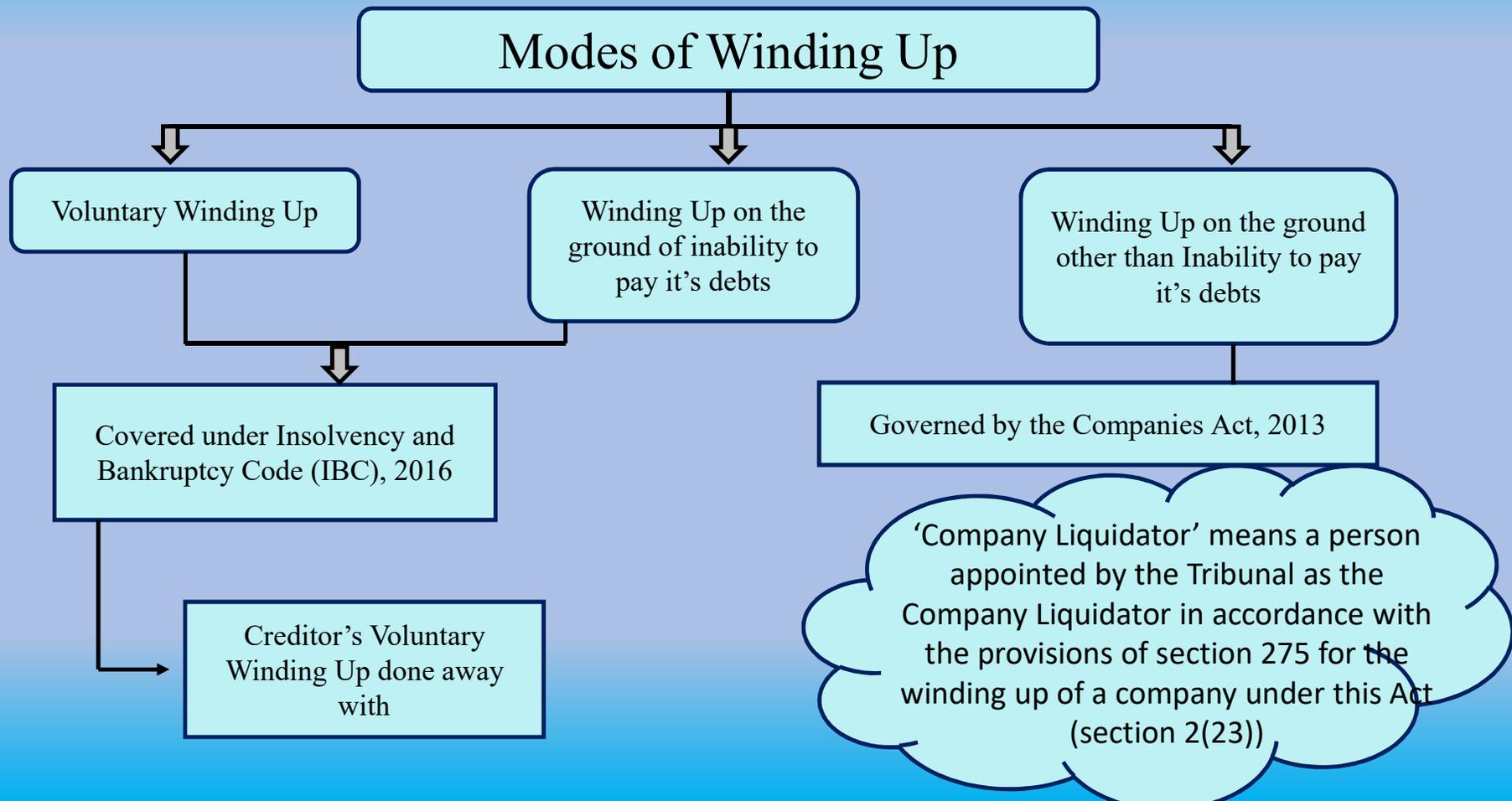


# 4.1.4 Chapter XX-Winding Up



The Companies Act 1956 was the only Act which deals with winding up of the companies and it remains in force for more than 5 decades after independence. Then, it was replaced by the Companies Act, 2013 containing the modified version of the provisions of winding up of companies in Chapter XX. But now with the enactment of IBC, 2016, a company can be wound up either under the Companies Act,2013 or IBC,2016 depending upon the mode of winding up as depicted in the pic

**Brief overview of the provisions of Chapter XX of the Companies Act, 2013 w.r.t. winding up after the enactment of IBC, 2016:**

Chapter XX begins with section 270 and further it has been divided in four parts covering winding up provisions as below:

Part	Heading	Sections Covered	Remarks
Part I	Winding up by the Tribunal	271-303	
Part II	Voluntary Winding Up	304-323	Deleted
Part III	Provisions applicable to every mode of winding up	324-358	
Part IV	Official Liquidators	359-365	

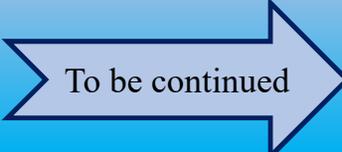
**Modes of Winding Up:** The provisions of Part I shall apply to the winding up of a company by the Tribunal under this Act. (Section 270) (Voluntary winding up has been deleted by IBC.2016)

## WINDING UP BY TRIBUNAL- PART I

### 1. Circumstances In Which Company May be Wound Up by Tribunal (Section 271)

There are five circumstances in which a company may be wound up by Tribunal;

- i. Special resolution passed by company for winding up by Tribunal
  
- ii. If the company has acted against the interest of the
  - sovereignty and integrity of India
  - The security of the State,
  - friendly relations with foreign States,
  - Public order
  - Decency or
  - Morality



To be continued

## WINDING UP BY TRIBUNAL- PART I

- iii. **If on an application made by the RoC** or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that it is proper that the company be, wound up because
- 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
- iv. Default in filing with the Registrar its **financial statements or annual returns or immediately preceding five consecutive financial years.**
- v. Just and equitable

## Petition for Winding up (Section 272)

### i. Who can file petition to the Tribunal for winding up:

- the company; (In case company is the petitioner, Tribunal can admit petition only if petition is accompanied by "Statement of Affairs" in prescribed form.)
- any contributory or contributories;
- the company and contributory or contributories
- the Registrar : - **With the previous sanction of the Central Government** (CG), RoC can file petition on all grounds mentioned in section 271 except (1) When SR is passed by the company or (ii) If the Tribunal is of the opinion that it is just and equitable that the company should be wound up. CG shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.
- any person authorized by the Central Government in that behalf; or
- in a case 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; by the Central Government or a State Government.

## **ii. Absolute right of contributory to file a petition for winding up if:**

- he is the original allottee of the shares
- He holds and is a registered shareholder for at least six months during the eighteen months immediately before the commencement of the winding up
- Shares have devolved on him through the death of a former holder- (Transmission of shares.)

This right is not affected by the following;

- he is the holder of fully paid-up shares, or
- the company may have no assets at all or
- the company may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities.

## **iii. Filing of petition with RoC by petitioner:**

- Mandatory
- the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition

# Power of Tribunal

1. The Tribunal may, on receipt of a petition for winding up under section 272 pass any of the following orders, namely:
  - i. Orders that may be passed by the Tribunal
    - 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; 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:
    - make an order for the winding up of the company with or without costs; or
    - any other order as it thinks fit
  - ii. Time period for making order  
Within 90 days from the date of presentation of the petition.

## Power of Tribunal-Section 273

iii. When shall not Tribunal refuse to making 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
- the company has no assets.

iv. When Tribunal may refuse winding up order:

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
- they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy.

## **The Procedure of Winding Up (Section 274 to Section 365):**

It is essential to understand a stepwise procedure of winding up under the Act. The procedure laid down under the statute is as follows:

1. The Tribunal may direct the Company to be wound up, if it is satisfied that a prima facie case exists. The Tribunal further directs the Company to file its objections along with a statement of its affairs within 30 days of such order (this timeline may be extended under special circumstances).
2. Further, the Tribunal at the time of passing an order shall also appoint a provisional liquidator or company liquidator. The Liquidator on its appointment shall file a declaration within seven days from the date of appointment in the prescribed form, disclosing a conflict of interest or lack of independence in respect to his appointment.

## **The Procedure of Winding Up (Section 274 to Section 365):**

3. If the Tribunal has passed an order of winding up, then the directors and such other officers have to submit the completed and audited books of the Company mandatorily, within 30 days of such order to the provisional Liquidator. If the director or such other officers fails to submit the required audited books, then they shall be personally liable for fine and imprisonment for contravening the provisions of the Act.
4. The Tribunal within 7 days of passing an order for appointment of provisional Liquidator shall intimate the same to the Liquidator and the Registrar. On receipt of the copy of order, the Registrar shall endorse the same and notify about the order in the Official Gazette. In case of a listed company, the Registrar shall intimate about the order to the stock exchange or exchanges where the securities of the Company are listed.

## **The Procedure of Winding Up (Section 274 to Section 365):**

5. 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.
6. Within 3 weeks from the date of passing of winding up order, the company liquidator shall make an application to the Tribunal for the constitution of a winding-up committee to assist and monitor the progress of liquidation. Such committee would comprise of the Liquidator, the nominee of secured creditors, and a professional nominated by the Tribunal.
7. When the order of winding-up is passed, no suit or other legal proceedings shall be commenced, or is pending, shall be proceeded with, by or against the Company, except with the leave of the Tribunal.

## **The Procedure of Winding Up (Section 274 to Section 365):**

8. On passing the order of winding up, the Tribunal shall pass an order to set up an advisory committee to assist the Liquidator and report the Tribunal regarding the matters as the Tribunal may direct. The committee should not exceed more than 12 members which is headed by the company liquidator and consisting of creditors and contributories of the Company, or other persons in such proportion as the Tribunal may direct.
9. The Liquidator has to submit a report to the Tribunal within 60 days of passing of the order of winding up. The report should be an exhaustive one, consisting of nature and details of the assets, valuation of the assets, amount of capital issued, existing and contingent liabilities, etc. The Liquidator shall also make a report on the steps to be taken for maximizing the value of the assets. The Liquidator should place periodical reports before the Tribunal to update about the Company's progress from time to time.

## **The Procedure of Winding Up (Section 274 to Section 365):**

10. The Tribunal, after scrutinizing the report by the Liquidator, shall fix a time within which the entire proceedings shall be completed, and the Company is to be dissolved, or the Tribunal may on examination of the report order sale of the Company as a going concern or its assets or part thereof. Accordingly, to assist the Liquidator in the sale, a sale committee is set up comprising of creditors, promoters, and officers of the Company.
  
11. Thereafter, the company liquidator on the order of winding up shall take into custody and control all the property, effects and actionable claims to which the Company is or appears to be entitled. The property shall be deemed to be in the custody of the Tribunal from the date of order of winding up.

## **The Procedure of Winding Up (Section 274 to Section 365):**

12. The Liquidator is under mandatory obligation to present the Tribunal with account of receipts and payments of the Company, which will be audited and copy of such audit report should be filed with the Tribunal, and other copies be delivered to the Registrar, which shall be open to inspection by any creditor, contributory or person interested.
  
13. The Tribunal then, orders the contributories to pay any money due to the Company from him. If any money is due from the Company towards the contributory and the contributory has not paid in full share amount, is allowed set off. Further, the Tribunal may issue summons to those, who are suspected of having Company's property and examine such persons. Apart from this, if any other person has some property of the Company, a report of the same has to be filed by the Liquidator.

## **The Procedure of Winding Up (Section 274 to Section 365):**

14. The company liquidator has the power to call the creditors to prove their claims, upon which the Liquidator prepares a list of creditors. Each creditor is then communicated about their claims being accepted or rejected. The Liquidator also ensures that every invoice, order or business letter issued by or on behalf of the Company, should contain a statement that Company is being wound up.
  
15. After all the formalities are over, the affairs of the Company has been completely wound up, the Liquidator shall submit an application to the Tribunal for dissolving the Company. If the Tribunal after the receipt of the application is of the opinion that it is just and reasonable to dissolve the Company, an order of dissolution is passed. A copy of such order shall be forwarded by the Liquidator to the Registrar.

## **Consequence of non- filing "Statement of Affairs" by the company (Section:274)**

- ❑ Company's right to oppose the petition shall be forfeited AND,
- ❑ A complaint may be filed in this behalf before the Special Court by Registrar, provisional liquidator, Company Liquidator or any person authorized by the Tribunal, and thereupon

### **Punishment for directors and officers in case of failure to complete accounts & audit:**

Imprisonment: Max. 6 months; or

Fine: Min. Rs.25 000 to max. Rs. 5 Lakh; or with both.

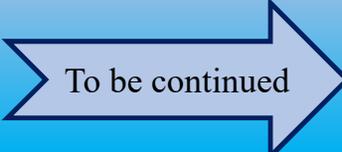
## **Appointment of Company Liquidator (Section 275):**

### **Who may be appointed as the Provisional Liquidator: The Insolvency Professional**

1. The Provisional liquidator or the Company Liquidator shall be appointed by the company law tribunal; the liquidator has to be a registered professional under the Insolvency and Bankruptcy Code, 2016.
2. A provisional liquidator shall have the same power as a company liquidator unless it is restricted by the Company Law Tribunal.
3. The Terms and Condition, the payment of fee everything shall be specified by the tribunal.
4. The liquidator has to disclose to the tribunal by means of declaration if there is a conflicting interest or lack of Independence in respect of his appointment if any.

## **Intimation of Passing of Winding Up (Section 277):**

- I. Intimation to be sent within 7 days of making order of appointment of PUCL or winding up
  - By Tribunal
  - To PL/CL + RoC
  
- II. Action by RoC on receipt of intimation
  - Endorsement to that effect in his records relating to the company
  - Notification of order in Official Gazette.
  - Intimation to stock exchange where securities of the company are listed (in case of listed company)
  
- iii. Consequence of winding up order
  - 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.



To be continued

## **Intimation of Winding Up (Section 277):**

### IV. Application for constitution of Winding Up Committee

- Mandatory to be made by CL to Tribunal
- Within three weeks from the date of passing of winding up order
- to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the following function:
  - ✓ taking over assets;
  - ✓ examination of the statement of affairs;
  - ✓ recovery of property, cash or any other assets of the company including benefits derived therefrom;
  - ✓ review of audit reports and accounts of the company;
  - ✓ sale of assets;
  - ✓ finalization of list of creditors and contributories;
  - ✓ compromise, abandonment and settlement of claims;
  - ✓ payment of dividends, if any; and
  - ✓ any other function, as the Tribunal may direct from time to time.

## **Intimation of Winding Up (Section 277):**

- I. Composition of winding up Committee: The Company Liquidator shall be the convener of the meetings of the winding up committee which shall consist of:
  - Official Liquidator attached to the Tribunal
  - nominee of secured creditors; and
  - a professional nominated by the Tribunal.
  
- II. Statutory duties of CL
  - 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.
  - prepare the draft final report for consideration and approval of the winding up committee
  - submit finally approved report to the Tribunal for passing of a dissolution order in respect of the company.

## **Order for the winding up of a company (Section 278):**

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.

## **Effect of winding up order (Section 279):**

### I. Stay of Suits, etc., on Winding up Order (Section 279)

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 when

- a. a winding up order has been passed or
- b. a provisional liquidator has been appointed
  - An application seeking leave shall be disposed to Tribunal within sixty days.

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, notwithstanding anything contained in any other law for the time being in force, 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;
- d. any scheme submitted under section 262;
- e. 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):

i. Reporting by CL: 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.

- 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:

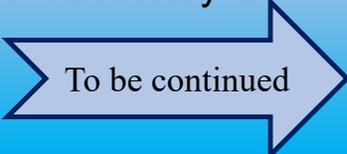
Provided that the valuation of the assets shall be obtained from registered valuers for this purpose;

- 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;

To be continued

## Submission of Report by Company Liquidator (Section 281):

- 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 realized 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; and
- any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include.



To be continued

## Submission of Report by Company Liquidator (Section 281):

### iii. Specific Reporting by CL:

- Promoter's fraud: CL 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.
- A report on the viability of the business of the company or the steps which, in his opinion, are necessary for maximizing the value of the assets of the company.
- make any further report or reports, if he thinks fit,

### iv. Inspection of the report of CL

- 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. 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:

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. 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.

## **Directions of Tribunal on Report of Company Liquidator (Section 282):**

3. 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 section 339 to 342 or direct the Company Liquidator to file a criminal complaint against persons who were involved in the commission of fraud.
4. 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. The Tribunal may pass such other order or give such other directions as it considers fit.

## **SETTLEMENT OF LIST OF CONTRIBUTORIES AND APPLICATION OF ASSETS (Section 284):**

1. Mandatory duty of the Tribunal immediately after passing winding up order
  - 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.

Tribunal may dispense with the settlement of a list of contributories if appears to the Tribunal that it would not be necessary to make calls on or adjust the rights of contributories

## **SETTLEMENT OF LIST OF CONTRIBUTORIES AND APPLICATION OF ASSETS (Section 284):**

- II. Obligation of the Tribunal while settling list of contributories:
- 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.
  - 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
    - ✓ of the costs, charges and expenses of winding up, and
    - ✓ for the adjustment of the rights of the contributories among themselves,

## **SETTLEMENT OF LIST OF CONTRIBUTORIES AND APPLICATION OF ASSETS (Section 284):**

Following ex-members 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;
- ✓ in respect of any debt or liability of the company contracted after he ceased to be a member;
- ✓ unless 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;
- ✓ 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, in the case of a company limited by shares
- ✓ exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up in the case of a company limited by guarantee but 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.

## Advisory Committee (Section 287)

1. Appointed by	<p>The Tribunal may, while passing an order of winding up of a company, direct that there shall be, an advisory committee</p> <ul style="list-style-type: none"><li>✓ to advise the Company Liquidator and</li><li>✓ to report to the Tribunal on such matters as the Tribunal may direct.</li></ul>
2. Composition of Advisory Committee	<ul style="list-style-type: none"><li>• Max. twelve members,</li><li>• 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.</li></ul>
3. Duty of CL	<ul style="list-style-type: none"><li>• 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.</li></ul>
4. Power of Advisory Committee	<ul style="list-style-type: none"><li>• right to inspect at a reasonable time. the</li><li>• books of account and other documents,</li><li>• assets and properties of the company under liquidation</li></ul>
5. Chairman of meeting of Advisory Committee	<ul style="list-style-type: none"><li>• Company Liquidator</li></ul>

## **Submission of Periodical Reports to Tribunal (Section 288)**

It is the duty of CL to submit to the Tribunal quarterly report w.r.t. the progress of winding up of the company.

## **Exercise of Powers by CL (Section 292)**

Any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the advisory committee.

## Provision for Professional Assistance to Company Liquidator (Section 291)

Appointed by	The Company Liquidator may, with the sanction of the Tribunal
Who may be appointed	<ul style="list-style-type: none"><li>✓ chartered accountants or</li><li>✓ company secretaries or</li><li>✓ cost accountants or</li><li>✓ legal practitioners or such other professionals</li></ul> on such terms and conditions, as may be necessary.
Purpose of Appointment	To assist CL in the performance of his duties and functions under this Act.
Duty of the person so appointed	Any person appointed under this section shall disclose forthwith to the Tribunal in the prescribed form any conflict of interest or lack of independence in respect of his appointment.

## **Powers of Tribunal to make order requiring contributories to pay and to allow them set off (Section 295)**

- If any money is due to the company from contributory apart from the call, Tribunal may order him to make payment.
- However, following set offs are allowed:
  - i. In the case of an unlimited company: Any money due to him or to the estate which he represents, from the company, on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit
  - ii. In the case of a limited company: allow to any director or manager whose liability is unlimited, or to his estate, such set-off.
  - iii. In the case of any company, whether limited or unlimited: when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

## **Powers of Tribunal to make Calls (Section 296)**

- After the passing of a winding up order, Tribunal may make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which it considers necessary for the following purpose:
  - i. to satisfy the debts and liabilities of the company, and
  - ii. to meet the costs, charges and expenses of winding up, and
  - iii. for the adjustment of the rights of the contributories among themselves.

## **Power to Summon Persons Suspected of Having Property of Company(Section 299)**

- I. To whom Tribunal may summon to be examined on oath:
  - Any officer of the company or
  - Any person known or suspected
    - ♦ to have in his possession any property or books or papers, of the company, or
    - ♦ to be indebted to the company, or
  - Any person whom the Tribunal thinks to be capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.
- II. Order to produce such books or papers without prejudice of his right of lien.
- III. Direct the liquidator to file before it a report in respect of debt or property of the company in possession of other persons.

## **Power to Summon Persons Suspected of Having Property of Company(Section 299)**

### IV. Tribunal orders:

- to make payment to PL by a person who is found to be indebted to the company.
- to deliver to PL if a person is found to be in possession of any property belonging to the company.
- impose an appropriate cost if officer of person so summoned fails to appear.

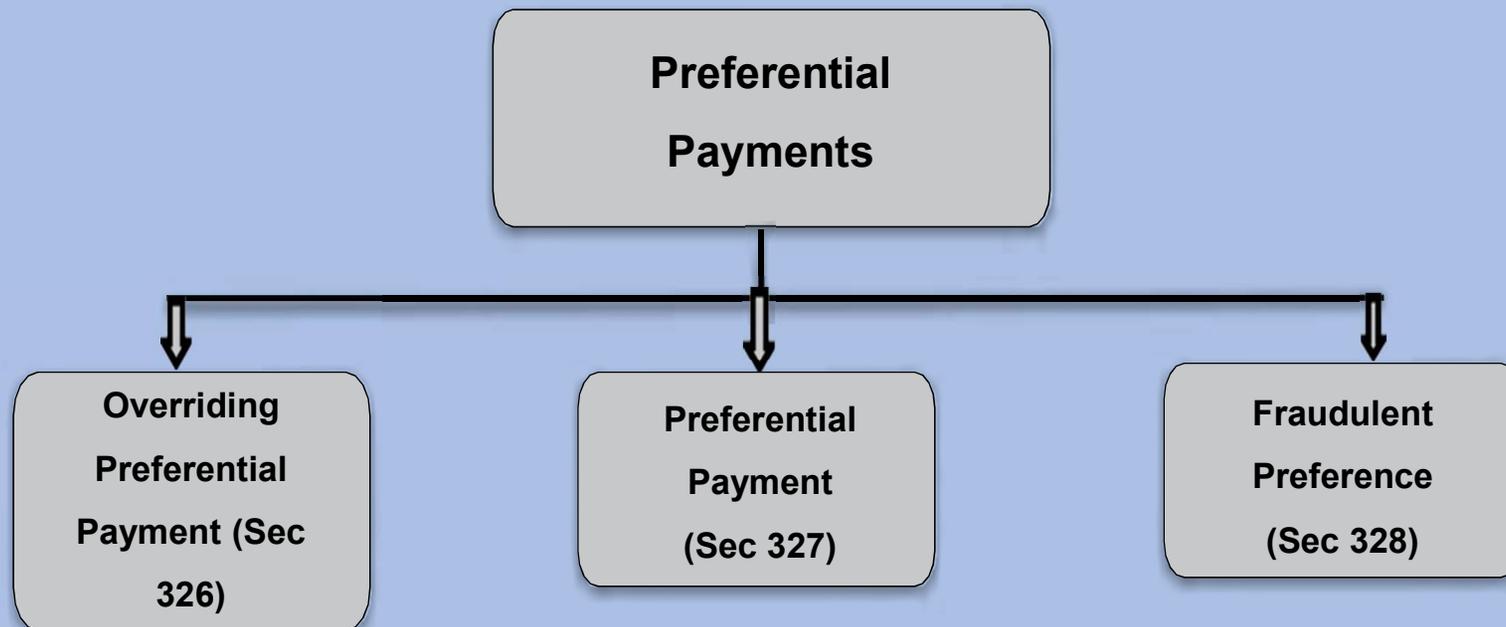
## **Tribunal Power to order examination of Promoters, directors, etc. (Section 300)**

Powers that can be exercised by Tribunal	Circumstances in which these power shall be exercised
<ul style="list-style-type: none"><li>• detention of the contributory and</li><li>• Seizure of his books and papers and movable property.</li></ul>	<p>At any time either before or after passing a winding up order, if the Tribunal is satisfied that a contributory or a person having property, accounts or papers of the company in his possession is about to</p> <ol style="list-style-type: none"><li>i. leave India or otherwise to abscond,</li><li>ii. remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company</li></ol>

## **Tribunal Power to order examination of Promoters, directors, etc. (Section 300)**

1. Application company	<ul style="list-style-type: none"><li>• When the affairs of a company have been completely wound up, an application shall be made by CL to the Tribunal for dissolution of such company.</li></ul>
2. order of dissolution by Tribunal	<ul style="list-style-type: none"><li>• Tribunal shall make an order of dissolution<ol style="list-style-type: none"><li>i. on an application filed by CL or</li><li>ii. when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company.</li></ol></li></ul>
3. filing copy of order with RoC	<ul style="list-style-type: none"><li>• Within 30 days</li></ul>

## Chapter-iii, Provisions Applicable to every mode of winding up (Section 324-358)



## Order of payment at the time of winding up

<p>1. Workmen dues (Sec. 326) Following workmen dues in arrear for 2 years preceding the winding up order:</p> <ol style="list-style-type: none"><li>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;</li><li>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;</li></ol>	<p>first absolute priority</p> <ul style="list-style-type: none"><li>• Shall be paid first within 30 days of sale of assets.</li><li>• These debts shall be paid in full before any payment is made to secured creditors.</li></ul>
<p>2. Preferential payments u/s 326 Workmen's dues Secured creditors (pending for more than 2 years of date of winding up)</p>	<ul style="list-style-type: none"><li>• Rank pari passu with each other</li><li>• These shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.</li></ul>

To be continued

## Order of payment at the time of winding up

3. Costs and expenses of winding up	Section 327
4. Creditors secured by floating charge	
5. Unsecured creditor	

## Some definitions for the purpose of section 326 & 327

1. 'Workmen', in relation to a company, means

the employees of the company, being workmen as defined under section 2(s) of the Industrial Disputes Act, 1947;

2. '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

**'Workmen's dues',  
in relation to a company, means  
the aggregate of the following sums due from the company to its workmen:**

(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.

(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, 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.

## Preferential Payments

### Section 327- Not applicable to winding up under IBC,2016

in a winding up, subject to the provisions of section 326, there shall be paid in priority to all other debts;

Government Dues	Employee's Dues	Investigation Expenses
All revenues, taxes, cesses and rates due from the company to the CG/SG/ a local authority at the relevant date, and having become due and payable within the twelve months immediately before that date;	<ul style="list-style-type: none"><li>• All wages or salary due for a period not exceeding four months within the twelve months immediately before the relevant date</li><li>• All accrued holiday remuneration</li><li>• 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</li><li>• 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:</li><li>• 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;</li></ul>	<ul style="list-style-type: none"><li>• the expenses of any investigation held in pursuance of section 213 and 216, in so far as they are payable by the company.</li></ul>

To be continued

- “relevant date” means in the case of a company being wound up by the Tribunal,
- (i) the date of appointment or first appointment of a provisional liquidator, or
- (ii) 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;”

- Paid after payment of costs and expenses of the winding up
- Rank pari passu among themselves
- Pay full if assets are sufficient.
- Pay proportionately if assets are not sufficient
- have priority over the claims of holders of debentures under any floating charge created by the company, if assets of the company available for payment to general creditors are insufficient to meet them.
- If any movable property of the company is seized by a landlord or other person immediately within 3 months before winding up, these preferential debts have first charge on this movable property or its sale proceeds.
- the expression “employee” does not include a workman

## Fraudulent Preference section 328

If a company gives preference for any of its debts or liabilities to

One of the creditors of the company

A surety or guarantor

Company does something which has the effect of putting these persons in a position better than they would have been in the event of winding up of the company

Winding up application is made within 6 months of such preferential act

Tribunal may, if satisfied, that within six months before making winding up application, there is preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company

Declare the transaction –fraudulent preference

Order the company to restore the position removing effect of fraudulent preference

# VOID TRANSFERS

## **Section 329** – Transfers not in good faith to be Void

- Any transfer of property, movable or immovable OR any delivery of goods, made by a company
- Not being a transfer or delivery made in the ordinary course of its business or in favor of a purchaser or encumbrancer in good faith and for valuable consideration
- if made within a period of one year before the presentation of a petition for winding up by the Tribunal under this Act
- shall be void against the Company Liquidator.

## **Section 330**

- Any transfer or assignment by a company of all its properties or assets to trustees for the benefit of all its creditors shall be void.

## Effect of Floating Charge (Section 332)

Where a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, be invalid, except

### **Floating charge shall not be invalid:**

1. If it is proved that the company immediately after the creation of the charge was solvent.
2. For the amount of any cash paid to the company at the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of 5% per annum or such other rate as may be notified by the Central Government in this behalf.

**Section 334:** In case of Winding up by the Tribunal, any disposition of the property including actionable claims after the commencement of winding up shall be: Void

**Section 335:** Where any company is being wound up by the Tribunal, any attachment, distress or execution put in force shall be: Void

**Section 337:** Every officer of a company who is found guilty of transfer of documents or alienation of property shall be: Imprisonment one year to 3 years and fine 1 lakh to 3 lakh

**Section 344:** Where a company is wounding up, every invoice, order, business letter etc. shall contain a statement that : The company is wounding up

**Penal provision, if a company contravenes of section 344(1):** To company, officer and liquidator: He shall be punishable with fine which shall not be less than Rs. 50000 rupees but which may extend to Rs. 3 lakh rupees

Winding up of a company by the Tribunal under the Companies Act, 2013 shall be deemed to commence: At the time of the presentation of the petition for the winding up

## **Official Liquidator to Make Payments into Public Account of India (Section 349)**

Every Official Liquidator shall, in such manner and at such times as may be prescribed, pay the monies received by him as Official Liquidator of any company, into the public account of India in the Reserve Bank of India.

## **Commencement of Winding Up by Tribunal (Section 357)**

The winding up of a company by the Tribunal under this Act shall be deemed to commence at the time of the presentation of the petition for the winding up.

## **exclusion of Certain Time in Computing Period of Limitation (Section 358)**

- Notwithstanding anything in the Limitation Act, 1963, or in any other law for the time being in force,
- in computing the period of limitation specified for any suit or application in the name and on behalf of a company which is being wound up by the Tribunal,
- the period from the date of commencement of the winding up of the company to a period of one year immediately following the date of the winding up order shall be excluded.

## **Appointment of Official Liquidator (Section 359)**

- For the purposes of this Act, so far as it relates to the winding up of companies by the Tribunal, the Central Government may appoint as many Official Liquidators, Joint, Deputy or Assistant Official Liquidators as it may consider necessary to discharge the functions of the Official Liquidator.
- The liquidators appointed shall be whole-time officers of the Central Government.

## **Part IV Official Liquidator (Section 359-365)**

### **Summary Procedure for Liquidation (Section 361)**

- Where the company to be wound up under this Chapter;
  - i. has assets of book value not exceeding one crore rupees; and
  - ii. belongs to such class or classes of companies as may be prescribed, the Central Government may order it to be wound up by summary procedure provided under this Part
- The Central Government shall appoint the Official Liquidator as the liquidator of the company.
- The Official Liquidator shall forthwith take into his custody or control all assets, effects and actionable claims to which the company is or appears to be entitled.

## **Part IV Official Liquidator (Section 359-365)**

- The Official Liquidator shall, within thirty days of his appointment, submit a report to the Central Government in such manner and form, as may be prescribed, including a report whether in his opinion, any fraud has been committed in promotion, formation or management of the affairs of the company or not.
- On receipt of the report, if the Central Government is satisfied that any fraud has been committed by the promoters, directors or any other officer of the company, it may direct further investigation into the affairs of the company and that a report shall be submitted within such time as may be specified.
- After considering the investigation report, the Central Government may order that winding up may be proceeded under Part I of this Chapter or under the provision of this Part.

## **Sale of Assets and Recovery of debts due to Company (Section 362)**

### **1. disposal of all assets of the company**

- By OL within 60 days of his appointment.

### **2. notice upon debtors of the company or the contributories**

- By OL within thirty days of his appointment
- To deposit within thirty days with him the amount payable to the company.

### **3. deposit of amount recovered**

- In public accounts u/s349

## **Order of dissolution of Company (Section 365)**

- The Official Liquidator shall, if he is satisfied that the company is finally wound up, submit a final report  
to the Central government and the Tribunal.
- CG or the Tribunal on receipt of such report shall order that the company be dissolved.
- The Registrar shall strike off the name of the company from the register of companies and publish a notification to this effect.