

2020]

COMPANY CASES

[VOL. 220

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2020] UNION BANK OF INDIA V. U. P. STATE SPINNING CO. (NCLT) 337

### ORDER

A. R. K. SINHA (*Judicial Member*).—The present petition is under section 7 of the Insolvency and Bankruptcy Code, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by the applicant/financial creditor, i. e., Union Bank of India for initiation of corporate insolvency resolution process against the respondent/corporate debtor-company “M/s. U. P. State Spinning Co. Ltd.”. 1

The applicant “Union Bank of India” is a banking institution and corporate body constituted under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970. Mr. Om Prakash Gautam, chief manager, has been authorised to file this application on behalf of financial creditor (copy of letter of authority is annexed as annexure 1). 2

The respondent/corporate debtor “M/s. U. P. State Spinning Co. Ltd.” is a company incorporated on August 20, 1974 under the provision of the Companies Act, 1956, bearing Identification Number U17111UP1974SGC003964. The authorized share capital of corporate debtor company is Rs. 933,000,000 and paid-up share capital is Rs. 932,443,000). 3

The company is involved in spinning, weaving and finishing of textiles. 4

Brief facts related to application are as follows : 5

(i) The applicant stated that corporate debtor were enjoying the financial assistance from the applicant and initially financial assistance were provided. The corporate debtor including contingent liabilities was to the extent of Rs. 700 lakhs since 1989 in which cash credit (hypothecation of goods and book debts) facility amounting to Rs. 190 lakhs, bills purchase limit was Rs. 150 lakhs and DA of Rs. 100 lakhs overall called working capital limit. (Copy of the sanction letter dated September 25, 1989 and security documents (mortgage deed) is annexed as annexures 6, 9, 10 and 11), and the same was renewed from time to time and out of total cash credit facility of Rs. 265 lakhs, Rs. 20 lakhs was transferred to Sarvodaya Nagar Branch, Kanpur of applicant-bank on March 21, 1997, defendant No. 5 executed the Government guarantee agreement on September 11, 2000 the corporate debtor signed and executed loan documents in respect of renewed financial assistance and on July 29, 2001 the borrowing corporate debtor signed and executed loan documents in respect of renewed financial assistance.

(ii) It is further stated in part 4 column 4 of the application that as on August 1, 2018 the amount in default under the diverse credit facility is as under :

Total cash credit (hypothecation of goods and book debts) facility of Rs. 265 lakhs, Rs. 20 lakhs was transferred to Sarvodaya Nagar Branch, Kanpur of applicant-bank on March 21, 1997 :

<i>Nature of limit</i>	<i>Sanctioned limit (in crores) (Rs. in lakhs)</i>	<i>Amount in default (O/S) including interest up to 1-8-2018</i>
Cash credit (hypothecation of goods and book debts)	265 lakhs	4,67,66,942.14
		42,24,744.06
Total	265	5,09,91,686.20

(iii) As per the statement of account available from pages 48 to 55, which shows that the amount has been calculated by the applicant till August 1, 2018 and on the basis of that statement of account, claimed the date of default on August 1, 2018. It is further case of the applicant that the corporate debtor also mortgaged the property, which are mentioned in Part 5 of the application.

(iv) Further learned counsel for the financial creditor submitted that to prove the existence of the financial debt ; they have annexed following documents :

(a) The copy of sanction letter dated September 25, 1989 (the copy is annexed as annexure A6 of the application).

(b) The applicant has also annexed debit balance confirmation letter dated July 31, 2001, March 31, 2005, August 31, 2006, September 30, 2007, March 1, 2008, March 15, 2010 and August 1, 2011 (annexed as annexure A21).

(c) Copy of balance-sheet for financial year ending on March 31, 2004 copy of letter dated April 16, 2015 written by the corporate debtor and letter dated May 22, 2015 and August 28, 2015 written by the applicant (annexed as annexures A22 and A23).

(d) Further copy of letter dated July 30, 2018 written by the corporate debtor and letter dated February 6, 2018 and August 2, 2018 written by the applicant annexed as annexure A24.

(e) Copy of the registration of charge registered by the Registrar of Companies (copy is annexed as annexure 8).

(v) It is further stated that the applicant has also proposed the name of Mr. Anupam Tiwari to act as IRP.

(vi) The records also shows that the applicant has enclosed several documents in support of their claim.

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It is a matter of record that the corporate debtor has filed a reply to present application stating that : 6

(i) The corporate debtor started incurring loss in 1992 and thereafter, in order to revive the condition matter was referred to the BIFR and hence on October 21, 1992 the corporate debtor was declared sick, thereafter, a scheme was submitted, with the consent of the financial creditor. Wherein it was agreed upon that the payment would be made after the disposal of the matter before the BIFR.

(ii) Further stated that during pendency of the above matter, the applicant moved to the DRT by filing O. A. No. 445 of 2014 which still remains pending and stated that applicant also initiated proceeding under section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 for taking possession of the unit to corporate debtor and same was allowed by the ADM, Rai Bareilly on November 5, 2016 however an application was moved by corporate debtor before ADM, hence the ADM stayed the effect of order dated November 5, 2016 against which financial creditor moved to the Lucknow Bench of the hon'ble High Court of Allahabad by filing Writ Petition No. 22066 of 2017, which is still pending.

(iii) Further stated that the SICA was repealed. However, scheme was not sanctioned by the BIFR, that thereafter corporate debtor approached Government, for seeking permission to move to the hon'ble National Company Law Tribunal under section 253 of the IBC and Government, allowed the same application vide its order dated September 26, 2017 and before a corporate debtor could move to the National Company Law Tribunal another proposal was moved by the Government, thereby the asset of the corporate debtor was supposed to transfer to UPSIDC.

(iv) Hence, stated that bank may be directed to either waives of the interest on NPA amount or become agree for accepting 4 per cent. interest on NPA amount as the corporate debtor is sick company and public sector entity. Further inform that proposal of transfer of asset and liability of the company to UPSIDC is under consideration before the Government, and necessary formalities are completed and yet final stage of completion and company is in process of arranging suitable funds from UPSIDC for payment of dues of the bank. So the bank may be directed to wait for their payment for two to three months' time (a copy of letter dated November 16, 2018 is annexed as annexure-CA01).

(v) And lastly stated that the corporate debtor is fully capable to pay the due to the financial creditor but due to procedural delay and liquidity problem at present the financial debt cannot be paid.

(vi) By filing supplementary counter affidavit on September 11, 2019 which is on the record, the corporate debtor further informed that the one-time settlement proposal was made to the financial creditor, which was placed before the competent authority on March 18, 2019 wherein it was duly approved. Under the one-time settlement proposal, the corporate debtor is required to pay a total sum of Rs. 4,24,00,000 plus a simple interest of 9 per cent. on the amount outstanding after April 1, 2019. Moreover, a total liability of Rs. 1,07,30,941.20 occurring out of interest levied on the outstanding payment, has been agreed to be waived by the financial debtor. It is provided under the proposal that the corporate debtor will pay the entire liability by June 30, 2019. A photocopy of the one-time settlement scheme passed on March 18, 2019 and communicated on March 19, 2019 is already on record. And on this ground, he prayed adjournment, which was turned down.

(vii) In this application, the corporate debtor also mentioned this fact that by two cheques bearing Nos. 025529 and 025530, dated March 8, 2019 the corporate debtor has already paid Rs. 50 lakhs, i. e., Rs. 25 lakhs each by two separate cheques.

(viii) On the last date of hearing, i. e., September 26, 2019 another application has been filed on behalf of applicant under rule 11 read with rule 32 of the National Company Law Tribunal Rules, 2016, praying therein to dismiss the company petition on the ground of limitation and he referred the judgment of the hon'ble Supreme Court passed in Civil Appeal No. 4952 of 2019 in matter of *Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd.* [2019] 8 Comp Cas-OL 250 (SC) and on the basis of that application, the corporate debtor submitted that since in this case the NPA was declared on March 7, 2013 and as per the decision of hon'ble Supreme Court, the limitation runs from March 7, 2013 and the financial creditor is required to file an application within three years from March 7, 2013 as provided under section 137 of the Limitation Act, and on this ground he prayed for dismissal of the application.

7 The applicant has filed rejoinder to the present reply stating that :

(i) Proceeding under section 7 of the Code are summary proceeding and corporate debtor was called upon to submit its response, rather than filing his response corporate debtor put forth all sort of misplaced averment in the nature of short counter affidavit and the same is liable to be discouraged and stated that the Code does not permit filing of any preliminary submission or short counter affidavit and same has been filed with mala fide intention.



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(ii) Further submitted that no documentary evidence has been adduced by the respondent to substantiate the aforesaid contention and therefore the same is not tenable.

(iii) Further in the rejoinder stated that the corporate debtor made a referenced to the BIFR. On December 1, 2016 the Sick Industrial Companies (Special Provision) Repeal Act, 2003 was notified and the SICA came to be repealed simultaneously the I and B Code, 2016 was brought into force and according to the Code a company whose reference was pending before BIFR as on December 1, 2016 was entitled to file an application under section 10 of the IBC, 2016 within period of 180 days from the notification of the repeal act 2003 on or before May 31, 2017 but an application was not filed by corporate debtor under section of 10 of the IBC, 2016. Hence, this Tribunal may most graciously be pleased to allow the instant application under section 7 of the IBC and lastly submitted that section 7 of Code allow financial creditor either by itself or jointly with other financial creditor to file an application to initiate CIRP against corporate debtor. The entire short counter affidavit is based only on assumption. The respondent has not disputed the default it is further most respectfully submitted that existence of default has been admitted by the corporate debtor.

I have heard the argument of learned counsel of the applicant and perused the record available. 8

It is matter of record that the corporate debtor in its reply to the IB application has only stated about the financial problem of the corporate debtor and stated about the plan, how to pay the debt to the financial creditor and so admitted the default. The corporate debtor has only objected on the ground of limitation and in support of such contention relied on the judgment of the hon'ble Supreme Court in matter of *Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd.* [2019] 8 Comp Cas-OL 250 (SC) (Civil Appeal No. 4952 of 2019) stating that present matter is barred by limitation as account of the corporate debtor was declared NPA on March 7, 2013 and applicant/financial creditor has filed this application much after 3 years, i. e., on September 17, 2018. 9

Since, it is admitted by the corporate debtor that the financial debt is due and the corporate debtor has raised the point of law that since, NPA was declared on March 7, 2013 therefore, the limitation runs from that date. Hence, at this juncture, I would also like to mention this fact that the date of NPA is not mentioned in the application filed by the applicant. As I have already referred in Part 4 column 4 of the application and stated that the date of default as per the applicant is August 1, 2018 and in support of that, the financial creditor has annexed the statement of account, which is 10

available at pages 48 to 55, which shows that the financial creditor has calculated the amount till August 1, 2018.

- 11 It is a fact that, nowhere in the application, the financial creditor has mentioned this fact that the debt of the corporate debtor was declared NPA on March 7, 2013. It was the corporate debtor, who brought this fact to the notice to this Adjudicating Authority by filing the application on September 26, 2019 although this fact had not been mentioned by the corporate debtor in the counter affidavit and on the basis of that, he claimed that the debt is barred by limitation, in view of the recent decision of the hon'ble Supreme Court passed in *Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd.* (Civil Appeal No. 4952 of 2019) [2019] 8 Comp Cas-OL 250 (SC).
- 12 In the light of that fact and the decision upon which the corporate debtor has placed reliance, I have gone through the application and annexures filed by the applicant as well as counter affidavit filed by the corporate debtor and on careful consideration of the same, I find, even if it is assumed that the debt of the corporate debtor is declared NPA on March 7, 2013 as per the statement of the corporate debtor, though not pleaded in the application of the applicant, this Adjudicating Authority finds that at page 407, the financial creditor has annexed the letter dated July 30, 2018 addressed to Deputy General Manager, Union Bank of India by the Assistant Company Secretary of the corporate debtor. By this letter, the corporate debtor has admitted the debt and undertake to repay the legal dues of the financial creditor within two or three months and this letter shows that this is the reply in pursuance of letter No. ROK : CRLD : 762 : 17, dated February 6, 2018 issued by DGM, Union Bank of India, which shows, even after the declaration of NPA, there were several correspondences in between the financial creditor and corporate debtor regarding the payment of the debt, which the corporate debtor has admitted by filing the counter affidavit and lastly on July 30, 2018 by sending this letter, acknowledged the debt of financial creditor and, therefore, in view of section 18 of the Limitation Act, fresh period of limitation will start from July 30, 2018 and not from March 7, 2013 the date on which the corporate debtor claimed NPA was declared and that is the reason, the financial creditor has not referred the date of NPA in Part 4 column 4 of the application.
- 13 Apart from the aforesaid facts, this Adjudicating Authority further finds by filing supplementary counter affidavit on September 11, 2019 the corporate debtor in paragraph 4 admits that by two cheques Nos. 025529 and 025530 dated March 8, 2019 he has deposited Rs. 50 lakhs, which was also amount to the acknowledgment of debt. So, for the reasons discussed

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above, in my opinion, the decision upon which the corporate debtor has placed reliance, the facts of that decision is different from the facts of the case in hand. Here in the case in hand, the financial creditor has not claimed the default from the date when NPA was declared, i. e., on March 7, 2013 rather he claimed default from July 30, 2018 the date when corporate debtor has sent the letter and acknowledged the debt.

Hence, this Adjudicating Authority finds no force in the contention raised by the corporate debtor that the present application is barred by the limitation in view of the recent decision of the hon'ble Supreme Court in matter of *Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd.* (Civil Appeal No. 4952 of 2019) [2019] 8 Comp Cas-OL 250 (SC). 14

Since, the prayer to dismiss the application on the point of limitation has been rejected by this Adjudicating Authority, therefore, now I would like to consider, whether the applicant has satisfied the condition of section 7 or not ? 15

A mere plain reading of the provision shows that in order to make an application under section 7(1), the financial creditor/petitioner is required to establish as follows : 16

- (i) Whether there is duly established financial debt ?
- (ii) Whether there is default in payment by the corporate debtor ?
- (iii) Whether the documents attached with the applicant shows that there is default in payment of debt and name of resolution professional is proposed to act as IRP and no disciplinary proceedings are pending against the proposed resolution professional ?

The hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank* [2017] 205 Comp Cas 57 (SC) held as under (page 88) : 17

“The scheme of section 7 stands in contrast with the scheme under section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in section 8(1) of the Code. Under section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing, i. e., before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the court.

On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is 'due', i. e., payable unless interdicted by some law or has not yet become due in the sense that it is payable at some further debt. It is only when this is proved to the satisfaction of the adjudicating authority may reject an application and not otherwise."

- 18 In the case of *Ajay Agarwal v. Central Bank of India* [2018] 208 Comp Cas 402 (NCLAT), the hon'ble National Company Law Appellate Tribunal held as follows :

"When in case a 'corporate debtor' commits a default of financial debt, the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the 'financial creditor' to satisfy itself that a default has occurred. Other considerations, such as the existence a dispute or discrepancy are irrelevant, so long it has not been disputed the same debt is due and is payable to the financial creditor and the corporate debtor has defaulted."

- 19 Recently in the matter of *Karan Goel v. Pashupati Jewellers* (Company Appeal (AT) (Insolvency) No. 1021 of 2019, dated October 1, 2019) [2020] 9 Comp Cas-OL 304 (NCLAT) stated as under (page 308) :

". . . it is clear that once the Adjudicating Authority is satisfied on the basis of records that the debt is payable and there is default, the Adjudicating Authority is required to admit the application."

- 20 In the light of the aforesaid decisions and the conditions required under section 7, when this Adjudicating Authority shall consider the case of the applicant, then, found that the financial creditor has fulfilled all the three conditions, which are required to trigger the provision contained under section 7 of the IBC. In other words, the financial creditor has successfully proved that there is a financial debt and there is default in the payment of the debt by the corporate debtor, which has been corroborated by the documents filed by the financial creditor.
- 21 Hence, the application on behalf of financial creditor/applicant under section 7 of the IBC is complete. It further appears that there is default in non-payment of the debt owed by the corporate debtor, applicant has annexed sufficient evidence to show that there is default on behalf of the corporate debtor.
- 22 The financial creditor has suggested the name of Mr. Anupam Tiwari, Registration Number IBBI/IPA-03/IP-N00018/2017-18/10131 for

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appointment as the interim resolution professional (IRP). Further, IRP has filed a declaration in Form 2 affirming that he is registered as insolvency professional and no disciplinary proceedings are pending against him and there is default in the payment of the financial debt which is more than rupees one lakh. Therefore, as per section 7(5)(a) of the Code, the present application filed under section 7 of the I and B Code is admitted.

Mr. Anupam Tiwari, Registration No. IBBI/IPA-03/IP-N00018/2017-18/10131 is appointed as the interim resolution professional (IRP). Further, a moratorium under the provision of sections 13 and 14 of the Code is declared prohibiting the following : **23**

“(i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, Tribunal, arbitration panel or other authority ;

(ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein ;

(iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) ;

(iv) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.”

It is further directed that :

(i) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(ii) The provision of sub-section (1) shall not apply to such transaction as may be notified by the Central Government in consultation with any financial sector regulator.

The IRP shall comply with the provision of sections 13(2), 15, 17 and 18 **24** of the Code. Further, the directors, promoters or any person associated with the management of the corporate debtor are directed to co-operate to the IRP as prescribed under section 19 and for discharging his function under the provision of section 20 of the Code.

The registry is further directed to communicate this order to the financial **25** creditor and the corporate debtor and IRP through e-mail and speed post.

List on November 13, 2019 for filing progress report of the IRP. **26**

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**[2020] 220 Comp Cas 346 (NCLT)**[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL —  
BENGALURU BENCH]**EDELWEISS ASSET RECONSTRUCTION CO. LTD.***v.***FALCON TYRES LTD.****RAJESWARA RAO VITTANALA (Judicial Member) and  
ASHUTOSH CHANDRA (Technical Member)**

December 30, 2019.

**HF ▶ Applicant**

INSOLVENCY RESOLUTION—LIQUIDATION—DESPITE GRANTING SUFFICIENT TIME EFFORTS TO REVIVE OPERATIONS OF CORPORATE DEBTOR FAILING—LIQUIDATION PROCEEDINGS TO BE INITIATED—INSOLVENCY AND BANKRUPTCY CODE, 2016, s. 33(1).

*On an application by the resolution professional under section 33(1) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016, inter alia, seeking to pass an order requiring the corporate debtor to be liquidated, in terms of the provisions of section 33(1) of the Code :*

*Held, that the resolution professional and the committee of creditors had made all efforts to revive the operations of the corporate debtor but in vain. The Adjudicating Authority had also exercised its discretion in granting sufficient time in order to exhaust all possibility of getting solution to the issues. Therefore, there was no other alternative for the Adjudicating Authority except to initiate the liquidation proceedings, as per extant provisions of the Code, in respect of the corporate debtor.*

ARCELORMITTAL INDIA P. LTD. *v.* SATISH KUMAR GUPTA [2018] 211 Comp Cas 369 (SC) (para 2) *and* SASHIDHAR (K.) *v.* INDIAN OVERSEAS BANK [2019] 213 Comp Cas 356 (SC) (para 2) *referred to.*

I. A. No. 47 of 2019 in C. P. (IB) No. 14/BB/2017.

*Nischal Dev (B. R.) with Ameya Gokhale, Ms. Apeksha, Savan Godiawala, resolution professional, for the applicant.*

*Vikram Trivedi with Keerthi Hegde, for the petitioner.*

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### ORDER

The order of the Bench was delivered by

RAJESWARA RAO VITTANALA (*Judicial Member*).—I. A. No. 47 of 2019 **1**  
in C. P. (IB) No. 14/BB/2017 is filed by Mr. Savan Godiawala (hereinafter referred to as the “applicant/resolution professional”) under section 33(1) read with section 60(5) of the Insolvency and Bankruptcy Code, 2016, by, inter alia, seeking to pass an order requiring the respondent to be liquidated, in terms of the provisions of section 33(1) of the Code ; to issue a public announcement stating that the respondent is in liquidation ; to direct that a copy of the order be sent to the Registrar of Companies, at Bengaluru, etc.

Brief facts of the case, as mentioned in the application, and subsequent **2**  
pleadings filed, which are relevant to the issue in question, are as follows :

(1) M/s. Falcon Tyres Ltd. (the corporate debtor) was incorporated as a public limited company on November 29, 1973 and engaged in manufacture of tyres and tubes for two and three wheelers, jeeps, LCVs and farm vehicles. In due course of time, on account of labour unrest beyond the control of the management, manufacturing activities of the corporate debtor came to a standstill and the corporate debtor shut down its operations in 2015. Multiple attempts were made to revive the corporate debtor, but to no avail. Eventually, C. P. (IB) No. 14/BB/2017 was filed by M/s. Edelweiss Asset Reconstruction Co. Ltd. (EARCL), a financial creditor, under section 7 of the IBC, 2016 read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, by, inter alia, seeking to initiate CIRP in respect of M/s. Falcon Tyres Ltd. (corporate debtor) on the ground that it has committed default for an amount of Rs. 107,95,37,383. Thereafter, the company petition was admitted by this Adjudicating Authority, vide order dated May 1, 2018 (admission order) by initiating CIRP, appointing Mr. Vijay Kumar V. Iyer, bearing IBBI Registration No. IBBI/IPA-001/IP-00526/2016-2017/1370 as IRP, imposing moratorium, etc. Subsequently, the Adjudicating Authority vide its order dated July 19, 2018 permitted the CoC to change RP of the corporate debtor and appointed Mr. Savan Godiawala as the resolution professional in place of the erstwhile RP.

(2) Subsequent to the appointment of IRP, a public announcement was issued on May 5, 2018 under regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 calling upon the creditors of the respondent to submit proof of their claims on or before May 16, 2018. After receiving the proof of claims, the CoC was constituted and the first meeting was

conducted on May 29, 2018 by the IRP. Further, a report certifying constitution of the CoC was filed before this Adjudicating Authority in compliance with regulation 17 of the CIR Regulations. In compliance with IRP's duties under section 25(2)(h) of the Code, the IRP had issued a public newspaper advertisement dated July 9, 2018. This advertisement was published on the website of the IBBI, the website of the respondent and editions of the *Times of India*, *Business Standard* and *Telegraph*, inviting from prospective resolution applicants to submit resolution plan for the respondent in accordance with the provisions of the Code. As per the original advertisement the last date for submission of resolution plan was August 17, 2018.

(3) It is also stated that a process memorandum dated July 30, 2018 which was later amended on October 6, 2018 was prepared for use of potential resolution applicants. In compliance with section 29 of the Code and regulation 36 of the CIR Regulations, the resolution professional prepared an information memorandum and uploaded all relevant information on a data room, access to which was provided to all potential resolution applicants, who met the minimum eligibility criteria stipulated in the advertisement and had executed the confidentiality undertaking.

(4) The fourth meeting of the CoC was held on August 13, 2018 wherein, the RP proposed that since few investors had shown interest in the resolution of the respondent, potential resolution applicants can be given more time to express their interest. Members of the CoC agreed and decided to extend that the last date for submission of resolution plan till September 14, 2018. An advertisement for extension of the last date for submission of resolution plan was published on August 17, 2018, wherein the last date for submission of resolution plan was extended till September 14, 2018. In the seventh meeting of the CoC dated October 1, 2018 with a few more investors showing interest the members of the CoC agreed to extend the last date for submission of resolution plan till October 12, 2018. Accordingly another advertisement for extension of last date for submission of resolution plan was published on October 3, 2018.

(5) During the eighth meeting of the CoC held on October 15, 2018, the RP informed the members of the CoC that one resolution plan was submitted by Maple Tree Leather Goods P. Ltd., on October 12, 2018. In the ninth meeting of the CoC held on October 25, 2018 the RP briefed the members of the CoC that the resolution plan submitted by the resolution applicant does not comply with the mandatory provisions of the Code, CIR Regulations and the process memorandum. The representative of the resolution applicant was also invited by the RP for discussions with the



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members of the CoC. Following discussions with the representative of the resolution applicant, the CoC rejected the resolution plan submitted by the resolution applicant since it was non-compliant and passed a resolution to issue a new invitation for resolution plan, if the Adjudicating Authority approves application for extension of the CIRP period. The Adjudicating Authority by an order dated October 26, 2018 passed in I. A. No. 349 of 2018 extended time for CIRP till January 26, 2019. Subsequently, a revised Form G was issued on November 28, 2018, extending the deadlines for submission of resolution plans to December 28, 2018. Again resolution plan was submitted by the same resolution applicant on December 28, 2018. During the eleventh meeting of the CoC held on December 31, 2018, wherein it was, inter alia, decided that the first resolution plan was non-compliant with the Code, the CIR Regulations and the process memorandum and thus decided that discussion should take place with the resolution applicant to make the plan compliant in the interest of the corporate debtor and to achieve the objectives of the Code. According, RA was communicated the aspects of non-compliance of resolution plan of the provisions of the Code on January 4, 2019. During, 12th CoC held on January 10, 2019 also the issue was discussed.

(6) During 13th CoC meeting held on January 21, 2019, wherein it was, inter alia, informed to the CoC members that after communicating the reason for non-compliance of first resolution plan, another addendum was submitted by the resolution applicant on January 18, 2019 read with e-mail dated January 19, 2019. It was also informed by the RP that discussions were held with the resolution applicant and his lawyers on the second addendum, after which a third addendum to the first resolution plan was received by the RP on January 21, 2019. The liquidation and fair value of the assets of the corporate debtor was shared with members of the CoC. Thereafter, representative of the resolution applicant was invited for discussions with the members of the CoC. After detailed discussions with members of the CoC and commercial aspects of the first resolution plan, the representative of the resolution applicant agreed to submit another resolution plan by January 23, 2019. And this was continued on January 23, 2019. The RP informed the Members of the CoC that fourth addendum to the first resolution plan was received by the RP on January 23, 2019. The RP invited the representative of the resolution applicant for the meeting, who had detailed discussion on the commercial aspects of the resolution plan. The resolution applicant was not agreeable to address some of the commercial concerns of the members of the CoC. Hence, most of the CoC members were of the view that the first resolution plan would be rejected.

However, the resolution professional decided to put the matter on electronic voting. On January 24, 2019 when the electronic voting was open for CoC members to vote on either in favour of approval of the resolution plan or liquidation, another addendum on email was received from the representative of the resolution applicant, which revised the commercial aspects of the plan.

(7) On the advice of members of the CoC, the RP convened another meeting on January 24, 2019, via., teleconferencing to get view of the members of the CoC on the fifth addendum submitted by the resolution applicant. The CoC members, who attended the meeting, were not in favour of the approving the resolution plan because the resolution plan as proposed by the resolution applicant does not appear to be credible, capable and genuine. The resolution applicant is also not ready to submit the performance guarantee, which is a requirement, as per the process memorandum. Further the first resolution plan also fails to balance the interest of all stakeholders, and the resolution value proposed by the resolution applicant is much below the liquidation value. Considering proposals and counter proposals, the RP has invited views of all CoC members.

(8) EARCL has, inter alia, expressed the follow views about the revised plan in question during the 14th CoC meeting :

“Representative of the EARC further stated that the resolution plan does not appear to be credible, capable and genuine. Not only that the plan envisages payment of resolution value after 4 months of its approval by the hon’ble National Company Law Tribunal but also the resolution applicant is not ready to provide the performance security as per bid documents. It is also submitted that the resolution plan under consideration does not meet the expectation of CoC and is also balancing the interest of all stakeholders. It was further submitted that they resolution value proposed for stakeholders is far below the liquidation value and thus resolution plan was not acceptable to them :

(a) Representative of PNB concurred with EARC’s view and stated the amount offered to financial creditor is not acceptable and the up front payment amount offered is also not acceptable. Hence, the revised offer by the resolution applicant was rejected.

(b) All other creditors concurred with the view of EARC.

(c) Therefore, the resolution to reject the resolution plan, when put it to vote, was approved by CoC consisting of 6 members with a majority of 99.3 per cent. votes and decided to approve and authorize the RP to file an application to this Adjudicating Authority to pass a

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liquidation order as per section 33 of the Code. In terms of section 34 of the Code, the members of the CoC agreed to appoint Mr. Velayudham Jayavel (Registration No. IBBI/IPA-001/IP-P01012/2017-2018/11663) as the liquidator of the respondent-company, subject to the approval of this Adjudicating Authority.”

(9) It is stated that CoC has been cast with a duty to ensure a time bound process to better preserve the economic value of the asset. Simultaneously, it is the duty of the CoC to ensure that a resolution plan approved by it is viable, feasible and maximizes the assets of the corporate debtor. And it is for the CoC, which has to take a business decision to accept or reject a resolution plan and no provision is made in the Code, Rules or Regulations that would enable or enjoin upon the Adjudicating Authority to sit over the resolution of the CoC in rejecting a particular resolution plan.

(10) The hon’ble Supreme Court of India in the case of *K. Sashidhar v. Indian Overseas Bank* (Civil Appeal No. 10673 of 2018) [2019] 213 Comp Cas 356 (SC) has clearly held that if opposition to the proposed resolution plan is purely a commercial or business decision, the same, being non-justifiable, is not open to challenge before the Adjudicating Authority or for that matter the Appellate Authority. The hon’ble Supreme Court went on to further hold that in such a situation, non-recording of any reason for taking such commercial decision will be of no avail. The hon’ble Supreme Court held as under (page 394 of 213 Comp Cas) :

“Besides the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring competition of the stated process within the timelines prescribed by the Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The Legislature, consciously, has not provided any ground to challenge the ‘commercial wisdom’ of the individual financial creditors or their collective decision before the Adjudicating Authority. That is made non-justifiable.”

In addition to the above, the hon’ble Supreme Court of India in *Arce-lorMittal India P. Ltd. v. Satish Kumar Gupta* (Civil Appeal Nos. 9402-9405 of 2018) [2018] 211 Comp Cas 369 (SC) while observing that the

“resolution applicant” has no vested right or fundamental right to have its “resolution plan” considered or approved held as follows (page 459 of 211 Comp Cas) :

“What has now to be determined is whether any challenge can be made at various stages of the corporate insolvency resolution process. Suppose a resolution plan is turned down at the threshold by a resolution professional under section 30(2). At this stage is it open to the concerned resolution applicant to challenge the resolution professional’s rejection ? It is settled law that a statute is designed to be workable, and the interpretation thereof should be designed to make it so workable . . .

Given the time line referred to above, and given the fact that a resolution applicant has no vested right that his resolution plan be considered, it is clear that no challenge can be preferred to the Adjudicating Authority at this stage. A writ petition under article 226 filed before a High Court would also be turned down on the ground that no right, much less a fundamental right, is affected at this stage. This is also made clear by the first proviso to section 30(4), whereby a resolution professional may only invite fresh resolution plans if no other resolution plan has passed muster . . .

Take the next stage under section 30. A resolution professional has presented a resolution plan to the committee of creditors for its approval, but the committee of creditors does not approve such plan after considering its feasibility and viability, as the requisite vote of not less than 66 per cent. of the voting share of the financial creditors is not obtained. As has been mentioned hereinabove, the first proviso to section 30(4) furnishes the answer, which is that all that can happen at this stage is to require the resolution professional to invite a fresh resolution plan within the time limits specified where no other resolution plan is available with him. It is clear that at this stage again no application before the Adjudicating Authority could be entertained as there is no vested right or fundamental right in the resolution applicant to have its resolution plan approved, and as no adjudication has yet taken place.”

- 3 Heard Shri Nischal Dev, learned counsel for the applicant/resolution professional and Shri Vikram Trivedi, learned counsel for the petitioner/EARCL. We have carefully perused the pleadings of both the parties and extant provisions of the Code and Rules made thereunder.
- 4 Learned counsels, have once again reiterated their respective averments, as briefly stated supra. They have reiterated that they explored all

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possibilities to get resolution rather than to send the corporate debtor for liquidation. However, they failed to get any viable resolution plan and the resolution to seek liquidation of the corporate debtor was approved with 99.3 per cent. Therefore, they urged the Adjudicating Authority to order to liquidate the corporate debtor under extant provisions of the Code and Rules made thereunder.

As stated supra, since the date of admission of case for CIRP on May 1, 2018, there are 14 CoC meetings are conducted in order to find a suitable resolution plan. The Adjudicating Authority has also granted several opportunities to the parties, as unsuccessful resolution applicant as well as Union have intervened in the matter and Government of Karnataka has also expressed interest for revival of the Company in view of lively hood of several workers are going to be effected. 5

The Adjudicating Authority, in addition to granting liberal adjournments, granting extension of time, exclusion of time, etc., has also passed an order dated September 16, 2019, pending the order of liquidation, by inter alia directing RP and EARCL/petitioner to file a comprehensive affidavit/reply disclosing all material facts of the case which includes the initial loan taken by the corporate debtor, subsequent assignment to EARCL/petitioner, liquidation and value and fair value of the corporate debtor, etc., so as to consider the issue. Accordingly, the following information has been placed on record. Accordingly, they have placed the following information by inter alia stating that the banks have assigned their loans granted to the corporate debtor to EARCL/petitioner by way of assignment agreements : 6

<i>Assignor bank</i>	<i>Sanction limit (in crores)</i>	<i>Principal dues (in crores)</i>	<i>O/s. Dues as on assignment agreement (in crores)</i>	<i>Details of assignment</i>
Central Bank of India	149.00	132.47	153.88	Registered Assignment Agreement dated 28-3-2014
Syndicate Bank	106.00	96.38	108.76	Registered Assignment Agreement dated 27-6-2014
South Indian Bank	50.00	50.00	86.00	Registered Assignment Agreement dated 30-3-2015
ICICI Bank	290.00	289.60	461.55	Registered Assignment Agreement dated 29-6-2016
Total	595.00	568.45	810.19	

However, the company petition was filed by EARCL/petitioner on the default committed by the corporate debtor with respect to the facility granted by South Indian Bank.

- 7** The Adjudicating Authority, vide its order dated June 20, 2019 passed in I. A. No. 294 of 2019, has granted exclusion of 194 days from computation of statutory period of CIRP in question, as a special case, as the statutory period of 270 days lapsed as early as on January 22, 2019 on various grounds, viz., livelihood of several hundred workers depend on the company, Government of Karnataka also shown its interest for revival of the company, unsuccessful resolution applicant has also application seeking to accept their resolution plan, etc. Therefore, basing on various offers/contention made by resolution applicant in question, the issue was again reconsidered by the CoC by calling a meeting of financial creditors on September 25, 2019 to discuss the revised financial offer submitted by the resolution applicant. However, it is found that revised offer is not Rs. 370 crores as contended by the resolution applicant and it is only Rs. 100 crores and there is no change for financial creditors, no comfort has been given to them with respect to up front payment which will be paid by the and no performance bank guarantee has been furnished securing the payment promised by the resolution applicant. The financial creditors insist they should get latest Rs. 170 crores apart from compliance of provisions of Code and the Rules made thereon. However, the resolution applicant has not proved its bona fide even at the stage of offering their terms and conditions of plan and trying to get confidential information in respect of fair and liquidation values of corporate debtor and thus trying to bargain for resolution plan. We have perused the fair and liquidation values of the corporate debtor produced by resolution professional and found that the contentions raised by the resolution applicant and Union not to be correct.
- 8** It is settled position of law, by various judgments, as relied upon by the resolution professional, as stated supra, court/Tribunal is not empowered intrude into the commercial wisdom of committee of creditors either in approving/rejecting resolution plan in question, except in cases, where CoC acted arbitrary in taking those decisions ; violating principles natural justice, violation provisions of the Code and the Rules made thereunder, etc. As stated supra, the Adjudicating Authority has granted sufficient time to both the parties to explore possibility of getting resolution plan and also examined rival contentions raised in the issue and found that there is no arbitrariness in the decision taken by the CoC in rejecting the resolution plan in question. Therefore, only possibility now is that the parties may

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explore possibilities of revival of business of the corporate debtor during liquidation process.

The Adjudicating Authority, after carefully analyzing the indebtedness of the corporate debtor (CD), admitted the case on May 1, 2018 by initiating CIRP, appointing IRP, imposing moratorium, etc., so as to see whether any revival of operations of the corporate debtor is possible during CIRP period. It is also to be noted here that the corporate debtor has availed several financial facilities from several banks, viz., Central Bank of India (Rs. 149 crores), Syndicate Bank (Rs. 106 crores), South Indian Bank (Rs. 50 crores), ICICI Bank (Rs. 290 crores) amounting to Rs. 595 crores. All these banks have assigned their respective loan accounts with CD in favour of EARCL by executing separate assignment agreements dated March 28, 2014, June 27, 2014, March 30, 2015 and June 29, 2016 respectively. However, the petition (C. P. (IB) No. 14/BB/2017) was filed by EARCL with respect to default for an amount of Rs. 107.95 crores committed by the corporate debtor in respect of South Indian Bank. One of objects of the Code is that only one application/petition seeking to initiate CIRP in respect corporate debtor would lie, and after initiation of CIRP, all financial creditors and operational creditors of such corporate debtor would be covered by such CIRP. In the instant case, there are several claims from banks, commercial department, operational creditors, workers, etc., running into more than Rs. 2000 crores. 9

After verification of claims, 6 financial creditors EARCL (Rs. 1,253 crores/ 82.65 per cent.), SBI-GF (Rs. 97.27 crores/6.43 per cent.), PNB (Rs. 67.66 crores/4.47 per cent.), SBI (Rs. 59.41 crores/3.93 per cent.) OBC (Rs. 25.02 crores/1.65 per cent.) and Amondz Finanz Ltd. (Rs. 9.91.crores/0.66 per cent.) alone entitled for total amount of Rs. 1,512.63 crores. Apart from above financial creditors, commercial tax dues are to the tune of Rs. 379 crores, apart several crores of rupees due to operational creditors, workers, etc. And the operation of company was stated to have been suspended as early as April, 2015 due to various reasons. Therefore, various contentions raised by the applicant that its resolution plan is most viable, alternative to revive operations of the company, etc., are not all tenable and baseless and thus they are liable to be rejected. The CoC has dispassionately considered the issue vis-a-vis the object of code, interest of all stake holders, and thus found that the resolution plan in question is not at all tenable and the same was view was almost unanimously approved by it. Therefore, there is no arbitrariness and any violations of provisions of the Code and the Rules made thereunder, in rejecting the case of applicant. 10

- 11 As per provisions of the section 33 of the Code, the Adjudicating Authority has to pass an order for liquidating the corporate debtor in the manner as laid down in the Code, to issue public announcement that corporate debtor is in liquidation process, etc., provided the Adjudicating Authority, do not receive any resolution plan during the time granted by the Adjudicating Authority (180 days + 90 days as the case may be). In the instant case as stated supra, the statutory period including exclusion of time was over as early as on August 3, 2019 and the resolution plan in question was rejected by CoC with 99.3 per cent. And further Shri Shivadutt Bannanje, insolvency professional, bearing registration No. IBBI/ IPA-002/IP-N00266/2017-18/10779 to act as liquidator in respect of the corporate debtor, who is also filed his written consent under section 34 of the IBC, 2016 dated August 8, 2019, by inter alia declaring that he has registered with the Board as an insolvency professional ; he is eligible to be appointed as an independent director on the Board of the corporate debtor, under section 149 of the Companies Act, 2013 (18 of 2013) ; he is not related party of the corporate debtor ; he has not been an employee or proprietor or a partner ; of a firm auditors or secretarial auditors or cost auditors of the corporate debtor or ; of a legal or consulting firm, that has or had any transactions with the corporate debtor contributing 10 per cent. or more of the gross turnover of such firm, in the last three financial years ; he is undertaken to disclose the existence of any pecuniary or personal relationship with the concerned corporate debtor or any of its stakeholders as soon as he become aware of it, to the Board and the Adjudicating Authority ; he is not a member of any insolvency professional entity.
- 12 The aforesaid reasons and circumstances clearly established that the resolution professional and the CoC have made all efforts to revive the operations of CD but in vain. As stated supra, the Adjudicating Authority has also exercised its discretion in granting sufficient time in order to exhaust all possibility of getting solution to the issue in question. Therefore, there is no other alternative for the Adjudicating Authority except to initiate liquidation proceedings, as per extant provisions of the Code, in respect of corporate debtor, and the delay occurred till this date is deemed to be condoned in the interest of justice.
- 13 In the result, I. A. No. 47 of 2019 in C. P. (IB) No. 14/BB/2017 is hereby disposed of with the following directions :
- (1) We hereby ordered that M/s. Falcon Tyres Ltd. (corporate debtor herein), to be liquidated in the manner as laid down in Chapter III (Liquidation Process) of Part II of the Code ;



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(2) We hereby appointed Shri Shivadutt Bannanje, Insolvency Professional, bearing registration No. IBBI/IPA-002/IPN00266/2017-18/10779 as liquidator for the corporate debtor ;

(3) We hereby directed the liquidator to issue immediate public announcement by stating that the corporate debtor is in liquidation ;

(4) The registry is directed to communicate this order to the Registrar of Companies, Karnataka for information and necessary action.

(5) The liquidator is directed to strictly adhere to the extant provisions of the Code and the Rules made there under framed by IBBI from time-to-time and also directed to take expeditious steps to complete the liquidation process in the light of various orders.

(6) Since the instant application is kept pending due to various the reasons as stated supra, delay for passing for orders, including all actions taken by the resolution professional till date deemed to be condoned and actions protected.

(7) Consequently, IAs, if any pending, also stands disposed of. No order as to costs.

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[2020] 220 Comp Cas 357 (NCLT)

[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL —  
CHANDIGARH BENCH]

**BHAWANI INDUSTRIES P. LTD.**

*v.*

**INDERJIT FORGINGS P. LTD.**

AJAY KUMAR VATSAVAYI (*Judicial Member*) and  
PRADEEP R. SETHI (*Technical Member*)

October 29, 2019.

**HF ▶ Respondent**

INSOLVENCY RESOLUTION—PETITION BY OPERATIONAL CREDITOR—  
LIMITATION—TIME-BARRED DEBT—NO ACKNOWLEDGMENT OF DEBT OR  
OTHER CIRCUMSTANCES TO EXTEND PERIOD OF LIMITATION—PETITION  
BARRED BY LIMITATION—INSOLVENCY AND BANKRUPTCY CODE, 2016,  
s. 9—LIMITATION ACT, 1963, s. 18.

*The petitioner filed a petition under section 9 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of the corporate insolvency resolution in respect the corporate debtor :*

Held, dismissing the petition, that admittedly, the date of default of the debt due to the petitioner was July 8, 2013 and no acknowledgment of debt or any other circumstances were shown to extend the period of limitation beyond the period of 3 years expiring on July 8, 2016. The petition having been filed on July 16, 2018 was clearly barred by the period of limitation.

VASHDEO R. BHOJWANI *v.* ABHYUDAYA CO-OPERATIVE BANK LTD. [2019] 8 Comp Cas-OL 551 (SC), JIGNESH SHAH *v.* UNION OF INDIA [2019] 217 Comp Cas 139 (SC), GAURAV HARGOVINDBHAI DAVE *v.* ASSET RECONSTRUCTION CO. (INDIA) LTD. [2019] 8 Comp Cas-OL 250 (SC) and SAGAR SHARMA *v.* PHOENIX ARC P. LTD. [2019] 8 Comp Cas-OL 577 (NCLAT) *relied on.*

Cases referred to :

B. K. Educational Services P. Ltd. *v.* Parag Gupta and Associates [2019] 212 Comp Cas 1 (SC) (paras 11, 12, 14)

Balkrishna Savalram Pujari *v.* Shree Dnyaneshwar Maharaj Sansthan [1959] Supp. (2) SCR 476 (para 11)

Gaurav Hargovindbhai Dave *v.* Asset Reconstruction Co. (India) Ltd. [2019] 8 Comp Cas-OL 250 (SC) (para 12)

Jignesh Shah *v.* Union of India [2019] 217 Comp Cas 139 (SC) (para 13)

Phoenix ARC P. Ltd. *v.* Hotel Horizon P. Ltd. [2019] 8 Comp Cas-OL 566 (NCLT) (para 14)

Pushpa Shah *v.* IL and FS Financial Services Ltd. [2019] 215 Comp Cas 391 (NCLAT) (para 13)

Sagar Sharma *v.* Phoenix ARC P. Ltd. [2019] 8 Comp Cas-OL 577 (NCLAT) (para 14)

Sagar Sharma *v.* Phoenix ARC P. Ltd. [2019] 8 Comp Cas-OL 581 (SC) (para 14)

Vashdeo R. Bhojwani *v.* Abhyudaya Co-operative Bank Ltd. [2019] 8 Comp Cas-OL 551 (SC) (para 11)

C. P. (IB) No. 238/Chd/Pb/2018.

*Jatin Singhal*, Practising Company Secretary for the petitioner.

*Harsh Garg* and *Pulkit Goyal* for the respondent.

### JUDGMENT

The judgment of the Tribunal was delivered by

- 1 AJAY KUMAR VATSAVAYI (*Judicial Member*).—The instant petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as “Code”) read with rule 6 of the Insolvency

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and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short hereinafter referred to as “Rules”). The application has been filed in Form 5 as prescribed in rule 6(1) of the Rules.

The petition is submitted on behalf of Bhawani Industries P. Ltd. (for short hereinafter referred to as the “petitioner” and/or “operational creditor”). Annexure 1 is the copy of board resolution dated July 2, 2018 wherein Mr. Jai Parkash Goyal, managing director, of the petitioner, has been authorized to file the petition against M/s. Inderjit Forgings P. Ltd. There is also an affidavit in support of the contents of the application. The identification number of the petitioner-operational creditor is U00000PB1999PTC022272 and its registered address is in District Fatehgarh Sahib, in the State of Punjab. **2**

M/s. Inderjit Forgings P. Ltd. (for short hereinafter referred to as the “respondent” and/or “corporate debtor”) is a company incorporated under the provisions of the Companies Act, 1956 with authorized share capital of Rs. 75,00,000 and paid-up capital of Rs. 74,25,000. The CIN of the respondent-corporate debtor is U28939PB1987PTC007780 and its registered office is situated in District Ludhiana in the State of Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at annexure 6 of the petition. **3**

The facts of the case, briefly stated, are that the petitioner-operational creditor is a duly registered company under the Companies Act, 1956. The petitioner-operational creditor is engaged in the business of setting up steel furnaces, continuous and casting and rolling mills plants etc. It is stated that the petitioner-operational creditor and respondent-corporate debtor have been doing the business since April, 2012 and both the parties have shared good business relation since then. It is further stated that since then and till the orders supplied by the petitioner-operational creditor in 2013, payment has not been made even after repeated reminders and after failing to honour the commitments made by the respondent-corporate debtor, the petitioner-operational creditor have instituted a criminal case under section 138 of the Negotiable Instruments Act, 1881, before the Chief Judicial Magistrate, Taluka Court, Amloh, which is pending adjudication. In Part IV of Form 5, the total amount of debt is stated to be Rs. 7,94,058 and the date of default is stated to be July 8, 2013. **4**

The petitioner-operational creditor sent demand notices in Forms 3 and 4 dated February 5, 2018, annexure A4, claiming the amount due towards the default along with copies of the invoices and its ledger account. Copy of the said demand notices are at pages 28 to 42 of the paper book. As per **5**

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postal receipt dated February 7, 2018 as at page 41 of the paper book, the notice was sent by speed post to the respondent-corporate debtor. As per the tracking report of the Postal Department, as at page 42 of the paper book, the notice was duly delivered to the respondent-corporate debtor on February 9, 2018.

- 6 Notice of this petition to show cause as to why this petition be not admitted was issued to the respondent-corporate debtor on August 21, 2018 and the matter was fixed on October 8, 2018. Vide Diary No. 3693 dated September 27, 2018 the petitioner filed its affidavit of service stating therein that notice has been served to the respondent-corporate debtor.
- 7 The respondent-corporate debtor, filed its reply, vide Diary No. 492 dated January 31, 2019 raising various preliminary objections. It is stated in the reply that the amount claimed by the operational creditor is barred by limitation as the transactions for which the invoices have been raised are of the year 2013 with the last invoice attached by the petitioner-operational creditor dated July 8, 2013. It is submitted that two Invoices Nos. 1085 and 1086, dated July 8, 2013 amounting to Rs. 2,45,071 and Rs. 5,40,272 respectively, which are stated by the petitioner-operational creditor as unpaid, are bogus. It is further stated that no goods have been supplied by the petitioner-operational creditor as claimed in these invoices and neither these invoices have been accepted by the respondent, nor there was any delivery taken upon these invoices. It is also stated that the respondent has cleared all the dues of the operational creditor by making a payment dated July 4, 2013 of Rs. 1,00,083.
- 8 The petitioner-operational creditor filed its rejoinder vide Diary No. 1908, dated April 12, 2019 and has stated that the date of dispatch of demand notice and invoice in Form Nos. 3 and 4 was sent on February 5, 2018 before the implementation of limitation period under section 238A of the Code and the criminal proceedings under Negotiable Instruments Act, 1881, which were initiated before the Chief Judicial Magistrate, Amloh, on February 30, 2016 both within the limitation period. It is also submitted that the invoices which the corporate debtor has referred to in its reply, i. e., Invoice Nos. 1085 and 1086 dated July 8, 2013 are appended with the petition as annexure 1, are genuine as the evidence are the annexures themselves.
- 9 We have heard learned counsel for the petitioner and learned counsel for the respondent and have carefully perused the records.
- 10 Admittedly, even as per learned counsel for the petitioner, the date of default for the alleged claim was July 8, 2013. The petitioner also failed to show any subsequent acknowledgment of debt by the respondent-corporate

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debtor, therefore, the starting point for the period of limitation is the date of default, i. e., July 8, 2013.

In *Vashdeo R. Bhojwani v. Abhyudaya Co-operative Bank Ltd.* [2019] 8 Comp Cas-OL 551 (SC) ; [2019] SCC Online SC 1159, decided on September 2, 2019 after considering *B. K. Educational Services P. Ltd. v. Parag Gupta and Associates* [2018] 4 Scale 482, paragraph 27 ; [2019] 212 Comp Cas 1 (SC) and *Balkrishna Savalram Pujari v. Shree Dnyaneshwar Maharaj Sansthan* [1959] Supp. (2) SCR 476 and article 137 of the Limitation Act and section 23 of the Limitation Act, the hon'ble Supreme Court held as under (page 554 of 8 Comp Cas-OL) :

“ . . . it is clear that when the recovery certificate dated December 24, 2001 was issued, this certificate injured effectively and completely the appellant's rights as a result of which limitation would have begun ticking.

This being the case, and the claim in the present suit being time barred, there is no doubt that is due and payable in law. We allow the appeal and set aside the orders of the National Company Law Tribunal and National Company Law Appellate Tribunal.”

In *Gaurav Hargovindbhai Dave v. Asset Reconstruction Co. (India) Ltd.* [2019] 8 Comp Cas-OL 250 (SC) ; [2019] SCC Online SC 1239, decided on September 18, 2019 respondent No. 2 was declared NPA on July 21, 2011. SBI filed two O. As. in the Debts Recovery Tribunal in 2012. During the pendency of the two OAs, SBI assigned the said debt to respondent No. 1 on March 28, 2014. The Debts Recovery Tribunal dismissed the OAs on June 10, 2016 as not maintainable for the reasons given therein. The special civil applications filed before the hon'ble Gujarat High Court, resulted in remanding the matter to Debts Recovery Tribunal. SLP filed against this order was dismissed on March 25, 2017. Thereafter, on October 3, 2017 respondent No. 1 filed an independent CP under section 7 of the Code. The National Company Law Tribunal applied article 62 of the Limitation Act, i. e., 12 years to enforce payment of money secured by a mortgage or otherwise charged upon immovable property and admitted the CP. The hon'ble National Company Law Appellate Tribunal, vide the impugned judgment held that the time of limitation would begin running for the purpose of limitation only on and from December 1, 2016 which is the date on which the Code was brought into force and consequently, dismissed the appeal. In this backdrop of the facts, the hon'ble Supreme Court held that article 62 has no application to the applications filed under the Code and article 137 is only applicable to the same. The relevant paragraphs read as under (page 252 of 8 Comp Cas-OL) :

“Mr. Aditya Parolia, learned counsel appearing on behalf of the appellant has argued that article 137 being a residuary article would apply on the facts of this case, and as right to sue accrued only on and from July 21, 2011 three years having elapsed since then in 2014, section 7 application filed in 2017 is clearly out of time. He has also referred to our judgment in *B. K. Educational Services P. Ltd. v. Parag Gupta and Associates* [2018] SCC Online SC 1921 ; [2019] 212 Comp Cas 1 (SC) in order to buttress his argument that it is article 137 of the Limitation Act which will apply to the facts of this case.

Mr. Debal Banerjee, learned senior counsel, appearing on behalf of the respondents, countered this by stressing, in particular, paragraph 7 of the *B. K. Educational Services P. Ltd. v. Parag Gupta and Associates* [2018] SCC Online SC 1921 ; [2019] 212 Comp Cas 1 (SC) and reiterated the finding of the National Company Law Tribunal that it would be article 62 of the Limitation Act that would be attracted to the facts of this case. He further argued that, being a commercial Code, a commercial interpretation has to be given so as to make the Code workable.

Having heard learned counsel for both sides, what is apparent is that article 62 is out of the way on the ground that it would only apply to suits. The present case being ‘an application’ which is filed under section 7, would fall only within the residuary article 137. As rightly pointed out by learned counsel appearing on behalf of the appellant, time, therefore, begins to run on July 21, 2011 as a result of which the application filed under section 7 would clearly be time-barred. So far as Mr. Banerjee’s reliance on paragraph 7 of *B. K. Educational Services P. Ltd. v. Parag Gupta and Associates* [2018] SCC Online SC 1921 ; [2019] 212 Comp Cas 1 (SC), suffice it to say that the Report of the Insolvency Law Committee itself stated that the intent of the Code could not have been to give a new lease of life to debts which are already time-barred.

This being the case, we fail to see how this paragraph could possibly help the case of the respondents. Further, it is not for us to interpret, commercially or otherwise, articles of the Limitation Act when it is clear that a particular article gets attracted. It is well-settled that there is no equity about limitation—judgments have stated that often time periods provided by the Limitation Act can be arbitrary in nature.

This being the case, the appeal is allowed and the judgments of the National Company Law Tribunal and National Company Law Appellate Tribunal are set aside.”

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In *Jignesh Shah v. Union of India* [2019] 217 Comp Cas 139 (SC) ; [2019] SCC Online SC 1254, decided on September 25, 2019 the IL and FS on June 19, 2013 filed a Suit No. 449 of 2013 in the hon'ble Bombay High Court for specific performance of the letter of undertaking by La-Fin or, in the alternative, for damages. It is stated in the plaint that the cause of action for the suit arose on August 16, 2012, i. e., the day La-Fin purportedly refused to honour its obligation under the letter of undertaking. On October 21, 2016 a winding up petition was filed by IL and FS against La-Fin in the Bombay High Court under section 433(e) of the Companies Act, 1956. The Code came into force on December 1, 2016 and as a result, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the winding up petition was transferred to the National Company Law Tribunal as a section 7 application under the Code. The statutory form under these Rules, namely, Form No. 1 was filled up by IL and FS indicating that the date of default was August 19, 2012. On August 28, 2018 the said winding up petition was admitted by the National Company Law Tribunal as an application under section 7 of the Code. The hon'ble National Company Law Appellate Tribunal on January 21, 2019—(*Pushpa Shah v. IL and FS Financial Services Ltd.* [2019] 215 Comp Cas 391 (NCLAT)) dismissed the appeal, agreeing with the National Company Law Tribunal that the aforesaid transaction would fall within the meaning of "financial debt" under the Code, and that the bar of limitation would not be attracted as the winding up petition was filed within three years of the date on which the Code came into force, viz., December 1, 2016. 13

In these backdrop of the facts, it was held that pendency of a separate and independent remedy proceedings, such as suit for recovery, cannot in any manner, impact the limitation period of another independent remedy such as winding up proceedings. It was also held that the settled principle of law "when a debt is barred by time, the right to a remedy is time barred" is applicable to Code applications also. The relevant paragraphs of the judgment read as under (page 159 of 217 Comp Cas) :

"The aforesaid judgments correctly hold that a suit for recovery based upon a cause of action that is within limitation cannot in any manner impact the separate and independent remedy of a winding up proceeding. In law, when time begins to run, it can only be extended in the manner provided in the Limitation Act. For example, an acknowledgment of liability under section 18 of the Limitation Act would certainly extend the limitation period, but a suit for recovery, which is a separate and independent proceeding distinct from the remedy of winding up would, in no manner, impact the limitation

within which the winding up proceeding is to be filed, by somehow keeping the debt alive for the purpose of the winding up proceeding . . .

Whereas, in Form 1, upon transfer of the winding up proceedings to the National Company Law Tribunal, what is correctly stated is that the date of default is August 19, 2012 ; making it clear that three years from that date had long since elapsed when the winding up petition under section 433(e) was filed on October 21, 2016.

We therefore allow Civil Appeal (Diary No. 16521 of 2019) and dispose of Writ Petition (Civil) No. 455 of 2019 by holding that the winding up petition filed on October 21, 2016 being beyond the period of three years mentioned in article 137 of the Limitation Act is time-barred, and cannot therefore be proceeded with any further. Accordingly, the impugned judgment of the National Company Law Appellate Tribunal and the judgment of the National Company Law Tribunal is set aside.”

- 14 In *Sagar Sharma v. Phoenix ARC P. Ltd.* [2019] 8 Comp Cas-OL 581 (SC) ; [2019] SCC Online SC 1332, decided on September 30, 2019 it was held that date of coming into force of the Insolvency and Bankruptcy Code, 2016, does not and cannot form a trigger point of limitation for applications filed under the Code and if the applications are filed under section 7, article 137 of the Limitation Act, alone will apply. The said judgment reads as under (page 583 of 8 Comp Cas-OL) :

“By our judgment dated October 11, 2018 in *B. K. Educational Services P. Ltd. v. Parag Gupta and Associates* [2018] SCC Online SC 1921 ; [2019] 212 Comp Cas 1 (SC) in paragraphs 2, 20, 38, 43, 48 and 49 we had made it clear that the Insolvency and Bankruptcy Code’s coming into force on December 1, 2016 is wholly irrelevant to the triggering of any limitation period for the purposes of the Code. However, we find that in the impugned judgment the following statement is made :

‘Admittedly, the “I and B Code” has come into force since December 1, 2016, therefore, the right to apply accrued to the first respondent on December 1, 2016. Therefore, we hold that the application under section 7 was not barred by limitation.’

We had also made it clear beyond any doubt that for applications that will be filed under section 7 of the Code, article 137 of the Limitation Act will apply. However, we find in the impugned judgment that article 62 (erroneously stated to be article 61) was stated to be attracted to the facts of the present case, considering that there was a deed of mortgage which was executed between the parties in this



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case. We may point out that an application under section 7 of the Code does not purport to be an application to enforce any mortgage liability. It is an application made by a financial creditor stating that a default, as defined under the Code, has been made, which default amounts to Rs. 1,00,000 (one lakh) or more which then triggers the application of the Code on settled principles that have been laid down by several judgments of this court.

Article 141 of the Constitution of India mandates that our judgments are followed in letter and spirit. The date of coming into force of the IBC does not and cannot form a trigger point of limitation for applications filed under the Code. Equally, since “applications” are petitions which are filed under the Code, it is article 137 of the Limitation Act which will apply to such applications.

Accordingly, we set aside the judgment under appeal and direct that the matter be determined afresh. It will be open for both sides to argue the case on facts on the footing that article 137 of the Limitation Act alone will apply.

The appeal is allowed in the aforesaid terms.

The National Company Law Tribunal order dated January 29, 2019—(*Phoenix ARC P. Ltd. v. Hotel Horizon P. Ltd.* [2019] 8 Comp Cas-OL 566 (NCLT)) shall remain stayed until further orders from the National Company Law Appellate Tribunal—(*Sagar Sharma v. Phoenix ARC P. Ltd.* [2019] 8 Comp Cas-OL 577 (NCLAT)).

Mr. Rakesh Dwivedi, learned senior counsel, wishes to raise a plea based on section 22 of the Limitation Act before the National Company Law Appellate Tribunal. We record this statement.”

Since, admittedly, the date of default of the debt due to the petitioner was July 8, 2013 and that no acknowledgment of debt or any other circumstances are shown to extend the period of limitation beyond the period of 3 years expiring on July 8, 2016 and the CP having been filed on July 16, 2018 is clearly barred by the period of limitation. **15**

In the circumstances and for the aforesaid reasons and also in view of the latest decisions of the hon’ble apex court on the point of limitation, we are of the considered view that the instant CP is barred by the period of limitation and accordingly, the same is dismissed. **16**

In view of the dismissal of the CP on the point of limitation, there is no need to delve upon other issues. **17**

A copy of this order be communicated to both the parties.

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COMPANY CASES

[VOL. 220]

[2020] 220 Comp Cas 366 (NCLT)

[BEFORE THE NATIONAL COMPANY LAW TRIBUNAL — CHENNAI BENCH]

**L AND T INFRASTRUCTURE FINANCE CO. LTD.***v.***1. DINESHCHAND SURANA**

(M. A. No. 372 of 2018)

**2. VIJAYRAJ SURANA**

(M. A. No. 374 of 2018)

**3. G. R. SURANA**

(M. A. No. 375 of 2018)

**4. MS. SHANTILAL SURANA**

(M. A. No. 376 of 2018)

**B. S. V. PRAKASH KUMAR** (*Judicial Member*) and  
**S. VIJAYARAGHAVAN** (*Technical Member*)

October 30, 2018.

**HF ▶ Respondent**

INSOLVENCY RESOLUTION—PETITION BY FINANCIAL CREDITORS—PETITIONS AGAINST GUARANTORS WHO GAVE PERSONAL GUARANTEE—PROVISION PERTAINING TO GUARANTORS NOT YET NOTIFIED—NOT WITHIN JURISDICTION OF ADJUDICATING AUTHORITY TO ENTERTAIN PETITION—INSOLVENCY AND BANKRUPTCY CODE, 2016, s. 60.

*The territorial as well as derivative jurisdiction to deal with proceedings against personal guarantors was vested in the National Company Law Tribunal on December 1, 2016. However, Part III (sections 78-187) of the Insolvency and Bankruptcy Code, 2016, the subject-matter jurisdiction that has to be percolated to the National Company Law Tribunal (section 60(4) of the Code) in respect of the personal guarantors to the loans availed of by the corporate debtor is not notified and unless Part III of the Code is notified the Tribunal cannot straightaway invoke the provisions of Part III. In fact under sub-section (4) of section 60 of the Code, unless powers are conferred upon the Debts Recovery Tribunal under Part III, the question of vesting the National Company Law Tribunal with such powers of the Debts Recovery Tribunal would not arise. Sub-section (4) is indeed carved out in such a way that whenever proceedings against personal guarantors are to be invoked under sub-section (2), the National Company Law Tribunal will take the role as the Debts Recovery Tribunal by virtue of sub-section (4) of section 60 of the Code. Today the Debts Recovery Tribunal is in existence as before, but the*

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*Debts Recovery Tribunal in the form of Adjudicating Authority as defined in section 79(1) of Part III of the Code is not in existence. For this reason, the jurisdiction to deal with proceedings against personal guarantors has been coined as derivative jurisdiction, because the powers to deal with personal guarantors is to be percolated to the National Company Law Tribunal from that of the Debts Recovery Tribunal powers, which are yet to come to it.*

*The National Company Law Tribunal as the Adjudicating Authority would not have jurisdiction to proceed independently against the personal guarantor in the absence of the corporate insolvency resolution process against the principal borrower, because the personal guarantor being an individual, a proceeding would lie against him before the Debts Recovery Tribunal as the Adjudicating Authority. This jurisdiction to proceed against the personal guarantors before the National Company Law Tribunal is contingent upon the corporate insolvency resolution process pending before the National Company Law Tribunal. So, this jurisdiction conferred upon the National Company Law Tribunal under section 60(4) of the Code is not only derivative but also contingent in nature. Therefore any proceeding against the personal guarantor in furtherance of the corporate insolvency resolution process pending against the principal borrower before the National Company Law Tribunal will be void ab initio so long as the jurisdiction in Part III is not conferred upon the Debts Recovery Tribunal. This contingent jurisdiction will come to the National Company Law Tribunal only upon the happening of two events, one, when Part III has been notified and two, when the corporate insolvency resolution process or liquidation proceeding is pending against the corporate debtor before the National Company Law Tribunal. It makes no matter as to whether or not section 60(2), (3) and (4) of the Code have been notified. As of now since operation of law in respect insolvency and bankruptcy proceeding against individuals and partnership firms has not come into force, and the Debts Recovery Tribunal has not yet been conferred jurisdiction as the Adjudicating Authority to deal with Part III of the Code, the National Company Law Tribunal cannot act as the Debts Recovery Tribunal regarding proceedings against personal guarantors disregarding the jurisdiction conferred upon the National Company Law Tribunal under section 60(2), (3) and (4) of the Code.*

*Every sentence of a judgment has to be read in the context of the remaining portion of the judgment. A sentence, cannot be picked out disregarding the ratio decided and the context of that sentence, which is not the spirit of understanding the ratio of a judgment. Moreover, no court will confer*

*jurisdiction upon somebody to whom the Legislature has not given such jurisdiction. Judges declare the law, they do not make the law.*

*The corporate debtor availed of loan facilities from a consortium of lenders including the financial creditor and the respondents stood as personal guarantors executing a deed of guarantee. The corporate debtor failed to repay the loan and the guarantors also did not make payments. The creditor initiated proceedings before the Debts Recovery Tribunal. In the meanwhile, the Adjudicating Authority admitted a petition filed by another entity under section 7 of the Code against the corporate debtor. The petitioner filed its claim form and it was accepted by the interim resolution professional. The petitioner also filed separate and independent miscellaneous applications against each of these respondents-guarantors under section 60(2) and (5) of the Code stating that since the liability against the corporate debtor and these individual guarantors was co-extensive, it had the right to initiate the corporate insolvency resolution process against each of these guarantors as evinced under section 60(2) of the Code. The respondents challenged the maintainability of the applications :*

*Held accordingly, dismissing the applications, that the applicant had moved these applications under section 60(5) of the Code, like any other miscellaneous application in the petition, instead of filing original applications as prescribed under section 95 of the Code. The creditor could not have filed miscellaneous applications under section 60(5) of the Code as a step enabling the progress of main petition. Had jurisdiction arrived under Part III of the Code, an occasion would have arisen to the applicant to file such independent applications. On the top of it, the applicant could not have sought for relief of initiation of the corporate insolvency resolution process against a personal guarantor, who was an individual amenable to a separate process set out under Part III. Of course since that separate power had not come into force, the creditor could not initiate that insolvency resolution process meant for individuals.*

*STATE BANK OF INDIA v. RAMAKRISHNAN (V.) [2018] 210 Comp Cas 364 (SC) distinguished.*

*STATE BANK OF INDIA v. RAMAKRISHNAN (V.) [2018] 210 Comp Cas 364 (SC) (para 9) referred to.*

*M. A. Nos. 372, 374 to 376 of 2018 in C. P. No. 646/IB/CB/2017.*

*Gaurav Chatterjee, J. R. Jayant, M. G. Pranava Charan for M/s. Kochhar and Co. for the petitioner/financial creditor.*

*Ravi Rajagopalan for the respondent in M. A. No. 374 of 2018.*

though they may be represented by different authorised representatives, unless the Tribunal otherwise orders.

**188. Tribunal's power to fix a fee.**—(1) Nothing in these rules shall be deemed to prevent the Tribunal from fixing a fee for any matter if in any particular case the Tribunal considers it necessary to do so in the interest of justice.

(2) In any case where the contest has not been of a substantial nature, the Tribunal may direct that the costs shall be on the uncontested scale.

**189. Allowance to witnesses.**—The allowances to be made to witnesses shall be on the scales as determined by the Tribunal.

#### PART V

##### *Summary procedure for liquidation*

**190. Powers and functions of official liquidator.**—(1) The official liquidator shall exercise the powers and perform the duties as specified in the Act and these rules.

(2) For the purpose of clause (ii) of sub-section (1) of section 361, the class of companies shall be as under, based on the latest audited balance-sheet :—

- (a) the company which has taken deposit and total outstanding deposits is not exceeding twenty-five lakhs rupees ; or
- (b) the company of which the total outstanding loan including secured loan does not exceed fifty lakh rupees ; or
- (c) the company of which turnover is up to fifty crore rupees ; or
- (d) the company of which paid-up capital does not exceed one crore rupees.

(3) The official liquidator shall maintain the registers and books of account in the manner provided in rules 79 and 80.

(4) For the purpose of filing and audit of the official liquidator's accounts, the procedure laid down in the preceding rules 91 to 99 shall be followed with the modification that wherever the word Tribunal is mentioned, it shall be read as Central Government and with further directions issued by the Central Government as may be necessary, from time-to-time.

(5) The official liquidator shall dispose of all the assets in the manner as described in preceding rules 165 to 167 with the modification that wherever the word Tribunal is mentioned, it shall be read as Central Government and with further directions issued by the Central Government as may be necessary, from time-to-time.

(6) The monies received by the official liquidator as referred to in section 349 shall be paid by him into the public account of India in the Reserve Bank of India as mentioned in that section not later than the next working day of the said bank.

(7) For the purposes of section 363, the creditors of the company shall prove their claim in the manner as provided under rules 100 to 125, with the modification and directions by the Central Government as mentioned in sub-rule (4).

(8) In the absence of any rules under this Part, on any subject for conduct of liquidation proceeding by the official liquidator, the relevant rules in the other Parts of these rules shall be followed with necessary modifications as directed by the Central Government.

#### PART VI

##### *Miscellaneous*

**191. Inspection of file.**—(1) Every duly authorised officer of the Central Government and, save as otherwise provided by these rules, every person who has been a director or officer of a company which is being wound up, shall be entitled, free of charge, at all reasonable times to inspect the file of proceedings of the liquidation, and to take copies or extracts from any document therein on payment at the rate of five rupees per page, to be furnished with such copies or extracts.

(2) Save as otherwise provided by these rules, every contributory and every creditor, whose claim or proof has been admitted, shall be entitled, at all reasonable times to inspect the file of proceedings on payment of one hundred rupees and to be furnished with copies and extracts from any document therein at the rate of five rupees per page.

FORM WIN 1

[See rule 3(1)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20. . . . .

. . . . .Petitioner

*Petition for winding up*

The petition of (full name, description, occupation and address of petitioner) showeth :

1. The address of the petitioner above named for the service of all notices, processes, etc., is that of his representative Shri . . . . . at . . . . .

2. The company above named, viz., . . . . . (hereinafter referred to as "the company") was incorporated in the month of . . . . . 19. . . /20 . . . . . , under the (Companies Act, . . .) as a public (private) company limited by shares/limited by guarantee/as an unlimited company.

3. The registered office of the company is situated at . . . . .

4. The nominal capital of the company is Rs. . . . . divided into . . . . . shares of Rs. . . . . each. The amount of capital paid-up or credited as paid-up is Rs. . . . . (or as the case may be.)

5. The objects for which the company was incorporated are (herein set out the main objects) and any matter considered necessary for furtherance thereof set forth in the memorandum of association thereof.

6,7,8, etc. [Here set out in numbered paragraphs, as may be necessary, the facts on which the petitioner relies in support of the petition. Where the petitioner is a contributory, the petition should state whether the conditions of sub-section (2) of section 272 are satisfied. Where the petition is presented by the Registrar of Companies or by a person authorised by the Central Government, the order of sanction or authorisation of the Central Government should be annexed to the petition. After setting out the facts conclude as follows :]

**Prayer**

The petitioner, therefore, prays as follows :—

(1) That the . . . . . Co., [Ltd.] be wound up by the Tribunal under the provisions of the Companies Act, . . . . ., and

(2) Such other order may be made in the premises as shall be just.

Representative of Petitioner

Petitioner

*Note* : It is intended to serve this petition on . . . . .

*Enclosures*

1. Where the petition is presented by the Registrar of Companies or a person authorized by the Central Government, the order of sanction or authorisation of the Central Government.

2. Statement of affairs in Form WIN 4 . . . . . in case winding up petition is being filed by the company.

FORM WIN 2

[See rule 3(1)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . .)

Petition No. . . . . of 20. . . . .

. . . . . Company Limited-Petitioner

*Petition by company*

The petition of . . . . . Co. Ltd., the petitioner herein, showeth as follows :—  
(Paragraphs 1 to 5 as in Form WIN1).

6. Where the company is already being wound up voluntarily or by the Tribunal, the facts showing that the voluntary winding up or winding up by the Tribunal, as the case may be, cannot be continued with due regard to the interests of the creditors or contributories or both, should be set out.

7. By a special resolution of the company duly passed in accordance with section 271 of the Companies Act, 2013, at a general meeting thereof, held on the . . . . . day of 20. . . . ., after due notice as provided in the Act, it was resolved unanimously (or, by a majority of . . . . . votes against . . . . . votes) as follows :—  
(Here set out the resolution)

[Here set out in paragraphs the facts relating to the financial position of the company and the circumstances that have led to the passing of the special resolution.]

8. The petitioner therefore prays as follows :—  
(1) That the . . . . . Co., [Ltd.], may be wound up by the Tribunal under the provisions of the Companies Act, . . . . ., and  
(2) Such other order may be made in the premises as shall be just.

Representative for the Petitioner Petitioner

*Enclosures*

1. Copy of notice calling the meeting in which resolution is passed.
2. Copy of resolution passed.
3. Copy of statement of affairs.

FORM WIN 3

[See rule 3(2)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20. . . . .

. . . . . Petitioner

*Affidavit verifying petition*

1. I, A.B., son of . . . . . aged . . . . . residing at . . . . .  
. . . . . do hereby solemnly affirm and state as follows :

(*Note.*—To be filled in by the petitioner other than a company)

1. I am a director/secretary/. . . . . / of . . . . . Ltd., the petitioner in the above matter and am duly authorised by the said petitioner to make this affidavit on its behalf.



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[*Note.*—To be filled in cases where the petitioner is the company.)

2. The statements made in paragraphs . . . . . of the petition herein now shown to me and marked with letter "A", are true to my knowledge, and the statements made in paragraphs . . . . . are based on information, and I believe them to be true.

Solemnly affirmed at . . . . . on this . . . . . day of . . . . . 20. . . . .

Deponent

<p>FORM WIN 4 [See rule 4] BEFORE THE NATIONAL COMPANY LAW TRIBUNAL BENCH AT . . . . . IN THE MATTER OF . . . . . LTD. (give the name of the company) (Company incorporated under Companies Act, . . . . .) Petition No. . . . . of 20. . . . . . . . . . Petitioner</p>
<p><i>Statement of affairs under section 274(1)</i> Statement of affairs of the above named company as on the . . . . . day of . . . . . . 20. . . . .</p>
<p>I/We . . . . . of . . . . . do solemnly affirm and say that the statement made herein and the several lists hereunto annexed marked "A" to "I" are to the best of my/our knowledge and belief a full, true and complete statement as to the affairs of the above-named company, on the . . . . . day of . . . . . 20 . . . . ., and that the said company carries/carried on the following business :</p>
<p>[Here set out nature of company's business]</p>
<p>Signature(s)</p>
<p>Solemnly affirmed at . . . . . this . . . . . day of . . . . . 20. . . . . Before me.</p>
<p>Commissioner for Oaths.</p>
<p>The Commissioner is particularly requested, before swearing the affidavit, to ascertain that the full name, address and description of the deponent are stated, and to initial any crossing out or other alterations in the printed form. A deficiency in the affidavit in any of the above respects will entail its refusal by the Tribunal, and will necessitate its being re-sworn.</p>
<p><i>Note.</i>—The several lists annexed are not exhibits to the affidavit.</p>
<p>STATEMENT OF AFFAIRS AND LISTS TO BE ANNEXED</p>
<p>Statement as to the affairs of . . . . . Ltd . . . . ., on the . . . . . day of . . . . . . . . . . 20 . . . . ., showing assets at estimated realisable values and liabilities expected to rank :</p>

	Estimated Realisable Values Rs.
<i>Assets not specifically pledged (as per List "A")</i>	
Balance at bank	...
Cash in hand	...
Marketable securities	...
Bills receivable	...
Trade debtors	...
Loans and advances	...
Unpaid calls	...
Stock in trade	...
Work in progress	...
.....	
.....	
Freehold property, land and buildings	...
Leasehold property	...
Plant and machinery	...
Furniture, Fittings, Utensils, etc.	...
Investments other than marketable securities	...
Livestock	...
Vehicle etc.	...
Other Property, viz.,	...
.....	
.....	

	(a)	(b)	(c)	(d)
	<i>Estimated Realisable Values</i>	<i>Due to secured creditors</i>	<i>Deficiency ranking as unsecured</i>	<i>Surplus carried to last column</i>
	Rs.	Rs.	Rs.	Rs.
*Asset specifically pledged (as per list "B")				
Freehold property	_____			
Rs. . . .	_____			

Estimated surplus from assets specifically pledged	.....	
Estimated total assets available for preferential creditors, debenture-holders secured by a floating charge, and unsecured creditors (brought forward)		
<i>Summary of Gross Assets</i>		Rs.
		Rs.
Gross realisable value of assets specifically pledged		
Other assets	...	
		....
Gross Assets Rs.	...	....
		....
*Note.—All assets specifically mortgaged, pledged or otherwise, given as security should be included under this head. In the case of goods given as security, those in possession of the company and those not in possession should be separately set out.		

			Rs.
	Estimated total assets available for preferential creditors, debenture-holders secured by a floating charge, and unsecured creditors (brought forward).		
(e)			
Gross Liabilities			
Rs.	<i>Liabilities</i>		
	(to be deducted from surplus or added to deficiency as the case may be.)		
	Secured creditors (as per List "B") to extent to which claims are estimated to be covered by assets specifically pledged [item (a) or (b) on preceding page, whichever is the less]	.....	
	[Insert in "Gross Liabilities" column only]		
	Preferential creditors (as per List "C")	.....	
	Estimated balance of assets available for debenture-holders secured by a floating charge and unsecured creditors		Rs. ....
	Debenture-holders secured by a floating charge (as per list "D") estimated surplus/deficiency as regards debenture holders.		Rs. ....
	Unsecured Creditors (as per List "E")		
	Estimated balance of claims of creditors* partly secured on specific assets, brought from preceding page.		

(c) .....		
Trade Accounts .....		
Bills Payable .....	.....	
Outstanding Expenses .....		
Contingent liabilities (state nature)		
.....		
		Rs.
Estimated Surplus/Deficiency as regards		
Rs. creditors being difference between Gross	.....	
Assets brought from preceding page (d)		
and gross liabilities as per column (e)	.....	
		Rs.
Issued and Called-up Capital : #		
..... Preference shares of ...		
each		
..... Called-up (as per List "F")	...	
..... equity shares of ... each	...	.....
..... Called-up (as per List "G")	...	
.....	...	
.....	.....	
Estimated Surplus/Deficiency as regards		Rs.
Members (as per list "H")		
# These figures must be read subject to the following notes :—		
(1) (f) there is no unpaid capital liable to be called up, or		
(g) the nominal amount of unpaid capital liable to be called		
up is Rs. .... estimated to produce Rs. .... which is/is not		
charged in favour of debenture holders [strike out (f) or (g)]		
(2) The estimates are subject to costs of the winding up and to		
any surplus or deficiency on trading pending realisation of		
assets.		

LIST "A" — ASSETS NOT SPECIFICALLY PLEDGED		
<i>Statement of Affairs : List "A"</i>		
Full particulars of every description of property not specifically pledged and not included in any other list are to be set forth in this list.		
<i>Full statement and nature of property</i>	<i>Book Value</i>	<i>Estimated to produce</i>
	Rs.	Rs.
State name of bankers	Balance at Bank	...

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## COMPANIES (WINDING UP) RULES, 2020

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	Cash in hand	...
	Marketable Securities, viz., ...	.....
	Bills receivable (as per Schedule I)	...
	Trade Debtors (as per Schedule II)	...
	Loans and advances (as per Schedule III)	...
	Unpaid calls (as per Schedule IV)	...
State nature	... Stock in trade (as per Schedule V)	...
State nature	... Work in Progress	...
	Freehold property, viz.,	.....
	Leasehold property, viz.,	.....
	Plant and machinery, viz.,	.....
	Furniture, Fittings, Utensils, etc.	...
	Patents, Trade Marks, etc., viz.,	.....
	Investments other than marketable securities, viz.,	.....
	Livestock, Vehicles, etc.	...
	Other property, viz.,	.....
Signature :		Dated ..... 20 .....

## SCHEDULE I

BILLS OF EXCHANGE, PROMISSORY NOTES, ETC., ON HAND AVAILABLE AS ASSETS

*Statement of Affairs : Schedule I to List "A"*

The names to be arranged in alphabetical order and numbered consecutively.

<i>Sl. No.</i>	<i>Name of acceptor of bill or note</i>	<i>Address, etc.</i>	<i>Amount of bill or note</i>	<i>Date when due</i>	<i>Estimated to produce</i>	<i>Particulars of any property held as security for payment of bill or note</i>
				<i>Rs.</i>		<i>Rs.</i>

Signature :

Dated ..... 20 .....

SCHEDULE II  
TRADE DEBTORS

*Statement of Affairs : Schedule II to List "A"*

The names to be arranged in alphabetical order and numbered consecutively.

*Note.*—If the debtor to the company is also a creditor, but for a less amount than his indebtedness, the gross amount due to the company and the amount of the contra account should be shown in the third column, and the balance only be inserted under the heading "Amount of debt" thus :

Sl. No.	Name	Residence and occupation	Amount of debt			Folio of ledger or other book where particulars to be found	When contracted	Estimated to produce	Particulars of an securities held for debt
			Rs.	Rs.	Rs.				
			Due to the Company						Rs.
			Less : Contra Account						
No such claim should be included in the List "E"									
			Good doubtful bad						
			Rs.	Rs.	Rs.		Month year		
									Rs.
Signature :								Dated . . . . . 20 . . . . .	

SCHEDULE III  
LOANS AND ADVANCES

*Statement of Affairs : Schedule III to List "A"*

Sl. No.	Date of advance	Name and address of person to whom advanced	Amount due	Estimated to realise	Particulars of security, if any	Folio of ledger or other book where particulars to be found
						Rs.
Signature :						Dated : . . . . . 20 . . . . .

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## COMPANIES (WINDING UP) RULES, 2020

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## SCHEDULE IV

## UNPAID CALLS

*Statement of Affairs : Schedule IV to List "A"*

The names to be arranged in alphabetical order and numbered consecutively.

<i>Consecutive No.</i>	<i>No. in shares register</i>	<i>Name of shareholder</i>	<i>Address</i>	<i>No. of shares held</i>	<i>Amount of call per share unpaid</i>	<i>Total amount due</i>	<i>Estimated to realise</i>
					Rs.	Rs.	Rs.

Signature :

Dated . . . . . 20. . . . .

## SCHEDULE V

## STOCK IN TRADE

*Statement of Affairs : Schedule V to List "A"*

<i>Sl. No.</i>	<i>Description</i>	<i>Quantity</i>	<i>Book Value</i>	<i>Estimated to realise</i>
			Rs.	Rs.

Signature :

Dated . . . . . 20. . . . .

## SCHEDULE VI

## DEBTS DUE FROM CONTRIBUTORIES

(Other than unpaid calls)

*Statement of Affairs : Schedule VI to List "A"*

<i>Consecutive No.</i>	<i>No. in shares register</i>	<i>Name of shareholder</i>	<i>Address</i>	<i>Nature and particulars of debt</i>	<i>Amount due</i>	<i>Securities held, if any, for the debt</i>	<i>Serial No. in Schedule I, II or III, as the case may be where the debt is included</i>
					Rs.		

Signature :

Dated . . . . . 20. . . . .

## LIST B-ASSETS SPECIFICALLY PLEDGED AND CREDITORS FULLY OR PARTLY SECURED

(Not including debentures-holders secured by a floating charge)

The names of the secured creditors are to be shown against the assets on which their claims are secured, numbered consecutively, and arranged in alphabetical order as far as possible.





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## LIST "E" — UNSECURED CREDITORS

The names to be arranged in alphabetical order and numbered consecutively

*Statement of Affairs : List "E"*

*Note.*—(1) When there is a contra account against the creditor less than his claim against the company, the amount of the creditor's claim and the amount of the contra account should be shown in the third column and the balance only inserted under the heading "Amount of Debt" thus :—

Rs.

Total amount of claim . . .

Less : Contra account . . .

(No such set-off should be included in Schedule I attached to List "A"

(2) The particulars of any Bills of Exchange and Promissory Notes held by a creditor should be inserted immediately below the name and address of such creditor.

<i>Sl. No.</i>	<i>Name</i>	<i>Address and occupation</i>	<i>Amount of debt</i>	<i>Date when contacted</i>	<i>Folio of ledger or other books where particulars to be found</i>	<i>Consideration</i>
			<i>Rs.</i>	<i>Month Year</i>		
	Unsecured balance of creditors partly secured					
	—Brought from List "B"					
	Balance not preferential of preferential creditor					
	—Brought from List "C"					

Signature :

Dated . . . . . 20 . . . . .

## LIST "F" — LIST OF PREFERENCE SHAREHOLDERS

The name to be arranged in alphabetical order and numbered consecutively

*Statement of Affairs : List "F"*

<i>Consecutive No.</i>	<i>Register No.</i>	<i>Name of Share-holder</i>	<i>Address</i>	<i>Nominal amount of share</i>	<i>No. of shares held</i>	<i>Amount per share called up</i>	<i>Total amount called up</i>
						<i>Rs.</i>	<i>Rs.</i>

Signature :

Dated . . . . . 20 . . . . .

**LIST "G" — LIST OF EQUITY SHAREHOLDERS**

The names to be arranged in alphabetical order and numbered consecutively

*Statement of Affairs : List "G"*

Consecutive No.	Register No.	Name of share-holder	Address	Nominal amount of share	No. of shares held	Amount per share called up	Total amount called up
						Rs.	Rs.

Signature :

Dated . . . . . 20 . . . . .

**LIST "H" — DEFICIENCY OR SURPLUS ACCOUNT**

*Statement of Affairs : List "H"*

The period covered by this Account must commence on a date not less than 3 years of the date of presentation of the winding up petition or, if the company has not been incorporated for the whole period, the date of formation of the company, unless the Tribunal otherwise agrees.

Items contributing to deficiency (or reducing surplus) :—

Rs. . . . .

1. Excess (if any) of Capital and Liabilities over Assets on the . . . . . 20 . . . . . as shown by balance-sheet (copy annexed) . . . . .
2. Net dividends and bonuses declared during the period from . . . . . 20 . . . . . to the date of the statement . . . . .
3. Net trading losses (after charging items shown in note below) for the same period. . . . .
4. Losses other than trading losses written off or for which provision has been made in the books during the same period (give particulars or annex schedule) . . . . .
5. Estimated losses now written off or for which provisions have been made for the purpose of preparing the statement (give particulars or annex schedule). . . . .
6. Other items contributing to Deficiency or reducing Surplus . . . . . Rs . . . . .

Items reducing Deficiency (or Contributing to Surplus) :—

7. Excess (if any) of assets over capital and liabilities on the . . . . . 20 . . . . . as shown on the Balance Sheet (copy annexed) . . . . . Rs.

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## COMPANIES (WINDING UP) RULES, 2020

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8. Net trading profits (after charging items shown in note below) for the period from the . . . . . 20 . . . . . to the date of statement.	Rs.
9. Profits and income other than trading profits during the same period (give particulars or annex schedule) . . . . .	Rs.
10. Other items reducing Deficiency or contributing to Surplus :— Deficiency/Surplus as shown by statement.	Rs.
Note as to Net Trading Profits and losses :—	
Particulars are to be inserted here (so far as applicable) of the items mentioned below, which are to be taken into account in arriving at the amount of net trading profits or losses shown in this account :—	
Provision for depreciation, renewals, or diminution in value of fixed assets.	
Charges for Income-tax and other taxation on profits.	
Interest on debentures and other fixed loans.	
Payment to directors made by the company and required by law to be disclosed in the accounts.	
Exceptional or non-recurring expenditure :	Rs.
Less : Exceptional or non-recurring receipts :	Rs.
Balance, being other trading profits or losses	Rs. . . . .
Net trading profits or losses as shown in Deficiency or Surplus Account above	Rs. . . . .
Signature :	Dated . . . . . 20 . . . . .

## LIST "I"

## Statement of Affairs : List "I"

In substitution for such of the Lists "A" to "H" as will have to be returned blank

List	Particulars	Remarks
		Where no entries are made on anyone or more of list = "A" to = "H" the word = "Nil" should be inserted in this column opposite to the list or lists thus left blank.
A.	Assets not specifically pledged. . . . .	

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- B. Assets specifically pledged and creditors fully or partly secured (not including debenture-holders secured by a floating charge)
- C. Preferential creditors for Rates, Taxes, Salaries, Wage and overriding preferential payments and otherwise . . . . .
- D. Debenture-holders secured by Floating Charge . . . . .
- E. Unsecured creditors . . . . .
- F. Preferential shareholders . . . . .
- G. Equity shareholders . . . . .
- H. Deficiency or Surplus Account . . . . .

Signature :

Dated . . . . . 20 . . . . .

<p>FORM WIN 5 [See rule 4] BEFORE THE NATIONAL COMPANY LAW TRIBUNAL BENCH AT . . . . . IN THE MATTER OF . . . . . LTD. give the name of the company) (Company incorporated under Companies Act, . . . . .) Petition No. . . . . of 20 . . . . . . . . . . Petitioner <i>Affidavit of concurrence in statement of affairs</i> I/We, . . . . . [name(s), description(s), etc.] do solemnly affirm and say as follows :— That I/we have perused the statement of affairs lodged herein by . . . . . and that to the best of my/our information, knowledge and belief, such statement contains a full and accurate account of the company's affairs [except as stated below]. [Here state, if necessary, in what respects, if any, the statement of affairs is not con- curred in.] Solemnly affirmed etc.  <i>Signature of deponent</i>  <i>Commissioner for Oaths</i> . . . . .</p>
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FORM WIN 6  
[See rule 7]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT . . . . .**

**IN THE MATTER OF . . . . . LTD. (give the name of the company)**  
(Company incorporated under Companies Act, . . . . . )  
Petition No. . . . . of 20 . . . . .  
. . . . . Petitioner  
*Advertisement of petition*

Notice is hereby given that a petition for the winding up of the above-named company by the Tribunal at . . . . was on the day of . . . . 20 presented to the said Tribunal by the said company [or. where the petition was not presented by the company, state the name and address of the petitioner and the capacity in which he presents the petition e.g., contributory, etc.] and that the said petition is directed to be heard before the Tribunal on the day of . . . . 20 . . . . Any contributory or other person desirous of supporting or opposing the making of an order on the said petition should send to the petitioner or his representative notice of his intention signed by him or his representative with his name and address so as to reach the petitioner or his representative not later than five days before the date fixed for the hearing of the petition and appear at the hearing for the purpose in person or by his representative. A copy of the petition shall be furnished by the undersigned to any creditor or contributory on payment of the prescribed charges for the same. Any affidavit intended to be used in opposition to the petition should be filed in Tribunal and a copy served on the petitioner or his representative not less than five days before the date fixed for the hearing.

Representative for petitioner

FORM WIN 7  
[See rule 14(1)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT . . . . .**

**IN THE MATTER OF . . . . . LTD. (give the name of the company)**  
(Company incorporated under Companies Act, . . . . . )  
*Company Petition No. . . . . of 20 . . . . .*  
*. . . . . —Petitioner*  
*Company Application No. . . . . of 20 . . . . .*  
*. . . . . Applicant.*  
Before the hon'ble Member of the Bench . . . . .

Dated . . . . .  
*Notice of the application for appointment of provisional liquidator*  
To  
. . . . .

Take notice that the application for appointment of provisional liquidator of the company pending final orders on the winding up petition in pursuance of section 273(1)(c) was presented by . . . . . (here mention whether it is a contributory or contributories, the Registrar of Companies or person authorised by the Central Government or the Central Government or the State Government, and admitted on the . . . . . day of 20 . . . . ., and that the said application is fixed for hearing before the Tribunal on the . . . . . day of . . . . . 20 . . . . .

If you desire to support or oppose the application at the hearing, the notice thereof in writing should reach the Tribunal not later than . . . . . days before the date fixed for the hearing of the application, and appear at the hearing in person or by your representative. If you wish to oppose the application, the grounds of opposition or a copy of affidavit should be furnished with the notice. A copy of the application is enclosed herewith\*

Name  
Dated . . . . . (Sd) . . . . .  
(Representative for applicant)  
. . . . .

[This notice should be served on or before the . . . . .day of . . . . . 20 . . . . .]

FORM WIN 8  
[See rule 14(2)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT . . . . .**

**IN THE MATTER OF . . . . . LTD. (give the name of the company)**  
(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .  
. . . . . Petitioner

Company Application No. . . . . 20 . . . . .  
. . . . . Applicant.

Before the Hon'ble Mr. . . . . .

Dated . . . . .

*Order appointing provisional liquidator*

Upon the application of . . . . . and upon hearing Shri . . . . ., representative for the applicant, and Shri . . . . . (name, designation, postal address, e-mail id, land line phone number or mobile phone number), representative for the company and upon reading the petition and affidavit filed the day of . . . . . 20 . . . . ., and the affidavit of the applicant herein filed the day of . . . . . 20 . . . . .

This Tribunal doth appoint the Shri . . . . ., resident of . . . . . to be provisional liquidator of the above-named company ;

And the Tribunal doth hereby limit and restrict the powers of the said provisional liquidator to the following acts, that is to say :—

[Here describe the acts which the provisional liquidator is authorised to do.]

And the Tribunal doth order that the provisional liquidator do forthwith take charge of all the property and effects of the company ;

And that the costs of this application shall be costs in the petition.

*(By the Tribunal)*

*Registrar*

*Note.*—It will be the duty of such of the persons as are liable to submit the books of account of company completed and audited up to the date of order to liquidator under section 274(3) to attend on the provisional liquidator at such time and place as he may appoint and to give him all information he may require.

\*Where the Tribunal directs that the provisional liquidator is to take possession of any specific properties, the clause should be suitably modified, and the particulars of such properties should be set out in a schedule to the order.

FORM WIN 9

[See rule 14(4)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

Company Petition No. . . . . 0/20 . . . . .

Application No. . . . . 0/20

. . . . . Petitioner (Applicant)

*Notice of appointment of provisional liquidator*

To

The provisional liquidator

. . . . . (Address)

Order pronounced this day by the Hon'ble Mr. . . . . . for appointment of the provisional liquidator of the under-mentioned company :

1. Name of company :
2. Registered office of the company :
3. Petitioner's representative :
4. Date of presentation of petition :

A copy each of the petition and the affidavit filed in support is herewith enclosed.

*Dated* . . . . .

Tribunal . . . . .

*Note.*—It will be the duty of such of the persons as are liable to submit the books of account of company completed and audited up to the date of order to liquidator under section 274(3), to attend on the provisional liquidator at such time and place as he may appoint and to give him all information he may require.  
Copy to Registrar of Companies.

FORM WIN 10  
[See rules 14(5) and 21]  
BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENCH AT . . . . .  
IN THE MATTER OF . . . . . LTD. (*give the name of the company*)  
(Company incorporated under Companies Act, . . . . .)  
Petition No. . . . . of 20 . . . . .  
. . . . . Petitioner  
*Disclosure of interest or lack of independence by provisional liquidator or  
by company liquidator*

To  
. . . . .  
Registrar/Deputy Registrar

Disclosure is hereby given that I, . . . . . appointed as the provisional liquidator or company liquidator of the abovementioned company by an order dated the . . . . . day of . . . . . 20 . . . . ., have no interest in the above named company and, am in no way so concerned with the company to affect my independence in the discharge of my duties as provisional liquidator or company liquidator of the said company.

[I have the following interests in the above named company which may affect my independence in discharge of my duties as the provisional liquidator or company liquidator of the said company (set out the interest)]

Dated this . . . . . day of . . . . . 20 . . . . .

(Sd.) . . . . .  
Provisional liquidator or company liquidator

FORM WIN 11  
[See rule 17(1)]  
BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENCH AT . . . . .  
IN THE MATTER OF . . . . . LTD. (*give the name of the company*)  
(Company incorporated under Companies Act, . . . . .)  
*Company* Petition No. . . . . /20 . . . . .  
. . . . . Petitioner



Before the Hon'ble Mr. ....

*Dated* .....

*Winding up order*

Upon the petition of ..... presented on the ..... day of ..... 20 ....., upon hearing Shri ..... representative for the petitioner Shri ..... representative for the creditors (or contributories) supporting the petition, Shri ..... representative for the creditors (or contributories) opposing the petition, and Shri ..... representative for the company, upon reading the said petition, the affidavit of A.B., filed the ..... day of ..... 20 ....., verifying the said petition, the affidavit of x.y., filed the ..... day of ..... 20 ....., the (state or union territory), paper publication of the advertisement of the said petition, this Tribunal doth order :

\*(1) That the said company be wound up by this Tribunal under the provisions of the Companies Act, 2013 ; and

(2) That the provisional liquidator or company liquidator, as the case may be, as liquidator of the company aforesaid, forthwith take charge of all the property, effects, actionable claims and books and papers of the said company ;

\*\* (3) That the provisional liquidator or company liquidator shall cause a sealed copy of this order to be served on the company by pre-paid registered post ;

(4) That the petitioner do advertise within fourteen days from this date a notice in the prescribed form of the making of this order in one issue (each) of ..... (here enter the newspaper or newspapers in which the order is to be advertised) ;

(5) That the said petitioner do serve a certified copy of this order on the Registrar of Companies not later than one month from this date ; and

(6) That the cost of the said petition shall be paid out of the assets of the said company.

*Dated this ..... day ..... 20 .....*

*(By the Tribunal)*

*Registrar*

\*Where the company ordered to be wound up is a banking company, or an insurance company, add at the end of clause (1) "and the Banking Companies Act, 1949" or "and the Insurance Act, 1938", as the case may be.

\*\* To be inserted only where the company is not the petitioner.

*Note :*

1. It will be the duty of such of the persons as are liable to submit the books of account of company completed and audited up to the date of order under section 274(3) to attend on the company liquidator at such time and place as he may appoint and to give him all information he may require.

2. It will be the duty of every person who is in possession of any property, books or paper, cash or any other assets of the company including the benefits derived therefrom, such person shall forth with surrender such property, books, papers, etc.

FORM WIN 12  
[See rule 17(1)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
BENCH AT . . . . .

**IN THE MATTER OF . . . . . LTD.** (*give the name of the company*)  
(Company incorporated under Companies Act, . . . . .)  
*Petition No. . . . . of 20 . . . . .*  
*. . . . . Petitioner*  
*Notice to company liquidator of winding up order*

To  
The Company Liquidator,  
. . . . . Name  
. . . . . (Address)

Order pronounced this day by the Hon'ble Mr. . . . . . for winding up the under-mentioned company under the Companies Act, 2013

1. Name of company :
2. Registered office of the company :
3. Petitioner's representative :
4. Date of presentation of petition :

\* A copy each of the petition and the affidavit filed in support is herewith enclosed.

Dated . . . . . Tribunal . . . . .

\*Strike out, where copies of the petition and the affidavit have been sent to the company liquidator along with notice of an order appointing provisional liquidation, if any.  
*Note.*—It will be the duty of such of the persons as are liable to submit the books of account of company completed and audited up to the date of order of liquidator under section 274(3) to attend on the company liquidator at such time and place as he may appoint and to give him all information he may require.

FORM WIN 13  
[See rule 17(1)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
BENCH AT . . . . .

**IN THE MATTER OF . . . . . LTD.** (*give the name of the company*)  
(Company incorporated under Companies Act, . . . . .)  
*Petition No. . . . . of 20 . . . . .*  
*. . . . . Petitioner*  
*Notice to Registrar of Companies winding up order*

To  
The Registrar of Companies,  
. . . . . (Address)

Order pronounced this day by the Hon'ble Mr. . . . . . for winding up the under-mentioned company under the Companies Act, 2013

1. Name of company :
2. Registered office of the company :
3. Petitioner's representative :
4. Date of presentation of petition :

\* A copy each of the petition and the affidavit filed in support is herewith enclosed.

Dated . . . . . Tribunal . . . . .

\*Strike out, where copies of the petition and the affidavit have been sent to the Company liquidator along with notice of an order appointing provisional liquidation, if any.

*Note :*

1. It will be the duty of such of the persons as are liable to submit the books of accounts of company completed and audited up to the date of order of liquidation under section 274(3) to attend on the company liquidator at such time and place as he may appoint and to give him all information he may require.
2. In case of a listed company, the Registrar shall send intimation of such order to the Stock Exchange, where the securities of the company are listed.

FORM WIN 14

[See rule 20]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Petition No. . . . . of 20 . . . . .*

*. . . . . Petitioner*

*Company Petition No. . . . . 20 . . . . .*

*. . . . . Petitioner*

*Notice of winding up order*

By an order made by the Tribunal in the above matter dated the . . . . . day of . . . . . 20 . . . . . it was ordered that the above-named company be wound up under the provisions of the Companies Act, 2013.

*Dated . . . . .*

*Representative for the Petitioner*

FORM WIN 15  
[See rule 24]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
BENCH AT . . . . .

**IN THE MATTER OF . . . . . LTD.** (*give the name of the company*)  
(Company incorporated under Companies Act, . . . . .)

*Company Petition No. . . . . of 20 . . . . .*  
*Application No. . . . . of 20 . . . . .*  
*. . . . . —Applicant*

*Application for leave to commence or continue any suit or proceeding  
under section 279(1) of the Companies Act, 2013*

The application of (full name, description, occupation and address of applicant) showeth :—

1. The address of the applicant/his representative for the service of all notices, processes etc., is Shri . . . . . at . . . . .
2. The company named, viz., . . . . . (hereinafter referred to as “the company”) was incorporated in the month of . . . . . 19 . . . . . /20 . . . . ., under the (Companies Act, . . . . .) as a public (private) company limited by shares/limited by guarantee/as an unlimited company.
3. The registered office of the company is situated at . . . . .
4. The nominal capital of the company is Rs. . . . . divided into . . . . . shares of Rs. . . . . each. The amount of capital paid-up or credited as paid-up is Rs. . . . . (or as the case may be)
5. The order for the winding up the company or for appointment of provisional liquidator dated . . . . . has been passed by the Tribunal.
6. The applicant hereby applies for the leave to commence [or continue] the suit [or proceeding] under section 279(1) of the Companies Act, 2013, the details of which are as mentioned below :

Dated this . . . . . day of . . . . . 20 . . . . .

Applicant

FORM WIN 16  
[See rule 25(1)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
BENCH AT . . . . .

**IN THE MATTER OF . . . . . LTD.** (*give the name of the company*)  
(Company incorporated under Companies Act, . . . . .)

*Petition No. . . . . of 20 . . . . .*  
*. . . . . Petitioner*

*Report of the company liquidator under section 281(1)*

The Company Liquidator, in pursuance of section 281(1) of the Companies Act, 2013 hereby submits his Report to the Tribunal as follows :—

1. *Capital* : The nominal capital of the company is Rs. . . . . divided into . . . . . shares of Rs. . . . . each.

The number of shares issued is . . . . . and comprises . . . . . shares allotted as fully paid and . . . . . shares subscribed for cash and fully called up (or on which Rs. . . . . per share has been called up). The unpaid calls amount to Rs. . . . .

2. *Assets* : The assets of the company located at . . . . . , are estimated by the registered valuer (or as the case may be) to be of the value of Rs. . . . . and they comprise the following :—

Assets not specifically pledged :

- |  |             |
|--|-------------|
| (1) Cash on hand   | Rs. . . . . |
| Cash at Bank   | Rs. . . . . |
| Negotiable Securities  | Rs. . . . . |
| (2) Debts due from contributories  | Rs. . . . . |
| (3) Debts due to the company : (name, addresses and occupation of person from whom they are due and the amount likely to be realised on account thereof) |             |
| (a) Secured  | Rs. . . . . |
| Securities available :   |             |
| (give particulars of the properties given as security, whether security given by company or an officer, their value and dates on which they were given)  |             |
| (b) Unsecured  | Rs. . . . . |
| (4) Guarantee, if any, extended by company   | Rs. . . . . |
| (5) Movable and Immovable properties :   |             |
| (a) Movable properties :   | Rs. . . . . |
| (i) Stock in trade   | Rs. . . . . |
| (ii) Other movables (give particulars)   | Rs. . . . . |
| (b) Immovable properties : (give particulars)  | Rs. . . . . |
| (6) Unpaid Calls   | Rs. . . . . |
| (7) List of contributories and dues, if any, payable by them   | Rs. . . . . |
| (8) Details of Trade Marks and intellectual property, if any, owned by the company   |             |
| (9) Other assets   |             |
| Assets specifically pledged :  | Rs. . . . . |
| (1) Assets held by fully secured creditors (give particulars)  | Rs. . . . . |
| (2) Assets held by partly secured creditors (give particulars)   | Rs. . . . . |

3. *Liabilities* : The liabilities of the company are returned as amounting to Rs. . . . . and include the following :—

- |                              |             |
|------------------------------|-------------|
| (1) Fully secured creditors  | Rs. . . . . |
| (2) Partly secured creditors | Rs. . . . . |

(3) Preferential creditors	Rs. . . . .
(4) Debenture holders	Rs. . . . .
(5) Unsecured creditors	Rs. . . . .
4. Details of subsisting contracts, joint venture and collaboration, if any.	
5. Details of holding and subsidiary companies, if any.	
6. Details of legal cases filed by or against the company, if any.	
7. Causes of failure : The company was formed to carry on the business of . . . . .	
The failure of the company is in the opinion of the company liquidator due to . . . . .	
8. Any other information which Tribunal may direct or company liquidator may consider necessary to include.	
9. The manner in which the company was promoted or formed and the company liquidator is of the opinion that fraud has been/has not been committed by any person in its promotion or formation.	
Dated this . . . . . day of . . . . . 20 . . . . .	
	Company Liquidator

FORM WIN 17 [See rule 28(2)]
<b>BEFORE THE NATIONAL COMPANY LAW TRIBUNAL</b>
<b>BENCH AT . . . . .</b>
<b>IN THE MATTER OF . . . . . LTD. (give the name of the company)</b>
(Company incorporated under Companies Act, . . . . .)
<i>Petition No. . . . . of 20 . . . . .</i>
<i>. . . . . Petitioner</i>
<i>Provisional list of contributories</i>
The following is a list of members of the above-named company liable to be placed on the list of contributories of the said company made out by me from the books and papers of the said company, together with their respective addresses and the number of shares [or extent of interest] to be attributed to each, and the amount called up and the amount paid-up in respect of such shares [or interest] so far as I have been able to make out or ascertain the same.
In the first part of the list are set forth the persons who are contributories in their own right.
In the second part of the list are set forth persons who are contributories as being representatives of or liable for the debts of others.

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*First Part*

## CONTRIBUTORIES IN THEIR OWN RIGHT

<i>Sl. No.</i>	<i>Name and description</i>	<i>Address</i>	<i>No. of shares or extent of interest</i>	<i>Amount called up at date of commencement of winding up</i>	<i>Amount paid-up at date of commencement of winding up</i>
(1)	(2)	(3)	(4)	(5)	(6)

*Second Part*CONTRIBUTORIES AS BEING REPRESENTATIVES OF OR  
LIABLE FOR THE DEBT OF OTHERS

<i>Sl. No.</i>	<i>Name and description</i>	<i>Address</i>	<i>In what character included</i>	<i>No. of shares or extent of interest</i>	<i>Amount called up at date of commencement of winding up</i>	<i>Amount paid-up at date of commencement of winding up</i>
(1)	(2)	(3)	(4)	(5)	(6)	(7)

(Sd.)

Company Liquidator.

FORM WIN 18

[See rule 29(1)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

*Notice to contributory of date fixed to settle list of contributories*

To

.....  
 .....

Take notice that I . . . . . the company liquidator of the above company, have fixed . . . . . day the . . . . . day of . . . . . 20 . . . . . at . . . . . o'clock in the . . . . . noon at my office, to settle the list of contributories of the above named company which has been made out by me, pursuant to the Companies Act, 2013 and the rules made thereunder, and that you are included in such list. The character and the number of shares [or extent of interest] in and for which you are included, and the amount called up and the amount paid-up in respect of such shares [or interest] are stated below. If no sufficient cause is shown by you to the contrary at the time and place aforesaid, the list will be settled including you therein as set forth in the said list.

No. of list	Name and description	Address	In what character included	No. of shares or extent of interest	Amount called up at date of commencement of winding up	Amount paid-up at date of commencement of winding up
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Dated this . . . . . day of . . . . . 20 . . . . .

(Sd.)

Company Liquidator.

Notes :

- Contributories are under no obligation to attend before the company liquidator if they are satisfied that the particulars contained in the notice are correct.
- A shareholder's name cannot be omitted from the list of contributories on account of his inability to pay calls ; this question will be dealt with when application is made for payment of the calls.
- A change of address may be notified by giving notice by post before the date fixed for the settlement of the list.

<p>FORM WIN 19 [See rule 29(2)] BEFORE THE NATIONAL COMPANY LAW TRIBUNAL BENCH AT . . . . . IN THE MATTER OF . . . . . LTD. (give the name of the company) (Company incorporated under Companies Act, . . . . . ) Petition No. . . . . of 20 . . . . . . . . . . Petitioner</p>
---



*Affidavit as to the posting of notices fixing a date for the  
settlement of the list of contributories*

I, . . . . . (name and description) do solemnly affirm and say as follows :—

1. That I did on the . . . . . day of . . . . . 20 . . . . . , send to each contributory mentioned in the provisional list of contributories made out by the company liquidator on the . . . . . day of . . . . . 20 , and now on the file of proceedings of the above-named company, at the address appearing in such list, a notice of the time and place fixed to settle the list of contributories, in the form hereunto annexed marked "A", except that in the tabular form at the foot of such copies respectively I inserted the number, name and description, address, in what character included, the number of shares (or extent of interest), the amount called up and the amount paid-up in respect of the shares (or interest), of the person to whom such copy of the said notice was issued.

2. That I sent the notices by putting the same pre-paid into the post office/by speed post at . . . . . before the hour of . . . . . o'clock in the . . . . . noon on the said day, and I obtained from the post office the certificate of posting relating thereto, which is here-with annexed\*.

Solemnly affirmed, etc.

*Deponent*

\*To be annexed

FORM WIN 20

[See rule 30]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Petition No. . . . . of 20 . . . . .*

. . . . . *Petitioner*

*Dated : . . . . .*

*List of contributories as settled by Tribunal*

The result of the settlement of the list of contributories of the above company, made out and filed in Tribunal by the Company Liquidator of the said company on the . . . . . day of 20 . . . . . ,

so far as the said list has been settled up to the date of this certificate, is as follows :—

1. The several persons whose names are set forth in the second column of the First Schedule hereto have been included in the said list of contributories as contributories of the said company in respect of the number of shares [or extent of interest] set opposite the names of such contributories respectively in the said Schedule.

2. In the first part of the said Schedule are set forth such of the said several persons as are contributories in their own right.

3. In the second part of the said Schedule are set forth such of the said several persons as are contributories as being representatives of or liable for the debts of others.
4. The several persons whose names are set forth in the second column of Second Schedule hereto, were included in the provisional list of contributories, and have been excluded from the said list of contributories.
5. In the fifth column of the first part and the sixth column of the second part of the First Schedule, and in the sixth column of the Second Schedule, are set forth, opposite the name of each of the several persons respectively, the date when such person was included in or excluded from the said list of contributories.
6. In the sixth and seventh columns of the first part, and the seventh and eighth columns of the second part, of the First Schedule, are set forth opposite the names of each of the said persons respectively the amount called up at the date of the commencement of the winding up and the amount paid up at such date in respect of their shares [or interest].

**THE FIRST SCHEDULE ABOVE REFERRED TO**  
*First Part*  
**CONTRIBUTORIES IN THEIR OWN RIGHT**

<i>Sl. No.</i>	<i>Name and description</i>	<i>Address</i>	<i>No. of shares or extent of interest</i>	<i>Date when included in the list</i>	<i>Amount called up the date of commencement of winding up</i>	<i>Amount paid-up at date of commencement of winding up</i>
(1)	(2)	(3)	(4)	(4)	(6)	(7)

*Second Part*  
**CONTRIBUTORIES AS BEING REPRESENTATIVES OF OR LIABLE**  
**FOR THE DEBTS OF OTHERS**

<i>Sl. No.</i>	<i>Name and description</i>	<i>Address</i>	<i>In what character included</i>	<i>No. of shares or extent of interest</i>	<i>Date when included in the list</i>	<i>Amount called up the date of commencement of winding up</i>	<i>Amount paid-up at date of commencement of winding up</i>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

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## THE SECOND SCHEDULE ABOVE REFERRED TO

Sl. No.	Names and description	Address	In what character proposed to be included	No of shares or extent of interest	Date when excluded from the list
(1)	(2)	(3)	(4)	(5)	(6)

Dated the ..... day of ..... 20 .....

.....  
Registrar National Company Law Tribunal

FORM WIN 21  
[See rule 31(1)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
BENCH AT .....

IN THE MATTER OF ..... LTD. (*give the name of the company*)  
(Company incorporated under Companies Act, .....)  
Petition No. .... of 20 .....  
..... Petitioner

*Notice to contributory of final settlement of list of contributories  
and that his name is included*

To  
.....  
.....

Take notice that I, ..... the company liquidator of the above-named company have by certificate dated the ..... day of ..... 20 ..... under my hand, finally settled the list of contributories of the said company, and that you are included in such list. The character and number of shares [or extent of interest] in and for which you are included and the amount called up and the amount paid-up in respect of such share [or interest] are stated below.

Any application by you to vary the said list of contributories or that your name may be excluded therefrom, must be made by you to the Tribunal within fifteen days from the date of service on you of this notice. Any application made after the expiry of the said period will not be entertained.

The said list may be inspected by you at the office of the Registrar of the National Company Law Tribunal, ..... on any day during office hours.

Dated this ..... day of ..... 20 .....

(Sd.) .....  
Company liquidator

No. of list	Name and description	Address	In what character included	No. of shares or extent of interest	Amount called up at date of commencement of winding up	Amount paid-up at date of commencement of winding up
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Company Liquidator.

FORM WIN 22  
[See rule 31(2)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)  
(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .  
. . . . . Petitioner

*Affidavit of service of notice on contributory*

I, . . . . . (name and description of deponent) of solemnly affirm and say as follows :—

1. I did on the . . . . day of . . . . 20 , in the manner hereinafter mentioned serve a true copy of the notice now produced and shown to me and marked "A" upon each of the respective persons whose names, descriptions and addresses appear in the second and third columns of the First Schedule to the list of contributories of the said company settled by the company liquidator of the said company on the . . . . . day of . . . . . 20 . . . . . and now on the file of the proceedings of the said company. In the tabular form at the foot of such copies respectively I inserted the number on list, name, description, address, in what character included, the number of shares [*or extent of interest*] and the amount called up and the amount paid up in respect of the shares [*or interest*], of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said Schedule.

2. I served that said respective copies of the said notice duly addressed to such persons respectively according to their respective names and addresses appearing in the said Schedule by registered post/speed post on . . . . at the post office at . . . , and the postal receipts and acknowledgements received from the said post office in respect thereof are annexed hereto. In the following cases, either the notices were returned unserved or the notices have not been returned nor the acknowledgments received :—

<i>Number on list</i>	<i>Name of person</i>	<i>Whether notice was returned unserved. Whether notices not returned for acknowledgement received</i>

Solemnly affirmed, etc.

Deponent

FORM WIN 23  
[See rule 37(1)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT . . . . .**

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)  
(Company incorporated under Companies Act, . . . . .)  
Petition No. . . . . of 20 . . . . .  
. . . . . Petitioner

*Report of result of meeting of creditors and contributories under section 287(3)*

I . . . . . (name), company liquidator of the Tribunal, and Chairman of the meetings of the creditors and contributories held under section 287(3), do hereby report the result of the said meetings :—

1. A meeting of the creditors of the above named company was summoned by advertisement in (here enter the newspaper or newspapers) of the date(s) . . . . . 20 . . . . ., and was held on the day of . . . . . 20 . . . . ., at . . . . . I was the chairman of the said meeting.
2. The said meeting was attended either personally or by proxy by . . . . creditors whose proofs of debt against the said company were admitted for voting purposes, amounting in the whole to the value of Rs. . . . . .
3. The question submitted to the said meeting of creditors was, they wished that a advisory committee shall be appointed to act with the Company Liquidator and so, who are to be the members of the advisory committee.
4. At the said meeting it was resolved unanimously (or as a result of the voting set out below) that there should be advisory committee consisting of following members :  
(Here set out the names of members)  
[or the result of the voting on the said proposition was as set out below]
5. A meeting of the contributories of the above-named company was summoned by advertisement in (here enter the newspaper or newspapers) of the date(s) . . . . . 20 and was held on the . . . . . day of . . . . . 20 . . . . ., at . . . . . for the purpose of considering the aforesaid decision of the creditors' meeting and to express the views of the contributories as to who are to be members of advisory committee. I was the Chairman of the said meeting.
6. The said meeting was attended either personally or by proxy by contributories holding in the whole . . . . . shares of the said company and entitled to . . . . . votes.

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7. At the said meeting it was resolved unanimously (or as a result of the voting as set out below) as follows :—  
 [Here set out the resolution or resolutions.]

**RESULT OF VOTINGS**

Resolutions	Voting on resolutions			
	For		Against	
	No.	Amount	No.	Amount
State the substance of any resolutions and give names of members of committee (if any) and amount of their proofs if creditors, or shares, (if contributories). Creditors : ..... Contributories : .....				
	No.	Shares vote	No.	Shares/ votes

Sd. ....

Company Liquidator and Chairman

FORM WIN 24  
 Form of advertisement  
 [See rule 37(3)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT .....**

**IN THE MATTER OF ..... LTD. (give the name of the company)**  
 (Company incorporated under Companies Act, .....)

Company Petition No. .... 20 .....

Application No. .... of 20 .....

*Notice to creditors and contributories*

Whereas the meeting of the contributories of the above company held under section 287(3) has not accepted the decision of the meeting of the creditors held regarding the composition of a advisory committee, notice is hereby given that an application has been made to the Tribunal by the company liquidator for directions of the Tribunal under section 287(3) as to who shall be the members thereof, and that the said application will be heard by the Tribunal on ..... day the ..... day of ..... 20 ....., at ..... o'clock in the ..... noon, when any creditor or contributory of the above-named company who wishes to be heard may appear and make such representations to the Tribunal as he wished to make in the said matter.

Dated this ..... day of ..... 20 .....

.....  
 Company liquidator

FORM WIN 25  
*Form of advertisement*  
[See rule 45(3)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT . . . . .**

**IN THE MATTER OF . . . . . LTD.** (*give the name of the company*)  
(Company incorporated under Companies Act, . . . . .)  
*Company Petition No. . . . . 20 . . . . .*

*Notice of meetings of creditors and contributories under section 287(3)*

Notice is hereby given that—

(1) A meeting of the creditors of the above-named company will be held at . . . . . (place) on . . . . . day, the . . . . . day of . . . . . 20 . . . . ., at . . . . . o'clock in the . . . . . noon, to determine as to who are to be the members of the advisory committee.

*Note.*—To entitle a creditor to vote at the meeting of creditors aforesaid, his proof must be lodged with the company liquidator not later than . . . . . o'clock in the . . . . . noon, on the . . . . . day of . . . . . 20 . . . . .

(2) A meeting of the contributories of the above-named company will be held at . . . . . (place) on . . . . . day the . . . . . day of . . . . . 20 . . . . ., at . . . . . o'clock in the . . . . . noon, to consider the decision of the said meeting of creditors and to express the views of the contributories as to who are to be the members of the advisory committee.

Forms of proof and of general and special proxies can be had at the office of the company liquidator. Proxies should be lodged with the company liquidator not later than . . . . . o'clock on the . . . . . day of . . . . . 20 . . . . .

Dated this . . . . . day of . . . . . 20 . . . . .

Company liquidator

[The company's statement of affairs has not been lodged (or has been lodged and may be inspected at the office of the company liquidator during office hours on payment of the prescribed fee.)]

\*The date fixed should be within fourteen days of the creditors' meeting.

FORM WIN 26  
*Form of individual notice to creditors*  
[See rule 45(3)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT . . . . .**

**IN THE MATTER OF . . . . . LTD.** (*give the name of the company*)  
(Company incorporated under Companies Act, . . . . .)  
*Company Petition No. . . . . of . . . . . 20 . . . . .*

*Notice of creditors' meeting under section 287(5) of the Companies Act, 2013*

To  
 .....  
 .....  
 .....

Take notice that a meeting of the creditors of the above-named company will be held at ..... (place) on ..... day the ..... day of ..... 20 ....., at ..... o'clock in the ..... noon, for the purpose mentioned below :

*Agenda*

To determine as to who are to be the members of the advisory committee.

To entitle you to vote thereat your proof must be lodged with the company liquidator not later than ..... o'clock in the .... noon on the day of ..... 20 ...

The company's statement of affairs has not been lodged [or has been lodged and may be inspected at the office of the company liquidator during office hours on payment of the prescribed fee].

Forms of proof and of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with the company liquidator not later than .... o'clock in the ..... noon on the day of ..... 20 ...

Dated this ..... day of ..... 20 .....

Company Liquidator

FORM WIN 27  
*Individual notice to contributories*  
 [See rule 45(3)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT .....**

**IN THE MATTER OF ..... LTD. (give the name of the company)**  
 (Company incorporated under Companies Act, .....)  
 Company Petition No. .... of ... 20 ....

*Notice of contributories' meeting under section 287(5) of the Companies Act, 2013*

To  
 .....  
 .....  
 .....

Take notice that a meeting of the contributories of the above-named company will be held at ..... (place) on ..... day the ..... day of ..... 20 ....., at ..... o'clock in the ..... noon, for the purpose mentioned below :

*Agenda*

To consider the decision to be taken at a meeting of the creditors of the said company to be held on the ... day of ... 20 ....., for determining as to who are to be the members of the advisory committee, and to express the views of the contributories on the said matters.



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The company's statement of affairs has not been lodged [or has been lodged and may be inspected at the office of the company liquidator during the office hours on payment of the prescribed fee].

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with the company liquidator at his office not later than . . . o'clock in the . . . . . noon on the . . . . . day of . . . . . 20 . . . . .

*Dated this . . . . . day of . . . . . 20 . . . . .*

*Company Liquidator*

FORM WIN 28  
*Form of individual notice*  
[See rule 45(3)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT . . . . .**

**IN THE MATTER OF . . . . . LTD. (give the name of the company)**  
(Company incorporated under Companies Act, . . . . .)

Company Petition No. . . . . of . . . 20 . . . . .

*Notice of meeting (General Form)*

To  
 . . . . . creditor (or contributory)  
 . . . . . of the said company  
 . . . . .

Take notice that a meeting of creditors [or contributories] in the above matter will be held at . . . . . (place) on the . . . . . day of . . . 20 . . . . . , at . . . . . o'clock in the . . . . . noon.

*Agenda*

[Here insert the purpose for which the meeting is called].

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with the company liquidator not later than . . . . . o'clock in the . . . . . noon on the . . . . . day of . . . . . 20 . . . . .

*Dated this . . . . . day of . . . . . 20 . . . . .*

*Company Liquidator*

FORM WIN 29  
*Form of advertisement*  
[See rule 45(3)]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT . . . . .**

**IN THE MATTER OF . . . . . LTD. (give the name of the company)**  
(Company incorporated under Companies Act, . . . . .)

Company Petition No. . . . . of . . . 20 . . . . .

*Notice of meeting (General Form)*

Notice is hereby given that a meeting of creditors [or contributories] in the above matter will be held at . . . . (place) on the . . . . . day of . . . . . 19 . . . . . , at . . . . . o'clock in the . . . . . noon.

*Agenda*

[Here insert the purpose for which the meeting is called].

Forms of general and special proxies can be had at the office of the company liquidator. Proxies to be used at the meeting must be lodged with the company liquidator not later than . . . . o'clock in the . . . . . noon on the . . . . day of . . . . . 20 . . . .

*Dated this . . . . . day of . . . . . 20 . . . . .*

*Company Liquidator*

## FORM WIN 30

[See rule 47]

## BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Company Petition No. . . . . of . . . . 20 . . . .*

*Notice to officers of company to attend meeting of creditors or contributories*

To

.....  
.....

Take notice that a [the first] meeting of creditors [or contributories] will be held on the . . . . . day of . . . . . 20 . . . . . , at . . . . . o'clock in the . . . . . noon at (here insert the place where the meeting is to be held) and that you are required to attend thereat and give such information as the meeting may require.

*Dated this . . . . . day of . . . . . 20 . . . . .*

*Company liquidator*

## FORM WIN 31

[See rule 48]

## BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Company Petition No. . . . . of 20 . . . . .*

*Affidavit as to the posting of notices of meeting*

I . . . . . (name and description) of etc., solemnly affirm and say as follows :—

1. That I did on the . . . day of . . . . 20 . . . , send to each creditor mentioned in the company's statement of affairs [and to each contributory mentioned in the Register of Members of the company] a notice of the time and place of the (respective) meeting(s) of creditors (and contributories) in the form(s) annexed hereto and marked "A" \*(and "B").

2. That the notices for creditors were addressed to the said creditors respectively according to their respective names and addresses appearing either in their proofs or in the statement of affairs or in the books of the company, or to the last known addresses of such creditors [and that the notices for contributories were addressed of the contributories respectively according to their respective names and addresses appearing in the Register of the company or to their last known addresses.]

3. That I further sent to each of the officers of the company mentioned below at their respective addresses a notice of the time and place of the (respective) meeting(s) of creditors (and contributories) in the Form annexed hereto and marked "C"\*\*.

4. That I sent the notices by putting the same pre-paid into the post office at . . . . before the hour of . . . . o'clock in the . . . . noon on the said day.

[5. That the notice was also advertised in (here set out the newspapers) dated . . . and copies of the said newspapers containing the advertisement are herewith annexed.]

. . . . .  
*Deponent*

Solemnly affirmed, etc.  
\*Form of the notice(s) sent to be annexed.  
Omit what is not required.  
\*\*FORM WIN 32.  
To be inserted where the notice of meeting was advertised.

FORM WIN 32  
[See rule 50]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT . . . . .**

**IN THE MATTER OF . . . . . LTD. (give the name of the company)**  
(Company incorporated under Companies Act, . . . . .)

*Company Petition No. . . . . of 20 . . . . .*  
*Nomination of chairman by company liquidator*

I . . . . . , the company liquidator of the above-named company, do hereby nominate . . . . . (name and description) of . . . . . to be chairman of the meeting of creditors (or contributories) in the above matter appointed to be held at . . . . . on the . . . . . day of . . . . . 20 . . . . . , and I depute him to attend such meeting and use, on my behalf, any proxy or proxies held by me in this matter.

*Dated this . . . . . day of . . . . . 20 . . . . .*

*Company liquidator*

FORM WIN 33

[See rule 64(2)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (give the name of the company)

(Company incorporated under Companies Act, . . . . .)

Company Petition No. . . . . of 20 . . . . .

List of creditors (or contributories) present at a meeting

Meeting held at . . . . this . . . . day of . . . . 20

Consecutive Number	Name of creditor (or contributory) present or represented	Amount of proof (for number of shares and votes held by each contributory)	
		In person	By proxies
1			
2			
3			
4			
5			
6			
7			
	Total number of creditors (or contributories) present or represented.		

Company liquidator

FORM WIN 34

[See rule 65]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (give the name of the company)

(Company incorporated under Companies Act, . . . . .)

Company Petition No. . . . . of 20 . . . . .

Report of result of meeting(s) of creditors/contributories held under order of Tribunal dated . . . . 20 . . . .

I . . . . . name, company liquidator of the Tribunal and Chairman of the meeting(s) of the creditors/contributories held in pursuance of the order of the Tribunal dated . . . . 20 . . . . , do hereby report the result of the said meeting(s) :

1. In pursuance of the order of the Tribunal dated 20 . . . . , a meeting of the creditors/ contributories of the above company was summoned by advertisement in (here enter the newspaper or newspapers) of the date(s) . . . 20 . . . , and was held on the day of . . . 20 . . . . at . . . o'clock in the . . . noon at . . . . I was the Chairman of the said meeting.

2. The said meeting was attended either personally or by proxy by . . . . creditors of the said company whose proofs of debts against the company were admitted (or admitted for voting purposes) amounting in the whole (as admitted) to the value of Rs. . . . . [or by contributories of the said company holding in the whole . . . . . shares of the said company] and entitled to . . . . . votes.

3. The question(s) submitted to the said meeting was (were) :  
[Here set out the question(s) submitted to the meeting].

4. At the said meeting it was resolved unanimously [or as a result of the voting as set out below] as follows :  
[Here set out the resolution(s) passed at the meeting].

Resolutions	Voting on resolutions					
	For			Against		
	No.	Amount	No.	Amount	No.	Amount
State the substance of any resolution passed . . . . .						
Creditors : . . . . .						
Contributories : . . . . .						
	No.	Shares	Votes	No.	Shares	Votes

Dated this . . . . . day of . . . . . 20 . . . . .

Company liquidator

FORM WIN 35

[See rule 67]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (give the name of the company)

(Company incorporated under Companies Act, . . . . .)

Company Petition No. . . . . 20 . . . . .

Form of general proxy

I/We . . . . . of . . . . . a creditor [or contributory] of the above-named company, hereby appoint . . . . . of . . . . . as my/our general proxy to vote for me/us and on my/our behalf at the meeting of creditors [or contributories] of the said company summoned to be held in the above matter on the . . . . . day of . . . . . 20 . . . . ., and at any adjournment thereof.

*Dated this . . . . . day of . . . . . 20 . . . . .*

*Sd. A. B.*

*Notes :*

1. It is open to a creditor or contributory to appoint the company liquidator or if there is no liquidator, the Chairman of the meeting to act as his proxy.
2. If the proxy is given by a firm, sign the firm's trading name and add by A. B. a partner in the said firm. If the proxy is given by a corporation, then the form of the proxy must be under its common seal or under the hand of some officer duly authorised in that behalf, and the fact that the officer is so authorised must be stated.
3. The proxy form when signed must be lodged with the company liquidator within the time mentioned in the notice convening the meeting at which it is to be used.

FORM WIN 36

[See rule 67]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Company Petition No. . . . . 20 . . . . .*

*Form of special proxy*

I/We . . . . . of . . . . . a creditor [or contributory] hereby appoint . . . . . as my/our proxy at the meeting of creditors [or contributories] to be held on the . . . . . day of . . . . . 20 . . . . ., or at any adjournment thereof, to vote. [Here insert the word "for" or the word "against", as the case may require, and specify the particular resolution] the resolution numbered . . . . . in the notice convening the meeting.

*Dated this . . . . . day of . . . . . 20 . . . . .*

*Sd.  
A. B.*

*Notes :*

1. It is open to a creditor or contributory to appoint the company liquidator or if there is no liquidator, the Chairman of the meeting to act as his special proxy.
2. If the proxy is given by a firm, sign the firm's trading name and add "by A. B., a partner in the said firm. If the proxy is given by a corporation, then the form of proxy must be under its common seal or under the hand of some officer duly authorised in that behalf, and the fact that he is so authorised must be stated.
3. The proxy form when signed must be lodged with the company liquidator within the time mentioned in the notice convening the meeting at which it is to be used.
4. Where the person giving proxy wishes to give instructions regarding voting on any amendments that may be moved or as the case may be, such instructions may be noted in the proxy if so desired.

FORM WIN 37  
[See rule 76]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT . . . . .**

**IN THE MATTER OF . . . . . LTD.** (*give the name of the company*)  
(Company incorporated under Companies Act, . . . . .)

*Company Petition No. . . . . 20 . . . . .*  
Dated . . . . .

*Quarterly Report with respect to progress of winding up under  
section 288(1) of the Companies Act, 2013*

I, . . . . . (name), Company Liquidator of the above named company, in accordance with section 288(1) of the Companies Act, 2013, do hereby report the progress of winding up during this quarter :—

1. Details of meetings held during the quarter :—
  - (a) Number of meetings :
  - (b) Dates :
  - Contributory/creditors/members meeting
  - (d) Agenda
2. Decision taken at the meetings
3. Steps taken by the company liquidator for proceeding to winding up
4. Pending actions for winding up
5. Any other important information needs to reported

(*Sd.*)  
Company liquidator

FORM WIN 38  
[See rule 78]

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENCH AT . . . . .**

**IN THE MATTER OF . . . . . LTD.** (*give the name of the company*)  
(Company incorporated under Companies Act, . . . . .)

*Company Petition No. . . . . 20 . . . . .*  
*Name of Company : . . . . . Limited*

*Presented by : . . . . . (Professional appointed to assist company liquidator)*  
*Declaration disclosing conflict of interest or lack of independence under  
section 291 of the Companies Act, 2013*

I, . . . . ., s/o, . . . . . t/o, . . . . ., have been appointed by the company liquidator vide letter dated . . . . . to assist him in the performance of his duties and functions under the Companies Act, 2013.

I solemnly affirm and declare that I am not having any conflict of interest/lack of independence in respect of my appointment as assistant to the company liquidator of the above named company.

Or

I solemnly affirm and declare that I have the following interest in the above named company which may affect my independence in respect of my duties.

And I make this solemn declaration believing the same to be true.

Solemnly affirmed and declared at . . . . . the . . . . . day of . . . . . 20 . . . . ., before me.

Professional appointed

FORM WIN 38A

[See rule 80]

Register of liquidations

Company Petition No. . . . . of 20 . . . . .

Name of the company . . . . . (in liquidation)

Name of petitioner . . . . .

By representative Shri . . . . .

<i>Date of presentation of petition for winding up</i>	<i>Date of order if any, appointing Provisional Liquidator</i>	<i>Date of winding up order</i>	<i>Date of communication to company liquidator of orders in columns 2 &amp; 3</i>	<i>Dates of taking possession of the books and papers and assets of the company</i>	<i>Date when notice, if any was issued to officers of the company for submission of statement of affairs</i>	<i>Date of submission of statement of affairs</i>	<i>Date of filing report by company liquidator under section 281(1)</i>	<i>Date of applications for directions under rule 38(3) and date of order on application</i>
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

<i>If Advisory Committee is appointed, date of appointment</i>	<i>Date of filing of further report(s) by company liquidator under section 281(4), if any</i>	<i>Date of examination, if any</i>	<i>Date of misfeasance summons against promoters and officers of company, if any</i>	<i>Date fixed for filing proofs of claims against the company</i>	<i>Date of settlement of list of creditors</i>	<i>Date of filing provisional list of contributions</i>	<i>Date of settlement of final list of contributions</i>	<i>Dates and rates of calls made, if any date rate</i>
(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)



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<i>Dates of filing company liquidator accounts into Tribunal</i>	<i>Dates and rates of dividends (mention preferential or ordinary)</i>	<i>Dates and rates of return of share capital</i>	<i>Dates of deposit of unclaimed dividends or undistributed assets under section 352(1)</i>	<i>Date of order for dissolution of the company</i>	<i>Date of filing the order of dissolution with the Registrar of companies</i>	<i>Date of deposit into the Scheduled bank of unclaimed dividends or undistributed assets of the company under section 352(2)</i>	<i>Date and manner of disposal of the books and papers of the company</i>	<i>Remarks</i>
(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)	(27)

## Assets

- A. 1. Cash on hand . . . . .  
 2. Balance with banks . . . . .  
 3. Investments :  
 (a) Government Securities . . . . .  
 (b) Other investments . . . . .

B. *Immovable Properties*

<i>*Serial number</i>	<i>Description of property</i>	<i>Estimated value</i>
1	2	3

C. *Other property*

<i>*Serial number</i>	<i>Description of property</i>	<i>Estimated value</i>
1	2	3

## D. Approximate amount of debts and outstandings to be realised—Rs. . . . .

Approximate amount of debts and liabilities to be paid—Rs. . . . .

E. *Amount of debts and outstandings realised (give progressive total)*

<i>After 6 months</i>	<i>After 12 months</i>	<i>After 18 months</i>	<i>After 24 months</i>
1	2	3	4

F. *Costs and expenses in liquidation*

<i>After 6 months</i>	<i>After 12 months</i>	<i>After 18 months</i>	<i>After 24 months</i>
1	2	3	4

G. *Remarks :*

*\*Note.*—Where the properties are too many to be entered here, give reference to the Register of Assets and mention the number of items, and the total estimated value of the properties.

FORM WIN 38B

[See rule 80]

Central Cash Book

(Cash Book of the Company Liquidator)

Receipts						Payments						
Date	Name of company	Particulars of receipt	Number of receipt	Cash	Bank	Date	Name of company	Particulars	Number of voucher or challan	Cash	Bank	Number of cheques
				Rs. P.	Rs. P.					Rs. P.	Rs. P.	
1	2	3	4	5	6	7	8	9	10	11	12	13

*Instructions :*

1. This register is common to all the liquidations administered by the company liquidator, and the day to day transactions of the company liquidator should be entered in this Register chronologically. Sufficient details should be entered under the column "particulars" to show clearly the nature of the transaction, the person by whom or to whom the payment was made, and on what account it was made.
2. All cash and cheques received by the company liquidator should, upon their receipt, be entered on the Receipts Side Under "Cash" and "Bank" respectively. When the cash collections are paid into the Bank by the company liquidator, an entry against cash on the Payments Side should be made, and a corresponding entry made under Bank on the Receipts Side. Where money is withdrawn from the Bank by cheque, the amount should be entered as a Payment under "Bank", on the Payments Side and entered as a receipt under "Cash" on the Receipts Side.
3. Where a cheque paid into the Bank is returned dishonoured, the entries previously made in the account in regard to it should be reversed by appropriate reverse entries.
4. Cash and cheques should be remitted into Bank under separate challans, and remittances in respect of each company should be made under a separate challan.
5. Vouchers for payments made by the company liquidator should be obtained at the time of making payment, and they should be numbered consecutively in a separate series for each half year. Receipts for payments made to the company liquidator should be issued out of a counterfoil receipt book, the leaves of which are machine numbered consecutively.
6. Where the liquidator carries on a business, only the weekly totals of the Receipts and Payments on the trading account should be brought into the Central Cash Book and the Company's Cash Book from the books of the trading account.
7. Where dividends are paid to creditors, only the total amounts of the dividends paid each day must be entered in the Central Cash Book and the Company's Cash Book and the details of individual payments made should be entered in the Dividends Paid Register.

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8. Cash Books should have their pages machine numbered. As far as possible no lines should be left blank, but if any space on a page of the Cash Book has to be left blank a diagonal line should be drawn to cancel the blank space, so that it may not be possible to make any subsequent entries therein. Interpolation of entries should be avoided, but when it becomes necessary to make any entries between two ruled lines or to make any additions to, or interpolation between, entries already made, such addition or interpolation should invariably be attested and dated by the liquidator under his initials.
9. The Cash Book should be balanced at the end of each day and the Cash and Bank Balances carried over to the following day. The Cash on hand should be verified daily by some responsible officer, and at least once a month by the Company Liquidator personally. A certificate of verification of Cash by actual count should be recorded in the Cash Book by the Officer verifying the Cash. The Cash Book should be closed monthly under the personal attestation of the Company Liquidator. The Bank balances should be reconciled with the Bank Statement at the end of each month, after taking into account factors arising out of cheques drawn but not cashed, or remittances made but adjusted in the Bank's Books in the accounts of a different month.
10. The total of the Cash and Bank Balances of all the companies should be tallied with the balances in the Central Cash Book once every month and a certificate should be recorded in the Register that the total of the balances in the individual companies' accounts agrees with the consolidated balance in the Central Cash Book.

FORM WIN 38C

[See rule 80]

Company's Cash Book

Company Petition No. . . . . . of 20 . . . . .

Name of Company . . . . . (In liquidation)

Date	Particulars	Ledger Folio	Receipt number	Receipts			Voucher number	Payments			Balance		
				Cash	Bank	Total		Cash	Bank	Total	Cash	Bank	Total
1	2	3	4	5	6	7	8	9	10	11	12	13	14

*Instructions :*

1. There should be a separate Cash Book for each company.
2. The entries in the Cash Book should be posted from the receipts and vouchers relating to the company and checked with the corresponding entries in the Central Cash Book.
3. Under particulars', the head of account to which the entry relates should be indicated so that the entry may be posted under the proper head in the General Ledger.
4. The instructions regarding the filling up of Bank and Cash columns in the Central Cash Book apply in the case of this Cash Book also.

5. The total of the Cash and Bank balances of all the companies should be tallied with the balances in the Central Cash Book once every month.

## FORM WIN 38D

[See rule 80]

General Ledger

Company Petition No. . . . . of 20 . . . . .

Name of Company . . . . . (In liquidation)

. . . . . (Head of account)

Date	Particulars	Dr.	Cr.	Balance
		Rs. P.	Rs. P.	Rs. P.
1	2	3	4	5

*Instructions :*

- A General Ledger should be maintained for each company with such heads of account as the company liquidator may think necessary and appropriate. The following heads of account may be found suitable:—
  - Property account
  - Investments account
  - Book debts and outstandings account
  - Calls
  - Rents collected
  - Interest on securities and deposits
  - Advances received
  - Miscellaneous receipts payments
  - Establishment
  - Legal charges
  - Rents, Rates and Taxes
  - Fees and Commission account
  - Other expenses
  - Suspense account
  - Secured creditors and preferential
  - Dividend account
- The entries in the General Ledger should be posted from the Company's Cash Book.
- The total of the debit balances and the total of the credit balances of the several heads of account in the General Ledger should agree, after taking into consideration the cash and bank balances as shown in the Company's Cash Book. The totals should be tallied once a month.

## FORM WIN 38E

[See rule 80]

*Cashier's Cash Book*

Date	Particulars	Amount received	Amount paid	Balance
		Rs. P.	Rs. P.	Rs. P.
1	2	3	4	5
Opening balance				
Closing balance				

*Instructions :*

1. The opening and closing balances should be struck for each day.
2. Under "particulars" it should be shown by whom or to whom and on what account the payment is made.
3. The number of the challan or receipt should also be given.

## FORM WIN 38F

[See rule 80]

*Bank Ledger**Company Liquidator's account with the Scheduled Bank*

Date	Particulars	Deposits		Withdrawals		Balance
		Challan Number	Rs. P.	Cheque Number	Rs. P.	Rs. P.
1	2	3	4	5	6	7

## FORM WIN 38G

[See rule 80]

*Register of assets*

Company Petition No. .... of 20 ....

Name of Company ..... (in liquidation)

Sl. No.	Description of assets	Date of taking possession	Serial number of Sales Register	Date of sale	Date of realisation	Amount	Remarks
1	2	3	4	5	6	7	8

*Instructions :*

All the property of the company except the Liquidator's investments in securities and outstandings to be realised should be entered in this Register.

## FORM WIN 38H

[See rule 80]

*Securities and Investment Register*

<i>Sl. No.</i>	<i>Company petition number and name of the company</i>	<i>Date of investment</i>	<i>Nature and particulars of security in which investment is made</i>	<i>Amount invested</i>	<i>Dividend or interest received with date of receipt</i>	<i>Date of disposal</i>	<i>Remarks</i>
1	2	3	4	5	6	7	8

## FORM WIN 38-I

[See rule 80]

*Register of book-debts and outstandings  
(Debtors' Ledger)*

Company Petition No. . . . . of 20 . . . .

Name of company . . . . . (in liquidation)

<i>Sl. No.</i>	<i>Name and address of debtor</i>	<i>Particulars of debt</i>	<i>Amount due</i>	<i>Date of bar by limitation</i>	<i>Action taken</i>	<i>Amount realised</i>	<i>Date of realisation</i>	<i>Reference to Suits register</i>	<i>Remarks</i>
1	2	3	4	5	6	7	8	9	10

*Instructions :*

All debts due to the company, both secured and unsecured, including amounts due for arrears of calls made prior to the winding-up, should be entered in this Register.

## FORM WIN 38J

[See rule 80]

*Tenants Ledger*

Company Petition No. . . . . of 20 . . . . .

Name of company . . . . . (In liquidation)

1. Description of property :
2. Name and address of tenant :
3. Date of tenancy :
4. Period of tenancy :
5. Rent (monthly or annual) :
6. Special terms, if any :
7. Arrears on date of taking charge of property :
8. Advance received, if any :

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19/20 . . . . . Month	Demand Amount	Realisation		Balance Amount	Remarks
		Date	Amount		
	Rs. P.		Rs. P.	Rs. P.	
1	2	3	4	5	6
January					
February, etc.					

## FORM WIN 38K

[See rule 80]

## Suits Register

Company Petition No. . . . . . of 20 . . . . .

Name of company . . . . . (In liquidation)

Sl. No.	No. of suit or appeal and court	Name and address of plaintiff/ appellant and his advocate	Name and address of defendant/ respondent and his advocate	Amount of claim	Date of filing	Dates of hearing	Date of decree or final order	Nature of relief granted	Amount decreed	Costs decreed	Reference to decree register	Remarks
1	2	3	4	5	6	7	8	9	10	11	12	13

## Instructions :

1. A single register may be maintained for all the companies in liquidation, but the register should be maintained company-wise, sufficient number of pages being allotted to each company.
2. Applications made by or against the company which are in the nature of suits should also be entered in this Register.

## FORM WIN 38L

[See rule 80]

## Decree Register

Company petition number and name of company	Number of suit or appeal and court	Name and address of judgment debtor	Amount decreed	Date of decree	Action taken	Amount realised	Date of realisation	Reference to Suits register
1	2	3	4	5	6	7	8	9

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COMPANY CASES (STATUTES)

[VOL. 220]

*Instructions :*

1. This Register is common to all the liquidations, the purpose of the Register being to enable the official liquidator to keep watch on the progress of the realisation of decrees in favour of the companies in his charge.
2. Every decree or order for payment of money or delivery of property in favour of the company including an order for payment of costs whether made in a suit, appeal or application, should be entered in this Register.

## FORM WIN 38M

[See rule 80]

*Sales Register*

Sl. No.	Company petition number and name of company	Serial number of assets register	Description of property	Estimated value	Date of sale	Method of sale public or private)	Name and address of purchaser	Highest bid	Sale price & date of confirmation
1	2	3	4	5	6	7	8	9	10

Advance received with date	Interest realised, if any	Balance realised		Cost of sale		Amount paid or adjusted against mortgage, if any	Date of payment or adjustment	Remarks
		Date	Rs. P.	Nature of expenditure	Rs. P.			
11	12	13	14		15	16	17	

*Instruction :* This Register is common to all the liquidations administered by the company liquidator, and entries in this Register should be made as and when sales of property are held.

## FORM WIN 38N

[See rule 80]

*Register of claims and dividends*

Petition No. . . . . . of 20 . . . . .

Name of company . . . . . (in liquidation)

Claims						Dividends declared and paid										Remarks
Sl. No.	Name & address of creditor	Amount claimed	Nature of claim	Amount admitted	Whether ordinary or preferential	Date	Amount	Date and mode of payment	Rate	Amount	Date and mode of payment	Rate	Amount	Date and mode of payment	Rate	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	

*Instructions :*

1. Only claims admitted either wholly or in part should be entered in this Register.



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2. The page on the left side should be reserved for claims and the page on the right side for Dividends.

## FORM WIN 38-O

[See rule 80]

## Contributories' Ledger

Petition No. . . . . of 20 . . . . .

Name of company . . . . . (in liquidation)

Sl. No.	Name and address of contributory	Number of shares or extent of interest held, and amount paid thereon	Calls			Remarks	Returns of share capital			Remarks
			First call		2nd call/ 3rd call		Rate of return	Date of payment	Amount paid	
			Date of call and amount called	Amount paid and date of payment						
1	2	3	4	5	6 to 9	10	11	12	13	14

## Instruction :

Only contributories settled on the list should be entered in this Register and they should be entered in the same order as in the list.

## FORM WIN 38P

[See rule 80]

## Dividends paid register

Petition No. . . . . of 20 . . . . .

Name of company . . . . . (in liquidation)

Date on which dividend is payable :

Total dividend payable in respect of the declaration

Date	Number on list of creditor	Particulars	Receipts	Payments
1	2	3	4	5

## Instructions :

1. Separate pages should be set apart for preferential and ordinary dividends.
2. The payments should be entered as and when they are made. Any amount which is returned unpaid should be re-entered in the account under "Receipts".
3. The number in column 2 should be the number of the creditor in the list of creditors as finally settled.

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4. The total amount of unclaimed dividends payable into the Reserve Bank of India, and the amount paid into the Bank with the date of payment, should be shown at the end of the account.

5. An account on similar lines should, if necessary, be maintained in respect of share capital returned to contributories.

## FORM WIN 38Q

[See rule 80]

*Suspense Register*

Company Petition No. . . . . of 20 . . . . .

Name of Company . . . . . (in liquidation)

<i>Date</i>	<i>Particulars</i>	<i>Debit</i>	<i>Credit</i>	<i>Balance</i>
1	2	3	4	5

*Instructions :*

1. This Register should be kept company-wise.
2. Advances made by the official liquidator to any person or made to the company Liquidator by any person should be entered in this Register.
3. There should be a separate opening for each person.

## FORM WIN 38R

[See rule 80]

*Documents Register*

Company Petition No. . . . . of 20 . . . . .

Name of company . . . . . (in liquidation)

<i>Sl. No.</i>	<i>Description of document</i>	<i>Date of receipt</i>	<i>From whom received</i>	<i>Reference number of shelf in which document is kept</i>	<i>How disposed of</i>	<i>Remarks</i>
1	2	3	4	5	6	7

*Instruction :* All documents of title like title-deeds, shares, promissory notes, etc., should be entered in this Register.

## FORM WIN 38S

[See rule 80]

*Books Register*

Petition No. . . . . of 20 . . . . .

Name of company . . . . . (in liquidation)

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Date	From whom received	Serial Number	Description of books including files	Shelf number	How disposed of	Remarks
1	2	3	4	5	6	7

*Instruction* : In this Register should be entered all books and files of the company which come into the hands of the liquidator.

## FORM WIN 38T

[See rule 80]

*Register of unclaimed dividends and undistributed assets deposited into the company liquidation dividend and undistributed assets account in the scheduled bank by the company liquidator*

Sl. No.	Name of person entitled to the dividend or return	Whether creditor or contributory	Number on list of creditors or contributories	Date of declaration of dividend or return	Rate of dividend or return	Total amount payable Rs. P.	Last date when payable
1	2	3	4	5	6	7	8

Date of payment into the companies liquidation dividend and undistributed assets account in the scheduled bank	Amount paid into Bank Rs. P.	Person by whom claim, if any, for the amount is made under section 352(6)	Date and nature of order made on the claim, if any	If refunded person to whom money is refunded	Amount refunded Rs. P.	Security taken, if any	Remarks
9	10	11	12	13	14	15	16

## FORM WIN 39

[See rule 92]

*Instructions regarding the preparation of the statement of account*

The following general instructions shall be observed in preparing the statements of account to be filed in Tribunal :—

1. The statement should be a detailed account of all the liquidator's realisations and disbursements in respect of the company. Under realisations should be entered all receipts derived from assets existing at the commencement of the winding up and subsequently realised, including balance in bank, book debts and calls collected, property sold, etc., and under disbursements should be entered all payments for costs and charges, or to creditors and contributories. Where property has been realised, the gross proceeds of sale must be entered under realisations, and the necessary payments incidental to sales must be entered as disbursements. The statement should not contain payments into or out of the Bank (which should be shown by the Bank pass book), nor the temporary investments by the liquidator or the proceeds of such investments when realised, which should be shown separately by a separate detailed statement of moneys invested by the Liquidator and the investments realised.

Interest allowed or charged by the Bank, Bank Commission etc., and profit or loss upon the realisation of temporary investments should, however, be inserted in the accounts of realisations or disbursements, as the case may be. Each receipt and payment must be entered in the account in such a manner as sufficiently to explain its nature. The receipts and payments must severally be added up at the foot of each sheet, and the totals carried forward, from one account to another without any intermediate balance, so that the gross totals shall represent the total amounts received and paid by the liquidator respectively.

2. Where the liquidator carries on a business, a trading account must be furnished as a distinct account, and only the totals of receipts and payments on the trading account must be brought into the statement.

3. When dividends or instalments of composition are paid to creditors, or a return of surplus assets is made to contributories, the total amount of each dividend, or instalment of composition, or return to contributories, actually paid, must be entered in the statement of disbursements as one sum ; and the liquidator must furnish separate accounts showing in lists the amount of the claim of each creditor, and the amount of dividend or composition payable to each creditor, and of surplus assets payable to each contributory, distinguishing in each list the dividends and instalments of composition and shares of surplus assets actually paid and those remaining unpaid.

4. When unclaimed dividends, instalments of composition or return of surplus assets are paid into the Company Liquidation Dividend and Undistributed Assets Account, the total amount so paid should be entered in the statement of disbursements as one sum.

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act. . . . .)

Petition No. . . . . of 20. . . . .

. . . . . Petitioner

*Exhibit "A" referred to in the affidavit of . . . . .*

*Solemnly affirmed this . . . . . day of . . . . . 20 . . . . .*

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Before me  
Commissioner

*Company liquidator's statement of account*

(To be filed under section 294(2) of the Companies Act, 2013)

1. Name of company :
2. Date of winding up order :
3. Date of commencement of winding up :
4. Period of account :

<i>Realisations</i>					<i>Disbursements</i>				
<i>Date</i>	<i>Of whom received</i>	<i>Nature of assets realised</i>	<i>Receipt No.</i>	<i>Amount Rs. nP.</i>	<i>Date</i>	<i>To whom paid</i>	<i>Nature of disbursement</i>	<i>Voucher No.</i>	<i>Amount Rs. nP.</i>
1	2	3	4	5	1	2	3	4	5
Brought forward carried forward					Brought forward carried forward				

*Notes.*—1. The statement should be made out in accordance with Instructions 1 to 4 herein.

2. No balance should be shown on this account, but only the total realisations and disbursements which should be carried forward to the next statement of account.

3. Only the total amount of dividends paid to creditors or capital returned to contributories should be included under disbursements, and the details should be given in the Annexure below.

*Analysis of balance*

Total realisations *Rs. P.*

Total disbursements

Balance

The balance is made up as follows :—

*Rs. P.*

1. Cash in hands of the Company Liquidator

2. Total payments into Bank including balance at date of commencement of winding up as per bank book

Total withdrawals from Bank

Balance at Bank

*Rs. P.*

\*3. Amounts invested by company liquidator

*Less :*

Amounts received by realisation of investment

Deduct profit or add loss on realisation of investment

(carried into account)

Balance under investment

Total balance as shown above

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\*Note.—Full details of investments made and realisations thereof should be given in a separate statement.

*Annexure to the Account*

*I. Calls made by the Company Liquidator :*

Date of call :

Rate of call :

Total amount of call :

Total amount realised on the call :

*II. Dividends declared :*

1. Date of declaration :

2. Rate of dividend :

3. If not declared, state reasons, and when declaration may probably be made :

(Where dividends have been declared and paid the following account should be furnished)

Number on list	Name of creditor	Amount of proof	Amount of dividend (or composition)	
			Paid Rs.	Unclaimed Rs.
			nP	nP
1	2	3	4	5
		Total		

*III. List of amounts paid and payable to contributories during the period of account*

Number on list	Name of contributory	Number of shares	Amount returnable on shares			
			Paid Rs.	nP	Unclaimed Rs.	nP
1	2	3	4		5	
		Total				

If any actions or other proceedings are delaying the close of the liquidation, state shortly the nature and probable duration thereof. State also any other circumstances tending to delay the winding up of the company, or affecting the realised value of the property or the costs of realisation.

*IV. Legal proceedings authorised*

Date of order authorising employment of representative	Name of representative	Nature of work authorised to be done	Limit of costs, if any
1	2	3	4

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## V. Liquidator's Trading Account\*

The company liquidator in account with the estate								
<i>Dr.</i>	<i>Receipts</i>				<i>Payments</i>		<i>Cr.</i>	
<i>Date</i>	<i>Particulars</i>	<i>Rs.</i>	<i>nP</i>	<i>Date</i>	<i>Particulars Total</i>	<i>Rs.</i>		<i>nP</i>
	<i>Total</i>							
<i>Date</i> . . . . .								

(Sd.)

Company Liquidator

\*To be furnished where the company liquidator carries on business.

FORM Win 40

[See rule 92]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20. . . . .

. . . . . Petitioner

*Affidavit verifying account*

I, . . . . ., the company liquidator of the above-named company solemnly affirm and say :—

That the account hereunto annexed and marked "A" contains a full and true account of my receipts and payments in the winding up of the above named company from the . . . day of . . . . . 20 . . . . ., to the . . . . . day of . . . . . 20 . . . . ., inclusive and that I have not nor has any other person by my order or for my use during such period, received or paid any moneys on account of the said company other than and except the items mentioned and specified in the said account.

I further say that the particulars in the annexed account marked "A" with respect to the proceedings in and position of the liquidation, are true to the best of my knowledge and belief.

Solemnly affirmed by the Company Liquidator at . . . . . this . . . . . day of . . . . . 20. . . . .

Before me.

Commissioner

Company liquidator

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FORM WIN 41

[See rule 92]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (give the name of the company)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20. . . . .

. . . . . Petitioner

Company liquidator's final account

1. Name of company :
2. Date of winding up order :
3. Date of commencement of winding up :
4. Period of account :

Realisations					Disbursements				
Date	Of whom received	Nature of assets	Receipt No.	Amount Rs. P.	Date	To whom paid	Nature of disbursement	Voucher No.	Amount Rs. P.
1	2	3	4	5	1	2	3	4	5
Brought forward Total					Brought forward Total				

*Note.*—The statement should be made out in accordance with the directions contained in the Form relating to the half-yearly statements.

#### *Analysis of Balance*

Rs. P.

Total realisations

Total disbursements

Balance

The balance is made up as follows :—

Rs. P.

1. Cash in hands of the company liquidator
  2. Total payments into Bank (including balance at date of commencement of winding up)
- Total withdrawals from Bank  
Balance at Bank  
Total balance as shown above

*(Trading account for the period, if any, to be attached)*

Subject to the directions of the Tribunal, it is proposed to pay the balance shown as above into the Company Liquidation Dividend and Undistributed Assets Account in the Scheduled Bank under section 352(2) of the Companies Act, 2013.



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## COMPANIES (WINDING UP) RULES, 2020

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Company Liquidator's report to accompany account

1. (i) Assets realised :

*As per statement of affairs, or where there is no statement of affairs, according to the liquidator's estimate	Assets at commencement of winding up		*Estimated value Rs. P.	Total realised from the assets Rs. P.	Remarks
	1. Property (as per register of Assets)				
2. Book debts and outstandings					
3. Surplus from securities					
4. Unpaid calls (prior to winding-up)					
5. Capital called up					
Total					

(ii) Assets which are unrealisable and should be written off : (Give particulars and state reasons why they could not be realised)

	Assets at the commencement of winding up	Estimated value	Reasons why they could not be realised and should be written off
1.	Property (as per Register of Assets)		
2.	Book Debts and Outstandings		
3.	Unpaid calls prior to winding-up		
4.	Capital not realised		

2. Liabilities :

	Amount due Rs. P.	Total amount paid by way of dividend or otherwise Rs. P.
1. Secured creditors		
2. Preferential creditors		
3. Debenture holders (secured by a floating charge)		
4. Unsecured creditors		
5. Return of capital to contributories		

3. Expenses of winding up

Rs. ....

4. Statement of unclaimed dividends and undistributed assets paid and payable into the Company Liquidation Dividend and Undistributed Assets Account in the Scheduled bank

Rs. nP.

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(a) Total amount of unclaimed dividends and undistributed assets paid into the Company Liquidation Dividend and Undistributed Assets Account as per previous account. Amount of unclaimed dividends and undistributed assets paid into the said account during the period of this account

Total

(b) Unclaimed dividends and undistributed assets pending payment into the Company Liquidation Dividend and Undistributed Assets Account in the Scheduled Bank.

5. Particulars of unclaimed dividends and undistributed assets paid into the Company Liquidation Dividend and Undistributed Assets Account in Scheduled Bank during the period of account :

<i>Number on list of creditors or contributories</i>	<i>Name and address of creditor or contributory</i>	<i>Amount of dividend or asset payable</i>	<i>Date of payment into Company Liquidation Dividend and Undistributed Assets Account</i>	<i>Remarks</i>
1	2	3	4	5

6. Particulars of unclaimed dividends or undistributed assets pending payment into the said account

<i>Number on list of creditors or contributories</i>	<i>Name and address of creditor or contributory</i>	<i>Amount of dividend or asset payable</i>	<i>Date when payable to creditor or contributory</i>	<i>Remarks</i>
1	2	3	4	5

Dated . . . . .

Company liquidator

FORM WIN 42

[See rule 94]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (give the name of the company)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

Requisition for audit of account

To

. . . . .

. . . . .

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## COMPANIES (WINDING UP) RULES, 2020

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Sir,

I am to enclose herewith a copy of the statement of account filed by the company liquidator relating to the above company in liquidation for the period from . . . . . to . . . . ., and to request that the said account may be audited with reference to the books and vouchers, kept by the company liquidator, under the Companies (Winding Up) Rules, 2020, and the orders of this Tribunal, and that upon such audit, a certificate of audit may be issued in regard to the said account and forwarded to this Tribunal with your observations thereon, if any, in duplicate, within one month from this date. A copy of the certificates of audit may also be forwarded to the company liquidator of this Tribunal for his reference.

*Yours faithfully,*  
Registrar.

Company liquidator

FORM WIN 43

[See rule 100]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

*Advertisement of notice to creditors to prove their claim*

Notice is hereby given to the creditors of the above-named company that they are required to submit to the company liquidator proofs of their respective debts or claims against the above-named company by delivering at the office of the company liquidator on or before the . . . . . day of . . . . . 20 . . . . ., or sending by post to the company liquidator so as to reach him not later than the said date, an affidavit proving the debt or claim in FORM WIN 44 with their respective names, addresses and particulars of debt or claim, and any title to priority under section 326/327. Any creditor who fails to submit his affidavit of proof within the time limited as aforesaid will be excluded from the benefit of any distribution of dividend before his debt is proved, or, as the case may be, from objecting to such distribution.

Any creditor who has sent in his proof, if so required by notice in writing from the company liquidator, shall either in person or by his representative, attend the investigation of such debt or claim at such time and place as shall be specified in such notice and shall produce such further evidence of his debt or claim as may be required.

Dated this . . . . . day of . . . . . 20 . . . . .

. . . . .  
Company liquidator

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COMPANY CASES (STATUTES)

[VOL. 220]

FORM WIN 44

[See rule 103]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Petition No. . . . . of 20 . . . . .**Affidavit of proof of debt*

I, . . . . . of, etc. (full name, address and occupation of deponent to be given) do solemnly affirm and state as follows :—

1. The above-named company was, at the date of the order winding up the same\*, viz., the . . . . . day of . . . . . 20 . . . . ., and still is, justly and truly indebted to me [or to me and C.D., and E.F., my co-partners in trade, or, as the case may be,] in the sum of Rs. . . . . for [here state consideration, e.g., goods sold and delivered by me/my firm to the said company between the dates of . . . . . or monies advanced by me/my firm in respect of the under mentioned bill of exchange, or as the case may be], as shown by the account in the schedule below.

2. In respect of the said sum or any part thereof, I say I have not, nor have my partners or any of them, nor has any person, by my/our order, to my/our knowledge or belief, for my/our use, had or received any manner of satisfaction or security whatsoever, save and except the following :—

[Here state the particulars of all securities held, and where the securities are on the property of the company, assess the value of the same, and if any bills or other negotiable securities be held specify them in the schedule.]

[If the claim is made as a preferential claim, say so and set out the grounds on which the preference is claimed.]

SCHEDULE

*Bills of Exchange*

<i>Date</i>	<i>Drawer</i>	<i>Acceptor</i>	<i>Amount Rs. P.</i>	<i>Due Date</i>

*Particulars of account referred to*

(Credit should be given for contra accounts)

<i>Date</i>	<i>Consideration</i>	<i>Amount Rs. P.</i>	<i>Remarks The vouchers (if any) by which the account can be substantiated should be set out here</i>

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## COMPANIES (WINDING UP) RULES, 2020

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Solemnly affirmed at . . . . . on . . . . .  
 . . . . . day, the . . . . . day of . . . . . 20 . . . . .  
 Before me  
 Commissioner.

*Deponent's signature*

*Notes :*

1. Bills of exchange or negotiable securities must be produced before the proof can be admitted.
  2. The proof cannot be admitted for voting at the first meeting unless it is properly completed and lodged with the company liquidator before the time named in the notice convening the meeting.
  3. Where the affidavit is not by the creditor, but by some person authorised by him, the deponent should state in a separate paragraph his authority for making the affidavit and the means of his knowledge, and suitable alterations should be made in paragraphs 1 and 2 above and the name, address and description of the creditor should be set out in paragraph 1.
- \*Where before the presentation of the petition for winding up, a resolution has been passed by the company for winding up, the date of the said resolution must be substituted for the date of the winding up order.

FORM WIN 45

[See rule 104]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

*Proof of debt of workmen*

I, . . . . . of, etc. ((fill in full name, address and occupation of deponent), on behalf of the workmen and others employed by the above-named company, solemnly affirm and say :—

That the above-named company was, on the . . . . . day of . . . . . 20 . . . . . , and still is justly and truly indebted to the several persons whose names, addresses and descriptions appear in the Schedule below in sums severally set against their names in column 7 of the said Schedule for wages due to them respectively as employees or others in the employees of the company, in respect of services rendered by them respectively to the company during such periods as are set out against their respective names in column 5 of the said Schedule, and for the accrued holiday remuneration so due to them in respect of such periods as are so set out in column 6 of the aforesaid Schedule, for which said sums or any part thereof, I say that they have not, nor has any of them, had or received any manner of satisfaction or security whatsoever.

.....

*Deponent*

CN—220—8

## SCHEDULE

Sl. No.	Full name of workmen	Address	Description	Period over which wages due	Period over which accrued holiday remuneration due	Amount due
						Rs. P.
1	2	3	4	5	6	7

Solemnly affirmed, etc.

.....  
Deponent's signature

FORM WIN 46

[See rule 111]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT .....

IN THE MATTER OF ..... LTD. (give the name of the company)

(Company incorporated under Companies Act, .....

Petition No. .... of 20 .....

..... Petitioner

*Notice to a creditor to attend the investigation or produce further evidence*

To

.....  
.....

Take notice that pursuant to rule 111 of the Companies (Winding Up) Rules, 2020 you are hereby required to attend before the company liquidator at his office in person or by representative on .... day, the ..... day of ..... 20 ....., at ..... o'clock in the ..... noon for the investigation of your debt or claim against the above-named company and furnish further evidence in support of your proof against the above-named company.

The further evidence required is as follows :—

\*\* \* \* \*

And take further notice that unless the above evidence is produced to the company liquidator on or before the said date, your said proof is liable to be rejected.

Dated this ..... day of ..... 20 .....

.....  
Company liquidator

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## COMPANIES (WINDING UP) RULES, 2020

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FORM WIN 47

[See rule 115]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, 1956/2013 having CIN . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

*Notice of rejection of proof of debt*

To

. . . . .  
. . . . .

Take notice that as the Company Liquidator of the above-named company, I have this day rejected your claim against the company [or to the extent of Rs. . . .]. on the following grounds :—

\*\* \* \* \*

And take further notice that, subject to the power of the Tribunal to extend the time, no application to reverse or vary my decision in rejecting your proof will be entertained after the expiration of twenty-one days from the date of the service of this notice.

Dated this . . . . . day of . . . . . 20 . . . . .

. . . . .  
Company liquidator

FORM WIN 48

[See rule 115]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

*Notice of admission of proof*

To

. . . . .  
. . . . .

You are hereby informed that your claim against the above-named company has been allowed at the sum of Rs. . . . . .

(Sd) . . . . .

Company Liquidator

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COMPANY CASES (STATUTES)

[VOL. 220]

FORM WIN 49

[See rule 116]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Company Petition No. . . . . of 20 . . . . .

*Appeal No. . . . . of 20 . . . . .**Creditor—Applicant**Appeal by creditor*

The appeal of (full name, description, occupation and address of applicant) showeth :—

1. The address of the appellant for the service of all notices, processes, etc., is Shri . . . . .  
 . . . at . . . . .
2. The company named, viz., . . . . . (hereinafter referred to as 'the company') was incorporated in the month of . . . . . 19 . . . . . /20 . . . . ., under the (Companies Act, . . . . .) as a public (private) company limited by shares/limited by guarantee/as an unlimited company.
3. The registered office of the company is situated at . . . . .
4. The nominal capital of the company is Rs. . . . . divided into . . . . . shares of Rs. . . . . each. The amount of capital paid up or credited as paid-up is Rs. . . . . (or as the case may be.)
5. The order for the winding up the company has been passed on . . . . . The order for appointment of Company Liquidator has been passed by the Tribunal on . . . . .
6. The Company Liquidator has settled the list of creditors and the amount of debts or claims after following the due procedure of calling all the creditors to prove their claims.
7. The decision of the liquidator accepting or rejecting the proof in whole or in part has been communicated to the concerned creditors.
8. The appellant has also received the decision in which the whole/ part of the claim has been rejected by the Liquidator.
9. The appellant therefore prays that for the reasons . . . . . (state the reasons), the records be called for, this appeal be allowed, the decision about the appellant's debt's under the list settled by the liquidator be set aside and quashed, and orders deemed just and proper be kindly passed.

Dated this . . . . . day of . . . . . 20 . . . . .

*Appellant*



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## COMPANIES (WINDING UP) RULES, 2020

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FORM WIN 50

[See rule 119]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

*Certified list of proofs tendered to, and admitted or rejected by, the company liquidator*

I, . . . . ., Company liquidator of the above-named company, hereby certify that the following is a correct list of all creditors who submitted their proofs of debts or claims against the said company pursuant to advertisement, dated the . . . day of . . . 20 . . ., and the notices issued individually to the creditors. I further certify that in the first part of the said list are set out debts and claims admitted by me in full or in part, and the amounts admitted altogether amount to Rs. . . . . In the second part are set out the claims which have been wholly rejected by me.

*First Part**Debts and claims admitted wholly or in part*

<i>Sl. No.</i>	<i>Name, address and description of creditor</i>	<i>Particulars of debt or claim</i>	<i>Amount claimed</i>	<i>Amount admitted</i>	<i>Whether admitted as preferential</i>

*Second Part**Claims which have been wholly rejected*

<i>Sl. No.</i>	<i>Name, address and description of creditor</i>	<i>Particulars of debt of claim</i>	<i>Amount of claim</i>

(Sd.)

. . . . .  
Company liquidator

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[VOL. 220]

FORM WIN 51

[See rule 130]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

*Notice by company liquidator requiring payment of money or delivery of property, books, etc., to the company liquidator*

I, the undersigned, the company liquidator of the above-named company, hereby require you, the undermentioned . . . . . (name of person to whom notice is addressed) to pay to me (or deliver, convey, surrender, transfer to or into my hands) at my office the sum of Rs. . . . . being the amount appearing to be due from you on your account with the said company [or any money, property\*, books or papers] now in your hands and to which the said company is entitled [or otherwise, as the case may be].

Dated this . . . . . day of . . . . . 20 . . . . .

(Sd.)

Company liquidator

To

. . . . .

(Name and address of the person to whom the notice is addressed)

\*Property to be specifically described.

FORM WIN 52

[See rule 133]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . .)

Application No. . . . . of 20 . . . . .

Company Liquidator—Applicant

*Leave to make a call*

Let the several persons whose names and addresses are set forth in the second column of the Schedule hereto, being contributories of the above-named company, as shown in the third column of the said Schedule, attend the Tribunal on the . . . . day of . . . . . 20 . . . ., at . . . o'clock in the . . . noon, on the hearing of an application by the Company liquidator of the above-named company for leave of the Tribunal to make a call to the amount of Rs. . . . per share on all the contributories [or as the case may be] of the said

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## COMPANIES (WINDING UP) RULES, 2020

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company [and that notice of this may be given by advertisement without separate notice to each contributory].

*Dated this . . . . . day of . . . . . 20 . . . .*

*Company liquidator*

*Registrar*

## SCHEDULE

<i>No. on list</i>	<i>Name and address</i>	<i>In what character included</i>

[*Note.*—Where a copy of this has to be served on any contributory, only the particulars relating to such contributory need be set out in the Schedule to the copy to be served on him.]

FORM WIN 53

[*See rule 133*]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Application No. . . . . of 20 . . . .*

*Affidavit in support of application for leave to make a call*

I, A. B., the Company Liquidator of the above-named company, solemnly affirm and say as follows :—

1. The above-named company was, by the order of the Tribunal dated . . . . . day of . . . . . 20 . . . . , ordered to be wound up by the Tribunal.
2. The list of contributories of the said company was settled on . . . . day of . . . . 20 . . . . , and . . . . persons have been settled on the list in respect of the total number of . . . . shares.
3. I have in the Schedule hereunder set forth a statement showing the amount due in respect of the debts proved and admitted against the said company and the estimated amount of the costs, charges and expenses of and incidental to the winding up of the affairs thereof which several amounts form in the aggregate the sum of Rs. . . . . or thereabouts.
4. I have also in the said Schedule set forth a statement of assets in hand belonging to the said company amounting to the sum of Rs. . . . . and no more, out of which I have realised the sum of Rs. . . . . I estimate that the assets still remaining to be collected will realise approximately Rs. . . . .

There are no other assets belonging to the said company except the amounts due from certain of the contributories of the said company, and to the best of my information and belief, it will be impossible to realise in respect of the said amounts more than the sum of Rs. . . . . or thereabouts.

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COMPANY CASES (STATUTES)

[VOL. 220]

5. For the purpose of satisfying the several debts and liabilities of the said company and of paying the costs, charges and expenses of and incidental to the winding up of the affairs thereof. I believe the sum of Rs. . . . . will be required in addition to the amount I have now on hand and the amount still to be collected by realisation of the outstanding assets.

6. In order to provide the said sum of Rs. . . . . , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realising the amount required as before mentioned, it is necessary that a call of Rs. . . . . per share should be made.

## SCHEDULE

Solemnly affirmed etc.

*Company liquidator*

FORM WIN 54

[See rule 134]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Application No. . . . . of 20 . . . . .

*Advertisement of application for leave to make a call*

Notice is hereby given that the Tribunal has appointed . . . . . day the . . . . . day of . . . . . 20 . . . . . , at . . . . . o'clock in the . . . . . noon, for the hearing of an application by the Company Liquidator of the said company for leave to make a call to the amount of Rs. . . . . per share on the contributories of the said company [or as the case may be]. All persons interested may attend the Tribunal at the said day and hour and offer objections to the making of the said call.

Dated this . . . . . day of . . . . . 20 . . . . .

*Company Liquidator*

FORM WIN 55

[See rule 135]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Application No. . . . . of 20 . . . . .

Company Liquidator—Applicant

Before the Hon'ble Member of the Bench . . . . .

Dated : . . . . .

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## COMPANIES (WINDING UP) RULES, 2020

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*Order giving leave to make a call*

Upon the application of the company liquidator of the above-named company, and upon reading the order to wind up the above-named company, the list of contributories of the said company and the company liquidator's (or, the Tribunals) certificate of the final settlement of the same filed on the day . . . of . . . 20 . . . , the affidavit of the said company liquidator filed on the . . . day of . . . 20 . . . , and upon hearing, etc. IT IS ORDERED that leave be given to the Company Liquidator to make a call of Rs. . . . . . per share on all the contributories of the said company (or as the case may be); And it is ordered that each contributory do, on or before the . . . . . day of . . . 20 . . . , pay to the company liquidator at his office or into the scheduled bank to the credit of the special bank account of the said company, the amount due from such contributory in respect of such call.

*Dated this . . . . . day of . . . . . 20 . . . . .*

*(By the Tribunal)*

*Registrar*

FORM WIN 56

[See rule 135]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Application No. . . . . of 20 . . . . .*

*Document making a call*

I, A.B., the company liquidator of the above-named company, in pursuance of the order of Tribunal made herein dated the . . . . day of . . . . 20 . . . . , hereby make a call of Rs. . . . per share on all the contributories of the company, which sum is to be paid at the office of the company liquidator [or in the scheduled bank to the credit of the special bank account of the said company], on or before the . . . . . day of . . . 20 . . .

*Dated this . . . . . day of . . . . . 20 . . . . .*

*Company Liquidator*

FORM WIN 57

[See rule 136]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Application No. . . . . of 20 . . . . .*

*Notice to be served with order sanctioning call*

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COMPANY CASES (STATUTES)

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To

.....X.....Y.....

.....

Take notice that the amount due from you, X, Y, in respect of the call made pursuant to the leave given by the order of the Tribunal dated . . . . . 20 . . . . ., a copy of which is attached hereto, is the sum of Rs. . . . ., and that you should, on or before the . . . . . day of . . . . . 20 . . . . ., pay the said sum to the Company Liquidator at his office or into the Scheduled bank to the credit of the special bank account of the said company. If you wish to make the payment into the scheduled bank, you must produce this notice and the copy of the order hereto attached at the Bank to enable the Bank to receive payment, and after making the payment you should give forthwith notice thereof to the company liquidator enclosing with such notice the voucher obtained from the said bank in respect of the payment, in default whereof proceedings will be taken against you to enforce the order.

Dated this . . . . . day of . . . . . 20 . . . . .

Company Liquidator

FORM WIN 58

[See rule 137]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Application No. . . . . of 20 . . . . .

Company Liquidator—Applicant

*Application to enforce call*

Let all parties concerned attend the Tribunal on the . . . . . day of . . . . . 20 . . . . ., at . . . . . o'clock in the . . . . . noon, on the hearing of an application made by the company liquidator of the above named company for an order that the several persons named in the column 2 of the Schedule to this application, being respectively contributories of the above company be ordered to pay to the said company liquidator at his office or into the scheduled bank to the credit of the special bank account of the said company, the several sums set opposite their respective names in the column 6 of the said Schedule hereto, such sums being the amounts due from the said several persons respectively in respect of the call of Rs. . . . . per share, made by the applicant, with interest thereon at six per cent. per annum from the date of the order, and that the said several persons may be ordered to pay to the applicant the costs of and incidental to this application.

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## COMPANIES (WINDING UP) RULES, 2020

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## SCHEDULE

<i>Sl. No.</i>	<i>Name and description</i>	<i>Address</i>	<i>In what character included</i>	<i>Amount of call</i>	<i>Amount due</i>
(1)	(2)	(3)	(4)	(5)	(6)

Dated this . . . . . day of . . . . . 20 . . . . .

Company liquidator

Registrar

FORM WIN 59

[See rule 137]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Application No. . . . . of 20 . . . . .

Company Liquidator—Applicant

*Affidavit in support of application for payment of call*

I, A.B., company liquidator of the above-named company, solemnly affirm and say as follows :—

1. The contributories of the said company whose names are set forth in the Schedule to FORM WIN58 herein marked "A", have not paid the sums set opposite their respective names in the said Schedule, which sums are the amounts now due from them respectively under the call of Rs. . . . . per share duly made under the Companies Act, 2013, pursuant to the order of this Tribunal dated . . . . 20 . . . . , granting leave to make a call.
2. A copy of the said order dated . . . 20 . . . . , and a notice in FORM WIN57 specifying the amount due from each of the said contributories were duly served by registered post (or speed post, as the case may be) on such contributories respectively.
3. The respective amounts set opposite the names of such contributories respectively in the column 6 of the aforesaid Schedule are the true amounts now due and owing by them respectively in respect of the said call.

Solemnly affirmed etc.

Company Liquidator

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COMPANY CASES (STATUTES)

[VOL. 220]

FORM WIN 60

[See rule 137]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Application No. . . . . of 20 . . . . .*

Company Liquidator—Applicant

Before the Hon'ble Member of the Bench . . . . .

Dated : . . . . .

*Order for payment of call amount due from contributory*

Upon the application of the Company Liquidator of the above-named company, and upon reading the order dated . . . . 20 . . . . , granting leave to make a call, the affidavit of . . . . filed the . . . . day of . . . . 20 . . . . , and the affidavit of the company liquidator filed the . . . . day of . . . . 20 . . . . , it is ordered :

That C.D., of etc., (or E.F., the legal representative of L.M., late of . . . . etc., deceased), one of the contributories of the said company [or, if against several contributories. That the several persons named in column 2 of the Schedule to this order, being respectively contributories of the said company] do on or before the . . . . day of . . . . 20 . . . . , pay to the company liquidator of the said company at his office or into the Scheduled Bank to the credit of the special bank account of the said company, the sum of Rs. . . . . (If against the legal representative add, out of the assets of the said L.M. deceased in his hands as such legal representative as aforesaid) [or if against several contributories, the several sums of money set opposite to their respective names in column 5 of the said Schedule], being the amount(s) due from the said C.D., [or L.M., or the said several persons respectively] in respect of the call of Rs. . . . per share duly made pursuant to the said order of this Tribunal .

And it is further ordered that said C.D., [or L.M. or the said several persons] do also pay interest at the rate of six per cent. per annum on the said amount(s) specified in column 5 of the aforesaid Schedule from this date to the date of payment.

## SCHEDULE

(To be included where there are two or more contributories)

<i>No. on list</i>	<i>Name and description</i>	<i>Address</i>	<i>In what character included</i>	<i>Amount due</i>
(1)	(2)	(3)	(4)	(5)

Dated this . . . . . day of . . . . . 20 . . . . .

(By the Tribunal)

Registrar



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## COMPANIES (WINDING UP) RULES, 2020

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*Note.*—The copy for service of the above order must bear the following endorsement :

“If you, A, B, neglect to obey this order by the time mentioned therein you will be liable to process of execution for the purpose of compelling you to obey the same.”

FORM WIN 61

[See rule 139]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Application No. . . . . of 20 . . . . .*

Company Liquidator (or as the case may be)—Applicant

*Application for leave to examine person(s) under section 299*

Let all parties concerned attend the Tribunal on . . . day the . . . . day of . . . . 20 . . . . , on the hearing of an application of the company liquidator of the above company for an order . . . . . [Here insert the name(s) of the person(s) to be examined] be examined by the Tribunal respecting [the property (or books and papers) of the company in his (their) possession or his (their) indebtedness to the company or the promotion, formation, trade, dealings, property, books or papers, or affairs of the company] [and/or for the production of all books, papers, writings and documents in his (their) custody or power relating to the said company] and that a date be fixed for such examination and summons(es) be issued to the said person(s) for his (their) appearance on the date fixed and that all necessary directions may be given in the said matter.

(Omit what is not required).

*Dated this . . . . . day of . . . . . 20 . . . . .*

Company Liquidator

*Registrar.*

Annexure : In case application filed by company liquidator, a statement signed by him setting forth the facts on which the application is based.

In case application is made by a person other than Company Liquidator, affidavit of applicant setting forth the matters in respect of which the examination is sought and grounds, relied on in support of application.

FORM WIN 62

[See rule 140]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Application No. . . . . of 20 . . . . .*

Company Liquidator—Applicant

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COMPANY CASES (STATUTES)

[VOL. 220]

Before the Hon'ble Member of the Bench . . . . .

Dated : . . . . .

*Order for examination under section 299*

Upon the application dated . . . . 20 . . . . , of the company liquidator (or of X, Y, a contributory) of the abovenamed company and upon hearing, etc., and upon reading the order to wind up the said company (or, the order appointing a Provisional Liquidator), dated . . . . 20 . . . . , and the statement of the company liquidator (or, the affidavit of the said X. Y.) filed . . . . 20 . . . . ,

It is ordered :

1. That . . . . . (name and description)\* be summoned to attend the Tribunal on the . . . . day of . . . . 20 . . . . , at . . . . o'clock in the . . . . noon, for the purpose of being examined under section 299 concerning [the property (or books or papers) of the company in his possession or his indebtedness to the company or the promotion, formation, trade, dealings, property, books or papers, or affairs of the company] [and the said . . . . be required to bring with him and produce at the said time and place the documents mentioned in the Schedule hereto, and all other books, papers, deeds, writings and other documents in his custody or power in any way relating to the above-named company] ;
2. That the company liquidator do have the conduct of the examination of the said person(s) ;
3. That the examination shall be in Tribunal (or as directed by the Tribunal) ;
- \*\*[4. That . . . . . (name) being a creditor (or contributory) of the said company be at liberty to attend (and take part in) the said examination.]

## SCHEDULE

(Of persons to be examined and/or of documents to be produced, as the case may be)

Dated this . . . . . day of . . . . 20 . . . .

(By the Tribunal)

Registrar.

\*Where more than one person is to be examined, say, "That the persons mentioned in the afore Schedule be summoned, and give the names and addresses in the said Schedule to the order".

\*\*Omit what is not required. To be included where necessary.

FORM WIN 63

[See rule 141]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (give the name of the company)

(Company incorporated under Companies Act, . . . . .)

Application No. . . . . of 20 . . . . .

Company Liquidator—Applicant

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## COMPANIES (WINDING UP) RULES, 2020

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*Summons to witness for examination under section 299*

To

.....  
 .....

Whereas by an order of the Tribunal dated the . . . . day of . . . . 20 . . . . , made herein, it was ordered that you . . . . (name and description) be examined under the provisions of section 299 touching the affairs of the above-named company (or as the case may be), you are hereby required to attend the Tribunal on the . . . . day of . . . . 20 . . . . at . . . . o'clock in the . . . . noon to be examined as aforesaid ; And you, the said . . . . , are hereby required to bring with you and produce at the time and place aforesaid the (here give the description of the property or document, etc.) and other documents in your custody or power in any way relating (or belonging) to the company.

If you fail to attend at the said place and time, having no lawful impediment to be then made known to the Tribunal and allowed by it, the Tribunal may impose appropriate cost.

A sum of Rs. . . . . is herewith tendered (or, sent separately by postal money order) for your expenses in connection with the aforesaid examination.

*Dated this . . . . . day of . . . . . 20 . . . . .*

*Company Liquidator.*

*Registrar*

FORM WIN 64

[See rule 144]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

Before the Hon'ble Member of the Bench . . . . .

*Order directing examination*

Upon reading the further report of the Company Liquidator in the above matter dated the . . . . . day of . . . . . 20 . . . . . , made under section 281(4), etc. of the Companies Act, 2013, it is ordered :

1. That the several persons whose names and addresses are set forth in the Schedule hereto do attend before the Tribunal on the day and hour to be appointed for the purpose, and be examined as to the promotion or formation or the conduct of the business of the company, or as to their conduct and dealings as officers of the company.
2. That notice of the date fixed for the examination be advertised in one issue (each) of (here set out the newspaper or newspapers in which the advertisement is to be inserted) and such notice be served on the persons to be examined not less than seven days before the date of the examination.

3. That the examination shall be held before (here name the officer\* and follow up with any further directions that may be given relating to the conduct of the examination or the matter on which the persons are to be examined).

SCHEDULE

<i>Sl. No.</i>	<i>Name</i>	<i>Address</i>	<i>Connection with the company</i>
(1)	(2)	(3)	(4)

Dated this ..... day of ..... 20 .....

(By the Tribunal)

Registrar

FORM WIN 65

[See rule 145]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT .....

IN THE MATTER OF ..... LTD. (give the name of the company)

(Company incorporated under Companies Act, .....)

Petition No. .... of 20 .....

..... Petitioner

Notice of examination

Notice is hereby given that a examination under section 300 will be held in Tribunal on the .... day of ..... 20 ...., at ..... o'clock in the ..... noon before ....., of ....., a director (or other officer) of the abovenamed company.

Company Liquidator

FORM WIN 66

[See rule 145]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT .....

IN THE MATTER OF ..... LTD. (give the name of the company)

(Company incorporated under Companies Act, .....)

Petition No. .... of 20 .....

..... Petitioner

Notice to attend examination

Whereas by an order of this Tribunal made on the .... day of ..... 20 ....., it was ordered that you, the undermentioned X.Y., should attend before the Tribunal and be examined as to the promotion or formation of the company and/or as to the conduct of

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## COMPANIES (WINDING UP) RULES, 2020

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the business of the company, and/or as to your conduct, and dealings as (here insert, director or officer, as the case may be) ;

And whereas it has been directed that the said examination be held before the Tribunal [or the Tribunal has directed that the said examination be held before (here mention the officer) before whom the examination has been directed to be held], and whereas the . . . day of . . . 20 . . . , at . . . o'clock in the . . . noon has been fixed as the time for holding the said examination ;

Notice is hereby given that you are required to attend at the said time and place and at any adjournments of the examination which may be ordered, and to bring with you and produce all books, papers, and writings and other documents in your custody or power in any way relating to the above-named company.

And take further notice that if you fail, without reasonable excuse, to attend at the said time and place and at any adjournments of the said public examination, a warrant for your arrest will issue, and you will be liable to be committed to prison without further notice.

*Note.*—A copy of the report of the company liquidator on which the order for examination was made will be furnished to you on payment of the prescribed charges for the same.

*Dated this . . . . . day of . . . . . 20 . . . . .*

*Company liquidator*

To

X.Y,

.....

(Name),

.....

(Description and address),

.....

FORM WIN 67

[See rule 147]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Petition No. . . . . of 20 . . . . .*

*. . . . . Petitioner*

*Report to the Tribunal where person examined refuses to answer to satisfaction of the person or authority referred to in rule 147*

At the examination of . . . . . (name and description of the person examined) held before me this . . . . . day of . . . . . 20 . . . . ., the following question(s) was (were) put by me (or allowed to be put by me) to the said person (hereinafter referred to as "the witness").

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Q. [Here state the question(s).]

The witness refused to answer the said question(s) (or) the witness answered the said question(s) as follows :—

[Here insert the answer(s), if any.]

I thereupon intimated the witness that I was reporting his refusal to answer [or his answer(s)] to the Tribunal and that he should attend the Tribunal on the . . . . day of . . . . 20 . . . . , at . . . . o'clock in the . . . . noon when the report will be considered by the Tribunal.

*Person/Authority holding the examination*

FORM WIN 68

[See rule 150]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Petition No. . . . . of 20 . . . . .*

*. . . . . Petitioner*

*Warrant against contributory who fails to attend examination*

To

X.Y., the Officer of this Tribunal.

(or as the case may be).

Whereas by order of this Tribunal dated . . . . 20 . . . . , A.B., (name of the contributory required to attend) was ordered to attend before the Tribunal (or the person or authority authorised by the Tribunal as the case may be), for the purpose of being examined under section 301 on a day and at a time to be appointed ; and

Whereas the . . . . . day of . . . . 20 . . . . , at . . . . o'clock in the . . . . noon was fixed for the said examination before the Tribunal (or officer etc.) ; and

Whereas by evidence taken upon oath (or by affidavit of . . . . . solemnly affirmed) it has been made to appear to the satisfaction of the Tribunal that notice of the said order and of the said time and place so appointed was duly served upon the said A. B. ; and

Whereas the said A.B., did without good cause fail to attend on the said . . . . day of . . . . 20 . . . . , for the purpose of being examined, according to the requirements of the said order of the Tribunal made on the . . . . day of . . . . 20 . . . . , directing him to attend [or and that the said A.B., has absconded (or that there is reason to believe that the said A.B. is about to abscond) with a view to avoiding the said examination] ;

This is to command you to arrest and take the said A.B., into your custody and bring him before the Tribunal with all convenient speed.

You are further ordered to return this warrant on or before . . . . 20 . . . . , with an endorsement certifying the day on which and the manner in which it has been executed, or the reason why it has not been executed.

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Given under my hand and the seal of the Tribunal this . . . . . day of . . . . . 20 . . . . .

*Tribunal*

FORM WIN 69

[See rule 151]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Petition No. . . . . of 20 . . . . .*

*. . . . . Petitioner*

*Warrant for keeping in prison*

To

The Officer in charge of the Jail,

. . . . . Jail . . . . .

. . . . .

Whereas A.B., whose attendance is required before this Tribunal for being examined under section 301, has been arrested and brought before the Tribunal in custody, and whereas the Tribunal called upon the said . . . . . to give security for his appearance before the Tribunal for his being examined under the said section, and the said A.B., has failed to do so.

This is to require you to receive the said A.B., into your custody in the civil prison and produce him before the Tribunal at . . . . . o'clock in the . . . . . noon on the . . . . . day of . . . . . 20 . . . . ., and on such other day or days as may hereinafter be ordered.

*Dated this . . . . . day of . . . . . 20 . . . . .*

*Tribunal*

FORM WIN 70

[See rule 151]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Petition No. . . . . of 20 . . . . .*

*. . . . . Petitioner*

*Order to release prisoner on bail*

Upon the application dated . . . . . 20 . . . . ., of A.B., now a prisoner in civil prison in the Government Jail at . . . . ., who was arrested by warrant of this Tribunal dated . . . . . 20 . . . . ., pursuant to the order of this Tribunal dated . . . . . 20 . . . . ., and upon hearing

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Shri . . . . ., representative for the applicant, and the company liquidator of the above-named company, and upon reading the order to wind up, etc., and the said A.B., by his counsel undertaking to attend before the Tribunal (or officer etc.) on the . . . . . day of . . . . . 20 . . . . ., at . . . . . o'clock in the . . . . . noon for being examined pursuant to the said order dated . . . . . 20 . . . . ., and at any adjournments of the said examination.

IT IS ORDERED that upon payment into this Tribunal by the said A.B., of Rs. . . . . [or upon the said A.B., furnishing two sureties for Rs. . . . . each to the satisfaction (of the Registrar) of this Tribunal for his due appearance before this Tribunal], the Officer in charge of the Government Jail at . . . . ., do discharge the said A.B., out of his custody under the said warrant dated . . . . . 20 . . . . .

Dated this . . . . . day of . . . . . 20 . . . . .

(By the Tribunal)

Tribunal or Registrar.

FORM WIN 71

[See rule 152]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (give the name of the company)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

Requisition to . . . Court in whose jurisdiction the contributory against whom a warrant of arrest has been issued is believed to be

Whereas the warrant of arrest hereto annexed has been issued by this Tribunal against the contributory named therein, namely . . . . . of . . . . ., under the provisions of the Companies Act, 2013 and the Companies (Winding Up) Rules 2020, and

Whereas he is outside the jurisdiction of this Tribunal and is believed to be within the jurisdiction of the Court of . . . . . (or, the Court of Small Causes at Mumbai, Kolkata or Chennai, as the case may be),

These are to request you to cause the said warrant to be executed.

You are further requested to return this warrant on or before . . . . . 20 . . . . ., with an endorsement certifying the day on which and the manner in which it has been executed or the reason why it has not been executed.

Should the said contributory on being produced before you, furnish security to your satisfaction in a sum of Rs. . . . . for his due appearance before this Tribunal for examination under section 301 on such dates and such times as may be intimated to him by this Tribunal, the said person may be released on such security.

Dated this . . . . . day of . . . . . 20 . . . . .

Seal of the Tribunal from which the warrant was originally issued.



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COMPANIES (WINDING UP) RULES, 2020

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*Tribunal*

Enclosure : Warrant.

To

The Court of .....

[or Chief Judge, Court of Small Causes, Mumbai,  
Kolkata or Chennai, as the case may be]

FORM WIN 72

[See rule 153]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT .....

IN THE MATTER OF ..... LTD. (give the name of the company)

(Company incorporated under Companies Act, .....)

Application No. .... of 20 .....

[Company] Liquidator of the company

[or A.B., a creditor or contributory

as the case may be]

—Applicant

versus

—Respondents

*Summons under section 339(1) of the Companies Act, 2013*

Let all parties attend the Chambers on the ..... day of ..... 20 ....., at ..... o'clock in the ..... noon on the hearing of an application under section 339(1) of the Companies Act, 2013 on the part of the [company] liquidator of the company aforesaid [or, A.B., of ..... a creditor/contributory of the said company] for the following declarations and orders :—

1. A declaration that the business of the said company was carried on from the ..... 20 ....., to the ..... 20 ....., (the date of the commencement of the winding up of the company), with intent to defraud creditors and for other fraudulent purposes by reason of the fact that [Here set out the facts showing the fraudulent purposes, e.g., that the company continued to trade and to obtain goods on credit and to incur other liabilities without any means or prospect of being able to pay or provide for payment thereof, and further for the purpose of increasing the amount of assets available for distribution among the debenture holders, including the respondent C.D., etc., or, as the case may be] and that the respondents as the ..... of the company were knowingly parties to the carrying on of the business of the said company in the manner aforesaid.

2. A declaration that the respondents ..... (Names) ..... shall be personally responsible, without any limitation of liability, for all the debts or other liabilities of the company.

3. A declaration that the said respondents are jointly and severally liable to pay to the [company] liquidator sums amounting to Rs. . . . . being the amount of debts owing by the company in respect of goods supplied to or services rendered to or other liabilities incurred by the said company during the period aforesaid or such part of the said sums as to the Tribunal shall seem fit after due inquiry.

4. An order for payment to the [company] liquidator by the said respondents of the said sum of Rs. . . . . or such other sum as to the Tribunal shall seem fit.

5. An order that for the purpose of giving effect to the foregoing declarations, the liability of the respondent . . . . . (name) shall constitute a first charge on [Here set out the debt, mortgage or interest of the respondent on which the charge is created under section 339(2)(b)], [and that the liability of the respondent C.D., thereunder shall be and constitute a first charge on the debenture issued by the said company to him, and the money secured thereby].

6. An order that the respondents do pay to the applicant costs of and incidental to this application.

7. Such other order in the premises as the Tribunal shall think fit to make.

Dated this . . . . . day of . . . . . 20 . . . . .

Registrar.

This summons was taken out by Shri . . . . . representative for the applicant.

To  
. . . . . (respondents)  
. . . . .

Note.—If you do not attend, either in person or by your representative, at the time and place abovementioned, such order will be made and proceedings taken as the Tribunal may think just and expedient.

FORM WIN 73

[See rule 153]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (give the name of the company)

(Company incorporated under Companies Act, . . . . .)

Application No. . . . . of 20 . . . . .

[in Company Petition No. . . . . of 20 . . .]

[Company] Liquidator of the company

[or A.B., a creditor or contributory

of the said Company]

—Applicant

versus

. . . . .

—Respondents

2020]

## COMPANIES (WINDING UP) RULES, 2020

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*Summons under section 340(1) of the Companies Act, 2013*

Let all parties attend the sitting Judge in Chambers on . . . . . day the . . . . . day of . . . . . 20 . . . . , at . . . . . o'clock in the . . . . . noon, on the hearing of an application under section 340(1) of the Companies Act, 2013 on the part of the [Company] Liquidator of the company aforesaid [or A.B., a creditor/contributory of the above company] for—

1. A declaration that the respondents, the . . . . . (promoters, directors, etc., as the case may be) of the above company had misapplied, retained or become liable or accountable for the money or property of the company, or were guilty of misfeasance and breach of trust in relation to the said company in [here set out briefly the ground on which the declaration is sought, e.g., paying to the shareholders dividend out of capital in respect of the financial year . . . . . , or lending without consideration and, without taking any security Rs. . . . . of the said company to . . . . . on . . . . . 20 . . . . , whereby the same became wholly lost to the said company on the adjudication of the said . . . . . as insolvent on . . . . . 20 . . . . , or as the case may be].
2. An order that all necessary inquiries be made and accounts taken for ascertaining what sums the respondents are liable to contribute to the assets of the said company by way of compensation for such misfeasance and breach of trust as aforesaid.
3. An order that the respondents do jointly and severally contribute to the assets of the said company and do pay to the [company] liquidator of the said company all such sums as they may be found liable to contribute to such assets together with interest on such sums at the rate of . . . . . per cent. per annum as from the several dates when the said sums were respectively wrongfully paid away until the date of repayment.
4. An order that the said respondents do pay the costs of and incidental to this application.
5. Such other order as in the premises, the Tribunal shall think fit to make.

*Dated this . . . . . day of . . . . . 20 . . . . .*

*Representative for applicant*

*Registrar.*

[This summons was taken out by Shri . . . . . representative for the applicant.]

To

. . . . . (respondents)

. . . . .

*Note.*—If you do not attend, either in person or by your representative, at the time and place abovementioned, such order will be made and proceedings taken as the Tribunal may think just and expedient.

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FORM WIN 74

[See rule 154]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Application No. . . . . of 20 . . . . .**[Company Petition No. . . . . of 20 . . .]**. . . . . Applicant*

versus

*. . . . . Respondents**Points of claim under section 339(1) of the Companies Act, 2013*

1. The above-named company [hereinafter called "the company"] was incorporated on the . . . . . 20 . . . . ., with a capital of Rs. . . . . divided into . . . . . shares of Rs. . . . . each, of which . . . . . shares were at all material times issued and fully paid.
2. By an order made on the . . . . . 20 . . . . ., the company was ordered to be wound up by the Tribunal.
3. The company is insolvent and the estimated deficiency according to [the statement of affairs] is Rs. . . . . .
4. The respondent was a director/managing agent, etc., of the said company (state the position occupied by the respondent in the company and the period during which he occupied such position, and the salary paid to him).
5. Etc. [Set out in separate paragraphs, as may be necessary, the nature of the business of the company, the way in which it was carried on and the facts showing that the business was conducted fraudulently and that the respondent was knowingly a party to the same.]

The company liquidator/liquidator/A.B., the applicant claims :—

- (1) A declaration that the respondent is liable without any limitation of liability for all the debts of the company amounting to the sum of Rs. . . . . .
- (2) If necessary, an amount of the debts of the company.
- (3) Payment by the respondent of the said sum of Rs. . . . . . or other sum for which he may be found responsible on the taking of accounts.
- (4) Costs.
- (5) Further or other relief.

Applicant

Delivered the . . . . . day of . . . . . 20 . . . . . by, . . . . . Representative for the Applicant.

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## COMPANIES (WINDING UP) RULES, 2020

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FORM WIN 75

[See rule 154]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Application No. . . . . of 20 . . . . .**[in Company Petition No. . . . . of 20 . . .]**. . . . . Applicant*

versus

*. . . . . Respondents**Points of claim under section 340(1) of the Companies Act, 2013*

1. The above-named company (hereinafter called "the company") was incorporated on the . . . . . 20 . . . . ., with a capital of Rs. . . . . divided into . . . . . shares of Rs. . . . . each, of which . . . . . shares were at all material times issued and stood credited in the books of the company as fully paid.
2. By an order dated the . . . . . 20 . . . . ., the company was ordered to be wound-up by the Tribunal.
3. The respondents were at all material times [state the position occupied by each of them, e.g., promoter, past or present director, managing agent, secretaries and treasurers, manager, liquidator or officer of the company].
4. Etc. [Set out in separate paragraphs as may be necessary the main facts showing the misfeasance or breach of trust committed by each of the respondents and the amounts which they are jointly and severally liable to make good to the company in consequence of such misfeasance or breach of trust].

And the company liquidator/liquidator/A.B., the applicant claims :—

- (1) A declaration that the respondents and each of them as past (or present) directors [or, as the case may be] as aforesaid, have been guilty of misfeasance and breach of trust in relation to the company as aforesaid.
- (2) An order that the respondents and each of them do repay to the (Company) Liquidator of the said company the said sums, together with interest at the rate of . . . . . per cent per annum from . . . . . 20 . . . . ., down to the date of payment.
- (3) Costs.
- (4) Further or other relief.

*Applicant.**Delivered the . . . . . day of . . . . . 20 . . . . . by . . . . .*

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COMPANY CASES (STATUTES)

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FORM WIN 76

[See rule 156]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Company Petition No. . . . . of 20 . . .**Notice to liquidator to elect whether he will disclaim*

I, the undersigned, give you notice that the above-named company was, at the time of the making of the winding up order herein [or at the time of the passing of the resolution for winding up], the lessee of the property described in the Schedule hereto [or as the case may be], and I, as lessor of the said property [or as the case may be], hereby require you pursuant to the provisions of section 333(4) of the Companies Act, 2013, within twenty-eight days after the receipt of this notice to decide whether you will disclaim the said lease [or as the case may be], and if you decide to disclaim as aforesaid, to give me notice within the said twenty-eight days of your intention to apply to the Tribunal for leave to disclaim accordingly\*\*.

Dated this . . . . . day of . . . . . 20 . . . . .

(Signature)

Address :

*(Lessor or representative for the lessor, or as the case may be)*

To  
The (Company) Liquidator of  
. . . . . Co., Ltd. (in liquidation)

SCHEDULE

Here set out particulars of the property, lease, contract, etc.

\*\*In the case of a contract, add at the end "and also disclaim the contract within the said period".

FORM WIN 77

[See rule 156]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Petition No. . . . . of 20 . . .**. . . . . Petitioner*

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## COMPANIES (WINDING UP) RULES, 2020

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*Notice by liquidator of intention to apply to Tribunal for leave to disclaim*

Take notice that I intend to apply to the Tribunal for leave to disclaim [here specify the property, lease, contract etc., with short particulars and the interest of the company therein sought to be disclaimed] referred to in the notice given by you to me as the Liquidator of the above-named company.

(Signature)

(Company) Liquidator of the said company

To

.....  
 .....

FORM WIN 78

[See rule 156]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT .....

IN THE MATTER OF ..... LTD. (give the name of the company)

(Company incorporated under Companies Act, .....

Application No. .... of 20 ...

(Company) Liquidator of the said company — Applicant

*Summons for extension of time for giving notice of  
 intention to apply for leave to disclaim*

Let all parties concerned attend the Tribunal on the ..... day of ..... 20 ....., on the hearing of an application by the applicant herein for an order that the applicant as the (company) liquidator of the abovenamed company may be at liberty within ..... days of the order to be made herein to given notice to ..... of ..... of his intention to apply to the Tribunal for leave to disclaim [here specify the property, lease or contract etc., and the interest of the company therein to be disclaimed, with short particulars thereof].

Dated this ..... day of ..... 20 .....

(Company) Liquidator

Registrar

This summons as taken out by the (company) liquidator of the above-named company.

To

(Insert names of persons to be served, if any)

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FORM WIN 79

[See rule 156]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

*Order extending time for disclaimer*

Upon the application of etc.

IT IS ORDERED that the applicant, as such liquidator, be and is hereby allowed a further period of . . . . . days from the . . . . . 20 . . . . , within which he may give notice to . . . . . of his intention to apply to the Tribunal for leave to disclaim the [here specify the property, lease, contract etc., with short particulars and the interest of the company therein which is to be disclaimed].

Dated this . . . . . day of . . . . . 20 . . . . .

(By the Tribunal)

Registrar

FORM WIN 80

[See rule 156]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

*Notice of interest in property sought to be disclaimed*

To

The (Company) liquidator, etc.,

Take notice that I, the undersigned, claim to be interested in [specify the property, lease, contract etc., with short particulars] which is sought to be disclaimed by you, and that the nature of my interest therein is as follows :—

\*\*

\*\*

\*\*

(Signature)

Address



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FORM WIN 81

[See rule 156]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Application No. . . . . of 20 . . . . .*(Company) Liquidator of the said company — *Applicant**Application for leave to disclaim*

Let all parties concerned attend the Tribunal on the . . . . . day of . . . . . 20 . . . . . , at . . . . . o'clock in the . . . . . , noon, on the hearing of an application of the (company) liquidator of the above-named company for an order pursuant to section 333 of the Companies Act, 2013, that the said Liquidator [notwithstanding that the time limited thereof by the said section has expired\*] may be at liberty to disclaim [here specify property, lease, contract etc., with short particulars and the interest of the company therein sought to be disclaimed] and that the costs of the application may be provided for.

*Dated this . . . . . day of . . . . . 20 . . . . .*

Liquidator of the said company.

*Registrar**Note.*—On the hearing, the summons will be adjourned for notice to interested parties.

\*To be included where the time has expired.

FORM WIN 82

[See rule 156]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Application No. . . . . of 20 . . . . .*(Company) Liquidator of the said company — *Applicant**Affidavit in support of summons for leave to disclaim a lease*

I, . . . . . the (company) liquidator of the said company, do solemnly affirm and say as follows :—

1. The above named company [hereinafter referred to as the company] was ordered to be wound up by this Tribunal by order dated the . . . . . , 20 . . . . . , and I was appointed liquidator for the purpose of the winding up).

2. By a lease dated the . . . . . day of . . . . . 20 . . . . . , made between . . . . . of the one part and the company of the other part, the said . . . . . demised unto the company all that (specify shortly the premises leased and the rent, mentioning any special covenants). The said lease\* is now produced and shown to me marked "A".

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3. The premises so demised to the company were used by them for the purposes of (specify what) but have not been occupied or used by the company since the month of . . . . . 20 . . . , (etc., as the case may be) nor are there any goods and chattels of the company thereon.

4. I have/have not endeavoured to sell the said lease. Having regard to the rent payable and the terms thereof, the lease is not a profitable one. I have/have not entered into possession of the premises thereby demised or exercised any act of ownership in relation thereto (or as the case may be).

5. The said lease is of no benefit to the company, its creditors or shareholders, and to the best of my knowledge, information and belief there are no persons interested in the said lease except the company and . . . . . the lessors as aforesaid (or, as the case may be, and state any advantages sought to be attained by the disclaimer, how it would affect other people, etc.).

6. (If the "disclaimer" is out of time, facts in explanation on which the Tribunal may be properly asked to extend the time should be stated).

7. On the . . . . . 20 . . . , I received a notice from . . . . . of . . . . . , requiring me to say whether or not it was my intention to disclaim the said contract. The notice is hereto annexed, marked . . . . . on the . . . . . day of . . . . . 20 . . . , within twenty-eight days of the receipt of the said notice (or if the Tribunal has extended the time, add, by leave of the Tribunal notwithstanding that twenty-eight days had elapsed since the receipt by me of the said notice) I gave notice to the said . . . . . of my intention to make this application to the Tribunal. A copy of the said notice is hereto annexed and marked . . . . .

8. The assets of the company are insufficient to meet the claims of the creditors (or as the case may be).

9. In these circumstances, I ask for leave to disclaim the said lease, and the said . . . . . should be allowed to prove for the loss suffered by reason of the said disclaimer along with the other creditors.

*Solemnly affirmed etc.*

*Liquidator.*

\*Note.—The original or a certified copy of the lease to be produced.

FORM WIN 83

[See rule 159]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (*give the name of the company*)

(Company incorporated under Companies Act, . . . . .)

*Petition No. . . . . of 20 . . .*

. . . . . Petitioner

*Notice to parties interested in the property in respect of  
which the application to disclaim is made*

Notice is hereby given that on an application to the Tribunal by me as (Company) Liquidator of the abovenamed company for leave to disclaim a lease to the above-named

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company dated the . . . . ., 20 . . . , etc., (or as the case may be), the Tribunal adjourned the matter until the . . . . . day of . . . . . 20 . . . , for notice to be given to you.

If you desire to be heard on the said application, you should attend the adjourned hearing before the Tribunal on . . . . . day, the . . . . . day of . . . . . 20 . . . , at . . . . . o'clock in the . . . . . noon, either in person or by representative.

Any affidavit that you intend to use in opposition should be filed in Tribunal and a copy thereof served on me not later than two days before the date of the adjourned hearing. A copy of the summons and a copy of my affidavit filed in support thereof are sent herewith.

(Signature)

.....

Liquidator.

To

.....  
.....

FORM WIN 84

[See rule 160]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (give the name of the company)

(Company incorporated under Companies Act, . . . . .)

Application No. . . . . of 20 . . .

(Company) Liquidator of the said company – Applicant

Order giving leave to disclaim

Upon the application by summons dated . . . . . 20 . . . , of the (company) liquidator of the above named company and upon hearing the applicant in person (or Shri . . . . . representative for the applicant [and the representative for . . . . . (party interested) or no one appearing for or on behalf of . . . . . a party interested although he has been duly served with notice of the said application pursuant to the directions of the Tribunal as appears by the affidavit of . . . . . filed on . . . . . 20 . . . ], and upon reading the order to wind up the said company dated the . . . . . . . 20 . . . , the affidavit of . . . . . filed the . . . . . 20 . . . , and the affidavit of . . . . . filed the . . . . . 20 . . . , and the exhibits in the said affidavits respectively referred to [Exhibit . . . . . to the first mentioned affidavit being the contract or lease or as the case may be].\*

IT IS ORDERED that the (company) liquidator of the said company, the applicant, be at liberty, on or before . . . . . 20 . . . , to disclaim the contract (or the lease, or the shares or other property as the case may be) dated the . . . . ., 20 . . . , made between . . . . . of the one part, and the said company of the other part, whereby (set out in brief the nature of the contract or the lease or the shares or other property as the case

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may be) particulars of which are set out in the Schedule hereto, upon the following terms, namely :—

[Here set out the terms and conditions if any subject to which leave to disclaim has been granted.]

## SCHEDULE

[Here set out the particulars of the property disclaimed e.g., contract or lease dated . . . . . 20 . . . . . made between etc. or shares of the face value of Rs. . . . . in . . . . . of which Rs. . . . . are paid-up, etc. (or as the case may be)].

Dated this . . . . . day of . . . . . 20 . . . . .

(By the Tribunal)

Registrar

\*Note.—Where the Tribunal has made an order extending the time, that order should also be mentioned in the preamble to this order.

FORM WIN 85

[See rule 161]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (give the name of the company)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner

Disclaimer of lease\*

Pursuant to an order of the Tribunal dated the . . . . . day of . . . . ., 20 . . . . . I, the undersigned, the Company Liquidator of the above-named company, hereby disclaim all interest in the lease dated the . . . . ., 20 . . . . ., whereby the premises (here insert description of the property disclaimed) were demised to . . . . . at a rent of Rs. . . . . per annum (or per mensem) for a term of . . . . . years.

Notice of this disclaimer has been given to . . . . .

Dated this . . . . . day of . . . . . 20 . . . . .

Company Liquidator.

\*The form to be suitably altered in the case of property other than lease.

FORM WIN 86

[See rule 161]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT . . . . .

IN THE MATTER OF . . . . . LTD. (give the name of the company)

(Company incorporated under Companies Act, . . . . .)

Petition No. . . . . of 20 . . . . .

. . . . . Petitioner