

**A. WINDING-UP :**

The 1956 Act provided three modes of winding-up of a company i.e.:

- Compulsory winding up ordered by the court
- Voluntary winding up the members
- Winding up under the supervision of the court

As against the existing modes of winding-up as prescribed by the 1956 Act, the 2013 Act prescribes the following two modes: [Section 270 – 365]

- By the Tribunal
- Voluntary winding up.

**Grounds for winding up [Section 271]**

The 2013 Act does not acknowledge the distinction between member voluntary winding up and creditor voluntary winding up vis-à-vis the position in Section 433 of the 1956 Act. Additionally the new grounds of winding up by Tribunal are as follows:

- In a situation when the company has acted against the interests of:
  - i. sovereignty and integrity of India,
  - ii. the security of the state,
  - iii. friendly relations with foreign states,
  - iv. public order,
  - v. decency or
  - vi. morality.
- If the Tribunal has ordered the winding up under Chapter XIX (Revival and Rehabilitation of Sick Companies).
- If an application has been made by the ROC or any other person authorized by the central government by a notification under the 2013 Act, and the tribunal is of the opinion that:
  - i. The affairs of the company have been conducted in a fraudulent manner or
  - ii. the company was formed for fraudulent and unlawful purposes or
  - iii. the persons concerned in the formation or management of its affairs have been found guilty of fraud, misfeasance or misconduct in connection therewith, and
  - iv. That it is proper that the company be wound up.
- If the company has made a default in filing with the ROC, its financial statements or annual returns for immediately preceding five consecutive financial years. [Section 271of the 2013 Act]

- If after reservation of name, it is found that name of the company was applied for by furnishing wrong/incorrect information and the company is incorporated, ROC may make a petition for winding up of the Company. [Section 4(5) of the 2013 Act]

#### **Definition of 'inability to pay' [Section 271(2)]**

Section 434 of the 1956 Act provided that a company shall be deemed to be unable to pay its debts, if:

- A creditor, by assignment or otherwise, to whom the company is indebted for more than Rs. 500/- then due, has served on the company at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the amount so due; and
- The company has failed to pay the sum within 21 days after the receipt of such demand or to secure or compound the debt to the reasonable satisfaction of the creditor.

There has been a change from the previous concept and now, the 2013 Act has increased the limit from a paltry Rs. 500/- to Rs. 1,00,000/-.

#### **Powers of the Tribunal**

Earlier, the Companies Act of 1956 by virtue of Section 443(3) provided that 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:

- Instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held; and
- Order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

Currently, the 2013 Act omits provisions relating to holding of statutory meeting which were there in Section 165 of the 1956 Act. Consequently, the provisions of Section 433(3) are also omitted from the 2013 Act.

#### **Directions for filing of Statement of Affairs [Section 274]**

Section 274 of the 2013 Act goes well beyond Section 439A of the 1956 Act. Unlike Section 439A of the 1956 Act, under Section 274 of the 2013 Act failure to file the Statement of Affairs (when so directed by the Tribunal) will forfeit the company's right to oppose the petition and the directors and officers as found responsible for such non-compliance, shall be punishable.

#### **Intimation to Company Liquidators [Section 277]**

Section 455 of the 1956 Act provided that on the making of a winding up order, it shall be the duty of the petitioner and of the company to file with the Registrar a certified copy of the order, within 30 days 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

be, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to Rs. 1,000 for each day during which the default continues.

Section 277 of the 2013 Act dispenses the requirement of filing of certified copy of winding up order with ROC by the petitioner and the company. The Tribunal shall directly send a copy of the order to the ROC.

#### **Custody of Company's property [Section 283]**

Under Section 283 of the new Act, making an application to the Chief Presidency Magistrate or the District Magistrate is not necessary (as was required under Section 456 of the Companies Act, 1956) as the Tribunal may order any specified person to pay, deliver, surrender or transfer forthwith, or within such time as the Tribunal directs, to the Company Liquidator, any money, property or books and papers in his custody or under his control to which the company appears to be entitled.

#### **Powers and duties of Company Liquidator [Section 290]**

The list of powers of the Liquidator under 2013 Act contains three additional powers which were not there in Section 457 of the 1956 Act:

- To sell the whole of the undertaking of the company as a going concern;
- To obtain any professional assistance for protection of assets of the company;
- To appoint an agent to do any business which the Company Liquidator is unable to do himself.

#### **Public examination of promoters, directors etc. [Section 275]**

This provision of Section 478(3) of the 1956 Act which provided that 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, has been omitted from the section 275 of the 2013 Act.

Since the 2013 Act transfers public examination from Court to Tribunal, the persons examined may employ Chartered Accountants or Company Secretaries or Cost Accountants or Legal Practitioners entitled to appear before the Tribunal for the aforesaid purpose.

#### **Dissolution of Company by Tribunal [Section 302]**

Section 481 of the 1956 Act provided that the Court shall make an order that the Company be dissolved from the date of order:

- When the affairs of a company have been completely wound up; or
- When the Court is of the opinion that the Liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made.

Section 302 of the 2013 Act provides that the Tribunal shall make an order that the company be dissolved from the date of order:

- On application filed by the Company Liquidator for dissolution after the affairs of the company have been completely wound up; or
- When the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made.