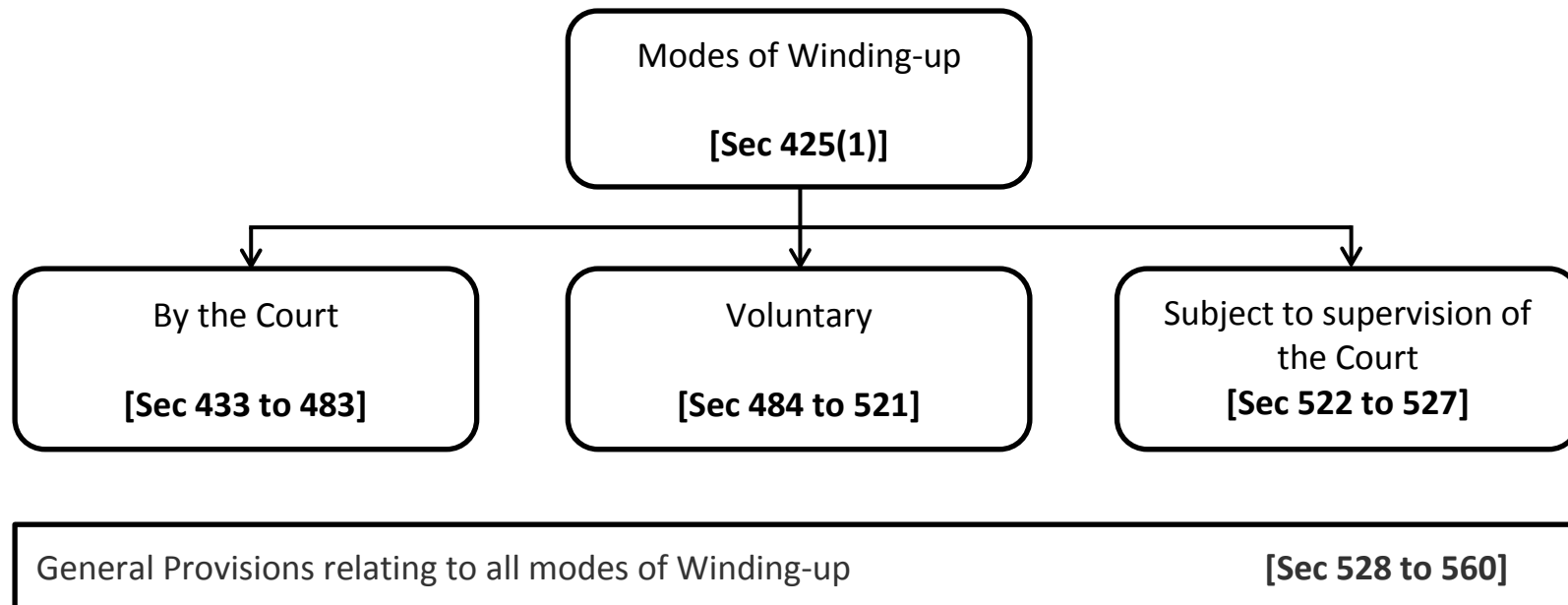


WINDING UP



PRELIMINARY

Sec 428 - Definition of "contributory".

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

Sec 429 - Nature of liability of contributory.

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

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes sitting outside the presidency towns.

Liability of Contributories

Sec 426 - Liability as contributories of present and past members.

(1) In the event of a company being wound up, every present and past member shall be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges and expenses of the winding up, and for the adjustment of the rights of the contributories among themselves, subject to the provisions of section 427 and subject also to the following qualifications, namely:-

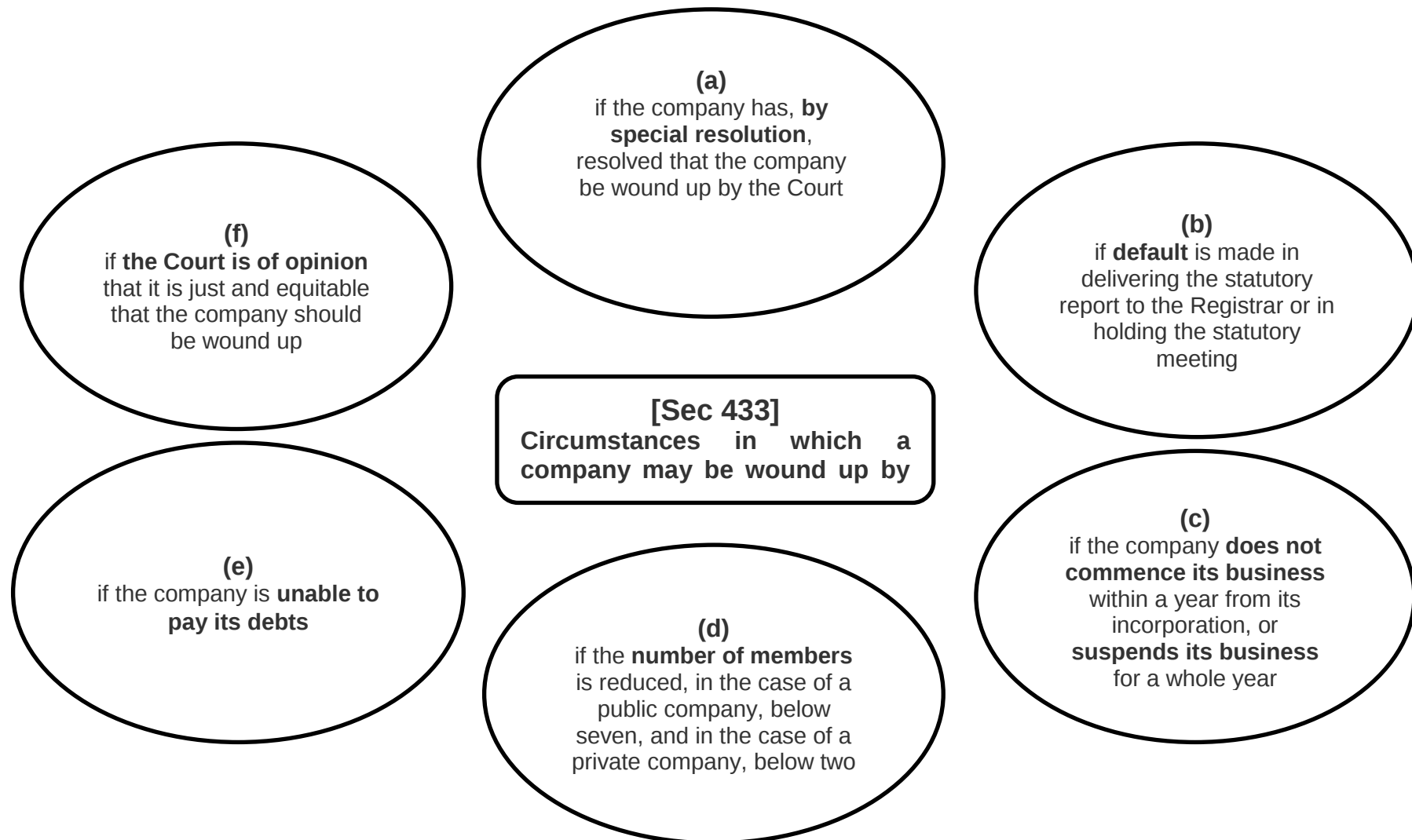
- (a)** a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;
- (b)** a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;
- (c)** no past member shall be liable to contribute unless it appears to the Court that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;
- (d)** in the case of a company limited by shares, no contribution shall be required from any past or present member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;
- (e)** in the case of a company limited by guarantee, no contribution shall, subject to the provisions of sub-section (2), be required from any past or present member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;
- (f)** nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;
- (g)** a sum due to any past or present member of the company in his character as such, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member, in a case of competition between himself and any creditor claiming otherwise than in the character of a past or present member of the company; but any such sum shall be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding up of a company limited by guarantee which has a share capital, every member of the company shall be liable, in addition to the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up, to contribute to the extent of any sums unpaid on any shares held by him as if the company were a company limited by shares

As present members: The Liability of a contributory as a present member is primary and absolute. He is included as “List A Contributory”. He cannot escape liability on the ground that the allotment of shares to him was void.

As past members: The liability of a contributory as a past member is secondary, and arises only when it appears to the Court/Tribunal that the present members are unable to satisfy the contributories required to be made by them. He is included as “List B Contributory”. List B contributory is a contributory who ceased to be a member within one year prior to the winding-up.

WINDING-UP BY THE COURT (COMPULSORY WINDING-UP) [Sec 433 to 483]



- Sec 433 is indicative of the fact that even if one or more grounds mentioned in it exist, it is NOT obligatory for the court to make an order of winding-up. The court has discretionary power.

Examples for “just and equitable grounds” as mentioned under section 433(f)

1. Loss of substratum. The substratum of the company may be said to have gone where the main purpose for which the company was formed becomes impossible, i.e., permanently impracticable. No general rule can be laid down as to the nature of circumstances in which it can be said that the substratum of the company has gone, and each case has to be decided on its own facts. Winding-up order was passed in the following cases:

- * Where it was established that the company was incorporated for a particular purpose which could no longer be achieved.
- * Where it was impossible to carry on the business of the company except at a loss, i.e., there was no reasonable hope of trading at a profit.

2. Deadlock in management. If there is total deadlock and there is no other practical remedy, the court would have little option but to order the winding-up.

3. Fraudulent or illegal business. Where the company was formed to carry on a fraudulent or illegal business or the business of the company becomes illegal by change in law.

4. Company is a bubble. Where the company is a mere bubble and does not carry on any business and does not have any property.

5. Recommendation by BIFR. Where the Board for Industrial and Financial Reconstruction (BIFR) recommends the winding-up of the company.

Sec 434 - Company when deemed unable to pay its debts.

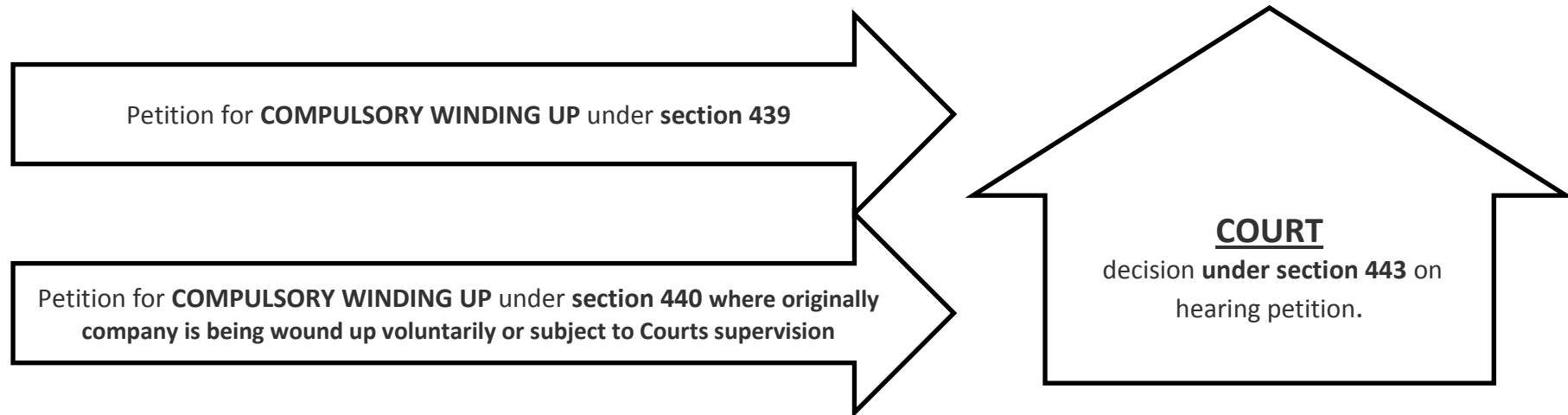
(1) A company shall be deemed to be unable to pay its debts

(a) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred rupees then due, has served on the company, by causing it to be delivered at its registered office, by registered post or otherwise, a demand under his hand requiring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum, or to secure or compound for it to the reasonable satisfaction of the creditor;

(b) if execution or other process issued on a decree or order of any Court in favor of a creditor of the company is returned unsatisfied in whole or in part; or

(c) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, and, in determining whether a company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

(2) The demand referred to in clause (a) of sub-section (1) shall be deemed to have been duly given under the hand of the creditor if it is signed by any agent or legal adviser duly authorized on his behalf, or in the case of a firm, if it is signed by any such agent or legal adviser or by any member of the firm.



Sec 439 - Provisions as to applications for winding up.

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

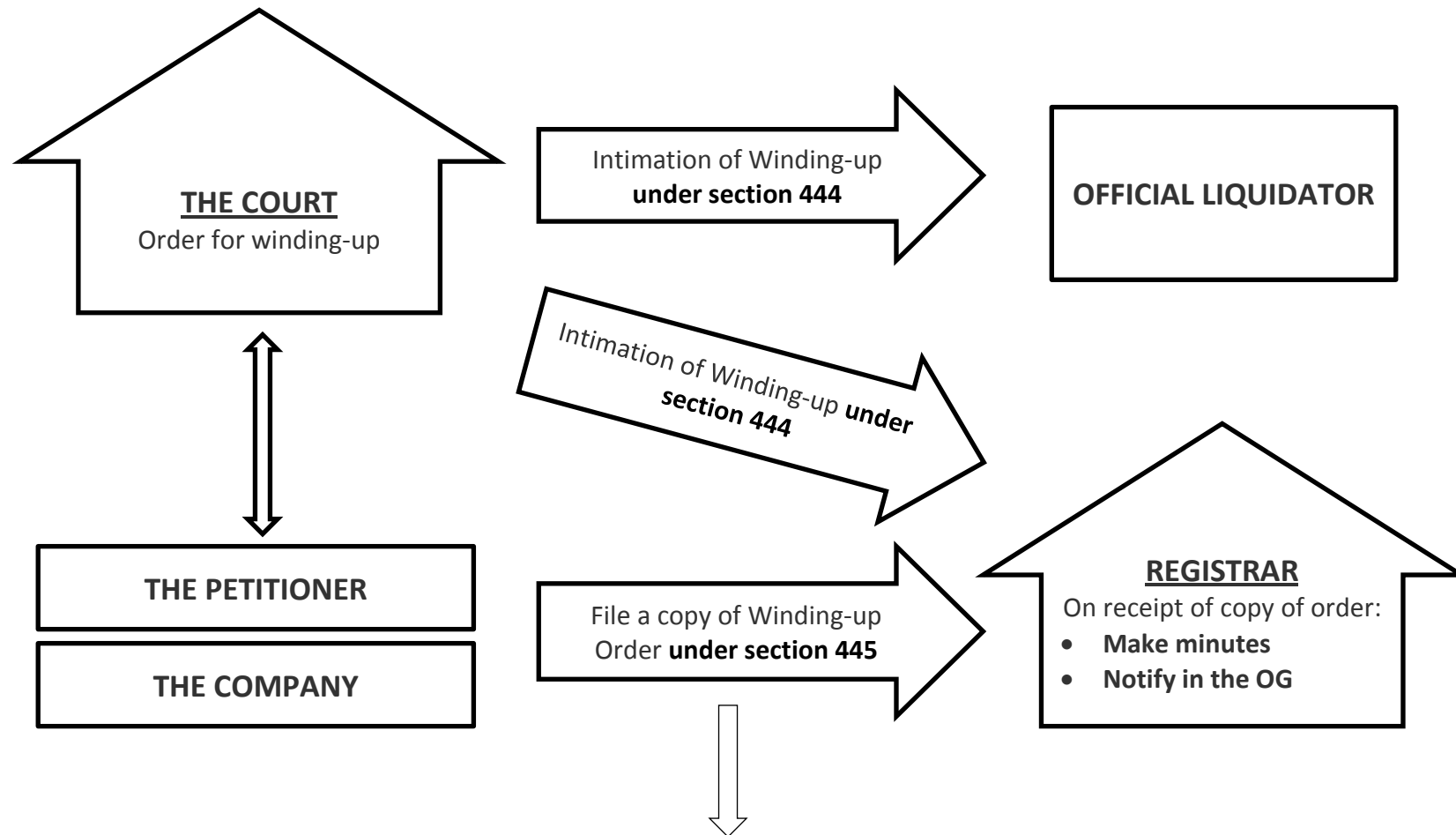
- (a) by the company; or
- (b) by any creditor or creditors, including any contingent or prospective creditor or creditors; or
- (c) by any contributory or contributories; or
- (d) by all or any of the parties specified in clauses (a), (b) and (c), whether together or separately; or
- (e) by the Registrar; or
- (f) in a case falling under section 243, by any person authorized by the Central Government in that behalf.

Sec 440 - Right to present winding up petition where company is being wound up voluntarily or subject to Courts supervision.

(1) Where a company is being wound-up voluntarily or subject to the supervision of the Court, a petition for its winding up by the Court may be presented by-

- (a) any person authorized to do so under section 439, and subject to the provisions of that section; or
- (b) the Official Liquidator.

(2) The court shall not make a winding up order on a petition presented to it under sub-section (1), unless it is satisfied that the voluntary winding up or winding up subject to the supervision of the Court cannot be continued with due regard to the interests of the creditors or contributories or both.

CONSEQUENCES OF WINDING-UP ORDER [SEC 444 to 463]

Filing under 445(1) to be made **within thirty days from the date of the making of the order**. If default is made in complying with the foregoing provision, the petitioner, or as the case may require, the company, and every officer of the company who is in default, shall be **punishable with fine which may extend to one thousand rupees for each day** during which the default continues.

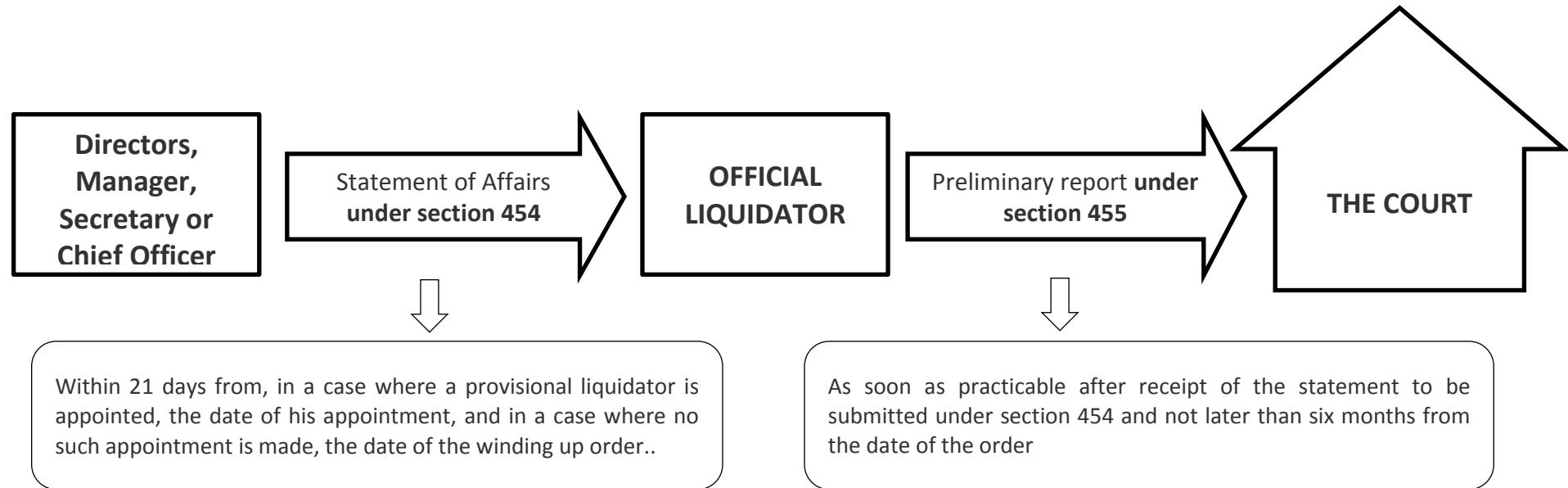
LIQUIDATOR

Sec 449 - Official Liquidator to be liquidator.

On a winding up order being made in respect of a company, the Official Liquidator shall, by virtue of his office, become the liquidator of the company.

Sec 450 - Appointment and powers of provisional liquidator.

- (1) At any time after the presentation of a winding up petition and before the making of a winding up order, the Court may appoint the Official Liquidator to be liquidator provisionally.
- (2) Before appointing a provisional liquidator, the Court shall give notice to the company and give a reasonable opportunity to it to make its representations, if any, unless, for special reasons to be recorded in writing, the Court thinks fit to dispense with such notice.
- (3) Where a provisional liquidator is appointed by the Court, the Court may limit and restrict his powers by the order appointing him or by a subsequent order ; but otherwise he shall have the same powers as a liquidator.
- (4) The Official Liquidator shall cease to hold office as provisional liquidator, and shall become the liquidator, of the company, on a winding up order being made.



Sec 454 - Statement of affairs to be made to Official Liquidator.

(1) Where the Court has made a winding up order or appointed the Official Liquidator as provisional liquidator, unless the Court in its discretion otherwise orders, there shall be made out and submitted to the Official Liquidator a statement as to the affairs of the company in the prescribed form, verified by an affidavit, and containing the following particulars, namely:-

- (a)** the assets of the company, stating separately the cash balance in hand and at the bank, if any, and the negotiable securities, if any, held by the company;
- (b)** its debts and liabilities;
- (c)** the names, residences and occupations of its creditors, stating separately the amount of secured and unsecured debts ; and in the case of secured debts, particulars of the securities given, whether by the company or an officer thereof, their value and the dates on which they were given;
- (d)** the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realized on account thereof;
- (e)** such further or other information as may be prescribed, or as the Official Liquidator may require.

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

- (a)** who are or have been officers of the company;
- (b)** who have taken part in the formation of the company at any time within one year before the relevant date;
- (c)** who are in the employment of the company, or have been in the employment of the company within the said year, and are, in the opinion of the Official Liquidator, capable of giving the information required;
- (d)** who are or have been within the said year officers of, or in the employment of, a company which is, or within the said year was, an officer of the company to which the statement relates.

Duties of the Liquidator

Duties of the Liquidator

Sec 451 - Conduct of the winding-up proceedings

Duty not to make secret profit

Sec 455 - Preliminary report

Sec 456 - Custody of company's property

Sec 461 - Maintenance of books

Sec 462 - Presentation of accounts by the Liquidator

Sec 551 - Information as to pending liquidation

Sec 455 - Report by Official Liquidator.

(1) In a case where a winding up order is made, the Official Liquidator shall, as soon as practicable after receipt of the statement to be submitted under section 454 and not later than six months from the date of the order or such extended period as may be allowed by the Court, or in a case where the Court orders that no statement need be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court--

(a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities, giving separately, under the heading of assets, particulars of (i) cash and negotiable securities; (ii) debts due from contributories; (iii) debts due to the company and securities, if any available in respect thereof; (iv) movable and immovable properties belonging to the company; and (v) unpaid calls;

(b) if the company has failed, as to the causes of the failure; and

(c) whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The Official Liquidator may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation, or by any officer of the company in relation to the company since the formation thereof, and any other matters which, in his opinion, it is desirable to bring to the notice of the Court.

(3) If the Official Liquidator states in any such further report that in his opinion a fraud has been committed as aforesaid, the Court shall have the further powers provided in section 478.

Sec 461 - Books to be kept by liquidator.

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

Sec 462 – Presentation of and audit of liquidator's accounts.

- (1) The liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments as liquidator.
 - (2) The account shall be in the prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.
 - (3) The Court shall cause the account to be audited in such manner as it thinks fit ; and for the purpose of the audit, the liquidator shall furnish the Court with such vouchers and information as the Court may require, and the Court may, at any time, require the production of, and inspect, any books or accounts kept by the liquidator.
 - (4) When the account has been audited, one copy thereof shall be filed and kept by the Court, and the other copy shall be delivered to the Registrar for filing ; and each copy shall be open to the inspection of any creditor, contributory or person interested.
 - (4A) Where an account referred to in sub-section (4) relates to a Government company in liquidation, the liquidator shall forward a copy thereof,--
 - (a) to the Central Government, if that Government is a member of the Government company; or
 - (b) to any State Government, if that Government is a member of the Government company; or
 - (c) to the Central Government and any State Government, if both the Governments are members of the Government company.
 - (5) The liquidator shall cause the account when audited or a summary thereof to be printed, and shall send a printed copy of the account or summary by post to every creditor and to every contributory:
- Provided** that the Court may in any case dispense with compliance with this sub-section.

Sec 464 - Appointment and composition of committee of inspection.**(1)**

(a) The Court may, at the time of making an order for the winding up of a company or at any time thereafter, direct that there shall be appointed a committee of inspection to act with the liquidator.

(b) Where a direction is given by the Court as aforesaid, the liquidator shall, within two months from the date of such direction, convene a meeting of the creditors of the company (as ascertained from its books and documents) for the purpose of determining who are to be members of the committee;

(2) The liquidator shall, within fourteen days from the date of the creditors meeting or such further time as the Court in its discretion may grant for the purpose; convene a meeting of the contributories to consider the decision of the creditors' meeting with respect to the membership of the committee; and it shall be open to the meeting of the contributories to accept the decision of the creditors' meeting with or without modifications or to reject it.

(3) Except in the case where the meeting of the contributories accepts the decision of the creditors' meeting in its entirety, it shall be the duty of the liquidator to apply to the Court for directions as to what the composition of the committee shall be, and who shall be members thereof.

Sec 551 - Information as to pending liquidations.

(1) If the winding up of a company is not concluded within one year after its commencement, the liquidator shall, unless he is exempted from so doing either wholly or in part by the Central Government, within two months of the expiry of such year and thereafter until the winding up is concluded, at intervals of not more than one year or at such shorter intervals, if any, as may be prescribed, file a statement in the prescribed form and containing the prescribed particulars duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation,-

(a) in the case of a winding up by or subject to the supervision of the Court, in Court; and

(b) in the case of a voluntary winding up, with the Registrar:

Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 462 apply.

(2) When the statement is filed in Court under clause (a) of sub-section (1), a copy shall simultaneously be filed with the Registrar and shall be kept by him along with the other records of the company.

(2A) Where a statement referred to in sub-section (2) relates to a Government company in liquidation, the liquidator shall forward a copy thereof,-

(a) to the Central Government, if that Government is a member of the Government company; or

(b) to any State Government, if that Government is a member of the Government company; or

(c) to the Central Government and any State Government, if both the Governments are members of the Government company.

(3) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement, and to receive a copy thereof or an extract there from.

POWERS OF THE LIQUIDATOR

Sec 457 - Powers of liquidator.

(1) The liquidator in a winding up by the Court shall have power, with the sanction of the Court,-

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

(2) The liquidator in a winding up by the Court shall have power -

- (i)** to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal;
- (ia)** to inspect the records and returns of the company on the files of the Registrar without payment of any fee;
- (ii)** to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;
- (iii)** to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi or note had been drawn, accepted, made or endorsed by, or on behalf of the company in the course of its business;
- (iv)** to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself:

Provided that nothing herein empowered shall be deemed to affect the rights, duties and privileges of any Administrator-General.

- (v)** to appoint an agent to do any business which the liquidator is unable to do himself.

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

Sec 535 - Disclaimer of onerous property in case of a company which is being wound up.

(1) Where any part of the property of a company which is being wound up consists of

(a) land of any tenure, burdened with onerous covenants;

(b) shares or stock in companies;

(c) any other property which is unsalable or is not readily saleable, by reason of its binding the possessor thereof either to the performance of any onerous act or to the payment of any sum of money; or

(d) unprofitable contracts;

the liquidator of the company, notwithstanding that he has endeavored to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, or done anything in pursuance of the contract, may, with the leave of the Court and subject to the provisions of this section, by writing signed by him, at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property:

Provided that, where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power of disclaiming the property may be exercised at any time within twelve months after he has become aware thereof or such extended period as may be allowed by the Court.

DISSOLUTION OF THE COMPANY

Sec 481- Dissolution of company.

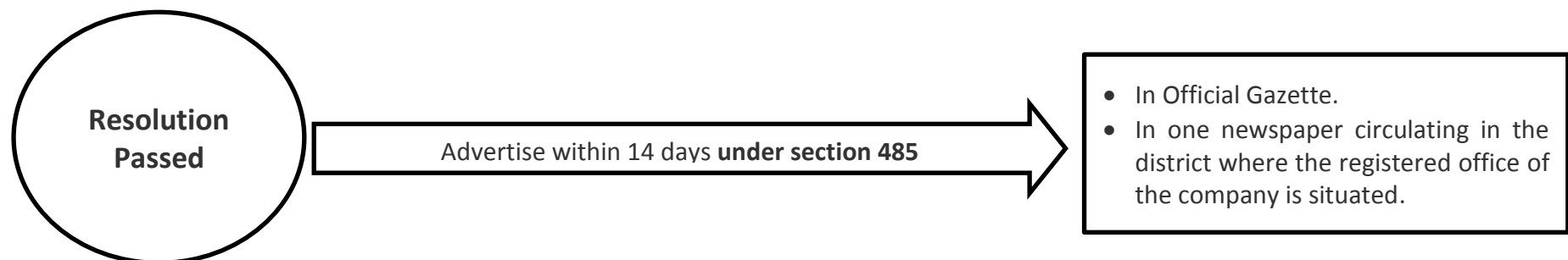
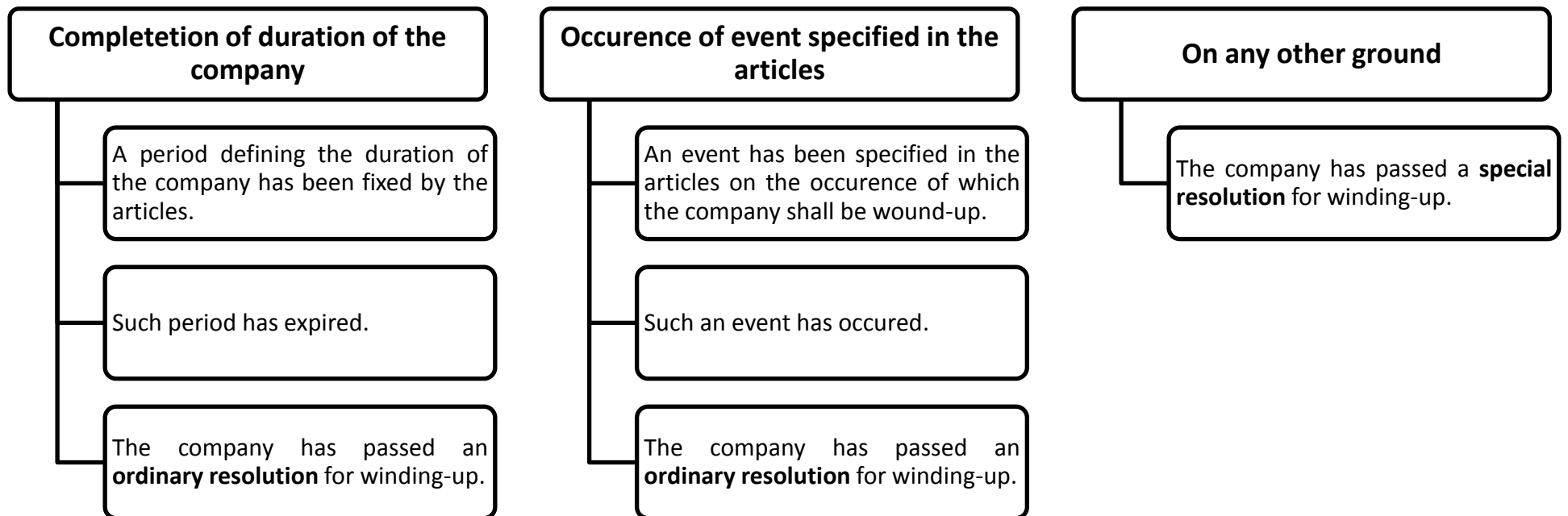
(1) When the affairs of a company have been completely wound up or when the Court is of the opinion that the liquidator cannot proceed with the winding up of a company for want of funds and assets or for any other reason whatsoever and it is just and reasonable in the circumstances of the case that an order of dissolution of the company should be made, the Court shall make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.

(2) A copy of the order shall; within thirty days from the date thereof, be forwarded by the liquidator to the Registrar who shall make in his books a minute of the dissolution of the company.

(3) If the liquidator makes default in forwarding a copy as aforesaid, he shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

VOLUNTARY WINDING-UP [Sec 484 to 521]

Grounds for voluntary winding-up [Sec 484]



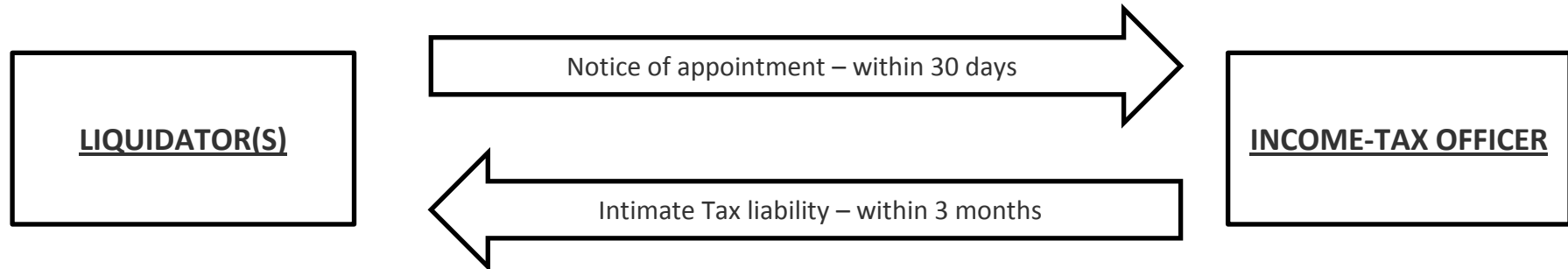
Sec 486 - Commencement of voluntary winding up.

A voluntary winding up shall be deemed to commence at the time when the resolution for voluntary winding up is passed.

Sec 487 - Effect of voluntary winding up on status of company.

In the case of a voluntary winding up, the company shall, from the commencement of the winding up, cease to carry on its business, except so far as may be required for the beneficial winding up of such business:

Provided that the corporate state and corporate powers of the company shall continue until it is dissolved.



MEMBERS' VOLUNTARY WINDING-UP

Sec 488 - Declaration of solvency in case of proposal to wind up voluntarily.

(1) Where it is proposed to wind up a company voluntarily, its directors, or in case the company has more than two directors, the majority of the directors, may, at a meeting of the Board, make a declaration verified by an affidavit, to the effect that they have made a full inquiry into the affairs of the company, and that, having done so, they have formed the opinion that the company has no debts, or that it will be able to pay its debts in full within such period not exceeding three years from the commencement of the winding up as may be specified in the declaration.

(2) A declaration made as aforesaid shall have no effect for the purposes of this Act, unless -

(a) it is made within the five weeks immediately preceding the date of the passing of the resolution for winding up the company and is delivered to the Registrar for registration before that date; and

(b) it is accompanied by a copy of the report of the auditors of the company (prepared, as far as circumstances admit, in accordance with the provisions of this Act) on the profit and loss account of the company for the period commencing from the date up to which the last such account was prepared and ending with the latest practicable date immediately before the making of the declaration and the balance sheet of the company made out as on the last-mentioned date and also embodies a statement of the company's assets and liabilities as at that date.

(3) Any director of a company making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full within the period specified in the declaration, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both,

(4) If the company is wound up in pursuance of a resolution passed within the period of five weeks after the making of the declaration, but its debts are not paid or provided for in full within the period specified in the declaration, it shall be presumed, until the contrary is shown, that the director did not have reasonable grounds for his opinion.

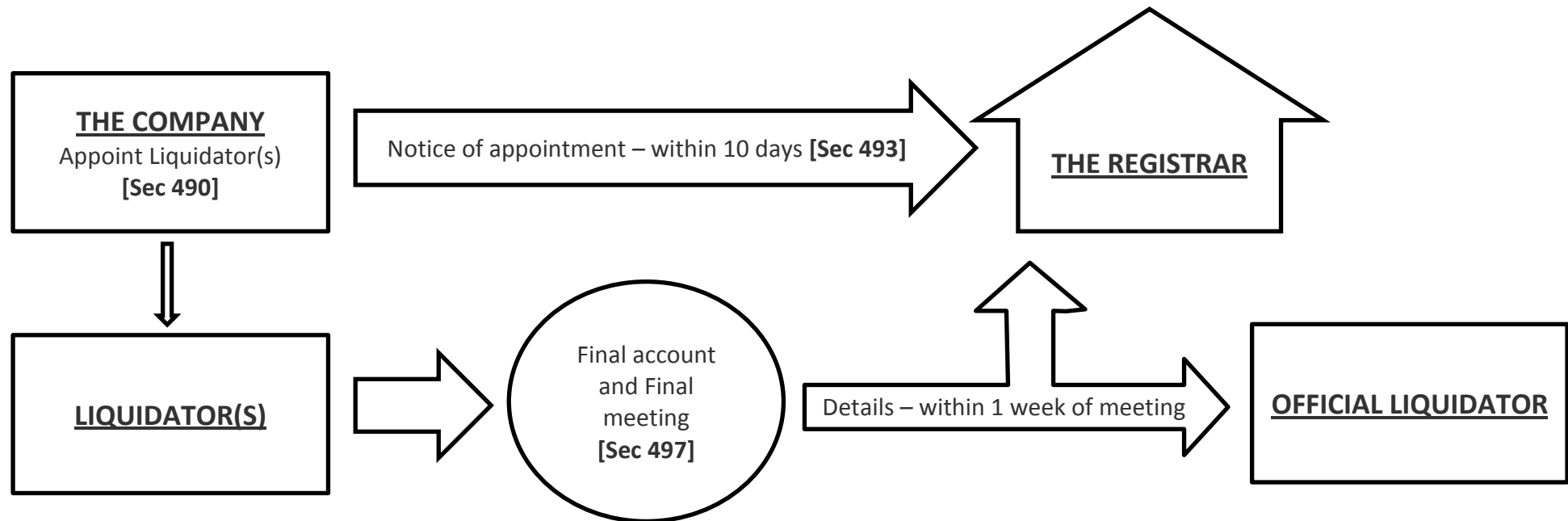
(5) A winding up in the case of which a declaration has been made and delivered in accordance with this section is in this Act referred to as "a members' voluntary winding up"; and a winding up in the case of which a declaration has not been so made and delivered is in this Act referred to as "a creditors' voluntary winding up".

Directors

=2 : all
>2 : majority

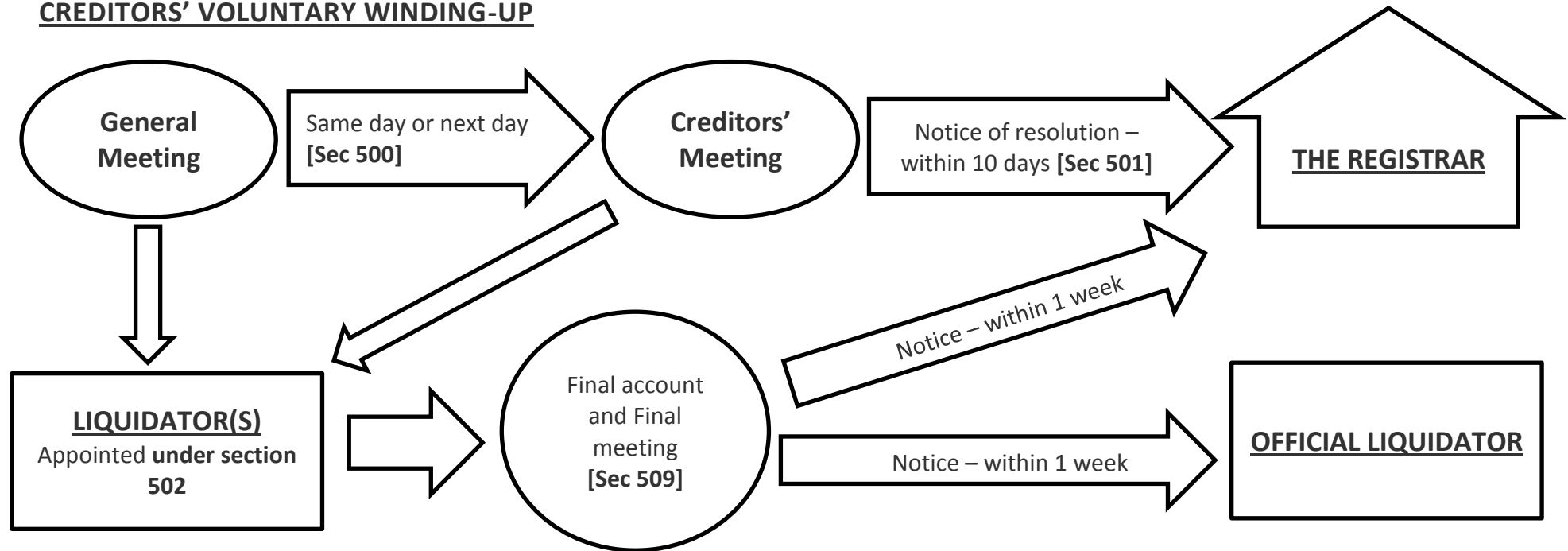
Deliver the **declaration of solvency within the 5 weeks** immediately preceding the date of the passing of the resolution for winding up

REGISTRAR



Sec 497 - Final meeting and dissolution.

- (1) Subject to the provisions of section 498, as soon as the affairs of the company are fully wound up, the liquidator shall
- (a) make up an account of the winding up, showing how the winding up has been conducted and the property of the company has been disposed of; and
 - (b) call a general meeting of the company for the purpose of laying the account before it, and giving any explanation thereof.
- (2) The meeting shall be called by advertisement
- (a) specifying the time, place and object of the meeting; and
 - (b) published not less than one month before the meeting in the Official Gazette, and also in some newspapers circulating in the district where the registered office of the company is situated.
- (3) Within one week after the meeting, the liquidator shall send to the Registrar and the Official Liquidator a copy each of the account and shall make a return to each of them of the holding of the meeting and of the date thereof. If the copy is not so sent or the return is not so made, the liquidator shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

CREDITORS' VOLUNTARY WINDING-UP**Sec 500 - Meeting of creditors.**

(1) The company shall cause a meeting of the creditors of the company to be called for the day, or the day next following the day, on which there is to be held the general meeting of the company at which the resolution for voluntary winding up is to be proposed, and shall cause notices of the meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the meeting of the company.

(2) The company shall cause notice of the meeting of the creditors to be advertised once at least in the Official Gazette and once at least in two newspapers circulating in the district where the registered office or principal place of business of the company is situated.

(3) The Board of directors of the company shall

(a) cause a full statement of the position of the company's affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid before the meeting of the creditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting.

The provisions on final meeting and dissolution under section 509 are similar to the provision under section 497.

Sec 511A - Application of section 454 to voluntary winding up.

The provisions of section 454 shall, so far as may be, apply to every voluntary winding up as they apply to the winding up by the Court except that references to-

- (a) the Court shall be omitted ;

- (b) the Official Liquidator or the provisional liquidator shall be construed as references to the liquidator; and

- (c) the "relevant date" shall be construed as references to the date of commencement of the winding up.

Sec 516 - Notice by liquidator of his appointment.

(1) The liquidator shall, within thirty days after his appointment publish in the Official Gazette, and deliver to the Registrar for registration, a notice of his appointment in the form prescribed.

Sec 519 - Application of liquidator to Court for public examination of promoters, directors, etc.

(1) The liquidator may make a report to the Court stating that in his opinion a fraud has been committed by any person in the promotion or formation of the company or by any officer of the company in relation to the company since its formation ; and the Court may, after considering the report, direct that person or officer shall attend before the Court on a day appointed by it for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as officer thereof.

WINDING-UP SUBJECT TO SUPERVISION OF COURT [Sec 522 to 527]**Sec 522 - Power to order winding up subject to supervision.**

At any time after a company has passed a resolution for voluntary winding up, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally on such terms and conditions, as the Court thinks just.

Sec 523 - Effect of petition for winding up subject to supervision.

A petition for the continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over suits and legal proceedings, be deemed to be a petition for winding up by the Court.

Sec 524 - Power of Court to appoint or remove liquidators.

(1) Where an order is made for a winding up subject to supervision, the Court may, by that or any subsequent order, appoint an additional liquidator or liquidators.

(2) The Court may remove any liquidator so appointed or any liquidator continued under the supervision order, and fill any vacancy occasioned by the removal, or by death or resignation.

(3) The Court may appoint the Official Liquidator as a liquidator under subsection (1) or to fill any vacancy occasioned under sub-section (2).

(4) The Court may also appoint or remove a liquidator on an application made by the Registrar in this behalf.

PROVISIONS APPLICABLE TO EVERY MODE OF WINDING-UP [Sec 528 to 560]

PROOF AND RANKING OF CLAIMS [Sec 528 to 530]

Sec 528 - Debts of all descriptions to be admitted to proof.

In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

Sec 529 -Application of insolvency rules in winding up of insolvent companies.

(1) In the winding up of an insolvent company, the same rules shall prevail and be observed with regard to

- (a)** debts provable;
- (b)** the valuation of annuities and future and contingent liabilities; and
- (c)** the respective rights of secured and unsecured creditors ; as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent:

Provided that the security of every secured creditor shall be deemed to be subject to a pari passu charge in favor of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debts opts to realize his security,

- (a)** the liquidator shall be entitled to represent the workmen and enforce such charge;
- (b)** any amount realized by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and
- (c)** so much of the debts due to such secured creditor as could not be realized by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank pari passu with the workmen's dues for the purposes of section 529A.

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company, may come in under the winding up, and make such claims against the company as they respectively are entitled to make by virtue of this section :

Provided that if a secured creditor instead of relinquishing his security and proving for his debts proceeds to realize his security, he shall be liable to pay his portion of the expenses incurred by the liquidator (including a provisional liquidator, if any) for the preservation of the security before its realization by the secured creditor.

Explanation.:- For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security;

Sec 529A - Overriding preferential payments.

- (1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company,
- (a) workmen's dues; and
 - (b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 pari passu with such dues, shall be paid in priority to all other debts.
- (2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

Sec 530 - Preferential payments.

- (1) In a winding up, subject to the provisions of section 529A, there shall be paid 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 at the relevant date as defined in clause (c) of sub-section (8), and having become due and payable within the twelve months next before that date;
 - (b) all wages or salary (including wages payable for time or piece work and salary earned wholly or in part by way of commission) of any employee, in respect of services rendered to the company and due for a period not exceeding four months within the twelve months next before the relevant date subject to the limit specified in sub-section (2);
[Note: As per the notification dt 17-02-97, issued by the Ministry of Finance, Department of Company Affairs, the amount payable shall not in case of any one claimant, exceed the sum of Rs.20,000/- (Rupees twenty thousand only)]
 - (c) all accrued holiday remuneration becoming payable to any employee, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;
 - (d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, all amounts due, in respect of contributions payable during the twelve months next before the relevant date, by the company as the employer of any persons, under the Employees' State Insurance Act, 1948 (34 of 1948), or any other law for the time being in force;
 - (e) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923 (8 of 1923), rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company;
 - (f) all sums due to any employee from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the employees, maintained by the company; and
 - (g) the expenses of any investigation held in pursuance of section 235 or 237, in so far as they are payable by the company.

EFFECT OF WINDING UP ANTECEDENT AND OTHER TRANSACTIONS

Sec 531 - Fraudulent preference.

(1) Any transfer of property, movable or immovable, delivery of goods, payment, execution or other act relating to property made, taken or done by or against a company within six months before the commencement of its winding up which, had it been made, taken or done by or against an individual within three months before the presentation of an insolvency petition on which he is adjudged insolvent, would be deemed in his insolvency a fraudulent preference, shall in the event of the company being wound up, be deemed a fraudulent preference of its creditors and be invalid accordingly:

(2) For the purposes of sub-section (1), the presentation of a petition for winding up in the case of a winding up by or subject to the supervision of the Court, and the passing of a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond to the act of insolvency in the case of an individual.

Sec 531A - Avoidance of voluntary transfer.

Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favor of a purchaser or encumbrance in good faith and for valuable consideration, if made within a period of one year before the presentation of petition for winding up by or subject to the supervision of the Court or the passing of a resolution for voluntary winding up of the company, shall be void against the liquidator.

Sec 532 - Transfers for benefit of all creditors to be void.

Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

Sec 533 - Liabilities and rights of certain fraudulently preferred persons.

(1) Where, in the case of a company which is being wound up, anything made, taken or done after the commencement of this Act is invalid under section 531 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, then (without prejudice to any rights or liabilities arising apart from this provision), the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less.

(2) The value of the said person's interest shall be determined as at the date of the transaction constituting the fraudulent preference, and shall be determined as if the interest were free of all encumbrances other than those to which the mortgage or charge for the company's debt was then subject.

(3) On any application made to the Court with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Court shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

This sub-section shall apply, with the necessary modifications, in relation to transactions other than the payment of money as it applies in relation to payments of money.

Sec 534 - Effect of floating charge.

Where a company is being wound-up, a floating charge on the undertaking or property of the company created within the twelve months immediately preceding the commencement of the winding up, shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid, except to the amount of any cash paid to the company at the time of, or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five per cent per annum or such other rate as may for the time being be notified by the Central Government in this behalf in the Official Gazette :

Provided that in relation to a charge created more than three months before the commencement of this Act, this section shall have effect with the substitution, for references to twelve months of references to three months.

Sec 536 - Avoidance of transfers, etc., after commencement of winding up.

(1) In the case of a voluntary winding up, any transfer of shares in the company, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members of the company, made after the commencement of the winding up, shall be void.

(2) In the case of a winding up by or subject to the supervision of the Court, any disposition of the property (including actionable claims) of the company, and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up, shall, unless the Court otherwise orders, be void.

Sec 537 - Avoidance of certain attachments, executions, etc., in winding up by or subject to supervision of Court.

(1) Where any company is being wound-up by or subject to the supervision of the Court

(a) any attachment, distress or execution put in force, without leave of the Court, against the estate or effects of the company, after the commencement of the winding up; or

(b) any sale held, without leave of the court, of any of the properties or effects of the company after such commencement;

shall be void.

(2) Nothing in this section applies to any proceedings for the recovery of any tax or impost or any dues payable to the Government.

Sec 545 - Prosecution of delinquent officers and members of the company.

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

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty of any offence in relation to the company, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the liquidator and relating to the matter in question, as the Registrar may require.

(3) Where any report is made under sub-section (2) to the Registrar, he may, if he thinks fit, refer the matter to the Central Government for further inquiry. The Central Government shall thereupon investigate the matter and may, if it thinks it expedient, apply to the Court for an order conferring on any person designated by the Central Government for the purpose, with respect to the company concerned, all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(4) If on any report to the Registrar under sub-section (2), it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the Court, the liquidator may himself take proceedings against the offender.

(5) If it appears to the Court in the course of a voluntary winding up that any past or present officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar under sub-section (2), the Court may, on the application of any person interested in the winding up or of its own motion, direct the liquidator to make such a report, and on a report being made accordingly, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2).

(6) If, where any matter is reported or referred to the Registrar under this section, he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government ; and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute proceedings:

Provided that no report shall be made by the Registrar under this sub-section without first giving the accused person an opportunity of making a statement in writing to the Registrar and of being heard thereon.

(7) When any proceedings are instituted under this section, it shall be the duty of the liquidator and of every officer and agent of the company past and present (other than the defendant in the proceedings) to give all assistance in connection with the prosecution which he is reasonably able to give. For the purposes of this sub-section, the expression "agent", in relation to a company, shall be deemed to include any banker or legal adviser of the company and any person employed by the company as auditor.

(8) If any person fails or neglects to give assistance in the manner required by sub-section (7), the Court may, on the application of the Registrar, direct that person to comply with the requirements of that sub-section.

(9) Where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure or neglect was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personally.