

Companies Act, 1956

Chapter 5 - Provisions Applicable to Every Mode of Winding Up

Section 528 - Debts of all descriptions to be admitted to proof

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency; or may sound only in damages, or for some other reason may not bear a certain value.

Section 529 - Application of insolvency rules in winding up of insolvent companies

(1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to-

- (a) debts provable;
- (b) the valuation of annuities and future and contingent liabilities; and
- (c) the respective rights of secured and unsecured creditors; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:

1[Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security,-

- (a) the liquidator shall be entitled to represent the workmen and enforce such charge;
- (b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and
- (c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank pari passu with the workmen's dues for the purposes of section 529A.]

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section:

2[Provided that if a secured creditor instead of relinquishing his security and proving for his debt proceeds to realise his security, he shall be liable to 3[pay his portion of the expenses] incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realization by the secured creditor.]

1[Explanation.-For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.]

3[(3) For the purposes of this section, section 529A and section 530,-

(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947);

(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:-

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);

(ii) all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (8 of 1923) rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of-

(i) the amount of workmen's dues; and

(ii) the amounts of the debts due to the secured creditors.

Illustration

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and of the amounts of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is therefore, one-fourth of the value of the security, that is Rs. 25,000.]

1 . Inserted by Act 35 of 1985, Section 4 (w.e.f. 24-5-1985).

2 . Inserted by Act 65 of 1960, Section 183 (w.e.f. 28-12-1960).

3 . Substituted by Act 35 of 1985, Section 4 for "pay the expenses" (w.e.f. 24-5-1985).

Section 529A - Overriding preferential payment

1[529A. Overriding preferential payment

(1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company-

(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues,

shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.]

1 . Inserted by Act 35 of 1985, Section 5 (w.e.f. 24-5-1985).

Section 530 - Preferential payments

(1) In a winding up¹[subject to the provisions of section 529A, there shall be paid] in priority to all other debts-

(a) all revenues taxes, cesses and rates due from the company to the Central or a State Government or to a local authority at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next before that date;

(b) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date²[***] subject to the limit specified in sub-section (2);

(c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;

(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948 (34 of 1948), or any other law for the time being in force;

(e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company;

(f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees maintained by the company; and

(g) the expenses of any investigation held in pursuance of section 235 or 237, in so far as they are payable by the company.

(2) The sum to which priority is to be given under clause (b) of sub-section (1), shall not, in the case of any one claimant,³[exceed such sum as may be notified by the Central Government in the Official Gazette].

⁴[***]

(3) Where any compensation under the Workmen's Compensation Act, 1923 (8 of 1923), is a weekly payment, the amount due in respect thereof shall, for the purposes of clause (e) of sub-section (1), be taken to be the amount of the lump sum for which the weekly payment could, if redeemable, be redeemed if the employer made an application for that purpose under the said Act.

(4) Where any payment has been made to any employee of a company,-

(i) on account of wages or salary; or

(ii) to him, or in the case of his death, to any other person in his right, on account of accrued holiday remuneration,

out of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid, up to the amount by which the sum in respect of which the employee or other person in his right would have been entitled to priority in the winding up has been diminished by reason of the payment having been made.

(5) The foregoing debts shall-

(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(6) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given by clause (d) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(7) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effect so distrained on, or the proceeds of the sale thereof:

Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(8) For the purposes of this section-

(a) any remuneration in respect of a period of holiday or of absence from work through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period;

(b) the expression "accrued holiday remuneration" includes, in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment (including any order made or direction given under any enactment), are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;

5[***]

6[(bb) the expression "employees" does not include a workman; and]

(c) the expression "the relevant date" means-

(i) in the case of a company ordered to be wound up compulsorily, the date of the appointment (or first appointment) of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless in either case the company had commenced to be wound up voluntarily before that date; and

(ii) in any case where sub-clause (i) does not apply, the date of the passing of the resolution for the voluntary winding up of the company.

(9) This section shall not apply in the case of a winding up where the date referred to in sub-section (5) of section 230 of the Indian Companies Act, 1913 (7 of 1913), occurred before the commencement of this Act, and in such a case, the provisions relating to preferential payments which

would have applied if this Act had not been passed, shall be deemed to remain in full force.

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- 1.Substituted by Act 35 of 1985, Section 6, for "there shall be paid" (w.e.f. 24-5-1985).
 - 2.Certain words inserted by Act 65 of 1960, Section 184 (w.e.f. 28-12-1960), and omitted by Act 35 of 1985, Section 6 (w.e.f. 24-5-1985).
 - 3.Substituted by Act 5 of 1997, Section 9, for "exceed one thousand rupees" (w.e.f. 1-3-1997).
 - 4.Proviso omitted by Act 35 of 1985, Section 6 (w.e.f. 24-5-1985).
 - 5.The word "and" omitted by Act 35 of 1985, Section 6 (w.e.f. 24-5-1985).
 - 6.Inserted by Act 35 of 1985, Section 6 (w.e.f. 24-5-1985).
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Section 531 to 537 - Effect of winding up on antecedent and other transactions

Section 531 - Fraudulent preference

(1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly:

Provided that, in relation to things made, taken or done before the commencement of this Act, this sub-section shall have effect with the substitution, for the reference to six months, of a reference to three months.

(2) For the purposes of sub-section (1), the presentation of a petition for winding up in the case of a winding up by [1](#) [the Tribunal], and the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to the act of insolvency in the case of an individual.

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1. Substituted by Act 11 of 2003, Section 94, for "or subject to the supervision of the Court".
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Section 531A - Avoidance of voluntary transfer

[1](#) [531A. Avoidance of voluntary transfer

Any transfer of property movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by [2](#) [the Tribunal] or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.]

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1. Inserted by Act 65 of 1960, Section 185 (w.e.f. 28-12-1960).
 2. Substituted by Act 11 of 2003, Section 94, for "or subject to the supervision of the Court".
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Section 532 - Transfers for benefit of all creditors to be void

Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

Section 533 - Liabilities and rights of certain fraudulently preferred persons

(1) Where, in the case of a company which is being wound up, anything made, taken or done after the commencement of this Act is invalid under section 531 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provisions), the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the mortgage or charge for the company's debt was then subject.

(3) On any application made to the¹[Tribunal] with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

This sub-section shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments of money.

1. Substituted by Act 11 of 2003, Section 95, for "Court".

Section 534 - Effect of floating charge

Where a company is being wound up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent, per annum or such other rate as may for the time being be notified by the Central Government in this behalf in the Official Gazette:

Provided that in relation to a charge created more than three months before the commencement of this Act, this section shall have effect with the substitution, for references to twelve months of references to three months.

Section 535 - Disclaimer of onerous property in case of a company which is being wound up

(1) Where any part of the property of a company which is being wound up consists of--

- (a) land of any tenure, burdened with onerous covenants;
- (b) shares or stock in companies;

(c) any other property which is unsaleable or is not readily saleable, by reason of its binding the processor thereof either to the performance of any onerous act or to the payment of any sum of money; or

(d) unprofitable contracts;

the liquidator of the company, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, or done anything in pursuance of the contract, may, with the leave of the 1[Tribunal] and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the 1[Tribunal], disclaim the property;

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the 1[Tribunal].

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interest, and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The 1[Tribunal], before or on granting leave to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such other order in the matter as the 1[Tribunal] thinks just.

(4) The liquidator shall not be entitled to disclaim any property in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not, within a period of twenty-eight days after the receipt of the application or such extended period as may be allowed by the 1[Tribunal], given notice to the applicant that he intends to apply to the 1[Tribunal] for leave to disclaim; and in case the property is a contract, if the liquidator, after such an application as aforesaid, does not within the said period or extended period disclaim the contract, 2[he shall be deemed to have adopted it].

(5) The 1[Tribunal] may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the 1[Tribunal] thinks just; and any damages payable under the order to any such person may be proved by him as a debt in the winding up.

(6) The 1[Tribunal] may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property, and after hearing any Such persons as it thinks fit, make an order for the vesting of the property in, or the delivery of the property to, any person entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the 1[Tribunal] thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided that, where the property disclaimed is of a lease-hold nature the 1[Tribunal] shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgage or holder of a charge by way of demise, except upon the terms of making that person--

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding up; or

(b) if the 1[Tribunal] thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either event (if the case so requires) as if the lease had comprised only the property comprised in the vesting order; and any mortgagee or under-lessee declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and, if there is no person

claiming under the company who is willing to accept an order upon such terms, the¹[Tribunal] shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the compensation or damages payable in respect of the injury, and may accordingly prove the amount as a debt in the winding up.

1. Substituted by Act 11 of 2003, Section 95, for "Court".

2. Substituted by Act 65 of 1960, Section 186, for "the company shall be deemed to have adopted it" (w.e.f. 28-12-1960).

Section 536 - Avoidance of transfers, etc., after commencement of winding up

(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the liquidator and any alteration in the status of the members of the company made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by ¹ [The Tribunal], any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall ² [unless the Tribunal] otherwise orders, be void.

1. Substituted by Act 11 of 2003, Section 96, for "or subject to the supervision of the Court".

2. Substituted by Act 11 of 2003, Section 96, for "unless the Court".

Section 537 - Avoidance of certain attachments, executions, etc., in winding up by Tribunal

¹537. Avoidance of certain attachments, executions, etc., in winding up by Tribunal

(1) Where any company is being wound up by the Tribunal--

(a) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or

(b) any sale held, without leave of the Tribunal of any of the properties or effects of the company after such commencement]

shall be void.

(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government]

1. Substituted by Act 11 of 2003, Section 97, for section 537 (See Annexe).

Section 538 to 545 - Offences antecedent to or in course of winding up

Section 538 - Offences by officers of companies in liquidation

(1) If any person, being a past or present officer of a company, which, at the time of the commission of the alleged offence, is being wound up, whether by 1 [The Tribunal] or voluntarily, or which subsequently ordered to be wound up 2 [by the Tribunal] or which subsequently passes a resolution for voluntary winding up,-

(a) does not, to the best of his knowledge and belief, fully and truly discover to the liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;

(b) does not deliver up to the liquidator, or as he directs, all such parts of the movable and immovable property of the company as is in his custody or under his control, and which he is required by law to deliver up;

(c) does not deliver up to the liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up;

(d) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of one hundred rupees or upwards, or conceals any debt due to or from the company;

(e) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently removes any part of the property of the company to the value of one hundred rupees or upwards;

(f) makes any material omission in any statement relating to the affairs of the company;

(g) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the liquidator thereof;

(h) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(i) within the twelve months next before the commencement of the winding up or at any time thereafter, conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company;

(j) within the twelve months next before the commencement of the winding up or at any time thereafter makes, or is privy to the making of, any false entry in any book or paper affecting or relating to, the property or affairs of the company;

(k) within the twelve months next before the commencement of the winding up or at any time thereafter, fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making of any omission in, any book or paper affecting or relating to the property or affairs of the company;

(l) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the winding up attempts to account for any part of the property of the company by fictitious losses or expenses;

(m) within the twelve months next before the commencement of the winding up or at any time thereafter, by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;

(n) within the twelve months next before the commencement of the winding up or at any time thereafter, under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;

(o) within the twelve months next before the commencement of the winding up or at any time thereafter, pawns, pledges or disposes of any property of the company which has been obtained on

credit and has not been paid for, unless such pawning, pledging or disposing is in the ordinary course of the business of the company; or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up,

he shall be punishable, in the case of any of the offences mentioned in clauses (m), (n) and (o), with imprisonment for a term which may extend to five years, or with fine, or with both, and, in the case of any other offence, with imprisonment for a term which may extend to two years, or with fine, or with both:

Provided that it shall be a good defence-

(i) to a charge under any of the clauses, (b), (c), (d), (f) (n) and (o), if the accused proves that he had no intent to defraud; and

(ii) to a charge under any of the clauses, (a), (h), (i) and (j). if he proves that he had no intent to conceal the true state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under clause (o) of sub-section (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) For the purposes of this section, the expression "officer" shall include any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

1. Substituted by Act 11 of 2003, Section 98, for "or subject to the supervision of the Court".

2. Substituted by Act 11 of 2003, Section 98, for "by the Court".

Section 539 - Penalty for falsification of books

If with intent to defraud or deceive any person, any officer or contributory of a company which is being wound up

(a) destroys mutilates, alters, falsifies or secretes, or is privy to the destruction, mutilation, alteration, falsification or secreting of, any books, papers or securities; or

(b) makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or document belonging to the company;

he shall be punishable with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Section 540 - Penalty for frauds by officers

If any person, being at the time of the commission of the alleged offence an officer of a company which is subsequently ordered to be wound up by the¹[Tribunal] or which subsequently passes a resolution for voluntary winding up, -

(a) has, by false pretences or by means of any other fraud, induced any person to give credit to the company; or

(b) with intent to defraud creditors of the company, has made or caused to be made any gift or transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or

(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company, or within two months before that date,

he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

1. Substituted by Act 11 of 2003, Section 99, for "Court".

Section 541 - Liability where proper accounts not kept

(1) Where a company is being wound up, if it is shown that proper books of account were not kept by the company throughout the period of two years immediately preceding the commencement of the winding up, or the period between the incorporation of the company and the commencement of the winding up, whichever is shorter, every officer of the company who is in default shall, unless he shows that he acted honestly and that in the circumstances in which the business of the company was carried on, the default was excusable, be punishable with imprisonment for a term which may extend to one year.

(2) For the purposes of sub-section (1), it shall be deemed that proper books of account have not been kept in the case of any company, if there have not been kept

(a) such books of accounts as are necessary to exhibit and explain the transactions and financial position of the business of the company, including books containing entries made from day to day in sufficient detail of all cash received and all cash paid; and

(b) where the business of the company has involved dealings in goods, statements of the annual stocktakings and (except in the case of goods sold by way of ordinary retail trade) of all goods sold and purchased, showing the goods and the buyers and sellers thereof in sufficient detail to enable those goods and those buyers and sellers to be identified.

Section 542 - Liability for fraudulent conduct of business

(1) If in the course of the winding up of a company, it appears that any business of the company has been carried on, with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the¹[Tribunal], on an application of the Official Liquidator, or the liquidator or any creditor or contributory of the company, may, if it thinks it proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the¹[Tribunal] may direct.

On the hearing of an application under this sub-section, the Official Liquidator or the liquidator, as the case may be, may himself give evidence or call witnesses.

(2) (a) Where the¹[Tribunal] makes any such declaration, it may give such further directions as it thinks proper for the purpose of giving effect to that declaration.

(b) In particular, the¹[Tribunal] may make provision for making the liability of any such person under the declaration a charge on any debt or obligation due from the company to him, or on any mortgage or charge or any interest in any mortgage or charge on any assets of the company held by or vested in him, or any person on his behalf, or any person claiming as assignee from or through the person liable or any person acting on his behalf.

(c) The 1[Tribunal] may, from time to time, make such further order as may be necessary for the purpose of enforcing any charge imposed under this sub-section.

(d) For the purpose of this sub-section, the expression "assignee" includes any person to whom or in whose favour, by the directions of the person liable, (he debt, obligation, mortgage or charge was created, issued or transferred or the interest was created, but does not include an assignee for valuable consideration (not including consideration by way of marriage) given in good faith and without notice of any of the matters on the ground of which the declaration is made.

(3) Where any business of a company is carried on with such intent or for such purpose as is mentioned in sub-section (1), every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to 2[fifty thousand rupees], or with both.

(4) This section shall apply, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground of which the declaration is to be made.

1. Substituted by Act 11 of 2003, Section 99, for "Court".

2. Substituted by Act 53 of 2000, Section 206, for "five thousand rupees" (w.e.f. 13-12-2000).

Section 543 - Power of Tribunal to assess damages against delinquent directors, etc.

1 [543. Power of Tribunal to assess damages against delinquent directors, etc

(1) If in the course of winding up of a company, it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, liquidator or officer of the company -

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

(b) has been guilty of any misfeasance or breach of trust in relation to the company;

the Tribunal may, on the application of the Official Liquidator, or the liquidator, or of any creditor or contributory, made within the time specified in that behalf in sub-section (2), examine into the conduct of the person, director, manager, liquidator or officer aforesaid, and compel him to repay or restore the money or property or any part thereof respectively, with interest at such rate as the Tribunal thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust, as the Tribunal thinks just.

(2) An application under sub-section (1) shall be made within five years from the date of the order for winding up, or of the first appointment of the liquidator in the winding up, or of the misapplication, retainer, misfeasance or breach of trust as the case may be, whichever is longer.

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

1. Substituted by Act 11 of 2003, Section 100, for section 543 (See Annexe).

Section 544 - Liability under sections 542 and 543 to extend to partners or directors in firm or company

Where a declaration under section 542 or an order under section 543 is or may be made in respect of a firm or body corporate, the 1[Tribunal] shall also have power to make a declaration under section 542,

or pass an order under section 543, as the case may be, in respect of any person who was at the relevant time a partner in that firm or a director of that body corporate.

1. Substituted by Act 11 of 2003, Section 101, for "Court".

Section 545 - Prosecution of delinquent officers and members of company

(1) If it appears to the 1 [Tribunal] in the course of a winding up by, 2 [the tribunal], that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, the 1 [Tribunal] may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either himself in prosecute the offender or to refer the matter to the Registrar.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of an offence in relation to the company he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the liquidator and relating to the matter in question, as the Registrar may require.

(3) Where any report is made under sub-section (2) to the Registrar, he may, if he thinks fit, refer the matter to the Central Government for further inquiry.

The Central Government shall thereupon investigate the matter and may, if it thinks it expedient, apply to the 1 [Tribunal] for an order conferring on any person designated by the Central Government for the purpose, with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the 1 [Tribunal].

(4) If on any report to the Registrar under sub-section (2), it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the 1 [Tribunal], the liquidator may himself take proceedings against the offender.

(5) If it appears to the 1 [Tribunal] in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar under sub-section (2), the 1 [Tribunal] may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the Registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government; and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute proceedings:

Provided that no report shall be made by the Registrar under this sub-section without first giving the accused person an opportunity of making a statement in writing to the Registrar and of being heard thereon.

(7) When any proceedings are instituted under this section, it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give.

For the purposes of this sub-section, the expression "agent", in relation to a company, shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor.

(8) If any person fails or neglects to give assistance in the manner required by subsection (7), the [1](#) [Tribunal] may, on the application of the Registrar, direct that person to comply with the requirements of that sub-section.

(9) Where any such application is made with respect to a liquidator, the [1](#) [Tribunal] may, unless it appears that the failure or neglect was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.

1. Substituted by Act 11 of 2003, Section 102, for "Court".

2. Substituted by Act 11 of 2003, Section 102, for "or subjects to the supervision of the Court".

Section 546 to 556 - Miscellaneous provisions

Section 546 - Liquidator to exercise certain powers subject to sanction

(1) The liquidator may -

(a) with the [1](#) [sanction of the Tribunal], when the company is being wound up by [2](#) [the tribunal]; and

(b) with the sanction of a special resolution of the company, in the case of a voluntary winding up,

(i) pay any classes of creditors in full;

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages, against the company, or whereby the company may be rendered liable; or

(iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharges respect thereof.

(iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharges respect thereof.

[3](#) [(1A) Notwithstanding anything contained in sub-section (1), in the case of a [4](#) [winding up by the Tribunal], the Supreme court may make rules under section 643 providing that the liquidator may, under such circumstances, if any, and subject to such conditions, restrictions and limitations, if any, as may be specified in the rules, exercise any of the powers referred to in sub-clause (ii) or sub-clause (iii) of subsection (1) without the [1](#) [sanction of the Tribunal].]

(2) In the case of a voluntary winding up, the exercise by the liquidator of the powers conferred by sub-section (1) shall be subject to the control of the [5](#) [Tribunal].

(3) Any creditor or contributory may apply to the [5](#) [Tribunal] with respect to any exercise or proposed exercise of any such power.

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1. Substituted by Act 11 of 2003, Section 103, for "sanction of the Court".
 2. Substituted by Act 11 of 2003, Section 103, for "or subject to the supervision of the Court".
 3. Inserted by Act 65 of 1960, Section 188 (w.e.f. 28-12-1960).
 4. Substituted by Act 11 of 2003, Section 103, for "winding up by the Court".
 5. Substituted by Act 11 of 2003, Section 103, for "Court".
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Section 547 - Notification that a company is in liquidation

(1) Where a company is being wound up, whether by [1](#) [the Tribunal] or voluntarily, every, invoice, order for goods or business letter issued by or on behalf of the company or a liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If default is made in complying with this section, the company, and every one of the following persons who wilfully authorises or permits the default, namely any officer of the company, any liquidator of the company and any receiver or manager, shall be punishable with fine which may extend to [2](#) [five thousand rupees].

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1. Substituted by Act 11 of 2003, Section 104, for "or under the supervision of the Court".
 2. Substituted by Act 53 of 2000, Section 208, for "five hundred rupees" (w.e.f. 13-12-2000).
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Section 548 - Books and papers of company to be evidence

Where a company is being wound up, all books and papers of the company and of the liquidators shall, as between the contributories of the company be prima facie evidence of the truth of all matters purporting to be therein recorded.

Section 549 - Inspection of books and papers by creditors and contributories

(1) At any time after the making of an order for the winding up of a company by [1](#) [the Tribunal], any creditor or contributory of the company may, if [2](#) [the Supreme court], by rules prescribed so permit and in accordance with and subject to such rules but not further or otherwise, inspect the books and papers of the company.

(2) Nothing in sub-section (1) shall be taken as excluding or restricting any rights conferred by any law for the time being in force -

- (a) on the Central or a State Government; or
- (b) on any authority or officer thereof; or
- (c) on any person acting under the authority of any such Government or of any such authority or officer.

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1. Substituted by Act 11 of 2003, Section 105, for "or subject to the supervision of the Court".
 2. Substituted by Act 65 of 1960, Section 189, for "the Central Government" (w.e.f. 28-12-1960).
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Section 550 - Disposal of books and papers of company

(1) When the affairs of a company have been completely wound up and it is about to be dissolved, its books and papers and those of the liquidator may be disposed of as follows, that is to say: -

1[(a) in the case of winding up by the Tribunal, in such manner as the Tribunal directs;]

(b) in the case of a member's voluntary winding up, in such manner as the company by special resolution directs; and

(c) in the case of a creditor's voluntary winding up, in such manner as the committee of inspection or, if there is no such committee, as the creditors of the company may direct.

(2) After the expiry of five years from the dissolution of the company, no responsibility shall rest on the company, the liquidator, or any person to whom the custody of the books and papers has been committed, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3) The Central Government may, by rules, -

(a) prevent for such period (not exceeding five years from the dissolution of the, company) as the Central Government thinks proper, the destruction of the books and papers of a company which has been wound up and of its liquidator; and

(b) enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (a) and to2[appeal to the Tribunal] from any direction which may be given by the Central Government in the matter.

(4) If any person acts in contravention of any such rules or of any direction of the Central Government thereunder, he shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to3[fifty thousand rupees], or with both.

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1. Substituted by Act 11 of 2003, Section 106, for clause (a) (See Annexe).
 2. Substituted by Act 11 of 2003, Section 106, for "appeal to the Court".
 3. Substituted by Act 53 of 2000, Section 209, for "five thousand rupees" (w.e.f. 13-12-2000).
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Section 551 - Information as to pending liquidations

1(1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals if any, as may be prescribed, file a statement in the prescribed form and containing the prescribed particulars duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation, -

2[(a) in the case of a winding up by the Tribunal, in Tribunal; and]

(b) in the case of a voluntary winding up, with the Registrar:

Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 462 apply.]

(2) When the statement is filed in ³[Tribunal] under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

⁴[(2A) Where a statement referred to in sub-section (2) relates to a Government company in liquidation, the liquidator shall forward a copy thereof, -

- (a) to the Central Government, if that Government is a member of the Government company; or
- (b) to any State Government, if that Government is a member of the Government company; or
- (c) to the Central Government and any State Government, if both the Governments are members of the Government company.]

(3) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or an extract there from.

(4) Any person untruthfully stating himself to be a creditor or contributory for the above purpose shall be deemed to be guilty of an offence under section 182 of the Indian Penal Code (45 of 1860), and shall, on the application of the liquidator, be punishable accordingly.

(5) If a liquidator fails to comply with any of requirements of this section, he shall be punishable with fine which may extend to ⁵[five thousand rupees] for every day during which the failure continues:

⁶[Provided that if the liquidator makes wilful default in causing the statement referred to in sub-section (1) to be audited by a person qualified to act as auditor of the company, the liquidator shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to ⁷[ten thousand rupees], or with both.

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1. Substituted by Act 65 of 1960, Section 190, for sub-section (1) (w.e.f. 28-12-1960).
 2. Substituted by Act 11 of 2003, Section 107, for clause (a) (See Annexe).
 3. Substituted by Act 11 of 2003, Section 107, for "Court".
 4. Substituted by Act 31 of 1988, Section 56 (w.e.f. 15-6-1988).
 5. Substituted by Act 53 of 2000, Section 210, for "five hundred rupees" (w.e.f. 13-12-2000).
 6. Inserted by Act 65 of 1960, Section 190 (w.e.f. 28-12-1960).
 7. Substituted by Act 53 of 2000, Section 210, for "one thousand rupees" (w.e.f. 13-12-2000).

Section 552 - Official Liquidator to make payments into the public account of India

Every Official Liquidator shall, in such manner and at such times as may be prescribed, pay the moneys received by him as liquidator of any company, into the public account of India in the Reserve Bank of India.

Section 553 - Voluntary liquidator to make payments into Scheduled Bank

(1) Every liquidator of a company, not being an Official Liquidator shall, in such manner and at such times as may be prescribed, pay the moneys received by him in his capacity as such into a Scheduled

Bank to the credit of a special banking account opened by him in that behalf, and called "the Liquidation Account ofCompany Limited/Company Private Limited/Company":

Provided that if the 1[Tribunal] is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason, it is to the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the 1[Tribunal] may authorise the liquidator to make his payments into or out of such other bank as the 1[Tribunal] may select; and thereupon those payments shall be made . in the prescribed manner and at the prescribed times into or out of such other bank.

(2) If any such liquidator at any time retains for more than ten days a sum exceeding five hundred rupees or such other amount as the 1[Tribunal] may, on the application of the liquidator, authorise him to retain, then, unless he explains the retention to the satisfaction of the 1[Tribunal], he shall -

(a) pay interest on the amount so retained in excess, at the rate of twelve per cent, per annum and also pay such penalty as may be determined by the Registrar;

(b) be liable to pay any expenses occasioned by reason of his default; and

(c) also be liable to have all or such part of his remuneration as the 1[Tribunal] may think just disallowed, and to be removed from his office by the 1[Tribunal].

1. Substituted by Act 11 of 2003, Section 108, for "Court".

Section 554 - Liquidator not to pay moneys into private banking account

Neither the Official Liquidator nor any other liquidator of a company shall pay any moneys received by him in his capacity as such into any private banking account.

Section 555 - Unpaid dividends and undistributed assets to be paid into the Companies Liquidation Account

1 [(1) Where any company is being wound up, if the liquidator has in his hands or under his control any money representing -

(a) dividends payable to any creditor which had remained un-paid for six months after the date on which they were declared, or

(b) assets refundable to any contributory which have remained undistributed for six months after the date on which they became refundable, the liquidator shall forthwith pay the said money into the public account of India in the Reserve Bank of India in a separate account to be known as the Company's Liquidation Account.]

(2) The liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing 2 [unpaid]dividends or undistributed assets in his hands at the date of dissolution.

(3) The liquidator shall, when making any payment referred to in sub-sections (1) and (2), furnish to such officer as the Central Government may appoint in this behalf, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(4) The liquidator shall be entitled to a receipt from the Reserve Bank of India for any money paid to it under sub-sections (1) and (2); and such receipt shall be an effectual discharge of the liquidator in respect thereof.

(5) Where the company is being wound up by the 3 [Tribunal], the liquidator shall make the payments referred to in sub-sections (1) and (2) by transfer from the account referred to in section 552.

(6) Where the company is being wound up voluntarily 3 [the Tribunal] the liquidator shall, when filing a statement in pursuance of sub-section (1) of section 551, indicate the sum of money which is payable to the Reserve Bank of India under sub-sections (1) and (2) of this section which he has had in his hands or under his control during the six months preceding the date to which the said statement is brought down, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Companies Liquidation Account.

(7) (a) Any person claiming to be entitled to any money paid into the Companies Liquidation Account (whether paid in pursuance of this section or under the provisions of any previous companies law) may apply to the 4 [Tribunal] for an order for payment thereof, and the 4 [Tribunal], if satisfied that the person claiming is entitled, may make an order for the payment to that person of the sum due:

Provided that before making such an order, the 4 [Tribunal] shall cause a notice to be served on such officer as the Central Government may appoint in this behalf calling on the officer to show cause within one month from the date of the service of the notice why the order should not be made.

(b) Any person claiming as aforesaid may, instead of applying to the 4 [Tribunal], apply to the Central Government for an order for payment of the money claimed; and the Central Government may, if satisfied whether on a certificate by the liquidator or the Official Liquidator or otherwise, that such person is entitled to the whole or any part of the money claimed and that no application made in pursuance of clause (a) is pending in the 3 [Tribunal], make an order for the payment to that person of the sum due to him, after taking such security from him as it may think fit.

(8) Any money paid into the Companies Liquidation Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government; but a claim to any money so transferred may be preferred under sub-section (1) and shall be dealt with as if such transfer had not been made, the order, if any, for payment on the claim being treated as an order for refund of revenue.

(9) Any liquidator retaining any money which should have been paid by him into the Companies Liquidation Account under this section shall -

(a) pay interest on the amount retained at the rate of twelve per cent per annum and also pay such penalty as may be determined by the Registrar:

5 [Provided that the Central Government may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause;]

(b) be liable to pay any expenses occasioned by reason of his default; and

(c) where the winding up is by 3 [the Tribunal], also be liable to have all or such part of his remuneration as the 4 [Tribunal] may think just to be disallowed and to be removed from his office by the 4 [Tribunal].

1. Substituted by Act 65 of 1960, Section 191, for sub-section (1) (w.e.f. 28-12-1960).

2. Substituted by Act 65 of 1960, Section 191, for "unclaimed" (w.e.f. 28-12-1960).

3. Substituted by Act 11 of 2003, Section 109, for "or under the supervision of the Court".

4. Substituted by Act 11 of 2003, Section 109, for "Court".

5. Substituted by Act 65 of 1960, Section 191 (w.e.f. 28-12-1960).

(1) If any liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the [1](#) [Tribunal] may, on an application made to the [1](#) [Tribunal] by any contributory or creditor of the company or by the Registrar, make an order directing the liquidator to make good the default within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the liquidator.

(3) Nothing in this section shall be taken to prejudice the operation of any enactment imposing penalties on a liquidator in respect of any such default as aforesaid.

1. Substituted by Act 11 of 2003, Section 110, for "Court".

Section 557 to 558 - Supplementary powers of Tribunal

Supplementary powers of [1](#) [Tribunal]

1. Substituted by Act 11 of 2003, Section 111, for "Court".

Section 557 - Meetings to ascertain wishes of creditors or contributories

(1) In all matters relating to the winding up of a company, the [1](#) [Tribunal] may -

- (a) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence;
- (b) if it thinks fit for the purpose of ascertaining those wishes direct meetings of the creditors or contributories to be called, held and conducted in such manner as the [1](#) [Tribunal] directors; and
- (c) appoint a person to act as chairman of any such meeting and to report the result thereof to the [1](#) [Tribunal].

(2) When ascertaining the wishes of creditors, regard shall be had to the value of each creditor's debt.

(3) When ascertaining the wishes of contributories, regard shall be had to the number of votes which may be cast by each contributory.

1. Substituted by Act 11 of 2003, Section 112, for "Court".

Section 558 - Court or person before whom affidavit may be sworn

(1) Any affidavit, required to be sworn under the provisions, or for the purposes of this Part may be sworn -

- (a) in India, before any [1](#) [court or the Tribunal], Judge or person lawfully authorised to take and receive affidavits; and

(b) in any other country, either before any¹[court or the Tribunal], Judge or person lawfully authorised to take and receive affidavits in that country or before an Indian Consul or vice-Consul.

²[***]

(2)³[All courts, Tribunals], Judges, Justices, Commissioners and persons acting judicially in India shall take judicial notice of the seal, stamp or signature, as the case may be, of any⁴[such court, Tribunal], Judge, person, Consul or Vice-Consul, attached appended or subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

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1. Substituted by Act 11 of 2003, Section 113, for "Court".
 2. Explanation omitted by Act 62 of 1956, Section 2 and Schedule (w.e.f. 1-11-1956).
 3. Substituted by Act 11 of 2003, Section 113, for "All Courts".
 4. Substituted by Act 11 of 2003, Section 113, for "such Court".
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Section 559 to 560 - Provisions as to dissolution

Section 559 - Power of Court to declare dissolution of company void

(1) Where a company has been dissolved, whether in pursuance of this Part or of section 394 or otherwise, the¹[Tribunal] may at any time within two years of the date of the dissolution on application by the liquidator of the company or by any other person who appears to the¹[Tribunal] to be interested, make an order, upon such terms as the¹[Tribunal] thinks fit, declaring the dissolution to have been void; and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within²[thirty] days after the making of the order or such further time as the¹[Tribunal] may. allow, to file a certified copy of the order with the Registrar who shall register the same; and if such person fails so to do, he shall be punishable with fine which may extend to³[five hundred rupees] for every day during which the default continues.

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1. Substituted by Act 11 of 2003, Section 114, for "Court".
 2. Substituted by Act 31 of 1965, Section 62 and Schedule, for "twenty-one" (w.e.f. 15-10-1965).
 3. Substituted by Act 53 of 2000, Section 211, for "fifty rupees" (w.e.f. 13-12-2000).
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Section 560 - Power of Registrar to strike defunct company off register

(1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

(2) If the Registrar does not within one month of sending the letter receive any answer thereto, he shall, within fourteen days after the expiry of the month, send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Official Gazette with a view to striking the name of the company off the register.

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer, he may publish in the Official Gazette, and send to the company by registered post, a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting, or that the affairs of (the company have been completely wound up, and any returns required (to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in the Official Gazette and send to the company or the liquidator, if any, a like notice as is provided in sub-section (3).

(5) At the expiry of the time mentioned in the notice referred to in sub-section (3) or (4), the Registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the Official Gazette; and on the publication in the Official Gazette of this notice, the company shall stand dissolved:

Provided that -

(a) the liability, if any, of every director,¹[***] manager or other officer who was exercising any power of management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved; and

(b) nothing in this sub-section shall affect the power of the²[Tribunal] to wind up a company the name of which has been struck off the register.

(6) If a company, or any member or creditor thereof, feels aggrieved by the company having been struck off the register, the²[Tribunal], on an application made by the company, member or creditor before the expiry of twenty years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the company was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register; and the²[Tribunal] may, by the order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) Upon a certified copy of the order under sub-section (6) being delivered to the Registrar for registration, the company shall be deemed to have continued in existence as if its name had not been struck off.

(8) A letter or notice to be sent under this section to a company may be addressed to the company at its registered office, or if no office has been registered, to the care of some director,¹[***] manager or other officer of the company or if there is no director,¹[***] manager or officer of the company whose name and address are known to the Registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(9) A notice to be sent under this section to a liquidator may be addressed to the liquidator at his last known place of business.

1. The words "the managing agent, secretaries and treasures," omitted by Act 53 of 2000, Section 212 (w.e.f. 13-12-2000)

2. Substituted by Act 11 of 2003, Section 114, for "Court".

COMPANIES ACT, 1956Part 8 - APPLICATION OF ACT TO COMPANIES FORMED OR REGISTERED UNDER PREVIOUS COMPANIES LAWS

Section 561 - Application of Act to companies formed and registered under previous companies laws

This Act shall apply to existing companies as follows:

- (a) in the case of a limited company other than a company limited by guarantee, this Act shall apply in the same manner as if the company had been formed and registered under this Act as a company limited by shares;
- (b) in the case of a company limited by guarantee, this Act shall apply in the same manner as if the company had been formed and registered under this Act as a company limited by guarantee; and
- (c) in the case of a company other than a limited company, this Act shall apply in the same manner as if the company had been formed and registered under this Act as an unlimited company:

Provided that

- (i) nothing in Table A in Schedule I shall apply to a company formed and registered under Act 19 of 1857 and Act 7 of 1860 or either of them, or under the Indian Companies Act, 1866 (10 of 1866), or the Indian Companies Act, 1882 (6 of 1882).
- (ii) reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous companies law concerned.

Section 562 - Application of Act to companies registered but not formed under previous companies laws

This Act shall apply to every company registered but not formed under any previous companies law in the same manner as it is in Part IX of this Act declared to apply to companies registered but not formed under this Act:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered under the previous companies law concerned.

Section 563 - Application of Act to unlimited companies re-registered under previous companies laws

This Act shall apply to every unlimited company registered as a limited company in pursuance of any previous companies law, in the same manner as it applies to an unlimited company registered in pursuance of this Act as a limited company:

Provided that reference, express or implied, to the date of registration shall be construed as a reference to the date at which the company was registered as a limited company under the previous companies law concerned.

Section 564 - Mode of transferring shares in the case of companies registered under Acts 19 of 1857 and 7 of 1860

A company registered under Act 19 of 1857 and Act 7 of 1860 or either of them may cause its shares to be transferred in the manner hitherto in use, or in such other manner as the company may direct.

Section 565 - Companies capable of being registered

(1) With the exceptions and subject to the provisions contained in this section-

(a) any company consisting of seven or more members, which was in existence on the first day of May, 1882 , including any company registered under Act No. 19 of 1857 and Act No. 7 of 1860 or either of them or under any laws or law in force in a Part B State, corresponding to those Acts or either of them; and

(b) any company formed after the date aforesaid, whether before or after the commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other Indian law (including a law in force in a Part B State), or of any Act of Parliament of the United Kingdom or Letters Patent in force in India, or being otherwise duly constituted according to law, and consisting of seven or more members;

may at any time register under this Act as an unlimited company, or as a company limited by shares, or as a company limited by guarantee; and the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up:

Provided that-

(i) a company registered under the Indian Companies Act, 1882 (6 of 1882), or under the Indian Companies Act, 1913 (7 of 1913), shall not register in pursuance of this section;

(ii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, and not being a joint stock company as defined in section 566 , shall not register in pursuance of this section;

(iii) a company having the liability of its members limited by any Act of Parliament other than this Act or by any other Indian law (including a law in force in a Part B State), or any Act of Parliament of the United Kingdom or Letters Patent in force in India, shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(iv) a company that is not a joint stock company as defined in section 566 shall not register in pursuance of this section as a company limited by shares;

(v) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person, or where proxies are allowed, by proxy, at a general meeting summoned for the purpose;

(vi) where a company not having the liability of its members limited by any Act of Parliament or any other Indian law (including a law in force in a Part B State) or by any Act of Parliament of the United Kingdom or Letters Patent in force in India, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present in person, or where proxies are allowed, by proxy, at the meeting;

(vii) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and

for the adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) In computing any majority required for the purposes of sub-section (1) when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company.

(3) Nothing in this section shall be deemed to apply to any company the registered office whereof at the commencement of this Act is in Burma, Aden or Pakistan,¹[***],

1.The words "or in the State of Jammu and Kashmir" omitted by Act 62 of 1956, Section 2 and Schedule (w.e.f. 1-11-1956).

Section 566 - Definition of "joint-stock company"

(1) For the purposes of this Part, so far as it relates to the registration of companies as companies limited by shares, a joint-stock company means a company having a permanent paid up or nominal share capital of fixed amount divided into shares, also of fixed amount, or held and transferable as stock or divided and held partly in the one way and partly in the other, and formed on the principle of having for its members the holders of those shares or that stock, and no other persons.

(2) Such a company, when registered with limited liability under this Act, shall be deemed to be a company limited by shares.

Section 567 - Requirements for registration of joint-stock companies

Before the registration in pursuance of this Part of a joint-stock company, there shall be delivered to the Registrar the following documents:

(a) a list showing the names, addresses and occupations of all persons who on a day named in the list, not being more than six clear days before the day of registration, were members of the company, with the addition of the shares or stock held by them respectively, distinguishing, in cases where the shares are numbered, each share by its number;

(b) a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Royal Charter, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company; and

(c) if the company is intended to be registered as a limited company, a statement specifying the following particulars:

(i) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company, with the addition of the word "Limited" or "Private Limited" as the case may require, as the last word or words thereof; and

(iv) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

Section 568 - Requirements for registration of companies not being "joint-stock companies"

Before the registration in pursuance of this Part of any company not being a joint-stock company, there shall be delivered to the Registrar the following documents:-

- (a) a list showing the names, addresses and occupations of the directors,¹***] and the manager, if any, of the company;
- (b) a copy of any Act of Parliament or other Indian law, Act of Parliament of the United Kingdom, Letters Patent, deed of settlement, deed of partnership or other instrument constituting or regulating the company; and
- (c) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

1.The words "managing agent, if any, the secretaries and treasures, if any," omitted by Act 53 of 2000, Section 213 (w.e.f. 13-12-2000).

Section 569 - Authentication of statements of existing companies

The lists of members and directors and any other particulars relating to the company required to be delivered to the Registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

Section 570 - Power of Registrar to require evidence as to nature of company

The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether any company proposing to be registered is or is not a joint-stock company as defined in section 566.

Section 571 - Notice to customers on registration of banking company with limited liability

(1) Where a banking company which was in existence on the first day of May, 1882, proposes to register as a limited company under this Part, it shall, at least thirty days before so registering, give notice of its intention so to register, to every person who has a banking account with the company, either by delivery of the notice to him, or by posting it to him at, or delivering it at, his last known address.

(2) If the banking company omits to give the notice required by sub-section (1), then, as between the company and the person for the time being interested in the account in respect of which the notice ought to have been given, and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Section 572 - Change of name for purposes of registration

Where the name of a company seeking registration under this Part is one which in the opinion of the Central Government is undesirable, the company may, with the approval of the Central Government signified in writing, change its name with effect from the date of its registration under this Part:

Provided that the like assent of the members of the company shall be required to the change of name as is required by section 565 to the registration of the company under this Part.

Section 573 - Addition of "Limited" or "Private Limited" to name

When a company registers in pursuance of this Part with limited liability, the word "Limited" or the words "Private Limited" as the case may be, shall form, and be registered as, the last word or words of its name:

Provided that this section shall not be deemed to exclude the operation of section 25.

Section 574 - Certificate of registration of existing companies

On compliance with the requirements of this Part with respect to registration, and on payment of such fees, if any, as are payable under Schedule X, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act, and in the case of a limited company that it is limited and thereupon the company shall be so incorporated.

Section 575 - Vesting of property on registration

All property, movable and immovable (including actionable claims), belonging to or vested in a company at the date of its registration in pursuance of this Part, shall, on such registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

Section 576 - Saving for existing liabilities

The registration of a company in pursuance of this Part shall not affect its rights or liabilities in respect of any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of, the company before registration.

Section 577 - Continuation of pending legal proceedings

All suits and other legal proceedings taken by or against the company, or any public officer or member thereof, which are pending at the time of the registration of a company in pursuance of this Part, may be continued in the same manner as if the registration had not taken place:

Provided that execution shall not issue against the property or person of any individual member of the company on any decree or order obtained in any such suit or proceeding; but, in the event of the property of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

Section 578 - Effect of registration under Part

(1) When a company is registered in pursuance of this Part, sub-sections (2) to (7) shall apply.

(2) All provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be

conditions and regulations of the company, in the same manner and with the same incidents as if so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and the residue thereof were contained in registered articles.

(3) All the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject as follows:

(a) Table A in Schedule I shall not apply unless and except insofar as it is adopted by special resolution;

(b) the provisions of this Act relating to the numbering of shares shall not apply to any joint-stock company whose shares are not numbered;

(c) subject to the provisions of this section, the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law relating to the company;

(d) subject to the provisions of this section, the company shall not have power, without the sanction of the Central Government, to alter any provision contained in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, relating to the company;

(e) the company shall not have power to alter any provision contained in any Act of Parliament or other Indian law or in any Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, with respect to the objects of the company;

(f) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration, who is liable to pay or contribute to the payment of any debt or liability of the company contracted before registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid;

(g) in the event of the company being wound up, every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of any contributory, the provisions of this Act with respect to the legal representatives of deceased contributories, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

(4) The provisions of this Act with respect to

(a) the registration of an unlimited as a limited company;

(b) the powers of an unlimited company on registration as a limited company, to increase the nominal amount of its share capital and to provide that a portion of its share capital shall not be capable of being called up except in the event of winding up;

(c) the power of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

shall apply, notwithstanding any provisions contained in any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.

(5) Nothing in this section shall authorise the company to alter any such provisions contained in any instrument constituting or regulating the company as would, if the company had originally been formed under this Act, have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(6) None of the provisions of this Act (apart from those of section 404) shall derogate from any power of altering its constitution or regulations which may be vested in the company, by virtue of any Act of Parliament or other Indian law, or other instrument constituting or regulating the company.

(7) In this section, the expression "instrument" includes deed of settlement, deed of partnership, Act of Parliament of the United Kingdom, Royal Charter and Letters Patent.

Section 579 - Power to substitute memorandum and articles for deed of settlement

(1) Subject to the provisions of this section, a company registered in pursuance of this Part may, by special resolution, alter the form of its constitution by substituting a memorandum and articles for a deed of settlement.

(2) The provisions of sections 17 and 19 with respect to an alteration of the objects of a company shall, so far as applicable, apply to any alteration under this section, with the following modifications:

(a) there shall be substituted for the printed copy of the altered memorandum required to be filed with the Registrar a printed copy of the substituted memorandum and articles; and

(b) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section, the expression "deed of settlement" includes any deed of partnership, Act of Parliament of the United Kingdom, Royal Charter or Letters Patent, or other instrument constituting or regulating the company, not being an Act of Parliament or other Indian law.

Section 580 - Power of Court to stay or restrain proceedings

The provisions of this Act with respect to staying and restraining suits and other legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order, shall, in the case of a company registered in pursuance of this Part, where the application to stay or restrain is by a creditor, extend to suits and other legal proceedings against any contributory of the company.

Section 581 - Suits stayed on winding up order

Where an order has been made for winding up, or a provisional liquidator has been appointed for, a company registered in pursuance of this Part, no suit or other legal proceeding shall be proceeded with or commenced against the company or any contributory of the company in respect of any debt of the company, except by leave of the [1](#)[Tribunal] and except on such terms as the [1](#)[Tribunal] may impose.

1.Substituted by Act 11 of 2003, Section 4, for "court".

COMPANIES ACT, 1956Part 9A - PRODUCER COMPANIES

[1](#)[PART IXA

1. Part IXA (containing sections 581A to 581ZT) inserted by Act 1 of 2003, section 2 (w.e.f. 6-2-2003).

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