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Part - VII

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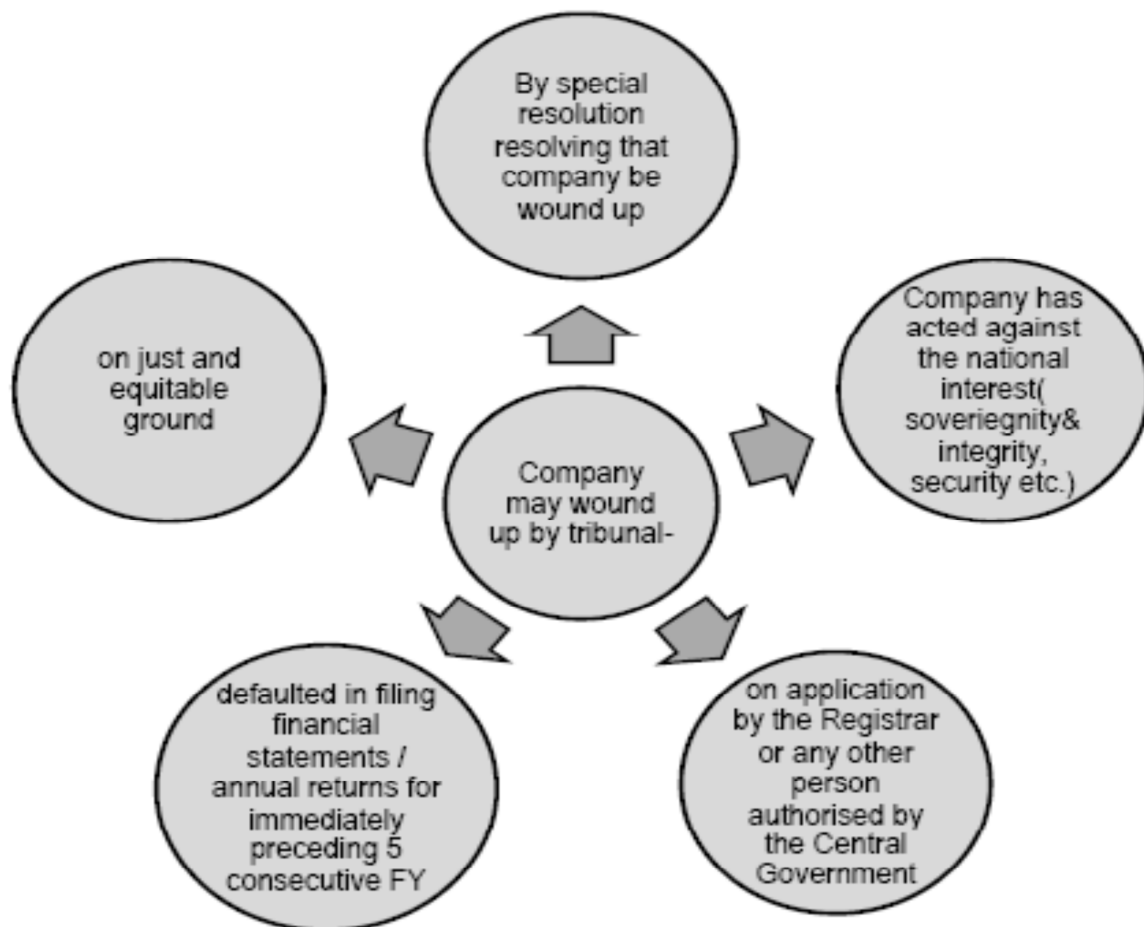
WINDING UP

PART – I : Winding up by the Tribunal [Section 271 – 303]

Circumstances in Which Company May be Wound Up by Tribunal [Section 271]

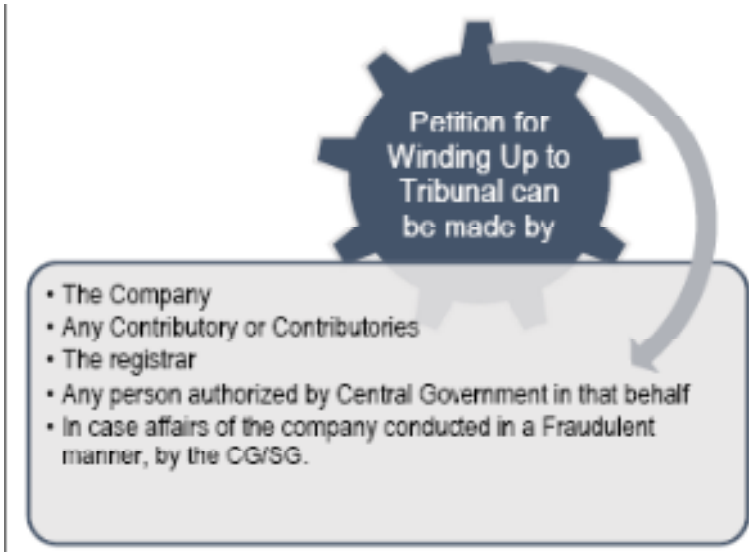
A company may, on a petition under section 272, be wound up by the Tribunal,—

- (a) If the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- (b) If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
- (c) If on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
- (d) If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
- (e) If the Tribunal is of the opinion that it is just and equitable that the company should be wound up.



Petition for Winding up [Section 272]

(1) Petition may be presented by :



Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

- (a) The company;
- (b) Any contributory or contributories;
- (c) All or any of the persons specified in clauses (a) and (b);
- (d) The Registrar;
- (e) Any person authorised by the Central Government in that behalf; or
- (f) In a case falling under clause (b) of section 271, by the Central Government or a State Government.

(2) Petition by contributory: A contributory shall be entitled to present a petition for the winding up of a company.

Shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

Contributory can file petition ignoring the following points

- He may be the holder of fully paid-up shares.
- The company may have no assets at all.
- The company may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities.

(3) Petition by registrar: The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) or clause (e) of that sub-section:

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

- (4) **Petition presented by company:** A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.
- (5) **Copy of petition with registrar:** A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.

Powers of Tribunal [Section 273]

- (1) **Order passed by tribunal:** The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:—
- Dismiss it, with or without costs;
 - Make any interim order as it thinks fit;
 - Appoint a provisional liquidator of the company till the making of a winding up order;
 - Make an order for the winding up of the company with or without costs; or
 - Any other order as it thinks fit:

Time limit for passing of an order: Provided that an order under this sub-section shall be made within ninety days from the date of presentation of the petition:

Notice to company on appointing of provisional liquidator: Provided further that before appointing a provisional liquidator, the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice:

Tribunal shall not refuse to make a winding up order: Provided also that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

- (2) **Tribunal make order for any other remedy on just and equitable ground:** Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy.

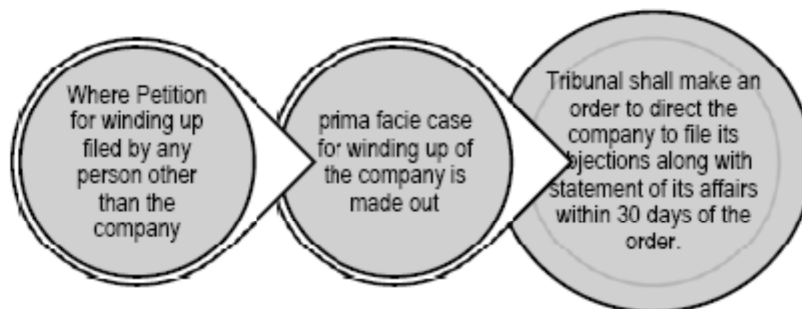
Directions for Filing Statement of Affairs [Section 274]

- (1) **Tribunal may order company to file a statement of its affairs:** Where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a prima facie case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs within thirty days of the order in such form and in such manner as may be prescribed.

Extension of time for filing: Provided that the Tribunal may allow a further period of thirty days in a situation of contingency or special circumstances:

Deposit of security: Provided further that the Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a precondition to issue directions to the company.

- (2) **Punishment for not filing of the statement of affairs:** A company, which fails to file the statement of affairs as referred to in sub-section (1), shall forfeit the right to oppose the petition and such directors and officers of the company as found responsible for such non-compliance, shall be liable for punishment under subsection (4).
- (3) **Officers to pay cost of the company, book of accounts completed and audited to the Liquidator :** The directors and other officers of the company, in respect of which an order for winding up is passed by the Tribunal under clause (d) of subsection (1) of section 273, shall, within a period of thirty days of such order, submit, at the cost of the company, the books of account of the company completed and audited up to the date of the order, to such liquidator and in the manner specified by the Tribunal.
- (4) **Contravention of section:** If any director or officer of the company contravenes the provisions of this section, the director or the officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.
- (5) **Complaint to be presented before special court may be filed by:** The complaint may be filed in this behalf before the Special Court by Registrar, provisional liquidator, Company Liquidator or any person authorised by the Tribunal.



Company Liquidators and their appointments [Section 275]

- (1) **Appointment of official liquidator:** For the purposes of winding up of a company by the Tribunal, the Tribunal at the time of the passing of the order of winding up, shall appoint an Official Liquidator or a liquidator from the panel maintained as the Company Liquidator.
- (2) **Appointment of provisional liquidator or the Company Liquidator by tribunal:** The provisional liquidator or the Company Liquidator, as the case may, shall be appointed by the Tribunal from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016;
- (3) **Tribunal may limit the powers of a provisional liquidator:** Where a provisional liquidator is appointed by the Tribunal, the Tribunal may limit and restrict his powers by the order appointing him or it or by a subsequent order, but otherwise he shall have the same powers as a liquidator.

- (4) **Tribunal to specify the terms and conditions of appointment of provisional liquidator:** The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him or it shall be specified by the Tribunal on the basis of task required to be performed, experience, qualification of such liquidator and size of the company.
- (5) **Filing of declaration by liquidator on appointment:** On appointment as provisional liquidator or Company Liquidator, as the case may be, such liquidator shall file a declaration within seven days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal and such obligation shall continue throughout the term of his appointment.
- (6) **Appointment of provisional liquidator as the company liquidator:** While passing a winding up order, the Tribunal may appoint a provisional liquidator, if any, appointed under clause (c) of sub-section (1) of section 273, as the Company Liquidator for the conduct of the proceedings for the winding up of the company.

Removal and Replacement of Liquidator [Section 276]

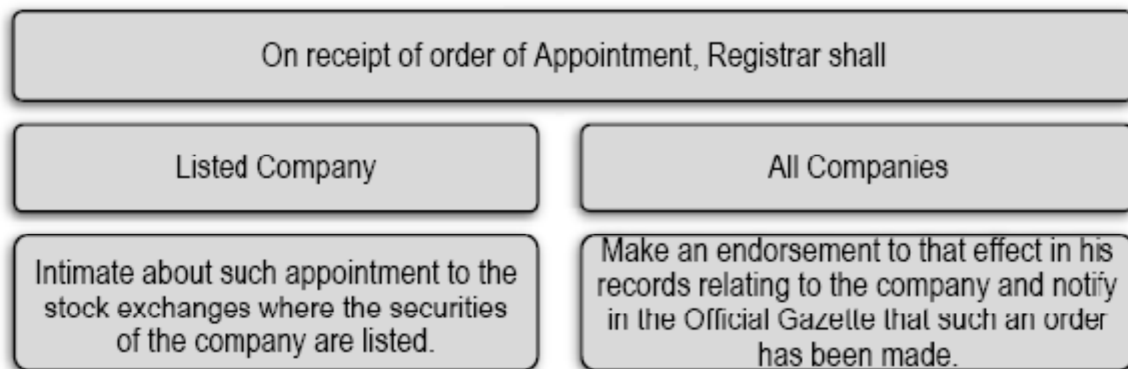
- (1) **Removal of provisional liquidator or the Company Liquidator:** The Tribunal may, on a reasonable cause being shown and for reasons to be recorded in writing, remove the provisional liquidator or the Company Liquidator, as the case may be, as liquidator of the company on any of the following grounds, namely:—
- (a) misconduct;
 - (b) fraud or misfeasance;
 - (c) professional incompetence or failure to exercise due care and diligence in performance of the powers and functions;
 - (d) inability to act as provisional liquidator or as the case may be, Company Liquidator;
 - (e) conflict of interest or lack of independence during the term of his appointment that would justify removal.
- (2) **Transfer of work of liquidators:** In the event of death, resignation or removal of the provisional liquidator or as the case may be, Company Liquidator, the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.
- (3) **Recover of loss or damage from liquidator:** Where the Tribunal is of the opinion that any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance of his or its powers and functions, the Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass such other orders as it may think fit.
- (4) **Reasonable opportunity of being heard to the provisional liquidator:** The Tribunal shall, before passing any order under this section, provide a reasonable opportunity of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

Intimation to Company Liquidator, Provisional Liquidator and Registrar [Section 277]

- (1) **Intimation of an order of tribunal:** Where the Tribunal makes an order for- □
 appointment of provisional liquidator or
- The winding up of a company,
 - It shall, within a period not exceeding seven days from the date of passing of the order, cause intimation thereof to be sent to the-
 - Company Liquidator or provisional liquidator, as the case may be, and
 - The Registrar.

(2) **Registrar to intimate of an order:**

With respect to all companies- On receipt of the copy of order of appointment of provisional liquidator or winding up order, the Registrar shall make an endorsement to that effect in his records relating to the company and notify in the Official Gazette that such an order has been made, and In the case of a listed company, the Registrar shall intimate about such appointment or order, as the case may be, to the stock exchange or exchanges where the securities of the company are listed.



- (3) **Winding up order shall be deemed to be notice of discharge:** The winding up order shall be deemed to be a notice of discharge to the officers, employees and workmen of the company, except when the business of the company is continued.
- (4) **Constitution of winding up committee to monitor liquidation proceedings:** Within three weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function as provided in sub-section (5) and such winding up committee shall comprise of the following persons, namely:—
- (i) Official Liquidator attached to the Tribunal;
 - (ii) Nominee of secured creditors; and
 - (iii) A professional nominated by the Tribunal.
- (5) **Functions of winding up committee:** The Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:—
- (i) Taking over assets;
 - (ii) Examination of the statement of affairs;
 - (iii) Recovery of property, cash or any other assets of the company including benefits derived therefrom;

- (iv) Review of audit reports and accounts of the company;
 - (v) Sale of assets;
 - (vi) Finalisation of list of creditors and contributories;
 - (vii) Compromise, abandonment and settlement of claims;
 - (viii) Payment of dividends, if any; and
 - (ix) Any other function, as the Tribunal may direct from time to time.
- (6) **Submission of report & minutes of meetings of the committee before tribunal:** The Company Liquidator shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.
- (7) **Company liquidator to prepare draft final report:** The Company Liquidator shall prepare the draft final report for consideration and approval of the winding up committee.
- (8) **Submission of approved final report before the tribunal for passing of dissolution order:** The final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

Effect of Winding up order [Section 278]

The order for the winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories.

Stay of Suits, etc., on Winding up Order [Section 279]

- (1) **Suit or legal proceeding can be commenced after winding up order/appointment of liquidator only with permission of tribunal:** When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with the leave of the Tribunal and subject to such terms as the Tribunal may impose: Provided that any application to the Tribunal seeking leave under this section shall be disposed of by the Tribunal within sixty days.
- (2) **In case proceeding pending in appeal:** Nothing in sub-section (1) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

Jurisdiction of Tribunal [Section 280]

The Tribunal shall have jurisdiction to entertain, or dispose of,—

- (a) Any suit or proceeding by or against the company;
- (b) Any claim made by or against the company, including claims by or against any of its branches in India;
- (c) Any application made under section 233 [Fast track merger];
- (d) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation

to winding up of the company, whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.

Submission of Report by Company Liquidator [Section 281]

- (1) **Particulars to be mentioned in the report of company liquidator:** Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within sixty days from the order, submit to the Tribunal, a report containing the following particulars, namely:—

Contents of Liquidator's Report

The nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank, if any, and the negotiable securities, if any, held by the company.

The valuation of the assets shall be obtained from registered valuers for this purpose.

Amount of capital issued, subscribed and paid-up.

The existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts, and

In the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given.

The debts due to the company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof

Guarantees, if any, extended by the company

List of contributories and dues, if any, payable by them and details of any unpaid call

Details of trademarks and intellectual properties, if any, owned by the company
Details of subsisting contracts, joint ventures and collaborations, if any

Details of holding and subsidiary companies, if any
Details of legal cases filed by or against the company

Any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include

- (2) **Duties of liquidator to give desirable information in the report:** The Company Liquidator shall include in his report the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation thereof and any other matters which, in his opinion, it is desirable to bring to the notice of the Tribunal.
- (3) **Report on viability of business of the company:** The Company Liquidator shall also make a report on the viability of the business of the company or the steps which, in his opinion, are necessary for maximising the value of the assets of the company.
- (4) **Any other necessitated report:** The Company Liquidator may also, if he thinks fit, make any further report or reports.
- (5) **Inspection of reports:** Any person describing himself in writing to be a creditor or a contributory of the company shall be entitled by himself or by his agent at all reasonable times to inspect the report submitted in accordance with this section and take copies thereof or extracts therefrom on payment of the prescribed fees.

Directions of Tribunal on Report of Company Liquidator [Section 282]

- (1) **Time limit for the preceeding shall be fixed:** The Tribunal shall, on consideration of the report of the Company Liquidator, fix a time limit within which the entire proceedings shall be completed and the company be dissolved:
Revision of time limit: Provided that the Tribunal may, if it is of the opinion, at any stage of the proceedings, or on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, that it will not be advantageous or economical to continue the proceedings, revise the time limit within which the entire proceedings shall be completed and the company be dissolved.

- (2) **Order of tribunal:** The Tribunal may, on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, order sale of the company as a going concern or its assets or part thereof:
Provided that the Tribunal may, where it considers fit, appoint a sale committee comprising such creditors, promoters and officers of the company as the Tribunal may decide to assist the Company Liquidator in sale under this sub-section.

- (3) **Tribunal may order for investigation against the company in respect of commission of fraud :** Where a report is received from the Company Liquidator or the Central Government or any person that a fraud has been committed in respect of the company, the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 210, and on consideration of the report of such investigation it may pass order and give directions under sections 339 to 342 or direct the Company Liquidator to file a criminal complaint against persons who were involved in the commission of fraud.

- (4) **Tribunal to take measures to safe guard the assets of the company:** The Tribunal may order for taking such steps and measures, as may be necessary, to protect, preserve or enhance the value of the assets of the company.

- (5) **Tribunal may pass such other order /directions as it may consider fit:** The Tribunal may pass such other order or give such other directions as it considers fit.

Custody of Company's Properties [Section 283]

Sl.No.	Provisions	Provisions
1.	Where a winding up order has been made or where a provisional liquidator has been appointed	The liquidator, shall, on the order of the Tribunal immediately take into his or its custody or control – <ul style="list-style-type: none"> • all the property, • effects and • actionable claims to which the company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the company.
2.	Computation of custody time period	all the property and effects of the company shall be deemed to be in the custody of the Tribunal from the date of the order for the winding up of the company

3.	On an application by the Company Liquidator, the tribunal may order to pay /deliver etc. any money, property etc. of the company to the Liquidator.	The Tribunal may, at any time after the making of a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company,- <ul style="list-style-type: none"> • to pay, • deliver, • surrender or • transfer forthwith, or • within such time as the Tribunal directs, <ul style="list-style-type: none"> - to the Company Liquidator, • any money, property or books and papers in his custody or under his control to which the company is or appears to be entitled.
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Promoters, Directors, etc., to cooperate with Company Liquidator [Section 284]

- (1) Persons to extend full cooperation to the liquidators: The promoters, directors, officers and employees, who are or have been in employment of the company or acting or associated with the company shall extend full cooperation to the Company Liquidator in discharge of his functions and duties.
- (2) On failure to discharge obligations: Where any person, without reasonable cause, fails to discharge his obligations under sub-section (1), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

Settlement of List of Contributories and Application of Assets [Sec 285]

- (1) **Tribunal to perform acts:** As soon as may be after the passing of a winding up order by the Tribunal, the Tribunal shall -
 - Settle a list of contributories,
 - Cause rectification of register of members in all cases where rectification is required in pursuance of this Act, and
 - Shall cause the assets of the company to be applied for the discharge of its liability. Provided that where it appears to the Tribunal that it would not be necessary to make calls on or adjust the rights of contributories, the Tribunal may dispense with the settlement of a list of contributories.
- (2) **Identifying contributories on the basis of nature of rights:** In settling the list of contributories, the Tribunal shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.
- (3) **Persons liable to contribute to the assets on certain conditions:** While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following conditions, namely:—

SL.NO.	LIABILITIES	CONDITIONS DESCRIBE THE LIABILITIES TO CONTRIBUTE TOWARDS THE ASSETS
1.	a person who has been a member shall not be liable to contribute	if he has ceased to be a member for the preceding one year or more before the commencement of the winding up
2.	a person who has been a member shall not be liable to contribute in respect of any debt or liability of the company	If such debt or liability contracted after he ceased to be a member
3.	a person who has been a member shall be liable to contribute	When it appears to the Tribunal that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act
4.	in the case of a company limited by shares	no contribution shall be required from any person, who is or has been a member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;
5.	in the case of a company limited by guarantee	If the company has a share capital, such member shall be liable to contribute to the extent of any sum unpaid on any shares held by him as if the company were a company limited by shares.

Obligations of Directors and Managers [Section 286]

Unlimited liability of a person in the case of a limited company: In the case of a limited company, any person who is or has been a director or manager, whose liability is unlimited under the provisions of this Act, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of winding up, a member of an unlimited company:

Provided that —

- (a) **Person ceased to hold office for a year or more:** a person who has been a director or manager shall not be liable to make such further contribution, if he has ceased to hold office for a year or upwards before the commencement of the winding up;
- (b) **Persons not liable to contribute any debt/ liability of the company after he ceased to hold office:** a person who has been a director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;
- (c) **Persons not liable unless tribunal deems it necessary to satisfy the debts and liabilities:** subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Tribunal deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

Advisory Committee [Section 287]

- (1) **Appointment of advisory committee:** The Tribunal may, while passing an order of winding up of a company, direct that there shall be, an advisory committee to advise the Company Liquidator and to report to the Tribunal on such matters as the Tribunal may direct.
- (2) **Composition:** The advisory committee appointed by the Tribunal shall consist of not more than twelve members, being-
 - Creditors and contributories of the company, or
 - Such other persons in such proportion as the Tribunal may, keeping in view the circumstances of the company under liquidation, direct.
- (3) **Conduct of meeting:** The Company Liquidator shall convene a meeting of creditors and contributories, as ascertained from the books and documents, of the company within thirty days from the date of order of winding up for enabling the Tribunal to determine the persons who may be members of the advisory committee.
- (4) **Right to inspection of documents:** The advisory committee shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation at a reasonable time.
- (5) **Procedure for the conduct of meeting and business shall be as prescribed by rules:** The provisions relating to the convening of the meetings, the procedure to be followed thereat and other matters relating to conduct of business by the advisory committee shall be such as may be prescribed.
- (6) **Company liquidator shall be chairperson:** The meeting of advisory committee shall be chaired by the Company Liquidator.

Submission of Periodical Reports to Tribunal [Section 288]

- (1) **Periodical reports to the tribunal:** The Company Liquidator shall make periodical reports to the Tribunal and in any case make a report at the end of each quarter with respect to the progress of the winding up of the company in such form and manner as may be prescribed.
- (2) **Review of orders by tribunal:** The Tribunal may, on an application by the Company Liquidator, review the orders made by it and make such modifications as it thinks fit.

Appeals from Orders Made Before Commencement of Act [Section 303]

Prospective effect: Nothing in this Chapter shall affect the operation or enforcement of any order made by any Court in any proceedings for the winding up of a company immediately before the commencement of this Act and an appeal against such order shall be filed before such authority competent to hear such appeals before such commencement.

(Part II- Voluntary winding up) Sections 304- 323- Omitted

Provisions under Companies Act, 2013 stands omitted due to section 255 of Insolvency & Bankruptcy Code, 2016 and section 59 covered under Chapter V of Insolvency & Bankruptcy Code, 2016 has been notified on 01.04.2017. For reference of the stated section see the reading material "An overview of Insolvency & Bankruptcy Code, 2016".

Part III—Provisions Applicable to Every Mode of Winding Up**Debts of all Descriptions to be Admitted to Proof [Section 324]**

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act or of the law of insolvency), -

- all debts payable on a contingency, and
- all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

Section 325- omitted**Overriding Preferential Payments [Section 326]**

(1) Debts to be paid in priority: In the winding up of a company under this Act, the following debts shall be paid in priority to all other debts:—

- (a) workmen's dues; and
- (b) where a secured creditor has realised a secured asset, so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen's portion in his security (if payable under the law), whichever is less, pari passu with the workmen's dues:

Provided that in case of the winding up of a company, the sums referred to in sub-clauses (i) and (ii) of clause (b) of the Explanation, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

(2) Proviso mentioning the debts shall be paid in full: The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that subsection shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

Explanation—For the purposes of this section, and section 327—

- (a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947;
- (b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

- (i) All wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947
 - (ii) All accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;
 - (iii) Unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (19 of 1923), rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;
 - (iv) All sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;
- (c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.

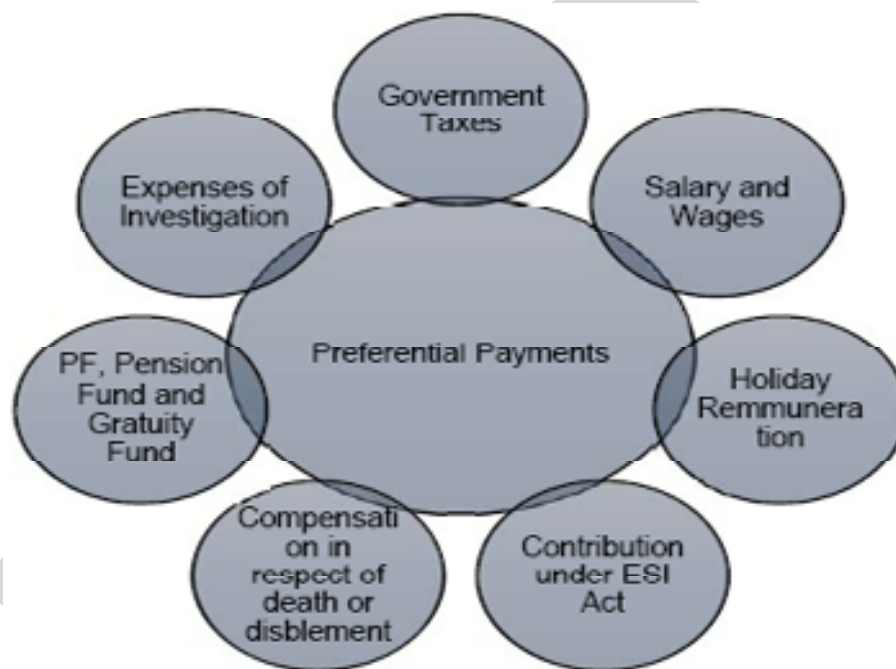
Preferential Payments [Section 327]

- (1) **In a winding up, subject to the provisions of section 326, there shall be paid in priority to all other debts,—**
- (a) all revenues, taxes, cesses and rates due from the company to the Central Government or a State Government or to a local authority at the relevant date, and having become due and payable within the twelve months immediately before that date;
 - (b) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any employee in respect of services rendered to the company and due for a period not exceeding four months within the twelve months immediately before the relevant date, subject to the condition that the amount payable under this clause to any workman shall not exceed such amount as may be notified;
 - (c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death, to any other person claiming under him, on the termination of his employment before, or by the winding up order, or, as the case may be, the dissolution of the company;
 - (d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, all amount due in respect of contributions payable during the period of twelve months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 or any other law for the time being in force;
 - (e) unless the company has, at the commencement of winding up, under such a contract with any insurer as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the

workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company:

Provided that where any compensation under the said Act is a weekly payment, the amount payable under this clause shall be taken to be the amount of the lump sum for which such weekly payment could, if redeemable, be redeemed, if the employer has made an application under that Act;

- (f) all sums due to any employee from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company; and
- (g) the expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.



- (2) **Payment in case of employee:** Where any payment has been made to any employee of a company on account of -
- wages or salary, or
 - accrued holiday remuneration, himself or,
 - in the case of his death, to any other person claiming through him,
 - out of money advanced by some person for that purpose, the person by whom the money was advanced
- shall, in a winding up, have a right of priority in respect of the money so advanced and paid-up to the amount by which the sum in respect of which the employee or other person in his right would have been entitled to priority in the winding up has been reduced by reason of the payment having been made.
- (3) **Payments of debts:** The debts enumerated in this section shall—
- (a) Rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
 - (b) So far as the assets of the company available for payment to general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

- (4) **Discharged from payment of debts:** Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given under clause (d) of sub-section(1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.
- (5) **Debts to which priority is given, shall be a first charge on the goods:** In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months immediately before the date of a winding up order, the debts to which priority is given under this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

- (6) **Remuneration of holiday/ of absence from work:** Any remuneration in respect of a period of holiday or of absence from work on medical grounds through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.
- (7) **Non-applicability of sections 326 & 327:** Sections 326 and 327 shall not be applicable in the event of liquidation under the Insolvency and Bankruptcy Code, 2016.

Explanation—For the purposes of this section,—

- (a) The expression “accrued holiday remuneration” includes, in relation to any person,
- all sums which, by virtue either of his contract of employment or of any enactment including any order made or direction given thereunder,
 - are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;
- (b) The expression “employee” does not include a workman; and
- (c) The expression "relevant date" means in the case of a company being wound up by the Tribunal-
- the date of appointment or first appointment of a provisional liquidator, or
 - if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date under the Insolvency and Bankruptcy Code, 2016;

INSPECTION & INVESTIGATION**Sec 206 : Power to call for inspection**

- Power given to Registrar to call for information explanation or document
- May demand any document or information by written notice if he has opinion that it is required on the basis of information supplied to him by the Company.

Duty of the Company

Registrar may demand additional information in writing if existing information is not sufficient, which may be required to Registrar.

It is duty to furnish information within time specified.

Inquiry by Registrar

- (a) (1) on the basis of information supplied to it
- (2) Conducting Business for fraudulent purpose
- (3) Grievance of Investor not redressed
- (b) Before calling the Company for inquiry registrar shall inform the allegation made against it.
- (c) CG shall authorize Registrar / Inspector for inquiry
- (d) Punishment as per Sec. 447 if indulged in fraudulent act.
Failure to furnish information : ₹ 100,000 + ₹ 500 per day

Sec 207 : Conduct of inspection & Inquiry

- Power of Registrar / Inspector:
 - 1) Demand copies of BOA
 - 2) Placing marks of identification in BOA
 - 3) Discovery & Production of BOA
 - 4) Summoning & Attendance
 - 5) Inspection of BOA
- Duty of company's officer / Director :
 - Furnish BOA / documents as required.
 - Furnish information explanation or document
 - Render all reasonable assistance to Registrar

Punishment : Officer or Director

Imprisonment upto 1 year and fine : min. 25,000 max. 100,000

Director / officer liable to vacate office

Sec. 208 Report on Inspection made

- In writing
- Along with recommendation / further information.

Sec. 209 : Search & Seizure

It Registrar / Inspector has reasonable ground to believe that books & Papers of Company or relating to KMP, Director, auditor, CS in Practice are likely to Destroy, mutilated, altered, falsified or secreted.

After obtaining order from special court for seizure can

- a) Enter with assistance & search the place
- b) Seize the BOA after allowing Co. to take copies for 180 Days + extension if needed.

Sec. 210 : investigation into Affairs of company

CG may order to investigate affairs of Co.

- 1) On report of registrar / Inspector
- 2) S.R. passed by Co.
- 3) In public Interest

CG Shall order an Investigation.

On order of Court / Tribunal :

- CG may appoint Inspector to investigate the matter.
- Applicant shall deposit amount. Upto ₹ 25,000.

It shall be refunded if investigation results in prosecution

Sec. 211: serious Fraud Investigation Office [SF 10]

To investigate frauds in relation to company

Sec. 213 :**Application to NCLT**

Co. having Share capital

↓
100 members

↓
1/10th of Total voting Power

Co. not having Share Capital

1/5th of Total of member

Sec. 216: Investigation of ownership of company

- (1) Where it appears to the Central Government that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons-
 - (a) Who are or have been financially interested in the success or failure, whether real or apparent, of the company; or
 - (b) Who are or have been able to control or to materially influence the policy of the company or Inserted by Companies (Amendment) Act, 2017
 - (c) Who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company
- (2) Without prejudice to its powers under sub-section (1), the Central Government shall appoint one or more inspectors under that sub-section, if the Tribunal, in the course of any proceeding before it, directs by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes specified in sub-section (1).
- (3) While appointing an inspector under sub-section (1), the Central Government may define the scope of the investigation, whether as respects the matters or the period to which it is

to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures.

- (4) Subject to the terms of appointment of an inspector, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation.

Sec. 218 : Protection of employees during investigation

No employees can be removed or deranked

Procedure to remove :

Application to NCLT within 30 days → NCLT passes order → Within 30 Days further appeal to NCLAT.

Sec. 220: Seizure of documents by Inspector

- In this case investigation is of other company
- Time limit for seizure of Books : Till conclusion of Investigation

Sec. 223 : Inspector's report

- (1) An inspector appointed under this Chapter may, and if so directed by the Central Government shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the Central Government.
- (2) Every report made under sub-section (1) shall be in writing or printed as the Central Government may direct.
- (3) A copy of the report made under sub-section (1) may be obtained by members, creditors or any other person whose interest is likely to be affected by making an application in this regard to the Central Government.
- (4) The report of any inspector appointed under this Chapter shall be authenticated either-
 - (a) By the seal, if any, of the company whose affairs have been investigated; or
 - (b) By a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
- (5) Nothing in this section shall apply to the report referred to in section 212.

Sec. 224 : Actions to be taken on basis of inspectors Report

- 1) Recovery of any loss or damage due to fraud
- 2) Recovery of property which is unlawfully applied
- 3) Winding up order may be passed

Expenses of investigation [Sec. 225]

Shall be borne by CG first & then it shall be recovered from the person liable (Guilty).

SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI) ACT , 1992

Preamble

1. To protect interest of investor
2. To regulate intermediaries
3. To develop securities market
4. Any matter incidental or ancillary in nature

Composition of SEBI

1. Chairman
2. Representative of ministry of finance, and representative of ministry of corporate affairs
3. Representative of RBI
4. 5 other members out of which atleast 3 shall be whole time member

General Functions of SEBI (Section 11)

1. Registering and regulating intermediaries
2. Prohibiting unfair trade practices and insider trading
3. Controlling substantial acquisition of shares or takeover
4. Inspection (i.e. calling for an information)

General Power of SEBI

1. Suspend any recognized stock exchange
2. Restrain any person to access securities market
3. Suspend any office bearers etc.
4. Impounding (confiscate) sale proceeds of securities
5. Freeze bank account
6. Direct any intermediary not to transfer securities

11A Power To Issue Regulation On Prospectus Offer Document Or Any Document On Basis Of Which Money Is Solicited From The Public

(1) As per the section, the Board may, for the protection of investors,—

Specify, by regulations	by general or special orders—
<ul style="list-style-type: none"> • The matters relating to issue of capital, transfer of securities and other matters incidental thereto; and • The manner in which such matters shall be disclosed by the companies; 	<ul style="list-style-type: none"> • Prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities; • Specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

(2) The Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.

11B Directions to Intermediaries

1. Directions can be issued for the following purposes
2. To protect interest of investors
3. To develop securities market
4. For proper management of intermediaries

11C Investigation**1. Ground**

- Transactions entered which is detrimental to interest of investors
- Any violation of the provisions of this Act

2. Duties of intermediaries :

- a) To produce document
- b) To provide information
- c) To appear personally
- d) Sign notes

3. Powers of investigating authority

- a) To inspect books of accounts
- b) To Call for information and explanation
- c) To summon
- d) To take on oath
- e) To take notes in writing

Investigating Authority can discharge following functions after approval of first class magistrate

- a. To enter with such assistance as may be required.
- b. To search such place as may be necessary.
- c. To seize books of accounts if required.

BOA can be seized if it is likely that book will be Destroyed, Mutilated, Altered, Falsified, Secreted

However, in case of listed companies books of accounts can be seized only on grounds of market manipulation or insider trading. BOA should be returned after examination. In no case it can be retained after conclusion of investigation.

11D Cease and Desist Order

- If there is violation of this Act, regulation, provisions then SEBI may pass cease order
STOP AND DON'T REPEAT
- If it is likely that any provisions, regulations and Act may be violated then, SEBI may pass desist order.
Prohibitory in nature and passed in advance.
- In case of listed company cease and desist order can be passed only if it is related to market manipulation or insider trading.

Factors to be taken into account by the adjudicating officer [Section 15J]

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely :—

- (a) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) The amount of loss caused to an investor or group of investors as a result of the default;
- (c) The repetitive nature of the default.

The power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the Provisions of this section.

Appeal

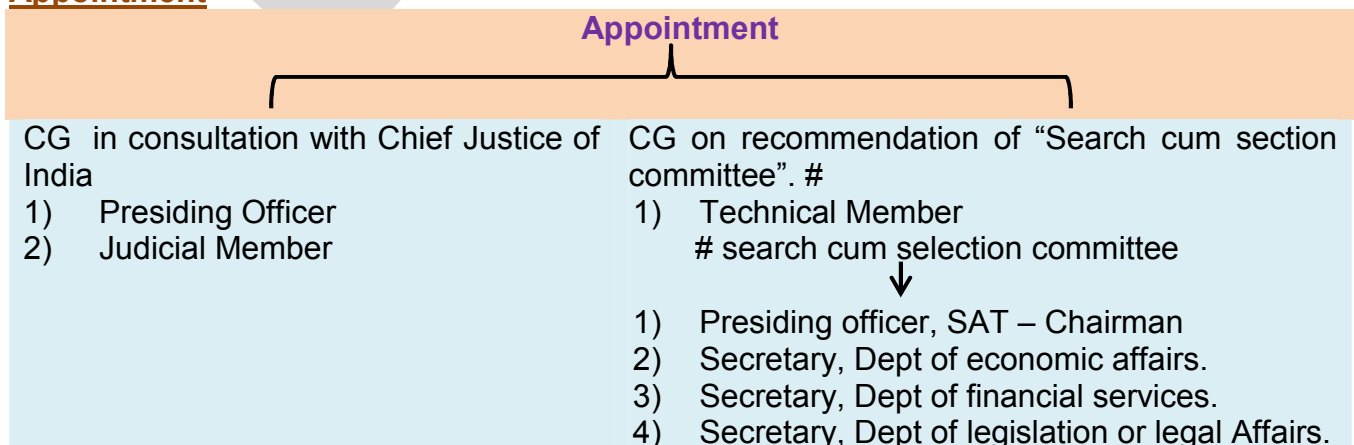
❖ **Securities appellant Tribunal (SAT) –**

- **Establishment of SAT** – central govt.
- **Composition** – Presiding officer / Judicial member / Technical member
- **Bench** – 1 Judicial member + 1 Technical member

Qualification

Presiding Officer	Judicial Member	Technical Member
1) Supreme collect judge or 2) High court chief Justice or 3) High collect Judge (Atleast 7 years)	1) High court Judge (Atleast 5 years)	1) Secretary or Additional secretary or ministry or Department of govt. 2) Ability / standing / integrity in financial sector or insurance (Atleast 15 years)

Appointment

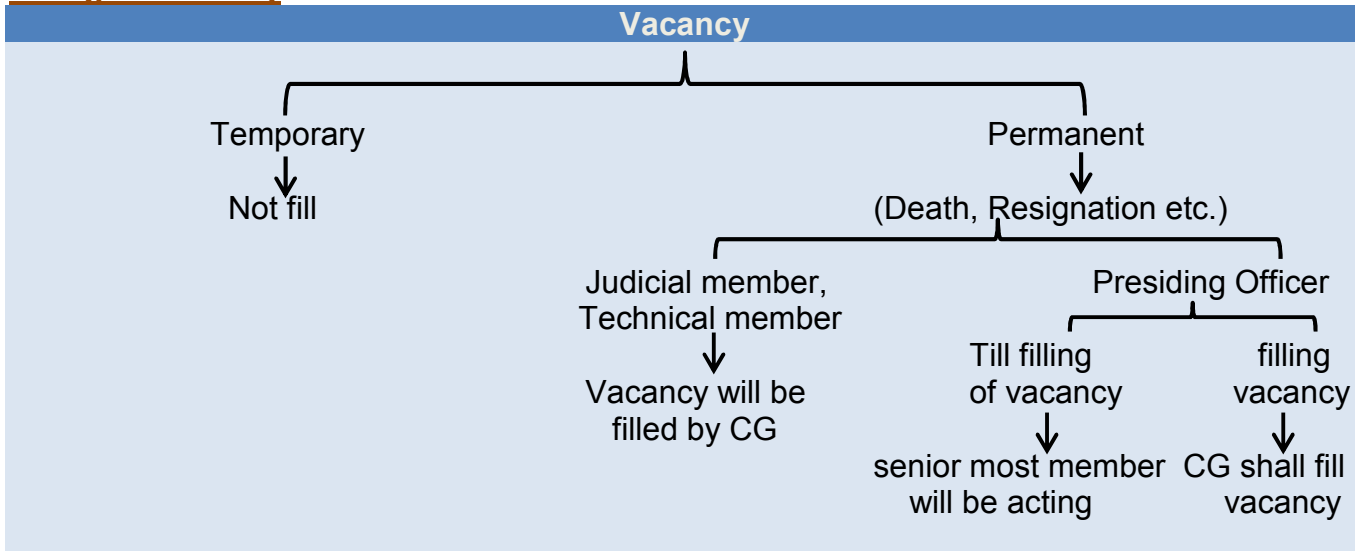


Tenure

Presiding officer / Judicial member / Technical member – 5 years + 5 years
 Maximum Age – Attain 70 years

Salary & Allowance

Salary & Allowance of PO shall not be at its disadvantage.

Filling of Vacancy**Resignation / Relinquishment of Office by Presiding officer / Judicial member / Technical member –****It will be effective –**

- 1) Within 3 months from the date of receipt of notice by CG
- 2) Successor appointed.
- 3) Tenure completed.

Whichever is earlier.

Removal of presiding officer / judicial member / Technical member –**Inquiry Judge of SC –**

- 1) Declared Insolvent
 - 2) Physical or mental Incapacitated
 - 3) Convicted – moral Turpitude
 - 4) Abuse his position
 - 5) Develop Financial Interest
- } opportunity of Being Heard

Validity of the Act of presiding officer / Judicial member / Technical member –

If there is any defect in appointment or procedure then it will not invalidate the decision already given.

Power of SAT –

- 1) Summon (Representative not allowed)
- 2) Discovery of Books
- 3) Enforcing affidavit
- 4) Examining witness
- 5) Reviewing his decision
- 6) Any other matter

Power of CGI to supersede SEBI –**It can supersede for max – 6 months on following grounds –**

- Grave emergency
- SEBI is not complying directions
- Not following acts
- Public Interest

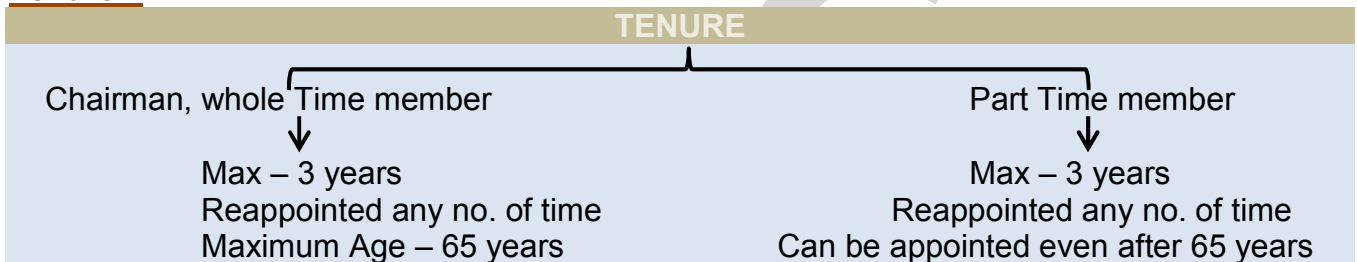
Member of SEBI

Removal of member of SEBI –

They can be removed either by serving 3 months by CG or 3 months' salary or allowance.

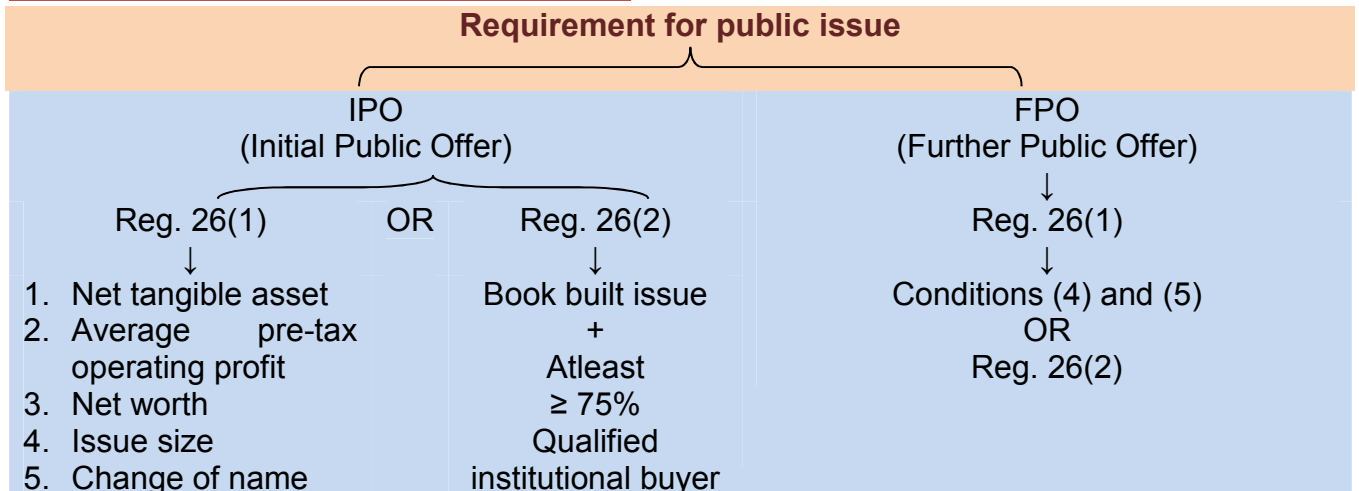
Relinquishment of office (i.e. resignation) –

3 months' notice is required in writing.

Tenure –

SEBI ICDR

Eligibility Requirements for Public Issue



1. **Net Tangible Asset** : Net tangible asset should be atleast 3 crores in every preceding 3 financial years (of 12 months each) out of which monetary asset should not be more than 50%. If it is more than 50% then issuer should make a proper arrangement to utilize in business of such excess amount.
2. **Average pre-tax opening profit** : average pre-tax operating profit in 3 FY out of preceding 5 FY should be atleast 15 crores
While calculating average profit non-recurring income will not be taken into consideration.
3. **Net worth** : net worth in every preceding 3 FY of 12 months each should be atleast 1 crore
4. **Issue size** :

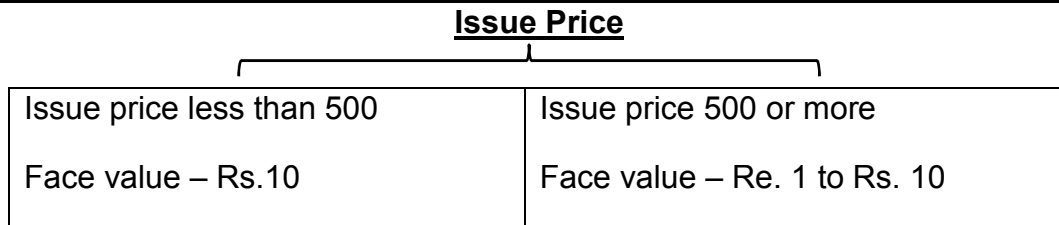
Public issue Already made in that FY	+ Proposed Issue in that FY	≤ 5 times of net worth
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5. **Change of name** : If the name has been changed in last 1 year then atleast 50% of total revenue should be indicated by new name

Note :

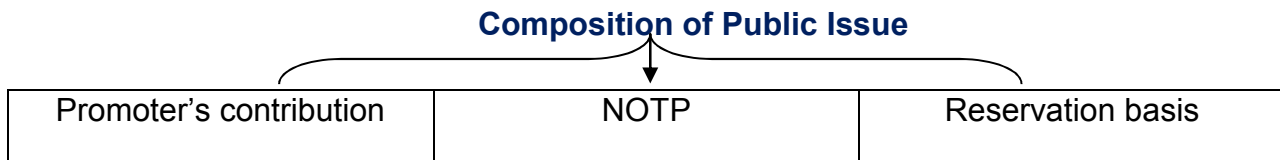
1. In case of public issue atleast 1000 allottees should make the investment.
2. IPO grading should be taken from credit rating agencies

Pricing in public issue

- Differential pricing (Reg. 29)
 - Price band (Reg. 30)
 - Face value (Reg. 31)
1. **Differential pricing (Reg.29)**
 - i) Discount can be offered to retail individual investor (RII) maximum upto 10%
 - ii) No discount can be offered to anchor investor (Rs.10 crores or more)
 - iii) In case of composite issue discount can be offered to right issue subject to justification in offer document
 2. **Price band (Reg. 30)**
Price range offered at the time of book building is termed as price band
 - Lower price is termed as floor price and higher price is termed as cap price
 - Difference between floor price and cap price can be maximum upto 20%
 3. **Face value (reg. 31)**



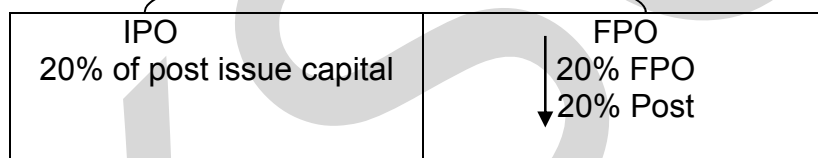
Composition of Public Issue



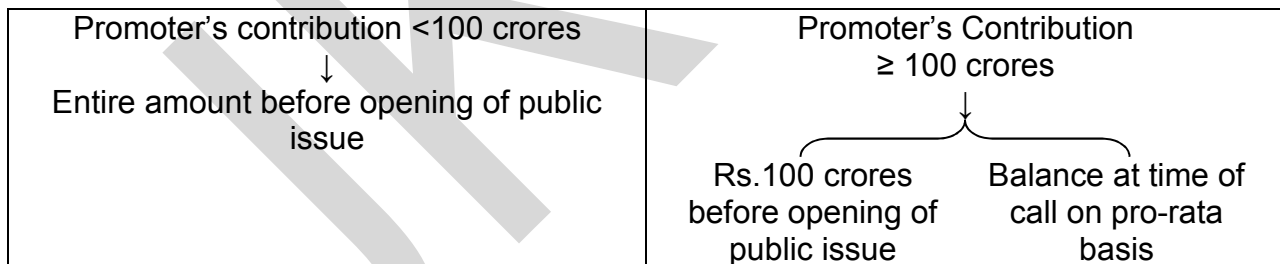
Promoter's Contribution

1. Minimum promoter contribution
2. Time of making
3. Non applicability
4. Lock in period

1. Minimum Promoter's Contribution



2. Time of Making



3. Non-applicability

- i) Non-identifiable promoter
- ii) Right issue
- iii) Company has paid dividend in preceding 3 FY and shares of the company is frequently traded

4. Lock-in-period

- minimum contribution 3 years
- excess contribution 1 year

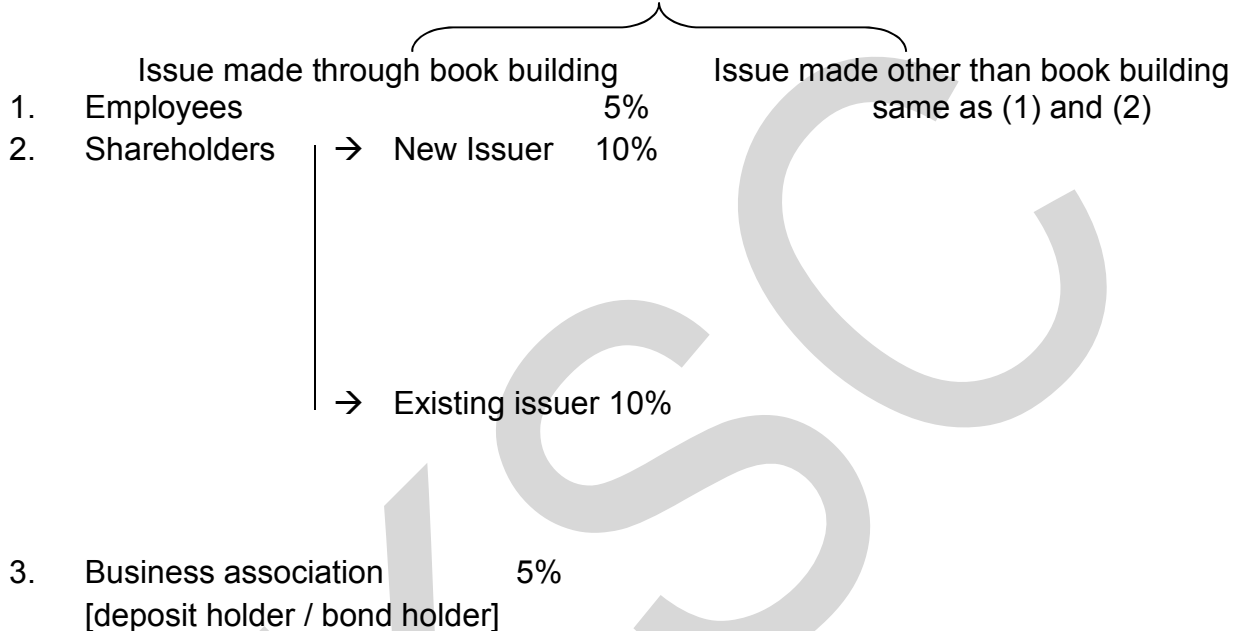
Note : Promoter can pledge excess contribution for his personal loan and can pledge his minimum contribution for loan to the company.

Net Offer To Public (NOTP)

Public issue capital upto ₹ 1600 cr. ↓ NOTP ≥ 25%	Post issue capital min. ₹ 1600 cr. upto ₹ 4000 cr. ↓ * NOTP Rs. 400 cr.	Post issue capital more than ₹ 4000 crores ↓ * NOTP At least 10%
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* It should be brought to 25% in next 3 years

Reservation Basis



Bonus Issue [Reg. 92]

Following conditions should be satisfied in order to make bonus issue.

1. It should be recognised by article
 2. If it is not authorized by article, then it should be amended by shareholders by passing special resolution.
 3. There should not be any default in repayment of fixed deposits or debt securities
 4. There should not be any default of statutory dues of employees (eg. Provident fund, bonus or gratuity)
 5. Company should make provision to issue bonus shares for its compulsory convertible securities.
- H owever, such bonus shares should be given after conversion
6. Bonus shares can be paid only out of profits realized in cash (i.e. free reserves) including securities premium. however, it cannot be paid out of revaluation reserve as it is not realized in cash.
 7. The partly paid shares, if any outstanding on the date of allotment, are made fully paid up.
 8. Bonus shares should be given to shareholders within 15 days if approval is not required. If approval is required then it should be given within 2 months.
 9. Once bonus shares have been declared it cannot be revoked.

10. Authorized share capital should be sufficient to accommodate bonus issue. If it is not sufficient then, memorandum should be amended by passing ordinary resolution of shareholders.

Right Issue (Reg. 52)

For making right issue company has to satisfy following conditions

1. Company has to fix record date and such record date should be intimated to the stock exchange
2. Once record date has been announced it cannot be withdrawn. Otherwise company is not eligible to make any fresh issue for the period of next 12 months. However, any convertible debentures due for conversion can be converted in that period
3. Company shall send "Letter of Offer" atleast 3 days before right issue (i.e. record date)
4. If any member has not received letter of offer then he may apply in 'plain paper' to the company.
5. Period of right offer should be not less than 15 days and it should not exceed 30 days
6. Right issue can be fully paid up or partly paid up. In case of fully paid up entire amount should be brought at time of application. In case of partly paid up atleast 25% should be brought at the time of application and balance should brought at time of call on pro-rata basis.
7. Reservation can be made for employees upto Rs.2 lakhs
8. Company should also make provision of right issue for compulsory convertible debenture holders

Preferential Allotment

Conditions for making preferential allotment :

1. special resolution of shareholders required :
2. dematerialized form : securities proposed to be issued in preferential allotment should be in Dmat form.
3. Continuous listing : The issuer is in compliance with the condition of continuous listing as given in listing agreement with stock exchange.
4. PAN : The issuer has obtained PAN of the allottees
5. Preferential allotment cannot be made to any person who has sold any securities within 6 months before relevant date.

Note : relevant date : the relevant date means 30 days prior to passing special resolution

6. Time limit : Preferential issue should be completed within 15 days from date of SR and if the company fails to do so then fresh SR required.
7. Pricing :

PRICING

Shares are listed for 26 weeks or more

Shares are listed for less than 26 weeks

1. Average of weekly high and low of weighted average price in preceding 26 weeks before relevant date
2. Average of weekly high and low of weighted average price in preceding 2 weeks before relevant date

1. IPO price
2. Average of weekly high and low of weighted average price for the period securities listed before relevant date
3. Average of weekly high and low of weighted average price of preceding 2 weeks before relevant date

Note : After expiry of 26 weeks step 2 shall be re-calculated and if the re-calculated amount is higher than difference should be paid to company and if it is lower then it shall not be taken into consideration.

CROSS-LISTING

Cross-listing is the listing of a company's common shares on a different exchange than its primary and original stock exchange. In order to be approved for cross-listing, the company in question must meet the same requirements as any other listed member of the exchange, such as basic requirements for the share count, accounting policies, filing requirements for financial reports and company revenues. The advantages to cross-listing include having shares trade in multiple time zones and in multiple currencies. This gives issuing companies more liquidity and a greater ability to raise capital.

A listed security is a financial instrument that is traded through an exchange, such as the NYSE (New York Stock Exchange) or NASDAQ (American stock exchange). When a private company decides to go public and issue shares, it will need to choose an exchange on which to be listed. To do so, it must be able to meet the exchange's listing requirements and pay both the exchange's entry and yearly listing fees. Listing requirements vary by exchange and include minimum stockholder's equity, a minimum share price and a minimum number of shareholders.

Exchanges have listing requirements to ensure that only high quality securities are traded on them and to uphold the exchange's reputation among investors.

PROCEDURE FOR QIP: The ICDR regulations have been laid down with certain conditions and restrictions for QIP which are to be complied by the company as a procedure without fail.

The company shall adhere to the following procedure:

- (a) **Approval of shareholders & validity of Shareholders:** The Company shall pass a Special resolution approving the qualified institutional placement by its shareholders. Further, the allotment of securities pursuant to the special resolution referred to in clause (a) of ICDR regulation 82 shall be completed within a period of 12 months from the date of passing of the resolution.
- (b) **Merchant Banker:** A QIP shall be managed by the merchant banker(s) registered with the board who shall exercise the due diligence. It is the duty of the merchant banker to seeking-in the approval for the listing of the eligible securities issued under QIPs and other requirements of the chapter.
- (c) **Listed securities:** The class of eligible securities, the equity shares of the same class, which are to be allotted through QIPs or there for conversion should have been listed in the stock exchange having nationwide trading terminal for a period of at least one year prior to the date of issuance of AGM notice to its shareholders. [Transferee Company in a scheme of merger, de-merger, amalgamation or arrangement sanctioned by a High Court under sections 391 to 394 of the Companies Act, 1956, may make QIP, where the equity shares of the same class of the transferor company were listed for a period of 1 year as mentioned above.]
- (d) **Allotment of securities under QIP:** the listed issuer to make QIPs may satisfies that it is in compliance withthe requirement of minimum public shareholding under Securities Contract (1956).
- (e) **Minimum Number of Allottee:** the minimum number of allottees for each placement of eligible securities that has to be made under QIPs shall not be less than two, where the issue size is less than or equal to ` 250 crores; and five, where the issue size is greater than ` 250 crores. However, no single allottee shall be allotted more than 50% of the issue size.
- (f) **Pricing:** Issue of shares under QIP shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date. Where eligible securities are convertible into or exchangeable with equity shares of the issuer, the issuer shall determine the price of such equity shares allotted pursuant to such conversion or exchange taking the relevant date as decided and disclosed by it while passing the special resolution.
- (g) **Partly paid-up:** the issuer shall not allot partly paid-up eligible securities, however case of the non-convertible debt instruments along with warrants, the allottees may pay full considerations or part thereof payable with respect to warrants, at the time of allotment of such warrants, however further, on allotment of equity shares on exercise of the options attached to warrants, such equity shares shall be fully paid up.
- (h) **Allotment Conditions:** At the time of allotment under the QIPs, minimum 10% of the eligible securities shall be allotted to mutual funds, however, if the mutual funds do not subscribe to the said minimum percentage or any part, such minimum portion or part may be allotted to other QIB's.
- (i) **Allotment to promoters:** No allotment shall be made, either directly or indirectly, to any qualified institutional buyer who is a promoter or any person related to promoters of the issuer.
- (j) **BIDS:** The applicants in qualified institutional placement shall not withdraw their bids after the closure of the issue.

- (k) **Quantum of issue:** The aggregate of the proposed qualified institutional placement and all previous qualified institutional placements made by the issuer in the same financial year shall not exceed 5 times the net worth of the issuer as per the audited balance sheet of the previous financial year.
- (l) **Tenure of convertibles securities:** The tenure of the convertible or exchangeable securities issued through qualified institutions placement shall not exceed 60 months from the date of allotment.
- (m) **Transferability of eligible securities:** the eligible securities under QIP shall not be sold by the allottee for a period of one year from the date of the allotment, except on a recognized stock exchange.
- (n) **Placement Document:** this is the most important provision as it tells that QIPs shall be made on the basis of a placement document which shall contain all material information. The following shall be submitted to Stock exchange-
- Hard copy of the preliminary Placement document;
 - Soft copy of the Preliminary Placement Document;
 - Due diligence Certificate of the lead Merchant Banker in compliance with ICDR regulations.