

Lesson 20

WINDING UP

INTRODUCTION

- Winding-up of a company is a process by means of which a company is dissolved and its assets are collected, its debts are paid off out of the assets and if any surplus is left, it is distributed among the members in accordance with their rights.
- At the end of the winding up the company will have no assets or liabilities and it will, therefore, be simply a formal step for it to be dissolved.
- The purpose must not be exploited for the benefit or advantage of any class or person entitled to submit petition for winding up of a company.
- The administrative machinery of the company gets changed as the administration is transferred in the hands of the liquidator.
- Even after commencement of the winding-up, the property and assets of the company belong to the company until dissolution takes place. Thus in between the winding up and dissolution, the legal status of the company continues.

Difference between Winding up and dissolution

Basis	Winding-up	Dissolution
1. Stage	Winding up is the first stage in the process whereby assets are realised, liabilities are paid off and the surplus, if any, distributed among its members.	Dissolution is the final stage whereby the existence of the company is withdrawn by the law.
2. Authority	The liquidator appointed by the company or the Court carries out the winding up proceedings	but the order for dissolution can be passed by the Court only.
3. Representation	According to the Companies Act the liquidator can represent the company in the process of winding up.	Once the Court passes dissolution orders the liquidator can no longer represent the company.
4. Proving debt	Creditors can prove their debts in the winding up	but not on the dissolution of the company.
5. Relation	Winding up in all cases does not	Dissolution is an act which puts an end to

	culminate in dissolution. Even after paying all the creditors there may still be a surplus; company may earn profits during the course of beneficial winding up; there may be a scheme of compromise with creditors	the life of the comp.
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Winding up under the Companies Act, 2013

- The notification of the Insolvency and Bankruptcy Code, 2016 has deleted the provisions in the Companies Act regarding winding up of companies on the ground of inability to pay their debts. The code will exclusively be governing the insolvency resolution and liquidation of corporates.
- MCA has notified these sections on 7th December, 2016 and which came into force with effect from 15th December, 2016, whereas the rules relating to the winding up have not yet notified by MCA.

Winding up by Tribunal : Grounds on which a Company may be wound up by the Tribunal

- A company under Section 271 may be wound up by the tribunal if
- By passing special resolution,
- 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;
- if 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,
- 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
- if the Tribunal is of the opinion that it is just and equitable

Who may file Petition for the Winding up? [Section 272]

- the company;
- any contributory or contributories;
- all or any of the persons specified in clauses (a) and (b);
- the Registrar;

- any person authorised by the Central Government in that behalf; or
- in a case falling under clause (b) of section 271, by the Central Government or a State Government.

Powers of Tribunal [Section 273]

Tribunal may pass any of the following orders within 90 days from the date of presentation of the petition:

- 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.

Refusal to make a winding up order by Tribunal

- 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.
- Further, Where a petition is presented on the ground that it is just and equitable the Tribunal may refuse to make an order of winding up.

Filing statement of affairs of the Company [Section 274]

- Tribunal may by an order direct the company to file its objections along with a statement of its affairs within 30 days of the order which can be allowed a further period of 30 days in a situation of contingency or special circumstances.
- If Company fails to file the statement of affairs, the tribunal shall forfeit the right of the company to oppose the petition.
- Officer in default will be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than 25 thousand rupees but which may extend to 5 lakh rupees, or with both.

Appointment of Company Liquidators by Tribunal [Section 275]

- The Tribunal at the time of the passing of the order of winding up, appoint a
 - provisional liquidator or
 - Official Liquidator or
 - insolvency professionals

- The Tribunal may limit and restrict the powers of the provisional liquidator, but otherwise he shall have the same powers as a liquidator.
- The terms and conditions of appointment of a provisional liquidator or Company Liquidator and the fee payable to him 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.
- The liquidator is required to file a declaration within 7 days from the date of appointment in the prescribed form disclosing conflict of interest or lack of independence in respect of his appointment.

Removal and Replacement of Liquidator [Section 276]

Tribunal may remove the provisional liquidator or the Company Liquidator, on any of the following grounds:

- misconduct;
- fraud or misfeasance;
- professional incompetence
- inability to act as provisional liquidator
- conflict of interest or lack of independence

In the event of death, resignation or removal of the liquidator the Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons to be recorded in writing.

Intimation for Winding Up [Section 277]

- Upon the order for appointment of provisional liquidator or for the winding up of a company, the tribunal shall within a period not exceeding 7 days from the date of passing of the order give intimation of the appointment to the Company Liquidator or provisional liquidator and the Registrar.
- The Registrar on receipt of the copy of order of appointment of provisional liquidator or winding up order shall make an endorsement in his records and notify in the Official Gazette
- In the case of a listed company, the Registrar shall intimate about such appointment or order, to the stock exchange or exchanges where the securities of the company are listed.

- Such 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.

Constitution of the Winding Up Committee

Within a period of 3 weeks from the date of passing of winding up order, the Company Liquidator is required to make an application to the Tribunal for constitution of a winding up committee comprising the

- Official Liquidator attached to the Tribunal;
- Nominee of secured creditors; and
- A professional nominated by the Tribunal.

Functions of winding up committee

- to assist and monitor the progress of liquidation
- 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,
- finalisation of list of creditors and contributories,
- compromise, abandonment and settlement of claims,
- payment of dividends, etc.

The Company Liquidator shall be the convener of the meetings of the winding up committee.

Submission of Report to Tribunal by Winding up Committee

- Liquidator will place a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting, till the final report for dissolution of the company is submitted before the Tribunal.
- The Company Liquidator is also required to prepare the draft final report for consideration and approval of the winding up committee and need to be submitted before the Tribunal for passing of a dissolution order in respect of the company.

Effect of winding up order [Section 278]

The order for winding up operate in favour of all the creditors and all contributories.

Stay of suits, etc., on winding up order [Section 279]

- Where a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding shall be commenced by or against the company, except with the leave of the Tribunal and subject to such terms as may be imposed by the Tribunal.
- Any application for seeking leave required to be disposed of by the Tribunal within 60 days.

Submission of report by Company Liquidator [Section 281]

The liquidator is required to submit to the Tribunal, a report containing the following particulars, within 60 days from the order:

- the nature and details of the assets
 - valuation Report from registered valuers
 - Capital issued, subscribed and paid-up;
 - Existing and contingent liabilities of the company
- secured and unsecured debts, and particulars of the securities given,
 - the debts due to the company
 - guarantees, if any, extended by the company;
 - list of contributories
 - details intellectual properties,
 - details of subsisting contracts, joint ventures and collaborations,
 - details of holding and subsidiary companies
 - details of legal cases filed by or against the company; and
 - any other information which the Tribunal may direct.

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 and it is desirable to bring to the notice of the Tribunal.
- a report on the viability of the business of the company
- The Company Liquidator is also required to make periodical reports at the end of each quarter with respect to the progress of the winding up of the company.

Directions of Tribunal for Dissolution [Section 282]

- Upon the report tribunal shall fix a time limit within which the entire proceedings shall be completed.
- If tribunal feels 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.
- The Tribunal may, on examination of the reports submitted to it by the Company Liquidator can order sale of the company as a going concern or its assets or part thereof:
- Tribunal may consider for constituting a sale committee comprising such creditors, promoters and officers of the company to assist the Company Liquidator in sale.

Custody of company's properties [Section 283]

Upon the winding up order made by the tribunal the Company Liquidator or the provisional liquidator take into his or its custody or control all the property.

Obligations of directors and managers [Section 286]

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 be liable to make a further contribution as if he were at the commencement of winding up, a member of an unlimited company.

Exception : 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;
- in respect of any debt or liability of the company contracted after he ceased to hold office;
- unless the Tribunal deems it necessary

Advisory committee [Section 287]

- The Tribunal may direct for the constitution of an advisory committee consisting of not more than 12 members, being creditors and contributories of the company.
- The Company Liquidator is required to convene a meeting of creditors and contributories, of the company within 30 days from the date of winding up order for enabling the Tribunal to determine the persons who may be members of the advisory committee.
- The advisory committee shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation.

Powers and duties of Company Liquidator [Section 290]

- to carry on the business of the company
- to do all acts and to execute, in the name and on behalf of the company,
- to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;
- to sell the whole of the undertaking of the company;
- to raise any money on the security of the assets of the company;
- to institute or defend any suit;
- to invite and settle claim of creditors;
- to inspect the records and returns of the company;
- to prove rank and claim in the insolvency of any contributory;
- to draw, accept, make and endorse any negotiable instruments;
- to obtain any professional assistance from any person or appoint any professional;
- to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary,—
 - (1) for winding up of the company;
 - (2) for distribution of assets;
 - (3) in discharge of his duties and obligations and functions as Company Liquidator; and

Exercise and control of Company Liquidator's powers [Section 292]

The Company Liquidator while in the administration of the assets of the company and the distribution thereof among its creditors, have regard to any directions which may be given by the resolution of the creditors or contributories at any general meeting or by the advisory committee.

Audit of Company Liquidator's accounts [Section 294]

The Company Liquidator is required to maintain proper and regular books of account. The Company Liquidator shall not be less than twice in each year during his tenure of office, present to the Tribunal an account of the receipts and payments as such liquidator along with a declaration.

Further, the copy of the audited accounts shall be filed by the Company Liquidator with the Tribunal, and shall also be delivered to the Registrar which shall be open to inspection by any creditor, contributory or person interested.

In case of a Government company, the Company Liquidator shall forward a copy to

- to the Central Government, if that Government is a member of the Government company; or
- to any State Government, if that Government is a member of the Government company; or
- to the Central Government and any State Government, if both the Governments are members of the Government company.

A printed copy of the audited accounts or summary thereof shall be sent by post to every creditor and every contributory.

Payment of debts by contributory and extent of set-off [Section 295]

- The Tribunal may, at any time after passing of a winding up order, pass an order requiring any contributory for the time being on the list of contributories to pay, any money due to the company.
- The Tribunal, in the case of an unlimited company, allow to the contributory, to set-off, any money due to him, but not any money due to him as a member of the company in respect of any dividend or profit;
- In the case of a limited company, allow to any director or manager whose liability is unlimited, or to his estate, such set-off.
- 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.

Power of Tribunal to make calls [Section 296]

The Tribunal may, at any time after the passing of a winding up order, make calls on all or any of the contributories, to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up.

Power to summon suspected persons [Section 299]

- The Tribunal at any time summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers, of the company.

- The Tribunal may examine any officer or person so summoned on oath concerning the matters aforesaid.
- The Tribunal may require any officer or person so summoned to produce any books and papers relating to the company in his custody or power.
- The Tribunal may direct the liquidator to file before it a report in respect of debt or property of the company in possession of other persons.
- If the Tribunal finds that a person is indebted to the company, the Tribunal may order him to pay to the provisional liquidator.

Examination of Promoters, Directors [Section 300]

Upon the report of the Company liquidator stating that in his opinion a fraud has been committed by any person in the

- promotion,
- formation,
- business or
- conduct of affairs of the company

since its formation, the Tribunal may, after considering the report, direct that such person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as an officer thereof.

Arrest of person trying to leave India or abscond [Section 301]

The Tribunal, if satisfied that a contributory or a person having property, accounts or papers of the company in his possession is

- about to leave India or
- otherwise to abscond, or
- is about to 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, the Tribunal may cause the contributory to be detained until such time as the Tribunal may order; and his books and papers and movable property to be seized and safely kept until such time as the Tribunal may think fit.

Dissolution of company by Tribunal [Section 302]

- When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company.
- The Tribunal shall on an application filed by the Company Liquidator or on its own make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
- A copy of the order shall, within 30 days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.
- If the Company Liquidator makes a default in forwarding a copy of the order within the aforesaid period, the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

PART III

PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP UNDER COMPANIES ACT, 2013

Debts of all descriptions to be admitted to proof [Section 324]

In every winding up all debts payable on a contingency, 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.

Overriding preferential payments [Section 326]

- In the winding up of a company under the Companies Act , 2013 , the debts relating ot the *workmen's dues and the Dues of the Secured creditor on a pari passu basis* shall be paid in priority to all other debts:
- Provided that in case of the winding up of a company, the sums referred above, which are payable for a period of 2 years preceding the winding up order, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of 30 days of sale of assets and shall be subject to such charge over the security of secured creditors.
- **Illustration:** The value of the security of a secured creditor of a company is 1,00,000. The total amount of the workmen's dues is 1,00,000. The amount of the debts due from the company to its secured creditors is 3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is 25,000.

Preferential payments [Section 327]

The following sum shall be paid in priority after the payment of the Overriding Preferential payments to all other debts,—

- 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 12 months immediately before that date;
- all wages or salary either 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 4 months within the 12 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;
- all accrued holiday remuneration becoming payable to any employee, or in the case of his death, to any other person claiming under him;
- 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 12 months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 (34 of 1948) or any other law for the time being in force;
- unless the company has, at the commencement of winding up, under such a contract with any insurer as is mentioned in section 14(See Appendix I) of the Workmen's Compensation Act, 1923 (8 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 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;
- 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
- the expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.

Status of the Fraudulent Preference Transactions [Section 328]

Preference

Where a company has given preference to a person who is one of the creditors of the company prior to 6 months of making winding up application, the Tribunal, if satisfied that, such transaction is a fraudulent preference may order as it may think fit for restoring the position to what it would have been if the company had not given that preference.

Transaction

If the Tribunal is satisfied that there is a preference transfer of property, within 6 months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction invalid and restore the position.

Liabilities and rights of Persons Fraudulently Preferred [Section 331]

During winding up anything made, taken or done after the commencement of the Act is invalid under section 328 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt.

Where a company is being wound up, a floating charge created within the 12 months immediately preceding the commencement of the winding up, shall be invalid, except 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 five per cent per annum or such other rate as may be notified by the Central Government in this behalf.

Disclaimer of onerous property

In case, Where any part of the property of a company which is being wound up consists of:

- land of any tenure, burdened with onerous covenants;
- shares or stocks in companies;
- any other property which is not saleable or is not readily saleable by reason of the possessor thereof being bound either to the performance of any onerous act or to the payment of any sum of money; or
- unprofitable contracts,

the Company Liquidator, with the leave of the Tribunal and subject to the provisions of this section, by writing signed by him, at any time within 12 months after the commencement of the winding up or such extended period as may be allowed by the Tribunal, disclaim the property.

In case of the wound up by the Tribunal, any attachment, distress or execution put in force, without leave of the Tribunal after such commencement shall be void. But any proceedings for the recovery of any tax or impost or any dues payable to the Government will not be void in this regard.

Liability of officer in case of fraud

Any person, who is or has been an officer of a company shall be punishable with imprisonment for a term which shall not be less than 3 years but which may extend to 5 years and with fine which shall not be less than 1 lakh rupees but which may extend to 3 lakh rupees if:

- He does not, fully and truly disclose to the Company Liquidator all the property and how and to whom and for what consideration and when the company disposed of any part thereof.
- He does not deliver all such part of the movable and immovable property in his custody or under his control to liquidator;
- He does not deliver all such books and papers of the company in his custody or under his control to liquidator;

Or within the 12 months immediately before the commencement of the winding up or at any time thereafter,—

- conceals any part of the property of the company to the value of 1 thousand rupees or more, or
- conceals any debt due to or from the company;
- fraudulently removes any part of the property of the company to the value of 1 thousand rupees or more;
- conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper.
- makes, any false entry in any book or paper.
- fraudulently parts with, alters or makes any omission in any book or paper affecting or relating to the property or affairs of the company;
- by any false representation obtains on credit any property which the company does not subsequently pay for;
- under the false pretence that the company is carrying on its business, obtains on credit, any property which the company does not subsequently pay for; or
- pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for,
- makes any material omission in any statement relating to the affairs of the company;

- knowing that a false debt has been proved by any person but fails to inform liquidator for a period of one month thereof;
- prevents the production of any book or paper affecting or relating to the property or affairs of the company;

Explanation.- For the purposes of the expression "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

Penalty for frauds by officers [Section 337]

An officer of a company upon the subsequently order for winding up shall not,

- by false pretences or by means of any other fraud, induced any person to give credit to the company; with intent to defraud creditors
- with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date.

In such cases, the officer shall be punishable with imprisonment for a term which shall not be less than 1 year but which may extend to 3 years and with fine which shall not be less than 1 lakh rupees but which may extend to 3 lakh rupees.

Liability where proper accounts not kept [Section 338]

Where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of 2 years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall be punishable with imprisonment for a term which shall not be less than 1 year but which may extend to 3 years and with fine which shall not be less than 1 lakh rupees but which may extend to 3 lakh rupees.

Liability for fraudulent conduct of business [Section 339]

If in the course of the winding up of a company, it appears that any business of the company has been carried on with intent to defraud creditors, the Tribunal, on the application of the Official Liquidator, or the Company Liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any person, who is knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Tribunal may direct:

Every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under section 447 of the Companies Act, 2013.

Power of Tribunal to assess damages against delinquent directors, etc. [Section 340]

- If in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any person, who is or has been a director, manager, Company Liquidator or officer of the company has been guilty of any misfeasance or breach of trust in relation to the company.
- The Tribunal may, on the application of the Official Liquidator, or the Company Liquidator, or of any creditor or contributory, order him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal considers just and proper, or to compensate in respect of the misapplication.
- In the matters where such person may be criminally liable, the aforesaid application shall be made within 5 years from the date of the winding up order, or of the first appointment of the Company Liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

Prosecution of delinquent officers and members of company [Section 342]

- In case where it appears to the Tribunal in the course of a winding up by the Tribunal, that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company, the Tribunal may, either on the application of any person interested in the winding up or *suo motu*, direct the liquidator to prosecute the offender or to refer the matter to the Registrar.
- If a person fails or neglects to give required assistance, he shall be liable to pay fine which shall not be less than 25 thousand rupees but which may extend to 1 lakh rupees.

“Being Wound up” to be mentioned in All Communication and Letters [Section 344]

- Where a company is being wound up, whether by the Tribunal or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a Company Liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.
- In Case of the contravention, the company, and every officer of the company, the Company Liquidator and any receiver or manager, who wilfully authorises or permits the non-compliance, shall be punishable with fine which shall not be less than 50 thousand rupees but which may extend to 3 lakh rupees.

Disposal of books and papers of company [Section 347]

- When the affairs of a company have been completely wound up and it is about to be dissolved, the books and papers of such company and those of the Company Liquidator may be disposed of in such manner as the Tribunal directs.
- After the expiry of 5 years from the dissolution of the company, no responsibility shall devolve on the company, the Company Liquidator, or any person to whom the custody of the books and papers has been entrusted, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

Information to be furnished to tribunal, if the winding up is not concluded within one year [Section 348]

If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, within 2 months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, file a statement duly audited to tribunal.

Further, a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

In case if a Government company in liquidation, the Company Liquidator is required to forward a copy thereof

- to the Central Government, if that Government is a member of the Government company;
- to any State Government, if that Government is a member of the Government company; or
- to the Central Government and any State Government, if both the Governments are members of the Government company.

In case of the contravention, the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.

If a Company Liquidator makes wilful default in causing the statement referred above, audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to 1 lakh rupees, or with both.

Company Liquidator to deposit monies into scheduled bank [Section 350]

Every Company Liquidator of a company is required to deposit the monies received by him in his capacity as such in a scheduled bank to the credit of a special bank account opened by him in that behalf:

If the Tribunal considers that it is advantageous for the creditors or contributories or the company, it may permit the account to be opened in such other bank specified by it.

If any Company Liquidator at any time retains for more than ten days a sum exceeding five thousand rupees or such other amount as the Tribunal may, on the application of the Company Liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the Tribunal, he shall—

- pay interest on the amount so retained in excess, at the rate of twelve per cent per annum and also pay such penalty as may be determined by the Tribunal;
- be liable to pay any expenses occasioned by reason of his default; and
- also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, disallowed, or may also be removed from his office.

Neither the Official Liquidator nor the Company Liquidator of a company shall deposit any monies received by him in his capacity as such into any private banking account.

Company Liquidation Dividend and Undistributed Assets Account [Section 352]

- Where any company is being wound up and the liquidator has in his hands or under his control any money representing dividends payable to any creditor but which had remained unpaid for six months after the date on which they were declared or assets refundable to any contributory which have remained undistributed for six months after the date on which they become refundable, the liquidator shall forthwith deposit the said money into a separate special account to be known as the Company Liquidation Dividend and Undistributed Assets Account maintained in a scheduled bank.
- The liquidator, when making any payment referred above shall furnish to the Registrar, a statement in the prescribed form.
- Any person claiming to be entitled to any money paid into the Company Liquidation Dividend and Undistributed Assets Account may apply to the Registrar for payment thereof, and the Registrar, if satisfied that the person claiming is entitled, may make the payment to that person of the sum due:
- Provided that the Registrar shall settle the claim of such person within a period of 60 days from the date of receipt of such claim, failing which the Registrar shall make a report to the Regional Director giving reasons of such failure.

- Any money paid into the Company Liquidation Dividend and Undistributed Assets Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government
- Any liquidator retaining any money which should have been paid by him into the Company Liquidation Dividend and Undistributed Assets Account shall:
 - pay interest on the amount so retained at the rate of twelve per cent per annum and also pay such penalty as may be determined by the Registrar:
 - Provided that the Central Government may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause;
 - be liable to pay any expenses occasioned by reason of his default; and
 - where the winding up is by the Tribunal, also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, to be disallowed, and to be removed from his office by the Tribunal.

Powers of Tribunal to declare dissolution of company void [Section 356]

Where a company has been dissolved, whether in pursuance of the provision of Companies Act, 2013 or otherwise, the Tribunal may at any time within 2 years of the date of the dissolution, on application by the Company Liquidator of the company or by any other person who appears to the Tribunal to be interested, make an order, upon such terms as the Tribunal thinks fit, declaring the dissolution to be void, and thereupon such proceedings may be taken as if the company had not been dissolved.

It shall be the duty of the Company Liquidator or the person on whose application the order was made, within 30 days after the making of the order or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same, and if the Company Liquidator or the person fails so to do, the Company Liquidator or the person shall be punishable with fine which may extend to 10 thousand rupees for every day during which the default continues.

Exclusion of certain time in computing period of limitation [Section 358]

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.

Liquidation Process under the Insolvency and Bankruptcy Code, 2016 [Section 33 to 54]

Taking possession and control of the liquidation estate of corporate debtor

- Section 36 of the Code lists the assets which shall form the liquidation estate and also mentions the assets which shall not form part of the liquidation estate.
- The liquidator has to take into his custody or control all the assets, property, effects and actionable claims of the corporate debtor and take appropriate measures to protect and preserve the same.
- He shall have the power to access any information systems for the purpose of identification of the liquidation estate assets relating to the corporate debtor in terms of section 37.

Consolidation, verification, admission/rejection and determination of valuation of claims

- The liquidator shall have the power to access any information system for the purpose of admission and proof of claims and identification of assets to be held in liquidation estate.
- The creditors can also call for financial information of the corporate debtor from the liquidator. Section 38 stipulates a time bound period of 30 days from the date of commencement of the liquidation process for collection of claims by the liquidator.
- The liquidator shall verify the claims submitted by the creditors within such time as specified by the Board by regulations.
- After verification, the liquidator may either admit or reject the claim. Where he rejects a claim, he shall record the reasons for such rejection in writing.
- The decision of admission or rejection of the claim shall be communicated to the creditor and the corporate debtor within 7 days of such admission or rejection.
- A creditor may appeal to NCLT against the decision of the liquidator rejecting the claim within 14 days of the receipt of such decision.

Evaluation and sale/disposal of the assets of corporate debtor

- Subject to the directions of NCLT, the liquidator shall have the powers and duties to evaluate the assets and property of the corporate debtor.
- He shall also have power to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract,

Avoidance of preferential transactions, undervalued transactions, transactions defrauding creditors and extortionate credit transactions

- Sections 44 to 51 provide for avoidance of preferential transactions, undervalued transactions, transactions defrauding creditors and extortionate credit transactions entered into by the corporate debtor within the specified period prior to the liquidation order as discussed hereunder

Preferential transactions

- During the course of corporate insolvency resolution process or the liquidation process it may come to the notice of the resolution professional or the liquidator that any preferential transaction has been made with any person within the period of 1 year preceding the insolvency commencement date or such transaction was made with a related party within a period of two years preceding the insolvency commencement date, an application may be made by the resolution professional or the liquidator to NCLT for avoidance of such preferential transaction.
- Section 44 specifies the orders that may be passed by NCLT in relation to the avoidance of a preferential transaction.
- An order of NCLT, however, shall not affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from such interest and was acquired in good faith and for value or shall not require a person, who received a benefit from the preferential transaction in good faith and for value to pay the liquidator or the resolution professional.

Undervalued transactions

A transaction which was made with any person within the period of 1 year preceding the insolvency commencement date or a transaction made with a related party within the period of 2 years preceding the insolvency commencement date shall be considered undervalued where the corporate debtor,-

- (a) Makes a gift to a person; or
- (b) Enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor and such transaction has not taken place in the ordinary course of business.

The liquidator or the resolution professional may make an application to NCLT for declaring such transaction void under section 45.

If the liquidator or the resolution professional does not make such application to NCLT knowingly, disciplinary proceedings can be ordered by NCLT against them. In that case, a creditor, member or a partner of the corporate debtor, as the case may be, may make an application to NCLT.

NCLT may pass order restoring the position as it existed before such transactions and reversing the effects thereof and the order may provide for the following:-

- (a) Require any property transferred as part of transaction, to be vested in the corporate debtor;
- (b) Release or discharge, in whole or in part, any security interest granted by the corporate debtor;
- (c) Require any person to pay such sums, in respect of benefits received by such person, to the liquidator or the resolution professional, as the case may be, as the NCLT may direct; or
- (d) Require the payment of such consideration for the transaction as may be determined by an independent expert.

Transactions defrauding creditors

- Section 49 strikes at transactions entered into with the intention prejudicing the interests of a person who is making or may make a claim, against the corporate debtor. As it involves fraud, there is no time limit for challenging such transactions. On application being made, NCLT may order restoring the position as it existed before such transaction as if the transaction had not been entered into and protecting the interests of persons who are victims of such transactions. Third party transactions entered into in good faith may not be affected by NCLT order.

Extortionate credit transactions

Where the corporate debtor has been a party to an extortionate credit transaction involving the receipt of financial or operational debt during the period of two years preceding the insolvency commencement date, the liquidator or the resolution professional, as the case may be, may make an application to NCLT for avoidance of the transaction

Where NCLT is satisfied that the terms of a credit transaction required exorbitant payments to be made by the corporate debtor, it shall, by order-

- Restore the position as it existed prior to such transaction;

- Set aside the whole or part of the debt created on account of the extortionate credit transaction;
- Modify the terms of the transaction;
- require any person who is, or was, a party to the transaction to repay any amount received by such person; or
- Require any security interest that was created as part of the extortionate credit transaction to be relinquished in favour of the liquidator or the resolution professional, as the case may be.

Distribution of assets

In terms of section 53, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified in the regulations by the Board, namely,-

- The insolvency resolution process costs and the liquidation costs paid in full;
- The following debts which rank equally between and among the following:-
 - (i) workmen's dues for the period of 24 months preceding the liquidation commencement date; and
 - (ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52 (see para 10.4 supra);
- wages and any unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date;
- financial debts owed to unsecured creditors; (e) the following dues shall rank equally between and among the following:-
 - (i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
 - (ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest.
- Any remaining debts and dues;
- Preference shareholders, if any, and
- Equity shareholders or partners, as the case may be.

Dissolution of corporate debtor.

Where the assets of the corporate debtor have been completely liquidated, the liquidator shall make an application to NCLT for the dissolution of such corporate debtor and NCLT shall order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly. A copy of an order of dissolution shall be forwarded to the authority with which the corporate debtor is registered within 7 days from the date of such order in terms of section 54.