

Companies Act, 1956

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 the¹[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 the¹[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).