COMPARATIVE STUDY OF WINDING UP OF COMPANIES IN INDIA AND ENGLAND

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Abstract -

A company is an artificial person created by a legal process known as incorporation. Its existence is distinct from that of the members who compose it. Winding up is the second method of putting an end to the life of a company. Winding up is also called "liquidation". It is beginning of the process to end the life of a company which stage is attained by "dissolution" of the company by the registrar of companies after the winding up process is complete. The winding up of a company involves the appointment of a liquidator to take charge of the affairs of the company, to satisfy the company's debts and obligations, to distribute the capital of the company among its members according to their rights to a share in the capital, and to distribute the surplus assets, if any, among its members. The purpose of a winding up is that of realization of the assets and a proper and expeditious distribution of those assets according to law.

Keywords – Winding up, Liquidator; Liquidation; Petition; Liability; Proceeding; Consequence; Dissolution; Judicial version;

The Indian Companies Act, which came into force in 1956, closely followed the U.K. Companies Act, 1948, which was founded on the report ofthe **COHEN Committee**. The U.K. Act of 1948 held sway without amendment until the 1960s. But, thereafter it was amended several times till 1985. Now the Principal Act in operation in the U.K. is the Companies Act 1985, and it is supported by three other enactments, viz; the Companies Securities (Insider Dealing) Act, 1985 now replaced by part Vth of the CriminalJustice Act 1993, the Business Names Act 1985, and the Companies Consolidation (Consequential Provisions) Act 1985. This Act has been furtheraffected by other legislative measures, mainly by the Insolvency Act 1986, Company Directors Disqualification Act, 1986 and the Financial Services Act1986.

The Companies Act 1989 has altered and supplemented the existing legislation in many ways, particularly in respect of the contents of companiesannual accounts and group accounts, and the rules relating to the eligibility ofappropriately qualified accountants for appointment as auditors of companiesand their tenure of office; registration of charges created by companies over their assets at the companies registry; and the reversal the external effect of ultra vires rule on the validity of companies contracts.

Thus the company legislation in the U.K. has grown in quantity and intricacy, and the flow of decisions by the Courts elaborating and/or clarifyingthe statutory provisions of the Act of 1985, as amended has kept pace. On theother hand, in India the Companies Act of 1956, which was founded on the report of the company law committee (**Bhabha Committee**) and which has placed considerable reliance on the U.K. Act of 1948, has been amended as many as on 19 occasion till 1997. Now there is a considerable shift in the concepts and principles underlying the Indian Law from those developed in the U.K. since 1948.Accordingly, full reliance should not be placed on the Judicialprecedents laid down by the British Courts while interpreting the provisions of the (Indian) Companies Act, 1956 as amended, except, perhaps, in regard tosuch of the provisions, which remain unaltered since 1956. The Companies Act 2013 has replaced The Companies Act 1956. The new Companies Act 2013 has been enforced w.e.f. 1 April 2014.

Application of English Law: -

As regards the applicability of English decisions. It was earlier stated that excepting as regards the special provision relating to its own managementsystem and Central Government Control in several matters, the Indian Act follows the English Act not only in general principles but in the detailed arrangement and expression of various provisions. English authorities, may therefore, be usefully be referred to as a good guide in construing such provisions.[1]

Of late, the Courts have, however, observed that while large areas of theCompany Law of both countries are common, it must be born in mind that inasmuch as the socio-economic aspects of the present Indian Act are differentfrom those of the English Act and having regard to the Directive Principles ofState Policy laid down in Part IV of the constitution, caution is necessary in the application of English case law.[2]

Supreme Court's Views –

On this subject the Supreme Court has observed as follows – "Althoughthe Indian CompaniesAct is modeled on the English Companies Act the IndianLaw is developing on its own lines. Our Law is also making significant progressof its own as and when necessary. Where the words used in both the Act are identical, the English decisions may throw good light and reasons may be persuasive." After quoting with approval the following passage from a decisionof the privy council in **Ramanandi Kuer *v.* Kalawati Kuer**,[3] wherein it wasstated that "where there is positive enactment of the Indian legislature, the propercourse is to examine the language of that statute and to ascertain its proper meaning, uninfluenced by any consideration derived from the previous state of the law or of the English law upon which it may be founded," the court has gone on to observe that the background, conditions and circumstances of the Indian society, the needs and requirements to our country call for a some whatdifferent treatment. We will have to adjust and adopt, limit or extend, the principles derived from English decision, entitled as they are to great respect suiting the conditions of our society and the country in general[4].

Winding up of the company: - Winding up is the most common way in which' the existence of a company is brought to an end. In the words of **Professor Gower[5]** for winding up of a company is the process whereby its life is ended and its property administered for the benefit of its creditors and members. An Administrator, called a liquidator, is appointed and he takes control of the company, collects its assets, pay its debts and finally distributed my surplus among the members in accordance with their rights.

The life of the company does not, however come to an end in when winding up begin, because winding up Is merely a process and it is only at the end of the process that the company is dissolved, that is, It loses its Corporate status and existence. Thus, the winding up is a long drawn-out process which ends in the dissolution of the company.[6] Winding up is legal process of closing down a firm and of ceasing all operations.

Winding up of companies in India:-

Winding up" is a provision in chapter xx of the companies Act, 2013, ranging from section 270 to section 365.

Modes of winding up (Section 270):- The company act 2013 provides for two kinds of winding up:-

1. Compulsory winding up of the companies by the Tribunal
2. Voluntary winding up of company.

(a) Compulsory winding up of company by the Tribunal (Section 271)

A company may be wound up at an order of the Tribunal; this is also called compulsory winding up. Section 271 empowers the Tribunal in its discretion to order the winding up of a company in the following circumstances.

(i) Special resolution - The Tribunal may wound up a company of the members of the company have passed a special resolution resolving that the company be wound up by the Tribunal. The Tribunal is however not bound to order winding up simply because the company has so resolved. The power of the Tribunal is resolved, discretionary.

(ii) Failure to file financial statements with the Registrar- If the Company has failed to the file its financial statement or annual reports with the Registrar for the last five consecutive Fiscal years, as required by section 271 of the act.

(iii) Inability to pay debts - A company may be ordered to be wound up if it is unable to pay its debts. Inability to pay debts is explained In Section 272 (2). According to this sub section a company shall be deemed to be unable to pay its debts in the following three cases:-

(a) firstly, If a creditor to whom the company owes a sum exceeding one lakh rupees or more has served a notice to the company at Its registered office, demanding payment of such some and If the company has, for a period of 21 days thereafter, failed to pay the amount or to secure or compound for it to the reasonable satisfaction of the creditors, It can be said that the company is unable to pay its debts.

(b) Decreed debt- Secondly, a company shall be deemed to be unable to pay its debts if execution of other process issued on a decree of order of any count in favour of a creditors of the company is returned unsatisfied in whole or in part.

(c) Commercial insolvency - Lastly, A company can be wound up if it is proved to the satisfaction of the tribunal that the company is unable to pay its debts.

(IV) Acts against Sovereignty - If the company commits on act that is detrimental to India's sovereignty and integrity, the security of the state, friendly relation with foreign states, public order, decency or morality, the tribunal may ask company to wind up the company.

(V) Sick Company - If the Tribunal has ordered winding up of the company under chapter is for having a sick company.[7] (under section - 253)

(VI) Fraudulent Conduct of affairs - The Tribunal is of opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent or unlawful purpose or person concerned in its formation or management of its affairs have been guilty of fraud misfeasance or misconduct in those connections and that it is proper that the company be wound up.

(VII) Just and Equitable - The last ground on which the Tribunal can order the winding up of a company is when " it is of opinion that it is just and equitable that the company should be wound up. This gives the tribunal is very wide discretionary power to order winding up whenever it appears to be desirable. The Tribunal may give due weight to the interest of the company, its employees, creditors and shareholders and general public interest should also be considered.

It is neither possible not even desirable, to lay down a complete list of all the circumstances in which winding up of a company is justified on the just and equitable ground, however, the following are some common instances in which the Tribunal have held that it would be justified to wind up a company on the just and equitable ground.

(a) Loss of Substratum - If a company's main object has failed if its substratum is lost. It would be just and equitable to wind it up.

(b) Deadlock - If there is a deadlock in the Management of a company and there seems to be no possibility of resolving such deadlock, the Company may be wound up on the just and equitable ground.

(C) Losses - Thirdly, It is considered just and equitable to wind up a company when it cannot carry on business except at losses. It will be needless Indeed for a company to carry of business when there is no hope of achieving the object of trading at a profit.

(d) Oppression of minority - Fourthly, It Is just and equitable to windup a company or where the principal shareholders have adopted an aggressive or oppressive or squeezing policy towards the minority.

(e) Fraudulent purpose - It is just and equitable to wind up a company if it has been conceived and brought forth in fraud of for illegal purpose.

(f) Incorporated or quasi-partnership - It has been observed that" there is little in common between the giant corporation and the family or one-men company, to apply the same requirements to such different organizations is productive of inconvenience and injustice.

(g) Public Interest- Winding up can also be ordered under this section when public Interest demands it. A type of conduct which comes in conflict with public Interest is indicated in a court of appeal decision in England.[8]

Person who can file a winding up petition (section272)

The following person are entitled to file this petition

1. The Company (S.272 (1) (a))
2. Creditor or creditors, including my contingent or potential creditor(S. 272 (1) (b))
3. Any contributors to that company (s. 272(1) (c))
4. Registrar company's petition (s. 272(1) (e) and (4))
5. Central Government 's petition (S. 272(1)(f))
6. Central Government or State Government's petition (S. 272(1)(g))

After hearing a winding up petition , the Tribunal may (a) dismiss it with or without costs, or (b) make any interim order as it think fit; or (c) appoint a provisional liquidator of the company till a winding up order ;or (d) make an order for winding up with or without costs; or (e) any other order think fit. The Tribunal can also Issue a conditional order of winding up, where a petition for winding up is filed before the tribunal by any other person than the company if the tribunal is satisfied that a *prima facie* case for winding up is made out, it has to direct the company to file its objections along with a statement of its affairs within 30 days in the prescribed form and manner.

Winding up procedure (section - 275): "Company liquidator", according to Section 2 (23) insofar as it relates to winding up of a company, means a person appointed by (a) the tribunal in case of winding up by the Tribunal,(b) by the company or creditors in case of voluntary winding up, as a company liquidator from a penal of professionals maintained by the Central Government under section 275 (2). The liquidator has to submit within 60 days of the winding up order to make a report to the Tribunal (S-281).[9]

After considering the report of the company liquidator, the Tribunal has to fix a time- limit within which the entire proceedings have to be completed. The tribunal issues orders to the liquidators in dissolving the company under section 282 of the act, and according to which the company's property undergoes shift into custody in order to satisfy the creditors and contributors Frost. The tribunal may order for steps and measures as may be necessary to protect, preserve and enhance to value of assets of the Company.

The company liquidator, including provisional liquidator, or receiving an order of the tribunal has to take into his custody or under his control all the property (S-283). When the affairs of the company have been completely wound up, the liquidator has to make an application to the tribunal for dissolution of the Company, if the tribunal is of opinion that it is just and reasonable in the circumstances of the case to order dissolution, it may pass on order of dissolution from the date at the order (S-302), the liquidator has to file a copy of the order with the registrar within 30 days. The registrar has to record the fact of dissolution in the register relating to the company.[10]

(B) Voluntary winding up

A company may be wound up voluntarily in the following two ways (S-304) (i) A company may be wound up voluntarily by the passing and ordinary resolution when the period, If any, fixed for the duration of the company by the articles, has expired. Similarly when the event, If any, has occurred, on the occurrence of which the articles provide that the company is to be dissolved, the company may, by passing an ordinary resolution to the effect Commence its Voluntary winding up (ii) A company may at any time pass a special resolution providing that the company be wound up voluntarily[11] within 14 days of the passing of the resolution, the company shall give notice of the resolution by advertisement in the official Gazette and also in some newspapers circulating in the district of the registered office of the company. A default in this respect is punishable with fine.[S -307].

Procedure -

The Act of 2013 has abolished the distinction between members voluntary winding up and creditors' voluntary winding up. The requirement now is that after member's' meeting for voluntary winding up a meeting of creditors must also be called. Such meeting has to be called and held on the same day or next day by sending notice of meeting to creditor's with the notice of meeting of the company. The Board Directors have to put before the meeting a full statement of affairs of the company, list of creditors, a copy of the declaration of solvency and the estimated amount of claims. If two third in value of the creditors are of opinion that it is in the interest of all parties that the company be wound up voluntarily, the company's voluntary winding up is to proceed. If they are of opinion that the company may not be able to pay its debts in full from proceeds of its assets involuntary winding up and they pass a resolution that it Is to be in interest of all parties If the company is wound up by the Tribunal, the company has to file on application before the tribunal within 14 days, within 10 days a notice of the resolution is to be given to the company and registrar[12]. In the general meeting, pass the ordinary resolution for winding up the company by ordinary majority of special resolution by 3/4 majority. The winding up of the company shall commence from the date of passing of this resolution.

In the general meeting at which at which a resolution For voluntary winding up is passed, a company liquidator has to be appointed from the panel prepared by the Central Government for winding up its affairs and distribute its assets and recommend the fee to be paid to the liquidator. A company liquidator appointed by the company can be removed by it and that appointed by creditors can be removed by them (section - 311). The company liquidator has to inform the registrar of his appointment (Section - 312). The Company liquidator has to perform such function and discharge such duties as may be required by the company or creditors. He has to settle the list of contributories. This will be *prima facie* evidence of Liability of persons shown in the list. He can call general meetings of the company when necessary for his working. He has to maintain regular and proper books of account they can be inspected by any member or creditor or any person authorized by the central Government. He has to make a quarterly statement of accounts, get it audited within 30 days from the close of each quarter and file it with registrar(S-314). Members and creditors have to appoint committees to help the liquidator for his working (S-315). The company liquidator has to report- quarterly on the progress of winding up to members and creditors (S- 316).

After completion of affairs of winding up, the company liquidator has to prepare a report of the winding up showing that the assets and properties of the company have been disposed of its debts fully discharged or discharged to the satisfaction of creditors. He has than to call a general meeting of the company and lay before it final accounts with his explanation. If a majority at members is satisfied with the report of the liquidator and feel that the company should be wound up, they may pass a resolution for its dissolution. Within two weeks, after the meeting the company liquidator has to send to the registrar a copy of the final winding up accounts and make a return in respect of each meeting and its date and copies of the resolutions passed in the meetings. He has to file an application along with his report and also books and papers before the tribunal for passing the order of dissolution. If the tribunal Is satisfied that the process of winding up has been just and fair it may within 60 days pass the order of dissolution. Within 30 days the liquidator has to file a copy of the order with the registrar. The letter has to publish a notice in the official Gazette that the Company is dissolved (S-318).[13]

Winding up in English Companies -

We have seen earlier that the winding up of a company is a prelude to itsultimate demise. Leaving aside the special case of bank insolvency, there aretwo kinds of winding up in insolvency: a creditors' voluntary winding up and acompulsory winding up by the court. But each of these divides into sub-groups,depending on whether the winding up is brought about in the ordinary way or inthe form of exit from administration. This sub-division produces four kinds ofinsolvency winding up: a creditors' voluntary winding up by resolution of themembers[14], a compulsory winding up by court order on a petition; a creditors' voluntary winding up as an exit from administration by registration of an administrator's notice, and a compulsory winding up as an exit from administration by court order. An unregistered company, including a company incorporated outside the United Kingdom, may be wound up if there is a sufficient connectionwith the United Kingdom, but an overseas company may not be put into a creditors' voluntary winding up except in accordance with the EC InsolvencyRegulation.

A. Voluntary Winding up -

Circumstances in which company may be wound up voluntarily

1. A company may be wound up voluntarily -

   (a) When the period (if any) fixed for the duration of the company by thearticles expires, or the event (if any) occurs, on the occurrence ofwhich the articles provide that the company is to be dissolved, andthecompanyingeneralmeetinghaspassed aresolution requiringitbewound up voluntarily;

   (b) If the company resolves by special resolution that it be wound upvoluntarily;

2. In thisAct the expression "a resolution for voluntary winding up" means aresolution passed under (either of the paragraphs) of subsection (1).

(2A) Before a company passes a resolution for voluntary winding up it must givewritten noticeof the resolution to the holder of any qualifyingfloatingchargeto which section 72A applies.

(2B) Where notice is given under subsection (2A) a resolution for voluntarywinding up may be passed only –

   (a) After the end of the period of five business days beginning with theday on which the notice was given, or

   (b) If the person to whom the notice was given has consented in writingto the passing of the resolution.

3. Chapter 3 of Part 3 of the Companies Act 2006 (resolutions affecting a company's constitution) applies to a resolution under paragraph (a) of subsection (1) as well as a special resolution under paragraph (b).

4. This section has effect subject to section 43 of the Common hold and Leasehold Reform Act 2002.

(i) Members' Voluntary Winding Up -Appointment of liquidator -

(1) In a members' voluntary winding up, the company in general meeting shallappoint one or more liquidators for the purpose of winding up the company's affairs and distributing its assets.

(2) On the appointment of a liquidator all the powers of the directors cease,except so far as the company in general meeting or the liquidator sanctions their continuance.

(i) Creditors' Voluntary Winding Up[15] -The procedure –

As mentioned before, creditors' voluntary winding up (other than as an exit from administration) is affected by a resolution of the members, not the creditors, but once in place operates under the control of the creditors. It is necessary to convene a meeting to pass a special resolution to wind up the company[16]. Not less than 14 days' notice must be given[17] and a resolution passed at a meeting on a show of hands must be passed by a majority of not less than 75 per cent of: (i) the members who, being entitled to do so, vote inperson on the resolution; and (ii) the persons who vote on the resolution as duly appointed proxies of members entitled to vote on it. In the case of a private company, the resolution may be passed without a meeting or prior notice by resolution in writing of all of the members who would be entitled toattend and vote at such a meeting[18]. The company is required to convene a meeting of creditors for a day no later than the 14th day after than fixed for the company meeting, at least seven days' notice being given and advertised[19]. In practice, the creditors' meeting is usually held after and on the same day as thecompany meeting. It is presided over by a director of the company appointed for that purpose by the directors, who must lay a statement of affairs before thecreditors' meeting showing particulars of the company's assets, debts and liabilities, the names and addresses of the company's creditors and any securities held by them[20]. The creditors and the company may (and almost invariably do) nominate a liquidator at their respective meetings[21], the creditors'nomination (if any) prevailing unless the court orders otherwise. A liquidatornominated by the company before the holding of a meeting of creditors may not exercise the powers conferred by Section 165 of the Insolvency Act until that meeting.

The notice convening a meeting of creditors must specify the date by which creditors must lodge any proxies necessary to entitle them to vote at themeeting[22]. If the proxy is not lodged in due time, the proxy-holder cannot vote.However, it is often overlooked that a company need not act by proxy, but canappear and vote by its duly authorized representative[23]. The difference between a proxy-holder and a representative is that the former is "another person" authorized to speak and vote as the company's representative[24], whereas a representative is treated as the personification of company itself. The representativemust be authorized by resolution of the directors[25], a sealed or certified copy of which must be produced to the chairman of the creditors' meeting[26], but need not be lodged before the meeting. At any meeting a creditor can vote onlyif, in addition to any necessary proxy, it has also duly lodged a proof of debt which has been admitted by the chairman under rule 4.70 of the Insolvency rules[27]. The chairman is likely to reject a proof where the creditor has not obtained judgment and the debt is genuinely disputed by the company, and in that event the creditor cannot vote at the meeting. The chairman must certify the liquidator's appointment, but may only do so when the person appointed has provided him with a written statement that he is an insolvency practitioner duly qualified under the InsolvencyAct to be the liquidator and thathe consents to act.

B. Compulsory Winding Up[28]- Procedural outline –

Proceedings for compulsory winding up are initiated by petition issued by a creditor or other person having an appropriate ***locus standi***. The petitionmust be served on the company and other parties specified in the Insolvency Rules and must be advertised as prescribed as prescribed by the Rules[29]. Various other procedural requirements must be fulfilled prior to the hearing. These too are set out in the Rules. On the hearing, the court may in its discretion make a number of different orders. If the court makes a winding uporder, the official receiver becomes liquidator automatically unless and until another liquidator is appointed[30]. Any such liquidator must be an authorized insolvency practitioner. The official receiver may summon meetings of the creditorsand contributories for the purpose of choosing another person as liquidator[31]. At such meeting, the nomination (if any) of the creditors prevails unless the court others otherwise. In practice, an outside liquidator will not accept an appointment unless he or she is satisfied that there are at least enough assets tocoverthecostsandexpensesofwindingup,including theliquidator'sremuneration.In such cases, the official receiver will continue in office as liquidator.

The official receiver will normally require the company to furnish a statement of affairs in the prescribed form, showing the company's assets, debts and liabilities, names and addresses of its creditors and details of any securities they hold. The official receiver will convene a first meeting of creditors,notice being given to each creditor and contributory as well as being advertised.If an outside liquidator is to be appointed, it is usually at this meeting that therequisite resolution will be passed.

The various stages in the administration of the liquidation broadly followthe same pattern as for a creditors' voluntary winding u, although there are numerous differences, some of the more important of which have been set outabove. With these preliminary remarks, we can go on to consider certain features of compulsory winding up deserving particular attention.

(i) Grounds and effect of winding up petition -

Circumstances in which company may be wound up by the court -

1. A company may be wound up by the court if -

a) The company has by special resolution resolved that the company be wound up by the court.

b) Being a public company which was registered as such on its incorporation, the company has not been issued with a trading certificate under section 761 of the Companies Act 2006 (requirement as to minimum share capital) and more than a year has expired since it was so registered.

c) The company does not commence its business within a year from its incorporation or suspends its business for a whole year;

d) Except in the case of a private company limited by shares or by guarantee the number of members is reduced below 2.

e) The company is unable to pay its debts.

f) The court is of the opinion that it is just and equitable that the company should be wound up.

2. In Scotland, a company which the Court of Session has jurisdiction to wind up may be wound up by the Court if there is subsisting a floating charge over property comprised in the company's property and undertaking, and the court is satisfied that the security of the creditor entitled to the benefit of the floating charge is in jeopardy.

For this purpose a creditor's security is deemed to be in jeopardy if the Court is satisfied that events have occurred or are about to occur which render it unreasonable in the creditor's interests that the company should retain power to dispose of the property which is subject to the floating charge.

3. Definition of inability to pay debts -

a) A company is deemed unable to pay its debts -

i. if a creditor (by assignment or otherwise) to whom the company is indebted in a sum exceeding € 750 then due has served on the company, by leaving it at the company's registered office, a written demand (in the prescribed form) requiring the company to pay the sum so due and the company has for 3 weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor, or

ii. If, in England and Wales, execution or other process issued on a judgment, decree or order of any court in favor of a creditor of the company is returned unsatisfied in whole or in part, or

iii. If, in Scotland, the induciae of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made, or

iv. If, in Northern Ireland, a certificate of unenforceability has been granted in respect of a judgment against the company, or

v. If it is proved to the satisfaction of the court that the company is unable to pay its debts as they fall due.

b. A company is also deemed unable to pay its debts if it is proved to the satisfaction of the court that the value of the company's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.

c. The money sum for the time being specified in subsection (1)(a) is subject to increase or reduction by order under section 416 in Part XV.

4. Who can present a petition -

a. Under Section 124 of the Insolvency Act 1986, a winding up petition may be presented by:

i. The company;

ii. The directors of the company;

iii. Any creditor or creditors (including any contingent or prospective creditor or creditors);

iv. Any contributory or contributories;

v. A liquidator or temporary administrator appointed in main proceedings opened in another EC Member State pursuant to art.3(1) of the EC Insolvency Regulation who wishes to open secondary proceedings in the United Kingdom pursuant to art.29(3) of the regulation;

vi. The clerk of a magistrates' court in exercise of the power conferred by Section 87A of the Magistrates' Courts Act 1980 (relating to the enforcement of fines imposed on companies); or

vii. All or any of those parties together or separately.

b. Except as mentioned below, a contributory is not entitled to present a winding up petition unless either –

i. The number of members is reduced below 2, or

ii. The shares in respect of which he is a contributory, or some of them either were originally allotted to him, or have been held by him, and registered in his name, for at least 6 months during the 18 months before the commencement of the winding up, or have devolved on him through the death of a former holder.

c. A person who is liable under section 76 to contribute to a company's assets in the event of its being wound up may petition on either of the grounds set out in section 122(1)(f) and (g), and subsection (2) above does not then apply; but unless the person is a contributory otherwise than under section 76, he may not in his character as contributory petition on any other ground.

d. A winding up petition may be presented by the Secretary of State –

i. If the ground of the petition is that in section 122(1)(b) or (c), or

ii. In a case falling within section 124A or 124B below.

(4AA) A winding up petition may be presented by the Financial Services Authority in a case falling within section 124C(1) or (2).

(4A) A winding up petition may be presented by the Regular of Community Interest Companies in a case falling within section 50 of the Companies (Audit, Investigations and Community Enterprise) Act 2004.

e. Where a company is being wound up voluntarily in England and Wales, a winding up petition may be presented by the official receiver attached to the court as well as by any other person authorized in that behalf under the other provisions of this section; but the court shall not make a winding up order on the petition unless it is satisfied that the voluntary winding up cannot be continued with due regard to the interests of the creditors or contributories.

(IV) The Liquidator and his Role - IV (a) Duties and powers –

The liquidator is an authorized insolvency practitioner whose primary function is to collect in the assets, realize them and distribute the net realizations according to a statutory order of priority, paying any surplus to the person entitled[32]. He may carry on the company's business, but only so far as may be necessary for its beneficial winding up. Part of the liquidator's job is also to investigate the causes of failure and to take appropriate steps to bring to book any delinquent directors. For this purpose, the liquidator can apply to the court for an order summoning to appear before it an officer of the company, any person known or suspected to have in his possession any property of the company or supposed to be indebted to the company and any person whom the court thinks capable of giving information concerning the promotion, business dealings, affairs or property of the company[33]. Such officer or other person may also be required to produce any relevant books, papers or other records in his possession[34]. This provision has been successfully invoked to enable a liquidator to obtain an order for production of documents relating to the remuneration paid to the former administrative receivers and the conduct of the company's affairs while in receivership[35].

The liquidator may be appointed by the creditors, the company, the court or, on the application of the official receiver then acting as liquidator and desiring a private liquidator to be appointed in his place, the Secretary of State. Separate provision is made by the Banking Act 2009 for a bank insolvency order appointing a qualified insolvency practitioner to act as the bank liquidator of a bank[36]. There is also an ER Directive governing the reorganization and winding up of banks. In compulsory winding up, the liquidator is an officer of the court[37]. As such, he is required to act with scrupulous fairness and impartiality, avoiding "dirty tricks" that might be open to an ordinary person, and his status as an officer of the court is relevant to the propriety of contracts into which he enters. While the liquidator is responsible for taking custody of the company's assets, they do not automatically vest in him or her[38], although where the company is in compulsory winding up the liquidator can apply to the court for a vesting order. The court cannot refuse to make a winding up order on the ground that the company's assets are fully mortgaged or that it has not assets, but where the company is in administration or administrative receivership, so that all of its assets are under the control of the administrator or administrative receiver, the liquidator must perforce wait on the sidelines as regards his distribution role until completion of the administration or receivership, after which he will take over whatever assets, if any, remain.

IV(b) Liability -

The liquidator is not a trustee for individual creditors but rather an agent for the company in much the same position as a director and with statutory duties which may be enforced by application to the court. His duty is owed to the company and to the creditors as a class, but he does not in general owe any duty to an individual creditor[39]. Accordingly, it is not normally open to an individual creditor to institute proceedings against a liquidator outside the winding up. His remedy for a breach of duty causing loss to the company is to institute misfeasance proceedings under Section 212 of the Insolvency Act for an order compelling the liquidator to contribute to the company's assets[40]. There are, however, exceptions to the rule that an individual creditor cannot

pursue a remedy in his own right. The liquidator may incur a liability to an individual creditor for loss caused by fraud or other personal misconduct, such as breachof fiduciary duty or misfeasance, or for breach of contract[41], or for negligentlydistributing the company's assets without taking account of a debt which has been or should have been admitted to proof, but in this last case only where thecompany has been dissolved, and consequently is no longer in course of windingup, so that the creditor is deprived of his ordinary remedy of application to thecourt. Where the company has not been dissolved, the liquidator cannot be sued for a dividend even if this has been declared, the creditor's remedy is toapply to the court in the winding up for an order under what is now Rule 4.182(3) of the Insolvency Rules 1986 directing the liquidator to pay out of themoneys in his hands or, if he has already paid away the moneys he had held, aclaim for payment by the liquidator personally in misfeasance proceedings under Section 212. In **Lomax Leisure Ltd. Miller[42]**, in which there was thought to be a surplus of assets allowing a member's voluntary winding up as the exitroute from administration, a creditor whose proof had been rejected by the liquidators successfully appealed. However, by that time the liquidators, whohad been unaware of the creditor's application to reverse the decision to rejectits proof, had issued cheques to the creditors whose proofs they had accepted. Consequent upon the appeal, they stopped the cheques. The effect of the appeal was that the surplus was turned into a deficit, with the result thatthe liquidation became a creditors' voluntary winding up and a new liquidatorwas appointed. The first liquidators were then sued by one creditor on the stopped cheque. It was held that Rule 4.182(3) precluded such a claim and thatthe creditor's only remedy was an application for an order for payment underRule 4.182(3) (applicable by analogy in a members' voluntary winding up) if the liquidator was still in funds or, if not, a misfeasance claim under Section 212. It followed that the liquidators were not liable on the cheque, which hadbeen given without consideration, there being no antecedent debt or liability.

IV(c) Proceedings by liquidator -

On behalf of the creditors, the liquidator can bring proceedings in the name of the company in respect of causes of action vested in the company but he has not locus standi to pursue claims vested in persons via creditors. So if acompany establishes a subsidiary to carry on the business of deposit-taking and the parent runs the subsidiary as its alter ego, effectively depriving the subsidiary's directors of any management function and using the subsidiary as a façade through which deposited funds are transferred to the parent, then if in consequence the subsidiary is driven into insolvent liquidation, the liquidatormay be able to pursue a claim in the name of the subsidiary against its parent,but has no standing to assert claims on behalf of the subsidiary's depositors, who must pursue their own proceedings.

In a compulsory winding up, the liquidator must obtain the sanction of the court or liquidation committee before commencing proceedings in the nameand a behalf of the company. In the case of a voluntary winding up no sanctionis required except for proceedings under Sections 213, 214, 238, 239, 242, 243or 423.[43] His failure to obtain the requisite sanction does not nullify the proceedings, but would preclude the liquidator from recovering his expenses unless the court or the liquidation committee exercises its statutory power to ratify what the liquidator has done, which cannot ordinarily be done unless the committee or the court is satisfied that the liquidator has acted in a case of urgency and has sought ratification without undue delay. However, the court has a residual discretion to dispense with these conditions, which in most cases it will do if the liquidator's failure was inadvertent.[44]

IV (d) Liquidator's powers of compromise -

The liquidator has power, with the sanction of the court or the committee of inspection, to make any compromise or arrangement with creditors or personsclaiming to be creditors or having or alleging themselves to have any claim against the company and also has power, exercisable without sanction, to compromise all calls and other claims subsisting between the company and contributory and all questions relating to or affecting the assets or the windingup of the company.

IV (e) Liquidator's powers of sale –

The liquidator has power, exercisable without sanction, to sell any of thecompany's property by public auction or private contract. In general, the availability of this power does not give rise to any difficulty. However, problemshave arisen in a number of cases involving the assignment of a cause of action,either for an agreed price or in consideration of a share of the fruits of the action, or an assignment of the fruits of the action themselves. Here the authorities establish the following:

(i) Although under the general law the assignment of a bare cause of actionunconnected to any legitimate interest of the assignee[45] savors of maintenance[46] and champerty and is unenforceable as being contrary topublic policy, the assignment by a liquidator of a bare cause of action vested in the company is allowed as an exception to the rule because a rightof action is an asset of the company and the liquidator has a statutory power to sell the company's assets, and thus to sell a bare cause of action.Moreover he can validly agree to do so in consideration of payment to the company of part of the fruits of the action.[47] But the exemption from

maintenance or champerty in respect of sale of a cause of action by a liquidator does not extend to an agreement to finance the litigation.

(ii) A sale of the fruits of the action is lawful even under the general law, so long as it does not involve the conferment on the assignee of a right to control or influence the course of the proceedings.[48] But the funding of the action by the assignee does not by itself appear to render the assignment objectionable.[49]

(iii) The liquidator is not entitled to sell causes of action vested not in the company but in him as liquidator, for example, claim for wrongful trading under Section 214 of the Insolvency Act 1986, or a claim to set aside a Transaction as a preference under Section 239, because such causes of action do not relate to the company's property, but the statutory rights conferred on the liquidator and thus fall outside the scope of Sch.4, para.6. Moreover, they have a public or penal element in them as regards which the court is entitled to have the assistance of the liquidator, so that it is contrary to public policy for the liquidator to pass control of those causes of action to another. The position is otherwise as regards misfeasance proceedings under Section 212, since these relate to a right of action vested in the company prior to the winding up.

(v) Powers of court on hearing of petition -

1. On hearing a winding up petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order, or any other order that it thinks fit; but the court shall not refuse to make a winding up order on the ground only that the company's assets have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

2. If the petition is presented by members of the company as contributories on the ground only that it is just and equitable that the company should be wound up, the court, if it is of opinion –

(a) That the petitioners are entitled to relief either by winding up the company or by some other means, and

(b) That in the absence of any other remedy it would be just and equitable that the company should be wound up, shall make a winding up order; but this does not apply if the court is also of the opinion both that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(vi) Consequence of winding up order -

1. On the making of a winding up order, a copy of the order must forthwith be forwarded by the company (or otherwise as may be prescribed) to the registrar of companies, who shall enter it in his records relating to the company.
2. When a winding up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose.
3. When an order has been made for winding up a company (registered but not formed under the Companies Act 2006) no action or proceeding shall be commenced or proceeded with against the company or its property or any contributory of the company, in respect of any debt of the company, except by leave of the court, and subject to such terms as the court may impose.
4. An order for winding up a company operates in favour of all the creditors and of all contributories of the company as if made on the joint petition of a creditor and of a contributory.

(Vii) Dissolution of Companies after Winding Up -

A. Dissolution (voluntary winding up) –

1. This section applies, in the case of a company wound up voluntary, where the liquidator has sent to the registrar of companies his final account and return under section 94 (members' voluntary) or section 106 (creditors' voluntary).
2. The registrar on receiving the account and return shall forthwith register them; and on the expiration of 3 months from the registration of the return the company is deemed to be dissolved.
3. However, the court may, on the application of the liquidator or any other person who appears to the court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as

the court thinks fit.

4. It is the duty of the person on whose application an order of the court under this section is made within 7 days after the making of the order to deliver to the registrar (a copy) of the order for registration; and if that person fails to do so he is liable to a fine and, for continued contravention, to a daily default fine.

B. Early dissolution (England and Wales) -

1. This section applies where an order for the winding up of a company has been made by the court in England and Wales.
2. The official receiver, if –
   a. He is the liquidator of the company, and
   b. It appears to him –
   (i) that the realizable assets of the company are insufficient to cover the expenses of the winding up, and
   (ii) that the affairs of the company do not require and further investigation, may at any time apply to the registrar of companies for the early dissolution of the company.
c. Before making that application, the official shall give not less than 28 days notice of this intention to do so to the company's creditors and contributories and, if there is an administrative receiver of the company, to that receiver.
d. With the giving of that notice the official receiver ceases (subject to any directions under the next section) to be required to perform any duties imposed on him in relation to the company, its creditors or contributories by virtue of any provision of this Act, apart from a duty to make an application under subsection (2) of this section.
e. On the receipt of the official receivers' application under subsection (2) the registrar shall forthwith register it and, at the end of the period of 3 months beginning with the day of the registration of the application, the company shall be dissolved. However, the Secretary of State may, on the application of the official receiver or any other person who appears to the Secretary of State to be interested, give directions under section 203 at any time before the end of that period.

(Viii) Creditor's voluntary winding up distinguished from compulsory winding up-

The effect of a creditors' voluntary winding up differs in a number of respects from that of a compulsory winding up. Whereas in a compulsory winding up the winding up order operates to terminate the director's powers and dismiss them from office, on a voluntary liquidation the powers of the directors come to an end only on the appointment of the liquidator,[50] although between the time of passing of the resolution for voluntary winding up and the appointment of the liquidator these powers are severely restricted. The liquidation is primarily under the control of the creditors rather than the court and the liquidator can exercise without sanction certain powers which in a compulsory winding up would require the sanction of the court or the liquidation committee. There is no equivalent to the retrospective effect of a winding up order; the winding up commences on the passing of the resolution to wind-up. In consequence, there is also no equivalent of Section 127 of the Act, which invalidates dispositions of the company's property between winding up petition and order unless sanctioned by the court. Whereas a winding up order automatically stays all proceedings against the company except by leave of the court,[51] there is no automatic stay in the case of a voluntary winding up. It is for the liquidator to apply for a stay[52], which will normally be granted as a matter of course if the claimant's claim is admitted, but not if it is disputed and the creditor has not submitted a proof.[53] The position is otherwise where the creditor has submitted a proof and the liquidator has not been dilatory in dealing with it, for by lodging a proof the creditor has elected to have his claim dealt with in the liquidation in the ordinary way and if the proof is rejected the creditor can appeal to the court against the rejection in the winding up proceedings.[54]

(IX) Procedural similarities -

Although there are procedural differences between a creditors' voluntary winding up and a compulsory winding up, much of the procedure is common to both forms. The liquidator in a voluntary winding up, as in a compulsory winding up, will admit or reject or reject proofs of debt, convene meetings of creditors as necessary, report on the conduct of the liquidation from time to time, collect in a realize the assets and make interim and final distributions of dividend to creditors whose proofs have been lodged and accepted. A creditor who fails to lodge a proof prior to a dividend distribution cannot disturb that distribution, but upon lodging his proof and having it accepted is entitled to payment of the dividend he would have received ahead of other creditors before any subsequent distribution is made. When the winding up is completed, the liquidator convenes final meetings of the company and creditors, and subsequently gives notice to the registrar of companies that the meetings have been held and of the decisions (if any) taken at them, upon which he is released. The company is

dissolved automatically three months after registration of the liquidator's notice.[55]

The liquidator is entitled to remuneration, fixed either: (i) as a percentage of the value of the assets realized or distributed or of the one value and the other in combination; (ii) by reference to the time properly given; or (iii) as a set amount, the remuneration and any percentage being fixed either by the liquidation committee or, if there is none, by a resolution of a meeting of creditors. The liquidator's remuneration and expenses together constitute expenses of the liquidation payable ahead of the claims of creditors[56] and ranking towards the end of the list of priorities for payment of liquidation expenses.

(X) Judicial Version of English and Indian Court –

The Companies Act in India is the cherished child of English parents born and brought up in England, such laws passed in India from time to time have been following the English provisions with, minor changes here and there.The principles laid down by the Common Law Courts have been adopted by the Indian judiciary and therefore, they are applicable to similar circumstances arising in the Indian Scenario. There have been varying trends.

The court in the case of **Virendra Singh Bhandari *v.* Nandlal Bhandari& Sons**,[57] followed the principle laid down in In **Re Yenidje Tabacco Co. Ltd.**[58] It further added that the company in this case was in fact a family concern,analogous to a partnership and the business cannot be carried on save at loss inview of the deadlock created by the hostility between the members of two groups. Therefore, the company was ordered to be wind up. The same principle was upheld in another case decided prior to Virendra Singh's case where the court laid down that "When a company is in fact a family concern and a complete deadlock arises among the members, the principles of dissolution of a partnership can be applied, as Section 433(f) in analogous to Section 44(g) of the Indian Partnership Act".[59]

The Gujarat High Court in the case of **Atul Drug House Ltd, Re**[60] suggested that a private company can be dissolved on the analogy of partnershiponly if it is wholly a domestic concern and there is irrevocable deadlock in its administration. The court here refused to apply the analogy to a private company whose shares were held by a foreign company and a domestic company as a result of collaboration agreement entered into by the companies.Thus, though Indian companiesAct is modeled on the line of English CompaniesAct in Indian law is developing on its lines. Our law is shaped accordingly bythe changing conditions of the society as a result of which the principles derived from English decisions adapted, limited or extended. Indian law on thisaspect has started to pave its own path in the light of the common law principles is evidenced by the decision delivered by the Supreme Court in **Kilpest P. Ltd. *v.* Shekhar Mehra**.[61] The court was of the view that by holding those who take the advantages of a corporate body by converting theirfirm into a company must be held bound by the provisions of the Companies Act. It said that a limited company should be treated as a quasi-partnership should not be easily accepted.

The majority's will prevails in most of the affairs of a company's management. According to the rule laid down more than one and a half centuryago in the case of **Foss *v.* Harbottel**,[62] the aggrieved minority shareholders, who had no say in the affairs of the company's management were helpless forgetting any relief either in the company's domestic forum or in the court of law.Later the hardship caused by the rule in Foss's case was relaxed and fraud onminority was identified as one of the exceptions to this rule, on the basis of which the minority shareholders could move a petition for winding up of the company on the 'just and equitable' ground.

However, the committee appointed in England, the **Cohen Committee**pointed out that the remedy of winding up was quite often detrimental to the interests of the minority shareholders and beneficial to the majority's case.[63] Asimilar committee that was formed in India for the said purposes was the **BhabhaCommittee**. Both the committees recommended and alternative remedy to winding up. This was how Section in the English Act of 1985 came to be incorporated so as to facilitate the minority in seeking an alternate remedy. Theanalogous provision in the Indian Companies Act, 1956 is Section 397 which confers a right on the minority shareholders to apply to the court for relief in cases of oppression. If any member of a company complains that the affairs ofthe company are conducted in a manner prejudicial to public interest of the shareholders interests or in manner oppressive to them.[64] The power to relievethe minority shareholders from the unfairly prejudicial conduct of the company'saffairs is remedied by the Company law Board under Section 397.

Prior to the incorporation Section 225(2) of the Companies Act, 1948 inthe English law the court would not make a winding up order where the petitioner had or, was thought to have an alternate remedy? This defect was cured by the provision, which provides that in the case of a petition by a contributory, if the court considers that the petitioner has some other remedy, but the otherwise it would be 'just and equitable' to order a winding up, the court shall make the order accordingly unless it considers that the petitioner is acting unreasonably in asking for winding up.

Under this ground, the basis of interference by the court into the internalmatters of the company can be questioned, where the proper forum for settlement of "indoor affairs" is a general meeting of the company. But the grave nature of allegations and

subsequent deprivation and detriment to the interests of shareholders, in case of non-interference justify this act of the court.The court under this ground will not make an order of winding up unless it isproved that wrong has been done to the company be abuse of majority votingpower, and it is impossible to carry on the business of the company for the benefit of the company as a whole, owing to the way in which the majority shareholders are using their voting power.[65]

It is just and equitable to wind up a company where the principal shareholder have adopted and aggressive or oppressive or squeezing policy towards the minority. One such instance is the case of **Loch *v.* John Blackwood Ltd**,[66] where the Privy Council ordered the winding up of the company on thepetition of minority shareholders when the directors, who held the majority of the issued shares, had persistently refused to call annual general meetings, or tosubmit accounts to the petitioners, or to have auditors appointed, or to give thepetitioner any information about the company's affairs, all this being part of thescheme to coerce the petitioners into selling their shares to the directors at a price somewhat less than quarter of their real worth.

The Madras High Court's view in **R. Sabapathi *v.* Sabapathi Ltd.**,[67] which is a landmark decision, is appreciable. Here the directors of a companywere able to exercise a dominating influence on the management of the company and the managing director was able to outvote the minority of the shareholders and retain the profits of the business between the members of the family and there were several complaints as to irregular payment dividends, non-receipt of copy of balance sheet, failure to read auditor's report at the general meeting the court observed that this constituted sufficient ground for winding up.

Unfair dealing with a member in the matter of his proprietary rights as ashareholder arises only in cases of a small private company, where majority ofthe shares are held within the family or relatives and friends who resort to burdensome and harsh conduct and make use of their majority shareholding tooppress the minority and thus, acquire unfair profits from them.[68] Thus, it canbe said that oppression practiced by the majority and mismanagement of the company is a ground in addition to fraud and illegality of object, on which a small private company is liable to be wound up. But this remedy of winding upin case of oppression is only a secondary remedy available to the shareholder,while the widely implemented one is the remedy prescribed by Section 397 ofthe Act under which an application to the company law board can be made togrant relief. This is because of the detrimental effect winding up, sometimes has on the interests of the shareholders. Thus, where it is expedient in the interests of the shareholder to exercise, the courts have ordered for winding upof the company as happened in case of **Rajahmundry Electric Supply Corporation Ltd. *v.* A. Nageshwar Rao**.[69] Here the court directed that in addition to the misconduct on part of the directors, if circumstances exist which render it desirable in the interests of the shareholders that the companyshould be wound up, there is nothing which bars the jurisdiction of the court from making such an order.

Conclusion

The Companies Act in India is the cherished child of English parents born and brought up in England. Such laws passed in India from time to time have been following the English provision with minor changes here and there. The principles laid down by the common law courts have been adopted by the Indian judiciary and they are applicable to similar circumstances arising in the Indian scenario. Winding up in the last stage in the life of a company and its property is administered for the benefit at shareholders and creditors. A liquidator is appointed to realize the assets and properties of the company, winding up of a company differs from the insolvency of an individual in as much as a Company cannot be made insolvent under the insolvency laws. The company is not dissolved immediately at the commencement of winding up, its corporate status and powers continue. "Winding up precedes dissolution." Winding up is more commonly called liquidation.

Dissolutions are typically faster than bankruptcy and involve lower transaction costs. Winding up a business is a legal process regulated by corporate laws as well as a company's article of association or partner agreements. Winding up can be compulsory or voluntary and can apply to publically and privately held companies. In England there are two kinds of winding up in insolvency: voluntary winding up and compulsory winding up by the court and in India there are two principle moves of winding-up of a company i.e. (i) winding up by the Tribunal, and (ii) Voluntary winding-up. The winding up of the company will be governed by the provisions of the Companies Act, 2013 unless the contrary appears to the winding up.

[1] *Naresh Chand Snayal v. Ramani Kanto Rai AIR 1949 Cal. 360 Lovelock & Lews v.Malabar T. & S. Mills (1915) 13 Mad. LT 282.*

[2] *Madan Lal Fakirchand Dudhediya v. Shree Changdeo Suger Mills Ltd. (1958) 28 Comp. Cas. 312 and National Textile Workers Union v. P.R. Rama Krishna AIR 1983 SC 75.*

[3] *AIR 1928 PC 2.*

[4] *Hind Overseas Pvt. Ltd. v. R. P. JhunJhun Walla AIR 1928 PC. 2.*
[5] *The Principles of Modern Company Law (3rd Ed. 1969) 647*
[6] *Pof. H-D. Pithawala " company law (1st Ed. 2010) 253*
[7] *Avtar Singh (Ed. 16, 2016) Company Law*
[8] *Watter L. Jacob & Com Ltd, re 1989 BCLC 345 (CA)*
[9] *Section 306, Avtar Singh (Ed.-2016) Company Law*
[10] *Section 306, Avtar Singh (Ed.-2016) Company Law*
[11] Section 304(b)
[12] *Section 306, Avtar Singh (Ed.-2016) Company Law*
[13] *Section 306, Avtar Singh (Ed.-2016) Company Law*
[14] *Insolvency Act 1986 s. 84(1)(b). Under S. 90 the winding up will be a creditors' voluntary winding up, as opposed to a members' voluntary winding up, if the directorsdo not make a declaration of solvency under s. 89. A creditors' voluntary winding upcan also result from a resolution passed at a meeting convened by the liquidator in amembers' voluntary winding up who is of the opinion that the company will be unable topay its debts in full which interest within the period specified in the directors' declaration of solvency (S. 95 and 96).*
[15] *See Peter Loose and Michael Griffiths, Loose on Liquidators, 6th edn (Bristol: Jordans,2010),Ch. 2.*
[16] *Insolvency Act 1986 S. 84(1)(b). A members' voluntary winding up must be convertedinto a creditors'voluntary winding up where the liquidator forms the opinion that thecompany will be unable to pay its debts in full together with interest within the periodspecified in the declaration of solvency (s.95).*
[17] *Companies Act 2006 s. 307(1) and (2). But the meeting may be called upon short noticeif so agreed by the requisite majority [s. 307(4) and (5)].*
[18] *Companies Act 2006 s. 281 and 288.*
[19] *Insolvency Act 1986 s.98(1A). At least five business days written notice must also be given to the holder of any qualifying floating charge [s.84(2A)].*
[20] *Insolvency Act 1986 s.99.*
[21] *If the company defers the appointment of a liquidator, the directors are disabled fromcontinuing to exercise their powers except on a order of the court or to comply with theobligation to convene a creditors'meeting or to dispose of perishable goods or protectthe company's assets (Insolvency Act 1986 s.114).*
[22] *Insolvency Rules 1986 r.4.51.*
[23] *Companies Act 2006 s.323.*
[24] *Insolvency Rules 1986 r.8.1(1).*
[25] *Companies Act 2006 s.323(1).*
[26] *Insolvency Rules 1986 r.8.7.*
[27] *Insolvency Rules 1986 r.4.67(1). The chairman may allow a creditor to vote, notwithstanding his failure to comply with this requirement, if satisfied that the failurewas due to circumstances beyond the creditor's control (r.4.68).*
[28] *See Derek French. Applications to Wind Up Companies, 2nd edn (Oxford: Oxford University Press, 2008); and Loose and Griffiths, Loose on Liquidators, 2010, Ch.4.*
[29] *Insolvency Rules 1986 r.4.11.*
[30] *Insolvency Act 1986 s. 136(2).*
[31] *Insolvency Act 1986 s.136(4). Alternatively, the official receiver may apply to the Secretary of State to appoint a liquidator in his place, although the Secretary of State may decline to do so [s.137(1) and (3)].*
[32] *The liquidator may not, however, exercise his powers where prior to the winding up aconfiscation or restraint order has been made under the Proceeds of Crime Act 2002.*
[33] *Insolvency Act 1986 s.236.*
[34] *See Pickard v FIM Advisers LLP (2010) EWHC 1299 (ch).*
[35] *Re Delberry Ltd (2008) B.C.C. 653.*
[36] *Banking Act 2009 s. 94(1) and (2). The provisions of the Banking Act relating towinding up are not discussed further.*
[37] *Re Oasis Merchandising Ltd (1998) Ch. 170.*
[38] *In this respect, a liquidator differs from a trustee in bankruptcy, in whom the bankrupt'sestate vests immediately on the trustee's appointment without the need for any conveyance, assignment or transfer (Insolvency Act 1986 s.306(1).*
[39] *Hague v Nam Tai Electronics Inc (2008) B.C.C. 295.*
[40] *Alternatively, the creditor can apply to the court under s.168(5) of the Act as a person aggrieved by the liquidator's act or decision.*
[41] *The firm employing the individual liquidator may also be liable as a contracting party where it undertakes to appoint one of its employees as liquidator and procurehim to do a proper job [A & J Fabrications (Batley) Ltd v Grant Thornton (1999) B.C.C. 807].*
[42] *(2008) 1 B.C.L.C. 262.*
[43] *In these cases the power given by Sch.4 para.4 is not exercisable because the proceedings are brought in the name of the liquidator, not in the name and on behalfof the company, and under para.3A their exercise requires the sanction of the liquidator or the liquidation committee. The section in question relate to proceedings for fraudulent trading, wrongful trading and recovery under the various provisions for avoidance of transactions.*

[44] *Gresham International Ltd v Moonie (2009) 2 B.C.L.C. 256.*
[45] *Camdex International Ltd. v. Bank of Zambia (1998) Q.B. 22 at 32-33.*
[46] *The giving of assistance to a litigant by a person having no interest in the litigationor other legitimate reason for supporting it.*
[47] *Ramsey v Hartley (1977) 1 W.L.R. 686, applying Guy v Churchill (1889) L.R. 40 Ch.D. 481.*
[48] *Bang & Olufsen UK Ltd v Ton Systeme Ltd, unreported, July 16, 1993, CA.*
[49] *See Ruttle Plant Ltd v Secretary of State of Environment, Food and Rural Affairs(No.3) (2008) EWHC 328 (TCC).*
[50] *Insolvency Act 1986 s.103, which, however, allows the liquidation committee or, if none, the creditors to sanction their continuance.*
[51] *Insolvency Act 1986 s.130(2).*
[52] *Under S.112 of the Act. The application is made in the action sought to be stayed,not in the liquidation.*
[53] *Carrie v Consolidated Kent Colleries Corp Ltd (1906) 1 K.B. 134.*
[54] Craven v Blackpool Greyhound Stadium Co (1936) 3 All E.R. 512.
[55] Insolvency Act 1986 ss.201 and 205(2).
[56] *Insolvency Act 1986 s. 176Z.A.*
[57] *(1982) 52 Comp. Cas. 36.*
[58] *(1916) All ER Rep 1050.*
[59] *In Re Othery Construction Ltd. (1966) 36 Comp. Cas. 350.*
[60] *(1971) 41 Comp. Cas. 352 (Guj).*
[61] *(1987) 62 Comp. Cas. 717 (MP).*
[62] *(1843) 2 Hare 461.*
[63] *Raj Bahadur Srivastava, "Meaning of the Expression "Oppressive" Under Section397 of the Companies Act, 1956" [1969] II Company Law Journal at 77. The Major issue which the Cohen Committee dealt with was how to devise more effective means than was available under the then existing law for the protection ofminority shareholders against the 'oppression' of the majority.*
[64] *But to accrue of this benefit, the complainant must satisfy the requirements of S. 399 of the Act which provides for the qualification of the applicants. The provision lays down that the application must be made by not less than 100 members of the company who must be holding not less than one-tenth of the issuedshare capital of the company and finally, the applicants must be fully paid shareholders.*
[65] *Re Anglo Continental produce Co. Ltd. (1939) 1 All. ER 99.*
[66] *(1924) All ER Rep 200.*
[67] *AIR 1930 Mad 240.*
[68] *In such cases the minority shareholder can adopt the remedy of winding up on theground of oppression of minority under S. 433 (f) of the 1956 Act.*
[69] *AIR 1956 SC 213.*

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