

## **Following changes to the Companies Act, 2013 in line with Insolvency and Bankruptcy Code, 2016:**

THE ELEVENTH SCHEDULE of the Insolvency and Bankruptcy Code, 2016, Amendments to the Companies Act, 2013:

1. In section 2,—

(a) for clause (23), the following clause shall be substituted, namely:—

*"(23) "Company Liquidator" means a person appointed by the Tribunal as the Company Liquidator in accordance with the provisions of section 275 for the winding up of a company under this Act;"*

(b) after clause (94) , the following clause shall be inserted, namely:—

*"(94A) "winding up" means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable."*

2. In section 8, in sub-section (9), for the words *"the Rehabilitation and Insolvency Fund formed under section 269"*, the words *"Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016"* shall be substituted.

3. In section 66, in sub-section (8), for the words, brackets and figures *" is unable, within the meaning of sub-section (2) of section 271, to pay the amount of his debt or claim,"* the words and figures *"commits a default, within the meaning of section 6 of the Insolvency and Bankruptcy Code, 2016, in respect of the amount of his debt or claim,"* shall be substituted.

4. In sections 77, in sub-section (3), after the words *"the liquidator"*, the words and figures *"appointed under this Act or the Insolvency and Bankruptcy Code, 2016, as the case may be,"* shall be inserted.

5. In section 117 in sub-section (3), in clause (f), for the word and figures *"section 304"*, the words and figures *"section 59 of the Insolvency and Bankruptcy Code, 2016"* shall be substituted.

6. In section 224, in sub-section (2), after the words *"wound up under this Act"*, the words and figures *"or under the Insolvency and Bankruptcy Code, 2016"* shall be inserted.

6A. In section 230,—

(a) in sub-section (1), after the word *"liquidator"*, the words *"appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be,"* shall be inserted;

(b) in sub-section (6), after the word *"on the liquidator"*, the words *"appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be,"* shall be inserted;

7. In section 249, in sub-section (1), for clause (e), the following clause shall be substituted, namely:—

*" (e) is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016."*

8. Sections 253 to 269 shall be omitted.

9. For section 270, the following section shall be substituted, namely:—

*"270. The provisions of Part I shall apply to the winding up of a company by the Tribunal under this Act."*

10. For section 271, the following section shall be substituted, namely:—

"271. A company may, on a petition under section 272, be wound up by the Tribunal,—

- (a) if the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- (b) 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;
- (c) if on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
- (d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
- (e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up."

12. For section 272, the following section shall be substituted, namely:—

"272. (1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

- (a) the company;
- (b) any contributory or contributories;
- (c) all or any of the persons specified in clauses (a) and (b);
- (d) the Registrar;
- (e) any person authorised by the Central Government in that behalf; or
- (f) in a case falling under clause (b) of section 271, by the Central Government or a State Government.

(2) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

(3) The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) or clause (e) of that sub-section:

Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition:

Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.

(4) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

(5) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition."

13. In section 275,—

(a) for sub-section (2), the following sub-section shall be substituted, namely:—

*"(2) The provisional liquidator or the Company Liquidator, as the case may, shall be appointed by the Tribunal from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016;"*

*(b) sub-section (4) shall be omitted.*

*14. For section 280, the following section shall be substituted, namely:—*

*"280. The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,—*

*(a) any suit or proceeding by or against the company;*

*(b) any claim made by or against the company, including claims by or against any of its branches in India;*

*(c) any application made under section 233;*

*(d) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company,*

*whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made."*

*15. Section 289 shall be omitted.*

*15A. The heading "Part II.—Voluntary winding up" shall be omitted.*

*16. Sections 304 to 323 shall be omitted.*

*17. Section 325 shall be omitted.*

*18. For section 326, the following section shall be substituted, namely:—*

*"326. (1) In the winding up of a company under this Act, the following debts shall be paid in priority to all other debts:—*

*(a) workmen's dues; and*

*(b) where a secured creditor has realised a secured asset, so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen's portion in his security (if payable under the law), whichever is less, pari passu with the workmen's dues:*

*Provided that in case of the winding up of a company, the sums referred to in sub-clauses (i) and (ii) of clause (b) of the Explanation, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.*

*(2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that subsection shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.*

*Explanation.—For the purposes of this section, and section 327—*

*(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act, 1947 (14 of 1947);*

*(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the*

company to its workmen, namely:—

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947 (14 of 1947);

(ii) all accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or 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 (19 of 1923), rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(iv) all sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.

**Illustration:**

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs.3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000."

19. In section 327,—

(a) after sub-section (6), the following sub-section shall be inserted, namely:—

" (7) Sections 326 and 327 shall not be applicable in the event of liquidation under the Insolvency and Bankruptcy Code, 2016.";

(b) in the Explanation, for clause (c), the following clause shall be substituted, namely:—

"(c) the expression "relevant date" means in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date under the Insolvency and Bankruptcy Code, 2016;"

20. For section 329, the following section shall be substituted, namely:—

"329. Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer in good faith and for valuable consideration, if made within a period of one year before the presentation of a petition for winding up by the Tribunal under this Act shall be void against the

*Company Liquidator."*

21. For section 334, the following section shall be substituted, namely:—

*"334. In the case of a winding up by the Tribunal, 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 Tribunal otherwise orders, be void."*

22. In section 336, in sub-section (1), in the opening paragraph, for the words "whether by the Tribunal or voluntarily, or which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up", the words "by the Tribunal under this Act or which is subsequently ordered to be wound up by the Tribunal under this Act" shall be substituted.

23. In section 337, for the words "or which subsequently passes a resolution for voluntary winding up," the words "under this Act", shall be substituted.

24. In section 342, sub-sections (2), (3) and (4) shall be omitted.

25. In section 343, for sub-section (1), the following sub-section shall be substituted, namely—

*"(1) The Company Liquidator may, with the sanction of the Tribunal, when the company is being wound up by the Tribunal,—*

*(i) pay any class of creditors in full;*

*(ii) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, against the company, or whereby the company may be rendered liable; or*

*(iii) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof."*

26. In section 347, for sub-section (1), the following sub-section shall be substituted, namely—

*"(1) When the affairs of a company have been completely wound up and it is about to be dissolved, the books and papers of such company and those of the Company Liquidator may be disposed of in such manner as the Tribunal directs."*

27. In section 348, for sub-section (1), the following sub-section shall be substituted, namely—

*"(1) If the winding up of a company is not concluded within one year after its commencement, the Company 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 such form containing such particulars as may be prescribed, duly audited, by a person qualified to act as auditor of the company, with respect to the proceedings in, and position of, the liquidation, with the Tribunal:*

*Provided that no such audit as is referred to in this sub-section shall be necessary where the provisions of section 294 apply;"*

28. For section 357, the following section shall be substituted, namely:—

*"357. The winding up of a company by the Tribunal under this Act shall be deemed to commence at the time of the presentation of the petition for the winding up."*

29. In section 370, in the proviso, after the words "obtained for the winding up the company", the words "in accordance with the provisions of this Act or of the Insolvency and Bankruptcy Code, 2016" shall be inserted.

30. In section 372, after the words "The provisions of this Act", the words "or of the Insolvency and Bankruptcy Code, 2016, as the case may be," shall be inserted.

31. In section 419, for sub-section (4), the following sub-section shall be substituted, namely:—

*"(4) The Central Government shall, by notification, establish such number of benches of the Tribunal, as it may consider necessary, to exercise the jurisdiction, powers and authority of the Adjudicating Authority conferred on such Tribunal by or under Part II of the Insolvency and Bankruptcy Code, 2016."*

32. In section 424,—

*(i) in sub-section (1), after the words, "other provisions of this Act", the words "or of the Insolvency and Bankruptcy Code, 2016" shall be inserted;*

*(ii) in sub-section (2), after the words, "under this Act", the words "or under the Insolvency and Bankruptcy Code, 2016" shall be inserted.*

33. In section 429, for sub-section (1), the following sub-section shall be substituted, namely:—

*"(1) The Tribunal may, in any proceedings for winding up of a company under this Act or in any proceedings under the Insolvency and Bankruptcy Code, 2016, in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such company under this Act or of corporate persons under the said Code, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,—*

*(a) take possession of such property, books of account or other documents; and*

*(b) cause the same to be entrusted to the Tribunal or other persons authorised by it."*

34. For section 434, the following section shall be substituted, namely:—

*"434. (1) On such date as may be notified by the Central Government in this behalf,—*

*(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under sub-section (1) of section 10E of the Companies Act, 1956 (1 of 1956), immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;*

*(b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order*

of the Company Law Board to him on any question of law arising out of such order:

*Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding sixty days; and*

*(c) all proceedings under the Companies Act, 1956 (1 of 1956), including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:*

*Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government.*

*(2) The Central Government may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section."*

*35. In section 468, for sub-section (2), the following sub-section shall be substituted, namely:—*

*"(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—*

- (i) as to the mode of proceedings to be held for winding up of a company by the Tribunal under this Act;*
- (ii) for the holding of meetings of creditors and members in connection with proceedings under section 230;*
- (iii) for giving effect to the provisions of this Act as to the reduction of the capital;*
- (iv) generally for all applications to be made to the Tribunal under the provisions of this Act;*
- (v) the holding and conducting of meetings to ascertain the wishes of creditors and contributories;*
- (vi) the settling of lists of contributories and the rectifying of the register of members where required, and collecting and applying the assets;*
- (vii) the payment, delivery, conveyance, surrender or transfer of money, property, books or papers to the liquidator;*
- (viii) the making of calls; and*
- (ix) the fixing of a time within which debts and claims shall be proved."*

*36. In Schedule V, in Part II, in section III, for clause (b), the following clause shall be substituted, namely:—*

*"(b) where the company—*

- (i) is a newly incorporated company, for a period of seven years from the date of its incorporation, or*
- (ii) is a sick company, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction for a period of five years from the date of sanction of scheme of revival, or*
- (iii) is a company in relation to which a resolution plan has been approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 for a period of five years from the date of such approval, it may pay remuneration up to two times the amount permissible under section II."*

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