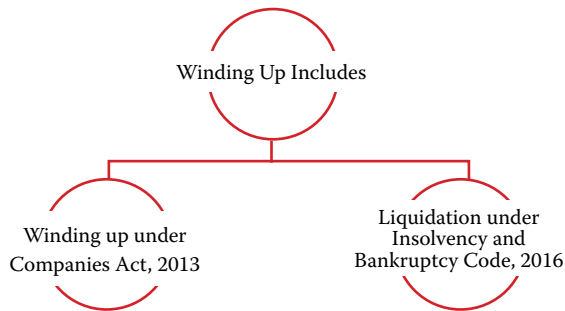


## CHAPTER 7: WINDING UP

### (1) Definition of Winding Up [Section 2(94A)]



*\*In most of the cases, liquidation (winding up) of companies are through the Insolvency Code only. Direct winding up process under Companies Act, 2013 are used very rarely.*

### (2) Circumstances in which Company may be Wound Up by Tribunal [Section 271]

#### Company may, wound up by Tribunal on petition filed u/s 272-

- by SR resolved that company be wound up
- If acted against the national interest (sovereignty & integrity, security etc.)
- Tribunal on an application, is of opinion that affairs of the company have been conducted in a fraudulent manner, or formed for fraudulent and unlawful purpose or the persons concerned in the formation /management of its affairs have been guilty of fraud, misfeasance or misconduct
- Co. has defaulted in filing financial statements/ annual returns for immediately preceding 5 consecutive FY
- On just and equitable ground

### (3) Petition for Winding up [Section 272 (1)]

#### (i) Presentation of Petition



- The Company
- Any Contributory / Contributories
- All or any of the persons specified above
- The registrar
- Any person authorized by Central Government in that behalf
- the CG/SG, in case falling u/s 271(b) i.e., if Co. acted against the national interest etc.

Copy of petition shall also be filed with the registrar

Registrar submit his views to Tribunal within 60 days of receipt of petition.

#### (ii) Petition filed by contributory [Section 272(2)]

Contributory can file petition, though

- He may be the holder of fully paid-up shares.
- The company may have no assets at all.
- The company may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities.
- Shares in respect of which he is a contributory/allotted to him/held by him & registered in his name for atleast 6 months during 18 months immediately before commencement of Winding up
- have devolved on him through the death of a former holder

#### (iii) Petition filed by Registrar [Section 272(3)]



*\*Registrar cannot file petition for winding up on the grounds given u/s 271(a) & 271(e) i.e. where the petition is made by the company/person authorised by the CG.*

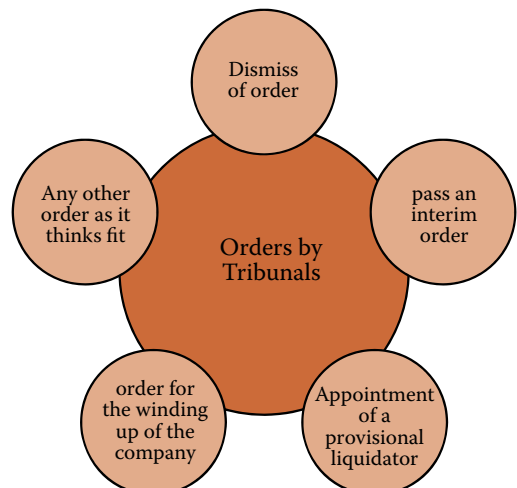
#### (iv) Petition presented by Co. for winding up

shall be presented before the Tribunal

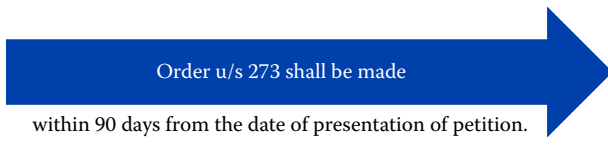
admitted only if accompanied by a statement of affairs

### (4) Powers of Tribunal [Section 273]

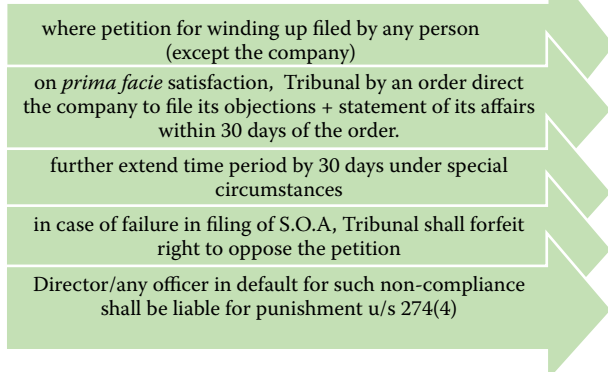
#### (i) Order passed by Tribunal



**(ii) Time period for passing of an order**



**(5) Tribunal may order company to file a statement of its affairs [Section 274(1)]**

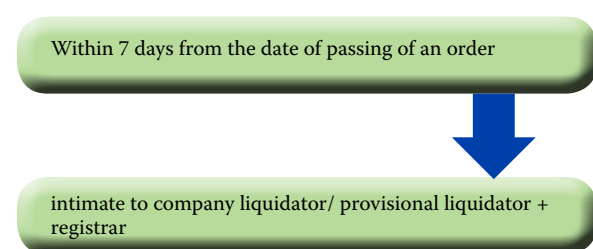


**(6) Company Liquidator (CL) & their appointment [Section 275]**

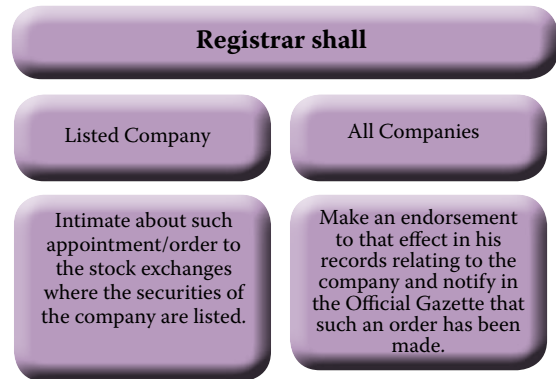
Tribunal, at the time of passing of order of winding up	shall appoint an Official Liquidator or a liquidator (from the panel maintained as the Company Liquidator)
The provisional liquidator /the Company Liquidator	shall be appointed by the Tribunal from amongst the insolvency professionals registered under the Insolvency and Bankruptcy Code, 2016;
Powers, terms and conditions of appointment of a provisional liquidator / Company Liquidator, and their removal and replacement	shall be regulated by Tribunal as per section 275 & 276
On appointment as provisional liquidator / Company Liquidator	such liquidator shall file a declaration within 7 days from the date of appointment disclosing conflict of interest / lack of independence in respect of his appointment with the Tribunal.

**(7) Intimation of appointment to CL, PL & Registrar [Section 277(1)]**

**(i) Intimation of order of Tribunal of an appointment of provisional liquidator (PL) /winding up of a company**



**(ii) On receipt of order of appointment /winding up [Section 277(2)]**



**(iii) In case of winding up order by the Tribunal [Section 277(4)]**

