

### **383. SECRETARIES AND TREASURERS NOT TO SELL GOODS OR ARTICLES PRODUCED BY COMPANY, ETC., UNLESS AUTHORISED BY BOARD**

[Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.]

#### **383A. CERTAIN COMPANIES TO HAVE SECRETARIES**

(1) Every company <sup>1</sup>[having such paid-up share capital as may be prescribed] shall have a whole time secretary, and where the Board of directors of any such company comprises only two directors, neither of them shall be the secretary of the company.

<sup>2</sup>[**Provided** that every company not required to employ a whole time secretary under sub-section (1) and having a paid-up share capital of ten lakhs rupees or more shall file with the Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions as may be prescribed, as to whether the company has complied with all provisions of this Act and a copy of such certificate shall be attached with Board's report referred to in section 217.]

<sup>3</sup>[(1A) If a company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to <sup>4</sup>[five hundred] rupees for every day during which the default continues :

**Provided** that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole time secretary.]

(2) Where, at the commencement of the Companies (Amendment) Act, 1974, -

(a) any firm or body corporate is holding office, as the secretary of a company, such firm or body corporate shall, within six months from such commencement, vacate office as secretary of such company ;

(b) any individual is holding office as the secretary of more than one company having a paid-up share capital of rupees twenty-five lakhs or more, he shall, within a period of six months from such commencement, exercise his option as to the company of which he intends to continue as the secretary and shall, on and from such date, vacate office as secretary in relation to all other companies.

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1. Substituted for "having a paid-up share capital of rupees twenty-five lakhs or more" by the Companies (Amendment) Act, 1988 w.e.f. 1-12-1988.

2. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 1-12-1988.

4. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

### **B. MANAGERS**

#### **384. FIRM OR BODY CORPORATE NOT TO BE APPOINTED MANAGER**

No company shall, after the commencement of this Act, appoint or employ, or after the expiry of six months from such commencement, continue the appointment or employment of, any firm, body corporate or association as its manager.

#### **385. CERTAIN PERSONS NOT TO BE APPOINTED MANAGERS**

(1) No company shall, after the commencement of this Act, appoint or employ, or continue the appointment or employment of, any person as its manager who -

(a) is an undischarged insolvent, or has at any time within the preceding five years been adjudged an insolvent ; or

(b) suspends, or has at any time within the preceding five years suspended, payment to his creditors ; or makes, or has at any time within the preceding five years made, a composition with them ; or

(c) is, or has at any time within the preceding five years been, convicted by a Court in India of an offence involving moral turpitude.

(2) The Central Government may, by notification in the Official Gazette, remove the disqualification incurred by any person in virtue of clause (a), (b) or (c) of sub-section (1), either generally or in relation to any company or companies specified in the notification.

#### **386. NUMBER OF COMPANIES OF WHICH A PERSON MAY BE APPOINTED MANAGER**

(1) No company shall, after the commencement of this Act, appoint or employ any person as manager, if he is either the manager or the managing director of any other company, except as provided in sub-section (2).

(2) A company may appoint or employ a person as its manager, if he is the manager or managing director of one, and not more than one, other company :

**Provided** that such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting, and of which meeting and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(3) Where, at the commencement of this Act, any person is holding the office either of manager or of managing director in more than two companies, he shall, within one year from the commencement of this Act, choose not more than two of those companies as companies in which he wishes to continue to hold the office of manager or managing director, as the case may be ; and the provisions of clauses (b) and (c) of sub-section (1) and of sub-sections (2) and (3) of section 276 shall apply *mutatis mutandis* in relation to this case, as those provisions apply in relation to the case of a director.

- (4) Notwithstanding anything contained in sub-sections (1) to (3), the Central Government may, by order, permit any person to be appointed as a manager of more than two companies, if the Central Government is satisfied that it is necessary that the companies should, for their proper working, function as a single unit and have a common manager.
- (5) [Omitted by the Companies (Amendment) Act, 1960.]

### **387. REMUNERATION OF MANAGER**

The manager of a company may, subject to the provisions of section 198, receive remuneration either by way of a monthly payment, or by way of a specified percentage of the "net profits" of the company calculated in the manner laid down in sections 349, <sup>1</sup>[and 350], or partly by the one way and partly by the other :

**Provided** that except with the approval of the Central Government such remuneration shall not exceed in the aggregate five per cent of the net profits.

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1. Substituted for ", 350 and 351" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

### **388. APPLICATION OF SECTIONS 269, 310, 311 AND 317 TO MANAGERS**

The provisions of sections 269, 310, 311 and 317 shall apply in relation to the manager of a company as they apply in relation to a managing director thereof, and those of section 312 shall apply in relation to the manager of a company, as they apply to a director thereof.

### **388A. SECTIONS 386 TO 388 NOT TO APPLY CERTAIN PRIVATE COMPANIES**

Sections 386, 387 and 388 shall not apply to a private company unless it is a subsidiary of a public company.

## **CHAPTER IVA: POWERS OF CENTRAL GOVERNMENT TO REMOVE MANAGERIAL PERSONNEL FROM OFFICE ON THE RECOMMENDATION OF THE <sup>1</sup>[TRIBUNAL]**

### **388B. REFERENCE TO <sup>1</sup>[TRIBUNAL] OF CASES AGAINST MANAGERIAL PERSONNEL**

(1) Where in the opinion of the Central Government there are circumstances suggesting -

(a) that any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust ; or

(b) that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices ; or

(c) that a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains ; or

(d) that the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may state a case against the person aforesaid and refer the same to the <sup>1</sup>[Tribunal] with a request that the <sup>1</sup>[Tribunal] may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(2) Every case under sub-section (1) shall be stated in the form of an application which shall be presented to the <sup>1</sup>[Tribunal] or such officer thereof as it may appoint in this behalf.

(3) The person against whom a case is referred to the <sup>1</sup>[Tribunal] under this section shall be joined as a respondent to the application.

(4) Every such application -

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purpose of the inquiry, and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the signature and verification of a plaint in a suit by the Central Government.

(5) The <sup>1</sup>[Tribunal] may at any stage of the proceedings allow the Central Government to alter or amend the application in such manner and on such terms as may be just, and all such alterations or amendments shall be made as may be necessary for the purpose of determining the real questions in the inquiry.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### **388C. INTERIM ORDER BY <sup>1</sup>[TRIBUNAL]**

(1) Where during the pendency of a case before the <sup>1</sup>[Tribunal] it appears necessary to the <sup>1</sup>[Tribunal] so to do in the interest of the members or creditors of the company or in the public interest, the <sup>1</sup>[Tribunal] may on the application of the Central Government or on its own motion, by an order -

(a) direct that the respondent shall not discharge any of the duties of his office until further orders of the <sup>1</sup>[Tribunal], and

(b) appoint a suitable person in place of the respondent to discharge the duties of the office held by the respondent subject to such terms and conditions as the <sup>1</sup>[Tribunal] may specify in the order.

(2) Every person appointed under clause (b) of sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### **388D. DECISION OF THE <sup>1</sup>[TRIBUNAL]**

At the conclusion of the hearing of the case, the <sup>1</sup>[Tribunal] shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### **388E. POWER OF CENTRAL GOVERNMENT TO REMOVE MANAGERIAL PERSONNEL ON THE BASIS OF <sup>1</sup>[TRIBUNAL'S] DECISION**

(1) Notwithstanding any other provision contained in this Act, the Central Government shall, by order, remove from office any director, or any other person concerned in the conduct and management of the affairs, of a company, against whom there is a decision of the <sup>1</sup>[Tribunal] under this Chapter :

<sup>2</sup>[\*\*\*]

(2) [Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.]

(3) The person against whom an order of removal from office is made under this section shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company during a period of five years from the date of the order of removal :

**Provided** that the Central Government may, with the previous concurrence of the <sup>1</sup>[Tribunal], permit such person to hold any such office before the expiry of the said period of five years.

(4) Notwithstanding anything contained in any other provision of this Act, or any other law or any contract, memorandum or articles, on the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

(5) On the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, the company may, with the previous approval of the Central Government, appoint another person to that office in accordance with the provisions of this Act.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Proviso omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

## **CHAPTER V: ARBITRATION, COMPROMISES, ARRANGEMENTS AND RECONSTRUCTIONS**

### **389. POWER FOR COMPANIES TO REFER MATTERS TO ARBITRATION**

[Omitted by the Companies (Amendment) Act, 1960.]

### **390. INTERPRETATION OF SECTIONS 391 AND 393**

In sections 391 and 393, -

(a) the expression "company" means any company liable to be wound up under this Act ;

(b) the expression "arrangement" includes a reorganisation of the share capital of the company by the consolidation of shares of different classes, or by the division of shares into shares of different classes or, by both those methods ; and

(c) unsecured creditors who may have filed suits or obtained decrees shall be deemed to be of the same class as other unsecured creditors.

### **391. POWER TO COMPROMISE OR MAKE ARRANGEMENTS WITH CREDITORS AND MEMBERS**

(1) Where a compromise or arrangement is proposed -

(a) between a company and its creditors or any class of them ; or

(b) between a company and its members or any class of them ;

the <sup>1</sup>[Tribunal] may, on the application of the company or of any creditor or member of the company, or, in the case of a company which is being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the <sup>1</sup>[Tribunal] directs.

(2) If a majority in number representing three-fourths in value of the creditors, or class of creditors, or members, or class of members, as the case may be, present and voting either in person or, where proxies are allowed under the rules made under section 643, by proxy, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the <sup>1</sup>[Tribunal], be binding on all the creditors, all the creditors of the class, all the members, or all the members of the class, as the case may be, and also on the company, or in the case of a company which is being wound up, on the liquidator and contributories of the company :

**Provided** that no order sanctioning any compromise or arrangement shall be made by the <sup>1</sup>[Tribunal] unless the <sup>2</sup>[Tribunal] is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the <sup>2</sup>[Tribunal], by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.

(3) An order made by the <sup>2</sup>[Tribunal] under sub-section (2) shall have no effect until a certified copy of the order has been filed with the Registrar.

(4) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(5) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to <sup>3</sup>[one hundred] rupees for each copy in respect of which default is made.

(6) The <sup>2</sup>[Tribunal] may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the <sup>1</sup>[Tribunal] thinks fit, until the application is finally disposed of.

(7)<sup>4</sup>[\*\*\*]

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "ten" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to omission, sub-section 7 read as under:

"(7) An appeal shall lie from any order made by a Court exercising original jurisdiction under this section to the Court empowered to hear appeals from the decisions of that Court, or if more than one Court is so empowered, to the Court of inferior jurisdiction. The provisions of sub-sections (3) to (6) shall apply in relation to the appellate order and the appeal as they apply in relation to the original order and the application."

### <sup>1</sup>[392. POWER OF TRIBUNAL TO ENFORCE COMPROMISES AND ARRANGEMENTS.

(1) *Where the Tribunal makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it -*

(a) *shall have power to supervise the carrying out of the compromise or an arrangement ; and*

(b) *may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.*

(2) *If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.*

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 392 read as under :

"392. Power of High Court to enforce compromises and arrangements. - (1) Where a High Court makes an order under section 391 sanctioning a compromise or an arrangement in respect of a company, it -

(a) shall have power to supervise the carrying out of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned under section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under section 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act under section 153 of the Indian Companies Act, 1913 (7 of 1913), sanctioning a compromise or an arrangement."

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement the companies (Amendment) Act, 2001 sanctioning a compromise or an arrangement.]

### **393. INFORMATION AS TO COMPROMISES OR ARRANGEMENTS WITH CREDITORS AND MEMBERS**

(1) Where a meeting of creditors or any class of creditors, or of members or any class of members, is called under section 391, -

(a) with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect ; and in particular, stating any material interests of the directors, managing director <sup>1</sup>[\*\*\*] or manager of the company, whether in their capacity as



such or as members or creditors of the company or otherwise, and the effect on those interests, of the compromise or arrangement, if, and insofar as, it is different from the effect on the like interests of other persons ; and  
(b) in every notice calling the meeting which is given by advertisement, there shall be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

(2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like information and explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

(3) Where a notice given by advertisement includes a notification that copies of a statement setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every creditor or member so entitled shall, on making an application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the statement.

(4) Where default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to <sup>2</sup>[fifty] thousand rupees ; and for the purpose of this sub-section any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company :

**Provided** that a person shall not be punishable under this sub-section if he shows that the default was due to the refusal of any other person, being a director, managing director, <sup>3</sup>[\*\*\*] manager or trustees for debenture holders, to supply the necessary particulars as to his material interests.

(5) Every director, managing director, <sup>3</sup>[\*\*\*] or manager of the company, and every trustee for debenture holders of the company, shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section ; and if he fails to do so, he shall be punishable with fine which may extend to <sup>4</sup>[five thousand] rupees.

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1. Words ", managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Words "managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

4. Substituted for ``five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

### 394. PROVISIONS FOR FACILITATING RECONSTRUCTION AND AMALGAMATION OF COMPANIES

(1) Where an application is made to the <sup>1</sup>[Tribunal] under section 391 for the sanctioning of a compromise or arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the <sup>1</sup>[Tribunal] -

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any company or companies, or the amalgamation of any two or more companies ; and

(b) that under the scheme the whole or any part of the undertaking, property or liabilities of any company concerned in the scheme (in this section referred to as a "transferor-company") is to be transferred to another company (in this section referred to as "the transferee-company") ;

the <sup>1</sup>[Tribunal] may, either by the order sanctioning the compromise or arrangement or by a subsequent order, make provision for all or any of the following matters :

(i) the transfer to the transferee-company of the whole or any part of the undertaking, property or liabilities of any transferor-company ;

(ii) the allotment or appropriation by the transferee-company of any shares, debentures, policies, or other like interests in that company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person ;

(iii) the continuation by or against the transferee-company of any legal proceedings pending by or against any transferor-company ;

(iv) the dissolution, without winding up, of any transferor-company ;

(v) the provision to be made for any persons who, within such time and in such manner as the <sup>1</sup>[Tribunal] directs, dissent from the compromise or arrangement ; and

(vi) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out :

**Provided** that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a company, which is being wound up, with any other company or companies, shall be sanctioned by the <sup>1</sup>[Tribunal] unless the <sup>1</sup>[Tribunal] has received a report from <sup>2</sup>[\*\*\*] the Registrar that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest :

**Provided further** that no order for the dissolution of any transferor-company under clause (iv) shall be made by the <sup>1</sup>[Tribunal] unless the Official Liquidator has, on scrutiny of the books and papers of the company, made a report to the <sup>1</sup>[Tribunal] that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest.

(2) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to and vest in, and those liabilities shall be transferred to and become the liabilities of, the transferee-company ; and in the case of any property, if the order so directs, freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect.

(3) Within thirty days after the making of an order under this section, every company in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration. If default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to <sup>3</sup>[five hundred] rupees.

(4) In this section -

(a) "property" includes property rights and powers of every description ; and "liabilities" includes duties of every description ; and

(b) "transferee-company" does not include any company other than a company within the meaning of this Act ; but "transferor-company" includes any body corporate, whether a company within the meaning of this Act or not.

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1. Substituted for 'Court' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Words "the Company Law Board or" omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

3. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **394A. NOTICE TO BE GIVEN TO CENTRAL GOVERNMENT FOR APPLICATIONS UNDER SECTIONS 391 AND 394**

The <sup>1</sup>[Tribunal] shall give notice of every application made to it under section 391 or 394 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing any order under any of these sections.

1. Substituted for 'Court' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **395. POWER AND DUTY TO ACQUIRE SHARES OF SHAREHOLDERS DISSENTING FROM SCHEME OR CONTRACT APPROVED BY MAJORITY**

(1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor-company") to another company (in this section referred to as "the transferee-company"), has, within four months after the making of the offer in that behalf by the transferee-company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee-company or its subsidiary), the transferee-company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder, that it desires to acquire his shares ; and when such a notice is given, the transferee-company, shall, unless, on an application made by the dissenting shareholder within one month from the date on which the notice was given, the <sup>1</sup>[Tribunal] thinks fit to order otherwise, be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee-company :

**Provided** that where shares in the transferor-company of the same class as the shares whose transfer is involved are already held as aforesaid to a value greater than one-tenth of the aggregate of the values of all the shares in the company of such class, the foregoing provisions of this sub-section shall not apply, unless -

(a) the transferee-company offers the same terms to all holders of the shares of that class (other than those already held as aforesaid) whose transfer is involved ; and

(b) the holders who approve the scheme or contract, besides holding not less than nine-tenths in value of the shares (other than those already held as aforesaid) whose transfer is involved, are not less than three-fourths in number of the holders of those shares.

(2) Where, in pursuance of any such scheme or contract as aforesaid, shares, or shares of any class, in a company are transferred to another company or its nominee, and those shares together with any other shares or any other shares of the same class, as the case may be, in the first-mentioned company held at the date of the transfer by, or by a nominee for, the transferee-company or its subsidiary comprise nine-tenths in value of the shares, or the shares of that class, as the case may be, in the first-mentioned company, then, -

(a) the transferee-company shall, within one month from the date of the transfer (unless on a previous transfer in pursuance of the scheme or contract it has already complied with this requirement), give notice of that fact in the prescribed manner to the holders of the remaining shares or of the remaining shares of that class, as the case may be, who have not assented to the scheme or contract; and

(b) any such holder may, within three months from the giving of the notice to him, require the transferee-company to acquire the shares in question ;

and where a shareholder gives notice under clause (b) with respect to any shares, the transferee-company shall be entitled and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders were transferred to it, or on such other terms as may be agreed, or as the <sup>1</sup>[Tribunal] on the application of either the transferee-company or the shareholder thinks fit to order.

(3) Where a notice has been given by the transferee-company under sub-section (1) and the <sup>1</sup>[Tribunal] has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee-company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the <sup>1</sup>[Tribunal] by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor-company together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee-company and on its own behalf by the transferee-company, and pay or transfer to the transferor-company the amount or other consideration representing the price payable by the transferee-company for the shares which, by virtue of this section, that company is entitled to acquire ; and the transferor-company shall -

- (a) thereupon register the transferee-company as the holder of those shares, and
- (b) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee-company :

**Provided** that an instrument of transfer shall not be required for any share for which a share warrant is for the time being outstanding.

(4) Any sums received by the transferor-company under this section shall be paid into a separate bank account, and any such sums and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sums or other consideration were respectively received.

(4A) (a) The following provisions shall apply in relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor-company to the transferee-company, namely :

- (i) every such offer or every circular containing such offer or every recommendation to the members of the transferor-company by its directors to accept such offer shall be accompanied by such information as may be prescribed ;
- (ii) every such offer shall contain a statement by or on behalf of the transferee-company, disclosing the steps it has taken to ensure that necessary cash will be available ;
- (iii) every circular containing, or recommending acceptance of, such offer shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered ;
- (iv) the Registrar may refuse to register any such circular which does not contain the information required to be given under sub- clause (i) or which sets out such information in a manner likely to give a false impression ; and
- (v) an appeal shall lie to the <sup>1</sup>[Tribunal] against an order of the Registrar refusing to register any such circular.

(b) Whoever issues a circular referred to in sub-clause (iii) of clause (a), which has not been registered, shall be punishable with fine which may extend to <sup>2</sup>[five thousand] rupees.

(5) In this section -

(a) "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee-company in accordance with the scheme or contract ;

(b) "transferor-company" and "transferee-company" shall have the same meaning as in section 394.

(6) In relation to an offer made by the transferee-company to share- holders of the transferor-company before the commencement of this Act, this section shall have effect -

- (a) with the substitution, in sub-section (1), for the words "the shares whose transfer is involved (other than shares already held at the date of the offer by, or by a nominee for, the transferee-company or its subsidiary)," of the words "the shares affected" and with the omission of the proviso to that sub-section ;
- (b) with the omission of sub-section (2) ;
- (c) with the omission in sub-section (3) of the words "together with an instrument of transfer executed on behalf of the shareholder by any person appointed by the transferee-company and on its own behalf by the transferee-company" and of the proviso to that sub-section ; and
- (d) with the omission of clause (b) of sub-section (5).

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1. Substituted for 'Court' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

### **396. POWER OF CENTRAL GOVERNMENT TO PROVIDE FOR AMALGAMATION OF COMPANIES IN NATIONAL INTEREST.**

(1) Where the Central Government is satisfied that it is essential in the public interest that two or more companies should amalgamate, then, notwithstanding anything contained in sections 394 and 395 but subject to the provisions of this section, the Central Government may, by order notified in the Official Gazette, provide for the amalgamation of those companies into a single company with such constitution ; with such property, powers, rights, interests, authorities and privileges ; and with such liabilities, duties, and obligations ; as may be specified in the order.

(2) The order aforesaid may provide for the continuation by or against the transferee-company of any legal proceedings pending by or against any transferor-company and may also contain such consequential, incidental and supplemental provisions as may, in the opinion of the Central Government, be necessary to give effect to the amalgamation.

(3) Every member or creditor (including a debenture holder) of each of the companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the company resulting from the amalgamation as he had in the company of which he was originally a member or creditor ; and to the extent to which the interest or rights of such member or creditor in or against the company resulting from the amalgamation are less than his interest in or rights against the original company, he shall be entitled to compensation which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette.

The compensation so assessed shall be paid to the member or creditor concerned by the company resulting from the amalgamation.

(3A) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the <sup>1</sup>[Tribunal] and thereupon the assessment of the compensation shall be made by the <sup>1</sup>[Tribunal].

(4) No order shall be made under this section, unless -

- (a) a copy of the proposed order has been sent in draft to each of the companies concerned ;

(aa) the time for preferring an appeal under sub-section (3A) has expired, or where any such appeal has been preferred, the appeal has been finally disposed of ; and  
(b) the Central Government has considered, and made such modifications, if any, in the draft order as may seem to it desirable in the light of any suggestions and objections which may be received by it from any such company within such period as the Central Government may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.  
(5) Copies of every order made under this section shall, as soon as may be after it has been made, be laid before both Houses of Parliament.

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1. Substituted for 'Company Law Board' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### **396A. PRESERVATION OF BOOKS AND PAPERS OF AMALGAMATED COMPANY**

The books and papers of a company which has been amalgamated with, or whose shares have been acquired by, another company under this Chapter shall not be disposed of without the prior permission of the Central Government and before granting such permission, that Government may appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the first-mentioned company or its amalgamation or the acquisition of its shares.

## **CHAPTER VI: PREVENTION OF OPPRESSION AND MISMANAGEMENT**

### **A. Powers of <sup>1</sup>[Tribunal]**

#### **397. APPLICATION TO <sup>1</sup>[TRIBUNAL] FOR RELIEF IN CASES OF OPPRESSION**

(1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the <sup>1</sup>[Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the <sup>1</sup>[Tribunal] is of opinion-

(a) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members ; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up ;

the <sup>1</sup>[Tribunal] may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **398. APPLICATION TO <sup>1</sup>[TRIBUNAL] FOR RELIEF IN CASES OF MISMANAGEMENT**

(1) Any members of a company who complain -

(a) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ; or

(b) that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors <sup>2</sup>[\*\*\*] or manager <sup>3</sup>[\*\*\*] or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company ;

may apply to the <sup>1</sup>[Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the <sup>1</sup>[Tribunal] is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the <sup>1</sup>[Tribunal] may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Words ", or of its managing agent or secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Words ", or in the constitution or control of the firm or body corporate acting as its managing agent or secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **399. RIGHT TO APPLY UNDER SECTIONS 397 AND 398**



(1) The following members of a company shall have the right to apply under section 397 or 398 :

(a) in the case of a company having a share capital, not less than one hundred members of the company or, not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares ;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

(2) For the purposes of sub-section (1), where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

(4) The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to the <sup>1</sup>[Tribunal] under section 397 or 398, notwithstanding that the requirements of clause (a) or clause (b), as the case may be, of sub-section (1) are not fulfilled.

(5) The Central Government may, before authorising any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable for the payment of any costs which the <sup>1</sup>[Tribunal] dealing with the application may order such member or members to pay to any other person or persons who are parties to the application.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **400. NOTICE TO BE GIVEN TO CENTRAL GOVERNMENT OF APPLICATIONS UNDER SECTIONS 397 AND 398**

The <sup>1</sup>[Tribunal] shall give notice of every application made to it under section 397 or 398 to the Central Government, and shall take into consideration the representations, if any, made to it by that Government before passing a final order under that section.

1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **401. RIGHT OF CENTRAL GOVERNMENT TO APPLY UNDER SECTIONS 397 AND 398**

The Central Government may itself apply to the <sup>1</sup>[Tribunal] for an order under section 397 or 398, or cause an application to be made to the <sup>1</sup>[Tribunal] for such an order by any person authorised by it in this behalf.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **402. POWERS OF <sup>1</sup>[TRIBUNAL] ON APPLICATION UNDER SECTION 397 OR 398**

Without prejudice to the generality of the powers of the <sup>1</sup>[Tribunal] under section 397 or 398, any order under either section may provide for -

(a) the regulation of the conduct of the company's affairs in future ;

(b) the purchase of the shares or interests of any members of the company by other members thereof or by the company ;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital ;

(d) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely :

(i) the managing director,

(ii) any other director,

(iii) and (iv) <sup>2</sup>[\*\*\*]

(v) the manager,

upon such terms and conditions as may, in the opinion of the <sup>1</sup>[Tribunal] be just and equitable in all the circumstances of the case ;

(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned ;

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference ;

(g) any other matter for which in the opinion of the <sup>1</sup>[Tribunal] it is just and equitable that provision should be made.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002.

2. Sub-clauses (iii) and (iv) omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **403. INTERIM ORDER BY <sup>1</sup>[TRIBUNAL]**

Pending the making by it of a final order under section 397 or 398, as the case may be, the <sup>1</sup>[Tribunal] may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **404. EFFECT OF ALTERATION OF MEMORANDUM OR ARTICLES OF COMPANY BY ORDER UNDER SECTION 397 OR 398**

(1) Where an order under section 397 or 398 makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make without the leave of the <sup>1</sup>[Tribunal], any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(2) Subject to the provisions of sub-section (1), the alterations made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act ; and the said provisions shall apply accordingly to the memorandum or articles as so altered.

(3) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(4) If default is made in complying with the provisions of sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to <sup>2</sup>[fifty] thousand rupees.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
  2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **405. ADDITION OF RESPONDENTS TO APPLICATION UNDER SECTION 397 OR 398**

If the managing director or any other director <sup>1</sup>[\*\*\*] or the manager, of a company, or any other person, who has not been impleaded as a respondent to any application under section 397 or 398 applies to be added as a respondent thereto, the <sup>2</sup>[Tribunal] shall, if it is satisfied that there is sufficient cause for doing so, direct that he may be added as a respondent accordingly.

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1. Words ", the managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
  2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **406. APPLICATION OF SECTIONS 539 TO 544 TO PROCEEDINGS UNDER SECTIONS 397 AND 398**

In relation to an application under section 397 or 398, sections 539 to 544, both inclusive, shall apply in the form set forth in Schedule XI.

#### **407. CONSEQUENCES OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS**

(1) Where an order <sup>1</sup>[\*\*\*] made under section 397 or 398 terminates, sets aside, or modifies an agreement such as is referred to in clause (d) or (e) of section 402, -

(a) the order shall not give rise to any claim whatever against the company by any person for damages or for compensation for loss of office or in any other respect, either in pursuance of the agreement or otherwise ;

(b) no managing or other director <sup>2</sup>[\*\*\*] or manager whose agreement is so terminated or set aside <sup>3</sup>[\*\*\*] shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the <sup>4</sup>[Tribunal] be appointed, or act, as the managing or other director <sup>2</sup>[\*\*\*] or manager of the company.

(2) (a) Any person who knowingly acts as a managing or other director <sup>2</sup>[\*\*\*] or manager of a company in contravention of clause (b) of sub-section (1) ;

(b) <sup>5</sup>[\*\*\*]

(c) every other director or every director, as the case may be, of the company, who is knowingly a party to such contravention ; shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to <sup>6</sup>[fifty] thousand rupees, or with both.

(3) <sup>7</sup>[No leave shall be granted] under clause (b) of sub-section (1) unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given an opportunity of being heard in the matter.

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1. Words ", managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 part06C/13-7-02
  2. Words "of a Court" omitted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991. w.e.f. 13-12-2000.
  3. Words ", managing agent or secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000. Words "and no person who, at the date of the order terminating or setting aside the agreement was, or subsequently becomes, an associate of such" though need to be omitted by the Companies (Amendment) Act, 2000 have not been so omitted.

4. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
5. Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
6. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
7. Substituted for "No Court shall grant leave" by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

#### **408. POWERS OF GOVERNMENT TO PREVENT OPPRESSION OR MIS-MANAGEMENT**

<sup>1</sup>[(1) Notwithstanding anything contained in this Act, the Central Government may appoint such number of persons as the <sup>2</sup>[Tribunal] may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interests to hold office as directors thereof for such period, not exceeding three years on any one occasion, as it may think fit, if the <sup>2</sup>[Tribunal], on a reference made to it by the Central Government or on an application of not less than one hundred members of the company or of the members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest :

**Provided** that *in lieu* of passing an order as aforesaid, the <sup>2</sup>[Tribunal] may, if the company has not availed itself of the option given to it under section 265, direct the company to amend its articles in the manner provided in that section and make fresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the <sup>1</sup>[Tribunal].

(2) In case the <sup>2</sup>[Tribunal] passes an order under the proviso to sub-section (1), it may, if it thinks fit, direct that until new directors are appointed in pursuance of the orders aforesaid, such number of persons as the <sup>1</sup>[Tribunal] may, by order, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest, shall hold office as additional directors of the company and on such directions, the Central Government shall appoint such additional directors.]

(3) For the purpose of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Central Government under sub-section (1) or (2) shall not be taken into account.

(4) A person appointed under sub-section (1) to hold office as a director or a person directed under sub-section (2) to hold office as an additional director, shall not be required to hold any qualification shares nor his period of office shall be liable to determination by retirement of directors by rotation ; but any such director or additional director may be removed by the Central Government from his office at any time and another person may be appointed by that Government in his place to hold office as a director or, as the case may be, an additional director.

(5) No change in the Board of directors made after a person is appointed or directed to hold office as a director or additional director under this section shall, so long as such director or additional director holds office, have effect unless confirmed by the <sup>2</sup>[Tribunal].

(6) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any person is appointed by the Central Government to hold office as director or additional director of a company in pursuance of sub-section (1) or sub-section (2), the Central Government may issue such directions to the company as it may consider necessary or appropriate in regard to its affairs <sup>1</sup>[and such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company, and upon such directions being given, the appointment, removal or alteration, as the case may be, shall be deemed to have come into effect as if the provisions of this Act in this behalf have been complied with without requiring any further act or thing to be done.]

(7) The Central Government may require the persons appointed as directors or additional directors in pursuance of sub-section (1) or sub-section (2) to report to the Central Government from time to time with regard to the affairs of the company.

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1. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **409. POWER OF <sup>1</sup>[TRIBUNAL] TO PREVENT CHANGE IN BOARD OF DIRECTORS LIKELY TO AFFECT COMPANY PREJUDICIALLY**

(1) Where a complaint is made to the <sup>1</sup>[Tribunal] by the managing director or any other director <sup>2</sup>[\*\*\*], or the manager, of a company that as a result of a change which has taken place or is likely to take place in the ownership of any shares held in the company, a change in the Board of directors is likely to take place which (if allowed) would affect prejudicially the affairs of the company, the <sup>1</sup>[Tribunal] may, if satisfied, after such inquiry as it thinks fit to make that it is just and proper so to do, by order, direct that no resolution passed or that may be passed or no action taken or that may be taken to effect a change in the Board of directors after the date of the complaint shall have effect unless confirmed by the <sup>1</sup>[Tribunal] ; and any such order shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in the memorandum or articles of the company, or in any agreement with, or any resolution passed in general meeting by, or by the Board of directors of, the company.

(2) The <sup>1</sup>[Tribunal] shall have power when any such complaint is received by it, to make an interim order to the effect set out in sub-section (1), before making or completing the inquiry aforesaid.

(3) Nothing contained in sub-sections (1) and (2) shall apply to a private company, unless it is a subsidiary of a public company.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
  2. Words ", the managing agent, the secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

## **CHAPTER VII: CONSTITUTION AND POWERS OF ADVISORY COMMITTEE**

### **410. APPOINTMENT OF ADVISORY COMMITTEE**

For the purpose of advising the Central Government and the <sup>1</sup>[*Tribuna*] on such matters arising out of the administration of this Act as may be referred to it by that Government or <sup>2</sup>[*the Tribuna*], the Central Government may constitute an Advisory Committee consisting of not more than five persons with suitable qualifications.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002.
  2. Substituted for "Board" by the Companies (Second Amendment) Act, 2002.

### **411. DUTIES OF ADVISORY COMMISSION**

[Omitted by the Companies (Amendment) Act, 1965, w.e.f. 15-10-1965.]

### **412. FORMS AND PROCEDURE IN CASES REFERRED TO ADVISORY COMMISSION**

[Omitted by the Companies (Amendment) Act, 1965, w.e.f. 15-10-1965.]

### **413. POWERS OF ADVISORY COMMISSION**

[Omitted by the Companies (Amendment) Act, 1965, w.e.f. 15-10-1965.]

### **414. PENALTIES**

[Omitted by the Companies (Amendment) Act, 1965, w.e.f. 15-10-1965.]

### **415. IMMUNITY FOR ACTION TAKEN IN GOOD FAITH**

[Omitted by the Companies (Amendment) Act, 1965, w.e.f. 15-10-1965.]

## **CHAPTER VIII: MISCELLANEOUS PROVISIONS**

### ***Contracts where company is undisclosed principal***

### **416. CONTRACTS BY AGENTS OF COMPANY IN WHICH COMPANY IS UNDISCLOSED PRINCIPAL**

- (1) Every person, being the <sup>1</sup>[\*\*\*] manager or other agent of a public company or of a private company which is a subsidiary of a public company, who enters into a contract for or on behalf of the company in which contract the company is an undisclosed principal shall, at the time of entering into the contract, make a memorandum in writing of the terms of the contract, and specify therein the person with whom it is entered into.
- (2) Every such person who enters into a contract as aforesaid shall forthwith deliver the memorandum to the company and send copies thereof to each of the directors ; and such memorandum shall be filed in the office of the company and laid before the Board of directors at its next meeting.
- (3) If default is made in complying with the requirements of this section, -
  - (a) the contract shall, at the option of the company, be voidable as against the company ; and
  - (b) the person who enters into the contract, or every officer of the company who is in default, as the case may be, shall be punishable with fine which may extend to <sup>2</sup>[two thousand] rupees.

- 
1. Words ", managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
  2. Substituted for "two hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

### ***Employees' securities and provident funds***

### **417. EMPLOYEES' SECURITIES TO BE DEPOSITED IN POST OFFICE SAVINGS BANK OR SCHEDULED BANK**

- (1) Any money or security deposited with a company by any of its employee in pursuance of his contract of service with the company shall be kept or deposited by the company within fifteen days from the date of deposit -
  - (a) in a post office savings bank account, or
  - (b) in a special account to be opened by the company for the purpose in the State Bank of India or in a scheduled bank, or
  - (c) where the company itself is a scheduled bank, in a special account to be opened by the company for the purpose either in itself or in the State Bank of India or in any other scheduled bank.
- (2) No portion of such moneys or securities shall be utilised by the company except for the purposes agreed to in the contracts of service.



(3) A receipt for moneys deposited with a company by its employee shall not be deemed to be a security within the meaning of this section ; and the moneys themselves shall accordingly be deposited as provided in sub-section (1).

#### **418. PROVISIONS APPLICABLE TO PROVIDENT FUNDS OF EMPLOYEES**

(1) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund (whether by the company or by the employees) or received or accruing by way of interest or otherwise to such fund shall, within fifteen days from the date of contribution, receipt or accrual, as the case may be, either-

(a) be deposited -

(i) in a post office savings bank account, or

(ii) in a special account to be opened by the company for the purpose in the State Bank of India or in a scheduled bank, or

(iii) where the company itself is a scheduled bank, in a special account to be opened by the company for the purpose either in itself or in the State Bank of India or in any other scheduled bank ; or

(b) be invested in the securities mentioned or referred to in clauses (a) to (e) of section 20 of the Indian Trusts Act, 1882 (2 of 1882).

(2) Notwithstanding anything to the contrary in the rules of any provident fund to which sub-section (1) applies or in any contract between a company and its employees, no employee shall be entitled to receive, in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (1), interest at a rate exceeding the rate of interest yielded by such investment.

(3) Nothing in sub-section (1) shall affect any rights of an employee under the rules of a provident fund to obtain advances from or to withdraw money standing to his credit in the fund, where the fund is a recognised provident fund within the meaning of clause (a) of section 58A of the Indian Income-tax Act, 1922 (11 of 1922), or where the rules of the fund contain provisions corresponding to rules 4, 5, 6, 7, 8 and 9 of the Indian Income-tax (Provident Funds Relief) Rules.

(4) Where a trust has been created by a company with respect to any provident fund referred to in sub-section (1), the company shall be bound to collect the contributions of the employees concerned and pay such contribution as well as its own contributions, if any, to the trustees within fifteen days from the date of collection ; but in other respects, the obligations laid on the company by this section shall devolve on the trustees and shall be discharged by them instead of by the company.

#### **419. RIGHT OF EMPLOYEE TO SEE BANK RECEIPT FOR MONEYS OR SECURITIES REFERRED TO IN SECTION 417 OR 418**

An employee shall be entitled, on request made in this behalf to the company, or to the trustees referred to in sub-section (4) of section 418, as the case may be, to see the bank's receipt for any money or security such as is referred to in sections 417 and 418.

#### **420. PENALTY FOR CONTRAVENTION OF SECTIONS 417, 418 AND 419**

Any officer of a company, or any such trustee of a provident fund as is referred to in sub-section (4) of section 418 who, knowingly, contravenes, or authorises or permits the contravention of, the provisions of section 417, 418 or 419, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to <sup>1</sup>[ten] thousand rupees.

### ***Receivers and managers***

#### **421. FILING OF ACCOUNTS OF RECEIVERS**

Every receiver of the property of a company who has been appointed under a power conferred by any instrument and who has taken possession, shall once in every half year while he remains in possession, and also on ceasing to act as receiver, file with the Registrar an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates.

#### **422. INVOICES, ETC., TO REFER TO RECEIVER WHERE THERE IS ONE**

Where a receiver of the property of a company has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company, or the receiver of the company, being a document on or in which the name of the company appears, shall contain a statement that a receiver has been appointed.

#### **423. PENALTY FOR NON-COMPLIANCE WITH SECTIONS 421 AND 422**

If default is made in complying with the requirements of section 421 or 422, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to <sup>1</sup>[two thousand] rupees.

For the purposes of this section, the receiver shall be deemed to be an officer of the company.

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1. Substituted for "two hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **<sup>1</sup>[424. APPLICATION OF SECTIONS 421 TO 423 TO RECEIVERS AND MANAGERS APPOINTED BY TRIBUNAL AND MANAGERS APPOINTED IN PURSUANCE OF AN INSTRUMENT**

*The provisions of sections 421 to 423 shall apply to the receiver of, or any person appointed to manage, the property of a company, appointed by the Tribunal or to any person appointed to manage, the property of a company under any powers contained in an instrument, in like manner as they apply to a receiver appointed under any powers contained in an instrument.]*

2. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to substitution section 424 read as under:

"424. Application of sections 421 to 423 to receivers and managers appointed by Court and managers appointed in pursuance of an instrument. - The provisions of sections 421, 422 and 423 shall apply to the receiver of, or any person appointed to manage, the property of

## <sup>1</sup>[PART VIA]

### **Revival and Rehabilitation of Sick Industrial Companies**

#### **424A. REFERENCE TO TRIBUNAL**

*(1) Where an industrial company, has become a sick industrial company, the Board of directors of such company shall make a reference to the Tribunal, and prepare a scheme of its revival and rehabilitation and submit the same to the Tribunal along with an application containing such particulars as may be prescribed, for determination of the measures which may be adopted with respect to such company :*

**Provided** that nothing contained in this sub-section shall apply to a Government company :

**Provided further** that a Government company may, with the prior approval of the Central Government or a State Government, as the case may be, make a reference to the Tribunal in accordance with the provisions of this sub-section and thereafter all the provisions of this Act shall apply to such Government company.

*(2) The application under sub-section (1) shall be accompanied by a certificate from an auditor from a panel of auditors prepared by the Tribunal indicating -*

*(a) the reasons of the net worth of such company being fifty per cent or less than fifty per cent ; or*

*(b) the default in repayment of its debt making such company a sick industrial company, as the case may be.*

*(3) Without prejudice to the provisions of sub-section (1), the Central Government or the Reserve Bank or a State Government or a public financial institution or a State level institution or a scheduled bank may, if it has sufficient reasons to believe that any industrial company has become, for the purposes of this Act, a sick industrial company, make a reference in respect of such company to the Tribunal for determination of the measures which may be adopted with respect to such company :*

**Provided** that a reference shall not be made under this sub-section in respect of any industrial company by -

*(a) the Government of any State unless all or any of the industrial undertakings belonging to such company are situated in such State;*

*(b) a public financial institution or a State level institution or a scheduled bank unless it has, by reason of any financial assistance or obligation rendered by it, or undertaken by it, with respect to such company, an interest in such company.*

*(4) A reference under sub-section (1) or sub-section (3) shall be made to the Tribunal within a period of one hundred and eighty days from the date on which the Board of directors of the company or the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank, as the case may be, come to know, of the relevant facts giving rise to causes of such reference or within sixty days of final adoption of accounts, whichever is earlier.*

*(5) The Tribunal may, on receipt of a reference under sub-section (1), pass an order as to whether a company in respect of which a reference has been made has become a sick industrial company and such order shall be final.*

1. Part VIA including sections 424A to 424L, inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **424B. INQUIRY INTO WORKING OF SICK INDUSTRIAL COMPANIES**

*(1) The Tribunal may make such inquiry as it may deem fit for determining whether any industrial company has become a sick industrial company -*

*(a) upon receipt of a reference with respect to such company under section 424A ; or*

*(b) upon information received with respect to such company or upon its own knowledge as to the financial condition of the company.*

*(2) The Tribunal may, if it deems necessary or expedient so to do for the expeditious disposal of an inquiry under sub-section (1), require by order any operating agency to enquire into the scheme for revival and make a report with respect to such matters as may be specified in the order.*

*(3) The operating agency shall complete its inquiry as expeditiously as possible and submit its report to the Tribunal within twenty-one days from the date of such order :*

**Provided** that the Tribunal may extend the said period to forty days for reasons to be recorded in writing for such extension.

*(4) The Tribunal shall conclude its inquiry as expeditiously as possible and pass final orders in the proceedings within sixty days from the commencement of the inquiry :*

**Provided** that the Tribunal may extend the said period to ninety days for reasons to be recorded in writing for such extension.

Explanation. - For the purposes of this sub-section, an inquiry shall be deemed to have commenced upon the receipt by the Tribunal of any reference or information or upon its own knowledge reduced to writing by the Tribunal.

(5) Where the Tribunal deems it fit to make an inquiry or to cause an inquiry to be made into any industrial company under sub-section (1) or, as the case may be, under sub-section (2), it may appoint one or more persons who possess knowledge, experience and expertise in management and control of the affairs of any other company to be a special director or special directors on the Board of such industrial company on such terms and conditions as may be prescribed for safeguarding its financial and other interests or in the public interest.

(6) The special director or special directors appointed under sub-section (5) shall submit a report to the Tribunal within sixty days from the date of appointment of such director or directors about the state of affairs of the company in respect of which reference has been made under sub-section (1) and such special director or directors shall have all the powers of a director of a company under this Act, necessary for discharge of his or their duties. (7) The Tribunal may issue such directions to a special director appointed under sub-section (5) as it may deem necessary or expedient for proper discharge of his duties.

(8) The appointment of a special director referred to in sub-section (5) shall be valid and effective notwithstanding anything to the contrary contained in any other provision of this Act or in any other law for the time being in force or in the memorandum and articles of association or any other instrument relating to the industrial company, and any provision regarding share qualification, age limit, number of directorships, removal from office of directors and such like conditions contained in any such law or instrument aforesaid, shall not apply to any special director or directors appointed by the Tribunal.

(9) Any special director appointed under sub-section (5), shall -

(a) hold office during the pleasure of the Tribunal and may be removed or substituted by any person by order of the Tribunal ;

(b) not incur any obligation or liability by reason only of his being a director or for anything done or omitted to be done in good faith in the discharge of his duties as a director or anything in relation thereto;

(c) not be liable to retirement by rotation and shall not be taken into account for computing the number of directors liable to such retirement ;

(d) not be liable to be prosecuted under any law for anything done or omitted to be done in good faith in the discharge of his duties in relation to the sick industrial company.

#### **424C. POWERS OF TRIBUNAL TO MAKE SUITABLE ORDER ON COMPLETION OF INQUIRY**

(1) If after making an inquiry under section 424 B, the Tribunal is satisfied that a company has become a sick industrial company, the Tribunal shall, after considering all the relevant facts and circumstances of the case, decide, as soon as may be, by an order in writing, whether it is practicable for the company to make its net worth exceed the accumulated losses or make the repayment of its debts referred to in clause (b) of sub-section (2) of section 424A within a reasonable time.

(2) If the Tribunal decides under sub-section (1) that it is practicable for a sick industrial company to make its net worth exceed the accumulated losses or pay its debt referred to in that sub-section within a reasonable time, the Tribunal shall, by order in writing and subject to such restrictions or conditions as may be specified in the order, give such time to the company as it may deem fit to make its net worth exceed the accumulated losses or make repayment of the debts.

(3) If the Tribunal decides under sub-section (1) that it is not practicable for a sick industrial company to make its net worth exceed the accumulated losses or make the repayment of its debts referred to in clause (b) of sub-section (2) of section 424A, within a reasonable time and that it is necessary or expedient in the public interest to adopt all or any of the measures specified in section 424D in relation to the said company it may, as soon as may be, by order in writing, direct any operating agency specified in the order to prepare, having regard to such guidelines as may be specified in the order, a scheme providing for such measures in relation to such company.

(4) The Tribunal may, -

(a) if any of the restrictions or conditions specified in an order made under sub-section (2) are not complied with by the company concerned, or if the company fails to revive in pursuance of the said order, review such order on a reference in that behalf from any agency referred to in sub-section (3) of section 424A or on its own motion and pass a fresh order in respect of such company under sub-section (3) ;

(b) if the operating agency specified in an order made under sub-section (3) makes a submission in that behalf, review such order and modify the order in such manner as it may deem appropriate.

#### **424D. PREPARATION AND SANCTION OF SCHEMES**

(1) Where an order is made under sub-section (3) of section 424C in relation to any sick industrial company, the operating agency specified in the order shall prepare as expeditiously as possible and ordinarily within a period of sixty days from the date of such order, having regard to the guidelines framed by the Reserve Bank of India in this behalf, a scheme with respect to such company providing for any one or more of the following measures, namely:-

(a) the financial reconstruction of such industrial company ;

(b) the proper management of such industrial company by change in, or take over of, the management of such industrial company ;

(c) the amalgamation of -

(i) such industrial company with any other company ; or

- (ii) any other company with such industrial company (hereafter in this section, in the case of sub-clause (i), the other company, and in the case of sub-clause (ii), such industrial company, referred to as "transferee-company") ;
- (d) the sale or lease of a part or whole of any industrial undertaking of such industrial company ;
- (e) the rationalisation of managerial personnel, supervisory staff and workmen in accordance with law ;
- (f) such other preventive ameliorative and remedial measures as may be appropriate ;
- (g) repayment of debt ;
- (h) such incidental, consequential or supplemental measures as may be necessary or expedient in connection with or for the purposes of the measures specified in clauses (a) to (g) :

**Provided** that the Tribunal may extend the said period of sixty days to ninety days for reasons to be recorded in writing for such extension.

(2) The scheme referred to in sub-section (1) may provide for any one or more of the following, namely : -

- (a) the constitution, name and registered office, the capital, assets, powers, rights, interests, authorities and privileges, duties and obligations of the sick industrial company or, as the case may be, of the transferee-company ;
- (b) the transfer to the transferee-company of the business, properties, assets and liabilities of the sick industrial company on such terms and conditions as may be specified in the scheme ;
- (c) any change in the Board of directors, or the appointment of a new Board of directors, of the sick industrial company and the authority by whom, the manner in which and the other terms and conditions on which, such change or appointment shall be made and in the case of appointment of a new Board of directors or of any director, the period for which such appointment shall be made ;
- (d) the alteration of the memorandum or articles of association of the sick industrial company or, as the case may be, of the transferee-company for the purpose of altering the capital structure thereof, or for such other purposes as may be necessary to give effect to the reconstruction or amalgamation ;
- (e) the continuation by or against the sick industrial company or, as the case may be, the transferee-company of any action or other legal proceeding pending against the sick industrial company immediately before the date of the order made under sub-section (3) of section 424C ;
- (f) the reduction of the interest or rights which the shareholders have in the sick industrial company to such extent as the Tribunal considers necessary in the interests of the reconstruction, revival or rehabilitation or repayment of debts of such sick industrial company or for the maintenance of the business of such industrial company ;
- (g) the allotment to the shareholders of the sick industrial company, of shares in such company or, as the case may be, in the transferee-company and where any shareholder claims payment in cash and not allotment of shares, or where it is not possible to allot shares to any shareholder, the payment of cash to those shareholders in full satisfaction of their claims -
- (i) in respect of their interest in shares in the sick industrial company before its reconstruction or amalgamation ; or
- (ii) where such interest has been reduced under clause (f) in respect of their interest in shares as so reduced ;
- (h) any other terms and conditions for the reconstruction or amalgamation of the sick industrial company ;
- (i) sale of the industrial undertaking of the sick industrial company free from all encumbrances and all liabilities of the company or other such encumbrances and liabilities as may be specified, to any person, including a co-operative society formed by the employees of such undertaking and fixing of reserve price for such sale ;
- (j) lease of the industrial undertaking of the sick industrial company to any person, including a co-operative society formed by the employees of such, undertaking ;
- (k) method of sale of assets of the industrial undertaking of the sick industrial company such as by public auction or by inviting tenders or in any other manner as may be specified and for the manner of publicity therefor ;
- (l) issue of the shares in the sick industrial company at the face value or at the intrinsic value which may be at discount value or such other value as may be specified to any industrial company or any person including the executives and employees of such sick industrial company ;
- (m) such incidental, consequential and supplemental matters as may be necessary to secure that the reconstruction or amalgamation or other measures mentioned in the scheme are fully and effectively carried out.

(3)(a) The scheme prepared by the operating agency shall be examined by the Tribunal and a copy of the scheme with modification, if any, made by the Tribunal shall be sent, in draft, to the sick industrial company and the operating agency and in the case of amalgamation, also to any other company concerned, and the Tribunal may publish or cause to be published the draft scheme in brief in such daily newspapers as the Tribunal may consider necessary, for suggestions and objections, if any, within such period as the Tribunal may specify.

(b) The complete draft scheme shall be kept at the place where registered office of the company is situated or at such places as mentioned in the advertisement.

(c) The Tribunal may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick industrial company and the operating agency and also from the transferee-company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies :

**Provided** that where the scheme relates to amalgamation, the said scheme shall be laid before the company other than the sick industrial company in the general meeting for the approval of the scheme by its shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of the transferee-company.

(4) The scheme may thereafter be sanctioned, within sixty days by the Tribunal (hereinafter referred to as the sanctioned scheme) and shall come into force on such date as the Tribunal may specify in this behalf :

**Provided [further]** that the Tribunal may extend the said period of sixty days to ninety days for reasons to be recorded in writing for such extension:



**Provided also** that different dates may be specified for different provisions of the scheme.

(5) The Tribunal may, on the recommendations of the operating agency or otherwise, review any sanctioned scheme and make such modifications as it may deem fit or may by order in writing direct any operating agency specified in the order, having regard to such guidelines including the guidelines framed by the Reserve Bank of India in this behalf in order to prepare a fresh scheme providing for such measures as the operating agency may consider necessary.

(6) When a fresh scheme is prepared under sub-section (5), the provisions of sub-sections (3) and (4) shall apply in relation thereto as they apply to in relation to a scheme prepared under sub-section (1).

(7) Where a sanctioned scheme provides for the transfer of any property or liability of the sick industrial company in favour of any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick industrial company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick industrial company.

(8) The sanction accorded by the Tribunal under sub-section (4) shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction or amalgamation, or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Tribunal to be a true copy thereof, shall, in all legal proceedings (whether in appeal or otherwise), be admitted as evidence.

(9) A copy of the sanctioned scheme referred to in sub-section (8) shall be filed with the Registrar within the prescribed time by the company in respect of which such scheme relates.

(10) On and from the date of the coming into operation of the sanctioned scheme or any provision thereof, the scheme or such provision shall be binding on the sick industrial company and the transferee-company or, as the case may be, the other company and also on the shareholders, creditors and guarantors and employees of the said companies.

(11) The creditors of a sick industrial company may also prepare a scheme for revival or rehabilitation of such sick industrial company and submit the same to the Tribunal for its sanction :

**Provided** that no scheme shall be submitted by the creditors to the Tribunal unless such scheme has been approved by at least three fourth in value of creditors of the sick industrial company.

(12) All the provisions relating to the preparation of scheme by the operating agency and sanction of such scheme by the Tribunal shall, as far as may be, apply to the scheme referred to in sub-section (11).

(13) The scheme referred to in sub-section (11) if sanctioned by the Tribunal shall be binding on all the creditors and on other concerned.

(14) If any difficulty arises in giving effect to the provisions of the sanctioned scheme, the Tribunal may, on the recommendation of the operating agency or otherwise, by order, do anything, not inconsistent with such provisions, which appears to it to be necessary or expedient for the purpose of removing the difficulty.

(15) The Tribunal may, if it deems necessary or expedient so to do, by order in writing, direct any operating agency specified in the order to implement a sanctioned scheme with such terms and conditions and in relation to the sick industrial company as may be specified in the order.

(16) Where the whole of the undertaking of the sick industrial company is sold under a sanctioned scheme, the Tribunal may distribute the sale proceeds to the parties entitled thereto in accordance with the provisions of section 529A and other provisions of this Act.

(17) The Tribunal may monitor periodically the implementation of the sanctioned scheme.

#### **424E. REHABILITATION BY GIVING FINANCIAL ASSISTANCE**

(1) Where the scheme relates to preventive, ameliorative, remedial and other measures with respect to the sick industrial company, the scheme may provide for financial assistance by way of loans, advances or guarantees or reliefs or concessions or sacrifices from the Central Government, a State Government, any scheduled bank or other bank, a public financial institution or State level institution or any institution or other authority (any Government, bank, institution or other authority required by a scheme to provide for such financial assistance being hereafter in this section referred to as the person required by the scheme to provide financial assistance) to the sick industrial company.

(2) Every scheme referred to in sub-section (1) shall be circulated to every person required by the scheme to provide financial assistance for his consent within a period of sixty days from the date of such circulation or within such further period, not exceeding sixty days, as may be allowed by the Tribunal, and if no consent is received within such period or further period, it shall be deemed that consent has been given.

(3) Where in respect of any scheme the consent referred to in sub-section (2) is given by every person required by the scheme to provide financial assistance, the Tribunal may, as soon as may be, sanction the scheme and on and from the date of such sanction the scheme shall be binding on all concerned.

(4) On the sanction of the scheme under sub-section (3), the financial institutions and the banks required to provide financial assistance, shall designate by mutual agreement a financial institution and a bank from amongst themselves which shall be responsible to disburse financial assistance by way of loans or advances or guarantees or reliefs or concessions or sacrifices agreed to be provided or granted under the scheme on behalf of all financial institutions and banks concerned.

(5) The financial institution and the bank designated under sub-section (4) shall forthwith proceed to release the financial assistance to the sick industrial company in fulfilment of the requirement in this regard.

(6) Where in respect of any scheme consent under sub-section (2) is not given by any person required by the scheme to provide financial assistance, the Tribunal may adopt such other measures, including the winding up of the sick industrial company, as it may deem fit.

such other measures including winding up of the sick industrial company, as it may deem fit.

#### **424F. ARRANGEMENT FOR CONTINUING OPERATIONS, ETC., DURING INQUIRY**

(1) *At any time before completion of the inquiry under section 424B, the sick industrial company or the Central Government or the Reserve Bank of India or a State Government or a public financial institution or a State level institution or a scheduled bank or any other institution, bank or authority providing or intending to provide any financial assistance by way of loans or advances or guarantees or reliefs, or concessions to such industrial company may make an application to the Tribunal -*

- (a) agreeing to an arrangement for continuing the operations of the sick industrial company ; or*
- (b) suggesting a scheme for the financial reconstruction of the sick industrial company.*

*(2) The Tribunal may, within sixty days of the receipt of the application under sub-section (1), pass such orders thereon as it may deem fit.*

#### **424G. WINDING UP OF SICK INDUSTRIAL COMPANY**

*(1) Where the Tribunal, after making inquiry under section 424B and after consideration of all the relevant facts and circumstances and after giving an opportunity of being heard to all concerned parties, is of the opinion that the sick industrial company is not likely to make its net worth exceed the accumulated losses within a reasonable time while meeting all its financial obligations and that the company as a result thereof is not likely to become viable in future and that it is just and equitable that the company should be wound up, it may record its findings and order winding up of the company.*

*(2) For the purpose of winding up of the sick industrial company, the Tribunal may appoint any officer of the operating agency, if the operating agency gives its consent, as the liquidator of such industrial company and the officer so appointed shall for the purpose of the winding up of such sick industrial company, be deemed to be, and have all the powers of, the official liquidator under 5 this Act.*

*(3) Notwithstanding anything contained in sub-section (2), the Tribunal may cause to be sold the assets of the sick industrial company in such manner as it may deem fit and pass orders for distribution in accordance with the provisions of section 529A, and other provisions of this Act.*

*(4) Without prejudice to the other provisions contained in this Act, the winding up of a company shall, as far as may be, concluded within one year from the date of the order made under sub-section (1).*

#### **424H. OPERATING AGENCY TO PREPARE COMPLETE INVENTORY, ETC**

*Where for the proper discharge of the functions of the Tribunal under this Part, the circumstances so require, the Tribunal may, through any operating agency, cause to be prepared -*

*(a) with respect to a company a complete inventory of -*

- (i) all assets and liabilities of whatever nature ;*
- (ii) all books of account, registers, maps, plans, records, documents of title or ownership of property and all other documents of whatever nature relating thereto ;*

*(b) a list of shareholders and a list of creditors showing separately in the list of creditors, the secured creditors and unsecured creditors;*

*(c) a valuation report in respect of the shares and assets in order to arrive at the reserve price for the sale of a part or whole of the industrial undertaking of the company or for fixation of the lease rent or share exchange ratio ;*

*(d) an estimate of reserve price, lease rent or share exchange ratio ;*

*(e) proforma accounts, where no up-to-date audited accounts are available.*

#### **424-I. DIRECTION NOT TO DISPOSE OF ASSETS**

*The Tribunal may, if it is of opinion, that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order, direct such company not to dispose of, except with the prior approval of the Tribunal, any of its assets during the period of inquiry under section 424B or during the period of preparation or consideration of the scheme under section 424C.*

#### **424J. POWER OF TRIBUNAL TO CALL FOR PERIODIC INFORMATION**

*On receipt of reference under section 424A, the Tribunal may call for any periodic information from the company as to the steps taken by the company to make its net worth exceed the accumulated losses or to make repayment of its debts referred to in that section, as the case may be, and the company shall furnish such information.*

#### **424K. MISFEASANCE PROCEEDINGS**

*(1) If, in the course of scrutiny or implementation of any scheme or proposal, it appears to the Tribunal that any person who has taken part in the promotion, formation or management of the sick industrial company or its undertaking, including any past or present director, manager or officer or employee of the sick industrial company -*

*(a) has misapplied or retained, or become liable or accountable for, any money or property of the sick industrial company ; or*

*(b) has been guilty of any misfeasance, malfeasance or non-feasance of breach of trust in relation to the sick industrial company,*

*the Tribunal may, by order, direct him to repay or restore the money or property or any part thereof, with or without interest, as it thinks just, or to contribute such sum to the assets of the sick industrial company or the other person, entitled thereto by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as*

*the Tribunal thinks just, and also report the matter to the Central Government for any other action which that Government may deem fit.*

*(2) If the Tribunal is satisfied on the basis of the information and evidence in its possession with respect to any person who is or was a director or an officer or other employee of the sick industrial company, that such person by himself or along with others had diverted the funds or other property of such company for any purpose other than a bona fide purpose of the company or had managed the affairs of the company in a manner highly detrimental to the interests of the company, the Tribunal shall by order, direct the public financial institutions, scheduled banks and State level institutions not to provide, during a period often years from the date of the order, any financial assistance to such person or any firm of which such person is a partner or any company or other body corporate of which such person is a director (by whatever name called). (3) No order shall be made by the Tribunal under this section against any person unless such person has been given an opportunity for making his submissions.*

*(4) This section shall apply notwithstanding that the matter is one for which the person may be criminally liable.*

#### **424L. PENALTY FOR CERTAIN OFFENCES**

*(1) Whoever violates provisions of this Part or any scheme, or any order, of the Tribunal or the Appellate Tribunal or makes a false statement or gives false evidence to the Tribunal or the Appellate Tribunal, and attempts to tamper the records of reference or appeal filed under this Act, shall be punishable with simple imprisonment for a term which may extend to three years or shall be liable to fine not exceeding ten lakhs rupees.*

*(2) No court shall take cognisance of any offence under sub-section (1) except on a complaint in writing of an officer of the Tribunal or the Appellate Tribunal or any officer of the Central Government authorised by it or any officer of an operating agency as may be authorised in this behalf by the Tribunal or the Appellate Tribunal, as the case may be.]*

## **PART VII : WINDING UP**

### **CHAPTER I : PRELIMINARY**

#### **425. MODES OF WINDING UP**

(1) The winding up of a company may be either, -

(a) by the <sup>1</sup>[Tribunal] ; or

(b) voluntary ; <sup>2</sup>[\*\*\*]

(c) <sup>3</sup>[\*\*\*]

(2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

2. Word 'or' omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

3. Words "subject to supervision of the court" omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

### **Contributories**

#### **426. LIABILITY AS CONTRIBUTORIES OF PRESENT AND PAST MEMBERS**

(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of section 427 and subject also to the following qualifications, namely : -

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up ;

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member ;

(c) no past member shall be liable to contribute unless it appears to the <sup>1</sup>[Tribunal] that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act ;

(d) in the case of a company limited by shares, no contribution shall be required from any past or present member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member ;

(e) in the case of a company limited by guarantee, no contribution shall, subject to the provisions of sub-section (2), be required from any past or present member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up ;

(f) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract ;

(g) a sum due to any past or present member of the company in his character as such, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member, in a case of competition

between himself and any creditor claiming otherwise than in the character of a past or present member of the company; but any such sum shall be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him as if the company were a company limited by shares.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **427. OBLIGATIONS OF DIRECTORS AND MANAGERS WHOSE LIABILITY IS UNLIMITED**

In the winding up of a limited company, any director <sup>1</sup>[\*\*\*] or manager, whether past or present, whose liability is, under the provisions of this Act, unlimited, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were, at the commencement of the winding up, a member of an unlimited company :

**Provided** that -

(a) a past director <sup>1</sup>[\*\*\*] or manager shall not be liable to make such further contribution, if he has ceased to hold office for a year or upwards before the commencement of the winding up ;

(b) a past director <sup>1</sup>[\*\*\*] or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office ;

(c) subject to the articles of the company, a director <sup>1</sup>[\*\*\*] or manager shall not be liable to make such further contribution, unless the <sup>2</sup>[Tribunal] deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

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1. Words ", managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **428. DEFINITION OF "CONTRIBUTORY"**

The term "contributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and includes the holder of any shares which are fully paid-up ; and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

#### **429. NATURE OF LIABILITY OF CONTRIBUTORY**

(1) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times specified in calls made on him for enforcing the liability.

(2) No claim founded on the liability of a contributory shall be cognisable by any Court of Small Causes sitting outside the presidency towns.

#### **430. CONTRIBUTORIES IN CASE OF DEATH OF MEMBER**

(1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives shall be liable in a due course of administration, to contribute to the assets of the company in discharge of his liability, and shall be contributories accordingly.

(2) If the legal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and compelling payment thereof of the money due.

(3) For the purposes of this section, where the deceased contributory was a member of a Hindu joint family governed by the Mitakshara School of Hindu Law, his legal representatives shall be deemed to include the surviving coparceners.

#### **431. CONTRIBUTORIES IN CASE OF INSOLVENCY OF MEMBER**

If a contributory is adjudged insolvent, either before or after he has been placed on the list of contributories, -

(a) his assignees in insolvency shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company ; and

(b) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

#### **432. CONTRIBUTORIES IN CASE OF WINDING UP OF A BODY CORPORATE WHICH IS A MEMBER**

If a body corporate which is a contributory is ordered to be wound up, either before or after it has been placed on the list of contributories, -

(a) the liquidator of the body corporate shall represent it for all the purposes of the winding up of the company and shall be a contributory accordingly, and may be called on to admit to proof against the assets of the body corporate, or otherwise to allow to be paid out of its assets in due course of law, any money due from the body corporate in respect of its liability to contribute to the assets of the company ; and



(b) there may be proved against the assets of the body corporate the estimated value of its liability to future calls as well as calls already made.

## CHAPTER II: WINDING UP BY THE <sup>1</sup>[TRIBUNAL]

### *Cases in which company may be wound up by the <sup>1</sup>[Tribunal]*

#### <sup>2</sup>[433. CIRCUMSTANCES IN WHICH COMPANY MAY BE WOUND UP BY TRIBUNAL]

*A company may be wound up by the Tribunal, -*

- (a) *if the company has, by special resolution, resolved that the company be wound up by the Tribunal ;*
- (b) *if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting ;*
- (c) *if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;*
- (d) *if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two;*
- (e) *if the company is unable to pay its debts ;*
- (f) *if the Tribunal is of opinion that it is just and equitable that the company should be wound up ;*
- (g) *if the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years ;*
- (h) *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 ;*
- (i) *if the Tribunal is of the opinion that the company should be wound up under the circumstances specified in section 424G :*

**Provided** that the Tribunal shall make an order for winding up of a company under clause (h) on application made by the Central Government or a State Government.]

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)
  2. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to substitution, section 433 read as under :

"433. *Circumstances in which company may be wound up by Court.* - A company may be wound by the Court, -

- (a) *if the company has, by special resolution, resolved that the company be wound up by the Court ;*
- (b) *if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting ;*
- (c) *if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year ;*
- (d) *if the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two ;*
- (e) *if the company is unable to pay its debts ;*
- (f) *if the Court is of opinion that it is just and equitable that the company should be wound up."*

#### **434. COMPANY WHEN DEEMED UNABLE TO PAY ITS DEBTS**

(1) A company shall be deemed to be unable to pay its debts -

- (a) *if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding <sup>1</sup>[one lakh] rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor ;*
- (b) *if execution or other process issued on a decree or order of any Court <sup>2</sup>[or Tribunal] in favour of a creditor of the company is returned unsatisfied in whole or in part ; or*
- (c) *if it is proved to the satisfaction of the <sup>3</sup>[Tribunal] that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the <sup>3</sup>[Tribunal] shall take into account the contingent and prospective liabilities of the company.*

(2) The demand referred to in clause (a) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm.

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1. Substituted for "five hundred" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)
  2. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)
  3. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

<sup>1</sup>[\*\*\*]

#### **435. TRANSFER OF WINDING UP PROCEEDINGS TO DISTRICT COURT**

[Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) ]

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1. Heading "Transfer of proceedings" omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **436. WITHDRAWAL AND TRANSFER OF WINDING UP FROM ONE DISTRICT COURT TO ANOTHER**

[Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) ]

#### **437. POWER OF HIGH COURT TO RETAIN WINDING UP PROCEEDINGS IN DISTRICT COURT**

[Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) ]

#### **438. JURISDICTION OF HIGH COURT UNDER SECTIONS 435, 436 AND 437 TO BE EXERCISED AT ANY TIME AND AT ANY STAGE**

[Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) ]

#### ***Petition for winding up***

#### **439. PROVISIONS AS TO APPLICATIONS FOR WINDING UP**

(1) An application to the <sup>1</sup>[Tribunal] for the winding up of a company shall be by petition presented, subject to the provisions of this section, -

- (a) by the company ; or
- (b) by any creditor or creditors, including any contingent or prospective creditor or creditors ; or
- (c) by any contributory or contributories ; or
- (d) by all or any of the parties specified in clauses (a), (b) and (c), whether together or separately ; or
- (e) by the Registrar ; or

(f) in a case falling under section 243, by any person authorised by the Central Government in that behalf ; or

<sup>2</sup>[(g) *In a case falling under clause (h) of section 433, by the Central Government or a State Government.*]

(2) A secured creditor, the holder of any debentures (including debenture stock), whether or not any trustee or trustees have been appointed in respect of such and other like debentures, and the trustee for the holders of debentures, shall be deemed to be creditors within the meaning of clause (b) of sub-section (1).

(3) A contributory shall be entitled to present a petition for winding up a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all, or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities.

(4) A contributory shall not be entitled to present a petition for winding up a company unless -

(a) either the number of members is reduced, in the case of a public company, below seven, and, in the case of a private company, below two ; or

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

(5) Except, in the case where he is authorised in pursuance of clause (f) of sub-section (1), the Registrar shall be entitled to present a petition for winding up a company only on the grounds specified in clauses (b), (c), (d), (e) <sup>3</sup>[(f) and (g)] of section 433 :

**Provided** that the Registrar shall not present a petition on the ground specified in clause (e) aforesaid, unless it appears to him either from the financial condition of the company as disclosed in its balance sheet or from the report of a special auditor appointed under section 233A or an inspector appointed under section 235 or 237, that the company is unable to pay its debts :

**Provided further** that the Registrar shall obtain the previous sanction of the Central Government to the presentation of the petition on any of the grounds aforesaid.

(6) The Central Government shall not accord its sanction in pursuance of the foregoing proviso, unless the company has first been afforded an opportunity of making its representations, if any.

(7) A petition for winding up a company on the ground specified in clause (b) of section 433 shall not be presented -

- (a) except by the Registrar or by a contributory ; or
- (b) before the expiration of fourteen days after the last day on which the statutory meeting referred to in clause (b) aforesaid ought to have been held.

(8) Before a petition for winding up a company presented by a contingent or prospective creditor is admitted, the leave of the <sup>1</sup>[Tribunal] shall be obtained for the admission of the petition and such leave shall not be granted -

- (a) unless, in the opinion of the <sup>1</sup>[Tribunal], there is a *prima facie* case for winding up the company ; and
- (b) until such security for costs has been given as the <sup>1</sup>[Tribunal] thinks reasonable.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

2. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

3. Substituted for "and (f)" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **<sup>1</sup>[439A. STATEMENT OF AFFAIRS TO BE FILED ON WINDING UP OF A COMPANY**

(1) *Every company shall file with the Tribunal a statement of its affairs along with the petition for winding up.*

(2) *Where a company opposes a petition for its winding up, it shall file with the Tribunal a statement of its affairs.*

(3) *The statement of affairs referred to in sub-section (1) or sub-section (2) shall be accompanied by -*

- (a) *the last known addresses of all directors and company secretary of such company ;*

- (b) the details of location of assets of the company and their value ;
- (c) the details of all debtors and creditors with their complete addresses;
- (d) the details of workmen and other employees and any amount outstanding to them ;
- (e) such other details as the Tribunal may direct.]

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1. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

**<sup>1</sup>[440. RIGHT TO PRESENT WINDING UP PETITION WHERE COMPANY IS BEING WOUND UP VOLUNTARILY**

(1) *Where a company is being wound up voluntarily, a petition for its winding up by the Tribunal may be presented by -*

- (a) *any person authorised to do so under section 439 ; or*
- (b) *the Official Liquidator.*

(2) *The Tribunal shall not make a winding up order on a petition presented to it under sub-section (1), unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories or both.]*

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) . Prior to its substitution, section 440 read as under :

**<sup>1</sup>[441. COMMENCEMENT OF WINDING UP BY TRIBUNAL**

(1) *Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.*

(2) *In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.]*

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 441 read as under :

Commencement of winding up

"441. Commencement of winding up by Court. - (1) Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the Court, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

(2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up."

**<sup>1</sup>[Levy by way of cess and formation of Rehabilitation and Revival Fund**

**441A. LEVY AND COLLECTION OF CESS ON TURNOVER OR GROSS RECEIPTS OF COMPANIES**

(1) *There shall be levied and collected, for the purposes of rehabilitation or revival or protection of assets of the sick industrial company, a levy by way of cess at such rate not less than 0.005 per cent and not more than 0.1 per cent on the value of annual turnover of every company or its annual gross receipt, whichever is more as the Central Government may, from time to time, specify by notification in the Official Gazette.*

(2) *Every company shall pay to the Central Government the cess referred to in sub-section (1) within three months from the close of every financial year.*

(3) *Every company shall furnish, in such form as may be prescribed, to the Central Government and the Tribunal the details of its turnover and gross receipts with payment of cess under sub-section (1).*

(4) *The Central Government may, by rules made in this behalf, specify the manner in which the cess shall be paid under sub-section (2).*

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1. Sections 441A to 441G inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

**441B. CREDITING PROCEEDS OF CESS TO CONSOLIDATED FUND OF INDIA**

*The proceeds of the cess levied and collected under section 441A shall first be credited to the Consolidated Fund of India and the Central Government may, if Parliament by appropriation made by law in this behalf so provides, pay to the Tribunal, from time to time, out of such proceeds (after deducting the cost of collection), such sums of money as it may think fit for being utilised for the purposes of the Fund.*

**441C. REHABILITATION FUND**

(1) *There shall be formed for the purposes of rehabilitation or revival or protection of assets of a sick industrial company, a Fund to be called the Rehabilitation and Revival Fund.*

(2) *There shall be credited to the Fund -*

- (a) *all amounts paid under section 441B ;*
- (b) *any amount given as grants by the Central Government for the purposes of this Fund ;*
- (c) *any amount given to the Fund from any other source ;*

- (d) any income from investment of the amount in the Fund ;
- (e) amount refunded by the company under section 441G.

#### **441D. APPLICATION OF FUND**

*The Fund shall be applied by the Tribunal for the purpose of -*

- (a) *making interim payment of workmen's dues pending the revival or rehabilitation of the sick industrial company ; or*
  - (b) *payment of workmen's dues due to the workmen, referred to in subsection (3) of section 529, of the sick industrial company ; or*
  - (c) *protection of assets of sick industrial company ; or*
  - (d) *revival or rehabilitation of sick industrial company ;*
- which in the opinion of the Tribunal are necessary or expedient for the said purposes.*

#### **441E. POWER TO CALL FOR INFORMATION**

*The Central Government or Tribunal may require any company to furnish for the purposes of rehabilitation or revival or protection of assets of sick industrial companies, such statistical and other information in such form and within such period as may be prescribed.*

#### **441F. PENALTY FOR NON-PAYMENT OF CESS**

*(1) If any cess payable by a company under section 441A is not paid in accordance with the provisions of that section, it shall be deemed to be in arrears and the same shall be recovered by the Tribunal in such manner as may be prescribed.*

*(2) The Tribunal may, after such inquiry as it deems fit, impose on the company, which is in arrears under sub-section (1), a penalty not exceeding ten times the amount in arrears :*

**Provided** *that before imposing such penalty, such company shall be given a reasonable opportunity of being heard, and if, after such hearing, the Tribunal is satisfied that the default was for any good and sufficient reason, no penalty shall be imposed under this sub-section.*

#### **441G. REFUND OF FUND IN CERTAIN CASES**

*(1) Where the fund has been applied by the Tribunal for any of the purposes specified in clauses (a) to (d) of section 441 D, such amount of fund shall be recovered from the company after its revival or rehabilitation or out of sale proceeds of its assets after discharging the statutory liabilities and payment of dues to creditors.*

*(2) The amount referred to in sub-section (7) shall be recovered in the manner as the Tribunal may direct.]*

### **Powers of<sup>1</sup>[Tribunal]**

#### **442. POWER OF COURT TO STAY OR RESTRAIN PROCEEDINGS AGAINST COMPANY**

<sup>2</sup>*[Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)]*

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1. Substituted for 'Court' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

2. Prior to its omission section 442 read as under :

"442. Power of Court to stay or restrain proceedings against company. - At any time after the presentation of a winding up petition and before a winding up order has been made, the company, or any creditor or contributory, may -

(a) where any suit or proceeding against the company is pending in the Supreme Court or in any High Court, apply to the Court in which the suit or proceeding is pending for a stay of proceedings therein ; and

(b) where any suit or proceeding is pending against the company in any other Court, apply to the Court having jurisdiction to wind up the company, to restrain further proceedings in the suit or proceeding ;

and the Court to which application is so made may stay or restrain the proceedings accordingly, on such terms as it thinks fit."

#### **<sup>1</sup>[443. POWERS OF TRIBUNAL ON HEARING PETITION**

*(1) On hearing a winding up petition, the Tribunal may -*

- (a) *dismiss it, with or without costs ; or*
- (b) *adjourn the hearing conditionally or unconditionally ; or*
- (c) *make any interim order that it thinks fit ; or*
- (d) *make an order for winding up the company with or without costs, or any other order that it thinks fit :*

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

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



that other remedy. (3) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar, or in holding the statutory meeting, the Tribunal may -

- (a) instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held ; and
- (b) order the costs to be paid by any persons who in the opinion of the Tribunal, are responsible for the default.]

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) . Prior to its substitution section 443 read as under :

"443. Powers of Court on hearing petition. - (1) On hearing a winding up petition, the Court may -

- (a) dismiss it, with or without cost ; or
- (b) adjourn the hearing conditionally or unconditionally ; or
- (c) make any interim order that it thinks fit ; or
- (d) make an order for winding up the company with or without costs, or any other order that it thinks fit :

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

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

(3) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar, or in holding the statutory meeting, the Court may -

- (a) instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held ; and
- (b) order the costs to be paid by any persons who in the opinion of the Court, are responsible for the default.

#### **<sup>1</sup>[444. ORDER FOR WINDING UP TO BE COMMUNICATED TO OFFICIAL LIQUIDATOR AND REGISTRAR**

*Where the Tribunal makes an order for the winding up of a company, the Tribunal, shall within a period not exceeding two weeks from the date of passing of the order, cause intimation thereof to be sent to the Official Liquidator and the Registrar.]*

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) . Prior to its substitution, section 444 read as under :

*Consequences of winding up order*

444. Order for winding up to be communicated to Official Liquidator and Registrar. - Where the Court makes an order for the winding up of a company, the Court shall forthwith cause intimation thereof to be sent to the Official Liquidator and the Registrar."

#### **445. COPY OF WINDING UP ORDER TO BE FILED WITH REGISTRAR**

(1) On the making of a winding up order, it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the Registrar a certified copy of the order, within thirty days from the date of the making of the order.

If default is made in complying with the foregoing provision, the petitioner, or as the case may require, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to <sup>1</sup>[one thousand] rupees for each day during which the default continues.

(1A) In computing the period of thirty days from the date of the making of a winding up order under sub-section (1), the time requisite for obtaining a certified copy of the order shall be excluded.

(2) On the filing of a certified copy of the winding up order, the Registrar shall make a minute thereof in his books relating to the company, and shall notify in the Official Gazette that such an order has been made.

(3) Such order shall be deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued.

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1. Substituted for "one hundred" by the Companies (Amendment) Act, 2000 w.e.f.

#### **446. SUITS STAYED ON WINDING UP ORDER**

(1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the <sup>1</sup>[Tribunal] and subject to such terms as the <sup>1</sup>[Tribunal] may impose. (2) The <sup>2</sup>[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 391 by or in respect of the company ;
- (d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the 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 before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960.

(3) <sup>3</sup>[\*\*\*]

(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a high Court.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)
  2. Substituted for "court which is winding up the company" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)
  3. Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to omission sub-section (3) read as under :  
"(3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court."

#### <sup>1</sup>[446A. RESPONSIBILITY OF DIRECTORS AND OFFICERS TO SUBMIT TO TRIBUNAL AUDITED BOOKS AND ACCOUNTS

*The directors and other officers of every company shall ensure that books of account of the company are completed and audited up to date of winding up order made by the Tribunal and submitted to it at the cost of the company, failing which such directors and officers shall be liable for punishment for a term not exceeding one year and fine for an amount not exceeding one lakh rupees.]*

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1. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **447. EFFECT OF WINDING UP ORDER**

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

#### **Official liquidators**

#### <sup>1</sup>[448. APPOINTMENT OF OFFICIAL LIQUIDATOR

(1) *For the purposes of this Act, so far as it relates to the winding up of a company by the Tribunal, there shall be an Official Liquidator who -*

(a) *may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and works accountants or firms having a combination of these professions, which the Central Government shall constitute for the Tribunal ; or*

(b) *may be a body corporate consisting of such professionals as may be approved by the Central Government from time to time ; or*

(c) *may be a whole-time or a part-time officer appointed by the Central Government :*

**Provided** *that, before appointing the Official Liquidator, the Tribunal may give due regard to the views or opinion of the secured creditors and workmen.*

(2) *The terms and conditions for the appointment of the Official Liquidator and the remuneration payable to him shall be -*

(a) *approved by the Tribunal for those appointed under clauses (a) and (b) of sub-section (1), subject to a maximum remuneration of five per cent of the value of debt recovered and realisation of sale of assets ;*

(b) *approved by the Central Government for those appointed under clause (c) of sub-section (1) in accordance with the rules made by it in this behalf.*

(3) *Where the Official Liquidator is an officer appointed by the Central Government under clause (c) of sub-section (1), the Central Government may also appoint, if considered necessary, one or more Deputy Official Liquidators or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions, and the terms and conditions for the appointment of such Official Liquidators and the remuneration payable to them shall also be in accordance with the rules made by the Central Government.*

(4) *All references to the "Official Liquidator" in this Act shall be construed as reference to the Official Liquidator specified in sub-section (1), or to the Deputy Official Liquidator or Assistant Official Liquidator referred to in sub-section (3), as the case may be.*

(5) *The amount of the remuneration payable shall -*

(a) *form part of the winding up order made by the Tribunal ;*

(b) *be treated as first charge on the realisation of the assets and be paid to the Official Liquidator or to the Central Government, as the case may be.*

(6) *The Official Liquidator shall conduct proceedings in the winding up of a company and perform such duties in reference thereto as the Tribunal may specify in this behalf :*

**Provided** *that the Tribunal may -*

(a) *transfer the work assigned from one Official Liquidator to another Official Liquidator for the reasons to be recorded in writing ;*

(b) *remove the Official Liquidator on sufficient cause being shown ;*

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 448 read as under :

`448. Appointment of Official Liquidator. - (1) For the purposes of this Act, so far as it relates to the winding up of companies by the Court, -

(a) there shall be attached to each High Court, an Official Liquidator appointed by the Central Government, who shall be a whole-time officer, unless the Central Government considers that there will not be sufficient work for a whole-time officer in which case a part-time officer may be appointed ; and

(b) the Official Receiver attached to a District Court for insolvency purposes, or if there is no such Official Receiver, then, such person as the Central Government may, by notification in the Official Gazette appoint for the purpose, shall be the Official Liquidator attached to the District Court.

(1A) The Central Government may appoint one or more Deputy or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions.

(2) All references to the "Official Liquidator" in this Act shall be construed as references to the Official Liquidator referred to in clause (a) or clause (b), as the case may be, of sub-section (1) and as including references to Deputy or Assistant Official Liquidators appointed under sub-section (1A).'

#### **449. OFFICIAL LIQUIDATOR TO BE LIQUIDATOR**

On a winding up order being made in respect of a company, the Official Liquidator shall, by virtue of his office, become the liquidator of the company.

#### **450. APPOINTMENT AND POWERS OF PROVISIONAL LIQUIDATOR**

(1) At any time after the presentation of a winding up petition and before the making of a winding up order, the <sup>1</sup>[Tribunal] may appoint the Official Liquidator to be liquidator provisionally.

(2) Before appointing a provisional liquidator, the <sup>1</sup>[Tribunal] shall give notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the <sup>1</sup>[Tribunal] thinks fit to dispense with such notice. (3) Where a provisional liquidator is appointed by the <sup>1</sup>[Tribunal], the <sup>1</sup>[Tribunal] may limit and restrict his powers by the order appointing him or by a subsequent order ; but otherwise he shall have the same powers as a liquidator.

(4) The Official Liquidator shall cease to hold office as provisional liquidator and shall become the liquidator, of the company, on a winding up order being made.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **451. GENERAL PROVISIONS AS TO LIQUIDATORS**

(1) The liquidator shall conduct the proceedings in winding up the company and perform such duties in reference thereto as the <sup>1</sup>[Tribunal] may impose. (2) Where the <sup>2</sup>[Official Liquidator referred to in clause (c) of sub-section (1) of section 448] becomes or acts as liquidator, there shall be paid to the

(3) The acts of a liquidator shall be valid, notwithstanding any defect that may afterwards be discovered in his appointment or qualification :

**Provided** that nothing in this sub-section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

2. Substituted for "Official Liquidator" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **452. STYLE, ETC., OF LIQUIDATOR**

A liquidator shall be described by the style of "The Official Liquidator" of the particular company in respect of which he acts, and not by his individual name.

#### **453. RECEIVER NOT TO BE APPOINTED OF ASSETS WITH LIQUIDATOR**

A receiver shall not be appointed of assets in the hands of a liquidator except by, or with the leave of, the <sup>1</sup>[Tribunal].

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **454. STATEMENT OF AFFAIRS TO BE MADE TO OFFICIAL LIQUIDATOR**

(1) Where the <sup>1</sup>[Tribunal] has made a winding up order or appointed the Official Liquidator as provisional liquidator, unless the <sup>1</sup>[Tribunal] in its discretion otherwise orders, there shall be made out and submitted to the Official Liquidator a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely : -

(a) the assets of the company, stating separately the cash balance in hand and at the bank, if any, and negotiable securities, if any, held by the company ;

(b) its debts and liabilities ;

(c) the names, residences 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 ;

(d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof ;

(e) such further or other information as may be prescribed, or as the Official Liquidator may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned, as the Official Liquidator, subject to the direction of the <sup>1</sup>[Tribunal], may require to submit and verify the statement, that is to say, persons -

(a) who are or have been officers of the company ;

(b) who have taken part in the formation of the company at any time within one year before the relevant date ;

(c) who are in the employment of the company, or have been in the employment of the company within the said year, and are, in the opinion of the Official Liquidator, capable of giving the information required ;

(d) who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within twenty-one days from the relevant date, or within such extended time not exceeding three months from that date as the Official Liquidator or the <sup>1</sup>[Tribunal] may, for special reasons, appoint.

(4) Any person making, or concurring in making, the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Liquidator or provisional liquidator, as the case may be, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Official Liquidator may consider reasonable, subject to an appeal to the <sup>1</sup>[Tribunal].

(5) If any person, without reasonable excuse, makes default in complying with any of the requirements of this section, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to <sup>2</sup>[one thousand] rupees for every day during which the default continues, or with both.

(5A) The <sup>1</sup>[Tribunal] by which the winding up order is made or the provisional liquidator is appointed, may take cognisance of an offence under sub-section (5) upon receiving a complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure, 1898 (5 of 1898), for the trial of summons cases by magistrates.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code (45 of 1860) ; and shall, on the application of the Official Liquidator, be punishable accordingly. (8) In this section, the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding up order.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)
  2. Substituted for "one hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **455. REPORT BY OFFICIAL LIQUIDATOR**

(1) In a case where a winding up order is made, the Official Liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 454 and not later than six months from the date of the order or such extended period as may be allowed by the <sup>1</sup>[Tribunal], or in a case where the <sup>1</sup>[Tribunal] orders that no statement need be submitted, as soon as practicable after the date of the order, submit a preliminary report to the <sup>1</sup>[Tribunal] -

(a) as to the amount of capital issued, subscribed, and paid-up, and the estimated amount of assets and liabilities, giving separately, under the heading of assets, particulars of (i) cash and negotiable securities ; (ii) debts due from contributories ; (iii) debts due to the company and securities, if any, available in respect thereof ; (iv) movable and immovable properties belonging to the company ; and (v) unpaid calls ;

(b) if the company has failed, as to the causes of the failure ; and

(c) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The Official Liquidator may also, if he thinks fit, make a further report, or further reports, stating 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 <sup>1</sup>[Tribunal].

(3) If the Official Liquidator states in any such further report that in his opinion a fraud has been committed as aforesaid, the <sup>1</sup>[Tribunal] shall have the further powers provided in section 478.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **456. CUSTODY OF COMPANY'S PROPERTY**

(1) Where a winding up order has been made or where a provisional liquidator has been appointed, the liquidator or the provisional liquidator, as the case may be, shall take into his custody or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.



(1A) For the purpose of enabling the liquidator or the provisional liquidator, as the case may be, to take into his custody or under his control, any property, effects or actionable claims to which the company is or appears to be entitled, the liquidator or the provisional liquidator, as the case may be, may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the liquidator or the provisional liquidator.

(1B) For the purpose of securing compliance with the provisions of sub-section (1A), the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be necessary.

(2) All the property and effects of the company shall be deemed to be in the custody of the <sup>1</sup>[Tribunal] as from the date of the order for the winding up of the company.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### 457. POWERS OF LIQUIDATOR

(1) The liquidator in a winding up by the <sup>1</sup>[Tribunal] shall have power, with the sanction of the <sup>1</sup>[Tribunal], -

(a) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company ;

(b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company ;

(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels ;

<sup>2</sup>[(ca) to sell whole of the undertaking of the company as a going concern;

(d) to raise on the security of the assets of the company any money requisite ;

(e) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

(2) The liquidator in a winding up by the <sup>1</sup>[Tribunal] shall have power -

(i) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal ;

(ia) to inspect the records and returns of the company on the files of the Registrar without payment of any fee ;

(ii) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors ;

(iii) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business ;

(iv) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself ;

**Provided** that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator-General;

(v) to appoint an agent to do any business which the liquidator is unable to do himself.

<sup>3</sup>[(2A) The liquidator shall -

(a) appoint security guards to protect the property of the company taken into his custody and to make out an inventory of the assets in consultation with secured creditors after giving them notice ;

(b) appoint, as the case may be, valuer, chartered surveyors or chartered accountant to assess the value the company's assets within fifteen days after taking into custody of property, assets referred to in sub-clause (a) and effects or actionable claims subject to such terms and conditions as may be specified by the Tribunal ;

(c) give an advertisement, inviting bids for sale of the assets of the company, within fifteen days from the date of receiving valuation report from the valuer, chartered surveyors or chartered accountants referred to in clause (b), as the case may be.

(2B) The liquidator shall, immediately after the order for winding up or appointing the liquidator as provisional Liquidator is made, issue a notice requiring any of the persons mentioned in sub-section (2) of section 454, to submit and verify a statement of the affairs of the company and such notice shall be served by the liquidator.

(2C) The liquidator may apply to the Tribunal for an order directing any person who, in his opinion, is competent to furnish a statement of the affairs under sections 439A and 454 and such person shall for the said purpose be served a notice by the liquidator in the manner as may be prescribed.

(2D) The liquidator may, from time to time, call any person for recording any statement for the purpose of investigating the affairs of the company which is being wound up and it shall be the duty of every such person to attend to the liquidator at such time and place as the liquidator may appoint and give the liquidator all information which he may require and answer all such questions relating to winding up of company as may be put to him by the liquidator.

(2E) Every bidder shall, in response to advertisement referred to in clause (c) of sub-section (2A), deposit, his offer in the manner as may be prescribed, with liquidator or provisional liquidator, as the case may be, within forty- five days



from the date of the advertisement and the liquidator or provisional liquidator shall permit inspection of property and assets in respect of which bids were invited :

**Provided** that such bid may be withdrawn within three days before the last day of closing of the bid :

**Provided further** that the inspection of property shall be open for not more than five days before closing of the bid.

(2F) The advertisement inviting bids shall contain the following details, namely :-

(a) name, address of registered office of the company and its branch offices, factories and plants and the place where assets of the company are kept and available for sale ;

(b) last date for submitting bids which shall not exceed ninety days from the date of advertisement ;

(c) time during which the premises of the company shall remain open for inspection ;

(d) the last date for withdrawing the bid ;

(e) financial guarantee which shall not be less than one-half of the value of the bid ;

(f) validity period of the bids ;

(g) place and date of opening of the bids in public ;

(h) reserve price and earnest money to be deposited along with the bid;

(i) any other terms and conditions of sale which may be prescribed.

(2G) The liquidator appointed shall -

(a) maintain a separate bank account for each company under his charge for depositing the sale proceeds of the assets and recovery of debts of each company ;

(b) maintain proper books of account in respect of all receipts and payments made by him in respect of each company and submit half yearly return of receipts and payments to the Tribunal.]

(3) The exercise by the liquidator in a winding up by the <sup>1</sup>[Tribunal] of the powers conferred by this section shall be subject to the control of the <sup>1</sup>[Tribunal] ; and any creditor or contributory may apply to the <sup>1</sup>[Tribunal] with respect to the exercise or proposed exercise of any of the powers conferred by this section.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

2. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

3. Sub-sections (2A) to (2G) inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **458. DISCRETION OF LIQUIDATOR**

The <sup>1</sup>[Tribunal] may, by order, provide that the liquidator may exercise any of the powers referred to in sub-section (1) of section 457 without the sanction or intervention of the <sup>1</sup>[Tribunal] :

**Provided** always that the exercise by the liquidator of such powers shall be subject to the control of the <sup>1</sup>[Tribunal].

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **458A. EXCLUSION OF CERTAIN TIME IN COMPUTING PERIODS OF LIMITATION**

Notwithstanding anything in the Indian Limitation Act, 1908 (9 of 1908) or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on

behalf of a company which is being wound up by the <sup>1</sup>[Tribunal], the period from the date of commencement of the winding up of the company to the date on which the winding up order is made (both inclusive) and a period of one year immediately following the date of the winding up order shall be excluded.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **<sup>1</sup>459. PROVISION FOR LEGAL ASSISTANCE TO LIQUIDATOR**

The liquidator may, with the sanction of the Tribunal appoint one or more chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 10GD to assist him in the performance of his duties.]

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 459 read as under :

"459. Provision for legal assistance to liquidator. - The Liquidator may, with the sanction of the court, appoint an advocate, attorney or pleader entitled to appear before the court to assist him in the performance of his duties."

#### **460. EXERCISE AND CONTROL OF LIQUIDATOR'S POWERS**

(1) Subject to the provisions of this Act, the liquidator shall, 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 resolution of the creditors or contributories at any general meeting or by the committee of inspection.

(2) 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 committee of inspection.

(3) The liquidator -

(a) may summon general meetings of the creditors or contributories, whenever he thinks fit, for the purpose of ascertaining their wishes;

(b) shall summon such meetings at such times, as the creditors or contributories, as the case may be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories, as the case may be.

(4) The liquidator may apply to the <sup>1</sup>[Tribunal] in the manner prescribed, if any, for directions in relation to any particular matter arising in the winding up.

(5) Subject to the provisions of this Act, the liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(6) Any person aggrieved by any act or decision of the liquidator may apply to the <sup>1</sup>[Tribunal] ; and the <sup>1</sup>[Tribunal] may confirm, reverse or modify the act or decision complained of, and make such further order as it thinks just in the circumstances.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **461. BOOKS TO BE KEPT BY LIQUIDATOR**

(1) The liquidator shall keep, in the manner prescribed, proper books in which he shall cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.

(2) Any creditor or contributory may, subject to the control of the <sup>1</sup>[Tribunal], inspect any such books, personally or by his agent.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **462. AUDIT OF LIQUIDATOR'S ACCOUNTS**

(1) The liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the <sup>1</sup>[Tribunal] an account of his receipts and payments as liquidator.

(2) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.

(3) The <sup>1</sup>[Tribunal] shall cause the account to be audited in such manner as it thinks fit ; and for the purpose of the audit, the liquidator shall furnish the <sup>1</sup>[Tribunal] with such vouchers and information as the <sup>1</sup>[Tribunal] may require, and the <sup>1</sup>[Tribunal] may, at any time, require the production of, and inspect, any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed and kept by the <sup>1</sup>[Tribunal], and the other copy shall be delivered to the Registrar for filing ; and each copy shall be open to the inspection of any creditor, contributory or person interested.

<sup>2</sup>[(4A) Where an account referred to in sub-section (4) relates to a Government company in liquidation, the liquidator shall forward a copy thereof, -

(a) to the Central Government, if that Government is a member of the Government company ; or

(b) to any State Government, if that Government is a member of the Government company ; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company.]

(5) The liquidator shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and to every contributory :

**Provided** that the <sup>1</sup>[Tribunal] may in any case dispense with compliance with this sub-section.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

2. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

#### **463. CONTROL OF CENTRAL GOVERNMENT OVER LIQUIDATORS**

(1) The Central Government shall take cognisance of the conduct of liquidators of companies which are being wound up by the <sup>1</sup>[Tribunal], and, if a liquidator does not faithfully perform his duties and duly observe all the requirements imposed on him by this Act, or by the Indian Companies Act, 1913 (7 of 1913), the rules thereunder, or otherwise, with respect to the performance of his duties, or if any complaint is made to the Central Government by any creditor or contributory in regard thereto, the Central Government shall inquire into the matter, and take such action thereon as it may think expedient :

**Provided** that where the winding up of a company has commenced before the commencement of this Act, the <sup>1</sup>[Tribunal] may, on the application of the Central Government, appoint in place of such liquidator the Official Liquidator as the liquidator in such winding up.

(2) The Central Government may at any time require any liquidator of a company which is being wound up by the <sup>1</sup>[Tribunal] to answer any inquiry in relation to any winding up in which he is engaged, and may, if the Central Government thinks fit, apply to the <sup>1</sup>[Tribunal] to examine him or any other person on oath concerning the winding up.

(3) The Central Government may also direct a local investigation to be made of the books and vouchers of the liquidators.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### ***Committee of inspection***

#### 464. APPOINTMENT AND COMPOSITION OF COMMITTEE OF INSPECTION

- (1) (a) The <sup>1</sup>[Tribunal] may, at the time of making an order for the winding up of a company or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator.
- (b) Where a direction is given by the <sup>1</sup>[Tribunal] as aforesaid, the liquidator shall, within two months from the date of such direction, convene a meeting of the creditors of the company (as ascertained from its books and documents) for the purpose of determining who are to be members of the committee.
- (2) The liquidator shall, within fourteen days from the date of the creditors' meeting or such further time as the <sup>1</sup>[Tribunal] in its discretion may grant for the purpose; convene a meeting of the contributories to consider the decision of the creditors' meeting with respect to the membership of the committee; and it shall be open to the meeting of the contributories to accept the decision of the creditors' meeting with or without modifications or to reject it.
- (3) Except in the case where the meeting of the contributories accepts the decision of the creditors' meeting in its entirety, it shall be the duty of the liquidator to apply to the <sup>1</sup>[Tribunal] for directions as to what the composition of the committee shall be, and who shall be members thereof.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### 465. CONSTITUTION AND PROCEEDINGS OF COMMITTEE OF INSPECTION

- (1) A committee of inspection appointed in pursuance of section 464 shall consist of not more than twelve members, being creditors and contributories of the company or persons holding general or special powers of attorney from creditors or contributories, in such proportions as may be agreed on by the meetings of creditors and contributories, or in case of difference of opinion between the meetings, as may be determined by the <sup>1</sup>[Tribunal].
- (2) The committee of inspection shall have the right to inspect the accounts of the liquidator at all reasonable times.
- (3) The committee shall meet at such times as it may from time to time appoint, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
- (4) The quorum for a meeting of the committee shall be one-third of the total number of the members, or two, whichever is higher.
- (5) The committee may act by a majority of its members present at a meeting, but shall not act unless a quorum is present.
- (6) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.
- (7) If a member of the committee is adjudged an insolvent, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who, together with himself, represent the creditors or contributories, as the case may be, his office shall become vacant.
- (8) A member of the committee may be removed at a meeting of creditors if he represents creditors, or at a meeting of contributories if he represents contributories, by an ordinary resolution of which seven days' notice has been given, stating the object of the meeting.
- (9) On a vacancy occurring in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy; and the meeting may, by resolution, re-appoint the same, or appoint another, creditor or contributory to fill the vacancy:
- Provided** that if the liquidator, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled, he may apply to the <sup>1</sup>[Tribunal] and the <sup>1</sup>[Tribunal] may make an order that the vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.
- (10) The continuing members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002. (w.e.f. a date yet to be notified)

#### **General powers of <sup>1</sup>[Tribunal] in case of winding up by <sup>1</sup>[Tribunal]**

#### <sup>2</sup>[466. POWER OF TRIBUNAL TO STAY WINDING UP

- (1) *The Tribunal may at any time after making a winding up order, on the application either of the Official Liquidator or of any creditor or contributory, and on proof to the satisfaction of the Tribunal that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Tribunal thinks fit.*
- (2) *On any application under this section, the Tribunal may, before making an order, require the Official Liquidator to furnish to the Tribunal a report with respect to any facts or matters which are in his opinion relevant to the application.*
- (3) *A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.]*

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

2. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 466 read as under:

"466. Power of Court to stay winding up. - (1) The Court may at any time after making a winding up order, on the application either of the Official Liquidator or of any creditor or contributory, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

(2) On any application under this section, the Court may, before making an order, require the Official Liquidator to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company."

#### **467. SETTLEMENT OF LIST OF CONTRIBUTORIES AND APPLICATION OF ASSETS**

(1) As soon as may be after making a winding up order, the <sup>1</sup>[Tribunal] shall settle a list of contributories, with power to rectify the 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 collected and applied in discharge of its liabilities :

**Provided** that, where it appears to the <sup>1</sup>[Tribunal] that it will not be necessary to make calls on, or adjust the rights of, contributories, the <sup>1</sup>[Tribunal] may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the <sup>1</sup>[Tribunal] shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **468. DELIVERY OF PROPERTY TO LIQUIDATOR**

The <sup>1</sup>[Tribunal] may, at any time after making a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the <sup>1</sup>[Tribunal] directs, to the liquidator, any money, property or books and papers in his custody or under his control to which the company is *prima facie* entitled.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **469. PAYMENT OF DEBTS DUE BY CONTRIBUTORY AND EXTENT OF SET-OFF**

(1) The <sup>1</sup>[Tribunal] may, at any time after making a winding up order, make an order on any contributory for the time being on the list of contributories to pay, in the manner directed by the order, any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The <sup>1</sup>[Tribunal], in making such an order, may -

(a) in the case of an unlimited company, allow to the contributory, by way of set-off, 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 ; and

(b) in the case of a limited company, make to any director <sup>2</sup>[\*\*\*] or manager whose liability is unlimited, or to his estate, the like allowance.

(3) 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.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Words ", managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **<sup>1</sup>[470. POWER OF TRIBUNAL TO MAKE CALLS**

(1) The Tribunal may, at any time after making winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,-

(a) 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 the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves ; and

(b) make an order for payment of any calls so made.

(2) In making a call, the Tribunal may take into consideration the probability that some of the contributories may, partly or wholly, fail to pay the call.]

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 470 read as under :

"470. Power of Court to make calls. - (1) The Court may, at any time after making a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company, -

(a) 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 the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves ; and

(b) make an order for payment of any calls so made.



(2) *In making a call, the Court may take into consideration the probability that some of the contributories may, partly or wholly, fail to pay the call."*

#### **471. PAYMENT INTO BANK OF MONEYS DUE TO COMPANY**

- (1) The <sup>1</sup>[Tribunal] may order any contributory, purchaser or other person from whom any money is due to the company to pay the money into the public account of India in the Reserve Bank of India instead of to the liquidator.
- (2) Any such order may be enforced in the same manner as if the <sup>1</sup>[Tribunal] had directed payment to the liquidator.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **<sup>1</sup>[472. MONEYS AND SECURITIES PAID INTO BANK TO BE SUBJECT TO ORDER OF TRIBUNAL**

*All moneys, bills, hundis, notes and other securities paid or delivered into the Reserve Bank of India in the course of the winding up of a company by the Tribunal, shall be subject in all respects to the orders of the Tribunal.]*

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 472 read as under :

*"472. Moneys and securities paid into bank to be subject to order of Court. - All moneys, bills, hundis, notes and other securities paid or delivered into the Reserve Bank of India in the course of the winding up of a company by the Court, shall be subject in all respects to the orders of the Court."*

#### **473. ORDER ON CONTRIBUTORY TO BE CONCLUSIVE EVIDENCE**

- (1) An order made by the <sup>1</sup>[Tribunal] on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if any, thereby appearing to be due or ordered to be paid is due.
- (2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings whatsoever.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **474. POWER TO EXCLUDE CREDITORS NOT PROVING IN TIME**

The <sup>1</sup>[Tribunal] may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts or claims are proved.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **475. ADJUSTMENT OF RIGHTS OF CONTRIBUTORIES**

The <sup>1</sup>[Tribunal] shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **476. POWER TO ORDER COSTS**

The <sup>1</sup>[Tribunal] may, in the event of the assets being insufficient to satisfy the liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority *inter se* as the <sup>1</sup>[Tribunal] thinks just.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **477. POWER TO SUMMON PERSONS SUSPECTED OF HAVING PROPERTY OF COMPANY, ETC**

- (1) The <sup>1</sup>[Tribunal] may, at any time after the appointment of a provisional liquidator or the making of a winding up order, 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, or known or suspected to be indebted to the company, or any person whom the <sup>1</sup>[Tribunal] deems capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.
- (2) The <sup>1</sup>[Tribunal] may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories ; and may, in the former case, reduce his answers to writing and require him to sign them.
- (3) The <sup>1</sup>[Tribunal] may require any officer or person so summoned to produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the <sup>1</sup>[Tribunal] shall have jurisdiction in the winding up to determine all questions relating to that lien.
- (4) If any officer or person so summoned, after being paid or tendered a reasonable sum for his expenses, fails to appear before the <sup>1</sup>[Tribunal] at the time appointed, not having a lawful impediment (made known to the <sup>1</sup>[Tribunal] at the time of its sitting and allowed by it), the <sup>1</sup>[Tribunal] may cause him to be apprehended and brought before the <sup>1</sup>[Tribunal] for examination.
- (5) If, on his examination, any officer or person so summoned admits that he is indebted to the company, the <sup>1</sup>[Tribunal] may order him to pay to the provisional liquidator or, as the case may be, the liquidator at such time and in



such manner as to the <sup>1</sup>[Tribunal] may seem just, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the <sup>1</sup>[Tribunal] thinks fit, with or without costs of the examination.

(6) If, on his examination, any such officer or person admits that he has in his possession any property belonging to the company, the <sup>1</sup>[Tribunal] may order him to deliver to the provisional liquidator or, as the case may be, the liquidator, that property or any part thereof, at such time, in such manner and on such terms as to the <sup>1</sup>[Tribunal] may seem just.

(7) Orders made under sub-sections (5) and (6) shall be executed in the same manner as decrees for the payment of money or for the delivery of property under the Code of Civil Procedure, 1908 (5 of 1908) respectively. (8) Any person making any payment or delivery in pursuance of an order made under sub-section (5) or sub-section (6) shall by such payment or delivery be, unless otherwise directed by such order, discharged from all liability whatsoever in respect of such debt or property.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **478. POWER TO ORDER PUBLIC EXAMINATION OF PROMOTERS, DIRECTORS, ETC**

(1) When an order has been made for winding up a company by the <sup>1</sup>[Tribunal], and the Official Liquidator has made a report to the <sup>1</sup>[Tribunal] under this Act, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since its formation, the <sup>1</sup>[Tribunal] may, after considering the report, direct that that person or officer shall attend before the <sup>1</sup>[Tribunal] on a day appointed by it for that purpose, and be publicly 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.

(2) The Official Liquidator shall take part in the examination, and for that purpose may, if specially authorised by the <sup>1</sup>[Tribunal] in that behalf, employ such legal assistance as may be sanctioned by the <sup>1</sup>[Tribunal].

(3) Any creditor or contributory may also take part in the examination either personally or by any <sup>2</sup>[chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 10GD].

(4) The <sup>1</sup>[Tribunal] may put such questions to the person examined as it thinks fit.

(5) The person examined shall be examined on oath, and shall answer all such questions as the <sup>1</sup>[Tribunal] may put, or allow to be put, to him.

(6) A person ordered to be examined under this section -

(a) shall, before his examination, be furnished at his own cost with a copy of the Official Liquidator's report ; and

(b) may at his own cost employ <sup>2</sup>[chartered accountants or company secretaries or cost accountants or legal practitioners entitled to appear before the Tribunal under section 10GD], who shall be at liberty to put to him such questions as the <sup>1</sup>[Tribunal] may deem just for the purpose of enabling him to explain or qualify any answers given by him.

(7) (a) If any such person applies to the <sup>1</sup>[Tribunal] to be exculpated from any charges made or suggested against him, it shall be the duty of the official liquidator to appear on the hearing of the application and call the attention of the <sup>1</sup>[Tribunal] to any matters which appear to the Official Liquidator to be relevant.

(b) If the <sup>1</sup>[Tribunal], after hearing any evidence given or witnesses called by the Official Liquidator, grants the application, the <sup>1</sup>[Tribunal] may allow the applicant such costs as it may think fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined ; and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) The <sup>1</sup>[Tribunal] may, if it thinks fit, adjourn the examination from time to time.

<sup>2</sup>[(10) An examination under this section may, if the Tribunal so directs, be held before any person or authority authorised by the Tribunal.]

(11) The powers of the <sup>1</sup>[Tribunal] under this section as to the conduct of the examination, but not as to costs, may be exercised by the <sup>3</sup>[person or authority] before whom the examination is held in pursuance of sub-section (10).

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "an advocate, attorney or pleader entitled to appear before the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, sub-section (10) read as under :

"(10) An examination under this section may, if the Court so directs and subject to any rules made in this behalf, be held before any District Judge, or before any officer of the High Court, being an Official Referee, Master, Registrar or Deputy Registrar."

3. Substituted for "Judge or Officer" by the Companies (Second Amendment) Act, 2002.

#### **479. POWER TO ARREST ABSCONDING CONTRIBUTORY**

At any time either before or after making a winding up order, the <sup>1</sup>[Tribunal] may, on proof of probable cause for believing that a contributory is about to quit 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, cause -

(a) the contributory to be arrested and safely kept until such time as the <sup>1</sup>[Tribunal] may order ; and

(b) his books and papers and movable property to be seized and safely kept until such time as the <sup>1</sup>[Tribunal] may order.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### <sup>1</sup>**480. SAVING OF EXISTING POWERS OF TRIBUNAL**

*Any powers conferred on the Tribunal by this Act shall be in addition to, and not in derogation of, any existing powers of instituting proceedings*

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 480 read as under :

*"480. Saving of existing powers of Court. - Any powers conferred on the Court by this Act shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums."*

#### **481. DISSOLUTION OF COMPANY**

(1) When the affairs of a company have been completely wound up or when the <sup>1</sup>[Tribunal] is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made, the <sup>1</sup>[Tribunal] shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall, within thirty days from the date thereof, be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in forwarding a copy as aforesaid, he shall be punishable with fine which may extend to <sup>2</sup>[five hundred] rupees for every day during which the default continues.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

2. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### ***Enforcement of and appeal from orders***

#### **482. ORDER MADE IN ANY COURT TO BE ENFORCED BY OTHER COURTS**

Any order made by a Court for, or in the course of, winding up a company shall be enforceable at any place in India, other than that over which such Court has jurisdiction, by the Court which would have had jurisdiction in respect of the company if its registered office had been situate at such other place, and in the same manner in all respects as if the order had been made by that Court.

#### **483. APPEALS FROM ORDERS**

Appeals from any order made, or decision given <sup>1</sup>[before the commencement of the Companies (Second Amendment) Act, 2002], in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.

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1. Inserted by the Companies (Second Amendment) Act, 2002.

### **CHAPTER III: VOLUNTARY WINDING UP**

#### ***Resolutions for, and commencement of, voluntary winding up***

#### **484. CIRCUMSTANCES IN WHICH COMPANY MAY BE WOUND UP VOLUNTARILY**

(1) A company may be wound up voluntarily -

(a) when the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting passes a resolution requiring the company to be wound up voluntarily ;

(b) if the company passes a special resolution that the company be wound up voluntarily.

(2) In this Act, the expression "a resolution for voluntary winding up" means a resolution passed under clause (a) or (b) of sub-section (1).

#### **485. PUBLICATION OF RESOLUTION TO WIND UP VOLUNTARILY**

(1) When a company has passed a resolution for voluntary winding up, it shall, within fourteen days of the passing of the resolution, give notice of the resolution by advertisement in the Official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situate.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to <sup>1</sup>[five hundred] rupees for every day during which the default continues.

For the purposes of this sub-section, a liquidator of the company shall be deemed to be an officer of the company.

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1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **486. COMMENCEMENT OF VOLUNTARY WINDING UP**

A voluntary winding up shall be deemed to commence at the time when the resolution for voluntary winding up is passed.

#### ***Consequences of voluntary winding up***

#### **487. EFFECT OF VOLUNTARY WINDING UP ON STATUS OF COMPANY**

In the case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up of such business :

**Provided** that the corporate state and corporate powers of the company shall continue until it is dissolved.

#### ***Declaration of solvency***

#### **488. DECLARATION OF SOLVENCY IN CASE OF PROPOSAL TO WIND UP VOLUNTARILY**

(1) Where it is proposed to wind up a company voluntarily, its directors, or in case the company has more than two directors, the majority of the directors, may, at a meeting of the Board, make a declaration verified by an affidavit, to the effect that they have made a full inquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company has no debts, or that it will be able to pay its debts in full within such period not exceeding three years from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act, unless -

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Registrar for registration before that date ; and

(b) it is accompanied by a copy of the report of the auditors of the company (prepared, as far as circumstances admit, in accordance with the provisions of this Act) on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on the last-mentioned date and also embodies a statement of the company's assets and liabilities as at that date.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to <sup>1</sup>[fifty] thousand rupees, or with both.

(4) If the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period specified in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

(5) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a members' voluntary winding up" ; and a winding up in the case of which a declaration has not been so made and delivered is in this Act referred to as "a creditors' voluntary winding up".

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1. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### ***Provisions applicable to a members' voluntary winding up***

#### **489. PROVISIONS APPLICABLE TO A MEMBERS' VOLUNTARY WINDING UP**

The provisions contained in sections 490 to 498, both inclusive, shall subject to the provisions of section 498, apply in relation to a members' voluntary winding up.

#### **490. POWER OF COMPANY TO APPOINT AND FIX REMUNERATION OF LIQUIDATORS**

(1) The company in general meeting shall -

(a) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company ; and

(b) fix the remuneration, if any, to be paid to the liquidator or liquidators.

(2) Any remuneration so fixed shall not be increased in any circumstances whatever, whether with or without the sanction of the <sup>1</sup>[Tribunal].

(3) Before the remuneration of the liquidator or liquidators is fixed as aforesaid, the liquidator, or any of the liquidators, as the case may be, shall not take charge of his office.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

#### **491. BOARD'S POWERS TO CEASE ON APPOINTMENT OF LIQUIDATOR**

On the appointment of a liquidator, all the powers of the Board of directors and of the managing or whole-time directors <sup>1</sup>[\*\*\*] and manager, if there be any of these, shall cease, except for the purpose of giving notice of such appointment to the Registrar in pursuance of section 493 or insofar as the company in general meeting or the liquidator may sanction the continuance thereof.

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1. Words ", managing agent, secretaries and treasurers" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **492. POWER TO FILL VACANCY IN OFFICE OF LIQUIDATOR**

(1) If a vacancy occurs by death, resignation or otherwise in the office of any liquidator appointed by the company, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose, a general meeting may be convened by any contributory, or by the continuing liquidator or liquidators, if any.

(3) The meeting shall be held in the manner provided by this Act or by the articles, or in such other manner as the <sup>1</sup>[Tribunal] may, on application by any contributory or by the continuing liquidator or liquidators, determine.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **493. NOTICE OF APPOINTMENT OF LIQUIDATOR TO BE GIVEN TO REGISTRAR**

(1) The company shall give notice to the Registrar of the appointment of a liquidator or liquidators made by it, under section 490, of every vacancy occurring in the office of liquidator, and of the name of the liquidator or liquidators appointed to fill every such vacancy under section 492.

(2) The notice aforesaid shall be given by the company within ten days of the event to which it relates.

(3) If default is made in complying with sub-section (1) or (2), the company, and every officer of the company (including every liquidator or continuing liquidator) who is in default, shall be punishable with fine which may extend to <sup>1</sup>[one thousand] rupees for every day during which the default continues.

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2. Substituted for "one hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **494. POWER OF LIQUIDATOR TO ACCEPT SHARES, ETC., AS CONSIDERATION FOR SALE OF PROPERTY OF COMPANY**

(1) Where -

(a) a company (in this section called "the transferor-company") is proposed to be, or is in course of being, wound up altogether voluntarily ; and

(b) the whole or any part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee-company") ;

the liquidator of the transferor-company may, with the sanction of a special resolution of that company conferring on the liquidator either a general authority or an authority in respect of any particular arrangement, -

(i) receive, by way of compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee-company, for distribution among the members of the transferor-company ; or

(ii) enter into any other arrangement whereby the members of the transferor-company may, *in lieu* of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee-company.

(2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor-company.

(3) If any member of the transferor-company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the liquidator, and left at the registered office of the company within seven days after the passing of the resolution, he may require the liquidator either -

(a) to abstain from carrying the resolution into effect ; or

(b) to purchase his interest at a price to be determined by agreement, or by arbitration in the manner provided by this section.

(4) If the liquidator elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved, and be raised by the liquidator in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid for the purposes of this section by reason only that it is passed before or concurrently with a resolution for voluntary winding up or for appointing liquidators ; but if an order is made within a year for winding up the company by <sup>1</sup>[the Tribunal], the special resolution shall not be valid unless it is sanctioned by the <sup>2</sup>[Tribunal].

(6) The provisions of the Arbitration Act, 1940 (10 of 1940), other than those restricting the application of that Act in respect of the subject- matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

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1. Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **495. DUTY OF LIQUIDATOR TO CALL CREDITORS' MEETING IN CASE OF INSOLVENCY**

(1) If, in the case of a winding up commenced after the commencement of this Act, the liquidator is at any time of opinion that the company will not be able to pay its debts in full within the period stated in the declaration under section 488, or that period has expired without the debts having been paid in full, he shall forthwith summon a meeting of the creditors, and shall lay before the meeting a statement of the assets and liabilities of the company.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable with fine which may extend to <sup>1</sup>[five thousand] rupees.



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1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **496. DUTY OF LIQUIDATOR TO CALL GENERAL MEETING AT END OF EACH YEAR**

(1) Subject to the provisions of section 498, in the event of the winding up continuing for more than one year, the liquidator shall -

(a) call a general meeting of the company at the end of the first year from the commencement of the winding up, and at the end of each succeeding year, or as soon thereafter as may be convenient within three months from the end of the year or such longer period as the Central Government may allow ; and

(b) lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the preceding year, together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the liquidation.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable, in respect of each failure, with fine which may extend to <sup>1</sup>[one thousand] rupees.

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1. Substituted for "one hundred" by the Companies (Amendment) Act, 2000 w.e.f.

#### **497. FINAL MEETING AND DISSOLUTION**

(1) Subject to the provisions of section 498, as soon as the affairs of the company are fully wound up, the liquidator shall -

(a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of ; and

(b) call a general meeting of the company for the purpose of laying the account before it, and giving any explanation thereof.

(2) The meeting shall be called by advertisement -

(a) specifying the time, place and object of the meeting ; and

(b) published not less than one month before the meeting in the Official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situate.

(3) Within one week after the meeting, the liquidator shall send to the Registrar and the Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] a copy each of the account and shall make a return to each of them of the holding of the meeting and of the date thereof.

If the copy is not so sent or the return is not so made, the liquidator shall be punishable with fine which may extend to <sup>2</sup>[five hundred] rupees for every day during which the default continues.

(4) If a quorum is not present at the meeting aforesaid, the liquidator shall, *in lieu* of the return referred to in sub-section (3), make a return that the meeting was duly called and that no quorum was present thereat.

Upon such a return being made within one week after the date fixed for the meeting, the provisions of sub-section (3) as to the making of the return shall be deemed to have been complied with.

(5) The Registrar, on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them.

(6) The Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall, as soon as may be, make, and the liquidator and all officers, past or present, of the company shall give the Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] all reasonable facilities to make, a scrutiny of the books and papers of the company and if on such scrutiny the Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] makes a report to the <sup>2</sup>[Tribunal] that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest, then, from the date of the submission of the report to the <sup>2</sup>[Tribunal] the company shall be deemed to be dissolved.

(6A) If on such scrutiny the Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] makes a report to the <sup>3</sup>[Tribunal] that the affairs of the company have been conducted in a manner prejudicial as aforesaid, the <sup>3</sup>[Tribunal] shall by order direct the Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] to make a further investigation of the affairs of the company and for that purpose shall invest him with all such powers as the <sup>3</sup>[Tribunal] may deem fit.

(6B) On the receipt of the report of the Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] on such further investigation the <sup>3</sup>[Tribunal] may either make an order that the company shall stand dissolved with effect from the date to be specified by the <sup>3</sup>[Tribunal] therein or make such other order as the circumstances of the case brought out in the report permit.

(7) If the liquidator fails to call a general meeting of the company as required by this section, he shall be punishable with fine which may extend to <sup>4</sup>[five thousand] rupees.

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1. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

4. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **498. ALTERNATIVE PROVISIONS AS TO ANNUAL AND FINAL MEETINGS IN CASE OF INSOLVENCY**



Where section 495 has effect, sections 508 and 509 shall apply to the winding up, to the exclusion of sections 496 and 497, as if the winding up were a creditors' voluntary winding up and not a members' voluntary winding up :

**Provided** that the liquidator shall not be required to call a meeting of creditors under section 508 at the end of the first year from the commencement of the winding up, unless the meeting held under section 495 has been held more than three months before the end of that year.

### ***Provisions applicable to a creditors' voluntary winding up***

#### **499. PROVISIONS APPLICABLE TO A CREDITORS' VOLUNTARY WINDING UP**

The provisions contained in sections 500 to 509, both inclusive, shall apply in relation to a creditors' voluntary winding up.

#### **500. MEETING OF CREDITORS**

(1) The company shall cause a meeting of the creditors of the company to be called for the day, or the day next following the day, on which there is to be held the general meeting of the company at which the resolution for voluntary winding up is to be proposed, and shall cause notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once at least in the Official Gazette and once at least in two newspapers circulating in the district where the registered office or principal place of business of the company is situate.

(3) The Board of directors of the company shall -

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid ; and

(b) appoint one of their member to preside at the said meeting.

(4) It shall be the duty of the director appointed to preside at the meeting of creditors to attend the meeting and preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is adjourned and the resolution is passed at an adjourned meeting, any resolution passed at the meeting of the creditors held in pursuance of sub-section (1) shall have effect as if it had been passed immediately after the passing of the resolution for winding up the company.

(6) If default is made -

(a) by the company, in complying with sub-sections (1) and (2) ;

(b) by its Board of directors, in complying with sub-section (3) ;

(c) by any director of the company, in complying with sub-section (4) ;

the company, each of the directors, or the director, as the case may be, shall be punishable with fine which may extend to <sup>1</sup>[ten] thousand rupees and, in the case of default by the company, every officer of the company who is in default, shall be liable to the like punishment.

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1. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **501. NOTICE OF RESOLUTIONS PASSED BY CREDITORS' MEETING TO BE GIVEN TO REGISTRAR**

(1) Notice of any resolution passed at a creditors' meeting in pursuance of section 500 shall be given by the company to the Registrar within ten days of the passing thereof.

(2) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to <sup>1</sup>[five hundred] rupees for every day during which the default continues.

For the purposes of this section, a liquidator of the company shall be deemed to be an officer of the company.

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1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **502. APPOINTMENT OF LIQUIDATOR**

(1) The creditors and the company at their respective meetings mentioned in section 500 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company.

(2) If the creditors and the company nominate different persons, the person nominated by the creditors shall be liquidator :

**Provided** that any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the <sup>1</sup>[Tribunal] for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or appointing the Official Liquidator or some other person to be liquidator instead of the person appointed by the creditors.

(3) If no person is nominated by the creditors, the person, if any, nominated by the company shall be liquidator. (4) If no person is nominated by the company, the person, if any, nominated by the creditors shall be liquidator.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

#### **503. APPOINTMENT OF COMMITTEE OF INSPECTION**

(1) The creditors at the meeting to be held in pursuance of section 500 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons.

(2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any subsequent general meeting, appoint such number of persons (not exceeding five) as they think fit to act as members of the committee :

**Provided** that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the committee of inspection.

(3) If the creditors so resolve, the persons mentioned in the resolution shall not, unless the <sup>1</sup>[Tribunal] otherwise directs, be qualified to act as members of the committee.

(4) On any application to the <sup>1</sup>[Tribunal] for a direction under sub-section (3), the <sup>1</sup>[Tribunal] may, if it thinks fit, appoint other persons to act as members of the committee of inspection in the place of the persons mentioned in the creditors' resolution.

(5) Subject to the provisions of sub-sections (1) to (4) and to such rules as may be made by the Central Government, the provisions of section 465 [except sub-section (1) thereof] shall apply with respect to a committee of inspection appointed under this section as they apply with respect to a committee of inspection appointed in a winding up by the <sup>1</sup>[Tribunal].

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **504. FIXING OF LIQUIDATORS' REMUNERATION**

(1) The committee of inspection, or if there is no such committee, the creditors, may fix the remuneration to be paid to the liquidator or liquidators.

(2) Where the remuneration is not so fixed, it shall be determined by the <sup>1</sup>[Tribunal].

(3) Any remuneration fixed under sub-section (1) or (2) shall not be increased in any circumstances whatever, whether with or without the sanction of the <sup>1</sup>[Tribunal].

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002

#### **505. BOARD'S POWERS TO CEASE ON APPOINTMENT OF LIQUIDATOR**

On the appointment of a liquidator, all the powers of the Board of directors shall cease, except insofar as the committee of inspection, or if there is no such committee, the creditors in general meeting, may sanction the continuance thereof.

#### **506. POWER TO FILL VACANCY IN OFFICE OF LIQUIDATOR**

If a vacancy occurs by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the <sup>1</sup>[Tribunal], the creditors in general meeting may fill the vacancy.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

#### **507. APPLICATION OF SECTION 494 TO A CREDITORS' VOLUNTARY WINDING UP**

The provisions of section 494 shall apply in the case of a creditors' voluntary winding up as in the case of a members' voluntary winding up, with the modification that the powers of the liquidator under that section shall not be exercised except with the sanction either of the <sup>1</sup>[Tribunal] or of the committee of inspection.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

#### **508. DUTY OF LIQUIDATOR TO CALL MEETINGS OF COMPANY AND OF CREDITORS AT END OF EACH YEAR**

(1) In the event of the winding up continuing for more than one year, the liquidator shall -

(a) call a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up and at the end of each succeeding year, or as soon thereafter as may be convenient within three months from the end of the year or such longer period as the Central Government may allow ; and

(b) lay before the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year, together with a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in, and position of, the winding up.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable, in respect of each failure, with fine which may extend to <sup>1</sup>[one thousand] rupees.

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1. Substituted for "one hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **509. FINAL MEETING AND DISSOLUTION**

(1) As soon as the affairs of the company are fully wound up, the liquidator shall -

(a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of ; and

(b) call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting shall be called by advertisement -

(a) specifying the time, place and object thereof ; and

(b) published not less than one month before the meeting in the Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situate.

(3) Within one week after the date of the meetings, or if the meetings are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar and the Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] a copy each of the account and shall make a return to each of them of the holding of the meetings and of the date or dates on which they were held.

If the copy is not so sent or the return is not so made, the liquidator shall be punishable with fine which may extend to <sup>2</sup>[five hundred] rupees for every day during which the default continues.

(4) If a quorum (which for the purposes of this section shall be two persons) is not present at either of such meetings, the liquidator shall, *in lieu* of the return referred to in sub-section (3), make a return that the meeting was duly called and that no quorum was present thereat.

Upon such a return being made within one week after the date fixed for the meeting, the provisions of sub-section (3) as to the making of the return shall, in respect of that meeting, be deemed to have been complied with.

(5) The Registrar, on receiving the account and also, in respect of each such meeting, either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall forthwith register them.

(6) The Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] on receiving the account and either the return mentioned in sub-section (3) or the return mentioned in sub-section (4), shall, as soon as may be, make, and the liquidator and all officers, past or present, of the company shall give the Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] all reasonable facilities to make, a scrutiny of the books and papers of the company and if on such scrutiny the Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] makes a report to the <sup>2</sup>[Tribunal] that the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to public interest, then, from the date of the submission of the report to the <sup>2</sup>[Tribunal] the company shall be deemed to be dissolved.

(6A) If on such scrutiny the Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] makes a report to the <sup>2</sup>[Tribunal] that the affairs of the company have been conducted in a manner prejudicial as aforesaid, the <sup>2</sup>[Tribunal] shall by order direct the Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] to make a further investigation of the affairs of the company and for that purpose shall invest him with all such powers as the <sup>2</sup>[Tribunal] may deem fit.

(6B) On the receipt of the report of the Official Liquidator <sup>1</sup>[referred to in clause (c) of sub-section (1) of section 448] on such further investigation the <sup>2</sup>[Tribunal] may either make an order that the company shall stand dissolved with effect from the date to be specified by the <sup>2</sup>[Tribunal] therein or make such other order as the circumstances of the case brought out in the report permit.

(7) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he shall be punishable, in respect of each such failure, with fine which may extend to <sup>4</sup>[five thousand] rupees.

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1. Inserted by the Companies (Second Amendment) Act, 2002.

2. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

4. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

### ***Provisions applicable to every voluntary winding up***

#### **510. PROVISIONS APPLICABLE TO EVERY VOLUNTARY WINDING UP**

The provisions contained in sections 511 to 521, both inclusive, shall apply to every voluntary winding up, whether a members' or a creditors' winding up.

#### **511. DISTRIBUTION OF PROPERTY OF COMPANY**

Subject to the provisions of this Act as to preferential payments, the assets of a company shall, on its winding up, be applied in satisfaction of its liabilities *pari passu* and, subject to such application, shall, unless the articles otherwise provide, be distributed among the members according to their rights and interests in the company.

#### **511A. APPLICATION OF SECTION 454 TO VOLUNTARY WINDING UP**

The provisions of section 454 shall, so far as may be, apply to every voluntary winding up as they apply to the winding up by the <sup>1</sup>[Tribunal] except that references to -

(a) the <sup>1</sup>[Tribunal] shall be omitted ;

(b) the official liquidator or the provisional liquidator shall be construed as references to the liquidator ; and

(c) the "relevant date" shall be construed as references to the date of commencement of the winding up.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **512. POWERS AND DUTIES OF LIQUIDATOR IN VOLUNTARY WINDING UP**

(1) The liquidator may, -

- (a) in the case of a members' voluntary winding up, with the sanction of a special resolution of the company, and in the case of a creditors' voluntary winding up, with the sanction of the <sup>1</sup>[Tribunal] or, the committee of inspection or, if there is no such committee, of a meeting of the creditors, exercise any of the powers given by clauses (a) to (d) of sub-section (1) of section 457 to a liquidator in a winding up by the <sup>1</sup>[Tribunal] ;
- (b) without the sanction referred to in clause (a), exercise any of the other powers given by this Act to the liquidator in a winding up by the <sup>1</sup>[Tribunal] ;
- (c) exercise the power of the <sup>1</sup>[Tribunal] under this Act of settling a list of contributories (which shall be *prima facie* evidence of the liability of the persons named therein to be contributories) ;
- (d) exercise the power of the <sup>1</sup>[Tribunal] of making calls ;
- (e) call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may think fit.
- (2) The exercise by the liquidator of the powers given by clause (a) of sub-section (1) shall be subject to the control of the <sup>1</sup>[Tribunal] ; and any creditor or contributory may apply to the <sup>1</sup>[Tribunal] with respect to any exercise or proposed exercise of any of the powers conferred by this section.
- (3) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.
- (4) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment or, in default of such determination, by any number of them not being less than two.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### **513. BODY CORPORATE NOT TO BE APPOINTED AS LIQUIDATOR**

- (1) A body corporate shall not be qualified for appointment as liquidator of a company in a voluntary winding up.
- (2) Any appointment made in contravention of sub-section (1) shall be void.
- (3) Any body corporate which acts as liquidator of a company, and every director <sup>1</sup>[\*\*\*], or a manager thereof, shall be punishable with fine which may extend to <sup>2</sup>[ten] thousand rupees.
- <sup>3</sup>[**Provided that, notwithstanding anything contained in any other law for the time being in force, a body corporate consisting of such professionals as may be approved by the Central Government from time to time, shall be qualified for appointment as Official Liquidator under section 448.**]

- 
1. Words ", the managing agent, or secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
2. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
3. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### **514. CORRUPT INDUCEMENT AFFECTING APPOINTMENT AS LIQUIDATOR**

Any person who gives, or agrees or offers to give, to any member or creditor of a company any gratification whatever with a view to -

- (a) securing his own appointment or nomination as the company's liquidator ; or
- (b) securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator ;
- shall be punishable with fine which may extend to <sup>1</sup>[ten] thousand rupees.

- 
1. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

### **<sup>1</sup>[515. POWER OF TRIBUNAL TO APPOINT AND REMOVE LIQUIDATOR IN VOLUNTARY WINDING UP**

- (1) *If from any cause whatever, there is no liquidator acting, the Tribunal may appoint the Official Liquidator or any other person as a liquidator.*
- (2) *The Tribunal may, on cause shown, remove a liquidator and appoint the Official Liquidator or any other person as a liquidator in place of the removed liquidator.*
- (3) *The Tribunal may also appoint or remove a liquidator on the application made by the Registrar in this behalf.*
- (4) *If the Official Liquidator is appointed as liquidator under the proviso to sub-section (2) of section 502 or under this section, the remuneration to be paid to him shall be fixed by the Tribunal and shall be credited to the Central Government.]*

- 
1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 515 read as under :
- "515. Power of Court to appoint and remove liquidator in voluntary winding up. - (1) If from any cause whatever, there is no liquidator acting, the Court may appoint the Official Liquidator or any other person as a liquidator.
- (2) The Court may, on cause shown, remove a liquidator and appoint the Official Liquidator or any other person as a liquidator in place of the removed liquidator.
- (3) The Court may also appoint or remove a liquidator on the application made by the Registrar in this behalf.
- (4) If the Official Liquidator is appointed as liquidator under the proviso to sub-section (2) of section 502 or under this section, the remuneration to be paid to him shall be fixed by the Court and shall be credited to the Central Government."



#### **516. NOTICE BY LIQUIDATOR OF HIS APPOINTMENT**

(1) The liquidator shall, within thirty days after his appointment publish in the Official Gazette, and deliver to the Registrar for registration, a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with sub-section (1), he shall be punishable with fine which may extend to <sup>1</sup>[five hundred] rupees for every day during which the default continues.

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1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **517. ARRANGEMENT WHEN BINDING ON COMPANY AND CREDITORS**

(1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company and on the creditors if it is sanctioned by a special resolution of the company and acceded to by three-fourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement, appeal to the <sup>1</sup>[Tribunal] against it and the <sup>1</sup>[Tribunal] may thereupon, as it thinks just, amend, vary, confirm or set aside the arrangement.

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1. Substituted for 'Court' by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **<sup>1</sup>[518. POWER TO APPLY TO TRIBUNAL TO HAVE QUESTIONS DETERMINED OR POWERS EXERCISED**

(1) *The liquidator or any contributory or creditor may apply to the Tribunal, -*

(a) *to determine any question arising in the winding up of a company; or*

(b) *to exercise, as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Tribunal might exercise if the company were being wound up by the Tribunal.*

(2) *The liquidator or any creditor or contributory may apply to the Tribunal for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.*

(3) *The Tribunal, if satisfied on an application under sub-section (1) or sub-section (2) that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.*

(4) *A copy of an order staying the proceedings in the winding up, made by virtue of this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.]*

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 518 read as under :

"518. Power to apply to Court to have questions determined or powers exercised. - (1) The liquidator or any contributory or creditor may apply to that Court -

(a) to determine any question arising in the winding up of a company ; or

(b) to exercise, as respects the enforcing of calls, the staying of proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound by the Court.

(2) The liquidator or any creditor or contributory may apply to the Court specified in sub-section (3) for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up.

(3) An application under sub-section (2) shall be made -

(a) if the attachment, distress or execution is levied or put into force by a High Court, to such High Court ; and

(b) if the attachment, distress or execution is levied or put into force by any other Court, to the Court having jurisdiction to wind the company.

(4) The Court, if satisfied on an application under sub-section (1) or (2) that the determination of the question or the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just.

(5) A copy of an order staying the proceedings in the winding up, made by virtue of this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company."

#### **<sup>1</sup>[519. APPLICATION OF LIQUIDATOR TO TRIBUNAL FOR PUBLIC EXAMINATION OF PROMOTERS, DIRECTORS, ETC**

(1) *The liquidator may make a report to the Tribunal stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation ; and the Tribunal may, after considering the report, direct that that person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.*



(2) *The provisions of sub-sections (2) to (11) of section 478 shall apply in relation to any examination directed under sub-section (1) as they apply in relation to an examination directed under sub-section (1) of section 478 with references to the liquidator being substituted for references to the Official Liquidator in those provisions.]*

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 519 read as under : "519. Application of liquidator to Court for public examination of promoters, directors, etc.-

(1) The liquidator may make a report to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation ; and the Court may, after considering the report, direct that that person or officer shall attend before the Court on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.

(2) The provisions of sub-sections (2) to (11) of section 478 shall apply in relation to any examination directed under sub-section (1) as they apply in relation to an examination directed under sub-section (1) of section 478 with references to the liquidator being substituted for references to the Official Liquidator in those provisions."

## **520. COSTS OF VOLUNTARY WINDING UP**

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the liquidator, shall, subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

## **521. SAVING OF RIGHT OF CREDITORS AND CONTRIBUTORIES TO APPLY FOR WINDING UP**

*[Omitted by the Companies (Amendment) Act, 1960.]*

### **CHAPTER IV: WINDING UP SUBJECT TO SUPERVISION OF COURT**

## **522. POWER TO ORDER WINDING UP SUBJECT TO SUPERVISION**

*[Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). ]*

## **523. EFFECT OF PETITION FOR WINDING UP SUBJECT TO SUPERVISION**

*[Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). ]*

## **524. POWER OF COURT TO APPOINT OR REMOVE LIQUIDATORS**

*[Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). ]*

## **525. POWERS AND OBLIGATIONS OF LIQUIDATOR APPOINTED BY COURT**

*[Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). ]*

## **526. EFFECT OF SUPERVISION ORDER**

*[Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). ]*

## **527. APPOINTMENT IN CERTAIN CASES OF VOLUNTARY LIQUIDATORS TO OFFICE OF LIQUIDATORS**

*[Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). ]*

### **CHAPTER V: PROVISIONS APPLICABLE TO EVERY MODE OF WINDING UP**

#### ***Proof and ranking of claims***

## **528. DEBTS OF ALL DESCRIPTIONS TO BE ADMITTED TO PROOF**

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

## **529. APPLICATION OF INSOLVENCY RULES IN WINDING UP OF INSOLVENT COMPANIES**

(1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to -

(a) debts provable ;

(b) the valuation of annuities and future and contingent liabilities ; and (c) the respective rights of secured and unsecured creditors ;

as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent :

**Provided** that the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security -

(a) the liquidator shall be entitled to represent the workmen and enforce such charge ;

(b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues ; and (c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank *pari passu* with the workmen's dues for the purposes of section 529A.

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section :

**Provided** that if a secured creditor instead of relinquishing his security and proving for his debt proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realisation by the secured creditor.

**Explanation.** - For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.

(3) For the purposes of this section, section 529A and section 530, -

(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947) ;

(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely :

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947) ;

(ii) all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution ;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of 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 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts 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 a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company ;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of -

(i) the amount of workmen's dues ; and

(ii) the amounts of the debts due to the secured creditors.

### Illustration

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and of the amounts of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is

### 529A. OVERRIDING PREFERENTIAL PAYMENTS

(1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company -

(a) workmen's dues ; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 *pari passu* with such dues, shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

### 530. PREFERENTIAL PAYMENTS

(1) In a winding up, subject to the provisions of section 529A, there shall be paid in priority to all other debts -

(a) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next before that date ;

(b) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date, subject to the limit specified in sub-section (2) ;

(c) all accrued holiday remuneration becoming payable to any employee, 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 ;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948 (34 of 1948), or any other law for the time being in force ;

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of 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 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts 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 ;

(f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company ; and

(g) the expenses of any investigation held in pursuance of section 235 or 237, insofar as they are payable by the company.

(2) The sum to which priority is to be given under clause (b) of sub-section (1), shall not, in the case of any one claimant, <sup>1</sup>[exceed such sum as may be notified by the Central Government in the Official Gazette.]

(3) Where any compensation under the Workmen's Compensation Act, 1923 (8 of 1923) is a weekly payment, the amount due in respect thereof shall, for the purposes of clause (e) of sub-section (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made to any employee of a company, -

(i) on account of wages or salary ; or

(ii) to him, or in the case of his death, to any other person in his right, on account of accrued holiday remuneration, out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee or other person in his right, would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The foregoing debts shall -

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions ; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by clause (d) of sub-section (1), formal proof thereof shall not be required except insofar as may be otherwise prescribed.

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof :

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

(8) For the purposes of this section -

(a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period ;

(b) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any enactment), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday ;

(bb) the expression "employee" does not include a workman ; and

(c) the expression "the relevant date" means -

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date ; and

(ii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company.

(9) This section shall not apply in the case of a winding up where the date referred to in sub-section (5) of section 230 of the Indian Companies Act, 1913 (7 of 1913) occurred before the commencement of this Act, and in such a case, the provisions relating to preferential payments which would have applied if this Act had not been passed, shall be deemed to remain in full force.

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1. Substituted for "exceed one thousand rupees" by the Companies (Amendment) Act, 1996 w.e.f. 1-3-1997.

### 531. FRAUDULENT PREFERENCE

(1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly :

**Provided** that, in relation to things made, taken or done before the commencement of this Act, this sub-section shall have effect with the substitution, for the reference to six months, of a reference to three months.

(2) For the purposes of sub-section (1), the presentation of a petition for winding up in the case of a winding up by <sup>1</sup>[the Tribunal], and the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to the act of insolvency in the case of an individual.

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1. Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### 531A. AVOIDANCE OF VOLUNTARY TRANSFER

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 favour 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 <sup>1</sup>[the Tribunal] or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.

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1. Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### 532. TRANSFERS FOR BENEFIT OF ALL CREDITORS TO BE VOID

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

### 533. LIABILITIES AND RIGHTS OF CERTAIN FRAUDULENTLY PREFERRED PERSONS

(1) Where, in the case of a company which is being wound up, anything made, taken or done after the commencement of this Act is invalid under section 531 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision), the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the mortgage or charge for the company's debt was then subject.

(3) On any application made to the <sup>1</sup>[Tribunal] with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the <sup>1</sup>[Tribunal] shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

This sub-section shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments of money.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### 534. EFFECT OF FLOATING CHARGE

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, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of, or subsequently 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 for the time being be notified by the Central Government in this behalf in the Official Gazette :

**Provided** that in relation to a charge created more than three months before the commencement of this Act, this section shall have effect with the substitution, for references to twelve months of references to three months.

### 535. DISCLAIMER OF ONEROUS PROPERTY IN CASE OF A COMPANY WHICH IS BEING WOUND UP

(1) Where any part of the property of a company which is being wound up consists of -

- (a) land of any tenure, burdened with onerous covenants ;
- (b) shares or stock in companies ;
- (c) any other property which is unsalable or is not readily saleable, by reason of its binding the possessor thereof either to the performance of any onerous act or to the payment of any sum of money; or
- (d) unprofitable contracts ;

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, or done anything in pursuance of the contract, may, with the leave of the <sup>1</sup>[Tribunal] and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the <sup>1</sup>[Tribunal], disclaim the property :

**Provided** that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the <sup>1</sup>[Tribunal].

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The <sup>1</sup>[Tribunal], before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the <sup>1</sup>[Tribunal] thinks just.

(4) The liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the <sup>1</sup>[Tribunal], given notice to the applicant that he intends to apply to the <sup>1</sup>[Tribunal] for leave to disclaim ; and in case the property is a contract, if the liquidator, after such an application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The <sup>1</sup>[Tribunal] may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the <sup>1</sup>[Tribunal] thinks just ; and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The <sup>1</sup>[Tribunal] may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property, and after hearing any such persons as it thinks fit, make an order for the vesting of the property in, or the delivery of the property to, any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the <sup>1</sup>[Tribunal] thinks just ; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose :

**Provided** that, where the property disclaimed is of a leasehold nature, the <sup>1</sup>[Tribunal] shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee or holder of a charge by way of demise, except upon the terms of making that person -

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up ; or

(b) if the <sup>1</sup>[Tribunal] thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date ;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order ; and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the <sup>1</sup>[Tribunal] shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of the injury, and may accordingly prove the amount as a debt in the winding up.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

### **536. AVOIDANCE OF TRANSFERS, ETC., AFTER COMMENCEMENT OF WINDING UP**

(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by <sup>1</sup>[the Tribunal], any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the <sup>2</sup>[Tribunal] otherwise orders, be void.

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1. Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### **<sup>1</sup>537. AVOIDANCE OF CERTAIN ATTACHMENTS, EXECUTIONS, ETC., IN WINDING UP BY TRIBUNAL**



(1) *Where any company is being wound up by the Tribunal -*

(a) *any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up ; or*

(b) *any sale held, without leave of the Tribunal of any of the properties or effects of the company after such commencement ;*  
*shall be void.*

(2) *Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.]*

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution, section 537 read as under :

"537. Avoidance of certain attachments, executions, etc., in winding up by, or subject to supervision of, Court. -

(1) Where any company is being wound by or subject to the supervision of the Court-

(a) any attachment, distress or execution put in force, without leave of the Court, against the estate or effects of the company, after the commencement of the winding up ; or

(b) any sale held, without leave of the Court, of any of the properties or effects of the company after such commencement ;

shall be void.

(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government."

### ***Offences antecedent to or in course of winding up***

#### **538. OFFENCES BY OFFICERS OF COMPANIES IN LIQUIDATION**

(1) If any person, being a past or present officer of a company which, at the time of the commission of the alleged offence, is being wound up, whether by <sup>1</sup>[*the Tribunal*] or voluntarily, or which is subsequently ordered to be wound up by the <sup>2</sup>[*Tribunal*] or which subsequently passes a resolution for voluntary winding up, -

(a) does not, to the best of his knowledge and belief, fully and truly discover to the liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company ;

(b) does not deliver up to the liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law to deliver up ;

(c) does not deliver up to the liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up ;

(d) within the twelve months next 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 one hundred rupees or upwards, or conceals any debt due to or from the company ;

(e) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards ;

(f) makes any material omission in any statement relating to the affairs of the company ;

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the liquidator thereof ;

(h) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company ;

(i) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company ;

(j) within the twelve months next before the commencement of the winding up or at any time thereafter makes, or is privy to the making of, any false entry in any book or paper affecting or relating to the property or affairs of the company ;

(k) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making of any omission in, any book or paper affecting or relating to the property or affairs of the company ;

(l) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses ;

(m) within the twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ;

(n) within the twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for ;

(o) within the twelve months next before the commencement of the winding up or at any time thereafter, pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary course of the business of the company ; or  
(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up ;  
he shall be punishable, in the case of any of the offences mentioned in clauses (m), (n) and (o), with imprisonment for a term which may extend to five years, or with fine, or with both, and, in the case of any other offence, with imprisonment for a term which may extend to two years, or with fine, or with both :

**Provided** that it shall be a good defence -

(i) to a charge under any of the clauses (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud ; and

(ii) to a charge under any of the clauses (a), (h), (i) and (j), if he proves that he had no intent to conceal the true state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (o) of sub- section (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both. (3) For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

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1. Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### **539. PENALTY FOR FALSIFICATION OF BOOKS**

If with intent to defraud or deceive any person, any officer or contributory of a company which is being wound up -

(a) destroys, mutilates, alters, falsifies or secrets, or is privy to the destruction, mutilation, alteration, falsification or secreting of, any books, papers or securities ; or

(b) makes, or is privy to the making of, any false or fraudulent entry in any register, books of account or document belonging to the company ;

he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

### **540. PENALTY FOR FRAUDS BY OFFICERS**

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the <sup>1</sup>[Tribunal] or which subsequently passes a resolution for voluntary winding up, -

(a) has, by false pretences or by means of any other fraud induced any person to give credit to the company ; or

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company ; or

(c) 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 ;

he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

### **541. LIABILITY WHERE PROPER ACCOUNTS NOT KEPT**

(1) 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 two 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, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which may extend to one year.

(2) For the purposes of sub-section (1), it shall be deemed that proper books of account have not been kept in the case of any company, if there have not been kept -

(a) such books or accounts as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day-to-day in sufficient detail of all cash received and all cash paid ; and

(b) where the business of the company has involved dealings in goods, statements of the annual stock takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and the sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

### **542. LIABILITY FOR FRAUDULENT CONDUCT OF BUSINESS**

(1) 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 of the company or any other persons, or for any fraudulent purpose, the <sup>1</sup>[Tribunal], on the application of the Official Liquidator, or the liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any persons who were 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 <sup>1</sup>[Tribunal] may direct.

On the hearing of an application under this sub-section, the Official Liquidator or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) (a) Where the <sup>1</sup>[Tribunal] makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

(b) In particular, the <sup>1</sup>[Tribunal] may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf.

(c) The <sup>1</sup>[Tribunal] may, from time to time, make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(d) For the purpose of this sub-section, the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to <sup>2</sup>[fifty] thousand rupees, or with both.

(4) This section shall apply, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### <sup>1</sup>[543. POWER OF TRIBUNAL TO ASSESS DAMAGES AGAINST DELINQUENT DIRECTORS, ETC

(1) *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 past or present director, manager, liquidator or officer of the company -*

(a) *has misapplied, or retained, or become liable or accountable for, any money or property of the company ; or*

(b) *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 liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal thinks just.*

(2) *An application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust as the case may be, whichever is longer.*

(3) *This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.]*

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1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 543 read as under :

"543. Power of Court to assess damages against delinquent directors, etc. - (1) If in the course of winding up a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, liquidator or officer of the company -

(a) has misapplied, or retained, or become liable or accountable for, any money or property of the company ; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company ;

the Court may, on the application of the Official Liquidator, or the liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

(2) An application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust, as the case may be, whichever is longer.

- (3) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable. "

#### **544. LIABILITY UNDER SECTIONS 542 AND 543 TO EXTEND TO PARTNERS OR DIRECTORS IN FIRM OR COMPANY**

Where a declaration under section 542 or an order under section 543 is or may be made in respect of a firm or body corporate, the <sup>1</sup>[Tribunal] shall also have power to make a declaration under section 542, or pass an order under section 543, as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **545. PROSECUTION OF DELINQUENT OFFICERS AND MEMBERS OF COMPANY**

(1) If it appears to the Court in the course of a winding up by, <sup>2</sup>[the Tribunal], that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, the <sup>1</sup>[Tribunal] may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself to prosecute the offender or to refer the matter to the Registrar.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the liquidator and relating to the matter in question, as the Registrar may require.

(3) Where any report is made under sub-section (2) to the Registrar, he may, if he thinks fit, refer the matter to the Central Government for further inquiry.

The Central Government shall thereupon investigate the matter and may, if it thinks it expedient, apply to the <sup>1</sup>[Tribunal] for an order conferring on any person designated by the Central Government for the purpose, with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the <sup>1</sup>[Tribunal].

(4) If on any report to the Registrar under sub-section (2), it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the <sup>1</sup>[Tribunal], the liquidator may himself take proceedings against the offender.

(5) If it appears to the <sup>1</sup>[Tribunal] in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar under sub-section (2), the <sup>1</sup>[Tribunal] may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the Registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government ; and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute proceedings :

**Provided** that no report shall be made by the Registrar under this sub-section without first giving the accused person an opportunity of making a statement in writing to the Registrar and of being heard thereon.

(7) When any proceedings are instituted under this section, it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this sub-section, the expression "agent", in relation to a company, shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor.

(8) If any person fails or neglects to give assistance in the manner required by sub-section (7), the <sup>1</sup>[Tribunal] may, on the application of the Registrar, direct that person to comply with the requirements of that sub-section.

(9) Where any such application is made with respect to a liquidator, the <sup>1</sup>[Tribunal] may, unless it appears that the failure or neglect was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for ", or subject to the supervision of, the Court" by the Companies (Second Amendment) Act 2002.

#### ***Miscellaneous provisions***

#### **546. LIQUIDATOR TO EXERCISE CERTAIN POWERS SUBJECT TO SANCTION**

(1) The liquidator may -

(a) with the sanction of the <sup>1</sup>[Tribunal], when the company is being wound up by <sup>2</sup>[the Tribunal] ; and

(b) with the sanction of a special resolution of the company, in the case of a voluntary winding up, -

(i) pay any classes of creditors in full ;



(ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable ; or

(iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(1A) Notwithstanding anything contained in sub-section (1), in the case of a winding up by the <sup>1</sup>[Tribunal], the Supreme Court may make rules under section 643 providing that the liquidator may, under such circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be specified in the rules, exercise any of the powers referred to in sub-clause (ii) or sub-clause (iii) of sub-section (1) without the sanction of the <sup>1</sup>[Tribunal].

(2) In the case of a voluntary winding up, the exercise by the liquidator of the powers conferred by sub-section (1) shall be subject to the control of the <sup>1</sup>[Tribunal].

(3) Any creditor or contributory may apply to the <sup>1</sup>[Tribunal] with respect to any exercise or proposed exercise of any such power.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **547. NOTIFICATION THAT A COMPANY IS IN LIQUIDATION**

(1) Where a company is being wound up, whether by <sup>1</sup>[the Tribunal] or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a 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.

(2) If default is made in complying with this section, the company, and every one of the following persons who wilfully authorises or permits the default, namely, any officer of the company, any liquidator of the company and any receiver or manager, shall be punishable with fine which may extend to <sup>2</sup>[five thousand] rupees.

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1. Substituted for "or under the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

2. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **548. BOOKS AND PAPERS OF COMPANY TO BE EVIDENCE**

Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

#### **549. INSPECTION OF BOOKS AND PAPERS BY CREDITORS AND CONTRIBUTORIES**

(1) At any time after the making of an order for the winding up of a company by <sup>1</sup>[the Tribunal], any creditor or contributory of the company may, if the Supreme Court, by rules prescribed so permit and in accordance with and subject to such rules but not further or otherwise, inspect the books and papers of the company.

(2) Nothing in sub-section (1) shall be taken as excluding or restricting any rights conferred by any law for the time being in force -

(a) on the Central or a State Government ; or

(b) on any authority or officer thereof ; or

(c) on any person acting under the authority of any such Government or of any such authority or officer.

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1. Substituted for "or subject to the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). \* Also refer section 643(3).

#### **550. DISPOSAL OF BOOKS AND PAPERS OF COMPANY**

(1) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the liquidator may be disposed of as follows, that is to say :

<sup>1</sup>[(a) in the case of a winding up by the Tribunal, in such manner as the Tribunal directs ;]

(b) in the case of a members' voluntary winding up, in such manner as the company by special resolution directs ; and

(c) in the case of a creditors' voluntary winding up, in such manner as the committee of inspection or, if there is no such committee, as the creditors of the company may direct.

(2) After the expiry of five years from the dissolution of the company, no responsibility shall rest on the company, the liquidator, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) The Central Government may, by rules, -

(a) prevent for such period (not exceeding five years from the dissolution of the company) as the Central Government thinks proper, the destruction of the books and papers of a company which has been wound up and of its liquidator ; and



(b) enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (a) and to appeal to the <sup>2</sup>[Tribunal] from any direction which may be given by the Central Government in the matter.

(4) If any person acts in contravention of any such rules or of any direction of the Central Government thereunder, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to <sup>3</sup>[fifty] thousand rupees, or with both.

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1. Substituted for following clause (a) by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to substitution clause (a) read as under:

"(a) in the case of a winding up by or subject to the supervision of the Court, in such manner as the Court directs ;"

2. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.

3. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

### 551. INFORMATION AS TO PENDING LIQUIDATIONS

(1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two 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, as may be prescribed, file a statement in the prescribed form and containing the prescribed particulars duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation, -

<sup>1</sup>[(a) in the case of a winding up by the Tribunal, in Tribunal ; and]

(b) in the case of a voluntary winding up, with the Registrar :

**Provided** that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 462 apply.

(2) When the statement is filed in <sup>2</sup>[Tribunal] under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

<sup>3</sup>[(2A) Where a statement referred to in sub-section (2) relates to a Government company in liquidation, the liquidator shall forward a copy thereof, -

(a) to the Central Government, if that Government is a member of the Government company ; or

(b) to any State Government, if that Government is a member of the Government company ; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company.]

(3) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or an extract therefrom.

(4) Any person untruthfully stating himself to be a creditor or contributory for the above purpose shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code (45 of 1860), and shall, on the application of the liquidator, be punishable accordingly.

(5) If a liquidator fails to comply with any of requirements of this section, he shall be punishable with fine which may extend to <sup>4</sup>[five thousand] rupees for every day during which the failure continues :

**Provided** that if the liquidator makes wilful default in causing the statement referred to in sub-section (1) to be audited by a person qualified to act as auditor of the company, the liquidator shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to <sup>5</sup>[ten] thousand rupees, or with both.

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1. Substituted for following clause (a) by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). "(a) in the case of a winding-up by or subject to the supervision of the Court, in Court ; and "

2. Substituted for "Court" by the Companies (Second Amendment) Act 2002.

3. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

4. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

5. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

### 552. OFFICIAL LIQUIDATOR TO MAKE PAYMENTS INTO THE PUBLIC ACCOUNT OF INDIA

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

### 553. VOLUNTARY LIQUIDATOR TO MAKE PAYMENTS INTO SCHEDULED BANK

(1) Every liquidator of a company, not being an Official Liquidator, shall, in such manner and at such times as may be prescribed, pay the moneys received by him in his capacity as such into a Scheduled Bank to the credit of a special banking account opened by him in that behalf, and called

Company Limited

"the Liquidation Account of.....Company Private Limited":

Company

**Provided** that if the <sup>1</sup>[Tribunal] is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason, it is to the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the <sup>1</sup>[Tribunal] may authorise the liquidator to make his payments into or

out of such other bank as the <sup>1</sup>[Tribunal] may select; and thereupon those payments shall be made in the prescribed manner and at the prescribed times into or out of such other bank.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the <sup>1</sup>[Tribunal] may, on the application of the liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the <sup>1</sup>[Tribunal], he shall -

(a) 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 Registrar ;

(b) be liable to pay any expenses occasioned by reason of his default; and

(c) also be liable to have all or such part of his remuneration as the <sup>1</sup>[Tribunal] may think just disallowed, and to be removed from his office by the <sup>1</sup>[Tribunal].

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1. Substituted for "Court" by the Companies (Second Amendment) Act 2002.

#### **554. LIQUIDATOR NOT TO PAY MONEYS INTO PRIVATE BANKING ACCOUNT**

Neither the Official Liquidator nor any other liquidator of a company shall pay any moneys received by him in his capacity as such into any private banking account.

#### **555. UNPAID DIVIDENDS AND UNDISTRIBUTED ASSETS TO BE PAID INTO THE COMPANIES LIQUIDATION ACCOUNT**

(1) Where any company is being wound up, if the liquidator has in his hands or under his control any money representing -

(a) dividends payable to any creditor which had remained unpaid for six months after the date on which they were declared, or

(b) assets refundable to any contributory which have remained undistributed for six months after the date on which they became refundable,

the liquidator shall forthwith pay the said money into the public account of India in the Reserve Bank of India in a separate account to be known as the Companies Liquidation Account.

(2) The liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.

(3) The liquidator shall, when making any payment referred to in sub-sections (1) and (2), furnish to such officer, as the Central Government may appoint in this behalf, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(4) The liquidator shall be entitled to a receipt from the Reserve Bank of India for any money paid to it under sub-sections (1) and (2), and such receipt shall be an effectual discharge of the liquidator in respect thereof.

(5) Where the company is being wound up by the <sup>1</sup>[Tribunal], the liquidator shall make the payments referred to in sub-sections (1) and (2) by transfer from the account referred to in section 552.

(6) Where the company is being wound up voluntarily <sup>1</sup>[by] <sup>2</sup>[the Tribunal], the liquidator shall, when filing a statement in pursuance of sub-section (1) of section 551, indicate the sum of money which is payable to the Reserve Bank of India under sub-sections (1) and (2) of this section which he has had in his hands or under his control during the six months preceding the date to which the said statement is brought down, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.

(7) (a) Any person claiming to be entitled to any money paid into the Companies Liquidation Account (whether paid in pursuance of this section or under the provisions of any previous companies law) may apply to the <sup>1</sup>[Tribunal] for an order for payment thereof, and the <sup>1</sup>[Tribunal], if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due :

**Provided** that before making such an order, the <sup>1</sup>[Tribunal] shall cause a notice to be served on such officer as the Central Government may appoint in this behalf, calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made.

(b) Any person claiming as aforesaid may, instead of applying to the <sup>1</sup>[Tribunal], apply to the Central Government for an order for payment of the money claimed ; and the Central Government may, if satisfied whether on a certificate by the liquidator or the Official Liquidator or otherwise, that such person is entitled to the whole or any part of the money claimed and that no application made in pursuance of clause (a) is pending in the <sup>1</sup>[Tribunal], make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.

(8) Any money paid into the Companies Liquidation 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 ; but a claim to any money so transferred may be preferred under sub-section (7) and shall be dealt with as if such transfer had not been made, the order, if any, for payment on the claim being treated as an order for refund of revenue.

(9) Any liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall -

(a) pay interest on the amount 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 ;

(b) be liable to pay any expenses occasioned by reason of his default; and  
(c) where the winding up is by, <sup>1</sup>[the Tribunal], also be liable to have all or such part of his remuneration as the <sup>2</sup>[Tribunal] may think just to be disallowed, and to be removed from his office by this <sup>2</sup>[Tribunal].

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1. Substituted for "or under the supervision of the Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
  2. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **556. ENFORCEMENT OF DUTY OF LIQUIDATOR TO MAKE RETURNS, ETC**

(1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the <sup>1</sup>[Tribunal] may, on an application made to the <sup>1</sup>[Tribunal] by any contributory or creditor of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.  
(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.  
(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

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2. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### ***Supplementary powers of <sup>1</sup>[Tribunal]***

#### **557. MEETINGS TO ASCERTAIN WISHES OF CREDITORS OR CONTRIBUTORIES**

(1) In all matters relating to the winding up of a company, the <sup>1</sup>[Tribunal] may -  
(a) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence ;  
(b) if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the <sup>1</sup>[Tribunal] directs ; and  
(c) appoint a person to act as chairman of any such meeting and to report the result thereof to the <sup>1</sup>[Tribunal].  
(2) When ascertaining the wishes of creditors, regard shall be had to the value of each creditor's debt.  
(3) When ascertaining the wishes of contributories, regard shall be had to the number of votes which may be cast by each contributory.

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2. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **558. COURT OR PERSON BEFORE WHOM AFFIDAVIT MAY BE SWORN**

(1) Any affidavit required to be sworn under the provisions, or for the purposes, of this Part may be sworn -  
(a) in India, before any Court <sup>1</sup>[or Tribunal], Judge or person lawfully authorised to take and receive affidavits ; and  
(b) in any other country, either before any Court, Judge or person lawfully authorised to take and receive affidavits in that country or before an Indian Consul or Vice-Consul.

*Explanation.* - [Omitted by the J & K (Extension of Laws) Act, 1956, with effect from 1-11-1956].

(2) All Courts, <sup>1</sup>[Tribunal], Judges, Justices, Commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any such Court, <sup>1</sup>[Tribunal], Judge, person, Consul or Vice-Consul, attached, appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

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1. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### ***Provisions as to dissolution***

#### **559. POWER OF <sup>1</sup>[TRIBUNAL] TO DECLARE DISSOLUTION OF COMPANY VOID**

(1) Where a company has been dissolved, whether in pursuance of this Part or of section 394 or otherwise, the <sup>1</sup>[Tribunal] may at any time within two years of the date of the dissolution, on application by the liquidator of the company or by any other person who appears to the <sup>1</sup>[Tribunal] to be interested, make an order, upon such terms as the <sup>1</sup>[Tribunal] thinks fit, declaring the dissolution to have been void ; and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.  
(2) It shall be the duty of the person on whose application the order was made, within thirty days after the making of the order or such further time as the <sup>1</sup>[Tribunal] may allow, to file a certified copy of the order with the Registrar who shall register the same ; and if such person fails so to do, he shall be punishable with fine which may extend to <sup>2</sup>[five hundred] rupees for every day during which the default continues.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002.
  2. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **560. POWER OF REGISTRAR TO STRIKE DEFUNCT COMPANY OFF REGISTER**

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in sub-section (3).

(5) At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette ; and on the publication in the Official Gazette of this notice, the company shall stand dissolved :

**Provided that -**

(a) the liability, if any, of every director, <sup>1</sup>[\*\*\*] manager or other officer who was exercising any power or management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved ; and

(b) nothing in this sub-section shall affect the power of the <sup>2</sup>[Tribunal] to wind up a company the name of which has been struck off the register.

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the <sup>2</sup>[Tribunal], on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register ; and the <sup>2</sup>[Tribunal] may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) Upon a certified copy of the order under sub-section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, <sup>1</sup>[\*\*\*] manager or other officer of the company, or if there is no director, <sup>1</sup>[\*\*\*] manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at

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1. Words ", the managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

## **PART VIII: APPLICATION OF ACT TO COMPANIES FORMED OR REGISTERED UNDER PREVIOUS COMPANIES LAWS**

### **561. APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER PREVIOUS COMPANIES LAWS**

This Act shall apply to existing companies as follows :

(a) in the case of a limited company other than a company limited by guarantee, this Act shall apply in the same manner as if the company had been formed and registered under this Act as a company limited by shares ;

(b) in the case of a company limited by guarantee, this Act shall apply in the same manner as if the company had been formed and registered under this Act as a company limited by guarantee ; and

(c) in the case of a company other than a limited company, this Act, shall apply in the same manner as if the company had been formed and registered under this Act as an unlimited company :

**Provided that -**

(i) nothing in Table A in Schedule I shall apply to a company formed and registered under Act 19 of 1857 and Act 7 of 1860, or either of them, or under the Indian Companies Act, 1866 (10 of 1866), or the Indian Companies Act, 1882 (6 of 1882) ;

(ii) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous companies law concerned.

### **562. APPLICATION OF ACT TO COMPANIES REGISTERED BUT NOT FORMED UNDER PREVIOUS COMPANIES LAWS**

This Act shall apply to every company registered but not formed under any previous companies law in the same manner as it is in Part IX of this Act declared to apply to companies registered but not formed under this Act :

**Provided** that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous companies law concerned.

### **563. APPLICATION OF ACT TO UNLIMITED COMPANIES REGISTERED UNDER PREVIOUS COMPANIES LAWS**

This Act shall apply to every unlimited company registered as a limited company in pursuance of any previous companies law, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company :

**Provided** that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the previous companies law concerned.

### **564. MODE OF TRANSFERRING SHARES IN THE CASE OF COMPANIES REGISTERED UNDER ACTS 19 OF 1857 AND 7 OF 1860**

A company registered under Act 19 of 1857 and Act 7 of 1860 or either of them may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct.

## **COMPANIES ACT, 1956**

**[Act No. 1 OF 1956]**

### **PART IX : COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT**

#### **565. COMPANIES CAPABLE OF BEING REGISTERED**

(1) With the exceptions and subject to the provisions contained in this section, -

(a) any company consisting of seven or more members, which was in existence on the first day of May, 1882, including any company registered under Act No. 19 of 1857 and Act No. 7 of 1860 or either of them or under any laws or law in force in a Part B State, corresponding to those Acts or either of them ; and

(b) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other Indian law (including a law in force in a Part B State), or of any Act of Parliament of the United Kingdom or Letters Patent in force in India, or being otherwise duly constituted according to law, and consisting of seven or more members ;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee ; and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up :

**Provided** that -

(i) a company registered under the Indian Companies Act, 1882 (6 of 1882) or under the Indian Companies Act, 1913 (7 of 1913), shall not register in pursuance of this section ;

(ii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, and not being a joint-stock company as defined in section 566, shall not register in pursuance of this section ;

(iii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or any Act of Parliament of the United Kingdom or Letters Patent in force in India, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee ;

(iv) a company that is not a joint-stock company as defined in section 566 shall not register in pursuance of this section as a company limited by shares ;

(v) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose ;

(vi) where a company not having the liability of its members limited by any Act of Parliament or any other Indian law (including a law in force in a Part B State) or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting ;

(vii) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) In computing any majority required for the purposes of sub- section (1) when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(3) Nothing in this section shall be deemed to apply to any company the registered office whereof at the commencement of this Act is in Burma, Aden or Pakistan.

#### **566. DEFINITION OF "JOINT-STOCK COMPANY"**

(1) For the purposes of this Part, so far as it relates to the registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid-up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in the one way and



partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons.

(2) Such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

#### **567. REQUIREMENTS FOR REGISTRATION OF JOINT-STOCK COMPANIES**

Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the Registrar the following documents : -

(a) a list showing the names, addresses, and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(b) a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Royal Charter, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company ; and

(c) if the company is intended to be registered as limited company, a statement specifying the following particulars: -

(i) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists ;

(ii) the number of shares taken and the amount paid on each share ;

(iii) the name of the company, with the addition of the word "Limited" or "Private Limited" as the case may require, as the last word or words thereof ; and

(iv) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

#### **568. REQUIREMENTS FOR REGISTRATION OF COMPANIES NOT BEING JOINT-STOCK COMPANIES**

Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the Registrar the following documents : -

(a) a list showing the names, addresses and occupations of the directors, <sup>1</sup>[\*\*\*] and the manager, if any, of the company ;

(b) a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company ; and

(c) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

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1. Words "the managing agent, if any, the secretaries and treasurers, if any," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **569. AUTHENTICATION OF STATEMENTS OF EXISTING COMPANIES**

The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

#### **570. POWER OF REGISTRAR TO REQUIRE EVIDENCE AS TO NATURE OF COMPANY**

The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as defined in section 566.

#### **571. NOTICE TO CUSTOMERS ON REGISTRATION OF BANKING COMPANY WITH LIMITED LIABILITY**

(1) Where a banking company which was in existence on the first day of May, 1882, proposes to register as a limited company under this Part, it shall, at least thirty days before so registering, give notice of its intention so to register, to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the banking company omits to give the notice required by sub-section (1), then, as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

#### **572. CHANGE OF NAME FOR PURPOSES OF REGISTRATION**

Where the name of a company seeking registration under this Part is one which in the opinion of the Central Government is undesirable, the company may, with the approval of the Central Government signified in writing, change its name with effect from the date of its registration under this Part :

**Provided** that the like assent of the members of the company shall be required to the change of name as is required by section 565 to the registration of the company under this Part.

#### **573. ADDITION OF "LIMITED" OR "PRIVATE LIMITED" TO NAME**

When a company registers in pursuance of this Part with limited liability, the word "Limited" or the words "Private Limited", as the case may be, shall form, and be registered as, the last word or words of its name :

**Provided** that this section shall not be deemed to exclude the operation of section 25.

#### **574. CERTIFICATE OF REGISTRATION OF EXISTING COMPANIES**

On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Schedule X, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

#### **575. VESTING OF PROPERTY ON REGISTRATION**

All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein. company. As the vesting of property is under statutory provisions, no instrument of transfer is necessary therefor.

If the constitution of the partnership firm is changed into that of a company by registering it under Part IX of this Act, there shall be statutory vesting of the title of all the property of the previous firm in the newly incorporated company without any need for a separate conveyance - *Vali Pattabhirama Rao v. Sri Ramanuja Ginning & Rice Factory (P) Ltd.* (1986) 60 Comp. Cas. 568 (AP).

#### **576. SAVING FOR EXISTING LIABILITIES**

The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

#### **577. CONTINUATION OF PENDING LEGAL PROCEEDINGS**

All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place :

**Provided** that execution shall not issue against the property or person of any individual member of the company on any decree or order obtained in any such suit or proceeding ; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

#### **578. EFFECT OF REGISTRATION UNDER PART**

(1) When a company is registered in pursuance of this Part, sub-sections (2) to (7) shall apply.

(2) All provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows :

(a) Table A in Schedule I shall not apply unless and except insofar as it is adopted by special resolution ;

(b) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered ;

(c) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law relating to the company;

(d) subject to the provisions of this section, the company shall not have power, without the sanction of the Central Government, to alter any provision contained in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, relating to the company ;

(e) the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law or in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, with respect to the objects of the company ;

(f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid ;

(g) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid ; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(4) The provisions of this Act with respect to -

(a) the registration of an unlimited as a limited company ;

- (b) the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up ;
- (c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up ;
- shall apply, notwithstanding any provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.
- (5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.
- (6) None of the provisions of this Act (apart from those of section 404) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.
- (7) In this section, the expression "instrument" includes deed of settlement, deed of partnership, Act of Parliament of the United Kingdom, Royal Charter and Letters Patent.

## **579. POWER TO SUBSTITUTE MEMORANDUM AND ARTICLES FOR DEED OF SETTLEMENT**

- (1) Subject to the provisions of this section, a company registered in pursuance of this Part may, by special resolution, alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.
- (2) The provisions of sections 17 to 19 with respect to an alteration of the objects of a company shall, so far as applicable, apply to any alteration under this section, with the following modifications :
- (a) there shall be substituted for the printed copy of the altered memorandum required to be filed with the Registrar a printed copy of the substituted memorandum and articles ; and
- (b) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.
- (3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.
- (4) In this section, the expression "deed of settlement" includes any deed of partnership, Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, or other instrument constituting or regulating the company, not being an Act of Parliament or other Indian law.

## **580. POWER OF COURT TO STAY OR RESTRAIN PROCEEDINGS**

The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for a winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

## **581. SUITS STAYED ON WINDING UP ORDER**

Where an order has been made for winding up, or a provisional liquidator has been appointed for, a company registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against the company or any contributory of the company in respect of any debt of the company, except by leave of the <sup>1</sup>[Tribunal] and except on such terms as the <sup>1</sup>[Tribunal] may impose.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

## **<sup>1</sup>[PART IXA]**

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1. Part IXA consisting of sections 581A to 581ZT, inserted by the Companies (Amendment) Act, 2002 w.e.f. 6-2-2003.

## **CHAPTER I: PRODUCER COMPANIES**

### **581A. DEFINITIONS**

*In this Part, unless the context otherwise requires, -*

- (a) "active Member" means a member who fulfils the quantum and period of patronage of the Producer Company as may be required by the articles ;
- (b) "Chief Executive" means an individual appointed as such under sub-section (1) of section 581W ;
- (c) "limited return" means the maximum dividend as may be specified by the articles ;
- (d) "Member" means a person or Producer institution (whether incorporated or not) admitted as a Member of a Producer Company and who retains the qualifications necessary for continuance as such ;
- (e) "inter-State co-operative society" means a multi-State co-operative society as defined in clause (k) of section 3 of the Multi-State Co-operative Societies Act, 1984 (51 of 1984) and includes any co-operative society registered under any other law for the time being in force, which has, subsequent to its formation, extended any of its objects to more than one State by enlisting the participation of persons or by extending any of its activities outside the State, whether directly or indirectly or through an institution of which it is a constituent ;

- (f) "mutual assistance principles" means the principles set out in sub-section (2) of section 581G ;
- (g) "officer" includes any director or Chief Executive or Secretary or any person in accordance with whose directions or instructions part or whole of the business of the Producer Company is carried on ;
- (h) "patronage" means the use of services offered by the Producer Company to its Members by participation in its business activities ;
- (i) "patronage bonus" means payments made by a Producer Company out of its surplus income to the Members in proportion to their respective patronage ;
- (j) "primary produce" means -
- (i) produce of farmers, arising from agriculture (including animal husbandry, horticulture, floriculture, pisciculture, viticulture, forestry, forest products, re-vegetation, bee raising and farming plantation products), or from any other primary activity or service which promotes the interest of the farmers or consumers ; or
  - (ii) produce of persons engaged in handloom, handicraft and other cottage industries ;
  - (iii) any product resulting from any of the above activities, including by-products of such products ;
  - (iv) any product resulting from an ancillary activity that would assist or promote any of the aforesaid activities or anything ancillary thereto ;
- (v) any activity which is intended to increase the production of anything referred to in sub-clauses (i) to (iv) or improve the quality thereof ;
- (k) "producer" means any person engaged in any activity connected with or relatable to any primary produce ;
- (l) "Producer Company" means a body corporate having objects or activities specified in section 581B and registered as Producer Company under this Act ;
- (m) "Producer institution" means a Producer Company or any other institution having only producer or producers or Producer Company or Producer Companies as its member whether incorporated or not having any of the objects referred to in section 581B and which agrees to make use of the services of the Producer Company or Producer Companies as provided in its articles.
- (n) "withheld price" means part of the price due and payable for goods supplied by any Member to the Producer Company ; and as withheld by the Producer Company for payment on a subsequent date.

## **CHAPTER II: INCORPORATION OF PRODUCER COMPANIES AND OTHER MATTERS**

### **581B. OBJECTS OF PRODUCER COMPANY**

- (1) The objects of the Producer Company shall relate to all or any of the following matters, namely : -
- (a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit.
- Provided** that the Producer Company may carry on any of the activities specified in this clause either by itself or through other institution ;
- (b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members ;
  - (c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members ;
  - (d) providing education on the mutual assistance principles to its Members and others ;
  - (e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members ;
  - (f) generation, transmission and distribution of power, revitalisation of land and water resources, their use, conservation and communications relatable to primary produce ;
  - (g) insurance of producers or their primary produce ;
  - (h) promoting techniques of mutuality and mutual assistance ;
  - (i) welfare measures or facilities for the benefit of Members as may be decided by the Board ;
  - (j) any other activity, ancillary or incidental to any of the activities referred to in clauses (a) to (i) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner ;
  - (k) financing of procurement, processing, marketing or other activities specified in clauses (a) to (j) which include extending of credit facilities or any other financial services to its Members.
- (2) Every Producer Company shall deal primarily with the produce of its active Members for carrying out any of its objects specified in this section.

### **581C. FORMATION OF PRODUCER COMPANY AND ITS REGISTRATION**

- (1) Any ten or more individuals, each of them being a producer or any two or more Producer institutions, or a combination of ten or more individuals and Producer institutions, desirous of forming a Producer Company having its objects specified in section 581B and otherwise complying with the requirements of this Part and the provisions of this Act in respect of registration, may form an incorporated Company as a Producer Company under this Act.
- (2) If the Registrar is satisfied that all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, he shall, within thirty days of the receipt of the documents required for registration, register the memorandum, the articles and other documents, if any, and issue a certificate of incorporation under this Act.
- (3) A Producer Company so formed shall have the liability of its Members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them and be termed a company limited by shares.

(4) The Producer Company may reimburse to its promoters all other direct costs associated with the promotion and registration of the company including registration, legal fees, printing of a memorandum and articles and the payment thereof shall be subject to the approval at its first general meeting of the Members.

(5) On registration under sub-section (1), the Producer Company shall become a body corporate as if it is a private limited company to which the provisions contained in this Part apply, without, however, any limit to the number of Members thereof, and the Producer Company shall not, under any circumstance, whatsoever, become or be deemed to become a public limited company under this Act.

#### **581D. MEMBERSHIP AND VOTING RIGHTS OF MEMBERS OF PRODUCER COMPANY**

(1) (a) In a case where the membership consists solely of individual members, the voting rights shall be based on a single vote for every Member, irrespective of his shareholding or patronage of the Producer Company.

(b) In a case where the membership consists of Producer institutions only, the voting rights of such Producer institutions shall be determined on the basis of their participation in the business of the Producer Company in the previous year, as may be specified by articles :

**Provided** that during the first year of registration of a Producer Company, the voting rights shall be determined on the basis of the shareholding by such Producer institutions.

(c) In a case where the membership consists of individuals and Producer institutions, the voting rights shall be computed on the basis of a single vote for every Member.

(2) The articles of any Producer Company may provide for the conditions, subject to which a Member may continue to retain his membership, and the manner in which voting rights shall be exercised by the Members.

(3) Notwithstanding anything contained in sub-section (7) or sub-section(2), any Producer Company may, if so authorised by its articles, restrict the voting rights to active Members, in any special or general meeting.

(4) No person, who has any business interest which is in conflict with business of the Producer Company, shall become a Member of that Company.

(5) A Member, who acquires any business interest which is in conflict with the business of the Producer Company, shall cease to be a Member of that Company and be removed as a Member in accordance with articles.

#### **581E. BENEFITS TO MEMBERS**

(1) Subject to provisions made in articles, every Member shall initially receive only such value for the produce or products pooled and supplied as the Board of Producer Company may determine, and the withheld price may be disbursed later in cash or in kind or by allotment of equity shares, in proportion to the produce supplied to the Producer Company during the financial year to such extent and in such manner and subject to such conditions as may be decided by the Board.

(2) Every Member shall, on the share capital contributed, receive only a limited return :

**Provided** that every such Member may be allotted bonus shares in accordance with the provisions contained in section 581ZJ.

(3) The surplus if any, remaining after making provision for payment of limited return and reserves referred to in section 581ZI, may be disbursed as patronage bonus, amongst the Members, in proportion to their participation in the business of the Producer Company, either in cash or by way of allotment of equity shares, or both, as may be decided by the Members at the general meeting.

#### **581F. MEMORANDUM OF PRODUCER COMPANY**

The memorandum of association of every Producer Company shall state : -

(a) the name of the company with "Producer Company Limited" as the last words of the name of such Company ;

(b) the State in which the registered office of the Producer Company is to situate ;

(c) the main objects of the Producer Company shall be one or more of the objects specified in section 581B ;

(d) the names and addresses of the persons who have subscribed to the memorandum ;

(e) the amount of share capital with which the Producer Company is to be registered and division thereof into shares of a fixed amount ;

(f) the names, addresses and occupations of the subscribers being producers, who shall act as the first directors in accordance with sub-section (2) of section 581J ;

(g) that the liability of its members is limited ;

(h) opposite to the subscriber's name the number of shares each subscriber takes :

**Provided** that no subscriber shall take less than one share ;

(i) in case the objects of the Producer Company are not confined to one State, the States to whose territories the objects extend.

#### **581G. ARTICLES OF ASSOCIATION**

(1) There shall be presented, for registration to the Registrar of the State to which the registered office of the Producer Company is, stated by the memorandum of association, to be situate : -

(a) memorandum of the Producer Company ;

(b) its articles duly signed by the subscribers to the memorandum.

(2) The articles shall contain the following mutual assistance principles, namely : -



- (a) the membership shall be voluntary and available, to all eligible persons who, can participate or avail of the facilities or services of the Producer Company, and are willing to accept the duties of membership ;
- (b) each Member shall, save as otherwise provided in this Part, have only a single vote irrespective of the share holding ;
- (c) the Producer Company shall be administered by a Board consisting of persons elected or appointed as directors in the manner consistent with the provisions of this Part and the Board shall be accountable to the Members;
- (d) save as provided in this Part, there shall be limited return on share capital ;
- (e) the surplus arising out of the operations of the Producer Company shall be distributed in an equitable manner by : -
  - (i) providing for the development of the business of the Producer Company ;
  - (ii) providing for common facilities ; and
  - (iii) distributing amongst the Members, as may be admissible in proportion to their respective participation in the business ;
- (f) provision shall be made for the education of Members, employees and others, on the principles of mutuality and techniques of mutual assistance ;
- (g) the Producer Company shall actively co-operate with other Producer Companies (and other organisations following similar principles) at local, national or international level so as to best serve the interest of their Members and the communities it purports to serve.
- (3) Without prejudice to the generality of the foregoing provisions of sub-sections (1) and (2), the articles shall contain the following provisions, namely : -
  - (a) the qualifications for membership, the conditions for continuance or cancellation of membership and the terms, conditions and procedure for transfer of shares ;
  - (b) the manner of ascertaining the patronage and voting right based on patronage ;
  - (c) subject to the provisions contained in sub-section (1) of section 581N, the manner of constitution of the Board, its powers and duties, the minimum and maximum number of directors, manner of election and appointment of directors and retirement by rotation, qualifications for being elected or continuance as such and the terms of office of the said directors, their powers and duties, conditions for election or co-option of directors, method of removal of directors and the filling up of vacancies on the Board, and the manner and the terms of appointment of the Chief Executive ;
  - (d) the election of the Chairman, term of office of directors and the Chairman, manner of voting at the general or special meetings of Members, procedure for voting, by directors at meetings of the Board, powers of the Chairman and the circumstances under which the Chairman may exercise a casting vote ;
  - (e) the circumstances under which, and the manner in which, the withheld price is to be determined and distributed ;
  - (f) the manner of disbursement of patronage bonus in cash or by issue of equity shares, or both ;
  - (g) the contribution to be shared and related matters referred to in subsection (2) of section 581ZI ;
  - (h) the matters relating to issue of bonus shares out of general reserves as set out in section 581ZJ ;
  - (i) the basis and manner of allotment of equity shares of the Producer Company in lieu of the whole or part of the sale proceeds of produce or products supplied by the Members ;
  - (j) the amount of reserves, sources from which funds may be raised, limitation on raising of funds, restriction on the use of such funds and the extent of debt that may be contracted and the conditions thereof ;
  - (k) the credit, loans or advances which may be granted to a Member and the conditions for the grant of the same ;
  - (l) the right of any Member to obtain information relating to general business of the company ;
  - (m) the basis and manner of distribution and disposal of funds available after meeting liabilities in the event of dissolution or liquidation of the Producer Company ;
  - (n) the authorisation for division, amalgamation, merger, creation of subsidiaries and the entering into joint ventures and other matters connected therewith ;
  - (o) laying of the memorandum and articles of the Producer Company before a special general meeting to be held within ninety days of its registration ;
  - (p) any other provision, which the Members may, by special resolution recommend to be included in articles.

#### **581H. AMENDMENT OF MEMORANDUM**

- (1) A Producer Company shall not alter the conditions contained in its memorandum except in the cases, by the mode and to the extent for which express provision is made in this Act.
- (2) A Producer Company may, by special resolution, not inconsistent with section 581B, alter its objects specified in its memorandum.
- (3) A copy of the amended memorandum, together with a copy of the special resolution duly certified by two directors, shall be filed with the Registrar within thirty days from the date of adoption of any resolution referred to in sub-section (2) :
 

**Provided** that in the case of transfer of the registered office of a Producer Company from the jurisdiction of one Registrar to another, certified copies of the special resolution certified by two directors shall be filed with both the Registrars within thirty days, and each Registrar shall record the same, and thereupon the Registrar from whose jurisdiction the office is transferred, shall forthwith forward to the other Registrar all documents relating to the Producer Company.
- (4) The alteration of the provisions of memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the<sup>1</sup>Company Law Board on petition.

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1. To be read as 'National Company Law Tribunal'.

#### **581-I. AMENDMENT OF ARTICLES**

- (1) *Any amendment of the articles shall be proposed by not less than two-third of the elected directors or by not less than one-third of the Members of the Producer Company, and adopted by the Members by a special resolution.*
- (2) *A copy of the amended articles together with the copy of the special resolution, both duly certified by two directors, shall be filed with the Registrar within thirty days from the date of its adoption.*

#### **581J. OPTION TO INTER-STATE CO-OPERATIVE SOCIETIES TO BECOME PRODUCER COMPANIES**

- (1) *Notwithstanding anything contained in sub-section (1) of section 581C, any inter-State co-operative society with objects not confined to one State may make an application to the Registrar for registration as Producer Company under this Part.*
- (2) *Every application under sub-section (1) shall be accompanied by -*
- (a) a copy of the special resolution, of not less than two-third of total members of inter-State co-operative society, for its incorporation as a Producer Company under this Act ;*
  - (b) a statement showing -*
    - (i) names and addresses or the occupation of the directors and Chief Executive, if any, by whatever name called, of such co-operative ; and*
    - (ii) list of members of such inter-State co-operative society ;*
  - (c) a statement indicating that the inter-State co-operative society is engaged in any one or more of the objects specified in section 581B;*
  - (d) a declaration by two or more directors of the inter-State co-operative society certifying that particulars given in clauses (a) to (c) are correct.*
- (3) *When an inter-State co-operative society is registered as a Producer Company, the words "Producer Company Limited" shall form part of its name with any word or expression to show its identity preceding it.*
- (4) *On compliance with the requirements of sub-sections (1) to (3), the Registrar shall, within a period of thirty days of the receipt of application, certify under his hand that the inter-State co-operative society applying for registration is registered and thereby incorporated as a Producer Company under this Part.*
- (5) *A co-operative society formed by producers, by Federation or Union of co-operative societies of producers or co-operatives of producers, registered under any law for the time being in force which has extended its objects outside the State, either directly or through a union or federation of co-operatives of which it is a constituent, as the case may be, and any Federation or Unions of such co-operatives, which has so extended any of its objects or activities outside the State, shall be eligible to make an application under sub-section (1) and to obtain registration as a Producer Company under this Part.*
- (6) *The inter-State co-operative society shall, upon registration under sub-section (1), stand transformed into a Producer Company, and there-after shall be governed by the provisions of this Part to the exclusion of the law by which it was earlier governed, save insofar as anything done or omitted to be done before its registration as a Producer Company, and notwithstanding anything contained in any other law for the time being in force, no person shall have any claim against the co-operative institution or the company by reason of such conversion or transformation.*
- (7) *Upon registration as a Producer Company, the Registrar of Companies who registers the company shall forthwith intimate the Registrar with whom the erstwhile inter-State co-operative society was earlier registered for appropriate deletion of the society from its register.*

#### **581K. EFFECT OF INCORPORATION OF PRODUCER COMPANY**

*Every shareholder of the inter-State co-operative society immediately before the date of registration of Producer Company (hereafter referred to as the transformation date) shall be deemed to be registered on and from that date as a shareholder of the Producer Company to the extent of the face value of the shares held by such shareholder.*

#### **581L. VESTING OF UNDERTAKING IN PRODUCER COMPANY**

- (1) *All properties and assets, movable and immovable, of, or belonging to, the inter-State co-operative society as on the transformation date, shall vest in the Producer Company.*
- (2) *All the rights, debts, liabilities, interests, privileges and obligations of the inter-State co-operative society as on the transformation date shall stand transferred to, and be the rights, debts, liabilities, interests, privileges and obligations of, the Producer Company.*
- (3) *Without prejudice to the provisions contained in sub-section (2), all debts, liabilities and obligations incurred, all contracts entered into and all matters and things engaged to be done by, with or for, the society as on the transformation date for or in connection with their purposes, shall be deemed to have been incurred, entered into, or engaged to be done by, with or for, the Producer Company.*
- (4) *All sums of money due to the inter-State co-operative society immediately before the transformation date, shall be deemed to be due to the Producer Company.*
- (5) *Every organisation, which was being managed immediately before the transformation date by the inter-State co-operative society shall be managed by the Producer Company for such period, to such extent and in such manner as the circumstances may require.*
- (6) *Every organisation which was getting financial, managerial or technical assistance from the inter-State co-operative society, immediately before the transformation date, may continue to be given financial, managerial or technical assistance, as the case may be, by the Producer Company, for such period, to such extent and in such manner as that company may deem fit.*

(7) The amount representing the capital of the erstwhile inter-State co-operative society shall form part of the capital of the Producer Company.

(8) Any reference to the inter-State co-operative society in any law other than this Act or in any contract or other instrument, shall be deemed to be reference to the Producer Company.

(9) If, on the transformation date, there is pending any suit, arbitration, appeal or other legal proceeding of whatever nature by or against the inter-State co-operative society, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the incorporation of the Producer Company under section 581C or transformation of the inter-State co-operative society as a Producer Company under section 581J, as the case may be, but the suit, arbitration, appeal or other proceeding, may be continued, prosecuted and enforced by or against the Producer Company in the same manner and to the same extent as it would have, or may have been continued, prosecuted and enforced by or against the inter-State co-operative society as if the provisions contained in this Part had not come into force.

#### **581M. CONCESSION, ETC., TO BE DEEMED TO HAVE BEEN GRANTED TO PRODUCER COMPANY**

With effect from the transformation date, all fiscal and other concessions, licences, benefits, privileges and exemptions granted to the inter-State co-operative society in connection with the affairs and business of the inter-State co-operative society under any law for the time being in force shall be deemed to have been granted to the Producer Company.

#### **581N. PROVISIONS IN RESPECT OF OFFICERS AND OTHER EMPLOYEES OF INTER-STATE CO-OPERATIVE SOCIETY**

(1) Notwithstanding anything contained in section 581-O, all the directors in the inter-State co-operative society before the incorporation of the Producer Company shall continue in office for a period of one year from the transformation date and in accordance with the provisions of this Act.

(2) Every officer or other employee of the inter-State co-operative society (except a director of the Board, Chairman or Managing Director) serving in its employment immediately before the transformation date shall, insofar as such officer or other employee is employed in connection with the inter-State co-operative society which has vested in the Producer Company by virtue of this Act, become, as from the transformation date, an officer or, as the case may be, other employee of the Producer Company and shall hold his office or service therein by the same tenure, at the same remuneration, upon the same terms and conditions, with the same obligations and with the same rights and privileges as to leave, leave travel concession, welfare scheme, medical benefit scheme, insurance, provident fund, other funds, retirement, voluntary retirement, gratuity and other benefits as he would have held under the erstwhile inter-State co-operative society if its undertaking had not vested in the Producer Company and shall continue to do so as an officer or, as the case may be, other employee of the Producer Company.

(3) Where an officer or other employee of the inter-State co-operative society opts under sub-section (2) not to be in employment or service of the Producer Company, such officer or other employee shall be deemed to have resigned.

(4) Notwithstanding anything contained in the Industrial Disputes Act, 1947 or in any other law for the time being in force, the transfer of the services of any officer or other employee of the inter-State co-operative society to the Producer Company shall not entitle such officer or other employee to any compensation under this Act or under any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

(5) The officers and other employees who have retired before the transformation date from the service of the inter-State co-operative society and are entitled to any benefits, rights or privileges, shall be entitled to receive the same benefits, rights or privileges from the Producer Company.

(6) The trusts of the provident fund or the gratuity fund of the inter-State cooperative society and any other bodies created for the welfare of officers or employees shall continue to discharge functions in the Producer Company as was being done hitherto in the inter-State co-operative society and any tax exemption granted to the provident fund or the gratuity fund would continue to be applied to the Producer Company.

(7) Notwithstanding anything contained in this Act or in any other law for the time being in force or in the regulations of the inter-State co-operative society, no director of the Board, Chairman, Managing Director or any other person entitled to manage the whole or substantial part of the business and affairs of the inter-State co-operative society shall be entitled to any compensation against the inter-State co-operative society or the Producer Company for the loss of office or for the premature termination of any contract of management entered into by him with the inter-State co-operative society.

### **CHAPTER III: MANAGEMENT OF PRODUCER COMPANY**

#### **581-O. NUMBER OF DIRECTORS**

Every Producer Company shall have at least five and not more than fifteen directors :

**Provided** that in the case of an inter-State co-operative society incorporated as a Producer Company, such company may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company.

#### **581P. APPOINTMENT OF DIRECTORS**

(1) Save as provided in section 581N, the Members who sign the memorandum and the articles may designate therein the Board of directors (not less than five) who shall govern the affairs of the Producer Company until the directors are elected in accordance with the provisions of this section.

(2) The election of directors shall be conducted within a period of ninety days of the registration of the Producer Company :

**Provided** that in the case of an inter-State co-operative society which has been registered as a Producer Company under sub-section (4) of section 581J in which at least five directors [including the directors continuing in office under sub-section (1) of section 581N] hold office as such on the date of registration of such company, the provisions of this sub-section shall have effect as if for the words "ninety days", the words "three hundred and sixty five days" had been substituted.

(3) Every person shall hold office of a director for a period not less than one year but not exceeding five years as may be specified in the articles.

(4) Every director, who retires in accordance with the articles, shall be eligible for re-appointment as a director.

(5) Save as provided in sub-section (2), the directors of the Board shall be elected or appointed by the Members in the annual general meeting.

(6) The Board may co-opt one or more expert directors or an additional director not exceeding one-fifth of the total number of directors or appoint any other person as additional director for such period as the Board may deem fit :

**Provided** that the expert directors shall not have the right to vote in the election of the Chairman but shall be eligible to be elected as Chairman, if so provided by its articles :

**Provided further** that the maximum period, for which the expert director or the additional director holds office, shall not exceed such period as may be specified in the articles.

#### **581Q. VACATION OF OFFICE BY DIRECTORS**

(1) The office of the director of a Producer Company shall become vacant if-

(a) he is convicted by a Court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months ;

(b) the Producer Company, in which he is a director, has made a default in repayment of any advances or loans taken from any company or institution or any other person and such default continues for ninety days ;

(c) he has made a default in repayment of any advances or loans taken from the Producer Company in which he is a director ;

(d) the Producer Company, in which he is a director -

(i) has not filed the annual accounts and annual return for any continuous three financial years commencing on or after the 1st day of April, 2002 ; or

(ii) has failed to, repay its deposit or withheld price or patronage bonus or interest thereon on due date, or pay dividend and such failure continues for one year or more ;

(e) default is made in holding election for the office of director, in the Producer Company in which he is a director, in accordance with the provisions of this Act and articles ;

(f) the annual general meeting or extraordinary general meeting of the Producer Company, in which he is a director, is not called in accordance with the provisions of this Act except due to natural calamity or such other reason.

(2) The provisions of sub-section (1) shall, as far as may be, apply to the director of a Producer institution which is a member of a Producer Company.

#### **581R. POWERS AND FUNCTIONS OF BOARD**

(1) Subject to the provisions of this Act and articles, the Board of directors of a Producer Company shall exercise all such powers and to do all such acts and things, as that company is authorised so to do.

(2) In particular and without prejudice to the generality of the foregoing powers, such powers may include all or any of the following matters, namely: -

(a) determination of the dividend payable ;

(b) determination of the quantum of withheld price and recommend patronage to be approved at general meeting ;

(c) admission of new Members ;

(d) pursue and formulate the organisational policy, objectives, establish specific long-term and annual objectives, and approve corporate strategies and financial plans ;

(e) appointment of a Chief Executive and such other officers of the Producer Company, as may be specified in the articles ;

(f) exercise superintendence, direction and control over Chief Executive and other officers appointed by it ;

(g) cause proper books of account to be maintained ; prepare annual accounts to be placed before the annual general meeting with the auditor's report and the replies on qualifications, if any, made by the auditors ;

(h) acquisition or disposal of property of the Producer Company in its ordinary course of business ;

(i) investment of the funds of the Producer Company in the ordinary course of its business ;

(j) sanction any loan or advance, in connection with the business activities of the Producer Company to any Member, not being a director or his relative ;

(k) take such other measures or do such other acts as may be required in the discharge of its functions or exercise of its powers.

(3) All the powers specified in sub-sections (1) and (2) shall be exercised by the Board, by means of resolution passed at its meeting on behalf of the Producer Company.

Explanation. - For the removal of doubts, it is hereby declared that a director or a group of directors, who do not constitute the Board, shall not exercise any of the powers exercisable by it.

#### **581S. MATTERS TO BE TRANSACTED AT GENERAL MEETING**

- (1) *The Board of directors of a Producer Company shall exercise the following powers on behalf of that company, and it shall do so only by means of resolutions passed at the annual general meeting of its Members, namely : -*
- (a) *approval of budget and adoption of annual accounts of the Producer Company ;*
  - (b) *approval of patronage bonus ;*
  - (c) *issue of bonus shares ;*
  - (d) *declaration of limited return and decision on the distribution of patronage ;*
  - (e) *specify the conditions and limits of loans that may be given by the Board to any director ; and*
  - (f) *approval of any transaction of the nature as is to be reserved in the articles for approval by the Members.*

#### **581T. LIABILITY OF DIRECTORS**

- (1) *When the directors vote for a resolution, or approve by any other means, anything done in contravention of the provisions of this Act or any other law for the time being in force or articles, they shall be jointly and severally liable to make good any loss or damage suffered by the Producer Company.*
- (2) *Without prejudice to the provisions contained in sub-section (1), the Producer Company shall have the right to recover from its director -*
- (a) *where such director has made any profit as a result of the contra vention specified in sub-section (1), an amount equal to the profit so made ;*
  - (b) *where the Producer Company incurred a loss or damage as a result of the contravention specified in sub-section (1), an amount equal to that loss or damage ;*
- (3) *The liability imposed under this section shall be in addition to and not in derogation of a liability imposed on a director under this Act or any other law for the time being in force.*

#### **581U. COMMITTEE OF DIRECTORS**

- (1) *The Board may constitute such number of committees as it may deem fit for the purpose of assisting the Board in the efficient discharge of its functions :*
- Provided** *that the Board shall not delegate any of its powers or assign the powers of the Chief Executive, to any committee.*
- (2) *A committee constituted under sub-section (1) may, with the approval of the Board, co-opt such number of persons as it deems fit as members of the committee :*
- Provided** *that the Chief Executive appointed under section 581W or a director of the Producer Company shall be a member of such committee.*
- (3) *Every such committee shall function under the general superintendence, direction and control of the Board, for such duration, and in such manner as the Board may direct.*
- (4) *The fee and allowances to be paid to the members of the committee shall be such as may be determined by the Board.*
- (5) *The minutes of each meeting of the committee shall be placed before the Board at its next meeting.*

#### **581V. MEETINGS OF BOARD AND QUORUM**

- (1) *A meeting of the Board shall be held not less than once in every three months and at least four such meetings shall be held in every year.*
- (2) *Notice of every meeting of the Board of directors shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.*
- (3) *The Chief Executive shall give notice as aforesaid not less than seven days prior to the date of the meeting of the Board and if he fails to do so, he shall be punishable with fine which may extend to one thousand rupees :*
- Provided** *that a meeting of the Board may be called at shorter notice and the reasons thereof shall be recorded in writing by the Board.*
- (4) *The quorum for a meeting of the Board shall be one-third of the total strength of directors, subject to a minimum of three.*
- (5) *Save as provided in the articles, directors including the co-opted director, may be paid such fees and allowances for attendance at the meetings of the Board, as may be decided by the Members in the general meeting.*

#### **581W. CHIEF EXECUTIVE AND HIS FUNCTIONS**

- (1) *Every Producer Company shall have a full time Chief Executive, by whatever name called, to be appointed by the Board from amongst persons other than Members.*
- (2) *The Chief Executive shall be ex officio director of the Board and such director shall not retire by rotation.*
- (3) *Save as otherwise provided in articles, the qualifications, experience and the terms and conditions of service of the Chief Executive shall be such as may be determined by the Board.*
- (4) *The Chief Executive shall be entrusted with substantial powers of mana-gement as the Board may determine.*
- (5) *Without prejudice to the generality of sub-section (4), the Chief Executive may exercise the powers and discharge the functions, namely : -*
- (a) *do administrative acts of a routine nature including managing the day-to-day affairs of the Producer Company ;*
  - (b) *operate bank accounts or authorise any person, subject to the gene-ral or special approval of the Board in this behalf, to operate the bank account ;*
  - (c) *make arrangements for safe custody of cash and other assets of the Producer Company ;*
  - (d) *sign such documents as may be authorised by the Board, for and on behalf of the company ;*



- (e) maintain proper books of account ; prepare annual accounts and audit thereof ; place the audited accounts before the Board and in the annual general meeting of the Members ;
  - (f) furnish Members with periodic information to appraise them of the operation and functions of the Producer Company ;
  - (g) make appointments to posts in accordance with the powers dele-gated to him by the Board ;
  - (h) assist the Board in the formulation of goals, objectives, strategies, plans and policies ;
  - (i) advise the Board with respect to legal and regulatory matters concerning the proposed and on going activities and take necessary action in respect thereof ;
  - (j) exercise the powers as may be necessary in the ordinary course of business ;
  - (k) discharge such other functions, and exercise such other powers, as may be delegated by the Board.
- (6) The Chief Executive shall manage the affairs of the Producer Company under the general superintendence, direction and control of the Board and be accountable for the performance of the Producer Company.

#### **581X. SECRETARY OF PRODUCER COMPANY**

- (1) Every Producer Company having an average annual turnover exceeding five crore rupees in each of three consecutive financial years shall have a whole-time secretary.
- (2) No individual shall be appointed as whole-time secretary unless he possesses membership of the Institute of Company Secretaries of India constituted under the Company Secretaries Act, 1980.
- (3) If a Producer Company fails to comply with the provisions of sub-section (1), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues :

**Provided** that in any proceedings against a person in respect of an offence under this sub-section, it shall be a defence to prove that all reasonable efforts to comply with the provisions of sub-section (1) were taken or that the financial position of the company was such that it was beyond its capacity to engage a whole-time secretary.

#### **581Y. QUORUM**

Unless the articles require a larger number, one-fourth of the total membership shall constitute the quorum at a general meeting.

#### **581Z. VOTING RIGHTS**

Save as otherwise provided in sub-sections (1) and (3) of section 58ID, every Member shall have one vote and in the case of equality of votes, the Chairman or the person presiding shall have a casting vote except in the case of election of the Chairman.

### **CHAPTER IV: GENERAL MEETINGS**

#### **581ZA. ANNUAL GENERAL MEETINGS**

- (1) Every Producer Company shall in each year, hold, in addition to any other meetings, a general meeting, as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a Producer Company and that of the next :  
**Provided** that the Registrar may, for any special reason, permit extension of the time for holding any annual general meeting (not being the first annual general meeting) by a period not exceeding three months.
- (2) A Producer Company shall hold its first annual general meeting within a period of ninety days from the date of its incorporation.
- (3) The Members shall adopt the articles of the Producer Company and appoint directors of its Board in the annual general meeting.
- (4) The notice calling the annual general meeting shall be accompanied by the following documents, namely : -
  - (a) the agenda of the annual general meeting ;
  - (b) the minutes of the previous annual general meeting or the extraordinary general meeting ;
  - (c) the names of candidates for election, if any, to the office of director including a statement of qualifications in respect of each candidate;
  - (d) the audited balance-sheet and profit and loss accounts of the Producer Company and its subsidiary, if any, together with a report of the Board of directors of such Company with respect to -
    - (i) the state of affairs of the Producer Company ;
    - (ii) the amount proposed to be carried to reserve ;
    - (iii) the amount to be paid as limited return on share capital ;
    - (iv) the amount proposed to be disbursed as patronage bonus ;
    - (v) the material changes and commitments, if any, affecting the financial position of the Producer Company and its subsidiary, which have occurred in between the date of the annual accounts of the Producer Company to which the balance sheet relates and the date of the report of the Board ;
    - (vi) any other matter of importance relating to energy conservation, environmental protection, expenditure or earnings in foreign exchanges ;
    - (vii) any other matter which is required to be, or may be, specified by the Board ;
  - (e) the text of the draft resolution for appointment of auditors ;

- (f) the text of any draft resolution proposing amendment to the memorandum or articles to be considered at the general meeting, along with the recommendations of the Board.
- (4) The Board of directors shall, on the requisition made in writing, duly signed and setting out the matters for the consideration, made by one-third of the Members entitled to vote in any general meeting, proceed to call an extraordinary general meeting in accordance with the provisions contained in sections 169 to 186 of this Act.
- (5) Every annual general meeting shall be called, for a time during business hours, on a day that is not a public holiday and shall be held at the registered office of the Producer Company or at some other place within the city, town or village in which the registered office of the Company is situate.
- (6) A general meeting of the Producer Company shall be called by giving not less than fourteen days prior notice in writing.
- (7) The notice of the general meeting indicating the date, time and place of the meeting shall be sent to every Member and auditor of the Producer Company.
- (8) Unless the articles of the Producer Company provide for a larger number, one-fourth of the total number of members of the Producer Company shall be the quorum for its annual general meeting.
- (9) The proceedings of every annual general meeting along with the Directors' Report, the audited balance sheet and the profit and loss account shall be filed with the Registrar within sixty days of the date on which the annual general meeting is held, with an annual return along with the filing fees as applicable under the Act.
- (10) In the case where a Producer Company is formed by Producer institutions, such institutions shall be represented in the general body through the Chairman or the Chief Executive thereof who shall be competent to act on its behalf : **Provided** that a Producer institution shall not be represented if such institution makes a default or failure referred to in clauses (d) to (f) of sub-section (1) of section 581Q.

## **CHAPTER V: SHARE CAPITAL AND MEMBERS RIGHTS**

### **581ZB. SHARE CAPITAL**

- (1) The share capital of a Producer Company shall consist of equity shares only.
- (2) The shares held by a Member in a Producer Company, shall as far as may be, be in proportion to the patronage of that company.

### **581ZC. SPECIAL USER RIGHTS**

- (1) The producers, who are active Members may, if so provided in the articles, have special rights and the Producer Company may issue appropriate instruments to them in respect of such special rights.
- (2) The instruments of the Producer Company issued under sub-section (1) shall, after obtaining approval of the Board in that behalf, be transferable to any other active Member of that Producer Company.
- Explanation. - For the purposes of this section, the expression "special right" means any right relating to supply of additional produce by the active Member or any other right relating to his produce which may be conferred upon him by the Board.

### **581ZD. TRANSFERABILITY OF SHARES AND ATTENDANT RIGHTS**

- (1) Save as otherwise provided in sub-sections (2) to (4), the shares of a Member of a Producer Company shall not be transferable.
- (2) A Member of a Producer Company may, after obtaining the previous approval of the Board, transfer the whole or part of his shares along with any special rights, to an active Member at par value.
- (3) Every Member shall, within three months of his becoming a Member in the Producer Company, nominate, in the manner specified in articles, a person to whom his shares in the Producer Company shall vest in the event of his death.
- (4) The nominee shall, on the death of the Member, become entitled to all the rights in the shares of the Producer Company and the Board of that Company shall transfer the shares of the deceased Member to his nominee: **Provided** that in a case where such nominee is not a producer, the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board.
- (5) Where the Board of a Producer Company is satisfied that -
- (a) any Member has ceased to be a primary producer ; or
  - (b) any Member has failed to retain his qualifications to be a Member as specified in articles,
- the Board shall direct the surrender of shares together with special rights, if any, to the Producer Company at par value or such other value as may be determined by the Board :
- Provided** that the Board shall not direct such surrender of shares unless the Member has been served with a written notice and given an opportunity of being heard.

## **CHAPTER VI: FINANCE, ACCOUNTS AND AUDIT**

### **581ZE. BOOKS OF ACCOUNT**

- (1) Every Producer Company shall keep at its registered office proper books of account with respect to -

- (a) all sums of money received and expended by the Producer Company and the matters in respect of which the receipts and expenditure take place ;
  - (b) all sales and purchase of goods by the Producer Company ;
  - (c) the instruments of liability executed by or on behalf of the Producer Company ;
  - (d) the assets and liabilities of the Producer Company ;
  - (e) in case of a Producer Company engaged in production, processing and manufacturing, the particulars relating to utilisation of materials or labour or other items of costs.
- (2) The balance sheet and profit and loss accounts of the Producer Company shall be prepared, as far as may be, in accordance with the provisions contained in section 211.

#### **581ZF. INTERNAL AUDIT**

Every Producer Company shall have internal audit of its accounts carried out, at such interval and in such manner as may be specified in articles, by a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Institute of Chartered Accountants Act, 1949 (38 of 1949).

#### **581ZG. DUTIES OF AUDITOR UNDER THIS PART**

Without prejudice to the provisions contained in section 227, the auditor shall report on the following additional matters relating to the Producer Company, namely : -

- (a) the amount of debts due along with particulars of bad debts if any ;
- (b) the verification of cash balance and securities ;
- (c) the details of assets and liabilities ;
- (d) all transactions which appear to be contrary to the provisions of this Part ;
- (e) the loans given by the Producer Company to the directors ;
- (f) the donations or subscriptions given by the Producer Company ;
- (g) any other matter as may be considered necessary by the auditor.

#### **581ZH. DONATIONS OR SUBSCRIPTION BY PRODUCER COMPANY**

A Producer Company may, by special resolution, make donation or subscription to any institution or individual for the purposes of -

- (a) promoting the social and economic welfare of Producer Members or producers or general public ; or
- (b) promoting the mutual assistance principles :

**Provided** that the aggregate amount of all such donation and subscription in any financial year shall not exceed three per cent of the net profit of the Producer Company in the financial year immediately preceding the financial year in which the donation or subscription was made:

**Provided further** that no Producer Company shall make directly or indirectly to any political party or for any political purpose to any person any contribution or subscription or make available any facilities including personnel or material.

#### **581ZI. GENERAL AND OTHER RESERVES**

- (1) Every Producer Company shall maintain a general reserve in every financial year, in addition to any reserve maintained by it as may be specified in articles.
- (2) In a case where the Producer Company does not have sufficient funds in any financial year for transfer to maintain the reserves as may be specified in articles, the contribution to the reserve shall be shared amongst the Members in proportion to their patronage in the business of that company in that year.

#### **581ZJ. ISSUE OF BONUS SHARES**

Any Producer Company may, upon recommendation of the Board and passing of resolution in the general meeting, issue bonus shares by capitalisation of amounts from general reserves referred to in section 581ZI in proportion to the shares held by the Members on the date of the issue of such shares.

### **CHAPTER VII: LOANS TO MEMBERS AND INVESTMENTS**

#### **581ZK. LOAN, ETC., TO MEMBERS**

The Board may, subject to the provisions made in articles, provide financial assistance to the Members of the Producer Company by way of -

- (a) credit facility, to any Member, in connection with the business of the Producer Company, for a period not exceeding six months ;
- (b) loans and advances, against security specified in articles to any Member, repayable within a period exceeding three months but not exceeding seven years from the date of disbursement of such loan or advances :

**Provided** that any loan or advance to any director or his relative shall be granted only after the approval by the Members in general meeting.

#### **581ZL. INVESTMENT IN OTHER COMPANIES, FORMATION OF SUBSIDIARIES, ETC**

- (1) The general reserves of any Producer Company shall be invested to secure the highest returns available from approved securities, fixed deposits, units, bonds issued by the Government or co-operative or scheduled bank or in such other mode as may be prescribed.
- (2) Any Producer Company may, for promotion of its objectives acquire the shares of another Producer Company.

(3) Any Producer Company may subscribe to the share capital of, or enter into any agreement or other arrangement, whether by way of formation of its subsidiary company, joint venture or in any other manner with any body corporate, for the purpose of promoting the objects of the Producer Company by special resolution in this behalf.

(4) Any Producer Company, either by itself or together with its subsidiaries, may invest, by way of subscription, purchase or otherwise, shares in any other company, other than a Producer Company, specified under sub-section (2), or subscription of capital under sub-section (3), for an amount not exceeding thirty per cent of the aggregate of its paid-up capital and free reserves :

**Provided** that a Producer Company may, by special resolution passed in its general meeting and with prior approval of the Central Government, invest in excess of the limits specified in this section.

(5) All investments by a Producer Company may be made if such investments are consistent with the objects of the Producer Company.

(6) The Board of a Producer Company may, with the previous approval of Members by a special resolution, dispose of any of its investments referred to in sub-sections (3) and (4).

(7) Every Producer Company shall maintain a register containing particulars of all the investments, showing the names of the companies in which shares have been acquired, number and value of shares ; the date of acquisition ; and the manner and price at which any of the shares have been subsequently disposed of.

(8) The register referred to in sub-section (7) shall be kept at the registered office of the Producer Company and the same shall be open to inspection by any Member who may take extracts therefrom.

## **CHAPTER VIII: PENALTIES**

### **581ZM. PENALTY FOR CONTRAVENTION**

(1) If any person, other than a Producer Company registered under this Part, carries on business under any name which contains the words "Producer Company Limited", he shall be punishable with fine which may extend to ten thousand rupees for every day during which such name has been used by him.

(2) If a director or an officer of a Producer Company, who wilfully fails to furnish any information relating to the affairs of the Producer Company required by a Member or a person duly authorised in this behalf, he shall be liable to imprisonment for a term which may extend to six months and with fine equivalent to five per cent of the turnover of that company during preceding financial year.

(3) If a director or officer of a Producer Company -

(a) makes a default in handing over the custody of books of account and other documents or property in his custody to the Producer Company of which he is a director or officer ; or

(b) fails to convene annual general meeting or other general meetings, he shall be punishable with fine which may extend to one lakh rupees, and in the case of a continuing default or failure, with an additional fine which may extend to ten thousand rupees for every day during which such default or failure continues.

## **CHAPTER IX: AMALGAMATION, MERGER OR DIVISION**

### **581ZN. AMALGAMATION, MERGER OR DIVISION, ETC., TO FORM NEW PRODUCER COMPANIES**

(1) A Producer Company may, by a resolution passed at its general meeting,-

(a) decide to transfer its assets and liabilities, in whole or in part, to any other producer Company, which agrees to such transfer by a resolution passed at its general meeting, for any of the objects specified in section 581B ;

(b) divide itself into two or more new Producer Companies.

(2) Any two or more Producer Companies may, by a resolution passed at any general or special meetings of its Members, decide to -

(a) amalgamate and form a new Producer Company ; or

(b) merge one Producer Company (hereafter referred to as "merging company") with another Producer Company (hereafter referred to as "merged company").

(3) Every resolution of a Producer Company under this section shall be passed at its general meeting by a majority of total Members, with right of vote not less than two-thirds of its Members present and voting and such resolution shall contain all particulars of the transfer of assets and liabilities, or division, amalgamation, or merger, as the case may be.

(4) Before passing a resolution under this section, the Producer Company shall give notice thereof in writing together with a copy of the proposed resolution to all the Members and creditors who may give their consent.

(5) Notwithstanding anything contained in articles or in any contract to the contrary, any Member, or any creditor not consenting to the resolution shall, during the period of one month of the date of service of the notice on him, have the option, -

(a) in the case of any such Member, to transfer his shares with the approval of the Board to any active Member thereby ceasing to continue as a Member of that company ; or

(b) in the case of a creditor, to withdraw his deposit or loan or advance, as the case may be.

(6) Any Member or creditor, who does not exercise his option within the period specified in sub-section (5), shall be deemed to have consented to the resolution.

(7) A resolution passed by a Producer Company under this section shall not take effect until the expiry of one month or until the assent thereto of all the Members and creditors has been obtained, whichever is earlier.

- (8) The resolution referred to in this section shall provide for -
- (a) the regulation of conduct of the Producer Company's affairs in the future ;
  - (b) the purchase of shares or interest of any Members of the Producer Company by other Members or by the Producer Company ;
  - (c) in the case of purchase of shares of one Producer Company by another Producer Company, the consequent reduction of its share capital ;
  - (d) termination, setting aside or modification of any agreement, howsoever arrived between the company on the one hand and the directors, secretaries and manager on the other hand, apart from such terms and conditions as may, in the opinion of the majority of shareholders, be just and equitable in the circumstances of the case;
  - (e) termination, setting aside or modification of any agreement between the Producer Company and any person not referred to in clause (d):
- Provided** that no such agreement shall be terminated, set aside or modified except after giving due notice to the party concerned :
- Provided further** that no such agreement shall be modified except after obtaining the consent of the party concerned;
- (f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property, made or done by or against the Producer Company within three months before the date of passing of the resolution, which would if made or done against any individual, be deemed in his insolvency to be a fraudulent preference ;
  - (g) the transfer to the merged company of the whole or any part of the undertaking, property or liability of the Producer Company ;
  - (h) the allotment or appropriation by the merged company of any shares, debentures, policies, or other like interests in the merged company;
  - (i) the continuation by or against the merged company of any legal proceedings pending by or against any Producer Company ;
  - (j) the dissolution, without winding up, of any Producer Company ;
  - (k) the provision to be made for the Members or creditors who make dissent ;
  - (l) the taxes if any, to be paid by the Producer Company ;
  - (m) such incidental, consequential and supplemental matters as are necessary to secure that the division, amalgamation or merger shall be fully and effectively carried out.
- (9) When a resolution passed by a Producer Company under this section takes effect, the resolution shall be a sufficient conveyance to vest the assets and liabilities in the transferee.
- (10) The Producer Company shall make arrangements for meeting in full or otherwise satisfying all claims of the Members and the creditors who exercise the option, within the period specified in sub-section (4), not to continue as the Member or creditor, as the case may be.
- (11) Where the whole of the assets and liabilities of a Producer Company are transferred to another Producer Company in accordance with the provisions of sub-section (9), or where there is merger under sub-section (2), the registration of the first mentioned Company or the merging company, as the case may be, shall stand cancelled and that Company shall be deemed to have been dissolved and shall cease to exist forthwith as a corporate body.
- (12) Where two or more Producer Companies are amalgamated into a new Producer Company in accordance with the provisions of sub-section (2) and the Producer Company so formed is duly registered by the Registrar, the registration of each of the amalgamating companies shall stand cancelled forthwith on such registration and each of the Companies shall thereupon cease to exist as a corporate body.
- (13) Where a Producer Company divides itself into two or more Producer Companies in accordance with the provisions of clause (b) of sub-section (1) and the new Producer Companies are registered in accordance with the provisions of sub-section (8), the registration of the erstwhile Producer Company shall stand cancelled forthwith and that Company shall be deemed to have been dissolved and cease to exist as a corporate body.
- (14) The amalgamation, merger or division of companies under the foregoing sub-sections shall not in any manner whatsoever affect the pre-existing rights or obligations and any legal proceedings that might have been continued or commenced by or against any erstwhile company before the amalgamation, merger or division, may be continued or commenced by, or against, the concerned resulting company, or merged company, as the case may be.
- (15) The Registrar shall strike off the names of every Producer Company deemed to have been dissolved under sub-sections (11) to (14).
- (16) Any member or creditor or employee aggrieved by the transfer of assets, division, amalgamation or merger may, within thirty days of the passing of the resolution, prefer an appeal to the High Court.
- (17) The High Court shall, after giving a reasonable opportunity to the person concerned, pass such orders thereon as it may deem fit.
- (18) Where an appeal has been filed under sub-section (16), the transfer of assets, division, amalgamation or merger of the Producer Company shall be subject to the decision of the High Court.

## **CHAPTER X: RESOLUTION OF DISPUTES**

### **581ZO. DISPUTES**

- (1) Where any dispute relating to the formation, management or business of a Producer Company arises -
- (a) amongst Members, former Members or persons claiming to be Members or nominees of deceased Members ; or
  - (b) between a Member, former Member or a person claiming to be a Member, or nominee of deceased Member and the Producer Company, its Board of directors, office-bearers, or liquidator, past or present ; or



(c) between the Producer Company or its Board, and any director, office bearer or any former director, or the nominee, heir or legal representative of any deceased director of the Producer Company, such dispute shall be settled by conciliation or by arbitration as provided under the Arbitration and Conciliation Act, 1996 (26 of 1996) as if the parties to the dispute have consented in writing for determination of such disputes by conciliation or by arbitration and the provisions of the said Act shall apply accordingly.

Explanation. - For the purposes of this section, a dispute shall include -

(a) a claim for any debt or other amount due ;

(b) a claim by surety against the principal debtor, where the Producer Company has recovered from the surety amount in respect of any debtor or other amount due to it from the principal debtor as a result of the default of the principal debtor whether such debt or amount due be admitted or not ;

(c) a claim by Producer Company against a Member for failure to supply produce as required of him ;

(d) a claim by a Member against the Producer Company for not taking goods supplied by him.

(2) If any question arises whether the dispute relates to formation, management or business of the Producer Company, the question shall be referred to the arbitrator, whose decision thereon shall be final.

## **CHAPTER XI: MISCELLANEOUS PROVISIONS**

### **581ZP. STRIKE OFF NAME OF PRODUCER COMPANY**

(1) Where a Producer Company fails to commence business within one year of its registration or ceases to transact business with the Members or if the Registrar is satisfied, after making such inquiry as he thinks fit, that the Producer Company is no longer carrying on any of its objects specified in section 581B, he shall make an order striking off the name of the Producer Company, which shall thereupon cease to exist forthwith :

**Provided** that no such order cancelling the registration as aforesaid shall be passed until a notice to show cause has been given by the Registrar to the Producer Company with a copy to all its directors on the proposed action and reasonable opportunity to represent its case has been given.

(2) Where the Registrar has reasonable cause to believe that a Producer Company is not maintaining any of the mutual assistance principles specified, he shall strike its name off the register in accordance with the provisions contained in section 560 of this Act.

(3) Any Member of a Producer Company, who is aggrieved by an order made under sub-section (1), may appeal to the <sup>1</sup>Company Law Board within sixty days of the order.

(4) Where an appeal is filed under sub-section (3), the order striking off the name shall not take effect until the appeal is disposed of.

1. To be read as 'National Company Law Tribunal'.

### **581ZQ. PROVISIONS OF THIS PART TO OVERRIDE OTHER LAWS**

The provisions of this Part shall have effect notwithstanding anything inconsistent therewith contained in this Act or any other law for the time being in force or any instrument having effect by virtue of any such law ; but the provisions of any such Act or law or instrument insofar as the same are not varied by, or are inconsistent with, the provisions of this Part shall apply to the Producer Company.

### **581ZR. APPLICATION OF PROVISIONS RELATING TO PRIVATE COMPANIES**

All the limitations, restrictions and provisions of this Act, other than those specified in this Part, applicable to a private company, shall, as far as may be, apply to a Producer Company, as if it is a private limited company under this Act insofar as they are not in conflict with the provisions of this Part.

## **CHAPTER XII: RECONVERSION OF PRODUCER COMPANY TO INTER-STATE CO-OPERATIVE SOCIETY**

### **581ZS. RECONVERSION OF PRODUCER COMPANY TO INTER-STATE CO-OPERATIVE SOCIETY**

(1) Any Producer Company, being an erstwhile inter-State co-operative society, formed and registered under this Part, may make an application -

(a) after passing a resolution in the general meeting by not less than two-third of its Members present and voting ; or

(b) on request by its creditors representing three-fourth value of its total creditors, to the High Court for its re-conversion to the inter-State co-operative society.

(2) The High Court shall, on the application made under sub-section (1), direct holding meeting of its Members or such creditors, as the case may be, to be conducted in such manner as it may direct.

(3) If a majority in number representing three-fourths in value of the creditors, or Members, as the case may be, present and voting in person at the meeting conducted in pursuance of the directions of the High Court under sub-section (2), agree for re-conversion, if sanctioned by the High Court, be binding on all the Members and all the creditors, as the case may be, and also on the company which is being converted.

**Provided** that no order sanctioning re-conversion shall be made by the Court unless the Court is satisfied that the company or any other person by whom an application has been made under sub-section (1) has disclosed to the Court, by affidavit or otherwise, all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company, the pendency of any investigation proceedings in relation to the company under sections 235 to 251, and the like.

(4) An order made by the Court under sub-section (3) shall have no effect until a certified copy of the order has been filed with the Registrar.

(5) A copy of every such order shall be annexed to every copy of the memorandum of the company issued after the certified copy of the order has been filed as aforesaid, or in the case of a company not having a memorandum, to every copy so issued of the instrument constituting or defining the constitution of the company.

(6) If default is made in complying with sub-section (4), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one hundred rupees, for each copy in respect of which default is made.

(7) The Court may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the company on such terms as the Court thinks fit, until the application is finally disposed of.

(8) Every Producer Company which has been sanctioned reconversion by the High Court, shall make an application, under the Multi-State Co-operative Societies Act, 1984 (51 of 1984) or any other law for the time being in force for its registration as multi-State co-operative society or co-operative society, as the case may be, within six months of sanction by the High Court and file a report thereof to the High Court and the Registrar of companies and to the Registrar of the co-operative societies under which it has been registered as a multi-State co-operative society or co-operative society, as the case may be.

## **581ZT. POWER TO MODIFY ACT IN ITS APPLICATION TO PRODUCER COMPANIES**

(1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act (other than those contained in this Part) specified in the said notification -

(a) shall not apply to the Producer Companies or any class or category thereof ; or

(b) shall apply to the Producer Companies or any class or category thereof with such exception or adaptation as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.]

## **PART X: WINDING UP OF UNREGISTERED COMPANIES**

### **582. MEANING OF "UNREGISTERED COMPANY"**

For the purposes of this Part, the expression "unregistered company" -

(a) shall not include -

(i) a railway company incorporated by any Act of Parliament or other Indian law or any Act of Parliament of the United Kingdom ;

(ii) a company registered under this Act ; or

(iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately before the separation of that country from India ; and

(b) save as aforesaid, shall include any partnership, association or company consisting of more than seven members at the time when the petition for winding up the partnership, association or company, as the case may be, is presented before the <sup>1</sup>[Tribunal].

1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

### **583. WINDING UP OF UNREGISTERED COMPANIES**

(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the exceptions and additions mentioned in sub-sections <sup>1</sup>[(3)] to (5).

(2) <sup>2</sup>[\* \* \* ]

(3) No unregistered company shall be wound up under this Act voluntarily <sup>3</sup>[by the Tribunal].

(4) The circumstances in which an unregistered company may be wound up are as follows :

(a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs ;

(b) if the company is unable to pay its debts ;

(c) if the <sup>4</sup>[Tribunal] is of opinion that it is just and equitable that the company should be wound up.

(5) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts -

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, <sup>5</sup>[\*\*\*] manager or principal officer of the company, or by otherwise serving in such manner as the <sup>3</sup>[Tribunal] may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor ;

(b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, from the company, or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, <sup>6</sup>[\*\*\*] manager or principal officer of the company or by otherwise serving the same in such manner as the <sup>4</sup>[Tribunal] may approve or direct, the company has not, within ten days after service of the notice, -

(i) paid, secured or compounded for the debt or demand ; or

(ii) procured the suit or other legal proceeding to be stayed ; or

(iii) indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same ;

(c) if execution or other process issued on a decree or order of any court <sup>8</sup>[or Tribunal] in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part ;

(d) if it is otherwise proved to the satisfaction of the <sup>2</sup>[Tribunal] that the company is unable to pay its debts.

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1. Substituted for "(2)" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

2. Omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified) Prior to its omission, sub-section (2) read as under :

"(2) For the purpose of determining the Court having jurisdiction in the matter of the winding up, an unregistered company shall be deemed to be registered in the State where its principal place of business is situate or, if it has a principal place of business situate in more than one State, then, in each State where it has a principal place of business ; and the principal place of business situate in that State in which proceedings are being instituted shall, for all the purposes of the winding up, be deemed to be the registered office of the company."

3. Substituted for "or subject to the supervision of the court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

4. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

5. Words "managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

6. Words "managing agent, secretaries and treasurers," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

7. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

8. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **584. POWER TO WIND UP FOREIGN COMPANIES, ALTHOUGH DISSOLVED**

Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

#### **585. CONTRIBUTORIES IN WINDING UP OF UNREGISTERED COMPANY**

(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory, who is liable to pay, or contribute to the payment of, -

(a) any debt or liability of the company ; or

(b) any sum for the adjustment of the rights of the members among themselves ; or

(c) the costs, charges and expenses of winding up the company.

(2) Every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any liability to pay or contribute as aforesaid.

(3) In the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

#### **586. POWER TO STAY OR RESTRAIN PROCEEDINGS**

The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

#### **587. SUITS, ETC., STAYED ON WINDING UP ORDER**

Where an order has been made for winding up an unregistered company, no suit or other legal proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the <sup>4</sup>[Tribunal] and except on such terms as the <sup>1</sup>[Tribunal] may impose.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002(w.e.f. a date yet to be notified)

#### **588. DIRECTIONS AS TO PROPERTY IN CERTAIN CASES**

(1) If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the <sup>1</sup>[Tribunal] may, by the winding up order or by any subsequent order, direct that all or any part of the property, movable or immovable (including actionable claims), belonging to the company or held by trustees on its behalf, shall vest in the Official Liquidator by his official name ; and thereupon the property or the part thereof specified in the order shall vest accordingly.

(2) The Official Liquidator may, after giving such indemnity, if any, as the <sup>1</sup>[Tribunal] may direct, bring or defend in his official name any suit or legal proceeding relating to that property, or which it is necessary to bring or defend for the purpose of effectually winding up the company and recovering its property.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **589. PROVISIONS OF PART CUMULATIVE**

(1) The provisions of this Part with respect to unregistered companies shall be in addition to and not in derogation of, any provisions hereinbefore in this Act contained with respect to the winding up of companies by the <sup>1</sup>[Tribunal].

(2) The <sup>1</sup>[Tribunal] or Official Liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the <sup>1</sup>[Tribunal] or Official Liquidator in winding up companies formed and registered under this Act :

**Provided** that an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

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1. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

#### **590. SAVING AND CONSTRUCTION OF ENACTMENTS CONFERRING POWER TO WIND UP PARTNERSHIP, ASSOCIATION OR COMPANY IN CERTAIN CASES**

Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company being wound up, or being wound up as a company or as an unregistered company, under the Indian Companies Act, 1913 (7 of 1913) or any Act repealed by that Act :

**Provided** that references in any such enactment to any provision contained in the Indian Companies Act, 1913 (7 of 1913) or in any Act repealed by that Act shall be read as references to the corresponding provision, if any contained in this Act.

### **PART XI: COMPANIES INCORPORATED OUTSIDE INDIA**

#### ***Provisions as to establishment of places of business in India***

#### **591. APPLICATION OF SECTIONS 592 TO 602 TO FOREIGN COMPANIES**

(1) Sections 592 to 602, both inclusive, shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely : -

(a) companies incorporated outside India which, after the commencement of this Act, establish a place of business within India ; and

(b) companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

(2) Notwithstanding anything contained in sub-section (1), where not less than fifty per cent, of the paid-up share capital (whether equity or preference or partly equity and partly preference) of a company incorporated outside India and having an established place of business in India, is held by one or more citizens of India or by one or more bodies corporate incorporated in India, or by one or more citizens of India and one or more bodies corporate incorporated in India, whether singly or in the aggregate, such company shall comply with such of the provisions of this Act as may be prescribed with regard to the business carried on by it in India, as if it were a company incorporated in India.

#### **592. DOCUMENTS, ETC., TO BE DELIVERED TO REGISTRAR BY FOREIGN COMPANIES CARRYING ON BUSINESS IN INDIA**

(1) Foreign companies which, after the commencement of this Act, establish a place of business within India shall, within thirty days of the establishment of the place of business, deliver to the Registrar for registration -

(a) a certified copy of the charter, statutes, or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company ; and, if the instrument is not in the English language, a certified translation thereof;

(b) the full address of the registered or principal office of the company ;

(c) a list of the directors and secretary of the company, containing the particulars mentioned in sub-section (2) ;

(d) the name and address or the names and addresses of some one or more persons resident in India, authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company ; and

(e) the full address of the office of the company in India which is to be deemed its principal place of business in India.

(2) The list referred to in clause (c) of sub-section (1) shall contain the following particulars, that is to say :

(a) with respect to each director, -

(i) in the case of an individual, his present name and surname in full, any former name or names and surname or surnames in full, his usual residential address, his nationality, and if that nationality is not the nationality of origin, his nationality of origin, and his business occupation, if any, or if he has no business occupation but holds any other directorship or directorships, particulars of that directorship or of some one of those directorships ; and

(ii) in the case of a body corporate, its corporate name and registered or principal office ; and the full name, address, nationality, and nationality of origin, if different from that nationality, of each of its directors ;

(b) with respect to the secretary, or where there are joint secretaries, with respect to each of them -

(i) in the case of an individual, his present name and surname, any former name or names and surname or surnames, and his usual residential address ; and

(ii) in the case of a body corporate, its corporate name and registered or principal office :

**Provided** that, where all the partners in a firm are joint secretaries of the company, the name and principal office of the firm may be stated instead of the particulars mentioned in clause (b) of this sub-section.

(3) Clauses (2) and (3) of the *Explanation* to sub-section (1) of section 303 shall apply for the purpose of the construction of references in sub-section (2) to present and former names and surnames as they apply for the purposes of the construction of such references in sub-section (1) of section 303.

(4) Foreign companies, other than those mentioned in sub-section (1), shall, if they have not delivered to the Registrar before the commencement of this Act the documents and particulars specified in sub-section (1) of section 277 of the Indian Companies Act, 1913 (7 of 1913), continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act.

### **593. RETURN TO BE DELIVERED TO REGISTRAR BY FOREIGN COMPANY WHERE DOCUMENTS, ETC., ALTERED**

If any alteration is made or occurs in -

(a) the charter, statutes, or memorandum and articles of a foreign company or other instrument constituting or defining the constitution of a foreign company ; or

(b) the registered or principal office of a foreign company ; or

(c) the directors or secretary of a foreign company ; or

(d) the name or address of any of the persons authorised to accept service on behalf of a foreign company ; or

(e) the principal place of business of the company in India ;

the company shall, within the prescribed time, deliver to the Registrar for registration a return containing the prescribed particulars of the alteration.

### **594. ACCOUNTS OF FOREIGN COMPANY**

(1) Every foreign company shall, in every calendar year, -

(a) make out a balance sheet and profit and loss account in such form, containing such particulars and including or having annexed or attached thereto such documents (including, in particular documents relating to every subsidiary of the foreign company) as under the provisions of this Act it would, if it had been a company within the meaning of this Act, have been required to make out and lay before the company in general meeting ; and

(b) deliver <sup>1</sup>[a copy] of those documents to the Registrar :

**Provided** that the Central Government may, by notification in the Official Gazette, direct that, in the case of any foreign company or class of foreign company the requirements of clause (a) shall not apply, or shall apply, subject to such exceptions and modifications as may be specified in the notification.

(2) If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof.

(3) Every foreign company shall send to the Registrar with the documents required to be delivered to him under sub-section (1), <sup>1</sup>[a copy] of a list in the prescribed form of all places of business established

### **595. OBLIGATION TO STATE NAME OF FOREIGN COMPANY, WHETHER LIMITED, AND COUNTRY WHERE INCORPORATED**

Every foreign company shall -

(a) in every prospectus inviting subscriptions in India for its shares or debentures, state the country in which the company is incorporated ;

(b) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate ;

(c) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, bill-heads and letter paper, and in all notices, and other official publications of the company ; and

(d) if the liability of the members of the company is limited, cause notice of that fact -

(i) to be stated in every such prospectus as aforesaid and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters ; and

(ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.



## 596. SERVICE ON FOREIGN COMPANY

Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name has been delivered to the Registrar under the foregoing provisions of this Part and left at, or sent by post to, the address which has been so delivered :

**Provided** that -

- (a) where any such company makes default in delivering to the Registrar the name and address of a person resident in India who is authorised to accept on behalf of the company service of process, notices or other documents ; or
  - (b) if at any time all the persons whose names and addresses have been so delivered are dead or have ceased so to reside, or refuse to accept service on behalf of the company, or for any reason, cannot be served ;
- a document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in India.

## 597. OFFICE WHERE DOCUMENTS TO BE DELIVERED

(1) Any document which any foreign company is required to deliver to the Registrar shall be delivered to the Registrar having jurisdiction over New Delhi, and references to the Registrar in this Part [except in sub-section (2)] shall be construed accordingly.

(2) Any such document as is referred to in sub-section (1) shall also be delivered to the Registrar of the State in which the principal place of business of the company is situate.

(3) If any foreign company ceases to have a place of business in India, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.

## 598. PENALTIES

If any foreign company fails to comply with any of the foregoing provisions of this Part, the company, and every officer or agent of the company who is in default, shall be punishable with fine which may extend to <sup>1</sup>[ten] thousand rupees, and in the case of a continuing offence, with an additional fine which may extend to <sup>2</sup>[one thousand] rupees for every day during which the default continues.

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1. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
  2. Substituted for "one hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

## 599. COMPANY'S FAILURE TO COMPLY WITH PART NOT TO AFFECT ITS LIABILITY UNDER CONTRACTS, ETC

Any failure by a foreign company to comply with any of the foregoing provisions of this Part shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof ; but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until it has complied with the provisions of this Part.

## 600. REGISTRATION OF CHARGES, APPOINTMENT OF RECEIVER AND BOOKS OF ACCOUNT

(1) The provisions of Part V (sections 124 to 145) shall apply *mutatis mutandis* to -

(a) charges on properties in India which are created by a foreign company after the 15th day of January, 1937 ; and

(b) charges on property in India which is acquired by any foreign company after the day aforesaid :

**Provided** that where a charge is created, or the completion of the acquisition of the property takes place, outside India, sub-section (5) of section 125 and the proviso to sub-section (1) of section 127 shall have effect as if the property, wherever situated, were situated outside India.

(2) The provisions of section 118 shall apply *mutatis mutandis* to a foreign company.

(3) (a) The provisions of section 209 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India the books of account referred to in that section, with respect to moneys received and expended, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.

(b) On and from the commencement of the Companies (Amendment) Act, 1974, -

(i) the provisions of section 159 shall, subject to such modifications or adaptations as may be made therein by the rules made under this Act, apply to a foreign company having an established place of business in India, as they apply to a company incorporated in India ;

(ii) the provisions of sections 209, 209A, 233A and 233B and sections 234 to 246 (both inclusive) shall, so far as may be, apply only to the Indian business of a foreign company having an established place of business in India, as they apply to a company incorporated in India.

(4) In applying the sections referred to in sub-sections (1), (2) and (3) to a foreign company as aforesaid, references in those sections to the Registrar shall be deemed to be references to the Registrar having jurisdiction over New Delhi, and references to the registered office of the foreign company shall be deemed to be references to its principal place of business in India.

## 601. FEES FOR REGISTRATION OF DOCUMENTS UNDER PART

There shall be paid to the Registrar for registering any document required by the foregoing provisions of this Part to be registered by him, such fees as may be prescribed.

## 602. INTERPRETATION OF FOREGOING SECTIONS OF PART

For the purposes of the foregoing provisions of this Part -

- (a) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation ;
- (b) the expression "director", in relation to a company, includes any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act ;
- (c) the expression "place of business" includes a share transfer or share registration office ;
- (d) the expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Act ; and
- (e) the expression "secretary" includes any person occupying the position of secretary, by whatever name called.

### *Prospectuses*

## 603. DATING OF PROSPECTUS AND PARTICULARS TO BE CONTAINED THEREIN

(1) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated ; and

(a) contains particulars with respect to the following matters : -

- (i) the instrument constituting or defining the constitution of the company ;
- (ii) the enactments or provisions having the force of enactments, by or under which the incorporation of the company was effected ;
- (iii) an address in India where the said instrument, enactments, or provision, or copies thereof, and if the same are not in English, a translation thereof certified in the prescribed manner, can be inspected ;
- (iv) the date on which and the country in which the company was incorporated ;
- (v) whether the company has established a place of business in India, and, if so, the address of its principal office in India ; and

(b) subject to the provisions of this section, states the matters specified in Part I of Schedule II and sets out the reports specified in Part II of that Schedule, subject always to the provisions contained in Part III of that Schedule :

**Provided** that sub-clauses (i), (ii) and (iii) of clause (a) shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business ; and in the application of Part I of Schedule II for the purposes of this sub-section, clause (a) thereof shall have effect with the substitution, for references to the articles, of references to the constitution of a company.

(2) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement imposed by virtue of clause (a) or (b) of sub-section (1), or purporting to affect him with notice of any contract, document or matter not specifically referred to in the prospectus, shall be void.

(3) No person shall issue to any person in India a form of application for shares in or debentures of such a company or intended company as is mentioned in sub-section (1), unless the form is issued with a prospectus which complies with the provisions of this part and the issue whereof in India does not contravene the provisions of section 604 :

**Provided** that this sub-section shall not apply if it is shown that the form of application was issued in connection with a *bona fide* invitation to a person to enter into an underwriting agreement with respect of the shares or debentures.

(4) In the event of non-compliance with or contravention of any of the requirements imposed by clauses (a) and (b) of sub-section (1), a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if -

- (a) as regards any matter not disclosed, he proves that he had no knowledge thereof ; or
- (b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part ; or
- (c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial, or was otherwise such as ought in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused :

**Provided** that, in the event of failure to include in a prospectus a statement with respect to the matters contained in clause 18 of Schedule II, no director or other person shall incur any liability in respect of the failure, unless it be proved that he had knowledge of the matters not disclosed.

(5) This section -

(a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons ; and

(b) except insofar as it requires a prospectus to be dated, shall not apply to the issue of a prospectus relating to shares or debentures which are or are to be in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange ;

but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.

(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or under this Act apart from this section.

## 604. PROVISIONS AS TO EXPERT'S CONSENT AND ALLOTMENT

(1) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India -

(a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, his written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid ; or

(b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions (other than penal provisions) of sections 72, 73 and 74, so far as applicable.

(2) In this section, the expression "expert" includes an engineer, a valuer, an accountant and any other person whose profession gives authority to a statement made by him ; and for the purposes of this section a statement shall be deemed to be included in a prospectus if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

## **605. REGISTRATION OF PROSPECTUS**

(1) No person shall issue, circulate or distribute in India any prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless before the issue, circulation or distribution of the prospectus in India, a copy thereof certified by the chairman and two other directors of the company as having been approved by resolution of the managing body has been delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered, and there is endorsed on or attached to the copy -

(a) any consent to the issue of the prospectus required by section 604;

(b) a copy of any contract required by clause 16 of Schedule II to be stated in the prospectus or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(c) where the persons making any report required by Part II of Schedule II have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.

(2) The references in clause (b) of sub-section (1) to the copy of a contract required thereby to be endorsed on or attached to a copy of the prospectus shall, in the case of a contract wholly or partly in a language other than English, be taken as references to a copy of a translation of the contract in English or a copy embodying a translation in English of the parts which are not in English, as the case may be, being a translation certified in the prescribed manner to be a correct translation.

## **<sup>1</sup>[605A. OFFER OF INDIAN DEPOSITORY RECEIPTS**

Notwithstanding anything contained in any other law for the time being in force, the Central Government may make rules applicable for—

(a) the offer of Indian Depository Receipts;

(b) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;

(c) the manner in which the Indian Depository Receipts shall be dealt in a depository mode and by custodian and underwriters;

(d) the manner of sale, transfer or transmission of Indian Depository Receipts,

by a company incorporated, or to be incorporated outside India, whether the company has or has not been established or, will or will not establish any place of business in India.]

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1. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

## **606. PENALTY FOR CONTRAVENTION OF SECTIONS 603, 604 AND 605**

Any person who is knowingly responsible -

(a) for the issue, circulation or distribution of a prospectus ; or

(b) for the issue of a form of <sup>2</sup>[application for shares, debentures or Indian Depository Receipt] ;

in contravention of any of the provisions of sections 603, 604 <sup>1</sup>[,605 and 605A], shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to <sup>2</sup>[fifty] thousand rupees, or with both.

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1. Substituted for "application for shares or debentures" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "and 605" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Substituted for "five" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

## **607. CIVIL LIABILITY FOR MIS-STATEMENTS IN PROSPECTUS**

Section 62 shall extend to every prospectus offering for subscription shares in or debentures of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, with the substitution for references in section 62 to section 60 of this Act, of references to section 604 thereof.

## 608. INTERPRETATION OF PROVISIONS AS TO PROSPECTUSES

(1) Where any document by which any shares in, or debentures of, a company incorporated outside India are offered for sale to the public, would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 64, to be a prospectus issued by the company, that document shall be deemed, for the purposes of this Part, to be a prospectus issued by the company offering such shares or debentures for subscription.

(2) An offer of shares or debentures for subscription or sale to any person whose ordinary business it is to buy or sell shares or debentures, whether as principal or as agent, shall not be deemed to be an offer to the public for the purposes of this Part.

(3) In this Part, the expressions "prospectus", "shares" and "debentures" have the same meanings as when used in relation to a company incorporated under this Act.

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1. Substituted for the words "three copies" by SO 70(E) dated 3rd February 2009 w.e.f. 03-02-2009.

## PART XII: REGISTRATION OFFICES AND OFFICERS AND FEES

### 609. REGISTRATION OFFICES

(1) For the purposes of the registration of companies under this Act, there shall be offices at such places as the Central Government thinks fit.

(2) The Central Government may appoint such Registrars, and such Additional, Joint, Deputy and Assistant Registrars as it thinks necessary for the registration of companies under this Act, and may make regulations with respect to their duties.

(3) The salaries of the persons appointed under this section shall be fixed by the Central Government.

(4) The Central Government may direct a seal or seals to be prepared for the authentication of documents required for, or connected with, the registration of companies.

(5) Whenever any act is by this Act directed to be done to or by the Registrar, it shall, until the Central Government otherwise directs, be done to or by the existing Registrar of Companies or joint-stock companies, or in his absence, to or by such person as the Central Government may for the time being authorise :

**Provided** that in the event of the Central Government altering the constitution of the existing registry offices or any of them, any such act shall be done to or by such officer and at such place, with reference to the local situation of the registered offices of the companies concerned, as the Central Government may appoint.

### 610. INSPECTION, PRODUCTION AND EVIDENCE OF DOCUMENTS KEPT BY REGISTRAR

(1) Save as otherwise provided elsewhere in this Act, any person may -

(a) inspect any documents kept by the Registrar, in accordance with the rules made under the Destruction of Records Act, 1917 (5 of 1917) being documents filed or registered by him in pursuance of this Act, or making a record of any fact required or authorised to be recorded or registered in pursuance of this Act, on payment for each inspection of <sup>1</sup>[such fees as may be prescribed] ;

(b) require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document to be certified by the Registrar, on payment of <sup>2</sup>[such fees as may be prescribed] :

**Provided** that the rights conferred by this sub-section shall be exercisable -

(i) in relation to documents delivered to the Registrar with a prospectus in pursuance of sub-clause (i) of clause (b) of sub-section (1) of section 60, only during the fourteen days beginning with the date of publication of the prospectus ; and at other times, only with the permission of the Central Government ; and

(ii) in relation to documents so delivered in pursuance of clause (b) of sub-section (1) of section 605, only during the fourteen days beginning with the date of the prospectus ; and at other times, only with the permission of the Central Government.

(2) No process for compelling the production of any document kept by the Registrar shall issue from any Court <sup>3</sup>[or the <sup>4</sup>[Tribunal]] except with the leave of that Court <sup>3</sup>[or the <sup>4</sup>[Tribunal]] ; and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the Court <sup>1</sup>[or the <sup>2</sup>[Tribunal]].

(3) A copy of, or extract from, any document kept and registered at any of the offices for the registration of companies under this Act, certified to be a true copy under the hand of the Registrar (whose official position it shall not be necessary to prove), shall, in all legal proceedings, be admissible in evidence as of equal validity with the original document.

(4) [Omitted by the Companies (Amendment) Act, 1960.]

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1. Substituted for "a fee of one rupee" by the Companies (Amendment) Act, 1988 w.e.f. 15-7-1988.

2. Substituted for following by the Companies (Amendment) Act, 1988 w.e.f. 15-7-1988 :

"a fee of five rupees in the case of a certificate of incorporation, and of one rupee for every one hundred words or fractional part thereof required to be copied in the case of a certified copy of extract".

3. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

4. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

<sup>1</sup>**[610A. ADMISSIBILITY OF MICRO FILMS, FACSIMILE COPIES OF DOCUMENTS, COMPUTER PRINTOUTS AND DOCUMENTS ON COMPUTER MEDIA AS DOCUMENTS AND AS EVIDENCE**

(1) Notwithstanding anything contained in any other law for the time being in force, -

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not) ; or

(b) a facsimile copy of a document ; or

(c) a statement contained in a document and included in a printed material produced by a computer (hereinafter referred to as a "computer printout"), if the conditions mentioned in sub-section (2) are satisfied, shall be deemed to be also a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence should be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following namely : -

(a) the information contained in the statement reproduces or is derived from returns and document filed by the company on paper or on computer network, floppy, diskette, magnetic cartridge tape, CD-rom or any other computer readable media ;

(b) while receiving returns or documents on computer media, necessary checks by scanning the documents filed on computer media will be carried out and media will be duly authenticated by the Registrar ; and

(c) the Registrar shall also take due care to preserve the computer media by duplicating, transferring, mastering or storage without loss of data.]

<sup>2</sup>**[610B. PROVISIONS RELATING TO FILING OF APPLICATIONS, DOCUMENTS INSPECTION, ETC. THROUGH ELECTRONIC FORM.**

(1) Notwithstanding anything contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000 (21 of 2000), the Central Government may, by notification in the Official Gazette, make rules so as to require from such date as may be specified in the rules, that

(a) such applications, balance sheet, prospectus, return, declaration, memorandum of association, articles of association, particulars of charges, or any other particulars or document as may be required to be filed or delivered under this Act or rules made thereunder, shall be filed, through the electronic form and authenticated in such manner as may be specified in the rules;

(b) such document, notice, any communication or intimation, required to be served or delivered under this Act, shall be served or delivered under this Act through the electronic form and authenticated in such manner as may be specified in the rules;

(c) such applications, balance sheet, prospectus, return, register, memorandum of association, articles of association, particulars of charges, or any other document and return filed under this Act or rules made thereunder shall be maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be specified in the rules;

(d) such inspections of the memorandum of association, articles of association, register, index, balance sheet, return or any other document maintained in the electronic form, which is otherwise available for such inspection under this Act or rules made thereunder, may be made by any person through the electronic form as may be specified in the rules;

(e) such fees, charges or other sums payable under this Act or rules made thereunder shall be paid through the electronic form and in such manner as may be specified in the rules;

(f) the Registrar shall, register change of registered office, alteration of memorandum of association or articles of association, prospectus, issue certificate of incorporation or certificate of commencement of business, register such document, issue such certificate, record notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or rules made thereunder or perform duties or discharge functions or exercise powers under this Act or rules made thereunder or do any act which is by this Act directed to be performed or discharged or exercised or done by the Registrar, by the electronic form, in such manner as may be specified in the rules.

(2) The Central Government may, by notification in the Official Gazette, frame a scheme to carry out the provisions specified under sub-section (1) through the electronic form:

Provided that the Central Government may appoint different dates in respect of different Registrar of Companies or Regional Directors from which such scheme shall come into force.

**610C. POWER TO MODIFY ACT IN RELATION TO ELECTRONIC RECORDS (INCLUDING THE MANNER AND FORM IN WHICH ELECTRONIC RECORDS SHALL BE FILED).**

(1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act, so far as it is required for the purpose of electronic record specified under section 610B in the electronic form,

(a) shall not apply, in relation to the matters specified under clauses (a) to (f) of sub-section (1) of section 610B, as may be specified in the notification; or

(b) shall apply, in relation to the matters specified under clauses (a) to (f) of sub-section (1) of section 610B only with such consequential exceptions, modifications or adoptions as may be specified in the notification :

**Provided** that no such notification which relates to imposition of fines or other pecuniary penalties or demand or payment of fees or contravention of any of the provisions of this Act or offence shall be issued under this sub-section.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or



more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

#### **610D. PROVIDING OF VALUE ADDED SERVICES THROUGH ELECTRONIC FORM**

The Central Government may provide such value added services through the electronic form and levy such fees as may be prescribed.

#### **610E. APPLICATION OF PROVISION OF ACT 21 OF 2000.**

All the provisions of the Information Technology Act, 2000 relating to the electronic records (including the manner and format in which the electronic records shall be filed), in so far as they are not inconsistent with this Act, shall apply, or in relation, to the records in electronic form under section 610B.]

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1. Inserted by the Companies (Amendment) Act, 1996 w.e.f. 1-3-1997.

2. Inserted by the Companies (Amendment) Act, 2006, w.e.f. **16-9-2006**. See also Companies (Electronic Filing and Authentication of Documents) Rules, 2006

#### **611. FEES IN SCHEDULE X TO BE PAID**

(1) In respect of the several matters mentioned in Schedule X, there shall, subject to the limitations imposed by that Schedule, be paid to the Registrar the several fees therein specified :

**Provided** that no fees shall be charged in respect of the registration in pursuance of Part IX of a company, if it is not registered as a limited company, or if, before its registration as a limited company, the liability of the shareholders was limited by some other Act of Parliament of any other Indian law or by an Act of Parliament of the United Kingdom, Royal Charter or Letters Patent in force in India :

**Provided further** that in the case of resolutions to which section 192 applies, not more than one fee shall be required for the filing of more resolutions than one passed in the same meeting if such resolutions are filed with the Registrar at the same time.

(2) Any document required or authorised by this Act to be filed or registered, or any fact required or authorised by this Act to be registered, with the Registrar on payment of the fee specified therefor in Schedule X, may, without prejudice to any other liability, be filed or registered after the time, if any, specified in this Act for its filing or registration on payment of such additional fee not exceeding ten times the amount of the fee so specified as the Registrar may determine.

#### **612. FEES, ETC., PAID TO REGISTRAR AND OTHER OFFICERS TO BE ACCOUNTED FOR TO CENTRAL GOVERNMENT**

All fees, charges, and other sums paid to any Registrar, any Additional, Joint, Deputy, or Assistant Registrar, or any other officer of the Central Government in pursuance of this Act shall be paid into the public account of India in the Reserve Bank of India.

#### **613. POWER OF CENTRAL GOVERNMENT TO REDUCE FEES, CHARGES, ETC**

(1) The Central Government may, by order notified in the Official Gazette, reduce the amount of any fee, charge or other sum specified in any provision contained in this Act, as payable in respect of any matter, either to the Central Government or to any Registrar, any Additional, Joint, Deputy, or Assistant Registrar or any other officer of the Central Government ; and thereupon such provision shall, during the period for which the order is in force, have effect as if the reduced fee had been substituted for the fee specified in such provision.

(2) Any order notified under sub-section (1) may, by a like order, be cancelled or varied at any time by the Central Government.

(3) Nothing in this section shall be deemed to affect the power of the Central Government under section 641 to alter any of the fees specified in Schedule X.

#### **614. ENFORCEMENT OF DUTY OF COMPANY TO MAKE RETURNS, ETC., TO REGISTRAR**

(1) If a company, having made default in complying with any provision of this Act which requires it to file or register with, or deliver or send to, the Registrar any return, account or other document, or to give notice to him of any matter, fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the <sup>1</sup>[Tribunal] may, on an application made to it by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or by any officers of the company responsible for the default.

(3) Nothing in this section shall be taken to prejudice the operation of any provisions in this or any other Act imposing penalties on a company or its officers in respect of any such default as aforesaid.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002.

#### **614A. POWER OF COURT TRYING OFFENCES UNDER THE ACT TO DIRECT THE FILING OF DOCUMENTS WITH REGISTRAR**

(1) Any Court trying an offence for a default in compliance with any provision of this Act which requires a company or its officers to file or register with, or deliver or send to, the Registrar, any return, account or other document, may at the time of sentencing, acquitting or discharging the accused, direct by order, if it thinks fit to do so, any officer or other employee of the company to file or register with, deliver or send to, the Registrar on payment of the fee including the additional fee required to be paid under section 611, such return, account or other document within such time as may be specified in the order.

(2) Any officer or other employee of the company who fails to comply with an order of the Court under sub-section (1) shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

### **PART XIII - GENERAL**

#### ***Collection of information and statistics from companies***

#### **615. POWER OF CENTRAL GOVERNMENT TO DIRECT COMPANIES TO FURNISH INFORMATION OR STATISTICS**

(1) The Central Government may, by order, require companies generally, or any class of companies, or any company, to furnish such information or statistics with regard to their or its constitution or working, and within such time, as may be specified in the order.

(2) (a) Every order under sub-section (1) addressed to companies generally or to any class of companies, shall be published in the Official Gazette and in such other manner, if any, as the Central Government may think fit.

(b) The date of publication of the order in the Official Gazette shall be deemed to be the date on which the demand for information or statistics is made on such companies or class of companies, as the case may be.

(3) Every order under sub-section (1) addressed to an individual company shall be served on it in the manner laid down in section 51.

(4) For the purpose of satisfying itself that any information or statistics furnished by a company in pursuance of any order under sub-section (1) is correct and complete, the Central Government may require such company -

(a) to produce such records or documents in its possession or under its control for inspection, before such officer and at such time as may be specified by the Central Government ; or

(b) to furnish such further information as may be specified by the Central Government and within such time as may be fixed by it.

(5) The Central Government may also, by order, direct an inquiry to be made by any person or persons named in the order -

(a) for the purpose of obtaining any information or statistics which a company has failed to furnish as required of it by an order under sub-section (1) ; or

(b) for the purpose of satisfying itself that any information or statistics furnished by a company in pursuance of an order made under sub-section (1) is correct and complete ; and insofar as such information or statistics may be found to be incorrect or incomplete, for the purpose of obtaining such information or statistics as may be necessary to make the information or statistics furnished correct and complete ; and a person or persons so appointed shall, for the purposes of such inquiry, have such powers as may be prescribed.

(6) If any company fails to comply with an order made under sub-section (1) or (4), or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the company, and every officer thereof who is in default, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to <sup>1</sup>[ten] thousand rupees, or with both.

(7) An order requiring any information or statistics to be furnished by a company may also be addressed to any person who is, or has at any time been, an officer or employee of the company, and all the provisions of this section, so far as may be, shall apply in relation to such person as they apply in relation to the company :

**Provided** that no such person shall be punishable under sub-section (6), unless the Court is satisfied that he was in a position to comply with the order and made wilful default in doing so.

(8) Where a body corporate incorporated outside India and having established an office within India, carries on business in India, all references to a company in this section shall be deemed to include references to the body corporate in relation, and only in relation, to such business.

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1. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### ***Application of Act to companies governed by special Acts***

#### **616. APPLICATION OF ACT TO INSURANCE, BANKING, ELECTRICITY SUPPLY AND OTHER COMPANIES GOVERNED BY SPECIAL ACTS**

The provisions of this Act shall apply -

(a) to insurance companies, except insofar as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 (4 of 1938) ;

(b) to banking companies, except insofar as the said provisions are inconsistent with the provisions of the <sup>1</sup>Banking Companies Act, 1949 (10 of 1949) ;

- (c) to companies engaged in the generation or supply of electricity, except insofar as the said provisions are inconsistent with the provisions of the Indian Electricity Act, 1910 (9 of 1910), or the Electricity Supply Act, 1948 (54 of 1948) ;
- (d) to any other company governed by any special Act for the time being in force, except insofar as the said provisions are inconsistent with the provisions of such special Act ;
- (e) to such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification in the Official Gazette, specify in this behalf, subject to such exceptions, modifications or adaptations, as may be specified in the notifications.

### ***Application of Act to Government companies***

#### **617. DEFINITION OF "GOVERNMENT COMPANY"**

For the purposes of this Act, Government company means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government company as thus defined.

#### **618. GOVERNMENT COMPANIES NOT TO HAVE MANAGING AGENTS**

*[Omitted by the Companies (Amendment) Act, 2000, w.e.f. 13-12-2000.]*

#### **619. APPLICATION OF SECTIONS 224 TO 233 TO GOVERNMENT COMPANIES**

(1) In the case of a Government company, the following provisions shall apply, notwithstanding anything contained in sections 224 to 233.

(2) The auditor of a Government company shall be appointed or re-appointed by <sup>1</sup>[[\*\*\*] the Comptroller and Auditor-General of India :

**Provided** that the limits specified in sub-sections (1B) and (1C) of section 224 shall apply in relation to the appointment or re-appointment of an auditor under this sub-section.

(3) The Comptroller and Auditor-General of India shall have power -

(a) to direct the manner in which the company's accounts shall be audited by the auditor appointed in pursuance of sub-section (2) and to give such auditor instructions in regard to any matter relating to the performance of his functions as such ;

(b) to conduct a supplementary or test audit of the company's accounts by such person or persons as he may authorise in this behalf ; and for the purposes of such audit, to require information or additional information to be furnished to any person or persons, so authorised, on such matters, by such person or persons, and in such form, as the Comptroller and Auditor-General may, by general or special order, direct.

(4) The auditor aforesaid shall submit a copy of his audit report to the Comptroller and Auditor-General of India who shall have the right to comment upon, or supplement, the audit report in such manner as he may think fit.

(5) Any such comments upon, or supplement to, the audit report shall be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

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**1. Words** "the Central Government on the advice of" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### **619A. ANNUAL REPORTS ON GOVERNMENT COMPANIES**

(1) Where the Central Government is a member of a Government company, the Central Government shall cause an annual report on the working and affairs of that company to be -

(a) prepared within three months of its annual general meeting before which the audit report is placed under sub-section (5) of section 619 ; and

(b) as soon as may be after such preparation, laid before both Houses of Parliament together with a copy of the audit report and any comments upon, or supplement to, the audit report, made by the Comptroller and Auditor-General of India.

(2) Where in addition to the Central Government, any State Government is also a member of a Government company, that State Government shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments or supplement referred to in sub-section (1).

(3) Where the Central Government is not a member of a Government company, every State Government which is a member of that company, or where only one State Government is a member of the company, that State Government shall cause an annual report on the working and affairs of the company to be-

(a) prepared within the time specified in sub-section (1) ; and

(b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature with a copy of the audit report and comments or supplement referred to in sub-section (1).

<sup>1</sup>[(4) The provisions of this section shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.]

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**1.** Inserted by the Companies (Amendment) Act, 1988 w.e.f. 15-6-1988.

### **619B. PROVISIONS OF SECTION 619 TO APPLY TO CERTAIN COMPANIES**

The provisions of section 619 shall apply to a company in which not less than fifty-one per cent of the paid-up share capital is held by one or more of the following or any combination thereof, as if it were a Government company, namely : -

- (a) the Central Government and one or more Government companies ;
- (b) any State Government or Governments and one or more Government companies ;
- (c) the Central Government, one or more State Governments and one or more Government companies ;
- (d) the Central Government and one or more corporations owned or controlled by the Central Government ;
- (e) the Central Government, one or more State Governments and one or more corporations owned or controlled by the Central Government ;
- (f) one or more corporations owned or controlled by the Central Government or the State Government ;
- (g) more than one Government company.

### **620. POWER TO MODIFY ACT IN RELATION TO GOVERNMENT COMPANIES**

(1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act (other than sections 618, 619 and 619A) specified in the notification : -

- (a) shall not apply to any Government company ; or
- (b) shall apply to any Government company, only with such exceptions, modifications and adaptations, as may be specified in the notification.

(2) A copy of every notification proposed to be issued under sub- section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

#### ***Modification of Act in its application to Nidhis and Mutual Benefit Societies***

### **620A. POWER TO MODIFY ACT IN ITS APPLICATION TO NIDHIS, ETC**

(1) In this section, "*Nidhi*" or "Mutual Benefit Society" means a company which the Central Government may, by notification in the Official Gazette, declare to be a *Nidhi* or Mutual Benefit Society, as the case may be.

(2) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act specified in the notification -

- (a) shall not apply to any *Nidhi* or Mutual Benefit Society ; or (b) shall apply to any *Nidhi* or Mutual Benefit Society with such exceptions, modifications and adaptations as may be specified in the notification.

(3) A copy of every notification issued under sub-section (1) shall be laid as soon as may be after it is issued, before each House of Parliament.

### **620B. SPECIAL PROVISIONS AS TO COMPANIES IN GOA, DAMAN AND DIU**

The Central Government may, by notification in the Official Gazette, direct that for such period or periods with effect from the 26th January, 1963 or any subsequent date, any of the provisions of this Act specified in the notification shall not apply or shall apply only with such exceptions, and modifications or adaptations as may be specified in the notification, to, -

- (a) any existing company in the Union Territories of Goa, Daman and Diu ;
- (b) any company registered in the said Union Territory under this Act on or after the 26th January, 1963.

#### ***Special provisions as to companies in Jammu and Kashmir***

### **620C. SPECIAL PROVISIONS AS TO COMPANIES IN JAMMU AND KASHMIR**

The Central Government may, by notification in the Official Gazette, direct that with effect from the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968 (5 of 1968), or any subsequent date, any of the provisions of this Act specified in the notification shall not apply, or shall apply only with such exceptions and modifications or adaptations as may be specified in the notification, to -

- (a) any existing company in the State of Jammu and Kashmir ;
- (b) any company registered in that State under this Act after the commencement of the Central Laws (Extension to Jammu and Kashmir) Act, 1968 (5 of 1968).

#### ***Offences***

### **621. OFFENCES AGAINST ACT TO BE COGNISABLE ONLY ON COMPLAINT BY REGISTRAR, SHAREHOLDER OR GOVERNMENT**

(1) No Court shall take cognisance of any offence against this Act <sup>1[\*\*\*]</sup>, which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, or of a shareholder of the company, or of a person authorised by the Central Government in that behalf :

**Provided** that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

<sup>2</sup>[**Provided further** that the court may take cognisance of offence relating to issue and transfer of securities and non-payment of dividend on a complaint in writing by a person authorised by the Securities Exchange Board of India.]  
 (1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), where the complainant under sub-section (1) is the Registrar or a person authorised by the Central Government, the personal attendance of the complainant before the Court trying the offence shall not be necessary unless the Court for reasons to be recorded in writing requires his personal attendance at the trial.  
 (2) Sub-section (1) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters included in Part VII (sections 425 to 560) or in any other provisions of this Act relating to the winding up of companies.  
 (3) A liquidator of a company shall not be deemed to be an officer of the company, within the meaning of sub-section (1).

- 
1. Words "(other than an offence with respect to which proceedings are instituted under section 545)" omitted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
  2. Inserted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

#### <sup>1</sup>[**621A. COMPOSITION OF CERTAIN OFFENCES**

(1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by the Central Government on payment or credit, by the company or the officer, as the case may be, to the Central Government of such sums as that Government may prescribe :*

**Provided** that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

**Provided further** that in prescribing the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 611 shall be taken into account.

(2) *Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.*

*Explanation. - For the purposes of this section, any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence.*

(3) (a) *Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon to the Central Government.*

(b) *Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.*

(c) *Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.*

(d) *Where the composition of any offence is made after the institution of any prosecution, such composition shall be brought by the Registrar in writing, to the notice of the Court in which the prosecution is pending and on such notice of the composition of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.*

(4) *The Central Government while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may, direct, by order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 611, such return, account or other document within such time as may be specified in the order.*

(5) *Any officer or other employee of the company who fails to comply with any order made by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding fifty thousand rupees or with both.*

(6) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) -*

(a) *any offence which is punishable under this act with imprisonment or with fine, or with both, shall be compoundable with the permission of the Court, in accordance with the procedure laid down in that Act for compounding of offences ;*

(b) *any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.*

(7) *No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.]*

#### **622. JURISDICTION TO TRY OFFENCES**

No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence against this Act.

#### **623. CERTAIN OFFENCES TRIABLE SUMMARILY IN PRESIDENCY TOWNS**



If any offence against this Act which is punishable with fine only is committed by any person within a Presidency town, such person may be tried summarily and punished by any Presidency Magistrate of that Presidency town.

#### **624. OFFENCES TO BE NON-COGNISABLE**

Notwithstanding anything in the Code of Criminal Procedure, 1898 (5 of 1898), every offence against this Act shall be deemed to be non-cognisable within the meaning of the said Code.

#### **624A. POWER OF CENTRAL GOVERNMENT TO APPOINT COMPANY PROSECUTORS**

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), the Central Government may appoint generally, or in any case, or for any specified class of cases in any local area, one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act ; and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by that Code on public prosecutors, appointed by a State Government under section 492 of that Code.

#### **624B. APPEAL AGAINST ACQUITTAL**

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898), the Central Government may, in any case arising out of this Act, direct any company prosecutor or authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any Court other than a High Court and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate Court.

#### **625. PAYMENT OF COMPENSATION IN CASES OF FRIVOLOUS OR VEXATIOUS PROSECUTION**

(1) In respect of any case instituted upon the complaint of a shareholder against the company or any officer thereof in pursuance of section 621, the provisions of section 250 of the Code of Criminal Procedure, 1898 (5 of 1898), shall not apply ; and the following provisions shall apply instead.

(2) If the Magistrate by whom any such case is heard discharges or acquits all or any of the accused and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the shareholder upon whose complaint the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused, or to each or any of such accused when there is more than one, or if such shareholder is not present, direct the issue of a summons to him to appear and show cause as aforesaid.

(3) The Magistrate shall record and consider any cause which such shareholder may show ; and if the Magistrate is satisfied that the accusation was false and either frivolous or vexatious, he may, for reasons to be recorded, direct that compensation to such amount as he may determine be paid by such shareholder to the accused or to each or any of them, not exceeding one thousand rupees in all.

(4) The Magistrate may, by the order directing payment of the compensation under sub-section (3), further order that, in default of payment, the shareholder ordered to pay such compensation shall suffer simple imprisonment for a term not exceeding two months.

(5) When any person is imprisoned under sub-section (4), the provisions of sections 68 and 69 of the Indian Penal Code (45 of 1860) shall, so far as may be, apply.

(6) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made by him :

**Provided** that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) A complainant who has been ordered to pay compensation under sub-section (3) by a Magistrate may appeal from the order, insofar as it relates to the payment of compensation, as if such complainant had been convicted on a trial held by such Magistrate.

(8) Where an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal under sub-section (7) has elapsed ; or, if an appeal is presented, before the appeal has been decided.

#### **626. APPLICATION OF FINES**

The Court <sup>1</sup>[or Tribunal] imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding of the person on whose information or at whose instance the fine is recovered.

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1. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **627. PRODUCTION AND INSPECTION OF BOOKS WHERE OFFENCE SUSPECTED**

(1) If, on an application made to a Judge of a High Court in chambers <sup>1</sup>[or Tribunal, as the case may be] by the Public Prosecutor of the State or by the Central Government, or by a company prosecutor appointed under section 624A, it is shown that there is reasonable cause to believe that any person has, while he was an officer of a company, committed an offence in connection with the management of the company's affairs, and that evidence of the commission of the offence is to be found in any books or papers of or under the control of the company, an order may be made-

(i) authorising any person named therein to inspect the said books or papers or any of them for the purpose of investigating, and obtaining evidence of the commission of, the offence ; or

- (ii) requiring the <sup>2</sup>[\*\*\*] manager of the company or such other officer thereof as may be named in the order, to produce the said books or papers or any of them to a person, and at a place and time, named in the order.
- (2) Sub-section (1) shall apply also in relation to any books or papers of a person carrying on the business of banking so far as they relate to the company's affairs, as it applies to any books or papers of or under the control of the company, except that no such order as is referred to in clause (ii) thereof shall be made by virtue of this sub-section.
- (3) No appeal shall lie from the decision of a Judge of the High Court <sup>3</sup>[or Tribunal] under this section.

- 
1. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).
  2. Words "managing agent, secretaries and treasurers or" omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
  3. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

## **628. PENALTY FOR FALSE STATEMENTS**

If in any return, report, certificate, balance sheet, prospectus, statement or other document required by or for the purposes of any of the provisions of this Act, any person makes a statement -

(a) which is false in any material particular, knowing it to be false ; or

(b) which omits any material fact, knowing it to be material ;

he shall, save as otherwise expressly provided in this Act, be punishable with imprisonment for a term which may extend to two years, and shall also be liable to fine.

## **629. PENALTY FOR FALSE EVIDENCE**

If any person intentionally gives false evidence -

(a) upon any examination upon oath or solemn affirmation, authorised under this Act ; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act ;

he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

## **629A. PENALTY WHERE NO SPECIFIC PENALTY IS PROVIDED ELSEWHERE IN THE ACT**

If a company or any other person contravenes any provision of this Act for which no punishment is provided elsewhere in this Act or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to <sup>1</sup>[five thousand] rupees, and where the contravention is a continuing one, with a further fine which may extend to <sup>2</sup>[five hundred] rupees for every day after the first during which the contravention continues. fine which may extend to Rs. 500 for everyday during which the contravention continues. Any offence covered by this section is compoundable.

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1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
  2. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

## **630. PENALTY FOR WRONGFUL WITHHOLDING OF PROPERTY**

(1) If any officer or employee of a company -

(a) wrongfully obtains possession of any property of a company ; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in the articles and authorised by this Act ;

he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine which may extend to <sup>1</sup>[ten] thousand rupees.

(2) The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default, to suffer imprisonment for a term which may extend to two years.

- 
1. Substituted for "one" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

## **631. PENALTY FOR IMPROPER USE OF WORDS "LIMITED" AND "PRIVATE LIMITED"**

If any person or persons trade or carry on business under any name or title of which the word "Limited" or the words "Private Limited", or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with

limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which may extend to <sup>1</sup>[five hundred] rupees for every day upon which that name or title has been used.

- 
1. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

## ***Legal proceedings***

## **632. POWER TO REQUIRE LIMITED COMPANY TO GIVE SECURITY FOR COSTS**

Where a limited company is plaintiff or petitioner in any suit or other legal proceeding, any Court <sup>1</sup>[or Tribunal] having jurisdiction in the matter may, if there is reason to believe that the company will be unable to pay the costs of

defendant if he is successful in his defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

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1. Inserted by the Companies (Second Amendment) Act, 2002 w.e.f. 13-12-2002.

### **633. POWER OF COURT TO GRANT RELIEF IN CERTAIN CASES**

(1) If in any proceeding for negligence, default, breach of duty, misfeasance or breach of trust against an officer of a company, it appears to the Court hearing the case that he is or may be liable in respect of the negligence, default, breach of duty, misfeasance or breach of trust, but that he has acted honestly and reasonably, and that having regard to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused, the Court may relieve him, either wholly or partly, from his liability on such terms as it may think fit :

**Provided** that in a criminal proceeding under this sub-section, the Court shall have no power to grant relief from any civil liability which may attach to an officer in respect of such negligence, default, breach of duty, misfeasance or breach of trust.

(2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a Court before which a proceeding against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).

(3) No Court shall grant any relief to any officer under sub-section (1) or sub-section (2) unless it has, by notice served in the manner specified by it, required the Registrar and such other person, if any, as it thinks necessary, to show cause why such relief should not be granted.

### **634. ENFORCEMENT OF ORDERS OF COURTS**

Any order made by a Court under this Act may be enforced in the same manner as a decree made by the Court in a suit pending therein.

#### **634A. ENFORCEMENT OF ORDERS OF COMPANY LAW BOARD**

Any order made by the Company Law Board <sup>1</sup>[\*\*\*] may be enforced by that Board in the same manner as if it were a decree made by a Court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the Court within the local limits of whose jurisdiction, -

(a) in the case of an order against a company, the registered office of the company is situated, or

(b) in the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain.

<sup>2</sup>[**Provided** that the provisions of this section shall not apply on and after the commencement of the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). ]

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1. The words and figures "under section 17, section 18, section 19, section 79, section 141 or section 186" omitted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

2. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### **635. ENFORCEMENT OF ORDERS OF ONE COURT BY OTHER COURTS**

(1) Where any order made by one Court is required to be enforced by another Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order. (2) The production of such certified copy shall be sufficient evidence of the order.

(3) Upon the production of such certified copy, the Court shall take the requisite steps for enforcing the order, in the same manner as if it had been made by itself.

(4) Where any order made by the Company Law Board <sup>2</sup>[or Tribunal] <sup>1</sup>[\*\*\*] is required to be enforced by a Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order and the provisions of sub-sections (2) and (3) shall, as far as may be, apply to every such order in the same manner and to the same extent as they apply to an order made by Court.

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1. The words and figures "under section 17, section 18, section 19, section 79, section 141 or section 186" omitted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

2. Inserted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### **635A. PROTECTION OF ACTS DONE IN GOOD FAITH**

No suit, prosecution or other legal proceeding shall lie against the Government or any officer of Government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules or orders made thereunder, or in respect of the publication by or under the authority of the Government or such officer of any report, paper or proceedings.

### **635AA. NON-DISCLOSURE OF INFORMATION IN CERTAIN CASES**

Notwithstanding anything contained in any other law for the time being in force, the Registrar, any officer of Government or any other person shall not be compelled to disclose to any Court, Tribunal or other authority whence he got any information which -

- (a) has led the Central Government to direct a special audit under section 233A or to order an investigation under section 235, 237, <sup>1</sup>[or 247] ; or  
(b) is or has been material or relevant in connection with such special audit or investigation.

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1. Substituted for figures "247, 248 or 249" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

### ***Temporary protection of employees***

#### **635B. PROTECTION OF EMPLOYEES DURING INVESTIGATION BY INSPECTOR OR PENDENCY OF PROCEEDING BEFORE COURT IN CERTAIN CASES**

(1) If -

(a) during the course of any investigation of the affairs and other matters of or relating to a company, body or person under section 235, section 237 or section 239 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, body or person, under section 247 <sup>1</sup>[\*\*\*] ; or

(b) during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter IVA of Part VI, such company, body or person proposes -

(i) to discharge, or

(ii) to punish, whether by dismissal, removal, reduction in rank or otherwise, any employee, the company, body or person, as the case may be, shall send by post to the <sup>2</sup>[Tribunal] previous intimation in writing of the action proposed against the employee and if the <sup>2</sup>[Tribunal] has any objection to the action proposed, it shall send by post notice thereof in writing to the company, body or person concerned.

(2) If the company, body or person concerned does not receive within thirty days of the sending of the previous intimation of the action proposed against the employee, any notice of the objection from the <sup>3</sup>[Tribunal], then and only then, the company, body or person concerned may proceed to take against the employee the action proposed.

(3) If the company, body or person concerned is dissatisfied with the objection raised by the <sup>3</sup>[Tribunal], it may, within thirty days of the receipt of the notice of the objection, prefer an appeal to the <sup>4</sup>[Appellate Tribunal] in the prescribed manner and on payment of the prescribed fee.

(4) The decision of the <sup>4</sup>[Appellate Tribunal] on such appeal shall be final and be binding on the <sup>3</sup>[Tribunal] and on the company, body or person concerned.

(5) For the removal of doubt, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.

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1. Words and figures ", section 248 or section 249" omitted by the companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

3. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

4. Substituted for "Court" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

### ***Reduction of fees payable to company***

#### **636. REDUCTION OF FEES, CHARGES, ETC., PAYABLE TO COMPANY**

(1) A company which is entitled to any specified fee, charge or other sum by virtue of any provision contained in this Act or in its articles, may reduce the amount thereof to such extent as it thinks fit ; and thereupon such provision shall, so long as the reduction is in force, have effect as if the reduced amount had been substituted for the fee, charge or sum specified in such provision.

(2) Any reduction made under sub-section (1) may, at any time, be cancelled or varied by the company.

### ***Delegation of powers and functions of Central Government***

#### **637. DELEGATION BY CENTRAL GOVERNMENT OF ITS POWERS AND FUNCTIONS UNDER ACT**

<sup>1</sup>[(1) The Central Government may, by notification in the Official Gazette, and subject to such conditions, restrictions and limitations as may be specified therein, delegate any of its powers or functions under this Act (other than the power to appoint a person as public trustee under section 153A and the power to make rules), to such authority or officer as may be specified in the notification.]

(2) The powers and functions which cannot be delegated under <sup>2</sup>[\*\*\*] sub-section (1) are those conferred by or mentioned in the following provisions of this Act, namely, sections 10, 81, 89(4), 211(3) and (4), 212, 213, 235, 237, 239, 241, 242, 243, 244, 245, 247, <sup>3</sup>[\*\*\*] 250, 259, 268, 269, 274(2), 295, 300, 310, 311, <sup>4</sup>[\*\*\*] 349, <sup>5</sup>[\*\*\*] 372, 396, 399(4) and (5), 401, 408, <sup>6</sup>[\*\*\*] 410, 411(b), 448, 609, 613, 620, 638, 641 and 642.

(2A) [Omitted by the Companies (Amendment) Act, 1988, w. e. f. 31-5-1991.]

(3) A copy of every notification issued under sub-section (1) shall, as soon as may be after it is issued, be placed before both Houses of Parliament.



1. Substituted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.
2. The words "clause (b) of" omitted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.
3. Figure "248, 249," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
4. Figure "324, 326, 328, 329, 332, 343, 345, 346, 347(2)," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
5. Figure "352, 369," omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.
6. Figure "409," omitted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

***Grant of approval, etc., subject to conditions and levy of fees on applications***

**<sup>1</sup>[637A. POWER OF CENTRAL GOVERNMENT OR TRIBUNAL TO ACCORD APPROVAL, ETC., SUBJECT TO CONDITIONS AND TO PRESCRIBE FEES ON APPLICATIONS**

(1) *Where the Central Government or Tribunal is required or authorised by any provision of this Act, -*

(a) *to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter ; or*

(b) *to give any direction in relation to any matter; or*

(c) *to grant any exemption in relation to any matter,*

*then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government or Tribunal may accord, give or grant such approval, sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.*

(2) *Save as otherwise expressly provided in this Act, every application which may be, or is required to be, made to the Central Government or Tribunal under any provision of this Act-*

(a) *in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or Tribunal to, or in relation to, any matter ; or*

(b) *in respect of any direction or exemption to be given or granted by that Government or Tribunal in relation to any matter ; or*

(c) *in respect of any other matter,*

*shall be accompanied by such fee as may be prescribed :*

***Provided*** *that different fees may be prescribed for applications in respect of different matters or in case of applications by companies, for applications by different classes of companies.]*

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 637A read as under :

"637A. Power of Central Government or Company Law Board to accord approval, etc., subject to conditions and to prescribe fees on applications. - (1) Where the Central Government or Company Law Board is required or authorised by any provision of this Act, -

(a) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter ;

(b) to give any direction in relation to any matter ; or

(c) to grant any exemption in relation to any matter,

then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government or Company Law Board may accord, give or grant such approval sanction, consent, confirmation, recognition, direction or exemption, subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction, consent, confirmation, recognition, direction or exemption.

(2) Save as otherwise expressly provided in this Act, every application which may be, or is required to be, made to the Central **Government** or Company Law Board under any provision of this Act -

(a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government or Board to, or in relation to, any matter ; or

(b) in respect of any direction or exemption to be given or granted by that Government or Board in relation to any matter ; or

(c) in respect of any other matter,

shall be accompanied by such fee as may be prescribed :

**Provided** that different fees may be prescribed for applications in respect of different matters or in case of applications by companies, for applications by different classes of companies."

**637AA. POWER OF CENTRAL GOVERNMENT TO FIX A LIMIT WITH REGARD TO REMUNERATION**

Notwithstanding anything contained in section 198, section 309 or

section 637A, the Central Government may, while according its approval under section 269, to any appointment or to any remuneration under section 309, section 310, section 311 or section 387, fix the remuneration of the person so appointed or the remuneration, as the case may be, within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deemed fit and while fixing the remuneration, the Central Government shall have regard to -

(a) the financial position of the company ;



(b) the remuneration or commission drawn by the individual concerned in any other capacity, including his capacity as a sole selling agent ; (c) the remuneration or commission drawn by him from any other company ;  
(d) professional qualifications and experience of the individual concerned ; (e) public policy relating to the removal of disparities in income.

#### **637B. CONDONATION OF DELAYS IN CERTAIN CASES**

Notwithstanding anything contained in this Act, -

(a) where any application required to be made to the Central Government under any provision of this Act in respect of any matter is not made within the time specified therein, that Government may, for reasons to be recorded in writing, condone the delay ;

(b) where any document required to be filed with the Registrar under any provision of this Act is not filed within the time specified therein, the Central Government may, for reasons to be recorded in writing, condone the delay.

#### ***Annual report on working of Act***

#### **638. ANNUAL REPORT BY CENTRAL GOVERNMENT**

The Central Government shall cause a general annual report on the working and administration of this Act to be prepared and laid before both Houses of Parliament, within one year of the close of the year to which the report relates.

#### **639. ANNUAL REPORTS ON GOVERNMENT COMPANIES TO BE PLACED BEFORE PARLIAMENT, ETC**

[The section and heading above it, viz., "Annual reports on Government companies" omitted by the Companies (Amendment) Act, 1960.]

#### ***Validation of registration of firms in certain cases***

#### **640. VALIDATION OF REGISTRATION OF FIRMS AS MEMBERS OF CHARITABLE AND OTHER COMPANIES**

Any firm which stood registered at the commencement of this Act, as a member of any association or company licensed under section 26 of the Indian Companies Act, 1913 (7 of 1913), shall be deemed to have been validly so registered with effect on and from the date of its registration.

#### ***Computation of time for filing orders of Court<sup>1</sup>[or the<sup>2</sup>(Tribunal)]***

#### **<sup>3</sup>[640A. EXCLUSION OF TIME REQUIRED IN OBTAINING COPIES OF ORDER OF COURT OR TRIBUNAL**

*Except as expressly provided in this behalf elsewhere in this Act, where by any provision of this Act, any order of the Court or Tribunal is required to be filed with the Registrar, or a company or any other person within a period specified therein, then, in computing that period, the time taken in drawing up the order and in obtaining a copy thereof shall be excluded.]*

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1. Inserted by the Companies (Amendment) Act, 1988 w.e.f. 31-5-1991.

2. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

3. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 640A read as under : "640A. Exclusion of time required in obtaining copies of orders of Court or the Company Law Board. - Except as expressly provided in this behalf elsewhere in this Act where by any provision of this Act, any order of the Court or the Company Law Board is required to be filed with the Registrar, or a company or any other person within a period specified therein, then, in computing that period, the time taken in drawing up the order and in obtaining a copy thereof shall be excluded."

#### ***Schedules, forms and rules***

#### **640B. FORMS OF, AND PROCEDURE IN RELATION TO, CERTAIN APPLICATIONS**

(1) Every application made to the Central Government under section 259, 268, 269, 310<sup>1</sup>[or 311] shall be in such form as may be prescribed.

(2) (a) Before any application is made by a company to the Central Government under any of the sections aforesaid, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.

(b) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.

(c) Copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application.

(d) <sup>2</sup>[\*\*\*]

1. Substituted for ", 311, 326, 328, 329, 332, 343, 345, 346 or 352" by the Companies (Amendment) Act, 2000, w.e.f. 13-12-2000.
2. Omitted by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000. Prior to its omission clause (d) read as under :  
 "(d) Nothing in clause (a), (b) or (c) shall apply to a private company which is not the managing agent of a public company."

#### **641. POWER TO ALTER SCHEDULES**

(1) Subject to the provisions of this section, the Central Government may, by notification in the Official Gazette, alter any of the regulations, rules, tables, forms and other provisions contained in any of the Schedules to this Act, except Schedules XI and XII.

(2) Any alteration notified under sub-section (1) shall have effect as if enacted in this Act and shall come into force on the date of the notification, unless the notification otherwise directs :

**Provided** that no such alteration in Table A of Schedule I shall apply to any company registered before the date of such alteration.

(3) Every alteration made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.

#### **642. POWER OF CENTRAL GOVERNMENT TO MAKE RULES**

(1) In addition to the powers conferred by section 641, the Central Government may, by notification in the Official Gazette, make rules -

(a) for all or any of the matters which by this Act are to be, or may be, prescribed by the Central Government ; and

(b) generally to carry out the purposes of this Act.

(2) Any rule made under sub-section (1) may provide that a contravention thereof shall be punishable with fine which may extend to <sup>1</sup>[five thousand] rupees and where the contravention is a continuing one, with a further fine which may extend to <sup>2</sup>[five hundred] rupees for every day after the first during which such contravention continues.

(3) Every rule made by the Central Government under sub-section (1) shall be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

<sup>3</sup>[(4) Every regulation made by the Securities and Exchange Board of India as under this Act shall be laid, soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.]

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1. Substituted for "five hundred" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

2. Substituted for "fifty" by the Companies (Amendment) Act, 2000 w.e.f. 13-12-2000.

3. Inserted by the Companies (Amendment) Act, 1999 w.r.e.f. 31-10-1998.

#### **<sup>1</sup>[643. POWERS OF CENTRAL GOVERNMENT TO MAKE RULES RELATING TO WINDING UP**

(1) *The Central Government shall, make rules consistent with the Code of Civil Procedure, 1908 (5 of 1908), providing for all matters relating to the winding up of companies, which by this Act, are to be prescribed, and may make rules providing for all such matters, as may be prescribed.*

(2) *In particular and without prejudice to the generality of the forgoing power, such rule may provide for all or any of the following matters, namely:-*

(i) *as to the mode of proceedings to be held for winding up of a company by the Tribunal ;*

(ii) *for the voluntary winding up of companies, whether by members or by creditors ;*

(iii) *for the holding of meetings of creditors and members in connection with proceedings under section 391 ;*

(iv) *for giving effect to the provisions of this Act as to the reduction of the capital ;*

(v) *generally for all applications to be made to the Tribunal under the provisions of this Act ;*

(vi) *the holding and conducting of meetings to ascertain the wishes of creditors and contributories ;*

(vii) *the settling of lists of contributories and the rectifying of the register of members where required and collecting and applying the assets ;*

(viii) *the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator ;*

(ix) *the making of calls ; and*

(x) *the fixing of a time within which debts and claims shall be proved.*

(3) *All rules made by the Supreme Court on the matters referred to in this section as it stood immediately before the commencement of the Companies (Second Amendment) Act, 2002, and in force at such commencement shall continue to be in force, insofar as they are not inconsistent with the provisions of this Act, till such time the rules are made by the Central Government and any reference to the High Court in relation to winding up of a company in such rules shall be construed as a reference to the Tribunal.]*

1. Substituted by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified). Prior to its substitution section 643 read as under:

"643. Power of Supreme Court to make Rules. - (1) The Supreme Court, after consulting the High Courts, -

(a) shall make rules providing for all matters relating to the winding-up of companies which, by this Act, are to be prescribed ; and may make rules providing for all such matters as may be prescribed, except those reserved to the Central Government by sub-section (5) of section 503, sub-section (3) of section 550, section 552 and sub-section (3) of section 555 ; and

(b) may make rules consistent with the Code of Civil Procedure, 1908 (5 of 1908), -

(i) as to the mode of proceedings to be had for winding up a company in High Courts and in Courts subordinate thereto ;

(ii) for the voluntary winding up of companies, whether by members or by creditors ;

(iii) for the holding of meetings of creditors and members in connection with proceedings under section 391 ;

(iv) for giving effect to the provisions of this Act as to the reduction of the capital ; and

(v) generally for all applications to be made to the Court under the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, the Supreme Court may, by such rules, enable or require all or any of the powers and duties conferred and imposed on the Court by this Act, in respect of the following matters, that is to say :

(a) the holding and conducting of meetings to ascertain the wishes of creditors and contributories ;

(b) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets ;

(c) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator ;

(d) the making of calls ; and

(e) the fixing of a time within which debts and claims shall be proved ;

to be exercised or performed by the official liquidator or any other liquidator as an officer of the Court, and subject to the control of the Court :

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members or make any call.

(3) Until rules are made by the Supreme Court as aforesaid, all rules made by any High Court on the matters referred to in this section and in force at the commencement of this Act, shall continue to be in force insofar as they are not inconsistent with the provisions of this Act in that High Court and in Courts subordinate thereto.

(4) All rules made by the Central Government under sub-section (1) of section 549 and in force immediately before the commencement of the Companies (Amendment) Act, 1960 shall continue in force and be deemed to have been made by the Supreme Court unless and until they are superseded by rules made by the Supreme Court after such commencement."

### ***Repeals and savings***

#### **644. REPEAL OF ACTS SPECIFIED IN SCHEDULE XII**

The enactments mentioned in Schedule XII are hereby repealed.

#### **645. SAVING OF ORDERS, RULES, ETC., IN FORCE AT COMMENCEMENT OF ACT**

Nothing in this Act shall affect any order, rule, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done, under or in pursuance of any previous companies law ; but any such order, rule, regulation, appointment, conveyance, mortgage, deed, document, agreement, fee, resolution, direction, proceeding, instrument or thing shall, if in force at the commencement of this Act, continue to be in force, and so far as it could have been made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act, shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act.

#### **646. SAVING OF OPERATION OF SECTION 138 OF ACT 7 OF 1913**

Nothing in this Act shall affect the operation of section 138 of the Indian Companies Act, 1913 (7 of 1913), as respects inspectors, or as respects the continuation of an inspection begun by inspectors, appointed before the commencement of this Act, and the provisions of this Act shall apply to or in relation to a report of inspectors

appointed under the said section 138 as they apply to or in relation to a report of inspectors appointed under section 235 or 237 of this Act.

#### **647. SAVING OF PENDING PROCEEDINGS FOR WINDING UP**

Where the winding up of a company has commenced before the commencement of this Act -

(i) sub-section (7) of section 555 shall apply in respect of any moneys paid into the Companies Liquidation Account whether before or after such commencement ; and

(ii) the other provisions with respect to winding up contained in this Act shall not apply, but the company shall be wound up in the same manner and with the same incidents as if this Act had not been passed :

**Provided** that where the proceedings in any such winding up are pending at the commencement of the Companies (Amendment) Act, 1960, -

(a) sections 463, 502, 515 and 524 shall, as far as may be, also apply in relation thereto ;

(b) the liquidator appointed by the Court and functioning in any such winding up shall in such manner and at such time as may be prescribed by the Central Government, pay the moneys received by him as such liquidator, into the public account of India in the Reserve Bank of India.

#### **<sup>1</sup>[647A. TRANSFER OF WINDING UP PROCEEDINGS TO TRIBUNAL**

*All proceedings (including proceedings relating to arbitration, compromises, arrangements and reconstruction and winding up of a company) pending before the commencement of the Companies (Second Amendment) Act, 2002 before any District Court or High Court, under this Act, or the Insurance Act, 1938 (4 of 1938) or any other law for the time being in force other than under the Banking Regulation Act, 1949 (10 of 1949), shall be transferred to the Tribunal from the date to be notified by the Central Government, in the Official Gazette, and the Tribunal may proceed with the matter either de novo or from the stage it was so transferred :*

**Provided** that where the winding up of a company has commenced, subject to the supervision of the District Court or a High Court, before the commencement of the Companies (Second Amendment) Act, 2002, such winding up shall continue to be under the supervision of the District Court or the High Court, as the case may be, and the company shall be wound up in the same manner and in the same incidents as if the Companies (Second Amendment) Act, 2002 had not been passed.]

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1. Inserted by Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **648. SAVING OF PROSECUTIONS INSTITUTED BY, LIQUIDATOR OR COURT UNDER SECTION 237 OF ACT 7 OF 1913**

Nothing in this Act shall affect any prosecution instituted or ordered by the Court to be instituted under section 237 of the Indian Companies Act, 1913 (7 of 1913) ; and the Court shall have the same power of directing how any costs, charges, and expenses properly incurred in any such prosecution are to be defrayed as it would have had, if this Act had not been passed.

#### **649. CONSTRUCTION OF REFERENCES TO FORMER ENACTMENTS IN DOCUMENTS**

Any document referring to any former enactment relating to companies shall be construed as referring to the corresponding enactment in this Act.

#### **650. CONSTRUCTION OF "REGISTRAR OF JOINT STOCK COMPANIES" IN ACT 21 OF 1860**

[Omitted by the Companies (Amendment) Act, 1960.]

#### **651. CONSTRUCTION OF REFERENCES TO EXTRAORDINARY RESOLUTION IN ARTICLES, ETC**

Any reference to an extraordinary resolution in the articles of a company, or in any resolution passed in general meeting by the company, or in any other instrument, or in any law in force immediately before the commencement of this Act, shall, with effect on and from such commencement, be construed as a reference to a special resolution.

#### **<sup>1</sup>[651A. REFERENCE OF WINDING UP OF COMPANIES IN OTHER LAWS**

*Unless the context otherwise requires, -*

(a) *any reference to the winding up of a company by a Court or High Court or winding up of a company subject to supervision of a Court or High Court in any other law [except the Banking Regulation Act, 1949 (10 of 1949)], shall, insofar as it relates to winding up of a company, be construed as winding up of a company by the Tribunal in accordance with the provisions of this Act ;*

(b) *any reference to the Company Law Board in any other law, so far as it relates to the Company Law Board, shall be construed as the Tribunal under this Act.]*

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1. Inserted by Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified).

#### **652. APPOINTMENT UNDER PREVIOUS COMPANIES LAWS TO HAVE EFFECT AS IF MADE UNDER ACT**

Any person appointed to any office under or by virtue of any previous companies law shall be deemed to have been appointed to that office under or by virtue of this Act.

#### **653. FORMER REGISTRATION OFFICES CONTINUED**

The offices existing at the commencement of this Act for the registration of companies shall be continued as if they had been established under this Act.

#### **654. REGISTERS UNDER PREVIOUS COMPANIES LAWS TO BE DEEMED TO BE PART OF REGISTERS UNDER ACT**

Any register kept under the provisions of any previous companies law shall be deemed to be part of the register to be kept under the corresponding provisions of this Act.

#### **655. FUNDS AND ACCOUNTS UNDER ACT TO BE IN CONTINUATION OF FUNDS AND ACCOUNTS UNDER PREVIOUS COMPANIES LAW**

All funds constituted and accounts kept under this Act shall be deemed to be in continuation of the corresponding funds constituted and accounts kept under previous companies laws.

#### **656. SAVING OF INCORPORATION UNDER REPEALED ACTS**

Nothing in this Act shall affect the incorporation of any company registered under any enactment hereby repealed.

#### **657. SAVING OF CERTAIN TABLES UNDER PREVIOUS COMPANIES LAWS**

Nothing in this Act shall affect -

- (a) Table B in the Schedule annexed to Act No. 19 of 1857, or any part thereof, so far as the same applies to any company existing at the commencement of this Act ;
- (b) Table A in the First Schedule annexed to the Indian Companies Act, 1882 (6 of 1882), or any part thereof, so far as the same plies to any company existing at the commencement of this Act ;
- (c) Table A in the First Schedule to the Indian Companies Act, 1913 (7 of 1913), either as originally contained in that Schedule or as altered in pursuance of section 151 of that Act, so far as the same applies to any company existing at the commencement of this Act.

#### **658. SECTION 6 OF THE GENERAL CLAUSES ACT, 1897(10 OF 1897) TO APPLY IN ADDITION TO SECTIONS 645 TO 657 OF ACT**

The mention of particular matters in sections 645 to 657 or in any other provision of this Act shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (10 of 1897), with respect to the effect of repeals.

### **SCHEDULE I**

[See sections 2(2), 14, 28(1), 29 and 223]

#### **TABLE A**

##### ***Regulations for management of a company limited by shares Interpretation***

1. (1) In these regulations -

- (a) "the Act" means the Companies Act, 1956,
- (b) "the seal" means the common seal of the company.

(2) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

##### ***Share capital and variation of rights***

2. Subject to the provisions of section 80, any preference shares may, with the sanction of an ordinary resolution, be issued on the terms that they are, or at the option of the company are liable, to be redeemed on such terms and in such manner as the company before the issue of the shares may, by special resolution, determine.

3. (1) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, subject to the provisions of sections 106 and 107, and whether or not the company is being wound up, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class.

(2) To every such separate meeting, the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least holding or representing by proxy one-third of the issued shares of the class in question.

4. The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall not, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking *pari passu* therewith.



5. (1) The company may exercise the powers of paying commissions conferred by section 76, provided that the rate per cent or the amount of the commission paid or agreed to be paid shall be disclosed in the manner required by that section.

(2) The rate of the commission shall not exceed the rate of five per cent of the price at which the shares in respect whereof the same is paid are issued or an amount equal to five per cent of such price, as the case may be.

(3) The commission may be satisfied by the payment of cash or the allotment of fully or partly paid shares or partly in the one way and partly in the other.

(4) The company may also, on any issue of shares, pay such brokerage as may be lawful.

6. Except as required by law, no person shall be recognised by the company as holding any share upon any trust, and the company shall not be bound by, or be compelled in any way to recognise (even when having notice thereof) any equitable, contingent, future or partial interest in any share, or any interest in any fractional part of a share, or (except only as by these regulations or by law otherwise provided) any other rights in respect of any share except an absolute right to the entirety thereof in the registered holder.

7. (1) Every person whose name is entered as a member in the register of members shall be entitled to receive within three months after allotment or within two months after the application for the registration of transfer (or within such other period as the conditions of issue shall provide) -

(a) one certificate for all his shares without payment ; or

(b) several certificates, each for one or more of his shares, upon payment of one rupee for every certificate after the first.

(2) Every certificate shall be under the seal and shall specify the shares to which it relates and the amount paid-up thereon.

(3) In respect of any share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

8. If a share certificate is defaced, lost or destroyed, it may be renewed on payment of such fee, if any, not exceeding two rupees, and on such terms, if any, as to evidence and indemnity and the payment of out-of-pocket expenses incurred by the company in investigating evidence, as the directors think fit.

### ***Lien***

9. (1) The company shall have a first and paramount lien -

(a) on every share (not being a fully-paid share), for all moneys (whether presently payable or not) called, or payable at a fixed time, in respect of that share ; and

(b) on all shares (not being fully-paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company :

**Provided** that the Board of directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause.

(2) The company's lien, if any, on a share shall extend to all dividends payable thereon.

10. The company may sell, in such manner as the Board thinks fit, any shares on which the company has a lien :

**Provided** that no sale shall be made -

(a) unless a sum in respect of which the lien exists is presently payable ; or

(b) until the expiration of fourteen days after a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share or the person entitled thereto by reason of his death or insolvency.

11. (1) To give effect to any such sale, the Board may authorise some person to transfer the shares sold to the purchaser thereof.

(2) The purchaser shall be registered as the holder of the shares comprised in any such transfer.

(3) The purchaser shall not be bound to see to the application of the purchase money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

12. (1) The proceeds of the sale shall be received by the company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable.

(2) The residue, if any, shall, subject to a like lien for sums not presently payable as existed upon the shares before the sale, be paid to the person entitled to the shares at the date of the sale.

### ***Calls on shares***

13. (1) The Board may, from time to time, make calls upon the members in respect of any moneys unpaid on their shares (whether on account of the nominal value of the shares or by way of premium) and not by the conditions of allotment thereof made payable at fixed times :

**Provided** that no call shall exceed one-fourth of the nominal value of the share or be payable at less than one month from the date fixed for the payment of the last preceding call.

(2) Each member shall, subject to receiving at least fourteen days' notice specifying the time or times and place of payment, pay to the company, at the time or times and place so specified, the amount called on his shares.

(3) A call may be revoked or postponed at the discretion of the Board.

**14.** A call shall be deemed to have been made at the time when the resolution of the Board authorising the call was passed and may be required to be paid by instalments.

**15.** The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

**16.** (1) If a sum called in respect of a share is not paid before or on the day appointed for payment thereof, the person from whom the sum is due shall pay interest thereon from the day appointed for payment thereof to the time of actual payment at five per cent per annum or at such lower rate, if any, as the Board may determine.

(2) The Board shall be at liberty to waive payment of any such interest wholly or in part.

**17.** (1) Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date, whether on account of the nominal value of the share or by way of premium, shall, for the purposes of these regulations, be deemed to be a call duly made and payable on the date on which by the terms of issue such sum becomes payable.

(2) In case of non-payment of such sum, all the relevant provisions of these regulations as to payment of interest and expenses, forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

**18.** The Board -

(a) may, if it thinks fit, receive from any member willing to advance the same, all or any part of the moneys uncalled and unpaid upon any shares held by him ; and

(b) upon all or any of the moneys so advanced, may (until the same would, but for such advance, become presently payable) pay interest at such rate not exceeding, unless the company in general meeting shall otherwise direct, six per cent per annum, as may be agreed upon between the Board and the member paying the sum in advance.

### ***Transfer of shares***

**19.** (1) The instrument of transfer of any share in the company shall be executed by or on behalf of both the transferor and transferee.

(2) The transferor shall be deemed to remain a holder of the share until the name of the transferee is entered in the register of members in respect thereof.

**20.** Subject to the provisions of section 108, the shares in the company shall be transferred in the following form, namely : -

### **<sup>1</sup>Form No. 7B**

### **DATE OF PRESENTATION TO THE PRESCRIBED AUTHORITY**

### ***Share Transfer Form***

### **[PURSUANT TO SECTION 108(1A) OF THE COMPANIES ACT, 1956]**

FOR THE CONSIDERATION stated below the ``Transferor(s)'' named do hereby transfer to the ``Transferee(s)'' named the shares specified below subject to the conditions on which the said shares are now held by the Transferor(s) and Transferee(s) do hereby agree to accept and hold the said shares subject to the conditions aforesaid.

FULL NAME OF COMPANY	NAME OF THE RECOGNISED STOCK EXCHANGE WHERE DEALT IN, IF ANY
----------------------	--

### **DESCRIPTION OF EQUITY/PREFERENCE SHARE**

No. in Figures	Number in words	Consideration (in figures)	Consideration (in words)
Distinctive numbers	From		
	To		
Corresponding Certificate Nos			

TRANSFEROR(S) [SELLER(S)] PARTICULARS  
Name(s) in full

Regd. Folio No.

Signature(s)

1.....

1.....

2.....

2.....

3.....

3.....

4.....

4.....

**ATTESTATION**

I, hereby attest the signature of the Transferor(s) herein mentioned

Signature -----

Name -----

Address/seal -----

\*Please see overleaf for instruction

Signature of witness

Name &amp; address of witness

-----

PIN-----

**TRANSFeree(S) [BUYER(S)] PARTICULARS**

Name(s) in full

1.....

2.....

3.....

Signature(s)

1.....

2.....

3.....

	Occupation	Address	Father's/Husband's name
1.			
2.			
3.			
Transferee(s) existing Folio, if an, in sme order of names			Value of Stamps affixed Rs.
<i>Dated this..... Day of..... One Thousand Nine Hundred..... Place.....</i>			
For office use only		Folio	Company Code
Checked by.....		Specimen Signature(s) of Transferees(s)	
Signature tallied by.....		1.....	
Entered in Register of Transfer No.		2.....	
Approval date.....		3.....	

*Continuation of front page (herein enter the Distinctive numbers when space on the front page is found to be insufficient)*

Distinctive numbers	From					
	To					
Corresponding Certificate Nos						

**\* INSTRUCTIONS FOR ATTESTATION**

Attestation, where required (thumb impressions, marks, signature difference, etc.) should be done by a Magistrate, Notary Public or Special Executive Magistrate or a similar authority holding a Public Office and authorised to use the

Seal of his office or a member of a recognised stock exchange through whom the shares are introduced or a manager of the transferor's bank.

**Note :** Names must be rubber stamped preferably in a straight line. Chronological order should be maintained. Broker's Clearing Number should be stated when delivery is given by a Clearing Member Bank.

Name of deliver Broker or Clearing Number  Date	Power Attorney	of	Probate	Death Certificate
	Letters of Administration			
	Registered with the Compan No.....Date.....			
	(Signature [not initials] of Broker, Bank, Company.			
	*Lodged by----- Full Address----- ----- -----			
	<b>Share certificates to be returned to</b> (Fill in the name and address to which the Certificates are required to be returned) Name and Address----- ----- -----			
	Share Transfer Stamps			

\*To be filled only if the document are lodged by a person other than the transferee.

1. Substituted by Notification No. GSR 480(E) dated 24-4-1988.

**21.** The Board may, subject to the right of appeal conferred by section 111, decline to register -

- (a) the transfer of a share, not being a fully-paid share, to a person of whom they do not approve ; or
- (b) any transfer of shares on which the company has a lien.

**22.** The Board may also decline to recognise any instrument of transfer unless -

- (a) a fee of two rupees is paid to the company in respect thereof ;
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the Board may reasonably require to show the right of the transferor to make the transfer ; and
- (c) the instrument of transfer is in respect of only one class of shares.

**23.** Subject to the provisions of section 154, the registration of transfers may be suspended at such times and for such periods as the Board may from time to time determine :

**Provided** that such registration shall not be suspended for more than thirty days at any one time or for more than forty-five days in the aggregate in any year.

**24.** The company shall be entitled to charge a fee not exceeding two rupees on the registration of every probate, letters of administration, certificate of death or marriage, power of attorney, or other instrument.

### **Transmission of shares**

**25.** (1) On the death of a member, the survivor or survivors where the member was a joint holder, and his legal representatives where he was a sole holder, shall be the only persons recognised by the company as having any title to his interest in the shares.

(2) Nothing in clause (1) shall release the estate of a deceased joint holder from any liability in respect of any share which had been jointly held by him with other persons.

**26.** (1) Any person becoming entitled to a share in consequence of the death or insolvency of a member may, upon such evidence being produced as may from time to time properly be required by the Board and subject as hereinafter provided, elect, either -

- (a) to be registered himself as holder of the share ; or
- (b) to make such transfer of the share as the deceased or insolvent member could have made.

(2) The Board shall, in either case, have the same right to decline or suspend registration as it would have had, if the deceased or insolvent member had transferred the share before his death or insolvency.

**27.** (1) If the person so becoming entitled shall elect to be registered as holder of the share himself he shall deliver or sent to the company a notice in writing signed by him stating that he so elects.  
(2) If the person aforesaid shall elect to transfer the share, he shall testify his election by executing a transfer of the share.  
(3) All the limitations, restrictions and provisions of these regulations relating to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or insolvency of the member had not occurred and the notice or transfer were a transfer signed by that member.

**28.** A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, except that he shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the company :

**Provided** that the Board may, at any time, give notice requiring any such person to elect either to be registered himself or to transfer the share, and if the notice is not complied with within ninety days, the Board may thereafter withhold payment of all dividends, bonuses or other moneys payable in respect of the share, until the requirements of the notice have been complied with.

### ***Forfeiture of shares***

**29.** If a member fails to pay any call, or instalment of a call, on the day appointed for payment thereof, the Board may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

**30.** The notice aforesaid shall -

- (a) name a further day (not being earlier than the expiry of fourteen days from the date of service of the notice) on or before which the payment required by the notice is to be made ; and
- (b) state that, in the event of non-payment on or before the day so named, the shares in respect of which the call was made will be liable to be forfeited.

**31.** If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Board to that effect.

**32.** (1) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Board thinks fit.

(2) At any time before a sale or disposal as aforesaid, the Board may cancel the forfeiture on such terms as it thinks fit.

**33.** (1) A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares, but shall, notwithstanding the forfeiture, remain liable to pay to the company all moneys which, at the date of forfeiture, were presently payable by him to the company in respect of the shares.

(2) The liability of such person shall cease if and when the company shall have received payment in full of all such moneys in respect of the shares.

**34.** (1) A duly verified declaration in writing that the declarant is a director ~~\*,~~the managing agent, the secretaries and treasurers} the manager or the secretary, of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

(2) The company may receive the consideration, if any, given for the share on any sale or disposal thereof and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.

(3) The transferee shall thereupon be registered as the holder of the share.

(4) The transferee shall not be bound to see to the application of the purchase money, if any, nor shall his title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

**35.** The provisions of these regulations as to forfeiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, becomes payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

\* Words should be omitted.

### ***Conversion of shares into stock***

**36.** The company may, by ordinary resolution, -

- (a) convert any paid-up shares into stock ; and
- (b) reconvert any stock into paid-up shares of any denomination.



**37.** The holders of stock may transfer the same or any part thereof in the same manner as, and subject to the same regulations under which, the shares from which the stock arose might before the conversion have been transferred, or as near thereto as circumstances admit :

**Provided** that the Board may, from time to time, fix the minimum amount of stock transferable, so however that such minimum shall not exceed the nominal amount of the shares from which the stock arose.

**38.** The holders of stock shall, according to the amount of stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose ; but no such privilege or advantage (except participation in the dividends and profits of the company and in the assets on winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred that privilege or advantage.

**39.** Such of the regulations of the company (other than those relating to share warrants), as are applicable to paid-up shares shall apply to stock and the words "share" and "shareholder" in those regulations shall include "stock" and "stock-holder" respectively.

### ***Share warrants***

**40.** The company may issue share warrants subject to, and in accordance with, the provisions of sections 114 and 115 ; and accordingly the Board may in its discretion, with respect to any share which is fully paid-up, on application in writing signed by the person registered as holder of the share, and authenticated by such evidence (if any) as the Board may, from time to time, require as to the identity of the person signing the application, and on receiving the certificate (if any) of the share, and the amount of the stamp duty on the warrant and such fee as the Board may from time to time require, issue a share warrant.

**41.** (1) The bearer of a share warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited, the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending, and voting and exercising the other privileges of a member at any meeting held after the expiry of two clear days from the time of deposit, as if his name were inserted in the register of members as the holders of the shares included in the deposited warrant.

(2) Not more than one person shall be recognised as depositor of the share warrant.

(3) The company shall, on two days' written notice, return the deposited share warrant to the depositor.

**42.** (1) Subject as herein otherwise expressly provided, no person shall, as bearer of a share warrant, sign a requisition for calling a meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to receive any notices from the company.

(2) The bearer of a share warrant shall be entitled in all other respects to the same privilege and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he shall be a member of the company.

**43.** The Board may, from time to time, make rules as to the terms on which (if it shall think fit) a new share warrant or coupon may be issued by way of renewal in case of defacement, loss or destruction.

### ***Alteration of capital***

**44.** The company may, from time to time, by ordinary resolution increase the share capital by such sum, to be divided into shares of such amount, as may be specified in the resolution.

**45.** The company may, by ordinary resolution, -

(a) consolidate and divide all or any of its share capital into shares of larger amount than its existing shares ;

(b) sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum, subject, nevertheless, to the provisions of clause (d) of sub-section (1) of section 94 ;

(c) cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.

**46.** The company may, by special resolution, reduce in any manner and with, and subject to, any incident authorised and consent required by law, -

(a) its share capital ;

(b) any capital redemption reserve account ; or

(c) any share premium account.

### ***General meetings***

**47.** All general meetings other than annual general meetings shall be called extraordinary general meetings.

**48.** (1) The Board may, whenever it thinks fit, call an extraordinary general meeting.

(2) If at any time there are not within India directors capable of acting who are sufficient in number to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner, as nearly as possible, as that in which such a meeting may be called by the Board.

### ***Proceedings at general meetings***

**49.** (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) Save as herein otherwise provided, five members present in person (in the case of a public company - two members present in person, in the case of a private company) shall be a quorum.

**50.** The chairman, if any, of the Board shall preside as chairman at every general meeting of the company.

**51.** If there is no such chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their number to be chairman of the meeting.

**52.** If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

**53.** (1) The chairman may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(2) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(3) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(4) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**54.** In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

**55.** Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

### ***Votes of members***

**56.** Subject to any rights or restrictions for the time being attached to any class or classes of shares, -

(a) on a show of hands, every member present in person shall have one vote ; and

(b) on a poll the voting rights of members shall be as laid down in section 87.

**57.** In the case of joint holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

For this purpose, seniority shall be determined by the order in which the names stand in the register of members.

**58.** A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

**59.** No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the company have been paid.

**60.** (1) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(2) Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

**61.** The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority, shall be deposited at the registered office of the company not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll ; and in default the instrument of proxy shall not be treated as valid.

**62.** An instrument appointing a proxy shall be in either of the forms in Schedule IX to the Act or a form as near thereto as circumstances admit.

**63.** A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed, or the transfer of the shares in respect of which the proxy is given :

**Provided** that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

### ***Board of directors***

**64.** The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

**65.** (1) The remuneration of the directors shall, insofar as it consists of a monthly payment, be deemed to accrue from day-to-day.

(2) In addition to the remuneration payable to them in pursuance of the Act, the directors may be paid all travelling, hotel and other expenses properly incurred by them -

(a) in attending and returning from meetings of the Board of directors or any committee thereof or general meetings of the company ; or

(b) in connection with the business of the company.

**66.** The qualification of a director shall be the holding of at least one share in the company.

**67.** The Board may pay all expenses incurred in getting up and registering the company.

**68.** The company may exercise the powers conferred by section 50 with regard to having an official seal for use abroad, and such powers shall be vested in the Board.

**69.** The company may exercise the powers conferred on it by sections 157 and 158 with regard to the keeping of a foreign register ; and the Board may (subject to the provisions of those sections) make and vary such regulations as it may think fit respecting the keeping of any such register.

**70.** All cheques, promissory notes, drafts, hundis, bills of exchange and other negotiable instruments, and all receipts for moneys paid to the company, shall be signed drawn, accepted, endorsed, or otherwise executed, as the case may be, *{by the managing agent or secretaries and treasurers of the company, or where there is no managing agent or secretaries and treasurers}*, by such person and in such manner as the Board shall from time to time by resolution determine.

\* Words should be omitted

**71.** Every director present at any meeting of the Board or of a committee thereof shall sign his name in a book to be kept for that purpose.

**72.** (1) The Board shall have power at any time, and from time to time, to appoint a person as an additional director, provided the number of the directors and additional directors together shall not at any time exceed the maximum strength fixed for the Board by the articles.

(2) Such person shall hold office only up to the date of the next annual general meeting of the company but shall be eligible for appointment by the company as a director at that meeting subject to the provisions of the Act.

### ***Proceedings of Board***

**73.** (1) The Board of directors may meet for the despatch of business, adjourn and otherwise regulate its meetings, as it thinks fit.

(2) A director may, and the *{managing agent, secretaries and treasurers,}* manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

\* Words should be omitted

**74.** (1) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

(2) In case of an equality of votes, the chairman of the Board, if any, shall have a second or casting vote.

**75.** The continuing directors may act notwithstanding any vacancy in the Board ; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.

- 76.** (1) The Board may elect a chairman of its meetings and determine the period for which he is to hold office.  
(2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.
- 77.** (1) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.  
(2) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.
- 78.** (1) A committee may elect a chairman of its meetings.  
(2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.
- 79.** (1) A committee may meet and adjourn as it thinks proper.  
(2) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.
- 80.** All acts done by any meeting of the Board or of a committee thereof or by any person acting as a director, shall, notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such director or such person had been duly appointed and was qualified to be a director.
- 81.** Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or of a committee thereof, for the time being entitled to receive notice of a meeting of the Board or committee, shall be as valid and effectual as if it had been passed at a meeting of the Board or committee, duly convened and held.

#### ***Manager or secretary***

- 82.** Subject to the provisions of the Act, -  
(1) a manager or secretary may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit ; and any manager or secretary so appointed may be removed by the Board ;  
(2) a director may be appointed as manager or secretary.
- 83.** A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and the manager or secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the manager or secretary.

#### ***The seal***

- 84.** (1) The Board shall provide for the safe custody of the seal.  
(2) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board or of a committee of the Board authorised by it in that behalf, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose and those two directors and the secretary or other person aforesaid shall sign every instrument to which the seal of the company is so affixed in their presence.

#### ***Dividends and reserve***

- 85.** The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the Board.
- 86.** The Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the company.
- 87.** (1) The Board may, before recommending any dividend, set aside out of the profits of the company such sums as it thinks proper as a reserve or reserves which shall, at the discretion of the Board, be applicable for any purpose to which the profits of the company may be properly applied, including provision for meeting contingencies or for equalising dividends and pending such application, may, at the like discretion, either be employed in the business of the company or be invested in such investments (other than shares of the company) as the Board may, from time to time, think fit.  
(2) The Board may also carry forward any profits which it may think prudent not to divide, without setting them aside as a reserve.

**88.** (1) Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the amounts of the shares.

(2) No amount paid or credited as paid on a share in advance of calls shall be treated for the purposes of this regulation as paid on the share.

(3) All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid ; but if any share is issued on terms providing that it shall rank for dividend as from a particular date such share shall rank for dividend accordingly.

**89.** The Board may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of the company.

**90.** [Omitted by Notification No. GSR 631, dated 23rd April, 1966.]

**91.** (1) Any dividend, interest or other moneys payable in cash in respect of shares may be paid by cheque or warrant sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the register of members, or to such person and to such address as the holder or joint holders may in writing direct.

(2) Every such cheque or warrant shall be made payable to the order of the person to whom it is sent.

**92.** Any one of two or more joint holders of a share may give effectual receipts for any dividends, bonuses or other moneys payable in respect of such share.

**93.** Notice of any dividend that may have been declared shall be given to the persons entitled to share therein in the manner mentioned in the Act.

**94.** No dividend shall bear interest against the company.

### ***Accounts***

**95.** (1) The Board shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations, the accounts and books of the company, or any of them, shall be open to the inspection of members not being directors.

(2) No member (not being a director) shall have any right of inspecting any accounts or books or documents of the company except as conferred by law or authorised by the Board or by the company in general meeting.

### ***Capitalisation of profits***

**96.** (1) The company in general meeting may, upon the recommendation of the Board, resolve -

(a) that it is desirable to capitalise any part of the amount for the time being standing to the credit of any of the company's reserve accounts, or to the credit of the profit and loss account, or otherwise available for distribution ; and  
(b) that such sum be accordingly set free for distribution in the manner specified in clause (2) amongst the members who would have been entitled thereto, if distributed by way of dividend and in the same proportions.

(2) The sum aforesaid shall not be paid in cash but shall be applied, subject to the provision contained in clause (3), either in or towards -

(i) paying up any amounts for the time being unpaid on any shares held by such members respectively ;

(ii) paying up in full, unissued shares of the company to be allotted and distributed, credited as fully paid-up, to and amongst such members in the proportions aforesaid ; or

(iii) partly in the way specified in sub-clause (i) and partly in that specified in sub-clause (ii).

(3) A share premium account and a capital redemption reserve account may, for the purposes of this regulation, only be applied in the paying up of unissued shares to be issued to members of the company as fully paid bonus shares.

(4) The Board shall give effect to the resolution passed by the company in pursuance of this regulation.

**97.** (1) Whenever such a resolution as aforesaid shall have been passed, the Board shall -

(a) make all appropriations and applications of the undivided profits resolved to be capitalised thereby, and all allotments and issues of fully paid shares, if any ; and

(b) generally do all acts and things required to give effect thereto.

(2) The Board shall have full power -

(a) to make such provision, by the issue of fractional certificates or by payment in cash or otherwise as it thinks fit, for the case of shares or debentures becoming distributable in fractions ; and also

(b) to authorise any person to enter, on behalf of all the members entitled thereto, into an agreement with the company providing for the allotment to them respectively, credited as fully paid-up, of any further shares to which they may be entitled upon such capitalisation, or (as the case may require) for the payment up by the company on their behalf, by the application thereto of their respective proportions of the profits resolved to be capitalised, of the amounts or any part of the amounts remaining unpaid on their existing shares.



(3) Any agreement made under such authority shall be effective and binding on all such members.

### ***Winding up***

**98.** (1) If the company shall be wound up, the liquidator may, with the sanction of a special resolution of the company and any other sanction required by the Act, divide amongst the members, *in specie* or kind, the whole or any part of the assets of the company, whether they shall consist of property of the same kind or not.

(2) For the purpose aforesaid, the liquidator may set such value as he deems fair upon any property to be divided as aforesaid and may determine how such division shall be carried out as between the members or different classes of members.

(3) The liquidator may, with the like sanction, vest the whole or any part of such assets in trustees upon such trusts for the benefit of the contributories as the liquidator, with the like sanction, shall think fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

### ***Indemnity***

**99.** Every officer or agent for the time being of the company shall be indemnified out of the assets of the company against any liability incurred by him in defending any proceedings, whether civil or criminal, in which judgment is given in his favour or in which he is acquitted or in connection with any application under section 633 in which relief is granted to him by the Court.

## **TABLE B**

### **MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES**

**1st** - The name of the company is "The Eastern Steam Packet Company Limited".

**2nd** - The registered office of the company will be situated in the State of Bombay.

**3rd** - (a) The main objects to be pursued by the company on its incorporation are "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine".

(b) The objects incidental or ancillary to the attainment of the above main objects are "the acquisition, construction, building, setting up and

provision of establishments for repairing ships or boats, for the training of personnel required for the running of ships or boats and the doing of all such other things as are conducive to the attainment of the foregoing main objects".

(c) The other objects for which the company is established are "carrying on the business of carriers by land, air and the running of hotels for tourists".

**4th** - The liability of the members is limited.

**5th** - The share capital of the company is two hundred thousand rupees, divided into one thousand shares of two hundred rupees each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, addresses, descriptions and occupations of subscribers</i>	<i>Number of shares taken by each subscriber</i>
1. A.B. of....., Merchant	200
2. C.D. of....., Merchant	25
3. E.F. of....., Merchant	30
4. G.H. of....., Merchant	40
5. I.J. of....., Merchant	15
6. K.L. of....., Merchant	5
7. M.N. of....., Merchant	10
Total Shares taken	325

Date.....day of.....19....

Witness of the above signatures X.Y. of .....

## **TABLE C**

### **MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**

#### ***Memorandum of association***

**1st** - The name of the company is "The Mutual Calcutta Marine Association Limited".

**2nd** - The registered office of the company will be situate in the State of West Bengal.

**3rd** - (a) The main objects to be pursued by the company on its incorporation are "the mutual insurance of ships belonging to members of the company".

(b) The objects incidental or ancillary to the attainment of the above main objects are "providing for the welfare of employees or ex-employees of the company and the making, drawing, accepting, endorsing, executing and issuing of any negotiable or transferable documents and the doing of such other things as are conducive to the attainment of the foregoing main objects".

(c) The other objects for which the company is established are "building, equipping and maintaining charitable hospitals, running of schools and undertaking any other social service".

**4th** - The liability of the members is limited.

**5th** - Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding one hundred rupees.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

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*Names, addresses, descriptions and occupations of subscribers*

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1. A.B. of....., Merchant
2. C.D. of....., Merchant
3. E.F. of....., Merchant
4. G.H. of....., Merchant
5. I.J. of....., Merchant
6. K.L. of....., Merchant
7. M.N. of....., Merchant

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Dated .....day of.....19.....

Witness to the above signatures X.Y. of.....

**ARTICLES OF ASSOCIATION OF A COMPANY LIMITED  
BY GUARANTEE AND NOT HAVING A SHARE CAPITAL**

***Interpretation 1.***

(1) In these articles -

(a) "the Act" means the Companies Act, 1956,

(b) "the seal" means the common seal of the company.

(2) Unless the context otherwise requires, words or expressions contained in these regulations shall bear the same meaning as in the Act or any statutory modification thereof in force at the date at which these regulations become binding on the company.

***Members***

2. The number of members with which the company proposes to be registered is 500, but the Board of directors may, from time to time, whenever the company or the business of the company requires it, register an increase of members.

3. The subscribers to the memorandum and such other persons as the Board shall admit to membership shall be members of the company.

***General meetings***

4. All general meetings other than annual general meetings shall be called extraordinary general meetings.

5. (1) The Board may, whenever it thinks fit, call an extraordinary general meeting.

(2) If at any time there are not within India directors capable of acting, who are sufficient in number to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible, as that in which such a meeting may be called by the Board.

***Proceedings at general meetings***

6. (1) No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

(2) Save as herein otherwise provided, five members present in person shall be a quorum.

7. (1) If within half an hour from the time appointed for holding the meeting, a quorum is not present, the meeting, if called upon the requisition of members, shall be dissolved.

(2) In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and at such other time and place as the Board may determine.

(3) If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

8. The chairman, if any, of the Board shall preside as chairman at every general meeting of the company.

9. If there is no such chairman, or if he is not present within fifteen minutes after the time appointed for holding the meeting, or is unwilling to act as chairman of the meeting, the directors present shall elect one of their number to be chairman of the meeting.

10. If at any meeting no director is willing to act as chairman or if no director is present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose one of their number to be chairman of the meeting.

11. (1) The chairman may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place.

(2) No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(3) When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.

(4) Save as aforesaid, it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

12. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

13. Any business other than that upon which a poll has been demanded may be proceeded with, pending the taking of the poll.

#### ***Votes of members***

14. Every member shall have one vote.

15. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee or other legal guardian, and any such committee or guardian may, on a poll, vote by proxy.

16. No member shall be entitled to vote at any general meeting unless all sums presently payable by him to the company have been paid.

17. (1) No objection shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes.

(2) Any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.

18. A vote given in accordance with the terms of an instrument of proxy shall be valid, notwithstanding the previous death or insanity of the principal or the revocation of the proxy or of the authority under which the proxy was executed: **Provided** that no intimation in writing of such death, insanity, revocation or transfer shall have been received by the company at its office before the commencement of the meeting or adjourned meeting at which the proxy is used.

#### ***Board of directors***

19. The number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

20. (1) The remuneration of the directors shall, insofar as it consists of a monthly payment, be deemed to accrue from day-to-day.

(2) The directors may also be paid all travelling, hotel and other expenses properly incurred by them -

(a) in attending and returning from meetings of the Board or any committee thereof or general meetings of the company ; or

(b) in connection with the business of the company.

#### ***Proceedings of meetings of Board***

21. (1) The Board of directors may meet for the despatch of business, adjourn and otherwise regulate its meetings, as it thinks fit.

(2) A director may, and the *{managing agent, secretaries and treasures,}* manager or secretary on the requisition of a director shall, at any time, summon a meeting of the Board.

\* Words should be omitted

22. (1) Save as otherwise expressly provided in the Act, questions arising at any meeting of the Board shall be decided by a majority of votes.

(2) In case of an equality of votes, the chairman shall have a second or casting vote.

23. The continuing directors may act notwithstanding any vacancy in the Board ; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company, but for no other purpose.

24. (1) The Board may elect a chairman of its meetings and determine the period for which he is to hold office.

(2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the directors present may choose one of their number to be chairman of the meeting.

25. (1) The Board may, subject to the provisions of the Act, delegate any of its powers to committees consisting of such member or members of its body as it thinks fit.

(2) Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the Board.

26. (1) A committee may elect a chairman of its meetings.

(2) If no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be chairman of the meeting.

**27.** (1) A committee may meet and adjourn as it thinks proper. (2) Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

**28.** All acts done by any meeting of the Board or of a committee thereof, or by any person acting as a director, shall notwithstanding that it may be afterwards discovered that there was some defect in the appointment of any one or more of such directors or of any person acting as aforesaid, or that they or any of them were disqualified be as valid as if every such director or such person had been duly appointed and was qualified to be a director.

**29.** Save as otherwise expressly provided in the Act, a resolution in writing, signed by all the members of the Board or a committee thereof for the time being entitled to receive notice of a meeting of the Board or committee, shall be as valid and effectual as if it had been passed at a meeting of the Board or committee, duly convened and held.

#### ***Manager or secretary***

**30.** (1) A manager or secretary may be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit ; and any manager or secretary so appointed may be removed by the Board.

(2) A director may be appointed as manager or secretary.

**31.** A provision of the Act or these regulations requiring or authorising a thing to be done by or to a director and the manager or secretary shall not be satisfied by its being done by or to the same person acting both as director and as, or in place of, the manager or secretary.

#### ***The Seal***

**32.** (1) The Board shall provide for the safe custody of the seal.

(2) The seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board of directors, and except in the presence of at least two directors and of the secretary or such other person as the Board may appoint for the purpose ; and those two directors and the secretary or other person as aforesaid shall sign every instrument to which the seal of the company is so affixed in their pre- sence.

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#### ***Names, addresses, descriptions and occupations of subscribers***

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1. A.B. of....., Merchant
2. C.D. of....., Merchant
3. E.F. of....., Merchant
4. G.H. of....., Merchant
5. I.J. of....., Merchant
6. K.L. of....., Merchant
7. M.N. of....., Merchant

Dated .....day of.....19.....

Witness to the above signatures X.Y. of.....

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#### **TABLE D**

### **MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL**

#### ***Memorandum of association***

**1st** - The name of the company is "The Snowy Range Hotel Company Limited".

**2nd** - The registered office of the company will be situate in the State of West Bengal.

**3rd** - (a) The main objects to be pursued by the company on its incorpora- tion are "the facilitating of travelling in the Snowy Range, by providing hotels and conveyances by sea and by land for the accommodation of travellers".

(b) The objects incidental or ancillary to the attainment of the above main objects are "conducting coaching classes in catering, hotel management, etc., and the doing of such other things as are conducive to the attainment of the foregoing main objects".

(c) The other objects for which the company is established are "running a publishing house and the publishing of periodical magazines/news- papers catering to various interests pertaining to the objects aforesaid".

**4th** - The liability of the members is limited.

**5th** - Every member of the company undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year after he ceases to be a member for payment of the debts and liabilities of the company, contracted before he ceases to be a member, and the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding fifty rupees.



**6th** - The share capital of the company shall consists of five hundred thousand rupees, divided into five thousand shares of one hundred rupees each. We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

<i>Names, addresses, descriptions and occupations of subscribers</i>	<i>Number of shares taken by each subscriber</i>
1. A.B. of....., Merchant	200
2. C.D. of....., Merchant	25
3. E.F. of....., Merchant	30
4. G.H. of....., Merchant	40
5. I.J. of....., Merchant	15
6. K.L. of....., Merchant	5
7. M.N. of....., Merchant	10
Total Shares taken	325

Date.....day of.....19....

Witness of the above signatures X.Y. of .....

### ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL

1. The number of members with which the company proposes to be registered is 100, but the directors may from time to time register an increase of members.

2. All the articles of Table A in Schedule I annexed to the Companies Act, 1956, shall be deemed to be incorporated with these articles and to apply to the company. *Names, addresses, descriptions and occupations of subscribers*

<i>Names, addresses, descriptions and occupations of subscribers</i>
1. A.B. of....., Merchant
2. C.D. of....., Merchant
3. E.F. of....., Merchant
4. G.H. of....., Merchant
5. I.J. of....., Merchant
6. K.L. of....., Merchant
7. M.N. of....., Merchant

Dated .....day of.....19....

Witness to the above signatures X.Y. of.....

### TABLE E

### MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY

#### *Memorandum of association*

**1st** - The name of the company is "The Patent Stereotype Company".

**2nd** - The registered office of the company will be situate in the State of West Bengal.

**3rd** - (a) The main objects to be pursued by the company on its incorpora-tion are "the working of a patent method of founding and casting stereotype plates of which method P.Q. of Bombay, is the sole patentee".

(b) The objects incidental or ancillary to the attainment of the above main objects are "purchasing, taking on lease or licence or concession or otherwise, lands, buildings, works and any rights and privileges or interest therein for establishing the necessary workshops/factories and the doing of such other things as are conducive to the attainment of the foregoing main objects".

(c) The other objects for which the company is established are "conducting research in any field pertaining to the science of metallurgy and turning to account the results of the same".

We, the several persons whose names are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names. *Names, addresses descriptions and Number of shares occupations of subscribers taken by each subscriber*

<i>Names, addresses, descriptions and occupations of subscribers</i>	<i>Number of shares taken by each subscriber</i>
1. A.B. of....., Merchant	3
2. C.D. of....., Merchant	2
3. E.F. of....., Merchant	1
4. G.H. of....., Merchant	2
5. I.J. of....., Merchant	2
6. K.L. of....., Merchant	1
7. M.N. of....., Merchant	1

Total Shares taken 12

Date.....day of.....19....

Witness of the above signatures X.Y. of .....

### Articles of Association of an unlimited company

1. the number of members with which the company proposes to be registered is 20, but the Board may from time to time register an increase of members.
2. The share capital of the company is twenty thousand rupees, divided into twenty shares of one thousand rupees each.
3. The company may by special resolution -
  - (a) increase the share capital by such sum to be divided into shares of such amount as the resolution may prescribe ;
  - (b) consolidate its shares into shares of a larger amount than its existing shares ;
  - (c) sub-divide its shares into shares of a smaller amount than its existing shares ;
  - (d) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person ;
  - (e) reduce its share capital in any way.
4. All the articles of Table A in Schedule I to the Companies Act, 1956, except articles (36, 37, 38, 39, 44, 45 and 46) shall be deemed to be incorporated with these articles and to apply to the company.

#### *Names, addresses, descriptions and occupations of subscribers*

1. A.B. of....., Merchant
2. C.D. of....., Merchant
3. E.F. of....., Merchant
4. G.H. of....., Merchant
5. I.J. of....., Merchant
6. K.L. of....., Merchant
7. M.N. of....., Merchant

Dated .....day of.....19.....

Witness to the above signatures X.Y. of.....

#### TABLE F

#### FORM OF STATEMENT TO BE PUBLISHED BY LIMITED BANKING COMPANIES, INSURANCE COMPANIES AND DEPOSIT, PROVIDENT OR BENEFIT SOCIETIES

\*The share capital of the company is Rs..... divided into ..... shares of Rs. .... each. The number of shares issued is ..... Calls to the amount of Rs..... per share have been made, under which the sum of Rs. .... has been received.

The liabilities of the company on the thirty-first day of December (or thirtieth day of June) were -

Debts owing to sundry persons by the company :

Rs.

Under decree,	.....
On mortgages or bonds,	.....
On notes, bills or hundis,	.....
On other contracts,	.....
On estimated liabilities,	.....

The assets of the company on that day were :

Government securities [stating them],	.....
Bills of exchange, hundis, and promissory notes,	.....
Cash at the bankers,	.....
Other securities.	.....

\*If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

#### SCHEDULE IA

[See section 6(c)]

#### LIST OF RELATIVES

1. Father.
2. Mother (including step-mother).
3. Son (including step-son).
4. Son's wife.
5. Daughter (including step-daughter).
6. Father's father.
7. Father's mother.
8. Mother's mother.
9. Mother's father.
10. Son's son.

11. Son's son's wife.
12. Son's daughter.
13. Son's daughter's husband.
14. Daughter's husband.
15. Daughter's son.
16. Daughter's son's wife.
17. Daughter's daughter.
18. Daughter's daughter's husband.
19. Brother (including step-brothers).
20. Brother's wife.
21. Sister (including step-sister).
22. Sister's husband.
- 23-49. [Omitted by the Companies (Amendment) Act, 1965, w.e.f. 15-10-1965.]

## SCHEDULE II

[See sections 43(2)(a) and 56]

### MATTERS TO BE SPECIFIED IN PROSPECTUS AND REPORTS TO BE SET OUT THEREIN

#### <sup>1</sup>[PART I

#### **I. General information**

- (a) Name and address of registered office of the company.
- (b) (i) Consent of the Central Government for the present issue and declaration of the Central Government about non-responsibility for financial soundness or correctness of statements.
- (ii) Letter of intent/industrial licence and declaration of the Central Government about non-responsibility for financial soundness or correctness of statements.
- (c) Names of regional stock exchange and other stock exchanges where application made for listing of present issue.
- (d) Provisions of sub-section (1) of section 68A of the Companies Act, relating to punishment for fictitious applications.
- (e) Statement/declaration about refund of the issue if minimum sub- scription of 90 per cent is not received within 90 days from closure of the issue.
- (f) Declaration about the issue of allotment letters/refunds within a period of 10 weeks and interest in case of any delay in refund at the prescribed rate under section 73(2)/(2A).
- (g) Date of opening of the issue.  
Date of closing of issue.  
Date of earliest closing of the issue.
- (h) Names and addresses of auditors and lead managers.
- (i) Name and address of trustee under debenture trust deed (in case of debenture issue).
- (j) Whether rating from Crisil or any rating agency has been obtained for the proposed debenture/preference shares issue.  
If no rating has been obtained, this should be answered as "No".  
If "yes" the rating should be indicated.

- (k) Underwriting of the issue  
(Names and addresses of the underwriters and the amount underwritten by them).  
(Declaration by board of directors that the underwriters have sufficient resources to discharge their respective obligations.)

<sup>2</sup>[(l) a statement by the board of directors stating that -

- (i) all moneys received out of issue of shares or debentures to public shall be transferred to a separate bank account other than the bank account referred to in sub-section (3) of section 73 ;
- (ii) details of all monies utilised out of the issue referred to in sub-item (i) shall be disclosed under an appropriate separate head in the balance sheet of the company indicating the purpose for which such monies had been utilised ; and
- (iii) details of all unutilised monies out of the issue of share or debentures, if any, referred to in sub-item (i) shall be disclosed under an appropriate separate head in the balance sheet of the company indicating the form in which such unutilised monies have been invested.]

1. Substituted by Notification No. SO 666(E) dated 3-10-1991.

2. Inserted by the Notification No. GSR 265(E) dated 15-5-1997.

#### **II. Capital structure of the company**

- (a) Authorised, issued, subscribed and paid-up capital.
- (b) Size of present issue giving separately reservation for preferential allotment to promoters and others.
- (c) Paid-up capital
  - (i) after the present issue
  - (ii) after conversion of debentures (if applicable).

### **III. Terms of the present issue**

- (a) Terms of payments.
- (b) Rights of the instrument holders.
- (c) How to apply - availability of forms, prospectus and mode of payment.
- (d) Any special tax benefits for company and its shareholders.

### **IV. Particulars of the issue**

- (a) Objects.
- (b) Project cost.
- (c) Means of financing (including contribution of promoters).

### **V. Company, management and project**

- (a) History and main objects and present business of the company.
- (b) Subsidiary(ies) of the company, if any  
(For financial data, refer to auditor's report in Part II).
- (c) Promoters and their background.
- (d) Names, addresses and occupation of manager, managing director and other directors including nominee-directors, whole-time directors (giving their directorships in other companies).
- (e) Location of project.
- (f) Plant and machinery, technology, process, etc.
- (g) Collaboration, any performance guarantee or assistance in marketing by the collaborators.
- (h) Infrastructure facilities for raw materials and utilities like water, electricity, etc.
- (i) Schedule of implementation of the project and progress made so far, giving details of land acquisition, civil works, installation of plant and machinery, trial production, date of commercial production, etc.
- (j) The products :
  - (i) Nature of the products - consumer/industrial and end-users
  - (ii) Approach to marketing and proposed marketing set up.
  - (iii) Export possibilities and export obligations, if any (in case of a company providing any "service" particulars, as applicable, be furnished).
- (k) Future prospects - expected capacity utilisation during the first three years from the date of commencement of production, and the expected year when the company would be able to earn cash profits and net profits.  
Stock market data for shares/debentures of the company high/low price in each of the last three years and monthly high/low during the last six months (where applicable).

### **VI. Following particulars in regard to the company and other listed companies under the same management within the meaning of section 370(1B) which made any capital issue during the last three years :**

Name of the company

Year of issue

Type of issue (Public/rights/composite)

Amount of issue

Date of closure of issue

Date of completion of delivery of share/debenture certificates

Date of completion of the project, where object of the issue was financing of a project

Rate of dividend paid

### **VII. (a) Outstanding litigation pertaining to -**

- (i) matters likely to affect operation and finances of the company including disputed tax liabilities of any nature ; and
- (ii) criminal prosecution launched against the company and the directors for alleged offences under the enactments specified in paragraph 1 of Part I of Schedule XIII to the Companies Act, 1956.
- (b) Particulars of default, if any, in meeting statutory dues, institutional dues, and towards instrument holders like debentures, fixed deposits, and arrears on cumulative preference shares, etc. (also give the same particulars about the companies promoted by the same private promoters and listed on stock exchanges).
- (c) Any material development after the date of the latest balance sheet and its impact on performance and prospects of the company.

### **VIII. Management perception of risk factors (i.e., sensitivity to foreign exchange rate fluctuations, difficulty in availability of raw materials or in marketing of products, cost/time overrun, etc.)**

#### **PART II**

#### **A. General information**

1. Consent of directors, auditors, solicitors/advocates, managers to the issue, registrar of issue, bankers to the company, bankers to the issue and experts.
2. Expert opinion obtained, if any.
3. Change, if any, in directors and auditors during the last three years, and reasons thereof.
4. Authority for the issue and details of resolution passed for the issue.
5. Procedure and time schedule for allotment and issue of certificates.

6. Names and addresses of the company secretary, legal adviser, lead managers, co-managers, auditors, bankers to the company, bankers to the issue, and brokers to the issue.

## **B. Financial information**

Reports to be set out

1. A report by the auditors of the company with respect to -

(a) profits and losses and assets and liabilities, in accordance with sub-clause (2) or (3) of this clause, as the case may require ; and

(b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company for each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares for any of those years,

and, if no accounts have been made up in respect of any part of the period of five years ending on a date three months before the issue of the prospectus, containing a statement of that fact (and accompanied by a statement of the accounts of the company in respect of that part of the said period up to a date not earlier than six months of the date of issue of the prospectus indicating the profit or loss for that period and the assets and liabilities position as at the end of that period together with a certificate from the auditors that such accounts have been examined and found correct by them. The said statement may indicate the nature of provision or adjustments made or are yet to be made).

2. If the company has no subsidiaries, the report shall -

(a) so far as regards profits and losses, deal with the profits or losses of the company (distinguishing items of a non-recurring nature) for each of the five financial years immediately preceding the issue of the prospectus ; and

(b) so far as regards assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

3. If the company has subsidiaries, the report shall -

(a) so far as regards profits and losses, deal separately with the company's profits or losses as provided by sub-clause (2) and in addition deal either -

(i) as a whole with the combined profits or losses of its subsidiaries so far as they concern members of the company ; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company ;

or, instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company, and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries ; and

(b) so far as regards assets and liabilities, deal separately with the company's assets and liabilities as provided by sub-clause (2) and in addition, deal either -

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities ; or

(ii) individually with the assets and liabilities of each subsidiaries ;

and shall indicate as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

4. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly -

(i) in the purchase of any business ; or

(ii) in the purchase of an interest in any business and by reason of that purchase, or anything to be done in consequence thereof, or in connection therewith ; the company will become entitled to an interest as respects either the capital or profits and losses or both, in such business exceeding fifty per cent, thereof ; a report made by accountants (who shall be named in the prospectus) upon -

(a) the profits or losses of the business for each of the five financial years immediately preceding the issue of the prospectus ; and

(b) the assets and liabilities of the business at the last date to which the accounts of the business were made up, being a date not more than one hundred and twenty days before the date of the issue of the prospectus.

5. (1) If -

(a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate ; and

(b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith, that body corporate will become a subsidiary of the company ;

a report made by accountants (who shall be named in the prospectus) upon -

(i) the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus ; and

(ii) the assets and liabilities of the other body corporate at the last date to which its accounts were made up.

(2) The said report shall -

(a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with for holders of other shares, if the company had at all material times held the shares to be acquired ; and

(b) where the other body corporate has subsidiaries deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-clause (2) above in relation to the company and its subsidiaries.



6. Principal terms of loan and assets charged as security.

**C. Statutory and other information**

1. Minimum subscription.

2. Expenses of the issue giving separately fee payable to :

(a) Advisers.

(b) Registrars to the issue.

(c) Managers to the issue.

(d) Trustees for the debenture-holders.

3. Underwriting commission and brokerage.

4. Previous issue for cash.

5. Previous public or rights issue, if any :

(during last five years)

(a) Date of allotment : Closing date :

Date of refunds :

Date of listing on the stock exchange :

(b) If the issue(s) at premium or discount and the amount thereof.

(c) The amount paid or payable by way of premium, if any, on each share which had been issued within the two years preceding the date of the prospectus or is to be issued, stating the dates or proposed dates of issue and, where some shares have been or are to be issued at a premium and other shares of the same class at a lower premium, or at part or at a discount, the reasons for the differentiation and how any premiums received have been or are to be disposed of.

6. Commission or brokerage on previous issue.

7. Issue of shares otherwise than for cash.

8. Debentures and redeemable preference shares and other instruments issued by the company outstanding as on the date of prospectus and terms of issue.

9. Option to subscribe.

<sup>1</sup>[9A. The details of option to subscribe for securities to be dealt with in a depository.]

1. Inserted by the Depositories Act, 1996 w.r.e.f. 20-9-1995.

10. Purchase of property :

(i) As respects any property to which this clause applies -

(a) the names, addresses, descriptions and occupations of the vendors ;

(b) the amount paid or payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-purchaser, the amount so paid or payable to each vendor, specifying separately the amount, if any, paid or payable for goodwill ;

(c) the nature of the title or interest in such property acquired or to be acquired by the company ;

(d) short particulars of every transaction relating to the property completed within the two preceding years, in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter, or a director or proposed director of the company had any interest, direct or indirect, specifying the date of the transaction and the name of such promoter, director or proposed director and stating the amount payable by or to such vendor, promoter, director or proposed director in respect of the transaction.

(ii) The property to which sub-clause (i) applies, is a property purchased or acquired by the company or proposed to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, other than property -

(a) the contract for the purchase or acquisition whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract ; or

(b) as respects which the amount of the purchase money is not material.

(iii) For the purpose of this clause, where a vendor is a firm, the members of the firm shall not be treated as separate vendors.

(iv) If the company proposes to acquire a business which has been carried on for less than three years, the length of time during which the business has been carried on.

11. (i) Details of directors, proposed directors, whole-time directors, their remuneration, appointment and remuneration of managing directors, interests of directors, their borrowing powers and qualification shares.

Any amount or benefit paid or given within the two preceding years or intended to be paid or given to any promoter or officer and consideration for payment of giving of the benefit.

(ii) The dates, parties to, and general nature of -

(a) every contract appointing or fixing the remuneration of a managing director or manager whenever entered into, that is to say, whether within or more than, two years before the date of the prospectus ;

(b) every other material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of the prospectus.

A reasonable time and place at which any such contract or a copy thereof may be inspected.

(iii) Full particulars of the nature and extent of the interest, if any, of every director or promoter -

(a) in the promotion of the company ; or

(b) in any property acquired by the company within two years of the date of the prospectus or proposed to be acquired by it.

Where the interest of such a director or promoter consists in being a member of a firm or company, the nature and extent of the interest of the firm or company, with a statement of all sums paid or agreed to be paid to him or to the firm or company in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm or company, in connection with the promotion or formation of the company.

12. Rights of members regarding voting, dividend, lien on shares and the process for modification of such rights and forfeiture of shares.

13. Restrictions, if any, on transfer and transmission of shares/debentures and on their consolidation/splitting.

14. Revaluation of assets, if any (during last five years).

15. Material contracts and inspection of documents, e.g.,

A. Material contracts.

B. Documents.

C. Time and place at which the contracts together with documents will be available for inspection from the date of prospectus until the date of closing of the subscription list.

### PART III

#### PROVISIONS APPLYING TO PARTS I AND II OF THE SCHEDULE

16. Every person shall, for the purpose of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase or for any option of purchase, of any property to be acquired by the company, in any case where -

(a) the purchase money is not fully paid at the date of the issue of the prospectus ;

(b) the purchase money is to be paid or satisfied, wholly or in part, out of the proceeds of the issue offered for subscription by the prospectus;

(c) the contract depends for its validity or fulfilment on the result of that issue.

17. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

18. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than five financial years, the accounts of the company or business have only been made up in respect of four such years, three such years, two such years or one such year, Part II of this Schedule shall have effect as if references to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

19. Where the five financial years immediately preceding the issue of the prospectus which are referred to in Part II of this Schedule or in this Part cover a period of less than five years, references to the said five financial years in either Part shall have effect as if references to a number of financial years the aggregate period covered by which is not less than five years immediately preceding the issue of the prospectus were substituted for references to the five financial years aforesaid.

20. Any report required by Part II of this Schedule shall either -

(a) indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary ; or

(b) make those adjustments and indicate that adjustments have been made.

21. Any report by accountants required by Part II of this Schedule -

(a) shall be made by accountants qualified under this Act for appointment as auditors of the company ; and

(b) shall not be made by any accountant who is an officer or servant ; or a partner or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

For the purposes of this clause, the expression "officer" shall include a proposed director but not an auditor.

22. Inspection of documents :

Reasonable time and place at which copies of all balance sheets and profit and loss accounts, if any, on which the report of the auditors is based, and material contracts and other documents may be inspected.

**Note :** Term "year" wherever used hereinafter, means financial year.

#### Declaration

<sup>1</sup>[That all the relevant provisions of the Companies Act, 1956, and the guidelines issued by the Government or the guidelines issued by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992, as the case may be, have been complied with and no statement made in prospectus is contrary to the provisions of the Companies Act, 1956 or the Securities and Exchange Board of India Act, 1992 or rules made there under or guidelines issued, as the case may be]

Place : .....

Date : .....

Signature of directors

1. Substituted by Notification No. GSR 650(E) dated 17-9-2002.

**SCHEDULE III**  
[See section 70]

**FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED, AND REPORTS TO BE SET OUT THEREIN**

**PART I**

**FORM OF STATEMENT AND PARTICULARS TO BE CONTAINED THEREIN**

**THE COMPANIES ACT, 1956**

***Statement in lieu of prospectus delivered for registration by***

.....  
(Insert the name of the company)

**PURSUANT TO SECTION 70 OF THE COMPANIES ACT, 1956**

Delivered for registration by.....

The nominal share capital of the company Rs. ....

Divided into

.....Shares of Rs. .... each

..... " " " .....

..... " " " .....

.....shares of Rs .....each

Amount (if any) of above capital which consists of redeemable preference shares

The earliest date on which the company has power to redeem these shares.

Names, addresses, descriptions and occupations of-

(a) directors or proposed directors ;

(b) managing director or proposed managing director ;

(c) \*, managing agent or proposed managing agent ;

(d) secretaries and treasurers or proposed secretaries and treasurers);

(e) manager or proposed manager.

Any provision in the articles of the company, or in any contract irrespective of the time when it was entered into, as to the appointment of and remuneration payable to the persons referred to in (a), (b), (c), (d) and (e) above.

If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash.

1. ....share of Rs ..... fully paid

2. ....shares upon which, Rs. .... per share credited as paid.

3. ....debentures. Rs .....

4. Consideration : .....

The consideration for the intended issue of those shares and debentures.

Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from, a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.

1. .... shares of Rs. .... and debentures of Rs. ....

Period during which the option is exercisable.

2. Until .....

Price to be paid for shares or debentures subscribed for or acquired under the option.

3. ....

Consideration for the option or the right to option.

4. Consideration.....

Persons to whom the option or the right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.

Names, occupations and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company except where the contract for its purchase or acquisition was entered into in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not material.

Amount (in cash, shares or debentures) payable to each separate vendor.

Amount (if any) paid or payable (in cash, shares or debentures) for each such property, specifying amount (if any) paid or payable for goodwill.

Short particulars of every transaction relating to each such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest, direct or indirect.

Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company ;  
or

Rate of the commission

The number of shares, if any, which persons have agreed to subscribe for a commission.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the five years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than five years and the accounts of which have only been made up in respect of four years, three years, two years or one year, the above requirements shall have effect as if references to four years, three years, two years or one year, as the case may be, were substituted for references to five years, and in any such case the statement shall say how long the business to be acquired has been carried on.

Where the financial year with respect to which the accounts of the business have been made up is greater or less than a year, references to five years, four years, three years, two years, and one year in this paragraph shall have effect as if references to such number of financial years as in the aggregate, cover a period of not less than five years, four years, three years, two years or one year, as the case may be, were substituted for references to three years, two years and one year, respectively.

Estimated amount of preliminary expenses.

By whom those expenses have been paid or are payable.

## 5. Names and addresses -

Total purchase price :

Rs. ....

Cash Rs. ....

Shares Rs. ....

Debentures Rs. ....

Good will Rs. ....

Amount paid.....

Amount payable.....

Rate per cent

Rs. ....

Amount paid or intended to be paid to any promoter.

Name of promoter.....

Amount Rs. ....

Consideration for the payment

Consideration.....

Any other benefit given or intended to be given to any promoter

Name of promoter.....

Nature and value of benefit.....

Consideration for the benefit

Consideration.....

Dates of, parties to, and general nature of :

(a) contract appointing or fixing the remuneration of directors, managing director \*, managing agent, secretaries and treasurers,} or manager ; and

(b) every other material contract (other than (i) contracts entered into in the ordinary course of the business intended to be carried on by the company, or (ii) entered into more than two years before the delivery of this statement).

Time and place at which (1) the contracts or copies thereof or (2)(i) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (ii) in the case of a contract wholly or partly in a language other than English, a copy of a translation thereof in English or embodying a translation in English of the parts in the other language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, may be inspected. Names and addresses of the auditors of the company (if any).

Full particulars of the nature and extent of the interest of every director, managing director \*, managing agent, secretaries and treasurers} or manager in the promotion of or in the property proposed to be acquired by the company, or where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

(Signatures of the persons above named as directors or proposed directors, or of their agents authorised in writing.)

.....  
.....  
.....

Date.....

\* Words should be omitted

## PART II

### REPORTS TO BE SET OUT

1. Where it is proposed to acquire a business, a report made by accountants (who shall be named in the statement) upon -

(a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar ; and

(b) the assets and liabilities of the business as at the last date to which the accounts of the business were made up.

2. (1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company, a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-clause (2) or (3) of this clause, as the case may require, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be



acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in sub-clause (1) shall -

(a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar;

(b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate as at the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-clause (1) shall -

(a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by sub-clause (2), and in addition deal either -

(i) as a whole with the combined profits or losses of its subsidiaries so far as they concern members of the other body corporate ; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the other body corporate ;

or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate, and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries ; and

(b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by sub-clause (2) and, in addition, deal either -

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate's assets and liabilities ; or

(ii) individually with the assets and liabilities of each subsidiary ; and shall indicate, as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

### **PART III**

#### **PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE**

3. (1) In this Schedule, the expression "vendor" includes a vendor as defined in Part III of Schedule II.

(2) Clause 31 of Schedule II shall apply to the interpretation of Part II of this Schedule as it applies to the interpretation of Part II of Schedule II.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five financial years, the accounts of the business or body corporate have only been made up in respect of four such years, three such years, two such years or one such year, Part II of this Schedule shall have effect as if references to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

5. Any report required by Part II of this Schedule shall either -

(a) indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the person making the report necessary ; or

(b) make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule - (a) shall be made by accountants qualified under this Act for appointment as auditors of a company ; and

(b) shall not be made by any accountant who is an officer or servant, or a partner or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

For the purposes of this clause, the expression "officer" shall include a proposed director but not an auditor.

### **SCHEDULE IV**

**Form of Statement in lieu of prospectus to be delivered to Registrar by a private company on becoming a public company and reports to be set out therein**

**[See section 44(2)(b)]**

#### **PART I**

**Form of statement and particulars to be contained therein**

**The Companies Act, 1956**

**Statement in lieu of prospectus delivered for registration by**

.....

**(Insert the name of the company)**

**Pursuant to clause (b) of sub-section (2) of section 44 of the Companies Act, 1956**

Delivered for registration by

Delivered for registration by

.....

The nominal share capital of the company Divided into	Rs.....shares of Rs.....each....., , ....., , , ,....., , , ,.....	
Amount (if any) of above capital which consists of redeemable preference shares.	.....shares of Rs.....each	
The earliest date on which the company has power to redeem these shares		
Names, addresses, descriptions and occupations of-		
(a)directors or proposed directors;		
(b)managing director or proposed managing director;		
(c) <sup>1</sup> [***]		
(d) <sup>2</sup> [***]		
(e)manager or proposed manager.		
Any provision in the articles of the company, or in any contract irrespective of the time when it was entered into as to the appointment of and remuneration payable to the persons referred to in (a), (b) <sup>3</sup> [***] and (e) above		
Amount of shares issued.		.....shares
Amount of commission paid or payable in connection therewith.		
Amount of discount, if any, allowed on the issue of any shares, or so much thereof as has not been written off at the date of the statement.		
Unless more than two years have elapsed since the date on which the company was entitled to commence business:-		
Amount of preliminary expenses.	Rs. ....	
By whom those expenses have been paid or are payable.		
Amount paid or intended to be paid to any promoter.	Name of promoter .....Amount Rs.....	
Consideration for the payment.	Consideration .....	
Any other benefit given or intended to be given to any promoter.	Name of promoter .....Nature and value ..... of benefit .....	
Consideration for the benefit.	Consideration .....	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.		
Number and amount of shares and debentures issued within the two years preceding the date of that statement as fully or partly paid-up otherwise than for cash or agreed to be so issued at the date of this statement.	1. ....shares of Rs. .... fully paid2. ....share upon which Rs. .... per share credited as paid.3. .... debentures of Rs. .... each	
Consideration for the issue of those shares or debentures.	4. Consideration:	
Number, description and amount of any shares or debentures which any person has or is entitled to be given an option to subscribe for, or to acquire from, a person to whom they have been allotted or agreed to be allotted with a view to his offering them or sale.	1. .... shares of Rs. .... and ..... debentures of Rs. ....	
Period during which the option is exercisable.	2. Until	
Price to be paid for shares or debentures subscribed for or acquired under the option.	3	
Consideration for the option or right to option.	4. Consideration:	
Persons to whom the option or the right to option was given or, if given to existing shareholders or debenture holders as such, the relevant shares or debentures.	5. Names and addresses.....	
Names, addresses, descriptions and occupations of vendors of property (1) purchased or acquired by the company within the two years preceding the date of this statement or (2) agreed or proposed to be purchased or acquired by the company, except where the contract for its purchase or		

acquisition was entered into in the ordinary course of business and there is no connection between the transaction and the company ceasing to be a private company or where the amount of the purchase money is not material.		
Amount (in cash, shares or debentures) paid or payable to each separate vendor.	Total purchase price Rs. ....	
Amount paid or payable in cash, shares or debentures for each such property, specifying the amount paid or payable for goodwill. Short particulars of every transaction relation to each such property which was completed within the two preceding years and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest direct or indirect.	Cash	Rs. ....
	Shares	Rs. ....
	Debentures	Rs. ....
	Goodwill	Rs. ....
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or rate of the commission.	Amount paid .....	
	Amount payable .....	
	Rate per cent .....	
The number of shares, if any, which persons have agreed to subscribe for a commission.		
If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the five years immediately preceding the date of this statement, provided that in the case of a business which has been carried on for less than five years, and the accounts of which have only been made-up in respect of four years, three years, two years or one year, the above requirements shall have effect as if references to four years, three years, two years, or one year, as the case may be, were substituted for references to five years, and in any such case, the statement shall say how long the business to be acquired has been carried on.		
Where the financial year with respect to which the accounts of the business have been made-up is greater or less than a year, references, to five years, four years, three years, two years and one year in this paragraph shall have effect as if references to such number of financial years as, in the aggregate, cover a period of not less than five years, four years, three years, two years or one year, as the case may be, were substituted for references to three years, two years and one year respectively.		
Dates of, parties to, and general nature of-		
(a) contract appointing or fixing the remuneration of directors, managing director <sup>3</sup> [***] or manager; and		
(b) every other material contract [other than (i) contracts entered into in the ordinary course of the business intended to be carried on by the company or (ii) entered into more than two years before the delivery of this statement.]		
Time and place at which (1) the contracts or copies thereof; or (2)(i) in the case of a contract not reduced into writing, a memorandum giving full particulars thereof, and (ii) in the case of a contract wholly or partly in a language other than English, a copy of translation thereof in English or embodying a translation in English of the parts in the other language, as the case may be, being a translation certified in the prescribed manner to be a correct translation, may be inspected.		
Names and addresses of the auditors of the company.		
Full particulars of the nature and extent of the interest of every director, managing director <sup>2</sup> [***] or manager, in any property purchased or acquired by the company within the two years preceding the date of this statement or proposed to be purchased or acquired by the company or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him		

as, a director, or otherwise for services rendered or to be rendered to the company by him or by the firm.	
Rates of the dividends (if any) paid by the company in respect of each class of shares in the company in each of the five financial years immediately preceding the date of this statement or since the incorporation of the company, whichever period is shorter.	
Particulars of the cases in which no dividends have been paid in respect of any class of shares in any of these years.	
(Signatures of the persons above named as directors or proposed directors, or of their agents authorised in writing.)	..... ..... .....
Date.....	

**1 Omitted by Act No. 17 of 1969, w.e.f. 3rd. April, 1970.**

**2 Omitted by Act No. 17 of 1969, w.e.f. 3rd. April, 1970.**

**3 Omitted by Act No. 17 of 1969, w.e.f. 3rd. April, 1970.**

## PART II

### Report to be set out

1. If unissued shares or debentures of the company are to be applied in the purchase of a business, a report made by accountants (who shall be named in the statement) upon-

(a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(b) the assets and liabilities of the business as at the last date to which the accounts of the business were made-up.

2.

(1) If unissued shares or debentures of the company are to be applied directly or indirectly in any manner resulting in the acquisition of shares in a body corporate which by reason of the acquisition or anything to be done in consequence thereof or in connection therewith will become a subsidiary of the company a report made by accountants (who shall be named in the statement) with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-clause (2) or (3) of this clause, as the case may require, indicating how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company, and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate has no subsidiaries, the report referred to in sub-clause (1) shall-

(a) so far as regards profits and losses, deal with the profits or losses of the body corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(b) so far as regards assets and liabilities, deal with the assets and liabilities of the body corporate as at the last date to which the accounts of the body corporate were made-up.

(3) If the other body corporate has subsidiaries, the report referred to in sub-clause (1) shall-

(a) so far as regards profits and losses, deal separately with the other body corporate's profits or losses as provided by sub-clause (2), and in addition deal either-

(i) as a whole with the combined profits or losses of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern

members of the other body corporate; or, instead of dealing separately with the other body corporate's profits or losses, deal as a whole with the profits or losses of the other body corporate and, so far as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries; and

(b) so far as regards assets and liabilities, deal separately with the other body corporate's assets and liabilities as provided by sub-clause (2) and in addition, deal either-

(i) as whole with the combined assets and liabilities of its subsidiaries, with or without the other body corporate; assets and liabilities; or

(ii) individually with the assets and liabilities of each subsidiary; and shall indicate, as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

### **PART III**

#### **Provisions applying to Parts I and II of this Schedule**

3. (1) In this Schedule, the expression "vendor" includes a vendor as defined in Part III of Schedule II.

(2) Clause 31 of Schedule II shall apply to the interpretation of Parts I and II of this Schedule as it applies to the interpretation of Part II of Schedule II.

4. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five financial years, the accounts of the business or body corporate have only been made-up in respect of four such years, three such years, two such years or one such year, Parts I and II of this Schedule shall have effect as if reference to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for references to five financial years.

5. Any report required by Part II of this Schedule shall either-

(a) indicate by way of note any adjustments as respects the figures of any profits or losses or assets and liabilities dealt with by the report which appear to the persons making the report necessary; or

(b) make those adjustments and indicate that adjustments have been made.

6. Any report by accountants required by Part II of this Schedule shall-

(a) be made by accountants qualified under this Act for appointment as auditors of a company; and

(b) shall not be made by any accountant who is an officer or servant or a partner or in the employment of an officer or servant, of the company, or of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

For the purposes of this clause, the expression "officer" shall include a proposed director but not an auditor.

### **<sup>1</sup>SCHEDULE V**

[See section 159]

#### **ANNUAL RETURN**

#### **CONTENTS AND FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL**

##### **PART I CONTENTS**

1. The address of the registered office of the company.

2. A summary specifying the following in respect of each class of shares :

(a) the amount of the authorised share capital of the company and the number of shares into which it is divided ;

(b) the number of shares issued, from the date of commencement of the company to the date of the company's last annual general meeting ;

(c) the number of shares subscribed up to the date aforesaid ;

(d) the paid-up share capital up to that date.

3. The total number of non-convertible, partly convertible and fully convertible debentures issued and outstanding on the date referred to in sub-clause (b) of clause 2.

4. Particulars of the total amount of the indebtedness of the company on the date referred to in sub-clause (b) of clause 2 in respect of all charges including mortgages which are required to be registered with the Registrar under this Act.

5. A list -

(a) containing the names and addresses of all persons who, on the date of the company's last annual general meeting are members or debenture holders of the company and of persons who have ceased to be members or debenture holders on or before that day and since the date of the annual general meeting with reference to which the last return was submitted or in the case of the first return, since the incorporation of the company ;

(b) stating the number of shares or debentures held by each of the existing members or debenture holders, as the case may be, at the date referred to in sub-clause (b) of clause 2, specifying the number of shares or debentures transferred since the date of the annual general meeting with reference to which the last return was submitted or in the case of the first return, since the date of the incorporation of the company by persons who are still members or debenture holders respectively, the dates of registration of transfers, and the names of transferees and the relevant folio containing particulars thereof ;

(c) if the names aforesaid are not arranged in alphabetical order having annexed thereto an index sufficient to enable the name of any person therein to be easily found.

6. Particulars specifying name, nationality, date of birth, date of appointment, Election Commission's Identity Card No. if issued and residential address with respect to the persons who at the date of the company's last annual general meeting are the directors of the company and with respect to any person who at the date is the manager or the secretary of the company together with all such particulars, with respect to those who had ceased to hold such office that is the office of the director, manager or secretary on or before the date of the last annual general meeting and since the date of the annual general meeting with respect to which the last return was submitted or in the case of the first return, since the incorporation of the company.

7. Information whether the shares of the company are listed on a recognised stock exchange.

---

1. Substituted by Notification No. GSR 389(E), dated 15-5-1995.

**FORM OF ANNUAL RETURN OF A COMPANY HAVING A SHARE CAPITAL**  
**ANNUAL RETURN**

The Companies Act, 1956

(1 of 1956)

**SCHEDULE V**

[See section 159]

Part II

I. Registration Details

Registration No.-----

Registration date -----(dd/mm/yy)

State Code -----(Refer Code List)

Whether shares listed on Recognised stock exchange(s) ----

Y - Yes

N - No

If Yes, Stock Exchange Code (Totals)  
(Refer Code List 2)

A-----

B-----

AGM Held Y - Yes---- N - No-----

Date of AGM / Due date -----(dd/mm/yy)

II. Name and registered office address of company :

Company Name-----

Address -----

Town/City-----

State ----- Pin Code -----

Telephone (with STD) Area Code -----Number -----

Fax Number -----

Mail address-----

III. Capital structure of the company (amount in Rs. thousand)

Authorised share capital break up

Type of Shares

No. of shares

Nominal value (in Rs.)

(i) Equity

-----

-----

(ii) Preference

-----

-----



Total authorised capital

-----

Issued share capital break up

(i) Equity

-----

-----

(ii) Preference

-----

-----

Total authorised capital

-----

Subscribed share capital break up

Type of Shares

No. of shares

Nominal value (in Rs.)

(i) Equity

-----

-----

(ii) Preference

-----

-----

Total authorised capital

-----

Paid up share capital breaking

Types of shares

No. of shares

Amount paid up (in Rs.)

(i) Equity

-----

-----

(ii) Preference

-----

-----

Total Paid-up capital

-----

Debentures break up

Type of debenture

No. of debentures

Nominal value (in Rs.)

(i) Non-convertible

-----

-----

(ii) Partly convertible

-----

-----

(iii) Fully convertible

-----

-----

Total Amount

-----

IV. Directors/manager/secretary information (past and present) [Refer clause 6 of Part (I) of Schedule V]

Name: -----(surname) -----(Middle Name)----- (First name)

Nationality I - Indian -----

F - Foreign-----

Date of Birth----- (dd/mm/yy)

Designation

C - Chairman-Cum-Managing Director ,W - Whole-time Director, S - Secretary, R - Manager

D - Director, M - Managing Director  
Date of Date of appointment----- (dd/mm/yy)  
Date of Ceasing ----- (dd/mm/yy)  
Election Commission Identity Card No. (if issued)]  
-----

---

Name: ----- (surname) ----- (Middle Name) ----- (First name)  
Nationality I - Indian -----  
F - Foreign-----  
Date of Birth----- (dd/mm/yy)  
Designation  
C - Chairman-Cum-Managing Director ,W - Whole-time Director, S - Secretary, R - Manager  
D - Director, M - Managing Director  
Date of Date of appointment----- (dd/mm/yy)  
Date of Ceasing ----- (dd/mm/yy)  
Election Commission Identity Card No. (if issued)]  
-----

Name: ----- (surname) ----- (Middle Name) ----- (First name)  
Nationality I - Indian -----  
F - Foreign-----  
Date of Birth----- (dd/mm/yy)

Designation  
C - Chairman-Cum-Managing Director ,W - Whole-time Director, S - Secretary, R - Manager  
D - Director, M - Managing Director  
Date of Date of appointment----- (dd/mm/yy)  
Date of Ceasing ----- (dd/mm/yy)  
Election Commission Identity Card No. (if issued)]  
-----

---

Name: ----- (surname) ----- (Middle Name) ----- (First name)  
Nationality I - Indian -----  
F - Foreign-----  
Date of Birth----- (dd/mm/yy)

Designation  
C - Chairman-Cum-Managing Director ,W - Whole-time Director, S - Secretary, R - Manager  
D - Director, M - Managing Director  
Date of Date of appointment----- (dd/mm/yy)  
Date of Ceasing ----- (dd/mm/yy)  
Election Commission Identity Card No. (if issued)]  
-----

Name: ----- (surname) ----- (Middle Name) ----- (First name)  
Nationality I - Indian -----  
F - Foreign-----  
Date of Birth----- (dd/mm/yy)

Designation  
C - Chairman-Cum-Managing Director ,W - Whole-time Director, S - Secretary, R - Manager  
D - Director, M - Managing Director  
Date of Date of appointment----- (dd/mm/yy)  
Date of Ceasing ----- (dd/mm/yy)  
Election Commission Identity Card No. (if issued)]  
-----

---

Residential Address  
-----  
Town/City  
-----  
District  
-----  
State  
-----  
Pin Code  
-----

---

Residential Address

Town/City

District

State

Pin Code

Residential Address

Town/City

District

State

Pin Code

\*Note : Additional Sheets may be attached if needed.

V. Details of shares/debentures held at date of AGM\*

Ledger Folio of share/debenture holder-----

Share/debenture

holder's name----- (surname) ----- (Middle Name) ----- (First name)

Father's name/ Husband' name -----

Type of share/ debentures 1 - Equity, 2 - Preference shares 3 - Debentures, 4 - Stock

Number of shares/ debentures held/stock, if any

Amount per share (in Rs.) -----

Ledger Folio of share/debenture holder-----

Share/debenture

holder's name----- (surname) ----- (Middle Name) ----- (First name)

Father's name/ Husband' name -----

Type of share/ debentures 1 - Equity, 2 - Preference shares 3 - Debentures, 4 - Stock

Number of shares/ debentures held/stock, if any

Amount per share (in Rs.) -----

Ledger Folio of share/debenture holder-----

Share/debenture

holder's name----- (surname) ----- (Middle Name) ----- (First name)

Father's name/ Husband' name -----

Type of share/ debentures 1 - Equity, 2 - Preference shares 3 - Debentures, 4 - Stock

Number of shares/ debentures held/stock, if any

Amount per share (in Rs.) -----

Note : Separate sheet may be attached if needed. If number of such shareholders exceed 10, if so desired, a text file may be submitted on a floppy or a cartridge tape in the format given in Annexure III.

Address

Town/City

District

State

Pin Code

Address

Town/City

District  
-----  
State  
-----  
Pin Code  
-----

---

Address  
-----  
Town/City  
-----  
District  
-----  
State  
-----  
Pin Code  
-----

VI. Details of shares/debentures transfers since date of last AGM (or in the case of the first return at any time since the incorporation of the company)\*  
Date of Previous AGM -----(dd/mm/yy)

---

Date of registration of transfer of shares----- (dd/mm/yy)  
Type of Transfer 1- Equity, 2 - Preference shares, 3 - Debentures, 4 - Stock  
Number of shares/ debentures transferred  
Amount per share (in Rs.)  
Ledger folio of transferor -----  
Transferor's name -----(surname) -----(Middle Name)----- (First name)  
Ledger folio transferee -----  
Transferee's name -----(surname) -----(Middle Name)----- (First name)

---

Date of registration of transfer of shares----- (dd/mm/yy)  
Type of Transfer 1- Equity, 2 - Preference shares, 3 - Debentures, 4 - Stock  
Number of shares/ debentures transferred  
Amount per share (in Rs.)  
Ledger folio of transferor -----  
Transferor's name -----(surname) -----(Middle Name)----- (First name)  
Ledger folio transferee -----  
Transferee's name -----(surname) -----(Middle Name)----- (First name)

---

\*Note : Separate sheet may be attached if needed. If number of such transactions exceed 10. If so desired a text file may be submitted on a floppy or cartridge in the Format given in Annexure IV.

VII. Indebtedness of the company (amount in Rs. thousands) [secured loans including interest outstanding/accrued but not due for payment].

Amount -----

VIII. Equity share capital break up (Percentage of total equity)

- (i) Government [Central & State(s)]-----
- (ii) Government Companies -----
- (iii) Public financial institutions-----
- (iv) Nationalised/Other banks-----
- (v) Mutual funds -----
- (vi) Venture capital -----
- (vii) Foreign holdings(FIIs/FCs/FFIs/NRIs/OCBs)-----
- (viii) Bodies corporate (not mentioned above) -----
- (ix) Directors/relatives of directors-----
- (x) Other top 50 shareholders(Other than those listed above)-----

We;We certify that :

((a) the return states the facts as they stood on the date of the annual general meeting aforesaid, correctly and completely ;

(b) since the date of the last annual return the transfer of all shares,debentures, the issue of all further certificates of shares and debentures have been appropriately recorded in the books maintained for the purpose ;

<sup>11</sup>[(c) the whole of amounts envisaged in clause (a) to (e) of sub section (2) of section 205C of the Companies Act, 1956 remaining unpaid or unclaimed for a period of seven years from the date they become payable by a company have been credited to the Investor Education and Protection Fund ;]

(d) the company has not, since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the company, issued any invitation to the public to subscribe for any shares or debentures of the company ;

- (e) where the annual return discloses the fact that the number of members of the company exceeds fifty, the excess consists wholly of persons who under sub-clause (1) of section 3 are not to be included in reckoning the number of fifty ;
- (f) since the date of annual general meeting with reference to which the first return was submitted or in the case of a first return since the date of the incorporation of the private company, no public company or deemed public company has or have held twenty-five per cent or more of its paid-up share capital ;
- (g) the company did not have an average turnover of Rs. 10 crore or more during the relevant period ;
- (h) since the date of the annual general meeting with reference to which the last annual return was submitted or since the date of incorporation of the company, if it is first return, the company did not hold twenty-five per cent or more of the paid-up share capital of one or more public companies ; and
- (i) the private company did not accept or renew or invite deposits from the public.

*signed*  
*Director*

.....  
*Director/Managing Director/Manager/Secretary*

.....  
*Secretary in whole-time practice*

.....  
*CP No.*

1. Substituted by Notification No. GSR 751(E) dated 2-11-2002.

**Note :** Certificates to be given by a director and manager/secretary or by two directors where there is no manager or secretary. In the case of a company whose shares are listed on a recognised stock exchange, the certificates shall also be signed by a secretary in whole-time practice.

#### **ANNEXURE I** **CODE LIST 1 : STATE CODES**

State Code	State Name
01	Andhra Pradesh
02	Assam
03	Bihar
04	Gujarat
05	Haryana
06	Himachal Pradesh
07	Jammu & Kashmir
08	Karnataka
09	Kerala
10	Madhya Pradesh
11	Maharashtra
12	Manipur
13	Meghalaya
14	Nagaland
15	Orissa
16	Punjab
17	Rajasthan
18	Tamil Nadu
20	Uttar Pradesh
21	West Bengal
22	Sikkim
23	Arunachal Pradesh
24	Goa
52	Andaman Islands
53	Chandigarh
54	Dadra Islands
55	Delhi
56	Daman & Diu
57	Lakshwadeep
58	Mizoram
59	Pondicherry

#### **ANNEXURE II** **CODE LIST 2 : STOCK EXCHANGE CODES**

Exchange Code	Stock Exchange
---------------	----------------

A1	Bombay Stock Exchange
B2	OTCEI
A2	Delhi
B2	Nagpur
A4	Calcutta
B4	Coimbatore
A8	Madras
B8	Cochin
A16	Bangalore
B16	MP
A32	Hyderabad
B32	Jaipur
A64	Ahmedabad
B64	Rajkot
A128	Pune
B128	Gauhati
A256	Kanpur
B256	Bhubaneshwar
A512	Ludhiana
B512	Magadh
A1024	National Stock Exchange
B1024	Vadodara
B2048	Rajkot

**Note :** If listed in more than one exchange, add the respective codes to arrive at the totals under the same category. For example a company listed in Bombay, Pune, Nagpur and Cochinn will fill in the exchange codes as follows :

### **ANNEXURE III**

#### **SHARES/DEBENTURES HELD : (FORMAT FOR FLOPPIES)**

##### **I. Registration Details :**

Field	Type	Length	Format/value
State Code	Number	2	-
Registration No.	Number	6	-
Date of AGM	Date	8	(DD/MM/YY)
Date of last AGM	Date	8	(DD/MM/YY)

**Note :** The first text file cid.txt will contain the data for above field for company identification.

##### **V. Shares held by Shareholders :**

Field	Type	Length	Format/Value
Ledger folio of shareholder	Character	8	-
Name of shareholder	Character	20	Surname/Middle Name/First Name
Father's/Husband's name	Character	20	Surname/Middle Name First Name
Residential address	Character	40	-
Town/City	Character	20	-
State	Character	20	-
Pin Code	Number	6	-
Type of share/debenture	Number	1	1- Equity, 2- Preference, 3- Debentures, 4- Stock
Number of shares/debenture	Number	6	Amount per share
Debenture	Number	6	

**Note :** The second text files shh.txt will contain the data for above fields for the shareholders/debenture holders. The files may be submitted 5.25" or 3.5" floppies (preferably 3.5") or 60/150 MB Normal Cartridge Tapes (mini Cartridges not acceptable). The Floppies/Cartridges may be formatted in Dos/Unix.

### **ANNEXURE IV**

#### **SHARES TRANSFERRED : (FORMAT FOR FLOPPIES)**

##### **I. Registration Details:**

Field	Type	Length	Format/value
State Code	Number	2	-
Registration No.	Number	6	-



Date of AGM                      Date                      8                      (DD/MM/YY)  
Date of last AGM                  Date                      8                      (DD/MM/YY)  
**Note :** The first text file cid.txt will contain the data for above field for company identification.

**VI. Transactions after the last AGM :**

Field	Type	Length	Format/value
Date of transfer of shares	Date	8	(DD/MM/YY)
Type of share/debenture	Number	1	1- Equity, 2- Preference, 3- Debentures, 4- Stock
Number of share/debentures	Number	6	-
Amount per shares/debenture	Number	6	-
Ledger folio of transferor	Character	8	-
Name of transferor	Character	20	Surname/Middle Name/First Name
Ledger folio of transferee	Character	8	-
Name of transferee	Character	20	Surname/Middle Name/First Names

Note : The second text file.sht.txt will contain the date for above fields for each such share transfer.

The files may be submitted in 5.25" or 3.5" floppies (preferably 3.5") or 60/150 MB Normal Cartridge Tapes (mini Cartridge not acceptable).

**SCHEDULE VI<sup>1</sup>**

[See section 211]

**GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET AND STATEMENT OF PROFIT AND LOSS OF A COMPANY IN ADDITION TO THE NOTES INCORPORATED ABOVE THE HEADING OF BALANCE SHEET UNDER PARTS A AND B**

**GENERAL INSTRUCTIONS**

**1.** Where compliance with the requirements of the Act including Accounting Standards as applicable to the companies require any change in treatment or disclosure including addition, amendment, substitution or deletion in the head/sub-head or any changes inter se, in the financial statements or statements forming part thereof, the same shall be made and the requirements of the Schedule VI shall stand modified accordingly.

**2.** The disclosure requirements specified in Part I and Part II of this Schedule are in addition to and not in substitution of the disclosure requirements specified in the Accounting Standards prescribed under the Companies Act, 1956. Additional disclosures specified in the Accounting Standards shall be made in the notes to accounts or by way of additional statement unless required to be disclosed on the face of the Financial Statements. Similarly, all other disclosures as required by the Companies Act shall be made in the notes to accounts in addition to the requirements set out in this Schedule.

**3.** Notes to accounts shall contain information in addition to that presented in the Financial Statements and shall provide where required (a) narrative descriptions or disaggregations of items recognized in those statements and (b) information about items that do not qualify for recognition in those statements.

Each item on the face of the Balance Sheet and Statement of Profit and Loss shall be cross-referenced to any related information in the notes to accounts. In preparing the Financial Statements including the notes to accounts, a balance shall be maintained between providing excessive detail that may not assist users of financial statements and not providing important information as a result of too much aggregation.

**4.** Depending upon the turnover of the company, the figures appearing in the Financial Statements may be rounded off as below:

Turnover	Rounding off
(i) less than one hundred crore rupees	To the nearest hundreds, thousands, lakhs or millions, or decimals thereof.
(ii) one hundred crore rupees or more	To the nearest, lakhs, millions or crores, or decimals thereof.

<sup>1</sup> Substituted vide Notification No. S.O. 447(E) dated 28-2-2011. The notification shall come into force for the Balance sheet and Profit and Loss Account to be prepared for the financial year commencing on or after 1-4-2011.

Once a unit of measurement is used, it should be used uniformly in the Financial Statements.

**5.** Except in the case of the first Financial Statements laid before the Company (after its incorporation) the corresponding amounts (comparatives) for the immediately preceding reporting period for all items shown in the Financial Statements including notes shall also be given.

**6.** For the purpose of this Schedule, the terms used herein shall be as per the applicable Accounting Standards.

### Notes

This part of Schedule sets out the minimum requirements for disclosure on the face of the Balance Sheet, and the Statement of Profit and Loss (hereinafter referred to as "Financial Statements" for the purpose of this Schedule) and Notes. Line items, sub-line items and sub-totals shall be presented as an addition or substitution on the face of the Financial Statements when such presentation is relevant to an understanding of the company's financial position or performance or to cater to industry/sector-specific disclosure requirements or when required for compliance with the amendments to the Companies Act or under the Accounting Standards.

### PART I – Form of BALANCE SHEET

Name of the Company.....

Balance Sheet as at .....

		(Rupees in.....)	
Particulars	Note No.	Figures as at the end of current reporting period	Figures as at the end of the previous reporting period
1	2	3	4
<b>I. EQUITY AND LIABILITIES</b> <b>Shareholders' funds</b> Share capital Reserves and surplus Money received against share warrants <b>Share application money pending allotment</b> <b>Non-current liabilities</b> Long-term borrowings Deferred tax liabilities (Net) Other Long term liabilities Long-term provisions <b>Current liabilities</b> Short-term borrowings Trade payables Other current liabilities Short-term provisions <b>TOTAL</b> <b>II. ASSETS</b> <b>Non-current assets</b> (1) (a) Fixed assets Tangible assets			

Intangible assets			
Capital work-in-progress			
Intangible assets under development			
Non-current investments			
Deferred tax assets (net)			
Long-term loans and advances			
Other non-current assets			
(2)			
<b>Current assets</b>			
Current investments			
Inventories			
Trade receivables			
Cash and cash equivalents			
Short-term loans and advances			
Other current assets			
<b>TOTAL</b>			

See accompanying notes to the financial statements

## Notes

### GENERAL INSTRUCTIONS FOR PREPARATION OF BALANCE SHEET

1. An asset shall be classified as current when it satisfies any of the following criteria:

- (a) it is expected to be realized in, or is intended for sale or consumption in, the company's normal operating cycle;
- (b) it is held primarily for the purpose of being traded;
- (c) it is expected to be realized within twelve months after the reporting date; or
- (d) it is cash or cash equivalent unless it is restricted from being exchanged or used to settle a liability for at least twelve months after the reporting date.

All other assets shall be classified as non-current.

2. An operating cycle is the time between the acquisition of assets for processing and their realization in cash or cash equivalents. Where the normal operating cycle cannot be identified, it is assumed to have a duration of 12 months.

3. A liability shall be classified as current when it satisfies any of the following criteria:

- (a) it is expected to be settled in the company's normal operating cycle;
- (b) it is held primarily for the purpose of being traded;
- (c) it is due to be settled within twelve months after the reporting date; or
- (d) the company does not have an unconditional right to defer settlement of the liability for at least twelve months after the reporting date. Terms of a liability that could, at the option of the counterparty, result in its settlement by the issue of equity instruments do not affect its classification.

All other liabilities shall be classified as non-current.

4. A receivable shall be classified as a 'trade receivable' if it is in respect of the amount due on account of goods sold or services rendered in the normal course of business.

5. A payable shall be classified as a 'trade payable' if it is in respect of the amount due on account of goods purchased or services received in the normal course of business.

6. A company shall disclose the following in the notes to accounts:

- A. Share Capital

for each class of share capital (different classes of preference shares to be treated separately):

- (a) the number and amount of shares authorized;
- (b) the number of shares issued, subscribed and fully paid, and subscribed but not fully paid;
- (c) par value per share;
- (d) a reconciliation of the number of shares outstanding at the beginning and at the end of the reporting period;
- (e) the rights, preferences and restrictions attaching to each class of shares including restrictions on the distribution of dividends and the repayment of capital;
- (f) shares in respect of each class in the company held by its holding company or its ultimate holding company including shares held by or by subsidiaries or associates of the holding company or the ultimate holding company in aggregate;
- (g) shares in the company held by each shareholder holding more than 5 per cent shares specifying the number of shares held;
- (h) shares reserved for issue under options and contracts/commitments for the sale of shares/disinvestment, including the terms and amounts;
- (i) for the period of five years immediately preceding the date as at which the Balance Sheet is prepared:
  - Aggregate number and class of shares allotted as fully paid up pursuant to contract(s) without payment being received in cash.
  - Aggregate number and class of shares allotted as fully paid up by way of bonus shares.
  - Aggregate number and class of shares bought back.
- (j) terms of any securities convertible into equity/preference shares issued along with the earliest date of conversion in descending order starting from the farthest such date.
- (k) calls unpaid (showing aggregate value of calls unpaid by directors and officers)
- (l) forfeited shares (amount originally paid up)

#### B. Reserves and Surplus

(i) Reserves and Surplus shall be classified as:

- (a) Capital Reserves ;
- (b) Capital Redemption Reserve;
- (c) Securities Premium Reserve;
- (d) Debenture Redemption Reserve;
- (e) Revaluation Reserve;
- (f) Share Options Outstanding Account;
- (g) Other Reserves – (specify the nature and purpose of each reserve and the amount in respect thereof);
- (h) Surplus *i.e.* balance in Statement of Profit & Loss disclosing allocations and appropriations such as dividend, bonus shares and transfer to/from reserves etc.

(Additions and deductions since last balance sheet to be shown under each of the specified heads)

- (ii) A reserve specifically represented by earmarked investments shall be termed as a 'fund'.
- (iii) Debit balance of statement of profit and loss shall be shown as a negative figure under the head 'Surplus'. Similarly, the balance of 'Reserves and Surplus', after adjusting negative balance of surplus, if any, shall be shown under the head 'Reserves and Surplus' even if the resulting figure is in the negative.

#### C. Long-Term Borrowings

(i) Longterm borrowings shall be classified as:

- (a) Bonds/debentures.

(b) Term loans

- from banks.
- from other parties.

(c) Deferred payment liabilities.

(d) Deposits.

(e) Loans and advances from related parties.

(f) Long-term maturities of finance lease obligations.

(g) Other loans and advances (specify nature).

- (ii) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.
- (iii) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.
- (iv) Bonds/debentures (along with the rate of interest and particulars of redemption or conversion, as the case may be) shall be stated in descending order of maturity or conversion, starting from farthest redemption or conversion date, as the case may be. Where bonds/debentures are redeemable by instalments, the date of maturity for this purpose must be reckoned as the date on which the first instalment becomes due.
- (v) Particulars of any redeemed bonds/ debentures which the company has power to reissue shall be disclosed.
- (vi) Terms of repayment of term loans and other loans shall be stated.
- (vii) Period and amount of continuing default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.

D. Other Long-term Liabilities

Other Long-term Liabilities shall be classified as:

- (a) Trade payables
- (b) Others

E. Long-term provisions

The amounts shall be classified as:

- (a) Provision for employee benefits.
- (b) Others (specify nature).

F. Short-term borrowings

- (i) Short-term borrowings shall be classified as:

(a) Loans repayable on demand

- from banks.
- from other parties.

(b) Loans and advances from related parties.

(c) Deposits.

(d) Other loans and advances (specify nature).

- (ii) Borrowings shall further be sub-classified as secured and unsecured. Nature of security shall be specified separately in each case.
- (iii) Where loans have been guaranteed by directors or others, the aggregate amount of such loans under each head shall be disclosed.
- (iv) Period and amount of default as on the balance sheet date in repayment of loans and interest, shall be specified separately in each case.

G. Other current liabilities

The amounts shall be classified as:

- (a) Current maturities of long-term debt;
- (b) Current maturities of finance lease obligations;
- (c) Interest accrued but not due on borrowings;
- (d) Interest accrued and due on borrowings;
- (e) Income received in advance;
- (f) Unpaid dividends;
- (g) Application money received for allotment of securities and due for refund and interest accrued thereon. Share application money includes advances towards allotment of share capital. The terms and conditions including the number of shares proposed to be issued, the amount of premium, if any, and the period before which shares shall be allotted shall be disclosed. It shall also be disclosed whether the company has sufficient authorized capital to cover the share capital amount resulting from allotment of shares out of such share application money. Further, the period for which the share application money has been pending beyond the period for allotment as mentioned in the document inviting application for shares along with the reason for such share application money being pending shall be disclosed. Share application money not exceeding the issued capital and to the extent not refundable shall be shown under the head Equity and share application money to the extent refundable *i.e.*, the amount in excess of subscription or in case the requirements of minimum subscription are not met, shall be separately shown under 'Other current liabilities';
- (h) Unpaid matured deposits and interest accrued thereon;
- (i) Unpaid matured debentures and interest accrued thereon;
- (j) Other payables (specify nature).

#### H. Short-term provisions

The amounts shall be classified as:

- (a) Provision for employee benefits.
- (b) Others (specify nature).

#### I. Tangible assets

- (i) Classification shall be given as:
  - (a) Land.
  - (b) Buildings.
  - (c) Plant and Equipment.
  - (d) Furniture and Fixtures.
  - (e) Vehicles.
  - (f) Office equipment.
  - (g) Others (specify nature).
- (ii) Assets under lease shall be separately specified under each class of asset.
- (iii) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related depreciation and impairment losses/reversals shall be disclosed separately.
- (iv) Where sums have been written off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every balance sheet subsequent to date of such write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

#### J. Intangible assets



- (i) Classification shall be given as:
  - (a) Goodwill.
  - (b) Brands /trademarks.
  - (c) Computer software.
  - (d) Mastheads and publishing titles.
  - (e) Mining rights.
  - (f) Copyrights, and patents and other intellectual property rights, services and operating rights.
  - (g) Recipes, formulae, models, designs and prototypes.
  - (h) Licenses and franchise.
  - (i) Others (specify nature).
- (ii) A reconciliation of the gross and net carrying amounts of each class of assets at the beginning and end of the reporting period showing additions, disposals, acquisitions through business combinations and other adjustments and the related amortization and impairment losses/reversals shall be disclosed separately.
- (iii) Where sums have been written off on a reduction of capital or revaluation of assets or where sums have been added on revaluation of assets, every balance sheet subsequent to date of such write-off, or addition shall show the reduced or increased figures as applicable and shall by way of a note also show the amount of the reduction or increase as applicable together with the date thereof for the first five years subsequent to the date of such reduction or increase.

#### K. Non-current investments

- (i) Non-current investments shall be classified as trade investments and other investments and further classified as:
  - (a) Investment property;
  - (b) Investments in Equity Instruments;
  - (c) Investments in preference shares;
  - (d) Investments in Government or trust securities;
  - (e) Investments in debentures or bonds;
  - (f) Investments in Mutual Funds;
  - (g) Investments in partnership firms;
  - (h) Other non-current investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate (indicating separately whether such bodies are (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities) in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

- (ii) Investments carried at other than at cost should be separately stated specifying the basis for valuation thereof.
- (iii) The following shall also be disclosed:
  - (a) Aggregate amount of quoted investments and market value thereof;
  - (b) Aggregate amount of unquoted investments;
  - (c) Aggregate provision for diminution in value of investments

#### L. Long-term loans and advances

- (i) Long-term loans and advances shall be classified as:
  - (a) Capital Advances;
  - (b) Security Deposits;

- (c) Loans and advances to related parties (giving details thereof);
  - (d) Other loans and advances (specify nature).
- (ii) The above shall also be separately sub-classified as:
  - (a) Secured, considered good;
  - (b) Unsecured, considered good;
  - (c) Doubtful.
- (iii) Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.
- (iv) Loans and advances due by directors or other officers of the company or any of them either severally or jointly with any other persons or amounts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

#### M. Other non-current assets

Other non-current assets shall be classified as:

- (i) Long-term Trade Receivables (including trade receivables on deferred credit terms);
- (ii) Others (specify nature);
- (iii) Long-term Trade Receivables, shall be sub-classified as:
  - (i) (a) Secured, considered good;
  - (b) Unsecured considered good;
  - (c) Doubtful
- (ii) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.
- (iii) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

#### N. Current Investments

- (i) Current investments shall be classified as:
  - (a) Investments in Equity Instruments;
  - (b) Investment in Preference Shares;
  - (c) Investments in government or trust securities;
  - (d) Investments in debentures or bonds;
  - (e) Investments in Mutual Funds;
  - (f) Investments in partnership firms;
  - (g) Other investments (specify nature).

Under each classification, details shall be given of names of the bodies corporate (indicating separately whether such bodies are (i) subsidiaries, (ii) associates, (iii) joint ventures, or (iv) controlled special purpose entities) in whom investments have been made and the nature and extent of the investment so made in each such body corporate (showing separately investments which are partly-paid). In regard to investments in the capital of partnership firms, the names of the firms (with the names of all their partners, total capital and the shares of each partner) shall be given.

- (ii) The following shall also be disclosed:
  - (a) The basis of valuation of individual investments;
  - (b) Aggregate amount of quoted investments and market value thereof;
  - (c) Aggregate amount of unquoted investments;
  - (d) Aggregate provision made for diminution in value of investments.

O. Inventories

- (i) Inventories shall be classified as:
  - (a) Raw materials;
  - (b) Work-in-progress;
  - (c) Finished goods;
  - (d) Stock-in-trade (in respect of goods acquired for trading);
  - (e) Stores and spares;
  - (f) Loose tools;
  - (g) Others (specify nature).
- (ii) Goods-in-transit shall be disclosed under the relevant sub-head of inventories.
- (iii) Mode of valuation shall be stated.

P. Trade Receivables

- (i) Aggregate amount of Trade Receivables outstanding for a period exceeding six months from the date they are due for payment should be separately stated.
- (ii) Trade receivables shall be sub-classified as:
  - (a) Secured, considered good;
  - (b) Unsecured, considered good;
  - (c) Doubtful.
- (iii) Allowance for bad and doubtful debts shall be disclosed under the relevant heads separately.
- (iv) Debts due by directors or other officers of the company or any of them either severally or jointly with any other person or debts due by firms or private companies respectively in which any director is a partner or a director or a member should be separately stated.

Q. Cash and cash equivalents

- (i) Cash and cash equivalents shall be classified as:
  - (a) Balances with banks;
  - (b) Cheques, drafts on hand;
  - (c) Cash on hand;
  - (d) Others (specify nature).
- (ii) Earmarked balances with banks (for example, for unpaid dividend) shall be separately stated.
- (iii) Balances with banks to the extent held as margin money or security against the borrowings, guarantees, other commitments shall be disclosed separately.
- (iv) Repatriation restrictions, if any, in respect of cash and bank balances shall be separately stated.
- (v) Bank deposits with more than 12 months maturity shall be disclosed separately.

R. Short-term loans and advances

- (i) Short-term loans and advances shall be classified as:
  - (a) Loans and advances to related parties (giving details thereof);
  - (b) Others (specify nature).
- (ii) The above shall also be sub-classified as:
  - (a) Secured, considered good;
  - (b) Unsecured, considered good;
  - (c) Doubtful.
- (iii) Allowance for bad and doubtful loans and advances shall be disclosed under the relevant heads separately.
- (iv) Loans and advances due by directors or other officers of the company or any of them either

severally or jointly with any other person or amounts due by firms or private companies respectively in which any director is a partner or a director or a member shall be separately stated.

S. Other current assets (specify nature).

This is an all-inclusive heading, which incorporates current assets that do not fit into any other asset categories.

T. Contingent liabilities and commitments

(to the extent not provided for)

(i) Contingent liabilities shall be classified as:

- (a) Claims against the company not acknowledged as debt;
- (b) Guarantees;
- (c) Other money for which the company is contingently liable

(ii) Commitments shall be classified as:

- (a) Estimated amount of contracts remaining to be executed on capital account and not provided for;
- (b) Uncalled liability on shares and other investments partly paid;
- (c) Other commitments (specify nature).

U. The amount of dividends proposed to be distributed to equity and preference shareholders for the period and the related amount per share shall be disclosed separately. Arrears of fixed cumulative dividends on preference shares shall also be disclosed separately.

V. Where in respect of an issue of securities made for a specific purpose, the whole or part of the amount has not been used for the specific purpose at the balance sheet date, there shall be indicated by way of note how such unutilized amounts have been used or invested.

W. If, in the opinion of the Board, any of the assets other than fixed assets and non-current investments do not have a value on realization in the ordinary course of business at least equal to the amount at which they are stated, the fact that the Board is of that opinion, shall be stated.

## PART II – Form of STATEMENT OF PROFIT AND LOSS

Name of the Company.....

Profit and loss statement for the year ended .....

				(Rupees in.....)		
	Particulars	Note No.		Figures for the current reporting period		Figures for the previous reporting period
I.	Revenue from operations			xxx		xxx
II.	Other income			xxx		xxx
III.	Total Revenue (I + II)			xxx		xxx
IV.	Expenses:					
	Cost of materials consumed			xxx		xxx
	Purchases of Stock-in-Trade			xxx		xxx
	Changes in inventories of finished goods work-in-progress and Stock-in-Trade			xxx		xxx
	Employee benefits expense					

	Finance costs					
	Depreciation and amortization expense					
	Other expenses					
	Total expenses			xxx		xxx
V.	Profit before exceptional and extraordinary items and tax (III-IV)			xxx		xxx
VI.	Exceptional items			xxx		xxx
VII.	Profit before extraordinary items and tax (V - VI)			xxx		xxx
VIII.	Extraordinary Items			xxx		xxx
IX.	Profit before tax (VII- VIII)			xxx		xxx
X	Tax expense:					
	(1) Current tax		xxx		xxx	
	(2) Deferred tax		xxx		xxx	
XI	Profit (Loss) for the period from continuing operations (VII-VIII)			xxx		xxx
XII	Profit/(loss) from discontinuing operations			xxx		xxx
XIII	Tax expense of discontinuing operations			xxx		xxx
XIV	Profit/(loss) from Discontinuing operations (after tax) (XII-XIII)			xxx		xxx
XV	Profit (Loss) for the period (XI + XIV)			xxx		xxx
XVI	Earnings per equity share:					
	(1) Basic			xxx		xxx
	(2) Diluted			xxx		xxx

**See accompanying notes to the financial statements**

## **GENERAL INSTRUCTIONS FOR PREPARATION OF STATEMENT OF PROFIT AND LOSS**

1.The provisions of this Part shall apply to the income and expenditure account referred to in sub-section (2) of section 210 of the Act, in like manner as they apply to a statement of profit and loss.

2.(A) In respect of a company other than a finance company revenue from operations shall disclose separately in the notes revenue from

- (a) sale of products;
- (b) sale of services;
- (c) other operating revenues;

Less:

- (d) Excise duty.

(B) In respect of a finance company, revenue from operations shall include revenue from

- (a) Interest; and
- (b) Other financial services

Revenue under each of the above heads shall be disclosed separately by way of notes to accounts to the extent applicable.

### 3. Finance Costs

Finance costs shall be classified as:

- (a) Interest expense;
- (b) Other borrowing costs;
- (c) Applicable net gain/loss on foreign currency transactions and translation.

### 4. Other income

Other income shall be classified as:

- (a) Interest Income (in case of a company other than a finance company);
- (b) Dividend Income;
- (c) Net gain/loss on sale of investments
- (d) Other non-operating income (net of expenses directly attributable to such income).

### 5. Additional Information

A Company shall disclose by way of notes additional information regarding aggregate expenditure and income on the following items:-

- (i) (a) Employee Benefits Expense [showing separately (i) salaries and wages, (ii) contribution to provident and other funds, (iii) expense on Employee Stock Option Scheme (ESOP) and Employee Stock Purchase Plan (ESPP), (iv) staff welfare expenses].
- (b) Depreciation and amortization expense;
- (c) Any item of income or expenditure which exceeds one per cent of the revenue from operations or Rs.1,00,000, whichever is higher;
- (d) Interest Income;
- (e) Interest Expense;
- (f) Dividend Income;
- (g) Net gain/ loss on sale of investments;
- (h) Adjustments to the carrying amount of investments;
- (i) Net gain or loss on foreign currency transaction and translation (other than considered as finance cost);
- (j) Payments to the auditor as (a) auditor, (b) for taxation matters, (c) for company law matters, (d) for management services, (e) for other services, (f) for reimbursement of expenses;
- (k) Details of items of exceptional and extraordinary nature;
- (l) Prior period items;
- (i) (a) In the case of manufacturing companies,-
  - (1) Raw materials under broad heads.
  - (2) goods purchased under broad heads.
- (b) In the case of trading companies, purchases in respect of goods traded in by the company under broad heads.
- (c) In the case of companies rendering or supplying services, gross income derived from services rendered or supplied under broad heads.
- (d) In the case of a company, which falls under more than one of the categories mentioned in (a), (b) and (c) above, it shall be sufficient compliance with the requirements herein if purchases, sales



and consumption of raw material and the gross income from services rendered is shown under broad heads.

- (e) In the case of other companies, gross income derived under broad heads.
- (ii) In the case of all concerns having works-in-progress, works-in-progress under broad heads.
- (iii) (a) The aggregate, if material, of any amounts set aside or proposed to be set aside, to reserve, but not including provisions made to meet any specific liability, contingency or commitment known to exist at the date as to which the balance-sheet is made up.  
(b) The aggregate, if material, of any amounts withdrawn from such reserves.
- (iv) (a) The aggregate, if material, of the amounts set aside to provisions made for meeting specific liabilities, contingencies or commitments.  
(b) The aggregate, if material, of the amounts withdrawn from such provisions, as no longer required.
- (v) Expenditure incurred on each of the following items, separately for each item:-
  - (a) Consumption of stores and spare parts.
  - (b) Power and fuel.
  - (c) Rent.
  - (d) Repairs to buildings.
  - (e) Repairs to machinery.
  - (f) Insurance .
  - (g) Rates and taxes, excluding, taxes on income.
  - (h) Miscellaneous expenses.
- (vi) (a) Dividends from subsidiary companies.  
(b) Provisions for losses of subsidiary companies.
- (vii) The profit and loss account shall also contain by way of a note the following information, namely:-
  - (a) Value of imports calculated on C.I.F. basis by the company during the financial year in respect of –
    - I. Raw materials;
    - II. Components and spare parts;
    - III. Capital goods;
  - (b) Expenditure in foreign currency during the financial year on account of royalty, know-how, professional and consultation fees, interest, and other matters;
  - (c) Total value if all imported raw materials, spare parts and components consumed during the financial year and the total value of all indigenous raw materials, spare parts and components similarly consumed and the percentage of each to the total consumption;
  - (d) The amount remitted during the year in foreign currencies on account of dividends with a specific mention of the total number of non-resident shareholders, the total number of shares held by them on which the dividends were due and the year to which the dividends related;
  - (e) Earnings in foreign exchange classified under the following heads, namely:-
    - I. Export of goods calculated on F.O.B. basis;
    - II. Royalty, know-how, professional and consultation fees;
    - III. Interest and dividend;
    - IV. Other income, indicating the nature thereof

**Note:-Broad heads shall be decided taking into account the concept of materiality and presentation of true and fair view of financial statements,".**

**2.** This notification shall come into force for the Balance Sheet and Profit and Loss Account to be prepared for the financial year commencing on or after 1-4-2011.

#### **\*SCHEDULE VII**

[See sections 368 and 379]

#### **RESTRICTIONS ON POWERS OF MANAGING AGENTS/ SECRETARIES AND TREASURERS**

The managing agents/secretaries and treasurers shall not exercise any of the following powers except after obtaining the previous approval of the Board of directors of the company in regard to each such exercise :

(1) [Omitted by the Companies (Amendment) Act, 1960.]

(2) Power to appoint as an officer or member of the staff of the company, payable from its funds (as distinguished from the funds of the managing agent/secretaries and treasurers or from out of any remuneration payable to him/them by the company), any person -

(a) on a remuneration or scale of remuneration exceeding the limits laid down by the Board in this behalf ; or

(b) who is a relative of the managing agent, or where the managing agent is /secretaries and treasurers are a firm, of any partner in the firm ; or where the managing agent is/ secretaries and treasurers are a private company, of any director or member or such company ;

(3) Power to purchase capital assets for the company except where the purchase price is within the limits prescribed by the Board in this behalf ;

(4) Power to sell the capital assets of the company, except where the sale price is within the limits prescribed by the Board in this behalf ;

(5) Power to compound, or sanction the extension of time for the satisfaction or payment of, any claim or demand of the company against (including any debt claimed to be due to it from) the managing agent/secretaries and treasurers or any associate of the managing agent/secretaries and treasurers ;

(6) Power to compound any claim or demand made against the company (including any debt claimed to be due from it) by the managing agent/secretaries and treasurers or any associate of the managing agents/secretaries and treasurers.

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\*Schedule VII should be omitted

#### **\*SCHEDULE VIII**

[See sections 347 and 379]

#### **DECLARATIONS TO BE MADE BY FIRMS, PRIVATE COMPANIES AND OTHER BODIES CORPORATE ACTING AS MANAGING AGENTS/SECRETARIES AND TREASURERS**

##### ***Definition***

1. (1) In this Schedule, "relevant date" means -

(a) in the case of a firm or body corporate holding office at the commencement of this Act as the managing agent/secretaries and treasurers of a company, the date of such commencement ; and

(b) in the case of a firm or body corporate appointed or re-appointed after the commencement of this Act as the managing agent/secretaries and treasurers of a company, the date of such appointment, or re-appointment.

(2) For the purposes of sub-clause (1), the expressions "re-appointment" and "re-appointed" shall have the same meaning as they have for the purposes of sub-section (1) of section 328.

\* Note: Schedule VIII should be omitted.

##### ***Firms***

2. Every firm acting as the managing agent/secretaries and treasurers of any company or companies shall file with each company, whether public or private, of which it acts as such, a declaration specifying -

(a) the names of the partners constituting the firm on the relevant date ;

(b) the share, or the extent of the interest, of each partner in the firm, on the relevant date ;

(c) the names of persons, if any, other than partners who are interested, on the relevant date, in any share of, or amount forming part of, the remuneration payable to the managing agent/secretaries and treasurers by the company ; and the extent of the interest of each such person in such remuneration.

3. The declaration shall be signed by a partner of the firm and shall be filed within one month of the relevant date.

4. If any change occurs in regard to any of the matters specified in clause 2 after the relevant date, a declaration specifying the change and signed by a partner of the firm shall be filed, within three weeks of the occurrence of the change, with each of the companies referred to in that clause

##### ***Private companies***

5. Every private company which acts as managing agent/secretaries and treasurers of any other company or companies, whether public or private, shall, file with each of those companies, a declaration specifying -

(a) the names of the members of the private company on the relevant date ;

(b) where the private company has a share capital, the shares held by each member of the company, on that date ;

- (c) where the private company has no share capital, the extent of the interest of each member of the company in it on that date ;
- (d) the manner in which each such member holds his shares or interest, that is to say, whether he holds the same beneficially, or on behalf of or in trust for any other person ; and in the latter case, the name or names of the person or persons on whose behalf or in trust for whom the shares or interest is held and the extent of the interest of each such person ;
- (e) the names of the directors of the private company, and the name of its managing director, if any ;
- (f) the names of persons, if any, who are interested in any share of, or amount forming part of, the remuneration payable to the private company by the company under its management, otherwise than as members of the private company ; and the extent of the interest of each such person in such remuneration ;
- (g) that no arrangement has been entered into to the knowledge of the private company, under which the control of the private company is vested in any persons other than the members of the company and the persons referred to in sub-clause (d) :

**Provided** that the obligation to furnish information on the matters specified in sub-clauses (d) and (f) shall extend only to such particulars relating to those matters as are within the knowledge of the private company.

**6.** The declaration shall be signed by a director of the private company and shall be filed within two months of the relevant date.

**7.** If, to the knowledge of the private company, there is a sale or transfer of any shares in the company or an agreement has been entered into, for the sale or transfer of any such shares, or any other change occurs in regard to any of the matters specified in clause 5, a declaration specifying the sale, transfer, agreement or change and signed by a director of the company shall be filed, within six weeks thereof, with each of the companies referred to in that clause.

**8.** Where any shares are sold or transferred or agreed to be sold or transferred, the declaration referred to in clause 7 shall specify the name of the person or persons who part with or have agreed to part with the shares and also the name or names of the person or persons who acquire or have agreed to acquire them, with full details of the sale, transfer or agreement.

#### **Other bodies corporate**

**9.** The provisions of clauses 5 to 8 shall apply to every body corporate (other than a private company) acting as the managing agent/secretaries and treasurers of any company, unless it is exempt from the operation of the provisions of this Schedule by virtue section 347/section 379 read with section 347.

#### **General**

**10. (1)** All declarations filed with any company in pursuance of this Schedule shall be open to inspection, and extracts may be taken therefrom and copies thereof may be required, by any member of the company to the same extent, in the same manner and on payment of the same fee as in the case of the register of members of the company.

**(2)** All such declarations shall also be open to inspection by any director of the company, free of charge.

### **SCHEDULE IX**

[See article 62 of the Table A and also section 176(6)]

#### **FORM OF PROXY**

##### **I**

#### **GENERAL FORM**

".....Name of Company

I/We..... of ..... in the district of ..... being a member/members of the above-named Company hereby appoint ..... of ..... in the district of ..... or failing him..... of.....in the district of ..... as my/our proxy to vote for me/us on my/our behalf at the annual general meeting/ general meeting (not being an annual general meeting) of the company to be held on the ..... day of ..... and at any adjournment thereof.

Signed this ..... day of ..... 20....."

##### **II**

#### **FORM FOR AFFORDING MEMBERS AN OPPORTUNITY OF VOTING FOR OR AGAINST A RESOLUTION**

".....Name of Company

I/We ..... of ..... in the district of ..... being a member/members of the above-named Company, hereby appoint ..... in the district of ..... or failing him, ..... of..... in the district of ....., as my/our proxy to vote for me/us on my/our behalf at the annual general meeting/general meeting (not being an annual general meeting) of the company, to be held on the ..... day of ..... 20 ..... and at any adjournment thereof.

Signed this..... day of ..... 20....."

[This form is to be used ~~in~~ favour of/~~against~~ the resolution. Unless otherwise instructed the proxy will act as he thinks fit.

<sup>†</sup>Strike out whichever is not desired.

<sup>1</sup>**[SCHEDULE X**  
[See sections 574 and 611]  
**TABLE OF FEES TO BE PAID TO THE REGISTRAR**

	Amount of fees to be paid (Rs.)
<b>I. In respect of a company having a share capital :</b>	
<b>1.</b> For registration of a company whose nominal share capital does not exceeds Rs. 1,00,000	4000
<b>2.</b> For registration of a company whose nominal share capital exceeds Rs. 1,00,000, the above fee of Rs. 4,000 with the following additional fees regulated according to the amount of nominal capital :	
(a) for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 1,00,000 upto Rs. 5,00,000.	300
(b) for every Rs. 10,000 of nominal share capital or part of Rs 10,000 after the first Rs. 5,00,000 upto Rs. 50,00,000.	200
(c) for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 50,00,000 upto Rs. one crore.	100
(d) for every Rs. 10,000 of nominal share capital or part of Rs. 10,000 after the first Rs. 1 crore.	50
<b>Provided</b> that where the additional fees, regulated according to the amount of the nominal capital of a company, exceeds a sum of rupees two crore, the total amount of additional fees payable for the registration of such company shall not, in any case, exceed rupees two crore.	
<b>[3.*</b> <sup>2</sup> For filing a notice of any increase in the nominal share capital of a company, the difference between the fees payable on the increased share capital on the date of filing the notice for the registration of a company and the fees payable on existing authorised capital, at the rates prevailing on the date of filing the notice.]	
<b>4.</b> For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee is charged for registering a new company.	
<b>5.</b> For filing, registering or recording any document by this Act required or authorised to be filed, registered or recorded -	
(a) in respect of a company having a nominal share capital of less than Rs. 1,00,000.	100
(b) in respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs.5,00,000.	200
(c) in respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs.25,00,000	300
(d) in respect of a company having a nominal share capital of Rs. 25,00,000 or more.	500
<b>6.</b> For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar -	
(a) in respect of a company having a nominal share capital of less than Rs. 1,00,000	100
(b) in respect of a company having a nominal share capital of Rs. 1,00,000 or more but less than Rs.5,00,000	200
(c) in respect of a company having a nominal share capital of Rs. 5,00,000 or more but less than Rs.25,00,000	300

(d) in respect of a company having a nominal share capital of Rs. 25,00,000 or more	500
<b>II. In respect of a company not having a share capital :</b>	
<b>7.</b> For registration of a company whose number of members as stated in the articles of association, does not exceed 20	1000
<b>8.</b> For registration of a company whose number of members as stated in the articles of association, exceeds 20 but does not exceed 100	2500
<b>9.</b> For registration of a company whose number of members as stated in the articles of association, exceeds 100 but is not stated to be unlimited, the above fee of Rs.2,500 with an additional Rs. 10 for every 50 members, or less number than 50 members, after the first 100.	
<b>10.</b> For registration of a company in which the number of members is stated in the articles of association to be unlimited.	5000
<b>11.</b> For registration of any increase in the number of members made after the registration of the company, the same fees as would have been payable in respect of such increase, if such increase had been stated in the articles of association at the time of registration : <b>Provided</b> that no company shall be liable to pay on the whole a greater fee than Rs. 5,000 in respect of its number of members, taking into account the fee paid on the first registration of the company.	
<b>12.</b> For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new company.	
<b>13.</b> For filing or registering any document by this Act required or authorised to be filed or registered with the Registrar.	50
<b>14.</b> For making a record of or registering any fact by this Act required or authorised to be recorded or registered by the Registrar.]	50

1. Substituted by Notification No. S.O. 419(E) dated 27-4-2000 w.e.f. 1-5-2000

2. Modified by Notification No. SO 658(E), dated 12-7-2000.

\* For refund of excess registration fees (for Form No 5) refer Circular No 7/2003 dated 27-01-2003 given in section 611 [Departmental Clarification].

## SCHEDULE XI

[See section 406]

### FORM IN WHICH SECTIONS 539 TO 544 OF ACT ARE TO APPLY TO CASES WHERE AN APPLICATION IS MADE UNDER SECTION 397 OR 398

**539. Penalty for falsification of books-** If with intent to defraud or deceive any person, any officer or member of a company in respect of which an application has been made under section 397 or 398 -

(a) destroys, mutilates, alters, falsifies or secretes any books, papers or securities, or is privy to the destruction, mutilation, alteration, falsification, or secreting of any books, papers or securities ; or

(b) makes, or is privy to the making of, any false or fraudulent entry in any register, books of account or document belonging to the company, he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

**540. Penalty for frauds by officers-** If any person, being at the time of the commission of the alleged offence, an officer of a company in respect of which the <sup>1</sup>[Tribunal] subsequently makes an order under section 397 or 398,-

(a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company ;

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against the property of the company ; or

(c) 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 ;

he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

**541. Liability where proper accounts not kept-** (1) Where an application has been made to the <sup>1</sup>[Tribunal] under section 397 or 398 in respect of a company, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the making of the application, or the period between the

incorporation of the company and the making of the application, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which may extend to one year.

(2) For the purposes of this section, proper books of account shall be deemed not to have been kept in the case of any company, if there have not been kept -

(a) such books of account as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day-to-day in sufficient detail of all cash received and all cash paid ; and

(b) where the business of the company has involved dealings in goods, statements of the annual stock takings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

**542. Liability for fraudulent conduct of business-** (1) If in the course of the proceedings on an application made to the <sup>1</sup>[Tribunal] under section 397 or 398 in respect of a company, it appears that any business of the company has been carried on with intent to defraud creditors of the company, or any other persons, or for any fraudulent purpose, the <sup>1</sup>[Tribunal] may, if it thinks it proper so to do, declare that any persons who were 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 <sup>1</sup>[Tribunal] may direct.

(2) (a) Where the <sup>1</sup>[Tribunal] makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

(b) In particular, the <sup>1</sup>[Tribunal] may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf.

(c) The <sup>1</sup>[Tribunal] may, from time to time, make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(d) For the purpose of this sub-section, the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, the debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both.

(4) This section shall apply, notwithstanding that the person concerned may be criminally liable in respect of the matter on the ground of which the declaration is to be made.

**543. Power of <sup>1</sup>[Tribunal] to assess damages against delinquent directors, etc. -** (1) If, in the course of the proceedings on an application made to the <sup>1</sup>[Tribunal] under section 397 or 398, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director \*, managing agent, secretaries and treasurers}, manager or officer of the company -

(a) has misapplied or retained or become liable or accountable for any money or property of the company ; or

(b) has been guilty of any misfeasance or breach of trust in relation to the company.

The <sup>1</sup>[Tribunal] may, on the application of any creditor or member, examine into the conduct of such person, director \*, managing agent, secretaries and treasurers}, manager or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the <sup>1</sup>[Tribunal] thinks just or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the <sup>1</sup>[Tribunal] thinks just.

(2) This section shall apply notwithstanding that the matter is one for which the person concerned may be criminally liable.

**544. Liability under sections 542 and 543 to extend to partners or directors in firm or company -** Where a declaration under section 542 or an order under section 543 is or may be made in respect of a firm or body corporate, the <sup>1</sup>[Tribunal] shall also have power to make a declaration under section 542 or pass an order under section 543, as the case may be, in respect of any person who is a partner in that firm or a director of that body corporate.

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1. Substituted for "Company Law Board" by the Companies (Second Amendment) Act, 2002 (w.e.f. a date yet to be notified)

\*Words should be omitted



Year 1	No. 2	Subject to shout title 3
1913	VII	The Indian Companies Act, 1913.
1942	LIV	The Registration of Transferred Companies Ordinance.
1951	LII	The Indian Companies (Amendment) Act, 1951.
1952	LI	The Indian Companies (Amendment) Act, 1952.w

### <sup>1</sup>[**SCHEDULE XIII**

[See sections 198, 269, 310 and 311]

## **CONDITIONS TO BE FULFILLED FOR THE APPOINTMENT OF A MANAGING OR WHOLE-TIME DIRECTOR OR A MANAGER WITHOUT THE APPROVAL OF THE CENTRAL GOVERNMENT**

### <sup>2</sup>[**PART I**

#### **APPOINTMENTS**

No person shall be eligible for appointment as a managing or whole-time director or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely :-

(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding one thousand rupees, for the conviction of an offence under any of the following Acts, namely : -

- (i) the Indian Stamp Act, 1899 (2 of 1899),
- (ii) the Central Excises and Salt Act, 1944 (1 of 1944),
- (iii) the Industries (Development and Regulation) Act, 1951 (65 of 1951),
- (iv) the Prevention of Food Adulteration Act, 1954 (37 of 1954),
- (v) the essential Commodities Act, 1955 (10 of 1955),
- (vi) the Companies Act, 1956 (1 of 1956),
- (vii) the securities Contracts (Regulation) Act, 1956 (42 of 1956),
- (viii) the Wealth-tax Act, 1957 (27 of 1957),
- (ix) the Income-tax Act, 1961 (43 of 1961),
- (x) the Customs Act, 1962 (52 of 1962),
- (xi) the monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969),
- (xii) the Foreign Exchange Regulation Act, 1973 (46 of 1973),
- (xiii) the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986),
- (xiv) the Securities and Exchange Board of India Act, 1992 (15 of 1992),
- (xv) the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992) ;

(b) he had not been detained for any period under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974) :

**Provided** that where the Central Government has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the Central Government shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval ;

<sup>3</sup>[(c) he has completed age of 25 years and has not attained the age of 70 years :

**Provided** that where -

- (i) he has not completed the age of 25 years, but has attained the age of majority ; or
- (ii) he has attained the age of 70 years ; and

where his appointment is approved by a special resolution passed by the company in general meeting, no further approval of the Central Government shall be necessary for such appointment ;

(d) where he is a managerial person in more than one company he draws remuneration from one or more companies subject to the ceiling provided in Section III of Part II ;]

(e) he is resident in India.

**Explanation** <sup>4</sup>[I] : For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India, -

- (i) for taking up employment in India, or
- (ii) for carrying on a business or vocation in India.

<sup>4</sup>[Explanation II : This condition shall not apply to the companies in special Economic Zones as notified by Department of Commerce from time to time :

**Provided** that a person, being a non-resident in India shall enter India only after obtaining a proper employment visa from the concerned Indian Mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.]

1. Substituted by the Notification No. 510(E) dated 14-7-1993.

2. Substituted by GSR 48(E) dated 1-2-1994.

3. Substituted for the following sub-paragraphs (c) and (d) by Notification No. GSR 418(E) dated 12-9-1996 :  
 "(c) he has completed the age of twenty-five years and has not attained the age of seventy years or the age of retirement, if any, specified by the company, whichever is earlier;  
 (d) where he is managerial person in more than one company, he opts to draw remuneration from only one company ;"  
 4. Inserted by Notification No. GSR 670(E) dated 30-9-2002

## PART II

### REMUNERATION

#### **Section I - Remuneration payable by companies having profits**

Subject to the provisions of sections 198 and 309, a company having profits in a financial year may pay any remuneration, by way of salary, dearness allowance, perquisites, commission and other allowances, which shall not exceed five per cent of its net profits for one such managerial person, and if there is more than one such managerial person, ten per cent for all of them together.

#### **Section II - Remuneration payable by companies having no profits or inadequate profits**

<sup>4</sup>[1. Notwithstanding anything contained in this Part, where in any financial year during the currency of tenure of the managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to a managerial person by way of salary, dearness allowance, perquisites and any other allowances, -

**(A)** not exceeding the ceiling limit of Rs. 24,00,000 per annum or Rs. 2,00,000 per month calculated on the following scale :-

Where the effective capital of company is	Monthly remuneration payable shall not exceed (Rupees)
(i) less than rupees 1 crore	75,000
(ii) rupees 1 crore or more but less than rupees 5 crore	1,00,000
(iii) rupees 5 crore or more but less than rupees 25 crore	1,25,000
(iv) rupees 25 crore or more but less than rupees 50 crore	1,50,000
(v) rupees 50 crore or more but less than rupees 100 crore	1,75,000
(vi) rupees 100 crore or more	2,00,000

**Provided** that the ceiling limits specified under this sub-paragraph shall apply, if -

- (i) payment of remuneration is approved by a resolution passed by the Remuneration Committee ;
- (ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person.

**(B)** not exceeding the ceiling limit of Rs.48,00,000 per annum or Rs. 4,00,000 per month calculated on the following scale :-

Where the effective capital of company is	Monthly remuneration payable shall not exceed (Rupees)
(i) less than rupees 1 crore	1,50,000
(ii) rupees 1 crore or more but less than rupees 5 crore	2,00,000
(iii) rupees 5 crore or more but less than rupees 25 crore	2,50,000
(iv) rupees 25 crore or more but less than rupees 50 crore	3,00,000
(v) rupees 50 crore or more but less than rupees 100 crore	3,50,000
(vi) rupees 100 crore or more	4,00,000 :

**Provided** that the ceiling limits specified under this sub-paragraph shall apply, if -

- (i) payment of remuneration is approved by a resolution passed by the Remuneration Committee ;
- (ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person ;
- (iii) a special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;
- (iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely ; -

#### **I. General Information :**

- (1) Nature of industry
- (2) Date or expected date of commencement of commercial production
- (3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus.
- (4) Financial performance based on given indicators
- (5) Export performance and net foreign exchange collaborations
- (6) Foreign investments or collaborators, if any.

#### **II. Information about the appointee :**

- (1) Background details
- (2) Past remuneration
- (3) Recognition or awards
- (4) Job profile and his suitability
- (5) Remuneration proposed
- (6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be w.r.t. the country of his origin)

(7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.

**III. Other information :**

- (1) Reasons of loss or inadequate profits
- (2) Steps taken or proposed to be taken for improvement
- (3) Expected increase in productivity and profits in measurable terms.

**IV. Disclosures :**

- (1) The shareholders of the company shall be informed of the remuneration package of the managerial person.
- (2) The following disclosures shall be mentioned in the Board of director's report under the heading "Corporate Governance", if any, attached to the annual report : -
  - (i) All elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors ;
  - (ii) Details of fixed component and performance linked incentives along with the performance criteria ;
  - (iii) Service contracts, notice period, severance fees ;
  - (iv) Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.
- (C) exceeding the ceiling limit of Rs. 48,00,000 per annum or Rs. 4,00,000 per month calculated on the following scale **if the company is a listed company or a subsidiary of a listed company<sup>3</sup> :-**

Where the effective capital of company is	Monthly remuneration payable shall not exceed (Rupees)
(i) less than rupees 1 crore	1,50,000
(ii) rupees 1 crore or more but less than rupees 5 crore	2,00,000
(iii) rupees 5 crore or more but less than rupees 25 crore	2,50,000
(iv) rupees 25 crore or more but less than rupees 50 crore	3,00,000
(v) rupees 50 crore or more but less than rupees 100 crore	3,50,000
(vi) rupees 100 crore or more	4,00,000

**Provided** that the ceiling limits specified under this sub-paragraph shall apply, if -

- (i) payment of remuneration is approved by a resolution passed by the Remuneration Committee ;
- (ii) the company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in the preceding financial year before the date of appointment of such managerial person ;
- (iii) a special resolution has been passed at the general meeting of the company for payment of remuneration for a period not exceeding three years;
- (iv) a statement along with a notice calling the general meeting referred to in clause (iii) is given to the shareholders containing the following information, namely ; -

**I. General Information :**

- (1) Nature of industry
- (2) Date or expected date of commencement of commercial production.
- (3) In case of new companies, expected date of commencement of activities as per project approved by financial institutions appearing in the prospectus.
- (4) Financial performance based on given indicators
- (5) Export performance and net foreign exchange collaborations
- (6) Foreign investments or collaborators, if any.

**II. Information about the appointee :**

- (1) Background details
- (2) Past remuneration
- (3) Recognition or awards
- (4) Job profile and his suitability
- (5) Remuneration proposed
- (6) Comparative remuneration profile with respect to industry, size of the company, profile of the position and person (in case of expatriates the relevant details would be w.r.t. the country of his origin)
- (7) Pecuniary relationship directly or indirectly with the company, or relationship with the managerial personnel, if any.

**III. Other information :**

- (1) Reasons of loss or inadequate profits
- (2) Steps taken or proposed to be taken for improvement
- (3) Expected increase in productivity and profits in measurable terms.

**IV. Disclosures :**

- (1) The shareholders of the company shall be informed of the remuneration package of the managerial person.
- (2) The following disclosures shall be mentioned in the Board of director's report under the heading "Corporate Governance", if any attached to the annual report : -
  - (i) All elements of remuneration package such as salary, benefits, bonuses, stock options, pension, etc., of all the directors ;
  - (ii) Details of fixed component and performance linked incentives along with the performance criteria ;
  - (iii) Service contracts, notice period, severance fees ;
  - (iv) Stock option details, if any, and whether the same has been issued at a discount as well as the period over which accrued and over which exercisable.

**Provided further** that the conditions specified in sub-paragraph (C) shall apply in the case the effective capital of the company is negative :

**Provided** also that the prior approval of the Central Government is obtained for payment of remuneration on the above scale.

<sup>2</sup>[(D) not exceeding Rs. 2,40,00,000 per annum or Rs. 20,00,000 per month in respect of Companies in Special Economic Zones as notified by Department of Commerce from time to time :

**Provided** that these companies have not raised any money by public issue of shares or debentures in India :

**Provided further** that such companies have not made any default in India in repayment of any of its debts (including public deposits) or debentures or interest payable thereon for a continuous period of thirty days in any financial year.]

2. A managerial person shall also be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in paragraph 1 of this section :

(a) contribution to provident fund, superannuation fund or annuity fund to the extent these either singly or put together are not taxable under the Income-tax Act, 1961,

(b) gratuity payable at a rate not exceeding half a month's salary for each completed year of service, and

(c) encashment of leave at the end of the tenure.

3. In addition to the perquisites specified in paragraph 2 of this section, an expatriate managerial person (including a non-resident Indian) shall be eligible to the following perquisites which shall not be included in the computation of the ceiling on remuneration specified in paragraph 1 of this section :

(a) *Children's education allowance* : In case of children studying in or outside India, an allowance limited to a maximum of Rs. 5,000 per month per child or actual expenses incurred, whichever is less. Such allowance is admissible upto a maximum of two children.

(b) *Holiday passage for children studying outside India/family staying, abroad* : Return holiday passage once in a year by economy class or once in two years by first class to children and to the members of the family from the place of their study or stay abroad to India if they are not residing in India with the managerial person.

(c) *Leave travel concession* : Return passage for self and family in accordance with the rules specified by the company where it is proposed that the leave be spent in home country instead of anywhere in India.

*Explanation I* . - For the purposes of section II of this part, "effective capital" means the aggregate of the paid-up share capital (excluding share application money or advances against shares, amount, if any, for the time being standing to the credit of share premium account, reserves and surplus (excluding revaluation reserve), long-term loans and deposits repayable after one year (excluding working capital loans, overdrafts, interest due on loans unless funded, bank guarantee, etc., and other short-term arrangements) as reduced by the aggregate of any investments (except in the case of investment by an investment company whose principal business is acquisition of shares, stock debentures or other securities), accumulated losses and preliminary expenses not written off.

*Explanation II* . - (a) Where the appointment of the managerial person is made in the year in which company has been incorporated, the effective capital shall be calculated as on the date of such appointment ; (b) In any other case, the effective capital shall be calculated as on the last date of the financial year preceding the financial year in which the appointment of the managerial person is made.

*Explanation III* . - For the purposes of section II of this part, family means the spouse, dependent children and dependent parents of the managerial person.

<sup>2</sup>[*Explanation IV* . - For the purposes of this section, "Remuneration Committee" means

(i) *[in respect of a listed company, a committee which consists of atleast three non-executive independent directors including nominee directors, if any; and*

(ii) *in respect of any other company, a Remuneration Committee of Directors]*<sup>3</sup>.

*Explanation V* . - For the purposes of this clause, the Remuneration Committee while approving the remuneration under this section, shall, -

(a) take into account, financial position of the company, trend in the industry, appointee's qualification, experience, past performance, past remuneration, etc.

(b) be in a position to bring about objectivity in determining the remuneration package while striking a balance between the interest of the company and the shareholders.

*Explanation VI* . - for the purposes of Paragraph 1, "negative effective capital" means the effective capital which is calculated : -

(a) in accordance with the provisions contained in Explanation I of this Part ;

(b) less than zero.]

1. Substituted by Notification No. GSR 36(E) dated 16-1-2002

2. Inserted By the Notification No. GSR 565(E), dated 14-8-2002

3. Inserted vide Notificaiton no. G.S.R. 70(E) dated 8<sup>th</sup> February, 2011

#### <sup>1</sup>[**SECTION III - REMUNERATION PAYABLE TO A MANAGERIAL PERSON IN TWO COMPANIES**

Subject to the provisions of sections I and II, a managerial person shall draw remuneration from one or both companies, provided that the total remuneration drawn from the companies does not exceed the higher maximum limit admissible from any one of the companies of which he is a managerial person.]

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1. Inserted By the Notification No. GSR 418(E), dated 12-9-1996.

#### **PART III**

#### **PROVISIONS APPLICABLE TO PARTS I AND II OF THIS SCHEDULE**

1. The appointment and remuneration referred to in Parts I and II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting.

2. The auditor or the secretary of the company or where the company has not appointed a secretary, a secretary in whole-time practice shall certify that the requirements of this Schedule have been complied with and such certificate

shall be incorporated in the return filed with the Registrar under sub-section (2) of section 269.]

<sup>1</sup> [ <b>SCHEDULE XIV</b> [See sections 205 and 350] <b>RATES OF DEPRECIATION</b>						
Nature of assets	Single Shift		Double Shift		Triple Shift	
	WDV	SLM	WDV	SLM	WDV	SLM
1	2	3	4	5	6	7
I. (a) BUILDINGS (other than factory buildings) [NESD]						
(b) FACTORY BUILDINGS						
(c) PURELY TEMPORARY ERECTORIES such as wooden structures						
II. PLANT AND MACHINERY						
<sup>2</sup> [(i) General rate applicable to, -						
(a) plant and machinery (not being a ship) other than continuous process plant for which no special rate has been prescribed under (ii) below :						
(b) continuous process plant, <sup>3</sup> [***] for which no-special rate has been prescribed under (ii) below [NESD]. (ii) Special rates						
A.1. Cinematograph films - Machinery used in the production and exhibition of cinematograph films [NESD].						
(a) Recording equipment, reproducing equip-ment developing machines, printing mac- hines, editing machines, synchronisers and studio lights except bulbs.						
(b) Projecting equipment of film exhibiting concerns.						
2. Cycles [NESD].						
<sup>4</sup> [3. Electrical machinery, X-ray and electro- therapeutic						

apparatus and accessories thereto, medical, diagnostic equipments, namely, cat-scan, ultrasound machines, ECG monitors, etc. [NESD].						
4. Juice boiling pans (karhais) [NESD].						
5. Motor-cars, motor-cycles, scooters and other mopeds [NESD].						
6. Electrically operated vehicles including battery powered or fuel cell powered vehicles [NESD].						
7. Sugarcane crushers (indigenous kolhus and belans) [NESD].						
8. Glass manufacturing concerns except direct fire glass melting furnaces Recuperative and regenerative glass melting furnaces -						
9. Machinery used in the manufacture of electronic goods and components						
B.1. 4. Aeroplanes, aero engines, simulators, visual system and quick engine change equipment [NESD]. 2. Concrete pipes manufacture moulds [NESD]. 3. Drum container manufacture-dies [NESD]. 4. Earth-moving machinery employed in heavy construction works, such as dams, tunnels, canals, etc. [NESD]. 5. Glass manufacturing concerns except direct fire glass melting furnaces - Moulds [NESD]. 6. Moulds in iron						



foundries [NESD].						
7. Mineral oil concerns - Field operations (above ground) - Portable boilers, drilling tools, well-head tanks, rigs, etc. [NESD].						
8. Mines and quarries - portable underground machinery and earth-moving machinery used in open cast mining [NESD].						
9. Motor buses and motor lorries other than those used in a business of running them on hire [NESD].						
9A. Motor tractors, harvesting combines [NESD].						
10. Patterns, dies and template, [NESD].						
11. Ropeway structures - Ropeways, ropes and trestle sheaves and connected parts [NESD].						
12. Shoe and other leather goods factories - Wooden lasts used in the manufacture of shoes .						
C. 1. <sup>5</sup> [***]						
2. Motor buses, motor lorries and motor taxis used in a business of running them on hire [NESD]						
3. Rubber and plastic goods factories moulds [NESD]						
4. Data processing machines including computers [NESD]						
5. Gas cylinders including valves and regulators [NESD]						
D.1 Artificial silk manufacturing machinery wooden parts						

2. Cinematograph films - Bulbs of studio lights						
3. Flour mills - Rollers						
4. Glass manufacturing concerns - Direct fire glass melting furnaces.						
5. Iron and Steel industries - Rolling mill rolls						
6. Match factories - Wooden match frames						
7. Mineral oil concerns - (a) Plant used in field operations (below ground) - Distribution - returnable packages ; (b) Plant used in field operations (below ground) but not including assets used in field operations (distribution) - Kerbside pumps including underground tanks and fittings.						
8. Mines and quarries - (a) Tubs, winding ropes, haulage ropes and sand stowing pipes, (b) Safety lamps.						
9. Salt works - Salt pans, reservoirs and condensers, etc., made of earthy, sandy or clay material or any other similar material						
10. Sugar works - Rollers.						
<b>III. FURNITURE AND FITTINGS</b>						
1. General Rates [NESD]						
2. Rate for furniture and fittings used in hotels, restaurants and boarding houses ; schools, colleges and other educational institutions, libraries ; welfare centres ; meeting halls, cinema						

houses ; theatres and circuses ; and for furniture and fittings let out on hire for use on the occasion of marriages and similar functions [NESD]						
<b>IV. SHIPS</b>						
<b>1. Ocean-going ships -</b>						
(i) Fishing vessels with wooden hull [NESD]						
(ii) Dredgers, tugs, barges, survey launches and other similar ships used mainly for dredging purposes [NESD]						
(iii) Other ships [NESD]						
<b>2. Vessels ordinarily operating on inland waters -</b>						
(i) Speed boats [NESD]						
(ii) Other vessels [NESD]						

- WDV means written down value.
- SLM means straight line method.

1. Inserted by the Companies (Amendment) Act, 1988 w.r.e.f. 2-4-1987.
2. Substituted by GSR 756(E), dated 16-12-1993.
3. The words "other than those" omitted by Notification No. GSR 101(E), dated 1-3-1995.
4. Substituted by Notification No. GSR 788(E), dated 4-11-1994.
5. Omitted by Notification No. GSR 788(E), dated 4-11-1994.
6. Inserted by Notification No. GSR 500(E), dated 18-8-1998.

#### NOTES

1. "Buildings" include roads, bridges, culverts, wells and tube-wells.
2. "Factory buildings" does not include offices, godowns, officers' and employees' quarters, roads, bridges, culverts, wells and tube-wells.
3. "Speed boat" means a motor boat driven by a high speed internal combustion engine capable of propelling the boat at a speed exceeding 24 kilometres per hour in still water and so designed that when running at a speed it will plane, i.e., its bow will rise from the water.
4. Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a *pro rata* basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed.
5. The following information should also be disclosed in the accounts :
  - (i) depreciation methods used ; and
  - (ii) depreciation rates or the useful lives of the assets, if they are different from the principal rates specified in the Schedule.
6. The calculations of the extra depreciation for double shift working and for triple shift working shall be made separately in the proportion which the number of days for which the concern worked double shift or triple shift, as the case may be, bears to the normal number of working days during the year. For this purpose, the normal number of working days during the year shall be deemed to be -
  - (a) in the case of a seasonal factory or concern, the number of days on which the factory or concern actually worked during the year or 180 days, whichever is greater ;
  - (b) in any other case, the number of days on which the factory or concern actually worked during the year or 240 days, whichever is greater.

The extra shift depreciation shall not be charged in respect of any item of machinery or plant which has been specifically, excepted by inscription of the letters "NESD" (meaning "no extra shift depreciation") against it in sub-items above and also in respect of the following items of machinery and plant to which the general rate of depreciation of <sup>1</sup>[13. 91] per cent applies -

  - (1) Accounting machines.

- (2) Air-conditioning machinery including room air-conditioners.
- (3) Building contractor's machinery.
- (4) Calculating machines.
- (5) Electrical machinery - switchgear and instruments, transformers and other stationary plant and wiring and fitting of electric light and fan installations.
- (6) Hydraulic works, pipelines and sluices.
- (7) Locomotives, rolling stocks, tramways and railways used by concerns, excluding railway concerns.
- (8) Mineral oil concerns - field operations :
- (a) <sup>2</sup>[\*\*\*]
- (b) Prime movers
- (c) <sup>2</sup>[\*\*\*]
- (d) Storage tanks (above ground)
- (e) Pipelines (above ground)
- (f) Jetties and dry docks
- (9) Mineral oil concerns - field operations (distribution) - kerbside pumps including underground tanks and fittings.
- (10) Mineral oil concerns - refineries :
- (a) <sup>2</sup>[\*\*\*]
- (b) Prime movers
- (c) <sup>2</sup>[\*\*\*]
- <sup>3</sup>[(d) LPG Plant]
- (11) Mines and quarries :
- (a) Surface and underground machinery (other than electrical machinery and portable underground machinery)
- (b) Head-gears
- (c) Rails
- (d) <sup>2</sup>[\*\*\*]
- (e) Shafts and inclines
- (f) Tramways on the surface
- (12) Neo-post franking machines.
- (13) Office machinery.
- (14) Overhead cables and wires.
- (15) Railway sidings.
- (16) Refrigeration plant containers, etc. (other than racks).
- (17) Ropeway structures :
- (a) Trestle and station steel work.
- (b) Driving and tension gearing.
- (18) Salt works - Reservoirs, condensers, salt pans, delivery channels and piers if constructed of masonry, concrete, cement, asphalt or similar materials ; barges and floating plant ; piers, quays and jetties ; and pipelines for conveying brine if constructed of masonry, concrete, cement, asphalt or similar materials.
- (19) Surgical instruments.
- (20) Tramways electric and tramways run by internal combustion engines - permanent- way : cars- car trucks, car bodies, electrical equipment and motors ; tram cars including engines and gears.
- (21) Typewriters.
- (22) Weighing machines.
- (23) Wireless apparatus and gear, wireless appliances and accessories.]
- (24) <sup>2</sup>[\*\*\*]
- <sup>4</sup>[7. "Continuous process plant" means a plant which is required and designed to operate 24 hours a day.
8. Notwithstanding anything mentioned in this Schedule, depreciation on assets, whose actual cost does not exceed five thousand rupees, shall be provided depreciation at the rate of hundred per cent :]
- <sup>5</sup>[**Provided** that where the aggregate actual cost of individual items of plant and machinery costing Rs. 5,000 or less constitutes more than 10 per cent of the total actual cost of plant and machinery, rates of depreciation applicable to such items shall be the rates as specified in Item II of the Schedule.]

1. Substituted for "15" by GSR 756(E), dated 16-12-1993.
2. Omitted by GSR 756(E), dated 16-12-1993.
3. Inserted by GSR 416(E), dated 14-5-1993.
4. Inserted by GSR 756(E), dated 16-12-1993.
5. Inserted by Notification No. GSR 101(E), dated 1-3-1995.

#### <sup>1</sup>[**SCHEDULE XV**

[See section 108B(2)(b)]

1. Arms and ammunition and allied items of defence equipment, defence aircrafts and warships.
2. Atomic energy.

**3. to 6<sup>2</sup>[ ]**

**7. Minerals specified in the Schedule to the Atomic Energy (Control of Production and Use) Order, 1953.**

**8. Railway transport.]**

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**1. Inserted by the MRTP (Amendment) Act, 1991, w.e.f. 27-9-1991.**

**2. Omitted by Notification No. GSR 686(E) dated 21-9-2001. Prior to omission S.No. 3, 4, 5, 6 stood as under :**

**3. Coal and lignite. 4. Mineral oils 5. Mining of iron ore, manganese ore, chrome ore, gypsum, sulphur, gold and diamond. 6. Mining of copper, lead, zinc, tin, molybdenum and wolfram.**

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