

Class: B.Com (Prog) Semester III

Subject : BCP 3.3 CORPORATE ACCOUNTING

Topic: Commencement of Winding Up, Contributory, Liquidator, Preferential payments:

3.1: Commencement of Winding Up by Tribunal after Resolution has been Passed by the Company for Voluntary Winding up (Section 357)

1. 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 shall 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 shall be deemed to have been validly taken.
2. In any other case, the winding up of a company by the Tribunal shall be deemed to commence at the time of the presentation of the petition for the winding up.

3.2: Contributory

According to the Companies Act a contributory is “every person liable to contribute to the assets of a company in event of its being wound up, and includes a holder of fully paid-up shares and also any person alleged to be contributory”. In the event of liquidation of a company, the liquidator prepares two lists of contributories:

- (i) **List ‘A’:** This list consists of those persons who are members of the company on the date of the winding up. In simple, List ‘A’ contributories is the list of the present members of the company. They are liable to contribute the amount remaining

unpaid on the shares held by them if the amount is needed to make payment to legal claimants.

The holders of fully paid-up shares are also treated as contributories even though they are not required to contribute anything to the company. This is necessary because in such a case, the court will know, not only those who will contribute but also who will share the surplus, if any.

- (ii) **List 'B':** This list consists of those persons who were the members of the company during the 12 months preceding the date of winding up. In case the assets of the company are not sufficient to pay the liabilities of the company in the event of company's winding up liquidator can ask List 'B' contributories to contribute towards the assets of the company, subject to certain conditions. However their liability is restricted to the amount not called up when the shares were transferred.

3.3: Liquidator

The person appointed for conducting the liquidation proceedings of the company is called 'Liquidator'. (In case of Voluntary winding up an Insolvency Professional). The company must submit a statement of affairs to the liquidator. The general duties of the liquidator are to take into his custody all the property of the company and actionable claims and make the payments as per the order laid down in the Companies Act.

3.4: Preferential payments: Preferential creditors are those creditors who are paid in priority to creditors having a floating charge and other (non-preferential) unsecured creditors. As per Sec. 326 of the Companies Act, 2013, preferential creditors include the following:

1. All revenues, taxes, cesses and rates due to the Central, State Government or to a local authority which have become due and payable within twelve months before the date of winding up order.
2. All wages or salaries of any employee not exceeding ` 20,000 per claimant, in respect of services rendered to the company and due for a period not exceeding four months within the said twelve months before the date of winding up order.
3. All amounts due in respect of contribution payable during the twelve months under the Employees' State Insurance Act, 1948 or any other law.
4. Compensation due under Workmen's Compensation Act, 1923 in respect of death or disablement of any employee of the company.
5. Any amount due to any employee from provident fund, pension fund, gratuity fund for the welfare of the employees maintained by the company.
6. Accrued holiday remuneration becoming payable to the employee or in case of his death, to any other person in his right, on termination of his employment before, or by the effect of the winding up.
7. The expenses of any investigation held in pursuance of Sec. 213 or 216 in so far as they are payable by the company.

3.5: Overriding Preferential Payments (Section 326)

Overriding preferential payments are to be paid in priority to all other debts as per the said Act.

They include:

- (a) Dues to workmen, and

(b) Debts due to secured creditors to the extent such debts rank to the security of every creditor shall be deemed to be subject to pari passu charge in favor of the workmen to the extent of workmen's portion therein.
