

Winding Up under Companies Act 2013

CA Udayraj Patwardhan

Insolvency Professional

B. Com., FCA, MBF (ICAI)

Whole Time Director , Sumedha Management Solutions (P) Ltd. (IPE)

+91 9822026867; udayraj_patwardhan@sumedhamanagement.com

Chapter XX

Section 270 to 365

Notification by MCA on 15th November 2016 amended majority of sections of Companies Act, 2013 regarding Winding Up.

Section 2(23) – “Company Liquidator” – appointed by Tribunal in accordance with provisions of sec 275.

Section 2(94A) – “winding up” means winding up under this act or IBC 2016 as applicable.

Sec 270 – Winding up by Tribunal –
Provisions of Part I shall apply to the winding up by the Tribunal under the Companies Act, 2013.

Section 271 and 272 Circumstances and Petition

1. Company - **Special Resolution** – for winding up of company by Tribunal – may be made by the **Company, any contributory/ies** (all or any of them)
2. Company acted against interest of the **sovereignty and integrity India**, the **security** of the State, **friendly relations** with foreign States, **public order, decency or morality**, affairs conducted in **fraudulent manner**, formed for **fraudulent or unlawful purpose**, management or promoter **guilty of fraud, misfeasance or misconduct** and its proper to wind up, **default** in Annual Filing for **5 consecutive years**, or **Tribunal opinion** that its just and equitable to wind up
 - may be made by the **Registrar**; any person **authorised** by **Central Government** in that behalf; or u/s 271(b) by **Central or State Government**
 - Registrar to obtain **previous sanction** of Central Government
 - Central Government - **reasonable opportunity** of making **representations**
 - Petition to accompany **Statement of Affairs**, **copy** of application to be **filed with Registrar** who will **submit views within 60 days**.

Section 273 and 274

Powers of Tribunal, Statement of Affairs

1. Powers of Tribunal - Tribunal may –
 - a. dismiss, b. make any interim order, c. appoint provisional liquidator till making winding up order, d. make order for winding up, or e. any other order
 - b. Within 90 days
 - c. Assets may be mortgaged, company may have assets of less or equal value or no assets.
 - d. May refuse to make order – if its of the opinion that other remedy available and they are acting unreasonably in seeking to winding up instead.
2. Statement of Affairs -

Section 275, 276, 277. Appointment, Removal and Replacement of Liquidator and Intimation.

1. Official Liquidator (Sec 359) or Liquidator (as per 275(2)) can be appointed as Company Liquidator.
2. Provisional Liquidator or Company Liquidator - from panel of Insolvency Professional under IBC, 2016.
3. Provisional Liquidator's powers may be limited or restricted in appointment order or in subsequent orders.
4. Terms, Conditions, Fees of PL or CL on the basis of task, experience, qualification, size of the company. OL is employee of CG.
5. PL or CL to file within 7 days, declaration disclosing conflict or lack of independence and obligation to continue throughout term of appointment.
6. PL may be appointed as CL.

Section 275, 276, 277. Appointment, Removal and Replacement of Liquidator and Intimation.

7. On **reasonable cause** and **reasons** recorded in writing, PL or CL may be removed –
 - i. **misconduct**;
 - ii. **fraud** or **misfeasance**;
 - iii. professional **incompetence** or failure to exercise **due care** and **diligence** in performance of the powers and functions;
 - iv. **inability to act** as PL or CL;
 - v. **conflict of interest or lack of independence** during the term of his appointment that would justify removal.
8. In the event of **death, resignation or removal** of PL or CL, Tribunal may transfer work to **another CL** for reasons to be recorded in writing.

Section 275, 276, 277. Appointment, Removal and Replacement of Liquidator and Intimation.

9. Tribunal's **opinion** that Liquidator is responsible for causing any **loss or damage** to the company due to **fraud or misfeasance** or **failure** to exercise **due care and diligence** in the performance of his or its powers and functions, the Tribunal may **recover** or cause to be recovered such loss or damage **from the liquidator** and pass such other orders as it may think fit.
10. The Tribunal shall, **before passing** any order under this section, provide a **reasonable opportunity** of being heard to PL or CL.

Section 275, 276, 277. Appointment, Removal and Replacement of Liquidator and Intimation.

11. Intimation appointment to be sent to PI or CL, Registrar within 7 days.
12. Registrar to make endorsement in own records, notify in Official Gazette, and to Stock Exchange/s where securities listed.
13. winding up order deemed to be a notice of discharge to officers, employees and workmen of company, except business of the company continued.
14. Within three weeks from date of passing of winding up order, CL shall make an application to Tribunal for constitution of a winding up committee to assist and monitor progress of liquidation proceedings
15. (i) OL attached to the Tribunal;
(ii) nominee of secured creditors; and
(iii) a professional nominated by the Tribunal.

Section 275, 276, 277. Appointment, Removal and Replacement of Liquidator and Intimation.

16. CL shall be convener of meetings of WUP - shall assist and monitor liquidation proceedings in following areas of liquidation functions :—
- (i) taking over assets;
 - (ii) examination of the statement of affairs;
 - (iii) recovery of property, cash or other assets of company including benefits derived therefrom;
 - (iv) review of audit reports and accounts of the company;
 - (v) sale of assets;
 - (vi) finalisation of list of creditors and contributories;
 - (vii) compromise, abandonment and settlement of claims;
 - (viii) payment of dividends, if any; and
 - (ix) any other function, as the Tribunal may direct from time to time.

Section 275, 276, 277. Appointment, Removal and Replacement of Liquidator and Intimation.

16. CL shall be convener of meetings of WUP - shall assist and monitor liquidation proceedings in following areas of liquidation functions :—
- (i) taking over assets;
 - (ii) examination of the statement of affairs;
 - (iii) recovery of property, cash or other assets of company including benefits derived therefrom;
 - (iv) review of audit reports and accounts of the company;
 - (v) sale of assets;
 - (vi) finalisation of list of creditors and contributories;
 - (vii) compromise, abandonment and settlement of claims;
 - (viii) payment of dividends, if any; and
 - (ix) any other function, as the Tribunal may direct from time to time.

Section 275, 276, 277. Appointment, Removal and Replacement of Liquidator and Intimation.

17. CL shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.
18. CL shall prepare draft final report for consideration and approval of WUC.
19. The final report so approved by WUC shall be submitted by CL before Tribunal for passing of a dissolution order in respect of the company.

Section 275, 276, 277, 278 Appointment, Removal & Replacement of Liquidator, Intimation, effect of WU Order.

17. CL shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.
18. CL shall prepare draft final report for consideration and approval of WUC.
19. The final report so approved by WUC shall be submitted by CL before Tribunal for passing of a dissolution order in respect of the company.
20. Order for winding up of a company shall operate in favour of all creditors and all contributories of company as if it had been made out on joint petition of creditors and contributories

Section 279

Stay of Suits, etc.on Winding up Order

1. When a **winding up order** has been passed or a **PL has been appointed**, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, except with **the leave of the Tribunal** and subject to such terms as the Tribunal may impose:
Provided that any **application** to the Tribunal seeking leave under this section shall be disposed of by the Tribunal **within sixty days**.
2. **Nothing** in sub-section (1) shall apply to any proceeding **pending in appeal** before the Supreme Court or a High Court.

Section 280

Jurisdiction of the Tribunal

Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have **jurisdiction to entertain, or dispose of,—**

- (a) any **suit or proceeding by or against the company;**
- (b) any **claim** made by or against the company, including claims by or against any of **its branches in India;**
- (c) any **application** made **u/s 233;**
- (d) any **question of priorities** or any other question whatsoever, whether of **law or facts**, including those **relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations** or in any matter arising out of, or in relation to **winding up** of the company, **whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made.**

Section 281

Submission of Report by Company Liquidator.

(1) Liquidator shall, within **sixty days from the order, submit** to the Tribunal, a **report** containing the following particulars :—

(a) the **nature and details** of the assets of the company including their **location and value, cash in hand and bank and negotiable securities** held by company:

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

(b) amount of **capital issued, subscribed and paid-up;**

(c) the **existing and contingent liabilities** of company including **names, addresses and occupations of its creditors**, stating separately the amount of **secured and unsecured** debts, and in the case of secured debts, particulars of the **securities given**, whether by the company or an officer thereof, their **value and dates** on which they were given;

Section 281

Submission of Report by Company Liquidator.

- (d) debts due to company and the names, addresses and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;
- (e) guarantees extended by the company;
- (f) list of contributories and dues payable by them and details of any unpaid call;
- (g) details of trade marks and intellectual properties owned by company;
- (h) details of subsisting contracts, joint ventures and collaborations;
- (i) details of holding and subsidiary companies;
- (j) details of legal cases filed by or against company; and
- (k) any other information which the Tribunal may direct or CL may consider necessary to include.

Section 281

Submission of Report by Company Liquidator.

- (2) CL shall include in the report manner in which company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by officer of company in relation to company since formation thereof and other matters which, in his opinion, it is desirable to bring to notice of Tribunal.
- (3) CL shall report on viability of business of company or the steps which, in his opinion, are necessary for maximising the value of the assets of the company.
- (4) CL may, if he thinks fit, make any further report or reports.
- (5) Any person describing himself in writing to be a creditor or a contributory of company shall be entitled by himself or by his agent at all reasonable times to inspect report submitted in accordance with this section and take copies thereof or extracts therefrom on payment of the prescribed fees.

Section 282

Directions of Tribunal on Report of Company Liquidator.

(1) The Tribunal shall, on consideration of the report of CL, fix a time limit within which the entire proceedings shall be completed and the company be dissolved:

Provided that Tribunal may, if it is of opinion, at any stage of the proceedings, or on examination of the reports submitted to it by CL and after hearing CL, creditors or contributories or any interested person, that it will not be advantageous or economical to continue proceedings, revise the time limit.

(2) Tribunal may, on examination of the reports submitted to it by CL and after hearing CL, creditors or contributories or any interested person, order sale of the company as a going concern or its assets or part thereof:

Provided that the Tribunal may, where it considers fit, appoint a sale committee comprising such creditors, promoters and officers of company as the Tribunal may decide to assist the Company Liquidator in sale under this sub-section.

Section 282

Directions of Tribunal on Report of Company Liquidator.

(3) Where a report is received from the CL or Central Government or any person that a fraud has been committed in respect of company, the Tribunal shall, without prejudice to the process of winding up, order for investigation u/s 210, and on consideration of the report of such investigation it may pass order and give directions u/s 339 to 342 or direct the CL to file a criminal complaint against persons who were involved in the commission of fraud.

(4) Tribunal may order for taking such steps and measures, as may be necessary, to protect, preserve or enhance the value of the assets of the company.

(5) Tribunal may pass such other order or give such other directions as it considers fit.

Section 283

Custody of Company's Properties

(1) Where a winding up order has been made or where a PL has been appointed, CL or PL shall, on order of Tribunal, forthwith take into his or its custody or control all property, effects and actionable claims to which company is or appears to be entitled to and take steps and measures to protect and preserve the properties of company.

(2) Notwithstanding anything contained in sub-section (1), all property and effects of company shall be deemed to be in custody of Tribunal from the date of the order for the winding up of the company.

(3) On an application by the CL or otherwise, Tribunal may, at any time after making of a winding up order, require any contributory for time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of company, to pay, deliver, surrender or transfer forthwith, or within such time as the Tribunal directs, to CL, any money, property or books and papers in his custody or under his control to which the company is or appears to be entitled.

Section 284

Promoters, Directors, etc., to Cooperate with CL

(1) Promoters, directors, officers and employees, who are or have been in employment of the company or acting or associated with the company shall extend full cooperation to CL in discharge of his functions and duties.

(2) Where any person, without reasonable cause, fails to discharge his obligations under sub-section (1), he shall be punishable with imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees, or with both.

Section 285

Settlement of List of Contributories, Application of Assets

(1) As soon as may be after passing of a winding up order by Tribunal, it shall settle a list of contributories, cause rectification of register of members and shall cause assets of company to be applied for the discharge of its liability:

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

(3) While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following conditions, namely:—

Section 285

Settlement of List of Contributories, Application of Assets

a member shall **not be liable** to contribute

- (a) if he **has ceased to be a member** for the preceding **one year or more before the commencement of the winding up**;
- (b) **debt or liability** of the company **contracted after he ceased to be a member**;
- (c) contribute unless it appears to the Tribunal that the **present members are unable to satisfy the contributions** required to be made by them in pursuance of this Act;
- (d) in the case of a company **limited by shares**, no contribution **exceeding the amount unpaid on the shares** in respect of which he is liable as such member;
- (e) in the case of a company **limited by guarantee**, no contribution **exceeding the amount undertaken to be contributed** by him to the assets of the company in the event of its being wound up but **if the company has a share capital**, shall be **liable to contribute to the extent of sum unpaid** on any **shares held by him** as if the company were a company limited by shares.

Section 286

Obligations of Directors and Managers.

In the case of a limited company, a director or manager, whose liability is unlimited under the provisions of this Act, shall be liable to make a further contribution as if he were at the commencement of winding up, a member of an unlimited company:

Provided that —

- (a) shall not be liable to make contribution, if ceased to hold office for a year or upwards before the commencement of the winding up;
- (b) shall not be liable to make contribution in respect of debt or liability of the company contracted after he ceased to hold office;
- (c) subject to the articles of the company, shall not be liable to make such further contribution unless the Tribunal deems it necessary in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

Section 287

Advisory Committee

- (1) Tribunal **may**, while passing an order of winding up of a company, direct **an advisory committee** to **advise CL and to report to Tribunal** on matters as Tribunal may direct.
- (2) Advisory committee appointed by Tribunal shall consist of upto **twelve members, creditors and contributories** or **other persons** in **proportion** as Tribunal may direct.
- (3) CL shall **convene a meeting of creditors and contributories**, from books and documents **within thirty days** from the date of order of winding up for **enabling Tribunal to determine** members of advisory committee.
- (4) Advisory committee shall **have right to inspect books of account and other documents, assets and properties** at a reasonable time.
- (6) Meeting of advisory committee shall be **chaired by the CL**

Section 288

Submission of Periodic Reports

- (1) CL shall make **periodical reports** to Tribunal and in any case make a report at the **end of each quarter** with respect to the progress of the winding up of the company in such form and manner as may be prescribed.
- (2) Tribunal may, on an **application by the CL, review orders** made by it and make such modifications as it thinks fit.

Section 290

Powers and Duties of Company Liquidator

- (1) (a) to **carry on the business** of company so far as may be necessary for **beneficial winding up**;
- (b) to **do all acts and to execute**, in the name and on behalf of company, all deeds, receipts, other documents, and to use the company's seal;
- (c) to **sell the immovable and movable property and actionable claims** of the company by **public auction or private contract**, with power to transfer such property, or to sell in parcels;
- (d) to **sell whole of undertaking** of the company **as a going concern**;
- (e) to **raise money** required **on security of assets** of company;
- (f) to **institute or defend any suit, prosecution or legal proceeding**, civil or criminal, in the name and on behalf of company;
- (g) to **invite and settle claim** of creditors, employees or any other claimant and **distribute sale proceeds** in accordance with priorities established under this Act;

Section 290

Powers and Duties of Company Liquidator

- (1) (h) to inspect records, returns on files of Registrar or any other authority;
- (i) to prove rank and claim in insolvency of contributory;
- (j) to draw, accept, make and endorse any negotiable instruments;
- (k) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate;
- (l) to obtain professional assistance or appoint professional, in discharge of his duties, obligations and responsibilities and for protection of the assets of the company, appoint an agent to do any business which CL is unable to do himself

Section 290

Powers and Duties of Company Liquidator

- (1) (m) to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary,—
- (i) for winding up of the company;
 - (ii) for distribution of assets;
 - (iii) in discharge of his duties and obligations and functions as CL; and
- (n) to apply to the Tribunal for orders or directions for winding up of company.
- (2) The exercise of powers by CL shall be subject to overall control of Tribunal.
- (3) Notwithstanding the provisions of sub-section (1), the CL shall perform such other duties as the Tribunal may specify in this behalf.

Section 291

Provision for Professional Assistance to CL

- (1) CL may, with **sanction of Tribunal**, appoint one or more CA or CS or CA or legal practitioners or such other professionals to assist him in performance of his duties and functions.
- (2) Any person appointed shall **disclose forthwith** to Tribunal in prescribed form **conflict of interest or lack of independence** in respect of his appointment.

Section 292

Exercise and Control of CL Powers

- (1) CL shall have regard to any **directions given by resolution of creditors or contributories** at general meeting or by advisory committee.
- (2) Directions given by **creditors or contributories** at general meeting shall, **in case of conflict, be deemed to override** directions given by advisory committee.
- (3) CL— (a) **may summon meetings of the creditors or contributories**, whenever he thinks fit, for the purpose of **ascertaining their wishes**; and
(b) **shall summon** such meetings at such times, as the creditors or contributories may, by resolution, direct, or whenever requested in writing to do so **by not less than one-tenth in value** of the creditors or contributories.
- (4) Any person **aggrieved by any act or decision of the CL** may apply to the Tribunal, and the Tribunal may confirm, reverse or modify the act or decision complained of and make such further order as it thinks just and proper in the circumstances.

Section 294

Audit of CL's Accounts

- (1) maintain proper and regular books of account, receipts and payments.
- (2) at least twice a year present an account of receipts and payments in duplicate verified by a declaration to the Tribunal.
- (3) The Tribunal shall cause the accounts to be audited, CL shall furnish vouchers and information and may require the production, inspection books of account.
- (4) Audited accounts- filed by CL with Tribunal and Registrar, open to inspection by any creditor, contributory or person interested.
- (5) account related to Government company, CL shall forward a copy—
 - (a) to Central Government, if member of the Government company; or
 - (b) to State Government, if a member of the Government company; or
 - (c) to CG and SG, if both members of the Government company.
- (6) CL to printed copy by post to every creditor and every contributory:
Provided Tribunal may dispense with compliance of this sub-section it deems fit.

Section 299

Power to Summon Persons Suspected of Having Property of Company, etc.

(1) Tribunal may summon officer of company or person known or suspected to possess property or books or papers, or known or suspected to be indebted, or any person capable of giving information concerning promotion, formation, trade, dealings, property, books or papers, or affairs of company.

(2) examine on oath, word of mouth or written interrogatories or affidavit and reduce to writing and require him to sign.

(3) may require to produce any books and papers in his custody or power, Tribunal to determine questions relating to lien.

(4) If the Tribunal finds that— (a) a person is indebted to the company, may order him to pay amount either in full discharge of the whole amount or not,

(b) a person is in possession of any property, may order to deliver.

(5) Every order shall be executed as decrees for payment of money or for delivery of property under the CCP, 1908.

Section 300, 301

Power to Order Examination of Promoters, Directors, etc. Arrest of Person Trying to Leave India or Abscond

A.(1) CL made a report - a fraud has been committed – the Tribunal may direct that person or officer to attend and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as an officer thereof.

(2) The Company Liquidator shall take part in the examination.

(3) If such person applies to Tribunal to be exculpated, CL to call the attention of Tribunal to relevant matters.

B. a contributory or a person having property, accounts or papers of the company is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, the Tribunal may cause—

(a) the contributory to be detained; and (b) his books and papers and movable property to be seized and safely

Section 302

Dissolution of Company by Tribunal.

- (1) When affairs have been completely wound up, CL apply for dissolution.
- (2) Tribunal to make order and company shall be dissolved.
- (3) CL, within thirty days, to forward to Registrar to record in the register.
- (4) CL makes a default - punishable with fine up to INR 5000 for every day.



Thank you

CA Udayraj Patwardhan

Insolvency Professional

B. Com., FCA, MBF (ICAI)

Whole Time Director , Sumedha Management Solutions (P) Ltd. (IPE)

+91 9822026867; udayraj_patwardhan@sumedhamanagement.com