CHAPTER 7

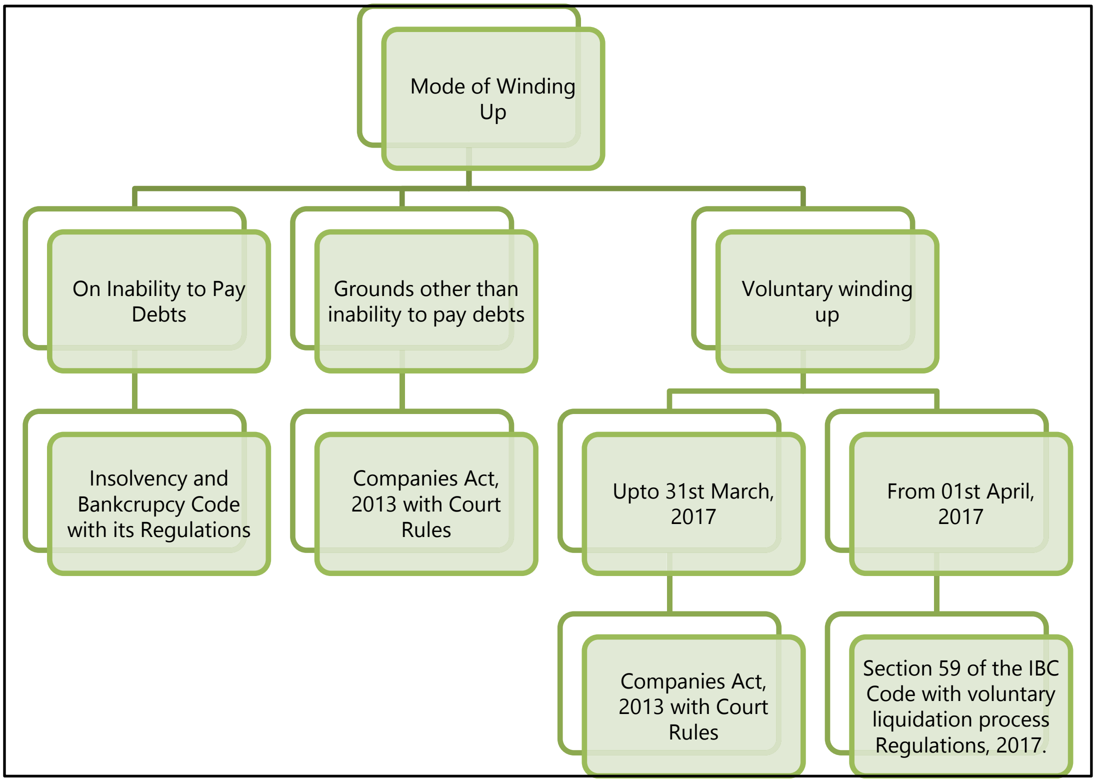
LIQUIDATION OF COMPANIES

LEARNING OUTCOMES

After studying this chapter, you will be able to:

- Understand the definition of Winding Up and its types.
- Prepare Statement of Affairs as per the format prescribed by the Act.
- Draw Deficiency account and will be able to point out the reasons for deficiency.
- Distinguish between preferential payments and over-riding preferential payments.
- Set an order of payment of all obligations.
- Prepare Liquidator's Final Statement of account.

CHAPTER OVERVIEW



1. LIQUIDATION - INTRODUCTION

A company comes into being through a legal process and also comes to an end by law. Liquidation is the legal procedure by which the company comes to an end. Thus a company being a creation of law cannot die a natural death. A company, when found necessary, can be liquidated.

2. DEFINITION OF WINDING UP

As per Section 2 (94A) of the Companies Act, 2013, winding up means winding up under this Act or liquidation under the Insolvency and Bankruptcy Code, 2016, as applicable.

Winding Up Includes	
	Winding up under Companies Act, 2013
	Liquidation under Insolvency and Bankruptcy Code, 2016

3. WINDING UP BY TRIBUNAL

As per section 270, the provision of Part I should apply to the winding up of a company by the Tribunal under this Act.

Circumstances in Which Company May be Wound Up by Tribunal [Section 271]

Circumstances

- **(a)** The company has resolved that the company be wound up by the Tribunal. The company has require to pass special resolution.
- **(b)** 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)** The Registrar or any other person authorised by the Central Government by notification under this Act can make an application to tribunal. 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)** The company has made a **default** in filing with the Registrar its **financial statements or annual returns** for immediately preceding **5 consecutive financial years.**
- **(e)** The Tribunal is of the opinion that it is just and equitable that the company should be wound up.

4. PETITION FOR WINDING UP [SECTION 272]

Petition for Winding Up to Tribunal can be made by	
	The Company
	Any Contributory or Contributories
	The registrar
	Any person authorized by Central Government in that behalf
	In case affairs of the company have been conducted in a Fraudulent manner, by the Central Government or a State Government.

Petition by Contributory

- ✓ A contributory should be entitled to present a petition for the winding up of a company.
- ✓ Shares in respect of which he is a contributory were either originally allotted to him or have been held by him for at least 6 months during the 18 months immediately before the commencement of the winding up and registered in his name or have transferred to him through the death of a former holder.

Contributory can file petition ignoring the following points

- He may be the holder of fully paid-up shares.
- The company may have no assets at all.
- The company may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities.

Petition by Registrar

The Registrar should be entitled to present a petition for winding up under section 271, except on the grounds specified in section 271 (a) or (e).

The Registrar should obtain the previous sanction of the Central Government to the presentation of a petition. The Central Government should not accord its sanction unless the company has been given a reasonable opportunity of making representations.

Petition by Company

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

A copy of the petition made under this section should also be filed with the Registrar and the Registrar should, without prejudice to any other provisions, submit his views to the Tribunal within 60 days of receipt of such petition.

5. VOLUNTARY WINDING UP

After knowing about the modes of compulsory winding up of a company let us now discuss the modes of voluntary winding up.

A company may be wound up voluntarily [Section 304[1]],—

(a) if the company in general meeting passes a resolution requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved; or

(b) if the company passes a special resolution that the company be wound up voluntarily.

Section 59 of the Insolvency and Bankruptcy Code, 2016

(1) A corporate person who intends to liquidate itself voluntarily and has not committed any default may initiate voluntary liquidation proceedings under the provisions of this Chapter[2].

(2) The voluntary liquidation of a corporate person under sub-section (1) shall meet such conditions and procedural requirements as may be specified by the Board.

(3) Without prejudice to sub-section (2), voluntary liquidation proceedings of a corporate person registered as a company shall meet the following conditions, namely:—

 (a) a declaration from majority of the directors of the company verified by an affidavit stating that—

  (i) they have made a full inquiry into the affairs of the company and they have formed an opinion that either the company has no debt or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

  (ii) the company is not being liquidated to defraud any person;

 (b) the declaration under sub-clause (a) shall be accompanied with the following documents, namely:—

  (i) audited financial statements and record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later;

[1] Applicable until 31 March 2017; with effect from 1 April 2017, Section 59 of the Insolvency and Bankruptcy Code, 2016 is applicable

[2] Chapter V- Voluntary liquidation of corporate persons

(ii) a report of the valuation of the assets of the company, if any prepared by a registered valuer;

(c) within four weeks of a declaration under sub-clause (a), there shall be—

(i) a special resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily and appointing an insolvency professional to act as the liquidator; or

(ii) a resolution of the members of the company in a general meeting requiring the company to be liquidated voluntarily as a result of expiry of the period of its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, as the case may be and appointing an insolvency professional to act as the liquidator:

Provided that the company owes any debt to any person, creditors representing two-thirds in value of the debt of the company shall approve the resolution passed under sub-clause (c) within seven days of such resolution.

(4) The company shall notify the Registrar of Companies and the Board about the resolution under sub-section (3) to liquidate the company within seven days of such resolution or the subsequent approval by the creditors, as the case may be.

(5) Subject to approval of the creditors under sub-section (3), the voluntary liquidation proceedings in respect of a company shall be deemed to have commenced from the date of passing of the resolution under sub-clause (c) of sub-section (3).

(6) The provisions of sections 35 to 53 of Chapter III[3] and Chapter VII[4] shall apply to voluntary liquidation proceedings for corporate persons with such modifications as may be necessary.

(7) Where the affairs of the corporate person have been completely wound up, and its assets completely liquidated, the liquidator shall make an application to the Adjudicating Authority for the dissolution of such corporate person.

[3] Liquidation process

[4] Offences and penalties

(8) The Adjudicating Authority shall on an application filed by the liquidator under sub-section (7), pass an order that the corporate debtor shall be dissolved from the date of that order and the corporate debtor shall be dissolved accordingly.

(9) A copy of an order under sub-section (8) shall within fourteen days from the date of such order, be forwarded to the authority with which the corporate person is registered.

6. LIQUIDATORS' STATEMENT OF ACCOUNT

In case of Compulsory wound-up, the Company Liquidator should keep proper books in such manner, as may be prescribed, in which he should cause entries or minutes to be made of proceedings at meetings and of such other matters as may be prescribed.

Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books, personally or through his agent.

While preparing the liquidator's statement of account, receipts are shown in the following order :

(a) Amount realised from assets are included in the prescribed order.

(b) In case of assets specifically pledged in favour of creditors, only the surplus from it, if any, is entered as 'surplus from securities'.

(c) In case of partly paid up shares, the equity shareholders should be called up to pay necessary amount (not exceeding the amount of uncalled capital) if creditors' claims/claims of preference shareholders can't be satisfied with the available amount. Preference shareholders would be called upon to contribute (not exceeding the amount as yet uncalled on the shares) for paying of creditors.

(d) Amounts received from calls to contributories made at the time of winding up are shown on the Receipts side.

(e) Receipts per Trading Account are also included on the Receipts side.

(f) Payments made to redeem securities and cost of execution and payments per Trading Account are deducted from total receipts.

Payments are made and shown in the following order :

(a) Legal charges;

(b) Liquidator's expenses;

(c) Debenture holders (including interest up to the date of winding up if the company is insolvent and to the date of payment if it is solvent);

(d) Creditors :

  (i) Preferential (in actual practice, preferential creditors are paid before debenture holders having a floating charge);

  (ii) Unsecured creditors;

(e) Preferential shareholders (Arrears of dividends on cumulative preference shares should be paid up to the date of commencement of winding up); and

(f) Equity shareholders.

7. COMMENCEMENT OF WINDING UP BY TRIBUNAL [SECTION 357]:

Where, before the presentation of a petition for the winding up of a company by the Tribunal, a resolution has been passed by the company for voluntary winding up, the winding up of the company should be deemed to have commenced at the time of the passing of the resolution, and unless the Tribunal, on proof of fraud or mistake, thinks fit to direct otherwise, all proceedings taken in the voluntary winding up should be deemed to have been validly taken.

In any other case, the winding up of a company by the Tribunal should be deemed to commence at the time of the presentation of the petition for the winding up.

Exclusion of Certain Time in Computing Period of Limitation [Section 358]:

Notwithstanding anything in the Limitation Act, 1963, or in any other law for the time being in force, in computing the period of limitation specified for any suit or application in the name and on behalf of a company which is being wound up by the Tribunal, the period from the date of commencement of the winding up of the company to a period of one year immediately following the date of the winding up order should be excluded.

8. STATEMENT OF AFFAIRS

In case of winding up by Tribunal, Section 272(5) of the Companies Act, 2013 provides that 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.

In accordance with Section 274(1), where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a prima facie case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs within thirty days of the order in such form and in such manner as may be prescribed. The Tribunal may allow a further period of thirty days in a situation of contingency or special circumstances.

The broad lines on which the Statement of Affairs is prepared are the following —

(1) Include assets on which there is no fixed charge at the value they are expected to realise. Students should note to include calls in arrear but not uncalled capital.

(2) Include assets on which there is a fixed charge. The amount expected to be realised would be compared with the amount due to the creditor concerned. Any **surplus** is to be extended to the other column. A **deficit** (the amount owed to the creditor exceeding the amount realisable from the asset) is to be added to unsecured creditors.

(3) The total of assets in point (1) and any surplus from assets mentioned in point (2) is available for all the creditors (except secured creditors already covered by specifically mortgaged assets).

(4) From the total assets available, the following should be deducted one by one:-

   (*i*) Preferential creditors,

   (*ii*) Debentures having a floating charge, and

   (*iii*) Unsecured creditors.

   If a minus balance emerges, there would be deficiency as regards creditors, otherwise there would be a surplus.

(5) The amount of total paid-up capital (giving details of each class of shares) should be added and the figure emerging will be deficiency (or surplus) as regards members.

Note: Statement of affairs should accompany eight lists:

List A ***Full particulars of every description of property not specifically pledged and included in any other list are to be set forth in this list.***

List B ***Assets specifically pledged and creditors fully or partly secured.***

List C ***Preferential creditors for rates, taxes, salaries, wages and otherwise.***

List D ***List of debenture holders secured by a floating charge.***

List E ***Unsecured creditors.***

List F ***List of preference shareholders.***

List G ***List of equity shareholders.***

List H ***Deficiency or surplus account.***

9. DEFICIENCY ACCOUNT

The official liquidator will specify a date for period (minimum three years) beginning with the date on which information is supplied for preparation of an account to explain the deficiency or surplus. On that date either assets would exceed capital plus liabilities, that is, there would be a reserve or there would be a deficit or debit balance in the Profit and Loss Account. The Deficiency account is divided into two parts:

1. The first part starts with the deficit (on the given date) and contains every item that increases deficiency (or reduces surplus such as losses, dividends etc.).
2. The second part starts with the surplus on the given date and includes all profits.

If the total of the first exceeds that of the second, there would be a deficiency to the extent of the difference, and if the total of the second part exceeds that of the first, there would be a surplus.

10. OVERRIDING PREFERENTIAL PAYMENTS [SECTION 326]:

In the winding up of a company under this Act, the following debts should be paid in priority to all other debts,

a. workmen's dues; and

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

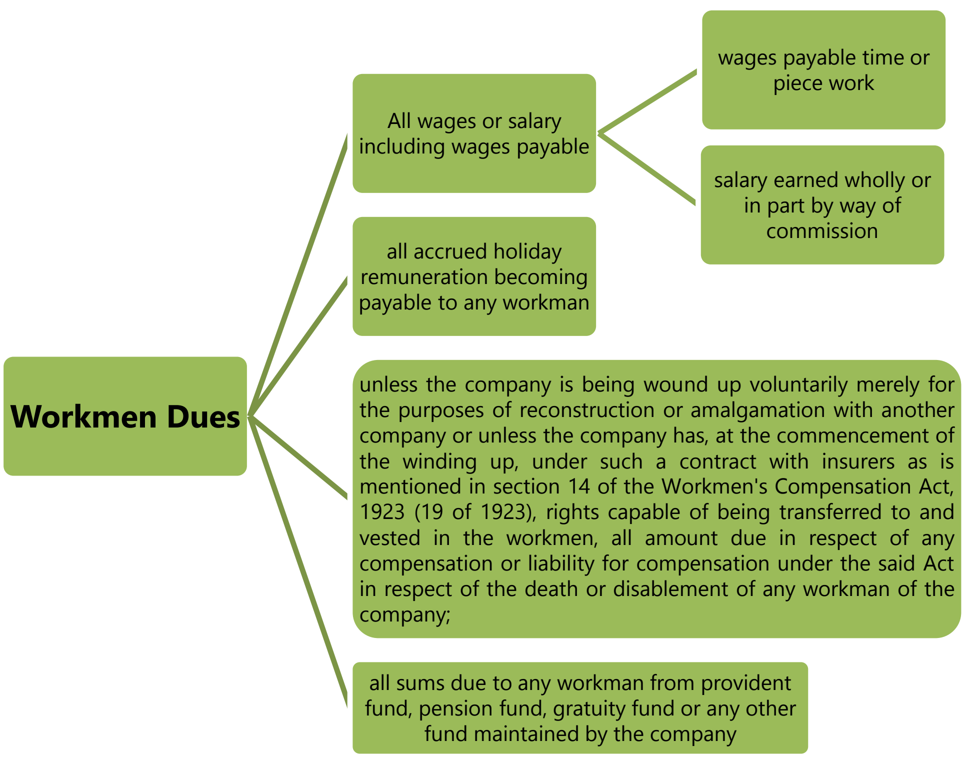
Illustration

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

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 Section 2 (s) of the Industrial Disputes Act, 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:



The following payment should be made in priority to secured creditors.

All wages or salary including wages payable

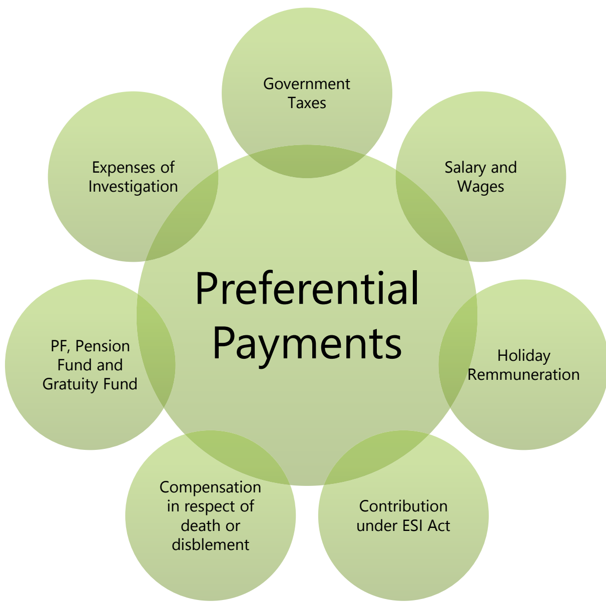
all accrued holiday remuneration becoming payable to any workman

If the above payments are payable for a period of 2 years preceding the winding up order then the same shall be paid in priority to all other debts (including debts due to secured creditors), within a period of 30 days of sale of assets and shall be subject to such charge over the security of secured creditors.

(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.

11. PREFERENTIAL CREDITORS

✓ In a winding up there should be paid in priority to all other debts subject to the provisions of section 326.



(a) **Government Taxes:** All revenues, taxes, cess and rates due from the company to the Central Government or a State Government or to a local authority at the relevant date, and having become due and payable within the twelve months immediately before that date;

(b) Salary and Wages: 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 12 months immediately before the relevant date, subject to the condition that the amount payable under this clause to any workman should not exceed such amount as may be notified;

(c) Holiday Remuneration: All accrued holiday remuneration becoming payable to any employee, or in the case of his death, to any other person claiming under him, on the termination of his employment before, or by the winding up order, or, as the case may be, the dissolution of the company;

(d) Contribution under ESI Act: Unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, all amount due in respect of contributions payable during the period of twelve months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 or any other law for the time being in force;

(e) Compensation in respect of death of disablement: Unless the company has, at the commencement of winding up, under such a contract with any insurer as is mentioned in section 14 of the Workmen's Compensation Act, 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 employee of the company:

Where any compensation under the said Act is a weekly payment, the amount payable under this clause should be taken to be the amount of the lump sum for which such weekly payment could, if redeemable, be redeemed, if the employer has made an application under that Act;

(f) PF, Pension Fund or Gratuity Fund: All sums due to any employee from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company; and

(g) Expenses of Investigation: The expenses of any investigation held in pursuance of sections 213 and 216, in so far as they are payable by the company.

- ✓ Where any advance payment has been made to any employee of a company on account of wages or salary or accrued holiday remuneration himself by some person for that purpose. The person by whom the money was advanced should have a right of priority in respect of the money so advanced and paid-up to the amount. The sum in respect of which the employee or other person in his right would have been entitled to priority in the winding up has been reduced by reason of the payment having been made.

- ✓ The debts enumerated in this section should—

  (a) **rank equally among themselves** and be paid in full, unless the assets are insufficient to meet them, in which case they should abate in equal proportions; and

  (b) so far as the assets of the company available for payment to general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

- ✓ The debts under this section should be discharged forthwith so far as the assets are sufficient to meet them, subject to the retention of such sums as may be necessary for the costs and expenses of the winding up.

- ✓ Formal proof should not require except the circumstances given in point number D.

- ✓ In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months immediately before the date of a winding up order, the debts to which priority is given under this section should be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:

  Provided that, in respect of any money paid under any such charge, the landlord or other person should have the same rights of priority as the person to whom the payment is made.

- ✓ Any remuneration in respect of a period of holiday or of absence from work on medical grounds through sickness or other good cause should be deemed to be wages in respect of services rendered to the company during that period.

Explanations: For the purposes of this section,

- **Accrued Holiday Remuneration includes,** in relation to any person, all sums which, by virtue either of his contract of employment or of any enactment including any order made or direction given thereunder, are payable on account of the remuneration which would, in the ordinary course, have become payable to him in respect of a period of holiday, had his employment with the company continued until he became entitled to be allowed the holiday;
- **Employee** does not include a workman; and
- **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.

✓ Sections 326 and 327 should not be applicable in the event of liquidation under the Insolvency and Bankruptcy Code, 2016.

Effect of Floating Charge [Section 332]

Where a company is being wound up, a floating charge on the undertaking or property of the company created within the 12 months immediately preceding the commencement of the winding up, should be invalid unless it is proved that the company immediately after the creation of the charge was solvent except for the amount of any cash paid to the company at the time of and in consideration for or subsequent to the creation of the charge together with interest on that amount at the rate of 5 per cent per annum or such other rate as may be notified by the Central Government in this behalf.

Example

A company went into liquidation whose creditors are ₹ 36,000. This amount of ₹ 36,000 includes ₹ 6,000 on account of wages of 15 men at ₹ 100 per month for 4 months, immediately before the date of winding up, ₹ 9,000 being the salaries of 5 employees at ₹ 300 per month for the previous 6 months, Rent for godown for the *last six months amounting to ₹ 3,000; Income-tax deducted out of salaries of employees ₹ 1,000. In addition it is estimated that the company would have to pay ₹ 3,000 as compensation to an employees for injuries suffered by him, which was contingent liability not accepted by the company and not included in above said creditors figure.*

Find the amount of Preferential Creditors.

Solution

Calculation of Preferential Creditors

Tax deducted at source on salaries	1,000
Wages (15 men for 4 months at ₹ 100 each)	6,000
Salaries (5 men for 4 months at ₹ 300 each)	6,000
Workmen's compensation	3,000
Total	16,000

Note:

(i) Wages or Salaries payable to any employee due for the period not exceeding 4 months within the twelve months next before commencement of winding up subject to maximum 20,000 per claimant are preferential creditors.

(ii) Rent for godown is not included in preferential creditors.

12. MISCELLANEOUS ILLUSTRATIONS

Illustration 1

X Ltd. was ordered to be wound up on March 31st, 2017 on which date its summarised balance sheet was as follows:

Liabilities		*₹*	*Assets*	*₹*
Subscribed Capital:				
10,000 shares of ₹ 100 each		*10,00,000*	*Goodwill*	*1,00,000*
5% Debentures	*1,60,000*		*Building*	*3,50,000*
Interest Accrued	*4,000*	*1,64,000*	*Plant*	*5,50,000*
(Secured by floating			*Fixtures*	*23,000*
charge on all assets)			*Stock*	*38,000*
Bank Overdraft		*25,000*	*Debtors*	*25,000*

(Secured by hypothecation of stock)		*Cash*	*500*
Trade payables	*36,000*	*P & L A/c*	*1,38,500*
Total	*12,25,000*	*Total*	*12,25,000*

The amounts estimated to be realised are : Goodwill ₹ 1,000; Building ₹ 3,00,000; Plant ₹ 5,25,000; Fixtures ₹ 10,000; Stock ₹ 31,000; Debtors ₹ 20,000.

Creditors included ₹ 6,000 on account of wages of 15 men at ₹ 100 per month for 4 months immediately before the date of winding up : ₹ 9,000 being the salaries of 5 employees at ₹ 300 per month for the previous 6 months; Rent for godown for the last six months amounting to ₹ 3,000; Income-tax deducted out of salaries of employees ₹ 1,000 and Directors Fees ₹ 500.

Three years ago, the debit balance in the Profit and Loss Account was ₹ 77,925 and since that date the accounts of the company have shown the following figures:

	Year 31-3-2015 ₹	*Year 31-3-2016 ₹*	*Year 31-3-2017 ₹*
Gross Profit	*65,000*	*45,000*	*40,000*
Wages and Salaries	*40,500*	*36,000*	*34,400*
Electricity and Water Tax	*5,750*	*6,380*	*5,260*
Debentures interest	*8,000*	*8,000*	*8,000*
Bad Debts	*8,540*	*7,600*	*6,700*
Depreciation	*6,700*		
Directors' Fees	*1,000*	*1,000*	*1,000*
Miscellaneous Expenses	*10,500*	*7,265*	*7,980*
Total	*80,990*	*66,245*	*63,340*

In addition it is estimated that the company would have to pay ₹ 5,000 as compensation to an employee for injuries suffered by him which was contingent liability not accepted by the company.

Prepare the Statement of Affairs and the Deficiency account

Solution

Statement of Affairs (In liquidation) of X Ltd. on 31 March, 2017

Estimated Realisable value

					₹
Assets not specifically pledged (as per list A)					
Cash					500
Debtors					20,000
Building					3,00,000
Plant					5,25,000
Fixtures					10,000
Goodwill					1,000
					8,56,500
Assets specifically pledged (as per list B)					
	(a)	(b)	(c)	(d)	
	Estimated Realisable Value	Due to secured creditors	Deficiency ranking as unsecured	Surplus carried to the last column	
	₹	₹	₹	₹	
Stock	31,000	25,000	—	6,000	
	Estimated surplus from assets specifically pledged				6,000
	Estimated total assets available for preferential creditors, Debenture holders secured by a floating charge and unsecured creditors (carried forward)				8,62,500
	Summary of Gross Assets :				
	Gross realised value of assets specifically pledged			31,000	
	Other Assets			8,56,500	
	Total			8,87,500	

Liabilities Gross Liabilities			
₹		₹	₹
25,000	Secured creditors (as per list B) to the extent which claims are estimated to be covered by assets specifically pledged		
18,000	Preferential creditors (as per list 'C' Estimated		18,000
	balance of assets available for Debenture holders secured by a floating charge and unsecured creditors)		8,44,500
1,64,000	Debenture holders secured by floating charge (as per list D)		1,64,000
	Estimated surplus as regards debenture holders*		6,80,500
	Unsecured creditors (as per list E)		
	Estimated unsecured balance of claims of creditors partly secured on specific assets brought		
	forward (*c*)	Nil	
	Creditors on Trade Account	16,500	
27,000	Outstanding Expenses	6,500	23,000
2,34,000	Estimated surplus as regards creditors, difference		6,57,500
	between Gross Assets (D) and		
	Gross Liabilities as per column (E)		
	Issued and called up capital :		
	1000 Equity Shares of ₹ 100 each fully called up as per list (G)		10,00,000
	Estimated deficiency as regards contributories		3,42,500

***Note**: This must be read subject to the following :

(1) There is no unpaid capital to the called-up.

(2) The estimates are subject to cost of the winding up and to any surplus or deficiency on trading pending realisation of assets.

List H Deficiency Account

Items contributing to deficiency:

(1)	Excess of capital and liabilities over assets three years ago as shown by the balance sheet		77,925
(2)	Net dividends or bonuses declared during the period		Nil
(3)	Net Trading Losses (after charging items shown in Note below) for the same period		60,575
(4)	Losses other than trading losses written off or for which provision has been made in the books during the same period		Nil
(5)	Estimated losses now written off for which provision has been made for the purpose of preparing the statement:		
	Bad Debts (Debtors)	5,000	
	Loss on		
	Goodwill	99,000	
	Buildings	50,000	
	Plant	25,000	
	Fixtures	13,000	
	Stock	7,000	
	Workmen's Compensation	5,000	2,04,000
(6)	Other items contributing to deficiency:		3,42,500
	Items reducing deficiency:		Nil
	Deficiency as shown by the Statement of affairs		3,42,500
	Notes as to net trading profits and losses :		
	Provision for depreciation on fixed assets		6,700
	Charged of Income-tax		Nil
	Interest on Debentures		24,000

Payment to directors made by the company and required by law to be disclosed in the accounts	3,000
Balance (being other trading losses)	26,875
	60,575

Particulars of Creditors for expenses	*Unsecured*	*Preferential*
Directors Fees	500	
Income tax on salaries	—	1,000
Rent (not distrained by landlord)	3,000	—
Wages (15 men for 4 months at ₹ 100 each)	—	6,000
Salaries (5 men for 4 months at ₹ 300 each, ₹ 9,000)	3,000	6,000
Workmen's Compensation		5,000
	6,500	18,000

Creditors on trade account are ₹16,500 (*i.e.*, ₹ 36,000 less the total of creditors mentioned above, excluding ₹ 5,000 for workmen's compensation).

Illustration 2

From the following particulars, prepare a Statement of Affairs and the Deficiency of the Equipment Ltd., which went into liquidation on December 31, 2016:

	₹	*₹*
3,000 equity shares of 100 each, ₹ 80 paid-up		*2,40,000*
6% 1,000 preference shares of ₹ 100 each fully paid-up	*1,00,000*	
Less : Calls in arrear	*(5,000)*	*95,000*
5% Debentures having a floating charge on the assets (interest paid upto June 30, 2016)		*1,00,000*
Mortgage on Land & Buildings		*80,000*
Trade Creditors		*2,65,500*
Owing for wages		*20,000*
Secretary's salary (@ ₹ 500 p.m.) owing		*3,000*
Managing Director's salary (@ ₹ 1,500 p.m.) owing		*6,000*

Assets	*Estimated to produce*	*Book value*
	₹	*₹*
Land & Building	*1,30,000*	*1,20,000*
Plant	*1,30,000*	*2,00,000*
Tools	*4,000*	*20,000*
Patents	*30,000*	*50,000*
Stock	*74,000*	*87,000*
Investments in the hands of a		
Bank for an overdraft of ₹ 1,90,000	*1,70,000*	*1,80,000*
Book Debts	*60,000*	*90,000*

On 31st December, 2011 the balance sheet of the company showed a general reserve of ₹ 40,000 accompanied by a debit balance of ₹ 25,000 in the Profit & Loss Account.

In 2012 the company made a profit of ₹ 40,000 and declared a dividend of 10% on equity shares. The company suffered a total loss of ₹ 1,09,000 besides loss of stock due to fire of ₹ 40,000 during 2013, 2014 and 2015. For 2016 accounts were not made.

The cost of winding up is expected to be ₹ 15,000.

Solution

In the matter of the Companies Act, &In the matter of Equipment Ltd. (in winding up)

Statement of Affairs on 31 December, 2016, the date of winding up

Estimated realisable value

Assets	*₹*
Assets not specifically pledged (as per list A)	
Trade debtors	60,000
Stock in trade	74,000
Plant	1,30,000
Tools	4,000
Patents	30,000
Unpaid calls	5,000
	3,03,000

Assets specifically pledged (as per list B)					
	Estimated Realisation	*Due to Secured Creditors*	*Deficiency Ranking as Unsecured Creditors*	*Surplus carried to the last column*	
	₹	₹	₹	₹	
Investments	1,70,000	1,90,000	20,000		
Land & Building	1,30,000	80,000		50,000	
	3,00,000	2,70,000			
	Estimated surplus from assets specifically pledged				50,000
	Estimated total assets available for preferential creditors, debenture holders and unsecured creditors				3,53,000
	Summary of Gross Assets:				
	Gross realisable value of -				
	assets specifically charged			3,00,000	
	others assets			3,03,000	
				6,03,000	
	Estimated total assets available for preferential creditors, debenture holders, bank overdraft and unsecured creditors brought forward				3,53,000
Gross Liabilities	*Liabilities*				
₹				₹	₹
2,50,000	Secured creditors (as per List B) to the extent to which claims are estimated to be covered by assets specifically pledge				
22,000	Preferential creditors as per list C (20,000 +2,000)				22,000
	Estimated balance of assets available for Debenture holders, Bank & unsecured creditors				3,31,000

1,02,500	Debenture holders secured by a floating charge as per list D		(1,02,500)
	Surplus as regards debenture holders		2,28,500
	Unsecured creditors as per list E		
	Estimated unsecured balance of claim of creditors partly secured on		
	specific assets	20,000	
	Trade creditors	2,65,500	
2,92,500	Outstanding expenses	7,000	2,92,500
	Estimated deficiency as regards creditors being the difference between gross liabilities and gross assets		64,000
6,67,000			
	Issued & Called up Capital:		
	3,000 Equity shares or ₹ 100 each, ₹ 80 paid	2,40,000	
	6% 1,000 preference shares of ₹ 100 each fully called	1,00,000	3,40,000
	Estimated Deficiency as regards members as per list H		4,04,000

Note:(*i*) The above is subject to cost to winding up estimated at ₹ 15,000 and to any surplus in deficiency on trading realisation of assets.

(*ii*) There are 3,000 shares unpaid @ ₹ 20 per share liable to be called up.

List H - Deficiency Account

		₹
A.	***Item contributing to Deficiency:***	
1.	Excess of capital & liabilities over assets on 1-1-2014	Nil
2.	Net dividend & bonuses during the period Jan.-Dec. 2014	29,700
3.	Net trading losses after charging depreciation, taxation, interest on debentures, etc. during the same period (₹ 1,09,000 + ₹ 1,31,300)	2,40,300

4. Losses other than trading losses written off or for which provision has been made in the books during the same period - stock loss.		40,000
5. Estimated losses now written off or for which provision has been made for the purpose of preparing the statement :		
	₹	
Plant	70,000	
Tools	16,000	
Patents	20,000	
Stock	13,000	
Investments	10,000	
Debtors	30,000	1,59,000
6. Other reducing items contributing to deficiency		NIL
		4,69,000

B. Items reducing Deficiency

7. Excess of assets over capital and liabilities on 1st Jan. 2012	15,000
8. Net trading profit during the period 1st Jan. 2010 to 31st Dec. 2012	40,000
9. Profit & Incomes other than trading profit during the same period	
10. Other items Deficiency - Profit expected on Land & Building	10,000
	65,000
Deficiency as shown by the statement of Affairs (A) - (B)	4,69,000
	4,04,000

Working Notes :

(1) Trial Balance to ascertain the amount of loss for 2016

	Dr. ₹	*Cr.* ₹
Land & Building	1,20,000	
Plant	2,00,000	
Tools	20,000	
Patents	50,000	
Stock	87,000	

Investments	1,80,000	
Debtors	90,000	
Equity Capital		2,40,000
6% Preference share capital		95,000
5% Debentures		1,00,000
Interest Outstanding		2,500
Mortgage on Land & Building		80,000
Trade Creditors		2,65,500
Owing for Wages		20,000
Secretary's Salary		3,000
Managing Director's Salary		6,000
Bank Overdraft		1,90,000
Profit & Loss Account on 1-1-2014	1,23,700	
	8,70,700	10,02,000
Loss for the year (balancing figure)	1,31,300	-
	10,02,000	10,02,000

Reserve & Surplus Account

2011		₹	2011		₹
Dec. 31	To Profit & Loss A/c(Transfer)	25,000	Dec. 31	By Balance b/d	40,000
2012			2012		
	To Dividend - Equity	24,000	Dec. 31	By Profit for the year	40,000
2013	- Preference	5,700	2013		
	To Profit & Loss A/c (Loss)	1,09,000	Dec. 31	By Balance c/d	1,23,700
	To Loss of Stock	40,000			
		2,03,700			2,03,700

Illustration 3

X Co. Ltd. went into voluntary liquidation on 1st April, 2017. The following balances are extracted from its books on that date :

	₹		₹
Capital		*Machinery*	*90,000*
24,000 Equity Shares of ₹ 10 each	*2,40,000*	*Leasehold properties*	*1,20,000*
Debentures (Secured by		*Stock*	*3,000*
Floating charge)	*1,50,000*	*Debtors*	*1,50,000*
Bank overdraft	*54,000*	*Investments*	*18,000*
Creditors	*60,000*	*Cash in hand*	*3,000*
		Profit and loss account	*1,20,000*
	5,04,000		*5,04,000*

The following assets are valued as under :

	₹
Machinery	*1,80,000*
Leasehold properties	*2,18,000*
Investments	*12,000*
Stock	*6,000*
Debtors	*1,40,000*

The bank overdraft is secured by deposit of title deeds of leasehold properties. There were preferential creditors amounting ₹ 3,000 which were not included in creditors ₹ 60,000.

Prepare a statement of affairs to be submitted to the meeting of members/creditors.

Solution

Statement of Affairs of X Co. Ltd. on the 1st day of April, 2017

Assets not specifically pledged :	*Estimated realisable values*
Cash in Hand	3,000
Investments	12,000
Debtors	1,40,000
Stock	6,000

Machinery					1,80,000
					3,41,000
Assets specifically pledged :					
	(a)	(b)	(c)	(d)	
	Estimated Realisable Value	Due to Secured Creditors	Deficiency ranking as unsecured	Surplus carried to last column	
	₹	₹	₹	₹	
Lease hold property	2,18,000	54,000	—	1,64,000	
	Estimated surplus from assets specifically pledged				1,64,000
	Estimated total assets available for preferential creditors, debentures holders secured by floating charge, and unsecured creditors				5,05,000
	Summary of Gross assets				
	Gross realisable value of assets specifically pledged			₹ 2,18,000	
	Other assets			₹ 3,41,000	
	Gross Assets			₹ 5,59,000	
₹	Gross Liabilities(to be deducted from surplus or added to deficiency as the case may be)				
	Secured creditors to the extent to which claims are estimated to be covered by assets				
54,000	Specifically pledged				
3,000	Preferential creditors				3,000
	Estimated balance of assets available for debenture holders secured by a floating charge and unsecured creditors				5,02,000
1,50,000	Debentures				1,50,000
	Estimated surplus as regard debenture holders				3,52,000
60,000	Creditors				60,000

2,67,000		2,92,000
	Estimated surplus as regards creditors [being difference between gross assets (d) and gross liabilities (e)]	
	Issued and called up capital :	
	24,000 equity shares of ₹ 10 each	2,40,000
	Estimated surplus as regard members	52,000

Illustration 4

Insol Ltd. is to be liquidated. Their summarised Balance Sheet as at 30th September, 2016 appears as under:

Liabilities:	₹
2,50,000 equity shares of ₹ 10 each	*25,00,000*
Secured debentures (on land and buildings)	*10,00,000*
Unsecured loans	*20,00,000*
Trade creditors	*35,00,000*
	90,00,000
Assets:	
Land and Building	*5,00,000*
Other fixed assets	*20,00,000*
Current assets	*45,00,000*
Profit and Loss A/c	*20,00,000*
	90,00,000
Contingent liabilities are :	
For bills discounted	*1,00,000*
For excise duty demands	*1,50,000*

On investigation, it is found that the contingent liabilities are certain to devolve and that the assets are likely to be realised as follows:—

	₹
Land & Buildings	*11,00,000*
Other fixed assets	*18,00,000*
Current assets	*35,00,000*

Taking the above into account, prepare the statement of affairs.

Solution

Statement of Affairs of Insol Ltd. (in Liquidation)
as on 30th September, 2016

					Estimated Realisable Value (₹)
Assets not specifically pledged (As per list A):					
Other fixed assets					18,00,000
Current assets					35,00,000
					53,00,000
Assets specifically pledged(As per List B)					
	Estimated realisable value	*Due to secured creditors*	*Deficiency*	*Surplus*	
	₹	₹	₹	₹	
Land & Buildings	11,00,000	10,00,000		1,00,000	
	Estimated total assets available to unsecured creditors				54,00,000
	Summary of Gross Assets				
	Gross realisable value of assets specifically pledged			11,00,000	
	Other assets			53,00,000	
	Gross Assets			64,00,000	
Gross liabilities ₹	**Liabilities**				
	Secured Creditors (as per list B) to the extent to which claims are estimated to be covered by assets				
10,00,000	Specifically pledged				
1,50,000	Preferential creditors (as per list C)				1,50,000
					52,50,000
	Unsecured creditors(as per list E)				
20,00,000	Unsecured Loans				20,00,000
35,00,000	Trade creditors				35,00,000

1,00,000	Contingent Liability on Bills Discounted	1,00,000
67,50,000	Estimated deficiency as regards creditors (67,50,000—64,00,000)	3,50,000
	2,50,000 Equity Shares of ₹ 10 each : (as per list G)	25,00,000
	Estimated deficiency as regards members	28,50,000

13. LIQUIDATOR'S FINAL STATEMENT OF ACCOUNT

In case of voluntary winding up, the statement prepared by the Liquidator showing receipts and payment of cash is called "Liquidator's Statement of Account". In case of compulsory winding up, the statement is known as "Official Liquidator's Final Account". While Preparing the Statement of Account, the following points should be noted :

(*i*) Assets are included in the prescribed order of liquidity.

(*ii*) In case of assets specifically charged in favour of creditors, only the surplus from it, if any, is recognised as "Surplus from Securities".

(*iii*) Net result of trading entered on the receipts side, profits being added and losses being deducted.

(*iv*) Payments made to redeem securities and cost of execution, *i.e.* cost of collecting debts, are deducted from the total receipts.

(*v*) Payments are made as shown in the following order:

(*a*) Legal Charges;

(*b*) Liquidator's Remuneration;

(*c*) Liquidation Expenses;

(*d*) Debenture holders (including interest up to the date of winding up if the company is insolvent and to the date of payment if it is solvent);

(*e*) Creditors;

Preferential (in actual practice, preferential creditors are paid before debenture holders having a floating charge). Unsecured creditors, shareholders for dividends declared but not yet paid;

(*f*) Preference shareholders; and

(*g*) Equity shareholders.

(*vi*) Arrears of dividends on cumulative preference shares should be paid up to the **date of winding up.**

(*vii*) In case of partly paid shares, it should be seen whether any amount is to be **called up** on such shares.

Firstly, the equity shareholders should be called up to pay the necessary amount (not exceeding the amount of **uncalled** capital) if creditors' claims of preference shareholders cannot be satisfied with the amount. Preference shareholders would be called upon to contribute (not exceeding the amount as yet uncalled on the shares) for paying off creditors.

(*viii*) The loss suffered by each class of shareholders, *i.e.* the amount that cannot be repaid, should be **proportionate** to the nominal value of the share. The loss per shares have nominal value of ₹ 100, and one set of shareholders has paid ₹ 80 per share and other set has paid ₹ 60 per share. Suitable adjustment will have to be made in cash in such a case; the latter set must contribute ₹ 20 first or the first set must be paid ₹ 20 first.

Illustration 5

M. Ltd. resolved on 31st December 2016 that the company be wound up voluntarily. The following was the trial balance extracted from its books as on that date:

	₹	₹
Equity shares of ₹ 10 each		*2,00,000*
9% Preference shares of ₹ 10 each		*1,00,000*
Plant (less depreciation w/o ₹ 85,000)	*2,15,000*	
Stock in trade	*2,50,000*	
Trade receivables	*55,000*	
Trade payables		*75,000*
Bank balance	*74,000*	
Preliminary Expenses	*6,000*	
Profit & Loss A/c (balance on 1st January, 2016)		*30,000*
Trading loss for the year 2016	*24,000*	
Preference dividend for the year 2016	*6,000*	
Outstanding Expenses (including mortgage interest)		*25,000*
4% Mortgage loan		*2,00,000*
Total	*6,30,000*	*6,30,000*

On 1st January, 2017 the liquidator sold M. Ltd.'s Plant for ₹ 2,05,000 and stock in trade for ₹ 2,00,000. The sale was completed in January, 2017 and the consideration satisfied as to ₹ 2,62,200 in cash and as to the balance in 6% Debentures of the purchasing company issued to the liquidator at a premium of 2%.

The remaining steps in the liquidation were as follows:

(1) The liquidator realised ₹ 52,000 out of the book debts and the cost of collection amounted to ₹ 2,000.

(2) The loan mortgage was discharged on 31st January, 2017 along with interest from 31st July, 2016. Creditors were discharged subject to 2% and outstanding expenses excluding mortgage interest were settled for ₹ 2,000;

(3) On 30th June 2017 six month's interest on debentures was received from M. Ltd.

(4) Liquidation expenses amounting to ₹ 3,000 and liquidator's remuneration of 3% on disbursements to members were paid on 30th June, 2017 when:

(a) The preference shareholders were paid out in cash; and

(b) The debentures on M. Ltd. and the balance of cash were distributed ratably among the equity shareholders.

Prepare the Liquidator's Statement of Account showing the distribution.

Solution

M. Ltd. (in liquidation)

Liquidator's Statement of Account from 1st January, 2017 to 30th June, 2017

		₹			₹
Balance at Bank Realisation from:		74,000	Liquidator's remuneration		7302*
Trade receivables M. Ltd. -		52,000	(3% on ₹ 2,43, 398) Liquidation		
₹ 1,40,000 6%			Expenses Loan on		3,000
Debentures	1,42,800		mortgage with		
Cash	2,62,200	4,05,000	Accrued interest**		2,04,000

*3/103 × 2,50,700 (i.e. ₹ 5,32,000 less payments made to all creditors)

**It is assumed that loan is secured by a floating charge.

6 months' interest on debentures		4,200	Creditors including Outstanding Expenses		75,500
Equity shareholders		5,35,200	Return contributors :		
Less: Cost of Collection of Debts		(2,000)	6% Preference share-Holders ₹ 10 per share		1,00,000
			6% Debentures	1,42,800	
			Cash (03 P. approx.) per share	598	1,43,398
Total		5,33,200	Total		5,33,200

Illustration 6

Prakash Processors Ltd. went into voluntary liquidation on 31st December, 2016 when their Balance Sheet read as follows:—

Liabilities	***₹***
Issued and subscribed capital :	
5,000 10% cumulative preference shares	
of ₹ 100 each, fully paid	*5,00,000*
2,500 equity shares of ₹ 100 each, ₹ 75 paid	*1,87,500*
7,500 equity shares of ₹ 100 each, ₹ 60 paid	*4,50,000*
15% Debentures secured by a floating charge	*2,50,000*
Interest outstanding on Debentures	*37,500*
Creditors	*3,18,750*
	17,43,750
Assets	
Land and Building	*2,50,000*
Machinery and Plant	*6,25,000*
Patents	*1,00,000*
Stock	*1,37,500*

Trade receivables	*2,75,000*
Cash at Bank	*75,000*
Profit and Loss A/c	*2,81,250*
	17,43,750

Preference dividends were in arrears for 2 years and the creditors included Preferential creditors of ₹ 38,000.

The assets realised as follows :

Land and Building ₹ 3,00,000; Machinery and Plant ₹ 5,00,000; Patents ₹ 75,000; Stock ₹ 1,50,000; Trade receivables ₹ 2,00,000.

The expenses of liquidation amounted to ₹ 27,250. The liquidator is entitled to a commission of 3% on assets realised except cash. Assuming the final payments including those on debentures is made on 30th June, 2017 show the liquidator's Statement of Account.

Solution

Prakash Processors Limited
Liquidator's Statement of Account

	Receipts		₹		*Payments*		₹
To	Assets realised -			By	Liquidation expenses		27,250
	Bank		75,000	By	Preferential creditors		38,000
				By	Liquidator's Remuneration (W.N.1)		36,750
	Other assets:			By	Debenture holders:		
	Land etc.	3,00,000			Debentures	2,50,000	
	Machinery etc.	5,00,000			Interest accrued	37,500	
	Patents	75,000			Interest 1-1-17/30-6-17	18,750	3,06,250
	Stock	1,50,000					
	Trade receivables	2,00,000	12,25,000				
To	Call on equity shareholders (7,500 × ₹ 2.65) (1)		19,875	By	Unsecured creditors		2,80,750
				By	Preferential shareholders :		
					Preference capital	5,00,000	
					Arrear of Dividend	1,00,000	6,00,000

					12,89,000
			By Equity shareholders - ₹ 12.35 on 2,500 shares		30,875
		13,19,875			13,19,875

Working Notes:

(1) Liquidator's remuneration 12,25,000 × 3/100 =₹ 36,750

(2) As the company is solvent, interest on the debentures will have to be paid for the period 1-1-2017 to 30-6-2017

$2,50,000 \times \frac{15}{100} \times \frac{1}{2} =$ ₹ 18,750

(3) Total equity capital - paid up ₹ 6,37,500

Less : Balance available after payment to unsecured and preference shares (13,00,000 — 12,89,000) ₹ (11,000)

Loss to be born by 10,000 equity shares ₹6,26,500

Loss per share ₹ 62.65

Hence, amount of call on ₹ 60 paid share ₹ 2.65

Refund to share on ₹ 75 paid ₹ 12.35

Illustration 7

The following is the Balance Sheet of Confidence Builders Ltd., as at 30th Sept. 2016:

Liabilities		₹	*Asset*	₹
Share Capital			*Land and Buildings*	*1,20,000*
Issued : 11% Pref. Shares			*Sundry Current Assets*	*3,95,000*
of ₹ 10 each		*1,00,000*	*Profit and Loss Account*	*38,500*
10,000 equity shares of			*Debenture Issue*	
₹ 10 each, fully paid up		*1,00,000*	*expenses not written off*	*2,000*
5,000 equity shares of				
₹ 10 each, ₹ 7.50 per				
share paid up		*37,500*		
13% Debentures		*1,50,000*		

Mortgage Loan		*80,000*		
Bank Overdraft		*30,000*		
Creditors for Trade		*32,000*		
Income-tax arrears :				
(assessment concluded				
in July 2012)				
Assessment year 2014-2015	*21,000*			
Assessment year 2015-2016	*5,000*	*26,000*		
		5,55,500		*5,55,500*

Mortgage loan was secured against land and buildings. Debentures were secured by a floating charge on all the other assets. The company was unable to meet the payments and therefore the debenture holders appointed a Receiver for the Debenture holders brought the land and buildings to auction and realised ₹ 1,50,000. He also took charge of Sundry assets of value of ₹ 2,40,000 and realised ₹ 2,00,000. The Bank Overdraft was secured by a personal guarantee of two of the Directors of the Company and on the Bank raising a demand, the Directors paid off the due from their personal resources. Costs incurred by the Receiver were ₹ 2,000 and by the Liquidator ₹ 2,800. The Receiver was not entitled to any remuneration but the liquidator was to receive 3% fee on the value of assets realised by him. Preference shareholders had not been paid dividend for period after 30th September 2014 and interest for the last half year was due to the debenture holders. Rest of the assets were realised at ₹ 1,00,000.

Prepare the accounts to be submitted by the Receiver and Liquidator.

Solution

Receiver's Receipts and Payments Account

		₹			₹
Sundry Assets realised		2,00,000	Costs of the Receiver		2,000
Surplus received from			Preferential payments		
mortgage			Creditors paid Taxes	-	
Sale Proceeds of land and building	1,50,000		raised within 12 months		26,000

Less: Applied to discharge of mortgage loan	(80,000)	70,000	Debentures holders Principal Interest for half year	1,50,000 9,750	1,59,750
			Surplus transferred to the Liquidator		82,250
		2,70,000			2,70,000

Liquidator's Final Statement of Account

	₹			₹
Surplus received from Receiver	82,250	Cost of Liquidation		2,800
		Remuneration to Liquidator (1,00,000x 3%)		3,000
Assets Realised	1,00,000	Unsecured Creditors :		
Calls on Contributories :		for Trade	32,000	
On holder of 5,000 at the rate of ₹ 2.17 per share	10,850	Directors for payment of Bank O/D	30,000	62,000
		Preferential Shareholders:		
		Principal	1,00,000	
		Arrears of Dividends	22,000	1,22,000
		Equity shareholder :		
		Return of money to contributors to holders of 10,000 shares at 33 paise each		3,300
	1,93,100			1,93,100

Working Note :

Call from party paid shares

Deficit before call from Equity Shares (1,82,250 — 1,89,800)	=	7,550
Notional call on 5,000 shares @ ₹ 2.50 each		12,500

Net balance after notional call		(a) 4,950
No. of shares deemed fully paid		(b) 15,000
Refund on fully paid shares $\frac{4,950}{15,000}$	=	33p
Calls on party paid share (2.50 — 0.33)	=	₹ 2.17

14. B LIST CONTRIBUTORIES

(a) **Persons:** Shareholders who had transferred Partly Paid Shares (otherwise than by operation of law or by death) within one year, prior to the date of winding up may be called upon to pay an amount to pay off such Creditors as existed on the date of transfer of shares. These Transferors are called as B List Contributories.

(b) **Liability:** Their liability is restricted to the amount not called up when the shares were transferred. They cannot be called upon to pay more than the entire face value of the share. For example, if Shares having Face Value ₹ 100 were paid up ₹ 60, the B List Contributory can be called up to pay a maximum of ₹ 40 only.

(c) **Conditions:** Liability of B List Contributories will crystallize only (a) when the existing assets available with the liquidator are not sufficient to cover the liabilities; (b) when the existing shareholders fail to pay the amount due on the shares to the Liquidator.

Illustration 8

In a liquidation which commenced on April 2, 2017 certain creditors could not receive payments out of the realisation of assets and out of the contributions from "A" list contributories. The following are the details of certain transfers, which took place in 2016 and 2017.

Shareholders	*Number of shares transferred at the date ofceasing to be member*	*Date of ceasing to be member*	*Creditors remaining unpaid and outstanding*
X	*1,500*	*1st March 2016*	*4,000*
A	*1,000*	*1st May 2016*	*6,000*
B	*1,500*	*1st July 2016*	*7,500*
C	*300*	*1st Nov. 2016*	*8,000*
D	*200*	*1st Feb. 2017*	*9,500*

All the shares were ₹ 10 each, ₹ 6 paid up ignoring expenses of and remuneration to liquidators, etc., show the amount to be realised from the various persons listed above.

Solution

X will not be liable since he transferred his shares prior to one year preceding the date of winding up. The amount of ₹ 6,000 outstanding on 1st May 2016 will have to be contributed by A, B, C & D in the ratio of number of shares held by them, *i.e.* in the ratio of 10:15:3:2; thus A will have to contribute ₹ 2,000: B ₹ 3,000, C ₹ 600 and D ₹ 400. Similarly, the further debts incurred between 1st May, 2016 and 1st July 2016, viz. ₹ 1,500 for which A is not liable will be contributed by B, C and D in the ratio of 15:3:2 B will have to contribute₹ 1,125. C will have to contribute ₹ 255 and D will contribute ₹ 150. The further increase from ₹ 7,500 to ₹ 8,000, viz. ₹ 500 occurring between 1st July and 1st Nov. will be shared by C and D who will be liable for ₹ 300 and ₹ 200 respectively. The increase between 1st Nov. and 1st Feb., is solely the responsibility of D.Against D's liability of ₹ 2,250, he can be called upon to pay ₹ 800, the loss of ₹ 1,450 will have to be suffered by these creditors.

The following statement makes the position clear:

Statement of Liabilities of B list contributors

Creditors Outstanding on the date of ceasing to be member	*A 1,000 Shares ₹*	*B 1,500 Shares ₹*	*C 300 Shares ₹*	*D 200 Shares ₹*	*Amount to be paid to the Creditors ₹*
(1) 6,000	2,000	3,000	600	400	6,000
(2) 1,500	-	1,125	225	150	1,500
(3) 500	-	-	300	200	500
(4) 1,500	-	-	-	1,500	50*
Total (a)	2,000	4,125	1,125	2,250	8,050
(b) maximum liability on shares held	4,000	6,000	1,200	800	
(c) Amount paid (a) or(b) whichever is lower	2,000	4,125	1,125	800	

SUMMARY

- In case of winding up of the company, a statement called Statement of affairs is prepared.
- Deficiency Account is the result of capital plus liabilities exceeding the assets or deficit or debit balance in the profit and loss account.
- Overriding preferential payments are the payments to be made for the workman's dues and debts secured to secured creditors to the extent they rank under section 529(1)(c).
- Preferential creditors have to be paid in priority to unsecured creditors or creditor having a floating charge.
- In case of voluntary winding up, the statement prepared by the Liquidator showing receipts and payment of cash is called "Liquidator's Statement of Account".
- The shareholders who transferred partly paid shares within one year, prior to the date of winding up may be called upon to pay an amount (not exceeding the amount not called up when the shares were transferred) to pay off such creditors as existed on the date of transfer of shares.

TEST YOUR KNOWLEDGE

Theoretical Questions

Question 1

Explain Overriding preferential payments as per Companies Act, 2013.

Question 2

B List of Contributories and the liability of contributories included in the list.

Question 3

Write the LISTS which should accompany the Statement of Affairs, in case of a winding up by Court.

Practical questions

Question 1

XYZ Limited is being would up by the tribunal. All the assets of the company have been charged to the company's bankers to whom the company owes ₹ 5 crores. The company owes following amounts to others:

- ✓ Dues to workers – ₹ 1,25,00,000
- ✓ Taxes Payable to Government – ₹ 30,00,000
- ✓ Unsecured Creditors – ₹ 60,00,000

You are required to compute with the reference to the provision of the Companies Act, 2013 the amount each kind of creditors is likely to get if the amount realized by the official liquidator from the secured assets and available for distribution among creditors is only ₹ 4,00,00,000/-

Question 2

'A' Ltd is to be liquidated. Their summarised Balance Sheet as at 30th September, 2016 appears as under:

	₹
Liabilities:	
5,00,000 equity shares of ₹100 each	50,00,000
Secured debentures (on Land and Buildings)	20,00,000
Unsecured loans	40,00,000
Trade creditors	70,00,000
	1,80,00,000
Assets:	
Land and buildings	10,00,000
Other fixed assets	40,00,000
Current assets	90,00,000
Profit and loss account	40,00,000
	1,80,00,000
Contingent liabilities are:	
For bills discounted	2,00,000
For excise duty demands	3,00,000

On investigation, it is found that the contingent liabilities are certain to devolve and that the assets are likely to be realised as follows:

	₹
Land and Building	22,00,000
Other fixed assets	36,00,000
Current assets	70,00,000

Taking the above into account, prepare the statement of affairs.

Question 3

The summarized Balance Sheet of Full Stop Limited as on 31st March 2017, being the date of voluntary winding up is as under:

Liabilities	(₹)	Assets	(₹)
Share capital:		Land & building	5,20,000
5,000, 10% Cumulative		Plant & machinery	7,80,000
Preference shares of ₹ 100		Inventory in trade	3,25,000
each fully paid up	5,00,000	Book debts	10,25,000
Equity share capital:		Profit & loss account	5,50,000
5,000 Equity shares of ₹ 100			
each ₹ 60 per share called			
and paid up	3,00,000		
5,000 Equity shares of ₹ 100			
each ₹ 50 per share called up			
and paid up	2,50,000		
Securities premium	7,50,000		
10% Debentures	2,10,000		
Preferential creditors	1,05,000		
Bank overdraft	4,85,000		
Trade creditors	6,00,000		
	32,00,000		32,00,000

Preference dividend is in arrears for three years. By 31-03-2017, the assets realized were as follows:

	₹
Land & building	6,20,000
Inventory in trade	3,10,000
Plant & machinery	7,10,000
Book debts	6,60,000

Expenses of liquidation are ₹ 86,000. The remuneration of the liquidator is 2% of the realization of assets. Income tax payable on liquidation is ₹ 67,000. Assuming that the final payments were made on 31-03-2017, prepare the Liquidator's Statement of Account.

ANSWER /HINTS

Answer 1

Refer para 10

Answer 2

Refer Para 14

Answer 3

Refer Para 8

Practical Questions

Answer: 1

Section 326 of the Companies Act, 2013 is talks about the overriding preferential payments to be made from the amount realized from the assets to be distributed to various kind of creditors. According to the proviso given in the section 326 the security of every secured creditor should be deemed to be subject to a paripassu change in favor of the workman to the extent of their portion.

$$Workman's\ Share\ to\ Secured\ Asset = \frac{Amount\ Realied * Workman's\ Dues}{Workman's\ Dues\ + Secured\ Loan}$$

$$Workman's\ Share\ to\ Secured\ Asset = \frac{4{,}00{,}00{,}000 * 1{,}25{,}00{,}000}{1{,}25{,}00{,}000\ + 5{,}00{,}00{,}000}$$

$$4{,}00{,}00{,}000 * \frac{1}{5}$$

$$Workman's\ Share\ to\ Secured\ Assets = 80{,}00{,}000$$

Amount available to secured creditor is ₹ 400 Lakhs – 80 Lakhs = 320 Lakhs

Hence, no amount is available for payment of government dues and unsecured creditors.

Answer 2

Statement of Affairs of 'A' Ltd. (in Liquidation)

as at 30th September, 2016

						Estimated Realisable Value (₹)
	Assets not specifically pledged (as per List A):					
	Other Fixed Assets					36,00,000
	Current Assets					70,00,000
						1,06,00,000
	Assets specifically pledged (as per List B):					
		Estimated Realizable value	Due to secured creditors	Deficiency ranking as unsecured	Surplus carried to the last column	
		₹	₹	₹	₹	
	Land and Building	22,00,000	20,00,000	–	2,00,000	2,00,000
	Estimated total assets available for preferential creditors, debenture holders secured by a floating charge and unsecured creditors					1,08,00,000
	<u>Summary of Gross Assets:</u>					
	Gross realizable value of assets specifically pledged				22,00,000	
	Other Assets				1,06,00,000	
	Total Assets				1,28,00,000	

	Liabilities	
Gross Liabilities	*Liabilities*	
20,00,000	Secured creditors (as per List B) to the extent to which claims are estimated to be covered by assets specifically pledged	–
3,00,000	Preferential creditors (as per List C) – for demand of excise duty	3,00,000
	Balance of assets available for debentureholders secured by floating charge and unsecured creditors	1,05,00,000
–	Debentureholders secured by floating charge (as per List D)	–
	Unsecured creditors (as per List E):	
40,00,000	Unsecured Loans	40,00,000
70,00,000	Trade creditors	70,00,000
2,00,000	Liability for bills discounted (Contingent)	2,00,000
1,35,00,000	Estimated deficiency as regards creditors (difference between gross assets and gross liabilities)	7,00,000
	Issued and called up capital:	
	5,00,000 Equity shares of ₹10 each (as per List G)	50,00,000
	Estimated deficiency as regards members/ contributories	57,00,000

Answer 3

Liquidator's Statement of Account

Receipts	₹	*Payments*	₹
Land & building	6,20,000	Liquidator's remuneration	46,000
Inventory in trade	3,10,000	Liquidation expenses	86,000
Plant & machinery	7,10,000	Preferential creditors	1,05,000
Book debts	6,60,000	10% Debentures	2,10,000
		Income tax payable	67,000
		Bank overdraft	4,85,000
		Trade creditors	6,00,000
		Preference shareholders:	
		Capital	5,00,000
		Arrears of preference dividend for 3 years	1,50,000
		Refund on 5,000 shares of	

		₹ 60 paid up @ ₹ 10.10 per share (Refer W.N.)	50,500
		Refund on 5,000 shares of ₹ 50 paid up @ ₹ 0.10 per share (Refer W.N.)	500
	23,00,000		23,00,000

Working Note:

	₹
Total equity capital paid up (3,00,000 + 2,50,000)	5,50,000
Less: Balance available after payment to secured, unsecured, preferential creditors and preference shareholders (23,00,000 – 46,000 – 86,000 – 2,10,000 – 1,05,000 – 67,000 – 4,85,000– 6,00,000 – 5,00,000 – 1,50,000)	(51,000)
Loss to be borne by 10,000 equity shareholders	4,99,000
Loss per share	₹ 49.90
Hence, amount of refund on ₹ 50 per share paid up (₹ 50 – ₹ 49.90)	₹ 0.10
Amount of refund on ₹ 60 per share paid up (₹ 60 – ₹ 49.90)	₹ 10.10