

CA Final – Paper 4 (Law) – Integrated Case Studies

Part V – Winding Up (Chapter 7)

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(Covering ICAI SM, MTPs & RTPs till May 2023 applicable for May/Nov. 2023 Exams)

Integrated Case Study - 1

The Board of Directors of Binjoy Textiles Limited, incorporated in the year 2010 under the Companies Act, 1956, comprises of six Directors including Mr. Raman Singh functioning as Managing Director. Based in Maharashtra, the company was in full swing with its different kinds of fabrics like cotton, polyester, nylon, etc., and was reaching the farthest corners of the country.

The Authorised Capital of Binjoy Textiles Limited was ₹ 5,00,00,000 divided into 50,00,000 equity shares of ₹ 10 each. The issued and subscribed capital as at 31-03-2021 was ₹ 4,00,00,000 of which paid-up capital was ₹ 3,40,00,000. In fact, 500 shareholders out of total 1000 shareholders, had not paid the last call of ₹ 3 per share. It is noteworthy that these 500 shareholders were holding 20,00,000 equity shares.

Not known to others, two directors of Binjoy Textiles Limited, Mr. Manav and Mr. Kundan, were involved in mismanagement of the company bringing its downfall day-by-day. They were clandestinely withdrawing huge sums of money on regular basis on one pretext or the other for their personal use. The company started incurring losses year-after-year. There was unrest among the stakeholders. Mr. Raman, Managing Director, was also a silent party to such fraud since he did not try to put a brake on the fraudulent deeds of Mr. Manav and Mr. Kundan, thus showing his gross negligence that led the company to head sharply southwards.

In order to get rid of mismanagement, the contributories presented a petition for winding up to the National Company Law Tribunal (NCLT) on the grounds of mismanagement and fraud committed by these two directors of the company.

The long list of contributories also contained the names of Mr. Rohan and Mr. Sharad who inherited 2,000 partly paid-up shares whose paid-up value was ₹ 14,000 (Face Value ₹ 20,000) after the untimely death of their father Mr. Mool Chand just three months ago. Mr. Mool Chand had held these shares for the past two years. After inheriting 1000 shares each from their deceased father, Mr. Rohan and Mr. Sohan became the shareholders of Binjoy Textiles Limited and therefore, they also signed the petition for winding up of the company.

On being satisfied, the National Company Law Tribunal (NCLT) passed an Order for winding up of Binjoy Textiles Limited.

Due to the impending winding up, Binjoy Textiles Limited was contemplating on the notion to compensate Mr. Raman Singh for the loss of his office as Managing Director. Had there been no winding up as ordered by the National Company Law Tribunal (NCLT), Mr. Raman Singh would have retired in the year 2023. As per his retirement date, Mr. Raman Singh was supposed to receive minimum one year's remuneration, which he would have earned if he had been in the office for the remainder of his term. Accordingly, Mr. Raman Singh was looking forward to receive his dues at the time of winding up.

For the purposes of winding up of Binjoy Textiles Limited, the National Company Law Tribunal (NCLT) appointed a Company Liquidator, Mr. Dilip, on 21st December, 2021. However, Mr. Dilip had conflict of interest with the company. Therefore, as per the relevant provisions of the Companies Act, 2013, on appointment as Company Liquidator, he filed a declaration in the prescribed form with the National Company Law Tribunal (NCLT), effective from the date of his appointment, disclosing the conflict of his interest with the company. To take the matter ahead, following the provisions of the Companies Act, 2013, the National Company Law Tribunal (NCLT) duly sent an intimation of winding up to Mr. Dilip and the Registrar of Companies.

As per Section 281 of the Companies Act, 2013, the Liquidator of the company Mr. Dilip submitted to the National Company Law Tribunal (NCLT), a report containing chiefly the following particulars:

- The nature and details of the assets of the company including their location and value, stating separately the cash balance in hand and in the bank and the negotiable securities held by the company. A report on the valuation of the assets was obtained from the registered valuer, Mrs. Sapna Singh.
- Details of amount of share capital issued, subscribed and paid-up.
- The existing and contingent liabilities of the company including names, addresses and occupations of its creditors, stating separately the amount of secured and unsecured debts.
- All the details of secured debts including their value and the dates on which they were given.
- The debts due to any company or persons from whom they were due and the amount likely to be realised on account thereof.
- Guarantees extended by the company.
- List of contributories and dues payable by them and details of the unpaid calls.
- Details of subsisting contracts.
- Details of legal cases filed by or against the company.

The National Company Law Tribunal (NCLT), then settled the list of contributories and caused rectification of Register of Members in all cases where rectification was required. The NCLT reviewed all the assets of the company to be applied for the discharge of the winding up liability.

While settling the list of contributories, the NCLT included every person, who was or had been a member and who would be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

As noticed earlier, there were total 1000 members of which 500 members had paid 70% of the amount due on their shares. A final call of ₹ 3 per was still due from them. It was estimated that the company could clear its entire debt, if the unpaid amount was received from these 500 members. However, out of the 500 members who held partly paidup shares, 350 members paid their unpaid contributions but remaining 150 shareholders were yet to pay the amount due from them. [Study Material 28]

1 From the case scenario, it is evident that Mr. Rohan and Mr. Sharad inherited 2,000 shares after the death of their father Mr. Mool Chand and irrespective of their eligibility, both had signed the winding up petition as the contributories of Binjoy Textiles Limited. According to the provisions of the Companies Act, 2013, whether they were eligible to sign the petition?

- (a) Mr. Rohan and Mr. Sharad, after becoming contributories due to inheriting of 2,000 shares from their father Mr. Mool Chand, were legally eligible to sign the winding up petition, only if the shares held by them were fully paid-up and not otherwise.

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| | <p>(b) Mr. Rohan and Mr. Sharad were eligible to sign the winding up petition only if they had held the shares in their names for at least six months after inheriting them from their deceased father, Mr. Mool Chand.</p> <p>(c) Mr. Rohan and Mr. Sharad were eligible to sign the winding up petition only if they had held the shares in their names for at least nine months after inheriting them from their deceased father, Mr. Mool Chand.</p> <p>(d) Mr. Rohan and Mr. Sharad were eligible to sign the winding up petition as the shares due to which they were contributories had devolved upon them on the death of their father, Mr. Mool Chand, a former holder.</p> |
| 2 | <p>From the case scenario it is noticed that out of the 500 members who held partly paid-up shares, only 350 members paid their unpaid contributions and remaining 150 shareholders were yet to pay the amount due from them. Select the correct option from those given below as to whether payment made by 350 members would absolve the remaining 150 members from their liabilities:</p> <p>(a) In case the amount required to settle the debts of Binjoy Textiles Limited is collected from 350 members, then the remaining 150 members are not required to pay their dues.</p> <p>(b) All the shareholders holding partly paid-up shares of Binjoy Textiles Limited are required to respond individually to the demand notice whether they wish to pay the unpaid amount due from them or not.</p> <p>(c) It is within the discretion of National Company Law Tribunal to require the remaining 150 shareholders of Binjoy Textiles Limited whether to pay or not to pay the unpaid amount due from them.</p> <p>(d) Every unpaid shareholder of Binjoy Textiles Limited, being a contributory, is liable to pay to the extent of unpaid amount on his shares, irrespective of his shareholding.</p> |
| 3 | <p>Binjoy Textiles Limited wanted to compensate Mr. Raman Singh since he had to lose office of Managing Director before the completion of his term. Is it justified for the company to pay compensation to Mr. Raman Singh?</p> <p>(a) Binjoy Textiles Limited is permitted to compensate its Managing Director Mr. Raman Singh for the loss of office before the completion of his term.</p> <p>(b) Binjoy Textiles Limited is not permitted to compensate its Managing Director Mr. Raman Singh for the loss of office before the completion of his term since the company is being wound up by the National Company Law Tribunal and the negligence of Mr. Raman Singh was involved.</p> <p>(c) Binjoy Textiles Limited is permitted to compensate its Managing Director Mr. Raman Singh for the loss of office before the completion of his term after the shareholders passed an ordinary resolution.</p> <p>(d) Binjoy Textiles Limited is permitted to compensate its Managing Director Mr. Raman Singh for the loss of office before the completion of his term after the shareholders passed a special resolution.</p> |
| 4 | <p>Mr. Dilip had some conflict of interest with the company. So, by what date he should file declaration with the tribunal.</p> <p>(a) 28th December, 2021</p> <p>(b) 31st December, 2021</p> <p>(c) 5th January, 2022</p> <p>(d) 10th January, 2022</p> |
| 5 | <p>What is the role of registrar on receipt of intimation order from the tribunal for winding up of the company?</p> <p>(a) The registrar will keep the vigilance over the winding up process.</p> <p>(b) The registrar will assist the Liquidator in the winding up process of the company.</p> |

- (c) The registrar shall make an endorsement to that effect in his records relating to the company and notify it in the Official Gazette.
- (d) The registrar will strike off the company's name from the register of companies.

Answers - Integrated Case Study 1

| Q. No | Answer | |
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| 1 | (d) | Mr. Rohan and Mr. Sharad were eligible to sign the petition as the shares of which they are contributories have devolved upon them upon the death of a former holder. |
| 2 | (d) | Every unpaid shareholder of Binjoy Textiles Limited, being a contributory, is liable to pay to the extent of unpaid amount on his shares, irrespective of his shareholding. |
| 3 | (b) | Binjoy Textiles Limited is not permitted to compensate its Managing Director Mr. Raman Singh for the loss of office before the completion of his term since the company is being wound up by the National Company Law Tribunal and the negligence of Mr. Raman Singh was involved. |
| 4 | (a) | 28th December, 2021 |
| 5 | (c) | The registrar shall make an endorsement to that effect in his records relating to the company and notify it in the Official Gazette. |

Integrated Case Study - 2

Mr. Sameer, holding 15% shares of Towe Ltd., an unlisted company, since 30th September 2021, is unpaid to the extent of ₹ 10 lakh, filed a petition with Tribunal on 5th April, 2022, for winding up of Towe Ltd. and a copy of the same was filed with Registrar of Companies (ROC).

The Registrar of Companies (ROC) submitted his views to the National Company Law Tribunal (NCLT) on 18th May, 2022. The ROC mentioned in his views that it was just and equitable that Towe Ltd. should be wound up, on analyzing the information available with him with respect to the affairs of Towe Ltd.

The Tribunal appointed provisional liquidator, Mr. Raj, on 20th May, 2022, without giving, notice of the same as well as without affording opportunity for making representations, to the company. Mr. Raj is registered as an insolvency professional under the Insolvency and Bankruptcy Code, 2016 and he filed the declaration with respect to his independence to the Tribunal on 25th May, 2022.

Tribunal passed its order for winding up of Towe Ltd. on 16th June, 2022 and the provisional liquidator, Mr. Raj was appointed as the Company Liquidator. The Tribunal directed Mr. Sameer to deposit an amount of ₹ 1 lakh as security for costs as a precondition to issue directions to Towe Ltd.

The intimation thereof, of passing such order was sent to Mr. Raj as well as to the Registrar of Companies, by the Tribunal. The ROC on receipt of such order from Tribunal made an endorsement to that effect in his records relating to Towe Ltd. and also made a notification in the Official Gazette that such order of winding up has been made by the Tribunal.

Mr. Raj calculated that the outstanding liabilities and debts of Towe Ltd. which amounted to ₹ 70 lakh and the expenses of winding up were estimated at ₹ 3 lakh.

Towe Ltd. has at present 8 members which are holding shares unpaid to the extent of ₹ 40 lakh, in total.

Following were the past members of the company:-

- (1) Mr. Kishan ceased to be member on 23rd March, 2021, from whom Towe Ltd. had unpaid calls on shares amounting to ₹ 8 lakh. At the time when, Mr. Kishan ceased to be a member, the outstanding liabilities of the company were only ₹ 5 lakh.

- (2) Mr. Dhawan ceased to be member on 28th May, 2021, from whom Towe Ltd. had unpaid calls on shares amounting to ₹ 16 lakh. At the time when, Mr. Dhawan ceased to be a member, the outstanding liabilities of the company were only ₹ 13 lakh.
- (3) Mr. Tanmay who ceased to be member on 17th June, 2021, was having unpaid calls on shares of Towe Ltd. amounting to ₹ 15 lakh. At the time when, Mr. Tanmay ceased to be a member, the outstanding liabilities of the company were only ₹ 10 lakh.

Towe Ltd. created a floating charge, as agreed, on the stock of the company on 23rd August, 2021, to secure a current account with Munim Bank which was in debit by ₹ 12 lakh from 1st May, 2021 and thereafter the bank also advanced ₹ 15 lakh on 1st September, 2021, for meeting the operating expenses of the company.

Munim Bank charged ₹ 1,18,500 as interest for financial year ended on 31st March, 2022, by debiting the said current account of Towe Ltd. on the total amount of ₹ 27 lakh (₹ 12 lakh + ₹ 15 lakh). Towe Ltd. remained solvent during the financial year 2021-22. [MTP-March 21]

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| 1 | <p>Whether Mr. Sameer was eligible to file petition for winding up against Towe Ltd.?</p> <p>(a) No, as he is not holding fully paid up shares of Towe Ltd.</p> <p>(b) No, as he is not holding shares for 12 months or more prior to presenting such petition for winding up.</p> <p>(c) Yes, as he is a holding not less than 10% of the shares of Towe Ltd.</p> <p>(d) Yes, as he is holding shares for 6 months or more prior to presenting such petition for winding up.</p> |
| 2 | <p>What was the last date available with ROC to submit his views to NCLT on the petition filed by Mr. Sameer and with the NCLT to pass order for winding up, respectively?</p> <p>(a) 5th June, 2022 and 5th July, 2022 respectively.</p> <p>(b) 4th June, 2022 and 4th July, 2022 respectively.</p> <p>(c) 5th May, 2022 and 5th July, 2022 respectively.</p> <p>(d) 5th May, 2022 and 4th July, 2022 respectively.</p> |
| 3 | <p>Whether the act of Tribunal can be considered valid for not giving notice of appointment of provisional liquidator, Mr. Raj as well as opportunity for making representations, to Towe Ltd.?</p> <p>(a) Partially invalid, as giving notice of appointment of provisional liquidator, Mr. Raj, is mandatorily for the tribunal. However, whether to afford opportunity to Towe Ltd. for making representations is upon the sole discretion of the tribunal.</p> <p>(b) Valid, if in the opinion of the tribunal, there were some special reasons, whether recorded in writing or not, for not giving notice as well as opportunity for making representations, if any, to Towe Ltd.</p> <p>(c) Valid, if in the opinion of the tribunal, there were some special reasons, recorded in writing, for not giving notice as well as opportunity for making representations, if any, to Towe Ltd.</p> <p>(d) Not valid, as giving notice of appointment of provisional liquidator, Mr. Raj as well as opportunity for making representations, to Towe Ltd., is mandatorily required to be given by the tribunal.</p> |
| 4 | <p>How much amount, Mr. Kishan, Mr. Dhawan and Mr. Tanmay, would be liable to pay as a contributory, if in case tribunal calls past members to satisfy the contributions?</p> <p>(a) Mr. Kishan shall not be liable to pay any amount, Mr. Dhawan and Mr. Tanmay shall be liable to pay ₹ 16 lakh and ₹ 10 lakh, respectively.</p> <p>(b) Mr. Kishan, Mr. Dhawan and Mr. Tanmay shall be liable to pay ₹ 5 lakhs, ₹ 13 lakh and ₹ 10 lakh, respectively.</p> <p>(c) Mr. Kishan shall not be liable to pay any amount, Mr. Dhawan and Mr. Tanmay shall be liable to pay ₹ 13 lakh and ₹ 10 lakh, respectively.</p> <p>(d) Mr. Kishan and Mr. Dhawan shall not be liable to pay any amount and Mr. Tanmay shall be liable to pay ₹ 10 lakh.</p> |

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| 5 | <p>How much amount of floating charge created on the stocks of Towe Ltd. shall be valid and how much of interest shall be allowed if no other rate is notified by the Central Government, other than the rate of interest prescribed in the Act?</p> <p>(a) ₹ 27 lakh and ₹ 1,18,500, respectively. (b) ₹ 15 lakh and ₹ 98,750, respectively. (c) ₹ 27 lakh and ₹ 98,750, respectively. (d) ₹ 12 lakh and ₹ 1,18,500, respectively.</p> |
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Answers - Integrated Case Study 2

| Q. No | Answer |
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| 1 | (d) Yes, as he is holding shares for 6 months or more prior to presenting such petition for winding up. |
| 2 | (b) 4th June, 2022 and 4th July, 2022 respectively. |
| 3 | (c) Valid, if in the opinion of the tribunal, there were some special reasons, recorded in writing, for not giving notice as well as opportunity for making representations, if any, to Towe Ltd. |
| 4 | (c) Mr. Kishan shall not be liable to pay any amount, Mr. Dhawan and Mr. Tanmay shall be liable to pay ₹ 13 lakh and ₹ 10 lakh, respectively. |
| 5 | (c) ₹ 27 lakh and ₹ 98,750, respectively. |

Integrated Case Study - 3

The Tribunal on an application made by the Central Government under section 271(c) of the Companies Act, 2013, made a winding up order of Chal Chaiya-Chaiya Entertainment Co. Ltd., since the company was formed for purpose of making movies, having adult contents and exploiting the youth under the minority age, to act in the film making, which is not permitted under the existing Indian Laws.

The Tribunal appointed Mr. X, as a liquidator under section 275 of the Act, for submission of report on the details of Assets of the Company. Mr. X included in his report his opinion that fraud has been committed by an officer of the company in relation to the company since the formation thereof and any other matters which, in his opinion, it is desirable to bring to the notice of the Tribunal.

And also made a report on the viability of the business of the company which, in his opinion, are necessary for maximising the value of the assets of the company.

Mr. Raman a creditor of the company wanted to inspect the above report submitted under this section. Since he was not available there, so he authorised Mr. Agent to inspect the report and take extracts therefrom on payment of the prescribed fees.

Based on the above scenario, answer the following questions:

[MTP-Nov. 21]

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| 1 | <p>In the given scenario of the winding up of the company ordered by the Tribunal, who amongst the following shall be appointed as company liquidator:</p> <p>(a) Official Liquidator & Insolvency Professional. (b) Provisional Liquidator & Company Liquidator. (c) Company Liquidator & Official Liquidator. (d) Insolvency Professional, Company Liquidator & Official Liquidator.</p> |
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| 2 | On appointment of Mr. X as a Company Liquidator in the given case, such liquidator shall file a declaration disclosing his conflict of interest or lack of independence within a period of: |
| | (a) 7 days (b) 10 days (c) 15 days (d) 30 days |
| 3 | Who shall apply to Tribunal for monitoring of progress of liquidation proceedings by the Company Liquidator: |
| | (a) Company liquidator himself (b) creditors (c) Contributories (d) winding up committee |
| 4 | Who shall be comprising winding up committee under the Companies Act, 2013 to assist the Company liquidator in performance of winding up functions: |
| | (a) Official Liquidator attached to the Tribunal. (b) nominee of secured creditors. (c) a professional nominated by the Tribunal. (d) All of the above. |
| 5 | Who is entitled to inspect the report submitted in accordance with section 281 of the Companies Act, 2013 and take copies thereof : |
| | (a) Any person (b) Creditor (c) Agent of creditor (d) Both (b) and (c). |

Answers - Integrated Case Study 3

| Q. No | Answer | |
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| 1 | (a) | Official Liquidator & Insolvency Professional. |
| 2 | (a) | 7 days |
| 3 | (a) | Company liquidator himself. |
| 4 | (d) | All of the above. |
| 5 | (d) | Both (b) and (c). |