

Corporate Bankruptcy and Winding up Code, 2001

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An act to amend, consolidate and codify law and practice on corporate reorganisation, winding up and liquidation.

Chapter I General Provisions

1. Short title, commencement and extent.

- (1) This Act may be called the Corporate Bankruptcy and Winding Up Code, 2001.
- (2) It shall come into force on such date as the Union government may, by notification in the Official Gazette, appoint.
- (3) It extends to the whole of India.

2. Repeal of certain Acts, and savings of certain provisions

- (1) The Sick Industrial Companies (Special Provisions) Act, 1985 is hereby repealed.
- (2) Part VII to Part X of the Companies Act, 1956 is hereby repealed.
- (3) Part III and Part III A of the Banking Regulation Act, 1949 is hereby repealed.

3. Definitions

Unless the text otherwise stipulates, in this code –

- (1) **“accountant”** means and includes –
 - (a) Chartered Accountant within the meaning of Chartered Accountant Act 1949;
 - (b) Costs Accountant within the meaning of Costs and Works Accountant Act 1959;
 - (c) any person having equivalent qualification as may be prescribed from time to time by the Union Government;
- (2) **“affiliate”** means –
 - (a) entity that directly or indirectly owns, controls, or holds with power to vote, 15 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities –
 - (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
 - (ii) solely to secure a debt, if such entity has not in fact exercised such a power to vote;
 - (b) corporation 15 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 15 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities –
 - (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
 - (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
 - (c) person whose business is operated under as lease or operating agreement by the debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or

- (d) entity that operated the business or substantially all of the property of the debtor under a lease or operating agreement;
- (3) **“asset”** means a resource controlled by the enterprise as a result of past events from which future economic benefits are expected to flow to the enterprise;
- (4) **“banking company”** has the same meaning as in the Banking Companies Act, 1949 (10 of 1949);
- (5) **“bankrupt”** means a situation where a company is unable to pay a claim on demand within three weeks from the date of such demand provided that the claim is not less than rupees one lakh;
- (6) **“bankruptcy proceedings”** means a proceedings initiated by either the debtor or the creditor for corporate restructuring on renegotiation, failing which to set in motion winding up proceedings as stipulated under this Code to liquidate the company;
- (7) **“bankruptcy court”** means a bench constituted in each High court to deal with bankruptcy and winding up proceedings including reorganisation, liquidation, dissolution and all other related matters;
- (8) **“board of directors”** or **“Board”**, in relating to a company, means the Board of directors of the company;
- (9) **“claim”** means –
- (a) right to payment, whether or not such right is reduced to judgment, liquidated , unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
 - (b) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgement, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured;
- (10) **“corporation”** means private and public limited companies, government companies and corporations established by special act of parliament;
- (11) **“creditor”** means –
- (a) person or entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
 - (b) person or entity that has a claim against the estate; or
 - (c) person or entity that has a community claim;
- (12) **“court”** means the Bankruptcy Court;
- (13) **“debt”** means liability on a claim;

(14) **“deposit insurance corporation”** means a corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961;

(15) **“depository receipt”** means a receipt issued by a depository of securities to its members;

(16) **“disinterested person”** means person that –

- (a) is not a creditor, an equity security holder, or an insider;
- (b) is not and was not an investment banker for any outstanding security of the debtor;
- (c) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;
- (d) is not and was not, within two years before the date of the filing of the petition a director, officer or employee of the debtor or of an investment banker specified in subparagraph (b) or (c) of this paragraph; and
- (e) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (b) or (c) of this paragraph, or for any other reason;

(17) **“entity”** includes person, estate, trust, governmental unit and the trustee;

(18) **“equity security”** means shares or stock of a company, whether listed or unlisted;

(19) **“equity security holder”** means holder of an equity security of the debtor;

(20) **“establishment”** means any place of operation including liaison office, branch, permanent establishment, where the debtor carries out his activities;

(21) **“financial institution”** means

- (a) bank as defined in the Banking Regulation Act 1949;
- (b) public financial institution as defined by the Companies Act, 1956;
- (c) non banking financial institutions, chit funds, nidhi as defined by the relevant legislation governing them; or
- (d) as may be notified by the Reserve Bank of India from time to time.

(22) **“foreign main proceeding”** means foreign proceeding taking place in the State where the debtor has the centre of its main interests;

(23) **“foreign non-main proceeding”** means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment;

(24) **“foreign proceeding”** means a collective judicial or administrative proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purposes of reorganisation or liquidations;

(25) **“foreign representative”** means a person or body including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor’s assets or affairs or to act as an representative of the foreign proceeding;

(26) **“foreign court”** means judicial or other competent authority to control or supervise a foreign proceeding;

(27) **“insolvency”** means a financial position of a company in which its total payable debt is more than its total realisable assets;

(28) **“insurance company”** has the same meaning as in the Insurance Act, 1938;

(29) **“intellectual property”** means intangible property and includes patent, copyright, trademark, industrial design, geographical appellation, integrated circuit, and trade secret;

(30) **“letter rogatory”** means a letter of request communicated through diplomatic channel for transfer of documents submitted to the court, records of court proceedings and judgement of a foreign court;

(31) **“liability”** means a present obligation or the enterprise arising from past events, the settlement of which is expected to result in an outflow from the enterprise of resources embodying economic benefits;

(32) **“lien”** means continuing with lawful possession on the property against the owner for the non-payment of dues. When for the non-payment of dues any property remaining in the possession of the creditor can be retained by the creditor, the lien is called general. When on non-payment of dues on specific property, lien can be exercised only on those goods the lien is called particular;

(33) **“petition”** means a petition addressed to the court submitting such information as may be stipulated by the rules, to initiate bankruptcy proceedings;

(34) **“prescribed”** means as prescribed by rules;

(35) **“public auction”** means sale of properties and goods through bidding process in the public either orally or through quotes in writing;

(36) **“recognised stock exchange”** means stock exchanges recognised under the Securities Contract(Regulation) Act, 1956;

(37) **“scheduled bank”** means a bank defined as scheduled bank under the Reserve bank of India Act 1934;

(38) **“secured creditor”** means a creditor whose claim is secured by creation of a security interest on any collateral assets by way of pledge, hypothecation, mortgage, assignment or by any other means through a security agreement;

(39) “**security**” has the same meaning as in Securities Contract (Regulation) Act, 1956;

(40) “**security agreement**” means an agreement that creates or provides for security interest;

(41) “**security interest**” means a right or an interest created on a collateral security against a debt, created by an agreement;

(42) “**trustee**” means a trustee appointed under section 19 of this Code;

4. Interpretation of words and expressions

Terms which are not defined in this Code but are defined in the General Clauses Act, Companies Act, 1956, Securities Contract (Regulation) Act, 1956, Banking Regulation Act, Securities and Exchange Board of India Act, 1992 or any other statute *ex pari materia* shall have the same meaning unless the text otherwise stipulates.

5. Calculation of time schedule

Any schedule of time mentioned in this Code be calculated from the date of filing of the petition for bankruptcy, in the case of bankruptcy matters and from the date of filing of the winding up petition in the case of winding up matters the text of any provision otherwise requires.

Chapter II Bankruptcy Court

6. Bankruptcy Court

There shall be a permanent division bench in each High court to deal with bankruptcy and winding up petitions, and to oversee reorganisation, winding up and liquidation proceedings of a company.

7. Powers of the Court on bankruptcy and winding up petitions

- (1) In the case of a bankruptcy petition, the Court shall have, subject to the specified time schedule which may be extended for reasons to be recorded in exceptional circumstances, the powers of,
 - (a) Appointing the trustee forthwith if the petition is made by the debtor company;
 - (b) Allowing the petition with 8 weeks from the date of receiving the petition, if it is made by a creditor or group of creditors and if after preliminary enquiry the court finds reasonable ground for such a petition to be allowed;
 - (c) Allowing not more than 4 weeks time to the trustee, from the date of his appointment, for preparing the statement of affairs, inventory of assets and list of secured and unsecured creditors and other liabilities along with the preliminary report which shall

be approved by the court within 2 weeks from the date of submission of the report and statements;

- (d) Allowing 20 weeks time to the trustee from the date of his appointment, for conducting renegotiation and preparation of the scheme of reorganisation, if possible with the participation and consent of the creditors on voluntary basis and submission of the same before the court for approval.
- (2) In the case of a winding up petition, the Court shall have, subject to the specified time schedule which may be extended for reasons to be recorded in exceptional circumstances, the powers of,
- (a) Approving the petition for winding up within 2 weeks from the date of application by the trustee on the failure of renegotiation;
 - (b) Allowing the petition for voluntary winding up submitted by the company within 2 weeks from the date of submission of such petition and appointing a trustee;
 - (c) Allowing the petition within 2 weeks, if the petition is submitted by the Registrar within the power assigned to him, and appointing the trustee;
 - (d) Allowing the petition submitted by any person authorised by the Union Government under section 243 of the Companies Act within 2 weeks and appointment of the trustee;
 - (e) Allowing not more than 4 weeks time to the trustee, from the date of his appointment, for preparing the statement of affairs, inventory of assets and list of secured and unsecured creditors and other liabilities along with the preliminary report which shall be approved by the court within 2 weeks from the date of submission of the report and statements. Provided that in the case of an application by the trustee for winding up under clause (a) of this subsection, this provision shall not be applicable;
 - (f) Approving the time schedule and plan for winding up as submitted by the trustee, the period of time required for completing the winding up procedure for completion and realisation of assets and payment of debt shall in ordinary circumstances not to exceed a time limit of 30 weeks.

8. Interlocutory matters

All interlocutory claims and counter-claims are to be decided by the same Court at appropriate stages. In all matters of fact the decision of the Court shall be final.

9. Jurisdiction

The situation of registered office of the company shall determine the jurisdiction of the Court excepting in the case of cross-border insolvency petition in which case the place of the establishment shall determine the jurisdiction.

10. Access to public records

- (1) Except as provided in subsection (2) of this section, a paper filed in a case under this title and the dockets of a Court are public records and open to examination by any person according to the rules prescribed.
- (2) On request of a party in interest, the Court shall, and on the Court's own motion, the Court may –
 - (a) protect a company with respect to a trade secret or confidential research and development, or commercial information; or
 - (b) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this code.

Chapter III Bankruptcy Procedure

11. When can a bankruptcy petition lie

- (1) The debtor company having passed a special resolution in the Annual General Meeting to that effect, file a bankruptcy petition at any time if it has an a reasonable apprehension of a claim against the company not being able to pay its debt on demand.
- (2) A creditor may file a petition for bankruptcy against the debtor company if;
 - (a) the company is unable to pay its debt of a sum exceeding rupees one lakh on demand after the debt falls due and the company having served a notice by registered post or by a courier or through electronic means requiring company to pay the sum so due and the company having failed to pay the sum or make it secured or compounded to the reasonable satisfaction of the creditor within a period of 3 weeks from the date of service of notice; or
 - (b) The company is unable to pay a debt on the execution of a decree for a claim exceeding Rupees one lakh by a court in favour of the creditor of a company; or
 - (c) if it is proved to the satisfaction of the court that the company is unable to pay its debt, and, in determining whether a company is unable to pay its debt, the court shall take into account the contingent and prospective liabilities of the company.

12. Inability of a debtor to present the bankruptcy petition

- (1) Where the managing director or the whole time director or executive director or manager having the ultimate responsibility for managing the company is of the view that the total liability of the company cannot be met from the total realisable assets, he shall place the matter before the Board of directors immediately.
- (2) When the Board of directors having such information from managing director or the whole time director or executive director or manager or on its own motion having made independent inquiries comes to the conclusion that the company is unable to pay its total

liability from its total realisable assets, the board of directors shall direct the managing director or the whole time director or executive director or manager to submit a bankruptcy petition to the Court forthwith.

- (3) Whosoever violates the provision of subsection (1) or (2) as the case may be or wilfully neglects or delays the petition as stipulated in subsection (2) shall be jointly and severally liable to compensate the company for any erosion of value of assets on account of not filing the petition at the proper time soon after knowing that the realisable assets are insufficient to redeem the liabilities.
- (4) If the Court decides that the negligence on the part of the member of the Board of directors or the management is gross and intentional, the court may impose disqualification of such members of the board and management for such term as may be decided by the court asking them to vacate from the office of directorship or management as the case may be, from all companies for such term as may be prescribed, in addition to the compensation payable to the company.

13. Power of court to stay or restrain proceedings against companies

At any time after the petition for bankruptcy, the company or the creditor may:

- (a) where a suit or proceeding against the company is pending in the Supreme Court of India or in any Court apply to the court in which the suit or proceeding is pending for a stay of proceedings therein; and
- (b) where any suit or proceeding is pending against the company in any other court, apply to the court in which the bankruptcy petition has been filed, to restrain further proceedings in the suit or proceedings;

and the court to which application is so made may stay or restrain the proceedings accordingly on such terms as it thinks fit.

14. Revision and Appeal (s. 483)

- (1) Any revision petition or appeal against the order of the Court in the matter of bankruptcy, winding up, liquidation and dissolution proceedings of a company shall lie in the same Court to which in the same manner, and subject to the same conditions under which, revision petition lie.
- (2) Any appeal against the decision and judgement of the court in bankruptcy and winding up proceeding shall lie with the Supreme Court in such manner and under such conditions as may be prescribed.

15. Penalty for persons who negligently or fraudulently submit bankruptcy petitions

If a bankruptcy petition is rejected due to the petition being filed negligently or fraudulently, the petitioner may be directed to pay a compensation equal to:

- (a) actual damage caused to the debtor company; and
- (b) all reasonable costs that the debtor company had to pay for contesting the petition.

In calculating the actual damage caused the Court may take into consideration the loss of reputation and harassment caused.

Chapter IV Trusteeship

16. Panel of Trustees

Each Court shall prepare a list of trustees who are qualified to become a trustee for bankruptcy and winding up proceedings having such qualification and following such procedures as may be prescribed.

Provided that the panel is to be revised biannually.

17. Who can apply to be trustee

The following may apply to the court for being empanelled as trustee:

- (a) a company engaged in financial business and whose promoters or directors or officials have proficiency in business management but who are both institutionally and individually disinterested persons in the affairs of the company to which it may be appointed as trustee;
- (b) a professional firm with partners from the profession of Chartered Accountants or Cost Accountants or Company Secretaries or solicitors or advocates as qualified under the respective Acts;
- (c) a trust constituted under the Indian Trust Act, 1882 with the trustees having such professional qualification and experience from finance, business management, corporate liquidation, public auction and law, as may be prescribed;
- (d) a Joint Venture of more than one professional firms or any two or more other institutions with a specific agreement to act as such and the members having such qualifications and experience as may be prescribed;
- (e) a society, registered under the Societies Registration Act, 1860 for the purpose, in which the members having such professional qualification and experience as may be prescribed; and
- (f) a person who is professionally qualified and experienced to have expertise in the matters of conducting bankruptcy and winding up proceedings, as may be prescribed.

18. Qualification and disqualification

- (1) The qualification of persons or institutions who can function as a trustee shall be prescribed by rules provided that the trustee is a disinterested person.
- (2) Any person or institution shall be disqualified on any of the following grounds to function as the trustee of a company:
 - (a) any member or official of the trustee having any financial relations either as a share holder or as a creditor or as a contributor or in any other manner having a conflict of interest;
 - (b) in case of an individual an undischarged insolvent;
 - (c) a person incompetent to enter into contract;
 - (d) a person or an entity against whom any charge sheet is submitted before a court in a criminal case;
 - (e) any other disqualification as may be prescribed.

19. Appointment of trustee

- (1) The Court shall appoint the trustee within 4 weeks from the date of filing of the bankruptcy petition or the petition of winding up as the case may be.
Provided that if the function of the company is regulated by a regulatory authority, the court shall take the advice of the concerned regulatory authority for the appointment of the Trustee.
- (2) If the bankruptcy petition is filed by the creditor the court shall hear the petition to ascertain the merit of the petition by providing opportunities for the contesting parties to deposit written submissions in the manner and with such particulars as may be prescribed, within a period not exceeding 4 weeks.
- (3) On assessing the written submissions, the Court may either dismiss the petition with or without costs in the event that there is no prima facie case or may allow the petition to be heard in which case the court may hear the parties within such time but not exceeding 4 weeks after the written submission have been received, determine whether the petition is to be allowed or to be rejected with or without costs. In the event of the petition being allowed, the court shall appoint the trustee immediately.
- (4) In the case of winding up petition by any other person the court shall appoint the trustee on the petition being allowed within 4 weeks from the date of allowing the petition.

20. When can a trustee be removed

The court may remove a trustee on any of the following grounds:

- (a) the person has become disqualified to hold the position of a trustee; and
- (b) the court is of the opinion that such a person is unable or not competent to perform the function of a trustee.

The court may also impose penal compensation necessary for wilful neglect of duty to be paid by the trustee if the court deems such imposition of penal compensation necessary.

21. Power to fill vacancy in office of trustee (s. 492)

In the case of any casual vacancy by way of resignation or removal or death, the court shall appoint another trustee from the panel immediately within 2 weeks from the date of vacancy being caused on such terms and conditions as the court may determine.

22. Role and capacity of the trustee

The trustee shall immediately take charge of the company after being appointed as such and may either dispense with the board of directors or continue with the existing board. Provided that the board cannot alienate or transfer or put under charge any assets of the company in any manner without the consent of the trustee.

23. Functions of the Trustee appointed on a bankruptcy petition

The following are the functions of the trustee in relation to the company put under the charge of the trustee, under bankruptcy petition:

- (a) take over the charge and management of the company forthwith after his appointment with all the properties and assets of the company and shall immediately prepare an inventory of assets to ensure existence and protection of such properties and assets within one week from the date of assuming the charge;
- (b) submit a preliminary report within 4 weeks from the date of assuming charge to the court which shall, *inter alia*, include
 - (i) statement of affairs, list of free and charged assets and list of secured and unsecured creditors;
 - (ii) fair assessment about the realisable value of the assets;
 - (iii) an assessment whether the company can be reorganised based on the voluntary efforts of the creditors and other claimants or whether the company should go for immediate liquidation;
 - (iv) recommendation about continuation of the Board or its suspension.
- (c) negotiate with the existing creditors, other stakeholder and any other institutions for the purpose of
 - (i) drawing a scheme of reorganisation in consultation and agreement with the creditors;
 - (ii) secure expert advice, if necessary, for the purpose of drawing such scheme and
 - (iii) submission of the scheme before the court for approval.

- (d) appoint the required personnel including advisers for the purpose of carrying out bankruptcy and winding up proceedings;
- (e) enter into contract for and on behalf of the company;
- (f) to implement reorganisation scheme and handing over the reorganised company to its Board; and
- (g) any other power that the court may specify for discharging any special function as required by the court.

24. Functions of trustee in the winding up by the court (s. 457 and 458)

- (1) In the case of winding up by the court the trustee shall have the following inherent functions,—
 - (a) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
 - (b) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;
 - (c) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or indorsed by or on behalf of the company in the course of its business;
 - (d) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the trustee to take out the letters of administration or recover the money, be deemed to be due to the trustee himself;
 - (e) to appoint an agent to do any business in which the trustee is unable to do himself.
- (2) In the event of winding up by the court, the trustee shall have the following power with the sanction of the court,-
 - (a) to institute or defend any suit, prosecution, or other legal proceeding, civil or criminal in the name and on behalf of the company;

- (b) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;
- (c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate, or to sell the same in parcels;
- (d) to raise on the security of the assets of the company any money required;
- (e) to do all such other things as may be necessary for winding up the affairs of the company and distributing its assets.

Provided that the Court may, by order, provide that the trustee may exercise any of the powers referred this sub-section without the sanction or intervention of the Court.

- (3) The exercise by the trustee in a winding up by the Court of the powers conferred by this section shall be subject to the control of the Court; and any creditor or contributory may apply to the Court with respect to the exercise or proposed exercise of any of the powers conferred by this section.

25. Powers and duties of Trustee in voluntary winding up(s. 512)

- (1) The Trustee may,—

- (a) in the case of voluntary winding up exercise any of the powers given by clauses (a) to (d) of sub-section (2) of section 24 to a trustee in a winding up by the court;
- (b) without the sanction referred to in clause (a) exercise any of the other powers given by this Act to the trustee in a winding up by the Court;
- (c) call general meetings of the company for the purpose of obtaining the sanction of the company by ordinary or special resolution, as the case may require, or for any other purpose he may think fit.

- (2) The trustee shall pay the debts of the company and shall adjust the rights of the contributories among themselves.
- (3) When several trustees are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number of them not being less than two.

26. Board's powers to cease on appointment of trustee (s. 491)

On the appointment of a trustee, all the powers of the Board of directors and of the managing or whole-time directors, managing agent, secretaries and treasurers, and manager, if there be any of these, shall cease, except for the purpose of giving notice of such appointment to the Registrar in

pursuance of section 31 or in so far as the company in general meeting or the trustee may sanction the continuance thereof.

27. Special liability of the existing management and board of directors of the company

- (1) If the existing management has failed to put the trustee in charge of the company after the company has been served with the notice of appointment of the trustee or where the trustee has a reasonable apprehension that all books of accounts, records, correspondences and properties of the company has not been given to the trustee, the trustee may by writing request the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction such properties or book of accounts of the company be situate or be found, to take immediate measures for putting the trustee into possession of those property or assets.
- (2) For the purpose of securing compliance with the provision of subsection (1) the Chief Metropolitan Magistrate or the District Magistrate as the case may be, may take or cause to be take such steps, and use or cause to be used such force as may in his opinion be necessary and the same shall not be called in question in any court or before any authority.
- (3) The trustee shall file petition for drawing contempt proceedings against such official of the company who have not passed on books of account or properties of the company, in accordance with the requirement under section 24 of this Code.
- (4) Any director or officer of the company unlawfully withholding any records, books of accounts properties assets and receivables of the company shall be personally liable to indemnify the company for the loss sustained by the company on account of such act and abstinence in addition to any other liability of the party for committing such offence.

28. Duty and accountability to the Court

The trustee shall submit periodical reports before the court from time to time, at least once in every quarter of a year. The court may give such directions and guidelines, as the court may deem necessary from time to time. Subject to such instructions, directions and guidelines the trustee shall be independent to take all decisions. In the event of the trustee not complying with the time schedule or is found negligent the court may impose penalty which is deductible from his remuneration.

29. Remuneration

The court shall appoint trustee on such fee as may be proposed by the trustee which is based upon the nature of the functions of the trustee as per the rules prescribed, and the same is to be based upon percentage of realisation of assets and disbursement of claims keeping in view the cost and expenses of winding up which shall be borne by the trustee out of the amount receivable by the trustee.

[Illustration: A trustee may charge fees which is efficiency and incentive compatible such as (a) fixed remuneration for designing the scheme of reorganisation on voluntary basis; (b) percentage on the realisation of assets and payment of liabilities; and (c) an incentive percentage on additional realisation amount over the approved realisable value of the asset.]

30. Protection to the trustee

- (1) No provision of the Indian Trustee Act, 1882 shall apply against the trustee appointed under this Code and his power, functions and responsibilities shall be governed by this Code only.
- (2) No civil or criminal action shall lie against the trustee for an act done in good faith or intended to be done in pursuance of this Code or any rule, regulation or order made thereunder.
- (3) No civil suit or criminal case shall be filed against the trustee without the prior approval of the Court having jurisdiction over the trustee.

31. Notice of appointment of trustee to be given to Registrar (s. 493)

- (1) Whenever the court appoints a trustee, either in pursuance of a bankruptcy petition or on a petition on voluntarily winding up or winding up by the court, a copy of the order appointing the trustee shall be served to the registrar immediately in the manner prescribed.
- (2) In the case of removal, resignation or death of a trustee and the court appoints a new trustee, such an order shall be sent to the Registrar in the manner prescribed.

Chapter V Reorganisation

32. Who may file the reorganisation proposal

- (1) The Board of the debtor company may file a reorganisation proposal to the trustee and the trustee may also prepare a reorganisation proposal within 10 weeks. On receipt of the same, forthwith, the trustee shall, by serving a 3 weeks notice enclosing a copy of the proposal, convene the meeting of the creditors.
- (2) During the meeting the trustee shall ascertain the opinion of the various interest groups of the creditors and hold negotiations with them for finalisation of the proposal, if possible, during the next 5 weeks which period shall be known as the negotiation period.
- (3) Any creditor or class of creditors or a contributory or a class of contributories may also submit alternative proposals during the negotiation period as stipulated in subsection (2).
- (4) When the trustee shall come to the opinion during the negotiation period that a proposal of reorganisation is so crystallised that it is likely to have the consent of the creditors, the trustee shall place such proposal before the meeting of the creditors. If 50% of the creditors attending the meeting having 70% of the total credit against the company have consented to the proposal in the manner prescribed and also approve a plan to secure further financial support to the company intending to reorganise on such terms and condition as agreed upon in the meeting of the creditors, such scheme shall then be placed before the court for its approval, by the trustee within 20 weeks.

- (5) If the trustee is of the opinion that the time for submission of the scheme and finalisation of negotiation require extension of time, the trustee shall place the matter before the court suggesting the reason for extension of time and quantum of time required for such extension. The court after consideration may extend such time as it deems fit.
- (6) If the scheme has been placed before the court for approval within 20 weeks the court may approve this scheme after ensuring that minority claim contesting against the scheme have been reasonably addressed to by the majority supporting the scheme.
- (7) If no scheme could be worked out the trustee shall submit his report to the court to that effect and file a petition for winding up under section 49(2).

33. Minority Interest

In the event of minorities disagreeing with the proposed scheme, even after negotiations, the interests of the minority is to be bought or made secure on the basis of an approved valuation of the assets as submitted by the trustee with the preliminary report and placed before the court.

[Illustration: Suppose the approved realisable value of all assets is Rupees one lakh. It covers an asset worth rupees eighty thousand put as a security against a claim of rupees sixty thousand rupees, can only fetch fifty thousand. Suppose the total claim amount is one lakh and twenty thousand of which creditors holding claim of rupees one lakh agree to go with the scheme. Creditors worth rupees twenty thousand, who are unsecured, do not agree to the scheme proposed by the majority. Total unsecured credit shall amount to Rupees sixty thousand plus rupees ten thousand of the secured credit not covered by the security. So the minority shall have to be paid or made secured the following amount:

$$\frac{20,000 \times 50,000}{70,000} = \frac{1,00,000}{7} = 14285.71]$$

34. Approval of scheme

The court shall then approve the scheme within 2 weeks from the date of filing of the scheme before the court, on such terms and in such manner, as may be necessary to implement the scheme.

35. Ongoing modification of the Scheme

The trustee may suggest suitable modification of the scheme from time to time if it is agreed by all the parties and place the recommendation for modification before the court which the court shall approve.

36. Committee of creditors and the power of the committee

On the recommendation of the trustee, the Court shall appoint a committee of creditors with proportionate representation from all classes of claimants for the following functions:

- (a) the committee shall meet periodically to review the implementation of the scheme;

- (b) advise the trustee and the reorganiser in proper implementation of the scheme; and
- (c) prepare a report for submission to the court along with the periodical report to be submitted by the trustee.

37. Periodical report and return to the court

The trustee shall submit periodical report at least once in every quarter to the court, stating therein the progress made for the implementation of the scheme during the period. At the end of each annual year a periodical annual statement of account audited by a firm of chartered accountants and a progress report shall be placed before the joint meeting of the creditors and the shareholders and the same shall also be placed before the court for approval.

38. Failure of the Scheme

After giving a reasonable trial for the scheme, if the trustee comes to the conclusion that the scheme is not operating or it has failed or it is not implementable, the trustee shall submit his report recommending initiation of the winding up proceedings to the court which the court may approve.

Chapter VI Winding up and liquidation

Part I – General Provisions

39. Modes of winding up (s.425)

- (1) The winding up of a company may be either –
 - (a) by the court; or
 - (b) voluntary; or
 - (c) subject to the supervision of the court.
- (2) The provisions of this Act with respect to winding up apply, unless the contrary appears, to the winding up of a company in any of those modes.

40. Definition of contributory (s. 428)

The term “contributory” means every person liable to contribute to the assets of a company in the event of its being wound up and includes the holder of any shares which are fully paid up; and for the purposes of all proceedings for determining, and all proceedings prior to the final determination of, the persons who are to be deemed contributories, includes any person alleged to be a contributory.

41. Settlement of list of contributories (s. 467)

(1) Soon after the appointment of the trustee, the court shall direct the trustee to settle a list of contributories and place the same before the Court, and rectify the register of members in all cases where rectification is required in pursuance of the Companies Act 1956 and this Code and shall cause the asset of the company to be collect and applied in discharge of its liabilities.

Provided that where it appears to the court that it will not be necessary to make calls on, or adjust the rights of the contributories, the court may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the trustee shall distinguish between those who are contributories in their own right and those who are contributories on any representative capacity.

42. Nature of liability of contributory (s. 429)

(1) The liability of a contributory shall create a debt accruing due from him at the time when his liability commenced, but payable at the times specified in calls made on him for enforcing the liability.

(2) No claim founded on the liability of a contributory shall be cognizable by any court of small causes sitting outside the presidency-towns.

43. Liability as contributories of present and past members (s. 426)

(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of section 44 and subject also to the following qualifications, namely:—

(i) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(ii) a past member shall not be a liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(iii) no past member shall be liable to contribute unless it appears to the Court that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Code;

(iv) in the case of a company limited by shares, no contribution shall be required from any past or present member exceeding the amount if any, unpaid on the shares in respect of which he is liable as such member;

(v) in the case of company limited by guarantee no contribution shall, subjects to the provisions of sub-section (2), be required from any past or present member exceeding

- the amount undertaken to be contributed by him to the assets of the company in the event of its been wound up;
- (vi) nothing in this Code shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
 - (vii) a sum due to any past or present member of the company in his character as such, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member, in a case of competition between himself and any other creditor who is not a past or present member of the company; but any such sum shall be taken into account for the purport of the final adjustment of the rights of the contributories among themselves.
- (2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him as if the company were a company limited by shares.

44. Obligations of directors, and managers whose liability is unlimited (s. 427)

In the winding up of a limited company, any director, managing agent, secretaries and treasurers or manager, whether past or present, whose liability is, under the provisions of the Companies Act, 1956 and this Code, unlimited shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were, at the commencement of the winding up, a member of an unlimited company:

Provided that –

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

45. Contributories in case of death of member (s. 430)

- (1) If a contributory dies either before or after he has been placed on the list of contributories, his legal representatives shall be liable in a due course of administration, to contribute to the assets of the company in discharge of his liability, and shall be contributories accordingly.
- (2) If the legal representatives make default in paying any money ordered to be paid by them, proceedings may be taken for administering the estate of the deceased contributory and compelling payment thereof of the money due.
- (3) For the purposes of this section, where the deceased contributory was a member of a Hindu joint family governed by the Mitakshara School of Hindu Law, his legal representatives shall be deemed to include the surviving coparceners.

46. Contributories in case of insolvency of member (s. 431)

If a contributory is adjudged insolvent, either before or after he has been placed on the list of contributories –

- (a) his assignees in insolvency shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to proof against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company; and
- (b) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

47. Contributories in case of winding up of a body corporate which is a member (s. 432)

If a body corporate which is a contributory is ordered to be wound up, either before or after it has been placed on the list of contributories,—

- (a) the trustee of the body corporate shall represent it for all the purposes of the winding up of the company and shall be a contributory accordingly, and may be called on to admit to proof against the assets of the body corporate, or otherwise to allow to be paid out of its assets in due course of law, any money due from the body corporate, in respect of its liability to contribute to the assets of the company; and
- (b) there may be proved against the assets of the body corporate the estimated value of its liability to future calls as well as calls already made.

48. Who can submit winding up petitions (s. 439)

- (1) An application to the Court for the winding up of a company shall be by petition presented, subject to the provisions of this section,—

- (a) by the trustee, on filing the bankruptcy petition the trustee submits in the preliminary report that there is no scope for reorganisation or on the failure of renegotiation or on the failure of the Scheme; or
 - (b) by the company in the case of members voluntary winding up; or
 - (c) by the Registrar; or
 - (d) in a case falling under section 243 of the Companies Act 1956, by any person authorised by the Union Government in that behalf.
- (2) Except in the case where he is authorised in pursuance of clause (d) of sub-section (1), the Registrar shall be entitled to present a petition for winding up a company only on the ground specified in clauses (b), (c), (d) and (e) sub-section (1) of section 49:
Provided that the Registrar shall not present a petition on the ground specified in clause (e) aforesaid, unless it appears to him either from the financial condition of the company as disclosed in its balance-sheet or from the report of an inspector appointed under section 235 or 237 of the Companies Act 1956 that the company is unable to pay its debts;
Provided further that the Registrar shall obtain the previous sanction of the Union government to the presentation of the petition on any of the grounds aforesaid.
- (3) The Union government shall not accord its sanction in pursuance of the foregoing proviso, unless the company has first been afforded an opportunity of making its representations, if any.

49. Circumstances in which company may be wound up by court (s. 433) –

- (1) A company may be wound up by the court,-
- (a) if the company has by special resolution, resolved that the company be wound up by the court;
 - (b) if default is made in delivering the statutory report to the Registrar or in holding the statutory meeting;
 - (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;
 - (d) if the number of members is reduced, in the case of public company, below seven, and in the case of a private company, below two;
 - (e) if the court is of opinion that it is just and equitable that the company should be wound up.

- (2) A company may be wound up by the court if on a bankruptcy petition against the company the court appoints a trustee on the company's inability to pay its debt under section 11 and
- (a) trustee in his preliminary report submits that no reorganisation is possible on voluntary basis; or
 - (b) renegotiation having attempted has failed; or
 - (c) the reorganisation scheme approved by the court could not be implemented in the manner approved by the court due to change of circumstances or the trustee submits a final report to the court suggesting cancellation of the scheme for saving the company from further and heavier losses;
on the petition of the trustee.

50. Court or person before whom affidavit may be sworn (s. 558)

- (1) Any affidavit required to be sworn under the provisions, or for the purposes, of this chapter may be sworn—
- (a) in India, before any Court, Judge or person lawfully authorised to take and receive affidavits; and
 - (b) in any other country, either before any Court, Judge or person lawfully authorised to take and receive affidavits in that country or before an Indian Consul or Vice-Consul.

Explanation — In this sub-section, "India" includes the State of Jammu and Kashmir.

- (2) All Courts 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 any such Court, 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 Chapter.

Part II – Winding up proceedings

51. Powers of Court on hearing petition (s. 443)

- (1) On hearing a winding up petition, the Court may—
- (a) dismiss it, with or without costs; or
 - (b) adjourn the hearing conditionally or unconditionally; or
 - (c) make any interim order that it thinks fit; or
 - (d) make an order for winding up the company with or without costs, or any other order that it thinks fit.

Provided that the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

- (2) Where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Court may refuse to make an order of winding up, if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.
- (3) Where the petition is presented on the ground of default in delivering the statutory report to the Registrar, or in holding the statutory meeting, the Court may—
 - (a) instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held; and
 - (b) order the costs to be paid by any persons who, in the opinion of the Court are responsible for the default.

52. Appointment of Trustee in winding up (s. 444)

Where the Court makes an order for the winding up of a company, the Court shall forthwith, not later than four weeks, appoint a trustee from the panel of trustees on such terms and conditions as may be decided by the Court.

Provided that if the Court makes the order for winding up in a bankruptcy proceeding, the trustee who was appointed to conduct the bankruptcy proceeding shall continue to operate as trustee for the purpose of winding up.

53. Transfer of winding up proceedings

- (1) All winding up proceedings initiated in the District Court before the commencement of this Code and pending there shall be transferred to the Court having jurisdiction and shall be placed before such Court for continuing with the proceeding.
- (2) All winding up proceedings initiated in the High Court before the commencement of this Code and pending there shall be reallocated to the Court having jurisdiction by the Chief Justice of that High Court and shall be placed before such Court for continuing with the proceeding.

54. Commencement of winding up by Court (s. 441)

- (1) Where, before the presentation of a petition for the winding up of a company by the Court, a resolution has been passed by the company for voluntary winding up, the winding up of the company shall be deemed to have commenced at the time of the passing of the resolution, and unless the court, on proof of fraud or mistake, thinks fit it direct otherwise, all proceedings taken in the voluntary winding up shall be deemed to have been validly taken.

- (2) In any other case, the winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

55. Power of Court to stay or restrain proceedings against company (s. 442)

At any time after the presentation of a winding up petition and before a winding up order has been made, the company may—

- (a) where any suit or proceeding against the company is pending in the Supreme court or in any court, apply to the Court in which the suit or proceeding is pending for a stay of proceedings therein; and
- (b) where any suit or proceeding is pending against the company in any other court, apply to the Court having jurisdiction to wind up the company, to restrain further proceedings in the suit or proceedings; and the Court to which application is so made may stay or restrain the proceedings accordingly, on such terms as it thinks fit.

56. Copy of winding up order to be filed with Registrar (s. 445)

- (1) On the making of a winding up order, it shall be the duty of the petitioner in the winding up proceedings and of the company to file with the Registrar a certified copy of the order, within 4 weeks from the date of the making of the order. If default is made in complying with the foregoing provision, the petitioner, or as the case may require, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees for each day during which the default continues.
- (2) In computing the period of thirty days from the date of the making of a winding up order under sub-section (1), the time requisite for obtaining a certified copy of the order shall be excluded.
- (3) On the filing of a certified copy of the winding up order, the Registrar shall make a minute thereof in his books relating to the company, and shall notify in the Official Gazette that such an order has been made.
- (4) Such order shall be deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued.

57. Suits stayed on winding up order (s. 446)

- (1) When a winding up order has been made and the trustee has been appointed and communicated with the order of the court to proceed for liquidation, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceed with, against the company, except by leave of the Court and subject to such terms as the Court may impose.
- (2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of:

- (a) any suit or proceeding by or against the company;
- (b) any claim made by or against the company (including claims by or against any of its branches in India);
- (c) any application made under section 391 of the Companies Act, 1956 by or in respect of the company;
- (d) any question of priorities or any other question whatsoever, whether of law or fact, which may related to or arise in course of the winding up of the company;

whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960).

- (3) Any suit or proceeding by or against the company which is pending in any court other than that in which the winding up of the company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by that Court.
- (4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court.

58. Receiver not to be appointed of assets with trustee (s. 453)

A receiver shall not be appointed of assets in the hands of the trustee except by, or with the leave of, the Court.

59. Statement of affairs to be made to Trustee (s. 454)

- (1) Where the application has been made for winding up other than the reasons for which the bankruptcy petition is made and the court has made a winding up order and has appointed a trustee, the company shall make out and submit a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, unless the court otherwise directs, namely:—
 - (a) The assets of the company, stating separately the cash balance in hand at the bank, if any, and the negotiable securities, if any, held by the company;
 - (b) its debts and liabilities;
 - (c) the names, residences and occupations of its creditors, stating separately the amount of secured and unsecured debts; and in the case of secured debts, particulars of the

securities given, whether by the company or an officer thereof, their value and the dates on which they were given;

(d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised on account thereof;

(e) such further or other information as may be prescribed, or as the Trustee may require.

(2) The statement shall be submitted and verified by one or more of the persons who are at the relevant date the directors and by the person who is at that date the manager, secretary or other chief officer of the company, or by such of the persons hereinafter in this sub-section mentioned, as the Trustee, subject to the direction of the Court, may require to submit and verify the statement, that is to say, persons—

(a) who are or have been officers of the company;

(b) who have taken part in the formation of the company at any time within one year before the relevant date;

(c) who are in the employment of the company, or have been in the employment of the company within the said year and are, in the opinion of the Trustee, capable of giving the information required;

(d) who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

(3) The statement shall be submitted within 3 weeks from the relevant date, or within such extended time not exceeding three months from that date as the Trustee or of the Court may, for special reasons, appoint.

(4) Any person making, or occurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Trustee, out of the assets of the company, such costs and expenses incurred in and about the preparation and making of the statement and affidavit as the Trustee may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, makes, default in complying with any of the requirements of this section, he shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues.

(6) The Court by which the winding up order is made, may take cognizance of an offence under sub-section (5) upon receiving a complaint of facts constituting such an offence and trying the offence itself in accordance with the procedure laid down in the Code of Criminal Procedure 1973, for the trial of summons cases by magistrates.

- (7) 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 fees, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom.
- (8) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Indian Penal Code (Act 45 of 1860); and shall, on the application of the Trustee, be punishable accordingly.

60. Report by Trustee (s. 455)

- (1) In a case where a winding up order is made, the trustee shall, as soon as practicable after receipt of the statement to be submitted under section 59 and not later than 12 weeks from the date of the order, or in a case where the Court orders that no statement need be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—
 - (a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately, under the heading of assets, particulars of (i) cash and negotiable securities; (ii) debts due from contributories; (iii) debts due to the company and securities, if any, available in respect thereof; (iv) movable and immovable properties belonging to the company; and (v) unpaid calls;
 - (b) as to a working plan of paying claims on the basis of priorities;
 - (c) if the company has failed, as to the causes of the failure; and
 - (d) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.
Provided that where the winding up order is given by the court in a bankruptcy proceeding the above provision shall not be applicable.
- (2) The Trustee may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any officer of the company in relation to the company since the formation thereof, and any other matters which, in his opinion, it is desirable to bring to the notice of the Court.
- (3) If the Trustee states in any such further report that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in section 80.

61. Custody of company's property (s. 456)

- (1) Where a winding up order has been made, the trustee shall take into his custody or under his control, all the property effects and actionable claims to which the company is or appears to be entitled.

- (2) For the purpose of enabling the trustee to take into his custody or under this control, any property, effects or actionable claim to which the company is or appears to be entitled, the trustee may by writing request the Chief Presidency Magistrate or the District Magistrate within whose jurisdiction such property, effects or actionable claims or any books of account or other documents of the company may be found, to take possession thereof, and the Chief Presidency Magistrate or the District Magistrate may thereupon, after such notice as he may think fit to give to any party, take possession of such property, effects, actionable claims, books of account or other documents and deliver possession thereof to the trustee.
- (3) For the purpose of securing compliance with the provisions of sub-section (2), the Chief Presidency Magistrate or the District Magistrate may take or cause to be taken such steps and use or cause to be used such force as may in his opinion be necessary.
- (4) All the property and effects of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company.

62. Exclusion of certain time in computing periods of limitation (s. 458A)

Notwithstanding anything in the Indian Limitation Act, 1908 (9 of 1908) or in any other law for the time being in force, in computing the period of limitation prescribed for any suit or application in the name and on behalf of a company which is being wound up by the Court, the period from the date of commencement of the winding up of the company to the date on which the winding up order is made (both inclusive) and a period of one year immediately following the date of the winding up order shall be excluded.

63. Exercise and control of trustee's powers (s. 460)

- (1) The trustee shall administer the assets of the company and distribute them amongst the creditors according to the preliminary report submitted to the Court. In the event of any contesting claims, the trustee shall give reasonable opportunity of hearing to the concerned creditors and follow the procedure of distribution as has been indicated in the preliminary report as well as instructions, if any, given by the Court.
- (2) The trustee—
 - (a) may summon general meetings of the creditors or contributories, whenever he thinks fit, for the purposes of ascertaining their wishes;
 - (b) shall summon such meetings at such times as the creditors or contributories, as the case may be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories, as the case may be.
- (3) The trustee may apply to the Court in the manner prescribed, if any, for directions in relation to any particular matter arising in the winding up.

- (4) Subject to the provisions of this Act, the trustee shall use his own discretion in the administration of the assets of the company and the distribution thereof among the creditors.
- (5) Any person aggrieved by any act or decision of the trustee may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such further order as it thinks just in the circumstances.

64. Books to be kept by trustee (s. 461)

- (1) The trustee shall keep, in the manner prescribed, proper books in which he shall cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.
- (2) Any creditor or contributory may, subject to the control of the Court, inspect any such books, personally or by his agent.

65. Audit of trustee's accounts (s. 462)

- (1) The trustee, shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments as trustee.
- (2) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.
- (3) The Court shall cause the account to be audited in such manner as it thinks fit by a firm of Chartered Accountants whose report shall be placed before the court.
- (4) When the account has been audited, one copy thereof shall be filed and kept by the Court, and the other copy shall be delivered to the Registrar for filing; and each copy shall be open to the inspection of any creditor, contributory or person interested.
- (5) Where an account referred to in sub-section (4) relates to a Government company in liquidation, the trustee shall forward a copy thereof,-
 - (a) to the Union 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 Union Government and any State Government, if both the Governments are members of the Government company.
- (6) The trustee shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and to every contributory;

66. Appointment and composition of committee of inspection (s. 464)

- (1) The trustee shall, within 4 weeks from the date of the order for the winding up of a company, convene a meeting of its creditors (as ascertained from its books and documents) for the purpose of determining whether or not a committee of inspection shall be appointed to act with the trustee, and who are to be members of the committee, if one is appointed.
- (2) The trustee shall, within 2 weeks from the date of the creditors meeting or such further time as the Court in its discretion may grant for the purpose, convene a meeting of the contributories to consider the decision of the creditors' meeting and to express the views of the contributories on the matter specified in subsection (1); and it shall be open to the meeting to accept the decision of the creditors' meeting with or without modification or to reject it.
- (3) Except in the case where the meeting of the contributories accepts the decision of the creditors' meeting in its entirety, it shall be the duty of the trustee to apply to the Court for directions as to whether there shall be a committee of inspection; and, if so, what the composition of the committee shall be, and who shall be members thereof.

67. Constitution and proceedings of committee of inspection (s. 465)

- (1) A committee of inspection appointed in pursuance of section 66 shall consist of not more than twelve members, being creditors and contributories of the company or persons holding general or special powers of attorney from creditors and contributories, in such proportions as may be agreed on by the meetings of creditors and contributories, or in case of difference of opinion between the meetings, as may be determined by the Court.
- (2) The committee of inspection shall have the right to inspect the accounts of the trustee at all reasonable times.
- (3) The committee shall meet at such times as it may from time to time appoint, and failing such appointment, at least once a month, and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.
- (4) The quorum for a meeting of the committee shall be one-third of the total number of the members, or two, whichever is higher.
- (5) The committee may act by a majority of its members present at a meeting, but shall not act unless a quorum is present.
- (6) A member of the committee may resign by notice in writing signed by him and delivered to the trustee.

- (7) If a member of the committee is adjudged an insolvent, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who, together with himself, represent the creditors or contributories, as the case may be, his office shall become vacant.
- (8) A member of the committee may be removed at a meeting of creditor if he represents creditors, or at a meeting of contributories if he represents contributories, by an ordinary resolution of which seven days' notice has been given, stating the object of the meeting.
- (9) On a vacancy occurring in the committee, the trustee shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill the vacancy; and the meeting may, by resolution, re-appoint the same, or appoint another, creditor or contributory to fill the vacancy:
Provided that if the trustee, having regard to the position in the winding up, is of the opinion that it is unnecessary for the vacancy to be filled, he may apply to the Court and the Court may make an order that the Vacancy shall not be filled, or shall not be filled except in such circumstances as may be specified in the order.
- (10) The continuing members of the committee, if not less than two, may act notwithstanding and vacancy in the committee.

68. Power of Court to stay winding up (s. 466)

- (1) The Court may at any time after making a winding up order, on the application of the Trustee and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether for a limited time, on such terms and conditions as the Court thinks fit.
- (2) On any application under this section, the Court may, before making an order, require the Trustee to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.
- (3) A copy of every order made under this section shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

69. Books and papers of company to be evidence (s. 548)

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

70. Inspection of books and papers by creditors and contributories (s. 549)

- (1) At any time after the making of an order of the winding up of a company by or subject to the supervision of the Court, any creditor or contributory of the company may, if the Union government, by rules prescribed so permit and in accordance with an 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.

71. Disposal of books and papers of company (s. 550)

- (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 trustee may be disposed of as follows, that is to say:—
 - (a) in the case of a winding up by or subject to the supervision of the Court, in such manner as the Court directs;
 - (b) in the case of a members' voluntary winding up, in such manner as the company by special resolution directs; and
 - (c) in the case of a creditors' 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 trustee, 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 Union government may, by rules —
 - (a) prevent for such period (not exceeding five years from the dissolution of the company) as the Union Government thinks proper, the destruction of the books and papers of a company which has been wound up and of its trustee; and
 - (b) enable any creditor or contributory of the company to make representation to the Union government in respect of the matter specified in clause (a) and to appeal to the Court from any direction which may be given by the Union government in the matter.

- (4) If any person acts in contravention of any such rules or of any direction of the Union government thereunder, he shall be punishable with imprisonment for a term which may extend to six months; or with fine which may extend to five thousand rupees, or with both.

Part III – Realisation of Assets

72. Effect of winding up order (s. 447)

- (1) An order for winding up a company shall operate in favour of all the creditors and of all the contributories of the company as if it had been made out on the joint petition of a creditor and of a contributory.
- (2) All assets and properties must be vested with the trustee as stipulated in section 22 and in the event of the inability of the trustee to take charge of the company from the existing management, the trustee shall initiate action as stipulated in section 27.
- (3) In all future correspondences, records and in deployment of all sign boards, advertisements the name of the company must include the suffix of “in the process of winding up” as an abundant notice to all those who deal with the company.

73. Delivery of property to trustee (s. 468)

The Court may, at any time after making a winding up order, require any contributory for the time being on the list of contributories, and any trust, receiver, banker, agent, or officer of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Court directs, to the trustee, any money, property or books and papers in his hands to which the company is prima facie entitled.

74. Payment of debts due by contributory and extent of set-off (s.469)

- (1) The Trustee may, at any time after receiving the winding up order, direct any contributory for time being on the list of contributories to pay any money due to the company, from his or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Code.
- (2) While making such direction, the Trustee may—
- (a) in the case of an unlimited company, allow to the contributory, by way of set-off any money due to him or to the estate which he represents, from the company, on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; and
- (b) in the case of a limited company, make to any director, managing agent, secretaries and treasurers manager whose liability is unlimited, or to his estate, the like allowance.

- (3) In the case of any company, whether limited or unlimited, when all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.
- (4) The Trustee shall submit the list of contributories who have failed to perform the responsibility as directed for the court to take a proper action there on and making such order as the court may deem fit.

75. Power of Trustee to make calls (s. 470)

The trustee at any time after receiving up order from the Court, and either before or after he has ascertained the sufficiency of the assets of the company

- (a) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Trustee considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves; and
- (b) direct for payment of any calls so made.

76. Payments into banks of money due to the company

- (1) The Trustee may direct any contributory, purchaser or other persons from whom any money is due to the company to pay the money into such account of the company as the Trustee may indicate.
Provided that in the case of a Government Company the amount is to be deposited with the public account of India.
- (2) Any such direction is enforceable in the same manner as if the Court has directed payment to the trustee.
- (3) Unless the respective contributor files an appeal against such direction in the same Court having jurisdiction, it shall be deemed that the direction to pay the amount due is the conclusive evidence that the money is due.

77. Power to exclude creditors not proving in time (s. 474)

The Trustee may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts or claims are proved.

78. Adjustment of rights of contributories (s. 475)

The Trustee shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

79. Power to summon persons suspected of having property of company, etc. (s. 477)

- (1) On the submission of the Trustee, the Court may summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers, of the company, or known or suspected to be indebted to the company, or any person whom the Court deems capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company.
- (2) The Court may examine any officer or person so summoned on oath concerning the matters aforesaid, either by word of mouth or on written interrogatories; and may, in the former case, reduce his answers to writing and require him to sign them.
- (3) The Court may require any officer or person so summoned produce any books and papers in his custody or power relating to the company; but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.
- (4) If any officer or person so summoned, after being paid or tendered a reasonable sum for his expenses, fails to appear before the Court at the time appointed, not having a lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause him to be apprehended and brought before the Court for examination.

80. Power to order public examination of promoters, directors etc. (s. 478)

- (1) When an order has been made for winding up a company by the Court, and the Trustee has made a report to the Court under this Code, stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company, or by any officer of the company in relation to the company since its formation, the Court may, after considering the report, direct that that person or officer shall attend before the Court on a day appointed by it for that purposes, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as an officer thereof.
- (2) The Trustee shall take part in the examination, and for that purpose may, if specially authorised by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.
- (3) Any creditor or contributory may also take part in the examination either personally or by any advocate, attorney or pleader entitled to appear before the Court.
- (4) The Court may put such questions to the person examined as it thinks fit.
- (5) The person examined shall be examined on oath, and shall answer all such questions as the Court may put, or allow to be put, to him.
- (6) A person ordered to be examined under this section —

- (a) shall, before his examination, be furnished at his own cost with a copy of the Trustee's report; and
 - (b) may at his own cost employ an advocate, attorney or pleader entitled to appear before the Court, who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him.
- (7) (a) If any such person applies to the Court to be exculpated from any charges made or suggested against him, it shall be the duty of the Trustee to appear on the hearing of the application and call the attention of the Court to any matters which appear to the Trustee to be relevant.
- (b) If the Court, after hearing any evidence given or witnesses called by the Trustee, grants the application, the Court may allow the applicant such costs as it may think fit.
- (8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined; and may thereafter be used in evidence against him, and shall be open to the inspection of any creditor or contributory at all reasonable times.
- (9) The Court may, if it thinks fit, adjourn the examination from time to time.
- (10) An examination under this section may, if the Court so directs and subject to any rules made in this behalf, be held before any District Judge, or before any officer of the Court, being an Official Referee, Master, Registrar or Deputy Registrar.
- (11) The powers of the Court under this section as to the conduct of the examination, but not as to costs, may be exercised by the Judge or officer before whom the examination is held in pursuance of sub-section (10).

81. Power to arrest absconding contributory (s. 479)

At any time either before or after making a winding up order, the Court may, on proof of probable cause for believing that a contributory is about to quit India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company cause—

- (a) the contributory to be arrested and safely kept until such time as the Court may order; and
- (b) his books and papers and movable property to be seized and safely kept until such time as the Court may order.

82. Saving of existing powers of Court (s. 480)

Any powers conferred on the Court by this Code shall be in addition to, and not in derogation of, any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

83. Order made in any Court to be enforced by other Courts (s. 482)

- (1) Any order made by a Court shall be enforceable at any place in India, other than that over which such Court has jurisdiction, by the Court which would have had jurisdiction in respect of the company if its registered office had been situate at such other place, and in the same manner in all respects as if the order had been made by that Court.
- (2) Appeals from any order made, or decision given, in the matter of the winding up of a company by the Court shall lie to the same Court to which, in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction.

Part IV – Voluntary winding up

84. Circumstances in which company may be wound up voluntarily (s. 484)

- (1) A company may be wound up voluntarily—
 - (a) when the period, if any, fixed for the duration of the company by the articles has expired, or the event, if any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting passes a resolution requiring the company to be wound up voluntarily;
 - (b) if the company passes a special resolution that the company be wound up voluntarily;
 - (c) when the company in the General Meeting passes a resolution requesting the Court to appoint a trustee for the purpose of carrying on voluntary winding up proceedings;
 - (d) when the Court on the petition of the company in pursuance of the resolution passed in the General Meeting as stipulated in clause (c) of subsection (1) shall appoint a trustee for conducting the voluntary winding up proceedings on such terms and conditions as may be stipulated by the court.
- (2) In this Act, the expression "a resolution for voluntary winding up" means a resolution passed under clause (a) or (b) of sub-section (1).

85. Publication of resolution to wind up voluntarily (s. 485)

- (1) When a company has passed a resolution for voluntary winding up, it shall, within 2 weeks of the passing of the resolution, give notice of the resolution by advertisement in the Official Gazette, and also in some newspaper circulating in the district where the registered office of the company is situate.

- (2) The copy of the resolution shall also be filed with the Registrar within 2 weeks.
- (3) If default is made in complying with sub-section (1), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to one thousand rupees for every day during which the default continues.

86. Commencement of voluntary winding up (s. 486)

A voluntary winding up shall be deemed to commence at the time when the trustee has been appointed by the court on the application by the company in the manner prescribed.

87. Effect of voluntary winding up on status of company (s. 487)

- (1) In the case of a voluntary winding up the company shall, from the commencement of the winding up, cease to carry on its business. Except so far as may be required for the beneficial winding up of such business:
Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.
- (2) The property assets liabilities and affairs of the company has been entrusted to the trustee from the Board.

88. Declaration of solvency in case of proposal to wind up voluntarily (s. 488)

- (1) Where it is proposed to wind up a company voluntarily, its directors, or in case the company has more than two directors, the majority of the directors, may, at a meeting of the Board, make a declaration verified by an affidavit, to the effect that they have made a full inquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company has no debts, or that it will be able to pay its debts in full within such period not exceeding 12 weeks from the commencement of the winding up as may be specified in the declaration. Provided that in a case where the assets could not be liquidated within the time period for special reasons, the court may extend the time on a petition filed by the trustee.
- (2) A declaration made as aforesaid shall have no effect for the purposes of this Act, unless—
 - (a) it is made within the two weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Registrar for registration before, that date; and
 - (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.
- (3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be personally liable to pay the debt.
- (4) If the company is wound up in pursuance of a resolution passed within the period of two week after making of the declaration, but its debts are not paid or provided for in full within

the period specified in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

89. Power of trustee to accept shares, etc., as consideration for sale of property of company (s. 494)

(1) Where —

- (a) a company (in this section called "the transfer company") is proposed to be, or is in course of being, wound up altogether voluntarily; and
- (b) the whole or any part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not (in this section called "the transferee company");

the trustee of the transferor company may, with the sanction of a special resolution of that company conferring on the trustee either a general authority or an authority in respect of any particular arrangement,—

- (i) receive, by way of compensation or part of compensation for the transfer or sale, shares, policies or other like interests in the transferee company; for distribution among the members of the transferor company; or
 - (ii) enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies, or other like interests or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company.
- (2) Any sale or arrangement in pursuance of this section shall be binding on the members of the transferor company.
- (3) If any member of the transferor company who did not vote in favour of the special resolution expresses his dissent therefrom in writing addressed to the trustee, and left at the registered office of the company within seven days after passing of the resolution, he may require the trustee either —
- (a) to abstain from carrying the resolution into effect; or
 - (b) to purchase his interest, at a price to be determined by agreement, or by arbitration in the manner provided by this section.
- (4) If the trustee elects to purchase the member's interest, the purchase money shall be paid before the company is dissolved, and be raised by the trustee in such manner as may be determined by special resolution.

- (5) A special resolution shall not be invalid for the purposes of this section by reason only that it is passed before or concurrently with a resolution for voluntary winding up or for appointing trustees; but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless it is sanctioned by the Court.
- (6) The provisions of the Arbitration and Conciliation Act 1996 (26 of 1996), other than those restricting the application of that Act in respect of the subject matter of the arbitration, shall apply to all arbitration in pursuance of this section.

90. Duty of trustee to call creditors meeting in case of insolvency (s. 495)

- (1) The trustee shall convene a meeting of the creditors as soon as possible and finalise a list or secured and unsecured creditors and a schedule for settlement of accounts.
- (2) If the trustee is of the opinion that the company shall not be able to meet its liabilities shall move a bankruptcy petition before a Court of competent jurisdiction in which case the court shall appoint the trustee.
- (3) Any creditor may also apply for bankruptcy petition if the claim is not settled within the stipulated time.

91. Duty of trustee to call general meeting at end of each year (s. 496)

If a voluntary winding up proceeding continues beyond a year, the trustee shall call the General Meeting of the company within 4 weeks from the date of completion of each financial year and submit the audited annual accounts and also a progress report on the winding up.

92. Arrangement when binding on company and creditors (s.517)

- (1) Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under this section, be binding on the company and on the creditors if it is sanctioned by a special resolution of the company and acceded to by three-fourths in number and value of the creditors.
- (2) Any creditor or contributory may, within 3 weeks from the completion of the arrangement, appeal to the Court against it and the Court may thereupon, as it thinks just, amend, vary, confirm or set aside the arrangement.

93. Power to apply to Court to have questions determined or powers exercised (s. 518)

- (1) The trustee or any creditor or contributory may apply to the Court specified in sub-section (3) for an order setting aside any attachment, distress or execution put into force against the estate or effects of the company after the commencement of the winding up, or effects of the company after the commencement of the winding up.
- (2) An application under sub-section (1) shall be made—

- (a) if the attachment, distress or execution is levied or put into force by any other Court, to the Court having jurisdictions to wind up the company;
 - (b) if the attachment, distress or execution is levied or put into force by any other Court, to the Court having jurisdiction to wind up the company.
- (3) The Court, if satisfied on an application under sub-section (1) that the determination of the question or the required exercise of power or the other applied for will be the just and beneficial, may accede wholly or partially to the application on such terms and conditions as to thinks fit, or may make such other order on the application as it thinks just.
- (4) A copy of an order staying the proceedings in the winding up, made by virtue of this section, shall forthwith be forwarded by the company, or otherwise as may be prescribed, to the Registrar, who shall make a minute of the order in his books relating to the company.

94. Application of trustee to Court for public examination of promoters, directors, etc. (s. 519)

- (1) The trustee may make a report to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formations, and the Court may, after considering the report, direct that that person or officer shall attend before the Court on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.
- (2) The provisions of sub-sections (2) to (11) of section 80 shall apply in relation to any examination directed under sub-section (2) as they apply in relation to an examination directed under sub-section (1) of section 80 with references to the trustee being substituted for references to the Trustee in those provisions.

95. Special power of the Trustee for compromise or arrangement (s. 546)

- (1) The trustee may—
- (a) with the sanction of the Court, when the company is being wound up by or subject to the supervision of the Court; 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 a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or 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 discharge in respect thereof.
- (2) In the case of a voluntary winding up, the exercise by the trustee of the powers conferred by sub-section (1) shall be subject to the control of the Court.
- (3) Any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any such power.

Part V – Winding up on Insolvency

96. Winding up petition on insolvency

When the trustee appointed in a bankruptcy petition files a petition for an order for winding up under section 49(2), the winding up proceedings on insolvency commences.

97. Application of insolvency rules in winding up of insolvent companies (s. 529)

- (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.

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 providing his debts opts to realise his security;-

- (a) the trustee shall be entitled to represent the workmen and enforce such charge;
- (b) any amount realised by the trustee by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

(c) so much of the debts 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 purpose of section 100.

(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 the section.

Provided that if a secured creditor instead of relinquishing his security and probing for his debts proceeds to realise his security, he shall be liable to pay his portion of the expenses incurred by the trustee, if any, for the preservation of the security before its realisation by the secured creditor.

Explanation – For the purposes of this proviso, the portion of expenses incurred by the trustee 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) For the purposes of this section, section 100 and section 102 –

- (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;
 - (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. 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 an 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;

provided that the trustee shall, on the date of assuming the charge of the company require the Board to specify the claim of the workers if not already incorporated in the previous audited balance sheet, as on the date of the order of winding up, the same claim can be notified to the workers according to the procedure prescribed and the trustee shall receive any complains regarding any claim ascertained by the management within 15 days and decide the actual claim providing opportunities of hearing to each party. Any decision for quantifying the claim of the workers by the trustee shall be final and such claim as on the day of winding up order shall stand *pari passu* with the secured creditors. After the finalisation of the claim or expiry of 15 days time if no counter claim is preferred, no further contest can be raised.

- (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.

Part VI – Settlement of Claims

98. General rule

- (1) The trustee shall notify the list of claims on the basis of classification of creditors on such manner as may be prescribed, specifying such time but not exceeding three weeks within which any application for revision of the claim with supportive written evidences must be submitted before the trustee.
- (2) The trustee shall after giving reasonable opportunity of representation for those who prefer to contest the claim notified shall finalise the list of claims on the basis of classification of creditors within four weeks after the notice period expires.

99. Debts of all descriptions to be admitted to proof (s. 528)

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 maybe subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

100. Overriding preferential payments (s. 529A)

- (1) Notwithstanding anything contained in any other provision of this Code 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 97 *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.

Provided that in the case of the secured creditors agreeing to accept absolute priority to be given to financiers who have supported the reconstruction scheme during the time of reorganisation of a company such claim shall receive the top priority as agreed upon.

101. Costs of winding up (s. 520)

All costs, charges and expenses properly incurred in the winding up, including the remuneration of the trustee, shall subject to the rights of secured creditors, if any, be payable out of the assets of the company in priority to all other claims.

Provided that the Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up in such order of priority *inter se* as the Court thinks just.

102. Preferential payments (s. 530)

- (1) In a winding up, there shall be paid in priority to all other debts—
 - (i) 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;
 - (ii) all wages or salary (including wages payable for time or piece of 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 date, subject to the limit specified in sub-section (2);
 - (iii) 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;
 - (iv) 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;

(v) 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;

(vi) 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

(vii) 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 of one claimant, exceed such sum as may be notified by the Union government in the Official Gazette.

(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) sub-section (1) be taken to be 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 this purpose, the person by whom the money was advanced shall, in a winding up, have a right of 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 payments 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 that charges.

- (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 the winding up order, the debts to which priority given by this section shall be a first charge on the goods or effects 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 or 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; 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 trustee, 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 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 Code, and in such a case, the provisions relating to preferential payments which would have applied if this Code had not been passed, shall be deemed to remain in full force.

103. Fraudulent preference (s. 531)

- (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 creditor and be invalid accordingly:

Provided that, in relation to things made, taken or done before the commencement of this Code, 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 or subject to the supervision of the Court, 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.

104. 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 incumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of petition for winding up by or subject to the supervision of the Court or the passing of a resolution for voluntary winding up shall be void against the trustee.

105. Transfers for benefit of all creditors to be void (s. 532)

Any transfer or assignment by a company of all its property to any other trustee for benefit of all its creditors shall be void.

106. Liabilities and rights of certain fraudulently preferred persons (s. 533)

- (1) Where, in the case of company which is being wound up, anything made, taken or done after the commencement of this Act is invalid under section 103 of 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 provision), the person preferred shall be subject to 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 continuing 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 the Court 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 modification, in relation to transactions other than the payment of money as it applies in relation to payments of money.

107. Effect of floating charge (s. 534)

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 Union 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 Code, this section shall have effect with the substitution, for references to twelve months, of references to three months.

108. Disclaimer of onerous property in case of a company which is being wound up (s. 535)

(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) unprofitable contracts;
- (d) unprofitable contracts;

the trustee 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 Court 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 Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the trustee 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 Court.

(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 Court, before or an 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 Court thinks just.
- (4) The trustee 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 trustee 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 Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim; and in case the property is a contract, if the trustee, after such an application as aforesaid, does not within the said period or extended period disclaim the contract, the company shall be deemed to have adopted it.
- (5) The Court may, on the application of any person who is, as against the trustee, 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 Court 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 Court 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 Code 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 Court 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 Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee 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 Court 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 an security upon the property, and, if there is no person claiming under the company who is willing to accept an order upon such terms, the Count 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 the 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.

109. Avoidance of transfers, etc., after commencement of winding up (s. 536)

- (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 trustee, 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 or subject to the supervision of the Court, 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, unless the Court otherwise orders, be void.

110. Avoidance of certain attachments, executions, etc., in winding up by or subject to supervision of Court. (s. 537)

- (1) Where any company is being wound up by or subject to the supervision of the Court—
- (a) any attachment, distress or execution put in force, without leave of the Court, against the estate or effects of the company, after the commencement of the winding up; or
 - (b) any sale held, without leave of the Court, of any of the properties or effects of the company after such commencement shall be void.
- (2) Nothing in this section applies to proceedings by the Government.

111. Notification that a company is in liquidation (s. 547)

- (1) Where a company is being wound up, whether by or under the supervision of the Court or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a trustee 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 trustee of the company and any receiver or manager, shall be punishable with fine which may extend to five hundred rupees.

112. Unpaid dividend and undistributed asset

- (1) The trustee shall prepare a list of –
 - (a) dividend payable to any creditor which has remained unpaid over a period of six months; or
 - (b) assets refundable to any contributory which have remained undistributed for more than six months

and submit the same at the end of each financial year to the Court.

- (2) The Court may direct the trustee to keep the amount in a separate bank account for such time as may be directed by the court.
- (3) Any person claiming to be entitled to any money kept in such account may apply to the trustee who shall after reasonable inquiry, if satisfied that the person claiming is entitled to, may make payment and submit the report of such payment along with the reasons therefor to the Court.
- (4) On the submission of the final report, on completion of the realisation of assets and settlement of claims, any amount still remaining unpaid in this account shall be transferred to the Investors Protection Fund constituted under section 205C of the Companies Act, 1956.

Part VII – Dissolution

113. Information as to pending liquidations (s. 551)

- (1) If the winding up of a company is not concluded within one year after its commencement the trustee shall, within one 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, with respect to the proceeding in, and position of, the liquidation—
 - (a) in the case of a winding up by or subject to the supervision of the Court, in Court; and
 - (b) in the case of a voluntary winding up with the Registrar
- (2) When the statement is filed in Court under clause (a) of subsection (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the 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 therefrom.
- (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 (Act 45 of 1860) and shall, on the application of the trustee, be punishable accordingly.

114. Final meeting and dissolution (s. 497)

- (1) As soon as the affairs of the company are fully wound up, meaning thereby that all the assets were liquidated and all the liabilities were paid off and whatever remained after paying the creditors were distributed to the share holders after meeting the winding up expenses, the trustee shall within 4 weeks —
 - (a) submit detailed account of the winding up certified by the auditor;
 - (b) call a general meeting of the company and submit the final report with the certified accounts of the winding up on such day and at such time and place as may be specified; and
 - (c) publish the final accounts and the final report in the Official Gazette and also in two newspapers having circulation in the command area of the company stating that the entire winding up procedure has been duly followed.
- (2) Within 1 week after the meeting, the trustee shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meeting and of the date thereof.
- (3) The Registrar, on receiving the account and either the return mentioned in sub-section (2) shall forthwith registrar them.
- (4) The Trustee shall submit a petition to the Court having jurisdiction praying for the order of the court directing the Registrar to strike off the name of the company from the name of the company, submitting a copy of the final account and final report as were registered with the Registrar. On receiving the petition, the court shall direct the Registrar to present the case and examine the issue and being satisfied that all the procedures have been complied with may give an order to the Registrar to strike off the name of company from the Register of Companies.
- (5) If the Trustee fails to call a general meeting of the company the court may on the petition filed by any shareholder or the Registrar, the Court may direct the Trustee to pay back to the company such sum of money as may be found reasonable to the court, subject to the maximum of total remuneration payable to the trustee.

115. Dissolution of company (s. 481)

- (1) When in a winding up proceedings the trustee did dispose off the entire properties of the company, distributed the whole realised amount to the creditors strictly on the basis of priority principles, the company is left out with no other assets for realisation and distribution and the final statement of account is placed before the court which the court has approved, it shall be deemed that the affairs of a company have been completely wound up.
- (2) When the affairs of a company have been completely wound up the court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
- (3) A copy of the order shall, within fourteen days from the date thereof, be forwarded by the trustee to the Registrar who shall make in his books a minute of the dissolution of the company and shall strike off the name of the company from the register.

116. Power of Court to declare dissolution of company void (s. 559)

- (1) Where a company has been dissolved, whether in pursuance of this Code or of Section 394 of the Companies Act, 1956 or otherwise, the Court may at any time within two years of the date of the dissolution, on application by the trustee of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court 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, within twenty-one days after the making of the order or such further time as the Court 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 to fifty rupees for every day during which the default continues.

Part VIII – Winding up of unregistered companies

117. Meaning of unregistered company (s. 582)

For the purpose of this Part, the expression "unregistered company"—

- (a) shall not include—
 - (i) a railway company incorporated by any Act of Parliament or other India law or any Act of Parliament of the United Kingdom;
 - (ii) a company registered under the Companies Act 1956; or
 - (iii) a company registered under any previous companies law and not being a company the registered office whereof was in Burma, Aden or Pakistan immediately

before the separation of the country from India or in the State of Jammu and Kashmir immediately before the 26th January, 1950; and

- (b) save as aforesaid, shall include any partnership, association or company consisting of more than seven members.

118. Winding up of unregistered companies (s. 583)

- (1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act, and all the provisions of this Code with respect to winding up shall apply to an unregistered company, with the exception and additions mentioned in sub-section (2) to (5)
- (2) For the purpose of determining the Court having jurisdiction in the matter of the winding up, an unregistered company shall be deemed to be registered in the State where its principal place of business is situate or, if it has a principal place of business situate in more than one State, then, in each State where it has a principal place of business; and the principal place of business situate in that State in which proceedings are being instituted shall for all the purposes of the winding up, be deemed to be the registered office of the company.
- (3) No unregistered company shall be wound up under this Code voluntarily or subject to the supervision of the Court.
- (4) The circumstances in which an unregistered company may be wound up are as follows:—
 - (a) if the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;
 - (b) if the company is unable to pay its debts;
 - (c) if the Court is of opinion that it is just and equitable that the company should be wound up.
- (5) An unregistered company shall, for the purposes of this Code, be deemed to be unable to pay its debts—
 - (a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, managing agent, secretaries and treasures manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has, for three weeks after the service of the demand, neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;
 - (b) if any suit or other legal proceeding has been instituted against any member for any debt or demand due, or claimed to be due, for the company, or from him in his character

of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, managing agent, secretaries and treasurers, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may or direct, the company has not, within ten days after service of the notice,—

(i) paid, secured or compounded for the debt or demand; or

(ii) procured the suit or other legal proceeding to be stayed; or

(iii) indemnified the defendant to his satisfaction against the suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(c) if execution or other process issued on a decree or order of any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied in whole or in part;

(d) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

119. Power to wind up foreign companies, although dissolved (s. 584)

Where a body corporate incorporated outside India which has been carrying on business in India, ceases to carry on business in India, it may be wound up as an unregistered company under this Part, notwithstanding that the body corporate has been dissolved or otherwise ceased to exist as such under or by virtue of the laws of the country under which it was incorporated.

96. Contributories in winding up of unregistered company (s. 585)

(1) In the event of a unregistered company being wound up, every person shall be deemed to be a contributory, who is liable to pay, or contribute to the payment of,—

(a) any debt or liability of the company; or

(b) any sum for the adjustment of the rights of the members among themselves; or

(c) the costs, charges and expenses of winding up the company.

(2) Every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any liability to pay or contribute as aforesaid.

- (3) In the event of the death or insolvency of any contributor, the provisions of this Code with respect to the legal representatives of deceased contributors, or with respect to the assignees of insolvent contributories, as the case may be, shall apply.

121. Power to stay or restrain proceedings (s. 586)

The provisions of this Code with respect to staying and restraining suits and 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 case of an unregistered company, where the application to stay or restrain is by a creditor, extend to suits and legal proceedings against any contributory of the company.

122. Suits etc. stayed on winding up order (s. 587)

Where an order has been made for winding up an unregistered company, no suit or other legal proceeding shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court and except on such terms as the Court may impose.

123. Directions as to property in certain cases (s. 588)

- (1) If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding up order or by any subsequent order, direct that all or any part of the property, movable or immovable (including actionable claims), belonging to the company or held by trustee on its behalf, shall vest in the Trustee by his official name; and thereupon the property or the part thereof specified in the order shall vest accordingly.
- (2) The Trustee may, after giving such indemnity, if any, as the Court may direct, bring or defend in his official name any suit or legal proceeding relating to that property, or which it is necessary to bring or defend for the purposes of effectually winding up the company and recovering its property.

124. Provisions of Part cumulative (s. 589)

- (1) The provisions of this Part with respect to unregistered companies shall be in addition to and not in derogation of, any provisions hereinbefore in this Code contained with respect to the winding up of companies by the Court.
- (2) The Court or Trustee may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by the Court or Trustee in winding up companies formed and registered under this Code;
Provided that unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

125. Saving and construction of enactments conferring power to wind up partnership, association or company in certain case (s. 590)

Nothing in this Part shall affect the operation of any enactment which provides for any partnership, association or company, being wound up, or being wound up as a company or as an unregistered company under the Indian Companies Act, 1913 (7 of 1913) or any Act repealed by that Act;

Provided that reference in any such enactment to any provision contained in the Indian Companies Act, 1913 (7 of 1913) or in any Act repealed by that Act shall be read as reference to the corresponding provision, if any contained in the Companies Act, 1956 or this Code.

Part IX– Offences and Penalties

126. Offences by officers of companies in liquidation (s. 538)

- (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 or subject to the supervision of the Court or voluntarily or which is subsequently ordered to be wound up by the Court 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 trustee all the property, movable 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 trustee, or as he directs all such part 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 delivery up;
 - (c) does not deliver up to the trustee, 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 the 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 trustee 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 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 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 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 to the winding up;

he shall be punishable, in case of any of the offences mentioned in clauses (m), (n) and (o) with imprisonment for a term which may extent 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 person 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.

127. Penalty for falsification of books (s. 539)

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 be liable to fine.

128. Penalty for frauds by officers (s. 540)

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 the Court 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 judgement or order for payment of money obtained against the company, or within two months before the date;

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

129. Liability where proper accounts not kept (s. 541)

- (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 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 or 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 stock-takings 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 details to enable those goods and those buyers and sellers to be identified.

130. Liability for fraudulent conduct of business (s. 542)

- (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, the Court on the application of the Trustee, or the trustee 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 the Court may direct.
On the hearing of an application under this sub-section, the Trustee or the trustee, as the case may be, may himself give evidence or call witnesses.
- (2)
 - (a) Where the Court 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, the Court may make provision for making up 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 assigned from or through the person liable or any person acting on his behalf.
 - (c) the Court 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 directories of the person liable, the 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 for such purposes as 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 five thousand rupees, or both.
- (4) This section shall apply, notwithstanding that the person concerned may be criminally liable in respect of the matters on the ground on which the declaration is to be made.

131. Power of Court to assess damages against delinquent directors etc. (s. 543)

- (1) If in the course of winding up a company, it appears that any person who was taken part in the promotion or formation of the company, or any past or present director, managing agent, secretaries and treasurers, manager, trustee 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 Court may, on the application of the Trustee, of the trustee, 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, managing agent, secretaries and treasurers, manager, trustee 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 Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misinterpretation, retainer, misfeasance or breach of trust, as the Court 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 trustee 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.

132. Liability under section 542 and 543 to extend to partners or directors in firm or company (s.544)

Where a declaration under section 130 or an order under section 131 is or may be made in respect of a firm or body corporate, the Court shall also have power to make a declaration under section 130, or pass an order under section 131, 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.

133. Prosecution of delinquent officers and members of company (s. 545)

- (1) If it appears to the Court in the course of a winding up, by or subject to the supervision of, the Court, that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the trustee either himself to prosecute the offender or to refer the matter to the Registrar.
- (2) If it appears to the trustee in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any 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 trustee 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 Union government for further inquiry.

The Union government shall thereupon investigate the matter and may, if it thinks it expedient, and apply to the Court for an order conferring on any person designated by the Union 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 Court.

- (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 trustee accordingly, and thereupon the subject to the previous sanction of the Court, the trustee may himself take proceedings against the offender.
- (5) If it appears to the Court 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 trustee to the Registrar under sub-section (2), the Court may, on the application of any person interested in the winding up or of its own motion, direct the trustee 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 Union 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 trustee 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 also to give.
- (8) If any person fails or neglects to give assistance in the manner required by sub-section (7), the Court 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 trustee, the Court may, unless it appears that the failure or neglect was due to the trustee 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 trustee personally.

Chapter VII Special Procedure

Part I – Banking Companies

134. Suspension of business (s. 37 of BR Act)

- (1) The Court may on the application of a banking company, which is temporarily unable to meet its obligations, make an order (a copy of which it shall cause to be forwarded to the Reserve Bank) staying the commencement or continuance of all actions and proceedings against the company for a fixed period of time on such terms and conditions as it shall think fit and proper, and may from time to time extend the period so however that the total period of moratorium shall not exceed six months.
- (2) No such application shall be maintainable unless it is accompanied by a report of the Reserve Bank indicating that in the opinion of the Reserve Bank the banking company will be able to pay its debts if the application is granted:
Provided that the Court may, for sufficient reasons, grant relief under this section even if the application is not accompanied by such report, and where such relief is granted, the Court shall call for a report from the Reserve Bank on the affairs of the banking company, on receipt of which it may either rescind any order already passed or pass such further orders thereon as may be just and proper in the circumstances.
- (3) When an application is made under sub-section (1), the Court may appoint an administrator on the recommendation of the Reserve Bank of India who shall forthwith take into custody or under his control all the assets, books, documents, effects and

actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the Court may deem fit to confer on him, having regard to the interests of the depositors of the banking company.

- (4) Where the Reserve Bank is satisfied that the affairs of a banking company in respect of which an order under sub-section (1) has been made, are being conducted in a manner detrimental to the interests of the depositors, it may make an application to the Court for the winding up of the company, and where any such application is made, the Court shall not make any order extending the period for which the commencement or continuance of all actions and proceedings against the company were stayed under that sub-section.

135. Winding up by Court (s. 38)

- (1) Notwithstanding anything contained in Section 391, Section 392 of the Companies Act 1956, Section 49 and Section 118 of this Code, but without prejudice to its powers under sub-section (1) of Section 134 of this Code, the Court shall order the winding up of a banking company –

- (a) if the banking company is unable to pay its debts; or
- (b) if an application for its winding up has been made by the Reserve Bank under Section 134 or this section.

- (2) The Reserve Bank shall make an application under this section for the winding up of a banking company if it is directed so to do by an order under clause (b) of sub-section (4) of Section 35 of the Banking Regulation Act, 1949.

- (3) The Reserve Bank may make an application under this section for the winding up of a banking company :

- (a) if the banking company-
 - (i) has failed to comply with the requirements specified in Section 11 of the Banking Regulation Act, 1949 ; or
 - (ii) has by reason of the provisions of Section 22 of the Banking Regulation Act, 1949 become disentitled to carry on banking business in India; or
 - (iii) has been prohibited from receiving fresh deposits by an order under clause (a) of sub-section (4) of Section 35 of the Banking Regulation Act, 1949 or under clause (b) of sub-section (3A) of Section 42 of the Reserve Bank of India Act, 1934 (2 of 1934) ; or
 - (iv) having failed to comply with any requirement of this Code other than the requirements laid down in Section 11, has continued such failure, or, having contravened any provision of this Act has continued such contravention beyond such period or periods as may be specified in that behalf by the Reserve Bank from time to time, after notice in writing of such failure or contravention has been conveyed to the banking company; or

(b) if in the opinion of the Reserve Bank –

- (i) a compromise or arrangement sanctioned by a court in respect of the banking company cannot be worked satisfactorily with or without modifications; or
- (ii) the returns, statements or information furnished to it under or in pursuance of the provisions of this Code disclose that the banking company is unable to pay its debts; or
- (iii) the continuance of the banking company is prejudicial to the interests of its depositors.

(4) Without prejudice to the provisions contained in Section 11, a banking company shall be deemed to be unable to pay its debts if it has refused to meet any lawful demand made at any of its offices or branches within two working days, if such demand is made at a place where there is an office, branch or agency of the Reserve Bank, or within five working days, if such demand is made elsewhere, and if the Reserve Bank certifies in writing that the banking company is unable to pay its debts.

(5) A copy of every application made by the Reserve Bank under sub-section (1) shall be sent by the Reserve Bank to the Registrar.

(6) The Court may seek advice of the Reserve Bank in conducting the procedure of bankruptcy as and when required.

136. Empanelment of Trustee

Without prejudice to the provisions contained in section 16 of this Code, the Reserve Bank of India shall empanel a list of trustee to be appointed in the case of a banking institution in consultation with the Reserve Bank of India having such qualifications as may be prescribed in consultation with the Reserve Bank.

137. Appointment of trustee (s. 39)

(1) Where in any proceeding for the winding up by the Court of a banking company, an application is made by the Reserve Bank in this behalf, the Reserve Bank, the State Bank of India or the Deposit Insurance Bureau or any other person from the panel of trustees of the Court shall be appointed as trustee by the court in consultation with the Reserve Bank of India.

(2) Subject to such directions as may be made by the Court, the court shall fix the remuneration of the trustee appointed under this section, on the basis of the percentage of realisation of assets and disbursement of claims keeping in view the cost and expenses of the winding up shall be borne by the trustee out of the amount receivable by the trustee.

138. Stay of proceedings (s. 40)

Notwithstanding anything to the contrary contained in Section 68 of this Code, the Court shall not make any order staying the proceedings in relation to the winding up of a banking company unless the Court is satisfied that an arrangement has been made whereby the company can pay its depositors in full as their claims accrue.

139. Preliminary report by trustee (s. 41)

- (1) Where a winding up order has been made in respect of a banking company whether before or after the commencement of this Code, the trustee shall submit a preliminary report to the Court within two months from the date of the winding up order or where the winding up order has been made before such commencement, within two months from such commencement, giving the following information:
 - (a) information required under section 24 of this code;
 - (b) the amount of assets which are in cash in his custody or under his control; and
 - (c) the amount of assets which are likely to be collected in cash within a period of two months in order to make preferential payments and in discharge, as far as possible, of liabilities and obligation of the banking company to depositors and other creditors.
- (2) The trustee shall make all efforts to dispose of as much as assets as possible and collect cash as speedily as possible to dispose off the liability and meet the obligation as speedily as possible.

140. Notice to preferential claimants and secured and unsecured creditors (s. 41 A)

- (1) Within fifteen days from the date of the winding up order of a banking company or where the winding up order has been made before the commencement of this Code, within one month from such commencement, the trustee shall, for the purpose of making an estimate of the debts and liabilities of the banking company (other than its liabilities and obligations to its depositors), by notice served in such manner as the Reserve Bank may direct, call upon:
 - (a) every claimant entitled to preferential payment under Sections 100 and 102 of this Code and
 - (b) every secured and every unsecured creditor,

to send to the trustee within one month from the date of the service of the notice a statement of the amount claimed by him.

- (2) Every notice under sub-section (1) sent to a claimant having a claim under Sections 100 and 102 of this Code, shall state that if a statement of the claim is not sent to the trustee before the expiry of the period of one month from the date of the service, the claim shall not be treated as a claim entitled to be paid under Sections 100 and 102 of this Code, in priority to all other debts but shall be treated as an ordinary debt due by the banking company.

- (3) Every notice under sub-section (1) sent to a secured creditor shall require him to value his security before the expiry of the period of one month from the date of the service of the notice and shall state that if a statement of the claim together with the valuation of the security is not sent to the Trustee, before the expiry of the said period, then, the trustee shall himself value the security and such valuation shall be binding on the creditor.
- (4) If a claimant fails to comply with the notice sent to him under sub-section (1), his claim will not be entitled to be paid under Sections 100 and 102 of this Code, in priority to all other debts but shall be treated as an ordinary debt due by the banking company; and if a secured creditor fails to comply with the notice sent to him under sub-section (1), the trustee shall himself value the security and such valuation shall be binding on the creditor.

141. Power to dispense with meetings of creditors, etc. (s. 42)

Notwithstanding anything to the contrary contained in this Code, the Court may, in the proceedings for winding up a banking company, dispense with any meeting of creditors or contributories if it considers that no object will be secured thereby sufficient to justify the delay and expense.

142. Booked depositors' credits to be deemed proved (s.43)

In any proceeding for the winding up of a banking company, every depositor of the banking company shall be deemed to have filed his claim for the amount shown in the books of the banking company as standing to his credit and, notwithstanding anything to the contrary contained in Section 77 of this Code, the Court shall presume such claims to have been proved, unless the trustee shows that there is reason for doubting its correctness.

143. Preferential payments to depositors (s. 43 A)

- (1) In every proceeding for the winding up of a banking company where a winding up order has been made, whether before or after the commencement of this Code, within three months from the date of the winding up order or where the winding up order has been made before such commencement, within three months therefrom, the preferential payments referred to in Sections 100 and 102 of this Code, in respect of which statements of claims have been sent within one month from the date of the service of the notice referred to in Section 140, shall be made by the trustee or adequate provision for such payments shall be made by him.
- (2) After the preferential payments as aforesaid have been made or adequate provision has been made in respect thereof, there shall be paid within the aforesaid period of three months:
 - (a) in the first place, to every depositor in the savings bank account of the banking company a sum of two hundred and fifty rupees or the balance at his credit, whichever is less; and thereafter;
 - (b) in the next place, to every other depositor of the banking company a sum of two hundred and fifty rupees or the balance at his credit, whichever is less,

in priority to all other debts from out of the remaining assets of the banking company available for payment to general creditors :

Provided that the sum total of the amounts paid under clause (a) and clause (b) to anyone person who in his own name (and not jointly with any other person) is a depositor in the savings bank account of the banking company and also a depositor in any other account, shall not exceed the sum of two hundred and fifty rupees.

- (3) Where within the aforesaid periods of three months full payment cannot be made of the amounts required to be paid under clause (a) or clause (b) of sub-section (2) with the assets in cash, the trustee shall pay within that period to every depositor under clause (a) or, as the case may be, Clause (b) of that sub-section on a *pro rata* basis so much of the amount due to the depositor under that clause as the trustee is able to pay with those assets; and shall pay the rest of that amount to every such depositor as and when sufficient assets are collected by the trustee in cash.
- (4) After payments have been made first to depositors in the savings bank account and then to the other depositors in accordance with the foregoing provisions, the remaining assets of the banking company available for payment to general creditors shall be utilised for payment on a *pro rata* basis of the debts of the general creditors and of the further sums, in any, due to the depositors; and after making adequate provision for payment on a *pro rata* basis as aforesaid of the debts of the general creditors, the trustee shall, as and when the assets of the company are collected in cash, make payment on a *pro rata* basis as aforesaid, of the further sums, if any, which may remain due to the depositors referred to in clause (b) of sub-section (2).
- (5) In order to enable the trustee to have in his custody or under his control in cash as much of the assets of the banking company as possible, the securities given to every secured creditor may be redeemed by the trustee:
 - (a) where the amount due to the creditor is more than the value of the securities as assessed by him or, as the case may be, as assessed by the trustee, on payment of such value; and
 - (b) where the amount due to the creditor is equal to or less than the value of the securities as so assessed, on payment of the amount due:

Provided that where the trustee is not satisfied with the valuation made by the creditor, he may apply to the Court for making a valuation.

- (6) When any claimant, creditor or depositor to whom any payment is to be made in accordance with the provisions of this section, cannot be found or is not readily traceable, adequate provision shall be made by the trustee for such payment.
- (7) For the purpose of this section, the payments specified in each of the following clauses shall be treated as payments of a different class, namely :-
 - (a) payments to preferential claimants under Sections 100 and 102 of this Code;
 - (b) payments under clause (a) of sub-section (2) of the depositors in the savings bank account;

- (c) payments under clause (b) of sub-section (2) to the other depositors;
 - (d) payment to the general creditors and payments to the depositors in addition to those specified in clause (a) and clause (b) of sub-section (2).
- (8) The payments of each different class specified in sub-section (7) shall 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 proportion.
- (9) Nothing contained in sub-sections (2), (3), (4), (7) and (8) shall apply to a banking company in respect of the depositors of which the Deposit Insurance Corporation is liable under Section 16 of the Deposit Insurance Corporation Act, 1961 (47 of 1961).
- (10) After preferential payments referred to in sub-section (1) have been made or adequate provision has been made in respect thereof, the remaining assets of the banking company referred to in sub-section (9) available for payment to general creditors shall be utilised for payment on *pro rata* basis of the debts of the general creditors and of the sums due to the depositors:
Provided that where any amount in respect of any deposit is to be paid by the trustee to the Deposit Insurance Corporation under Section 21 of the Deposit Insurance Corporation Act, 1961 (47 of 1961), only the balance, if any, left after making the said payment shall be payable to the depositor.

144. Powers of Court in voluntary winding up (s. 44)

- (1) Notwithstanding anything to the contrary contained in Section 84 of this Code, no banking company may be voluntarily wound up unless the Reserve Bank certifies in writing that the company is able to pay in full all its debts to its creditors as they accrue.
- (2) The Court may, in any case where a banking company is being wound up voluntarily, make an order that the voluntary winding up shall continue, but subject to the supervision of the Court.
- (3) Without prejudice to the provisions contained in Section 54 of this Code, the Court may of its own motion and shall on the application of the Reserve Bank, order the winding up of a banking company by the Court in any of the following cases, namely:
- (a) where the banking company is being wound up voluntarily and at any stage during the voluntary winding up proceedings the company is not able to meet its debts as they accrue; or
 - (b) where the banking company is being wound up voluntarily or is being wound up subject to the supervision of the Court and the Court is satisfied that the voluntary winding up or winding up subject to the supervision of the Court cannot be continued without detriment to the interests of the depositors.

145. Power of Court to decide all claims in respect of banking companies (s. 45B)

This Court shall, save as otherwise expressly provided in Section 144, have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up (including claims by or against any of its branches in India) or any application made under Section 391 of the Companies Act, 1956 (1 of 1956) by or in respect of a banking company or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of banking company.

146. Transfer of pending proceedings (s. 45C)

- (1) Where a winding up order is made or has been made in respect of a banking company, all suits or other legal proceeding, whether civil or criminal, in respect of which the Court has jurisdiction under this Code and which is pending in any other court immediately before the commencement of this Code, shall be transferred to the Court.
- (2) The trustee shall, within three months from the date of the winding up order or commencement of this Code, whichever is later, or such further time as the Court may allow, submit to the Court a report containing a list of all such pending proceedings together with particulars thereof.
- (3) Nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court or a Court.

147. Settlement of list of debtors (s. 45D)

- (1) Notwithstanding anything to the contrary contained in any law for the time being in force, the Court may, settle in the manner hereinafter provided a list of debtors of a banking company which is being wound up.
- (2) Subject to any rules that may be made under Section 52 of the Banking Regulation Act, 1949, the trustee shall, within six months from the date of the winding up order or the commencement of this Code, whichever is later, from time to time, file to the Court lists of debtors containing such particulars as are specified in the Fourth Schedule:
Provided that such lists may, with the leave of the Court, be filed after the expiry of the said period six months.
- (3) On receipt of any list under sub-section (2), the Court shall, wherever necessary, cause notices to be issued on all persons affected and after making an inquiry in such manner as may be provided by rules made by the Court, it shall make an order settling the list of debtors:
Provided that nothing in this section shall debar the Court from settling any such list in part as against such of the persons whose debts have been settled without settling the debts of all the persons placed on the list.
- (4) At the time of the settlement of any such list, the Court shall pass an order for the payment of the amount due by each debtor and make such further orders as may be necessary in

respect of the relief claimed, including reliefs against any guarantor or in respect of the realisation of any security.

- (5) Every such order shall, subject to the provisions for appeal, be final and binding for all purposes as between the banking company on the one hand and the person against whom the order is passed and all persons claiming through or under him on the other hand, and shall be deemed to be a decree in a suit.
- (6) In respect of every such order, the Court shall issue a certificate specifying clearly the reliefs granted and the names and descriptions of the parties against whom such reliefs have been granted, the amount of costs awarded and by whom, and out of what funds and in what proportions, such costs are to be paid; and every such certificate shall be deemed to be a certified copy of the decree for all purposes including execution.
- (7) At the time of settling the list of debtors or at any other time prior or subsequent thereto, the Court shall have power to pass any order in respect of a debtor on the application of the trustee for the realisation, management, protection, preservation or sale of any property given as security to the banking company and to give such powers to the trustee to carry out the aforesaid directions as the Court thinks fit.
- (8) The Court shall have power to sanction a compromise in respect of any debt and to order the payment of any debt by installments.
- (9) In any case in which any such list is settled *ex parte* as against any person, such person may, within thirty days from the date of the order settling the list, apply to the Court for an order to vary such list, so far as it concerns him, and if the Court is satisfied that he was prevented by any sufficient cause from appearing on the date fixed for the settlement of such list and that he has a good defence to the claim of the banking company on merits, the Court may vary the list and pass such orders in relation thereto as it thinks fit:
Provided that the Court may, if it so thinks fit, entertain the application after the expiry of the said period of thirty days.
- (10) Nothing in this section shall –
 - (a) apply to a debt which has been secured by a mortgage of immovable property, if a third party has any interest in such immovable property; or
 - (b) prejudice the rights of the trustee to recover any debt due to a banking company under any other law for the time being in force.

148. Special provisions to make calls on contributories (s. 45E)

Notwithstanding that the list of the contributories has not been settled under this Code, the Court may, if it appears to it necessary or expedient to so do, at any time after making a winding up order, make a call on and order payment thereof by any contributory under sub-section (1) of Section 75 of this Code, if such contributory has been placed on the list of contributories by the trustee and has not appeared to dispute his liability.

149. Documents of banking company to be evidence (s. 45F)

- (1) Entries in the books of account or other documents including electronically maintained and communicated documents of a banking company which is being wound up shall be admitted in evidence in all legal proceedings and all such entries may be proved either by the production of the books of account or other documents of the banking company containing such entries or by the production of a copy of the entries, certified by the trustee under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books of account or other documents including electronically maintained and communicated documents of the banking company in his possession.
- (2) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 (1 of 1872), all such entries in the books of account or other documents, including electronically maintained and communicated documents, of a banking company shall, as against the Directors [officers and other employees] of the banking company in respect of which the winding up order has been made, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

150. Public examination of Directors and Auditors (s. 45G)

- (1) Where an order has been made for the winding up of a banking company, the trustee shall submit a report whether in his opinion any loss has been caused to the banking company since its formation by any act or omission (whether or not a fraud has been committed by such act or omission) or any person in the promotion or formation of the banking company or of any Director or Auditor of the banking company.
- (2) If, on consideration of the report submitted under sub-section (1), the Court is of opinion that any person who has taken part in the promotion or formation of the banking company or has been a Director or an Auditor of the banking company should be publicly examined, it shall hold a public sitting on a date to be appointed for that purpose and direct that such person, Director or Auditor shall attend thereat and shall be publicly examined as to the promotion or formation or the conduct of the business of the banking company, or as to his conduct and dealings, in so far as they relate to the affairs of the banking company:
Provided that no such person shall be publicly examined unless he has been given an opportunity to show cause why he should not be so examined.
- (3) The trustee shall take part in the examination and for that purpose may, if specially authorised by the Court in that behalf employ such legal assistance as may be sanctioned by the Court.
- (4) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court.
- (5) The Court may put such questions to the person examined as it thinks fit.
- (6) The person examined shall be examined on oath and shall answer all such questions as the Court may put or allow to be put to him.

(7) A person ordered to be examined under this section may, at his own cost, employ any person entitled to appear before the Court who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answer given. by him:

Provided that if he is, in the opinion of the Court, exculpated from any charges made or suggested against him, the Court may allow him such costs in its discretion as it may deem fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in any proceeding, civil or criminal, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) Where on such examination, the Court is of opinion (whether a fraud has been committed or not):

(a) that a person, who has been a Director of the banking company, is not fit to be a Director of a company, or

(b) that a person, who has been an Auditor of the banking company or a partner of a firm acting as such Auditor, is not fit to act as an Auditor of a company or to be a partner of a firm acting as such Auditor,

the Court may make an order that person shall not, without the leave of the Court, be a Director of or in any way, whether directly or indirectly, be concerned or take part in the management of any company or, as the case may be, act as an Auditor of, or be a partner of a firm acting as Auditors of, any company for such period not exceeding five years as may be specified in the order.

151. Special provisions for assessing damages against delinquent on Directors, etc. (s. 45H)

(1) Where an application is made to the Court under Section 131 of this Code against any promoter, Director, Manager, Trustee or Officer of a banking company for repayment or restoration of any money or property and the applicant makes out a *prima facie* case against such person, the Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part:

Provided that where such an order is made jointly against two or more such persons, they shall be jointly and severally liable to make the repayment or r restoration of the money or property.

(2) Where an application is made to the Court under Section 131 of this and the Court has reason to believe that a property belongs to any promoter, Director, Manager, Trustee or Officer of the banking company, whether the property stands in the name of such person or any other person as an ostensible owner, then the Court may, at any time, whether before or

after making an order under III sub-section (1), direct the attachment of such property, or such portion thereof, as it thinks fit and the property so attached shall remain subject to an attachment unless the ostensible owner can prove to the satisfaction of the Court that he is the real owner and the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to attachment of property shall, as far as may be, apply to such attachment.

152. Duty of Directors and Officers of banking company to assist in the realisation of property (s. 45 I)

Every Director or other officer of a banking company may reasonably require in connection with the realisation and distribution of the property of the banking company.

153. Special provisions for punishing offences in relation to banking companies being wound up (s. 45 J)

(1) The Court may, if it thinks fit, take cognizance of and try in a summary way any offence alleged to have been committed by any person who has taken part in the promotion or formation of the banking company which is being wound up or by any Director, Manager or Officer thereof:

Provided that the offence is one punishable under this Code or under the Companies Act, 1956 (1 of 1956),

(2) When trying any such offence as aforesaid, the Court may also try any other offence not referred to in sub-section (1) which is an offence with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) In any case tried summarily under sub-section (1), the Court-

(a) need not summon any witness, if it is satisfied that the evidence of such witness will not be material;

(b) shall not be bound to adjourn a trial for any purpose unless such adjournment is, in the opinion of the Court, necessary in the interests of justice;

(c) shall, before passing any sentence, record judgement embodying the substance of the evidence and also the particulars specified in Section 263 of the Code of Criminal Procedure, 1973 (2 of 1974), so far as that section may be applicable,

and nothing contained in sub-section (2) of Section 262 of the Code of Criminal Procedure, 1973, shall apply to any such trial.

(4) All offences in relation to winding up alleged to have been committed by any person specified in sub-section (1) which are punishable under this Code or under the Companies Act, 1956 (1 of 1956), and which are not tried in a summary way under sub-section (1) shall, notwithstanding anything to the contrary contained in that Act or the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, be taken

cognizance of and tried by a Judge of the Court other than the Judge for the time being dealing with the proceedings for the winding up of the banking company.

- (5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973(2 of 1973), the Court may take cognizance of any offence under this section, without the accused being committed to it for trial.

154. Public examination of Directors and Auditors, etc., in respect of banking company under schemes of arrangement (s. 45 L)

- (1) Where an application for sanctioning a compromise or arrangement in respect of a banking company is made under Section 391 of the Companies Act, 1956 (1 of 1956)], or where such sanction has been given and the Court is of opinion, whether on a report of the Reserve Bank or otherwise, that any person who has taken part in the promotion or formation of the banking company or has been a Director or Auditor of the banking company should be publicly examined, it may direct such examination of such person the provisions of Section 150 shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up.
- (2) Where a compromise or arrangement is sanctioned under Section 391 of the Companies Act, 1956 (1 of 1956), in respect of a banking company, the provisions of Section 131 and 151 of this Code shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.
- (3) Where a scheme of reconstruction or amalgamation of a banking company has been sanctioned by the Union government under Section 45 of the Banking Regulation Act, 1949 and the Union government is of opinion that any person who has taken part in the promotion or formation of the banking company or has been a Director or a Auditor of the banking company should be publicly examined, that Government may apply to the Court for the examination of such person and if on such examination the Court finds (whether a fraud has been committed or not) that person is not fit to be a Director of a company or to act as an Auditor of a company or to be a partner of a firm acting as such Auditors, the Union government shall make an order that the person shall not, without the leave of the Union government, be a Director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any company or, as the case may be, act as an Auditor of, or be a partner of a firm acting as Auditor of, any company for such period not exceeding five years as may be specified in the order.
- (4) Where a scheme or reconstruction or amalgamation of a banking company has been sanctioned by the Union government under Section 45 of the Banking Regulation Act, 1949, the provisions of Section 131 and 151 of this Code shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the scheme of reconstruction or amalgamation, as the case may be, were an order for the winding up of the banking company; and any reference in the said

Section 131 to the application of the trustee shall be construed as a reference to the application of the Union government.

155. Special provisions for banking companies working under schemes of arrangement at the commencement of the Amendment Act (s. 45 M)

Where any compromise or arrangement sanctioned in respect of a banking company under Section 391 of the Companies Act, 1956 (1 of 1956) is being worked at the commencement of the Banking Companies (Amendment) Act, 1953 (52 of 1953), the Court may, if it so thinks fit, on the application of such banking company, -

- (a) excuse any delay in carrying out any of the compromise or arrangement; or
- (b) allow the banking company to settle the list of its debtors in accordance with the provisions of Section 147 and in such a case, the provisions of the said section shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.

156. Appeals (s. 45N)

- (1) An appeal shall lie from any order or decision of the Court in a civil proceeding under this Act when the amount or value of the subject matter of the claim exceeds five thousand rupees.
- (2) The Court may by rules provide for an appeal against any order made under Section 153 and the conditions subject to which any such appeal would lie.
- (3) Subject to the provisions of sub-section (1) and sub-section (2) and notwithstanding anything contained in any other law for the time being in force, every order or decision of the Court shall be final and binding for all purposes as between the banking company on the one hand, and all persons who are parties thereto and all persons claiming through or under them or any of them, on the other hand.

157. Special period of limitation (s. 45 O)

- (1) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (9 of 1908) or in any other law for the time being in force, in computing the period of limitation prescribed for a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded.
- (2) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (9 of 1908) or (1 of 1956) or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any Director of a banking company which is being wound up or for the enforcement by the banking company against any of its Directors of any claim based on a contract, express or implied; and in respect of all other claims by the banking company against its Directors, the period of limitation shall be twelve

years from the date of the accrual of such claims or five years from the date of the first appointment of the trustee, whichever is longer.

- (3) The provisions of this section, in so far as they relate to banking companies being wound up, shall also apply to a banking company in respect of which a petition for the winding up has been presented before the commencement of this Code.

158. Reserve Bank to tender advice in winding up proceedings (s. 45 P)

Where in any proceeding for the winding up of a banking company in which any person other than the Reserve Bank has been appointed as the trustee and the Court has directed the trustee to obtain the advice of the Reserve Bank on any matter (which it is hereby empowered to do), it shall be lawful for the Reserve Bank to examine the record of any such proceeding and tender such advice on the matter as it may think fit.

159. Power to inspect (s. 45 Q)

- (1) The Reserve Bank shall, on being directed so to do by the Union government or by the Court, cause an inspection to be made by one or more of its officers of a banking company which is being wound up and its books and accounts.
- (2) On such inspection, the Reserve Bank shall submit its report to the Union government and the Court.
- (3) If the Union government, on consideration of the report of the Reserve Bank, is of opinion that there has been a substantial irregularity in the winding up proceedings, it may bring such irregularity to the notice of the Court for such action as the Court may think fit.
- (4) On receipt of the report of the Reserve Bank under sub-section (2) or on any irregularity being brought to its notice by the Union government under sub-section (3), the Court may, if it deems fit, after giving notice to and hearing the Union government in regard to the report, give such directions as it may consider necessary.

160. Power to call for returns and information (s. 45 R)

The Reserve Bank may, at any time by a notice in writing, require the trustee of a banking company to furnish it, within such time as may be specified in the notice or such further time as the Reserve Bank may allow, any statement or information relating to or connected with the winding up of the banking company; and it shall be the duty of every trustee to comply with such requirements.

Explanation.-For the purposes of this section and Section 159, a banking company working under a compromise or arrangement but prohibited from receiving fresh deposits, shall, as far as may be, be deemed to be a banking company which is being wound up.

161. Chief Presidency Magistrate and District Magistrate to assist trustee in taking charge of property of banking company banking wound up (s. 45S)

- (1) For the purpose of enabling the trustee or the special officer appointed under sub-section (3) of Section 134 to take into his custody or under his control, all property, effects and actionable claims to which a banking company is or appears to be entitled, the trustee or the special officer, as the case may be, may request in writing the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, within whose jurisdiction any property, books of account or other documents of Such banking company may be situate or be found, to take possession thereof, and the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, shall, on such request being made to him:-
 - (a) take possession of such property , books of accounts or other , documents, and
 - (b) forward them to the trustee or the special officer.
- (2) Where any such property and effects are in the possession of the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be, such Magistrate shall, on request in writing being made to him by the official trustee or the special officer referred to in sub-section (1), sell such property and effects and forward the net proceeds of the sale to the trustee or the special officer:
Provided that such sale shall, as far as practicable, be effected by public auction.
- (3) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate or the Chief Judicial, Magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.
- (4) No act of the Chief Metropolitan Magistrate or the Chief Judicial Magistrate done in pursuance of this section shall be called in question in any court or before any authority.

162. Enforcement of orders and decisions of Court (s. 45 T)

- (1) All orders made in a civil proceeding by a Court may be enforced in the same manner in which decrees of such court made in any suit pending therein may be banking enforced.
- (2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (5 of 1908), a trustee may apply for the execution of a decree by a court other than the one which made it on production of a certificate granted under sub-section (6) of Section 147 and on his certificate to such other court in writing the amount remaining due or relief remaining unenforced under any the decree.
- (3) Without prejudice to the provisions of sub-section (1) or sub-section (2), the any amount found due to the banking company by an order or decision of the of Court may, with the leave of the Court, be recovered by the be trustee in the same manlier as an arrear of land revenue and for the purpose he of such recovery the trustee may forward to the Collector within whose jurisdiction the property of the person against whom any order or decision of the Court as been made is situate, certificate under his signature specifying the amount so due and the person by whom it is payable.

(4) On receipt of a certificate under sub-section (3), the Collector shall proceed to recover from such person the amount specified therein as if it were an arrear of land revenue:

Provided that without prejudice to any other powers of the Collector, he shall, for the purposes, of recovering the said amount, have all the powers, which, under the Code of Civil Procedure, 1908 (5 of 1908), a civil court has for the purpose of the recovery of an amount due under a decree.

163. References to Directors, etc., shall be construed as including references to past Directors, etc. (s. 45 V)

For the removal of doubts it is hereby declared that any reference in this Chapter to a Director, Manager, Trustee, Officer or Auditor of a banking company shall be construed as including a reference to any past or present Director, Manager, Trustee, Officer or Auditor of the banking company.

164. Part II of Banking Regulation Act 1949 not to apply to banking companies being wound up (s. 45 W)

Nothing contained in Part II of Banking Regulation Act 1949 shall apply to a banking company which is being wound up.

165. Validation of certain proceedings (s. 45 X)

Notwithstanding anything contained in Section 145 or in Section 11 of the Banking Companies (Amendment) Act, 1950 (20 of 1950), no proceeding held, judgment delivered or decree or order made before the commencement of this Code, by any Court other than the Court in respect of any matter over which the Court has jurisdiction under this Act shall be invalid or be deemed ever to have been invalid merely by reason of the fact that such proceeding, judgment, decree or order was held, delivered or made by a Court other than the Court.

Part II – Non banking financial institutions

166. Bankruptcy and winding up proceedings

The court shall follow the special procedure mentioned for banking institutions for conducting winding up proceedings of non banking financial institutions as far as possible, including procedure for appointment of trustee.

167. Insurance company

In the event of bankruptcy or winding up of an insurance company the court shall follow the special procedure as far as practicable with a proviso that the trustee shall be appointed in consultation with the Insurance Regulatory and Development Authority.

Part III – Public Corporations and Government Companies

168. Bankruptcy and Winding Up Proceedings

In the event of bankruptcy or winding up of a public corporations and government companies, the court shall follow the same procedure as far as possible as if it is only a public limited company.

Chapter VIII Cross-border Insolvency

169. Scope of application of this chapter

This Chapter applies where:

- (a) assistance is sought in India by a foreign court or a foreign representative in connection with foreign proceedings; or
- (b) assistance is sought in a foreign State in connection with proceedings under the laws of India relating to insolvency; or
- (c) foreign proceedings and proceedings under the laws of India relating to insolvency in respect of the same debtor are taking place concurrently; or
- (d) creditors or other interested persons in a foreign State have an interest in requesting the commencement of, or participating in, proceedings under the laws of India relating to insolvency.

170. International obligations of India

To the extent that this Chapter conflicts with an obligation of India arising out of any treaty or other form of agreement to which it is a party with one or more other States, the requirements of the treaty or agreement prevail.

171. Court

The functions referred to in this Chapter relating to recognition of foreign proceedings and co-operation with foreign courts shall be performed by the Court.

172. Authorisation of Trustee to act in a foreign State

A trustee is authorized to act in a foreign State on behalf of a proceeding under this Code, as permitted by the applicable foreign law.

173. Public policy exception

Nothing in this Chapter prevents the court from refusing to take an action governed by this Chapter if the action would be manifestly contrary to the public policy of India.

174. Additional assistance under other laws

Nothing in this Chapter limits the power of a court or a Trustee to provide additional assistance to a foreign representative under other laws of India.

175. Right of direct access

A foreign representative is entitled to apply directly to a court in India.

176. Limited jurisdiction

The sole fact that an application pursuant to this Chapter is made to a court in India by a foreign representative does not subject the foreign representative or the foreign assets and affairs of the debtor to the jurisdiction of the courts of India for any purpose other than the application.

177. Application by a foreign representative to commence a proceeding under this code

A foreign representative is entitled to apply to commence a proceeding under this Code if the conditions for commencing such a proceeding are otherwise met.

178. Participation of a foreign representative in a proceeding under this Code

Upon recognition of a foreign proceeding, the foreign representative is entitled to participate in a proceeding regarding the debtor under this Code.

179. Access of foreign creditors to a proceeding under this Code

Foreign creditors have the same rights regarding the commencement of, and participation in, a proceeding under this Code as creditors in India based on the priorities determined by the contract.

180. Notification to foreign creditors of a proceeding under this Code

- (1) Whenever under this Code notification is to be given to creditors in India, such notification shall also be given to the known creditors that do not have addresses in India. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.
- (2) Such notification shall be made to the foreign creditors individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other, similar formality is required.
- (3) When a notification of commencement of a proceeding is to be given to foreign creditors, the notification shall:
 - (a) Indicate a reasonable time period for filing claims and specify the place for their filing;
 - (b) Indicate whether secured creditors need to file their secured claims; and
 - (c) Contain any other information required to be included in such a notification to creditors pursuant to the law of India and the orders of the court.

181. Application for recognition of a foreign proceeding

- (1) A foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed.
- (2) An application for recognition shall be accompanied by:
 - (a) A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative; or
 - (b) A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or
 - (c) In the absence of evidence referred to in sub-clauses (a) and (b), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.
- (3) An application for recognition shall also be accompanied by a statement identifying all foreign proceedings in respect of the debtor that are known to the foreign representative.
- (4) The court may require a translation of documents, if the documents are not written in English, supplied in support of the application for recognition, in English.

182. Presumptions concerning recognition

- (1) If the decision or certificate referred to in subsection (2) of section 181 indicates that the foreign proceeding is a proceeding within the meaning of subsection (24) of section 3 and that the foreign representative is a person or body within the meaning of subsection (25) of section 3, the court is entitled to so presume.
- (2) The court is entitled to presume that documents submitted in support of the application for recognition are authentic, whether or not they have been legalised.
- (3) In the absence of proof to the contrary, the debtor's registered office is presumed to be the centre of the debtor's main interests.

183. Decision to recognise a foreign proceeding

- (1) Subject to public policy exception, a foreign proceeding shall be recognised if:
 - (a) The foreign proceeding is a proceeding as defined under this Code;
 - (b) The foreign representative applying for recognition is a person or body as defined under this Code;
 - (c) The application meets the requirements of subsection (2) of section 181; and
 - (d) The application has been submitted to the Court.
- (2) The foreign proceeding shall be recognised:
 - (a) As a foreign main proceeding if it is taking place in the State where the debtor has the centre of its main interests; or

(b) As a foreign non-main proceeding if the debtor has an establishment within the meaning of subsection (23) of section 3 in the foreign State.

- (3) An application for recognition of a foreign proceeding shall be decided upon at the earliest possible time.
- (4) The provisions of sections 181, 182, 183 and 184 do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist.

184. Subsequent information

From the time of filing the application for recognition of the foreign proceeding, the foreign representative shall inform the court promptly of:

- (a) Any substantial change in the status of the recognised foreign proceeding or the status of the foreign representative's appointment; and
- (b) Any other foreign proceeding regarding the same debtor that becomes known to the foreign representative.

185. Relief that may be granted upon application for recognition of a foreign proceeding

- (1) From the time of filing an application for recognition until the application is decided upon, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including:

- (a) Staying execution against the debtor's assets;
- (b) Entrusting the administration or realisation of all or part of the debtor's assets located in India to the foreign representative or another person designated by the court, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy;
- (c) Any relief mentioned in subsection (1) (c), (d) and (g) of section 187.

- (2) Unless extended under subsection (1) (f) of section 187, the relief granted under this section terminates when the application for recognition is decided upon.
- (3) The court may refuse to grant relief under this section if such relief would interfere with the administration of a foreign main proceeding.

186. Effects of recognition of a foreign main proceeding

- (1) Upon recognition of a foreign proceeding that is a foreign main proceeding,
 - (a) Commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities is stayed;

(b) Execution against the debtor's assets is stayed; and

(c) The right to transfer, encumber or otherwise dispose of any assets of the debtor is suspended.

- (3) The scope, and the modification or termination, of the stay and suspension referred to in subsection 1 are subject to provisions exceptions, limitations, modifications or terminations as provided in this Code.
- (4) Subsection 1 (a) shall not affect the right to commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.
- (5) Subsection 1 shall not affect the right to request the commencement of a proceeding under this Code or the right to file claims in such a proceeding.

187. Relief that may be granted upon recognition of a foreign proceeding

- (1) Upon recognition of a foreign proceeding, whether main or non-main, where necessary to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including:
 - (a) Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's assets, rights, obligations or liabilities, to the extent they have not been stayed under subsection (1) (a) of section 186;
 - (b) Staying execution against the debtor's assets to the extent it has not been stayed under subsection (1) (b) of section 186;
 - (c) Suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under subsection (1) (c) of section 186;
 - (d) Providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;
 - (e) Entrusting the administration or realisation of all or part of the debtor's assets located in India to the foreign representative or another person designated by the court;
 - (f) Extending relief granted under subsection (1) of article 185;
 - (g) Granting any additional relief that may be available to the Trustee under this Code.
- (2) Upon recognition of a foreign proceeding, whether main or non-main, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in India to the foreign representative or another person designated by the court, provided that the court is satisfied that the interests of creditors in India are adequately protected.

- (3) In granting relief under this section to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of India, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

188. Protection of creditors and other interested persons

- (1) In granting or denying relief under section 185 or 187, or in modifying or terminating relief under subsection (3) of this section, the court must be satisfied that the interests of the creditors and other interested persons, including the debtor, are adequately protected.
- (2) The court may subject relief granted under section 185 or 187 to conditions it considers appropriate.
- (3) The court may, at the request of the foreign representative or a person affected by relief granted under section 185 or 187, or at its own motion, modify or terminate such relief.

189. Actions to avoid acts detrimental to creditors

- (1) Upon recognition of a foreign proceeding, the foreign representative has standing to initiate bankruptcy proceedings against the debtor.
- (2) When the foreign proceeding is a foreign non-main proceeding, the court must be satisfied that the action relates to assets that, under the law of India, should be administered in the foreign non-main proceeding.

190. Intervention by a foreign representative in proceedings in India

Upon recognition of a foreign proceeding, the foreign representative may, provided the requirements of the law of India are met, intervene in any proceedings in which the debtor is a party.

191. Co-operation and direct communication between a court of India and foreign courts or foreign representatives

- (1) In matters referred to in section 169, the court shall co-operate with foreign courts or foreign representatives, either directly or through the Trustee.
- (2) The court may communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives.

192. Co-operation and direct communication between the Trustee and foreign courts or foreign representatives

- (1) In matters referred to in section 169, the Trustee shall, in the exercise of his functions and subject to the supervision of the court, co-operate to the maximum extent possible with foreign courts or foreign representatives.
- (2) The Trustee is entitled, in the exercise of its functions and subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

193. Forms of co-operation

Co-operation referred to in sections 191 and 192 may be implemented by any appropriate means, including:

- (a) Appointment of a person or body to act at the direction of the court;
- (b) Communication of information by any means considered appropriate by the court;
- (c) Co-ordination of the administration and supervision of the debtor's assets and affairs;
- (d) Approval or implementation by courts of agreements concerning the co-ordination of proceedings;
- (e) Co-ordination of concurrent proceedings regarding the same debtor.

194. Commencement of a proceeding under this Code after recognition of a foreign main proceeding

After recognition of a foreign main proceeding, a proceeding under this Code may be commenced only if the debtor has assets in India; the effects of that proceeding shall be restricted to the assets of the debtor that are located in India and, to the extent necessary to implement co-operation and co-ordination under sections 191, 192 and 193, to other assets of the debtor that, under the law of India, should be administered in that proceeding.

195. Co-ordination of a proceeding under this Code and a foreign proceeding

Where a foreign proceeding and a proceeding under this Code are taking place concurrently regarding the same debtor, the court shall seek co-operation and co-ordination under sections 191, 192 and 193, and the following shall apply:

- (a) When the proceeding in India is taking place at the time the application for recognition of the foreign proceeding is filed,
 - (i) Any relief granted under section 185 or 187 must be consistent with the proceeding in India; and
 - (ii) If the foreign proceeding is recognised in India as a foreign main proceeding, section 186 does not apply;
- (b) When the proceeding in India commences after recognition, or after the filing of the application for recognition, of the foreign proceeding,
 - (i) Any relief in effect under section 185 or 187 shall be reviewed by the court and shall be modified or terminated if inconsistent with the proceeding in India; and
 - (ii) If the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in subsection (1) of section 186 shall be modified or

terminated pursuant to subsection (2) of section 186 if inconsistent with the proceeding in India;

(c) In granting, extending or modifying relief granted to a representative of a foreign non-main proceeding, the court must be satisfied that the relief relates to assets that, under the law of India, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.

97. Co-ordination of more than one foreign proceeding

In matters referred to in section 169, in respect of more than one foreign proceeding regarding the same debtor, the court shall seek co-operation and co-ordination under sections 191, 192 and 193, and the following shall apply:

(a) Any relief granted under section 185 or 187 to a representative of a foreign non-main proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding;

(b) If a foreign main proceeding is recognised after recognition, or after the filing of an application for recognition, of a foreign non-main proceeding, any relief in effect under section 185 or 187 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding;

(c) If, after recognition of a foreign non-main proceeding, another foreign non-main proceeding is recognised, the court shall grant, modify or terminate relief for the purpose of facilitating co-ordination of the proceedings.

197. Presumption of insolvency based on recognition of a foreign main proceeding

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under this Code, proof that the debtor is insolvent.

198. Rule of payment in concurrent proceedings

Without prejudice to secured claims or rights *in rem*, a creditor who has received part payment in respect of its claim in a proceeding pursuant to a law relating to insolvency in a foreign State may not receive a payment for the same claim in a proceeding under this Code regarding the same debtor, so long as the payment to the other creditors of the same class is proportionately less than the payment the creditor has already received.

Chapter IX Miscellaneous

199. Rule making power of the Court

(1) The Court shall make rules in any or all of the following procedure for:

(a) empanelment, appointment and regulation trustees;

- (b) procedure for the bankruptcy proceedings;
 - (c) procedure for the functions of the trustees in matters relating to formulation of scheme, conducting renegotiation, implementation of the scheme, submission of accounts to the court and any other matter incidental thereto;
 - (d) procedure for winding up, liquidation and dissolution;
 - (e) procedure for conducting the functions of the trustee for appointments of officials such as public auctioneers, trustees, banks, receiver;
 - (f) procedure for co-operation and co-ordination with foreign proceedings;
 - (g) procedure for co-operation and co-ordination with foreign representatives and foreign court; and
 - (h) procedure for any other matter that the court feels necessary.
- (2) Regard being had to the generality of the above provision stipulated in subsection (1) the court may make the following further rules for bankruptcy proceedings in banking institutions:
- (a) manner in which enquiry and proceeding under part III of the Banking Regulation Act and chapter VII of this Code may be held;
 - (b) the offences which may be tried summarily;
 - (c) the authority to which, and the conditions subject to which, appeals may be preferred and the manner in which such appeals may be filed and heard; and
 - (d) any other matter for which provision has to be made for enabling the Court to effectively exercise its functions under this Act.

200. Code to have overriding effect

The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

201. Removal of difficulties

- (1) If any difficulty arises in giving effect to the provisions of this Code, the Union Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Code as appear to it to be necessary or expedient for removing the difficulty.

Provided that no order shall be made under this section after the expiry of a period of two years from the commencement of this Code.

- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

202 Power of Registrar to strike defunct company off register (s. 560)

- (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, the 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 trustee is acting or that the affairs of the company have been completely wound up, and any returns required to be made by the trustee 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 trustee, 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, the managing agent, secretaries and treasurers, 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 the Court to wind up a company the name of which has been struck off the register.
- (6) If a company, or any member of creditor thereof, feels aggrieved by the company having been struck off the register, the Court, 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 the Court may, by the order give such directions and made 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, the managing agent, secretaries and treasurers, manager or other officer of the company, or if there is no director, managing agent, secretaries and treasurers, 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 trustee may be addressed to the trustee at his last known place of business.

203 Power of Court to make rules for Banking companies (s. 45 U)

The Court may make rules consistent with this Act and the rules made under Section 52 of the Banking Regulation Act, 1949 prescribing:-

- (1) the manner in which inquiries and proceedings under Chapter VII may be held;
- (2) with regard to the generality of the above provisions as stipulated in subsection (1) in the case of banking companies the court may also make rules as stipulated in section 199.

Website Links/references of Documents referred to in the Report

1. UNCITRAL Model Law on Cross-Border Insolvency :
[http:// www.uncitral.org/en-index.htm](http://www.uncitral.org/en-index.htm)
2. Orderly & Effective Insolvency Procedures:
<http://www.imf.org/external/pubs/ft/orderly/index.htm#top>
3. European Convention on Certain International Aspects of Bankruptcy:
http://www.jurisint.org/pub/pres_en.htm

4. Council of the International Bar Association (May 1996) :

'Committee J Cross-Border Insolvency Concordat', Madrid, Spain.