Chapter 5

The Substantive and Procedural Laws Relating to Winding up of Companies in India

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Introduction

Initially, company was never considered as a distinct entity apart from its members and thus there were no rules governing the winding up process in India. There was no practical role of judiciary in the affairs of company but just to resolve minute issues by approaching the partnership laws on the lines of mutual trust and confidence. This was due to the attitude of judges towards companies with limited liability as a partnership and nothing more than that.

After the independence of India due to the demands to bring the reform in Companies Act in India, *Bhobha* committee was suggested comprehensive changes in Companies Act and hence, the Companies Act, 1956 came into being. It retains the different kinds of winding up provided in the previous Acts. It devotes ninety five sections to the subject of winding up and dissolution of companies.

Gradually with time various other amendments have been brought to the company's law in India and the major Companies Act, 2013 replaced the Companies Act, 1956 which further on kept meeting the pace with the new industrial conditions in India and brought the recent Insolvency and Bankruptcy Code, 2016.

In the present chapter, researcher shall cover substantive as well a procedural law pertaining to the winding up in India. The first part of the chapter shall be comprising of the modes and grounds of compulsory and voluntary winding up in India and second part of the chapter shall be pertaining to the proceedings under the winding up order from the appointment of the liquidator till the dissolution declaration by the court.

Researcher explains in detail, the modes of winding up of companies in India, the legal consequences of liquidation of a company and the role of liquidator in

determination of the rights. However, the focal point of the research in the present chapter is to focus on the laws as per Companies Act, 2013, and to provide the comparative study between 1956 & 2013 Companies Acts at last.

1. Modes of Winding up of Companies in India

Section 270 of Companies Act, 2013 provides the following modes of winding up of a company, viz:

1. Compulsory Winding up.[428]
2. Voluntary winding up.[429]

1.1. Compulsory Winding up

Winding up by the tribunal or the compulsory winding up is the process wherein a company is dissolved under the supervision of the court. The procedure of winding up can be initiated by the members, contributory, Registrar or the creditor or any other person authorized under Company Act, 2013, who is of the opinion that company would not able to perform as per the aims and objectives mentioned in the article of association, or there is inevitable bias against minority shareholders or in the event of mismanagement of the company etc.

The grounds on which tribunal can order a compulsory winding up of the company are given under section 271 of the Companies Act, 2013. The jurisdiction of the Tribunal extends to provide relief of a discretionary nature and the remedy is not a matter of right.

There are specific provisions in the Companies Act, 2013 for winding up of foreign companies. under Section 376 of Companies Act, 2013 foreign company comes within the classification of unregistered company, and such corporations may be dissolved as provided for under Companies Act, 2013. Such winding up may be done only by the court, not voluntarily or merely subject to the supervision of the court. However, sections provide that these specific provisions shall be in addition to and not as substitutes for other provisions involving the winding up of companies by the

[428] Companies Act, 2013 (Act No. 18 of 2013), S. 271.
[429] Companies Act, 2013 (Act No. 18 of 2013), S. 304.

court. It is a well recognized principle that a winding up order will affect only the properties and assets in India.[430]

Compulsory winding up involves the actions implemented against the company's consent, in contrast to the members or creditors voluntary winding up. Proceedings in compulsory winding up take place by filing the petition by creditor, the company, the directors or by a contributory before a tribunal.

Receivers and administrators are also able to present petitions in the case of the former, to aid realisation of the assets and, in the case of the latter, under court authorisation. In the case of creditors whose claims are disputed by the company, the court will exercise a discretion and will tend not to accede to the petition where the company disputes the claim on substantial grounds and in good faith. The creditor whose claim is genuinely disputed is thus poorly placed to assert that the company has 'neglected to pay' the debt. Where, moreover, the debtor company has an enforceable cross claim against the petitioner for a sum exceeding the claim, the court may dismiss or stay a winding up petition.[431]

A company may be wound up by an order of the court. It is also known as the compulsory winding up of a company. Section 271 does not confer on any person the right to seek an order that a company shall be wound up. It confers power of the court to pass an order of winding up in an appropriate case.

In *Karnataka Vegetables Oils and Refineries Ltd. v Madras Industrial Investment Corporation Ltd*.[432]It was held that the jurisdiction of the court to pass winding up order under section 433 of Act, 1956 is a discretionary one which need not be exercised on the instance of a single creditor. It needs to be noted that the company shall not be wound up simply because it is unable to pay off its debts. As long as the company can be resurrected or revived by a scheme of arrangement, an order of winding up shall not be made. Court has to consider all the interest coming before it and not merely one category of the company that is creditors. Therefore, for the just

[430] E.V Davedson"Indian Law as Applicable to Corporations Incorporated Outside India", Vol. 16 No. 4, *The Business Lawyer*, 1074 (1961).

[431] Vanessa Finch, *Corporate Insolvency Laws- Perspective & Principles*375 (1ST Edn., Cambridge University Press The Edinburgh Building, Cambridge, United Kingdom ISBN 0521 626854, 2002).

[432] Comp Case 24 HC 1954 249.

and equitable winding up of the company, court has to take into consideration all the factors, the interest of the members of the company, the rights of the company as well as of any third party likely to be affected by such order of winding up.

1.2. Voluntary Winding up

a voluntary winding up of the company occurs when the members of company agree to dissolve the company in the general meeting by the Board of Directors.[433] The voluntary winding up may be subdivided into:

- Member's voluntary winding up
- Creditor's voluntary winding up.

Companies Act 2013, from section 304 to 323, expressly and comprehensively provides the mechanism of voluntary winding up of companies in India. It is a kind of dissolution of the company wherein, the members are free to wind up the company as per their decision and no interference or pressure is by a tribunal or by the court per se. this is why it is known as the voluntary winding up of the company i.e. the company is dissolved at the volition of the members, creditors and officials.

2. Grounds for Compulsory Winding up of Companies

Following are the general reasons under Companies Act, 2013, to wind up the company as follows:[434]

1. "If the company is unable to pay its debts;
2. Winding up by Special Resolution
3. threat to sovereignty of India;
4. In the event of revival and rehabilitation of such company;
5. Any fraudulent activity by company;
6. If default is made in filing the financial statements;
7. Lastly, if the tribunal is of the opinion that it is just or equitable that the company should be wound up."

[433] Robert Pennington, *Pennington's Company Law* 839 (Butterworths Law 5th Edn., 1995).
[434] Companies Act, 2013 (Act 18 of 2013), S. 271 (a) to (g).

Researcher shall discuss in detail the grounds of compulsory winding up in India with the assistance of companies winding up provisions Act, 2013 and case laws with the interpretation of the courts.

2.1. Inability to Pay Debts

If a company has taken a loan and is unable to pay within the given period of time and also is unable to pay the same in future, then court may order to wind up such company so that the loan amount can be realized against the property or the shares of company.

Companies Act, 2013, lays down three circumstances where the inability of the company to pay the debt is determined and hence winding up procedure is followed, which records as under[435]:

1. "If a creditor by assignment or otherwise, to whom the company is indebted for an amount exceeding one lakh rupees then registered office, by registered part or otherwise, a demand requiring the company to pay the amount so due and the company has failed to pay the sum within twenty one days after the receipt of the such demand or to provide adequate a security or restructure or compound the debt to the reasonable registration of the creditor.
2. if any execution or other process issued on a decree or order of any court or tribunal in favour of accredit or of the company is returned unsatisfied in whole or in part, or
3. If it is proved to the satisfaction of the court that the company is unable to pay its debt and in determining whether the company is unable to pay is debts, tribunal shall take into account the contingent and prospective liabilities of the company."

Statutory notice under section 271 2 (a) is when the creditor against whom a company owes an amount of one lakh or upward has served a demand notice then such company is liable to pay the said amount within the period of three weeks of such notice or otherwise satisfy him. The tribunal may order winding up of the company on such creditor's application. However, the debt must be presently payable and the title of the petitioner demanding it should be complete.

[435] Companies Act, 2013 (Act 18 of 2013), S. 271 (2).

Earlier, the expression 'neglects to pay' was used under Companies Act, 1956 [436] which after the commencement of Companies Act, 2013 was omitted Therefore, in a case where after several communications including the service of notice was held to be the evidence of neglect or inability.

Several issues are to be taken into consideration while initiating the winding up procedure as whether the debt is actually a debt which is due or whether a company is liable to pay the debt as a principal debtor or as a guarantor or if there is a bonafide and reasonable dispute as to the substantial part of the debt on which the petition is based because when a debtor company believes even wrongly that its act is justified by law to neglect such payment so such cannot be regarded as a 'neglect to pay'.[437]

Commercial insolvency which means when it is proved to the satisfaction of the Court that the company is unable to pay its debts, considering its contingent and prospective liabilities, i.e. whether its assets are sufficient to meet its liabilities. The term commercial insolvency is a broad term and it not only includes the non-payment of a debt but also that on its balance sheet it should been shown as an entity which is not being able to pay the debts to the creditors even after encashing all the assets of the company.[438] Thus, all the financial statements as well as the prospective liabilities of the company are to be taken into consideration while determining the commercial insolvency of the company.[439]

- **Discretion of Tribunal**

Indian judiciary enjoys discretion in the event of ordering winding up on the inability to pay debt so as to protect the unreasonable interference with the company's management and to keep a check on the activities of the entity too. The discretion in true sense is no power but a responsibility to determine an issue by looking into the causes and consequences of such non-payment and of the liquidation of such company too.

[436] Companies Act, 1956 (Act 1 of 1956), S. 434 (a).

[437] R.K Bangia, *Company Law* 254 (Law Agency Allahabad, 5th Edn., 2006).

[438] Avtar Singh, *Company Law* 531-532 (Eastern Book Company Lucknow, 12thEdn., 1999).

[439] Vanessa Finch & David Milman, *Corporate Insolvency Law Perspectives and Principles* 120 (Cambridge University Press, 2017)

The main purpose of winding up of the companies is to realise the assets and pay the debts of the company. However the purpose must not be exploited for the benefit or advantage of any class or persons entitled to submit petition for winding up of a company. It may be noted that on winding up of company does not cease to exist as such except when it is dissolved. The administrative machinery of the company gets changed as the management is transferred in the hands of the administrator called as liquidator. Even at the commencement of the winding up, assets and property of the company belong to the company only unless it is dissolved. On dissolution, company cease to exist as the legal entity and becomes incapable of keeping property, suing or be sued.

Thus, with all such consequences factual as well as legal, the procedure of winding up is an intricate matter and court has to tackle it with caution and by taking into consideration the interest and rights of the parties involved. There have been several occasions where authorities acted on discretion to grant or not grant winding up order.

Vanaspati industries Ltd v Firm Prabhu Dayal[440]The petitioner claimed to be the creditor of the company who served demand notice for the amount due. Company did not pay the amount and took the defense that such amount cannot be paid right now as there is a counter claim of the company and therefore it needs time to go through the records to settle the claim. However, there was no clear reason stated. Court held that there is no bonafide dispute as to the substantial part of the debt amount.

The notice should be served at the registered office of the company. A service to the correspondence address is not counted as a good service. Once the requirements of the petition for winding up are satisfied and there is non-compliance with the statutory notice then no excuse can be heard there after to prove the malafide intention of the creditor or to show the reasonable alternative remedy of the petitioner other than this or to say that the petition was presented to save the limitation period.[441]

However, again the court has been conferred with the discretionary power to initiate the winding up proceedings. one of the examples of such discretion which was used by Bombay High court in *Nagree v. Asnew Drums Co Ltd, Re*[442] wherein the due amount was over seventy eight lakhs rupees and the petitioner had a claim of eleven lakhs. He did

[440] AIR 1950 EP 142.

[441] Avtar Singh, *Company Law* 529 (Eastern Book Company Lucknow, 12thEdn., 1999).

[442] Comp LJ 2 1967 289.

fulfill all the requirements of the statutory notice. Company asked for time to settle and compromise the amount against all the creditors. Court did allow the company to arrange a meeting to settle the claim of all the creditors and thus dismissed the petition.

Decreed Debt is when execution or other process is issued on a judgement or order in favor of a creditor of the company and is returned unsatisfied in whole or in part[443].The debt in question has to be understood as a sum of money which becomes payable at present or in future by reason of the obligation. Such existing obligation to pay the amount is *sine qua non* for debt. For example, damages constitute the money claimed by a person as compensation for loss or injury and when is granted by an adjudicatory authority, it becomes an obligation and hence a debt. If in pursuance to a decree, an order has been passed to execute the same for the payment of any debt or an amount in favor of the decree holder and such company does not act in whole or in part then in such circumstances court can order the compulsory winding up of such company.[444]

Therefore, a claim for damages is not a debt per se unless so is declared by the competent authority which follows by enquiring into the issue and if the person against whom, the claim for damages is made, has committed breach and incurred a pecuniary liability towards the party complaining of breach and assesses the quantum of loss and awards damages. Damages are payable on account of fiat of the court and not on account of quantification by the person alleging the breach.

In *State Black Sea Shipping Company v Viraj Overseas P Ltd.,*[445]respondent company sent a reply to the statutory notice under section 434 (1) (a) of Companies Act, 1956 and now under 271 (1) (a) of the Companies Act, 2013, without raising any objection that notice was not sent to the registered office. Mere reply to a notice is not enough to create deemed inability of the company to pay its debts which would arise only on strict compliance of requirement under section 271. There is no question of any waiver of requirement of dispute between the parties has to be settled by appropriate proceedings. It was held by Delhi high court that full effect has to be given to the statutory fiction and it has to be carried to its logical conclusion. Hence, substantial compliance of the provisions is not enough.

[443] Companies Act, 2013 (Act No. 18 of 2013), S. 271 (2) (b).
[444] Kailash Rai, *Company Law* 428 (Allahabad Law Agency Allahabad, 12th Edn., 2012)
[445] Comp L.J Del 1 (2004) 396.

Paharpur 3P v. Dalmia Consumer Care (P.) Ltd.[446]notice under section 433 (e) of Companies Act, 1956 and now in 271 (1) (a) of the Companies Act, 2013, was served at registered office, the respondent company neglected to pay the amount admitted to be due or to secure or compound for it to the reasonable satisfaction of the petitioner within three weeks of the date of the notice. Defense taken by the respondent company was the low quality of the products supplied by the petitioner. Court held that such defense is just an afterthought in order to produce a sham defense in the winding up proceedings and hence the company was ordered to be wound up.

Now, the researcher shall discuss the examples where the ground inability to pay the debt has been interpreted to include one or the other by the court as follows:

- **Terms of the Contract**

It has to be taken into consideration that terms of the contract create the liability to pay the amount so demanded or not. In order to proceed with the petition to wind up the company on the ground of the payment of amount under a contract, the provisions of the parties are to be looked upon to determine the liability and thus the inability.

Bharat Bijlee Ltd. v National Industrial Development Corporation[447]The respondents, National Industrial Development Corporation claiming to be connected as consultant of the U.P. State Industrial Development Corporation U.P SIDC and therefore was not obliged to make the payment to the petitioner as per the terms of the contract. There was no privity of contract between the petitioner and U.P SIDC and the payment had to be related by the respondent NIDC to the petitioner on behalf of U.P.SIDC. It was held that the conduct of the respondent otherwise malafide, liable to pay as debts which is not a bonafide dispute.

Shakti Prakash Metal Finishers (P) Ltd. v Hindustan Machine Tools Ltd & Another[448] in the present case, appellant claimed payment of bills for the work performed along with the interest. Notice was issued for the interest and also the penal interest but no reply was given. However, on earlier reply to notice confirming the actual due and denying the liability to pay any, the company itself filed for winding up. The company

[446] Comp L.J Del 3 2008 554.
[447] Comp. L.J Del 6 2002 145.
[448] ILR 19 2002 KAR 19

judge declined to issue a direction for winding up of the company, but left it open to the appellant to file the suit in regard to the disputed amount in accordance with law. Hence, the present appeal is filed.

It was held that there was a contract between the appellant and the respondents and the same has to be dealt with as per the terms of the agreement. It was observed that just the violation of certain terms in the contract down not give rights per se to invoke the remedies under section 271 of the Companies Act, 2013. It was observed that the true intention of the Act was not to confer civil jurisdiction on company's court to entertain an individual claim on the basis of the agreement violation. Non-payment of the amount under a contract does not necessarily mean an admitted debt even if it is disputed. Debt has been defined as something which is borrowed by a person on a settled terms and conditions and settled rate of interest and it can be resettled between the parties. Hence, the present amount cannot be said to be a debt and therefore, the appeal was dismissed.[449]

Steel Equipment & Construction Co, Re[450], In this case the question was whether in the event of an appeal or a suit to set aside the decree in pursuance to the terms of the contract, the petition for winding up would operate or would be null? Calcutta high court held that a petition shall be adjourned till the disposal of the suit.

- **Non Payment of Bill**

Non- payment of bill of any kind is among the negligence in paying or intentionally avoiding to pay and hence, it is one of the valid grounds for filing the winding up petition. The interpretation is to include the liabilities of all those companies which are neglecting to pay the authorized bill for the services or goods supplied for a reasonable amount of time.

Ah interesting question arose in *Bharat Bijler Ltd. vs. NIDC*[451]as regard whether a winding up petition against consultant of principal for the non-payment of the bill money, can be admitted, when that consultant floated a tender on behalf of the principal and the principal failed to pay the balance money on the contract. The case

[449] *Ibid.*
[450] Comp Cas 1968 Cal 82.
[451] Comp. L.J Del 6 (2002) 145.

pertained to the contract between petitioner and respondent wherein respondent was responsible for getting the payment of bills released. The court held that the amount is said to be the bill amount for the installation of the lift in the building of UPSIDC and is said to be payable and if not paid then the petition for the winding up shall be maintainable.

2.2. Passing a Special Resolution of the Company to Wind up by Tribunal

If the company by a special resolution agrees to dissolve the company by the tribunal then the provisions of section 271 (1) (b) of Companies Act, 2013 would apply. However, the tribunal is conferred with the discretionary power to act upon the resolution and will take into consideration the essential circumstances for example if it is against the public policy or if it is against the interest of the company itself.

In order to understand the power of the members for filing the winding up petition under this clause, the meaning of special resolution is to be understood first. Companies Act, 2013, lays down that a resolution shall be a Special Resolution when:[452]

1. The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
2. The notice required under this Act has been duly given; and
3. The votes cast in favor of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

In *Re Langhan Skating Rink Company James*[453], L.J. has aptly observed that "It is very important that the court should not take upon itself, unless a strong case is made out, to interfere with the domestic forum which has been established for the management of the affairs of a company." It is true the legislature has said, "we do

[452] Companies Act, 2013 (Act No. 18 of 2013), S. 114 (2).
[453] Ch.D. 5 (1877) 669.

not relieve in the case of a minority, we do not say that they may capriciously discontinue what they have once began."[454]

Hence, where the company presents itself the petition for winding up, the petition shall be valid and presentable before the court. There is no reason why a company may not be able to present a petition before the court for winding up any grounds mentioned in clause (a) to (g) of section 271. The same condition applies in cases where a winding up petition has been made before the court and if it found that the substratum of the company is gone. If a company is unable to pay of its debts, or its substratum is gone, a winding up petition will lie even if it is presented by the company itself after a special resolution to this effect is passed. It is irrelevant that the company may have got strained circumstances due to its own misdoings or mismanagement. The motive behind the filing of the petition is equally irrelevant. It needs to noted that there is no jurisdiction to order winding up of company suomoto.

2.3. Threat to Sovereignty and Integrity of India

Laws in any country are to be protected because they govern not only the citizen, individual but also the corporate entities formed or carrying business within the jurisdiction of the country. Therefore, "any activity by such body corporate which poses threat the sovereignty and integrity of India and further if it also effects adversely the public interest, morality and decency, such company may be ordered to be wound up by the Tribunal."[455]

In fact, there have been number of occasions where the foreign companies set up the business in disguise in the nation to carry on various militant activities. Therefore, with the number of such terror activities, Indian government is on alert and thus frames or legislates any law by taking into consideration the enemy acts. Hence, section 271 of companies Act, 2013 puts a check on such fraudulent companies who are threatening the sovereignty and integrity of the nation in disguise.

In "*National Textile Workers Union v. P.R. Ramakrishnan"*[456], Supreme Court said that social scientist and researchers consider the company as a living being, vital and

[454] MLR 27 1964 284.
[455] Companies Act, 2013 (Act No. 18 of 2013), S. 271 (1) (c)
[456] AIR 1983 S.C 75.

dynamic social organism with firm and deep-rooted affiliations with the rest of the community in which it functions and therefore, it would be wrong to look at it as it belongs to shareholders only. Thus, it is to be looked upon as an entity responsible to the society as a whole and it is to be judged as per the reaction of its action.

2.4. Revival and Rehabilitation of Sick Companies

Sick Industries Act, 1985 governed the rehabilitation of sick companies in India for a long time and wherein it can't be rehabilitated, it is to be wound up under Companies Act, 2013 under section 271 (d).

Determination of sickness: "Where on a demand by the secured creditors of a company representing fifty per cent or more of its outstanding amount of debt, the company has failed to pay the debt within a period of thirty days of the service of the notice of demand or to secure or compound it to the reasonable satisfaction of the creditors, any secured creditor may file an application to the Tribunal in the prescribed manner along with the relevant evidence for such default, non-repayment or failure to offer security or compound it, for a determination that the company be declared as a sick company."[457]

Once it is deemed as a sick company, measures for its revival and rehabilitation could not yield a positive result, such company may be ordered to be wound up. It is an accepted view that an incorporated company is a social institution which renders its service for the livelihood and development of the society at large and is dissolution if beneficial. Thus, all the possible efforts are to be taken to dissolve such company.

2.5. Fraudulent Purpose

Any corporation formed for fraudulent purpose to carry out the business or through misrepresentation in the prospectus for illegal purpose. It is just and equitable for the tribunal to wind up the company on the ground of ill intentions. But, in order to exercise the given power to the tribunal, it also has to be seen that it is not mere a misrepresentation or fraud in promotion but clearly it has been that the objects of the company which has been brought forth, are in fraud or carried on for illegal purpose.

[457] Companies Act, 2013 (Act No. 18 of 2013), S. 253 (1).

In *Universal Mutual Aid and Poor Houses v A.D. Thoppa Naidu*[458] Madras high court observed that "where the main object of the company is the conduct of 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".

In *Re L. Todd Swanscombe Ltd*[459] it was held that the fraudulent purpose hereby is an actionable wrong under civil code, criminal code as well as corporate winding up. In all these cases, it is necessary to establish trading with 'intent to defraud'. This requires the court to find that the directors were acting dishonestly, not just that they were acting unreasonably. The difficulty of establishing this has made this remedy little used. It is wider than wrongful trading, however, in that it is available against any persons who were knowingly parties to the carrying on of the business of the company.

Only a liquidator may apply under the civil remedy, but criminal proceedings can be instituted for fraudulent trading outside the insolvency context, regardless of whether a company is wound up or not. The court has power under the civil remedy to make an order that the respondent make such contribution if any, to the company's assets as the court thinks proper.[460]

2.6. Default in Filing Financial Statements or Annual Returns

Indian Companies Act, 2013, lays down that if a company made a default in filing with the registrar its financial statements or annual returns for immediately preceding five consecutive financial years, tribunal can order the winding up of such company.[461] The contributory[462] or a registrar to the company may initiate the proceedings by presenting the petition for the same.[463]

R. Subramanium v Drivers' & Conductors' Bus Services[464], It was held that the power of the court is discretionary and instead of making a winding up order the court may

[458] AIR 1933 Mad 16.
[459] 1990 BCC 125.
[460] Janet Dine *Company Law*310 (Macmillian Press Ltd London, 3rd Edn.,1998).
[461] Companies Act, 2013 (Act No. 18 of 2013), S. 271 (f).
[462] Companies Act, 2013 (Act No. 18 of 2013), S. 2 (26).
[463] Companies Act, 2013 (Act No. 18 of 2013), S. 272 (4).
[464] Comp Cas 1978 Mad 672.

direct that the statutory report shall be delivered or that the section shall be complied with shall be held.

Such petition may be initiated either by members or any member of the company or by the registrar with prior approval of the central government. However, to initiate the proceedings under section 272, the definition of the member has to be taken into consideration which does not include the past members, any beneficiary or the trustees of the Bankrupted members. Members include those who are registered as the members of the company under Memorandum of Association which were mentioned during the incorporation of such company.[465]

2.7. Winding up of Company by Tribunal on Just & Equitable Grounds

Section 271 clause (g) confers the wide power to the tribunal to order winding up of the company. Apart from mentioning the specific grounds for the winding up of companies, legislature provided clause (g) in order to cope up with any condition which renders the company as insolvent or which ultra vires any law or any contract or violates the interest and rights of the creditor and hence becomes a reason to wind up the company. Section 271 clause (g) says"if the Tribunal is of opinion that it is just and equitable that the company should be wound up."

Thus, tribunal enjoys a very wide discretionary power to order winding up when it seems desirable to the tribunal. The tribunal may give due weight age to the interest of the company, its shareholders, creditors or to the public interest. Though the tribunalis not bound to consider this clause as *ejusdemgeneris*as only covering grounds of the like nature as mentioned in clause a under section 271 of Companies Act, 2013 yet court shall look into the matter of like nature.

In *Jivabhai M Patel v Extrusion Processes Ltd.*[466]it was observed that The principle of Ejusdem Generis which means denoting a rule for interpreting statutes and other writings by assuming that a general term describing a list of specific terms denotes other things that are like the specific elements, have dominated the interpretation of just and equitable clause in almost all the statutes since long. But in this clause, it has

[465] Companies Act, 2013 (Act No. 18 of 2013), S. 2 (55)
[466] Comp L.J 2 1966 Bom 74.

been entirely abandoned and wide discretionary power has been conferred on the Tribunal to determine the matters to order winding up of the companies. There must be a really strong ground for the winding up of companies. Moreover, the court may refuse to grant winding up order if it is of the opinion that some other remedy is available to the petitioner and he is acting unreasonably in seeking to have the company wound up, instead of pursuing other remedies.

As per the implication of the term 'Just and Equitable', it is neither possible nor desirable to categorise the situations which render it just and equitable to wind up the companies. Generalising the situations under this clause is wrong and it should be left with the discretion of the tribunal to decide the matter as per the circumstances of each case. However, some circumstances given below may form appropriate cases for the winding up of companies:

- **Loss of Substratum**

Substratum is derived from a Latin term *stratum* (layer or Base) which means the foundation or the basis. Therefore, the loss of substratum in corporate terms implies when the company is unable to fulfil the aims and objectives so mentioned in Memorandum of the company. *German Date Coffee Co Re*[467] is an important illustration on the point where in the company was formed to manufacture coffee from dates under a patent. Government approval was to be taken before carrying on the business. But unfortunately, no paten was granted and company embarked upon other patents. But, on the petition by the shareholder, it was held that it was impossible to carry the objects for which the company was formed and therefore, it was just and equitable to wind up the company.

However, a temporary difficulty which does not hitch the bottom of the company should not be permitted to be counted under this clause for loss of substratum. One of the cases under this head can be *Steam Navigation Co. Re*[468]A steamship company was incorporated with the principle object of acquiring a firm's business of plying steamers. After the business was acquired there grew a grave difference between the company and the firm. As a result, the company had to return seven out of nine

[467] All ER Report 20 1882 372.
[468] LR 10 BOM 1901 107.

steamers acquired from company. Subsequently few losses also occurred and application for winding up on the ground of failure of substratum was filed. However, court did not admit the application on the ground that the ultimate objectives of the company did not become impossible to attain. The company did have enough capital to buy other steamers and hence could carry on with the business after making purchase of the steamers so required to carry on the business.

- **Oppression of Minority**

An aggressive and oppressive order by the directors of the company against the minority shareholder seems a just and equitable ground for the winding up of companies. For example, where seventy percent of the shares of the company are to use for the objects and the majority of the shareholder do not agree with such object then in such event company is bound to be wound up as against the will of the shareholders.

One of the important cases on the point is *R Sabapathi Rao v Sabapati Press Ltd.*[469]in the present case, there were several complaints regarding the ill management of the company. Directors were able to control the management of the company to the extent to take decisions against the rights and interest of the shareholders to outvote the minority of the shareholders and share the profits among the members of the family in the business. The balance sheet was never provided to the shareholders and the audit report was not read at the general meeting, dividends were not regularly paid and as a consequence, the rate kept diminishing. Grounds were found sufficient to wind up the company under the head just and equitable.

As Alfred Palmer rightly said:

> "The liquidation of the company may result in the sale of its assets at break-up value without regard to the value of the goodwill or 'know how' of the company and the minority shareholder who urged by the shareholder's oppression petitions for a winding up order may in effect play up his opponents' game".[470]

[469] AIR 1925 Mad 107.

[470] The Institute of Companies Secretaries of India, *Executive Program Study Material, Company law* 979 (Module II, Paper 4, ICSI House New Delhi).

Therefore, this statutory protection under Companies Act, 2013 section 271 clause (g), for the prevention of oppression and mismanagement, is an alternative remedy for winding up of the affairs of the company. The reason is that the oppressed minority may file petition with the Tribunal to wind up the company. However, the company may be a sound and profitable concern. In that case, the petitioners will not only be deprived of whatever dividends they might have been getting but also the value of the assets of the company might be substantially reduced.

- **Partnership Analogy**

In India, there are different commercial entities due to the objects of business and to enjoy different legal consequences and thus to apply the legal requirements to them in common is the productive of inconvenience and the confusion. Therefore, tribunal treats them differently while taking the decisions as to the winding up as per the nature of business and the form thereof. One such matter is the interpretation of the just and equitable clause in terms of the winding up of small private business.

In *Ebrahim v Westbourne Galleries Ltd*.,[471] it was held that where a private company is in essence or substance a partnership, it may be ordered to be wound up under the just and equitable clause as interpreted in accordance with the partnership principles. Lord Wilber Force observed that "there is room in Company Law for recognition of the fact that behind the company, or amongst it, there are individuals, with rights, obligations and expectations inter se which are not strictly submerged in the company's structure."

As in this case, the clear intention of the parties was that all would participate in running the company and all profits were paid as directors' fees and not as dividends, so that dismissal of one director from his post meant that the underlying assumptions upon which the company was founded were destroyed and winding up was necessary.[472]

A division bench of Calcutta High Court in *Ragunanth Prasad Jhunjuwala v Hind Overseas Pvt Ltd.*,[473] ordered the winding up of the company private in form consisting of two groups. It was found that the company was truly started as a partnership venture

[471] (1973) AC 360.
[472] Mike Ottley, *Q&A Company Law* 61 (9th Edn., Routledge, 2015)
[473] Comp Cas. 41 Cal 1971 308.

which was shown by their correspondence and bank account opened by them where the shareholding was not equal but it was clear that the members of one group were functioning as working to those of others. However, Supreme court reversed the decision of Calcutta High Court and observed that Ejusdem Generis Principle will be applicable when the company in essence is partnership and in the present case, the idea of forming a partnership was left behind at the initial stage of the incorporation of the companies. It was incorporated as a company and it had divergent interest and only few family interests and the exclusion from directorship in such cases cannot be a proper ground for putting the company to an end.[474]

- **Failure to Commence Business**

One of the very important ground for the winding up of the company by a Tribunal is the non-commencement if the business or the suspension of the company's business. As in the event of the Inability to pay debts, tribunal also enjoys the discretionary power to order winding up in the event of non-commencement of business of company. In order to determine the winding up proceedings on this ground, court has to take into consideration the intention of company to carry on the business and also the past recorded for such suspension or non-commencement satisfactory or not. Is the company pursuing many businesses and any one or few of them have been suspended or not commenced since long, it does not become a ground per se for the winding up of company unless the suspension or the non-commencement is of the entire business of the said company[475].

Secondly, after determining the non-commencement of the business, court has to look further into the possibility if the company could run or continue its business. *Anand Synthetic v A & Synthetic Employee Union*[476] is an important authority on the point wherein on the basis of two grounds under Companies Act of inability to pay debts and just and equitable ground, company was ordered to be wound up wherein the company was not able to pay the wages of the employees and also was not carrying on its business for the last eight years and hence the winding up order was made on the following grounds:

[474] S.C Tripathi, *New Company Law* 416 (Central Law Publications Allahabad, 1st Edn., 2015).
[475] *Ibid* 546.
[476] Comp L.J 4 2001 33.

The mine for which the company was formed could not be found.

1. Patent was not granted.
2. Bulk of the said company was sold.
3. No grant of contract or concession which the company was supposed to undertake.
4. Due to dead lock, company has not worked for several years and there could not be seen any chance of revival.
5. Where there was suspension of the business for over a year, the members were reduced to less than two, all directors but one were absconding and assets were taken over by the lending institution, the petition by the sole remaining director was admitted. The argument by the lending institution that the winding is sought to escape the remaining liability of the company was not accepted.
6. The company could not be revived where various bans and financial institutions refused to advance terms of the loan on account of antecedents of the managing director and by change of management.
7. The directors of the company which had cheated investors, banks and other financial institutions were also involved in the respondent company. Statutory notice was also not complied with and no reply was sent within the prescribed time period. There was no objection to the advertisements as well and no business was done by the company since its incorporation.

Regarding the holding and subsidiary company, it has to be noted that if the business of such subsidiaries is continued by the holding company then it cannot be said that the business by the company was suspended and the commencement of such business by the holding is a conclusive proof of the active business.[477]

If a company is not active in business since the incorporation for a period of one year then court may order to wind up such company. However, court will take into consideration the intention to carry on the business of its member before initiating the winding up proceedings. If it is brought to the knowledge of the court that the business could not be exercised because of reasonable circumstances or the circumstances were temporary then court may refuse the order.[478]

[477] Karn Gupta, *Introduction to the Companies Law*391 (Lexis Nexis, 1st Edn.,2013).
[478] Companies Act, 1956 (Act 1 of 1956), S. 433 (c)

Murlidhar v Bengal steamship Co[479] the company was incorporated and it employed a steamer and two flats. However, the business could not be carried in the flats for the company's business for the period of more than a year as they were occupied by the government during the First World War. Taking into the consideration the circumstances, court held that there was a reasonable ground for not to carry on the business for the aforesaid period and therefore the petition to wind up was dismissed.

However, in various cases where the company's business had remained suspended for the period of ten years and its capital has been lost in misappropriation. In *Surendra Kumar Pareek v Shree Guru Nanak Oils P Ltd* [480]where the company's business could not be commenced for the period of one year though the loans were taken from the financial institution and also the members reduced beyond the limit fixed for a private company, court ordered the winding up procedure instantly.

In *Orissa trunks & Enamel Works Ltd Re*,[481]the order to exercise the power under the ground of just and equitable, one thing that needs to be mentioned here is that where there is an alternative remedy available and everything has been done but no solution is in sight then court may order the winding up. Therefore, under just and equitable clause, tribunal shall not make winding up order if the petitioner has another remedy to have the matters complained by him rectified, as for example an action to restrain ultra vires acts or a requisition to call a general meeting and have matters rectified and settled by the general body of shareholders.

3. Grounds for Voluntary Winding up of Companies

A company may be wound up voluntarily under the following circumstances:[482]

1. If the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or

[479] AIR 1920 Cal 722.
[480] Comp Cas 82 1995 642.
[481] Comp Case 43 1973 503.
[482] Companies Act, 2013 (Act 18 of 2013) S. 304

2. If the company passes a special resolution that the company be wound up voluntarily.

No reason is to be assigned in the event of winding up by passing a special resolution under clause (b) of section 304 under the Companies Act, 2013.

In *Re, Bailey Hay & Co. Ltd.,*[483] here were only five shareholders, two of whom held between themselves 50% of the voting power and they passed the resolution. shareholders who abstained from voting on the resolution and allowed it to be passed with knowledge of their power to stop it must be deemed to have assented to the resolution which accordingly was held valid. Similarly, where the required special resolution is passed at a meeting convened by giving a shorter notice than that required by the Act, but all the members of the company unanimously agreed thereto, the resolution being intra vires the company, would be considered valid.

Winding up order by the tribunal is not common because normally the members of the company prefer to wind up the company voluntarily for in such a case they shall have a voice in its winding up. Further, its creditors are left to settle their affairs without going to a court, although they may apply to the court for directions or orders, when necessary.[484] However, the tribunal is conferred with this power to exercise only in the cases where it is against the interest of the company and the public. Mostly, voluntary winding up is proceeded with because it is easier and speedy and also members and creditors can have a say in that too. Therefore, compulsory winding is preferred only when there is a dire need of it.

In *British Water Gas Syndicate v. Notts Derby Water Gas Co. Ltd.*[485], held that However prosperous and solvent a company may be, if the members wish the company to be wound up, they can do so by passing a special resolution to that effect and no reasons need be given. no articles of the Company can prevent the exercise of this statutory right. And the right cannot be interfered with by any Court by means of an injunction or otherwise.

[483] (1972) 42 Comp Cas 442.

[484] Sumita Patwari, Voluntary Winding Up In India- A Comparative Analysis available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2377165 (Last Retrieved on 16.04.2018).

[485] 1889 WN 204

In the event of voluntary winding up of the company by passing the special resolution the company is bound to advertise the intention in the official gazette within 14 days of passing of such resolution and also in a local newspaper at the place where the office of the company is registered.[486]In *S.P Bhargava v RameshwarShastri*, it was held that the non-compliance of this does not vitiate the resolution terminating the life of the company.it only invites punishment as it is a matter of irregularity and not illegality.[487]

On winding up of company voluntarily, the company ceases to carry on its business from the commencement of winding up but may carry on further for the beneficial and fruitful result of winding up.[488] In *Dawson's Ban Ltd v Nippon Menkwa Kabushiki Kesha*it was held that the effect of voluntary liquidation on the suit pending against it merely on the conduct of defense. In other words, it does not effect the position of the company. The only change which shall occur is in the conduct of the business where the liquidator shall act as directors.[489]

4. Kinds of Voluntary Winding up

A voluntary winding up may be in two ways, members voluntary winding up and creditors voluntary winding up as follows:

4.1. Member's Voluntary Winding up

In the member's voluntary winding up, declaration of solvency is sine qua non in the before passing the resolution to winding up in general meeting of the company. In the absence of the declaration, it would be regarded as creditor's winding up even though the company is solvent enough to pay the debts within the prescribed period of time.[490]

A statutory declaration of the solvency is to be made by the company when it is proposed to wind up the company, if there are more than two directors, such declaration is to be made by the majority by affidavit of inquiry into the affairs of the

[486] Companies Act, 2013 (Act 18 of 2013), S. 307 (1)
[487] AIR 1952 Madh B 3.
[488] Companies Act, 2013 (Act 18 of 2013), S. 309.
[489] AIR 1935 PC 79.
[490] H.K Saharay, *Company Law* 489 (Universal Law Publishing, 7thEdn., 2016).

company to the effect that company has no debt or whether it will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up.[491]

Such declaration has to be made before at least five weeks before the passing of the resolution and should have been sent to the registrar as well for the registration before the aforesaid date. Such declaration should be accompanied with the audit report of the company until the declaration date including the statement of the company's assets and liabilities.[492] In *Uma Charam v Lalu Prasad*, it was held that the failure to comply such conditions will render the proceedings vitiated by the liquidators as there was no liquidator appointed.[493]

And any declaration by the director on unreasonable ground shall be punishable for the term not exceeding six months or with fine to the extent of fifty thousand Rs. or with both. When the company is unable to pay its debts within the three years of winding up, it shall be presumed as an unreasonable ground by the director but will be a rebuttable presumption.[494] In *Decourcy v Clement and another*[495]it was held that the meaning of company's assets and liabilities statement thereof means anything which shall fairly describe the financial position of the company. But even if there are errors and omissions in the statement then it shall not prevent it to be the financial statement of the company.

4.2. Creditor's Voluntary Winding up

If no declaration is made with the Registrar then such voluntary winding up shall be called as creditor's voluntary winding up. In such case the meeting of the creditor shall follow the same day or the next day following the day of proposal of winding up resolution, and notice of the creditor's meeting shall be given to the creditor and all the members of the company.[496]The notice of the meeting shall also be published in the official gazette and the local newspaper where the office of the company is registered.[497] At such creditors meeting the directors must cause a full statement of the position of the company's affairs together with the list of creditors of the company

[491] Companies Act, 2013 (Act 18 of 2013), S. 305 (1)
[492] Companies Act, 2013 (Act 18 of 2013), S. 305 (2) (a & c)
[493] AIR 1955 NUC 2761.
[494] Companies Act, 2013 (Act 18 of 2013), S. 305 (4)
[495] (1971) 41 Comp Cas 769 (Ch D): (1971) 2 WLR 210
[496] Companies Act, 2013 (Act 18 of 2013), S. 306 (1).
[497] Companies Act, 2013 (Act 18 of 2013), S. 307 (1).

along with the amount of their claims,[498] and must be one director of the company to preside over the creditor's meeting.[499]

The resolution passed in the creditor's meeting shall be notified to the registrar within ten days of passing of such resolution[500] and a person shall be appointed as a creditor who shall conduct the winding up proceedings thereafter in the same manner as conducted in the compulsory winding up.

4.3. Differences between Members Voluntary Winding up and Creditors Voluntary Winding up

After the careful consideration of Companies Act, 2013, above following are the vivid differences between Member's voluntary winding up and creditor's voluntary winding up:

a. Members voluntary winding up process is used by solvent companies to close down their business. In contrast, although still voluntarily undertaken, a creditors voluntary winding up involves closure of a company that is insolvent

b. After an members voluntary winding up the proceeds of sale go to the shareholders Whereas a creditors voluntary winding up sees the cash realized from the sale of assets returned to creditors.

c. In Members voluntary winding up there is no need to have creditors meeting but, in the case of creditors voluntary winding up, a meeting of the creditors must be called immediately after the meeting of the members.[501]

d. Liquidator, in the case of members winding up, is appointed by the members[502] but in the case of creditors voluntary winding up if the members and creditors nominate two different persons as liquidators, creditors nominee shall become the liquidator.[503]

[498] Companies Act, 2013 (Act 18 of 2013), S. 306 (2) (a).
[499] Companies Act, 2013 (Act 18 of 2013), S. 306 (2) (b).
[500] Companies Act, 2013 (Act 18 of 2013), S. 306 (4).
[501] Companies Act, 2013 (Act 18 of 2013), S. 306 (1).
[502] Companies Act, 2013 (Act 18 of 2013), S. 310 (1).
[503] Companies Act, 2013 (Act 18 of 2013), S. 310 (2)

e. In the case of Members' voluntary winding up, there is no provision for any such Committee. But in case of Creditor's voluntary winding up, if the creditors so wish, a Committee of Inspection may be appointed. [504]

f. In members voluntary winding up, dominant control remains in the hands of the members of the company but in the creditors voluntary winding up, dominant control remains in hands of the creditors.

g. In case of members voluntary winding up the liquidator can exercise some of his powers with the sanction of a special resolution of the company.[505] but in case of creditors voluntary winding up, the liquidator can do so with the sanction of the court or the Committee of inspection or of meeting of creditors

The process of voluntary winding up of companies has now been shifted from the Companies Act, 2013 to Insolvency and Bankruptcy Code, 2016 and it will be discussed further in the sixth chapter of the present thesis.

5. Rights of the Persons to File for Winding up

The Court does not choose to wind up a company at its own motion. It has to be petitioned. Section 272 of the Companies Act enumerates the persons those who can file a petition to the court for the winding up of a company. Subject to the provisions of the section, a petition to the Tribunal for the winding up of a Company shall be presented by:

1. "The company;
2. Any creditor or creditors, including any contingent or prospective creditor or creditors;
3. Any contributory or contributories;
4. All or any of the persons specified in clauses (a), (b) and (c) together;
5. The Registrar;
6. Any person authorised by the Central Government in that behalf; or
7. In a case falling under clause (c) of sub-section (1) of section 271, by the Central Government or a State Government."

[504] Companies Act, 2013 (Act 18 of 2013), S. 315.
[505] Companies Act, 2013 (Act 18 of 2013), S. 314 (3).

Researcher shall discuss in detail the rights of the above mentioned to file the winding up suit before the court as follows:

5.1. Petition by Company

A company can make a petition only when it has passed a special resolution[506] to that effect. However, it has been held that where the company is found by the directors to be insolvent due to circumstances which ought to be investigated by the Court, the directors may apply to the Court for an order of winding up of the company without obtaining the sanction of the general meeting of the company.[507]

5.2. Petition by Creditors

The word 'creditor' includes 'secured creditor', debenture holder and a trustee for debenture holder.[508] A contingent or prospective creditor such as the holder of a bill of exchange not yet matured or of debentures not yet payable is also entitled to petition for a winding up of the company.[509]

Before a petition for winding up of a company presented by a contingent or prospective creditor is admitted, the leave of the Court must be obtained for the admission of the petition. Such leave is not granted (a)[510] unless, in the opinion of the Court, there is a prima facie case for winding up the company; and (b)[511] until reasonable security for costs has been given. Notice that a creditor has a right to winding up order if he can prove that he claims an undisputed debt and that the company has failed to discharge it. When a creditors' petition is opposed by other creditors, the Court may ascertain the wishes of the majority of creditors.[512]

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[506] Avtar Singh, *Company Law* 544 *(Eastern Book Company, Lucknow, 12th Edn.,1999).*

[507] State of Madras v. Madras Electric Tramways AIR 1956 Mad 131

[508] The Provincial Insolvency Act, 1920 (Act 1 of 1920) S. 2 (1) (e).

[509] Companies Act, 2013 (Act 18 of 2013), S. 272 (b).

[510] Companies Act, 2013 (Act 18 of 2013), S. 272 (6).

[511] *Ibid.*

[512] Gulshan S. S. G K Kapoor, *Business Law Including Company Law* 519 (New Age International, non-publishing date).

5.3. Petition by Contributories

The term contributory defined under Companies Act, 2013 as every person who is liable to contribute to the assets of the company in the event of its being wound up.[513]A contributory is entitled to present a petition for winding up of company on all the grounds under mentioned under Section 271 except on the inability to pay the debt and the special resolution passed by the member of such company if: [514]

1. The shares in respects of which he is a contributory either were originally allotted to him or have been held by him; and
2. The shares have been registered in his name, for at least six months during the period of 18 months immediately before the commencement of the winding up; and
3. The shares have been devolved on him during the death of a former holder.

Section 272 (3) makes it clear that it includes the holder of fully paid shares. A fully paid shareholder will not, however, be placed on the list of contributors, as he is not liable to pay any contribution to the assets, except in cases where surplus assets are likely to be available for distribution.[515]

A contributory shall be allowed to present a petition for the winding up of the 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 holders after the satisfaction of its liabilities. It is not necessary for a contributory making petition to have tangible interest in the assets of the company. A contributory or a member may present a petition to the court for the winding up of the company if default has been committed by the company.[516]

[513] Companies Act, 2013 (Act 18 of 2013) S. 2 (26).
[514] Companies Act, 2013 (Act 18 of 2013) S. 272 (3).
[515] Kapoor N D, *Elements of Company Law*374 (Sultan Chand & Sons, New Delhi, 2015).
[516] M.C. Kuchhal & Vivek Kuchhal, *Business Laws (For GBTU), 4th Edition* 305 (Vikas Publishing House, non-publishing date)

5.4. Petition by Registrar

The Registrar of Companies as defined under Sub-Section 75 of Section 2 of the Companies Act, 2013, is appointed by the Ministry of Corporate Affairs who is responsible for the regulation of Indian enterprises in Industrial and Services Sector.

He has been vested with a number of functions and equipped with a wide range of powers under the Companies Act, 2013 and most importantly, he is responsible for fostering business ethics in the current paradigm and plays a dominant role in facilitating business.

He has been conferred with the power to file for the winding up of a company. Such power can be considered as his duty too so as to bring in the knowledge of the government the default or illegal acts on the part of the company only on the following grounds, viz.:

1. "if a default is made in delivering the statutory report to the Registrar or in holding the statutory meeting[517];
2. If the company is unable to pay its debts;[518]
3. If the company has acted against the interest of sovereignty and the integrity of India, the security of the State[519] and
4. When the affairs of the company have been conducted in fraudulent manner."[520]

In *Registrar of Companies v Navjivan Trading & Finance Pvt Ltd*, it was held that the Registrar can file a petition for winding up only with prior approval of the Central Government. The Central Government before sanctioning approval must give an opportunity to the company for representing its part, if any. Again, a petition on the ground of default in delivering the statutory report or holding the statutory meeting cannot be presented before the expiration of fourteen days after the last day on which the statutory meeting ought to have been held.[521]

[517] Companies Act, 2013 (Act 18 of 2013), S. 271 (1) (f).
[518] Companies Act, 2013 (Act 18 of 2013), S. 271 (1) (a).
[519] Companies Act, 2013 (Act 18 of 2013), S. 271 (1) (c).
[520] Companies Act, 2013 (Act 18 of 2013), S. 271 (1) (e).
[521] (1978) 48 Comp Cas (Guj) 402

5.5. Petition by any Person Authorised by the Central Government

If it appears to the Central Government from any report of the inspectors appointed to investigate the affairs of the company, that it is expedient to wind up the company because its business is being conducted with intent to defraud creditors, members or any other person, or its business is being conducted for a fraudulent or unlawful purpose, or the management is guilty of fraud[522], misfeasance[523] or other misconduct, the Central Government may authorize any person to present to the Court a petition for winding up of company that is just and equitable that the company should be wound up.[524]

6. Powers of the Court in Winding up proceedings

Regarding the winding up proceedings, court has been conferred with gross powers to entertain, hear and dispose of the matter. Though, Companies Act, 2013 lays down the procedure to be followed in any winding up proceedings but at the same time by virtue of the supreme position of judiciary, judges are free to exercise discretion in granting and rejecting the winding up petition as discussed above in relation to clause (a) of section 271 of the Companies Act, 2013.

On hearing a winding up petition the court may, grant the petition and make a winding up order, or dismiss the petition with or without costs, or may make interim order, or any other order it may deem just and fit to make.[525]In *Re Pioneer Bank Ltd*,[526] it was held that "there is no obligation whatever on the court to admit a petition merely because it has been presented."

In the event of the winding up proceedings by the tribunal, court appoints a provisional liquidator till the making of the winding up order.[527] Also, the court may appoint official liquidator before passing of the order and after presentation of the petition. Such liquidator has to be appointed with serious considerations as it can adversely affect the reputation and the financial structure of the company in the event

[522] Indian Contract Act, 1872 (Act No. 9 of 1872), S. 17.

[523] The term misfeasance has been defined under tort law in India which means an act which is normally legal but has been done improperly or in an illegal manner.

[524] Companies Act, 2013 (Act 18 of 2013), S. 272 (f).

[525] Companies Act, 2013 (Act 18 of 2013), S. 273 (a) & (b).

[526] I.L.R Bombay 1915 39.

[527] Companies Act, 2013 (Act 18 of 2013), S. 273 (c).

where winding order has not been passed. It is to protect the company's property for the determination of the rights of the creditor. However, in the event of voluntary winding up, the receiver who has been appointed by the company can act as a provisional liquidator on the order of the court. The official liquidators enjoy wider powers when it comes to the investigation proceedings.[528]

Section 279 of the Companies Act 2013 provided that even before any order has been made by the court, on the application of the creditor or any interested person for the stay of proceeding in any other court including high court or supreme court, the court may order such proceedings to be stayed. The power of the court is extensive in nature wherein it includes criminal, civil as well as revenue proceedings.[529]

Court may exercise all the powers which it deems necessary for the appropriation of company winding up affairs. For example, in *Vallabh Glass Works v. ICI Corp*[530] there were proceedings in the Bombay High Court against the secured creditor and the winding up proceedings were presented before the Gujarat High Court. Court ordered to transfer the proceedings from the Bombay high court to the Gujarat High Court for the convenience as well as to look into the affairs properly to settle the company winding up proceedings. Also, the court has been conferred with the power to set aside the order of winding up on reasonable grounds.

In *GT Swami v Good luck Agencies,* [531] where by due to the reason of similarity of name, one genuine company was wound up, court after taking into consideration the mistake of fact allowed the rescission of winding up order and revived the company's status.

7. Commencement of Winding up Proceedings

Sections 308 and 357 of the Companies Act, 2013 provides the procedural rules regarding the commencement of winding up of a company. It states that the liquidation commences differently in voluntary and compulsory as follows; "A voluntary winding up shall be deemed to commence on the date of passing of the

[528] Companies Act, 2013 (Act 18 of 2013), S. 277.
[529] The Matter of Ovation v. Adverts (Private) Ltd. And Anr Comp Cas 595 Bom 1969 39.
[530] Comp Case SC 62 1987 101.
[531] Comp Case 69 Kant 1990 819.

resolution for voluntary winding up and the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up".

In *Re Prudential Capital Markets vs Unknown*[532] the issue was regarding any attachment, distress or execution put in force, without leave of the court against the estate or effects of the company, after the commencement of the winding up or any sale held, without leave of the court of any of the properties or effects of the company after such commencement. Court said that such transfer shall be void as the winding up of a company by the court is deemed to commence at the time of presentation of the petition for winding up and hence any transaction after the presentation of the winding up petition by the court would not escape the liability that the transfer was made with the genuine intention and without the knowledge of the filing of the suit. Therefore, for the purpose of procuring the interest of the creditors the commencement of the winding up by court shall start from day of the presentation of the suit itself.

8. Consequences of Winding up of Company

1. Where the Tribunal makes an order for winding up of company, the Court must forthwith cause intimation thereof to be sent to the Official Liquidators and the Registrar.[533]
2. The winding up order is deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued.[534]
3. When a winding up order has been made, no suit or other legal proceedings can be commenced against the company except with the leave of the court. suits pending at the date of the winding up order cannot be further proceeded without the leave of the court.[535] court has 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, (c) any application made under Section 233 by or in respect of the

[532] Comp LJ Cal 1 2008 314.
[533] Companies Act, 2013 (Act 18 of 2013), S. 277 (1).
[534] Companies Act, 2013 (Act 18 of 2013), S. 277 (3).
[535] Companies Act, 2013 (Act 18 of 2013), S. 279.

company, (d) any question of priorities or any other question whatsoever which may relate to or arise in course of the winding up of the company.[536]

4. An order for winding up operates in favour of all the creditors and of all the contributories of the company as if it had been made on the joint petition of a creditor and of a contributory [537]
5. Section 335 of Companies Act, 2013 declares that "any attachment and sale of the estate or effects of the company, after the commencement of the winding up, will be void. In the case of winding up by the court any attachment, distress or execution put in force, without leave of the court, against the estate or effects of the company after the commencement of the winding up will be void. Similarly, any sale held, without leave of the court, of any of the properties or effects of the company after the commencement of the winding up will be void. With leave of the Court, attachment and sale of the properties of the company will be valid even if such attachment and sale are made after the commencement of the winding up of the company. Besides, this section does not apply to any proceedings for the recovery of any tax imposed or any dues payable to the Government." Thus, the Court in *Narendra Bahudur Tondon v. Shankar Lal*, [538] held that the court can direct that any such disposition of property or actionable claims[539] or transfer of shares or alteration of status of the members will be valid. But unless the Court so directs, such disposition, transfer or alteration will be void.
6. It is to be noted that winding up order does not bring the business of the company to an end. The corporate existence of the company continues through winding up till the company is dissolved. Thus, the company continues to have corporate personality during winding up. Its corporate existence comes to an end only when it is dissolved.[540]
7. On winding up order being made in respect of a company, the Official Liquidator, by virtue of the office, becomes the liquidator of the company.[541]

[536] Companies Act, 2013 (Act 18 of 2013), S. 280.
[537] Companies Act, 2013 (Act 18 of 2013), S. 278.
[538] AIR 1980 SC 575.
[539] Transfer of Property Act, 1882 (Act No. 4 of 1882), S. 3.
[540] Companies Act, 2013 (Act 18 of 2013), S. 309
[541] Companies Act, 2013 (Act 18 of 2013), S. 275.

9. Appointment of Liquidator

For the purpose of Winding up of the affairs of a Company, satisfying its debts and obligations and distributing the surplus, if any, among the members according to their rights, there must be some person to discharge these duties. The person who does all this is known as the 'Liquidator'. In many countries, there are registered liquidators, qualified liquidators etc., for the purpose of the determination of rights and liabilities of the company by dealing with the assets and the property of the company. There are two sorts of liquidators in India as follows:

9.1. Official Liquidator

Official liquidator is a whole time officer appointed by the central government. Though the office of the official liquidator is involved in both the modes of winding up, it is the process of winding up by court in which the office of the official liquidator assists the court, which is the NCLT in India.

As per the Companies Act, 2013, the tribunal where passing the winding up order, shall appoint an official liquidator or provisional liquidator from the panel as maintained by the Central government as company liquidator.[542] Section 275(2) of the Companies Act, 2013, provides that the provisional liquidator or the company liquidator having at least ten years of experience in the company matters shall be appointed from a panel consisting of the followings: [543]

- Chartered Accountants
- Advocates
- Secretaries
- Cost Accountants and
- Firms and Bodies Corporate.

The tribunal is working the appointment of the official liquidator shall have regard to the views of the secured creditors and workmen of the company. *Board for industrial*

[542] Companies Act, 2013 (Act 18 of 2013), S. 275 (1).
[543] Companies Act, 2013 (Act 18 of 2013), S. 275 (2).

and financial reconstruction vs. Swadeshi Mills Company Ltd.[544] R. J. Kochan J held provision of watch and ward series for protection of assets of company. An official liquidator is attached to each tribunal and is appointed by Central Government.

As far as official liquidator is concerned, he is appointed as per section 275 of Companies Act, 2013, who qualifies the mandates by the tribunal as per the nature of the company and he shall be responsible for the determination of rights and liabilities of the creditors and of companies. The powers and duties are same in regarding the winding up of the companies as that of a provisional liquidator and hence there is no such difference as to the standing of both the liquidators and therefore the decisions taken in pursuance to the appointment are valid.

9.2. Interim or Provisional Liquidator

Section 275 of Companies Act, 2013 provides for the appointment of the provisional liquidator at the initial stage of the proceedings where the tribunal must be satisfied that the circumstances warrant for the appointment of such provisional liquidator for the administration of the assets of the company because such when such provisional liquidator is directed to take the charge of the assets of the company, it shall directly interfere with the affairs of the company which as a result influence the winding up proceedings. Therefore, it is necessary that Tribunal is satisfied to appoint such provisional liquidator.[545]

New Era Manufacturing Co. Ltd. Case[546]According to Patna and Punjab High Courts, the appointment of such liquidator is not only provisional, but contingent also as it operates to protect the property for an equal distribution in the event of a 'compulsory winding up' order being made; if no such order is made, then his appointment ought not to interfere with the rights of third persons. "The appointment of a provisional liquidator is made by the court on the application of a creditor, or a contributory, or of the company. Where the company is not applicant, notice of the application for appointment of provisional liquidator should be given to the company unless the court, for special reasons to be recorded in writing, dispenses with the notice."

[544] Comp Case 6 Bombay 2002 98.
[545] N.E.P.C. India Ltd (Mys), Chairman v M/s Indian Oil Corporation Ltd LW Mad 2009 229.
[546] Comp. L.J. 2 1965 309.

The provisional liquidator is appointed in pending the winding up proceedings and the aim of such appointment is the procurement of the assets and potential creditors of the company and the supreme consideration of appointment is the dissolution of the assets of the company.[547] Therefore, before invoking the powers of the tribunal under the said section for appointment of provisional liquidator the reasons and circumstances which mandate the appointment must be cited and well established.[548]

Hence, a tribunal is authorised to lay down such conditions and essentials as it may think necessary for the appointment of such provisional liquidator. However, the fee payable to such liquidator shall be determined as per the tasks performed, experience, qualifications and the size of the company.[549]

The leading authority is Emmerson's Experience wherein Lord Romilly has aptly observed as follows[550]

> "It is perhaps convenient that I should state what my practice is with reference to the appointment of Provisional Liquidators. Where there is no opposition to the winding up, appoint a provisional Liquidator as a matter of course on the presentation of the petition. But where there is opposition to it, then I never do, because I might paralyze all the affairs of the Company and afterwards refuse to make the Winding up order at all. But when the Directors themselves apply or do not oppose the Winding up, then appoint the Provisional Liquidator."

In *New Era Manufacturing Co. Ltd.*,it was observed that the name provisional liquidator is only a convenient label; the appointment under Section 275 is as liquidator though provisionally under Section 290 he has the same powers, and to the extent these powers imply duties, the same duties as a liquidator in a Winding up. The circumstances that Sections 275 and 283 speak about the liquidator, does not mean

[547] S.C Tripathi, *New Company Law* 442 (Central Law Publications Allahabad, 1st Edn., 2015).

[548] *Ibid.*

[549] Companies Act, 2013 (Act 18 of 2013), S. 275 (5).

[550] Redhu, Suresh Kumar *Winding up of companies under Indian companies Act Recent impacts* (2008) (Maharshi Dayanand University).

that provisions which speak only about the liquidator do not include a Provisional Liquidator within the scope of that word.[551]

10. Duties & Powers of Liquidator

The liquidator is an agent of the company for the purpose of the winding up. while discharging his duties, he looks into the interests of the creditors, contributories and the company. He acts impartially and holds the balance even between the company and the creditors or contributories. a liquidator is not in the position of a trustee for the individual creditors or contributories in true sense, but in the sense that he must act in the interest of the company, creditors and contributories. He must protect the interests of company and should not act in his own interests.[552]

Following are the duties and powers of the liquidator in the events of voluntary and compulsory winding up of the company:

10.1. Duties of Liquidator

When a liquidator of a company is appointed, he is bound to perform many functions and duties which are provided under various provisions of the Companies Act, 2013. It becomes the duty of the official liquidator to conduct the proceedings in the winding up of the company and perform such duties as the court may impose from time to time. He must conduct equitably and impartially all proceedings in the winding up according to the provisions of the law.

The act of the liquidator shall be valid not withstanding any defect in his appointment or qualifications that may afterwards be discovered.[553]The functions or duties of a liquidator so appointed under the provisions of a statute are given below:

1. When the company liquidator is appointed by the court then, he shall submit report to the court within sixty days from the date of his appointment order. The company liquidator's report shall contains the following points:[554]

[551] Comp. L.J. 2 1965 309.
[552] Tom Le Clair, *The Liquidators* 56 (Greekworks.com, Incorporated, 2017).
[553] Companies Act, 2013 (Act 1 of 1956), S. 451 (3)

- All the information of assets of the company such as cash balance in band and in the bank and negotiable securities, trademarks and any intellectual property belong to the company.
- Any amount capital paid-up, subscribed and issued
- All the details of liabilities of the company and secured and unsecured debts.
- Debts due to the company
- Guarantees extended by company
- Name of contributories and amount paid and unpaid by them.
- Information of, collaborations, subsisting contracts and joint ventures.
- Details of holding and subsidiary companies, if any.
- Details of legal cases against or filed by the company.

2. The official liquidator may, if he thinks fit, make further reports, stating the manner in which the company was promoted or formed. He may state in the reports whether in his opinion any fraud has been committed by any person in its promotion or formation, or since the formation thereof. He may also state any other matters which, in his opinion, it is desirable to bring to the notice of the tribunal.[555]
3. He must take into his custody and control the property of the company. Notice that so long as there is no liquidator, all the property and effects of the company are deemed to be in the custody of the tribunal.[556]
4. The liquidator must in the administration of the assets of the company and the distribution thereof among its creditors have regard to any directions which may be given by a resolution of the creditors or contributories at any general meeting or by the committee of inspection. Any direction given by the creditors or contributories at any general meeting may not override any directions given by the committee of inspection.[557]
5. He may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes. But he shall be bound to summon such

[554] Companies Act, 2013 (Act 18 of 2013), S. 281 (1).
[555] Companies Act, 2013 (Act No. 18 of 2013), S. 281 (2).
[556] Companies Act, 2013 (Act No. 18 of 2013), S. 283 (1) & (2).
[557] Companies Act, 2013 (Act No. 18 of 2013), S. 292 (1) & (2).

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, as the case may be.[558]

6. The liquidator must keep proper books for making entries or recording minutes of proceedings at meetings and of such other matters as may be prescribed. Any creditor or contributory may subject to the control of the tribunal, inspect any such books, personally or through his agent.[559]
7. He must, at least twice in each year, present to the tribunal an account of his receipts and payments as liquidator. The account must be in the prescribed form and must be made in duplicate.[560]the tribunal gets the account audited, keeps one copy thereof in its records and delivers the other copy to the registrar for filling. each copy shall, however, be open to the inspection of any creditor, contributory or person interested. The liquidator must also send a printed copy of the accounts so audited by post to every creditor and to every contributory.[561]
8. The Liquidator shall call for a meeting of contributories and creditors, within 30 days from the date of issuing the order of winding up by tribunal in order to decide the persons who may be participants of the advisory committee.[562] The advisory committee duty is to offer consultation to the Company Liquidator and to send regular report to the court upon its request.[563]

If the winding up of a company is not concluded within one year after its commencement, the Company Liquidator shall, unless he is exempted from so doing, either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation. The statement must be filed (a) in the case of a winding up by or subject to the supervision of the court, in

[558] Companies Act, 2013 (Act 18 of 2013), S. 292 (3) (a & b).
[559] Companies Act, 2013 (Act 18 of 2013), S. 293 (1 & 2).
[560] Companies Act, 2013 (Act 18 of 2013), S. 294 (2).
[561] Companies Act, 2013 (Act 18 of 2013), S. 294 (4).
[562] Companies Act, 2013 (Act 18 of 2013), S. 287 (3).
[563] Companies Act, 2013 (Act 18 of 2013), S. 287 (1).

the Court; and (b) in the case of voluntary winding up, with the Registrar.[564] Also, that when the statement is filed in the Tribunal, a copy must simultaneously be filed with the Registrar and must be kept by him along with the other records of the company.[565].

10.2. Powers Exercisable by a Liquidator

Liquidator enjoys powers under the Companies Act, 2013. The powers are conferred upon the liquidator in order to perform the task of the liquidation efficiently and independently of the actions of the third person. Due to the nature and the extent of the powers exercised by the liquidator, the powers are provided under the following heads:

10.2.1. Powers Exercisable with the Sanction of the Court

Section 290 is important and sets out the powers of the liquidator in winding up of the companies. Under this head, it is only the liquidator who is authorised to perform the given powers with the sanction of the court. It implies that the so given powers are not exercisable by anyone else and such liquidator cannot delegate his powers to someone else without the authorisation of the court. If the liquidator does not act in accordance with the directions of the court then such court shall interfere.

Following powers are enjoyed by a liquidator as follows:

1. "To institute any civil or criminal suit on behalf of the company and also to represent the company if any legal proceeding is instituted against it, during the winding up proceedings.[566]
2. To take any decision for carrying the company's business for the beneficial winding up of the company.[567]
3. To arrange public or private auction to sell the assets, movable or immovable property and other actionable claims of the company.[568]
4. To raise the money on the security of the assets of the company.[569]

[564] Companies Act, 2013 (Act 18 of 2013), S. 348 (1).
[565] Companies Act, 2013 (Act 18 of 2013), S. 348 (2).
[566] Companies Act, 2013 (Act 18 of 2013), S. 290 (f).
[567] Companies Act, 2013 (Act 18 of 2013), S. 290 (a).
[568] Companies Act, 2013 (Act 18 of 2013), S. 290 (c).
[569] Companies Act, 2013 (Act 18 of 2013), S. 290 (e).

5. To appoint a legal advisor or a pleader to assist in the furtherance of the winding up duty.[570]
6. And to take all the necessary steps in order to wind up the affairs of the assets of the company for the determination of the rights of the creditors or to satisfy the court order".

In *Loomchand Sait v. Official Liquidator*[571], it was held that "the sanction of the court is generally given before the commencement of the proceedings but court has jurisdiction to grant the sanction even after the commencement."

10.2.2. Powers Exercisable without the Sanction of the Court

There are powers which are conferred by the court at the time of the appointment by virtue of the Companies Act, 2013. Powers granted without the sanction of the court are the powers which are enjoyable in nature without the timely approval by the court and providing speedily service to the matter. The reason to confer such powers is that the position of the liquidator is crucial for the determination of the rights of the creditor and the duties of the company due to his experience and qualifications and hence, no sanction is needed to carry upon them as the reliance has been put on his *personam* at the time of his appointment by virtue of section 275.

Under the second head i.e. powers without the sanction of the court, following are the powers enjoyable by the liquidator:

1. "To execute the documents and deeds of the company and also to use the seal of the company for the official matters so as to wind up the company ultimately.[572]
2. Without paying any fee to the registrar, a liquidator can call for such records and documents of the company which he thinks as necessary for determining the financial condition of the company.[573]

[570] Companies Act, 2013 (Act 18 of 2013), S. 291 (l).
[571] AIR 1953 Mad 595.
[572] Companies Act, 2013 (Act 18 of 2013), S. 290 (b).
[573] Companies Act, 2013 (Act 18 of 2013), S. 290 (h).

3. To draw, endorse, accept and make any bill of exchange[574], hundis or promissory note[575] which with the same effect as has been drawn, endorsed, accepted or made by the company itself.[576]
4. He can prove the rank or the claim of any contributory for any balance in the insolvency in order to receive dividends.[577]
5. Such liquidator can take out the letters of administrations in his official name to any contributory.[578]
6. To appoint an agent in order to carry on the business of the company only if he thinks that he is unable to undertake himself alone.[579] However, if he wants to appoint a legal advisor in order to represent him before the court, he has to take the sanction of the court."[580]

The liquidator's statutory powers are exercisable with the sanction of the court. Such sanction is generally obtained before proceedings are initiated, but court has jurisdiction to grant the same after the proceedings have initiated. General sanction to grant the same is enough and any complaint filed in pursuance to the sanctioned powers is not valid. In *Salendra NathSinha vs.Jasoda Dulal Adhikary*[581] Supreme court went ahead and said that though the section 179 of Indian Companies Act, 1913 says that powers are exercisable with the sanction of the court but still any powers exercisable under this section without the sanction of the court is not illegal or void, or the proceedings invalidated thereby.

In *Narendra Kumar Nakhat v M/s. Nandi Hasbi Textile Mills & Others,*[582] Hon'ble Supreme court observed that when the powers are being exercised under section 457 of Companies Act, 1956 for the winding up of the company by the official liquidator and property was put under sale process but sale could not be confirmed for some reasons. In such event the claim to refund the bid amount cannot be rejected for the

[574] Negotiable Instrument Act 1881, (Act 26 of 1881), S. 5.
[575] Negotiable Instrument Act 1881, (Act 26 of 1881), S. 4.
[576] Companies Act, 2013 (Act 18 of 2013), S. 290 (j).
[577] Companies Act, 2013 (Act 18 of 2013), S. 290 (i).
[578] Companies Act, 2013 (Act 18 of 2013), S. 290 (k).
[579] Companies Act, 2013 (Act 18 of 2013), S. 290 (l).
[580] Companies Act, 2013 (Act 18 of 2013), S. 291 (1) & (2).
[581] 1959 AIR 51 1959 SCR 1263.
[582] AIR 1998 S.C. 1988.

whole amount. the authority has the right to refuse the claim up to the extent of earnest amount and not for the refund of bid amount.

In *Wellworth Vanjya Pvt. Ltd v Chowdury Udyog Pvt. Ltd*,[583] The company was wound up as far as back on 28th of February 1986 and the creditor's rights were not determined cause the assets could not be sold of the company. The value of the assets of the company had come down from 7.5 Crores to 4.25 Crores which was the best offer after long time; whereas the offer made by the first respondent was 3 crores and was not willing to enhance it. The court after taking into consideration of the fact situation thought that the offer should be accepted. Therefore, the court allowed the appeal, set aside the impugned order of the court and asked to accept the offer by the appellants by depositing the balance amount and the necessary documents filing. Court directed the official liquidator to do the needful in the interest of justice.

In *Allahabad Bank v Bengal Paper Mills Ltd*.,[584] the auction of the sale of the properties of the company does not fetch a good price and there are reasonable evidences to show that such sale was conducted in haste, the mere right of the purchaser to get the possession of the goods cannot be a ground to confirm the sale and hence the sale was set aside by the court.

Re Northland Services Pty. Ltd.[585] a company domiciled in South Australia was subject to a concurrent liquidation order made by the courts of the Northern Territory. The company was subject to a charge duly registered and entitled to priority according to the laws of South Australia but invalid according to the laws of the Northern Territory. Notwithstanding the existence of a liquidation order in the company's domicile, the courts of the Northern Territory refused to permit the liquidator appointed under that order to turn over assets realized in the concurrent proceeding to the liquidator appointed in South Australia. The reason for the refusal was the fact that the assets realized in the Northern Territory would have been distributed in South Australia according to a scheme of distribution which would recognize the prior claim of a charge invalid in the Northern Territory. As a result of the decision, the proceeds derived in the Northern Territory were paid to the persons

[583] AIR 2003 S.C. 1627.
[584] AIR 1999 S.C. 1715.
[585] 3 A.C.L.R. 371 (S.C.N.Terr.); Aust.L.R.18 1978 684.

entitled to priority according to its domestic law and in a manner different from that in which the proceeds realized in South Australia were distributed.[586]

There are three possibilities, in each of which the liquidator must deal with encumbered assets as a way of complying with his obligation to discharge the company's unsecured liabilities:

First, if the value of the assets subject to the security, net of realization costs, is more than the value of the secured debt, then the liquidator must realise it in order to maximize the recoveries of unsecured creditors. He would use the proceeds to discharge the secured debt and distribute the surplus amongst unsecured creditors.

Secondly, if the value of the assets subject to the security, net of realisation costs, is less than the value of the secured debt, the liquidator must nevertheless realise it on the assumption that the secured creditor does not wish, or is unable, to do so himself, and use the proceeds to discharge *pro tanto*[587] the secured debt, so as to maximise the value of the remaining estate for the benefit of unsecured creditors who would not then have to compete against the full claim of the secured creditors. In either of these situations, it would almost invariably be in the secured creditor's interests to participate in the sale by releasing its encumbrance, subject, of course, to protection for its priority in the proceeds of sale. This would maximize those proceeds, which would rarely, if ever, be contrary to the secured creditor's genuine interests.

Finally, if the costs of realising the secured assets are prohibitive for example, because the asset in question is polluted land whose clean-up costs exceed its value, the liquidator still must take appropriate steps in relation to it, for example, by disclaiming it as onerous property.[588]

The company liquidator is entitled to appoint one or more professional like chartered accountant, company secretaries or cost accountant or legal professionals to assist him

[586] A.D Grace "The Recognition and Enforcement of Foreign Liquidation Orders in Canada and Australia: A Critical Comparison" Vol. 35 *ICLQ* 694 (1986).

[587] Merriam Webster Dictionary 'Legal Definition of pro tanto" *available at*: https://www.merriam-webster.com/legal/pro%20tanto9 Last Retrieved on 16.04.2018).

[588] Rizwaan Jameel Mokal "What Liquidation Does for Secured Creditors, and What It Does for You" Vol. 71, *The Modern Law Review*, 719 (2008).

in performances of his duties and functions under Companies Act, 2013. However, before appointing such held, the liquidator is to take the sanction of the Tribunal first.

The powers of the company's liquidator in the management of the assets of the company for winding up purposes are subjected to the resolution of the creditors or the contributories of the company in question passed it in any general meeting. Also, the advisory committee is also competent to exercise control over the powers of the company liquidator. In the event of conflict though the powers derived by creditors or contributories shall prevail at the general meeting.

11. Declaration of Dissolution of Company by the Court

The Court may make an order for the dissolution of a company[589] on the following conditions:

1. When the affairs of the company have been completely wound up; or
2. When the Court is of opinion that liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason and it is just and equitable in the circumstances of the case that an order of dissolution of the company should be made.
3. A copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.
4. If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in sub-section (3), the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.

Biswanath Khan v Prafulla Kumar Khan,[590] Where such an order is made by the Court, the company will be dissolved from the date of the order of the Court. Within 30 days from the date of the order, the liquidator must send a copy of the order to the Registrar."[591]

[589] Companies Act, 2013 (Act No. 18 of 2013), S. 302.
[590] Comp LJ 3 1989 208 Cal.
[591] Comp LJ 3Cal 1989 208.

Sarmon P Ltd v SidhaSyntex Ltd,[592]on the dissolution, the corporate existence of the company comes to an end. Also in *Raghbir Singh v District Magistrate, Delhi,* Company in liquidation exists as juristic personality until order of dissolution is based by the Court. After the order of dissolution, the legal personality of the company comes to an end.[593]

The Court may declare the dissolution void within 2 years from the date of the dissolution. If the court finds that the company should not be dissolved for any reasons then such court can direct the earlier dissolution order to be taken back and appropriate actions can be taken accordingly.[594] Mostly, this event occurs when court comes to know about any preferential transactions carried on by such company just before or during the dissolution proceedings.

The operative field of section 302 of Companies Act 2013 was explained by the full bench of Kerala high court in *Methew Phillips v. Malayalam Plantations.*[595]Three contingencies are provided therein for the dissolution of the company; "(a) when the affairs of the company have been completely wound up. (b) when the court is of the opinion that the liquidator cannot proceed with the winding up of the company for the wants of funds and assets; (c) when the court is of the opinion that the liquidator cannot proceed with the winding up of the company for any reason whatsoever."

In all such contingencies, the court is authorized to declare the dissolution of the company if the court is of the opinion that it is just and reasonable in the circumstances of the case to dissolve such company. The effect of such order is that such company shall cease to exist for all the legal purposes.

In *U.P Prestressed Company Ltd*[596], the liquidator was not able to carry on the liquidation of the company and the entrepreneur who was the director of the company was not traceable, the court ordered the dissolution of the company. A company in liquidation continues to exist as a legal person till an order of the dissolution is made by the court and till then the liability to pay taxes in respect of the land shall continue.

[592] Crimes 2 1994 257.
[593] Comp LJ 2 1963 230.
[594] Companies Act, 2013 (Act No. 18 of 2013), S. 356
[595] Com Cases 1994 38.
[596] Comp LJ 1996 3.

Guest Keen Williams Ltd. v. Josh India Ltd.,[597] The order of winding up was made but no actions were taken further on behalf of the liquidator to comply with the statutory provisions of the companies act in respect of liquidation for the period of twelve years. As a result, recovery proceedings against the debtors of the company became time barred and hence, there being no other option, the court ordered the dissolution of the company. The court observed the office of the liquidator was in a hopeless condition and not equipped to perform the serious task of liquidation of companies which were assigned to him a herculean effort and immediate steps were required to be imperatively taken, especially regarding the valuable assets of the company which involved immovable property worth of crores of rupees.

The dissolution order puts an end to the life of the company. Unless and until it has been set aside, it prevents any proceedings being taken against promoters, directors or officers of the company to recover money or property due to belonging to it or prove a debt due from him. When the company is dissolved the liquidator's statutory duty towards creditors and contributories is gone; but if he has committed the breach of any of his duty to any creditor by distributing the assets without complying the requirement of Companies Act, 2013 he is subjected to any order as directed by the court in this respect.[598]

12. Scams in India (Cases for Compulsory Winding up of Companies by Court/ Tribunal)

In the age of globalization, we find the widespread of commercial activities all around the world. Specially, with the investment treaties among nations, border barriers are no more and national laws have loosened the stringency as it had before in order to provide the free flow of trade between the countries. When such laissez faire is a boon to the economy of the country, at the same time it has its own loopholes.

Investor's interests in the company are protected by the treaties which do not have any international enforcing authority and even if it does have then it gives no fruitful results if granted in favor due to lack of awards enforcement agencies in the Nation. Taking the examples from Vodafone in 2002 to the White line industries case of

[597] SCL DEL 2009 132.

[598] Karn Gupta, *Introduction to the Companies Law* 425 (Lexis Nexis, 1st Edn., 2013).

[598] Companies Act, 2013 (Act 18 of 2013), S. 276.

2012, there have been no action to enforce the awards in decades which time and again cries for the appropriate penal provisions for the enforcement of the awards to protect the investors/ creditors and governments rights.

Therefore, Indian Companies Act, 2013 provide for the winding up by the court where it finds that company keeps on delaying the payment of the amount due, payment of the amount under the decree or an order or the payment of the amount which court finds it unable to pay in reasonable time to the contributories. Its jurisdiction extends within the National border which authorizes it to shut down any company within Indian territory on the grounds as mentioned in section 433 of Companies Act, 1956 and now mention in section 271 of new Companies Act, 2013.

Researcher here would like to mention major scams in India which have called for the compulsory winding up by the court. In order to approach the practice of Indian courts under the circumstances as mentioned in section 271 of Companies Act, 2013.

The major corporate scandal in USA of ENRON[599] is a very common example when we are discussing the corporate scandals, wherein the Kenneth L. Lay and Jeffery K. Skilling, the past as well as the current directors were held personally liable for the debt of the company for committing the fraud and betraying the innocent shareholders and creditors. The ERON scandal was one of the huge scam which included the criminal participation of the members and hence the officials also were punished with the imprisonment with the heaviest fine till now in the history of USA.

12.1. Dunlop India

It is the brand of tyres owned by various companies in the world. Founded by pneumatic tyre pioneer John Boyd Dunlop in Birmingham, England in 1889, in India the brand is owned by Dunlop India Ltd. whose parent company is the Ruia Group.[600]

In 2003, creditors of the tyre manufacturer Dunlop went to the court for liquidation. Initial order for liquidation was given 2013 by the High Court. The total due of Dunlop

[599] Enron Scandal: The Fall of a Wall Street Darling, *available at*: https://www.investopedia.com/updates/enron-scandal-summary/ (Last Retrieved on 10.04.2018).

[600] Dunlop Tyres, *available at*: https://en.wikipedia.org/wiki/Dunlop_Tyres (last retrieved on 18.04.2018).

was said to be close to Rs 2,000 crore. Dunlop India has been dealing with lockouts, plant shut-downs and operative restructuring for quite some time before the order was given. The liquidator was authorised to take control of further company transactions.[601]

Justice Sanjib Banerjee of Calcutta high court in December 17- 2017, allowed the application by the Ruia group to deposit the amount of 500 million within 5 days as an affirmation of the will to pay the remaining amount. However, it failed to pay the said amount.

Justice Sanjib Banerjee on 22nd of December 2017, ordered the official liquidator to take control over the all books, records, documents, assets and properties of the company in liquidation and take control of its transactions.[602]

12.2. Kingfisher Airlines

Founded in the year 2003, it had the second largest share in the India's domestic air travel market. But in a decade of its foundation, a petition for liquidation was filed in 2012 by one of the creditor i.e. Aerotron, a company based in West Sussex, United Kingdom.[603]

The KFL was required to pay US $6,023,724.01 to Aerotron Ltd as on July 4, 2012 of which US $5,192,483.80 was the principal amount. The petitioner company had moved to the Court in 2012 seeking winding up of the airline for recovering the amount due to it while complaining that the airline had failed to pay the amount despite repeated reminders.

Kingfisher admitted the liability and agreed to sign the agreement to pay the amount to the Aerotron on monthly basis from March 2012 to October 2012 via instalments of around US 5 Million $. But it failed to comply with the agreement as well and as a consequence of which, Justice Vineet Kothari of Bangalore High Court passed the winding up order in2016 on a day when a lawyer representing the airline withdrew from the case, claiming that he had received no instructions from his client to appear

[601] Special correspondent, Liquidation notice on closed Dunlop Sahagunj unit by Calcutta High Court: Officials left putting up a notice of liquidation of the Calcutta high court at the factory gate, *The Economic Times* May 10, 2017.

[602] Sankar, HC orders wind-up, end of the road for Dunlop, *Times of India*, 23rd December 2017.

[603] Kingfisher Airlines, *available at*: https://en.wikipedia.org/wiki/Kingfisher_Airlines (Last Retrieved on 18.04.2018).

on behalf of the airline. Not only the Aerotron was the victim but also the state government, union government, banks, workers and employees. It owes the loan of 650 million to the banks and a huge tax amount to the government in India.[604]

In the current years, the airline's planes were repossessed by lessors. Its lenders, a 17-bank consortium, has taken control of the remaining assets such as the airline's office in suburban Mumbai, the brand and the tagline 'Fly the good times,' Mallya's private jet and his villa in Goa; all collateral against loans.
The latest attempt was an e-auction of the 12,350 sqmeter Goa villa, which once had hosted lavish parties typical of the liquor baron.[605]

Now the matter is before SEBI (Securities and Exchange Board of India) and Securities Appellate Tribunal has given the deadline of May 31st2018 to make final order in the Liquor Baron Vijay Mallya Case. Mallya, who is currently in the UK, has been evading summons from various investigation agencies and courts for many months. India is in negotiation with the UK government for early extradition of Mallya.[606]

13. Differences between Companies Act 1956 & Companies Act, 2013 relating to Winding up Provisions

1956 & 2013 Companies Acts are more or less similar with few exceptional changes as to the section numbers and winding up by tribunal. Voluntary winding up in both the acts requires the volition of the members to pass the special or the ordinary resolution. The appointment of the liquidator, his duties and powers, the winding up procedure, creditor's meetings and the consequences of winding up too are same in both the acts. However, it is important to differentiate the acts by mentioning the amendments brought by Companies Act, 2013 so as to be aware with the current laws in India relating to the winding up procedure in the country.

Researcher hereby the major points of difference between 1956 and 2013 Companies Act relating to the winding up by the tribunal in the below mentioned table.

[604] Arinurban Chowdhury, Paving way for liquidation, Karnataka HC orders winding up of Kingfisher Airlines, *The Economic Times*, November 19, 2016.

[605] Naomi Canton, No end to the good times: UK court gives Mallya permission to spend £18,000 a week, The Times of India, Feb 4, 2018.

[606] PTI, SAT grants more time to Sebi to pass final order in Vijay Mallya case, *The Economic Times*, April 06, 2018.

S. No.	Companies Act, 1956	Companies Act, 2013
1.	Under section 433 and 434 of the Companies Act, 1956, "circumstances are given in which company can be wound up by the tribunal which speaks about the reduction in number i.e. two in case of private company and seven in case of public company and non-commencement of business within 1 year of the incorporation as grounds"	Under section 271 gives away such ground and added fraud, fraudulent activities, misfeasance under the ground for winding by the tribunal. Section 271(e) & (f) reads as under: "Circumstances in which company may be wound up by Tribunal: (1) A company may, on a petition under section 272, be wound up by the Tribunal, (e) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up; (f) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years."
2.	Section 433 of Companies Act, 1956 confers power to pass an order under four grounds, dismiss, adjourn, pass interim order or	Section 273 of the Companies Act provides the power to pass an order to dismiss, interim order, appoint a provisional liquidator,

	winding up order.	winding up order or any other order.
2.	Under section 446 A, "directors and auditors have to ensure that books of accounts are complete and audited, if they fail they are punishable with imprisonment not exceeding one year and fine not exceeding one lakh Rs.."	Section 274 (d) lays down that "if any director contravenes the provisions of this section shall be punishable with imprisonment for a term extending to 6 months or fine 25,000/- Rs. extending to five lakh Rs. or both."
3.	Section 448 and 450 of Companies Act, 1956 allow the liquidator to appoint an assistant or deputy official liquidator and also provide the provision for the remuneration as fixed under 1956 Act.	Under section 275 of Companies Act, 2013 the requirement of assistant and deputy liquidators has been done away with. Remuneration as specified in Companies Act, 1956 has been removed.
4.	Section 444 of Companies Act, 1956 mentions the requirement to intimate the winding up order to the liquidator and the registrar within two weeks of the order.	Section 277 of the Companies Act, 2013has reduced to seven days.
5.	Under section 446 (2) the tribunal had jurisdiction to entertain or dispose of suits, claims, application and question of priority.	Section 280 of Companies Act, 2013 provides that tribunal has jurisdiction to entertain or dispose of, "any scheme under section 262" has been added along with the rest which reads as under: Sanction of scheme: "(1) The scheme prepared by the company administrator under section 261 shall be placed before the creditors of the sick company in a meeting convened for their approval by the company administrator within the period of sixty days from his appointment, which may be extended by the Tribunal up to a period not

		exceeding one hundred twenty days. (2) The company administrator shall convene separate meetings of secured and unsecured creditors of the sick company and if the scheme is approved by the unsecured creditors representing one-fourth in value of the amount owed by the company to such creditors and the secured creditors, representing three fourths in value of the amount outstanding against financial assistance disbursed by such creditors to the sick company, the company administrator shall submit the scheme before the Tribunal for sanctioning the scheme: Provided that where the scheme relates to amalgamation of the sick company with any other company, such scheme shall, in addition to the approval of the creditors of the sick company under this sub-section, be laid before the general meeting of both the companies for approval by their respective shareholders and no such scheme shall be proceeded with unless it has been approved, with or without modification, by a special resolution passed by the shareholders of that company. (3) (i) The scheme prepared by the company administrator shall be examined by the Tribunal and a copy of the scheme with

		modification, if any, made by the Tribunal shall be sent, in draft, to the sick company and the company administrator and in the case of amalgamation, also to any other company concerned, and the Tribunal may publish or cause to be published the draft scheme in brief in such daily newspapers as the Tribunal may consider necessary, for suggestions and objections, if any, within such period as the Tribunal may specify. (ii) The complete draft scheme shall be kept at the place where registered office of the company is situated or at such places as mentioned in the advertisement. (iii) The Tribunal may make such modifications, if any, in the draft scheme as it may consider necessary in the light of the suggestions and objections received from the sick company and the company 162 administrator and also from the transferee company and any other company concerned in the amalgamation and from any shareholder or any creditors or employees of such companies. (4) On the receipt of the scheme under sub-section (3), the Tribunal shall within sixty days there from, after satisfying that the scheme had been validly approved in accordance with this section, pass

		an order sanctioning such scheme. (5) Where a sanctioned scheme provides for the transfer of any property or liability of the sick company to any other company or person or where such scheme provides for the transfer of any property or liability of any other company or person in favour of the sick company, then, by virtue of, and to the extent provided in, the scheme, on and from the date of coming into operation of the sanctioned scheme or any provision thereof, the property shall be transferred to, and vest in, and the liability shall become the liability of, such other company or person or, as the case may be, the sick company. (6) The Tribunal may review any sanctioned scheme and make such modifications, as it may deem fit, or may by order in writing direct company administrator, to prepare a fresh scheme providing for such measures as the company administrator may consider necessary. (7) The sanction accorded by the Tribunal under sub-section (4) shall be conclusive evidence that all the requirements of the scheme relating to the reconstruction or amalgamation or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in

		writing by an officer of the Tribunal to be a true copy thereof shall in all legal proceedings be admitted as evidence. (8) A copy of the sanctioned scheme referred to in sub-section (4) shall be filed with the Registrar by the sick company within a period of thirty days from the date of receipt of a copy thereof."
6.	Section 455 of Companies Act, 1956 and 281 of Companies Act, 2013 provide the report by the liquidator of winding up within 6 months.	the particulars to be mentioned have been increased by Companies Act, 2013 Submission of report by Company Liquidator under section 281 mentions additional particulars as follows: (e) "guarantees, if any, extended by the company; (f) list of contributories and dues, if any, payable by them and details of any unpaid call; (g) details of trademarks and intellectual properties, if any, owned by the company; (h) details of subsisting contracts, joint ventures and collaborations, if any; (i) details of holding and subsidiary companies, if any; (j) details of legal cases filed by or against the company; and (k) any other information which the Tribunal may direct or the Company Liquidator may consider necessary to include."
7.	Section 481 under Companies Act, 1956 provide the punishment for the delay or the default in forwarding	Section 302 (4) of the Companies Act, 2013 extended to 5000 Rs. everyday till the delay continues.

	the order within stipulated time. 1956 act provided for the fine of 500 Rs..	
8.	Section 538 of Companies Act, 1956 lays down the penalty for the officers of the company who pawns, pledges or disposes any property in circumstances that amount to an offence shall be punishable with an imprisonment of 3 years or fine or both.	However, section 336 extends this penalty up to five years including the fine which may extend to 5 lakh Rs..
9.	Section 542 (3) of 1956 act provides that when any business of company is carried on fraudulently and the members are aware about the same, then the members will be liable for an imprisonment of 2 years or fine extending to 50,000 Rs. or both.	Whereas section 339 (3) of Companies Act, 2013 mentions the penalty for the same in accordance to section 447 which includes imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.
10.	Section 545 of 1956 act provides the prosecution of delinquent officers & members of company there is no mention about the amount of penalty.	Section 342 Clause 6 says that if a person fails or neglects to pay assistance as required under this act then he shall be liable to pay a fine which shall not be less than 25,000/- Rs. but which may extend to 1 lakh Rs.
11.	Under section 547 of Companies Act, 1956 if a company contravenes the provision of the act while undergoing the liquidation and whoever allows such non-compliance shall be punishable with fine which may extend to 5000 Rs.	Section 344 of Companies Act, 2013 extends it to 50000 up to 3 lakh Rs.

12.	Under section 545 of Companies Act, 1956 the sanction of the Supreme Court was mandatory to inspect the books and other documents of the company.	Section 346of Companies Act, 2013 removes such condition.
13.	Section 552 (5) of Companies Act, 1956 provided that in the event of pending of winding up suit, liquidator commits any default then fine would be levied of 10,000 Rs.	348 (7) of Companies Act, 2013 extends the punishment to the 1 lakh Rs. and imprisonment up to 6 months.
14.	Lastly, section 555 of Companies Act, 1956 provided for the liquidator to deposit the amount of company in a separate bank account in reserve bank of India.	Now Section 352 of Companies Act, 2013 says that the liquidator has to deposit in the company's liquidation dividend and undistributed assets account in a scheduled bank.

Conclusion

Researcher hereby concludes that winding up is a process wherein a company is dissolved on the ground as mentioned under section 270 of Companies Act, 2013. Such company is dissolved on the just grounds to secure the interest of creditors, investors and public as well. The procedure of dissolution starts with the collection of its assets, paying off its liabilities out of the assets of the company or from contributions by its members. If any excess is left, it is distributed amid the members in accordance with their rights and hence the winding up.

Companies Act, 1956 & 2013 provide two kind of winding up procedure of companies in India which are; winding up by court and secondly voluntary winding up. In the former case, court orders the dissolution of the company on the petition filed by the company itself, or by the creditors of the companies, by the registrar or by the any authorized person of the government of India in this regard. On filing such petition, court becomes concerned with the matter wherein, it appoints the official liquidator who thereafter takes control over the assets of the company. Such liquidator is appointed under section 275 of the Companies Act, 2013.

After taking over such company, he is liable to provide the financial statement of the company so that court can conclude if the winding up is the only cure or some other way can be availed too. For such financial statement of the company, the liquidator has powers to look into the books and all the relevant documents of the company i.e. the balance sheets of the company of each year, salary statement of the employees, profit and loss statement etc. The report is to be sent to the court within after which court can order to commence the winding up proceedings.

Winding up proceedings include the collection of assets and determination of the creditors, members, government or public from such assets. Liquidator has been conferred with the duty to sale the assets of the company, to recover debts owed to the company, to represent the company in any legal proceedings, against or by such company. He is responsible to arrange creditors meeting, to maintain the proper books of record, to maintain report of every six months under section 281 of Companies Act 2013, of winding up to show the progress of winding up proceedings and this is how a company is wound up under the order of the court.

Secondly, voluntary winding up is when there is a period mention in the article of association after the expiry of which such company would be dissolved or if it mentions any event on the occurrence of which such company would be dissolved and such period has expired or such event has occurred and company passes a special resolution in the general meeting to dissolve the entity then such proceeding would be initiated as voluntary winding up.

If the company passes a special resolution to dissolve the company then such company may initiate the winding up procedure

Voluntary winding up also includes the appointment of liquidator and the procedure same as that in winding up by court as to the collection of assets, sale of assets, and determination of the rights and liabilities of its members, contributories, creditors etc. But the only difference between the two is that if the winding up occurs under the section 304 of Companies Act, 2013 then it is a member's voluntary winding and if not then it is the case of creditor's winding up. For the winding up by the members of the company the resolution for the same has to be passed by the majority of the directors present and voting in the general meeting and such resolution should be verified by an affidavit also.

Also, the company is required to make a declaration that inquiry has been made and there is no debt owed by the company and if there is then it will be paid in full from the proceeds of assets sold in voluntary winding up. Such declaration has to be made before 5 weeks of passing such resolution to dissolve the company.

Researcher highlights the scams in India which shook the India's approach of laissez faire. Dunlop, Kingfisher Airline are such examples which time and again strengthen the role of judiciary in the corporate sector and build the trust and confidence on the executives of the Nation.

At last, Researcher also mentions the reform brought by the Companies Act 2013 by mentioning the point of differences between two acts as to the winding up of companies. However, researcher realizes that there are no such changes to winding up procedures in India after the introduction of Companies Act, 2013 as it firmly provides the two mode of winding up as before i.e. winding up by court and winding up by members and only the section numbers have been changed. Though, the rules regarding the liquidator's remuneration, penalty provisions and reports by the liquidator have been added on otherwise all the provisions state the same procedure as mentioned in the early 1956 Companies Act which governed the corporate sector in India for the period of 60 years.