# KAMARAJ COLLEGE

SELF FINANCING COURSES
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(Affiliated to Manonmaniam Sundaranar University, Tirunelveli.)
THOOTHUKUDI – 628003.

# STUDY MATERIAL FOR

# B.COM. CORPORATE SECRETARYSHIP

# COMPANY LAW – II

# SEMESTER – II

# ACADEMIC YEAR 2022-2023

# PREPARED BY

# COMMERCE DEPARTMENT

**Objectives**

To enable the students to

- Know the appointment of directors
- Understand the meetings of shareholders
- Know the books of accounts
- Understand principles of minority rule

**Unit I**

Directors – Definition – Appointment of Directors – Position of Directors – Number of Directorships – Share Qualification – Disqualifications – Powers, Duties and Liabilities of Directors.

**Unit II**

Company Meetings – Meetings of Shareholders – Meetings of Board of Directors – Resolutions: Ordinary, Special and Resolutions Requiring Special Notice – Quorum – Proxies – E-voting and Ballot – Minutes.

**Unit III**

Books of Accounts – Statutory Books – Auditors – Qualification and Disqualifications – Appointment – Removal – Rights and Powers of Auditors

**Unit IV**

Investigation – Meaning and Types – Principles of Minority Rule – Prevention of Oppression and Mismanagement

**Unit V**

Winding up – Meaning – Modes of Winding Up – Grounds for compulsory winding up – Voluntary winding up – Types – Consequences of winding up – Liquidator – Liquidator's Powers, Duties and Liabilities

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# UNIT – I

## DIRECTORS

### DEFINITION OF DIRECTOR

The Companies Act, 2013 does not contain an exhaustive definition of the term "Director". However, Sec. 2(34) of the Act prescribed that "Director" means a director appointed to the Board of a company.

### APPOINTMENT OF DIRECTORS

1. **Appointment of First Directors [Sec. 152(1)]**

   The first directors are named by the subscribers to the Memorandum or mentioned in the Articles. If no one is appointed either by the subscribers or by the Articles, then all the subscribers who are individuals will become the first directors [Sec. 152(1)]. They will hold the office till the conclusion of the first Annual General Meeting. In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the directors are duly appointed by the member in accordance with the provisions of Sec. 152.

2. **Subsequent Directors [Sec. 152(2) to 152(7)(b)]**

   General provisions relating to appointment of directors-

   1. Every director shall be appointed by the company in general meeting [Sec. 152(2)].

   2. Director Identification Number is compulsory for appointment of director of a company [Sec. 152(3)].

   3. Every person proposed to be appointed as a director shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under the Act (Sec. 152(4)].

   4. A person appointed as a director shall on or before the appointment give his consent to hold the office of director [Sec. 152(5)] in physical form DIR-2 1.e. Consent to act as a director of a company. Company shall file Form DIR-2 within 30 days of the appointment as director along with necessary fee [Rule 8].

**3.Appointment of Additional Director [Sec. 161(1)]**

The board of directors can appoint additional directors, if such power k conferred on them by the Articles of Association. Such additional directors hold office only up to the date of next annual general meeting or the last date, on which the annual general meeting should have been held, whichever is earlier. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director.

**4. Appointment of Alternate Director [Sec. 161(2)]**

Sec. 161(2) of the Act allowed the following:

(i) The Board of Directors of a company must be authorized by its Articles or by a resolution passed by the company in general meeting for appointment of alternate director

(ii) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.

(iii) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the Company.

**5. Appointment of Directors by Nomination [Sec. 161(3)]**

This new sub-section now provides for appointment of Nominee Directors. It states that subject to the Articles of a company, the Board may appoint any person as a director nominated by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding in a Government Company.

**6. Appointment of Directors in Causal Vacancy [Sec. 161(4)]**

If any vacancy is caused by death or resignation of a director appointed by the shareholders in General meeting, before expiry of his term, the Board of Directors can appoint a Director to fill up such vacancy. The appointed director shall hold office only up to the term of the director in whose place he is appointed.

**7. Appointment of Directors to be Voted Individually [Sec. 162(1)]**

A single resolution shall not be moved for the appointment of two or more persons as directors of the company unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.

A resolution moved in contravention of aforesaid provision shall be void, whether or not any objection was taken when it was moved. A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.

**8. Proportional Representation for Appointment of Directors [Sec. 163]**

The Articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in Sec. 161(4).

## POSITION OF THE DIRECTORS

It is not easy to explain the exact position of directors of a company As Bowen L.J. said "Directors are described sometimes as agent sometimes as trustees and sometimes as managing partners".

1. **Directors as Agents**

   A company is an artificial being invisible, intangible and existing only in contemplation of law. As such, the company can act only through persons known as directors. In this capacity, the directors are the agents of the company. The position was clearly defined in Ferguson V. Wilson, "The Company has no person; it can act only through directors and the case is, as regards those directors, merely the ordinary case of principal and agent exists".

2. **Directors as Trustees**

   As was held in G.E. Railway Co's case, "The directors are the mere trustees or agents of the company". The directors are not the trustees for the individual shareholder or for the creditors of the company or for third parties who have made contracts with the company.

3. **Directors as Employees**

   The directors, generally, are not the employees of the company because they act according to the provisions of the Companies Act and no shareholder can instruct them to act according to his will and pleasure. Even then a director may be an employee of the company if a special contract to that effect exists between the company and the directors.

   The above view is supported by the provisions in the Act, contained in Secs. 67, 188, 191 and 197. According to these sections, a director can be in the full time or part time employment of the company.

4. **Directors as Officers**

   As per Sec. 2(59) of the Act, directors are considered as officers of the company under certain specified circumstances.

## QUALIFICATIONS OF A DIRECTOR:

As regards to the qualification of directors, there is no direct provision in the Companies Act, 2013. But, according to the different provisions relating to the directors; the following qualifications may be mentioned:

1. A director must be a person of sound mind.
2. A director must hold share qualification, if the article of association provides such.
3. A director must be an individual.

4. A director should be a solvent person.
5. A director should not be convicted by the Court for any offence, etc.

**DISQUALIFICATIONS OF A DIRECTOR:**

Section 164 of Companies Act, 2013, has mentioned the disqualification as mentioned below:

1) A person shall not be capable of being appointed director of a company, if the director is

(a) Of unsound mind by a court of competent jurisdiction and the finding is in force;

(b) An un discharged insolvent;

(c) Has applied to be adjudicated as an insolvent and his application is pending;

(d) Has been convicted by a court of any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence;

e) Has not paid any call in respect of shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; or

(f) An order disqualifying him for appointment as director has been passed by a court in pursuance of section 203 and is in force, unless the leave of the court has been obtained for his appointment in pursuance of that section;

2) Such person is already a director of a public company which:

(a) Has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April, 1999; or

(b) Has failed to repay its deposits or interest thereon on due date or redeem its debentures on due date or pay dividend and such failure continues for one year or more.

**REMOVAL OF DIRECTORS [SEC, 169]**

A company may, remove a director except the director appointed by National Company Law Tribunal u/s 242, before the expiry of the period of his office alter giving him a reasonable opportunity of being heard after passing the ordinary resolution.

However, where the company has availed itself of the option given to it u/s 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation the above said provision shall not apply.

Any resolution to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed shall require a special notice.

## DUTIES OF DIRECTORS [SEC. 166]

1. Act in accordance with the Articles of the company.
2. Act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, and the community and for the protection of environment.
3. Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
4. Not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
5. Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
6. Not assign his office and any assignment so made shall be void. If a director of the company contravenes the provisions of this section such director shall be punishable with fine, which shall not be less than 1, 00,000 but which may extend to 5, 00,000.

## POWERS OF DIRECTORS

The Board of Directors is the head and brain of the company. When the brain functions, the company is said to function. For the proper functioning, the directors should be properly entrusted with some powers. The directors generally acquire their powers from the provisions of the Articles of Association and then from the Companies Act.

### 1. General Powers

The Board of Directors of a company shall be entitled to exercise al such powers and to do all such acts and things, as the company is authorized to exercise and do.

Further the Board shall not exercise any power or do any act or thing, which is directed or required, whether under this Act or by the Memorandum or Articles of the company or otherwise, to be exercised or done by the company in general meeting I Sec 179(1)

No regulation made by the company in general meeting shall invalidate any prior act of the Board, which would have been valid if that regulation had not been made I Sec. 179(2).

### 2. Specific Powers

In the case of a public company, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the Articles of the company, be filled by the Board of Directors at a meeting of the Board. The Board

Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board

(a) To make calls on shareholders in respect of money unpaid on their shares
(b) To authorize buy-back of securities u/s 68
(c) To issue securities, including debentures, whether in or outside India
(d) To borrow monies
(e) To invest the funds of the company
(f) To grant loans or give guarantee or provide security in respect of loans
(g) To approve financial statement and the Board's report
(h) To diversify the business of the company
(i) To approve amalgamation, merger or reconstruction Sec. 179(3)

## LIABILITIES OF DIRECTORS

From the duties of the directors discussed above naturally there arises the liability of the directors. They are endowed with enormous powers to conduct the affairs of the company. As a result, they are liable to the company as well as to the outsiders dealing with the company, for any fault on their part. Their liability is of both criminal and civil.

## SCOPE AND EXTENT OF LIABILITY

Scope and Liability of directors can be discussed as shown below:

### I. Civil Liabilities

**1. Contracts in their Own Name:**

If the directors enter into a contract in their own name without disclosing the fact that they are acting for the company, the third party can sue either the company or the director or both, as was held in Gadd V. Houghton. But if the contract is in the name of a director and it is expressly stated that he is making the contract on behalf of the company, he will not be personally liable.

**2. Ultra Vires Acts:**

If an act of the directors is ultra vires the company, the company is not liable. But the directors will be liable for breach of an implied warranty of authority [Weeks V. Propert).

**3. Misleading Prospectus:**

If third parties have subscribed for shares or debentures on the basis of a false statement in the prospectus, the directors are personally liable.

**4. Failure to Repay Application Money:**

If the minimum subscription has not been received within 30 days of the issue of the prospectus, the directors are jointly and severally liable to repay the application money with interest.

**5. Irregular Allotment:**

If the allotment is made against the provisions of Sec. 39, the directors are personally liable to compensate the loss Incurred by the allottees.

**6. Stock Exchange Placing:**

If the application for the securities to be dealt in on a recognized stock exchange is not made by the company or is refused by the stock exchange, and if application amount is not returned to the applicants within the prescribed time limit, the directors will be personally liable to repay the money with an interest at 12%.

**7. Fraudulent or Tortious Act:**

If the directors are parties to a fraud or to the commission of any other tort, causing injury to any other person, they will be personally liable.

**II. Liability to the Company**

The directors can be held liable to the company for damages both during the life time and after the life time of the company.

1. **Ultra Vires Act:**

   If the directors enter into a contract, which is ultra vires the company, they will become personally liable to indemnify the company for any subsequent loss or damage. As Lindley says, the directors have to replace the money however honestly, they may have acted.

2. **Negligence:**

   If the directors do not make use of so much skill, diligence and care in the management of the affairs of the company as an ordinary man under similar circumstances would use of, they will be held liable for negligence.

3. **Breach of Trust:**

   Directors are considered as the trustees of the company's money and property entrusted to them. If they commit a breach of trust, resulting in a loss to the company, they are bound to make the loss good. The directors are also liable if they make any secret profit or accept bribes or gifts while acting as agents of the company.

## MANAGING DIRECTOR

It is a common practice that the Board of Directors appoints one of its members to manage the affairs of the company as a whole-time officer and calls him the Managing Director.

He acts as the chief executive. He occupies a position of dual authority and responsibility. As a director, he attends the Board meetings and, as a manager, he performs the managerial functions.

## POWERS, DUTIES AND RESPONSIBILITIES OF THE MANAGING DIRECTOR MAY BE STATED AS FOLLOWS

1. As a member of the Board of Directors he participates in formulating the objectives and policy-making functions of the Board.
2. To execute policies laid down by the Board of Directors.
3. He is the liaison officer between the Board of Directors and the rest of the organisation.
4. To interpret and communicate policies of the company to subordinate employees.
5. To review the operations of the company and present to the Board periodically accounts and statistics showing the progress and the present position of the company.
6. To formulate the employment and compensation plan in accordance with the accepted policies of the company.
7. To appoint high officials of the company.
8. To plan the development and expansion of business.
9. To organise meetings with department heads.
10. To promote high morale among the employees of company by creating a sense of belonging.
11. To maintain contact with the govt., chamber of commerce, trade unions and community at large.
12. To maintain a harmonious relationship between line and staff managers.
13. To approve or disapprove development plans submitted by the senior executives and place before the Board for final approval.
14. To establish a system of budgetary control by which the actual performance of the company may be evaluated against the planned course of action.
15. To administer production and sales activities of the company.
16. To give due attention to consumer satisfaction which is ensured by the continued supply of goods and services to the market.

## REMUNERATION OF MANAGING DIRECTOR

Managing Director or a Whole time Director of a company may be paid remuneration either

(i) By way of a monthly payment, or

ii) At a specified percentage of the net profits of the company, or

(iii) Partly by one and partly by the other.

Provided that, except with the approval of the Central Govt., such remuneration shall not exceed 5% of the net profit for one such director and 10% for all of them together. In case of inadequacy of profits, the company may pay, subject to the approval of the Central Govt., to its managing director and other managerial staff together minimum remuneration such sum not exceeding Rs. 50,000 per annum. Such sum shall be exclusive of any fees payable to directors. Increase of remuneration to managing director requires the approval of the Central Govt.

Any appointment or re-appointment of any such director on a higher remuneration than that of his predecessor shall not be effective without the approval of the Central Govt. and shall be void if it is disapproved by the Central Govt.

While fixing remuneration, the Central Govt. shall have regard to:

(i) The financial position of the company,

(ii) The remuneration or commission drawn by the individual concerned in any other capacity,

(iii) The remuneration or commission drawn by him from any other company,

(iv) His professional qualifications and experience.

# UNIT – II

## MEETINGS

### Meaning and Definition of Company Meeting

A company meeting may be defined as a concurrence or coming together of at least a quorum of members in order to transact either ordinary or special business of the company.

The assembly of persons must be for discussion and transaction of some lawful business. A previous notice would be given for convening a meeting. The meeting must be held at a particular place, date and time. The meeting must be held as per provisions/rules of Companies Act.

Company Meeting means the special meeting of Company Shareholders, including any adjournment or postponement of such special meeting in accordance with the terms of the Arrangement Agreement, to be called and held in accordance with the Interim Order to consider the Arrangement Resolution.

### Meetings of shareholders

The general meeting of shareholders (GMS) is where shareholders can exercise their rights to make certain decisions relating to the Company, to receive reports from the Board of Commissioners and the Board of Directors on their performance and accountability and to question the Boards about their actions.

### Definition

Meeting of the shareholders of a corporation, held at least annually, to elect members for the board of directors and hear reports on the business' financial situation as well as new policy initiatives from the corporation's management.

The board of directors has the power to call general meetings and the majority of general meetings will be called by the directors (S302 of the Companies Act 2006). The members also have the ability to demand a general meeting.

### Meetings of board of directors

The Board of Directors of Company is primarily an oversight board. It oversees the management of the company to ensure that the interest of non-controlling shareholders are protected, it also functions as advisory board.

**Meetings of the Board**

Section 173 of the Act deals with Meetings of the Board and Section 174 deals with quorum. The Act provides that the first Board meeting should be held within thirty days of the date of incorporation. In addition to the first meeting to be held within thirty days of the date of incorporation, there shall be minimum of four Board meetings every year and not more one hundred and twenty days shall intervene between two consecutive Board meetings. In case of One Person Company (OPC), small company and dormant company, at least one Board meeting should be conducted in each half of the calendar year and the gap between two meetings should not be less than Ninety days. Important Points to be noted for holding Board Meeting : Notice of calling of Board Meeting: As per Section 173(4) " A meeting of the board shall be called by giving notice of not less than seven days notice in writing to every director at his residence address and such notice shall be send by hand delivery or by the post or by the electronic means to the director. Notice of the meeting should be delivered to the right participants; all should be timely informed of the meeting.

**In case of shorter notice of board meeting:**

Make sure that at least one independent director is present at the meeting, and in absence of such independent director, decisions taken at such meeting shall be circulated to all the directors and shall be final only on the rectification thereof by at least one independent director, if any.

**Quorum of Meetings**

Quorum means, the minimum number of members who must be present at a meeting as required by the rules. Any business transacted at any meeting without quorum is invalid. The purpose of having a quorum is to avoid decisions being taken at a meeting by a small minority which may be found unacceptable to vast majority of members. According to Section 174 of the Companies Act, 2013, the minimum number of members of the board required for a meeting is 1/3rd of the total number of Directors or two directors whichever is higher. However please note Section 174 doesn't apply to One Person Company.

**Preparation of the Agenda**

It's important to prepare a clear and specific agenda for the discussing in the Board Meeting, ensure that important topics are covered, every board meeting has a set agenda that must be followed, and agenda is the topic of discussion of the Board Meeting. A clear agenda received will help in keeping on track and allows preparing for the same. And make sure that if there are some changes that can't be avoided, make sure to send notifications to participants, and make necessary communication to tell them the changes before the meeting. For the safer side always

make sure to send reminders, preferably a day before the scheduled board meeting , so the participants don't forget about the same.

**Proper Authority to Convene Meeting**

A meeting must be convened or called by a proper authority. Otherwise it will not be a valid meeting. The proper authority to convene general meetings of a company is the Board of Directors. The decision to convene a general meeting and issue notice for the same must be taken by a resolution passed at a validly held Board meeting.

**Chairman of the Meeting**

Chairman is the person who has been designated or elected to preside over and conduct the proceedings of the meeting. That person is the chief authority in the conduct and control of the meeting.

**Recording of Important points and action to be taken**

All the relevant materials about the meeting such as signed contracts, amendments to policies, documented decisions, must be filed or achieved in a secure storage facility, whether they are electronic/digital files or physical papers documents.

**Minutes of the Meeting of the Board of Meeting**

All minutes of the meeting of the Board should be signed and dated by the chairperson of the Meeting. Such minutes may be signed by the chairperson of the meeting at any time before the next meeting is held. Minutes of any meeting are a fair and correct summary of the proceedings of that meeting. Minutes must be prepared and signed within 30days of the conclusion of the meeting, and should be kept at the registered office of the company or at such place as may be approved by the Board.

**Duty of Directors**

Directors have a duty to attend meetings where they are reasonably able to do so on receiving the notice and should confirm their presence at the meeting.

**Proxy**

The term Proxy is used to refer to the person who is nominated by a shareholder to represent him at a general meeting of the company, also through which such a nominee is named and authorized to attend the meeting. Penalty for failure to give notice As per Companies Act, 2013, Section 173(4) every officer of the company whose duty is to give notice under this section and who fails to do shall be liable to a penalty of Rs. 25,000.

**Some requisites of Meeting**

Meeting should be properly convened by proper authority. Proper notice must be served(Section 101 and Section 102 of Companies Act,2013)

Proper quorum must be present in the meeting. Proper chairperson must be present in the meeting (Section 104 of the Companies Act,2013)

Business must be transacted at the meeting. After the meeting proper meeting must be prepared (Section 118 and Section 119 of the Companies Act, 2013)

For a valid meeting, it must be convened by a proper authority.

The notice must be properly drafted according to the act and the rules.

For General meeting notice must be provided at least 21 days before the meeting, Powers of the Board that are required to be exercised at a duly convened Board Meeting

As per Section 179 of Companies Act, 2013 read with rule 8 the Companies (Meeting of Board and its Powers) Rules 2014, followings powers of the Board can be exercised by means of a resolution passed at a duly convened Board Meeting:

1. To make calls on shareholders in respect of money unpaid.

2. To authorize buy back of securities.

3. To issue securities, including debentures, whether in or outside India.

4. To borrow monies.

5. To invest the funds of the company.

6. To grant loans or give guarantee or provide security in respect of loans.

7. To approve financial statements and Board Report.

8. To diversify the business of the Company.

9. To approve amalgamation, merger or reconstruction.

10. To take over a company or acquire a controlling or substantial stake in another company.

11. To make political contributions.

12. To appoint internal auditors and Secretarial auditor.

**Types of company meetings are**

A meeting is a gathering of two or more people that has been convened for the purpose of achieving a common goal through verbal interaction, such as sharing information or reaching agreement.

**Statutory Meeting**

It is the first meeting of the shareholders of a public company. It must be held within a period of not less than one month nor more than 6 months from the date at which the company is entitled to commence business. It is held only once in the lifetime of a company. A private company and a company limited by guarantee and not having a share capital need not hold such a meeting.

The purpose of the statutory meeting with its statutory report is to put the shareholders of the company in possession of all the important facts relating to the new company, what shares have been taken up, what moneys received etc. This also provides an opportunity to the shareholders of meeting to discuss the whole situation, the management and prospects of the company.

The Board of Directors must, atleast 21 days before the day on which the meeting is to be held, forward a report, called the 'statutory report' to every member of the company. This report contains all the necessary information relating to formational aspects of the company for the information of the shareholders.

**Contents of Statutory Report**

1. The total number of shares allotted, distinguishing those allotted as fully or partly paid up otherwise than in cash, the extent to which they are partly paid up, the consideration for which they have been allotted and total amount received in cash.
2. An abstract of the receipts and payments under distinctive heads up to a date within seven days of the date of report.
3. An account of estimate of the preliminary expenses of the company.
4. The names, addresses and occupations of the managing director, director, and also its secretary and auditors of the company.
5. The particulars of any contract which, and the modification or proposed modification of which, are to be submitted to the meeting for approval.
6. The extent to which underwriting contracts, if any, have not been carried out and the reason there for.
7. The arrears, if any, due on calls from directors, managing director or manager.
8. The particulars of any commission or brokerage paid, or to be paid, in connection with the issue or sale of shares to any director, managing director or manager.

**Annual General Meeting**

An annual general meeting (AGM) is a yearly gathering of a company's interested shareholders. At an AGM, the directors of the company present an annual report containing information for shareholders about the company's performance and strategy.

An annual general meeting (AGM, also known as the annual meeting) is a meeting of the general membership of an organization.

These organizations include membership associations and companies with shareholders.

These meetings may be required by law or by the constitution, charter, or by laws governing the body. The meetings are held to conduct business on behalf of the organization or company.

**When should the annual general meeting be held?**

A company must hold its AGM within a period of six months from the end of the financial year. However, in the case of a first annual general meeting, the company can hold the AGM in less than nine months from the end of the first financial year.

The purpose of the Annual General Meeting is to ensure full compliance with all the independent statutory requirements such as preparation and presentation of a company's financial reports, auditor/auditors' appointment, the election of a board of directors, and so on.

An AGM can be called at a notice of less than 21 days if at least 95% of the members entitled to vote in the meeting agree to the shorter notice. The consent may be given in writing or through electronic mode. In the case of a private company, the quorum for AGM is: Two members present at the meeting

**What happens at an annual meeting?**

The annual meeting usually includes the following activities: Election of directors whose terms are up for renewal or to fill vacancies on the board of directors. Declaration of a dividend or changes in the dividend policy. Review of the corporation's annual report.

**What are the legal requirements of an annual general meeting?**

- The annual financial report
- report and auditor's report
- election of directors
- Passing resolutions
- The appointment of the auditor and the fixing of their remuneration

**Extra Ordinary General Meeting**

An extraordinary general meeting (EGM) refers to any shareholder meeting called by a company other than its scheduled annual meeting. The extraordinary general meeting is utilized to deal with urgent matters that come up between annual shareholders' meetings.

Extra-Ordinary General Meeting means a duly convened, held and conducted Meeting of Members. Annual General Meeting shall be conducted once in a year and there is a gap of around a year or 18 months between two annual general meetings. Therefore, if an important business arises in between two annual general meetings that require shareholders' approval, then an extraordinary general meeting can be called.

**Mandatory Requirements**

1. No gifts, gifts coupons, or cash in lieu of gifts shall be distributed to members at or in connection with the General Meeting.
2. Every Company which has listed its equity shares on a recognized stock exchange and every company having not less than 1,000 members shall provide to its members facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.
3. Quorum should be present throughout the Meeting. No business should be transacted when the Quorum is not so present.
4. Presence of Chairperson must be required.
5. Maintain the Minutes Book for Signing the minutes.
6. To arrange for the printing of a notice of the Extra-Ordinary general meeting, ensure the notice containing the following contents
   a. Time, date and place of the meeting
   b. Matters to be transacted in the meeting
   c. Procedure of e-voting, if any
   d. Proxy form
   e. Explanatory statement
   f. Route Map

**Calling an Extraordinary General Meeting**

An extraordinary general meeting can be called for transacting any business of urgent nature, which cannot be postponed until the next annual general meeting. Usually an extraordinary general meeting (EGM) can be called in the following circumstances:

1. Calling of the EGM by the Board on its own motion.
2. Calling of EGM by any Director, if at any time there are not within India Directors capable of acting who is sufficient win number to form a quorum.

3. Calling EGM by the Board of requisition of members as per provision of the Act.
4. Calling of EGM by the requisitionists themselves.
5. Convening of EGM by the Company Law Board or Tribunal

**Extraordinary General Meeting on Requisition of Members**

An extraordinary general meeting can be convened on the requisition of members whether having share capital or not. However, to call and hold an extraordinary general meeting, the requisition must be signed by holders of not less than one tenth of paid-up share capital. The requisition for extraordinary general meeting must be submitted at least 21 days prior to the proposed date of the extraordinary general meeting. If the company fails to proceed within 21 days and to call the above said meeting within 45 days then the members may call themselves a meeting within a period of 3 months from the date of deposit of requisition to the company and after expiry of 45 days.

**Class meetings**

Class meetings which are held by holders of a particular class of shares, e.g., preference shareholders. Such meetings are normally called when it is proposed to vary the rights of that particular class of shares.

A class meeting is a meeting of shareholders, where the only shareholders in attendance that can vote are those that hold a particular class of shares. When the rights of the holders of a class of shares are to be varied by the company, it may be necessary to hold a class meeting to ensure that the shareholders of that class of shares can vote on the matter. At a class meeting only matters that concern that class of shares can be discussed. Any matters affecting more than one class must be discussed at a general meeting or dealt with using the usual written resolution procedure if the company is a private limited company.

For example if a company has Ordinary A shares and Ordinary B shares and the company wants to change the voting rights of only the Ordinary B shares, a meeting would be called for the Ordinary B shareholders. The Ordinary B shareholders could then vote on the variation, but would not be able to make a decision on other matters relating to the company.

People other than the shareholders are able to attend and speak at a class meeting, such as the company's directors and the company's auditors. However, if these parties are not members of the particular share class, they would not be able to vote at the meeting.

# UNIT – III

## BOOKS OF ACCOUNTS

Every company shall prepare and keep its books of accounts and financial statement for every financial year which give a true and fair view of the state of the affairs of the company and explain the transactions and the accounts shall be kept on accrual basis on double entry system of accounting.

**Financial Statement of a company must include:**

- Balance sheet as at the end of the financial year
- Profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year
- Cash flow statement for the financial year
- Statement of changes in equity, if applicable
- Explanatory note forming part of any document mentioned in above clauses.

As per Section 2(13) of Companies Act, "books of account" includes records maintained in relation to:

- all sums of money received and expended by a company and matters in relation to which the receipts and expenditure take place;
- all sales and purchases of goods and services by the company;
- the assets and liabilities of the company; and
- the items of cost as may be prescribed under section 148 in the case of a company which belongs to any class of companies specified under that section;

The term "book and paper" and "book or paper" include books of account, vouchers, deeds, minutes, documents, writings, and registers maintained on paper or in electronic form.

The Board of Directors has to also prepare a Directors Report in the prescribed format and has to forward the same to the shareholders along with audited accounts.

The aforesaid financial statements shall have to be placed before the Annual General Meeting (AGM) of the company and has to be adopted by the meeting.

**Accounts to be maintained at registered office**

The books of accounts including necessary paper shall be maintained at the registered office of the company for every financial year. However, the board of directors may keep the books of accounts at any other place in India after filing a notice with the Registrar.

**Maintenance of books of accounts at different place**

Board of directors can decide to keep the books of accounts of the company at any place in India to keep its books of accounts. The Board shall pass a resolution to give effect to such a decision and within 7 days file a notice with the Registrar of Companies in Form AOC-5.

**Company Annual Filing**

Every Company registered under Companies Act is required to file their returns with the Registrar of Companies annually.

Company Annual Filings refers to the filing of Audited Annual Financial Accounts of the Company along with Directors Report and Annual Return of Company with Registrar of Companies. These yearly filings are mandatory for every registered Company whether the Company carries on business or not.

**Accounts of Branch Office**

Every company which has a branch office in India or outside India has to keep at its office the proper books of accounts relating to the transactions effected at the branch. Further, the branch office has to send the summarized returns periodically to its registered office or such office where the books of accounts are maintained.

**Inspection of books of accounts**

The company has to keep ready all its books of account and other books and papers open for inspection at the registered office of the company or at such other place in India during business hours including financial information maintained outside India. Further, the inspection of subsidiary of the company can be only done by a person authorized by the Board of Directors through a resolution.

**Preservation of Books of Accounts**

The company has to preserve its books of account of 8 financial years immediately preceding a financial year and in case the company had been in existence for less than 8 years, the records of all the preceding years shall be preserved.

**Penalty for Default**

As per Section 128 of the Companies Act, the officer who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than Rs.50,000.00 but which may extend to Rs.5,00,000 or with both.

The officer who is in default means the Managing Director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company.

**Auditor**

All the government and non-government organizations have to keep track of their accounts and audit reports as the financial year approaches. The financial statements of these firms need to be thoroughly analysed and assessed before submitting them to the authorized departments. This assessment of financial documents is done by an Auditor. In case of any discrepancy in the reports, the auditor is held responsible. Thus, the requirement of an auditor is a must for every organization.

**Appointment Of Auditor**

1. **Within 30 Days:**

   Every company must appoint its first auditor or an auditing firm within 30 days of registration of the company during the annual general meeting or within 90 days, in an Emergency General Body Meeting by the Board of Directors. The first auditor (or the auditing firm) appointed will hold office from the conclusion of the meeting (in which the appointment of auditor has been made) to the time when the sixth annual general meeting is held (five years). Therein, the auditor appointments are reviewed every sixth year.

**2. Written Consent:**

A written consent from the auditor, with sufficient proof to suggest that the person (or firm) qualifies the criteria provided in Section 141 of the Act, needs to be submitted before an appointment.

**3. Appointment Notice:**

The company should issue an appointment notice to the auditor, and a Form, ADT- 1 is required to be submitted with the registrar within 15 days of the meeting in which the auditor is appointed.

**4. Section 139:**

The companies listed in Section 139 (belonging to the class or classes of companies as mentioned in the section) and Rule 5 of the companies (audit and auditor) rules, 2014, will not:

1. Appoint an individual as auditor for more than one consecutive five-year tenure
2. Appoint an auditing firm for more than two terms of five consecutive years

Provided, the auditor who has finished his term will not be eligible for reappointment in the same company or the auditing firm who has completed a two-year tenure is not eligible for appointment in the same company for five years.

A three-year transition period is given to comply with this requirement. Although, according to the rules, the five years is calculated with the retrospective effect.

Sections 139 to 148 of the Companies Act, 2013 give a complete and detailed summary of the role of an auditor as well as the other requirements, such as their appointments or removal from the company payroll.

**Removal Of Auditor**

1. The Companies Act, 2013 lays the provision for the removal or change of auditor before the completion of his tenure. This happens in those cases where the organization is not satisfied with the services of the auditor. The procedure of the removal of the auditor has been given in the sub-section (1) of Section 140 of the Act.
2. Before being removed by the firm, the auditor is given a fair and reasonable chance of laying down reasons for his inappropriate conduct.
3. If the auditor is being removed before the completion of his term, an approval from the central government is necessary before passing a special resolution by the company.
4. The application to the Central Government has to be done in the form ADT-2 as prescribed in Rule 7 of the Companies (Audit & Auditors) Rules, 2014. A prescribed fee provided under Section 12 of the Companies (Registration Offices and Fee) Rules, 2014 needs to be submitted along with this form.

5. The application has to be made within thirty days of the resolution passed by the board.
6. The company can hold a general meeting within sixty days of receipt of the approval of the Central Government for passing the auditor appointment resolution.

**Remuneration Of Auditors**

Remuneration of Auditors (apart from the first auditor) of the company will be determined by stakeholders in general meeting as per section 142 of Companies Act 2013.
The process of determination remuneration of auditors

1. The remuneration of the auditor of the company will be fixed in a general meeting or in such a manner as may be prescribed therein. Provided the Board of directors may fix the remuneration of the first auditor appointed by them.
2. The remuneration will be the fees payable to the auditor, accompanied by the expenses that are incurred by the auditor with regard to the audit of the company & any facility extended to him by the Companies Act.

Section 142

1. The Remuneration of the Auditor might be fixed in a general meeting or in such a manner as may be determined. Even though the Board of Directors can fix the remuneration of the First Auditor.
2. The Expenses which are paid to the auditors are in addition to the audit that he carries out in the Company.

**Power And Duties Of Auditor**

**Powers**

1. **Right to access:**

Every auditor of a company shall have right to access at all time to book of accounts and vouchers of the company. The Auditor shall be entitled to require from officers of the company such information and explanation as he may consider necessary for performance of his duties. There is an inclusive list of matter for which auditor shall seek information and explanation. The list includes issues related to:

(a) Proper security for Loan and advances
(b) Transaction by book entries
(c) Sale of assets in securities in loss
(d) Loan and advances made shown as deposits
(e) Personal expenses charged to revenue account
(f) Case received for share allotted for cash. The auditor of holding company also has same rights.

**2. Auditor to sign audit reports:**

The auditor of the company shall sign the auditor's report or sign or certify any other document of the company and financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

**3. Auditor in general meeting:**

It is a prime requirement under section 146, that the company must send all notices and communication to the auditor, relating to any general meeting, and he shall attend the meeting either through himself or through his representative, who shall also be an auditor. Such auditor must be given reasonable opportunity to speak at the meeting on any part of the business which concerns him as the auditor.

**4. Right to remuneration:**

The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein. It must include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

**5. Consent of auditor:**

As per Section 26, the company must mention in their prospectus the name, address and consent of the auditors of the company.

**Duties**

**1. Make report:**

The auditor shall make a report to the members of the company on accounts examined by him on every financial statement and shall state, (a) Whether he has sought and obtained all the necessary information and explanations, (b) Whether proper books of account have been kept, (c) Whether company's balance sheet and profit and loss account are in agreement with books of accounts and returns.

**2. Audit report of Government Company:**

The auditor of the government company will be appointed by the Comptroller and Auditor General of India and such auditor shall act according to the directions given by

them. He must submit a report to them which should include the action taken by him and impact on accounts and financial statement of the company. The Comptroller and Audit General of India shall within 60 days of receipt of the report have right to (a) conduct a supplementary audit and (b) comment upon or supplement such audit report. The Comptroller and Audit General of India may cause test audit to be conducted of the accounts of such company.

**3. Liable to Pay Damages:**

As per section 245, the depository and members of the company have right to file an application before the tribunal if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company. They also have right to claim damages or compensation from the auditor for any improper or misleading statement made in his audit report or for any fraudulent or unlawful conduct.

**4. Branch Audit:**

Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company, or by any other person qualified for appointment as an auditor of the company. The branch auditor shall prepare a report on the accounts of the branch examined by him and send it to the auditor of the company who shall deal with it in his report in such manner as he considers necessary.

**5. Auditing Standards:**

Every auditor shall comply with the auditing standards. The Central Government shall notify these standards in consultation with National Financial reporting Authority. The government may also notify that auditors' report shall include a statement on such matters as notified.

**6. Fraud Reporting:**

If an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

**7. Winding up:**

As per section 305, at the time of voluntary winding up of a company it is a mandatory requirement that auditor should attach the copy of the audits of the company prepared by him.

# UNIT – IV

## INVESTIGATION

### Introduction

The Companies Act gives the shareholders various kinds of rights, like the rights to appoint and remove directors and auditors, the right to receive dividends etc. However, shareholders are often ill-equipped to exercise these rights effectively over the Company as the Company, for all practical purposes, is managed by the Board of Directors.

The Directors may, at times, be inefficient or at other times, act in a manner that is not favourable to the shareholders or company or act in a fraudulent manner. This is said to be an abuse of their position by the Directors. To prevent and curb such practices, the Central Government has been vested with wide powers to investigate the affairs of the Company in cases where they have a reason to believe that the business of the Company is being conducted with an intent to defraud its members, creditors or where the company has been set up to conduct unlawful or illegal activities.

With this intention, Chapter XIV has been provided for in the Companies Act, 2013 ("the Act"), which deals with the provisions relating to Inspection, Inquiry and Investigation of the affairs of companies.

The term Investigation, in common parlance, means "a searching inquiry for ascertaining facts". It is a detailed or careful examination to arrive at the truth behind the activities or affairs of the Company. It generally succeeds in the inquiry and inspection conducted by the Registrar of Companies. There are 4 parallel provisions dealing with Investigations under the Act. The Sections are 210, 212, 213 and 216, each of which are independent provisions and yet interconnected.

This article gives a brief outline of the provisions of an investigation into the ownership of companies, which is covered under Section 216 of the Act and the manner in which such investigation is conducted.

### Need for Section 216

Section 216 deals with the investigation of ownership of the Company by the Central Government. The term member (owner) means the subscriber to the Constitution documents, persons whose name is entered in the Register of Members, persons who have declared their beneficial interest in the company. The members include individuals, LLP, bodies corporate, companies, Association of Persons (AOP), Hindu Undivided Family (HUF), Pooled Investment Vehicle (PIV) and Trusts. The various kinds of members and complex corporate structures necessitate a separate provision for such investigation.

The importance of the provisions of this section can be understood by forging links with other provisions of the Act such as:

Inter-connections with the other provisions of Chapter XIV – Inspection, Inquiry and Investigation

As mentioned above, there are 4 specific investigations that can be conducted under the Act. These are an investigation into the affairs of the Company by members/ shareholders (Sec. 201), the investigation into the affairs of the company by members as well as other persons (Sec. 213), an investigation by the Serious Fraud Investigation Office (Sec. 212). These inspections/ investigations can be carried on account of the following reasons:

1. Misstatement of a prospectus.
2. Fraudulent inducement to invest.
3. Acquisition of securities.
4. Offences relating to the issue of share certificates, transfer and transmissions.
5. Reduction of share capital.
6. Fraudulent application for removal of the name of the company from the Register.
7. Fraudulent conduct of business etc.

If during the inquiry or inspection, for any of the above-mentioned reasons, the Central Government is of the opinion that a deeper probe into the owners ought to be conducted to nail the real owners of the company, an investigation can be ordered under this section. An investigation under this section is specifically conducted to ascertain the real people:

1. Controlling the directors.
2. Controlling ownership.
3. Controlling the decisions taken at the shareholder or board meetings.
4. Beneficial ownership of securities.

**Inter-connections with cases on oppression and mismanagement**

The Members have been given the power to approach the National Company Law Tribunal (NCLT) if they believe that the affairs of the company are being conducted in a manner prejudicial to the public interest or the member(s)' interest or the interests of the company. These are broadly termed as acts of oppression or mismanagement by the directors/ majority owners of the Company and are governed by Chapter XVI of the Act. Within the said chapter, the NCLT has been vested with powers, which *inter-alia*, include the power to the purchase of shares or interests of any members of the company by other members thereof or by the company as well as the power to restrict the transfer or allotment of shares of the company. In order to exercise these powers, the NCLT may order an investigation into the ownership to ascertain the real owners of the company.

**Inter-connections with money laundering, benami and hawala transactions**

Companies are often used for money laundering, benami and/ or hawala transactions, frauds etc. leading to other deeper issues like terrorism. In such cases, it becomes essential for authorities to pierce the corporate veil and ascertain the real persons who are behind the corporate structures. This also necessitates the investigation into the company's membership.

**Instances when the investigation can be ordered**

The Central Government has been vested with the discretionary power to investigate the ownership of a company if it has reason to believe that such a probe is warranted, based on the facts and circumstances of each case. The probe is to determine the true persons:

1. who are or have been financially interested in the success or failure, whether real or apparent, of the company; or
2. who are or have been able to control or to materially influence the policy of the company; or
3. who have or had a beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company. [Sec. 216(1)(a), (b) &(c)]

**Who can order the investigation?**

- Suo-Motu action by the Central Government
- Order by the NCLT
- Complaint by members

**Who conducts the investigation?**

The investigation will be conducted by an Inspector appointed by the Central Government. The scope and the period of investigation also will be determined by the Central Government.

**Powers of the Inspector**

To conduct the investigation, a wide range of powers have been vested in the Inspector; they are:

- The power to summon the officers, employees (including former officers and employees of the company) and other persons in relation to the company as they deem necessary. [Sec. 217(1)]
- Require the body corporate to furnish information and produce such books and papers deemed necessary. [Sec. 217(1)(a)]
- Require any other body corporate to furnish information and produce such books and papers deemed necessary. [Sec. 217(1)(a)]
- Subject to the terms of appointment, the inspector may also investigate any circumstances suggesting the existence of any arrangement or understanding which,

though not legally binding, is or was observed or is likely to be observed in practice. [Sec. 216(4)]

- Seizure of documents if he has reasonable cause to believe that the documents can be mutilated or destroyed. [Sec. 220(1)]
- Keep seized documents in his/ her custody. [Sec. 220(2)]
- In addition to the above, the investigator is also vested with the powers of a civil court under the Code of Civil Procedure, 1908, with regard to the discovery of books and documents, summoning and enforcing the attendance of persons on oath and inspection of any books, records and other documents at any place. [Sec. 217(5)]

**Submission of Report by the Inspector [Sec. 223]**

**Powers of the NCLT**

- The Tribunal may, either on a reference by the Central Government or on a complaint made under Sec. 244 or complaint by a creditor having Rs. 1 lakh outstanding against the company or deems it necessary, freeze the assets of the company for a period of 3 years. [Sec. 221(1)]
- The Tribunal may, either on a complaint or Suo-motu in connection with an ongoing investigation, impose restrictions on the transfer etc. of securities. [Sec. 222(1)]

**Action by Central Government upon receipt of the Report**

- Prosecute the officers and/ or employees if they are held guilty of offences that are criminal in nature.
- Order for winding up of the company.
- Recover damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs.
- Recover property which has been misapplied or wrongfully retained.

Other provisions

**Penal provisions**

The Act imposes penalties in case of violation of the orders of the inspector and the Tribunal. The following penalties may be levied:

- Disobedience of the direction of the Inspector or Registrar attracts imprisonment of up to 1 year and fine of Rs. 25,000/- extendable up to Rs. 1 lakh or both on the directors and officers of the company. [Sec. 217(6)(i)]
- Disqualification and vacation of office of the directors. [Sec. 217(6)(ii)]
- Non-furnishing of information, non-production of documents, non-appearance before the inspector etc. attracts imprisonment of up to 6 months and fine of Rs. 25,000/- extendable up to Rs. 2,000/- for every day of default. [Sec. 217(8)]
- Transfer of assets that are frozen by the NCLT attracts a fine of Rs. 1 lakh extendable to Rs. 25 lakhs on the company and imprisonment of up to 6 months and a fine

of Rs. 25,000/- extendable up to Rs. 5 lakhs or both on the officers. [Sec. 221(2)]

- Transfer of securities in contravention of the order of the NCLT attracts a fine of Rs. 1 lakh extendable to Rs. 25 lakhs on the company and imprisonment of up to 6 months and a fine of Rs. 25,000/- extendable up to Rs. 5 lakhs or both on the officers. [Sec. 222(2)]
- Certain acts like destruction, mutilation, falsification of documents, provision of false information etc. also attract criminal charges under Sec. 447. [Sec. 229]

**Miscellaneous**

- The expenses of investigation may be recovered by the Central Government from the convicts. [Sec. 225]
- The Act extends protection to employees, bankers and legal advisers during the course of investigation. [Sec. 218, 227]
- All provisions under the Chapter apply to foreign companies also. [Sec. 228]

Corporate structures are often used to perpetrate illegal and fraudulent activities. These activities impact the other members, creditors, depositors and the financial system in general. It is with the intent to nail such persons hiding behind the corporate veil that the Companies Act 2013 includes provisions on the investigation of ownership of companies. The law also provides wide powers to the inspector to perform their duties. These provisions are, thus, very critical towards building an environment of good corporate governance.

# UNIT – V

## WINDING UP

Winding up refers to the last stage in the life of a company. It refers to a legal process through which a company is put to an end. In the words of Prof. Cower, "Winding up is a process whereby the life of a company is ended and its property administered for the benefit of its creditors and members. An administrator, called Liquidator is appointed and he takes the control of the company, collects its assets profits and debts and finally distributes any surplus among the members in accordance with their rights".

**PROCESS OF WINDING UP:**

1. **Appointment of Liquidator:**

   As soon as the proceedings are started, the Board of Directors ceased to act as such, and administrator called Liquidator is appointed. In a winding up by the National Company Law Tribunal the Liquidator Is known as Official Liquidator and In a voluntary winding up, the Liquidator is known as Company Liquidator or simply Liquidator.

2. **Payment of Debts and Liabilities:**

   The business of the company is then closed. Its assets and liabilities are ascertained. Its assets are sold and converted into liquid cash. The money is then applied to pay off the debts and liabilities of the company.

3. **Distribution of Surplus:**

   After satisfying the claims of the creditors if any surplus is left, it is distributed amongst the members in proportion to their rights or interests in the company.

4. **Removal of the Name from the Register:**

   When all these are done and the company has complied with certain formalities, the company is dissolved. The name of the company in the Register of Companies shall be struck off by the Registrar of Joint Stock Companies.

## MODES OF WINDING-UP OF A COMPANY

### A. COMPULSORY WINDING-UP:

It takes place when a company is directed to be wound-up by an order of the Court. **Grounds for Compulsory Winding-up (Sec. 433):** A company may be wound-up by the Court under the following cases:

**(i) Special Resolution of the Company:**

If the company has, by special resolution, resolved that the Company be wound-up by the Court;

**(ii) Default:**

If a default is made in delivering the statutory report of the Registrar of Companies or in holding the statutory meeting of the company, the court may make a winding-up order;

**(iii) Not Commencing or Suspending the Company:**

If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

**(iv) Reduction of Members:**

If the number of members falls below seven in case of a public company or below two in case of a private company;

**(v) Inability to Pay Debts:**

If the company is unable to pay its debts;

**(vi) The Just and Equitable Clause:**

If the Court is of opinion that it is just and equitable that the company should be wound-up.

### B. COMMENCEMENT OF WINDING-UP:

The winding-up of a company by the Court is deemed to commence from the time of the presentation of the petition for winding-up (Sec. 441). Where there is a resolution for voluntary winding-up, before the presentation of the petition to Court, the winding-up is deemed to commence from the date of the resolution. But the Court may direct otherwise in cases of fraud and mistake.

**Powers of Court on Hearing Petition (Sec. 443):**

The court may, on hearing a petition:

(a) Dismiss it with or without costs; or

(b) Adjourn the hearing conditionally or unconditionally; or

(c) Make any interim order that it thinks fit; or

(d) Make an order for winding-up of the company with or without costs or any other order as it thinks fit.

**Consequences of Winding-up Order:**

If the court makes an order for winding-up, its consequences date back to the commencement of winding- up.

The other consequences of winding-up by the Court are:

(a) Intimation to official liquidator and Registrar (Sec. 444).

(b) Copy of Winding-up order to be filed with the Registrar.

(c) Order for winding-up deemed to be notice of discharge [Sec. 445(2)].

(d) Suits stayed [Sec. 446(1)].

(e) Powers of the Court [Sec. 446(2)].

(f) Effect of winding-up order (Sec. 447).

(g) Official Liquidator to be liquidator (Sec. 449).

**APPOINTMENT OF OFFICIAL LIQUIDATOR**

The Companies Act, 1956, provides that in each High Court there must be attached an officer known as the Official Liquidator appointed by the Central Government. There may also be Deputy or Assistant Official Liquidator. Upon the presentation of a petition for winding-up, the Court may appoint the official liquidator as the provisional liquidator. When the winding-up order is passed, the official liquidator becomes the liquidator of the company (Sec. 449).

**POWERS OF THE LIQUIDATORS (SEC. 457)**

**(1) The liquidator, in a winding-up by the Court, has power to do the following with the sanction of the Court:**

(a) To institute or defend any suit, prosecution or other legal proceedings, civil or criminal, in the name and on behalf of company.

(b) To carry on the business of the company so far as may be necessary for the beneficial winding-up of the company.

(c) To sell the immovable property and actionable claims of the company by public auction or private contract, with power to transfer the whole thereof to any person or body corporate or to sell to the same in parcels.

(d) To raise on the security of the assets of the company any money requisites.

(e) To do all such other things as may be necessary for winding-up the affairs of the company and distributing its assets.

**(2) The liquidator in a winding-up by the court has power to do the following things, without taking special permission from the court:**

(a) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the company's seal.

(b) To inspect the records and returns of the company on the files of the Registrar without payment of any fee.

(c) To prove, rank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency.

(d) To draw, accept make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company.

(e) To take out, in his official name, letters of administration to any deceased contributory and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company.

(f) To appoint an agent to do any business which the liquidator is unable to do himself.

The Court can limit or modify the exercise of any of the powers of the liquidator enumerated under (2) above.

**DUTIES OF LIQUIDATOR:**

**(i) Proceeding in Winding-up:**

Sec. 451(1) states that the liquidator shall conduct the proceedings in winding-up the company and perform such duties as the Court may impose.

**(ii) Report:**

After receipt of the Statement of Affairs of the company the liquidator must submit a preliminary report to the Court not later than 6 months from the date of the order of winding-up.

**(iii) Additional Reports:**

Sec. 455(2) also provides that the official liquidator may make, if he thinks fit, further report stating the manner in which the company was promoted or formed. He may also state if any fraud has been committed by any person relating to formation or any other matters which it is desirable to bring to the notice of the Court.

**(iv) Custody of Company's Property:**

Sec. 456 (1) states that where a winding-up order has been made or where a provisional liquidator has been appointed, the liquidator, or the provisional liquidator, as the case may be, shall take into his custody all the property, affects and actionable claims to which the company is entitled.

**(v) Control of Powers:**

Sec. 460(1) provides that the liquidator shall, in the administration of the asset of the company and the distribution thereof among creditors, have regard to any directions which may be given by the committee of inspection.

**(vi) Meeting of Creditors and Contributories:**

According to Sec. 460(3), the liquidator may summon general meeting of the creditors/contributories as soon as he thinks fit in order to ascertain their wishes. He shall summon such meeting at such times as the creditors/contributories may, by direct resolution or

whenever requested in writing, to do so by not less than 1/10th in value of creditors/contributories, as the case may be.

**(vii) Directions from the Court:**

Sec. 460(4) (4) provides that the liquidator may apply to the Court for directions in relation to any particular matter arising in a winding-up.

**(viii) Proper Books:**

Sec. 461(1) states that the liquidator shall keep proper books for making entries or recording minutes of the proceeding at meetings and such other matters as may be prescribed.

**(ix) Audit of Accounts:**

Sec. 462(1) also provides that the liquidator shall, at such times as may be prescribed but at least twice each year during his tenure of office, present to the court an account of his receipts and payments as liquidators. The account must be in the prescribed form, shall be made in duplicate and duly verified [Sec. 462(2)].

**(x) Appointment of Committee of Inspection:**

Sec. 464(1)(b) provides that the liquidator shall, within two months from the date of duration by the Court, convene a meeting of the company's creditors to determine the members of the committee of inspection.