PART XXXVI

WINDING UP AND DEFUNCT OF COMPANY

Chapter 1

Winding up

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1. Winding up

Companies registered under the Act may put an end to their affairs by winding up their business. This is carried out by realisation of the assets and applying the proceeds in payment of its debts and liabilities and if there is any balance left after meeting the liabilities, the same is paid back to the members in proportion to the contribution made by them to the capital of the company.

2. Meaning of winding up and dissolution

The terms "Winding up" and "Dissolution" are sometimes erroneously used to mean the same thing. However, they are quite different in their meanings. Winding up is a process whereby all assets of the company are realized and used to pay off the liabilities and members. Dissolution of the company takes place after the entire process of winding up is over. Dissolution puts an end to the life of the company. A dissolution order passed by the Court is like the Death Certificate of the company.

3. Modes of winding up of a company

Section 425 provides that a company may be wound up in the following ways:—

(*a*) by the Court/Tribunal, or;

(*b*) by the members voluntarily.

WINDING UP BY THE COURT/TRIBUNAL

Section 433 provides that a company may be wound up by the High Court/Tribunal,—

(*a*) if the company has by special resolution resolved that the company be wound up by the Court/Tribunal;

(*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 a public company, below seven, and in the case of a private company, below two;

(*e*) if the company is unable to pay its debts;

(*f*) if the Court/Tribunal is of the opinion that it is just and equitable that the company should be wound up;

(*g*) if the company has made a default in filing with the Registrar, its balance sheet and profit and loss account or annual return for any five consecutive financial years;

(*h*) if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;

(*i*) if the Court/Tribunal is of the opinion that the company should be wound up under the circumstances specified in section 424G:

Provided that the Court/Tribunal shall make an order for winding up of a company under clause (*h*) on an application made by the Central Government or State Government.

4. Circumstances in which a company may be wound up by the Court/Tribunal

In terms of the provisions of section 433 of the Act, a company may be wound up in any of the following circumstances:—

4.1. Passing a special resolution

Where the company has, by a special resolution, resolved that the company may be wound up by the Court/Tribunal, it may present an application to the Court/Tribunal for winding up.

4.2. Failure to hold statutory meeting

Every public company limited by shares or a public company limited by guarantee and having a share capital is required by section 165, to prepare a statutory report within a period of not less than one month and not more than six months from the date at which the company is entitled to commence business, and send it to the shareholders and the Registrar of Companies duly certified at least 21 days before the statutory meeting is held. The company shall also hold the statutory meeting and shall, *inter alia*, approve the statutory report.

4.3 Failure to commence business

Where a public company or a private company does not commence business within a year from its incorporation or where a company suspends its business for a whole year, a petition for winding up will lie. It is expected that the public company shall obtain the certificate to commence business within a reasonable time and also take action to commence business. On the other hand, a private company is authorised to commence business immediately on formation. Where in either case the company has not commenced its business within a year of its incorporation or within a reasonable period, it will be a ground for winding up.

4.4 Reduction in number of members below minimum

Where the number of members in a public company is reduced to less than seven or in a private company to less than two and the position continues for a long time, it will be a ground for winding up by the Court/Tribunal.

4.5 Inability to pay its debts

This clause vests a large amount of discretion to the Court/Tribunal to find out whether the company is commercially insolvent and whether there is likelihood of the revival of the company after a set back in business and operations. A company will be deemed to be unable to pay its debts if it is proved to the satisfaction of the Court/Tribunal that the company is unable to pay its debts and in determining whether a company is unable to pay its debts, the Court/Tribunal shall take into account the contingent and prospective liabilities of the company. The Court/Tribunal will draw the presumption that a company is unable to pay its debts if it is shown that the company owes a sum exceeding Rupees One Lakh to a creditor and when the creditor has served on the company, at its registered office a demand to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure the debt to the satisfaction of the creditor.

The remedy of recovery of money through a civil suit being distinct from winding up of the debtor company u/s 434, eve where a civil suit is filed by the petitioner, there is no bar against filing a petition for winding up of the defaulting company. The court may, however, refuse to wind up the company if it is just and equitable to do so. For this purpose, the company must disclose the financial position and take a defence, which may disentitle the petitioner to seek relief of winding up of the company. In the absence of any pleadings and arguments against winding up by the defaulter company, the company has to be wound up when admitted debt liability remains unpaid after the statutory notice. [*Dhandhania Brothers (P) Ltd. Khaitan Overseas and Finance Ltd.* (2004) 60 CLA (SNR) 9 (ALL)].

For the purpose of filing winding up petition on ground of company being unable to pay its debts, debts should be enforceable in Court of law and it is only for enforceable debts person becomes a creditor of a company when he files a petition in Court. Enforceability in Court of law has to be in accordance with law of limitation and if action is not taken within a period of limitation, Court itself does not have any jurisdiction to issue any direction or pass a decree for repayment of debt, although it is in existence. Therefore, winding-up petition cannot be filed in respect of time barred debts. [*Gurdino Jiwatram Kukreja* v *Eastern Mining and Allied Industries Ltd.* (2005) 58 SCL 262 (GAU)].

***4.6 Arrears of unpaid salary and the dues of an employee, is not a debt within the meaning of this expression in section 433*(e)**

Salary is the remuneration payable to a person or an employee in lieu of services rendered by him whereas debt is not remuneration. Debt is something, which is borrowed by a person or settled term and condition and at settled rate of interest and can be re-settled between the parties for which view no authority had been cited.

Clause (*b*) of section 530(1) adverts to 'all wages or salary, including wages payable for time or piece work and salary earned wholly or in part …. In respect of services rendered to the company and due for a period …..' If wages and salary payable to an employee in respect of services rendered is made a preferential charge under the Act, there is no good reason to take out arrears of salary from the definition or meaning of the concept of debt for the purposes of section 433(*e*). [*M. Suryanarayana* v *Stiles India Ltd.* (2002) (AP)].

4.7 Winding up on just and equitable grounds

Under this clause the Court/Tribunal is endowed with very wide discretion to come to the opinion that it is just and equitable that the company should be wound up. Several circumstances may be posed before the Court/Tribunal.

For instance that the substratum of the company has disapproved due to take-over of the business by the Government. [*Bombay Gas Co. Ltd*. v *Hindustan Mercantile Bank Ltd.* (1980) 50 Comp Cas 202 (Cal)]; that there is deadlock in management or that in public interest it was just and equitable to order winding up of a company.

4.8 Default in filing with the Registrar the balance sheet or annual return

Under this clause, if a company commits default in filing of the balance sheet or annual return with the Registrar of Companies under sections 159 and 220 of the Companies Act, for any five consecutive financial years, it will be a ground for winding up of the company by the Court/Tribunal.

4.9 Acting against the interest of the country

Under this clause, if a company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, it will be a ground for winding up by the Court/Tribunal.

4.10 If the company is a sick industrial company and is not likely to become viable in future

After making inquiry by the Court/Tribunal and after consideration of all the relevant facts and circumstances and after hearing all the concerned parties, if the Court/Tribunal is of the opinion that the sick industrial company is not likely to become viable in future, it may record its findings and order winding up of the company.

5. In case of a time barred debt by limitation cannot seek winding up

In the case of *Poddar Projects Ltd.* v *Krishna Metal Industries Pvt. Ltd.* (1996) 86 Comp Cas 360; AIR 1996 AP 305, the debt of the petitioner-company for which winding up of the company had been sought, was found barred by limitation. The Andhra Pradesh High Court held that the plea of the respondent that the debt is barred by time under article 15 is a substantial defence and, accordingly, it cannot be said that the defence is not *bona fide*. Hence, it was held that the petitioner cannot seek the relief of winding up since there is a prima facie case in the plea of the respondent that the debt is barred by limitation".

6. Assignment of debt

It was held in the case of *Clicquot Asia Ltd.* v *Red Robin International Ltd.* [CP No. 779 of 2003 (Bom)] that section 434 does not contemplate that there should be a fresh notice under section 434 if the debt is assigned by the company. What it requires is only that as on the date of the notice a person should be creditor and before filing of the winding up petition, if there is valid assignment, then the petition can be filed by assignee who has taken over all rights of the creditors under the assignment.

It was also observed that if the debt is not assigned in favour of the person in whom the bill of exchange is endorsed, then the said right to sue on the original debtor-original cause of action still subsists and survives in favour of the endorser who has endorsed the bill of exchange in favour of the third party. That is to say, no re-endorsement is necessary for the purpose of maintaining a suit by the person who is originally entitled to the said claim.

7. Petition for winding up not to be stayed on ground of civil suit having been filed

If the legislature had intended that on account of the fact that a suit or proceedings has been filed in another Court, the Tribunal or Court in season of winding up application will stay the winding up proceedings on that ground alone, there would have been a provision to that effect in the Companies Act,

1956. However, there is no such provision because a winding up proceeding is not merely for the benefit of the petitioner but for all its shareholders, creditors and contributories, therefore, merely because a creditor has filed a suit against the company, the winding up proceedings cannot be stayed.

8. Proceeding in civil action should not be stayed where a criminal complaint filed against the company is pending

There is no legal bar to the continuance of civil and criminal proceedings simultaneously. The legal position is that between both proceedings, criminal proceedings should be given precedence but there is no hard and fast rule. It is not always necessary to stay civil proceedings. [*Krishkeo International* v *Ackwait Steel and Metal Pvt. Ltd.* (1993) Case 398 (Del)].

9. Winding-up proceedings would prevail over any other provision adopted by the company

In the case of *Bank of Nova Scotia* v *RPG Transmission Ltd., High Court of Delhi*, (2005) 64 SCL 261 (Delhi) the bank had filed a petition under sections 433, 434 and 439 of the Companies Act, 1956 praying for winding-up of the respondent company on the ground that the company had become insolvent and that it was unable to pay its debt. An application was also pending adjudication before the Debt Recovery Tribunal between the parties, which was also initiated by the appellant praying for recovery of the amount due and payable to it prior to the filing of the winding-up petition. On an objection taken by the company, the Company Judge dismissed the winding-up petition for the reason that the appellant had already chosen a forum of recovery, *i.e*., the Debt Recovery Tribunal and, therefore, the winding-up petition could not be entertained.

The intention and the purpose of initiating a proceeding under the Recovery of Debt Due to Banks & Financial Institutions Act, 1993 (RDB Act) is to recover the amount which is allegedly due and payable to the bank/financial institution whereas the purpose of invoking the provisions of sections 433 and 434 is to wind up a company on the ground that it had become commercially insolvent. The intention and purpose for instituting the two proceedings are, therefore, distinctly separate and not identical. The jurisdiction of the Tribunal under the RDB Act is to adjudicate the liability of the debtor during the course of which it is ascertained as to what debt is due to the bank/financial institution and after ascertainment of the said Liability, a certificate of recovery thereof is issued. The Tribunal has not been given the power and jurisdiction to declare a company as commercially insolvent.

There is no inconsistency between the provisions of winding up and those of the recovery proceedings initiated under the RDB Act and, therefore, RDB Act would have no application in respect of the proceedings initiated under the provisions of sections 433 and 434.

If there is any inconsistency between the provisions of the RDB Act and those of the Companies Act, 1956 it is the RDB Act, which would prevail. The contention that the petitioner could choose one of the remedies in case where two or more than two remedies are available, is applicable when the remedy provided for, is one and the same but when two different remedies are provided for two different reliefs, in that event the plea of selection of remedies is not applicable. Also, since both the remedies and jurisdictions are mutually exclusive of each other, there cannot be any inconsistency between the two different remedies provided for in two different legislations.

WHO CAN FILE PETITION FOR WINDING UP

Section 439 provides that an application to the Court/Tribunal for the winding up of a company can be made:—

(*a*) by the company;

(*b*) by any creditor or creditors, including any contingent or prospective creditor or creditors;

(*c*) by any contributory or contributories;

(*d*) by all or any of the parties at (*a*), (*b*) and (*c*), whether together or separately;

(*e*) by the Registrar of Companies;

(*f*) by any person authorised by the Central Government as a result of investigation carried out on the affairs of a company pursuant to section 237;

(*g*) by the Central Government or a State Government, in a case falling under clause (*h*) of section 433.

10. By company itself

Where a company has, by a special resolution, resolved that the company may be wound up, it has a right to present a petition to the Court/Tribunal.

11. By a creditor or creditors

Any creditor or creditors of the company may present a petition to the Court/Tribunal for winding up, alleging that the company is unable to pay the debts of the creditor in the manner specified in section 433 or 434. The Court/Tribunal will ascertain the wishes of a majority of the creditors and where the majority oppose the petition, the Court/Tribunal will not make the order.

The Court/Tribunal can direct winding up of a company even if the petition is filed at the instance of a single creditor. A petition for winding up can be presented by a contingent or prospective creditor and it is for the Court/Tribunal to satisfy itself about the eligibility of such person to present a petition.

12. By a contributory

A contributory is entitled to present a petition although he holds fully paid shares in the company or that the company may have no surplus for distribution among shareholders after satisfaction of its liabilities.

Contributory means every person liable to contribute to the assets of a company in the event of its being wound up and includes holders of its fully paid shares. While every member of a company becomes a contributory, not every contributory is a member. Besides members, any person who ceased to be a member 1 year prior to the commencement of winding up is also a contributory.

However, a contributory shall not be entitled to present a petition unless the number of members is reduced below two, in the case of a private company, or below seven, in the case of a public company.

13. By the Registrar

The Registrar may be authorised by the Central Government pursuant to section 243 to present a petition for winding up. Further that the Registrar is capable of filing a petition on the matters specified in clauses (*b*) to (*d*) and (*f*) to (*g*) of section 433, namely:—

(*b*) Default is made in delivering the statutory report to the Registrar or in holding the statutory meeting.

(*c*) The company does not commence its business within a year from its incorporation or suspends its business for a whole year.

(*d*) The number of members is reduced below two, in the case of a private company, or below seven, in the case of a public company.

(*f*) It is just and equitable that the company should be wound up.

(*g*) Default is made in filing with the Registrar, balance sheet and profit and loss account or annual return for any five consecutive financial years.

The Registrar shall obtain the previous sanction of the Central Government for the presentation of the petition. However, the Central Government shall not accord its sanction to the Registrar unless the company has been afforded an opportunity of making its representation, if any.

14. Filing of statement of affairs on winding up

Section 439A provides that:—

(1) Every company shall file with the Court/Tribunal a statement of its affairs alongwith the petition for winding up.

(2) Where a company opposes a petition for its winding up, it shall file with the Court/Tribunal a statement of its affairs.

(3) The statement of affairs referred to in sub-section (1) or sub-section (2) shall be accompanied by—

   (*a*) the last known addresses of all the directors and company secretary of such company;

   (*b*) the details of location of assets of the company and their value;

(*c*) the details of all debtors and creditors with their complete addresses;

(*d*) the details of workmen and other employees and any amount outstanding on them;

(*e*) such other details as the Court/Tribunal may direct.

15. Power of the Court/Tribunal on hearing petition

Section 443 provides that:—

(1) On hearing a winding up petition, the Court/Tribunal 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 of the company with or without costs, or any other order that it thinks fit:

Provided that the Court/Tribunal 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/Tribunal may refuse to make an order of winding up, if it is of the 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/Tribunal 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/Tribunal, are responsible for the default.

The person whose views will be taken into account by the Court/Tribunal will be namely the petitioners, the company, creditors and contributories. The Court/Tribunal shall have the discretion to hear any other person on the grounds of public interest. The Court/Tribunal will generally give an opportunity, to the workers as interveners to present their views.

On hearing a winding up petition, the Court/Tribunal may:—

(*a*) dismiss it with or without costs; or

(*b*) adjourn the hearing conditionally or unconditionally; or

(*c*) make such interim order as it thinks fit; or

(*d*) make an order for winding up the company with or without costs or any other order as it thinks fit.

16. Order for winding up by the Court/Tribunal to be communicated to the Official Liquidator and the Registrar

Section 444 of the Companies Act, 1956 which provides that where the Court/Tribunal makes an order for the winding up of the company, the Court/Tribunal, shall within a period not exceeding two weeks from the date of passing of the order, cause intimation thereof to be sent to the Official Liquidator and the Registrar.

17. Filing of the winding up order with the Registrar of Companies

Section 445 provides that as soon as a winding up order is made, the petitioner and the company shall, within 30 days of the date of the order, file with the Registrar a certified copy of the order. The period of 30 days will not include the time required for obtaining a certified copy of the order. Once a winding up order is made, it shall be deemed to be a notice of discharge to the officers and employees of the company except, when the business of the company is continued.

18. Is suit is maintainable if no leave has been obtained u/s 446 of the Companies Act, 1956

When a winding up order is made, no suit or other legal proceeding shall be commenced or proceeded with against the company except with the leave of the Court/Tribunal. However, this will not affect any legal proceeding in appeal before the Supreme Court or the High Court. [*Dewtsche Bank* v *Kala S.P*. (1990) 67 Comp Cas 474, 477 (Bom)].

In the case of *Vijayawada Chamber of Commerce & Industry* v *Registrar of Non-Trading Companies* [(2004) 51 SCL 378 (AP)], the Registrar published the notice in the AP Gazette on 14-9-2000, while the petitioner filed the company petition on 26-8-2003, which was much before the expiry of 20 years, and having regard to the fact that the company petition had been filed before the expiry of 20 years, it was held that the same could be entertained for the same was not barred by limitation, and before entertaining the petition, it was imperative that the Court (now Tribunal) should satisfy itself as to whether the petitioner was, in fact, carrying on business and was in operation uninterruptedly since its operation.

In the case of *ICICI Ltd.* v *Shriniwas Agency* (96) 774 (SC) it was held that a winding up Court (now Tribunal) has jurisdiction *inter alia* to dispose of any suit or proceeding by or against the company even if such suit or proceeding had been insisted before the order for winding up had been made. Therefore, the winding up Court (now Tribunal) has jurisdiction to transfer such suit or proceeding and dispose of the same.

In *Nagarjuna Finance Ltd.* v *Kanosika Lab. Ltd*. (AIR) 1998 (AP), it was held by the High Court that the marginal note to section was 'staying suits on winding up order' the words 'other legal proceedings' should be read *esjusdem generis*. The operation of this section must be restricted to proceedings arising out of violation of the Companies act and not proceedings for violation of provisions of other criminal statues.

Winding up proceedings under section 446 does not provide immunity to directors. As far as directors of company are concerned for winding up proceedings of company, section 446(1) of the act had no application because the provision is mean for the prosecution against company's and not against the directors.

In the case of *State of Jammu and Kashmir* v *UCO Bank* (2006) 66 SCL 191 (SC) and *Bansidhar Sankarlal* v *Mohd. Ibram* it was held that failure to obtain leave prior to the institution of suit would not debar the Court from granting such leave subsequently and that the only consequence of this, would be that proceedings would be regarded as having been instituted on the date on which leave was obtained from the High Court.

19. Responsibility of directors and officers to submit to the Court/Tribunal, audited books and accounts

Section 446A has been inserted by the Companies (Second Amendment) Act, 2002 which provides that the directors and other officers of every company shall ensure that books of accounts of the company are completed and audited upto the date of winding up order made by the Tribunal and submitted to it at the cost of the company, failing which such directors and officers shall be liable for punishment for a term not exceeding one year and fine for an amount not exceeding rupees one lakh.

However, notification in respect of implementation of Companies (Second Amendment) Act, 2002 is yet to be issued by the Central Government.

20. Appointment of Official Liquidator

Section 448 substituted by the Companies (Second Amendment) Act, 2002 provides that:—

(1) For the purposes of this Act, so far as it relates to the winding up of a company by the Tribunal, there shall be an Official Liquidator who—

- (*a*) may be appointed from a panel of professional firms of chartered accountants, advocates, company secretaries, costs and works accountants or firms having a combination of these professions, which the Central Government shall constitute for the Tribunal; or
- (*b*) may be a body corporate consisting of such professionals as may be approved by the Central Government from time to time; or
- (*c*) may be a whole-time or a part-time officer appointed by the Central Government:

Provided that, before appointing the Official Liquidator, the Tribunal may give due regard to the views or opinion of the secured creditors and workmen.

(2) The terms and conditions for the appointment of the Official Liquidator and the remuneration payable to him shall be—

(*a*) approved by the Tribunal for those appointed under clauses (*a*) and (*b*) of sub-section (1), subject to a maximum remuneration of five per cent of the value of debt recovered and realisation of sale of assets;

(*b*) approved by the Central Government for those appointed under clause (*c*) of sub-section (1) in accordance with the rules made by it in this behalf.

(3) Where the Official Liquidator is an officer appointed by the Central Government under clause (*c*) of sub-section (1), the Central Government may also appoint, if considered necessary, one or more Deputy Official Liquidators or Assistant Official Liquidators to assist the Official Liquidator in the discharge of his functions, and the terms and conditions for the appointment of such Official Liquidators and the remuneration payable to them shall also be in accordance with the rules made by the Central Government.

(4) All references to the "Official Liquidator" in this Act shall be construed as reference to the Official Liquidator specified in sub-section (1), or to the Deputy Official Liquidator or Assistant Official Liquidator referred to in sub-section (3), as the case may be.

(5) The amount of the remuneration payable shall—

(*a*) form part of the winding up order made by the Tribunal;

(*b*) be treated as first charge on the realisation of the assets and be paid to the Official Liquidator or to the Central Government, as the case may be.

(6) The Official Liquidator shall conduct proceedings in the winding up of a company and perform such duties in reference thereto as the Tribunal may specify in this behalf:

Provided that the Tribunal may—

(*a*) transfer the work assigned from one Official Liquidator to another Official Liquidator for the reasons to be recorded in writing;

(*b*) remove the Official Liquidator on sufficient cause being shown;

(*c*) proceed against the Official Liquidator for professional misconduct.

However, notification in respect of implementation of Companies (Second Amendment) Act, 2002 is yet to be issued by the Central Government.

21. Official liquidator to be the liquidator

There are official liquidators including deputy and assistant liquidators attached to each High Court. When a winding up order is made, the Court/Tribunal forthwith sends a copy thereof to the official liquidator. By virtue of his position the official liquidator shall be the liquidator of the company. Where the Court/Tribunal so orders, it may appoint the official liquidator as the provisional liquidator. The official liquidator shall cease to be provisional liquidator once a winding up order is made.

22. Audit of liquidator's accounts

The liquidator shall at such times as may be prescribed, but at least twice each year, present to the Court/Tribunal an account of his receipts and payments as liquidator. The said account shall be audited and thereof one copy shall be filed with the Court/Tribunal and another copy with the Registrar, in the e-Form 62 which shall be open to the inspection of the creditors, contributories or other interested persons. [Section 462]

23. Committee of Inspection

At the time of making the winding up order, the Court/Tribunal may give direction to the official liquidator to appoint a committee of inspection to act with liquidator consisting of not more than 12 members, being creditors and contributories. The official liquidator shall, within two months of the direction of the Court/Tribunal, convene a meeting of creditors for the purpose of constitution of the committee. He will also take the approval of the contributories on the formation of the committee. Where there is a difference of opinion between the creditors and the contributories, the official liquidator shall apply to the Court/Tribunal for direction. [Section 464]

24. Statement of affairs to be made to the Official Liquidator

As soon as a winding up order is made, within 21 days of the order or within 12 days of the appointment of a provisional liquidator, where applicable, it shall be the duty of the directors and officers of the company to prepare a statement as to the affairs of the company in the prescribed form and submit it to the official liquidator duly verified.

The responsibility for the preparation of the statement will lie collectively on the directors and officers of the company and it can be submitted within three months as the official liquidator or the Court/Tribunal may direct, if the statement is not ready within 21 days as mentioned above. Any creditor or contributory shall be entitled, by payment of necessary fees, to inspect the statement or ask for a copy thereof. [Section 454]

25. Contents of Statement of affairs

The Statement of Affairs shall contain the following particulars about the company:—

(*a*) the assets of the company separately giving the cash in hand and at Banks and negotiable securities, if any.

(*b*) its debts and liabilities.

(*c*) names, address and occupation of secured and unsecured creditors and the amounts due to them and in the case of secured debts, the particulars of security given, whether by the company or any of its officer, value and date when given.

(*d*) names, address and occupation of the persons from whom money is due to the company and the amount due.

(*e*) such other information as may be prescribed or required by the Official Liquidator.

26. Failure to submit statement of affairs of the company under liquidation

Absence of reasonable cause for committing the default in complying with the order of the official liquidator in filing the requisite statements is made punishable under section 454(5) of the Act. [*Official Liquidator* v *Surya Pratap Singh* (1996) 21 CLA 257 (P&H)].

A person could be punished under section 454(5) only when the default is without reasonable excuse. The liability to submit the statement under section 454 is on the person who is director, manager, secretary, chief officer of the company at the relevant time, which is either the date on which the provisional liquidator was appointed or where no such appointment is made, the date on which the winding up order was passed by the Court (now Tribunal). [*Official Liquidator, Auto Electricals* (*I*) (*P*) *Ltd.* v *P.R. Mehta* (1999) 98 Comp Cas 62 (Raj)].

27. Powers of the Court/Tribunal to order for public examination of promoters, directors, etc.

Where in his report to the Court/Tribunal, the official liquidator stated that in his opinion a fraud has been committed by any person in the promotion or formation of a company or by any officer of the company, the Court/Tribunal shall direct that person to be publicly examined in respect of his act in the formation of the company or the conduct of the business of the company. [Section 478]

28. Dissolution of a company

When the affairs of a company have been completely wound up or where the Court/Tribunal is of the opinion that it is just and reasonable that an order of dissolution should be made, the Court/Tribunal shall make an order that the company be dissolved from the date of the order. The liquidator shall forward a copy of the order to the Registrar within 30 days from the date thereof. The Registrar shall make a record in his books of the dissolution of the company. [Section 481]

MEMBERS' VOLUNTARY WINDING UP

29. Circumstances in which voluntary winding up may be made

A company may be wound up voluntarily, in case—

(*i*) where a company is formed for undertaking a fixed object and the articles provide that the company is to be dissolved on the completion of the object, the company may be dissolved voluntarily where an ordinary resolution is passed at a general meeting;

(*ii*) where the proposal is approved by a special resolution passed at the general meeting of the company. (*See* Appendix 2)

30. Publication of the resolution of winding up

Section 485 provides that where a company has passed a resolution for voluntary winding up, notice of the resolution shall be given within 14 days of the passing of the same by advertisement in the Official Gazette and also in some newspaper circulating in the district where the registered office is situated.

31. Commencement of winding up

In terms of the provisions of section 486 of the Act, a voluntary winding up shall be deemed to commence at the time when the resolution for voluntary winding up is passed by the members.

32. Company may carry on business activities until the order for winding up is passed

In case of *Orkay Industries Ltd.* v *State of Maharashtra* (1999) 32 CLA 94 (Bom), it was held that it could not be said that on the presentation of petition for winding up, the affairs of a company would come to a standstill. Mere presentation of winding up petition would not prevent the company from continuing its business and its directors would not ceased to be directors until an order of winding up is passed by the Court (now Tribunal) or a provisional liquidator had been appointed.

33. Declaration of solvency

Section 488 of the Act provides that in case of a members' voluntary winding up, within five weeks immediately preceding the date of the passing of the resolution a declaration shall be made by two directors or where there are more than two directors, by a majority of the directors, at a meeting of the Board of directors, to the effect that they have made a full enquiry 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 three years from the commencement of the winding up as may be specified in the declaration.

The declaration should also be duly verified by an affidavit and it should be accompanied by a copy of the report of the auditors of the company or the profit and loss account from the date upto which the last such account was prepared and ending with a date on close to the date of declaration as possible and on the balance sheet as on that date. The declaration and the auditor's report shall be filed with the Registrar of Companies with the e-Form 62 before the date of the resolution.

In case where the declaration has not been so made and delivered, it will be treated as a creditors voluntary winding up. Therefore, requirement of section 488(2) is mandatory in nature in as much as not only a declaration is required to be made but the same is required to be delivered within the period as provided under clause (*a*) of sub-section (2) of section 488 of the Companies Act. [*Surat Dyes* v *Arya Silk Mills Pvt. Ltd.* (2005) 125 Comp Cas 212 (Guj)].

34. Appointment and remuneration of liquidator

Section 490 provides that in a members' voluntary winding up, the company in general meeting shall:—

(*a*) appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company; and

(*b*) fix the remuneration of the liquidator or liquidators.

Before the remuneration of the liquidator is fixed as aforesaid, he shall not take charge of his office. The remuneration of the liquidators cannot be increased in any case.

35. Notice of appointment of liquidator to the Registrar

Section 493 provides that the company shall within 10 days of the appointment of the liquidator or liquidators give notice of the appointment to the Registrar with the e-Form 62. Where any vacancy arises in the office of the liquidator, such vacancy shall be filled up by the company in general meeting and notice of the same shall be given to the Registrar.

36. Duties of the liquidator

Where the liquidator is of the opinion that the company will not be able to pay its debts in full within the period stated in the declaration as per section 488, or where that period has expired without the debts having been paid in full, he will call a meeting of the creditors and place before them a statement of the assets and liabilities of the company.

In the event of the winding up continuing for more than a year, the liquidator shall call a general meeting of the company within three months from the end of each year and place before the meeting full details of his acts and dealings and of the position of winding up.

37. Final meeting and dissolution

Section 497 says that where the assets are enough to pay the debts of the company, the liquidator shall call a general meeting and place before it an account of the winding up and how the property has been disposed off. The meeting shall be called by publishing a notice in the Official Gazette and also in some newspaper circulating in the district where the registered office of the company is situated.

Within one week of the meeting, the liquidator shall send to the Registrar and the official liquidator a copy each of the account and make a return to each of them. Where the meeting could not be held for want of quorum, even then the liquidator shall send a return to the above officers within one week of the date of the meeting.

The Official Liquidator shall scrutinise the books and papers of the company and make a report to the Court/Tribunal whether the affairs of the company have not been conducted in a manner prejudicial to the interests of its members or to the public interest and make an order that the company shall be deemed to be dissolved from the date of the report to the Court/Tribunal.

Where the report of the Official Liquidator states that the affairs of the company have been conducted in a manner prejudicial to the interests of its members or to public interest, the Court/Tribunal shall direct the Official Liquidator to make a further investigation. On receipt of the further report of the Official Liquidator, the Court/Tribunal may either make an order that the company shall stand dissolved from the date specified by the Court/Tribunal or make such other order as the circumstances of the case demand.

38. Procedure for members' voluntary winding up

The company which proposes to proceed for voluntary winding up its affairs is required to comply with the following procedure for effective voluntary winding up:—

1. Convene a Board meeting by issuing notice to all the directors of the company as per provisions of section 286.
2. Within five weeks, immediately preceding the date of resolution for winding up, make sure that the company can pay its debts in full within a period of three years, if the company is put to liquidation and make a declaration therein to this effect in Form 149 prescribed under rule 313 of the Companies (Court) Rules, 1959. The declaration should also be verified by an affidavit.
3. Ensure that the aforesaid declaration is accompanied by:—
   (*i*) the audited balance sheet and the profit and loss account ending on the latest practicable date before the date of declaration;
   (*ii*) a statement of the company's assets and liabilities as at that date; and
   (*iii*) a copy of the report of the auditors of the company on the above two documents. [Section 488(2)]
4. Approve in the said Board meeting the draft of the resolution for putting the company into members' voluntary winding up, appointing liquidator(s) and fixing his/their remuneration and it should also fix the date, time, place and agenda of the general meeting. [Sections 484 and 490]

5. If the winding up takes place as per the period or event determined in the articles of association, then the resolution required will be an ordinary resolution, otherwise a special resolution will be required. [Section 484(1)]
6. Confirm that a body corporate is not appointed as a liquidator. [Section 513]
7. The declaration mentioned in Item No. 2 above should be duly verified by an affidavit before a Judicial Magistrate and deliver the same with the concerned Registrar, with the e-Form 62 before the general meeting is held for passing the resolution for winding up. [Section 488(2)(*a*)]
8. Issue notices for the general meeting (not less than 21 days before the meeting) in writing proposing the ordinary or special resolution, as the case may be, with suitable explanatory statement. [Section 484(1)(*a*) and (*b*)] (Appendix 2)
9. Hold the general meeting and pass the ordinary resolution by ordinary majority or special resolution by 3/4th majority for winding up as the case may be.
10. It should be noted carefully that the winding up shall commence from the date and time of passing the requisite resolution by the members at their meeting.
11. In case of the listed company, forward promptly to all the stock exchanges in which the company is listed, 6 copies of notice and a copy of the proceedings of the general meeting.
12. Within 10 days of the passing of the resolution, file a notice with the e-Form 62 electronically with the concerned Registrar for the appointment of liquidator after paying a requisite fee as prescribed under Schedule X to the Companies Act, 1956 in the prescribed manner.
13. Submit to the liquidator a statement on the company's affairs in the prescribed form in duplicate, duly verified in e-Form 58 within 21 days from the commencement of winding up.
14. File the certified copies of the special or ordinary resolution as the case may be for winding up alongwith the explanatory statement with the concerned Registrar within 30 days of its passing in e-Form 23 with the requisite fees as per Schedule X of the Act.
15. Within 14 days of passing of the resolution for voluntary winding up, give a notice of the resolution in the Official Gazette and also advertise at least in two newspapers, one in English and one in local language circulating in the district where the registered office of the company is situated. [Section 485(1)]
16. In case of a listed company, forward promptly to the stock exchange with which the company is listed, 6 copies of the resolution advertised as above.
17. Confirm that the liquidator files a notice of his appointment with the concerned Registrar together with the e-Form 62 in Form 152 of the Companies (Court) Rules, 1959, and publish the same in the Official Gazette in Form 151 of the said rules within 30 days of his appointment. [Section 516 and rule 315 of Companies (Court) Rules, 1959]
18. Also confirm that the liquidator gives notice of his appointment to the Income Tax Commissioner having jurisdiction on the company within 30 days of his appointment. [Section 178 of the Income-tax Act, 1961]
19. If vacancy occurs by death, resignation or otherwise in the office of the liquidator, call a general meeting to fill up the vacancy and also inform to the concerned Registrar about the vacancy and repeat the formalities as in items 12, 15 and 17 hereof.
20. If the liquidator at any time form an opinion that the company will not be able to pay its debts in full within the period stated in the declaration of solvency or that the period has expired without the debts having been paid in full, he has to summon forthwith a meeting of the creditors, and lay before the meeting a statement of the assets and liabilities of the company in Form 150 of the Companies (Court) Rules, 1959. [Section 495 and rule 314 of the Companies (Court) Rules, 1959]
21. In case if the process of winding up continues for more than a year, liquidator shall call a general meeting within 3 months from the end of every year from the date of commencement of winding up, or within such longer period as the Central Government may allow and lay before the meeting

the account of his acts and dealings together with the statements in Form 153 of the Companies (Court) Rules, 1959, and duly verified in Form 154 of the said Rules. [Section 496]

22. Where the case falls under item 21, the meeting of creditors is also required to be like wisely called except, in case of the meeting at the end of the first year where the same shall not be required to be called unless the meeting held under item 20 hereof has been held more than 3 months before the end of the year. [Rule 328 of the Companies (Court) Rules, 1959 and section 498]
23. If the winding up is not concluded within a year after its commencement then the liquidator shall file a statement with the concerned with the e-Form 62 electronically Registrar twice in every year. [Rule 327 of the Companies (Court) Rules, 1959]
24. The first year's statement should be duly audited for the full year, that is the period commencing from the appointment of the liquidator to the end of twelve months, from the commencement of winding up and thereafter subsequent statement in every 6 months. [Form 153 of the Companies (Court) Rules, 1959]
25. The aforesaid 2 statements should be duly verified in Form 154 of the said Rules and file the same with the concerned Registrar, electronically with the e-Form 62 within 12 months from the end of the year. [Rule 327 of the Companies (Court) Rules, 1959 and section 551]
26. The auditor's report should be in the form as agreed to between the Government and the Institute of Chartered Accountants of India, a draft of which may be taken from the concerned Registrar.
27. Even where there is no receipt and payment, the aforesaid statement is required to be filed stating this fact.
28. Complete the winding up by realising all assets and paying of all liabilities and returning the share capital and surplus, if any.
29. The provisions of sections 426 to 432, 452, 487, 491, 511, 511A, 512, 514, 515, 517 to 520, 528 to 549 and 553 to 556 and the prescribed forms and Rules of the Companies (Court) Rules, 1959, should also be noted in this respect.
30. As soon as affairs of the company are fully wound up, prepare the liquidators account of the winding up in Form 156 of the Companies (Court) Rules, 1959 and get the same audited as stated in Item No. 20 above. [Section 497]
31. Call the final general meeting by giving notice in Form 155 of the Companies (Court) Rules, 1959. The notice has to be given not less than 1 month before the meeting in the Official Gazette and should also give advertisement in some newspaper circulating in the district where the Registered Office of the company is situated. [Section 497]
32. If the case falls in Item No. 20 hereof then call the creditors meeting also. [Section 498]
33. The company should also pass the special resolution for disposal of the books and papers of the company when the affairs of the company are completely wound up and it is about to be dissolved. [Section 550]
34. Within a week of the final meeting (and where the case falls within item 16 then within a week of members' meeting or the creditors' meeting, whichever is held later), file a copy of the above account with the concerned Registrar with the e-Form 62 electronically as well as with the Official Liquidator and file a return to each of them in Form 157 of the Companies (Court) Rules, 1959.
35. If required quorum is not present, in the aforesaid meeting, file a return in Form 158 of the Companies (Court) Rules, 1959. [Rule 331 of the Companies (Court) Rules, 1959]
36. The Registrar, on receiving the account and either the return mentioned in sub-section (3) of section 497, or the return mentioned in sub-section (4) of section 497, shall forthwith register them. [Section 497(5)]
37. The Official Liquidator, on receiving the account and either the return mentioned in sub-section (3) of section 497, or the return mentioned in sub-section (4) of section 497, shall as soon as may

be, make a scrutiny of books and papers of the company and the liquidator and all officers, past or present, of the company shall give the Official Liquidator all reasonable facilities to do so.

38. If on such scrutiny the Official Liquidator makes a report to the Court/Tribunal that the affairs of the company have not been conducted in a manner prejudicial to the interest of its members or to the public interest, then, from the date of the submission of the report to the Court/Tribunal, the company shall be deemed to be dissolved. [Section 497(6)]
39. If on such scrutiny the Official Liquidator makes a report to the Court/Tribunal that the affairs of the company have been conducted in a manner prejudicial, as aforesaid, the Court/Tribunal shall by an order direct to the Official Liquidator to make further investigations of the affairs of the company and for that purpose shall vest him with all such powers as the Court/Tribunal may deem fit. [Section 497(6A)]
40. On receipt of the report of the Official Liquidator on such further investigation, the Court/Tribunal may either make an order that the company shall stand dissolved with effect from the date to be specified by the Court/Tribunal therein or make such other order as per the circumstances of the case brought out in the report. [Section 497(6B)]
41. File the special resolution mentioned in item 32 with the concerned Registrar within thirty days of passing in the e-Form 23 electronically after paying the requisite fee prescribed under Schedule X to the Companies Act, 1956 in the prescribed manner.
42. The Court/Tribunal may in a fit case declare the dissolution void within two years of the date of dissolution on application by the liquidator of the company or by any other person who appears to the Court/Tribunal to be interested.
43. A person who obtains the said order of the Court/Tribunal shall file the certified copy of the Court/Tribunal's order with the Registrar in the e-Form 21 electronically within 30 days or such further time as may be allowed by the Court/Tribunal after paying the requisite fee prescribed under Schedule X to of the Companies Act, 1956 in the prescribed manner.

39. Authority to dispose of property after commencement of winding up

In case of *Orkay Industries Ltd.* v *State of Maharashtra* (1999) 32 CLA 94 (Bom), it was held that section 536(2) would come into play and there could be no disposition of property after issuance of order for winding up or appointment of provisional liquidator by the Court (now Tribunal) and transaction relating to payment to creditors would not been wide immediately on presentation of petition for winding up.

40. Disposition made during interregnum not null and void

It is difficult to lay down that all disposition of property made by a company during the interregnum between the presentation of a petition for winding up and the passing of the order for winding up would be null and void. If such a view is taken the business of the company would be paralyzed for, the company may have to deal with very many day-to-day transactions, make payments of salary to the staff and meet urgent contingencies. If any such view is adopted, a fraudulent company may deceive any *bona fide* person transacting business with the company by stage-managing a petition to be presented for winding up in order to defeat such *bona fide* customers.

41. Cheque issued after presentation of winding up petition do not amounts to disposition of the company's property

When once it is held that payment is not void *ab initio* the company cannot contend that it is legally forbidden from making payment of the cheque amount when the payee regarding dishonor of the cheque issued notice. A cheque can be an order on the banker to pay the amount to the holder thereof and no disposition of property would take place until the banker makes the payment pursuant thereto. At the most drawing of a cheque can be considered as a step towards disposition of property but that is insufficient to amount to disposition of property. [*Pankaj Mishra* v *State of Maharashtra* (2000) 36 CLA 316 (SC)].

CREDITORS' VOLUNTARY WINDING UP

Section 498 provides that where the liquidator is of the opinion that the company will not be able to pay its debts in full, it will be considered as the creditors' voluntary winding up and not a members' voluntary winding up and he shall summon a meeting of the creditors as per section 495 of the Companies Act.

42. Meeting of creditors

Section 500 of the Act provides that on the same day or the day following the day of the general meeting at which the resolution for voluntary liquidation is proposed as per section 484, a meeting of the creditors will be held. The notice of the meeting of the creditors will be advertised in the Official Gazette and also in two newspapers circulating in the district where the registered office of the company is situated.

At the creditors' meeting the Board shall place before the meeting a statement of the position of the company's affairs together with a list of creditors of the company and the amounts of their claims.

The meeting will be presided over by one of the directors. If the director did not turn up, the creditors could appoint their own nominee to preside over their meeting.

If default is made in complying with the provision, the company, its Board or the director entrusted with the duty of presiding over the meeting shall each be punishable with fine upto Rs. 10,000 and in case of default by the company, every officer who is in default shall be liable to the like punishment.

43. Adjournment of the meeting

If the meeting of the company is adjourned and the resolution for voluntary winding up is passed at the adjourned meeting, any resolution passed at the meeting of creditors shall have effect as if it had been passed immediately after the passing of the resolution for winding up of the company.

44. Notice of resolution passed by creditors' meeting shall be given to the Registrar

In compliance with the provisions of section 501 of the Act, the notice of the resolution passed at the meeting of creditors in accordance with the provisions of section 500 shall be given by the company to the Registrar with the e-Form 23 electronically within 10 days of passing.

In case if default is made, by the company and every officer of the company who is in default shall be punishable with fine which may extend to Rs. 500 for every day during which the default continues. For the purpose of this section the liquidator of the company shall be deemed to be an officer of the company.

45. Appointment of liquidator

Section 502 gives powers to the members and the creditors to nominate different person to be liquidator at their respective meetings and where they do so, the person nominated by the creditors shall be the liquidator. However, where there is difference of opinion, any director, member or a creditor may move to the Court/Tribunal within 7 days of the nomination made by the creditors for an order regarding nomination of liquidator and the Court/Tribunal may direct that the person nominated by the members will be the liquidator or he may act jointly with the person nominated by the creditors or the Court/Tribunal may also appoint the Official Liquidator to be the liquidator.

45.1. Appointment of Committee of Inspection

The creditors at their first meeting or at any subsequent meeting appoint a Committee of Inspection consisting of not more than five persons. The members of the company in the meeting where the resolution for voluntary winding up is passed or at a subsequent meeting may also appoint such number of persons not exceeding five to act as members of the committee. The creditors in a meeting have the power to resolve that all or any the persons appointed by the company shall not be members. But the Court/Tribunal, on an application made to it, may appoint other person to the Committee in place of the persons nominated by the creditors. [Section 503]

45.2 Body corporate may be appointed as liquidator

Section 513 makes restrictions on the appointment of body corporate as Liquidator in case of a voluntary winding up.

A proviso to sub-section (3) of section 513 provides that notwithstanding anything contained in any other law for the time being in force a body corporate consisting of such professionals as may be approved by the Central Government from time to time shall be qualified for appointment as Official Liquidator under section 448 of the Companies Act, 1956.

45.3 Fixation of remuneration of liquidators

The Committee of Inspection or where there is no such Committee, the creditors may fix the remuneration to be paid to the liquidators. Where it is not so fixed, the Court/Tribunal may fix the same.

45.4 Duty of liquidator to call meetings of the company and its creditors

Section 508 provides that in a creditors' voluntary winding up, the liquidator shall call a meeting of members and a meeting of creditors at the end of every year from the date of commencement of winding up which will be held not later than three months from the end of the year or such longer time as the Central Government may allow. The liquidator shall place before the meeting all details of the winding up.

45.5 Power of Court/Tribunal to appoint or remove liquidator

Where in a voluntary winding up there is no Liquidator acting due to any reason whatsoever, the Court/Tribunal may appoint the Official Liquidator or any other person as the liquidator. On a cause being shown, the Court/Tribunal may remove a liquidator and appoint the Official Liquidator or any other person as the liquidator. The Registrar may also apply to the Court/Tribunal in this regard. If the Official Liquidator is appointed as liquidator under the proviso to sub-section (2) of section 502 or section 515, the remuneration shall be fixed by the Court/Tribunal and shall be credited to the Central Government.

46. Arrangements binding on company if approved by the members

Any arrangement regarding winding up between the company and its creditors shall be binding on the company and the creditors if it is approved by a special resolution of the company in general meeting and by three-fourths in number and value of the creditors. Such arrangement is appealable to the Court/Tribunal by any creditor or contributory within three weeks from the completion of the arrangement.

47. Powers of High Court/Tribunal in creditors voluntary winding up

In a voluntary winding up, the liquidator or any contributory or any creditor may apply to the Court/Tribunal to determine any question arising in winding up or to exercise any power to set aside any attachment or distress against the company or the staying of the proceeding of winding up or the enforcing of calls or any of the powers which the Court/Tribunal may exercise if the company were being wound up by the Court/Tribunal.

Copy of the order of the Court/Tribunal staying the winding up will be filed by the company with the Registrar.

48. Report of the liquidator and issuance of Order by Court/Tribunal for public examination

The Liquidator may, during the course of winding up, make a report to the Court/Tribunal stating that in his opinion a fraud had been committed by:

(*i*) any person in the promotion or formation of the company or

(*ii*) any officer of the company in relation to the company since its formation.

After considering the report, the Court/Tribunal may direct that the concerned person shall attend before the Court/Tribunal and will be examined in public on a day named in the order.

49. Final meeting and dissolution

In terms of the provisions of section 509, as soon as the affairs of the company are wound up, the liquidator shall make up an account showing how the winding up has been conducted and how the property has been disposed of. The liquidator shall call a general meeting of members and a general meeting of creditors by publishing a notice in the Official Gazette at least one month before the meeting and also in some newspapers circulating in the district where the registered office is situated, at least one month in advance.

50. Return to the Registrar and the Official Liquidator

The liquidator shall, within one week after the date of the meetings or where the meetings are held in different dates, within one week of the second meeting, send to the registrar and the official liquidator a copy each of the account placed before the meetings of members and creditors and also a return of the holding of the meetings. If quorum is not present at either of the meeting, that fact must also be intimated to the said two officers within one week of the said meeting. The official liquidator will report the matter to the Court/Tribunal and submit a report whether the affairs of the company have not been conducted prejudicial to the interests of members or public interest. Action similar to the action taken in a members' voluntary winding up as explained above is taken by the Court/Tribunal in dissolving the company.

PROVISIONS APPLICABLE TO EVERY TYPES OF WINDING UP

51. Preferential payments

Section 530 provides that in any winding up, the following payments due at the time of commencement of winding up may be made in priority to all other debts:—

(*a*) all revenues, taxes, cesses and rates due from the company to the Central or a State Government or to a local authority,

(*b*) all wages or salary due to employees in respect of service rendered to the company for the period stated including contribution due under the ESI Act, 1948,

(*c*) all sums due to any employee from provident fund, pension fund, gratuity fund or any other fund for the welfare of employees. Under Notification No. GSR 80(E), dated 17-2-1997, the Central Government, in exercise of the powers conferred by sub-section (2) of section 530, has notified that with effect from 1st March, 1997, that the sum to which priority shall be given under clause (*b*) of section 530(1), namely the items referred to in clause (*b*) above shall not in case of any one claimant exceed the sum of Rs. 20,000 only. The foregoing debts shall rank equally among themselves and be paid in full unless the assets are insufficient to meet them or in which case they will be paid proportionately.

The payments stated in section 529A, namely:—

(*i*) workmen's dues; and

(*ii*) debts due to recovered creditors;

will however be discharged in preference to the preferential payments and such payments shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate proportionately.

52. Wages of workers rank in priority over secured creditors

The protection of section 529A is available only when a company has been wound up, the Official Liquidator has taken over the assets and disbursements are being made by the Official Liquidator in course of the winding up of the company. There was no question of the worker claiming a preferential right or payment while a company was running and carrying on business in the usual course and incurring daily expenses and liabilities. *[Radheshyam Ajitsaria* v *Bengal Chatkal Mazdoor Union* (2006) 69 SCL 73(SC)].

No income tax is payable out of the sale proceed of the assets of the company in liquidation as capital gain tax, advance tax installments and additional tax, if any, under section 143(1A) of Income-tax Act until the dues of secured creditors and workers are paid in full.

The purpose of section 529A is to ensure that workmen should not be deprived of their rights in the event of liquidation of the company. The wages and emoluments of workers upto the date of closure of the company will rank in priority over the secured creditors. [*KTC Tyres* (*India*) *Ltd*. (2003) 52 CLA 191 (Ker)].

Under section 529A dues of workers and debts due to secured creditors are to be treated pari passu and prior to all dues and said section overrides all other claims of other creditors even where a decree has been passed by the Court/Tribunal. [*ONGC vs. Official Liquidator, Ambica Mills Co. Ltd.* (2005) 57 SCL 184 (Guj)].

The money that the company had deducted from the wages of its employees towards their contribution under the Employees' State Insurance Act shall have to be kept apart by the company as that amount is to be held by it in trust.

As and when the sale of the assets and properties of the company is effected the bank as well as Official Liquidator, whoever sold them, should kept apart a sum equivalent to the amount due under these two heads and send intimation to the corporation about the sale of the properties and availability of the amount due to the corporation. [*Central Bank of India* v *Recovery Mamlatdas & Others* (1996) 2 Comp. LJ 322 (Guj)].

It was held in the case of *Textile Labour Association* v *Official Liquidator* (2004) 16 ILD 725 (SC) that the effect of sections 529 and 529A is that the workmen of the company become secured creditors by operation of law to the extent of the workmen's dues provided there exists secured creditor by contract. If there is no secured creditor then the workmen of the company become unsecured preferential creditors under section 529A to the extent of the workmen dues. The purpose of section 529A is to ensure that the workmen should not be deprived of their legitimate claims in the event liquidation of the company and the assets of the company would remain charged for the payment of the workers' dues and such charge will be *pari passu* with the charge of the secured creditors. There is no other statutory provision overriding the claim of the secured creditors except section 529A. Therefore, section 529A will override all other claims of other creditors even where a Court has passed a decree.

It was observed in *Khimjibhai Sanabhai Parmar* v *Sevalaia Cement Works* (2005) 60 SCL, 496 (All), that even one employee is enough to bring about the disaster in the industrial sphere if he is allowed to maintain a winding up petition as a creditor. There is no dispute about the fact that section 529A confers preferential rights of the workmen and within the meaning of this section, workmen's dues are also considered to be the debts due to them by the company and such dues are put at par with the debts of the secured creditors and such debts are to be paid in priority to all other debts. This section, however, comes into play only after the winding up order is passed by the Court (now Tribunal). Till such order is passed, the Court cannot and should not draw analogy from this section that even during the subsistence of the winding up petition, the workman's' dues are the debts due to them by the company and they are the creditors of the company. The right to be heard in the winding up petition legally and properly filed, is conferred on the workmen only because if some unscrupulous creditors for achieving their own objects want to bring an end to the company which affect the employment of the workmen, they can come forward before the Court/Tribunal and oppose any order of winding up. In rarest cases, the workmen come before the Court (now Tribunal) and pray for the winding up of the company.

53. Right of secured creditors to realise their debts from the company under winding up

Bank, financial institutions, suppliers of goods or services and trade creditors are also main backbones of any industry or business organization and at their peril or disadvantages, unscrupulous management of companies must not be allowed to defend winding up petitions under guise of worker's interests. [*UTI Bank Ltyd.* v *Shree Rama Multitech Ltd.* (2005) 58 SCL 328 (Guj)].

In the case of *ICICI Ltd.* v *Srinivisan Agency* (96) 774, it was held that receiver appointed by a Civil Court on being approached by a secured creditor would basically look after the interest of that creditor. So far as priority of secured creditor claim is concerned the Court (now Tribunal) would not transfer the proceeding and will take care of the interest of other secured creditors. The Court will also appraise itself about whether dues of workmen were outstanding and their extent. The Court will also see that whether after the assets of the company allowed to be used to satisfy the debt of secured creditors it will be possible to satisfy the workmen's dues *pari passu*.

Section 439 contains provisions as to the applications for winding up. Clause (b) of sub-section (1) thereof provides that an application to the court for winding up of a company shall be by petition presented, subject to the provisions of this section, *inter alia*, by any creditor or creditors including any contingent or prospective creditor or creditors. Section 433 enumerates the circumstances in which a company may be wound up by the court.

Where a debt is bona fide disputed and substantial questions are raised, a petition for winding up of a company on the allegation that the said company neglects or omits without reasonable cause to pay its debt, is not maintainable even if the debt is otherwise admitted. [*Ferro Alloys Corporation Ltd.* v *Rjhns Steel Ltd*.].

In the case of *Madhusudan Gordhandas and Co.* v *Madhu Woollen Industries Pvt. Ltd*. AIR 1971 SC 2600; (1972) 42 Comp Cas 125 the apex court has held that if the debt is *bona fide* disputed and the defence is a substantial one, the court will not wind up the company. The apex court has held that the principles on which the court acts are first that the defence of the company is in good faith and one of substance; secondly, the defence is likely to succeed in point of law; and thirdly, the company adduces prima facie proof of the facts on which the defence depends. In other words, if the company sought to be wound up is likely to succeed in its defence on the point of law, like limitation, the winding up thereof, cannot be ordered.

By virtue of section 38C of the Bombay Sales Tax Act, 1959, Maharashtra State would have charge on property of company in liquidation for recovery of its dues under said Act, if not a first charge to exclusion of secured creditors and workers, its claim for recovery of said dues would have to be considered along with other secured creditors and workers on *pari passu* basis by virtue of section 529A. On above said reasoning State is a secured creditor of company in liquidation also in relation to dues receivable under provision of the Maharashtra Sales or State of Karnataka, arising under provisions of Central Sales Tax Act, would have to be considered along with other secured creditors and workers of company in liquidation on pari passu basis. [*State of Maharashtra* v *Official Liquidator, Reliance Heat Transfer* (*P*) *Ltd*. (2004) 53 SCL 158 (Bom)].

54. Fraudulent preference

Section 531 of the Companies Act, provides that any action taken by a company within six months before commencement of winding up like a transfer of its property or payment to a creditor in preference to other claims which will defraud the lawful claims of the creditors of a company are known as fraudulent preference. The mere fact of the transfer, payment or other act being within six months prior to the petition is not by itself insufficient to avoid it as invalid under this section in the absence of evidence to show that the transfer was made within a view to give preference. [*Official Liquidator* v *Victor Chit Fund* (*P*) *Ltd*. (1972) 42 Comp Cas 396 (Del)].

55. Liability for fraudulent conduct of business

Section 542 gives power to the official liquidator or the liquidator or any creditor or contributory to apply to the Court/Tribunal, if it appears that any business of a company has been carried on with intent to defraud creditors of the company; or any other person or for any fraudulent purpose. The Court/Tribunal on hearing the application, if it thinks proper so to do, may declare that any persons who were knowingly parties to the carrying on of the business 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/Tribunal may direct. Where the Court/Tribunal makes any such declaration, it may give such further directions for giving effect to the declaration.

Whenever it is find that the deceased person had by his wrong diverted either property or the proceeds of the property belonging to someone else into his own estate, recourse could be had to that estate through the legal representatives of the deceased to recover it. Legal representatives would not be liable for any sum beyond the value of the estate of the deceased in his hand. [*Official Liquidator* v *Partha Sarthi Sinha* AIR 1983 SC 188].

In the case of *Official Liquidator* v *Ram Swarup* (1997) 88 Comp Cas 569 it was held that object of section 542(1) is to make the discharge of debts and other liabilities of the company consequent on the fraudulent conduct of the business of the company. While sub-section (1) provides for the declaration of the personal liability of the persons concerned with fraudulent conduct of business, sub-section (2) provides for giving of appropriate directions for the purpose of giving effect to that declaration.

56. Deposit of money by liquidator

Every official liquidator shall, as may be prescribed, pay the moneys, received by him as liquidator of any company, into the public account of India in the Reserve Bank of India.

Even liquidator, in a voluntary winding up, shall, as may be prescribed, pay the money received by him as such into a scheduled bank to the credit of a special banking account opened by him and called "the liquidation account of ……...........….. company limited/company private limited/company". The liquidator cannot keep more than Rs. 500 with him except with the permission of the Court/Tribunal.

Appendix 1

Specimen of the resolution of the Board for voluntary winding-up

RESOLVED THAT the consent of the Board of directors of the Company be and is hereby accorded to voluntarily wind up the affairs of the Company in accordance with the provisions of section 484 of the Companies Act, 1956 subject to the approval of members in general meeting.

RESOLVED FURTHER THAT pursuant to section 488 of the Companies Act, 1956, the Board of directors have made a pragmatic assessment of the affairs of the company and have reasonable grounds to form the opinion that the company will be able to pay its debts in full within a period of one year after realising the assets belonging to the Company.

RESOLVED FURTHER THAT the Declaration of Solvency alongwith an affidavit to verify the declaration, and auditor's report thereon, a draft of which as placed before the Board duly initialed by the chairman for the purpose be and is hereby considered and approved and all the directors of the company be and are hereby authorised to sign the declaration and affidavit and to file the same to the Registrar of Companies.

RESOLVED FURTHER THAT Shri VKP, the director of the company be and is hereby authorised to do all such acts, deeds and things as may be required to implement the above said decision of the Board and to issue the notice of the extra ordinary general meeting as placed before the Board duly initialed by the Chairman for the purpose of identification.

Appendix 2

Specimen of the notice of the Extraordinary General Meeting

NOTICE is hereby given that an Extraordinary General Meeting of the members of XYZ PRIVATE LIMITED shall be held at the Registered Office of the Company at "SWAPNIL", Rambagh, Collectorate Area, Ratlam (MP) on …………., the xx.xx.xzxxx at 11.00 A.M. to transact the following special business:

SPECIAL BUSINESS:

1. To consider and if thought fit, to pass with or without modification(s), if any, the following resolution as special resolution:

RESOLVED THAT pursuant to the provisions of section 484(1)(*b*) of the Companies Act, 1956, the consent of the members of the Company be and is hereby accorded to wind up the affairs of the Company as the members' voluntary winding up, w.e.f. xx,xx.xxxx

2. To consider and if thought fit, to pass with or without modification(s), if any, the following resolution as special resolution:

RESOLVED THAT pursuant to the provisions of section 490 of the Companies Act, 1956 Shri S.L. Chaplot s/o Shri Sohan Lal Chaplot, Chartered Accountant of Ratlam be and is hereby appointed as 'the Liquidator of the Company for the purpose of the members' voluntary winding up of the affairs of the Company.

FURTHER RESOLVED THAT the consent of the members of the Company be and is hereby accorded to sanction the remuneration of liquidator of Rs. 5,000 only (Rupees Five Thousand only) in addition to the actual out of pocket expenses for the winding up of the affairs of the Company.

FURTHER RESOLVED THAT Shri S.L. Chaplot, the liquidator be and is hereby authorised to exercise all the powers as per the provisions of the Companies Act, 1956 to effectively winding up the affairs of the Company.

3. To consider and if thought fit, to pass with or without modification(s), if any, the following resolution as ordinary resolution:

RESOLVED THAT notwithstanding the appointment of liquidator the Board of Directors of the Company be and is hereby authorized to exercise all the powers in consideration with the liquidation of the Company like filing of statement of affairs with the liquidator, filing of return with the Registrar of Companies, filling up vacancy in the office of liquidator and such other matters incidental to the liquidation of the Company.

BY ORDERS OF THE BOARD

Ratlam, VKP

Date: xx.xx.xxxx DIRECTOR

Notes.—

1. A member entitled to attend and vote at the meeting, is entitled to appoint a proxy to attend and vote instead of himself and the proxy need not be a member. Proxy in order to be effective must be received by the Company not less than 48 hours before the meeting.
2. Explanatory statements setting out the material facts in respect of item nos. 1 and 2 are annexed hereto.
3. All documents referred to in the accompanying notice and explanatory statements are open for inspection at the Registered Office of the Company on all working days, except Saturdays, between 11.00 A.M. to 1.00 P.M.

ANNEXURE TO THE NOTICE

EXPLANATORY STATEMENT IN PURSUANT TO THE PROVISIONS OF SECTION 173(2) OF THE COMPANIES ACT, 1956 IN RESPECT TO THE SPECIAL BUSINESS

Item Nos. 1 and 2

The Company was formed for the purpose of dealing in chemicals, drugs, pharmaceuticals, intermediates, dyes, solvents, formulations, laboratory chemicals and reagents. Initially the business of the Company was quite remunerative and earned adequate profits on capital invested. But as the members are aware that the Company is not doing any business activities for the last 2-3 years. The Board of directors of the Company considered the matter and was of the opinion that in view of the non-availability of business prospects, and long-term financial resources it is not financially viable to carry on the business activities. It therefore does not serve any fruitful purpose to maintain the status of the Company. The directors of the Company feel that there is no alternative but to put the Company into voluntary winding up, realise the assets thereof and distribute the proceeds to the members.

The Board made a pragmatic assessment of the affairs of the Company and has reasonable grounds to form the opinion that the Company will be able to pay its debts in full within a period of one year after realising the assets belonging to the Company.

On the basis of the assessment made by your Board of directors, the Board passed a resolution declaring solvency of the Company at a meeting held on the xx.xx.xxxx and that such declaration shall be delivered to the Registrar accompanied by a report of the auditors of the Company, as required under section 488 of the Companies Act, 1956.

Your approval is required for the voluntary winding up of the Company as given in item No. 1.

Your approval is also required for appointing Shri S.L. Chaplot, as liquidator of the Company at a remuneration of Rs. 5,000 in addition to reimbursement of actual out of pocket expenses.

The above said declaration of solvency is available for inspection at the registered office of the Company during business hours on any working day till the date of the meeting.

None of the directors of your Company are interested in the proposed resolution, except to the extent of their share holdings in the Company.

BY ORDERS OF THE BOARD

Ratlam, VKP

Date: xx.xx.xxxx DIRECTOR

Appendix 3

Specimen of the Board resolution for authorising the Bankers' to act on the instructions of the liquidator

Note.—The Chairman should inform the Board the name of the liquidator of the Company as appointed by the members at their extraordinary general meeting by passing a special resolution in terms of the provisions of section 484(1)(*b*) and 490 of the Companies Act, 1956 for members' voluntarily wounding up the affairs of the Company.

The Chairman should also intimate the Board that after the appointment of the liquidator by the members, all the powers of the Board of directors have automatically ceased and now vest with the liquidator duly appointed by the members. Therefore, it is necessary to give copy of the resolution of the general meeting to the Bank to act upon the signature and instructions of the liquidator Shri S.L. Chaplot.

Thereafter the following Resolution should be passed unanimously/by simple majority:

RESOLVED THAT the Board of directors of the Company be and hereby confirm that Shri S.L. Chaplot, has been appointed as the liquidator of the Company by the members at their Extraordinary General Meeting held on xx.xx.xxxx is vested with all the powers of the Board of directors to conduct the affairs of the Company in terms of the provisions of the Companies Act, 1956.

FURTHER RESOLVED THAT the Bankers of the Company be and are hereby requested to act upon the instruction as may be given by the liquidator, Shri S.L. Chaplot.

FURTHER RESOLVED THAT the director of the Company be and are hereby authorised to attest the signature of Shri S.L. Chaplot, the liquidator of the Company.

Appendix 4

Specimen of Declaration of Solvency

Form 149

[*See* rule 313]

Members' Voluntary winding up

Declaration of Solvency

Embodying a statement of assets and liabilities

(Pursuant to section 488)

Name of the Company : XYZ PVT. LTD.

Presented By : Shri VKP, the director of the Company

We (1) Shri NKP R/o 9, Bajaj Khana, Ratlam, (2) Shri SKP R/o Ratlam, and (3) Shri VKP R/o Ratlam, (M.P.) being the majority of the directors of XYZ PVT. LTD. duly authorised by the Board by unanimous consent of all the directors of the Company do solemnly affirm and declare that we have made full enquiry into the affairs of the Company, and that having done so we have formed the opinion that this Company will be able to pay its debts in full within a period not exceeding one year from the date of commencement of winding up, and we append a statement of Company's assets and liabilities as at xx.xx.xxxx being the latest practicable date before the making of this declaration and we make this solemn declaration believing the same to be true.

For, XYZ PVT. LTD.
(1) NKP
(2) SKP
(3) VKP

Solemnly affirmed and declared at Ratlam the ……. day of ….. before me.

Signatures
Notary Public

XYZ PVT. LTD.

Statement as at ...., 2006 showing assets at estimated realisable values and liabilities expected to rank

ASSETS	Book Value Rs.	Estimated to realise Rs.
1. Cash in Hand		
2. Balance with Scheduled Bank		
3. Deposits with Government Deptt.& other		
4. Loans & Advances		
5. Advances recoverable in cash or in kind or for value to be received	___________	___________
Total Rs.	___________	___________

LIABILITIES	Estimated to rank for payment (to the nearest Re.)	
1. Estimated cost of liquidation and other expenses including interest accruing until payment of debts in full.	___________	___________
Total Rs.	___________	___________

Total estimated value of assets Rs.
Total liabilities Rs.

Estimated surplus after paying debts in full

Remarks
Dated ....

Signatures
Director of the Company

Appendix 5

Specimen of the Auditor's Certificate

THIS IS TO CERTIFY THAT, we the auditors of the Company M/s XYZ PVT. LTD. having its Registered Office at 'Swapnil', Rambaugh, Collectorate Area, Ratlam (M.P.) have audited the Books of accounts for the period xx.xx.xxxx to xx.xx.xxxx and on the basis of the information and explanation furnished to us and the Statement of Affairs of the Company drawn from the Books of accounts of the Company verified by us, we do hereby confirm and certify that:

The Company is having adequate assets to discharge its liabilities and shall be in a position to pay all its liabilities, claims, demands, actions, proceedings, losses, damages, recoveries, judgments, costs, charges and expenses which may be made or brought or commenced against the Company or which the Company may have to bear, pay or suffer directly or indirectly on account of any debt or liabilities of the said Company for the period up to xx.xx.xxxx on which it has stopped its operations and is wound up or thereafter, in full within a period not exceeding three years from the date of commencement of the winding up.

We further certify that on the date of balance sheet as at xx.xx.xxxx the affairs of the Company may be wound up as the members' voluntary winding up pursuant to the provisions of section 484(1)(b) of the Companies Act, 1956.

For, PRAMOD TILWANI & ASSOCIATES
CHARTERED ACCOUNTANTS

Ratlam
xx.xx.xxxx

PRAMOD TILWANI
PROPRIETOR

Appendix 6

Specimen of the Affidavit by the Directors

AFFIDAVIT

We (1) Shri NKP R/o 9, Bajaj Khana, Ratlam, (2) Shri SJ R/o 1, Rajput Boarding Colony, Ratlam, (3) Shri SKP R/o Ratlam, (4) Shri VKP R/o Ratlam, (M.P.) and (5) Shri MKS R/o Ratlam, do solemnly affirm and say as follows:—

1. That we are the directors of M/s. XYZ PVT. LTD. a Company registered under the Companies Act, 1956 and having its Registered Office at 'Swapnil', Rambaug, Collectorate Area, Ratlam (M.P.).
2. That the statements made in the Declaration of Solvency filed/to be filed with the Registrar of Companies under section 488 of the Companies Act, 1956 are based on the information derived from the records of the Company and are made true to the best of our knowledge and belief.
3. That the affairs of the Company have been properly inquired into by us and in our opinion the affairs of the Company shall be voluntarily.
4. That the Company is solvent and can meet its debts properly.
5. That the information given under Para No. 1 to 4 is true and correct to the best of our knowledge and belief and that it conceals nothing and that no part of it is false.

For, **XYZ PVT. LTD.**

SKP	NKP	MKS	SJ	VKP
DIRECTOR	DIRECTOR	DIRECTOR	DIRECTOR	DIRECTOR

Place: xxxxxx
Date: xx.xx.xxxx

(Public Notary)

Appendix 7

Specimen of the notice for appointment of liquidator

Regn. No. of Company: 10 - XXXXX   Nominal Capital: Rs. 10.00 Lakhs

THE COMPANIES ACT, 1956

NOTICE OF APPOINTMENT IN THE OFFICE OF LIQUIDATOR IN THE EVENT OF MEMBERS' VOLUNTARY WINDING UP

(Pursuant to section 493)

Name of the Company : XYZ PVT. LTD.
Presented by : Shri VKP, Director of the Company

To,

The Registrar of Companies
Madhya Pradesh & Chhatisgrah
Sanjay Complex, IInd Floor,
'A' Block, Jayendra Ganj,
Gwalior (M.P.)

Dear Sir,

At the Extraordinary General Meeting of the members of the said Company, duly convened and held at the Registered Office of the Company at Swapnil, Rambaugh, Collectorate Area, Ratlam (M.P.) on 22nd August, 2005, the following resolutions were duly passed:

A. RESOLVED THAT pursuant to the provisions of section 484(1)(*b*) of the Companies Act, 1956, the consent of the members of the Company be and is hereby accorded to wind up the affairs of the Company as the members' voluntary winding up, w.e.f. xx.xx.xxxx.

B. RESOLVED THAT pursuant to the provisions of section 490 of the Companies Act, 1956 Shri S.L.Chaplot s/o Shri Sohan Lal Chaplot, Chartered Accountant of Ratlam be and is hereby appointed as 'the Liquidator' of the Company for the purpose of the members' voluntary winding up of the affairs of the Company.

FURTHER RESOLVED THAT the consent of the members of the Company be and is hereby accorded to sanction the remuneration of liquidator of Rs. 5,000 only (Rupees Five Thousand only) in addition to the actual out of pocket expenses for the winding up of the affairs of the Company.

FURTHER RESOLVED THAT Shri S.L. Chaplot, the liquidator be and is hereby authorised to exercise all the powers as per the provisions of the Companies Act, 1956 to effectively winding up the affairs of the Company.

C. RESOLVED THAT notwithstanding the appointment of liquidator the Board of Directors of the Company be and is hereby authorized to exercise all the powers in consideration with the liquidation of the Company like filing of statement of affairs with the liquidator, filing of return with the Registrar of Companies, filling up vacancy in the office of liquidator and such other matters incidental to the liquidation of the Company.

For, XYZ PVT. LTD.
VKP
DIRECTOR

Dated the xx.xx.xxxx

Appendix 8

Specimen of the notice of appointment of liquidator

Form 151

[*See* rule 315]

Members' (or Creditors') Voluntary Winding up

NOTICE OF APPOINTMENT OF LIQUIDATOR PURSUANT TO SECTION 516

Name of the Company : XYZ PRIVATE LIMITED

Nature of Business : Trading of drugs and chemicals, presently not carrying on any business activity

Address of the Registered Office: SWAPNIL, RAMBAGH, COLLECTORATE AREA, RATLAM, (M.P.)

Name(s) and Address(es) of Liquidator(s): Shri S. L. Chaplot
700, Katjoo Nagar,
Ratlam (M.P.)

Date of Appointment: xx.xx.xxxxx

By whom Appointed: Members at the Extraordinary General Meeting held on 22nd August, 2005

Appendix 9

Specimen of notice of appointment of liquidator

Form 152

[*See* rule 315]

Members' (or Creditors') Voluntary Winding up

NOTICE OF APPOINTMENT OF LIQUIDATOR PURSUANT TO SECTION 516

Name of the Company: XYZ PRIVATE LIMITED

Nature of Business: Trading of drugs and chemicals, presently not carrying on any business activities

Presented by: Shri. S.L. Chaplot, Liquidator

To,

The Registrar of Companies
Madhya Pradesh and Chhatisgrah
Sanjay Complex, IInd Floor,
'A' Block, Jayendra Ganj,
Gwalior (M.P.)

COMPANY NO.: 10 - XXXXX

I, S.L. Chaplot R/o 700, Katjoo Nagar, Ratlam (M.P.), practicing as a Chartered Accountant, hereby give notice that, I have been appointed as the liquidator of the Company XYZ PRIVATE LIMITED by the special resolution passed by the members of the Company at their Extraordinary General Meeting held on xx.xx.xxxx.

S.L. Chaplot
Liquidator

Dated xx.xx.xxxx Signature

Appendix 10

Specimen of the affidavit verifying account

Form 154

[*See* rule 327]

In the High Court at Madhya Pradesh, Bench, Indore

Original Jurisdiction

In the matter of the Companies Act, 1956

and

In the matter of XYZ PVT. LTD.

Name of the Company: XYZ PRIVATE LIMITED

Nature of proceeding: Voluntary winding up of the Company by the members

Date of commencement of winding-up: xx.xx.xxxxx

AFFIDAVIT VERIFYING ACCOUNT

I, S.L. Chaplot, Liquidator of the above named Company do solemnly affirm and say:

That the account hereunto annexed and marked 'A' contains a full and true account of my receipts and payments in the winding up of the above named Company from the xx.xx.xxxx, to the 30th day of September, 2005, inclusive, and that I have not, nor has any other person by my order or for my use during such period, received or paid any moneys on account of the said Company other than and except the items mentioned and specified in the said account.

I further say that the particulars in the annexed account marked 'A' and the annexures thereto, with respect to the proceedings in and position of the liquidation, are true to the best of my knowledge and belief.

Solemnly affirmed by the official liquidator of this Court at .... this .... day of ...…... before me.

S.L. CHAPLOT
Liquidator

Appendix 11

Specimen of the notice of the final General meeting

The Companies (Court) Rules, 1959

Form 155

[*See* rule 329]

Name of the Company: XYZ PVT. LTD.

NOTICE is hereby given in pursuance of section 497 of the Companies Act, 1956 that a general meeting of the members of the above named Company will be held at the registered office of the Company at Swapnil, Rambaugh, Collectorate Area, Ratlam (M.P.) 457 001 at 11.00 A.M. on ……….. the xx.xx.xxxxfor the purpose of having an account laid before them showing the manner in which the winding up has been conducted and the property of the Company disposed off and for hearing any explanation that may be given by the liquidator and also for determining by a special resolution of the Company, the manner in which the books of accounts and documents of the Company and of the liquidator shall be disposed off.

Ratlam — S.L. Chaplot

xx.xx.xxxx — Liquidator of the Company

Appendix 12

Specimen of the liquidator's statement of account of the winding up of the members' voluntary winding up

Form 156

[*See* rule 329]

Winding up by members' voluntary winding up

Liquidator's Statement of Account of the Winding up of the
Members' Voluntary winding-up)
[Pursuant to section 497]

1. Name of the Company : XYZ PRIVATE LIMITED.
2. Nature of proceedings* :
3. Date of commencement of the winding up : xx.xx.xxxx
4. Name and address of the liquidator : Shri S.L.Chaplot,
   700, Katjoo Nagar, Ratlam (MP)

Statement showing how the winding up has been conducted and the property of the Company has been disposed of from xx.xx.xxxx (commencement of winding up) to xx.xx.xxxx (close of winding up).

Receipts	*Estimated Value Rs. P.*	*Value Realised Rs. P.*	*Payments*	*Payments*	
Assets			**Legal charges**		
Cash at Bank	XXXX.XX	XXXX.XX	Liquidator's remuneration:—	XXX.XX	XXX.XX
Cash in hand	XXXX.XX	XXXX.XX	Where applicable—		
Marketable Securities	XX.XX	XX.XX	per cent on Rs.X.XX realised X.X		
Bills Receivable	XX.XX	XX.XX	... per cent on Rs..distributed		
Trade Debtors	XX.XX	XX.XX			
Loans and Advances			Total Rs.	XXX.XX	XXX.XX
Stock in Trade	XX.XX	XX.XX			
Work in Progress	XX.XX	XX.XX	[Fixed by the members at their EGM]		
Freehold Property	XX.XX	XX.XX	Auctioneers and valuers charges.	XX.XX	XX.XX
Leasehold Property	XX.XX	XX.XX	Costs of possession and	XX.XX	XX.XX

Receipts	*Estimated Value Rs. P.*	*Value Realised Rs. P.*	*Payments*	*Payments*	
Plant and Machinery	XX.XX	XX.XX	maintenance of estate.		
Furniture, Fitting, utensils	XX.XX	XX.XX	Costs of notices in Gazette and Newspapers	XX.XX	XX.XX
Patents, Trade Marks, etc.	XX.XX	XX.XX	Incidental outlay (establishment charges and other expenses	XX.XX	XX.XX
Investments other than Marketable Securities	XX.XX	XX.XX	of liquidation) Total costs and charges Rs.	XXX.XX	XX.XX
Surplus from Securities	XX.XX	XX.XX			
Unpaid Calls at commencement of winding up	XX.XX	XX.XX	(*i*) Debentureholders:— Payment of Rs...per Rs...	XX.XX	XX.XX
Amounts received from calls on contributories made in the winding up	XX.XX	XX.XX	Debenture Payment of Rs...per Rs... Debenture	XX.XX	XX.XX
Receipts per Trading Account	XX.XX	XX.XX	Payment of Rs...per Rs... Debenture debenture	———	———
Other Property	XX.XX	XX.XX	(*ii*) Creditors:		
			Preferential	XX.XX	XX.XX
			Unsecured:—	XX.XX	XX.XX
	———	———	Dividend(s) of in the Rupee	XX.XX	XX.XX
Total	XXXXXX	XXXXXX			
Less			[The estimate of the amount	XX.XX	XX.XX
Payments to redeem			expected to rank for dividend		
Costs of execution			was Rs......]		
Payments per trading			(*iii*) Returns to contributors-		
Account	—	—	.... P. per rupee...+Share		
			.... P. per rupee...+Share		
Net realisations	XXXXXX		.... P. per rupee...+Share		
			Add balance		
Rs.	XXXXXXX			XXXXXX	

* State the number, preferential creditors need not be separately shown if all creditors have been paid up in full.

\+ State nominal value and class of shares.

(1) The following assets estimated to be of value of Rs. NIL have proved to be unrealisable:—

(Give details of the assets which have proved to be unrealisable)

(2) Amount paid into the companies liquidation account in respect of:—

(*a*) Unclaimed dividends payable to creditors in the winding up: Rs. XXX

(*b*) Other unclaimed distributions in the winding up: Rs. XXX

(*c*) Moneys held by the Company in trust in respect of dividends or other sums due before the commencement of the winding up to any person as a member of the Company: Rs. XXX

(3) Add here any remarks the Liquidator thinks desirable:—

Dated, xx.xx.xxxx (SIGNATURE)

Liquidator

I declare that the above statement is true and contains a full and accurate account of the winding-up from the commencement to the close of the winding up.

Dated.xx.xx.xxxx (S.L.CHAPLOT)

Appendix 13

Specimen of the return of final winding up meeting

[*See* rule 331]

Members' Voluntary Winding up

Form 157

Return of Final winding up meeting

Name of Company : XYZ PRIVATE LIMITED

Presented by : S.L.Chaplot, the liquidator of the Company

To

The Registrar of Companies
Madhya Pradesh and Chhatisgrah,
Sanjay Complex,
'A' Block, Jayendra Ganj,
Gwalior (M.P.)

I, S.L. Chaplot R/o 700, Katjoo Nagar, Ratlam (M.P.) being the liquidator of XYZ PRIVATE LIMITED, hereby inform you that the general meeting of the Company was duly held on xx.xx.xxxxpursuant to section 497 for the purpose of laying before it an account (of which a copy is attached hereto) showing how the winding up of the Company has been conducted, and the property of the Company disposed off, and that the said account was duly laid before the said meeting.

A copy of the minutes of the meeting is also annexed.

Dated the xx.xx.xxxx

S.L. Chaplot
Liquidator
Signature(s)

Chapter 2

Defunct Company

Synopsis

Important Provisions at a Glance

Sl. No.	*Sections*	*Matters dealt with*	*e-Form Nos.*
1.	560	Power of Registrar to strike defunct company off the Register of companies.	61

1. Defunct companies

The expression 'Defunct Companies' denotes those companies, which do not exist and are almost dead.

It is for the Registrar of Companies of the State or Union Territory where the registered office of the company is situated, to determine whether a company is presently in operation or not.

2. Powers of the Registrar of Companies to strike off names of defunct companies

Section 220 stipulates filing of copies of balance sheet, etc., with the concerned Registrar of Companies. Where it is established from the scrutiny of latest available balance sheet that the concerned company does not have adequate assets to meet the costs of liquidation, the course followed is to strike the name of the company off the Register of companies pursuant to section 560 of the Companies Act, 1956.

3. Circumstances in which the Registrar can exercise his power

The Registrar of Companies has power under section 560 to remove the names of defunct companies under the following circumstances:—

(*i*) where he has reasonable cause to believe that a company is not carrying on business or in operation; or

(*ii*) in case where a company is being wound up, he has reasonable cause to believe that no liquidator is acting; or

(*iii*) in case where a company is being wound up, he has reasonable cause to believe that the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months; or

(*iv*) where a private company, with a paid up capital of less than rupees one lakh or a public company, with a paid up capital of less than rupees five lakh, existing on 13th December, 2000 [on the commencement of the Companies (Amendment) Act, 2000] fails to enhance its paid up capital within a period of two years. [Sections 3(3), 3(4) and 3(5)]

4. Meaning of 'in operation'

Though a company is in course of being wound up and not carrying on any business, yet so long as it remains undissolved, it will be considered to be in operation, *Re, Outlay Assurance Society* (1887) 34 Ch D 479. [Section 560(1)]

5. Registrar's notice to strike off the name from the Register

Copy of the notice under section 560(3) should also be sent to the Income-tax Authorities also. [File No. 6/89/59-CL III, dated 10th November, 1959].

6. Existing liability

It was decided in the case of *Srikishen Dhoot* v *Kamalapurkar* (1956) 1 Comp LJ 233: (1965) 35 Comp Cas 913 (DB)(AP); *Narmada Choudhury* v *Motor Accidents Claims Tribunal* AIR 1984 Gau 16 that the effect of clause (*a*) is only to continue the liability of any director or other officer, which existed prior to the dissolution of the company. It does not enhance the liability such as making them personally liable, when they were not so liable before. [Sub-section (5), proviso (*a*)]

7. Court/Tribunal's jurisdiction

This clause has now the effect of giving jurisdiction to the Court [Powers vested with the Tribunal *vide* the Companies (Second Amendment) Act, 2002. However, necessary notification in respect of the implementation of the same is yet to be issued by the Department] to order a winding up, even without the company being first restored, though the proper course is first to apply for restoration of the name of the company to the Registrar and then to apply for a compulsory winding up order, or the same petition may pray for both restoration and winding up. *Re, Cambridge Coffee Room Association* (1952) 1 All ER 112. In view of the proviso (*b*) of sub-section (5), a winding up order may be passed without first getting the dissolution order vacated.

8. Procedure to be followed by the Registrar

The procedures for striking the name off the Register of companies have been elaborated in section 560 for different circumstances as discussed hereunder:

8.1 Registrar on believing that a company is not carrying on business or in operation shall take the following steps

(*a*) *Inquiry to know whether company is in operation or not*

If the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he will send a letter by ordinary post to the company under section 560(1) inquiring about the same.

All the letters or notices to be sent to a company by the Registrar under section 560 should be addressed to its registered office, or if no office has been registered, to the care of some director, manager, secretary or any responsible officer of a company. If no such address is available with the Registrar, he shall send such notices to each of the subscribers to the Memorandum of Association. [Section 560(8)]

(*b*) *Dispatch of registered letter in case no response received against first letter*

If the Registrar receives no response to his first letter within one month, he shall within next fourteen days send to the company another letter by registered post. In this letter, he will make a reference of his first letter sent by ordinary post and mention that no answer has been received thereto. He shall add further that if no answer is received within a month of the dispatch of the registered letter, he shall proceed to get a notice published in Official Gazette, with a view to strike the name of the concerned company off the Register of companies. [Section 560(2)]

(*c*) *Publication of Registrar's notice in Official Gazette*

If the Registrar receives no reply to his registered letter within one month or receives a reply to the effect that the company is not carrying on business or in operation, he may use his discretion to get a notice published in the Official Gazette and also send a notice to the company mentioning that the company's name shall stand deleted from the Register of companies after the expiry of three months from the date of that notice, unless a cause to the contrary is shown to him within this period. [Section 560(3)]

(*d*) *Striking the name off the Register of Companies*

If up till the expiry of three months of the notice, company does not show any cause to the contrary, the Registrar shall strike the name of the company off the Register and publish a notice thereof in the Official Gazette. [Section 560(5)]

8.2 Company fails to achieve minimum paid up capital

Where a private company, with a paid up capital of less than rupees one lakh or a public company, with a paid up capital of less than Rupees Five Lakhs, existing on 13th December, 2000 [on the commencement of the Companies (Amendment) Act, 2000] fails to enhance its paid up capital within a period of two years. *i.e.* on or before 12th December, 2002, the Registrar may on the verification of the balance sheet, annual return and other relevant documents shall take suitable action to struck the name off from the Register of companies as per the provisions given under section 560 of the Companies Act, 1956. [Sections 3(3), 3(4) and 3(5)]

8.3 Company being in the course of winding up

If the Registrar of Companies has a reasonable cause to believe that, (*a*) a company is being wound up and no liquidator is acting, or (*b*) a company is being wound up and the affairs of the company have been completely wound up, and any returns required to be made by the liquidator have not been made for a period of six consecutive months, the Registrar shall publish in Official Gazette and send to the company or the liquidator, a notice and if needed, go ahead with the step as mentioned above.

9. Consequences of striking the name off the register of companies

The consequences of the removal of the name of a company from the Register of companies are as follows:—

1. The concerned company shall stand dissolved. [Section 560(5)]
2. The liability, if any of every director, manager or other officer who was exercising any power or management, and of every member of the company, shall continue and may be enforced as if the company had not been dissolved. [Section 560(5)(*a*)]
3. Section 560(3) shall not affect the power of the Court/Tribunal to wind up a company, the name of which has been struck off the Register. [Section 560(5)(*a*)]

10. No material effect on the creditors on striking off the name of a company

The striking off the name of a company does not materially affect the creditors of the company, because such creditors may—

(*i*) enforce their claims against every director, secretaries and treasurers, manager or any other officer of the company and against every member of the company as if the name of the company had not been struck off; or

(*ii*) apply to the Court/Tribunal for the winding up of the company whose name has been struck off; or

(*iii*) apply to the Court/Tribunal, at any time within 20 years from the date of publication of the notice intimating that the name of the company has been struck off, for the restoration of the name of the company to the Register of companies and on such application being made, the Court/Tribunal may order the name of the company to be restored to the Register.

11. Policy as regards striking off the name of defunct companies

The policy, which is followed with regard to weeding out the defunct companies is that where it appears from the latest available balance sheet of a defunct company that it has adequate realisable assets, steps are taken to take the company into compulsory liquidation. But where the latest available balance sheet shows that the company has no assets or has such assets, which would not be sufficient to meet the costs of liquidation, steps are taken to strike their names off the Register under section 560. The striking off the name of a company does not materially affect the creditors of the company, because such creditors may:—

(*i*) enforce their claims against every director, secretaries, treasurers, manager or any other officer of the company and against every member of the company as if the name of the company had not been struck off; or

(*ii*) apply to the Court/Tribunal for the winding up of the company whose names have been struck off; or

(*iii*) apply to the Court/Tribunal, at any time within 20 years from the date of publication of the notice intimating that the name of the company has been struck off, for the restoration of the name of the company to the Register of Companies and on such application being made, the court may order the name of the company to be restored to the Register. (Extract from the Fourth Annual Report on the Working and Administration of the Companies Act, 1956 — Year ended 31st March, 1960)

SIMPLIFICATION OF PROCEDURE FOR REMOVAL OF NAMES OF DEFUNCT COMPANIES

I. Department's Circular

"As you are aware, the matter regarding weeding out the names of defunct/dormant companies was discussed in the last Conference of Regional Directors/Registrars of Companies held on 25th/26th June,

1986. It has now been decided that the following revised procedure be adopted by all the Registrars of Companies before the name of a company is struck off from the Register of Companies under section 560 of the Companies Act, 1956:—

(*a*) An affidavit should be obtained from the managing director/whole-time director and in case there is none in a company then from two directors of the company to the effect that the company has not been carrying on any business during the last one year or more which should be evidenced by a latest audited balance sheet and profit and loss account of the company;

(*b*) An indemnity bond from the aforesaid managing director/whole-time director or two directors of the company to the effect that the liabilities of the company, if any will be met by them even after the name of the company is struck off from the Register under section 560 of the Companies Act, 1956;

(*c*) A notice should be issued to the Income-tax Commissioner before striking off the name of the company under section 560 of the Companies Act, 1956, indicating its date of incorporation and registered address stipulating that if no reply/objection is received within 3 months from the date of notice, the name will be struck off from the Register of Companies under section 560 of the Companies Act, 1956.

In addition, Registrars of Companies will comply with the procedure as provided under section 560 of the Act." (Circular No. 9/7/83-CL.III, dated 17-2-1987)

II. Department's Circular

"I am directed to say that the procedure for striking off the names of companies was revised *vide* this Department's Circular No. 9/7/83-CL.III, dated 17-2-1987 (copy published hereunder for ready reference). It is, however, felt that the procedure requires to be suitably amended/liberalised so that the names of such defunct companies are struck off from the register of companies without unnecessary delay. It has, therefore, been decided that the conditions specified in clause (*c*) of the Circular, dated 17-2-1987 need not be insisted upon and you may obtain an affidavit and indemnity bond from the managing director or whole-time directors of the company to the effect that the company has no assets or liabilities and that the company is not carrying on any business. This may be accompanied by the audited accounts of the subject company. In this connection, it may be stated that the latest available balance sheet may be relied upon for this purpose and you may not insist upon the company to produce 'NIL' balance sheet for the past years. Care may be taken where the company owes large sums of money to the investors/creditors and there are complaints against the company. This is, however, without prejudice to the procedural requirements of section 560 of the Act, including issue of notice under section 560(3), (5) of the Act to be sent to the Income Tax Authorities also.

It may also be pointed out that where a request has been made under section 560 of the Act and you are satisfied that action under section 560 of the Act can be taken, you should take expeditious action in accordance with the aforesaid liberalised procedure and in the meantime, prosecution for non-filing of annual return/balance sheet, etc. need not be resorted to. However, the matter has to be considered and decided on the merits of each case. In case of any difficulty, you may seek guidance of your Regional Director." [Nos. 1/3/91-CL V; 5/4/91-CL.III (Circular No. 6/91), dated 19-2-1991]

III. "Company Law Settlement Scheme-2000 — Clarification regarding withdrawal of Circular No. 9/7/83-CL.III, dated 17-2-1987 and 1/3/91-CL-V, 5/4/91-CL.III, dated 19-2-1991 till further orders

Department's Circular.—"The Government had announced a scheme, called Company Law Settlement Scheme, 2000 (CLSS-2000) under which a company may file documents such as Balance Sheet, Annual Return, etc. alongwith a lump sum fee as indicated in the scheme. However, it has been observed that some of the companies have approached Registrar of Companies for striking off the names of the companies taking the shadow of Circulars, dated 17-2-1987 and 19-2-1991 issued by the Department regarding striking off names. The companies have, however not filed the annual returns and balance sheets. It is quite clear that as per section 560 of the Companies Act even in case of companies which have come for striking off their names under this section, the company should file all the balance sheets and profit and loss accounts and not one latest balance sheet. This is more necessary to ascertain whether applicant seeking sanction under section 560 of the Act has met his obligation to depositors, banks and financial institutions from whom it borrowed the money and paid taxes and other Government and statutory dues.

The Government has now reconsidered the circulars referred to above and has decided that the aforesaid circulars are not appropriate. Therefore, the Circular No. 9/7/83-CL.III, dated 17-2-1987 and 1/3/91-CL-V,5/4/91-CL.III, dated 19-2-91 are withdrawn till further orders." [General Circular No. 8/2000 No. 1/5/2000-CL-V Government of India, Ministry of Law, Justice and Company Affairs (Department of Company Affairs), dated 24-8-2000]

IV. "Simplified Exit Scheme (SES) — Press Note No. 1/2003 dated 29-3-2003

The Department of Company Affairs *vide* Press Notification No. 1/2003, dated 29th March, 2003 gave an opportunity to defunct companies to be struck off the register by the Registrar by introduction of Simplified Exit Scheme.

The Simplified Exit Scheme has provided an opportunity to all the defunct companies including all such companies which could not carry on any business activities after registration of the company or ceased their business activities long back (for a period of more than one year) and do not wish to further carry on any business activities to apply for striking off their names from the Register of Companies.

The Scheme has also provided an opportunity to all other companies which could not raise the paid-up capital to the extent of Rs. 1.00 lakh in case of a private company and Rs. 5.00 Lacs in case of a public company within the stipulated time period *i.e.* 12th December, 2002 as per the provisions of section 3(5) of the Companies Act, 1956.

The SES initially remained in operation upto 31-12-2003 from the date of issue of circular. Later on, the Department of Company Affairs *vide* Circular No. 37/2003, dated 31-12-2003 extended the scheme by a further period of three months with effect from 1-1-2004 *i.e.* upto 31st March, 2004.

V. "Simplified Exit Scheme (SES) — Circular No. 02/2005 (File No. 17/78/2001-CL-V) dated 28th Jan., 2005

The Central Government has vide General Circular No. 02/2005 (File No. 17/78/2001-CL-V) dated 28th Jan., 2005 introduced the fresh scheme to enable defunct companies to get their names struck off from the Register of Companies u/s 560 of the Companies Act, 1956 through the operation of the Scheme called "Simplified Exit Scheme, 2005" (SES-2005) which initially remained in operation from 1.02.2005 to 31.07.2005.

The Simplified Exit Scheme- 2005 was further extended by one month by the Central Government vide Press Note No 04/2005 dt. 30.07.2005 that remained effective upto 31.8.2005, to afford further opportunity to defunct companies to avail the benefits of the scheme.

VOLUNTARY APPLICATION BY THE COMPANY TO THE REGISTRAR FOR DEFUNCT OF THE COMPANY

12. Types of companies eligible to apply under section 560 of the Act

The following types of companies, which are not having any assets and liabilities as per the Financial Statement or Statement of Accounts drawn are eligible to apply subject to fulfillment of the conditions laid down hereinafter:—

(*i*) Companies that did not carry out any business at any time since their incorporation;

(*ii*) Companies that carried out some business activity but discontinued the same thereafter;

(*iii*) Non-Banking Financial Company (NBFC) as defined under section 45-I(*f*) of Reserve Bank of India Act, 1934:

(*a*) If such company is not registered with the RBI as NBFC and it has not carried out any operation or commercial activity since its incorporation;

(*b*) If such company is registered with the RBI as NBFC, 'no objection letter' is obtained from the RBI for availing the exit option and enclosed along with the application.

(*iv*) Collective Investment Management Company (CIMC) as defined in Regulation 2(1)(*h*) of Securities and Exchange Board of India (Collective Investment Companies) Regulations, 1999:

(*a*) if such Collective Investment Management Company is not registered with SEBI as CIMC and it has not carried out any operation or commercial activity since its incorporation;

(*b*) if such Collective Investment Management Company is registered with the SEBI, 'no objection letter' obtained from SEBI for availing the exit option and enclosed along with the application.

(*v*) Government Companies, which have no assets and liabilities and submit an approval letter issued by the concerned administrative ministry with the application.

13. Types of companies, which are not eligible to apply under section 560 of the Act

The following types of companies are not eligible to apply even though they are not having any business activities and also not having any assets and liabilities;

(*i*) Non-Banking Financial Company (NBFC) as defined under section 45-I(*f*) of Reserve Bank of India Act, 1934:

(*a*) if such company is not registered with the RBI as NBFC and it has carried out any operation or commercial activity after incorporation, irrespective that it has discontinued all the business activities since long;

(*b*) if such company is registered with the RBI as NBFC, and could not obtain and attach with the application a 'no objection letter' issued by the RBI for availing the exit option.

(*ii*) Collective Investment Management Company (CIMC) as defined in Regulation 2(1)(*h*) of Securities and Exchange Board of India (Collective Investment Companies) Regulations, 1999:—

(*a*) if such Collective Investment Management Company is not registered with SEBI as CIMC and it has carried out any operation or commercial activity since its incorporation, irrespective that it has discontinued all the business act ivies since long;

(*b*) if such Collective Investment Management Company is registered with the SEBI, and could not obtained and attach a 'no objection letter' received from the SEBI for availing the exit option.

(*iii*) Government Companies, which have no assets and liabilities but the approval letter have not been obtained from the concerned administrative ministry and attached with the application.

(*iv*) Company, which is registered under section 25 of the Companies Act, 1956.

(*v*) Company having any assets and liabilities.

(*iv*) Companies having any types of dues towards Income Tax/Sales Tax/Central Excise/Professional Tax/Nagar Nigam/Service Tax/Banks/Financial Institution or State Govt. Department/Authorities or any Local Authorities.

(*vii*) Company on which any prosecution for a non-compoundable offence is pending before any competent authority.

14. Passing necessary resolutions for authority to make application

It should be ensured that the company is having minimum number of directors to constitute a valid quorum for the meeting.

If the company fulfills the criteria prescribed under section 560, the Managing Director/Whole-time Director/Director/Secretary or the authorised officer should give a notice in writing to all the directors of the company as per provisions of section 286 of the Companies Act, 1956 and should pass resolution in the meeting of the Board of Directors for the following purposes:

(*i*) for approval of the Board to make an application for striking off the name of the company from the Register in accordance with the provisions of section 560 of the Companies Act, 1956 in the prescribed form 61;

(*ii*) to authorise the directors of the Company for execution and signing the Affidavits and Indemnity Bond;

(*iii*) to approve the audited financial statement or statement of accounts as prepared for a period not prior to the one month from the date of application;

(*iv*) to authorise the Managing Director/Whole-time Director/Director(s) of the company to apply in the prescribed form to the Registrar of Companies for striking off name of the company.

15. Disclosure of status of litigations

The Company is required to give brief particulars of all the litigations pending against or involving the company and state the authority, with address, where it is pending, along with case number. Therefore, proper inquiry should be made before filing of the application with the Registrar of Companies.

16. Penalty for providing wrong information, affidavit, etc.

It must be ensured that no wrong information has been given in the application, affidavit and indemnity bond, in case where any wrong information has been given the directors may be prosecuted under the provisions of section 628 of the Companies Act, 1956 and under relevant provisions of the Indian Penal Code. Section 628 of the Companies Act, 1956 provides that if any person intentionally gives false affidavit, deposition of solemn affirmation about any matter arising under Act or makes false statements in the balance sheet, statement or other documents which is false in any material particular, knowing to be false; or which omits any material facts knowing to be material, shall be punishable with imprisonment for a term of two years and, shall also be liable for fine.

17. Filing of application for compounding of offence

The company is required to disclose the litigations under the Companies Act, 1956 or other Act pertaining to an offence, which is compoundable, and whether the compounding application has been filed with the e-Form 61, electronically with the Registrar of Companies.

In case if any prosecution is pending under the provisions of the Companies Act or pertaining to other Acts, which are compoundable offences under the Companies Act, 1956, the company will be allowed to apply only if it files compounding application before the appropriate authority.

Further that a copy of the acknowledgement of the compounding applications shall also be enclosed with the affidavit.

18. Application cannot be filed if any prosecution is pending which is not compoundable

A company shall not be allowed to apply under section 560, if any prosecution for an offence which is non-compoundable under the Companies Act, 1956 or pertains to any other Act is pending against the company.

19. Requirement to apply in the prescribed form

The application shall be made to the Registrar electronically in the e-Form 61 as specified by the Notification No. GSR 56(E) Dated 10th Feb., 2006 (previously there was no form prescribed for that purpose) together with the Affidavit and Indemnity Bond should be made. (Appendix 1)

19.1 Submission of Audited Financial Statements/Statement of Accounts

It is a compulsory requirement to provide financial statement whether Audited Financial Statement as provided under section 211 of the Companies Act, 1956 or the Statement of Accounts

The Statement of Account submitted with the application must give true and fair view of the financial position of the company. The directors of the applicant company are also required to specify the reason for non-filing of audited Balance Sheet and Profit and Loss Accounts in the Statement of Accounts.

19.2 The applicant company must have nil assets and liabilities

The applicant company should have nil assets and liabilities at the time of filing application should submit Audited Financial Statement showing no assets and liabilities.

19.3 Submission of Affidavit

The application must be accompanied by an affidavit of each director of the applicant company separately, sworn before a Magistrate/Executive Magistrate/Oath Commissioner/Notary, to affirm the followings:

19.3.1 Affidavit shall be given on Non-Judicial Stamp Paper

The Affidavit is required to be given on the Non Judicial Stamp Paper of adequate value separately by each director of the company. The text of the affidavit should be typed on the Non-Judicial Stamp Paper/continued sheet.

19.3.2 Execution and verification of Affidavit

The Affidavit should be executed before any of the following authorities:

(*i*) Magistrate;

(*ii*) Executive Magistrate;

(*iii*) Oath Commissioner;

(*iv*) Public Notary

It is also advisable to write the name and place of posting of the authority before which the Affidavit was executed.

All the enclosures of the Affidavit like, proof of address, copy of the e-Form 62 for application for compounding of the offence, resolution passed by the Board of Directors and any other relevant document should also be enclosed and marked as Annexure with the Affidavit.

19.3.3 Affidavit is compulsorily required to be enclosed with the application

It is compulsorily required to enclose affidavit executed by each of the director in original copy together with enclosures. If an application in the e-Form 61 is not supported with the proper affidavit, the application for striking off name of the defunct company shall not be considered by the Registrar of Companies.

19.4 Submission of an Indemnity Bond

The application In the e-Form 61 must be accompanied by an Indemnity Bond given by each director of applicant company separately, duly notarized to the effect that should there be any liabilities on the company, such liabilities will be met in full by the directors of the applicant company even after the name of the company is struck off the register of the companies and will be liable jointly as well as severally.

Indemnity Bond is required to be given on the Non Judicial Stamp Paper of adequate value as applicable in the state where the Registered Office of the company is situated; therefore, the text of the Indemnity Bond should be typed on the Non-Judicial Stamp Paper and then should be executed before the Public Notary.

19.5 Information needs to be given by a Non Banking Financial Company and Collective Investment Management Company

In case of a Non-Banking Financial Company (NBFC) or Collective Investment Management Company (CIMC), which is registered, with RBI/SEBI, it is required to give the following details in the application form.

It should be noted that a company, which is having name and/or objects of the NBFC/CIMC companies, and has not commenced or carried any business activities whether relating to the NBFC/CIMC or other business activities at any time after its incorporation shall be eligible to apply under section 560.

Looking into large number of non-operative NBFC/CIMC companies, which have not commenced NBCF/CIMS business activities, but have commenced other business activities not related to NBFC/CIMC business should also be allowed by the Central Government to apply under section 560.

19.6 Submission of additional documents

The following additional documents/informations are also required to be enclosed with the Affidavit and Indemnity Bond, by each applicant:—

(*i*) Copy of the Passport/Income Tax Permanent Account No. duly attested by gazetted officer;

(*ii*) Original copy of the proof of the present residential address and permanent address of the applicant directors duly attested by gazetted officer or an affidavit sworn before the Executive Magistrate may be enclosed;

(*iii*) Certified copy of the compounding application submitted to the respective authorities in respect of compoundable offence committed by a company;

(*iv*) Certified copy of the Board resolution giving authority to file application with the Registrar;

(*v*) Certified copy of Bank Account maintained by the company, if any;

(*vi*) Original copy of the Affidavit along with enclosures as mentioned in the Affidavit;

(*vii*) Original copy of the Indemnity Bond along with enclosures as mentioned in the Indemnity Bond;

(*viii*) Audited Financial Results/Statement of Accounts for the previous year and current financial year for a period not earlier than one month from the date of application.

20. Liabilities on directors after striking off the name

It should be noted that the proviso (*a*) of section 560(5) provides that on striking off the name of the company from the register the liability, if any, of every director, 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 has not been dissolved.

It was held that the effect of proviso (*a*) of section 560(5) is to continue the liability of the directors, manager or other officers existing prior to the dissolution of the company. It does not enhance the liability as such or make them personally liable, when they were not so liable before the dissolution of the company. Any liability on the company even after the name of the company is struck off the register of companies will be met in fully by the directors of the company and the directors will be liable jointly as well as severally.

Further that the directors shall also be jointly or severally liable under relevant provisions of the Indian Penal Code and under section 628 of the Companies Act, 1956 save as otherwise expressly provided in the Companies Act, 1956 with an imprisonment for a term which may extent to two years and shall also be liable to fine, if they make any statement in the Application, Affidavit and Indemnity, which is false in any material particular known to be false or omits any material fact knowing it to be material.

RESTORATION OF A COMPANY

Section 560(6) provides that if a company or any member or creditor thereof, is aggrieved by the company having been struck off the register, the Court/Tribunal, on an application made by the company, member or creditor, before the expiry of 20 years from the publication in the Official Gazette of the notice as 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; and the Court/Tribunal may, by order, give such directions and make such provisions as seem just for placing the company and all other persons in the same position as they would have been if the name of the company had not been struck off.

21. Who can apply?

The following aggrieved parties may apply to the Court/Tribunal for restoration of the company:—

(1) any member,

(2) any creditor,

(3) the company itself.

'Member' or 'creditor' in this sub-section includes the personal representative of a deceased member or creditor.

A person is entitled to be called a 'creditor' under this sub-section only if he was a creditor at the time the company was struck off the Register. *Re, Aga Estate Agencies Ltd.* 1986 BCLC 346 (Ch D). "Creditor" in this section should be construed widely so as to include a creditor whose debt was contingent or prospective. A person claiming damages (an unliquidated claim) has been held to be a creditor for the purpose of this sub-section.

A third party, unless he is a creditor has no *locus standi* to apply for restoration of the company.

For involving this sub-section, the applicant must be a person "aggrieved". For a learned discussion on this, see *Re, Lindsay Bowman Ltd*. (1970) 40 Comp Cas 246 (Ch D).

It may be noted that not only the member or creditor but the company itself, though it has been struck off and considered non-existent, may apply to have its name restored to the Register. But the Court/ Tribunal would not make an order if there was no sufficient evidence of likely benefit to members or creditors.

22. Limitation of time for applying

The right to seek restoration is not lost as long as twenty years have not expired. [*Purushattam Dass* v *Registrar of Cos*. (1986) 60 Comp Cas 154 (Bom)].

23. Revival of company under liquidation for 35 years — whether barred by limitation — sections 559 and 560 referred to the Companies Act, 1956 — company in liquidation for 35 years — revival sought by shareholders — whether opposed to public policy

FACTS: The company was ordered to be wound up in September, 1960. 35 years thereafter the present petition was filed stating that the shareholders of the company in liquidation have unanimously decided to revive the company and permission of the Court was sought for this purpose. The Regional Director raised objection for revival, stating that claims of creditors had been settled by the liquidator and the present petition for revival was not only opposed to public policy but was also barred by limitation, both under the Limitation Act as well as under the Companies Act. Dismissing the petition, the High Court held:

DECISION AND REASONS: Public policy: The contention that revival of a company under liquidation was opposed to public policy was not tenable. A scheme for restarting a company under winding up could be sanctioned by the company Court, if it had been approved by the necessary majority and the company had surplus assets after paying all the creditors and repaying the shareholders the face value of their share holding. In the instant case the creditors had been repaid. The fact was that the shares were available on account of their investment in another prosperous company; the shareholders could be paid more than the face value of their shareholding. Had the revival been sought within the stipulated time, a stigma would have been removed by such revival.

LIMITATION: Although revival was not opposed to public policy under Article 100 of the Limitation Act, the period stipulated to alter or set aside any decision or order of the Civil Court in any proceedings other than a suit or any act or order of an officer of a Government in his official capacity was one year from the date of final decision or order by the Court. The present attempt to revive the company after 35 years of the passing of the order of liquidation was certainly barred by limitation.

Under section 559 of the Companies Act the Court could declare the dissolution of the company as void on an application by liquidator or by any other person who appeared to the Court to be interested if the application had been filed within 2 years of the date of dissolution.

Under section 560(6) if any member or creditor of the company or even if the company felt aggrieved by the company having been struck off the register, the Court, on an application made by any of them before the expiry of 20 years from the publication in the Official Gazette, if satisfied that it was just that the company be restored to the register, order of restoration of the same. The period for restoration of the name of the company in the Register as per section 559 being two years and as per section 560(6) 20 years, the present attempt of the shareholders to restore the name in the Register of Companies was also barred by limitation. [*J.M.A. Mohammed Farook* v *Aziz Company* (*P*) *Ltd*.].

Before the Court/Tribunal makes an order for restoration it must be satisfied that:—

(1) the applicant was a creditor or contributory at the time the company was dissolved;

(2) the company is solvent;

(3) on the date of striking off, the company was carrying on business, or otherwise it is in the interests of justice that the order of restoration should be made. [*Re, Portrafram Ltd*. 1986 BCLC 533 (Ch D)].

24. Status of litigation by third party against the company is pending

Where a litigation by a third party against the company is pending, the name of the company should not be struck off, and if, struck off it will be restored. It was held proper to restore the name of the company where a suit against it was pending and the directors usually participating in the trial.

25. Effects of restoration

Section 560(7) provides that 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.

The effect of an order under this section is that the company is to be deemed to have continued in existence "as if its name had not been struck off". The object is to put both the company and their parties in the same position as they would have occupied if the dissolution of the company had not intervened. Not only is the corporate existence of the company restored, but also it takes effect retrospectively, so that at the date of the restoration, the company is to be regarded as never having been dissolved. The restoration produces "as you were" position. [*Tyman's Ltd*. v *Craven* (1952) 1 All ER 613].

26. Rights of the parties

The rights of all parties would be as though there had been no cessation or interruption in the existence of the company on account of the striking off and subsequent restoration. Further that the rights and liabilities of the company are not wiped out by its having been struck off in the interim period. [*Purushottamdass* v *Registrar of Cos., Maharashtra* (1986) 60 Com Cas 154 (Bom)].

27. Position of creditors on restoration

Where a company is restored to the Register, the Court/Tribunal will make such order as will put the company and third parties in the same position as they would have occupied if no dissolution had intervened. As a defunct company can be restored at any time within twenty years, any contributory or other person interested, cannot try to defeat the creditors by keeping quiet for some years until the creditors' claim get time barred, and then apply to have the company restored, so that any available assets of the company may be taken by themselves without paying anything to the creditors.

28. Period for limitation in case of liabilities during the period of removal of name from the register

For the limitation in case of the order restoring the company, it has been held that in the case of claims of creditors, which were not statute barred on the date of dissolution, the period between the date of dissolution and the date of restoration shall not be counted for the purposes of the Limitation Act.

The Limitation Act does not contain any provision in this respect, but common justice requires that not only the company but all third persons concerned should be put in the "as you were" position, and enabled to take advantage of the restoration. [*Re, Kenyon Donald Ltd.* (1956) 3 All ER 596: (1957) 27 Comp Cas 250].

After restoration of a dissolved company, the Court (now Tribunal) can give such directions and make such provisions as may seem just including orders that right of action existing against the company at the date of its dissolution shall not be barred by the Limitation Act and the restoration of the company to the Register. [*Huntingdon Poultry Ltd., Re* (1969) 1 All ER 328: (1969) 2 Comp LJ 68].

29. Appeal and revision

There is no provision for appeal against an order restoring a company to the Register. But where an order is erroneous, it is open to revision. [*Surjan Das* v *Chabba Cotton Co*. AIR 1925 Lah 443].

30. Costs

In restoring a company to the register, the Court/Tribunal has no jurisdiction to impose any penalty for defaults under the Act, but may order costs as a term of restoration. [*Re, Moses and Cohens Ltd.* (1957) 3 All ER 425].

Appendix 1

Specimen of e-Form 61 for Deletion of Name of Defunct Company

Form for filing an application with Registrar of Companies

[Pursuant to sections 166, 210, 394, 560, 621A of the Companies Act, 1956]

Note: All fields marked in * are to be mandatorily filled.

1. (*a*)*Corporate identity number (CIN) of company	xxxxxxxxxxxxxxxxxxx
(*b*) Global location number (GLN) of company	

2. (*a*) Name of the company: ABC INDUSTRIES LIMITED

(*b*) Address of the registered office of the company: 4TH FLOOR, SILVER ARK PLAZA, 20A, NEW PALASIYA INDORE (M.P.) 452001

3. *Application filed for

☐ Compounding of offences

☐ Extension of period of annual general meeting by three months under section 166(1)

☐ Exemption from holding annual general meeting at the registered office under section 166(2)

☐ Extending the period of annual accounts upto eighteen months under section 210(4)

☑ Declaring a defunct company under section 560

☐ Amalgamation

☐ Others

4. If others, then specify

5. Whether application for compounding offence is filed by

○ Company ○ Director ○ Manager or secretary ○ Other

6 Director identification number (DIN) or income-tax permanent account number (PAN)

7. Name of the applicant

8. (*a*) Service request number of Form 23

(*b*) Date of passing special or ordinary resolution (DD/MM/YYYY)

(*c*) Date of filing Form 23 (DD/MM/YYYY)

9. *Details of application

Approval for deletion of name of a defunct company, under section 560.

Attachments

1.	Board resolution.	Attach	
2.	Scheme of amalgamation	Attach	
3.	Detailed application.	Attach	
4.	Certified copy of the Memorandum and Articles of Association.		
5.	Certified copy of the Balance Sheet and Profit and Loss Account.	Attach	
6.	Optional attachment(s), if any. — Affidavit — Indemnity Bond	Attach	

Declaration

To the best of my knowledge and belief, the information given in this application and its attachments is correct and complete. I have been authorised by the Board of directors' resolution dated 28/02/2006 (DD/MM/YYYY) to sign and submit this application.

To be digitally signed by

Managing director or director or manager or secretary of the company: ISHAN JAIN

For office use only

Digital signature of the authorising officer

This e-Form is hereby approved	
This e-Form is hereby rejected	

Annexure 1 to Appendix 1

Specimen of the Board resolution

RESOLVED THAT the consent of the Board of Directors of the Company be and is hereby accorded to make an application to the Registrar of Companies, Madhya Pradesh & Chhatisgarh under provisions of section 560 of the Companies Act, 1956 for striking off the name of the Company from the Register of Company.

FURTHER RESOLVED THAT Shri IJ and Ms. AJ, the Directors of the Company be and are hereby, requested to make an application and to give necessary affidavit and indemnity bond under section 560 of the Companies Act, 1956, as per the draft of the same as placed before the meeting duly initialed by the Chairman for the purpose of identification in order to get the name of company struck off from the Register of Companies maintained by the Registrar.

RESOLVED FURTHER THAT Shri VKN and Mrs. R.N., the Directors of the Company be and are hereby authorised to sign and give any information, clarifications, explanations and to do all such acts and deeds as may be required under the Act, to implement the above said resolution.

Annexure 2 to Appendix 1

Specimen of Application for striking off the name of the Company u/s 560 of the Companies Act, 1956

Affix Passport size Photograph	Affix Passport size Photograph

No. of Company	1	0	-	0	1	3	4	5	6

Name of the Company:	A	B	C		I	N	F	T	E	C	H
	L	I	M	I	T	E	D				

Address of the Company: 406, 4TH FLOOR, SILVER ARK PLAZA
20A, NEW PALASIYA INDORE (M.P.) 452001

To

The Registrar of Companies,
Madhya Pradesh & Chhatisgarh

Sir,

The Company after carefully considering all aspects has duly resolved in the Board meeting held on 30th March, 2006 to make an application for striking off the name of our company under section 560 of the Companies Act, 1956 from the Register maintained by the Registrar of Companies. We, the directors of the Company make an application for striking the name of our Company off the Register under section 560 of the Companies Act, 1956.

(2) We furnish the following details and documents for considering our application:

(*i*) A Statement of Account for the period from 1st April, 2005 to 28th February, 2006 being the latest period applicable for the Company and as at 31st March, 2005 for the previous financial year. It is declared that due to no substantial change in the state of the affairs of the Company, not having any business activities, the Balance Sheet and Profit and Loss Account can not be prepared, hence a Statement of Accounts is submitted showing nil assets and liabilities.

(*ii*) Affidavits

(*iii*) Indemnity Bonds

(*iv*) Copy of Board Resolution passed on dated 30th March, 2006 showing authorization given to us for filing of this application.

(3) Now, therefore, the undersigned request you to strike off the name of the Company from the Register.

We shall be liable under section 628 of the Companies Act, 1956 and under relevant provisions of the Indian Penal Code if we make any statement pursuant to this circular:-

(*i*) which is false in any material particular, knowing it to be false; or

(*ii*) which omits any material fact knowing it to be material.

Yours faithfully,

For ABC INFOTECH LTD.

1. Ishan Jain (Signature)
   S/o D.K.Jain
   202, Bijali Nagar
   Indore (M.P.) 452018

2. Abha Jaiswal. (Signature)
   D/o Shri Gopal Jaiswal
   132 Mahavir Nagar
   Indore (M.P.) 452018
   Date: 30th March, 2006

Annexure 3 to Appendix 1

Specimen of Affidavit

(to be given individually by each Applicant)

I, Director of ABC Infotech Limited, (hereinafter called "the Company"), incorporated on 1st May, 2000 under the Companies Act, 1956 having its Registered Office at 406, 4th Floor, Silver Ark Plaza, 20A, New Palasiya, Indore (M.P.) and having PAN No. xxxxxxxxxx do solemnly affirm and state as under:

(1) I, Ishan Jain S/o Shri D.K.Jain, holder of PAN xxxxxxx (Copy of PAN duly attested by Gazetted Officer is enclosed as Annexure-A) am Director of the Company stated above since incorporation of the Company, *i.e.* 1st May, 2000.

(2) My present residential address is 204, Bijali Nagar, Indore (M.P.) 452018 (Copy of the PAN No. being the documentary evidence duly attested by Gazetted Officer is enclosed as Annexure A).

(3) My permanent address is 204, Bijali Nagar, Indore (M.P.) 452018 (Copy of the PAN No. being the documentary evidence duly attested by Gazetted Officer is enclosed as Annexure A)

(4) The Company was incorporated on 1st May, 2000 with the object to carry on the business of Software development as more particularly described in the Clause III(A)(1) of the Object Clause of the Memorandum of Association of the Company.

(5) The Company does not have any bank account as on date.

(6) The Company commenced business activities after incorporation but has been inoperative for the past two years due to non-availability of business prospects, non-availability of long-term financial resources, etc.

(7) As on date, the Company does not have any dues towards Income Tax/Sales Tax/Central Excise/ Banks and Financial Institutions; any other Central or State Government Departments/Authorities or any Local Authorities.

(8) There is no litigation pending against or involving the company.

(9) I have been authorised to file this application by Board resolution passed on dated 30th March, 2006. (Copy of resolution is enclosed as Annexure B)

(10) That an application is hereby filed for action under section 560 of the Companies Act, 1956, before the Registrar of Companies with necessary fees and required Statement Account and Declaration signed by me.

(11) In case of any loss(es) to any person or any valid claim arising from any person after the striking off of the name of the Company from the Register of Companies, Madhya Pradesh and Chhatisgrah, I the applicant, undertake to indemnify any person for such losses and the indemnity bond to this effect is enclosed and submitted.

I solemnly state that the contents of this affidavit are true to the best of my knowledge and belief and that it conceals nothing and that no part of it is false.

Signature: Ishan Jain
(Deponent)

Verification

I verify that the contents of this affidavit are true to the best of my knowledge and belief.

Signature: Ishan Jain
(Deponent)

Place: Indore
Date: xx.xx.xxxx

Annexure 4 Appendix 1

Specimen of Indemnity Bond

(to be given individually by each Applicant)

I, the Director of ABC Infotech Limited (hereinafter called "the Company"), incorporated on 1st May, 2000 under the Companies Act, 1956, having its Registered Office at 406, 4th Floor, Silver Ark Plaza, 20A, New Palasiya, Indore (M.P.) and having PAN Number xxxxxxxxxxx do hereby declare that:

(*a*) (*i*) I, Ishan Jain, S/o Shri D.K.Jain, am holder of PAN xxxxxxxx. (Copy of PAN duly attested by Gazetted Officer is enclosed as Annexure-A)

(*ii*) I am Director of this Company since incorporation, i.e. 1st May, 2000.

(*iii*) My present residential address is 204, Bijali Nagar, Indore (M.P.) 452018 (Copy of PAN No. being the documentary evidence duly attested by Gazetted Officer is enclosed as Annexure A)

(*iv*) My permanent address is 204, Bijali Nagar, Indore (M.P.) 452018 (Copy of PAN NO. being the documentary evidence duly attested by Gazetted Officer is enclosed as Annexure A)

(*b*) That I have made an affidavit dated the xx.xx.xxxx duly sworn before Notary affirming that the Company XYZ Private Limited, has no assets and no liabilities.

(*c*) Further, the Company commenced business after incorporation but has been inoperative for the past two years. And the Company is not intending to do any business or commercial activity. Thus the Company is defunct and I request the Registrar of Companies, Madhya Pradesh to strike off the name of the Company from the Register of Companies under section 560 of the Companies Act, 1956.

2. I do hereby undertake and indemnify in writing:—

(*i*) to pay and settle all lawful claims arising in future after the striking off the name of the Company.

(*ii*) to indemnify any person for any losses that may arise pursuant to striking off the name of the Company.

(*iii*) to settle all lawful claims and liabilities which have not come to our notice upto this stage, even after the name of the Company has been struck off in terms of section 560 of the Companies Act, 1956.

Place: Indore Signature:…………..
Date:XX.XX.XXXX Ishan Jain
WITNESSES:
1……………. (Signature)
2……………. (Signature)

ACCEPTED

Registrar of Companies

Annexure 5 to Appendix 1

Specimen of Statement of Accounts

Name of the Company: XYZ PRIVATE LIMITED

Year to which the Statement of Account pertains: xx.xx.xxxx

Part A

S. No.	*Particulars*	*Schedule*	*Figure at the end on Amount in Rs.*	
			Current Financial Year ended xx.xx.xxxx	*Previous Financial Year xx.xx.xxxx*
I	Source of Funds ((Brief break up in respect of each item needs to be given).			
(1)	Capital: 10,000 Equity Shares of Rs. 10 each fully paid-up		1,00,000	1,00,000
(2)	Reserves & Surplus (including balance in Profit and Loss Account)		0	0
(3)	Loan Funds		0	0
	Total of (1) to (3)		1,00,000	1,00,000
II	Application of Funds (Brief break up in respect of each item needs to be given).			
(1)	Fixed Assets		0	0
(2)	Investments		0	0
(3)	(*i*) Current Assets, loans and Advances		0	0
	Less: (*ii*) Current Liabilities & Provons		0	0
	Net Current assets (*i* –*ii*)		0	0
(4)	Miscellaneous expenditure to the extent not written off or adjusted		0	0
(5)	Profit & Loss Account (Debit balance		1,00,000	1,00,000
	Total of (1) to (5)		1,00,000	1,00,000
PART B				
III	(*i*) Income		0	0
	(*ii*) Expenditure		0	0
	(*iii*) Profit/Loss before Tax ((*i*) – (*ii*)		0	0
IV	Appropriation in case of profit		0	0

'We do hereby declare and confirm that the above said Statement of Accounts furnished by us to the best of our knowledge and belief are true and fair view of the Company's Financial Positions.'

Ishan Jain
Signature
(Director/Applicant)

Abha Jaiswal
Signature
(Director/Applicant)

Date: xx.xx.xxxx

Place: Indore (M.P.)