MISCELLANEOUS PROVISIONS

S.417 – EMPLOYEE'S SECURITIES TO BE DEPOSITED IN POST OFFICE SAVINGS BANK OR SCHEDULED BANK- within 15 days from date of deposit

S.418 – PROVISIONS APPLICABLE TO PF of employees

WINIDNG UP

S. 425 – Modes of winding Up – By the tribunal or voluntary

S. 426 – LIABLITIES AS CONTRIBUTORIES OF PRESENT AND PAST MEMBERS

a) Past member not liable – If ceased to be a member 1 year or more from commencement of W/up

b) Past member not liable – debts contracted after he ceased to be a member

c) Past members not liable – unless satisfied that present members unable to satisfy the contributions req

d) Contribution not to exceed – Past or Present – Amount unpaid on shares

e) Company limited by guarantee – Cont not to exceed amount undertaken

WINDING UP BY THE TRIBUNAL

S.433 – Circumstances in which company maybe wound up by the Tribunal – a) Co. by a special resolution resolved for wound up by tribunal b) default is made in delivering statutory report to Registrar or in holding statutory meeting c) Company does not commence its business within a year from its incorporation d) No of members reduced – Pub Co below 7; Pvt Co below 2 e) company unable to repay its debts f) tribunal is of opinion to wind up g) company has made default In filing with ROC B/S or P/L or Annual Returns for any 5 consecutive FYs h) Company has acted against the interests of sovereignty and integrity of India i) Sick industrial company

S.434- Company when deemed unable to repay its debts – a) Creditor – to whom company is indebted for more than Rs.1lakh – served a demand on the company – company has neglected to pay for 3 weeks b) execution or other process or order of court – issued in favor of a creditor – returned unsatisfied in part or whole c) proved to satisfaction to Tribunal – unable to repay its debts – tribunal to take into a/c contingent and prospective liabilities

S. 439 – PROVISIONS AS TO APP FOR W/UP – Application can be made by – a) Co b) creditor c) contributory d) parties in a, b, c together e) ROC f) S.243 case (report U/s 237) – person authorized by C/G g) S.433 case – C/G or S/G

S. 441 – Commencement of W/up – Commenced from the date of passing of resolution by the Company

VOLUNTARY W/Up

S.484 – CIRCUMSTANCES IN WHICH COMPANY MAYBE W/UP VOLUNTARILY – a) period fixed in articles has expired b) co. passes a special resolution

S. 488 – DECLARATION OF SOLVENCY IN CASE OF PROPOSAL TO W/UP VOLUNTARILY – Majority of Directors – Board meeting – Declaration that-Co has no debts or Debts to be paid in full within 3 years from commencement of w/up. Winding up in which such Decl is made = Member's Vol. W/up otherwise Creditor's W/up

S.529 – APPLICATION OF INSOLVENCY RULES IN W/UP OF INSOLVENT CO's – ***Illustration*** – Value of security of a secured creditor is Rs. 1,00,000/-. Total amount of workmen's dues is Rs. 1, 00,000/-. Amount due to secured creditors is Rs.3, 00,000/-. The aggregate amount of secured creditors and workers dues are Rs.4, 00,000/-. The workmen's portion of security is Therefore 1/4th of value of security i.e. Rs. 25,000/-.

S.529A – OVERRIDING PREFERNTIAL PAYMENTS – a) Workmen's dues and b) debts due to secured creditors shall be paid in priority to all other debts. Debts payable under a) and b) shall be paid in full, unless assets are insufficient to meet them, they shall abate in equal proportions

S.530 – PREFRENTIAL PAYMENTS – Subject to provisions of S.529A – In a W/up – in priority to all other debts – a) all revenues, taxes, cesses, duties due and payable within 12 months b4 relevant date b) all wages or salary due for a period not exceeding 4 months within 12 months next b4 relevant date(not t o exceed amount notified by C/G currently Rs.20000) c)all accrued holiday remuneration payable to any employee d) all amounts due in respect of contributions payable during 12months b4 relevant date (except w/up for reconstruction or amalgamation) e)compensation payable U/s 14 of Workmen's Compensation Act 1923 (except w/up for reconstruction or amalgamation) f) all sums due to any employee from PF, Pension fund, Gratuity Fund, or any other fund for welfare of employees

RELEVANT DATE means – Co W/up compulsorily – date of appointment of provisional liquidator – or if no appointment is made – date of W/up order. In other cases – date of passing of resolution of W/up.

S.531- FRAUDELENT PREFERNCE – Any transfer of property – taken, done by or **against a company within 6 months** - b4 commencement of w/up – which – **had it been made, taken or done against an individual – within 3 months** b4 presentation of an insolvency petition on which he is adjudged insolvent – deemed to be a fraudulent preference – in the event of company being w/up – deemed a fraudulent preference of its creditors – invalid accordingly

S.533 – LIABILITIES AND RIGHTS OF CERTAIN FRAUDULENTLY PREFERRED PERSONS – Person preferred shall be subject to same liabilities – and shall have same rights, as if he had undertaken to be personally liable as surety for the debt – to the extent of the mortgage or charge on the property or value of his interest – whichever is less

S.534 – EFFECT OF FLOATING CHARGE – Floating Charge on the undertaking or property of the company – created within 12months immediately preceding the comm. Of w/up – unless proved that company immediately after creation of charge was solvent – be invalid – except – cash paid at or subseq to creation + interest @ 5%p.a

S.535 – DISCLAIMER OF ONEROUS PROPERTY IN CASE OF COMPANY WHICH IS BEING W/up – Where [art of the company includes a) land of any tenure burdened with onerous covenants b) shares or stocks of companies c) any other property not readily saleable d) unprofitable contracts – The liquidator even after endeavored to sell or dispose the property – within 12 m after commencement of w/up – with leave of tribunal – disclaim the property

S.550 – DISPOSAL OF BOOKS AND PAPERS OF THE COMPANY – Only after 5 years from dissolution of company

S.559 – POWER OF TRIBUNAL TO DECLARE DISSOLUTION TO EB VOID – within 2 years from date of dissolution – on application by Liquidator or any other person in the opinion of Tribunal

S.560 – POWER OF ROC TO STRIKE DEFUNCT COMPANY OFF REGISTER – ROC believes company not carrying any business – send a letter enquiring – within 1 month no reply – another letter within 14 days from expiry of 1 month – still no reply – or reply dat company does not carry any business – send to a company a notice – on expiration of 3m from date of notice – strike off name from register and company will be dissolved. If company or any member or creditor feels aggrieved – application to the Tribunal within 20 years – Company's name to reinstated

COMPANIES INCORP OUTSIDE INDIA

S.591 – APPLICATION OF S.592 to 602 TO FOREIGN CO's – Foreign Company means – a) Company incorp outside India established a place of business within India b) having a place of business b4 and after commencement of act. Where more than 50% of paid up capital (equity or preference) of a company incorp outside India established a place of business in India – by one or more citizens of India or body corporate incorp in India – whether singly or in aggregate

S.592 – DOC's ETC TO BE DELIVERED TO ROC BY FOR. CO's CARRYING ON BUSINESS IN INDIA – a) certified copy of charter, memorandum b) full address of Reg or principal office of the Co. c) list of Directors and secretary of the co d) names and address of persons resident in India authorized to accept notices or docs on behalf of the company e) full address of office of the company in India (deemed principal place of business)

S.597 – OFFICE WHERE DOCS TO BE DELIVERED – ROC NEW DELHI AND ROC OF CONCERNED STATE

S.621A – COMPOSITION OF OFFENCES – any offence other than – offence punishable with imprisonment only or imprisonment with fine- b4 or after institution of any prosecution- be compounded by C/G- on payment of presc. Sum – Not to apply where a previous offence was compounded 3 years before

S.630 – PENALTY FOR WRONGFUL WITHHOLDING OF PROPERTY – On complaint of Creditor or Contributory – punishable with fine - extend to Rs. 10000/-