

Winding up of companies under companies
laws of India : a critical study

DISSERTATION
Submitted in the Partial Fulfilment for the Degree of
MASTER OF LAW'S (LL.M.)
SESSION: 2019-20



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I wish him/her success in life.

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ACKNOWLEDGEMENT

A project gains a lot of relevance as it on time activity serving a definite object. Practical experience in undertaking a project teaches many things which would otherwise elude observations.

I am very indebted and obliged to have Ms. Trishla Singh (Associate Professor) project guide and whose scholarly guidance and sustained interest in the progress of my project have been the major contributing factor in preparation of this dissertation

I also place my sincere thanks to all respondents and concerned people to this dissertation.

ABBREVIATIONS

AIR - All India Reporter

CA - Court of appeal

Ch. - Chancery.

Comp L .J. - Company Law Journal

D.B. - Divisional Bench

L.T - Law Times Reports

M.L.R. - Madras Law Review

P.C - Privy Council

S.C. - Supreme Court

S.C.L. - SEBI Corporate Law Magazine

SCC-Supreme Court Cases

TLR - Time Law Reports

ILR -Indian law Report

US - United State

SOX - Sarbanes Oxley Act

SEBI - Securities & Exchange Board of India

CII - Confederation of Indian Industries

FDI - Foreign Direct Investment

FII - Foreign Institutional Investment

MCA - Ministry of Corporate Affairs

SS - Sub Section

SFIO - Serious Fraud Investigation Office

PWC - Price Waterhouse Coopers

USL - United Spirits Ltd.

UB - United Breweries

DRS - Director's Responsibility Statement

CII - Chamber of Indian Industries

TABLE OF CASES

- 1 MAHARASHTRA STATE TEXTILE CORPORATION V OFFICIAL LIQUIDATOR (1978) ISCC490-498)
- 2 BOMBAY METROPOLITIAN TRANSPORT CORPORATION LTD V EMPLOYEES
- 3 S.R SUBRAMANIAM V DRIVERS AND CONDUCTOR BUS SERVICES
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- 10 GUJARAT INDUSTRIAL INVESTMENT CORPORATION LTD V STERLING HOLIDAY RESORTS
- 11 M/S QUANTUM INDUSTRIES (INDIA) LTD CASE

RESEARCH METHODOLOGY

The research is an attempt of exploratory research, based on the secondary data sourced from journals, magazines, articles and media reports .Looking into requirements of the objectives of the study the research design nemployed for the study is of descriptive type. Keeping in view of the se tobjectives, this research design was adopted to have greater accuracy and indepth analysis of the research study. Available secondary data was extensively used for the study. The investigator procures the required data through secondary survey method. Different news articles, Books and Web were used which were enumerated and recorded.

HYPOTHESIS

Emphasis is given on the overall procedure and the process by way of which a company can be wound up . Somewhat different types of companies are defined with their structure and functions .

Different modes of winding up of the company are enriched. Chapterwise differentiation and stages of the winding up of the Company are given .

Focus is given on the list of cases in order to get the better understanding of the subject . Detailed explanation of the topic is derived and emphasised with respect to its conclusion and suggestion as well.

INTRODUCTION

59. In view of increasing emphasis on adherence to norms of good corporate governance, the company law assumes an added importance, as it deals with structure, management, administration and conduct of affairs of the companies.
60. It is seen that nowadays “Liquidation” has become a common feature of the large-scale sector as well as the small-scale sector. In spite of the enactment of the special legislation and various steps taken by the government and RBI to deal with the problem, “Liquidation” is growing at an alarming pace.
61. In law, “Liquidation” refers to the process by which a company is brought to an end, and the assets and property of the company redistributed. We can also say that Liquidation is the process whereby a company has its assets realized and distributed to satisfy insofar as it is able, its liabilities and to repay its shareholders. Liquidation can also be referred to as winding-up or dissolution, although dissolution technically refers to the last stage of Liquidation.
62. The liberalization of the economy resulting into increased competition has also added a new problem known as industrial sickness. The Board for Industrial and Financial Reconstruction (BIFR) is assigned with the responsibility of hearing cases that apply for being declared sick and deciding whether or not the unit deserves to be termed “sick”. The Board for Industrial and Financial Reconstruction (BIFR) is also the authority that must approve takeover of a sick unit.
63. The purpose of writing of this dissertation is that there are many opinions interpretations in the text of various sections relating to winding up in company law, resulting to it there have been conflicting decisions of different High Courts. These all differences of Opinion require a through critical analysis. Therefore, it is beneficial to

critically analyze the statutory provisions and judicial decisions relating to Winding Up of a company.

64. The purpose of this dissertation is also to develop an understanding of regulations of winding up of a company and to provide through understanding of the various provisions of the winding up as well as rules made there under including their interpretation through case laws, departmental clarifications etc.

65. The object of the present dissertation is to analyze these provisions decisions of the different High Courts of India, Supreme Court of India and Privy Council and then to arrive at a logical conclusion and suggest certain amendments to supplements the present provisions related to the winding of a company. For this purpose the author has visited the Jaipur Metals and Electricals Ltd. BIFR vide its order dated 26 September 2002 had declared winding up of Jaipur Metals and Electricals Ltd.

66. , the whole dissertation has been divided into the lowing chapters :-

67. Sr. No.	Chapters	Name of Chapter
68. 1.		Introduction
69. 2.	Chapter-1	Concept of Compulsory Winding Up
70. 3.	Chapter-2	Modes of Compulsory Winding Up
71. 4.	Chapter-3	Procedure of Compulsory Winding Up
72. 5.	Chapter-4	Winding up a Registered Company and an Unregistered Company.
73. 6.	Chapter-5	After effects of winding up and a social legal study
74. 7.		Conclusion and Suggestion
75.	In the first introductory	the subject of the dissertation is highlighted

76. The first Chapter relates to the meaning nature and definitions of winding up, essential elements of the winding up and the most important thing of winding up.
77. “Winding Up” in literal sense, means to bring to a conclusion or an end by putting in order. It is defined as the process by which the life of a company is ended and its property is administered for the benefit of its members and creditors.
78. Winding up is more a formal company liquidation procedure that involves the orderly winding up of the company affairs, the appointment of a liquidator to manage the process of realizing the company assets, ceasing or sale of its operations, payment of its debts (if any) and distribution of surplus assets (if any) among its members.
79. The second chapter relates to modes of winding up.
80. Liquidator may either be compulsory or voluntary:-
81. The parties who are entitled by law to petition for the compulsory liquidation of a company vary from jurisdiction to jurisdiction, but generally, a petition may be lodged with the court for the compulsory liquidation of a company by :-
82. The company itself
83. Any creditor who establishes a prima facie case
84. Contributors
85. The Secretary of State (or equivalent)
86. The Official Receiver
87. The grounds upon which one can apply for a compulsory liquidation also vary between jurisdictions, but the normal grounds to enable an application to the Court for an order to compulsory wind-up of the company are :- a
88. The company has so resolved
89. The company was incorporated as a public company, and has not been issued with a trading certificate (or equivalent) within 12 months of registration.

90. It is an “old public company” (i.e. one that has not re-registered as a public company or become a private company under more recent companies legislations requiring this)
91. It has not commenced business within the statutorily prescribed time (normally one year) or its incorporation, or has not carried on business for a statutorily prescribed amount of time.
92. The number of members has fallen below the minimum prescribed by statute.
93. The company is unable to pay its debts as they fall due.
94. It is just and equitable to wind up the company.
95. In practice, the vast majority of compulsory winding-up applications are made under one of the last two grounds. Voluntary liquidation occurs when members of the company resolve to voluntarily wind-up the affairs of company and dissolve. Voluntary liquidation begins when the company passes the resolution, and the company will generally cease to carry on business at that time (if it has not done so already). If the company is solvent, and the members have made a statutory declaration of solvency, the liquidation will proceed as a members’ voluntary winding-up. In such case, the general meeting will appoint the liquidator(s). If not, the liquidation will proceed as a creditor’s voluntary winding-up , and a meeting creditors will be called, to which the directors must report on the company’s affairs. Where a voluntary liquidation proceeds by way of creditors, voluntary liquidation, a liquidation committee may be appointed.
96. Where a voluntary winding-up of a company has begun, a compulsory liquidation order is still possible, but the petitioning contributory would need to satisfy the court that a voluntary liquidation would prejudice the contributories.
97. The third chapter relates to the Procedure of winding up.

98. The main purpose of a liquidation where the company is insolvent is to collect in the company's assets, determine the outstanding claims against the company, and satisfy those claims in the manner and order prescribed by law.
99. The liquidation must determine the company's title to property is its possession. Property which is held by the company on trust for third parties will not form part of the company's assets available to pay creditors.
100. Before the claims are met, secured creditors are entitled to enforce their claims against the assets of the company to the extent that they are subject to a valid security interest. In most legal systems, only fixed security takes precedence over all claims; security by way of floating charge may be postponed to the preferential creditors.
101. Claimants with non-monetary claims against the company may be able to enforce their rights against the company. For example, a party who had a valid contract for the purchase of land against the company may be able to obtain an order for specific performance, and compel the liquidator to transfer title to the land to him, upon tender of the purchase price.
102. After the removal of all assets which are subject to retention of title arrangements, fixed security, or are otherwise subject to proprietary claims or others, the liquidator will pay the claims against the company's assets. Generally, the priority of claims of the company's assets will be determined in the following order :
103. Firstly, the costs of the liquidation are met out of the company's remaining assets.
104. Secondly, the preferential creditors under applicable law are paid
105. Thirdly, in many legal systems, the claims of the holders of a floating charge will be paid; other claims may also fit into this layer.
106. Fourthly, if there is anything left, the unsecured creditors are paid out *pari passu* in accordance with their claims. In many jurisdictions, a portion of the assets which would otherwise be caught by a floating charge are reserved for the unsecured creditors.

107. In the very rare instance where the unsecured creditors are repaid in full, any surplus assets are distributed between the members in accordance with their entitlements.
108. Having wound-up the company's affairs the liquidator must call a final meeting of the members (if it is a member's voluntary winding-up), creditors (if it is a compulsory winding-up) or both (if it is a creditors' voluntary winding-up). The liquidator is then usually required to send final accounts to the Registrar and to notify the court.
109. In some jurisdictions, the company may elect to simply be struck off the Register as a cheaper alternative to a formal winding-up and dissolution. In such case, an application is made to the Registrar, and they may strike off the company if there is reasonable cause to believe that the company is not carrying on business or has been wound-up and, after enquiry, no case is shown why the company should not be struck off.
110. The company is then dissolved.
111. The fourth chapter relates to winding up a Registered Company and an Unregistered Company.
112. The fifth chapter relates to the after effect of winding-up and social legal study present scenario. The after effects of winding-up can be divided into two classifications: -
 113. Legal after effects
 114. Social after effects
115. The Legal after effects highlighted in this chapter are as follows :-
 116. Effect of winding-up on proceedings
 117. Effect of winding-up on disposition of company assets.
 118. Effect of winding-up on execution process.

119. Effect of winding-up on floating charges.
120. Effect of winding-up on secured creditors
121. The Effect of winding-up of a Company After Sale Of Immovable Property In Execution, But Prior To Transfer Of Such Immovable Property.
122. The Social after effects highlighted in this chapter are as follows :-
123. Winding-up of a company involves termination of employment.
124. Effect of winding-up pm shareholders.
125. Effect of winding-up on mental health of employees.
126. conclusion and suggestions. This has been divided in two parts. Part A belongs to conclusion and part B relates to certain suggestions on the basis of critical analysis of statutory revisions and judicial decisions in India.

CHAPTER – I

127. CONCEPT OF COMPULSORY WINDING UP

128. DEFINITIONS OF WINDING UP

129. An Analysis on Compulsory Winding up in Companies Act, 1956

130. Winding up of company is the process whereby its life is ended and its property administered for the benefit of its creditor and members. An administrator, called a

liquidator, is appointed and he takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their respective rights. In the word of 'Pennington' winding up or liquidation is the process which the management of company's affairs is taken out of its director's hands, its assets are realized by a liquidator and its debts and liabilities are discharged out the proceeds of realization and any surplus of assets remaining is returned to its members or shareholders. At the end of the winding up of the company will have no assets will have no assets or liabilities and it will therefore be simply a formal step for it to be dissolved that is for its legal personality as a corporation to be brought to an end.

131. Any company does its business under the regulations set by the Act. It needs to follow the provisions of the act and work in accordance to the memorandum and articles set to govern the company's activities. It has to consider the interests of its owners, creditors as well as the public. If the company trespasses any of the provisions of the act, it may lead to winding up of the company. A company may have to face winding up proceedings on many accounts. The company could be wound-up either by a tribunal (through court) or voluntarily by the members of the company. A sick or potentially sick company can file a petition for voluntary winding up of company. The company must seek clearance for closure from the government. A company referred to the Board of Financial and Industrial Reconstruction can be wound-up after the order is passed by the board. Once the amount of settlement (assets minus liabilities) is determined, the permission of RBI is taken to make the final settlement to the owners of the company.
132. Winding up of a company differs from insolvency of an individual inasmuch as a company cannot be made insolvent under the insolvency law. Besides, even a solvent company may be wound up.
133. As per American Law :-
134. According to Jones, "Winding up is a process whereby a company prepares for dissolution – the assets of company are applied to discharge its liabilities and any

surplus returned to those who are entailed to it provided there is any excess remaining. “

135. As per India Law :-

136. Winding up of a company is the process its life is ended and its property administered for the benefit of its creditors and members. An Administrator called a liquidator is appointed and he takes control of the company, collects its debts and finally distributes any surplus among the members in accordance with their rights.

137. D As per Supreme Court of India :-

138. In Maharashtra State Textile Corporation V. Official Liquidator (1978) ISCC 490-495 the court said that only a limited company could be wound-up. The term “winding-up” (or “wound-up”) bears a similar meaning of “liquidation”. It generally means that all the assets of the company would realize (sold off and converted to cash) through a legal process in order to repay its debts. Winding-up would end a company.

139. A limited company is a company that is registered under the Companies Ordinance. It is a separate legal entity (i.e. it can sue or be sued in legal proceedings). The liabilities of shareholder are limited to the value of the company’s shares held by them (limited by shares). Another situation, which is not common in commercial organizations, is that the liabilities of shareholders are limited to the amount in which the shareholders have agreed to contribute to the company’s assets if the company is being wound-up (limited by a guarantee).

140. The court also said that it is not possible to construe the words winding-up in such a narrow meaning so as to defeat the very object of the act. The word must be given the widest possible amplitude in order to serve the purpose of the act.

141. WINDING UP - PROCEDURE UNDER COMPANIES ACT, 1956

142. Winding up is the process by which the normal activities of the corporation or association of person is stopped and the assets and liabilities of the association is assessed and distributed among the shareholders as per the existing agreement. On

winding up, the organization ceases to be a going concern. The owners are eligible to get the share of residual property and may require to compensate in the event the assets are insufficient and the existing agreement so specifies.

143. DIFFERENCE BETWEEN DISSOLUTION AND WINDING UP :-

144. Winding up is generally seen in a company. When a corporation announces that it will dissolve and end its legal existence, it is only the beginning of the end. Dissolution marks the end of business as usual, but corporate existence continues for the limited purpose of paying, settling, and collecting debts. Once this is done, the corporation may wind up and distributes the remaining assets.

145. Dissolution is generally seen in partnership. A general partnership will dissolve when a change occurs in the relation of the partners caused by any easing to be associated in the carrying on of the business. In the absence of a contrary agreement by the partners, dissolution involves reducing the partnership assets to cash, paying creditors, and distributing to partners the value of their respective interests, as well as the performance of existing contracts. Once this phase is completed the partnership may wind up by distributing assets. Once the winding has occurred, the termination of the partnership is complete.

146. CAUSES OF WINDING UP :-

147. The Liberalization of the economy resulting into increased competition has also added a new problem known as industrial sickness. There are numerous causes of winding up of a company but the deteriorating financial position and continuous losses in a company are the major causes winding up. The biggest example in respect of the same is Jaipur Metals and Electricals Ltd.

148. Jaipur Metals and Electricals Ltd. :-

149. Jaipur Metals and Electricals Ltd. (JMEL) originally incorporated under the name of Jaipur Metal Industries Ltd in August, 1943, having its registered address at Near

Railway Station, Jaipur, was mainly engaged in manufacture of electrical meters, aluminum and copper conductors enameled wires, non ferrous metal, aluminum and arsenical rods.

150. Jaipur Metals and Electricals Ltd. (JMEL) has been a profit making company till 1995. The company has been incurring operating losses from the year 1996 and due to unviable market conditions, deteriorating financial position and continuous losses, the production of Jaipur Metals and Electricals Ltd. (JMEL) was stopped from February 1998 when it has accumulated losses to the extent of approx Rs. 60 Crore.
151. The company was referred to BIFR after erosion of its Net worth on 18 December, 1998. BIFR admitted sickness in the hearing dated 2 June, 1999.
152. Jaipur Metals and Electricals Ltd. (JMEL) declared layoff with effect from 30 September, 2000. At that time, 1558 employees were on the rolls of Jaipur Metals and Electricals Ltd. (JMEL) out of which 1198 were workers and the remaining 360 were staff of Jaipur Metals and Electricals Ltd. (JMEL).
153. On 16 January 2001 Jaipur Metals and Electricals Ltd. (JMEL) retrenched about 150 employees while some of the employees left the services of Jaipur Metals and Electricals Ltd. (JMEL) due to retirement, resignation and death.
154. And on 31 May 1998, about 690 workers and 195 staffs was on the rolls of Jaipur Metals and Electricals Ltd. (JMEL)
155. BIFR vide its order dated 26 September 2002 had declared winding up of a company.
156. About 20% of shareholding of Jaipur Metals and Electricals Ltd. (JMEL) is held by government of Rajasthan, about 60% of share holding of Jaipur Metals and Electricals Ltd. (JMEL) is held by JME Employees Co-operative Credit and thrift society and the balance by banks/FIs and others.
157. PERSONS MAY PETITION THE COURT FOR WINDING UP :-
158. The Company

159. Any creditor of the Company
160. Any contributory or shareholders, Contributory means ever person liable to contribute to the assets of a company in the event of its being wound up and includes holders of its fully paid shares. While every member of a Company becomes a contributory, not every contributory is a member. Besides members, any person who ceased to be a member 1 year prior to the commencement of winding up is also a contributory.
161. Registrar may petition for winding up III the following circumstances : -
162. If default is made in delivering statutory report or holding the statutory report.
163. If the company does not commence its business within one year from its incorporation or suspends its business for a whole years.
164. If it appears, to him either from financial position of the company as disclosed in the balance sheet of the company or from the report of a special auditor or an inspector that the company is unable to pay its debts.
165. Where the Registrar is authorized by the Central Government to petition for winding up the company.
166. Where the number of members of the company fall below the statutory minimum.
167. Where it is just and equitable that the company be wound up.
168. Any person authorized by the Central Government under Section 243, if any report of an inspector appointed to investigate the affairs of the company discloses;
169. That the business of the company is being conducted to defraud its creditors or members or for a fraudulent or unlawful purpose.
170. That the persons concerned in the formation or management have been guilty of fraud, misfeasance, and it appears to the Central Government from such report so to do, then the Central Government may authorize any person including the Registrar to petition for winding up the company on the ground that it is just and equitable to do so.

171. The Official Liquidator attached to a Court where a company is already being voluntarily wound up and such voluntary winding up cannot be continued with due regard to the interest of the creditors or contributors or both.
172. Liquidator can be released from the relevant duties in a winding up proceedings;
173. The Liquidator can apply to the Court for the release of the duties once the followings have been accomplished;
174. All the assets of the company have been realized (i.e. all assets have been sold and converted to cash);
175. Investigation related to the winding up proceedings are completed;
and
176. A final dividend (if any) has been paid to the creditors to settle the debts.
177. The liquidator will send notices, together with a summary of the relevant receipts and payments in the liquidation, to the creditors and contributories of the company of the intention to apply to the Court for release from the duties as liquidator. At this point, any creditor or contributory has 21 days from the date of the notice to raise objection to the intended release of the liquidator.
178. After obtaining the order for release from the court, the liquidator will file a “Certificate to Release of Liquidator” with Registrar of Companies. The company shall be dissolved two year after the filing or the “Certificate of Release of Liquidator”.
179. AN OVERVIEW OF WINDING UP PROCEDURES :-
180. The general picture on the winding up procedures (except “voluntary winding up”) is given in the following steps :
181. Firstly, issuing a written demand for debt repayment to the target company.
182. Secondly, presenting a winding up petition to the Court and the company. .

183. Thirdly, Court hearing for the petition.
184. Fourthly, granting of winding up order by the court.
185. Fifthly, meeting to creditors and other relevant parties.
186. Sixthly, appointment of Liquidator.
187. Seventhly, realization and distribution of company's assets to the creditors.
188. Eighthly, release of duties for liquidator.
189. Lastly, dissolution of the company.

CHAPTER – II

190. MODES OF COMPULSORY WINDING

191. Winding up of a company is defined as a process by which the life of a company is brought to an end its property administered for the benefit of its member and creditors. An administrator; called the liquidator, is appointed and he takes control of the company, collects' its assets, pays debts and finally distributes are surplus among the members in accordance with their rights. At the end of winding up, the company will have no assets or liabilities. When the affairs of a company are completely wound up, the dissolution of the company takes place. On dissolution, the company's name is struck off the register of the companies and its legal personality as a corporation comes to an end.

192. The procedure for winding up differs depending upon whether the company is registered or unregistered. A company formed by registration under the Companies Act, 1956 is known as a registered company. It also includes an existing company, which has been formed and registered under any of the earlier Companies Acts.

193. 2 MODES OF COMPULSORY WINDING UP

194. A company may be wound up in any one of the following three ways namely,

195. By the court making a winding up order (compulsory winding up)

196. By passing of an appropriate resolution for voluntary winding up at a general meeting of members (Voluntary winding up)

197. By a voluntary winding up which the court which the court order to be continued subject to the supervision of the court.

198. WINDING UP BY COURT :

199. A company may be wound up at any order of the court. It is also known as "Compulsory Wining up" here, the court means "High Court". The cases in which a company may be wound up by the court are given in section 433. They are follows :-

200. Special Resolution.

201. Default in holding statutory meeting.

202. Failure to commence Business.

203. Reduction in membership.
204. Inability to pay debts.
205. Just and Equitable.
206. SPECIAL RESOLUTION :
207. If the company itself, has passed a special resolution in the general meeting to wound up its affairs. Special resolution means, resolution passed by the three-fourth of the members present.
208. A company may make a petition for its winding up, when the member of the company have so resolved by passing special resolution. However it is not very common for companies to apply for winding up order since, if desired they have only to pass a special resolution for voluntary winding up under section 484 of the act. But where the directors find the company to be insolvent due to the circumstances which ought to be investigated by the court that may file a petition for winding up order on behalf of the company. In such circumstances, a director may make a petition even without obtaining the sanction of the general meeting of the company.
209. In the case of Bombay Metropolitan Transport Corporation Ltd. V/s Employees the court said that if the company has be special resolution, resolved that it be wound up by the court. The court is however not bound to order wining up simply because the company has so resolved. The power is discretionary any may not be exercised where winding up would be opposed to the public or company's interests.
210. DEFAULT IN HOLDING STATUTORY MEETING :
211. In the case of S.R. Subramaniam V/s Drivers and conductors bus services the court said that if there is a default, in holding the statutory meeting or in delivering the statutory report to the Registrar. It may be ordered to be wound up. A company which is limited by shares, and a company limited by guarantee having share capital, is required to hold a "Statutory Meeting" or its members, within six months, and after one month, from the date of commencement of its business. A statutory report of the meeting so held shall also be forwarded to the registrar.

212. FAILURE TO COMMENCE BUSINESS :

213. If a company does not commence its business within a year from its incorporation or has suspended business for a whole year, it may be ordered to be wound up. Here against the power is discretionary and will be exercised only when there is a fair indication that there is no intention to carry on business.

214. An illustration is the decision of the Calcutta High Court in Murlidhar V/s Bengal Steamship Company the court said that to carry on its business; a company employed a steamer and two flats. The flats were acquired by the first World War and the company was not able to replace them immediately in view of the rise in prices. This resulted in suspension of business for more than a year. In a petition to wind up the company, it was held that “the suspension of business for a whole year is sufficiently accounted for and does not furnish an indication that there is no intention to carry on the business. “

215. D. REDUCING IN MEMBERSHIP :

216. If the members are reduced, in the case of a public company, below seven, and in case of a private company, below two, the company may be ordered to be wound up.

217. E. INABILITY TO PAY DEBTS :

218. A company may be ordered to be wound up if it is unable to pay its debts. Inability to pay debts is explained in Section 434. According to this section a company shall be deemed to be unable to pay its debts in the following three cases : -

219. Statutory Notice :-

220. Firstly, if a creditor to whom the company owes a sum exceeding Five Hundred Rupees has served on the company, a demand for payment and the company has for three weeks neglected to pay or otherwise satisfy him. In *Vanaspati Industries Limited V/s Firm Prabhu Dayal*, The petitioner disputed that the amount claimed was wrong. They only said that they had some kind of a counter claim, which the court found to be of a very nebulous character. All they said was that the accounts required

scrutiny and that the petitioner was not presently entitled to the sum claimed, but why it was not clearly stated. The court therefore held that there was no bona fide dispute with regard to the sum due.

221. Decreed Debt :

222. Secondly, a company shall be deemed to be unable to pay its debts if execution or other process issued on a decree or order of any court in favor of a creditor of the company is returned unsatisfied in whole or in part. Even in case of a decretal debt, question of bona fide dispute may be raised and the court may, instead of passing winding up orders, allows the petition to stand over on an undertaking by the company to file a suit for setting aside the decree. In the case of a consent decree and the failure of the company to pay according to the decree, the creditor entitled to an order ex debit justified. The question of the company having any defense and the question of examine the solvency of the company are ruled out.

223. (c) COMMERCIAL INSOLVENCY:

224. Lastly, if it is proved to the satisfaction of the court that the company is unable to pay its debts. In reference to the concept of “unable to pay debts” it has been observed though it is not necessary that there should be a statutory demand or any demand at all, the court would not be easily satisfied that a company is unable to pay its debts from the mere non-payment of a debt which was never demanded of it. In determining this, the court shall take into account the contingent and prospective liabilities of the company. A perusal of the balance sheet of the company must show that its assets are sufficient to meet its liabilities. If it is not so, the company may be regarded as commercially insolvent. In the case of Coimbatore Transport Limited V/s Governor in Council, a company was not ordered to be wound up, as it was unable to pay its taxes in spite of demands nor was it able to furnish security. Where the assets of a company were taken over by the state and in reply to the creditors’ claims and petitions the company was only telling them it was trying to retrieve those assets and there was nothing to show any benefit to the creditors in the continuity of the company, the court ordered winding up.

225. F. JUST AND EQUITABLE :

226. In the case of Gadadhar Dixit V. Utkal Flour Mills Pvt. Limited the court said that the last ground on which the court can order the winding up of a company is when the court is of the opinion that it is “just and equitable” that the company should be wound up. This gives the court a very wide discretionary power to order winding up whenever it appears to be desirable. The court may give due weight to the interest of the company, its employees, creditors and shareholders and general public interest should also be considered.

227. It is not possible to categorize facts that render it just and equitable to wind up a company. But the circumstances in which the courts have in past dissolved companies on this ground can be resolved into general categories, which are as under: -

228. Deadlock:-

229. Firstly, when there is a deadlock in the management of a company, it is just and equitable to order winding up. But this clause should not be invoked in cases where the only difficulty is the difference of view between the majority directorate and those representing the minority.

230. Loss of Substratum:-

231. Secondly, it is just and equitable to wind up a company when its main object has failed materialize or it has lost its substratum. A good illustration is German Date coffee co re, a company was formed for the purpose of manufacturing coffee from dates under a patent which was to be granted by the Government of Germany and also for working other patents of similar kind. The German patent was never granted and the company embarked upon other patents but on the petition of a shareholder, it was held that the substratum of the company had failed and it was impossible to carry out the objects for which it was formed and therefore, it was just and equitable that the company should be wound up.

232. Losses:-

233. Thirdly, it is considered just and equitable wind up a company when it cannot carry on business except at losses. But a mere apprehension on the part of some shareholders that the assets of a company will be frittered away and that loss instead of gain will result has been held to be no ground.

234. Oppression of Minority:-

235. Fourthly, it is just and equitable to wind up a company where the principal shareholders have adopted an aggressive or oppressive or squeezing policy towards the minority. The decision of the Madras High Court in R Sabapathi Rao V. Sabapathai Press Ltd is an illustration in point. The Court observed where the directors of a company were able to exercise a dominating influence on the management of the company and the managing director was able to outvote the minority of the shareholders and retain the profits of the business between members of the family and there were several complaints that the shareholders did not receive a copy of the balance sheet nor was the auditor's report read at the general meeting, dividends were not regularly paid and the rate was diminishing that constituted sufficient ground for winding up.

236. Fraudulent Purpose:-

237. It is just and equitable to wind up a company if it has been conceived and brought forth in fraud or for illegal purpose. Thus in universal Mutual aid and poor houses association v thopa naidu the Madras High Court observed, where the main object of a company is the conduct of a lottery the mere fact that some of its objects were philanthropic will not prevent the company from being ordered to be wound up as being one formed for an illegal purpose.

238. Incorporated or quasi partnership:-

239. It has been observed that there is little in common between the giant corporation and the family or one-man company. To apply the same legal requirements to such different organizations is productive of inconvenience and injustice. But even in matters in which the act treats them alike the courts have had to distinguish them. One such matter is the interpretation of the just and equitable clause in reference to the winding up of a small private company.
240. The case of Yenidje Tobacco Co Ltd is itself an application of the partnership principles for the company in the case was ordered to be wound up not merely because of the deadlock between the two member directors because they had forfeited mutual confidence beyond repair.
241. According to Lord Wilberforce a private company can be treated as an incorporated partnership if it possesses one or probably more of the following elements:
242. An association formed or continued on the basis of a personal relationship involving mutual confidence this element will often be found where a pre existing partnership has been converted into a limited company.
243. An agreement or understanding that all or some (for there must be sleeping members) of the share holders shall participate in the conduct of the business and restriction on the transfer of the members interest in the company so that if confidence is lost or one member is removed from management he can. Take out his stake and go elsewhere.
244. In Atul Drug House Ltd the Gujarat High Court suggested that the partnership analogy will apply only when a private company is a domestic concern. The court accordingly refused to apply the analogy to a private company whose shares were held by two different families. The decision seems to be somewhat unreal for even a partnership may consist of different families.
245. Public Interest:-

246. Winding up can also be ordered under this section when public interest demands it. A type of conduct which comes in conflict with public interest is indicated in a court of appeal decision in England. The company in question had no proper records, it is pretended to be an impartial adviser in matters of investment when in fact it was only a share vending company the American companies in which the clients were such companies in which the clients were advised to invest their moneys were such whose share could not be easily traded and the company was also violating its investment agreement. The court was of the view that public interest demanded winding up of a company which was wasting the capital resources of the country.
247. It was not material that the company had already suspended its business because if the company was permitted to remain alive it may again start befooling small investors.
248. An order of winding up may be refused when it would operate against public interest.
249. Eligibility for Petition [Section 439]:
250. An application to the court for the winding up of a company is made by a petition. A petition may be presented by anyone of the following:-
251. Petition by Company:-
252. The company may itself present a petition for winding up. Petition by the company will be particularly necessary when the only ground for winding up is that the company has passes a special resolution to that effect. There must be a valid resolution to enable the company to take this step.
253. Where for example in Patiala Banaspati Company, an application for winding up of a company was made by the Managing Director of the company, Rejecting the petition the court said the petition by the company must have behind it the decision of the general meeting. The managing director or directors cannot constitute the company for the purpose.

254. Creditors' Petition:-

255. A creditor may apply for winding up. The words "creditor" includes a secured creditor, debenture-holder and a trustee for debenture-holders. Accordingly, "a secured creditor is as much entitled as of right to file a petition as an unsecured creditor."

256. But where a petition is brought by a contingent or prospective creditor, it shall not be admitted unless the leave of the court is obtained for its admission. Such leave is not to be granted unless the court is satisfied that there is a prima facie case for winding up the company and reasonable security for costs has been given.

257. Sometimes a creditor's petition is opposed by other creditors. In such cases, the court may ascertain the wishes of the majority of the creditors. But their opinion does not bind the court. The question will ultimately depend upon the state of the company. If the company is commercially insolvent and the object of trading at a profit cannot be attained, winding up order would follow as a matter of course.

258. A creditor has a right to a winding up if he can prove that he claims an undisputed debt and that the company has failed to discharge it. The word 'creditor' includes secured creditor, debenture holder and a trustee for debenture holder. Winding up is equally good whether it is obtained by secured or unsecured creditor. It is not even necessary for a secured creditor to apply that he should be giving up his security. But it shall not admit unless the leave of the court is obtained for its admission. A creditor petition is generally based on the ground that there is unable to pay its debt. He will not ordinary be heard to urge that a winding up order should be made because the substratum of the company is gone which is usually the proper concern of the company shareholder.

259.

260. On the commencement of the winding up of a company, its shareholders are called contributories.
261. A 'contributory' means any person liable to contribute to the assets of a company in the event of its being wound up. Except for this purpose, the term contributory includes holder of fully paid shares.
262. A contributory however may petition
263. On the ground that the number of members is reduced below the statutory minimum of seven members in case of public company and two in case of private company.
264. On any other ground if the shares in respect of which he is contributory or some of them were originally allotted to him or have been held by him and registered in his name for at least six out of the 18th months proceeding the commencement of the winding up or have devolved upon him through the death of the former holder.
265. Thus in *Re Gattapado Ltd.*, a transfer through executed and stamped in June 1967 were presented winding up petition in Dec., 1968 held the petition was not valid since she not held shares for six months as required by the Act. A holder of full paid shares is a contributory for the purpose of petitioner not because he is liable to contribute but he because he may have an interest in the assets in a winding up. In *Re Othry Construction Co.*, Buckley J., observed in my judgment it remains a rule of a court that where a fully paid shareholder petition for compulsory winding up he must show on the face of his amongst the shareholder". But in India this judgment is not applicable in view of a company section 493 (3) "A contributory shall be entitled to present a petition for winding up a company notwithstanding that he may be the holder of fully paid up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholder after the satisfaction of the liabilities".
266. REGISTRAR
267. The registrar may file a petition where
268. default is made in delivering the statutory report to him or in holding the statutory meeting.

269. The company has not commenced its business within a year from its incorporation.
270. The number of its member has fallen below the statutory minimum.
271. The financial condition of the company as disclosed in the balance sheet or from the report of a special auditor appointed u/s. 235 to 237 it appears that it is unable to pay its debts.
272. It is a just and equitable that the company be wound up.
273. There has arisen a default contemplated u/s. 433.
274. Notice that, petition on ground of default in delivering the statutory report or holding the statutory meeting cannot be presented before the expiration of 14 days after the last days on which the statutory meeting ought to have been hold. 444
275. OFFICIAL LIQUIDATOR'S PETITION
276. An official liquidator may present a petition for winding up by the court where a company is being wound up voluntarily or subject to the supervision of the court. The court however shall not make a winding up order unless it is satisfied that the voluntarily winding up or winding up subject to the supervision of the court cannot be continued with due regard to the interest of the creditors or contributors or both.
277. Section 448 of the Act specifies that there shall be attached to each High court an official liquidator appointed by the Central government, who ordinarily shall be the whole time officer.
278. In case K. Satish Kumar v. Official Liquidator, has held that a company cannot direct official liquidator to perform acts not contemplated for him as the person in-charge of liquidator proceeding. Once liquidation commences (which depends upon applicable law, but will generally be when the petition was originally presented, and not when the court makes the order), dispositions of the company's property are generally void and litigation involving the company is generally restrained. Upon hearing the application, the court may either dismiss the petition, or make the order for winding-up. The court may dismiss the application if the petitioner unreasonably refrains from an alternative course of action. The court may appoint an official receiver, and one or more liquidators, and has general powers to enable rights and

liabilities of claimants and contributories to be settled. Separate meetings of creditors and contributories may decide to nominate a person for the appointment of liquidator and possibly of supervisory liquidation committee.

279. Power of the Court (Section 443):-

280. The court may pass anyone of the following orders on hearing the winding up petition:

281. Dismiss it, with or without costs

282. Make any interim order, as it thinks fit, or

283. Pass an order for winding up of the company with or without costs.

284. Consequences when a court passing an order for winding up

285. If the court is satisfied, that sufficient reasons exist III the petition for winding up, then it will pass a winding up order. Once the winding up order is passed, following consequences follow:

286. Court will send notice to an official liquidator, to take charge of the company. He shall carry out the process of winding up, (Section 444)

287. The winding up order, shall be applicable on all the creditors and contributories, whether they have filed the winding up petition or not.

288. The official liquidator is appointed by Central Government (Section 448)

289. The company shall relevant particulars, relating to, and assets; cash in hand; bank balance, liabilities, particulars of creditors etc, to the official liquidator. (Section 454)

290. The official liquidator shall within six months, from the date of winding up order, submit a preliminary report to the court regarding:

291. Particulars of Capital
292. Cash and negotiable securities
293. Liabilities
294. Movable and immovable properties
295. Unpaid calls, and
296. An opinion, whether further inquiry is required or not
(+55)
297. STAY ORDER:
298. The court may pass anyone of the following orders on hearing the winding up petition:
299. Dismiss it, with or without costs
300. Make any interim order, as it thinks fit, or
301. Pass an order for winding up of the company with or without costs.
302. DISSOLUTION OF COMPANY (Section 481):-
303. Finally the court will order for dissolution of the company, when:
304. The affairs of the company are completely wound up, or
305. The official liquidator is unable to carry on the winding up procedure for want of funds.
306. APPEAL (Section 483):-
307. An appeal from the decision of court, will lie before the court, before whom, appeals lie from any order or decision of the former court in cases within it's ordinary jurisdiction.
308. Power of the Liquidator:
309. The powers of the liquidator are laid out under section 231 of the 1963 Companies Act as amended by Section 124 of the 1990 Act.

310. The liquidator in a winding up by the court shall have power, with the sanction of the court or of the committee of inspection
311. To bring or defend any action or other legal proceeding in the name and on behalf of the company;
312. To carry on the business of the company so far as may be necessary for the beneficial winding up thereof;
313. To appoint a solicitor to assist him in the performance of his duties;
314. To pay any classes of creditors in full;
315. To make any compromise or arrangement with creditors or persons claiming to be creditors or having or alleging themselves to have any claim present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;
316. To compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.
317. The Liquidator of a company shall not sell by private contract a non-cash asset of the requisite value to a person who is, or who, within three years prior to the date of commencement of the winding-up, has been, an officer of the company unless the liquidator has given at least 14 days notice of his intention to do so to all creditors of the company who are known to him or who have been intimated to him.
318. The liquidator in a winding up by the court shall have power
319. To sell the real and personal property and things in action of the company by public auction or private contract, with power to transfer the whole thereof to any person or company or to sell the same in lots and for the purpose of selling the company's land or any part thereof to carry out such sales by fee farm

grant, sub fee farm grant, lease, sublease, or otherwise, and to sell rent reserved on any such grant or any reversion expectant upon the determination of any such lease;

320. To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal:

321. Where any contributory has been adjudged bankrupt or has presented a petition for arrangement with his creditors in pursuance of the Bankruptcy Acts, to prove, rank and claim in the bankruptcy or arrangement for any balance against his estate, and to receive dividends in the bankruptcy or arrangement in respect of that balance, as a separate debt due from the bankrupt or arranging debtor, and ratable with the other separate creditors.

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

323. To raise in the security of the assets of the company any money requisite;

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

325. To give security for costs in any proceedings commenced by the company or by him in the name of the company;

326. To appoint an agent to do any business which the liquidator is unable to do himself;

327. To do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

328. The exercise by the liquidator in a winding up by the court of the powers conferred by this section shall be subject to the control of the court, and any creditor or contributory may apply to the court in relation to any exercise or proposed exercise of any of those powers.
329. The Court may provide by any order that the liquidator may, where there is no committee of inspection, exercise any of the powers mentioned above without the sanction or intervention of the court.
330. VOLUNTARY WINDING UP:-
331. A company may be wound up voluntarily at any time in the following two ways:
332. By passing a special resolution-
333. The company has to call a general meeting of the shareholders and pass a special resolution for the winding up of the company, by advertising it in the local newspapers.
334. By ordinary resolution-
335. Where the articles provide for a period on expiry which the company is to wound up and that period has expired, or for a contingency on the happening of which the company is to be dissolved and that contingency has happened, winding up may be commenced with an ordinary resolution {Section 484}.
336. Within 14 days the resolution should be advertised III the Official Gazette and in a newspaper circulating in the district of the registered office of the company {Section 485}. Winding up commences from the date of resolution {Section 486}. The corporate status and power of the company shall continue till the company is completely dissolved, but it shall stop its business, except so far as may be necessary for beneficial winding up {Section 488}.
337. Declaration of solvency-
338. If a declaration of solvency is made in accordance with the provisions of the Act, it will be members' winding up. If the directors are not able to pay the debts within the specified period, the liquidator shall call a meeting of the creditors and it then becomes the creditors' winding up [Section 495 and Section 498].

339. Kinds of Voluntary Winding Up: It is of two kinds, namely-
340. MEMBERS' VOLUNTARY WINDING UP
341. CREDITORS' VOLUNTARY WINDING UP
342. MEMBERS' VOLUNTARY WINDING UP-: In case of a company, which is solvent and able to pay its liabilities in full and which desires to be wound up voluntarily, the majority of its directors at a meeting of the Board must make a declaration of solvency, verified by an affidavit stating that in their opinion, the company will be able to pay its debts in full within such period, not exceeding 3 years from the commencement of the winding up as may be specified in the declaration. Such a declaration must be made within 5 weeks, immediately preceding the date of the passing of the resolution for winding up the company and be delivered to the Registrar for registration before that date.
343. The declaration must embody a statement of the company's assets and liabilities as at the practicable date before the making of the declaration. Any director, making a false declaration, shall be criminally liable to imprisonment as well as with fine extending up to Rs. 50,000.
344. The company must appoint liquidators for the purpose of winding up and fix their remuneration at a general meeting. On the appointment of the liquidators, the Board of Directors, managing director and manager of the company cease to have any management power. The liquidator may transfer or sell the assets of the company and payoff its liabilities. The Official Liquidator makes a report that the affairs of the company have been conducted in a manner, prejudicial to the interest of its members or to public interest; the court may direct the Official Liquidator to make further investigation of the affairs of the company. On receipt of the investigation report, the Court may make an order of dissolution or may make such order as it deems fit and proper in the given circumstances.
345. The Procedure shall be carried out by the Company.
346. The company shall appoint one or more liquidators, in a general meeting, who shall look after the affair of winding up procedure, and distribution of assets. [Section 490 (2)] The company shall also give notice of appointment of liquidator to the

registrar within ten days of appointment (Section 493). Once the company has appointed liquidator, the powers of the Board of Directors, Managing Director, and Manager, shall cease to exist. (Section 491). The Liquidator is generally given a free hand, to carry out the winding up procedure, in such a manner, as he thinks best in the interest of creditors, and company. In case, the winding up procedure, takes more than one year, then liquidator will have to call a general meeting, at the end of each year, and he shall present, a complete account of the procedure, and position of Liquidator (Section 496), when affairs of the company are fully wound up.

347. The Liquidator shall take the following steps when affairs of the company are fully wound up : (Section 497)
348. Call a general meeting of the members of the company, and lay before it, complete picture of accounts, winding up procedure and how the properties of company are disposed of.
349. The meeting shall be called by advertisement, specifying the time, place and object of the meeting.
350. The Liquidator shall sent to , the Registrar and Official Liquidator copy of account, within one week of the meeting.
351. If from the report, official Liquidator comes to the conclusion, that affairs of the company are not being carried in manner prejudicial to the interest of its' members, or public, then the company shall be deemed to be dissolved from the date of report to the Court.
352. However, if the Official Liquidator comes to a finding, that affair have been carried in a manner prejudicial to interest of member or public, then court may direct the liquidator to investigate furthers.
353. CREDITORS' VOLUNTARY WINDING UP-:
354. Where the company is not solvent or where the declaration of solvency of the company is not made and delivered to the Registrar in a voluntary winding up, it amounts to creditors' voluntary winding up. In this case, all the provisions of a members' voluntary winding up apply except that instead of the members, it is the creditors, who appoint the Liquidator, approve the accounts and regulate the winding

up proceedings. The creditors may appoint a Committee of Inspection, consisting of not more than 5 creditors in order to regulate and supervise the winding up proceedings. The court may appoint the Official Liquidator or any other person as Liquidator where the appointed Liquidator is not acting.

355. It may remove the Liquidator and appoint the Official Liquidator or any other person as Liquidator on justifiable cause being shown. On an application of the Liquidator or contributory or creditor, it may determine any question, arising in the winding up of a company and it may exercise, as respects the enforcing of calls, the staying of suits or other legal proceedings or any other matter, all or any of the powers which the Court might exercise if the company were being wound up by the Court. The court can set aside any attachment, distress or execution started against the assets of the company after the commencement of the winding up on such terms as it thinks fit on application made by the liquidator, creditor or contributory if the Court thinks fit. Company in the general meeting in which resolution for winding up is passed and the creditors in their meeting, appoint Liquidator. They may either agree on one Liquidator, or if two names are suggested, then liquidator appointed by creditor shall act.

356. The remuneration of Liquidator shall be fixed by the creditors, or by the court. On appointment of Liquidator, all the power of Board of Directors shall cease. In case, the winding up procedure, takes more than one year, then he will have to call a general meeting, and meeting of creditors, at end of each year, and he shall present, a complete account of the procedure, and the status / position of liquidation. When affairs of the company are fully wound up.

357. Power of the Liquidator in voluntary winding up

358. The powers of the Liquidator are laid out under Section 231 of the 1963 Companies Act as amended by Section 124 of the 1990 Act. The powers of the liquidators in voluntary winding up are just the same as those of the Official Liquidator in a winding up by the Court. There is, however, this difference that in

cases where the Official Liquidator has to obtain the sanction of the Court, the Liquidator in voluntary winding up shall have to obtain the sanction of the court, the Liquidator in voluntary winding up shall have to obtain the sanction of the court, or of the committee of inspection or, in its absence, of the creditors. In addition to those powers, the liquidator shall have the following powers:

359. The power of the court of settling the list of contributories.
360. The power of the court of making calls. Sanction of the court is not necessary. His right to make a call is not affected by the fact that the company had itself made a call which had become time-barred.
361. The power of calling general meetings of the company.
362. A voluntary liquidator is not, speaking strictly, an officer of the company, but even so he is in the position of an officer because he takes over the management of the company from its directors. He is thus entitled to relief under Section 633 if the conditions are satisfied.
363. The liquidator shall take the following steps, when affair of the company are fully wound up:
 364. Call a general meeting, and meeting of creditors, and lay before it, complete picture of accounts, winding up procedure and how the properties of company are disposed of.
 365. The meeting shall be called by advertisement, specifying the time, place and object of the meeting.
 366. The liquidator shall send to the Registrar and official liquidator copy of account, within one week after the meeting.
 367. Of from the report, official liquidator comes to the conclusion, that affairs of the company are not being carried in manner prejudicial to the interest of its' members or public, then the company shall be deemed to be dissolved, from the date of report to the court.

368. However, if official liquidator comes to a finding, that affairs have been carried in a manner prejudicial to intent of members or public, then court may direct the liquidator to investigate further.

369. Distribution of property of company in voluntary winding up [both members' and creditors' voluntarily winding up]-

370. Once the company is fully wound up, and assets of the company sold or distributed, the proceedings collected are utilized to pay off the liabilities. The proceedings so collected shall be utilized to pay off the creditors in equal proportion. Thereafter any money or property left, may be distributed among members according to their rights and interests in the company.

371. WINDING UP SUBJECT TO SUPERVISION OF COURT

372. Winding up subject to supervision of court, is different from "Winding Up By Court."

373. Here the court only supervise the winding up procedure. Resolution for winding up, is passed by members in the general meeting. It is only for some specific reasons, that court may supervise the winding up proceedings. The court may put up some special terms and conditions also. However, liberty is granted to creditors, contributories or other to apply to court for some relief. (Section 522)

374. After a company has passed a resolution for voluntary winding up the court may make an order that the voluntary winding up shall continues but subject to supervision of the court. The extent of supervision is to be determined by the court. The court may give such liberty to the creditors, contributories or others to apply to the court as it thinks just. The court may also appoint an additional liquidator or liquidators and may according to exigencies remove any liquidator and fill any vacancy occasioned by the removal or by death or resignation. A liquidator so appointed shall have the same powers be subject to the same obligations and in all respects stand in the same position as if he had been appointed in a ordinance with the provision of the act relating to the appointment of liquidator in a voluntary winding up subject however to any restrictions the court may impose.

375. The court may also appoint liquidators, in addition to already appointed, or remove any such liquidator. The court may also appoint the official liquidator, as a liquidator to fill up the vacancy. Liquidator is entitled to do all such things and acts, as he thinks best in the interest of company. He shall enjoy the same powers, as I the company is being wound-up voluntarily. The court also may exercise powers to enforce calls made by the liquidators, and such other powers, as if an order has been made for winding up the company altogether by court. (Section 526)

376. CHAPTER - III

377. PROCEDURE OF COMPULSORY WINDING UP

378. An overview of winding-up procedures:
379. The general picture on the winding up procedure (except "voluntary Winding up") is given in the following steps;
380. Firstly, issuing a written demand for debt repayment to the target company.
381. Secondly, presenting a winding-up petition to the Court and the company.
382. Thirdly, court hearing for the petition.
383. Fourthly, granting of winding up order by the court.
384. Fifthly, meeting of creditors and other relevant parties.
385. Sixthly, appointment of liquidator.
386. Seventhly, realization and distribution of company's assets to the creditors.
387. Eighthly, release of duties for liquidator.
388. Lastly, dissolution of the company.
389. Procedure of winding up by Court:
390. The central government may attach to each high court an official liquidator and the official receiver attached to a district court or any person may be appointed official liquidator attached to the district court.
391. As soon as a winding up order is made, the official liquidator becomes the liquidator of the company. The court may also appoint a provisional liquidator after a petition is presented but before making a winding up order. Before making such appointment, the court should give reasonably opportunity to the company to make its representation.
392. The appointment of a provisional liquidator is made before the order of winding up.

393. The main purpose of a liquidation where the company is insolvent is to collect in the company's assets, determine the outstanding claims against the company, and satisfy those claims in the manner and order prescribed by law.
394. The liquidator must determine the company's title to property in its possession. Property which is held by the company or trust for third parties will not form part of the company's assets available to pay creditors.
395. Before the claims are met, secured creditors are entitled to enforce their claims against the assets of the company to the extent that they are subject to a valid security interest. In most legal systems, only fixed security takes precedence over all claims; security by way of floating charge may be postponed to the preferential creditors.
396. Claimants with non-monetary claims against the company may be able to enforce their rights against the company. For example, a party who had a valid contract for the purchase of land against the company may be able to obtain an order for specific performance, and compel the liquidator to transfer title to the land to him, upon tender of the purchase price.
397. Statement of affairs (Section 454)
398. Within twenty-one days of the date of the winding up order or where a provisional liquidator is appointed from the date of that appointment a statement as to the affairs of the company has to be submitted to the official liquidator.
399. The statement has to be submitted and verified by the director manager secretary or other chief officer of the company.
400. The statement should show the following particulars:-
401. The asset of the company showing separately cash in hand and at bank and negotiable securities.
402. Its debts and liabilities.
403. Its names and addresses of the company are creditors indicating the amount of secure or unsecured debts.

404. 4. The debts due to the company and the names and addresses of the persons from whom they are due and the amount likely to be realized.
405. 5. Such other information as may be required.
406. Report by Official Liquidator
407. As soon as practicable after receiving this statement but within six months of the order, the official liquidator is required to submit a preliminary report to the court showing :-
408. The amount of issued and paid up capital and the estimated amount of assets and liabilities.
409. If the company has failed the causes of the failure and
410. Whether in his opinion further inquiry is desirable as to any matter relating to the promotion formation or failure of the company or the conduct of its business.
411. Custody of Company's Property
412. The liquidator including the provisional liquidator has to take into his custody or under his control all the property, effects and actionable claims to which the company is or appears to be entitled. Such property can be recovered with the order of chief presidency magistrate or district magistrate.
413. Power of Liquidator (Section 475)
414. APPOINTMENT OF LIQUIDATOR
415. As soon as the winding up order is passed, the official liquidator attached the High court or district court becomes the liquidator of the company. The official liquidator conducts winding up and performs such other duties as the tribunal may impose. The court may also appoint a provisional liquidator after a petition is presented before making a winding up order. Before making such appointment, the court should give reasonable opportunity to the company. According to section 454, said that within 20 days of appointment from the date of appointment, a statement as to the affairs of the company has to be submitted to the official liquidator. After the

submission of statement of affair, the official liquidator bound to give report on company financial situation within six months.

416. The liquidator shall have powers with the sanction of the court:
417. To institute or defend any suit, prosecution or other legal proceeding, civil or criminal in the name and on behalf of the company.
418. To carry on the business of the company so far as may be necessary for the beneficial winding up of a company.
419. To sell the immovable and movable property and actionable claims of the company he may make the sale by public auction or by private contract and shall have the power to transfer the whole in one lot or in parcels.
420. To raise on the security of the assets of the company any money requests.
421. To do all such other things as may be necessary for winding up the affairs for the company and distributing its assets.
422. Committee of Inspection (Section 464)
423. The court may order the appointment of a committee of inspection to act the with the liquidator has then within two months to summon a meeting of the creditors for determining the membership of the committee. Within fourteen days of the creditors meeting, he shall call a meeting of the contributories to consider the creditors meeting, he shall call a meeting of the contributories to consider the creditors suggestions with respect to the membership of the committee. In case, there is a conflict of opinion the liquidator should apply to the court for a final decision.
424. The committee shall not consist of more than twelve members. It shall have the right to inspect the liquidator accounts. The committee may meet at such times as it may from time to time appoint. The liquidator or any member of the committee may call a meeting as and when he thinks necessary.
425. Payment of Liabilities

426. The important duty of the liquidator is to pay off the company's liabilities. All persons who are entitled to receive money from the company have the right to claim their respective amounts from the liquidator. Section 528 declares so clearly that in every winding up all debts payable on a contingency and all claims against the company present or future, certain or contingent ascertained or sounding only in damages shall be admissible to proof against the company. A just estimate shall have to be made so far as possible of the value of such debts or claims as are subject to any contingency or may sound only in damages or for some other reason may not bear a certain value. But where the company in liquidation is insolvent, insolvency rules will apply and only such claims shall be provable against the company as are provable again". An insolvent person.

427. THE RIGHT OF SET OFF (S.469)

428. Where apart from his liability as a shareholder any other money is due from a contributory to the company, the court may order him to pay the same. Suppose the company also owes some money to such contributory. Does he have the right to claim that the two debts should be mutually set off? Not in all cases but a limited right to set off is given by the act in the following cases

429. In the case of unlimited company, a contributory may set off his debt against any money due to him from the company on any independent dealing or contract with the company. But no set off is allowed for any money due to him as member of the company in respect of any dividend or profit.

430. If, in the case of a limited company there is any director managing agent, secretaries and treasure or manager whose liability is unlimited, he shall have the same right of set off.

431. In the case of any company, where limited or unlimited when all the creditors have been paid in full any money in due on any account whatever to a contributory from the company may be allowed to him by set-off against any subsequent call. This is the one case where set-off is allowed for money due on call.

432. Preferential Payments (Section 530)

433. The first payments to be made are called preferential payments. They have to be paid in priority to all other debts. Such payments are listed below:-
434. All revenues taxes and rates due to the central or a state government or to a local authority.
435. All wages or salary of any employee in respect of services rendered to the company.
436. All secured holiday remuneration becoming payable to any employee on the termination of his employment before or by the effect of the winding up.
437. All amounts due in respect of any compensation or liability for compensation under the workmen's compensation act 1923 in respect of death of any employee of the company.
438. The expenses of any investigation held in pursuance of section 235 or 237 as far as they are payable by the company.
439. Company wound up on account of insolvency (Section 529):-
440. When a company is being wound up on account of its insolvency, section 529 comes into play. It provides for the application of insolvency laws to the payment of the debts of an insolvent company. With the globalization of economy, the issues relating to corporate insolvency have assumed greater significance and a need has been felt for long for bringing about reforms in this branch of law. Moreover, with the Indian Economy having been opened up for investment by foreign creditors and internationally, the Indian corporate also making investments in companies outside, the realm of cross border insolvency law has multiplied colossally.
441. In the year 1999, the government of India set up a High Level Committee headed by Hon'ble Justice V.B. Balakrishna Eradi, a superannuated judge of Supreme Court of India for remodeling the existing laws relating to insolvency and winding up of companies and bringing them in time with the international practices in this field.
442. Recommendation of the Committee:-

443. The committee recommended that:
444. The jurisdiction, power and authority relating to winding up of companies should be vested in a National Company Law Tribunal which should be vested with the functions and power with regard to rehabilitation and revival of sick industrial companies, a mandate presently entrusted with BIFR under SICA.
445. The 1956 Act should be suitably amended to take the power away from High Court and the transfer of the pending winding up proceedings to the Tribunal.
446. The adoption of the international trend in law relating to corporate bankruptcy, namely, sell the assets first as quickly as possible, and relegate to a later stage the adjudication of claims and distribution of proceeds.
447. An in depth assessment of the office of Official Liquidators, in view of inadequate and incompetent manpower and absence of latest office equipments and technologies.
448. A liquidation committee consisting of creditors of the company on the lines of Section 14 of the Insolvency Act, 1986 of UK be set up to assist the Liquidator.
449. The repeal of SICA and recommended the ameliorative, revival and deconstructionist procedures obtaining under it to be reintegrated in a suitably amended form in the structure of the 1956 Act except that there is no stand still provision like Section 22 of SICA.
450. Part VII of the Companies Act, 1956 should incorporate a new substantive provision to adopt the UNCITRAL Modal Law as approved by the United Nations and the Modal Law itself may be incorporated as a Schedule to the Companies Act, 1956, which shall apply to all cases of Cross-Border insolvency.
451. Adopt the necessary principles enunciated under the heading “Legal Framework”, “Orderly and Effective Insolvency Procedures- Key Issues”, to bring the provision of the Companies Act, 1956 in line with international practices.

452. The Committee completed its work and submitted its report to the Central Government in the year 2000. In August 2001, the Companies (Amendment) Bill, 2001 and the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001 were introduced in the Parliament of India. The Bills, if passed in their present form will bring the curtains down on the Sick Industrial Companies (Special Provisions) Act, 1985 and will restructure the Companies Act, 1956 in a big way leading to the new regime of tackling Corporate rescue and insolvency procedure in India. With a view to creating confidence in the minds of investors, creditors, labor and shareholders.

453. Scheme of Insolvency Laws:-

454. The stream of insolvency laws can be segregated chiefly under two heads: Personal Insolvency, which deals with individuals and partnership firms governed by Provisional Insolvency Act, 1920 and Presidency Towns Insolvency Act, 1908 and Corporate Insolvency, whose consequence is winding up of the company under the Companies Act, 1956. In the process of liberalization, deregulation and adopting market economy, India is experiencing a massive growth of retail loans to individuals, housing loans and credit card users. On account of phenomenal rise in retail, lending it will be necessary in the near future to give a re-look at the personal insolvency laws to ensure that any insolvency proceedings against individuals are also expeditiously decided.

455. However, the basic tenets of corporate insolvency can be classified as: restoring the debtor company to profit able trading where it is practicable; to maximize the return to creditors as a whole where the company itself cannot be saved; to establish a fair and equitable system for the ranking of claims and the distribution of assets among creditors, involving a redistribution of rights; and to provide a mechanism by which the causes of failure can be identified and those guilty of mismanagement brought to book; placement of the assets of the company under external control; substitution of collective action for individual pursuits; avoidance of certain transactions and fraudulent conveyances, dissolution and winding up etc.

456. In context of corporate laws, the work “insolvency” has neither been used nor defined. However, Section 433(e) covers a company, which is “unable to pay its debts”, and thus constitutes a ground for winding up of the company. Inability to pay its debts would be a case where, a company’s entire capital is lost in heavy losses and no accounts are prepared and filed and no business is done for one year. In such circumstances, the Registrar of Companies makes out a case of inability to pay debts. These debts however, would only include debts, incurred after the legal incorporation of the Company. Inability to pay debts has even been amplified in Section 34 wherein, a creditor with a due of Rs. 500 or more serves a demand by registered post and the company neglects to pay, secure or compound the same in 3 weeks, in cases where the execution of a decree returned unsatisfied and also where the Court is otherwise satisfied that the company is unable to pay its debts.

457. Unclaimed dividends (Section 555):-

458. Dividends, which have not been claimed by any creditor or contributory for a period of six months, have to be deposited in the reserve banks, which may then be claimed by the person concerned with an order of the court. If they are not claimed for 15 years they merge in the general revenue of the central government. In the meantime they belong to the contributory and cannot be claimed back by the liquidator or the company, which has been revived under a scheme of compromise.

459. Priority of claims on the company’s assets:-

460. After the removal of all assets, which are subject to retention of title arrangements, fixed security, or are otherwise subject to proprietary claims of other, the liquidator will pay the claims against the company’s assets. Generally, the priority of claims on the company’s assets will be determined in the following order:

461. Firstly, the costs of the liquidation are met out of the company’s remaining assets.

462. Secondly, the preferential creditors under applicable law are paid.

463. Thirdly, in many legal systems, the claims of the holders of a floating charge will be paid; other claims may also fit into this layer.

464. Fourthly, if there is anything left, the unsecured creditors are paid out pari passu in accordance with their claims. In many jurisdictions, a portion of the assets, which would otherwise be caught by a floating charge, are reserved for the unsecured creditors.

465. In the very rare instances where the unsecured creditors are repaid in full, any surplus assets are distributed between the members in accordance with their entitlements. Having wound-up the company's affairs, the liquidator must call a final meeting of the members (if it is a members' voluntary winding up), creditors (if it is a creditors' voluntary winding up). The liquidator is then usually required to send final accounts to the Registrar and to notify the court.

466. Money Received By Liquidator (Section 553):-

467. Apart from an official liquidator, every liquidator appointed by company or court to carry on the winding up procedure, shall deposit the money is received by him in a scheduled bank, to the credit of a special banking account opened by him.

468. Winding up Procedure for Other Companies:-

469. Apart from a normal company, registered under the Companies Act, 1956, other companies as well winding up procedure for these companies are bit different from a company registered under Companies Act.

470. These companies are:-

471. UNREGISTERED COMPANIES (Sec.583):-

472. In simple words, an unregistered company is a company which is not registered or covered under provisions of companies Act, 1956. (Section 582)

473. An unregistered company cannot be wound up voluntarily, or, subject to supervision of court.

474. However, the circumstances in which an unregistered company may be wound up, are as follows:

475. If the company, is dissolved, or has ceased to carry on business, or is carrying on business only for the purposes of winding up, it's affairs.
476. If the company is unable to pay it's debts.
477. If the court is of opinion that it is just and equitable, that the company should be wound up.
478. A creditor, contributory, or company itself by filing a petition, or any person authorized by Central Govt. may institute winding up proceedings.
479. In respect to other aspects, the same provisions and procedure shall follow, as in winding up of registered company.
480. A foreign company, carrying on business in India, which has been dissolved, may be wound up, as unregistered company.
-
481. FOREIGN COMPANY (Sec.583): -
482. A foreign company, is a company which is incorporated outside India, and having a place of business in India.
483. Winding up of such companies is only limited to the extent of its assets in India. In respect of assets and business carried outside India, Indian Courts has no jurisdiction.
484. Winding up of a foreign company can only be made through court.
485. Even if the company had been dissolved or ceased to exist in the country of its incorporation, winding up order in this country can be made.
486. Even if a foreign company has been wound up according to foreign law, the courts in India still protect the Indian Creditors. The surplus assets, after paying the creditors, should be distributed among the shareholders equally in the same proportion, as the assets to the total issued and paid up capital.

487. Pendency of a foreign liquidation does not affect the jurisdiction to make winding up order. The assets can be of any nature and do not take to be in the ownership of the company and can come from any Source [(1944)2 All.E.R. 556]

488. As, for persons claiming to be creditors, their presence, it is sufficient. It is not required to show that company carried on business operations from any place of business in India.

489. GOVERNMENT COMPANY (Sec.583): -

490. A Government Company means a company, in which 51 % or more of shares are held by a Govt. Company. Winding up procedure for a government company registered under the companies Act, 1956, is nearly similar to normal winding up procedure.

491. However, Courts take interest of public into consideration and priority is given to them as the main function of the Govt. Company is to provide services to Public.

492. After analyzing and observing various legal propositions and situations, it is found that the right to apply for winding up is the creature of statute and not of contract, and the winding up orders passed by the court are not judgments in rem. In the absence of any prohibited provisions in the Act winding up proceedings u/s 433(e), 434,439 can be allowed even if a civil suit is already pending against the debtor company. But it should be marked that the winding up proceeding are greatly affected by the facts and circumstances of a particular case. The machinery of winding-up cannot be used as a pressure tactics, where a suit has already been

instituted for recovery of debt, under such circumstances, the proceeding are in the nature of parallel proceedings in respect of the same cause of action. As a result, such course should not be considered by the court more so to avoid conflict of jurisdiction of findings by two parallel courts of competent jurisdiction. Thus at last it cansaidtha genuine case has to be made out rejecting the malafide contention, in the interest of good faith and justice.

493.

494.A.K.Majumdar, Company Law and Practice (New Delhi:Taxmann Publication co.) 2008 p.1116. (2004) 52 SCL 52.

495.(1991) 72Comp 545. Avtar Singh, Ccompany Law (Lucknow: Eastern Book Edition) 2007 p. 703.C.Krishnamoorthy v. Official Liquidator, (1998) 18 SCL 504 (Ker.).

CHAPTER - IV

Winding Up a Registered Company and anUnregistered Company

496. Winding up of a company is defined as a process by which the life of a company is brought to an end and its property administered for the benefit of its members and creditors. An administrator, called the liquidator, is appointed and he takes control of

the company, collects its assets, pays debts and finally distributes any surplus among the members in accordance with their rights. At the end of winding up, the company will have no assets or liabilities. When the affairs of a company are completely wound up, the dissolution of the company takes place. On dissolution, the company's name is struck off the register of the companies and its legal personality as a corporation comes to an end. The procedure for winding up differs depending upon whether the company is registered or unregistered. A company formed by registration under the Companies Act, 1956 is known as a registered company. It also includes an existing company, which had been formed and registered under any of the earlier Companies Acts.

497. Winding up a Registered Company

498. The Companies Act provides for two modes of winding up a registered company.

499. Grounds for Compulsory Winding Up or Winding up by the Tribunal

500. If the company has, by a Special Resolution, resolved that the company be wound up by the Tribunal. If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting. A petition on this ground may be filed by the Registrar or a contributory before the expiry of 14 days after the last day on which the meeting ought to have been held. The Tribunal may instead of winding up, order the holding of statutory meeting or the delivery of statutory report. If the company fails to commence its business within one year of its incorporation, or suspends its business for a whole year. The winding up on this ground is ordered only if there is no intention to carry on the business and the Tribunal's power in this situation is discretionary.

501. If the number of members is reduced below the statutory minimum i.e. below seven in case of a public company and two in the case of a private company. If the company is unable to pay its debts. If the tribunal is of the opinion that it is just and equitable that the company should be wound up. Tribunal may inquire into the revival and rehabilitation of sick units. If its revival is unlikely, the tribunal can order its winding up. If the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial

years If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

502. The petition for winding up to the Tribunal may be made by :-

503. The company, in case of passing a special resolution for winding up. A creditor, in case of a company's inability to pay debts. A contributory or contributories, in case of a failure to hold a statutory meeting or to file a statutory report or in case of reduction of members below the statutory minimum. The Registrar, on any ground provided prior approval of the Central Government has been obtained. A person authorised by the Central Government, in case of investigation into the business of the company where it appears from the report of the inspector that the affairs of the company have been conducted with intent to defraud its creditors, members or any other person. The Central or State Government, if the company has acted against the sovereignty, integrity or security of India or against public order, decency, morality, etc.

504. Voluntary Winding Up of a Registered Company

505. When a company is wound up by the members or the creditors without the intervention of Tribunal, it is called as voluntary winding up. It may take place by:-

506. By passing an ordinary resolution in the general meeting if :-

507. the period fixed for the duration of the company by the articles has expired; or

508. some event on the happening of which company is to be dissolved, has happened.

509. By passing a special resolution to wind up voluntarily for any reason whatsoever.

Within 14 days of passing the resolution, whether ordinary or special, it must be advertised in the Official Gazette and also in some important newspaper circulating in the district of the registered office of the company.

510. The Companies Act (Section 484) provides for two methods for voluntary winding up:-

511. Members' voluntary winding up

512. It is possible in the case of solvent companies which are capable of paying their liabilities in full. There are two conditions for such winding up:-
513. A declaration of solvency must be made by a majority of directors, or all of them if they are two in number. It will state that the company will be able to pay its debts in full in a specified period not exceeding three years from commencement of winding up. It shall be made five weeks preceding the date of resolution for winding up and filed with the Registrar. It shall be accompanied by a copy of the report of auditors on Profit & Loss Account and Balance Sheet, and also a statement of assets and liabilities upto the latest practicable date; and Shareholders must pass an ordinary or special resolution for winding up of the company.
514. The provisions applicable to members' voluntary winding up are as follows:-
515. Appointment of liquidator and fixation of his remuneration by the General Meeting. Cessation of Board's power on appointment of liquidator except so far as may have been sanctioned by the General Meeting, or the liquidator. Filling up of vacancy caused by death, resignation or otherwise in the office of
516. liquidator by the general meeting subject to an arrangement with the creditors. Sending the notice of appointment of liquidator to the Registrar. Power of liquidator to accept shares or like interest as a consideration for the sale of business of the company provided special resolution has been passed to this effect. Duty of liquidator to call creditors' meeting in case of insolvency of the company and place a statement of assets and liabilities before them.
517. Liquidator's duty to convene a General Meeting at the end of each year. Liquidator's duty to make an account of winding up and lay the same before the
518. final meeting.
519. Creditor's voluntary winding up
520. It is possible in the case of insolvent companies. It requires the holding of meetings of creditors besides those of the members right from the beginning of the process of voluntary winding up. It is the creditors who get the right to appoint liquidator and hence, the winding up proceedings are dominated by the creditors.

521. The provisions applicable to creditors' voluntary winding up are as follows:-
522. The Board of Directors shall convene a meeting of creditors on the same day or the next day after the meeting at which winding up resolution is to be proposed. Notice of meeting shall be sent by post to the creditors simultaneously while sending notice to members. It shall also be advertised in the Official Gazette and also in two newspapers circulating in the place of registered office. A statement of position of the company and a list of creditors along with list of their claims shall be placed before the meeting of creditors. A copy of resolution passed at creditors' meeting shall be filed with Registrar within 30 days of its passing. It shall be done at respective meetings of members and creditors. In case of difference, the nominee of creditors shall be the liquidator. A five-member Committee of Inspection is appointed by creditors to supervise the work of liquidator.
523. Fixation of remuneration of liquidator by creditors or committee of inspection. Cessation of board's powers on appointment of liquidator. As soon as the affairs of the company are wound up, the liquidator shall call a final meeting of the company as well as that of the creditors through an advertisement in local newspapers as well as in the Official Gazette at least one month before the meeting and place the accounts before it. Within one week of meeting, liquidator shall send to Registrar a copy of accounts and a return of resolutions.
524. Winding up an Unregistered Company
525. According to the Companies Act, an unregistered company includes any partnership, association, or company consisting of more than seven persons at the time when petition for winding up is presented. But it will not cover the following:-
526. A railway company incorporated by an Act of Parliament or other Indian law or any Act of the British Parliament;
527. A company registered under the Companies Act, 1956;
528. A company registered under any previous company laws.
529. An illegal association formed against the provisions of the Act.

530. However, a foreign company carrying on business in India can be wound up as an unregistered company even if it has been dissolved or has ceased to exist under the laws of the country of its incorporation.

531. The provisions relating to winding up of a unregistered company:-

532. Such a company can be wound up by the Tribunal but never voluntarily. Circumstances in which unregistered company may be wound up are as follows:- If the company has been dissolved or has ceased to carry on business or is carrying on business only for the purpose of winding up its affairs.

533. If the company is unable to pay its debts. If the Tribunal regards it as just and equitable to wind up the company.

534. Contributory means a person who is liable to contribute to the assets of a company in the event of its being wound up. Every person shall be considered a contributory if he is liable to pay any of the following amounts:-

535. Any debt or liability of the company;

536. Any sum for adjustment of rights of members among themselves;

537. Any cost, charges and expenses of winding up;

538. On the making of winding up order, any legal proceeding can be filed only with the leave of the Tribunal.

539. CHAPTER - V

540. AFTER EFFECTS OF WINDING UP AND IT'S SOCIAL

541. LEGAL STUDY OF PRESENT SECNARIO

542. The after effects of winding up can be divided into two classifications:
543. Legal After Effects
544. Social After Effects
545. Legal After Effects
546. Effect of winding Up on Proceedings: -
547. At any time after the presentation of a winding up petition and before a winding up order has been made, an application may be made to the court to stay or restrain pending proceedings against the company.
548. When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company except with the court's leave.
549. Effect of Winding Up on Disposition of Company Assets:-
550. Any disposition of the property of the company and any transfer of shares or alteration in the status of members of the company made after the commencement of the winding up the court is void without the court's sanction.
551. The court may allow disposal of property for continuation of business or in the ordinary course of business, which may be beneficial not only to the company but also to the body of unsecured creditors.
552. Sale of assets at full market value may also be validated; as such, a transaction does not involve dissipation of the company's assets in that the value of the assets is not reduced.
553. A disposition carried out in good faith in the ordinary course of business at a time when parties are unaware that a petition has been presented may be validated by

Court unless there were grounds for thinking that the transaction might involve an attempt to prefer the disposition.

554. Effect of winding up on Execution Process

555. After a winding up petition has been presented, no creditor is allowed to take out or continue attachment or execution proceedings against the company. A creditor must complete execution before the winding up petition has been presented. Otherwise, he cannot retain the goods. E.g., goods under a writ of seizure and sale must be seized and sold; garnishee proceedings are completed on receipt of the debt. Landlords may not distain for the debt. Landlords may not distain for the debt. Landlords may not distrain for rent after the winding up petition has been presented. However if distress proceeding completed before that date, landlords are entitled to met proceeds of sale of up to 12 months rent.

556. Effect of winding up on floating charges

557. A floating charge on the undertaking or property of the company created within 6 months of the commencement of the winding up shall, unless it is proved that the except to the amount of any case paid to the company at the time of or subsequently to the creation of and in consideration for the charge together with interest on that amount at the rate of 5% per annum.

558. Any floating charge given by the company in the 6 month period, unless the company was solvent immediately afterwards, be invalid except to the extent that it was given to secure new money. The section invalidates only the floating charge. The debt remains, but only the floating charge. The debt remains, but only as an unsecured debt.

559. The proceeds of realization of assets under a floating charge will first be used to pay certain priority claims in accordance with section 328 of the Companies Act before satisfying the claim of the floating charge.
560. Effect of winding up on secured creditors
561. The rights of the secured creditor to deal or realize his security over company assets are not affected by the winding up order. However, he is not entitled to interest on his debt if his security is not realized within 6 months of winding up or such further period as allowed by the Official Receiver.
562. Effect of Winding Up of a company after sale of immovable property in execution, but prior to transfer of such immovable property
563. Purchasers of property at a sale in execution should be aware of the risk particularly where the execution debtor whose property has been sold is a company, rather than an individual. The transfer almost invariably takes from about six to eight weeks. In the unfortunate situation that the seller, (where such a seller is a company), is liquidated prior to transfer being registered into the purchaser's name, the property sold in execution falls under the control of the Master of the High Court pending the appointment of a liquidator. The purchaser does not have an automatic right to transfer of the property.
564. However, where the seller is a private individual, whose property is sold in execution, the property vests in the Master of High Court upon the provisional sequestration of the seller, and the Sheriff is obliged to stay the execution process, unless the Court orders otherwise. The distinction between a company and an individual is that, with an individual the court may, in its discretion, allow the Sheriff to proceed with the execution and transfer the property to the purchaser, whereas in the case of a company the court does not have such discretion. This means the purchaser of a property from a company, (assuming that the liquidator elects not to continue with the transaction) will then have to prove a claim against the company in liquidation, upon which he may be awarded a dividend, if dividends are, in fact, paid.

This situation also of course carries the risk of a contribution to the costs of winding up of the company, should the hapless purchaser decide to prove his claim.

565. The distinction between the effect of a winding up of a company and a sequestration of an individual on the transfer of immovable property sold pursuant to a warrant of execution, was considered by the Supreme Court of Appeal in the matter of *Legh v Nungu Trading 353 (Proprietary) Limited & another* [2007] JOL 20696 (SCA) (“*Legh v Nungu*”).

566. In the *Legh v Nungu* matter, the appellant was a shareholder in the second respondent (the insolvent company) which was the owner of property situate in the Erkurhuleni Municipality (“the municipality”). The Insolvent company had fallen into arrears in respect of certain rates and taxes and the municipality had obtained a judgment against it and an order declaring that the property could be sold in execution. At the sale in execution, the first respondent bought the property for the sum of R100 subject to payment of arrears rates and taxes in the sum of R 3,5 million. First respondent paid 10% of the purchase price and obtained a rates clearance certificate.

567. Before the property could be transferred to the first respondent, the appellant brought an urgent winding up application in respect of the second respondent. The first respondent (the purchaser) then intervened and sought a declaratory order that, in the event that a provisional winding up order was granted, the property should be transferred to it. The court a quo granted the declaratory order that the property be transferred by the Sheriff of the Court to the first respondent by virtue of section 20(1)(c) of the Insolvency Act (Act 24 of 1936m as amended) (“the Insolvency Act”), read with section 339 of the Companies Act, Act 61 of 1973 (as amended) (“the Companies Act). Section 339 of the Companies Act is the section, which generally makes the Insolvency Act applicable in the case of companies being wound up.

568. The SCA confirmed the principle that the property of a company in liquidation falls under the control of the Master of the High Court, pending the appointment of a provisional liquidator. Thus, where property is sold in execution, and the seller is

hereafter liquidated before the transfer of such property to the purchaser, the property will fall under the control of the Master of the High Court.

569. The purchaser in the court a quo has successfully contended that in terms of section 20(1)(c) of the Insolvency Act, read with the section 339 of the Companies Act, it was entitled to registration of transfer of the property. Section 20(1)(c) of the Insolvency Act provides that: “the effect of the sequestration of the estate of an insolvent shall be.....as soon as any sheriff or messenger, whose duty it is to execute any judgment given against an insolvent, becomes aware of the sequestration of the insolvent’s estate, to stay that execution, unless the court otherwise directs” (my emphasis).

570. The question was whether this section applied in the case of the winding-up of a company. Section 339 of the Companies Act provides that, “In the winding up of a company unable to pay its debts the provisions of the law relating to insolvency shall, in so far as they are applicable, be applied mutatis mutandis in respect of a matter not specially provided for by this Act.” The main thrust of the purchaser’s argument was thus that section 20(1)(c) of the Insolvency Act was applicable to the winding up of a company by virtue of section 339 of the Companies Act.

571. The appellant however appealed against the declaratory order, and the SCA was tasked with deciding whether or not section 20(1)(c) of the Insolvency Act applied to the winding-up of a company by virtue of section 339 of the Companies Act.

572. The SCA upheld the appeal and decided that section 20(1)(c) of the Insolvency Act did not apply to the winding up of a company, holding that a reading of section 20 in its entirety clearly points to the fact that the legislature did not intend section 20 of the insolvency act to apply to winding-up of companies but to the sequestered estates of individuals. Section 361(1) of the Companies Act gives control or the assets of a company in provisional liquidation to the Master of the High Court pending the appointment of a provisional liquidator. In addition, the Court noted that section 342(1) of the Companies Act provided that the assets of a company in liquidation shall be applied towards the payment of costs of the liquidation and claims of

creditors. This would not be achieved should the transfer of the property to the first respondent be allowed. Thus section 20(1)(c) of the Insolvency Act does not find application to the Companies Act because the legislature did not intend this and it would only have applied by virtue of section 339 of the Companies Act where the matter was not specifically provided for elsewhere in the Companies Act. The court a quo had opened the door to purchases of property, bought at a sale in execution, where the seller (being a company) is subsequently liquidated, before transfer of such property, to intervene in the liquidation proceedings and request that the court allow the Sheriff to proceed with the execution and transfer the property to the purchaser. The SCA closed this door and confirmed the principle that such property belonging to the seller in provisional liquidation falls under the control of the Master the High Court pending the appointment of a provisional liquidator.

573. Had the seller in the Legh V Nungu matter been a private individual and not a company, section 20 of the Insolvency Act would have been applicable, and the purchaser could have approached the court to obtain a declaratory order, in terms of section 20(1)(c), that the sheriff proceed with the execution and transfer the property to it. Although a purchaser may be successful in picking up a bargain at a sale in execution, the identity of the execution debtor has to be borne in mind. A sale in execution is in itself a good indication that the debtor company is in financial difficulty and could possibly be liquidated. In the event, however that the company does go into liquidation before the transfer is registered, the purchaser has no remedy to approach the Court to enforce the transfer of property to it. The inquiry then moves into the realms of the election which a liquidator would have to accept the transfer of the property – if the liquidator does not do so, then the purchaser must simply join the queue of concurrent creditors of the company in liquidation.

574. Social After Effects of Winding Up and Social Legal Study:-

575. Winding up involves termination of employment: -

576. Closure of an industrial undertaking involves termination of employment of many employees, and throws them into the ranks of the unemployed and it is in the interest

of the general public that misery resulting from unemployment should be redressed. The Excel Wear case is the best example related to the above content.

577. Facts of the Excel Wear Case:-

578. In this case, four writ petitions challenging the constitutional validity of Ss. 25-0 and 25-R of the Industrial Disputes Act, 1947 (hereinafter the “Act”) were filed¹. One of the writ petitions had been filed by Excel Wear², a registered partnership firm. Excel Wear had a factory at Bombay where it manufactured garments for exports, and wherein about 400 workmen were employed. It was the petitioner’s case that the relation between the Excel Wear management and its employees started deteriorating from the year 1974 and had become worse from 1976. From Aug. 1976, the workmen become very militant, aggressive, violent, indulged in unjustifiable or illegal strikes and the labor trouble in the factory became of an unprecedented nature. Excel wear, finding it difficult, to carry n the business of the factory, served a notice on the State Government of Maharashtra, for previous approval of the intended closure of the undertaking in accordance with Section 25-0(1) of the Act. However, the State Government refused to grant the approval.

579. Another writ petition was filed by Acme Manufacturing Co. Ltd., who was obliged to decide to close down the undertaking due to huge losses incurred by them on account of low productivity, serious labor unrest and indiscipline resulting in various incidents of assaults or the like. The company, therefore, applied to the State Government of Maharashtra on May 2, 1977 under section 25-0(1) of the Act for approval of the intended closure, but the State Government refused.

580. The other two writ petitions were also of a similar nature.

581. Analysis of the JUDGEMENT delivered by the Court.

582. The main issues before the Supreme Court were 1) whether A.19 (1)(g) also included a fundamental right to close down a business? 2) And if there is such a right,

¹ The facts of these four different cases were of a similar nature

² Writ petition No. 644 of 1977

then whether the restriction imposed by Section 25-O and 25-R of the Act, which in essence required a prior approval by the government for closure of business, are reasonable or not?

583. With regards to the inherent right to carry on business

584. The Apex Court in the case relied upon the same case of M/s Hatising Mfg. Co. Ltd. V. Union of India³ and held that the right to carry on any business includes a right to start, carry on or close down any undertaking and the payment of compensation to the employees are not condition precedents to the closure of business. The court in the instant in a negative form that it is wrong to say that an employer has no right to close down a business once he starts it. If he has such a right, as obviously he has, it cannot but be a fundamental right embedded in the right to carry on any business guaranteed under Art. 19 (1) (g) of the Constitution.

585. The Court observed that the owner cannot be asked to part with them or destroy the properties and business assets invested by not permitting him to close down the undertaking. In a given case for his mismanagement of the undertaking resulting in bad relation with the labor or incurring recurring losses, the undertaking may be taken over by the State. It will be consistent with the object of making India a Socialist State. But not to permit the employer to close down is essentially an interference with his fundamental right to carry on the business.

586. Interest of the employees on closure of business:-

587. The Apex Court appreciated the fact that the employees are adversely affected and have to face a lot of hardships whenever there is any closure of business. The

³ (1960) 3 SCR 528 (AIR 1960 SC 923):- “By Art. 19 (1) (g) of the Constitution freedom of carry on any trade or business is guaranteed to every citizen, but this freedom is not absolute.” “In the interest of the general public.” Says the learned Judge, “the law may impose restrictions on the freedom of the citizens to start, carry on or close their undertakings.” This clearly indicates, and the whole ratio of the case is based upon this tooting, that the right to carry on any business: includes a right to start, carry on or close down any undertaking. It has further been pointed out on the same page that “by S. 25FFF(I), termination of employment on closure of the undertaking without payment of compensation and without either serving notice or paying wages in lieu of notice is not prohibited. Payment of compensation and payment of wages to the period of notice are not therefore conditions precedent to closure.” Referred in Excel Wear V. Union of India AIR 1979 SC 25 at p.31

court also relied upon the observations made by the Court in M/s Hatisingh Mfg. Co. Ltd. V. Union of India⁴ that “Closure of an industrial undertaking involves termination of employment of many employees, and throws them into the ranks of the unemployed, and it is in the interest of the general public that misery resulting from unemployment should be redressed ... retrenchment compensation was intended to give the workmen some relief and to soften the rigour of hardship which retrenchment brings in its wake when the retrenched workman is suddenly and without his fault thrown on the streets, to face the grim problem of unemployment.....Loss of service due to closure stands on the same footing as loss of service due to retrenchment, for in both cases, the employee is thrown out of employment suddenly and for no fault of his and the hardships which he has to face are, whether unemployment is the result of retrenchment or closure of business, the same. ”

588. In case of retrenchment, only a specified number of workmen lose their employment while in closure all the workmen become unemployed. However, the Court also held that just because the employees become unemployed, it cannot be used as a justification for not allowing the employer to close down his business when it becomes unprofitable and unpractical to run the same.

589. With regards to the constitutionality of the impugned provisions

590. The Supreme Court held Ss. 25-O and 25-R to be constitutionally invalid, in violation of A.19 (1) (g) of the Constitution. The court held that the impugned provisions constitute unreasonable restrictions on the right of closure of business, which is a part of the freedom to carry on business as guaranteed by A. 19 (1)(g) of the Constitution.

591. The Court also referred to the observations made in the case of Narendra Kumar V. Union of India⁵ that “In applying the test of reasonableness, the Court has to consider the question in the background of the facts and circumstances under which

⁴ M/s Hatisingh Mfg. Co. Ltd. V. Union of India AIR SC 923 (928)

the order was made, taking into account the nature of the evil that was sought to be remedied by such law, the ratio of the harm caused to individual citizens by the proposed remedy, to the beneficial effect reasonable expected to result to the general public. It will also be necessary to consider in that connections whether the restraint caused by the law is none than was necessary in the interests of the General Public.”

592. The Court observed that it is highly unreasonable to achieve the object of maintaining production of the commodity by compelling the employer not to close down in public interest for maintaining production. The Court also observed that in case of bona fide closures, though the reasons given by the employers are correct, adequate and sufficient, yet the permission to close might be refused n ground of public interest. Hence, the law is unconstitutional as it permits the authority to pass a capricious, whimsical and one-sided order.

593. IMPLICATIONS OF THE CASE

594. Excel Wear case is a landmark case on the Company’s inherent right of closing its business. If the court in this case had not recognized the employer’s right to close down his business and had upheld the impugned provisions, then the Companies would have been at mercy of the whims and fancies of the State. It would have discouraged businessmen even to start their business, as a fear that they would be forced to carry on their business even if it was incurring heavy losses would have constantly lurked in their minds. The business environment would have been suffocated under the pretext of socialism.

595. The “License Raj” would have prevailed as the closure of the business could be refused without assigning any reasons to it. Upholding of the impugned provisions would have adversely affected the right of the members’ voluntary winding up. The voluntary winding up could have been denied on the whims and fancies of the government.

⁵ AIR 1960 SC 430 (437)

596. The Court in this case had recognized that the workers on closing down of business would be put in considerable difficulty. But the COURT at the same time held that refusing closure of business just because workers would become unemployed is an unreasonable restriction on the right to close down business (inspire of insertion of the word “Socialism” in the Preamble by the 44th Constitutional Amendment Act, 1976) as in every closure of business workers are bound to lost their jobs and that non-closure of business was not an appropriate remedy for unemployment. The Court held that the workers should be paid compensation on closing down of the business. This right of payment of the workers has been recognized in S.529-A of the Companies Act, which provides that the workers shall rank pari passu with the secured creditors and above the government, for recovering their legitimate claims.

597. After analysis of the Excel Wear Case and the related company law provisions, it can be said that the right of the members’ of the company of voluntary winding up and the right of the workers to compensation has been aptly balanced.

598. The term “Socialism” being stated that in the Preamble of the Indian Constitution, it is a duty of the Welfare Indian State to provide a solution to the problem of unemployment faced by the workers. At the same time the right of the businessmen to close down their business (and in particular the members’ right of voluntary winding up) has to be protected. The Apex Court in Excel Wear case by holding the impugned provisions as unconstitutional has rightly prevented the businessmen from being forced to implore to the government for permission to close down their business which could have been easily denied by the government arbitrarily and without any reason.

599. Effect of winding-up on Shareholders: -

600. The laws governing insolvency of companies are more pro-creditor than pro-debtor. As stated earlier, when a company becomes insolvent a receiver or a

liquidator will be appointed. A receiver or a liquidator will be appointed. A receiver may be appointed by the court or by a debenture holder under the powers conferred in the instrument creating the charge over the company's assets. The court upon the making of a winding up order appoints a liquidator.

601. The receiver is answerable to the appointing creditor (or to the court where his appointment is by the court). His powers are normally defined in the instrument the basis upon which he is appointed. His role is to realize the company's assets for the benefit of the secured creditor who appointed him. When his work is done, he hands over the company back to the directors and shareholders. Whereas he has no duty to the shareholders, he has a duty of care to ensure that he obtains the best price for the assets. If there is any surplus, this will be paid to the company. He need however not incur any losses while seeking the best price for the assets.

602. The receiver has certain obligations under the Companies Act. These include making returns to the registrar of companies. However, the receiver has no duty to the shareholders, the shareholders on the other hand have no rights against the receiver.

603. Shareholders however have a right to loan the company money to pay off the creditors. In that event they may replace the secured creditor with respect to the loaned amount. They thereby become creditors in addition to being shareholders. However, in this way, they may save their company from the auctioneer's hammer.

604. The liquidator's position is somewhat different. Though he is primarily concerned with liquidating the Company for the benefit of all creditors, he must have regard to the interests of the shareholders, who will get any residual value after the creditors have been paid. The shareholders have a right to receive information from the liquidator on the progress of the liquidation.

605. All told, the shareholders' rights in insolvent companies are very minimal. They are hardly in a position to bargain with the creditors, especially when one considers that the management of the company is in the hands of the directors. Perhaps it is

time the law was amended to give shareholders more powers and rights to influence the course of events in their companies.

606. Effect of winding up on Mental Health of Employees: -

607. It is well known that the winding up of a company has serious effects on mental and physical health of the employees of a company. A recent study indicates that the severity of the effect depends on the level of stress resulting from job loss and the social support available to the unemployed person. In a survey conducted after a winding up of a company three hundred men were followed for five years; they were examined every six months and their psychological and physical functioning were measured by a variety of methods. This group of 300 men who became unemployed due to winding up was compared with other 300 who remained employed in different functional company but were otherwise very similar.

608. The first time their health was rated after losing a job, the men had more depression, anxiety, and hypochondriacally complaints. Employed men spent an average of one day confined to bed during the six-month period and unemployed men spent an average of five days. They also visited doctors five times more often and took twice as many drugs, although they did not have more diagnosed illnesses. The more stress unemployed man felt himself to be under, the more likely he was to visit a doctor and the less likely he was to consider himself healthy. Co-relations between social support and physical and mental health were less strong. On the average, men who had become unemployed did not have lower self-esteem than men who were still employed.

609. CONCLUSION AND SUGGESTIONS

610. CONCLUSION: -

611. It may take just 35 days to register a business in India's financial capital Mumbai, but when it comes to winding up a company in the country it can drag as long as 10 to 13 years.

612. ACCORDING TO Ms. Komal Anand, Secretary, Ministry of Company Affairs: -

613. Ms. Komal Anand, Secretary, Ministry of Company affairs on the sidelines of the inauguration of the Mumbai registry of MCA 21 said that as per the latest data. There are 7000 companies in India under liquidation and this would involve a huge amount of documentation and this year we have decided that we should address the issue. "The ministry intends to make it easier and faster to wind up companies. The new Companies Act provides for a National Company Law Tribunal, which will take over many of the functions currently served by the BIFR and the High Courts. It will bring down the time taken for winding up companies to three years; currently takes more than eleven years.

614. According to the Government Union Minister of Company Affairs Premchand Gupta: -

615. Government Union Minister of Company Affairs Premchand Gupta told Lok Sabha in a written reply that according to a recent study, it takes an average of about 10 years to complete a company liquidation process in India.

616. According to the Report of High Level Committee headed by Justice V.B. Balakrishna Eradi: -

617. In the year 1999, the Government of India set up a High Level Committee headed by Justice V.B. Balakrishna Eradi, a superannuated Judge of Supreme Court of India for remodeling the existing laws relating to winding up of companies and bringing them in time with the international practices in this field.

618. Recommendations of the Committee: -
619. Jurisdiction, power and authority relating to winding up of companies should be vested in a National Company Law Tribunal.
620. The 1956 Act should be suitably amended to take the power away from High Court and the transfer of the ending winding up proceedings to the Tribunal.
621. The adoption of the international trend in law relating to corporate bankruptcy, namely, sell the assets first as quickly as possible, and relagate to a later stage the adjudication of claims and distributions of proceeds.
622. Depth assessment of the office of Official Liquidators, in view of inadequate and incompetent manpower and absence of latest office equipments and technologies.
623. Part VII of the Companies Act, 1956 should incorporate a new substantive provision to adopt the UNCITRAL Model Law as approved by the United Nations and the Model Law itself may be incorporated as a Schedule to the Companies Act, 1956, which shall apply to all cases of Cross-Border insolvency.
624. Adopt the necessary principles enunciated under the heading “Legal Framework”, “Orderly and Effective Insolvency Procedures” – Key issues, to bring the provisions of the Companies Act, 1956 in line with international practices.
625. The Committee completed its work and submitted its report to the Central Government in the year 2000. In August 2001, the Companies (Amendment) Bill, 2001 the Sick Industrial Companies (Special Provisions) Repeal Bill, 2001 were introduced in the Parliament of India. The Bills, if passed in their present form will bring the curtains down on the Sick Industrial Companies (Special Provisions) Act, 1985 and will restructure the Companies Act, 1956 in a big way leading to the new regime of tackling corporate rescue and insolvency procedures in India with a view to creating confidence in the minds of investors, creditors, labor and shareholders.

626. My topic of dissertation is “Law relating to winding up of companies and its after effects and a social legal study of present scenario.” The whole study of the dissertation has been divided into the six chapters.
627. These conclusively discussed as follows: -
628. In the first the subject of the dissertation has been introduced.
629. The FIRST chapter relates to the meaning nature and definitions of winding up, essential elements of winding up and the most important thing, causes of winding up. ”Winding-up” in literal sense, means to bring to a conclusion or an end by putting in order. It is defined as the process by which the process by which the life of a company is ended ends the life of a company and its property is administered for the benefit of its members and creditors.
630. In ‘IND Bank Merchant Banking Services Ltd., V. Orient Resorts (India) Ltd.,’ - (2009) 91 SCL 302 (Guj): -
631. In this case, the petitioner bank had advanced finance to respondent company under a hire purchase agreement. The petitioner filed winding up petition against the respondent on the ground that it failed to pay certain amount due under said agreement despite statutory notice. The respondent contended that if some time was granted and interest was waived and some lesser amount was accepted, it was ready and willing to make payment in installments. The court held that once hire purchase agreement was executed and respondent company had taken finance, it was not open for respondent company to submit that it would pay a lesser amount and that too without any interest. Since respondent company failed to make payment when opportunity was given to it to make some payment to show its bona fides, respondent company had lost its financial substratum and was not in a position to pay its debts to creditors inclusive of petitioners and therefore, it was to be ordered to be wound up.
632. Winding up is a more formal company liquidation procedure that involves the orderly winding-up of the company affairs, the appointment of a liquidator to manage

the process of realizing the company assets, ceasing or sale of its operations, payment of its debts (if any) and distributions of surplus assets (if any) among its members.

633. The second chapter relates to modes of winding up.
634. The parties who are entitled by law to petition for the compulsory liquidation of a company vary from jurisdiction to jurisdiction, but generally, a petition may be lodged with the court for the compulsory liquidation of a company by:
 635. The company itself
 636. Any creditor who establishes a prima facie case
 637. Contributories
 638. The Secretary of State (or equivalent)
 639. The Official Receiver
640. The grounds upon which one can apply for a compulsory liquidation also vary between jurisdictions, but the normal grounds to be enable an application tot he court for an order to compulsorily wind-up the company are:
 641. The company has so resolved.
 642. The company was incorporated as a public company, and has not been issued with a trading certificate (or equivalent) within 12 months of registration.
 643. It is an “old public company” (i.e., one that has not re-registered as a public company or become a private company under more recent companies legislation requiring this).
 644. It has not commenced business within the statutorily prescribed time (normally one-year) of its incorporation, or has not carried on business for a statutorily prescribed amount of time.
 645. The number of members has fallen below the minimum prescribed by statue.
 646. The company is unable to pay its debts as they fall due.

647. It is just and equitable to wind up the company.
648. In practice, the vast majority of compulsory winding-up applications are made under one of the last two grounds.
649. In “Madhusudan Gordhard & Co., V. Madhu Woollen Industries (P) Ltd.,” – (1972) 42 Comp. Cases 125: -
650. In this case, the Supreme Court held that the debit is bona fide disputed and the defense is a substantial one the court will not wind up the company. Where the debit is undisputed, the court will not act upon a defense that the company has the ability to pay the debt but the company chooses not to pay that particular debt. Where, however, there is no doubt that the company owes the creditor a debt entitling him to a winding up order but the exact amount of the debt is disputed, the court will make a winding up order without requiring the creditor to quantify the debt precisely. The principles on which the court acts are first that the defence of the company is in good faiths and one of substance, secondly the defence is likely to succeed in point of law, and thirdly, the company adduces prima facie proof of the facts on which the defence depends.
651. In Amalgamated Commercial Traders (P) Ltd., V. A.C.K. Krishnaswami (1965) 35 Comp, case. 456: -
652. In this case, the Supreme Court held that a winding up petition is not a legitimate means of seeking to enforce payment of a debt, which is bonafide disputed by the company. A petition presented ostensibly for a winding up order, but really to exercise pressure will be dismissed and in the circumstances may be stigmatized as a scandalous abuse of process of the Court.
653. In ‘Gujarat Industrial Investment Corporation Ltd. V. Sterling Holiday Resorts (India) Ltd.’ – (2009) 91 SCL 253 (Mad.): -
654. In this case, the respondent company is running smoothly and earning profit. Its sale had gone up bas back as in the year 2005 to the tune of Rs. 44.18 crores. Though a number of suits, etc., were preferred by other financial Institutions, except the

appellant corporation, the company was in a position in dispute that the corporation has already preferred a suit against the company and its directors and prayed for a judgement and decree with interest. In view of the interim order, the company has already deposited a sum of Rs. 7.50 Crores, almost the amount claimed in the suit with interest. It has not been disputed that apart from 8,39,800 equity shares of Rs. 10/- each pledged under an unattested document along with a blank transfer deed in pledged in favor of the corporation. The court held that there is a genuine dispute of interest, particularly with regard to pendent elite interest, which has to be determined in the suit. Even before this Court, the company gave a better offer in favor of the appellant corporation to settle the dispute, but the corporation did not choose to accept the same. It will be evident that the company is in a position to pay the debts and whatever amount not agreed upon is a disputed amount between the parties. The court upheld the order dismissing the petition for winding-up, as was preferred by the appellant being not maintainable.

655. Voluntary Liquidation occurs when the members of the company resolve to voluntarily wind-up the affairs of the company and dissolve. Voluntary Liquidation begins when the company passes the resolution, and the company will generally cease to carry on business at that time (if it has not done so already). If the company is solvent, and the members have made a statutory declaration of solvency, the Liquidation will proceed as members' voluntary winding-up. In such case, the general meeting will appoint the liquidator(s). If not, the liquidation will proceed as a creditors' voluntary winding-up, and a meeting of creditors will be called, to which the directors must report on the company's affairs. Where a voluntary liquidation proceeds by way of creditors' voluntary liquidation committee may be appointed.

656. Where a voluntary winding up of a company has begun, a compulsory liquidation order is still possible, but the petitioning contributory would need to satisfy the court that a voluntary liquidation would prejudice the contributories.

657. The third chapter relates to the Procedure of winding up.

658. The main purpose of a liquidation where the company is insolvent is to collect in the company's assets, determine the outstanding claims against the company, and satisfy those claims in the manner and order prescribed by law.
659. The liquidator must determine the company's title to property in its possession. Property, which is held by the company on trust for third parties, will not form part of the company's assets available to pay creditors.
660. Before the claims are met, secured creditors are entitled to enforce their claims against the assets of the company to the extent that they are subject to a valid security interest. In most legal systems, only fixed security takes precedence over all claims; security by way of floating charge may be postponed to the preferential creditors.
661. Claimants with non-monetary claims against the company may be able to enforce their rights against the company. For example, a party who had a valid contract for the purchase of land against the company may be able to obtain an order for specific performance, and compel the liquidator to transfer title to the land to him, upon tender of the purchase price.
662. After the removal of all assets, which are subject to retention of title arrangements, fixed security, or are otherwise subject to proprietary claims of others, the liquidator will pay the claims against the company's assets. Generally, the priority of claims on the company's assets will be determined in the following order:
663. Firstly, the costs of the liquidation are met out of the company's remaining assets.
664. Secondly, the preferential creditors under applicable law are paid.
665. Thirdly, in many legal systems, the claims of the holders of a floating charge will be paid; other claims may also fit into this layer.
666. Fourthly, if there is anything left, the unsecured creditors are paid out *pari passu* in accordance with their claims. In any jurisdictions, a portion of the assets, which would otherwise be caught by a floating charge, are reserved for the unsecured creditors.

667. In the very rare instances where the unsecured creditors are repaid in full, any surplus assets are distributed between the members in accordance with their entitlements.
668. In M/s Quantum Industries (India) Ltd. Case: -
669. In this case, the Madras High Court, after hearing the company petitions filed by two German firms, has ordered winding up of M/s Quantum Industries (India) Ltd. Athipattu village, Ponneri Taluk, near Chennai, as it defaulted in clearing the debts to the two companies.
670. Mr. Justice K. Raviraja Pandian, who heard the counsel for the German companies, directed the Official Liquidator to take charge of all properties and effects of the Chennai based company.
671. The Official Liquidator shall cause a sealed copy of this order to be served on the company.
672. The ex-directors of the Chennai Company were directed to file the statement of affairs within 21 days from the date of receipt of a copy of the court's order.
673. The petitioners, M/s Renova Plastik-Maschinen GmbH and M/s Oppenheim Forfatt GmbH of Germany, contended that the respondent company (Quantum Industries) had ordered three machines of German make for manufacturing T-shirt carrier bags and for printing, and they were supplied as per specifications.
674. Against the total amount due, 1,12,64,315 were paid, leaving a balance of DM 18,34,786.59. The cheques issued by the respondent company in respect of the said sum were dishonored. After due deliberation, the respondent admitted its liability by its letter dated July 3, 1997 to pay the balance amount. Even after that, the respondent was not able to meet its commitment. Hence, the petitioners filed the company petition for winding up of the respondent company.
675. The respondent company, in its counter, submitted that the petition could not be maintained, as there was some dispute about the quality of the machines supplied.

676. The Judge said a perusal of the letter dated May 12, 1997 showed that there was nothing other than a piece of information by the respondent that the printing machine supplied was an overhauled machine. Even after making such an information, the respondent accepted their liability by stating that the delay in making payment was only due to the delay in construction and completion of the factory building, customs clearance of the imported machines and obtaining power supply from the Government Agencies.

677. In the absence of any other defence, and since the one and only defence taken by the respondent that there were certain disputes as to the liability of the respondent was also eschewed by this court as not legally sustainable, the resultant position was to come to a conclusion that the respondent was not in a position to discharge its liability, and it was fair and equitable to pass orders for dissolution of the respondent company, the judge held.

678. In 'California Pacific Trading Corporation V. Kitply Industries Limited' – (2009) 91 SCL 258 (Gau): -

679. In this case, the petitioner claimed its dues against the respondent company under a decree. The District Court, USA passed a decree in favor of the petitioner for a certain sum. The petitioner instead of taking steps for execution of the decree filed winding up petition against the respondent company. The respondent resisted the case since the petitioner had not taken steps for execution of the decree, and therefore, was not maintainable. Further, it was also contended that US Court had no jurisdiction to pass the decree and that decree had not been passed on consideration of the merits of the case. The court held that the order of the US Court clearly shows that the claim of the petitioner was not decreed merely on the failure of the defendant to offer its defence. The evidence and material adduced by the petitioner were duly considered and it is only thereafter that the decree was passed. The submission of the respondent with regard to the applicability of the deeming provision contained in Section 434 (1) in case of a debt under a decree has to be addressed. The punctuation contained in Section 434 (1), particularly after each sub-clauses i.e., (a), (b) and (c)

and the use of a semicolon at the end of sub-clause (a) and before beginning of sub-clause (b), in the considered of the court, would, sufficiently indicate that all the three sub-clauses are in the alternative and upon existence of anyone of the same, a company can be deemed to be unable to pay its debts. Section 434 (1) (b), therefore, contemplates a situation of an unsuccessful attempt at execution of a decree. However, the said sub-clause cannot be understood to be indicative of any mandatory requirement to put the decree to execution before a company can be deemed to be unable to pay its debts arising from such a decree. For the aforesaid reasons, the company petition for winding up has to succeed. But the Court directed that the order for winding up of the respondent company should follow only after its failure to pay the amount due to the petitioner within a period of three months or in accordance with such installment plans as may be agreed upon by and between the parties.

680. In “Thirukumara Trading Agency V. Sleek Textiles Industries Ltd.,”- (2009) 91 SCL 308 (MA): -

681. In this case, the Petitioner Company, filed winding up petition against respondent company on the ground that it failed to pay a part of amount towards supply of goods made by petitioner. The respondent contended that there was bonafide dispute with regard to amount payable by respondents as goods supplied by the petitioner were not confining to the standard specified and after negotiation liability was reduced. The court held that since respondent company had disputed debt with documents to support discretion in favor of the petitioner for winding up of respondent company could not be exercised.

682. However, having wound-up the company’s affairs, the liquidator must call a final meeting of the members (if it is a members’ voluntary winding-up), creditors (if it is a creditors’ voluntary winding-up). The liquidator is then usually required to send final accounts to the Registrar and to notify the Court.

683. In some Jurisdictions, the company may elect to simple be struck off the Register as a cheaper alternative to a formal winding-up and dissolution. In such cases, an application is made o the Registrar, and they may strike off the company if there is

reasonable cause to believe that the company is not carrying on business or has been wound-up and, after inquiry, no case is shown why the company should not be struck off.

684. The company is then dissolved.

685. The fifth chapter relates to the after effects of winding up and a social legal study of present scenario.

686. The most drastic after effect of winding-up is unemployment. "Closure of an industrial undertaking involves termination of employment of many employees, and throws them into the ranks of the unemployed, and it is in the interest of the general public that misery resulting from unemployment should be redressed....retrenchment compensation was intended to give the workmen some relief and to soften the rigour of hardship which retrenchment brings in its wake when the retrenched workman is suddenly and without his fault thrown on the streets, to face the grim problem of unemployment.....Loss of service due to closure stands on the same footing as loss of service due to retrenchment, for in both cases, the employee is thrown out of employment suddenly and for no fault of his and the hardships which he has to face are, whether unemployment is the result of retrenchment or closure of business, the same."

687. The last relates with conclusion and suggestions. This chapter has been divided in two parts. Part A belongs to conclusion and part B relates to certain suggestions on the basis of critical analysis of statutory provisions and judicial decisions in India.

688. Suggestions: -

689. On the basis of above critical analysis and a brief comparative study with English Law and in keeping view of the various conflicting decisions of different High Courts and Report of High Level Committee headed by Justice V.B. Balakrishna Eradi, the following suggestions are submitted: -

690. Jurisdiction, power and authority relating to winding up of companies should be vested in a National Company Law Tribunal.

691. The 1956 Act should be suitably amended to take the power away from High Court and the transfer of the pending winding up proceedings to the Tribunal.
692. High Court is the Court of proper jurisdiction for handing winding up proceedings and power sought to be transferred to the NCLT with the onset of reforms by way of a proposed Bill.
693. We must say no to Procedural Delays. There are inherent defects both, procedural and legal in proceedings before BIFR. The BIFR takes nearly one year to determine whether a company is sick. Thereafter, it takes around one year to formulate revival strategy. Consideration of the same also takes substantial time since banks and financial institutions have their own hierarchy in decision-making, leading to avoidable delays. The decisions by the banks are also neither transparent, nor subject to judicial review. By the time decisions are taken and communicated, the plan, which had been conceived, has lost its viability resulting in failure of revival schemes even after sanction.
694. There should not be lack of timely commencement of proceedings under the exiting law; a company can approach the BIFR for adopting steps for its revival, on erosion of its entire net worth. The erosion of entire net worth is too late a stage to attempt restructuring as by the time the net worth is eroded the company is too sick to be revived and has lost its resilience to restructure and revive itself.
695. There must not be poor enforcement mechanism. The mechanism for its implementation is so poor that violations take place fearlessly leaving no fear for law. The misuse of the said forum in making an entry by manipulating must be curbed by strict penal consequences for such misuse, which should be demonstrably used to ensure that no entity attempts to misuse these provisions. However, this aspect and solution to this problem has to be found out in the proposed legislation.
696. There should be some laws related to extra territorial jurisdiction. Indian Insolvency Laws do not have any extra-territorial jurisdiction, nor do they recognize the jurisdiction of foreign banks operating in India. Therefore, if a foreign company is taken into liquidation outside India, its Indian Business will be treated as a separate

matter and will not be automatically affected unless an application is filed before an insolvency Court for winding up of its branches in India.

697. In the sphere of insolvency laws in India, where all the suits are stayed on making of the winding up order, parties may pursue individual claims in certain circumstances.
698. Winding up procedure implies all personal rights be converted into right to prove debt in winding up.
699. Under Section 446, stay on all suits and the winding up Court to decide all suits by or against the company.
700. A secured creditor may enforce security interest without a suit and therefore real rights of secured creditors are protected.
701. Criminal Proceedings or proceedings against directors or officers are not stayed.
702. Income Tax proceedings will continue against the liquidator.
703. The debts due as workmen's dues and the claims of the secured creditors sacrificed to workmen have an overriding preferential claim or priority to all debts. The debts payable shall be paid in full unless the assets are insufficient to meet them in which case they shall abate in equal proportions.
704. Also, any transfer of property, delivery of goods, payment, execution or other act relating to the property made, taken or done by or against the company within 6 months prior to commencement of winding up be deemed a fraudulent preference.
705. Apart from the lengthy and time-consuming winding up procedure, all the companies liable to be wound up under the Companies Act may resort to the alternative of compromise or arrangement. The court may make orders to enforce these remedies and where a meeting of creditors or class of creditors or members or nay class of members is called upon; certain disclosures shall be made. The orders passed by the Courts include transfer of property to another company and to facilitate amalgamation, merger and demergers. Even reduction of capital to the extent that the capital is lost, or capital is in surplus is permitted.
706. There is a urgent need to create the Commercial Insolvency Tribunal. The need to continue with the body like BIFR was also scrutinized by the Task Force in the

context of restructuring and reorganization of business. The BIFR proceedings tend to convert debt into equity and it also deprives the creditors, secured and unsecured, from proceedings against the company for recovery of money or for bringing about creditors winding up. The general feeling of the industry was that 'Sickness' has become a gateway for promoters who have no serious intention of continuing business, but to make quick money. The Task Force does not deny that there may be genuine cases of 'Sickness', but the fact remains that there has not been much work done in effectively rehabilitating industry which have become sick due to mal-administration, or because they have been exposed to global competition without adequate assistance and expertise to remain in the reckoning. The Task Force had meetings with the Department of Company Affairs and found that the Department was also in general agreement with the thinking of the Task Force that instead of different agencies, like the Department of Company Affairs, High Court in a winding-up proceeding, BIFR acting under SICA, dealing with situations of sickness bordering on insolvency, these could be dealt with by a single agency. After going through the provisions of the relevant sections in Companies Act and Sick Industrial Companies Act (SICA), the Task Force has come to the conclusion that the time has come to create a separate tribunal called the Commercial Insolvency Tribunal which will not only take up the cases relating to winding-up of company but also deal with revival of companies which have become sick. At the moment a company winding up, has to go separately through the High Court. The tribunal must have the powers, which a High Court has, as also the powers, which the existing BIFR has. There should be provision making it mandatory for the Tribunal to give its judgement within a period not exceeding one year and the decision of the Tribunal should be appealable only to Supreme Court and that too, on a question of law or for certain errors apparent on the face of the record. The BIFR was constituted under the Sick Industrial Companies (Special Provisions) Act, 1985. The purpose of BIFR was to deal with potentially sick companies and to take remedial measures. From experience, it is found that BIFR is unable to attract any company or agency to take over a sick unit and the current recession is also not helping matters. In addition to this,

economies of scale and volumes drive the market in a global competitive scenario and as such, the proposition of investing

n sick units does not appeal to industrialists. As a result of this, the BIFR will have to take a decision under Section 20 to wind-up a sick company. Here lies the problem, in the sense that BIFR cannot order winding up but, it has to record its opinion and sent it to the concerned High Court and thereafter the High Court will have to proceed in accordance with the provisions of the Companies Act. It, therefore, serves no purpose to create dual agencies, which deal with commercial insolvency. Just as an indebted individual is open to insolvency proceedings, a corporate which is incapable of meeting its liabilities should be threatened with a strong provision of insolvency, and the Task Force believes that bringing into existence such Tribunal with ample powers, not only to declare the company insolvent but also penalize opportunistic promoters for mismanagement, will help bring about a sense of discipline in corporate behavior and public accountability.

BIBLIOGRAPHY

Primary Sources :

1. Statutes
- 1 Company Act, 2013
- 2 Competition Act,2005

Secondary Sources :

2. Books & Websites

- 1) Agrawal, R.K. (2016). A Comparative Study of Indian Companies Act, 2013 and Companies Act of Republic of Maldives, 1996.IRA-International Journal of Management & Social Sciences(ISSN 2455-2267), 4(1).
<https://doi.org/10.21013/jmss.v4.n1.p9>
- 2) Borad, S. (1981*). Companies Act 2013: Bare act. sunil.
- 3) D’Erasmus, A. J. (2010). The Companies Act 2006. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.1627648>
- 4) Dhar, K. (2012). SEBI and Collective Investment Schemes.SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2014416>
- 5) Dravis, B. F. (2016). The Role of Independent Directors in Corporate Governance.
- 6) du Plessis, J. J., Varottil, U., & Veldman, J. (2018). Globalisation of Corporate Social Responsibility and its Impact on Corporate Governance. Springer.
- 7) Hathi, U. (2014). Indian Companies Act 2013 Highlights and Review. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2442727>
- 8) Mittal, A., & Jain, A. (2015). Indian Companies Act, 2013 –Changing the face of CSR in India. In Proceedings of the 7th International Conference on Business and Finance. <https://doi.org/10.4102/jbmd.v5i1.14>

- 9) Pulbrook, A. (1865). The Companies Act, 1862: With Analytical References and Copious Index..
- 10) Rakesh, V. (2014). Corporate Social Responsibility Under Companies Act 2013: An Overview. SSRN Electronic Journal.
<https://doi.org/10.2139/ssrn.2469131>
- 11) Ramaiya, A. (2013). Guide to the Companies Act: Secs. 146 to 377.
- 12) Sabri, B., & Khuong, N. D. (2014). Corporate Governance And Corporate Social Responsibility: Emerging Markets Focus. World Scientific.
- 13) Sekar, S. G., & FCA. (2014). The Companies Act 2013: Companies Act 2013 (New Companies Act). Shree Guru Kripa's Institute of Management.
- 14) Taylor, C. (2009). "Companies Act 2006: A Guide for Private Companies" (First edition) Peter Van Duzer. "Companies Act 2006: A Guide for Private Companies" (First edition). Jordan, Bristol, 450 pp., ISBN: ISBN 9781846610387 £75.00. Coastal Management: An International Journal of Marine Environment, Resources, Law, and Society, 51(2), 124–125.
- 15) Vijay, G., BBA.LLB, Year, 3rd, School, S. L., & PUNE. (2011). Corporate Governance Under the Companies Act 2013: A More Responsive System of Governance. Indian Journal of Applied Research, 4(4), 1–3.
- 16) 20-5-2017 <<https://blog.ipleaders.in/corporate-governance/>>.
- 17) Smita Jain, Corporate Governance—National and International Scenario, 33rd National Convention of Company Secretaries, p. A-71 <<https://www.icsi.edu/media/webmodules/programmes/33nc/33souvearticle-smitajain.pdf>>.
- 18) SEBI, Recommendations of the Narayan Murthy Committee on the Revised Cl. 49—Corporate Governance—Press Release, last updated on 15-12-2003 <https://www.sebi.gov.in/media/press-releases/dec-2003/recommendations-of-the-narayana-murthy-committee-on-the-revised-clause-49-corporate-governance-press-release_17040.html>.

- 19) Moneycontrol.com, What Changed in the Legal Landscape Post Satyam Scam, last updated on 11-1-2018 <<https://www.moneycontrol.com/news/business/companies/what-changed-in-the-legal-landscape-post-satyam-scam-2480623.html>>.
- 20) Corporate Governance Framework in India, Mondaq, Vaish Associates, last updated on 8-1-2016 <<http://www.mondaq.com/india/x/456460/Shareholders/Corporate+Governance+Framework+In+India>>.
- 21) 6 FE Online, Financial Express, last updated on 11-1-2018 <<https://www.financialexpress.com/industry/what-was-satyam-scam-which-toppled-indias-fourth-largest-it-company-from-the-top-slots/1010389/>>.
- 22) Voluntary Guidelines on Corporate Governance, the Ministry of Corporate Affairs, December 2009.
- 23) Afar Afsharipour, a Brief Overview of Corporate Governance Reforms In India, UC Davis Legal Studies Research Paper Series. April 2011.
- 24) Dimple Grover, Amulya Khurana, Ravi Shankar, the Regulatory Norms Of Corporate Governance in India.
- 25) Sadhalaxmi Vivek Rao, Legal Framework and corporate Governance: An Analysis of Indian Governance System.
- 26) Chhibber, P.K., and S.K. Majumdar (1999), Foreign Ownership and Profitability: Property Rights, Control, and the Performance of Firms in Indian Industry, Journal Of Law and Economics. Journal of Finance
- 27) Das, A. and S. Ghosh, 2004. Corporate Governance in Banking System: An Empirical Investigation, Economic and Political Weekly.
- 28) Goswami, Omkar, 2002, "Corporate Governance in India," Taking Action Against Corruption in Asia and the Pacific.
- 29) T. N. Satheesh Kumar, 'Corporate Governance: Principles and Practices', Pearson Education India; 4 edition (2011).
- 30) Prasad K, 'Corporate Governance', Prentice Hall India Learning Private Limited; 2 edition (2011).

- 31) Asish K. Bhattacharyya, 'Corporate Governance in India: Change and Continuity', Oxford University Press (19 September 2016).
- 32) Indian Institute of Corporate Affairs, "Corporate Governance", Taxmann; 2015 edition (2016).
- 33) Das S. C., Corporate Governance in India: An evaluation, Taxmann; 2015 edition (2016).
- 34) Fernando, 'Business Ethics and Corporate Governance', Pearson Education India; 2 edition (2012).
- 35) Tricker, 'Corporate Governance: Principles, Policies and Practices', Oxford University Press India; Second edition (14 January 2013).

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