DRAFT RULES UNDER THE COMPANIES ACT, 2013

CHAPTER XX COMPANIES (WINDING UP) RULES 2013 Ministry of Corporate Affairs Notification

Dated

New Delhi

GSR No.....:- In exercise of the powers conferred by section 468 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following rules:-

- **1. Short title and commencement**: (1) These rules may be called the Companies (Winding up) Rules, 2013.
- (2) They shall come into force on the date of their publication in the official gazette.

Definitions -

- 2.In these rules, unless the context otherwise requires,
 - (1) 'Act' means the Companies Act, 2013.
 - (2) 'Annexures' means an annexure to these rules.
 - (3) 'Section' means the section of the Act.
 - (4) 'Tribunal' means the National Company Law Tribunal.
 - (5) Words and Expressions: -

Save as aforesaid, and unless the context otherwise requires, words and

expressions contained in these rules shall bear the same meaning as in the Act, and the General Clauses Act, 1897 for the interpretation of these rules, and save as above words and expressions contained in Companies Rules, 2013, National Company Law Tribunal Rules, 2013 and National Company Law Appellate Tribunal Rules, 2013 shall apply to these rules.

3. FORMS

'Forms' means forms prescribed in Annexure-'A' to these rules with such variations as may be necessary.

4. FEES

'Fees' means fee as prescribed in Annexure-B to these rules.

Part-II Winding-up by Tribunal

5. Winding-up petition and its hearing:

(1) Petition for winding-up along with the statement of affairs – For the purposes of sub-section (1) of section 272, a petition for winding-up of a company shall be presented in Form No. 1, 2, or 3, as the case may be, with such variations as circumstances may require, and shall be presented in triplicate. If the petition is made by the company, it shall be accompanied with the statement of its affairs in Form No. 4 as required under sub-section (5) of section 272 and shall state the facts up to the date which shall not be a date more than fifteen days prior to the date of making of the statement. This statement shall be duly certified by a Chartered Accountant in practice. The fee for filing the petition shall be as prescribed in Annexure-B

(2) Admission of petition and directions as to advertisement - Upon the filing of the petition, it shall be listed before the Tribunal for admission and fixing a date for its hearing and for directions as to the advertisements to be published and the persons, if any, upon whom copies of the petition are to be served. Where a petition has been filed by a person other than the company, the Tribunal shall if it thinks fit, direct notice to be given to the company and give an opportunity of being heard, before giving directions as to the advertisement of the petition.

(3) Petition by a contingent or prospective creditor -

(i) A contingent or prospective creditor is one who is able to prove that he has a bonafide and *prima facie* case to establish his claim to the satisfaction of the Tribunal and his application shall be in accordance with sub-section (6) of section 272 to seek the leave of the Tribunal for the admission of the petition in **Form No. 5.** along with the fees as prescribed in Annexure -B

Provided that no leave shall be granted, unless in the opinion of the Tribunal there is a prima facia case for winding up of the company and until such security for costs has been given as the Tribunal thinks reasonable.

- (ii)No advertisement of the petition shall be made unless the leave has been granted, or where the leave has been granted subject to any conditions precedent to the admission of the petition, unless such conditions have been satisfied.
- (4) Copy of petition to be furnished -Every contributory or creditor of the company shall be entitled to be furnished by the petitioner or by his authorized representative with a copy of the petition. In case such copy is not so provided, the contributory or creditor may apply to the

Registry of the Tribunal, which shall provide an electronic copy on payment of fee as prescribed in Annexure-B

(5) Advertisement of petition -Subject to directions of the Tribunal, the petition shall be advertised in not less than fourteen days before the date fixed for hearing in one daily newspaper in English language and one daily newspaper in the principal regional language circulating in the state or union territory where the registered office of the Company is situated. The advertisement shall be in **Form No. 6**.

(6) Application for withdrawal of petition -

- (i) The Tribunal may allow to withdraw the petition subject to such orders including about costs as may be considered appropriate.
- (ii) An application to withdraw a petition for winding-up which has been advertised in accordance with the provisions of Rule 5 shall not be considered at any time before the date fixed in the advertisement for the hearing of the petition.

(7) Substitution of creditor or contributory for original petitioner

Where a petitioner –

- (i) is not entitled to present a petition, or
- (ii) fails to advertise his petition within the time prescribed by these rules or by order of the Tribunal, or
- (iii) consents to withdraw the petition, or to allow it to be dismissed, or

the hearing to be adjourned or fails to appear in support of his petition when it is called on in Tribunal on the day originally fixed for the hearing thereof, or any day to which the hearing has been adjourned, or

- (iv) if appearing, does not apply for an order in terms of the prayer of his petition, or,
- (v) where in the opinion of the Tribunal there is other sufficient cause for an order being made under this rule,

the Tribunal may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who, in the opinion of the Tribunal, would have a right to present a petition, and who is desirous of prosecuting the petition.

- (8) Affidavit-in-Opposition: (i) Subject to section 274 of the Act, any Affidavit intended to be used in opposition of the petition shall be filed not less than five days before the date fixed for hearing of the petition, and a copy of the affidavit shall be served on the petitioner or his authorized representative forthwith.
- (ii) For the purposes of sub section (1) of section 274 of the Act, where a petition for winding up is filed before the Tribunal by any person other than the Company, the Tribunal shall, if satisfied that a *prime-facie case* for winding up has been made out, by an order direct the company to file its objections through an affidavit along with statement of affairs in Form No. 4 within 30 days of the order. Copy of the affidavit along with the statement of affairs shall be served on the petitioner or his authorized representative forthwith.
- (iii) Copies of the affidavit shall also be given to any creditor or

contributory appearing in support of the petition, who may require the same, on payment of the prescribed charges/fees.

- (9) Affidavit in reply: A rejoinder intended to be used in reply to the affidavit filed in opposition to the petition shall be filed not less than two days before the date fixed for hearing of the petition, and a copy of the rejoinder to reply shall be served on the day of filing thereof on the person by whom the affidavit in opposition was filed or his authorized representative.
- (10) Procedure on substitution Where the Tribunal makes an order substituting a creditor or contributory as petitioner in a winding-up petition, it shall adjourn the hearing of the petition to a date to be fixed by the Tribunal and direct such amendments of the petition as may be necessary. Such creditor or contributory shall, within seven days from the making of the order, amend the petition accordingly, and file two amended copies thereof together with an affidavit in duplicate setting out the grounds, on which he supports the petition. The amended petition shall be treated as the petition for the winding-up of the company and shall be deemed to have been presented on the date on which the original petition was presented.

6. PROVISIONAL LIQUIDATOR

(1) Appointment of Provisional Liquidator -

(i) Tribunal may by an order appoint either Official Liquidator or a liquidator from the panel maintained by the Central Government as Provisional Liquidator. An order appointing a provisional liquidator shall be in **Form No. 7** and the intimation of such appointment of a provisional liquidator shall be in **Form No. 8** within a period of seven days from the date of passing of the order alongwith a copy of the petition, copy of

Statement of Affairs and the affidavit, if any, filed in support thereof.

- (ii) The Provisional Liquidator who is appointed from the panel shall file a declaration in **Form No. 9**making disclosures in accordance with sub section (6) of section 275. Thereafter, on the order of the Tribunal as per sub section (1) of section 283, the Provisional Liquidator shall forthwith take into his custody or under his control all the properties, effects, actionable claims and books and papers of the company, and it shall be the duty of all persons having custody of any of the property, books and papers of the company, to deliver possession thereof to the Provisional Liquidator.
- (iii) Subject to any order of the Tribunal, all the costs, charges and expenses incurred by the Provisional Liquidator shall be paid out of the assets of the company.
- (iv) EveryProvisional Liquidator appointed from the panel, shall before entering uponhis duties as such liquidator, furnish securityof such sum and in such manner as the Tribunal may direct. The cost of furnishing the required security shall be borne by the liquidator and shall not be charged against the assets of the company as an expense incurred in winding up.Such security shall be provided through **Form No.10**.
- (v) If the Tribunal is of the opinion that the security furnished by the liquidator under clause (iv) above is inadequate, the Tribunal may require the liquidator to furnish additional security. Where the security furnished is excessive, the liquidator may apply to the Tribunal for reducing the amount of security, and the Tribunal may make such order thereon as it think fit.

(2) Rules applicable to Provisional Liquidator – In pursuance of sub-section (3) of section 275, the rules relating to Company Liquidators shall apply to Provisional Liquidators, so far as applicable, subject to such variations as the Tribunal may direct in each case.

7. WINDING-UP ORDER

- (1)Order to be sent to Company Liquidator and Registrar of Companies and form of order-
- (i) Tribunal may by an order appoint either Official Liquidator or liquidator from the panel maintained by the Central Government as Company Liquidator. For the purposes of sub section (1) of section 277, the order for winding up shall be in **Form No. 11** and shall be sent within a period not exceeding seven days from the date of passing of the order, to the Company Liquidator and the Registrar of Companies in **Form No. 12 and 13** respectively. In case of a listed company, the Registrar of Companies shall send intimation of such order to the stock exchange, where the securities of the company are listed. The copy of the order shall be accompanied by a copy of the petition, copy of Statement of Affairs and the affidavit, if any, filed in support thereof.
- (ii) Except where a company is the petitioner, the Company Liquidator shall cause a sealed copy of the order to be served upon the company by RegisteredAD or other recognized modes of service as per section 20 of the Act addressed at its registered office (if any), or, if there is no registered office, at its principal or last known principal place of business, or upon such other person or persons or in such manner as the Tribunal

may direct.

(2) Contents of winding-up order — An order for winding-up of the company in Form No. 11shall contain a footnote stating that (i) it will be the duty of such of the persons as are liable to submit books of account of the company completed and audited up to the date of order, to attend on the Company Liquidatorat required time and place and give him all the information and (ii) it will be the duty of every person who is in possession of any property, books or papers, cash or any other assets of the company, including the benefits derived therefrom, to surrender forthwith such property, books or papers, cash or other assets and the benefits so derived, as the case may be, to the Company Liquidator.

(3) Directions on making the winding-up order and advertisement of the order –

- (i) At the time of making the winding-up order, or at any time thereafter, the Tribunal shall give directions as to the advertisement of the order and the persons, if any, on whom the order shall be served and the persons, if any, to whom notice shall be given of the further proceedings in the liquidation, and such further directions as may be necessary.
- (ii) Save as otherwise ordered by the Tribunal, every order for the winding-up of a company by the Tribunal, shall within fourteen days of the date of making the order, be advertised by the petitioner in English and Vernacular language in one issue of a newspaper in the English language and a newspaper in the principal regional language respectively circulating in the State or the Union Territory concerned and shall be served by the petitioner upon such person, if any, and in such manner as the Tribunal may direct including publication on the website of the Tribunal if any or MCA 21 portal. The advertisement shall be in **Form No.**

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(4) Declaration by Company Liquidator -

- (i) For the purposes of sub-section (6) of section 275, the Company Liquidator appointed by the Tribunal from the panel maintained by the central government at the time of passing of the order of winding-up shall file a declaration in **Form No. 9** disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the Tribunal within seven days from the date of appointment.
- (ii) Every Liquidator appointed from the panel, shall before entering upon his duties as company liquidator, furnish security of such sum and in such manner as the Tribunal may direct. The cost of furnishing the required security shall be borne by the liquidator and shall not be charged against the assets of the company as an expense incurred in the winding up. Such security shall be provided through **Form No.10**.
- (iii) If the Tribunal is of the opinion that the security furnished by the liquidator under clause (iv) above is inadequate, the Tribunal may require the liquidator to furnish additional security. Where the security furnished is excessive, the liquidator may apply to the Tribunal for reducing the amount of security, and the Tribunal may make such order thereon as it think fit.
- (5)Company Liquidator to take charge of assets and books and papers of company- On an order of the Tribunal, the Company Liquidator shall, forthwith take into his custody or under his control all properties, effects, actionable claims and books and papers of the company, and it shall be the duty of all persons having custody of any of the properties, books and papers of the company, to deliver possession

thereof to the Company Liquidator.

(6) Form of proceedings after winding-up order is made - After a winding-up order is made, every subsequent proceeding in the winding-up shall bear the original number of the winding-up petition besides its own distinctive number, but against the name of the company in the cause-title, the words 'in liquidation' shall appear in brackets.

8. APPLICATIONS UNDER SECTION 279

Application for leave to commence or continue suit or proceeding

- An application under sub-section (1) of section 279 for leave of the Tribunal to commence or continue any suit or proceeding against the company shall be made in **Form No 15** upon notice to the Company Liquidator and the parties to the suit or proceeding sought to be commenced or continued and Tribunal shall dispose off such application within sixty days.

9. REPORTS BY COMPANY LIQUIDATOR UNDER SECTION 281

(1) Report by Company Liquidator -

- (i). The report to be submitted by the Company Liquidator under subsection (1) of section 281 shall be in **Form No. 16** within sixty days from the order. The report shall also contain the viability plan of the business of company or the steps which are necessary for maximizing the value of the assets of the company. The Company Liquidator may make further report or reports, if he thinks fit, according to the provisions of sub-section (4) of section 281.
- (ii) The Company Liquidator while making the report in accordance with sub-rule (1), shall state in such report the manner in which the company was promoted or formed and whether in his opinion, any fraud has been committed by any person in the promotion or formation or managing the

affairs of the company or by any officer in relation to the company since its formation, and shall set out the names of the persons by whom the fraud, in his opinion, was committed and the facts on which such opinion is based. The report shall set out in a narrative form facts and matters which the Company Liquidator desires to bring to the notice of the Tribunal.

- (iii) The Company Liquidator shall, along with the report prepared in accordance with the sub-rule (1), attach a report in **Form No. 17** on the viability of the business of the company or the steps which, in his opinion, are necessary for maximizing the value of the assets of the company.
- (iv) It shall be the duty of the promoters, directors, officers, employees and the person so authorised, as and when required, to attend on the Company Liquidator and answer all such questions as may be put to them, give all such further information as may be required from them, and provide such assistance as may be required by the Company Liquidator.
- (v) The Tribunal shall, within seven days from the receipt of such report, fix a date for the consideration thereof by the Tribunal and notify the date on the notice board/website of the Tribunal. Such date shall also be notified to the Company Liquidator and also the concerned company.
- (2)Inspection of statement of affairs and report –In pursuance of sub-section (5) of section 281, every creditor or contributory, by himself, or by his agent, shall be entitled to inspect the statement of affairs submitted under sub-section (5) of section 272 or sub-section (1) of section 274 and the report of the Company Liquidator submitted under rule 18(1), on payment of such fee and to obtain copies thereof or extracts therefrom on payment of fee at such rate, as prescribed in Annexure-B

(3) Report by the Company Liquidator -The Company Liquidator shall pursuant to section 281, place his report before the Tribunal. The Company Liquidator shall provide the Tribunal with the information / explanation required and any further information or explanation with reference to the matters contained therein which the Tribunal may require. On a consideration of the report (s), the Tribunal may pass such order(s) and give such directions as it may think fit including directions under section 282.

10. SETTLEMENT OF THE LIST OF CONTRIBUTORIES

(1) Provisional List of contributories -

- (i) For the purposes of sub-section (1) of section 285, unless the Tribunal dispenses with the settlement of a list of contributories, the Company Liquidator shall prepare and file in the Tribunal not later than twenty one days after the date of the winding up order a provisional list of contributories of the company with their names and addresses, the number of shares, the amount called up and the amount paid up in respect of such shares, and distinguishing in such list the several classes of contributories.
- (ii) The list shall consist of every person who was a member of the company at the commencement of the winding-up or his representative, and shall be divided into two parts, the first part consisting of those who are contributories in their own right, and the second part, of those who are contributories as being representatives of, or liable for the debts of, others, as is required under sub-section (2) of section 285. The lists shall be in **Form No. 18**.

(2) Notice to be given of date of settlement -

- (i) Upon the filing of provisional list of contributories mentioned in sub rule (1), the Company Liquidator shall obtain date from the Tribunal for settlement of the list of contributories and shall give notice of the date appointed to every person included in such list, stating in such notice in what character and for what number of shares such person is included in the list, the amount called up and the amount paid up in respect of such shares, and informing such person by such notice that if he intends to object to his being settled as a contributory in such character and for such number of shares as mentioned in the list, he should file in the Tribunal his affidavit, if any, in support of his contention and serve a copy of the same on the Company Liquidator not less than two days before the date fixed for the settlement, and appear before the Tribunal on the date appointed for the settlement in person or by authorised representative. Such notice shall be in Form No. 19, and shall be sent by Registered AD or other recognized modes of service as per section 20 of the Act for acknowledgment to every person included in the list so as to reach him in the ordinary course of post not less than fourteen days before the date fixed for the settlement.
- (ii) An affidavit in **Form No. 20** relating to the dispatch of notice, shall be filed in the Tribunal not later than two days before the date fixed for the settlement of the list.
- (3)Settlement of the list On the date appointed for the settlement of the list, the Tribunal shall hear any person who objects to being settled as a contributory or as a contributory in such character or for such number of shares as is mentioned in the list, and after such hearing, shall finally settle the list in accordance with sub-section (1) of section 285. The list

when settled shall be certified by the Tribunal under its seal and shall be in Form **No. 21**.

(4) Notice of settlement to contributories -

- (i) Upon the settlement of the list of contributories, the Company Liquidator shall forthwith give notice to every person placed on the list of contributories as finally settled, stating in what character and for what number of shares he has been placed on the list, what amount has been called up and what amount paid up in respect of such shares and in the notice he shall inform such person that any application for the removal of his name from the list or for a variation of the list, must be made to the Tribunal within fifteen days from the date of service on the contributory of such notice. Such notice shall be in **Form No. 22**, and shall be sent to each person settled on the list by Registered AD or other recognized modes of service as per section 20 of the Act for acknowledgment at the address mentioned in the list as settled.
- (ii) An affidavit of service relating to the despatch of the notices to the contributories under this Rule shall be filed in the Tribunal within seven days of the settlement of the list of contributories by the Tribunal. Such affidavit shall be in **Form No. 23**.
- (5) Supplemental list of contributories The Tribunal may add to the list of contributories by a supplemental list or lists and any such addition shall be made in the same manner in all respects as the settlement of the original list.
- (6) Variation of list Save as provided in the immediate preceding rule,

the list of contributories shall not be varied, and no person settled on the list as a contributory shall be removed from the list, or his liability in any way varied, except by an order of the Tribunal and in accordance with such orders.

- (7) Application for rectification of list -If after the settlement of the list of contributories, the Company Liquidator has reason to believe that a contributory who had been included in the provisional list has been improperly or by mistake excluded or omitted from the list of contributories as finally settled or that the character in which or the number of shares or extent of interest for which he has been included in the list as finally settled or any other particular contained therein, requires rectification in any respect, he may, upon notice to the contributory concerned, apply to the Tribunal for such rectification of the list as may be necessary, and the Tribunal may on such application, rectify or vary the list as it may think fit.
- (8) List of contributories consisting of past members- It shall not be necessary to settle a list of contributories consisting of the past members of a company, unless so ordered by the Tribunal. Where an order is made for settling a list of contributories consisting of the past members of a company, the provisions of these Rules shall apply to the settlement of such list in the same manner as they apply to the settlement of the list of contributories consisting of the present members.

11. ADVISORY COMMITTEE

(1) Meeting of creditors and contributories - The meeting of the creditors and contributories in accordance with the provisions of sub-

section (3) of section 287 for the purpose of determining the persons who shall be the members of the Advisory Committee, shall be convened, held and conducted in the manner hereinafter provided by these rules for the holding and conducting of meetings of creditors and contributories. However, on application made by the company liquidator the Tribunal may exempt any procedure or manner of conducting the meetings or prescribe any alternative procedure or manner, considering the availability of fund with the company liquidator or number of creditors and contributories.

(2) Company Liquidator to report result of meeting -

- (i) The Company Liquidator shall not later than seven days after the holding of the meetings of the creditors or contributories, report the result thereof to the Tribunal. Such report shall be in **Form No. 24**.
- (ii) Where the creditors and contributories have agreed upon the constitution and composition of the Advisory Committee and the persons who are to be members thereof, an Advisory committee shall, subject to the provisions of sub-section (2) of section 287, be constituted in accordance with such decision, and the Company Liquidator shall set out in his report the names of the members of the Advisory Committee so constituted.
- (iii) Where the creditors and contributories have not agreed upon the constitution and composition of the Advisory Committee and the persons who are to be members thereof, the Company Liquidator shall, at the time of making his report as aforesaid, apply to the Tribunal for directions as to whether there shall be an Advisory Committee, and if so, what shall be its composition, and who shall be the members thereof,

and the Tribunal shall thereupon fix a date for the consideration of the report of the Company Liquidator. Notice of the date so fixed shall be advertised by the Company Liquidator in such manner as the Tribunal shall direct not less than seven days before the date fixed. The advertisement shall be in **Form No. 25**.

- (iv) On the date fixed for hearing of the said application for directions, the Tribunal may, after hearing the Company Liquidator and any creditor or contributory who may appear, appoint an Advisory Committee, or dispense with the appointment of an Advisory Committee, or pass such orders or give such directions in the matters, as the Tribunal may think fit.
- (v) Notwithstanding anything contained in this rule, in regard to composition of the Advisory Committee, where the Liquidator of the company is from the panel maintained by the Central Government, the Committee shall include the Official Liquidator of the concerned jurisdiction or his nominee who is not below the rank of the Assistant Official Liquidator as one of the members of the Advisory Committee.
- (vi) In case the Official Liquidator or his nominee is not able to attend the meeting of the Advisory Committee, he may forward his advice in writing to the Company Liquidator.
- (vii) In the event of disagreement with the advice rendered by the Official Liquidator or his nominee, the reasons of such disagreement shall be recorded in the minutes of the Advisory Committee meeting.
- (viii) As per sub-section (1) of section 288, the Company Liquidator shall make quarterly reports to the Tribunal in **Form No. 26** with respect to the progress of winding up of the company.

(3) Filling -up of the vacancy in Advisory Committee -

(i) On a vacancy occurring in the Advisory Committee, the Company Liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, within a period of seven days 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 Company 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 Tribunal and the 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.

The continuing members of the Advisory committee, if not less than two, may act notwithstanding any vacancy in the Advisory committee.

Where the creditors or contributories, as the case may be, fail to fill the vacancy for whatever reason, the Company Liquidator shall forthwith report such failure to the Tribunal and Tribunal may, by order, fill such vacancy.

(4)CompanyLiquidator and members of the Advisory Committee dealing with company's assets - Neither the Company Liquidator nor any member of the Advisory Committee shall, while acting as liquidator or member of such committee in any winding-up, either directly or indirectly, by himself or through his employer, partner, clerk, agent, servant, or relative, become a purchaser of any part of the company's assets, except by leave of the Tribunal. Any such purchase made contrary to the provisions of this rule may be set aside by the Tribunal on the application of the Company Liquidator or of a creditor or contributory, as the case may be, and the Tribunal may make such order as to costs as it may think fit.

- (5)Cost of obtaining sanction of Tribunal -In any case in which sanction of the Tribunal is obtained under the last two preceding rules, the costs of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained and shall not be payable out of the company's assets.
- **(6) Meetings of the Advisory Committee** For the purposes of subsection (5) of section 287 -
- (i) The advisory committee shall meet at such times as it may from time to time appoint and the Company liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
- (ii) The quorum for a meeting of the advisory committee shall be onethird of the total number of the members, or two, whichever is higher.
- (iii) The advisory committee may act by a majority of its members present at a meeting, but shall not act unless a quorum is present.
- (iv) A member of the advisory committee may resign by notice in writing signed by him and delivered to the Company Liquidator.
- (v) If a member of the advisory 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.
- (vi) A member of the advisory committee except the Official Liquidator or his nominee appointed as committee member 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.

12. MEETINGS OF CREDITORS AND CONTRIBUTORIES

- (1)Notice of meeting -(i) The Company Liquidator shall summon meetings of the creditors and contributories by giving not less than fourteen daysnotice of the time and place appointed for the meeting by an advertisement in one daily newspaper in the English language and one daily newspaper in the principal regional language circulating in the State or Union Territory where the registered office of the Company is situated, and by sending individually to every creditor of the company notice of the meeting of creditors, and to every contributory of the company notice of the meeting of contributories, by sending letters by Registered AD or other recognized modes of service as per section 20 of the Act so as to reach such person in the ordinary course of post not less than seven days before the date appointed for the meeting.
- (ii) The notice to each creditor shall be sent to the address given in his proof or, if he has not proved, to the address given in the statement of affairs, or, to the address given in the books of the company, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the books of the company as the address of such contributory or to such other address as may be known to the person summoning the meeting.
- (iii) The notices shall be in **Forms No. 27** as may be applicable.
- (2) Place and time of meeting. Every meeting shall be held at such place and time as the Company Liquidator considers most convenient for

the majority of the creditors or contributories or both. Different times or places or both may, if thought fit, be appointed for the meetings of creditors and the meetings of contributories.

(3) Notice of first or other meeting to officers of company.-

- (i) The Company Liquidator shall also give, to each of the officers of the company, who in his opinion ought to attend the first or any other meeting of creditors or contributories, seven days' notice in **Form No. 28** of the time and place appointed for such meeting. The notice may either be delivered personally or sent by Registered AD or otherrecognized modes of service as per section 20 of the Act for acknowledgment as may be convenient. It shall be the duty of every officer who receives notice of such meeting to attend if so required by the Company Liquidator, and if any such officer fails to attend, the Company Liquidator may report such failure to the Tribunal and the Tribunal may issue such directions to such person as it thinks fit.
- (ii) The Company Liquidator, if he thinks fit, may instead of requiring any of the officers of the company to attend the meeting as aforesaid, require such officer to answer any interrogatories or to furnish in writing any information that he may require for purposes of such meeting, and if such officer fails to answer the interrogatories or furnish such information, he shall report such failure to the Tribunal and the Tribunal may issue such directions to such person as it may think fit.
- (4) Proof of notice- A declaration by way of Affidavit by the Company Liquidator who sent the notices, that such notices have been duly sent, shall be sufficient evidence of the notices having been sent to the persons

to whom the same were addressed. The declaration *supported* with *proof* of service shall be filed in the Tribunal in **Form No. 29**.

- **(5) Costs of meetings** -The cost of convening and conducting the meetings of the creditors or contributories shall be met out of the assets of the company.
- **(6) Chairman of meetings** The Company Liquidator or some person nominated by him shall be the chairman of the meeting. The nomination shall be in **Form No. 30**.
- (7)Resolution at creditors' meeting -At a meeting of creditors, a resolution shall be deemed to be passed, when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution. In a winding-up by the Tribunal, the value of a creditor, shall, for the purposes of a first meeting of the creditors held under section 287, be deemed to be the value as shown in the books of the company, or the amount mentioned in his proof, whichever is less and for the purposes of any other meeting, the value which the creditor has proved his debt or claim.
- (8)Resolution of contributories' meeting -At a meeting of the contributories, a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy and voting on the resolution have voted in favour of the resolution. The value of the contributories shall be determined according to the number of votes to which each contributory is entitled as a member of the company under the provisions of the Act, or the articles of the company, as the case may be.

- **(9)** Copies of resolutions to be filed. The Company Liquidator shall file in the Tribunal, a copy certified by him of every resolution passed at a meeting of creditors or contributories. The Registrar shall keep in each case a file of such resolutions.
- (10)Non-receipt of notice by a creditor or contributory.-Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the Tribunal otherwise orders, be valid notwithstanding that some creditors or contributories may not have received the notice sent to them.
- (11) Adjournments.-The chairman may, with the consent of the meeting, adjourn it, but the adjourned meeting shall be held not later than seven days at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Tribunal otherwise orders.
- (12) Quorum.-A meeting may not act for any purpose except for adjournment thereof unless there are present or represented thereat in the case of a creditors' meeting at least three creditors entitled to vote or in the case of a meeting of contributories at least three contributories or all the creditors entitled to vote or all the contributories, if the number of creditors entitled to vote or the number of contributories as the case may be shall not exceed three.
- (13) Procedure in the absence of quorum.-If, within half an hour from the time appointed for the meeting, a quorum of creditors or contributories, as the case may be, is not present or represented, the

meeting shall be adjourned to the same day in the following week at the same time and place. If at such adjourned meeting, a quorum be not present, two creditors or contributories present in person shall form a quorum and may transact the business for which the meeting was convened.

Provided that at the adjourned meeting two creditors or the contributories, as the case may be, are not present, the chairman shall submit his report to the Tribunal for such directions as the Tribunal may deem fit.

(14) When creditor can vote.-In the case of a meeting of creditors held under section 287 or of any adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the Company Liquidator not later than the time mentioned for that purpose in the notice convening the meeting, a proof of the debt which he claims to be due to him from the company. In the case of other meetings of creditors, a person shall not be entitled to vote as a creditor unless he has lodged with the Company Liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held:

Provided that this Rule and the next four following Rules shall not apply to a meeting of creditors held prior to the meeting of creditors under section 287:

Provided further that these Rules shall not apply to any creditors or class of creditors who by virtue of these Rules or any directions given thereunder are not required to prove their debts, or to any voluntary

liquidation meetings.

(15) Cases to which creditors may not vote. - A creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat liability to him thereon of every person who is liable thereon antecedently to the company, and against whom no order of adjudication has been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for purposes of dividend, to deduct it from his proof.

(16) When secured creditor can vote. -

- (i) For the purposes of voting at a meeting, in a winding-up by the Tribunal, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to vote only in respect of the balance due to him, if any, after deducting the value of his security.
- (ii) For the purposes of voting at any voluntary liquidation meeting, a secured creditor shall, unless he surrenders his security, lodges with the liquidator, or where there is no liquidator, at the registered office of the company, before the meeting, a statement giving the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to vote only in respect of balance due to him, if any, after deducting the value of his security.

(17) Effect of voting by a secured creditor.-If a secured creditor votes

in respect of his whole debt he shall be deemed to have surrendered his security, unless the Tribunal on application is satisfied that the omission to value the security was due to inadvertence.

(18) Procedure when secured creditor votes without surrendering security.-The liquidator may within fifteen days from the date of the meeting at which a secured creditor voted on the basis of his valuation of the security, require him to give up the security for the benefit of the creditors generally on payment of the value so estimated by him, and may, if necessary, apply to the Tribunal for an order to compel such creditor to give up the security:

Provided that the Tribunal may, for reasoned cause shown, permit a creditor to correct his valuation before being required to give up the security, upon such terms as to costs as the Tribunal may consider just.

- (19) Admission or rejection of proofs for purposes of voting.-The chairman shall have power to admit or reject a proof for the purposes of voting, but his decision shall be subject to appeal to the Tribunal. If he is in doubt whether a proof shall be admitted or rejected, he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.
- **(20) Minutes of proceedings -** (i) The chairman shall cause minutes of the proceedings at the meeting to be drawn up and entered in the Minute Book and the minutes shall be signed by him or by the chairman of the next meeting.
- (ii) A list of creditors and contributories present at every meeting shall

be made and kept as in Form No. 31.

(21)Report to the Tribunal – The Company Liquidator shall, within seven days of the conclusion of the meeting, report the result thereof to the Tribunal in Form No. 24. The report shall include the details of advices given by the Official Liquidator or his nominee and in case of disagreement with his advices; the reasons thereto shall also be mentioned in the report.

13. PROXIES IN RELATION TO MEETINGS OF CREDITORS OR CONTRIBUTORIES

- (1) Form of proxies A creditor or contributory may give a proxy to any person. A proxy shall be in Form No. 32.
- (2) Proxies to Liquidator or chairman A creditor or contributory in a winding-up by the Tribunal may appoint the Company Liquidator, and in a voluntary winding-up, the liquidator, or if there is no liquidator, the chairman of the meeting, to act as his proxy.
- (3) Use of proxies by deputy Where Company Liquidator who holds any proxies cannot attend the meeting for which they are given, he may in writing depute some person under his official control to use the proxies on his behalf and in such manner as he may direct.
- **(4) Forms to be sent with notice** Forms of proxies shall be sent to the creditors and contributories with the notice summoning the meeting. No name shall be inserted or printed in the form before it is sent.

- (5) Proxies to be lodged A proxy shall be lodged not later than fortyeight hours before the meeting at which it is to be used, with the Company Liquidator in a winding-up by the Tribunal. In the event of the proxy of a creditor or contributory not knowing English, it may be mentioned by the witness that he certifies what was explained to the creditor or contributory's proxy in the language known to him, and give the creditor's or contributory's name in English below the signature.
- (6) Voting by proxies /authorised representatives A creditor or contributory may vote either in person or by proxy. Where a person is authorised in the manner provided by section 113 to represent a Corporation at any meeting of creditors or contributories, such person shall produce to the Company Liquidator or chairman of the meeting a copy of the resolution so authorising him. Such copy must be certified to be a true copy by a director, the manager, the secretary or other officer of the company dulyauthorised in that behalf who shall certify that he is so authorised. However, neither a minor nor a person holding a place of profit in respect of the assets of the company shall be appointed as a proxy.

14. ATTENDANCE AND APPEARANCE OF CREDITORS AND CONTRIBUTORIES

(1) Attendance at proceedings -

(i) Save as otherwise provided by these Rules or by an order of Tribunal, every person for the time being on the list of contributories of the company and every creditor whose debt has been admitted by Company Liquidator wholly or in part shall be at liberty at his own expense to

attend the proceedings before the Tribunal or before the Company Liquidator and shall be entitled upon payment of the costs occasioned thereby to have notice or all such proceedings as he shall, by request in writing addressed to the Company Liquidator, desire to have notice of; but if the Tribunal shall be of opinion that the attendance of any such person has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs or a gross sum in lieu thereof to be paid by such person and such person shall not be entitled to attend any further proceedings until he had paid the same. No contributory or creditor shall be entitled to attend any proceedings before the Bench, unless and until he or an Authorised representative on his behalf has filed a memo of appearance with the Registrar. The Registrar shall keep an "Appearance Book" in which all such appearances shall be entered.

(2) Representation creditors contributories before of and Tribunal.-The Tribunal may, if it thinks fit, appoint from time to time any one or more of the creditors or contributories to represent before the Tribunal at the expense of the company all or any class of creditors or contributories upon any question or in relation to any proceedings before the Tribunal, and may remove any person so appointed, if more than one person is appointed under this Rule to represent one class. The persons soappointed, shall employ the same authorised representative to represent them, and where they fail to agree as to the authorised representative to be employed, the Bench may nominate an authorised representative for them.

15. Submission of periodical report to Tribunal -

(1) For the purposes of sub-section (1) of section 288 of the Act,

Company Liquidator shall make a periodical report to the Tribunal and in any case make a report at the end of each quarters (quarters ending on 31st March, 30th June, 30th September & 31st December) on the progress of the winding up of the company in**Form No. 26** which shall be made before the end of the following quarter.

(2) The Tribunal may, on an application by the Liquidator, review any order made by it and make such modification as it thinks fit with or without any further directions.

16. Application for stay of winding-up proceedings -

- (i) An application under sub-section (1) of section 289 for stay of proceedings in the winding-up shall be made to the Tribunal in **Form No.**33, upon notice to the parties to the winding-up petition and to such other persons as the Tribunal may direct enclosing a scheme for rehabilitation and notice shall be given to the Company Liquidator.
- (ii) An application under sub-section (4) of section 289 for stay of proceedings in the winding-up shall be made by the Company Liquidator to the Tribunal in **Form No.34** upon notice to the parties to the winding-up petition and to such other persons as the Tribunal may direct specifying the grounds for making the application.
- (iii) Where an order is made staying proceedings, the Company Liquidator shall forthwith file a certified copy thereof with the Registrar of Companies within a period of 15 daysdays of passing of such order.

17. COLLECTION AND DISTRIBUTION OF ASSETS IN A WINDING-UP BY TRIBUNAL

(1)Company Liquidator to be in the position of a receiver.-For the discharge by the Company Liquidator of the duties imposed by subsection (1) of section 290, the Company Liquidator shall, for the purpose of acquiring and retaining possession of the property of the company, be in the same position as if he were a receiver of the property appointed by the Tribunal, and the Tribunal may on his application enforce such acquisition or retention accordingly.

(2)Company's property to be to surrendered to Company Liquidator on requisition.-The powers conferred on the Tribunal by sub-section (3) of section 283 may be exercised by the Company Liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker or agent or officer of a company which is being wound-up under order of the Tribunal, shall on notice from the Company Liquidator and within such time as he shall by notice require, pay, deliver, convey, surrender or transfer to or into the hands of the Company Liquidator any money, property or documents, books or papers which happen to be in his hands for the time being and *prima facie* entitled. Where the person so required fails to comply with the notice, the Company Liquidator may apply to the Tribunal for appropriate orders. The notice shall be in **Form No. 35.**

18. CALLS IN A WINDING-UP BY THE TRIBUNAL

(1) Company Liquidator to realise uncalled capital. -Notwithstanding any charge or encumbrance on the uncalled capital of the company, the Company Liquidator shall alone be entitled to call and realise the

uncalled capital of the company and to collect the arrears if any due on calls made prior to the winding-up, but shall hold all moneys so realised subject to the rights, if any, of the holder of any such charge or encumbrance. The Company Liquidator shall however not make any call without obtaining the leave of the Tribunal for the purpose within seven days of the settlement of the list of contributories. The application shall state the proposed amount of such call and be in Form No. 36 and shall be supported by the affidavit and shall be served to the contributories through Registered AD or other recognized modes of service as per section 20 of the Act accompanied by proof of service not less than seven days before the date appointed for hearing of the said application. In case, the Tribunal so directs, notice of the application may be given by advertisement in Form No. 37, in such papers as the Tribunal shall direct not less than seven clear days before the date appointed for the hearing, without a separate notice to each contributory. The affidavit of service shall be required to be submitted three days prior to the date of the hearing of the application.

(2) Order granting leave to make a call and document making the call.-The order granting leave to make a call shall contain directions as to the time within which such calls shall be paid. When an order has been made granting leave to make a call, the Company Liquidator shall file in the Tribunal the necessary documents making the call in Form No. 38 with such variations as circumstances may require and shall on receipt of order granting leave to make a call serve by Registered AD or other recognized modes of service as per section 20 of the Act, a copy of the order granting leave to make the call upon each of the contributories included in such call together with a notice in Form No. 39 specifying the amount or balance due from such contributory in respect

of such call. The order granting leave to make a call need not be advertised unless the Tribunal otherwise orders for any special reason. In case of non-compliance by the contributories in making payment on the call, the same can be reported to the Tribunal by the Company Liquidator for appropriate directions by filing appropriate applications with a notice of not less than seven days.

(3) Other moneys due by contributories.-When any money is due to the company from a contributory or from the estate of the person whom he represents, other than moneys due on calls made subsequent to the winding-up but including moneys due on calls made prior to the winding-up the Company Liquidator may make an application to the Tribunal supported by an affidavit for an order against such contributory for the payment of such moneys. Notice of the application shall be given to such contributory by Registered AD or other recognized modes of service as per section 20 of the Act not less than seven days prior to the date fixed for the hearing of the application.

19.Professional Assistance for the Company Liquidator.- (1)The Company Liquidator shall, as far as possible, personally appear and conduct all proceedings before the Tribunal in the liquidation:

Provided that the Company Liquidator may apply to the Tribunal for sanction to employ professional(s) as an authorised representative or authorised representatives to assist him in pursuance of sub-section (1) of section 291, and the Tribunal may on such application, sanction such employment or pass such orders as it may think fit.

Provided that such appointment shall be made from the panel maintained by the company Liquidator with the approval of the Tribunal.

(2) In pursuance of sub-section (2) of section 291, the professional appointed by the Company Liquidator with the sanction of the Tribunal shall file a declaration in **Form No. 40** disclosing conflict of interest or lack of independence in respect of his appointment. During the term of his appointment, if in future, any conflict of interest arises, it shall be duty of Company Liquidator/ Provisional Liquidator to declare the same before the Tribunal, within seven days from the date of appointment.

20. REGISTERS AND BOOKS OF ACCOUNT TO BE MAINTAINED BY THE COMPANY LIQUIDATOR

- (1) For the purposes of sub-section (1) of section 293 and sub-section (1) of section 294, the Company Liquidator shall maintain the following books of accounts, so far as may be applicable, in respect of the company under winding up -
- i. Register of Liquidations in Form No. 41-A.
- ii. Central Cash Book in Form No.41-B
- iii. Company's Cash Book in Form No. 41-C.
- iv. General Ledger in Form No. 41-D.
- v. Cashier's Cash Book in Form No. 41-E
- vi. Bank Ledger in Form No. 41-F.

- vii. Register of Assets in Form No. 41-G
- viii. Securities and Investment Register in Form No. 41-H.
- ix. Register of Book Debts and Outstandings in Form No. 41-I.
- x. Tenants Ledger in Form No. 41-J.
- xi. Suits Register in Form No. 41-K.
- xii. Decree Register in Form No. 41-L.
- xiii. Sales Register in Form No. 41-M.
- xiv. Register of Claims and Dividends in Form No. 41-N.
- xv. Contributories Ledger in Form No. 41-O.
- xvi. Dividends Paid Register in Form No. 41-P.
- xvii. Commission Register in Form No. 41-Q.
- xviii. Suspense Register in Form No. 41-R.
- xix. Documents Register in Form No. 41-S.
- xx. Books Register in Form No. 41-T.
- xxi. Register of unpaid dividends and undistributed assets, deposited

into the Company Liquidation Dividend and Undistributed Assets Account in a scheduled bank, in Form No. 41-U and

xxii. A Record Book for each company in which shall be entered all minutes of proceedings and the resolutions passed at any meeting of the creditors or contributories or of the Advisory Committee, the substance of all orders passed by the Court in the liquidation proceedings, and all such matters other than matters of account as may be necessary to furnish a correct view of the administration of the company's affairs.

In maintaining the registers and books mentioned above, the Company Liquidator shall follow the instructions contained in the respective forms prescribed for the said books and registers.

- (2) The Company Liquidator shall, in addition to the Registers and Books prescribed above, maintain such other books as may be necessary for the proper and efficient working of his office and accounting of transactions entered into by him in relation to the company.
- (3) Where the accounts of the company are incomplete, the Company Liquidator shall, with all convenient speed, as soon as the order for winding-up is made, have them completed and brought up-to-date.
- (4) (i) Where the Company Liquidator is authorised to carry on the business of the company he shall keep separate books of account in respect of such business and such books shall, as far as possible, be in conformity with the books already kept by the company in the course of its business. The Company Liquidator shall incorporate in the winding up Cash Book and in the company's Cash Book, the total weekly amounts of the receipts and payments on such trading account.

- (ii) The trading account shall be verified by affidavit, from time to time not being less than once in every month, and the Company Liquidator shall thereupon submit such account to the Advisory Committee (if any) or such member thereof as may be appointed by the Advisory Committee for that purpose, who shall examine and certify the same.
- **(5)** The Company Liquidator shall keep proper vouchers for all payments made or expenses incurred by him. The vouchers shall be serially numbered.

21. FILING AND AUDIT OF THE COMPANY LIQUIDATOR'S ACCOUNT

(1) Half-yearly accounts to be filed. - For the purpose of sub-section (2) of section 294, unless otherwise ordered by the Tribunal, the Company Liquidator shall file his accounts in the Tribunal twice a year. Such accounts shall be made up to the 31st of March and 30th of September every year, the account for the period ending 31st March being filed not later than the 30th of June following, and account for the period ending 30th September, not later than the 31st of December following:

Provided that the final account of the Company Liquidator shall be filed as soon as the affairs of the company have been fully wound-up, irrespective of the period prescribed above.

- (2) Form of account.- For the purposes of sub-section (2) of section 294, the account shall be a statement of receipts and payments in Form No. 42 and shall be prepared in accordance with the instructions contained therein. Three copies thereof shall be filed, and the account shall be verified by an affidavit of the Company Liquidator in Form No. 43. The final account shall be inForm No. 44.
- (3)Nil account.-Where the Company Liquidator has not during the period of account received or paid any sum of money on account of the assets of the company, he shall file an affidavit of no receipts or payments on the date on which he shall have to file his accounts for the period.
- (4)Registrar to send copy of account to the Auditor.-As soon as the accounts are filed, the Registrar of Tribunal shall forward to the auditor one copy thereof within 15 days for purposes of audit with a requisition in Form No. 45 requesting that the accounts may be audited and a certificate of audit submitted to the Tribunal not later than one month from the date of receipt of the copy of the account as required under subsection (4) of section 294:

Provided that the accounts need not be got audited where the transaction during the period is for rupees five thousand or less.

(5) Audit of the Company Liquidator's accounts.-The accounts shall be audited by one or more Chartered Accountants appointed by the Tribunal. The audit shall be a complete check of the accounts of the Company Liquidator. The Company Liquidator shall produce before the auditor all his books and vouchers for the purposes of the audit, and shall give the auditor all such explanations, information and assistance as may

be required of him in respect of the accounts.

(6) Audit certificate to be filed.-After the audit of the accounts of the Company Liquidator filed in Tribunal, the auditor shall forward to the Registrar a certificate of audit relating to the account with his observations and comments, if any, on the account, together with a copy thereof and shall forward another copy to the Company Liquidator in accordance with sub-section (4) of section 294. The Registrar shall file the original certificate with the records and forward the copy to the Registrar of Companies together with a copy of the account to which it relates.

(7) Audit fees. -

Audit fees according to the following scale on the gross amount brought to credit, including the produce of calls on contributories interest on investments and rents from properties, but after deducting (a) the amount spent out of the money received in carrying on the business of the company and (b) the amounts paid by the Company Liquidator to secured creditors (other than debenture-holders), shall be paid to the auditor and debited to the account of the liquidation to which the audit relates:-

On the amount brought to credit including the produce of calls on contributories, interest on investments and rents from properties, but after deducting (a) the amount spent out of the money received in carrying on the business of the company, and (b) amounts paid by the Company Liquidator to secured creditors (other than debenture-holders) ... 1/2 per cent.

On disbursements, other than payments to secured creditors not being

debenture holders. ... 1/2 per cent.

On such fee as may be prescribed by the Tribunal.

- (8)Inspection of the account and certificate of audit.- For the purposes of sub-section (4) of section 294, any creditor or contributory or person interested shall be entitled to inspect the accounts and the auditor's certificate in the office of the Registrar of Companies on payment of such fee and to obtain a copy thereof on payment of the charges at such rate as may be provided in Annexure B
- **(9)** Account and auditor's report to be placed before Bench.-Upon the audit of the account, the Registrar shall place the statement of account and the auditor's certificate before the Bench for its consideration and orders.

22. EXAMINATION UNDER SECTIONS 299 AND 300

(1) Application for examination under section 299 -

An application for the examination of a person under section 299 may be made ex-parte, provided that where the application is made by any person other than the Company Liquidator, notice of the application shall be given to the Company Liquidator. The application shall be in **Form No.**46 and, where the application is by the Company Liquidator, it shall be accompanied by a statement signed by him setting forth the facts on which the application is based. Where the application is made by a person other than the Company Liquidator, the application shall be supported by an affidavit of the applicant setting forth the matters in respect of which the examination is sought and the grounds, relied on in support of the application.

- (2) Service of the summons -The summons issued in pursuance of the order shall be in Form No. 47 and shall be served by Registered AD or other recognized modes of service as per section 20 of the Act on the person to be examined not less than seven days before the date fixed for the examination. The Tribunal at its discretion may give a reasonable sum towards expenses to such person for appearing before the Tribunal, if it deems to be justifiable.
- (3) Conduct of the examination (i) The Company Liquidator shall have the conduct of an examination under section 299, provided that the Tribunal may, if for any reasons it thinks fit to do so, entrust the conduct of the examination to any contributory or creditors. Where the conduct of the examination is entrusted to any person other than the Company Liquidator, the Company Liquidator shall nevertheless be entitled to be present at the examination in person or by authorised representative, and may take notes of the examination for his own use and put such questions to the person examined as the Tribunal may allow.
- (ii) Save as aforesaid, no person shall be entitled to take part in an examination under section 299 except the Company Liquidator and his authorised representative, but any person examined shall be entitled to have the assistance of his authorised representative, who may reexamine the witness:

Provided that the Tribunal may permit, if it thinks fit, any creditor or contributory to attend the examination subject to such conditions as it may impose.

(iii) Notes of the examination may be permitted to be taken by the witness or any person on his behalf on his giving an undertaking to the Tribunal that such notes shall be used only for the purpose of the reexamination of the witness. On the conclusion of the examination, the notes shall, unless otherwise directed, be handed over to the Tribunal for

destruction.

(4) Notes of the deposition.-

- (i) The notes of the deposition of a person examined under section 299 shall be signed by such person and shall be lodged in the office of the Registrar. But the notes shall not be open for the inspection of any creditor, contributory or other person, except the Company Liquidator, nor shall a copy thereof or extract therefrom be supplied to any person other than the Company Liquidator, save upon orders of Tribunal.
- (ii) The Tribunal may from time to time give such general or special directions as it shall think expedient as to the custody and inspection of such notes and the furnishing of copies thereof or extracts therefrom.

(5) Order for public examination under section 300 -

Where an order is made for the examination of any person or persons under section 300, the examination shall be held before the Bench: provided that the Bench may direct that the whole or any part of the examination of any such person or persons be held before any of the officers mentioned in sub-section (9) of the said section as may be mentioned in the order. Where the date of the examination has not been fixed by the order, the Company Liquidator shall take an appointment from the Bench, or officer before whom the examination is to be held as to the date of the examination. The order directing a public examination shall be in **Form No. 48.** The Bench may, if it thinks fit, either in the order for examination or by any subsequent order, give directions as to the specific matters on which such person is to be examined.

(6) Notice of public examination.-Not less than sevenclear days

before the date fixed for the examination, the Company Liquidator shall give notice thereof to the creditors and contributories of the company of advertisement in **Form No. 49** in such newspapers as the Bench shall direct, and shall within the same period, serve, either personally or by Registered AD or other recognized modes of service as per section 20 of the Act, on the person or persons to be examined, a notice in **Form No. 50** of the date and hour fixed for the examination and the officer before whom it is to be held, together with a copy of the order directing the examination. Where a public examination is adjourned, it shall not be necessary to advertise the adjournment or serve notice thereof unless otherwise ordered.

(7) Notes of Examination -The copy of the notes of every public examination shall, after being signed as required by sub-section (7) of section 300, form part of the records of winding-up. The Company Liquidator, the person examined and any creditor or contributory of the company shall be entitled to obtain a copy thereof from the Tribunal on payment of the charges specified in Schedule......

(8) Default in attending examination under section 299 or 300

If any person who has been directed by the Tribunal to attend for examination under section 299 or section 300 fails to attend at the time and place appointed for holding or proceeding with the same and no reasonable cause is shown by him for such failure, suitable costs may be imposed on him.

23. SALES BY THE COMPANY LIQUIDATORS

(1) Procedure at sale subject to confirmation by the Tribunal - Every sale shall be subject to the sanction and confirmation by the Tribunal and shall be conducted by the Company Liquidator and / or in accordance with the advices given by the Advisory Committee and with the assistance of the Sale Committee if constituted by the Tribunal, or, if the Bench shall so direct, by an agent or an auctioneer approved by the Tribunal, and subject to such terms and conditions, if any, as may be approved by the Tribunal. All sales shall be made by public auction or by inviting sealed tenders or by electronic-bidding or in such manners as the Bench may direct, which shall also be displayed on the website of the Tribunal, providing the description of the asset in question

(2) Expenses of sale - Where property forming part of a company's assets is sold by the Company Liquidator through an auctioneer or other agent, the gross proceeds of the sale shall, unless, the Tribunal otherwise orders, be paid over to the Company Liquidator by such auctioneer or agent and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent in accordance with the scales, if any, fixed by the Tribunal.

PART-III VOLUNTARY WINDING-UP

24. VOLUNTARY WINDING-UP

(1) Declaration in voluntary winding-up.-The declaration to be made by the director or directors or in case the company has more than two directors, by the majority of directors of a company under sub-section (1) of section 305, shall be in **Form No. 51**.

- **(2)Statement of position** .- For the purposes of clause (a) of subsection (2) of section 306, the statement of position of the company's affairs shall be in **Form No. 52**.
- (3) Winding up by the Tribunal An application for winding up of the company by the Tribunal in pursuance of clause (b) of sub-section (3) of section 306 shall be made in **Form No. 53**.
- **(4)Publication of resolution to wind up voluntarily –** For the purposes of sub-section (1) of section 307, notice of the resolution to wind up shall be given in **Form No. 54**.

25. LIQUIDATOR IN VOLUNTARY WINDING-UP

- (1) Declaration disclosing conflict of interest or lack of independenceetc:-(i) In pursuance to sub-section (4) of section 310, the Company Liquidator appointed by the company or by the creditors, shall file a declaration in **Form No. 55** disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the company and the creditors within seven days from the date of appointment.
- (ii) Company Liquidator, shall before entering upon his duties as voluntary liquidator, furnish security of such sum and in such manner as the member or the creditor as the case may be, decide. Such security shall be provided through **Form No.10.** with such variation as may be necessary.

(2) Notice of appointment of liquidator. For the purposes of subsection (1) of section 312, the notice of appointment of the Company Liquidator, of every vacancy occurring in the office of the Company Liquidator and of the name of the Company Liquidator appointed to fill every such vacancy shall be given to the Registrar of Companies within ten days thereof in **Form No. 56.** with filing fees as prescribed.

(3) Company Liquidator not to accept any gift, commission, remuneration or pecuniary or other benefit and restriction on purchase of goods. –

A Company Liquidator shall not, under any circumstances whatsoever, make any arrangement for, or accept from any authorised representative, auctioneer or any other person connected with company of which he is the liquidator, or employed in or in connection with the winding-up of the company, any gift, commission, remuneration, or pecuniary or other benefit whatsoever beyond the remuneration to which he is entitled as liquidator under the Act and the Rules, nor shall he make any arrangement for giving up, or give up any part of such remuneration to any such person.

Where the Company Liquidator carries on the business of the company, he shall not, purchase goods for carrying on of such business from any person which would result in any direct or indirect benefit out of the transaction.

(4)Office of Company Liquidator vacated by his insolvency and Misconduct-A Company Liquidator against whom an order of insolvency is made shall thereby vacate his office, and for the purposes of the Act

and the Rules, shall be deemed to have been removed. Further, a Company Liquidator who is found guilty of professional or other misconduct under the respective laws governing the profession to which he belongs, shall vacate his office, and for the purposes of the application of the Act and the Rules, he shall be deemed to have been removed.

(5)Resignation of Company Liquidator - A Company Liquidator appointed by the members or creditors who desires to resign from his office, shall summon a meeting of the members or creditors, as the case may be, to submit his resignation and shall submit an account of his acts and dealings as liquidator and a statement as to the position of the liquidation during his tenure and all the relevant documents including books of accounts. The expenses of summoning the meeting shall be part of the expenses of the liquidation. The company shall give the notice of intimation of resignation to the Registrar of Companies in Form No. 57within ten days of such meeting with filing fees as prescribed.

(6) Books to be kept by the Company Liquidator.-

- (i) For the purpose of sub-section (4) of section 314, the Company Liquidator shall keep proper books of account as provided in rule 20 so far as may be applicable.
- (ii) In addition to the books of account, the Company Liquidator shall keep a record book in which he shall enter minutes of all the proceedings and resolutions passed at any meeting of the creditors or members or of the Committees, particulars of all his transactions and negotiations in relation to the winding-up and all such matters other than matters of account as may be necessary to furnish a correct view of the administration of the company's affairs. He shall also keep a book showing the dates at which all notices to creditors and shareholders were sent out and posted. The person who despatched the notices shall initial

the entries in the book relating thereto.

(7) Quarterly Statement of Accounts

For the purposes of sub-section (5) of section 314, the quarterly statement of accounts to be filed with the Registrar of Companies shall be made in **Form No. 58**. Such statement of accounts shall be audited by an auditor appointed by the company in general meeting if the Comapny Liquidator is appointed in general meeting or by the creditors if the Comapny Liquidator is appointed by the creditors and the fee of the auditor so appointed, shall be determined by the members or creditors as the case may be.

(9)Bills and securities to be deposited in Bank.-All bills, hundis, notes and other securities payable to the company or to the liquidator

thereof shall, as soon as they come into the hands of the liquidator be deposited by him with the Bank for the purpose of being presented for acceptance and payment or for payment only, as the case may be, and the proceeds when realised shall be credited by the Bank to the account of the liquidator.

(10) Investment of surplus funds.-

- (i) All such moneys for the time being standing to the credit of the liquidation account as is not immediately required for the purposes of the winding-up, shall be invested by the Company Liquidator in Government securities or in interest bearing deposits in the State Bank of India or any other nationalized bank, in the name of the Company Liquidator as Company Liquidator of the company to which the funds belong.
- (ii) Rules 33of these Rules relating to investments shall apply *mutatis mutandis* to investments made by the Company Liquidator in every voluntary winding-up.

(11) Liquidator's report under sub-section (1) of section 316-

For the purposes of sub-section (1) of section 316,

- (i) The quarterly report on the progress of winding up shall be made in **Form No.59**; and
- (ii) The meetings of the members and creditors, if applicable, shall be convened and conducted in such form and such manner as specified under **Rule 12**.

- (12) Final report of the Winding up under section 318 The Company Liquidator/ Voluntary Liquidator shall lay report before a general meeting of the company under sub-section (1) of section 318 of the Act.
- (13)Notice convening final meeting and the account to be laid before the meeting. For the purposes of sub-section (2) of section 318, the notice convening the final meeting of the company in a voluntary winding-up, shall be in Form No. 60. The Account of the winding-up to be laid by the liquidator before the said meeting shall be in Form 61.
- (14)Consideration by Tribunal of the report under section 318 and final accounts in a voluntary winding-up For the purposes of clause (b) of sub-seciton (4) of section 318, the Company Liquidator/Voluntary Liquidator shall apply to the Tribunal and the Registrar, if on preliminary scrutiny finds the application to be in order, shall fix a date for the consideration thereof by the Bench, and notify the date on the notice board of the Tribunal and to the Company Liquidator. The Company Liquidator shall attend such consideration of the application or report or final account, as the case may be, and shall give the Bench such further explanation or information with reference to the matters contained therein as the Bench may require.
- (15) Inspection by creditor or contributory of reports filed by liquidator.-Any creditor or contributory of a company which is being wound-up shall be entitled to inspect any of the reports, statements made under sections 316 and 318 on payment of such fee, and to obtain a copy thereof or extract therefrom on payment of the charges at such

rate as may be prescribed in Schedule......

(16) Application under sub-section (2) of section 321 – Any creditor or contributory may make an application to the Tribunal in Form No. 62 within three weeks from the completion of the arrangement.

(17) Applications under section 322 -

- (i) An application under section 322 shall be made in **Form No. 63** and notice of the application shall be given to the Company Liquidator where he is not the applicant, to the respondents, if any, named in the application, and to such other persons and in such manner as the Tribunal may direct.
- (ii) For the purposes of sub-section (4) of section 322, the copy of the order staying the proceedings in the winding up shall be forwarded by the company or by any other person as may be directed by the Tribunal, to the Registrar of Companies within fifteen days of passing of such order in **Form No13** with such variations as may be required.
- (18) Public examination under section 317 Where, in a voluntary winding-up, an order is made under section 317 for the public examination of any of the persons mentioned in the said section, the rules relating to a public examination under section 300 in a winding-up by the Tribunal shall apply *mutatis mutandis* in respect of such examination.

PART-IV

RULES APPLICABLE TO EVERY MODE OF WINDING UP

26. DEBTS AND CLAIMS AGAINST COMPANY

- (1) Notice for proving debts- For the purposes of section 324, subject to the provisions of the Act and directions of the Tribunal, -
- (a) the Company Liquidator in a winding-up by the Tribunal shall, within a period of seven days from the date of order of winding up, or
- (b) the Company Liquidator in voluntary winding up shall, within a period of seven days from the date of his appointment –

fix a certain day, and give a notice of fourteen days thereof -

by advertisement in **Form No. 64** in one issue of a daily newspaper in the English language and one issue of a daily newspaper in the principal regional language circulating in the State or Union Territory concerned to the creditors of the company to prove their debts or claims and to establish any title they may have to priority under section 327, or to be excluded from the benefit of any distribution made before such debts or claims are proved, or, as the case may be, from objecting to such distribution.

by Registered AD or other recognized modes of service as per section 20 of the Act, as the case may be, to every person mentioned in the statement of affairs, as a creditor, who has not proved his debt and to every person mentioned in the statement of affairs as a preferential creditor, whose claim to be a preferential creditor has not been established or is not admitted, or where there is no statement of affairs,

to the creditors as ascertained from the books of the company and, to each person who, to the knowledge of the Company Liquidator, claims to be a creditor or preferential creditor of the company and whose claim has not been admitted, to the last known address or place of residence of such person.

All the rules hereinafter set out as to the admission or rejection of proofs shall apply with necessary variations to any claim to priority as a preferential creditor.

(2) Proof of debt -

In a winding-up by the Tribunal, every creditor shall, subject as hereinafter provided, prove his debt, unless the Bench in any particular case directs that any creditors or class of creditors shall be admitted without proof and in a voluntary winding up, every creditor shall, subject as hereinafter provided, prove his debt.

(3) Mode of proof and verification thereof -A debt may be proved by delivering or sending by post to the Company Liquidator, an affidavit to that effect. If the affidavit is made by a person authorised by the creditor, it shall state the authority and means of knowledge of the deponent and shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The affidavit shall further state whether the creditor is a secured creditor, unsecured creditor or a preferential creditor. Where the creditor is a secured creditor or a preferential creditor, he shall set out the particulars of the security or of the preferential claims. The affidavit shall be in Form No. 65.

- (4) Employees's wages—(i)In any case where there are numerous claims for wages or accrued holiday remuneration by employees of the company, it shall be sufficient if one proof in Form No. 66. For all such claims is made—by any person on behalf of all such employees. Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the employees and the amounts due to them. Any proof made in compliance with this Rule shall have the same effect as if separate proofs had been made by each of the said employees.
- (5) Production of bills of exchange and promissory notes -Where a creditor seeks to prove in respect of a bill of exchange, promissory note or other negotiable instrument or security of a like nature on which the company is liable, such bill of exchange, note, instrument or security shall be produced before the Company Liquidator and be marked by him before the proof is admitted.
- (6) Value of debts The value of all debts and claims against the company shall, as far as is possible, be estimated according to the value thereof at the date of the order of the winding-up of the company or where before the presentation of the petition for winding-up, a resolution has been passed by the company for voluntary winding-up, at the date of the passing of such resolution.
- **(7)Discount -** A creditor proving his debt shall deduct therefrom all trade discounts, if any.
- (8) Interest On any debt or certain sum payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is

overdue at the date of the winding-up order, or the resolution as the case may be, the creditor may prove for interest at a rate not exceeding six per cent per annum up to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of demand until the time of payment.

(9) Periodical payments - When any rent or other payment falls due at stated period, and the order or resolution to wind-up is made at any time other than one of those periods, the persons entitled to the rent for a proportionate part thereof up to the date of winding-up order or resolutions accrued due from day to day:

Provided that where the Company Liquidator remains in occupation of the premises demised to a company which is being wound-up, nothing herein contained shall prejudice or affect the right of the landlord of such premises to claim payment by the company, or the Company Liquidator, of rent during the period of the company's or Company Liquidator's occupation.

(10) Proof of debt payable at a future time -A creditor may prove for a debt not payable at the date of the winding-up order or resolution for voluntary winding up, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of six per cent per annum computed from the date of declaration of the dividend to the time when the debt would have become payable according to the terms on which it was contracted.

- (11) Examination of proof –The Company Liquidator shall, as soon as possible but not later than thirty days or within such time as may be allowed by the Tribunal on an application by the Company Liquidator, examine every proof of debt lodged with him and the grounds of the debt. He may call for the production of the documentary proof, if any, referred to in the affidavit of proof or require further evidence in support of the debt. If he requires further evidence, or requires that the creditor should attend the investigation in person, he shall fix a day and time at which the creditor is required to attend or to produce further evidence and send a notice to such creditor in Form No. 67 by Registered AD or other recognized modes of service as per section 20 of the Act so as to reach him not later than seven days before the date fixed.
- (12)Company Liquidator's right to summon any person in connection with the investigation The Company Liquidator may summon any person whom he may deem capable of giving information regarding the debts to be proved in liquidation and may require such person to produce any documents in his custody or power relating to such debts and shall tender with the summons such sum as appears to the Company Liquidator sufficient to defray the traveling and other expenses of the person summoned for attendance. Where the person so summoned fails without lawful excuse to attend or produce any documents in compliance with the summons or avoids or evades service, the Company Liquidator may report the same to the Tribunal and apply for appropriate orders. The Tribunal may pass any order as it may think fit.
- (13) Oaths For the purpose of his duties, in relation to the admission of proof of debts, the Company Liquidator may administer oaths and

take affidavits. The Company Liquidator may at his discretion dispense with this requirement.

(14) Acceptance or rejection of proof to be communicated - As soon as possible, but not later than seven days, from the date of conclusion of such investigation, the Company Liquidator shall, in writing admit or reject the proof in whole or in part. Every decision of the Company Liquidator accepting or rejecting a proof, either wholly or in part, shall be communicated to the creditor concerned by Registered AD or other recognized modes of service as per section 20 of the Act for acknowledgment where proof is rejected wholly or in part:

Provided that it shall not be necessary to give notice of the admission of a claim to a creditor who has appeared before the Company Liquidator and the acceptance of whose claim has been communicated to him or his agent in writing at the time of acceptance. Where the Company Liquidator rejects a proof, wholly or in part, he shall state the grounds of the rejection to the creditor in **Form No. 68**. Notice of admission of proof shall be in **Form No. 69**.

(15)Appeal by creditor - If a creditor is dissatisfied with the decision of the Company Liquidator in respect of his proof, the creditor may, not later than twenty one days from the date of service of the notice upon him of the decision of the Company Liquidator, appeal to the Tribunal against the decision. The appeal shall be made in **Form No. 70**, supported by an affidavit which shall set out the grounds of such appeal, and notice of the appeal shall be given to the Company Liquidator. On such appeal, the Tribunal shall have all the powers of an Appellate Tribunal under the Code of Civil Procedure.

(16) Procedure where creditor appeals -

- (i) The Company Liquidator shall, upon receiving notice of the appeal against a decision rejecting a proof wholly or in part, file with the Registry of the Tribunal such proof with the order containing the grounds of rejection. However, the Company Liquidator shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.
- (ii) It shall be open to any creditor or contributory to apply to the Tribunal for leave to intervene in the appeal, and the Tribunal may, if it thinks fit, grant the leave subject to such terms and conditions as may be just. Where such leave has been granted notice of the hearing of the appeal shall be given to such creditor or contributory.
- (17) Proofs and list of creditors to be filed in Tribunal (i) In a winding-up by the Tribunal, the Company Liquidator shall, within thirty days from the date fixed for the submission of proofs, under sub rule(1) of rule 25 of these Rules or such further time as the Tribunal may allow, file in Tribunal a list of the creditors in **Form No. 71** who submits to him proofs of their claims in pursuance of the advertisement and the notices referred to in under sub rule (1) of rule 25, the amounts of debt for which they claimed to be creditors, distinguishing in such list the proofs admitted wholly, the proofs admitted or rejected in part, and the proofs wholly rejected. The proofs, with the memorandum of admission or rejection of the same in whole or in part, as the case may be, endorsed thereon, shall be filed in Tribunal along with the certificate.

- (ii) In a voluntary winding-up, the Company Liquidator shall, within thirty days from the date fixed for the submission of proofs, under Rule 106 of these Rules, send to all the members and creditors a list of the creditors as settled by him.
- (18) List of creditors not to be varied In winding up by Tribunal, the list of creditors filed in Tribunal shall be the list of the creditors of the company, and shall not be added to or varied except under orders of Tribunal and in accordance with such orders. Where an order is made adding to or varying the list of creditors, the Company Liquidator shall amend the list in accordance with such order. Where the company is under voluntary winding up, the list of creditors sent to the members and creditors, shall be the list of the creditors of the company, and shall not be added to or varied by the Company Liquidator except with the approval by a resolution passed at the meeting of the creditors / members.
- (19) Notice of filing the list and inspection of the same In winding up by the Tribunal, upon the filing of the list of creditors as settled by the Company Liquidator, the Registrar shall notify the filing thereof on the Tribunal notice board and website of the Tribunal, and the list of creditors as settled and the proofs relating thereto shall be open to the inspection of every creditor or contributory on payment of such fee as provided in the Annexure B.

(20) Expunging of proof -

- (i) If after the admission of a proof, the Company Liquidator has reason to think that the proof has been improperly admitted or admitted by a mistake, he may immediately apply to the Tribunal upon notice to the creditor who made the proof, to expunge the proof or reduce its amount, as the case may be.
- (ii) Any creditor or contributory may also apply to the Tribunal within ten days to expunge a proof or reduce the amount thereof, if the Company Liquidator declines to move in the matter, and on such application, the Tribunal may pass such orders as it may think just.
- (21) Procedure on failure to prove the debt within the time fixed If any creditor fails to file proof of his debt with the Company Liquidator within the time specified in the advertisement referred to in Rule 106, such creditor may apply to the Tribunal for relief within fifteen days from the time specified in such advertisement, and the Tribunal may, thereupon, adjudicate upon the debt or direct the Company Liquidator to do so.
- (22) Right of creditor who has not proved debt before declaration of dividend Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the Company Liquidator available for distribution of dividend, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by

reason that he has not participated therein.

(23) Payment of subsequent interest -In the event of there being a surplus after payment in full of all the claims admitted to proof, creditors whose proofs have been admitted shall be paid interest from the date of the winding-up order or of the resolution, as the case may be, up to the date of the declaration of the final dividend, at a rate not exceeding six per cent per annum on the admitted amount of the claim, after adjusting against the said amount the dividends declared as on the date of the declaration of each dividend.

(24)Overriding preferential payments: For the purposes of subsection (1) of section 326 of the Act, in case of the winding up of a company, the sums towards wages or salary referred to in sub-clause (i) of clause (b) of sub-section (3) of section 325, which are payable for a period of two years preceding the winding up order shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets. Subject to the cost of winding up, such sum payable shall be first realized on proportionate bases from the sale proceeds of assets not having security and from the sale proceeds of assets having security; and the amount so required to be realized from the sale proceeds of assets having security which shall have first and foremost charge to the extent of said amount and shall be realized on proportionate bases from the security of every secured creditor.

27. APPLICATION AGAINST DELINQUENT DIRECTORS, PROMOTERS AND OFFICERS OF THE COMPANY

- (1) Applications under section 339 or 340 An application under sub-section (1) of section 339 or under sub-section (1) of section 340, shall be made by summons returnable in the first instance in chambers and be served on every person against whom an order is sought in not less than seven days before the day mentioned in the summons for the hearing of the application. It shall not be necessary to file any affidavit or report before the return of the summons. The summons shall be in **Form No. 72or 73** with such variations as may be necessary.
- (2) Directions at preliminary hearing of summons -On the return of the summons, the Tribunal may give such directions as it shall think fit as to whether points of claim and defence are to be delivered, as to the taking of evidence wholly or in part by affidavit or orally, as to the cross-examination, before the Bench on the hearing in Tribunal or of any deponents to affidavits in support of or in opposition to the application, as to any report it may require the Company Liquidator to make, and generally as to the procedure on the summons and for the hearing thereof. Points of claim to be delivered shall be in **FormNos. 74**or **75** with such variations as may be necessary.
- (3) Liberty to apply for further directions Where the Tribunal has directed that points of claim and defence shall be delivered, it shall be open to either party who wishes to apply for any further direction as to any interlocutory matter, to apply, by restoration, of the summons, before the summons has been set down for trial, for such direction, upon giving two clear days' notice in writing to the other party stating the grounds of the application. A copy of the notice shall be filed with the Registrar two clear days before the day fixed for the hearing of the application.

28. DISCLAIMER

(1) Application for disclaimer -

An application for leave to disclaim any part of the property of a company under section 333 shall be made in **FormsNos.76 to 82**along with such variations as may be necessary.

- **(2)Preliminary hearing of the application -** The application shall be posted before the Tribunal *ex-parte* in the first instance for directions as to the persons on whom notice of the application should be served, and the Tribunal shall thereupon fix a date for the hearing of the application and give such directions as may be necessary to the persons on whom notice of the application should be served.
- (3) Claimant to furnish statement of his interest -Where a person claims to be interested in any part of the property of the company which the Company Liquidator wishes to disclaim, such person shall, if so required by the Company Liquidator, furnish a statement of the interest claimed by him.
- (4) Service of notice Notice of the date fixed for the hearing of the application shall be in Form No.83 and shall be served not less thanseven days before the date fixed for the hearing, together with a copy of the application and of the affidavit filed in support thereof. The notice shall require that any affidavit-in-opposition to the application shall be filed in Tribunal and a copy thereof served on the Company Liquidator of the company not later than two days before the date fixed for the

hearing.

- **(5) Order granting leave to disclaim** The order granting leave to disclaim shall be in **Form No. 84**.
- (6) Disclaimer to be filed with Registrar of Companies-The Company Liquidator shall file a copy of the disclaimer with the Registrar of Companies.

An order requiring parties interested in a disclaimed lease to apply for a vesting order or to be excluded from all interest in the lease shall be in **Form No. 85**, and an order vesting lessee and excluding persons who have not elected to apply, shall be in **Form No. 86**.

29. COMPROMISE OR ABANDONMENT OF CLAIMS

No claim to be compromised or abandoned without sanction of Tribunal. -In a winding-up by the Tribunal, no claim by the company against any person shall be compromised or abandoned by the Company Liquidator without the sanction of the Tribunal upon notice to such person as the Tribunal may direct.

30. DIVIDENDS AND RETURNS OF CAPITAL IN A WINDING-UP BY TRIBUNAL

- (1) Declaration of dividend or return of capital No dividend to creditors or return of capital to contributories shall be declared by the Company Liquidator without the sanction of the Tribunal.
- (2) Notice of declaration The Company Liquidator shall give notice of

the declaration of dividend not less than fifteen days prior to the date fixed for the payment thereof. Unless otherwise directed by the Bench, such notice shall be given by advertisement in such newspapers as the Bench shall direct and by Registered AD or other recognized modes of service as per section 20 of the Act, to every creditor / member as on such date. The advertisement shall be in **Form No. 87** and the notice to creditors /contributories in **Form No. 88**.

- (3) Form of authority to pay dividend and modes of transmission A person to whom dividend is payable may lodge with the Company Liquidator an authority in writing to pay such dividend to another person named therein. Such authority shall be in **Form No. 89.** Dividends and returns of capital may, at the request, risks and cost of the person to whom they are payable, shall upon submission of valid identification proof, be transmitted through electronic or other reliable means.
- (4) Form of order directing return of capital -Every order by which the Company Liquidator is authorised to make a return to contributories of the company, shall, unless the Tribunal otherwise directs, contain or have appended thereto a schedule or list (which the Company Liquidator shall prepare) setting out in a tabular form the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories and such other information as may be necessary to enable the return to be made. The schedule or list shall be in Form No. 90 with such variations as circumstances shall require and the Company Liquidator shall send a notice of return to each contributory by

Registered AD or other recognized modes of service as per section 20 of the Act in **Form No. 91**.

(5) Payment of dividend or return of capital due to a deceased creditor or contributory - Where a claim is made in respect of a dividend due to a deceased creditor or a return of capital due to a deceased contributory upto one lakh rupees, the Company Liquidator may, upon satisfying himself as to the claimant's right and title to receive the dividend or the return as the case may be, apply to the Tribunal for sanctioning the payment of such dividend or return to the claimant. Where the Tribunal sanctions the payment without the production of a succession certificate or like authority, the Company Liquidator shall make the payment upon obtaining a personal indemnity from the payee.

31. CONCLUSION OF WINDING-UP

- (1) Company Liquidator to apply for dissolution After the affairs of the Company have been fully wound up and final accounts thereof are audited, the Company Liquidator shall apply to the Tribunal within ten days along with audited final accounts and auditors certificate thereon for orders as to the dissolution of the company.
- (2) Dissolution of the company Upon hearing of the application, the Tribunal may, after hearing the Company Liquidator and any other person to whom notice may have been ordered by the Tribunal, make such orders as it may think fit as to the dissolution of the company. The balance amount lying in the hands of the Company Liquidator shall be deposited in the Company Liquidation Dividend and Undistributed Assets

Account. Every order of dissolution shall direct that the Company Liquidator doforward a certified copy of the order to the Registrar of Companies not later than seven days from the date of receipt of the order. Along with the copy of the order shall be filed with the Registrar of Companies, a statement signed by the Company Liquidator that the directions of the Tribunal regarding the application of the balance as per his final account have been duly complied with. There shall also be an order for discarding the books and papers of the company and relieving the Company Liquidator.

- **(3)Conclusion of winding-up** The winding-up of a company shall, for the purposes of section 348, be deemed to be concluded-
- (i) in the case of a company wound-up by order of the Tribunal, at the date on which the order dissolving the company has been reported by the Company Liquidator to the Registrar of Companies;
- (ii) in the case of a company wound-up voluntarily, at the date of the dissolution of the company, unless any fund or assets of the company remaining unclaimed or undistributed in the hands or under the control of the Company Liquidator, shall be distributed or paid into the Company Liquidation Dividend and Undistributed Assets Account as provided in section 352 of the Act.
- **(4)Application to declare dissolution void.**-An application under section 356 shall be made upon notice to the Central Government and the Registrar of Companies. Where the Tribunal declares the dissolution to have been void, the order shall direct that the applicant do file a certified

copy of the order with the Registrar of Companies not later than twenty one days from the date of the order.

32.BANKING ACCOUNT OF THE COMPANY LIQUIDATOR

- (1) All money to be paid in to the special bank account maintained with State Bankof India or any other nationalised bank— For the purposes of sub-section (1) of section 350, the Company Liquidator shall pay to the credit of a special bank account in his Official name opened in State Bank of India or any other nationalised bank all moneys including cheques and demand drafts received by him as the Company Liquidator of the company, and the realisations of each day shall be paid into the Bank without deduction not later than the next working day of the Bank. The Company Liquidator may maintain a petty cash of five thousand rupees or such higher amount as may be permitted by the Tribunal to meet day to day expenses. All payments out of the account by the Company Liquidator above two thousand rupees shall be made bycheques drawn against the said account.
- (2) Bills and securities to be deposited into bank. All bills, hundies, notes and other securities payable to the company or to the Company Liquidator thereof shall, as soon as they come into the hands of the Company Liquidator, be deposited by him with the Bank for the purpose of being presented for acceptance and payment or for payment only, as the case may be, and the proceeds when realised shall be credited by the Bank to the account of the Company Liquidator.
- (3) Payments into Bank Where the Tribunal makes an order directing any person to pay any money due to the company into the bank account

maintained by the Company Liquidator, the person so directed shall, at the time of making the payment, produce to the Bank a certified copy of the order or a payment in challan endorsed by the Company Liquidator under his signature. The person making the payment shall give notice thereof to the Company Liquidator and produce before him the Bank receipt relating thereto.

(4)Company Liquidator's Dividend Account. -The Company Liquidator shall also open a separate dividend account for the company under liquidation with the sanction of the Tribunal, in State Bank of India or any other nationalised bank under the name 'the Dividend Account of................ (name of the company) in liquidation, into which account he shall, upon a declaration of dividend being made in the winding-up of the company, deposit by transfer from his account, the total amount of the dividend payable upon such declaration. There shall be a separate account in respect of each declaration of dividend. All payments of dividend shall be made from the said Company Liquidator's dividend account and any unpaid balance in the account shall be transferred to the Company Liquidation Dividend and Undistributed Assets Account opened in accordance with sub-section (1) of section 352.

All payments of dividends shall be made by cheques or through Electronic Clearing System (ECS) drawn against the said account.

(5) Where the company has no available assets- Where a company against which a winding-up order has been made has no available assets, the Company Liquidator may, with the leave of the Tribunal, incur any necessary expenses in connection with the winding-up out of

any permanent advance or other fund provided by the Central Government, and the expenses so incurred shall be recouped out of the assets of the company in priority to the debts of the company:

Provided that where any money has been advanced to the Company Liquidator by the petitioner or other creditor or contributory for meeting any preliminary expenses in connection with the winding-up, the Company Liquidator may incur any necessary expenses out of such amount, and the money so advanced shall be paid out of the assets of the company in priority to the debts of the company.

33. INVESTMENT OF SURPLUS FUNDS

- (1) Investment of surplus funds -All such money for the time being standing to the credit of the Company Liquidator at the Bank as is not immediately required for the purposes of winding-up, shall be invested in Government securities or in interest bearing deposits in the State Bank of India or any other nationalised bank in the name of the Company Liquidator as Company Liquidator of the company to which the funds belong.
- (2) Company Liquidator to examine the accounts for purposes of investment.-The Company Liquidator shall, at the end of every month, examine the account of liquidation to ascertain what moneys are available for investment, and shall make an entry at the end of every month in the Record Book relating to the company of his having examined the account for the purpose and of the decision taken by him regarding the investment, and in case he decides not to invest any surplus funds, the reasons for such decision.

- (3)Investments to be made by the Bank.-All investments shall be made by the Bank upon the written request of the Company Liquidator. The securities shall be retained in the Bank in the name and on behalf of the Company Liquidator, and shall not be sold except by the Bank and under the written instructions of the Company Liquidator. When the securities are sold the proceeds shall be credited by the Bank to the account of the Company Liquidator.
- (4)Dividend and interest to be credited.-All dividends and interest accruing from any securities or investments shall from time to time be received by the Bank and placed to the credit of the account of the Company Liquidator and intimation thereof shall be given to the Company Liquidator, who shall thereupon credit such dividend or interest in his accounts to the company to which the security or the investment relating thereto belongs.
- (5) Refunds of Income-tax.-The Company Liquidator shall claim such refunds of income-tax as may be due in respect of any dividends or interest received on the securities or investments and credit the same when realised to the appropriate account.
- 34. PAYMENT OF UNPAID DIVIDENDS OR UNDISTRIBUTED ASSETS INTO THE COMPANY LIQUIDATION DIVIDEND AND UNDISTRIBUTED ASSETSACCOUNT IN A WINDING-UP
- (1) Statement of unpaid dividend and undistributed assets:

The statement to be furnished, under sub-section (3) of section 352 to

the Registrar of Companies, by the Liquidatorwhen making any payment of unpaid dividends or undistributed assets into the Company Liquidation Dividend and Undistributed Assets Account in scheduled bank under subsections (1) and (2) of section 352 shall be in **Form No. 92**.

- (2) Unpaid dividends or undistributed assets under investment.For purposes of payment of unpaid dividends and undistributed assets
 into the Company Liquidation Dividend and Undistributed Assets Account,
 money invested or deposited at interest by the liquidator shall be deemed
 to be money in his hand, and when such money forms part of the unpaid
 dividends or undistributed assets of the company, the liquidator shall
 realise the investment or withdraw the deposit and shall pay the proceeds
 into the Company Liquidation Dividend and Undistributed Assets Account.
- (3) Application by person for payment of money paid into the Company Liquidation Dividend and Undistributed Assets Account.- An application under sub-section (6) of section 352 by any person claiming to be entitled to any money paid into the Company Liquidation Dividend and Undistributed Assets Account for payment of such money shall state whether the applicant had made an application to the Central Government for the payment, and, if so, the result of the application.

(4) Cost and expenses payable out of the assets in a winding-up by the Tribunal.-

(i) The assets of a company in a winding-up by the Tribunal remaining after payment of the fees and expenses properly incurred in preserving, realizing or getting in the assets including, where the company has previously commenced to be wound-up voluntarily, such remuneration, cost and expenses as the Tribunal may allow to the liquidator in such voluntary winding-up, shall, subject to any order of the Tribunal and to

the rights of secured creditors if any, be liable to the following payments which shall be made in the following order of priority, namely:-

First.-the costs of the petition including the costs of any person appearing on the petition, whose costs are allowed by the Tribunal.

Next.-the costs and expenses of any person who makes, or concurs in making, the company's statement of affairs;

Next.-the necessary disbursements of the Company Liquidator other than expenses properly incurred in preserving, realising or getting in the properties of the company;

Next.-the cost of any person properly employed by the Company Liquidators;

Next.-the actual out of pocket expenses necessarily incurred by the members of the Advisory Committee , and sanctioned by the Tribunal.

- (ii) Save as otherwise ordered by the Tribunal, no payments in respect of bills of authorised representatives, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the taxing officer of the Tribunal.
- (iii) Nothing contained in this Rule shall apply to or affect costs which, in the course of legal proceedings by or against the company which is being wound-up by the Tribunal, are ordered by the Tribunal in which such proceedings are pending, to be paid by the company or the liquidator, or the rights of the person to whom such costs are payable.

Part-V

OFFICIAL LIQUIDATOR

35. Official Liquidator

- **(1)** (i) In pursuance of sub-section (1) of section 359, the Central Government may appoint as many number of Official Liquidators, Joint, Deputy or Assistant Official Liquidator as it considers necessary to discharge the functions of Official Liquidator.
- (iii) For the purposes of sub-section (3) of section 359, the terms and conditions including the salaries payable to persons appointed under this section shall be paidby the Central Government.
- (iv) The rules applicable to the Company Liquidator shall apply to the Official Liquidator *mutatis mutandis* except filing of declaration of disclosure of conflict of interest and furnishing of security.
- (iv) A liquidator shall be described by the style of "Official Liquidator" of the particular Company in respect of which he acts, and not by his individual name.
- **(2)** For the purpose of sub section (1) of section 360, the Official Liquidator shall exercise following powers and perform following duties:
- (i) For winding up of the company by the Tribunal, the Tribunal at the

time of passing an order of winding up, may appoint Official Liquidator as Company Liquidator, who shall exercise all powers as may be exercised by the Liquidator in the winding up proceedings.

- (ii) The Tribunal may also by an order appoint official liquidator as Provisional Liquidator for the purpose of winding up.
- (iii) Official Liquidator shall continue as the Company Liquidator or provisional liquidator for all such cases of winding up of companies, pending before District Court or High Court immediately before the date of transfer to the Tribunal as per clause (c) of sub-section (1) of Section 434 of the Act.
- (iv) To supervise the functions of any Company Liquidator or Provisional Liquidator appointed from the panel, if directed by Tribunal or Central Government.
- (v) To advice or guide the Company Liquidator or Provisional Liquidator appointed from the panel on any reference made to him by such Liquidator.
- (vi) Official Liquidator shall conduct enquires or investigations, if directed by the Tribunal or Central Government in respect of matters arising out of winding up proceedings including all such cases where the company liquidator is appointed from the panel.
- (vii) To submit report to the Tribunal on any such matter including on the report for dissolution of the company filed by Company Liquidator appointed from the panel, on winding up by the Tribunal or Voluntary Winding up.

(viii) The Official Liquidator shall maintain a panel of Security Agency with the approval of Tribunal and of professionals including Valuers, Chartered Accountants, Company Secretaries, Cost Accountants and Advocates to represent and assist the Official Liquidator in the winding up process and proceeding related to winding up petitions and applications before the Tribunal and the Central Government.

(ix) Any such powers and duties as may be directed by the Tribunal or Central Government from time to time.

36. Professional Assistance for the Official Liquidator.-The Official Liquidator appear either personally or through an advocate on its panel and conduct all proceedings before the Tribunal or the Central Government in the liquidation.

37. REGISTERS AND BOOKS OF ACCOUNT TO BE MAINTAINED BY THE Official Liquidator.

The official liquidator shall maintain such books of accounts as are required to be maintained by a company liquidator with such variation as may be necessary and sanctioned by the Central Government.

38. FILING AND AUDIT OF THE OFFICIAL LIQUIDATOR'S ACCOUNTS

Audits of the books of the official liquidator shall be done in accordance with these rules.

39. WINDING-UP APPLICATION BEFORE CENTRAL GOVERNMENT.

- (1) Application under *Section* 361 for Summary Procedure of Winding-Up- For the purpose of clause (ii) of sub section (1) of section 361 of the Act, the classes of company shall be as follows:
 - (a) One Person Company, or
 - (b) Small Company.

(2) Application for winding up

- (i) Application for winding up by the Company shall be in **Form-A**with such variations as may be necessary and in any other case it shall be in **Form-B**with such variations as may be necessary.
- (ii) The applicant shall, not less than one month before filing any application in Form A or B as the case may be publish a general notice, at least once, in a daily newspaper published in English and in the principal language of the State or the Union Territory in which the registered office of the company is situated, clearly indicating the substance of the application and stating that any person whose interest is likely to be affected by the proposed application and may intimate to the Central Government (Regional Director) within twenty-one days of the date of publication of that notice, the nature of interest and grounds of opposition, if any.
- (3) Application by the Company. Subject to section 271 and 272 of the Act, in case the application is made by the

company:

- (i) The company shall not less than one month before filing application, serve on each debenture-holder and creditor of the company by registered post or speed post, individual notice indicating the substance of the application and stating that if his interst is likely to be affected by the proposed applicationand may intimate to the Central Government (Regional Director) within twenty-one days of the date of publication of that notice, the nature of interest and grounds of opposition, if any.
- (ii) The application shall contain:
 - (a) a list stating the name and address of the creditors and debenture holders and the amount due to each of them up to the latest practicable date preceding the date of filing of the application which shall not precede the date of filing the application by more than thirty days indicating whether the secured or unsecured creditors and details of the property mortgaged or hypothecated to such secured creditors, if any.
 - (b) A director of the company shall file an affidavit to the effect that they have made the full enquiry into the affairs of the company and, having done so, have formed the opinion that the list referred above is correct, and the estimated values as given in the list

- of debt or claims payable on a contingency or not ascertained are proper estimates of the values of such debt and claims included in the list and the same are borne out by the books and records of the company and that there are no other debts, or claims against, the company to their knowledge.
- (c) The company shall prove the publication of the notice and service of notice to each of the debenture holder or creditor by an affidavit.
- (d) Copy of the audited financial statements for the preceding financial year;
- (e) Statement of Affairsin **Form 4** made up to the latest practicable date preceding the date of filing of the application which shall not precede the date of filing the application by more than 30 days; and
- (f) Copy of the resolution of the Board of Directors authorizing Board to submit the application; and
- (g) copy of the special resolution of the company in terms of clause (b) of sub-section (1) of section 271 of the Act.
- (4) Subject to section 271 and 272 of the Act in any other case, the application shall be accompanied by an affidavit to prove the publication of the notice, copy of the latest audited financial statements available in the MCA 21 portal, copy of the charge documents available in the MCA 21 portal and an affidavit to prove

the service of notice to the secured creditors whose names are available in the charge documents in the manner provided in clause (i) of sub-rule (3).

- Objections to the application. (i) Any person intending to oppose the application shall within twenty-one days from the date of service of publication of the notice, as the case may be, deliver, or cause to be delivered, or send by registered post or speed post, the objections supported by an affidavit, in original, to the Central Government and shall also serve a copy of the objections on the applicant and the company at its registered office if the objector is not the company.
 - (ii) Where an application for winding up is filed by a person other than the company: (a) the objection, if any, by the company shall be accompanied with the statement of affairs in **Form 4** (b) The Central Government if satisfied that a prima facie case for winding up of the company is made out, direct the company to file its objections along with a statement of its affairs in **Form 4** within thirty days of the direction. (c) A company which fails to file statement of affairs, shall forfeit the right to oppose the application and such directors and officers of the company as found responsible for such non compliance, shall be liable for punishment under sub section (4) of section 274 of the Act.
- (6) Affidavit in support. Every application shall be accompanied by an affidavit verifying the same and shall be drawn up in the

first person and shall state the full name, age, occupation and complete residential address of the deponent and shall be signed by the deponent and sworn before an oath commissioner.

- (7) Documents may be attested by the party or the authorized representative or the advocate. Where the application is filed by the authorized representative, Memorandum of Appearance shall be appended to the application as in **Form C**.
- (8) Admission of application and directions Upon the filing of the application, it shall be listed before the Central Government for admission and consideration of objections received, if any.
- (9) Consideration and disposal. The Central Government may upon considering the application, in case where there are no objections, wherever applicable, statement of affairs have been received, and found that the company can be would up through summary procedures, may allow the application and pass a winding up order; in any other case may either dismiss the application or may issue notice to the company or the objector to file a reply or issue, any other direction deemed fit and proper.

- (10) Reply of the notice: The objector or the company as the case may be within a period of thirty days from the receipt of notice file a reply to the application for winding up.
- (11) Order: Upon considering the application and the reply, if the central government is of the view that;
 - A. the grounds for winding up are made out and no further evidence is required it shall pass an order winding up the company;
 - B. the grounds for winding up are not made out it shall dismiss the application;
 - C. the adjudication of the application involves complex issues of facts and law or the Central Government is of the opinion that summary procedures under the Part IV of Chapter XX is not possible, the Central Government shall return the application, where after, the applicant shall be at liberty to approach the Tribunal.

40. WINDING-UP ORDER

(1) Order to be sent to Official Liquidator and Registrar of Companies and form of order- Where a winding up order is made by the Central Government, it shall appoint the official liquidator as the Liquidator of the company. The order for winding

up shall be in **Form D**and shall be sent within a period not exceeding seven days thereof, to the Official Liquidator and to the Registrar of Companies.

(2) The Official Liquidator shall have all the powers as may be exercised by the company liquidator under the provisions of the Act.

41. REPORTS BY Official Liquidator.

- (1) Form of Report. The report to be submitted by the Official Liquidator under sub-section (4) of section 361 shall be in Form E with such variations as may be necessary within thirty days of his appointment. The Official Liquidator may make further report or reports, as my be required by the Central Government.
- (2) Upon perusal of the report submitted by the Official Liquidator under sub rule (1), the Central Government may direct further investigation in to the affairs of the company in terms of sub section (5) of section 361 of the Act and report shall be submitted by the Official Liquidator with in the time specified by the Central Government in its direction.
- (3) After considering the report submitted under sub rule (2) above, the Central Government may either direct that the Official Liquidator shall proceed with the winding up process under Part-I of the Chapter XX of the Act before the Tribunal or proceed with the process of winding up summarily under Part –IV of the Chapter XX.
- (4) Where an order to proceed summarily has been made, the Official Liquidator shall dispose off all the assets taken over by it of the company within sixty days of his appointment. Provided that any further assets which may be discovered may also be disposed off

- with the approval of the Central Government.
- (5) It shall be the duty of the promoters, directors, officers, employees and any person with such authority, to attend on the Liquidator and answer all such questions as may be put to them, give all such further information as may be required from them, and provide such assistance as may be required by the Liquidator.

42. Notice *to* debtors or contributories:

- (1) Notice under sub section (2) of section 362shall be in Form F.
- (2) The application under sub section (3) of section 362 shall be in **Form G**.

43. SALES BY THE OFFICIAL LIQUIDATORS

Procedure at sale subject to confirmation by the Central Government - Every sale by the Liquidator shall be subject to the confirmation by the Central Government and shall be conducted, or, if the Central Government shall so direct, by an agent or an auctioneer on the panel of the Official Liquidator. All sales shall be made by public auction or by inviting sealed tenders or by electronic-bidding.

44. Settlement of Claims of Creditors by the Official Liquidator:

- (i) Official Liquidator may issue a public notice in the newspaper one edition in English and in one edition of vernacular language inviting claims from the creditors in the event creditors are more than one hundred.
- (ii) The Official Liquidator shall issue individual notice to creditors by registered or speed post. The notice shall be in **Form H.**
- (iii) The claim application shall be submitted by creditor in Form I,

supported by an affidavit duly sworn in.

(iv) The list of claims of creditors prepared under sub section (2) of section 363, shall be in **Form J**. The notice of acceptance or rejection under sub-section (2) of section 363, shall be in **Form K or L** respectively.

45. Appeal under sub section (1) of Section 364:-

Appeal shall be in Form M.

46. ORDER OF DISSOLUTION OF COMPANY:

- (1) The report to be made to the Central Government or Tribunal under section 365, shall be in Form N or O or with such variations as may be necessary.
- (2) Order made by the Central Government or Tribunalunder sub section (2) of section 365 shall be communicated by the Central Government or the Tribunal to the Registrar of Companies in Form P within fifteen days of such orders.

PART VI

Winding up of unregistered companies (Pursuant to sub-section (1) of section 375)

47. 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,—

any debt or liability of the company; or

any sum for the adjustment of the rights of the members among themselves; or

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 the 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.

48. Power to stay or restrain proceedings.

The provisions of the 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 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.

49. 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 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 company liquidator or provisional liquidator, as the case may be, by his official name; and thereupon the property or the part thereof specified in the order shall vest accordingly.
- (2) The company or provisional Liquidator may, after giving such indemnity, if any, as the 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.
- **50.**(1) The rules under this part, with respect to unregistered companies shall be in addition to and not in derogation of, any Rules prescribed in these Rules.

PART VII

Winding up of Companies incorporated outside India (Pursuant to sub-section (2) of section 391)

51. These rules shall apply *mutatis-mutandis* for closure of the place of business of foreign company in India as if it were a company incorporated in India.

PART -VIII

MISCELLEANEOUS

52. MISCELLEANEOUS

(1) Fees to be credited to the Central Government-

In every winding-up where the Official Liquidator becomes or acts as Liquidator, there shall be paid into the public account of India in the Reserve Bank of India to the credit of the Central Government, from out of the assets of the company in liquidation, the fees determined in accordance with the following provisions:-

- (i) Where a winding-up order is made and the Official Liquidator acts as liquidator of a company.
- (a) Upon the total assets, including produce of calls on contributories, interest on investments and rents from properties, realised or brought to credit by the Official Liquidator, after deducting sums on which fees are chargeable under paragraphs (3) and (4) below and the amount spent out of the money received in carrying on the business of the company, upon each year's collections.

On the first Rs. 10,000 or fraction thereof ... 3 per cent.

On the next Rs. 40,000 or fraction thereof ... 2 per cent.

On the next Rs. 50,000 or fraction thereof ... 1 per cent.

Above Rs. 1,00,000 ...

3/4 per cent.

- (b) On the total amount distributed in dividend or paid to contributories, preferential creditors, and debenture-holders by the Official Liquidator, half the above percentages.
- (ii) Where the Official Liquidator collects, calls or realises property for debenture-holders.

The same scale of fees as under paragraph (i) to be paid out of the proceeds of such calls or property.

(iii) Where the Official Liquidator realises property for secured creditors other than debenture-holders.

On the amount realised for each secured creditor.-

On the first Rs. 10,000 or fraction thereof 4 per cent.

On the next Rs. 40,000 or fraction thereof 2 1/2 per cent.

On the next Rs. 50,000 or fraction thereof 2 per cent.

Above Rs. 1, 00,000 1 1/2 per cent.

- (iv) When the Official Liquidator acts as trustee, under a scheme of arrangement, such fees not exceeding the scale of fees under paragraph (i) above, as the Tribunal shall allow.
- (v) When the Official Liquidator performs any special duties not provided for above such fees as the Tribunal may fix on the application of the Official Liquidator, in addition to any other fees payable.
- (vi) Where the Tribunal has sanctioned the reconstruction of the company under liquidation or a scheme of arrangement of its affairs, or where for any reason the Tribunal is of the opinion that the fees prescribed in above paragraphs would be excessive, such reduction may be made in the said fees as the Tribunal thinks fit.
- (vi) When the Official Liquidator acts in any other capacity Tribunal may fix the fees.

(2) Inspection of file-

- (i) Every duly authorised officer of the Central Government and, save as otherwise provided by these Rules, every person who has been a director or officer of a company which is being wound-up, shall be entitled, free of charge, at all reasonable times to inspect the file of proceedings of the liquidation and to take copies or extracts from any document therein, and, on payment of the prescribed charges, to be furnished with such copies or extracts.
- (ii) Save as otherwise provided by these Rules, every contributory and every creditor whose claim or proof has been admitted, shall be entitled,

on payment of the prescribed charges, at all reasonable times to inspect the file of proceedings and to be furnished with copies and extracts from any document therein.

(3) Transfer of proceedings-

- (i) All proceedings under the Companies Act, 1956 (1 of 1956) relating to winding up of companies, pending before District Court or High Court shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such cases after the stage, the cases has already been proceeded.
- (ii) In all winding up proceedings under the Companies Act, 1956 pending immediately before any District Court or High Court, on transfer to Tribunal under clause (c) of sub section (1) of section 434 of the Act, Official Liquidator shall continue as Company Liquidator or Provisional Liquidator, wherever Official Liquidator has been appointed as Liquidator or Provisional Liquidator.

(4) Saving of Rules under Special Acts-

- (i) Nothing in these rules shall affect the operation of any rules framed under the Banking Companies Act, 1949 or the Insurance Act, 1938, or other Special Acts relating to any class of companies and these Rules shall apply to such Companies subject to the Rules, if any, made under the special Acts.
- (ii) Companies (Court) Rules 1959 stand repealed except to the extent to which those rules are required to be pursued for the effective conclusion

of the respective proceedings and where these rules or National Company Law Tribunal Rules 2013 do not answer in respect of the transfer proceedings with regard to the matters earlier dealt by the District Court or High Court.

(5) Applicability of National Company Law Tribunal Rules, 2013:-

Save as otherwise provided in these rules, National Company Law Tribunal Rules, 2013, shall apply to the circumstances in which these rules do not specifically provide or elaborate in relation to any matter.

(6) Appeal from order of Tribunal to National Company Law Appellate Tribunal

Any aggrieved person may prefer an appeal against the order or decision of the Tribunal to the National Company Law Appellate Tribunal within in the period of 45 days from the date on which the copy of order is delivered in such manner as may be provided by that Appellate Tribunal.

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of 45 days from the date aforesaid, but within a further period not exceeding 45 days, if it is satisfied that appellant was prevented by the sufficient cause from filing the appeal within that period.

(ii) Any order on appeal in relation to the winding up shall be intimated to the company Liquidator or Official Liquidator or Provisional Liquidator as the case may be within 15 days of such order and any order staying the winding up shall be filed with the Registrar of Companies within 15 days of the such order with prescribed filing fees. Forms shall be Form No 12

and 13 respectively.