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Bachelor of Business Administration (BBA) | Semester 4 | UK4DSCMGT203

# Corporate Regulations

Course Code: UK4DSCMGT203 • Module 5 Notes


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# Winding Up of Companies and Regulatory Tribunals

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## 1. Concept, Legal Consequences, and Modes of Winding Up

Winding up represents the terminal statutory process through which the life of a corporate entity is brought to an end. It is the legal mechanism whereby corporate assets are realized, outstanding debts and obligations are investigated and liquidated from enterprise funds, and any surplus capital remaining is distributed among contributories and shareholders in accordance with their respective rights defined in the Articles. Lord Justice Lindley defined winding up as a proceeding by which the affairs of a company are wound up, its property administered for the benefit of its creditors and members, and the company dissolved.

### Vital Legal Distinction: Winding Up versus Dissolution

| Comparison Parameter | Winding Up of a Company | Dissolution of a Company |
|---|---|---|
| Legal Status of Entity | The corporate persona remains intact; the company can still sue and be sued in its name. | The corporate persona is completely extinguished; the company ceases to exist in law. |
| Procedural Nature | Initial procedural phase involving realization of assets and settlement of debts. | Final terminal decree issued by NCLT striking the corporate entity off the register. |
| Administration Custody | Affairs and assets are administered by the Company Liquidator or Resolution Professional. | No administration remains possible because the legal subject is extinguished. |
| Property Ownership | Corporate property belongs to the company, custody resting with the liquidator. | Any undistributed property vests in the State under the doctrine of bona vacantia. |

### Consequences of a Winding Up Order (Section 277 & 278)

The pronouncement of a winding up order by the National Company Law Tribunal triggers immediate statutory consequences:

- **Intimation to Liquidator and ROC:** The Tribunal immediately sends intimation to the Official Liquidator and the ROC in Form WIN-12. The petitioner and company must file certified copies with the ROC within 30 days.
- **Stay of Legal Proceedings:** Under Section 279, when a winding up order has been passed or a provisional liquidator appointed, no suit or other legal proceeding shall be commenced or proceeded with against the company except with the leave of the Tribunal.

- **Discharge of Officers and Employees:** The order operates as statutory notice of discharge to all officers, employees, and workmen of the company, except when the business is continued by the liquidator for beneficial winding up.
- **Cessation of Board Powers:** All managerial powers of the Board of Directors, Managing Director, and KMPs cease immediately, vesting exclusively in the Company Liquidator.

## 2. The National Company Law Tribunal (NCLT) and NCLAT Governance

The Companies Act 2013 dismantled the fragmented jurisdiction previously split among Company Law Boards, High Courts, and BIFR, establishing a dedicated, unified quasi-judicial framework:

### National Company Law Tribunal (NCLT - Section 408)

Constituted by the Central Government, the NCLT exercises comprehensive corporate jurisdiction across original proceedings, including incorporation disputes, reduction of share capital, oppression and mismanagement petitions (Sections 241–242), corporate restructurings and mergers (Sections 230–232), corporate insolvency under the Insolvency and Bankruptcy Code (IBC 2016), and compulsory winding up petitions under Section 271. Benches consist of Judicial Members (former High Court judges or senior advocates) and Technical Members (senior civil servants or chartered accountants) to ensure technical competence.

### National Company Law Appellate Tribunal (NCLAT - Section 410)

The NCLAT serves as the exclusive appellate forum hearing appeals against orders of the NCLT and the Insolvency and Bankruptcy Board of India (IBBI). Under Section 421, any person aggrieved by an order of the NCLT may file an appeal to the NCLAT within **forty-five (45) days**. An extension of up to 45 days may be granted on sufficient cause. Under Section 423, any person aggrieved by an order of the NCLAT may file an appeal to the **Supreme Court of India** within **sixty (60) days** on any question of law arising out of such order.

## 3. Compulsory Winding Up by the Tribunal (Section 271)

Under Section 271 of the Companies Act 2013 (as amended by the Insolvency and Bankruptcy Code 2016), a company may be wound up by the Tribunal on five specific statutory grounds:

1. **Special Resolution of the Company (Section 271(a)):** If the company has by special resolution resolved that the company be wound up by the Tribunal. However, the Tribunal retains judicial discretion and may refuse to order winding up if it is opposed to public interest or the company's financial health.
2. **Acts against National Sovereignty and Security (Section 271(b)):** If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency, or morality.
3. **Fraudulent Conduct and Misconduct of Affairs (Section 271(c)):** If on an application made by the Registrar or any other person authorized by the Central Government, the Tribunal is satisfied that the affairs of the company have been conducted in a fraudulent manner, or the

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company was formed for fraudulent and unlawful purposes, or the persons concerned in the formation or management have been guilty of fraud, misfeasance, or misconduct, and it is proper that the company should be wound up.

4. **Default in Filing Financial Statements or Annual Returns (Section 271(d)):** If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding **five consecutive financial years**.
5. **Just and Equitable Ground (Section 271(e)):** If the Tribunal is of the opinion that it is just and equitable that the company should be wound up. This equitable ground grants wide judicial discretion, applied under established legal precedents:
    - **Deadlock in Management:** Where equal shareholding factions are locked in irreconcilable hostility and the Board cannot function, as established in *Yenidje Tobacco Co. Ltd. (1916)*, where two equal shareholder-directors became so hostile they refused to speak to each other, communicating only through the secretary. The court treated the private company as a quasi-partnership and ordered winding up.
    - **Loss of Substratum:** Where the paramount corporate charter object for which the company was incorporated has become totally impossible of commercial achievement, as in *German Date Coffee Co. (1882)*, where a company formed to manufacture coffee from date leaves under a German patent failed to secure the patent; the substratum had disappeared and winding up was ordered.
    - **Oppression of Minority:** Where the controlling majority group exercises its legal powers oppressive to minority members, destroying basic mutual confidence.

### Petitioners Entitled to File for Winding Up (Section 272)

An application to the Tribunal for winding up must be made by a petition presented by: (a) the company; (b) any contributory or contributories; (c) all or any of the persons specified in clauses (a) and (b) jointly; (d) the Registrar of Companies (with prior sanction of Central Government); (e) any person authorized by the Central Government; or (f) by the Central or State Government in cases involving national sovereignty.

## 4. Insolvency and Bankruptcy Code (IBC 2016) and Resolution Mechanism

Prior to 2016, inability to pay debts was a ground for winding up under the Companies Act. The enactment of the **Insolvency and Bankruptcy Code (IBC 2016)** fundamentally reorganized Indian commercial law, transferring insolvency resolution and debt liquidation to a dedicated insolvency regime. Under the IBC, the primary objective is reorganization and revival of stressed corporate entities, treating liquidation as a last resort.

### The Corporate Insolvency Resolution Process (CIRP) Workflow

1. **Triggering CIRP:** An application can be initiated before NCLT under Section 7 (by Financial Creditors), Section 9 (by Operational Creditors), or Section 10 (by Corporate Debtor itself) upon establishing a default threshold of ₹1 Crore.

2. **Moratorium (Section 14):** Upon admission of the petition, the NCLT declares a statutory moratorium prohibiting institution of suits, continuation of recovery proceedings, execution of judgments, and termination of essential supply contracts against the corporate debtor.
3. **Appointment of Resolution Professional (RP):** An Interim Resolution Professional (IRP) takes over managerial control of the company and custody of assets, displacing the Board of Directors.
4. **Committee of Creditors (CoC):** Composed exclusively of financial creditors, the CoC constitutes the decision-making authority, evaluating resolution plans submitted by prospective resolution applicants. Approving a resolution plan requires a minimum **66% voting majority** of financial creditors.
5. **Mandatory Time Bound Process:** CIRP must be concluded within **180 days**, extendable once by up to 90 days, with an outer cap of **330 days** including judicial litigation.
6. **Liquidation Order (Section 33):** If no resolution plan is approved by the CoC within the statutory period, or if the CoC resolves by 66% vote to liquidate the enterprise, the NCLT passes a formal liquidation order, appointing the liquidator to realize assets.

### Waterfall Mechanism of Asset Distribution (IBC Section 53)

Upon liquidation under the IBC, realized proceeds must be distributed strictly in accordance with the statutory **Priority Waterfall** under Section 53, overriding all other enactments:

| Priority Tier | Claimant Category | Statutory Scope and Treatment |
|---|---|---|
| Priority 1 | CIRP Costs & Liquidation Costs | Paid in full before any other distribution; covers fees of RP, liquidator, operational running costs. |
| Priority 2 | Workmen's Dues & Secured Creditors | Workmen dues for 24 months preceding liquidation rank equally (pari passu) with secured debts. |
| Priority 3 | Employee Wages | Wages and unpaid dues of non-workmen employees for the period of 12 months preceding liquidation. |
| Priority 4 | Unsecured Financial Creditors | Unsecured institutional debt, corporate deposits, and unsecured debenture obligations. |
| Priority 5 | Government Dues & Balance Secured | Central and State Government taxes (2 years) rank pari passu with balance debts of secured creditors. |
| Priority 6 | Remaining Debts & Operational Creditors | Trade vendors, commercial suppliers, contractors, utility balances, and other remaining liabilities. |
| Priority 7 | Preference Shareholders | Return of paid-up preference capital in accordance with priority specified in Articles. |
| Priority 8 | Equity Shareholders | Residual surplus assets distributed among equity members in proportion to paid-up share capital. |

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## 5. Striking Off Defunct Companies and Fast-Track Exit (Section 248)

Where a company has ceased operations but has not formally wound up, the Companies Act 2013 provides a summary administrative exit mechanism under Section 248, known as **Striking Off of Defunct Companies**, avoiding costly tribunal litigation:

### Suo Motu Striking Off by Registrar of Companies

The ROC may initiate striking off the name of a company from the register of companies if they have reasonable cause to believe that:

- A company has failed to commence business within one year of its incorporation; or
- A company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under Section 455.

The ROC issues a formal notice in **Form STK-1** to the company and its directors, requiring them to submit representations within 30 days. If no satisfactory explanation is received, notice of proposed striking off is published in the Official Gazette and in newspapers in **Form STK-5**. If no objections are received from the public or regulatory authorities (Income Tax, GST, RBI), the ROC publishes a dissolution notice in **Form STK-7**, whereupon the company stands dissolved.

### Voluntary Application by Company (Fast-Track Exit)

A defunct company that has extinguished all its liabilities may file a voluntary application with the ROC in **Form STK-2** for removing its name from the register. The application must be supported by:

1. A Special Resolution passed by members or consent of 75% members in terms of paid-up share capital;
2. Indemnity bonds duly notarized given by every director in Form STK-3;
3. Affidavits from every director in Form STK-4 affirming absence of pending litigation or tax dues; and
4. A statement of accounts showing zero assets and zero liabilities, certified by a practicing Chartered Accountant not older than 30 days.

Crucially, Section 248(3) and Section 250 clarify that even after striking off and dissolution, the liability of every director, manager, and member continues and may be enforced as if the company had not been dissolved. Furthermore, under Section 252, any aggrieved person or creditor may file an appeal before the NCLT within **twenty (20) years** from publication of dissolution notice to restore the company to the register if it is proved that the company was carrying on business or it is otherwise just that the company be restored.

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## 6. Liquidator Administration, Contributory Liabilities, and Fast-Track Pre-Packs

The realization and equitable distribution of enterprise assets during corporate winding up represents a complex administrative exercise monitored by regulatory tribunals to prevent fraud and protect public funds.

### Powers, Duties, and Liabilities of the Company Liquidator (Sections 290 to 292)

Upon the passing of a winding up order, the Tribunal appoints an **Official Liquidator** or a registered insolvency professional as the Company Liquidator under Section 275. The Liquidator assumes custody and control of all property, actionable claims, books, and records of the company. Under Section 290, the Liquidator exercises extensive statutory powers:

- To carry on the business of the company so far as may be necessary for the beneficial winding up of the enterprise;
- To sell real estate, plant, machinery, inventory, and actionable claims by public auction or private contract;
- To institute or defend any suit, prosecution, or other legal proceedings in the name and on behalf of the company;
- To raise requisite finances on the security of corporate assets;
- To invite, verify, settle, and adjudicate proofs of debts from creditors and claims from debenture holders;
- To settle the list of contributories, rectify registers of members, and make calls on contributories for unpaid share amounts; and
- To summon general meetings of creditors and contributories to ascertain their collective directions.

Under Section 294, the Liquidator must maintain accurate account books of receipts and payments and present an audited summary of accounts twice every year to the NCLT. If a Liquidator misapplies funds or commits breach of trust, they incur personal liability under Section 340 (misfeasance proceedings).

### Contributories and Extent of Member Liability (Sections 284 & 285)

Under Section 2(26), a **Contributory** means every person liable to contribute to the assets of a company in the event of its being wound up. The law classifies contributories into two historical lists:

1. **List A Contributories (Present Members):** Consists of individuals who are registered members of the company on the date of commencement of winding up. In a company limited by shares, their liability is strictly restricted to the amount remaining unpaid on the shares held by them.
2. **List B Contributories (Past Members):** Consists of persons who ceased to be members within **one year immediately preceding** the commencement of winding up. A past member is not liable to contribute unless it appears to the Tribunal that existing List A members are unable to

satisfy the required contributions. Furthermore, a past member is liable only for debts contracted by the company *before* they ceased to be a member, and their liability cannot exceed the amount unpaid on the shares for which they were registered.

### Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs

Introduced via the Insolvency and Bankruptcy Code (Amendment) Act 2021 (Chapter III-A), the **Pre-Packaged Insolvency Resolution Process (PPIRP)** provides an innovative, cost-efficient, fast-track restructuring framework exclusively for Micro, Small, and Medium Enterprises (MSMEs) facing financial distress. Unlike traditional CIRP where the existing management is immediately ousted, PPIRP operates on a **"Debtor-in-Possession with Creditor-in-Control"** model:

- The existing promoter-directors continue managing daily operations under the supervision of an appointed Resolution Professional, preserving commercial goodwill and avoiding operational disruption.
- The corporate debtor drafts a Base Resolution Plan in informal negotiation with financial creditors prior to approaching the NCLT.
- Approval of PPIRP requires consent of not less than **66% of financial creditors** in value.
- Once admitted by the NCLT, the entire resolution process must be completed within an aggressive statutory deadline of **120 days** (90 days for submitting approved resolution plan to NCLT, and 30 days for tribunal sanction).
- If the base plan impairs operational creditor dues without promoter dilution, the plan is subjected to a "Swiss Challenge" bidding contest, ensuring transparent market price discovery.

### Comparative Architecture: Corporate Insolvency, Winding Up, and Striking Off

| Comparison Parameter | Winding Up (Companies Act 2013) | Insolvency & Liquidation (IBC 2016) | Striking Off (Section 248) |
|---|---|---|---|
| Primary Trigger | Statutory default, sovereign security, fraud, just & equitable | Default in debt payment (Threshold >= ₹1 Crore) | Defunct entity; inoperation for 2 continuous years |
| Primary Objective | Realize assets and distribute proceeds to dissolve | Reorganize and revive entity; liquidation as last resort | Summary administrative removal from corporate register |
| Governing Authority | National Company Law Tribunal (NCLT) | NCLT (Adjudicating Authority) & IBBI | Registrar of Companies (ROC) |
| Appointed Official | Company Liquidator (Official Liquidator) | Resolution Professional (RP) / Liquidator | ROC administrative officer |
| Creditors' Role | Advisory through Committee of Inspection | Supreme decision-making through CoC (66% vote) | Creditor consent / zero liability certification |
| Distribution Rule | Companies Act Section 326 / 327 priority | IBC Section 53 Statutory Priority Waterfall | Zero liabilities required prior to exit |

### Fraudulent Preference and Transfers Not in Good Faith (Sections 328 & 329)

During the twilight zone preceding corporate winding up, dishonest managements frequently attempt to siphon assets or confer illicit advantages upon favored creditors at the expense of general creditors. The Companies Act 2013 equips the Tribunal and Liquidator with sharp claw-back provisions:

- **Fraudulent Preference (Section 328):** Where a company has given preference to any person who is a creditor, surety, or guarantor within **six months** (or one year for related parties) prior to the presentation of a winding up petition, such transaction is deemed a fraudulent preference and is completely void against the Liquidator. The test requires proving that the dominant intention of the corporate debtor was to confer an unjust commercial advantage on that favored creditor.
- **Transfers Not in Good Faith (Section 329):** Any transfer of movable or immovable property, delivery of goods, or charge created by a company within **one year** before presentation of a winding up petition is completely void against the liquidator, unless the transfer was made in the ordinary course of business and in good faith for valuable consideration.

### Misfeasance Proceedings and Delinquent Directors (Section 340)

If during the course of winding up it appears that any person who has taken part in the promotion or formation of the company, or any past or present director, manager, or liquidator, has misapplied, retained, or become liable for any corporate money or property, or been guilty of any misfeasance or breach of trust in relation to the company, the NCLT may examine their conduct on application of the Liquidator or any creditor. The Tribunal may order the delinquent officer to repay or restore the money or property with interest, or contribute such sum to corporate assets by way of compensation as the Tribunal considers just and equitable. This civil restitutionary remedy operates independently of criminal prosecutions under Section 447.

### Final Dissolution Decree of the Company (Section 302)

When the affairs of the company have been completely wound up, the Company Liquidator makes an application to the Tribunal for an order that the company be dissolved. The Tribunal makes an order that the company be dissolved from the date of the order, and the corporate entity is officially dissolved accordingly. A certified copy of the dissolution order must be forwarded by the Liquidator to the Registrar of Companies within **thirty (30) days**. The ROC makes an official minute in the register of companies that the company is dissolved, extinguishing its legal personhood forever.

### Landmark Judicial Precedents on Oppression and Winding Up

The relationship between winding up on "just and equitable" grounds and relief against oppression under Sections 241–242 was definitively articulated by the Supreme Court of India in *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. (1981)* and recently fortified in *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd. (2021)*. The Supreme Court ruled that winding up under just and equitable grounds is an extreme, nuclear remedy that destroys corporate enterprise value and eliminates employment. To justify winding up a solvent, thriving corporate giant on just and equitable grounds, the petitioner must establish that there exists a functional deadlock, or a complete destruction of mutual confidence, or an insurmountable breakdown of substratum akin to the dissolution of a partnership. Mere commercial differences, lack

of directorial consensus, or removal from directorship does not warrant winding up a corporate institution that sustains public economic welfare.

### Powers of the Tribunal on Hearing Winding Up Petitions (Section 273)

Upon hearing a winding up petition under Section 273 of the Companies Act 2013, the National Company Law Tribunal (NCLT) is endowed with wide statutory powers. The Tribunal may, within **ninety (90) days** from the date of presentation of the petition, pass any of the following orders:

1. **Dismissal:** Dismiss the petition with or without costs if it is frivolous, vexatious, or an abuse of judicial process;
2. **Interim Order:** Make any interim order as it thinks fit, including appointing a Provisional Liquidator to take custody of corporate property until final orders;
3. **Appointment of Provisional Liquidator:** Appoint a provisional liquidator of the company till the making of a winding up order, defining their powers and requiring notice to the company;
4. **Winding Up Order:** Make an order for the winding up of the company with or without costs, initiating full liquidation administration; or
5. **Alternative Relief:** Make any other order as it thinks fit, including directing corporate restructuring, buyout of shares, or framing a scheme of arrangement under Section 230 to revive the enterprise.

The Tribunal will not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets. However, where the petition is presented on just and equitable grounds by contributories, the Tribunal may refuse to order winding up if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that alternative remedy.

### Vesting and Custody of Corporate Assets in Liquidation (Section 283 & 284)

Upon the issuance of a winding up order, the custody and control of all property, effects, and actionable claims to which the company is or appears to be entitled immediately pass to the Company Liquidator under Section 283. Directors, promoters, KMPs, and bankers of the company are legally obligated to surrender all assets, books of accounts, digital databases, title deeds, and registers to the liquidator within thirty days. Under Section 284, promoters, directors, and officers must extend full cooperation and assistance to the Liquidator; failure to cooperate without reasonable cause is punishable with imprisonment up to six months or fine up to ₹50,000.

### Preferential Payments in Priority Winding Up (Section 326 & 327)

In winding up proceedings governed by the Companies Act 2013, **Overriding Preferential Payments** under Section 326 must be paid in priority to all other debts:

- Workmen's dues (including wages, accrued holiday remuneration, and compensation under the Industrial Disputes Act); and
- Debts due to secured creditors to the extent of the workmen's portion of security;

shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions (pari passu). Under Section 327, subject to Section 326, other preferential debts include: (i) all revenues, taxes, cesses, and rates due to the Central or State Government or local authority having become due and payable within twelve months next before the relevant date; (ii) wages of employees (not being workmen) for a period of four months; and (iii) accrued holiday remuneration. These preferential claims are paid in full before ordinary unsecured trade creditors receive any dividend from liquidated assets.

### Voluntary Liquidation under Insolvency and Bankruptcy Code (Section 59)

Corporate entities that are completely solvent and have extinguished their liabilities may initiate **Voluntary Liquidation** under Section 59 of the Insolvency and Bankruptcy Code 2016. The statutory procedure requires:

1. A formal declaration of solvency verified by an affidavit of a majority of directors, affirming that they have made full inquiry into the affairs of the company and formed the opinion that the company has no debts or will be able to pay its debts in full from proceeds of assets sold in liquidation, and that the company is not being liquidated to defraud any person;
2. Audited financial statements and record of business operations of the company for the previous two years, accompanied by an asset valuation report prepared by a registered valuer;
3. Passing a **Special Resolution** within four weeks of the declaration of solvency, resolving that the company be liquidated voluntarily and appointing an Insolvency Professional as liquidator; and
4. If the company owes debts to creditors, obtaining approval from creditors representing two-thirds in value of debt within seven days of passing the special resolution.

Once assets are completely liquidated and distributed, the liquidator applies to the NCLT for an order of dissolution, which formally terminates corporate existence upon registration with the ROC.

### Disclaimer of Onerous Property by Liquidator (Section 333)

Where any part of the property of a company consists of: (a) land burdened with onerous covenants; (b) shares or stock in companies carrying liability for unpaid calls; (c) unprofitable commercial contracts; or (d) property that is unsaleable or not readily saleable, the Company Liquidator may, with the leave of the National Company Law Tribunal, by writing signed by them at any time within **twelve months** after the commencement of winding up, disclaim such onerous property. The disclaimer operates to determine, from the date of disclaimer, the rights, interests, and liabilities of the company in respect of the property disclaimed, while releasing the company from ongoing liabilities. Any person sustaining financial loss in consequence of the disclaimer is deemed to be a creditor of the company to the amount of the loss and may prove for such amount in the winding up.

### Custody, Disposal, and Preservation of Corporate Books (Section 347)

When a company has been wound up and is about to be dissolved, the books and papers of the company and of the Company Liquidator must be disposed of in such manner as the National Company Law Tribunal directs in the case of a winding up by the Tribunal. After the expiry of **five years** from the dissolution of the company, no responsibility shall rest on the company, the liquidator,

or any person to whom custody of books and papers has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein. Furthermore, under Section 348, if the winding up of a company is not concluded within one year after its commencement, the Liquidator must file an audited statement of receipts and payments with the ROC at prescribed statutory intervals until dissolution is finalized.

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