(i) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commmencement of the winding up;

(ii) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(iii) a past member shall not be liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(iv) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect to which he is liable as a present or past member;

(v) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(vi) nothing in this Act shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members on the policy or contract is restricted or whereby the fruds of the company are alone made liable in respect of the policy or contract;

(vii) a sum due to any member of a company in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company payable to that member in a case of competition between himself and any other creditor who is not a member of the company.

(2) In the winding up of a company limited by guarantee which has a share captial, every member thereof shall be liable to pay the following amounts namely :—

(a) the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up; and

(b) an amount to the extent of any sums unpaid, on any shares held by him.

236. liability of directors whose liability is unlimited.— In the winding up of a limited company, any director whether past or present, whose liability is, in pursuance of this Act, unlimited, shall, in addition to his own libility (if any) to contirbute as an ordinary member, be liable to make a further contribution, as if he were at the commencement of the winding up a member of any unlimited company;

Provided that—

(i) a past director shall not be liable to make such further contribution if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(ii) a past director shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(iii) subject to the articles, a director shall not be liable to make such further contribution unless the Court deems it necessary to require contribution in order to satisfy the debts and liabilities of the company and the costs, charges and expenses of the winding up.

237. Meaning of "contributory".— The term "cntributory" means every person liable to contribute to the assets of a company in the event of its being wound up, and, in all proceedings for determining and in all proceedings prior to the final determination of the persons who are to be deemed contributries, includes any person alleged to be a contributory.

238. Nature of liability of contributory.— (1) The liability of the contributory shall create a debt payable at the time sepcified in the calls made on him by the liquidator.

(2) No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes.

239. Contributories in case of death of member.— (1) If a contributory dies either before or after the has been placed on the list of contributories, his, legal representatives and his heirs shall be liable in the due course, of administration to contribute to the assets of the company in discharge of his liability and shall be contributories accordingly.

(2) If the legal representatives or heirs make default in paying any money ordered to be paid by them, proceedings may be taken for administering the property of the deceased contributory, whether movable or immovable, or both, and for compelling payment there out of the money due.

(3) For the purposes of this section, the surviving coparceners of a contirbutory who is a member of a Hindu Joint Family governed by the Mitakshara School of Hindu Law shall be deemed to be his legal representatives and heirs.

240. Contributories in case of insolvency of member.— If a contributory is adjudged insolvent either before or after he has been placed on the list of contributors, then—

(a) his assignese shall represent him for all the purposes of the winding up, and shall be contributories accordingly, and may be called on to admit to prove against the estate of the insolvent, or otherwise to allow to be paid out of his assets in due course of law, any money due from the insolvent in respect of his liability to contribute to the assets of the company; and

(b) there may be proved against the estate of the insolvent the estimated value of his liability to future calls as well as calls already made.

COMMENTARY : Case-law : Previous Act : s. 162

Some grounds which justify dissolution of the company.— *Section 162 of the Companies Act provides for winding up a company on six grounds. three of which are quoted below as they are found present in this case:*

(iv) If default is made in filing a statutory report or in holding statutory meetings.

(v) If the company is unable to pay its debt.

(vi) If the Court is of opinion that it is just and equitable that the company should be wound up. [(1979) 31 DLR 28].

Winding-up of a company by Court for debt not called for where there is bonafide dispute relating to the existence of the debt [(1970) 22 DLR 170].

Private limited company.—*Status of private limited Co. legally is the same as that of partnership.—Grounds for dissolving a private limited Co. are same as those of partnership—Domestic company formed with members of a family—Its dissolution can be brought about, like that of private company.*

In the case of a private limited company the tendency of the Court has uniformly been to treat it more or less as a partnership and to apply the same principles in the winding up of private limited company as would entitle a partner to have a partnership firm dissolved.

When a company is formed not by appeal to the public but is in substance a domestic company where the real partners are the members of a family, then in such a case "all the reasons that apply to the dissolution of private companies on the grounds of incompatibility between the views or methods of the partners would be applicable in terms to the division amongst the shareholders" of such a company. [(1965) 17 DLR (SC) 52].

Winding up of a company.—*Power of a party to start winding up proceeding depends on the company's position when proceedings are started in court.—It was contended on behalf of the respondent that the appellant had no longer any locus standi to ask for the winding up of the company, as he had during the pendency of*

the winding up petition in the High Court ceased to be share-holder of the company. The Company, it is said, has completely changed its character, for, it has since been converted in India into a public limited company.

Held : *The rights of the parties in this matter are to be adjudged according to the legal position prevailing on the date of the institution of the proceedings for winding up and not on the basis of changes which have since been introduced without the consent of the appellant pendente life by the unilateral acts of the others.*

A change in the law made subsequently in another country could not be regarded to be a relevant consideration for refusing an order for winding up if the appellant was otherwise entitled to the said order. [Ibid].

Visting of management of a company in one person.— *Vesting the share holdings of a company in one person—Difference between the two—In the former case the company does not lose its substratum. [(1977) 29 DLR 95].*

Innherent drawbacks in handling management affairs are not matters which can be corrected by prceedings under sec. 162 [Ibid].

No occasion arises for invoking provision of section 162 of the Companies Act when all the assets and property of the mortgagor companies are assigned and mortgaged to the Bank and specific remedy and procedure are provided in P.O. 129 of 1972.

A temporary inability to repay debt should not be an occasion for winding up of a company, that being opposed to the State's policy. [(1977) 29 DLR 67].

Private Company is a separate juristic person unlike partnership firm—Present policy is one of encouraging growth of private companies. [(1977) 29 DLR 95].

Dissolution of partnership firm and winding up of a company—Difference in approach between the two.

Interests which should be kept in view in deciding the question of winding up of a company. [Ibid].

When a company undertakes services of public utility the interest of the community should be kept in view. [Ibid].

Interest of the creditors of the company sought to be wound up should also be kept in view. [Ibid].

Application for winding up of a private limited company (run by two share-holders) rejected there being no ground that it is just and equitable to do so—But special circumstance of the case demanded an assurance form the respondent that he will act in a way which does not in any manner affect the interest of the other share. [(1974) 26 DLR 285].

Ss. 162 & 163: Winding up petition.—*legitimate method of enforcing payment of just debt. Creditor who is unable to obtain payment of his debt has the right exdebition justiciae to a winding up order— Argument that debt is time barred, not by itself a proof of contention that debt is disputed bonafide and on sound, legitimate and substantial grounds—Respondent Company not disputing debt and not claiming discharge of its liabilities—Winding up proceedings in circumstances, held, competent. [(1969) 21 PLD (Lahore) 195].*

Deadlock in the affairs of a company—*when becomes a ground for winding up of the company.—Deadlock in the affairs of the company by itself has not been made a ground under section 162 of the Companies Act for winding up a company but clause (vi) of section 162 of the Act provides that if the court is of opinion that it is just and equitable that the company should be wound up the court may wind up a company. [(1982) 34 DLR (AD) 47].*

Winding up of a private limited company.— *A private limited company can also be wound up on the principles of dissolution of partnership [Ibid].*

A company may be wound up by the Court upon the resolution that the company be wound up by the Court and on the ground that the Court would be of the opinion that it is just and equitable that the company should be wound up. The principle that would guide the dissolution of a partnership firm would also be applicable to a case of winding up of a private company—A mere lack of understanding which arsoe out of a personal dispute alone cannot be a ground for winding up the company. Parties seeking for an order from the Court must have an equity in his favour. [42 DLR 302].

Winding up matter is a serious affair. The winding up matter is a serious affair which is evident from the perusal of the entire Part V of the Act and in this connection the anxiety of the Privy Council in the case of unjustified winding up order may be noticed. [38 DLR (AD) 26].

Sections 162, 163 & 166—Winding up of a company.— *Maintainability of the application for winding up on grounds of inability to pay debts was challenged upon a counter-claim of money*

by the appellant company. The Court found the counter-claim to be just an allegation, no evidence having been placed before the Court in support of the counter-claim. Such counter-claim was not acceptable. [42 DLR 474].

***petitioner bank when not entitled to interest forming part of the debts.**—The interest charge against the company related to period of turmoil and for the period from the date of its taking over as abandoned property till date of its release. To allow such interest is absolutely a discretion of the Court. During this period the shareholders and Directors and legal disabilities over the affairs of the company and as such they should not be made to pay interests for such period. [42 DLR 474]*

***Winding up on plea of inability to pay debts.**—collateral security of the appellant company along with the value of the lands where its factory is situated and the value of machineries when taken up together, debts to the petitioner bank were fully secured. In such a position no application for winding up can be maintained. [42 DLR 474].*

In the facts of counter-claims raised, the legal liability of the company may be determined in a regular suit. Even after the decree in the money suit, the bank may be entitled to go for winding up proceeding if the company fails to pay the decretal amount. When a bonafide dispute over the claim of debt is made, winding up proceeding is not an appropriate legal proceeding. [42 DLR 474].

A limited company being a juristic person, lives, runs and functions under the provisions of a statute; death warrant can be issued under the same stature. The death warrant in the form of winding up should be springly issued. To the last minute effort should be made to save a company from liquidation. [42 DLR 747].

The company judge simply incorporated the claims made by the creditors without considering in details the assets and liabilities on the company and other materials so as to see whether the company was actually unable to repay the loan. His sweeping finding for winding up was not acceptable. [42 DLR 474].

***Plea for winding up of a company.**— Company Judge is competent to dispose of winding-up petition summarily on affidavits and counter-affidavits of parties. Company Court has inherent power to stay all further proceedings sine die for the ends of justice when such petition is malafide having been made for a collateral purpose and the same is an abuse of the process of the court. Order staying winding-up petition sine die amounts to rejection of such petition. It is*

not legally permissible to reopen the matter on the grounds as contained in the existing petition—New facts cannot be incorporated by amending the existing winding up petition. Revival of the present petitions are uncalled for —Filing of fresh winding up petition will depend on new or continuing causes of action. [43 DLR(AD) 169].

Winding up of a company—question of locus standi.— *Since the petitioner is one of the original promoter-directors of the Company and is now challenging the transfer of his shares in the Company on grounds of fraud the application under section 162 of the Act is maintainable as he has still got subsisting interest in the company. [43 DLR 99].*

When a proceeding before the High Court Division is pending under section 162 of the Companies Act, the fate of the Company with all assets and liabilities as well as rights of all creditors, secured or otherwise, and the share holders are sub judice before the court. [45 DLR 282].

Sections 162 and 163 Landlord's right to seek winding up of a company.—*When a debt due by a company is established and remains unsatisfied, it is not under discretion of the Court to refuse creditor an order for winding up of the Company. The Court is to consider the nature of the money owing to the creditor. Money owing is that which is legally recoverable. The petitioner being admittedly landlord and the defendant company being unable to pay its rent, the application for winding up of the latter is maintainable. [43 DLR 240].*

Sections 162 and 163— Winding up of a Company for non-payment of rent.— *An arrear house rent is the liability of a company and if a company is unable to pay such liability it may be wound up. [43 DLR 603].*

Sections 162, 163 166 & 202—Winding up of a company by court.—*Circumstances in which winding up will be ordered— The basis of an order for winding up a company on the ground of its inability to pay its debts is always insolvency. A company must be found to be commercially insolvent when its existing and probable assets are insufficient to meet the existing liabilities, it is heavily indebted to various creditors, all its assets being in mortgage or in pledge, and there is no possible chance of a profit being made or its business carried out. [43 DLR (AD) 164].*

Sections 162 & 166—Winding up of a Company.— *Whether mismanagement could be a ground for winding up-there may be certain irregularities and omissions in the management of c*

company. But mere allegation of mismanagement will not make the company liable to be wound up on the just and equitable reason— Where nothing more is established than that the directors have misappropriated the funds of the company an order for winding up would not be just and equitable. Allegations of misconduct of the directors or that the business has been carried on at a heavy loss are per se not grounds on which the court would order winding up. Where petition by a share-holder contains allegations which all relate to the internal management or mismanagement of the company's affairs, it is a matter for the share-holders themselves to deal with and not one that would call for interference by the court. [44 DLR 256].

Sections 162(I) & 166.—*The inclusion of a Company of which the Government is the 100% shareholder, in the schedule of the Public Corporation (Management and Co-ordination) Ordinance. 1986 (Ordinance 48 of 1986) does not make the company Public Corporation and the provisions of liquidation as contained in the Companies Act are applicable to such an enterprise in spite of the consultative committee of public enterprises of the said Ordinance of 1986. [46 DLR 552].*

Sections 162(I) & 166— *Government, while doing commercial or trading business through a company, does not function as a department or organ of the government in its administrative capacity and such a company satisfies all the qualifications of a company within the meaning of the companies Act and the petition for its winding up is competent. [46 DLR 552].*

WINDING UP BY COURT

241. Circumstances in which company may be wound up by Court.— A company may be wound up by the Court; if—

(i) if the company has by special resolution resolved that the company be wound up by the Court; or

(ii) if default is made in filing the statutroy report or in holding the statutrory meeting; or;

(iii) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year; or

(iv) if the number of members is reduced, in the case of a private company below two, or, in the case of any other company, below seven; or

(v) if the company is unable to pay its debts; or

(vi) if the Court is of opinion that it is just and equitable that the company should be wound up.

242. Company when deemed unable to pay its debts.

(1) A company shall deemed to be unable to pay its debts—

(i) if a creditor, by assignment or otherwise, to whom the company is indebted for a sum exceeding five housand taka then due, has served on the company, by causing the same to be delivered by registered post or otherwise at its registered office, a demand under his hand requrring the company to pay the sum so due and the company has for three weeks thereafter neglected to pay the sum or to secure or compound for it to the reasonable satisfaction of the creditor; or

(ii) if execution or other process issued on a decree or order of any court in favour of a creditor of the company is returned unsatisfied in whole or in part; or

(iii) if it is proved to the satisfaction of the Court that the company is unable to pay its debts, the Court shall take into account the contingent and prospective liabilities of the company.

(2) The demand referred to in clause (i) of sub-section (I) shall be deemed to have been duly given under the hand of the creditor if it is signed by an agent or legal adviser duly authorised on his behalf, or in the case of a firm, if it is signed by such agent, or by a legal adviser or by any one member of the firm on behalf of the firm.

COMMENTARY : Previous Act : S. 163

Winding up of a company by Court.— *Circumstances in which winding up will be ordered—The basis of an order for winding up a company on the ground of its liability to pay its debts is always insolvency. A company must be found to be commercially insolvent*

when its existing and probable assets are insufficient to meet the existing liabilities, it is heavily indebted to various creditors, all its assets being in mortgage or in pledge, and there is no possible chance of a profit being made or its business carried out. [43 DLR (AD) 164].

243. Winding up may be referred to District Court.— Where the High Court Division makes an order for winding up of a company under this Act it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court, and thereupon such District court shall for the purpose of winding up the company, be deemed to be "the Court" within the meaning of this Act and shall have, for the perposes of such winding up, all the jurisdiction and powers of the High Court Division.

244. Transfer of winding up from one Disrtrict Court to another.— If during the progress of a winding up in a District Court it is made to appear to the High Court Division that the same may be more conveniently prosecuted in any other District Court, the High court Division may transfer the same to such other District Court, and there upon the winding up shall proceed in such other District Court, and at any stage of such proceedings, that Division may with draw the proceedings from any of such District Courts and dispose it of.

245. Provisions as to applications for winding up.— An application to the Court for the winding up of a company shall be by petition prsented, subject to the provisions of this section, either by the company, or by any creditor or creditors, including any contingent or prospective creditor or creditors, contributory or contributors, or by all or any of those parties, together or separately or by the Registrar :

Provided that—

(a) a contributory shall not be entitled to present a petition for winding up a company, unless—

(i) either the number of members is reduced in the case of a private company, below two, or, in the case of any other company, below seven; or

(ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months before the commencement of the winding up, or have devolved on him through the death of a former holder;

(b) the Registrar shall not be entitled to present a petitions for winding up a company—

(i) except on the ground from the financial condition of the company as disclosed in its balance sheet or from the report of an inspector appointed under section 195 or, in a case falling within section 204, it appears that the company is unable to pay its debts; and

(ii) unless the previous sanction of the Government has been obtained to the presentation of the petition :

Provided that no such sanction shall be given unless the company has first been afforded an opportunity of being heard.

(c) a petition for winding up of a company on the ground of default in filing the statutory report or in holding the statutory meeting shall not be presented by any person except by a shareholder, nor before the expiration of fourteen days after the last day on which the meeting ought to have been held;

(d) the Court shall not give a hearing to a petition for winding up of a company by a contingent or prospective credition until such security for costs has been given as the Court thinks resonable and until a prima facie case for winding up has been established to the satisfaction of the Court.

COMMENTARY : Previous Act : S. 166

Winding up of a Company.—*Whether mismanagement could be a ground for winding up*— *There may be certain irregularities and omissions in the management of a company. But mere allegation of mismanagement will not make the company liable to be wound up on the just and equitable reason—Where nothing more is established than that the directors have misappropriated the funds of the company an order for winding up would not be just and equitable. Allegations of misconduct of the directors or that the business has been carried on at a heavy loss are per se not grounds on which the court would order winding up. Where petition by a share-holder contains allegations which all relate to the internal management or mismanagement of the company's affairs, it is a matter for the share-holders themselves to deal with and not one that would call for interference by the court. [44 DLR 256].*

Winding up of a company by court.—*Circumstances in which winding up will be ordered-The basis of an order for winding up a company on the ground of its inability to pay its debts is always insolvency. A company must be found to be commercially insolvent when its existing and probable assets are insufficient to meet the existing liabilities, it is heavily indebted to various creditors, all its assets being in mortgage or in pledge, and there is no possible chance of a profit being made or its business carried out. [43 DLR (AD) 164].*

246. Effect of winding up order.— An order for winding up of a company shall operate in favor of all the creditors and of all the contributories of the company as if made on the joint petition of a credition and of a contributory.

247. Commencement of winding up by Court.—A winding up of a company on the Court shall be deemed to commence at the time of the presentation of the petition for the winding up.

248. Court may grant injunction.—The Court may, at any time after the presentation of the petition for winding up of a company under this Act and before making an order for winding up the company, upon the application of the company or of any creditor or contributory of the company, restrain further proceedings in any suit or proceedings against the

company and may also pass other similar order upon such terms as the Court thinks fit.

249. Powers of Court on hearing petition.— (1) On hearing the petition, the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order or any other order which, it deems just, but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equial to, or in excees of, those assets. or that the company has no assets.

(2) Where the petition is presented on the ground of default in filing the statutory report or in holding the statutory meeting the Court may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

(3) Where the Court makes an order for the winding up of a company, it shall, except where a liquidator is appointed simultaneously, forthwith cause intimation thereof to be sent to the official receiver.

250. Suits stayed on winding up order.— When a winding up order has been made or a provisional liquidator has been appointed, no suit or other legal proceedings shall be proceeded with or commenced against the company except by leave of the Court and subject to such terms as the Court may impose.

COMMENTARY : Previous Act : s. 171

'Suit' or 'other legal proceeding'—Meaning of the words explained.—*For the purpose of section 171 of the Companies Act the word "suit" means a suit instituted for the first time and the words "other legal proceedings" mean legal proceedings which are other than a suit instituted for the first time. The words "other legal proceedings" in section 171 do not include any proceeding arising out of a suit or a proceeding, in other words they do not include appeal, revision etc. at the instance of a party other than the Official Liquidator.*

. If a party wants to institute a suit or start any legal proceeding for the first time against a company which had gone into liquidation,

such suit or other legal proceeding shall not be proceeded with or commenced without the leave of the Court. [(1961) 13 DLR 481].

Section 171 of the Companies Act has no application to any Scheduled Industrial Enterprise as envisaged in P.O. 27 of 1972 and the courts have no powers relating to winding up of a Scheduled Industrial Enterprise. [(1984) DLR 257].

The meaning of the expression "leave" of the Court referred to in this section means the consent of the winding up Court. [42 DLR 480].

The Banking Companies Ordinance, 1962 made special provisions for banking companies when they are in liquidation and empowered the High Court Division exclusive jurisdiction to decide any claim by or against a banking company. Though this Ordinance is in addition and not in derogation of the Companies Act or any other law for the time being in force, section 60 of the Banking Companies Ordinance by its non obstante clause made provision to prevail over the Companies Act, Civil Procedure Code or any other law for the time being in force. [42 (DLR) 480].

Auction sale of property of a company—The Company is in liquidation long afterwards—Question of setting aside the sale—Provisions of the Banking Companies Ordinance when read with those of the Companies Act and the Public Demands Recovery Act, it appears that the provisions of the Banking Companies Act shall be effective in addition to and not in derogation to the Companies Act or any other law for the time being in force excepting the provisions which are specifically made in the ordinance. In view of the fact that the law under which the auction sale took place has made provisions for the aggrieved person to seek the relief of setting aside the auction and the plaintiff did not avail of the forum for appropriate remedy and the auction is still subsisting in the eye of law. the same cannot be set aside now in the present proceeding under the Bangladesh Companies Ordinance. [43 DLR 558].

251. Vacancy in the office of liquidator.—(1) For the purposes of this Act, so far as it relatres to the winding up of companies by the Court, the term "official receiver" means the official receiver attached to the Court, or, if there is no such official receiver, then such person as the Government may, by notification in the official Gazette, appoint for the purpose.

(2) On the making of a winding up order the official receiver shall become the official liquidator of the company and shall continue to act as such until his further continuance is terminated by an order of the Court.

(3) The official receiver shall, as the official liquidator, forthwith take into his custody and control all the books, documents and the assets of the company.

(4) The official receiver shall be entitled so such remuneration as the Court shall fix.

252. Copy of winding up order to be filed with the Registrar.—(1) On the making of a winding up order, it shall be the duty of the petitioner in the widning up proceedings and of the company to file with the Registrar a copy of the order within thirty days from the date of the making in the order.

(2) On the filing of a copy of a winding up order, the Registrar shall register a summary thereof in his books relating to the company, and shall notify in the official Gazette that such an order has been made.

(3) Such order shall be deemed to be notice of discharge to the servants of the company except when the business of the company is continued.

253. Power of Court to stay winding up.—The Court may, at any time after an order for winding up, on the application of any creditor or contributor, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.

254. Court may have regard to wishes of creditors or contributories.— The Court may, as to all matters relating to a winding up, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

OFFICIAL LIQUIDATOR

255. Appointment of official liquidator.—(1) For the purpose of conducting the proceedings in winding up a company and performing such duties in reference thereto as the Court may impose, the Court may appoint a person or persons, other than the official receiver, to be called an official liquidator or official liquidators.

(2) The Court may make such an appointment provisionally at any time after the presentation of a petition and before the making of an order for winding up, but shall, before making any such appointment, give notice to the company unless for reasons to be recorded it thinks fit to dispense with such notice.

(3) If more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act, by this Act required or authorised, to be done by the official liquidator is to be done by all or any one or more of such persons.

(4) The Court may determine whether any and what security is to be given by any official liquidator on his appointment.

(5) The acts of an official liquidator shall be valid notwithstanding any defect that may afterwards by discoverd in his appointment.

Provided that nothing in this sub-section shall be deemed to give validity to acts done by an official liquidator after his appointment has been shown to be invalid.

(6) A receiver shall not be appointment of assets in the hands of an offcial liquidator.

COMMENTARY Case-law : Previous Act : s. 175

Provisional Liquidator, appointment of—Discretion of court.—*To be exercised in judicial manner after giving due consideration to facts and circumstances of each cases— Not necessary, for Court to come to definite finding that Company must ulitimately go into liquidation"— Respondent-Company incurring*

debts enceeding its paid up capital. refusing to pay debts and also suspending its business for more than three years without any plausible reason —Appontment of Provisional Liquidator, held just and proper. in circumstances of case. [1969) 21 P.L.D. (Lahore) 195].

256. Resignations, removals, filling up vacancies and compensation—(1) Any official liquidator may resign, or may be removed by the Court on due cause shown.

(2) Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court and until the vacancy is so filled up the official receiver shall be and act as the official liquidator.

(3) There shall be paid to the official liquidator such salary or remuneration by way of percentage or otherwise, as the Court may direct and if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

257. Oficial liquidator.— The official liquidator shall be described by the style of the official liquidator of the particular company in respect of which he is appointed, and not by his individual name.

258. Statement of affairs to be made to the liquidator.—(1) Where the Court has made a winding up order or apointment an official liquidator provisionally, there shall, unless the Court thinks fit to order otherwise and so orders, be made out and submitted to the official liquidator a statements as to the affairs of the company verified by an affidavit and containing the following particulars, namely :—

(a) the assets of the company, staying separately the cash balance in hand and in the bank, if any;

(b) the debts and other liabilities;

(c) the names, residences and oocupations of the creditors stating stating separately the amount of secured debts and unsecured debts, and in the case of secured debts, particulars of the

securities, their value and the dates when they were given;

(d) the debts due to the company and the names, residences and occupations of the persons from whom they are due and the amount likely to be realised therefrom.

(2) The said statement shall be submitted and verified by one or more of the following persons.—

(a) the persons who were at the releveant date the directors and the person who was at that date the secretary, manager or other chief officer of the company, or

(b) such other person as the official liquidator may, subject to the direction or Court, require to submit and verify the statement, and the said other persons are the persons.—

(i) who are or had been directors or officers of the company;

(ii) who have taken part in the formation of the company at any time within one year before the relevant date;

(iii) who are in the employment of the company or had been in the employment of the company within the said year referred to in sub-section (ii) above, and are, in the opinion of the official liquidator, capable of giving the information required;

(iv) who are or had been within the said year to which the statement relates officers of or in the employment of a company.

(3) The statement shall be submitted within twenty-one days from the relevant date, or within such extended time as the official liquidator or the Court may, for special reasons appoint.

(4) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the official liquidator

or provisional liquidator at the case may be out of the assets of the company, such costs and expended incurred in and about the preparation and making of the statement and affidavit as the official liquidator may consider reasonable, subject to an appeal to the Court.

(5) If any person, without reasonable excuse, knowingly and wilfully make default in complying with the requirements of this section, he shall be liable to a fine not exceeding five hundred taka for every day during which the default pontinues.

(6) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted is pursuance of this section and to a copy thereof or extraet therefrom.

(7) Any person untruthfully so stating himself to be a creditor or contributory shall be guilty of an offence under section 182 of the Penal Code, 1860 (XIV of 1860), and shall, on the application of the liquidator or of the receiver be punishable accordingly.

(8) In this section, the expression "the relevant date" means, in a case where a provisional liquidator is appointed, the date of his appointment, and in a case where no such appointment is made, the date of the winding up order.

259. Statement by liquidator.— (1) In a case where a winding up order is made, the official liquidator shall, as on as practicable after receipt of the statement to be submitted under section 258, and not later than one hundred an twenty days or with the leave of the Court one hundred any sixty days from the date of the order, or in a case where the Court orders that no statement shall be submitted, as soon as practicable after the date of the order, submit a preliminary report to the Court—

(a) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilites giving separately under the leading of assets, particulars of—

(i) cash and negotiable securities;

(ii) debts due from contributories;

(iii) debts due to and securities, if any, available to the company,

(iv) movable and immovable properties belonging to the company;

(v) unpaid calls and

(b) if the company has failed as to the causes of the failure, and

(c) whether in his opinion further inquirey is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2) The official liquidatory may also, if he thinks fit, make a further report or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any director or other officer of the company in relation to the company since the formation thereof, and any other matter which is his opinion it is desirable to bring to the notice of the Court.

260. Custody of company's property.— (1) The official liquidator, whether appointed provisionally or not, shall take into his custody, or under his control, all the property, effects and actionable claims to which the company is or appears to be entitled.

(2) All the property and effec's of the company shall be deemed to be in the custody of the Court as from the date of the order for the winding up of the company.

COMMENTARY : Previous Act : S. 178

Ss. 178(2) and 229 *– Under sub-sec (2) of sec. 17g company's properties shall vest in court's custody and under sub-s (1) Official Liquidator shall take into his custody all properties – Section 178 is controlled by Sec 229 which deals with insolvency rules. [(1980) 32 D.L.R. 45].*

261. Committee of Inspection in compulsory winding up. – (1) The official liquidator shall, whithin a month from the date of the order for the winding up of a company, convene a meeting of the creditors of the company, as ascertained from the books and documents of the company, for the purpose of determining whether or not a committee of inspection shall be appointed to act with the liquidator, and who are to be members of the committees, if appointed.

(2) The official liquidator shall, within a week from the date of the creditors meeting convence a meeting of the contributories to consider the decision of the creditors and to accept the same with or without modification.

(3) If the contributories do not accept the decision of the creditors in its entirely, it shall be the duty of the official liquidator to apply to the Court for directions as to whether there shall be a committee of inspection and if so, what shall be the composition of the committee, and who shall be members thereof.

(4) A committee of inspection appointed under this section shall consist of not more than twelve members being creditors and contributories of the company or persons holding general or special powers of attorney from creditors or contributories, in such proportions as may be agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the court.

(5) The committee of inspection shall have the right to inspect the accounts of the official liquidator at all reasonable times.

(6) The committee shall meet at such times as they may form time to time appoint, and, failing such

appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(7) The committee may act by a majority of thier members present at a meeting, but shall not act unless a majority of the committee are present.

(8) A member of the committee may resign by notice in writing signed by him and delivered to the liquidator.

(9) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meeting of the committee without the leave of those members who together with himself represent the creditors or contributories, as the case may be, his office shall thereupon became vacant.

(10) A members of the committee may be removed thereform by an ordinary resolution at a meeting of creditors if, he represents, creditors,or of contributories,if he represents contributories, of which seven days, notice has been given stating the object of the meeting.

(11) On a vacancy occurrling in the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may require, to fill in the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill in the vacancy.

(12) The continung members of the committee, if not less than two, may act notwithstanding any vacancy in the committee.

262. Powers of official liquidator. – The official liquidator shall have power with the sanction of the Court, to do the following things–

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

(b) to carry on the business of the company so far as may be necessary, for the beneficial winding up of the same,

(c) to sell the immovable and movable property of the company by public auction on private contract, with power to transfer the whole thereof to any person or organisation or company, or to sell the same in parcles,

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

(e) to prove, rank and claim in the insolvency of any contributory, for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(f) to draw, accept, make and endorse any bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill, hundi, or note had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(g) to raise on the security of the assets of the company any more requisite;

(h) to take out in his official name letters of administration relating to the estate of any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the same of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of

administration or recover the money be deemed to be due to the liquidator or himself;

Provided that nothing in clause (h) shall be deemed to affect the rights, duties and privileges of the Administrator General appointed under the Administrator General's Act, 1913 (III of 1913);

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

COMMENTARY : Previous Act : S. 179

Section 179 has been enacted to check and control Official Liquidator.– *Provisions in section 179 have been made only to check and control Official Liquidator so that no unnecessary litigation is started by the Official Liquidator or no flimsy defence is put up by the Liquidator.*

Once a litigations is started by an official Liquidator with the leave of the Court no further leave of the Court need be taken by any party to a suit or proceeding other than by Official Liquidator for preferring an appeal or motion. as the case may be, against a decision given in such a suit or a proceeding [(1961) 13 D.L.R. 48].

163. Limit of Discretion of official liquidator.- (The Court may provide by any order that the official liquidator may exersise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

264. Provision for legal assistance to official liquidator.– The Official liquidator may, with the sanction of the Court, appoint an advocate or attorney entitled to appear before the Court to assist him in the performance of his duties ;

Provided that, where the official liquidator is an advocate or attorney, he shall not appoint his partner, unless the latter consents to act without remunaration.

265. Liquidator to keep books containing proceedings of meetings and to submit account of his receipts to Court.– (1) The official liquidator of a company which is being wound up by the Court shall keep, in the manner prescribed, proper books in which he shall cause to be made entries or minutes of preceedings at meetings and of such other matters as may be prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his agent, inspect any such books.

(2) Every offficial liquidator shall, at such times as may be prescribed but not less than twice in each year during his tenure of office, present to the Court an account of his receipts and payments as such liquidator.

(3) The liquidator shall prepare the account in the prescribed form in duplicate, and shall verify it by a declaration in the prescribed form.

(4) The Court shall cause the account to be audited in such manner as it thinks fit and for the purpose of the audit the liquidator shall furnish the Court with such vouchers, and books or other document as the Court may require, and the Court may at any time require the production of and inspect any books or accounts kept by the liquidator.

(5) When the account has been audited, one copy therof shall be filed and kept by the Court, and the other copy shall be delivered to the Registrar for filing, and each copy shall be open to the inspection of any creditor or any person interested.

266. Exercise and control of liquidator's powers. – (1) Subject to the provisions of this Act, the official liquidator of a company which is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting or by the committee of inspection, and any directions given by the creditors or

contributories at any general meeting shall, in case of conflict be deemed to over ride any directions given by the committee of inspection.

(2) The official liquidator may summon general meeting of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories by resolution may direct or whenever requested in writing to do so by one tenth in value of the creditors or contributories, as the case may be.

(3) The official liquidator may apply to the Court in the manner prescribed for directions in relation to any particular matter arising in the winding up.

(4) Subject to the provision of this Act, the official liquidator shall use his own discretion in the administration of the assets of the company and in the distribution thereof among the creditors.

(5) If any person is aggrieved by any act or decision of the official liquidator, that person may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, make such order as it thinks just in the circumstances.

ORDINARY POWERS OF COURT

267. Settlement of list of contributories and application of assets. – (1) As soon as may be after making a winding up order, the Court, shall settle a list of conrtibutories, shall have power to register of members in all cases where rectification is required in pursuance of this Act. and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) In setteling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

COMMENTARY : Previous Act : S. 184

The moot question that was submitted before him (i.e. the Company Judge) was whether the prayer could be entertained together (i.e. for winding up of the company as well as for rectification of share-register) on the same petition. [38 DLR (AD) 26]

The purport of the petition that was filed by the respondents was to rectify share-register by cancelling the allotment of 1700 shares and at the same time for winding up of the Company and that could be dealt with under section 184 [38 DLR (AD) 26).

268. Power to require transfer, delivery etc, of property.– The Court may at any time after making a winding up order, require any contributory for the time being settled on the list of contributories and any trustee, receiver, banker, agent, or officer of the company to pay, deliver surrender or transfer forthwith, or within such time as the Court directs to the official liquidator any money property or documents in his hands to which the company is prima facie entitled.

COMMENTARY : Previous Act : S. 185

Secs 185 & 188 : Section 185 when maintainable.— *The words "other persons" in section 188 apply to which category – An application under section 185 can be maintained only against a contributory trustee, receiver, banker or agent or officer of the company for the purpose of delivering, surrendering or transferring the money or other property which should be in such person's hand and to which the company should be prima facie entitled. But if a bonafide dispute is raised whether the company is entitled or not to the money or to the property, there is nothing in the section empowering the Court or liquidator to determine that question. If the party against whom the order is sought submits to the jurisdiction of the Court, as for example where it admits that it has the money and it claims to set off for a lesser sum the Court can determine the liability.*

The word "trustee" in section 185 means only an express trustee, and not a constructive trustee.

The words "other persons" appearing in section 188 refer to the category mentioned in section 185 and not to any one else. (8 PLR (Dac) 385].

It is one of the condition for the application of section 185 that money or property in respect of which order is sought should be in the

hands of the person against whom the order is to be made. Of course this does not mean that by his own improper act the person concerned can take his case out of the scope of section 185. If he improperly misappropriates it or wastes it, an order may still be passed against him. The proper interpretation of the words "in his hand" is that the property in dispute is either in fact in his hands or the circumstances are such the Court will regard it as still in his hands of his own default he will not be allowed to take advantage. The Court will, in the particular circumstances of each case, decide whether the property in dispute can still be said to be in the hands of the party against whom the order is to be passed. [(1953) PLR (Lah) 793)].

Where an application is in substance and in effect an application for the adjustment of the rights of the contributors among themselves and for distribution of the surplus amongst the persons entitled thereto, it falls under section 192 of the Companies Act and the questions under that section can be determined by the Court in a compulsory winding up. Such questions can also be determined in an application under section 216 of the Act in the case of a voluntatry winding up of a conmpany Pak. International Air Lines and Orient Airaways (in Liquidation). [1959) 11 DLR 10].

Limitation to the powers of the Court when exercising power under the section [Ibid].

Rights of different classes of share-holders in the winding up of a company [Ibid].

269. Power to order payment of debts by contributory.– (1) The Court may, at any time after making a winding up order, make an order any contributory for the time being settled on the list of contributories to pay, in the manner directed by the order, any money due from him or from the estate of the person whom he represents to the company, exclusive of any money payable by him or the estate by virtue of any call in pursuance of this Act.

(2) The Court in making such an order may, in the case of an unlimited company, allow to the contributory by way of set off any money due to him or to the estate which he represents from the company. on any independent dealing or contract with the company. but not any money due to him as a member of the company in respect of any dividend or profit, and may,

in the case of a limited company, made to any director whose liability is unlimited or to his estate the like allowance:

Provided that, the case of any company, whether limited or unlimited when all the creditors are paid in full. any money due on any account what ever to a contributory from the company may be allowed to him by way of set off against any subsequent call.

270. Power of Court to make calls.— (1) The Court may, at any time after making a winding up order, and that is either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment there of by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liabilty, for payment of any money which the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expanses of winding up, and for the adjustment of the rights of the contributories among themselves.

(2) In making the call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

271. Power to order payment into bank.- The Court may order any contributory, purchaser or other person from whom money is due to the company to pay the same into the account of the official liquidator in any scheduled banks as defined in the Bangladesh Bank Order, 1972 (P.O. No. 127), instead of to the official liquidator and any such order may be enforced in the same manner as if it had made direct payment to the official liquidator.

272. Regulation of account with Court. – All moneys, bills, hundis, notes and other securities paid and delivered into the bank where the liquidators of the company may have his account, in the event of a company being wound up by the Court, shall be subject in all respect to the orders of the Court.

273. Order on contributory conclusive evidence.– (1) An order made by the Court on a contributory shall, subject to any right of appeal, be conclusive evidence that the money, if only, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons, and in all proceedings whatsoever.

274. Power to enclude creditors not proving in time.- The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

275. Adjustment of right of contributories.– The Court shall adjust the right of the contributories among themselves, and distribute any surplus among the persons entiled thereto.

276. Power toorder cost.— The court may in the event of the company assets being insufficient to satisfy the liabilities, make an order as to the payment, out of the assets, of the costs, charges and expenses, incurred in the winding up in such order of priority as the Court thinks just.

COMMENTARY : Previous Act : S. 193

S. 193 read with Sec. 230 (3). *- Costs of unsuccessful litigation awarded against Official Liquidator - Payable out of assets of company in priority to costs of liquidation itself. [(1964) 16 D.L.R. 656]*

277. Dissolution of company.– (1) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the Company shall be dissolved accordingly.

(2) The order shall be reported within fifteen days of the making thereof by the official liquidator to the Registrar, who shall record in his make books a minute of the dissolution of the company.

(3) If the official liquidator makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding one hundred taka for everyday during which he is in default.

EXTRAORDINARY POWERS OF COURT

278. Power to summon person suspected of having property of company. :-

(1) The Court may, after it has made a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property of the company, or supposed to be indebted to the company, or any person whom the Court deems capable of giving information concerning the trade, dealing, affairs or property of the company.

(2) The Court may examine him on oath concerning the same, either by word or mouth or on written interrogatories and may reduce his answers to writing and require him to sign them.

(3) The Court may require him to produce any documents in his custody or power relating to the company; but, where he claims any lien on documents produced by him, the production shall be without prejudice to that lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for his expens, refuses to come before the Court at the time appointed, not having a lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may cause him to be apprehended and brought before the Court for examinatiion.

279. Power to order public examination of promotors, etc.-

(1) When an order has been made for winding up a company by the Court, and the official liquidator has

applied to the Court stating that in his opinion, a fraud has been committed by any person in the promotion or formation of the company or by any director or other officer of the company, in relation to the company since its formation, the Court may, after consideration of the application, direct that any person who has taken any part in the promotion or formation of the company or has been a director, manager or other officer of the company shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined as to the promotion or formation or the conduct of the business of the company, or as to his conduct and dealings as director, manager or other officer thereof.

(2) The official liquidator shall take part in the examination and for that purpose may, if specially authorised by the Court in that behalf, employ such legal assistance as may be sanctioned by the Court.

(3) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the Court.

(4) The Court may put such questions to the person examined as the Court thinks fit.

(5) The person examined shall be examined on oath and shall answer all such questions as the Court may put or allow to be put to him.

(6) A person ordered to be examined under this section may at his own cost employ any person entitled to appear before the Court who shall be at liberty to put to him such questions as the Court may deem just for the purpose of enabling him to explain or qualify any answers given by him;

Provided that if he is in the opinion of the Court, exculpated from any charges made or suggested against him the Court may allow him such costs as in its discretion, it may think fit.

(7) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him in civil proceedings and shall be open to the inspection of any creditor or contributory at all resonable times.

(8) The Court may if it thinks fit, adjourn the examination from time to time.

(9) An examination under this section may, if the Court so directs and subject to any rules in this behalf, be held before any District Judge or before any officer of the High Court Division being an official referee, master, Registrar or Deputy Registrar and the powers of the Courts under this section as to the conduct of the examination, but not as to costs may be exercised by the person before whom the examination is held.

COMMENTARY : Previous Act : S. 196

Secs. 196 & 202 *– Application under sec 196 must allege fraud – Appeal under section 196 lies when penalty is imposed. – Under section 196 the application must show a prima facie case of fraud against the person concerned; merely a general allegation of fraud in the management of the company would not necessarily justify a public examination. [(1976) 28 D.L.R. 402]*

Difference between s. 66 of the Banking Companies Ordinance and S. 196 (1) of the Companies Act. *– So far as the contents of the report which may be submitted under sub-section (1) of section 66 of the Banking Companies Ordinance and sub-section (1) of section 196 of the Companies Act are concernd, the substantial difference between the two appears to result from the expressions "whether in his opinion any loss has been caused to the banking company" and also the expressions " whether or not a fraud has been committed by such act or omission" which have been employed in sub-section (1) of section 66 of the Ordinance.*

Provisions of sub-section (1) of section 66 of the Ordinance are wider than section 196 (1) of the Act. [(1981) 33 D.L.R. (AD) 355].

An order made by Company Judge u/s 66(1) of the Banking Companies Ordinance not appealable. Even if an Appeal is possible from an order u/s 196 of the Companies Act. If it falls within the

purview of S. 66(1) of the Banking Companies Ordinance no appeal will lie. [Ibid].

280. Power to arrest absconding contributionry :- The Court, at any time either before or after making a winding up order and on proof of probable cause for believing that a contributory is or about to quit Bangladesh or otherwise to abscond, or to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, may cause the contributory to be arrested and his books and papers and movable property to be sized, and him and them to be safe castody until such times as the Court may order.

281. Saving of other proceedings. - Any powers by this Act conferred on the Court shall be in addition to and not in restriction of, any existing powers of instituing proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor for the recovery of any call or other sums.

ENFORCEMENT OF AND APPEAL FROM ORDERS

282. Power to enforce orders. : All orders made by the Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

283. Order made in any Court to be enforced by other Courts. - Any order made by the Court for or in the course of the winding up of a company shall be enforced in any place in Bangladesh by any other Court that would have had jurisdiction in respect of such company if the registered office of the company had been situate at such place and in the same manner in all respect as if such order had been made by the court that is hereby required to enforce the same, but in relation to the place where the registered office of the company is situate, only the court having jurisdiction cover such place shall enforce such order.

284. Mode of dealing with orders to be enforced by other Courts. - Where any order made by one Court

is to be enforced by another Court, a certified copy of the order so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order having been made; and thereupon the last mentioned Court shall take the requisite steps in the matter for enforcing the order, in the same manner as if it were the order of the Court enforcing the same.

285. Appeal from orders. : – Re-hearing of, and appeals from order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction.

COMMENTARY : Previous Act : S. 202

No appeal lies against an administrative order.- *If order made is administrative in nature an appeal would not lie under the provisions of section 202 of the Companies Act.*

The Company Judge's order not binding on the executing Court which is to exercise its discretion according to the facts and circumstances of the case. It should be remembered in this case the direction is not on any subordinate Court by a judge of a High Court but the direction is by the Company Judge to the official liquidator, an officer of this Court and that it is plainly the duty of the executing Court concerned to pass such order as may be warranted by circumstances. He has to apply law to the facts and circumstances of the case and exercise his discretion. The observation of the learned Company Judge will not influence in any manner the decision of the Executing Court [(1968) 20 D.L.R. 1206].

Appeal lies against all orders winding up a company thereby finally disposing of disputes between parties.

Section 202 is wide enough to cover appeals against all orders made in the matter of the winding up of a Company, provided such an order finally deeides a dispute between the parties or deprives the appellant of a substantial and important right and is not a mere formal or interlocutory order. [Ibid].

Winding up of a company by court. *- Circumstances in which winding up will be ordered – The basis of an order for winding up a company on the ground of its inability to pay its debts is always insolvency. A company must be found to be commercially insolvent when its existing and probable assets are insufficient to meet the existing liablities, it is heavily indebted to various creditors, all its assets being in mortgage or in pledge, and there is no possible chance of a profit being made on its business carried out. [43 DLR (AD) 164].*

VOLUNTARY WINDING UP

286. Circumstances in which company may be wound up voluatarily. : (1) A company may be wound up voluntarily–

(a) when the period, if any, fixed for the duration of the company by the articles expires, or the even, if any occurs on the occurrence of which articles provide that the company is to be disolved and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily;

(b) if the company resolves by special resolution that the company be wound up voluntaily;

(c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) The expression "resolution for voluntarily winding up" when used here after in this Part means a resolution passed under clause (a), clause (b) or clause (c) of this section.

287. Commencement of voluntary winding up. – A voluntary winding up shall be deemed to commence at the time of the passing of the resolution for voluntary winding up.

288. Effect of voluntary winding up on status of company.- When a company is wound up voluntarily, the company shall, from the commencement of the

winding up, cease to carry on its business, except so far as may be required for the beneficial winding up thereof:

Privided that the corporate state and corporate powers of the company shall, notwithstanding anything to the contrary in its articles, continue until it is dissolved.

289. Notice of resolution to wind up volontarily.– (1) Notice of any special resolution or extraordinay resolution for winding up a company voluntarily shall be given by the company within ten days of the passing of the same by advertisement in the official Gazatte, and also in some news paper, if any circulating in the district where the registered office of the company is situate.

(2) If a company makes default in complying with the requirements of this section, it shall be liable to a fine not exceeding one hundred taka for every day during which the default continues ; and also every officer of the company who knowingly and wilfully authorises or permits the default shall be liable to a like penalty.

290. Declaration of solvency.- (1) Where it is proposed to wind up a company voluntarily, the directors of the company or, in the case of a company having more than two directors, the majority of the directors shall at a meeting of the directors held before the date on which the notice of the meeting at which the resolution for the winding up the company is to be proposed are sent out make a declaration verified by an affiavit to the effect that they have made a full inquiry into the affairs of the company, and that, having so done, they formed the opinion that the company will be able to pay its debts in full within a period, not exceeding three years, from three commencement of the winding up.

(2) Such declaration shall be supported by a report of the company's auditor on the company's affairs and shall have no effect for the purposes of this Act unless it is

delivered to the Registrar for registration before the date mentioned in sub-section (1)

(3) A winding up, in the case which a declaration has been made and delivered in accordance with sub-sections (1) and (2), is in this Act referred to as "members voluntars winding up" and, where a declaration has not been made and delivered as aforesaid, is in this Act. referred to as "creditors voluantary winding up."

MEMBERS VOLUNTARY WINDING UP

291. Provisions applicable to a members" voluntary winding up.- The provisions contained in section 292 to 296 (both inclusive), shall apply in relation to a members voluntary winding up.

292. Power of company to appoint and fix remuneration of liquidator.- (1) The company in general meeting shall appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the company, and may fix the remuneration to be paid to him or them.

(2) On the appointment of liquidator, all the powers of the directors shall cease, except so far as the company in general meeting or the liquidator, sanctions the continuance thereof.

193. Power to fill vacancy in the office of liquidator.-

(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company, the company in genaral meeting may, subject to any agreement with its creditors, fill the vacancy.

(2) For the purpose of filling in the said vacancy, a general meeting may be convented by any contributory or, if there were more liquidators than one, by the continuing liquidator.

(3) The meeting shall be held in the manner provided by this Act or by articles, or in such manner as may, on

application by any contributory or by the continuing liquidators, be determined by the Court.

294. Power of liquidator to accept shares, etc as consideration for sale of property of company.– (1) Where a company is proposed to be, or is in course of being, wound up altogether voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another company, whether a company within the meaning of this Act or not, in this section called "the transferee company" the liquidator of the first-mentioned company, in this section called "the transferor company", may with the sanction of a special resolution of that company conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement where by the members of the transferor company may in lieu of receiving cash or shares, policies or other like interests or in addition thereto, participate in the profits of, or receive any other benefit from, the transferee company.

(2) Any sale or other transfer or arrangement in pursuance of this section shall be binding on the members of the transferor company.

(3) If any member of the transferor company who did not vote in favour of the special resolution expresses his disent therefrom in writing addressed to the liquidator and left at the registered office of the company within seven days after the passing of the special resolution, he may require the liquidator either to abstain from carrying the resolution into effect or to purchase his interest at a price to be determined by agreement or any arbitration in manner hereafter provided.

(4) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is dissolved, and be raised by the liquidator

in such manner as may be determined by special resolution.

(5) A special resolution shall not be invalid, for the purposes of this section by reson only that it is passed before or concurrently with a resolution for voluntary winding up or for appointment of liquidators, but if an order is made within a year for winding up the company by or subject to the supervision of the Court, the special resolution shall not be valid unless sanctioned by the Court.

(6) The provisions of the Arbitration Act. 1940 (X of 1940) other that those restricting the application of that Act in respect of the subject matter of the arbitration, shall apply to all arbitrations in pursuance of this section.

195. Duty of liquidator to call general meeting at the end of each year.–

(1) In the event of the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding up and of each succeeding year, or as soon thereafter as may be convenient within ninety days, of the close of the year, and shall lay before the meeting an account of his acts and dealings and of the conduct of the winding up during the proceeding year and a statement in the presribed form containing the prescribed particulars with respect to the position of the liquidation.

(2) If the liquidator fails to comply with this section, he shall be liabie to a fine not exceeding five hundred taka.

296. Final meeting and dissolution.– (1) As soon as the affairs of the company are fully wound up, liquidator shall make up an account of the winding of up showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting the company for the purpose of laying before it the account and giving explanation thereof.

(2) The meeting shall be called by advertisement specifying the time, place and object thereof, and published one month at least before the meeting in the manner specified in sub-section (1) of section 289 for publication of a notice under that sub-section;

(3) Within one week after the meeting the liquidator shall send to the Registrar a copy of the account and shall make a return to him of the holding of the meeting and of its date, and if the copy is not sent or the return is not made in accordance with this sub-section, the liquidator shall be liable to a fine not exceeding one hundred taka for everyday during which the default continues:

Provided that, if a quorum is not present at the meeting the liquidator shall in lieu of the said return make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to making of the return shall deemed to have been complied with.

(4) The Registrar on receiving the account and either of the returns mentioned in sub-section (3) shall forthwith register them and on the expeiration of three months from the registration of the return the company shall be deemed to be dissolved:

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under sub-section (4) is made, whithin twenty-one after the making of the order, to deliver to the Registrar a certified copy of the order for registration and if that person fails so to do he shall be liable to a fine not exceeding one hundred taka for every day during which the default continues.

CREDITOR'S VOLUNTARY WINDING UP

297. Provision applicable to a vontary winding up.- The provisions contained in sections 298 to 305 , both inclusive, shall apply in relation to a creditoris voluntary winding up.

298. Meeting of creditors.- (1) The company shall cause a meeting of the creditors of the company to be summoned for the day , or the day next following the day , on which there is to be held the meeting at which the resolution for voluntary winding up is to be proposed, and shall cause the notices of the said meeting of creditors to be sent by post to the creditors simultaneously with the sending of the notices of the said meeting of the company at which such resolution will be proposed.

(2) The company shall also cause notice of the meeting of the creditors be advertised in the manner specified in sub - section (1) of section 289 for the publication of a notice under that sub-section.

(3) The directors of the company shall-

(a) cause a full statement of the position of the companys affairs together with a list of the creditors of the company and the estimated amount of their claims to be laid, before the meeting of crditors to be held as aforesaid; and

(b) appoint one of their number to preside at the said meeting .

(4) It shall be the duty of the director appointed to preside at the meeting creditors to attened the meeting and to preside thereat.

(5) If the meeting of the company at which the resolution for voluntary winding up is to be proposed is abjourned and the resolution is passed at an abjourne meeting, any resolution passed at the meeting of the creditors held in pursuance of sub-section (1) shall have effect as if it hed been passed immediately after the passing of the resolution for winding up of the company.

(6) If default is made-

(a) by the company in complying with sub-sections (1)and (2);

(b) by the board of directors of the company in complying with sub-section(3);

(c) by any director of the company in complying with sub-section (4).

the company, every member of the board of directors or director, as the case may be, shall be liable to a fine not exceeding five thousand taka and, in the case of default by the company, every officer of the company who is in default shall be liable to the like penalty.

299. Appointment of liquidator. - The creditors and the company at their respective meetings mentioned in section 298 may nominate a person to be liquidator for the purpose of winding up the affairs and distributing the assets of the company, and if the creditors and the company nominate different persons, the person nominated by the creditors shall be the liquidator, and if no person is nominated by the creditors the person if any, nominated by the company shall be liquidator :

Provided that in the case of different persons being nominated, any director, member or creditor of the company may, within seven days after the date on which the nomination was made by the creditors, apply to the Court for an order either directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors or appointing some other person to be liquidator instead of the person appointed by the creditors.

300. Appointment of committee of inspection. – The creditors at the meeting to be held in pursuance of section 298 or at any subsequent meeting may, if they think fit, appoint a committee of inspection consisting of not more than five persons and if such a committee is appointed the company may, either at the meeting at which the resolution for voluntary winding up is

passed or at any time subsequently in general meeting appoint such number of persons as they think fit to act as members of the committee not exceeding five in number :

Provided that the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company to be members of the committee of inspection and if the creditors so resolve, the persons mentioned in the resolution shall not, unless the Court otherwise directs, be qualified to remain or to act as members, of the committee, and on any application to the Court may under this provision the Court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

301. Fixing of liquidators remuneration and cessation of directors powers.– (1) The committee of inspection, or if there is no such committee, the creditors may fix the remuneation to be paid to the liquidator or liquidators, and where the remuneration is not so fixed, it shall be determined by the Court.

(2) On the appointment of a liquidator, all the powers of the directors shall cease, except so far as the committee of inspection, or if there is no such committee, the creditors sanction the continuance thereof.

302. Power to fill vacancy in the office of liquidator.- If a vacancy occurs by death, resignation or otherwise in the office of a liquidator then the vacancy may be filled in by the Court when the liquidator was appointed by the Court or by the creditors where the liquidator was appointed by creditors.

303. Application of section 294 to a creditors voluntary winding up.– The provisions of section 294 shall apply the case of a creditors voluntary winding up as in the case of a members voluntary winding up with the modification that the powers of the liquidator uader the said section shall not be exercise with the saction either the of Court or of the committee of inspection.

304. Duty of liquidator to call meetings of company and of creditors at the year end.–

(1) In the event of the winding up continuing for more than one year, the liquidator shall summon, a general meeting of the company and a meeting of creditors at the end of the first year from the commencement of the winding up. and of each succeeding year, or as soon thereafter as may be convenient and shall lay before the meetings an account of his acts and dealting and of the conduct of the winding up during the proceeding year and a statement in the prescribed form obtaining the prescribed particulars with respect to the position of the winding up.

(2) If the liquidator fails to comply with this section, he shall be liable to a fine not exceeding five hundred taka.

305. Final meeting and dissolution.- (1) As soon as the affairs of the company are fully wound up, the liqudator shall make up an account of the winding up showing how the winding up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors, for the purpose of laying the account before the meetings and giving any explanation thereof.

(2) Each such meeting under sub-section (II) shall be called by advertisement specifying the time, place and object thereof and published onc month at least before the meeting in the manner specified in sub-section (1) of section 289 for the publication of a notice under that sub-section.

(3) Within one week after the date of the meetings, or, if the meetings, are not held on the same date, after the date of the later meeting, the liquidator shall send to the Registrar a copy of the account, and shall make a return to him of the holding of the meetings and of their dates, and if the copies are not sent or the return is not made in accordance with this sub-section, the

liquidator shall be liable to a fine not exceeding one hundred taka for every day during which the default continues:

Provided that, if a quorum, which for the purpose of this section shall be two person, is not present at either of such meetings the liquidator shall, in lieu of such return, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon such a return being made the provisions of this sub-section as to the making of the return shall, in respect of that meeting be deemed to have been complied with. (4) The Registrar, on receiving the account and in respect of each such meeting.

(4) The Registrar on receiving the account and any of the returns mentioned in sub-section (3) shall forthwith register them, and on the expiration of three months from the registration there of the company shall be deemed to be dissolved :

Provided that the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect for such time as the Court thinks fit.

(5) It shall be the duty of the person on whose application an order of the Court under sub-section this (4) is made, within twenty one days after the making of the order, to deliver to the Register a certified copy of the order for registration, and if that person fails to do so, he shall be liable to a fine not exceeding one hundred taka for every day during which the default continues.

GENERAL PROVISION FOR VOLUNTARY WINDING UP

306. Provisions applicable to every voluntory winding up.– The provisions contained in section 307 to 314, both inclusive, shall apply to every voluntary winding up whether a members or a creditors winding up.

307. Distribution of property of company.- Subject to the provisions of this Act as to preferential payments, the property of a company shall, on its winding up, be applied in satisfaction of its liabilites pari passu and,

subject to such application, shall unless the articles otherwise provide, be distributed among the members according to their rights and interested in the company.

308. Powers and duties of liquidator in voluntary winding up.– (1) The liquidator may-

(a) in the case of a members voluntary winding up, with the sanction of an extraordinary resolution of the company, and in the case of a creditors voluntary winding up, with the sanction of either the Court or the committee of inspection exercise any of the powers given by clauses (d), (e), (f) and (h) of section 262 to a liquidator in a winding up; but the exercise by the liquidator of the powers given by this clause shall be subject to the control of the Court and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of these powers;

(b) wothout the sanction referred to in clause (a) exercise any of the other powers by this Act given on the liquidator in a winding up by the Court;

(c) exercise the power of the Court under this Act of settling a list of contributories, and the list of contributories shall be *prima facie* evidence of the laibility of the persons named therein to be contributories;

(d) exercise the power of the Court of making calls on shares or otherwise;

(e) summon general meetings of the company for the purpose of obtaining the sanction of the company by special or extraordinary resolution or for any other purpose he may think fit.

2) The liquidator shall pay the debts of the company and shall adjust the rights of the contributories among themselves.

(3) When several liquidators are appointed, any power given by this Act may be exercised by such one or more of them as may be determined at the time of the

appointment, or, in default of such determination, by any number not less than two.

309. Power of Court to appoint and remove liquidator in voluntary winding up.-

(1) If, from any cause whatever, there is no liquidator acting, the Court may appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator and appoint another liquidator, and, in case of such removal, shall immediately send a copy of the removal order to the removed liquidator.

310. Notice by liquidator of his appointment.- (1) The liquidator shall, within twenty-one days after his appointment, deliver to the Registrar for registration a notice of his appointment in the form prescribed.

(2) If the liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding one hundred taka for every day during which the default continues.

311. Arrangement when binding on creditors.– Any arrangement entered into between a company about to be, or in the course of being, wound up and its creditors shall, subject to the right of appeal under sub-section (2) be binding on the company if sanctioned by an extraordinary resolution and also on the creditors if acceded to by threefourths in number and value of the creditors.

(2) Any creditor or contributory may, within three weeks from the completion of the arrangement appeal to the Court against, it, and the Court may thereupon, as it thinks just amend, vary or confirm the arrangement

312. Power to apply to Court to have questions determined of powers exercised.–

(1) The liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding up of a company, or to exercise, as respects the enforcing of calls, staying of proceedings or any other matter all or any of the powers which the

Court might exercise if the company were being wound up by the Court.

(2) The liquidator or any creditor or contributory may apply for an order setting aside any attachment, distress or excecution put into force against the estate or effects of the company after the commencement of the winding up.

(3) The application under sub-section (2) shall be made –

(a) if the attachment, distress or execution is levied or put into force by the High Court Division to the High Court Divisions; and

(b) if the attachment, distress or execution is levied or put into force by any other Court, to the Court having jurisdiction to wind up the company

(4) The Court, if satisfied that the determination of the question of the required exercise of power or the order applied for will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit. or may make such other order on the application as it thinks just.

313. Cost of voluntary winding up.– All costs, charges and other expenditure properly incurred in the winding put including the remuneration of the liquidator, shall subject to the rights of secured creditors, if any, be payable out of the assets of the company in priory to all other items.

314. Saving for rights of creditors and contributors.– The winding up of a company shall not bar the right of any creditor or contributory to apply for a winding up by the Court, but in the Case of an application by a contributory the Court must be satisfied that the rights of the contributors will be prejudiced by a voluntary winding up.

315. Power of Court to adopt proceeding of voluntary winding up.– Where a company is being wound up voluntarily and an order is made for winding up by the Court, the Court may, if it think fit, by the same or

subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding up and also for any incidental on consequeatan situation.

WINDING UP SUBJECT TO SUPERVISION OF COURT

316. Power to order winding up subject to supervision.– When a company has by special or extraordinary resolution, resolved to wind up voluntarily, the Court may make an order that the voluntary winding up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the court and generally on such terms an conditions as the Court thinks just.

317. Effect of petition for winding up subject to supervision.- A petition for continuance of a voluntary winding up subject to the supervision of the Court shall, for the purpose of giving jurisdication to the Court over suits, be deemed to be a petition for winding up by the Court.

318. Court may have regard to wishes of creditors and contributories.– The Court may, in deciding between a winding up by the Court and winding up subject to supervision, in the appointment of liquidators, and in all other matter relating to the winding up subject to supervision have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

319. Power of Court to appoint and remove liquidators.– (1) Where an order is made for a winding up subject to supervision, the Court may by the same or any subsequent order appoint any additional liquidator.

(2) A liquidator appointed by the Court under this section shall have the same powers, be subject to the same obligations and in all respects stand in the same position as if he had been appointed by the company.

(3) The Court may remove any liquidator so appointed by the Court or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal or by death or resignation.

320. Effect of supervision order.– (1) Where an order is made for a winding up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily.

(2) Expect as provided in sub-section (1), and save for the purposes of section 279, any order made by the Court for a winding up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceeding, be deemed to be an order of the Court for winding up of the company by the Court, and shall confer full authority only the Court to make calls or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court.

(3) In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in farvour of the official liquidator, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding up subject to the supervision of the Court .

COMMENTARY : Previous Act : S. 225

Directions given by Company Judge to Official Liquidator and not orders of High Court – *Such directions are not binding on executing Court which is to exercise its own discreation according to the facts and circumstances of the case [(1971) 23 D.L.R I].*

Money received by Official Liquidator pending approval of Company Judge for settlement of claim with judgment debtor is a deposit and not payment. If approval is not granted. the Official

Liquidator is to return the money- Adjustment of the amount by the Official Liquidator is illegal. [Ibid].

321. Appointment of liquidators subject to supervision to the office of official liquidators.- Where an order has been made for the winding up of a company subject to supervision and an order is afterwards made for winding up by the Court, the Court may, by the last-mentioned order or by any subsequent order, appoint the liquidators for the first mentioned winding up or any of them either provisionally or permanently and either with or without the addition of any other person, to be official liquidator in the winding up by the Court.

SUPPLEMENTAL PROVISIONS

322. Avoidance of transfers, etc. after commencement of winding up.- (1) In the case of voluntary winding up, every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company made after the commencement of the winding up shall be void.

(2) In the case of a winding up by, or subject to the supervision of the Court, every disposition of the property, including actionable claims of the company, and every transfer of shares, alteration in the status of its members made after the commencement of the winding up shall, unless the Court otherwise orders be void.

323. Debts of all descriptions to be proved.- In every winding up, subject in the case of insolvent companies to the application in accordance with the provisions of this Act or the law of insolvency, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, shall be admissible to proof against the company, a just estimate being made, so far as possible, of value of such debts or claims as may be subject to any

contingency or for some other reason do not bear a certain value.

324. Application of insolvency rules in winding up of insolvent companies. – In the winding up of an insolvent company the same rules shall prevail and be observed with regard to the respective rights of secured and unsecured creditors and to debts provable and the valuation of annuities and future and contingent liabilities as are in force for the time being under the law of insolvency with respect to the estate of persons adjudged insolvent; and all Persons who in any such case would be entitled to prove for and receive dividends out of the assets of the company may come in under the winding up, and make such claims against the company as they respectively are entitled to by virtue of this section.

COMMENTARY : Previous Act : S. 229

The position of an attaching creditor under the Act is similar to that under the Provincial Insolvency Act (Section 51) [(1959)] D.L.R. 459].

325. Preferential payments.- (1) In a winding up there shall be paid in priority to all other debts–

(a) All revenue, taxes, cesses and rates, whether payable to the Government or to a local authority due from the company at the date, specified in sub-section (5), hereinafter referred in this sub-section as the said date and having become due and payable within the twelve months next before the said date;

(b) all wages or salary of any clerk and other servant in respect of service rendered to the company within the two months next before the said date, not exceeding one thousand taka for each clerk or servant;

(c) all wages of any labourer or workman not exceeding five hundred for each, whether payable for the time or piece-work in respect of services

rendered to the company within the two months next before the said date;

(d) compensation payable under the Workmen's Compensation Act, 1923 (VIII of 1923), in respect of the death or disablement of any officer or employee of the company;

(e) all sums due to any employee from a provident fund a pension fund a gratuity fund or any other fund for the welfare of the employees maintained by the company; and

(f) the expenses of any investigation held in pursuance of clause (c) of section 195 of this Act.

(2) The debts mentioned in sub-section (1) shall -

(a) rank equally among themselves and be paid in full unless the assets are insufficient to meet them, in which case they shall abate in equal proportion; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of any person distraining or having distrained on any goods or effects of the company within three months next before the date of a winding up order, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on the proceeds of the sale thereof:

Provided that in respect of any money paid under any such charge the said persons shall have the same rights of priority as the person to whom the payment is made

(5) The date referred to in sub-section (1) (a) is –

(a) in the case of a company ordered to be wound up compulsorily which had not previously commenced to be wound up voluntarily the date of the winding up order; and

(b) in any other case the date of the commencement of the winding up.

COMMENTARY : Previous Act : S. 230

Cost and expense of winding up– *Where a liquidator appointed under the Companies Act. instead of taking any step to give up a property which was held on lease by the company tries to retain the same and uses the same for the benefit of the business of the Company in liquidation the rent of the property should be regarded as cost and expenses of the winding-up under section 230(3) of the Companies Act. and it should be paid in full like any other debt or expenses properly incurred by the liquidator [8 PLR (dac.) 409].*

326. Disclaimer of property.- (1) Where any part of the property of a company which is being wound up consists of land of any tenure burdened with onerous convenience, of shares, or stock in other companies, of unprofitable contracts or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that he had endeavoured to sell or has taken possession of the property. or had exercised any act of ownership in relation thereto. may with the leave of the Court and subject to the provisions of this section, by writing signed by him at any time within twelve months after the commencement of the winding up or such extended period as may be allowed by the Court, disclaim the property :

Provided that where any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding up, the power under this section of disclaiming the property may be exercised at any time within twelve months after he has become aware

thereof or such extended period as may be allowed by the Court.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but shall not, except so far as is necessary for the purpose of relasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(3) The Court, before or on granting leave to disclaim, may require such notice to be given to persons interested and impose such terms as a condition or granting, leave and make such other order in the matter as the Court thinks just.

(4) The liquidator shall not be entitled to disclaim any property under this section in any case where an application in writing has been made to him by any persons interested in the property requiring him to decide whether he will or will not disclaim, and the liquidator has not within a period of thirty days after the receipt of the application or such further time as may be allowed by the Court, given notice to the applicant that he intends to apply to the Court for leave to disclaim, and in the case of a contract, if the liqudiator, after such an application as aforesaid, does not within the said period or further period disclaim the contract, the company shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by either party of damages for the nonperformance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by him as debt in the winding up.

(6) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property and or hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid or a trustee for him and on such terms as the Court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or as signment for the purpose :-

Provided that, where the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favor of any person claiming under the company whether as under lessee or as mortgagee expect upon the terms of making that person–

(a) subject to the same liabilities and obligations as those to which the company was subject under the lease or mortgage in respect of the property at the commencement of the winding up ; or

(b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date;

and in either, if the case so requires, as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under lease declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property, and if there is no person claiming under the company who is willing to accept an order upon such terms, the Court shall have power to vest the estate and interest of the company in the property in any person liable, either personally or in representative, and either alone or jointly with the company, to perform the lessee's convenants in the lease,

freed and discharged from all estates, incumbrances and interests created therein by the company.

(7) Any person injured by the operation of a disclaimer under this section, shall be deemed to be a creditor of the company to the amount of the injury, and may accordingly prove the amount as a debt in the winding up.

327. Fraudulent preference.– (1) Any transfer, delivery of goods, payment, execution or other act relating to property which would, if made or done by or against an individual, be deemed in his insolvency a fraudulent preference, shall if made or done by or against a company, be deemed in the event of its being wound up a fraudulent preference of its creditors, and be invalid accordingly.

(2) For the purpose of this section, the presentation of a petition for winding up in the case of winding up by or subject to the supervision of the Court, and a resolution for winding up in the case of a voluntary winding up, shall be deemed to correspond with the act of insolvency in the case of an individual.

(3) Any transfer or assignment by a company of all its property to trustees for the benefit of all its creditors shall be void.

328. Avoidance of certain attachments, executions, etc.- (1) Where any company is being wound up by or subject to the supervision of the Court, any attachment, distress or execution put in force without leave of the Court against the estate or effects or any sale held without leave of the Court of any properties of the company after the commencement of the winding up shall be void.

(2) Nothing in this section applies to proceedings by the Government.

329. Effect of charge created after commencement of winding up.– A floating charge on the undertaking or property of the company created within ninety days of

the commencement of the winding up shall, unless it is proved that the company immediately after the creation of the charge was solvent, be invalid except to the amount of any cash paid to the company at the time of or subsequently to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of five percent per annum.

330. General scheme of liquidation may be sanctioned.- (1) The liquidator may with the sanction of the Court when the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the company in the case of a voluntary winding up, do the following things or any of them :-

(1) pay to any classes of creditors in full—

(ii) make any compromise or arrangement with creditors or persons claiming to be creditors or alleging themselves to have any claim, present or future, whereby the company may be rendered liable;

(iii) compromise all calls and liabilities to calls, debts and liabilities, capable or resulting in debts, and all claims, present or future, certain or contingent, subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or the winding up of the commpany, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) The exercise by the liquidator of the powers under this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any these powers.

331. Power of Court to assess damages against delinquent directors, etc.- (1) Where, in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company or any past or present director, manager or liquidator, or any officer of the company has misapplied or retained or become liable or accountable for any money or property of the company, or been gullty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator or of any creditor or contributory made within three years form the date of the first appointment of liquidator in the winding up or of the misapplication retainer misfeasance or breach of trust as the case may be, whichever is longer, examine of the conduct of the promoter, director, manager, liquidator or officer and may compel him to repay or restore the money or property or any part there of respectively with interest at such rate as the Court thinks just, or to contribute such sum to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach or trust as the Court thinks just.

(2) This section shall apply notwithstanding that offence is one for which the offender may be criminally prosecuted.

COMMENTARY : Previous Act : S. 235

Application under section 235 of the Companies Act read with section 67 of the Banking Companies Ordinance maintainable even against a person who does not fall under any of the categories mentioned therein.

Section 61 the Banking Companies Ordinance enables the High Court dicide all matters relating to a Bank in liquidation.

Two partners both had a current account each and were in the habit of transferring deposits from one account to another and this practice had been accepted by the bank and such transfers were even made by the transferee from the transfero's account to be subsequently endorsed, confirmed by the transferor though not invariably and after one such particular transfer on the transferee's

instruction the Bank went into liquidation and the transferred amount remained with the Bank. The partners subsequently fell out and the transferor who had apparently not authorised the transfer tried to hold the Bank liable on the allegation that the transfer was illegal and prayed for a declaration that the Bank owed to him the transferred amount.

Held : *On the evidence adduced it was proved that such transfers though apparently irregular was an established practice as between the Bank and the two current account-holders. As such the impugned transfer was legal and the Bank was in no way liable.*

Further held*, though strictly speaking the liability of the transferee account-holder was outside the scope of enquary of either section 235 of the Companies Act and section 67 of the Banking Companies Ordinance yet in view of the fact that the impugned amount was still lying with the Bank when it went into liquidation and further in view of section 61 of the Banking Companies Ordinance which requires that all matters relating to a Bank in liquidation would be decided by this Court the impleading of Respondert No. 3(the transferee account-holder) was maintainable in an application under section 235 of Companies Act read with section 67 of the Ordinance [(1969) 21 DLR 44].*

332. Penalty for falsification of books.– If any director, manager, officer or contributory of any company being wound up destroys, multilates, alters or falsifies or fraudulently secrets any books, papers or securities or makes or is privy to the making of any false or fraudulent entry in any register book of account or document belonging to the company with intent to defraud or deceive any person, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

333. Prosecution of delinquent directors.- (1) If it appears to the court in the course of a winding up by, or subject to the supervision of, the Court that an past or present director, manager or other officer, of any member of the company has been guilty of any offience in relation to the company for Which he is criminally liable, the Court may, either on the application of any person interested in the winding up or of its own motion, direct the liquidator either

himself to prosecute the offender or to refer the matter to the Registrar.

(2) If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager of other officer or any member of the company has been guilty of any offence in relation to the company for which he is criminally liable, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and shall furnish to him such information and give it him such access to and facilities for inspecting and taking copies of any documents, being information or documents in the possession or under the control of the liquidator relating to the matter in question as he may require.

(3) Where any report is made under sub-section (2) to the Registrar, he may, if he thinks fit, refer the matter to the Government for further inquiry, and the Government shall thereupon investigate the matter and may, if they think it expedient apply to the Court for an order conferring on any person designated by the Government for the purpose with respect to the company concerned all such powers of investigating the affairs of the company as are provided by this Act in the case of a winding up by the Court.

(4) If on any report to the Registrar under sub section (2) it appears to him that the case is not one in which proceedings ought to be taken by him, he shall inform the liquidator accordingly, and thereupon, subject to the previous sanction of the court, the liquidator may himself take proceedings against the offender.

(5) If it appears to these court in the course of a voluntary winding up that any past or present director, manager or other officer or any member of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the liquidator to the Registrar, the court may, on the application of any person interested in the wining up or of its own motion, direct the liquidator to make such a report,

and on a report being made accordingly, the provision of this section shall have effect as though the report has been made in pursuance of the provisions of sub-section (2).

(6) If a matter is reported or referred to the Registrar under this section and he considers that prosecution ought to be instituted there on he shall place the papers before the Attorney General or the public prosecutor and shall if advised to do so, institute proceedings:

Provided that no prosecution shall be undertaken without first giving the accused person an opportunity of making a statement in writing to the Registarer and of being heared thereon.

(7) Notwithstanding anything contained in the Evidence Act, 1872 (1 of 1872), when any proceedings are instituted under this section it shall be the duty of the liaquidator and of every officer and agent of the company past and present, other than the defendant in the proceedings, to give all assistance in connection with the prosecution which he is reasonably able to give, and for the purposes of this sub-section the expression "agent" in relation to a company shall be deemed to include any banker or legal adviser if the company and any person employed by the company as auditor, whether that person is or is not an officer of the company.

(8) If any person fails or neglects to give assistance in manner required by sub-section (7), the Court may, on the application of the Registrar direct that person to comply with the requirements of the said sub-section, and where any such application is made with respect to a liquidator, the Court may, unless it appears that the failure on neglect to comply was due to the liquidator not having in his hands sufficient assets of the company to enable him so to do, direct that the costs of the application shall be borne by the liquidator personlly.

334. Penalty for fales evidence.– If any person, upon any examination upon quath authorised under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years, and shall also be liable to fine.

335. Penal provisions. (1) If any person, being a past or present director, managing agent, manager or other officer of a company which at the time of the commission of the alleged offence is being wound up in any manner.–

(a) does not to the best of his knowledge and belief fully and truly discover to the liquidator all the property, movable and immovable of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary way of the business of the company; or

(b) does not deliver up to the liquidator, or as he directs, all such part of movable and immovable property of the company as in his custody or under his control and which he is required by law to deliver, or

(c) does not deliver to the liquidator, or as he directs all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver, or

(d) within twelve months next before the commencement of the winding up or at any time thereafter, conceals any part of the property of the company to the value of one hundred taka or up wards or conceals any debt due to or from the company, or

(e) within twelve months nest before the commencement of the winding up or at any time thereafter fraudulently remove any part of the property of the company to the value of one hundred taka or upwards , or

(f) makes an material omission in any statement relating to the affairs of the company, or

(g) knowing or believing that a false debt has been proved by any person under winding up, fails within the period of a month to inform the liquidator thereof, or

(h) after the commencement of the winding up prevents the production of any book or paper affecting or relating to the property or affairs of the company, or

(i) within twelve months next before the commencement of the winding up or any time thereafter, conceals, destroys, mutilates or falsifiles, or is privy to the concealment, destruction, mutilation or falsification of any book or paper affecting or relating to the property or offairs of the company, or

(j) within twelve months next before the commencement of the winding up or at any time thereafter makes or is privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company, or

(k) with twelve months next before the commencement of the winding up or at any time thereafter fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company, or

(l) after the commencement of the winding up or at any meeting of the creditors of the company within

twelve months next before the commencement of the winding up, attempts to account for any part of the property of the company by fictitious losses or expenses, or

(m) within twelve months next before the commencement of the winding up or at any time thereafter by any false representation or other fraud, obtained any property for or on behalf of the company on credit which the company does not subsequently pay, or

(n) within twelve months next before the commencement of the winding up or at any time thereafter, under the false pretnce that the company is carrying on its business, obtains on credit, for or on behalf of the company any property which the company does not subsequently pay for, or

(o) within twelve months next before the commencement of the winding up or at any time thereafter pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawining pledging or disposing is in the ordinary way of the business of the company, or

(p) is guilty of any false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them true an agreement with reference to the affairs of the company or to the winding up,

he shall be punishable in the case of the offence mentined in clauses (m), (n) and (o) with imprisonment for a term not exceeding seven years, and, in the case of any offence, mentioned in other clauses with imprisonment for a term not exceeding two years :

Provided that it shall be a good defence to a charge under any of clauses (b), (c), (d), (f), (n) and (o), if the accused proves that he had no intent to defraud, and to a charge under any of the clauses (a) (h), (i) and (j), if he

proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which and amount to an offence under clause (o) of sub-section (1) every person who takes in pawn or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in such circumstances as aforesaid shall be punishable with imprisonment for a term not exceeding three years.

336. Meeting to ascertain wishes of creditors or contributories.- (1) where by this Act the Court is authorised in relation to winding up to have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence, the Court may, if it thinks for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Court directs, and may appoint a person to act as Chirman of any such meeting and to report the result therof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditors debt.

(3) In the case of contributories regard shall be had to the number of votes conferred on each contributory by the articles.

337. Evidentiary value of documents of company.– Where any company is being wound up, all documents of the company and of the liquidator shall as between the contributories of the company, be prima-facie evidence of the truth of all matters purporting to be therein recorded.

338. Inspection of documents. – After an order for a winding up by or subject to the supervision of the Court, the Court may make such order for inspection by creditors and contributories of the company of its documents as the Court thinks just, and any documents in the possession of the company may be

inspected by creditors or contributories accordingly, but not, further or otherwise.

339. Disposal of documents of company. – (1) When a company has been wound up and is about to be dissolved, the documents of the company and of the liaquidators may be disposed of as follows, that is to say : –

(a) in the case of a winding up by or subject to the supervision of the Court, in such way as the Court directs;

(b) in the case of voluntary winding up, in such way as the company by extraordinary resolution directs.

(2) After three years from the dissolution of the company, no responsibility shall rest on the company of the liquidators, or any person to whom the custody of the documents has been committed, by reason of the same not being forthcoming to any person claiming to be interested therein.

340. Power of Court to declare dissolution of company void. : (1) Where a company has been dissolved, the Court may, at any time whithin two years of the date of the dissolution on an application being made for the purpose by liquidator of the company or by any other person who appears to the Court to be interested, make an order upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be aken as might have been taken if the company had not been dissolved.

(2) It shall be the duty of the person on whose application the order was made, within tewnty-one days after the making of the order, to file with the Register a certified copy of the order, and if that person fails so to do, he shall be liable to a fine not exceeding one hundred taka for everyday during which he default continues.

341. Information as to pending liquidations. (1) Where a company is being wound up, if the winding up is not concluded one year after its commencement, the liquidator shall, once a year and at intervals of not more that twelve months until the winding up is concluded, file in the Court or with the Registar, as the case may be a statement in the prescrided form and containing the prescribed particulars with respect to the proceeding in and the position of the liquidation.

(2) Any person stating himself in writing to be a creditor or contributory of the company shall be entiled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement and to receive a copy thereof or extract therefrom ; but any person untruthfully so stating himself to be a creditor or contributory shall be deemed to be guilty of an offence under section 182 of the Penal Code (XLV of 1860), and shall be punishable accordingly on the application of the liquidator.

(3) If a liquidator fails to comply with the requirements of this section, he shall be liable to a fine not exceeding one thousand taka for each day during which the default continues.

(4) When the statement is field in Court, a copy shall simultaneously be filed with the Registrar and shall be kept by him alongwith other records of the company.

342. Payment of liquidator into bank. : (i) Every liquidator of a company which is being wound up by the Court shall, in such manner and at such times as may be prescribed, pay the money received by him into a scheduled bank as defined in the Bangladesh Bank Order, 1972 (P.O. No. 127 of 1972) :

Provided that if the Court is satisfied that for the purpose of carrying on the business of the company or of obtaining advances or for any other reason it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Court may authorised the liquidator to make his payments

into or out of such other bank as the Court may select and there up to those payments shall be made in the prescribed manner.

(2) It any such liquidator, at any time retains for more than 10 days a sum exceeding five hundred taka or such other amount as the Court may in any particular case authorise him to retain, then unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in exceess at the rate of twenty per cent annum and shall be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from his office by the Court and shall be liable to pay any expenses occasioned by resson of his default.

(3) A liquidator of a company which is being wound up shall open a special banking account and pay all sums received by him as liquidator into such account.

343. Unclaimed dividends and undistributed assets to be paid to Companies Liquidation Account :

(1) Where any company is being wound up, if the liquidator has in his hands or under his control any money of the company representing unclaimed dividends payable to any creditor or undistributted asset refundable to any contributory which have remained unclaimed for one hundred and eighty days after the date on which they became payable or refundable that liquidator shall forthwith pay the said money into the Bangladesh Bank to the credit of "the Government in an account to be called the Companies Liquidation Account" and the liquidator shall, on the dissolution of the company, similarly pay into the said account any money representing unclaimed dividend or undistributed assets in his hand at the date of dissolution.

(2) The liquidator shall, when making any payment referred to in sub-section (1), furnish to such officer as the Government may appoint in this behalf a statement in the prescribed form setting forth in

respect of all sums included in such payment the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto and such other particulars as may be prescribed.

(3) The receipt of the Bangladesh Bank for any money paid to it under sub-section (1) shall be an effectual discharge of the liquidator in respect thereof.

(4) Where the company is being wound by the Court, the liquidator shall make the payment referred to in sub-section (1) by transfer from the special banking account referred to in sub-section (3) of section 342, and where the company is being in wound up voluntarily, or subject to the supervision of the Court, the liquidator shall, when filing a statement it pursuance of sub-section (1) of section 341, indicate the sum to money which is payable to the Bangladesh Bank under sub-section (1) of this section which he has had in his hands or under his control during the one hundred and eighty days , preceeding the date to which the said statement is brought down, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Company Liquidation Account.

(5) Any person claiming to be entitled to any money, paid into the Companies Liquidation Account in pursunce of this section may apply to the Court for an order for payment thereof, and the Court, if satisfied that the person claiming is entitled may make an order for the payment to that person of the sum or the asset due to him;

Provided that before making such order the Court shall cause a notice to be served on such officer as the Government may appoint in this behalf calling on the officer to show cause within thirty days from the date of the service of the notice why the order should not be made.

(6) Any money paid into the Companies Liquidation Account is pursuance of this section, Which remains unclaimed thereafter for a period of fifteeen years, shall be transferred to the general revenue account of the Government, but any claim preferred under sub-section (5) to any money or asset so transferred shall be allowable as if such transfer had not been made, the order for payment on such claim being treated as an order for refund of revenue.

(7) Any liquidator retaining any money or asset which should have been deposited by him into the Companies Liquidation Account under this section shall pay interest on the amount retained at the rate of twenty percent annum and shall also be liable to pay any expense occasioned by reason of his default and where the winding up is by or under the supervision of the Court, he shall also be liable to disallowance of all or such part of his remuneration as the Court may think just and to be removed from this office by the Court.

(8) For; the purposes of this section, the liquidator may with the sanction of the Court or as the case may be, of the Government, sellout the undistributed asset referred to in sub-section (1) and deposit the sale proceed in the company's Liquidation Account and it may be accordingly be disposed under this section.

344. Court or person before whom affidavit may be sworn.- (1) Any affidavit required to be sworn under the provisions or for the purposes of this Part may be sworn in Bangladesh before any Court, Judge or person Lawfully authorised to take and receive affidavits or in any place outside Bangladesh before a Bangladesh Consul or Vice Consul.

(2) All Courts Judges, Justices, Commissioners and persons acting judicially in Bangladeh shall take judicial notice of the seal or stamp or signature, as the case, may be, of any such Court, Judge,person, Consul or Vice-Consul attached appended or

subscribed to any such affidavit or to any other document to be used for the purposes of this Part.

RULES

345. Power of Supreme Court to make rules. (1) The Supreme Court, may from time, to time make rules consistent with this Act and with the Code of Civil Procedure 1908 (Act) of 1908) concerning the following matters namely –

(a) the mode of proceedings to be held for winding up of a company in the High Court Division and in a court subordinate thereto.

(b) in the case of voluntary winding up by members or creditors, for the holding of meetings of creditors and members in connection with proceedings under section 228 of this Act.

(c) giving effect to the provisions of this Act for the purpose of reduction of share capital and sub-division of the shares of a company ;

(d) all applications to be made to the Court under the provisions of this Act.

(2) The Court shall make rules providing for all matters which by this Act, are required to be prescribed.

(3) Whithout prejudice to the generality of the foregoing power, the Supreme Court may by such rules enable or require all or any of the powers and duties conferred and imposed on the Court by this Act in respect of the matters following to be exercised or performed by the official liquidator, and subject to the control of the Court, that is to say, the powers and duties of the Court in respect of –

(a) holding and conducting meetings to assertain the wishes of creditors and contributories;

(b) Settling lists of contributories and rectifying the register of members where required, and collecting and applying the assets ; of the company

(c) requiring delivey of property or documents to the liquidator;

(d) making calls;

(e) fixing a time within which debts and claims must be proved;

Provided that the official liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without the special leave of the Court.

REMOVAL OF DEFUNCT COMPANIES FROM REGISTER

346. Registrar may strike defunct company off register.- (1) Where the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, he shall send to the company by post a letter inquiring whether the company is carying on business or in operation;

(2) If the Registrar does not within thirty days of sending the letter receive any answer thereto, he shall within fourteen days, after the expiration of the said thirty days send to the company by post a registered letter referring to the first letter and stating that no answer thereto has been received and that, if an answer is not received to the second letter within thirty days from the date thereof, a notice will be published in the official Gazette with a view to striking the name of the company off the register;

(3) If the Registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within thirty days after sending the second letter receive any answer, he may publish in the official Gazette and send to the company by post a notice that, at the expiration of ninety days from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary , be struck off the register and the company will be dissolved, and in such a case the

Registrar may send a copy of the notice to the company while in sending it to the concerned authority for its publication in official Gazette;

(4) If, in any case where a company is being wound up, the Registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the Registrar demanding the returns,has been sent by post to the company, or to the liquidator at his last known place of business, the Registrar may publish in the official Gazette and sent to the company a like notice as is provided in the sub-section (3);

(5) At the expiration of the time mentioned in the notice the Registrar may unless cause to the contrary is previously shown by the company, strik its name on the register and on the publication in the official Gazette of a notice to the effect the company shall be dissolved;

Provided that the liability, if any, of every director and member of the company shall continue and may be enforeced as if the company had not been dissolved.

(6) If a company or any member or creditor thereof fees aggrieved by the companys having been struck off the register, the Court, on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation or otherwise that it is just that the company be restored, to the register, and thereupon the company shall be deemed to have continued in existence as its name had not been struck off; and the Court may by order give such directions and make such provisions as seems just for placing the company and all other persons in the same positions as nearly as may be as if the name of the company had not been struck off;

(7) A letter or notice under this section may be addressed to the company at its registered office, or, if no office has been registered, to the care of some director, manager or other officer of the company or, if there is no director, manager or other officer of the company whose name and address are known to the Registrar such letter or notice may be sent to each of the persons who subscribed the memorandum, at the address mentioned in the memorandum.

PART VI

REGISTRATION OFFICE AND FEES

347. Registration office.— (1) For the purposes of the registration of companies under this Act, there shall be a central office and orginal offices at such places as the Government thinks, fit and no company shall be registered except at an ofice within the teritorial jurisdiction in which by the memorandum, the registered office of the company is declared to be established.

(2) The Government may appoint such Registrar, Additional Registrar, and Assistant Registrar as it thinks necessary for the registration of companies under this Act and may make regulation rule with respect of their duties.

(3) The salaries of the persons appointed under this section shall be fixed by the Government.

(4) The Government may direct a seal or seals to be prepared for the authentication of documents required for or connected with the registration of companies.

(5) Any person may inspect the documents kept by the Registrar on payment of such fees as may be spicified by the Government, not exceeding the fee specified in Schedule II for each inspection; and any person may require a certificate of the incorporation, or certificate of commencement of business, of any company, or a copy or extrack of any other document or any part of other document, to be certified by the Registrar on

payment for the certificate, certified copy or extract, of such fees as the Government may specify not exceeding the fee specified in the said Schedule.

(6) Whenever any act is by this Act directed to be done to or by the Registrar it shall until the Government otherwise directs, be done to or by in the case of the central office the existing Registrar or in his absence to or by such person as the Government may for the time being authorise and in the case of a regional office be done to or by such Additional Registrar or Joint Registrar or Deputy Registrar or Assistant Registrar as is appointed as the Chief Officer of that office.

348. Fees.— (1) There shall be paid to the Registrar in respect of the several matters mentioned in Schedule II the several fees therein specified, or such smaller fees as the Government may direct.

(2) All fees paid to the Registrar in pursuance of this Act shall be accounted for to the Government.

349. Enforcing submission of returns and documents to Registrar: (1) f a company, having made default in complying with any provision of this Act, which requires it to file with, deliver or send to the Registrar any return account or other document, or to give notice to him of any matter fails to make good the default within fourteen days after the service of a notice on the company requiring it to do so, the Court may, on an application made to the Court by any member or creditor of the company or by the Registrar, make an order directing the company and any officer thereof to make good the defauit within such time as may be specified in the order.

(2) Any such order may provide that all costs of and incidental to the application shall be borne by the company or the concerned officer in respect of any such default as aforesaid.

(3) Nothing in this section shall be taken to prejudice the operation of any other enactment imposing penalties

on a company or its officers in respect of any such default as aforesaid.

350. Filling or registration of documents, etc. after the time specified :—Any documents or return by this Act required or authorised to be filed or registered or any fact by this Act required or authorised to be registered with the Registrar on payment of fees pecified therefore in Schedule II may, without prejudice to any other liabilities be filed or registered after the time if any specified in this Act for its filing or registration on payment of late fee specified in the said Schedule II.

PART VII

APPLICATION OF ACT TO COMPANIES FORMED AND REGISTERED UNDER FORMER COMPANIES ACT

351. Application of Act to companies formed under former Companies Act :— In the application of this Act to existing companies it shall apply in the same manner in the case of a limited company other than a company limited by guarantee, as if the company had been formed and registed undered this Act as a company limited by shares; in the case of a company limited by guarantee, as if the company had been formed and registered undered this Act as a company limited by Gurantee; and in the case of a company other than a limited company as if the company had been formed and registered under this Act as an unlimited company;

Provided that—

(a) nothing in Schedule I shall apply to a company formed and registered under any law in force at any time before the commencement of this Act;

(b) reference express or impiled to the date of registration shall be construeted as a reference to the date at which the company was registered under any law in force at any time before the commencement of this Act.

352. Application of Act to companies registered but not formed under former Companies Act :— This Act shall apply to every company registered but not formed under any law in force at any time before the cmmencement of this Act in the same manner as it is hereinafter in this Act. declared to apply to companies registered but not formed under this Act:

Provided that reference, express or impiled, to the date of registration shall be consrened as a reference to the date at which the company was registered under the said laws or any of them.

353. Mode of transferring.— A company registered under any law in force at any time before the commencement of this Act may cause its shares to be transferred in the manner eitherto in use or in such other manner as the company may direct.

PART VIII

COMPANIES AUTHORISED TO BE REGISTERED

354. Companies capable of being registered.— (1) With the exceptions and subject to the provisions mentioned and contained in this section, any company formed whether before or after the commencement of this Act in pursuance of any Act of Parliament other than this Act or being otherwise duly constituted according to law and consisting of seven or more members, may, at any time register under this Act as an unlimited company or as a company limited by shares or as a company limited by guarantee; and the registration shall not be in valid by reason that it has taken place with a view to the company being wound up.

Provided that—

(a) a company having the liability of its members limited by Act of Parliament and not being a joint-stock company as insection 355, defined, shall not register in pursuance of this section;

(b) a company having the liability of its members limited by Act of Parliament shall not register in pursuance of this section as an unlimited company or as a company limited by guarantee;

(c) a company that is not a joint-stock company as in section 355 defined shall not register in-pursuance of this section as a company limited by shares;

(d) a company shall not register in pursuance of this section without the assent of a majority of such of its members as are present in person or by proxy, in cases where proxies are allowed. by the articles, at a general meeting summoned for the purpose;

(e) where a company not having the liability of its members limited by Act of Parliament is about to register as a limited company, the majority required to assent as mentioned it clause (d) shall consist of not less than three-fourths of the members present in porson or by proxy at the meeting;

(f) where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceased to be a member and of the costs and expenses of winding up and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding a specified amount.

(2) In computing any majority under this section, when a poll is demanded, regard shall be had to the member of votes to which each member in entitled according to the articles.

355. Definition of Joint-stock' company.— (1) For the purposed of this part, so far as it relates to registration of companies limited by shares, a joint-stock company means—

(a) a company having a permianent paid up or nominat share captial of fixed amount divided into shares, also fixed amount, or held and transferable as stock or divided and held partly in one way and partly in the other; and

(b) formed on the principle or having only for its members as the holders of those shares or that stock and for no other person.

(2) Such a company, when registered with limited liabilitity under this Act, shall be deemed to be a company limited by shares.

356. Requirements for registration of joint-stock companies.— Before the registration in pursuance of this part of a joint-stock company, there shall be delivered to the Registar the following documents, that is to say—

(a) a list showing the names, address and occupations of all persons who on a day named in the list not bieng more than six clear days before the day of registration, were members of the company with the addition of the shares or stock held by them respctviely distinguishing in the case where the shares are numbered, each share by its number;

(b) a copy of deed of settlement, contract of copartnery or other instrument constituing or regulating the company; and

(c) if the company is intended to be registered as a limited company, a statement specifying the following particulars, that is to say—

(i) the nominal share capital of the company and the number of shares into which it is divided or the amount of stock of which it consists;

(ii) the number of shares taken and the amount paid on each share;

(iii) the name of the company with the addition of the word "Limited" as the last word thereof; and

(iv) in the case of a company intended to be registered as a company limited by guarantee, the resolution declaring the amount of the guarantee.

357. Requirements for registration of companies other than joint-stock companies.—Before the registration in pursuance of this part of any company not being a joint-stock company, there shall be delivered to the Registrar.—

(a) a list showing the names, addresses and occupations of the directors of the company; and

(b) a copy of deed of settlement, contract of copartner or other instrument constituing or regulating the company; and

(c) in the case of a company intended to be registered as a company limited by guarantee, a copy of the resolution declaring the amount of the guarantee.

358. Authentication of statement of existing companies.— The list of members and directors and any other particulars relating to the company required to be delivered to the registrar shall be duly verified by the declaration of any two or more directors or other principal officers of the company.

359. Registrar may require evidence as to nature of company.—The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself wherther any company proposing to be registered is or is not a joint-stock company as defined in section 355.

360. On registration of banking company with limited liability, notice to be given to customers.— (1) Where a banking company, which was in existence on the commencement of this Act, proposes to register as

a limited company, it shall, at least thirty days before so registering, give notice of its internation so to register to every person who has a banking account with the company be delivery of the notice to him by posting at or his last known address.

(2) If the company omits to give the notice required by this section, then as betwen the company and the person for the time being interested in the account in respect of which the notice ought to have been given and so far as respects the account down to the time at which notice is given, but not further or otherwise, the certiticate of registration with limited liability shall have no operation.

361. Exemption of certain companies from payment of fees.—No fees shall be charged in respect of the registration in pursuance of this part of a company if it is not registered as a limited company, or if before its registration as a limited company the liability of the shareholders was limited by some Act of Parliament.

362. Addition of "Limited" to name.— When a company registers in pursuance of this part with limited liability, the word "Limited" shall form and be registered as part of its name.

363. Certificate of registration of existing companies.— On compliance with the requirements of this part with respect of registration and on payment of such fees, if any, as are payable under schedule II, the Registrar shall certify under his hand that the company applying for registration is incorporated as a company under this Act and in the case of a limited company that it is limited, and thereupon the company shall be incorporated, and shall have perpetual succession and a common seal.

364. Vesting of property on registration.— All property, movable and immovable, including all interest and rights into and out of property, movable and immovable, and including obligations and actionable claims as may belong to or be vested in a company at

the date of its registration in pursuance of this part, shall, on registration, pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein.

365. Saving of existing liabilities.— The registration of a company in pursuance of this part shal not affect the rights or liabilities of the company in whatever manner such rights on liabilities accured or arose.

366. Continuation of existing suits.— All suits and other leagal proceedings which at the time of the registration of a company, in pursuance of this part are pending by or against the company or an officer or member thereof, may be continued in the same manner as if the registration had not taken place, nevertheless exccution shall not issue against the effects of any individual member of the company on any decree or order obtained in any such suit or proceeding, but, in the event of the property and effects of the company being insufficient to satisfy the decree or order, an order may be obtained for winding up the company.

367. Effect of registration under this Act.— When a company is registered in pursuance of this Part—

(a) all provisions contained in any Act of Parliament deed of settlement contract of copartner or other instraument constituting or regulating the company or, in the case of a company registered as a company limited by guarntee, the resolution declaring the amount of the gaurantee, shall be deemed to be the conditions and regualtions of the company in the same manner and with the same incidence; as it—

(i) so much thereof as would, if the company had been formed under this Act, have been required to be inserted in the memorandum, were contained in a registered memorandum, and

(ii) the residue thereof were contained in a registered articles;

(b) all the provisions of this Act shall apply to the company and the members, contributories and creditors thereof, in the same manner in all respects as of it had been formed under this Act subject as follows, that is to say—

(i) the regulation; in Schedule I shall not apply, unless adopted by special resolution:

(ii) the provisions of this Act relating to the unmbering of shares shall not apply to any joint-stock company whose shares are not numbered:

(iii) subject to the Provisions of this section the company shall not have power to alter any provision contained in any Act of Parliament relating to the company;

(iv) in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted before registration who is liable to pay or contribute to the payment of any such debt or liability, or to pay or contribute to the payment of any sum for the adjustment of the rights of the numbers among themselves in respect of any such debt or liabilities; or to pay or contribute to the payment of the cost and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums-due from him in respect of any such liability as aforesaid; and in the event of the death or insolvency of the contributory; the provisions of this Act with respect of the legal representatives and heirs of decreased contributeries, and with reference to the assigness of insolvent contributories, shall apply;

(c) the provisions of this Act with respect to—

(i) the registration of an unlimited company limited;

(ii) the powers of an unlimited company on registration as a limited company to increase the nominal amount of its shares capital and to provide that a portion of its shares capital and to provide that a portion of its shares capital shall not be capable of being called up except in the event of winding up;

(iii) the prwer of a limited company to determine that a portion of its share capital shall not be capable of being called up except in the event of winding up;

Shall apply withnotstanding any provisions contained in any Act of Parliament, deed of settlement, contract of copartnery, or other instrument constituting or regulating the company;

(d) nothing in this section shall authorise the company to alter any such provisions contained in any Act of Perliament, deed of settlement, contract of copartnery or other instrument constituting or regulating the company, as would, if the company had originally been formed under this Act have been required to be contained in the memorandum and are not authorised to be altered by this Act.

(e) nothing in this Act shall derogate from any lawful power of altering its continuting or regulating the company which may by virtue of any Act of Parliament, deed of settlement contract of co-partnery or other instrument constituting or regulating the company, be vested in the company.

368. Power to substitute memorandum and articles for deed of settlement.— (1) Subject to the provisions of this section, a company registered in pursuance of this part may, by special resolution,alter the form of its constitution by substituting a memorandum and articles for a deed of settlement;

(2) The provisions of this Act with respect to confirmation by the Court and registration of an alteration of the objects of a company shall, so far as applicable, apply to an alteration under this section with the following modifications; namely :—

(a) there shall be substituted for the printed copy of the altered memorandum required to be filed with the Registrar a printed copy of the substitued memorandum and articles; and

(b) on the registration of the alteration being certified by the Registrar, the substituted memorandum and articles shall apply to the company in the same manner as if it were a company registered under this Act with that memorandum and those articles, and the company's deed of settlement shall cease to apply to the company.

(3) An alteration under this section may be made either with or without any alteration of the objects of the company under this Act.

(4) In this section the expression "deed of settlement" includes any contract of copartnery or other instrument constituting or regulating the company, not being an Act of Parliament.

369. power of Court to stay or restrain proceedings.— The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the presentation of a petition for winding up and before the making of a winding up order shall, in the case of a company registered in pursuance of this Part, were the application to stay or restrain is by creditor, extend to suits and legal proceedings against any contributory of the company.

370. Suits stayed on winding up order.— When an order has been made for winding up a company registered in pursuance of this Part, no suit or other legal proceeding shall be commenced or proceeded with

against the company or any contributory of the company in respect of any debt of the company, except by leave of the Court and subject to such terms as the Court may impose.

PART IX

WINDING UP OF UNREGISTERED COMPANIES

371. Meaning of "unregistered company".— For the purposes of this part, the expression "unregistered company shall not include a company registered under this Act or under any company law in force at any time before the commencement of this Act, but any partnership, association or company consisting of more than seven members and not registered under this Act or the said company law shall be deemed to be an "unregistered company".

COMMENTARY : Cese lew: Previous Act : S. 371

Winding-up unregistered Company.— *Under section 271, all the provisions of the Act with respect to winding up would apply to an unregistered company and a provision to avert a winding up will be a provision with respect to the winding-up. [(1950) 2 DLR 181].*

372. Winding up of unregistered companies.—(1) Subject to the provisions of this Part, any unregistered company may be wound up under this Act and all the provisions of this Act with respect to winding up shall apply to an unregistered company, with the following exceptions and additions, namely :—

(a) no unregistered company shall be wound up under this Act voluntarily or subject to supervision of the Court;

(b) the circumstances in which an unregistered company may be wound up are as follows, namely:—

(i) if the company is dissolved or has ceased to carry on business or is carrying on business for the purpose of winding up its affairs;

(ii) if the company is unable to pay its debts;

(iii) if the Court is of option that it is just and equitable that the company should be wound up.

(c) an unregistered company shall, for the purposes of this section be deemed to be unable to pay its debts.—

(i) if a creditor, by assignment or otherwise, to whom the company is indebted in a sum exceeding five hundred taka then due has served on the company, by leaving at its principal place of business, or by delivering to the secretary, or some director, manager or principal officer of the company, or by otherwise serving in such manner as the Court may approve or direct a demand under his hand requiring the company to pay the sum so due, and the company has for three weeks after the service of the demand neglected to pay the sum, or to secure or compound for it to the satisfaction of the creditor; or

(ii) if any suit or other leagl proceeding has been instituted against any member for any debt or demand due or claimed to be due, from the company or from him in his character of member, and notice in writing of the institution of the suit or other legal proceeding having been served on the company by leaving the same at its principal place of business or by delivering it to the secretary, or some director, manager or principal officer of the company or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of the notice paid, secured or compounded for the debt or demand, procured an order for the suit or other legal proceeding to be stayed, or indemnified the said member or defendant to his reasonable satisfaction against the suit or other legal proceeding, and against all costs, damages and expense to be incurred by him by reason of the same; or

(iii) if execution or other procees issued on a decree or order obtained in any Court in favour of a creditor against the company, or any member thereof as such, or any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied; or

(iv) if it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

(2) Noting in this Part shall affect the oparation of any enactment which provides for any partnership, association or company being wound up or being wound up as a company or as unregistered company under any enactment repealed by this Act, except that references in any such first-mentioned enactment to any such repealed enactment shall be read as references to the corresponding provision, if any, of this Act.

(3) Where a company incorporated outside Bangladesh which has been carrying on business in Bangladesh, it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or othersise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.

373. Contributories in winding up of unregistered companies.—(1) In the event of an unregistered company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members among themselves, or to pay or contribute to the payment of the costs and expenses of winding up the company, and every contributory shall be liable to contribute to the assets of the company all sums due from him in respect of any such liability as aforesaid.

(2) In the event of any contributory dying or being adjudged insolvent of the provisions of this Act shall

apply to the legal representatives and heirs of deceased contributories, and to the assignees of insolvent contributories.

374. Power to stay or restrain proceedings.—The provisions of this Act with respect to staying and restraining suits and legal proceedings against a company at any time after the prsentaion of a petiton for winding up and before the making of a winding up order shall, in the case of an unregistered company, where the application to stay or restrains is by a creditor, extend to suits and legal proceedings against any contributory of the company.

375. Restrictions on commencing etc. of suit after winding up order.— Where an order has been made for winding up of a company under this part, no suit or other legal proceedings shall be proceeded with or commenced against any contributory of the company in respect of any debt of the company, except by leave of the Court, and subject to such terms as the Court may impose.

376. Courts directions as to property in certain cases.— If an unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may, by the winding in order, or by any subsequent order, direct that all or any part of the property, movable or imovable, including all interests and reghts in, to and out of property, movable and immovable, and including obligation and actionable claims as may belong to the company or to trustees on its behalf is to vest in the official liquidator by his official name and thereupon the property or the part thereof specified in the order shall vest accordingly and the offficial liquidator may after giving such indemnity. if any as the court may direct bring or defend in his official name any suit or other legal proceeding relating to that property, or necessary to be brought or defended for purposes of effectully winding up the company and recovering its property.

377. Provisions of this part cumulative.— The provisions of this Part with respect to unregistered companies shall be in addition to, and not in restriction of, any provitions herinbefore in this Act contained with respect to winding up companies by the Court, and the Court or official liquidator may exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in the winding up of companies formed and registered under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this Part.

PART X

FOREIGN COMPANIES' REGISTRATION, ETC.

378. Application of sections 379 to 387 to foreign companies.— Sections 379 to 387 shall apply to all foreign companies, that is to say, companies falling under the following two classes, namely:—

(a) companies incorporated outside Bangladesh which, after the commencement of this Act, establish a place of business within Bangladesh; and

(b) companies incorporated outside Bangladesh which have, before the commencement of this Act, established a place of business within Bangladesh and continued to have an established place of business within Bangladesh, at the commencement of this Act.

379. Documents, etc. to be delivered to Registrar by foreign companies carrying on business in Bangladesh.—(1) Foreign companies, which after the commencement of this Act, establish a place of business within Bangladesh shall, within one month of the establishment of the place of business, deliver to the Registrar for registration—

(a) a certified copy of the charter or statues or memorandum and articles of the company or other instrument constituting or defining the constitution of the company; and if the instrument is not written in Bengali or English language, a certified Bengali or English translation thereof;

(b) the full address of the registered or principal office of the company;

(c) a list of the directors and secretary, if any, of the company;

(d) the name and address or the names and addresses of one or more persons resident in Bangladesh, authorised to accept on behalf of the company service of process and any notice or other document required to be served on the company;

(e) the full address of the office of the company in Bangladesh whcih is to be deemed its principal place of business in Bangladesh.

(2) Foreign companies other than those mentioned in sub-section (1), shall, if they have not delivered to the Registrar before the commencement of this Act the documents and particulars specified in the sub-section (1) and section 277 of the Companies Act, 1913 (VII of 1913) replaced by this Act. shall continue to be subject to the obligation to deliver those documents and particulars in accordance with this Act.

(3) If any alteration is made or coccurs in—

(a) the charter, statutes, or memorandum and articles of a foreign company or other instrument constituting or defining the constitution of a foreign company, or

(b) the registered or principal office of a foreign company, or

(c) the directors or secretary, if any, of a foreign company, or

(d) the names and addresses of the persons outhorised to accept service on behalf of a foreign company, or

(e) the principal place of business of a foreign company in Bangladesh, the company shall, within the prescribed time, file with the Registrar a return containing the prescribed particulars of the alteration.

380. Accounts of foreign company.— (1) Every foreign company shall,in every calendar year.—

(a) make out a balance sheet and profit and loss account or in the case of a company not trading for profit an income and expenditure account it the company is a holding company, group accounts, in such form and containing such particulars and including such documents, as under the provision of this Act it would if it had been acompany within the meaning of this Act, have been required to make out and lay before the company in general meeting; and

(b) deliver three copies of those documents to the Registrar;

Provided that the Government may, by notfication in the official Gazette, direct that in the case of a foreign company or class of foreign companies the requirements of clause (a) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in the notification.

(2) If any such document as is mentioned in sub-section (1) is not written in Bengali or English language, there shall be annexed to it a certified translation thereof.

381. Obligation to state name, etc. of foreign company.— Every foreign company shall—

(a) in every prospectus inviting subscription in Bangladesh for its shares or debentures, state the country in which the company is incorporated;

(b) conspicuously exhibit on the outside of every office or palce where it carries on business in Bangladesh, the name of the company and the country in which it is incorporated, in the letters easily legible in Bengali or English character,

(c) cause the name of the company and of the country in which the company is incorporated, to be stated in legible Bengali or English characters; in all bill heads and letter paper, and in all notices and other official publications of the company; and

(d) if the liability of the members of the company is limited, cause a notice of that fact—

(i) to be stated in every such prospectus as aforesaid and in all bill heads,letter paper, notices, advertisements and other official publications of the company, in legible Bengali or English characters;

(ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in Bangladesh, in legible Bengali or English characters.

382. Service on foreign company.— Any process notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person mentioned in section 379(1) (d) and left at, or sent by post to the address which has been so delivered under that section to the Registration.

Provided that—

(a) where any such company makes default in delivering to the Registrar in pursuance of that section the name and address of a person, or

(b) if at any time all the persons whose names and address have been delivered to the Registrar are dead, or ceased or have ceased so to reside at those addresses, or refused to accept on behalf of

the company any process, notice or other document, or, those cannot be served or sent for any other reason, such document may be served on the company by leaving it at, or sending it by post to, any place of business established by the company in Bangladesh.

383. Notice of ceasing place of business of a company.— If any foreign company ceases to have a place of business in Bangladesh, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in Bangladesh.

384. Penalties.— If any foreign company fails to comply with any of the foreign provisions of this Part, the company shall be punishable with fine which may extend to one thousand taka, or, in the case of a continuing offence, with an additional fine of five hundred taka for every day after the first day during which the default continues; and every officer or agent of the company who is knowingly willfully, makes such default, shall be punishable with the same fine.

385. Company's failure to comply with this part not to affect its liability under contracts.— Any failure by a foreign company to comply with any of the foregoing provisions of this Part shall not affect the validity of any contract dealing or transaction entered into by the company or its liability to be sued in respect thereof; but the company shall not be entitled to bring any suit, claim any set off, make any counter claim or institute any legal proceeding in respect of any such contract, dealing or transaction until it has complied with the provisions of this Part.

386. Fees for registration of documents under this part.—There shall be paid to the Registrar for registering any document required by the foregoing provisions of this Part such fees as specified in Schedule II.

387. Interpretation.— For the purposes of the foregoing provisions of this Pat—

(a) the expression "director" includes any person occupaying the position of director by whatever name called.

(b) the expression "prospectus" has the same meaning as when used in relation to a company incorporated under this Act;

(c) the expression "place of business" includes a share transfer or share registration office;

(d) the expression "secretary" includes any person occupying the position of secretary, by whatever name called and

(e) the expression "certified" means certified in the prescribed manner to be a true copy or a correct translation.

388. Restriction on sale and offer for sale of shares.— (1) It shall not be lawful for any person—

(a) to issue, circulate or distribute in Bangladesh any prospectus offering to the public for subscription to shares in or debentures of a company incorporated or to be incorporated outside Bangladesh whether the company has or has not established, or when formed will or will not establish, a place of business in Bangladesh, unless—

(i) before the issue, circulation or distribution of the prospectus in Bangladesh a copy thereof, certified by the chairman and two other directors of the company as having been approved by resolution of the managing body, has been delivered for registration to the Registrar;

(ii) the prospectus state on the face of it that the copy has been so delivered;

(iii) the prospectus is dated; and

(iv) the prospectus other wise complies with this part; or

(b) to issue to any person in Bangladesh a form of application for shares in or debentures of such? company or intended company as aforesaid unless the form is issued with a prospectus which complies the requirements of this Part:

Provided that this clause shall not apply if it is shown that the form of application was issued in connection with a bonafide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.

(2) This section shall not apply to the issue to existing members or debentures holders of a company of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant for shares or debentures will not have the right to renounce in favour of other persons, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued or with reference to the formation of a company or subsequently.

(3) Where any document by which any shares in or debentures of a company incorporated outside Bangladesh are offered for sale to the public would, if the company concerned had been a company within the meaning of this Act, have been deemed by virtue of section 142 to be a prospectus issued by the company, that document shall be deemed to be, for the purposes of this section, a prospectus issued by the company.

(4) An offer of share or debentures for subscription or sale to any person whose ordinary business or part of whose ordinary business is to by or sell shares or debentures, whether as principal or agent, shall not be deemed an offer to the public for the purposes of this section.

(5) A person who is knowingly responsible for the issue, circulation or distribution of any prospectus, or for the

issue of a form of application for shares or debentures, in contravention of the provisions of this section shall be liable to a fine not exceeding ten thosuand taka.

(6) In this section and in section 389, the expression "prospectus" "shares" and "debentures" have the same meaning as and when used in relation to a company incorporated under this Act.

389. Requirements as to prospectus.— In order to comply with this Part a prospectus, in addition to complying with the provisions of sub-clauses (ii) and (iii) of clause(a) of sub-section (1) of section 388, must—

(a) contain particulars with respect to the follwing matters, namely—

(i) the objects of the company;

(ii) the instrument constituting or defining the cnostitution of the company;

(iii) the enactments, or provisions having the force of an enactment, by or under which the incorporation of the company was effected;

(iv) an address in Bangladesh where the said instrument, enactments or provisions, or copies thereof, and if the same are in a foreign language other than Englsih a translation thereof in the Bengali or English certified in the prescribe manner can be inspected;

(v) the date on which and the country in which the company was incorporated.

(iv) whether the company has established a place of business in Bangladesh :

Provided that the provisions of sub-clause (i), (ii) and (iii) of this clause shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business;

(b) subject to the provisions of this section, state the matters specified in sub-section (1) of section 135 and set out the reports specified in that section;

Provided that—

(i) where any prospectus is published as a newspaper advertisement, it shall be a sufficient compliance with the requirements that the prospectus must specify the objects of the company if the advertisement specified the primary objects with which the company was formed; and

(ii) in section 135 of this Act, a reference to the article of the company shall be deemed, to be a reference to the constitution of the company.

(2) Any condition requiring or binding any applicant for shares or debenture shall be void, if the acceptance thereof has the effect of—

(a) waiving compliance with any requirements of this section; or

(b) serving him with notice of any contract, document or matter not specifically referred to in the prospectus.

(3) In the event of non-compliance with or contravention of any of the requirements, of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance or contravention, if—

(a) as regard any matter not disclosed, he proves that he was not congnizant thereof; or

(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or

(c) the non-compliance or cotravention was in respect of matter which, in the option of the court dealing with the case, were immarterial or were otherwise

such as ought, in the option of that Court, having regard to all the circumstnces of the case, reasonably to be excused,

provided that in the event of failure to include in a prospectus a statement with respect to the matters specified in clause 18 of the Part-I of Schedule-III or in pursuance of sub-section (I) of section 135, no director or other person shall incure any liability in respect of the failure unless it be proved that he had knowledge of the matters not disclosed.

(4) Nothing in this section limit or diminish any liability which any person may incur under the general law or this Act, apart from this section.

390. Restriction on canvassing for sale of shares.— (1) It shall be an oftence of any person goes from house to house of the public or any member of public offering shares of a company incorporated outside Bangladesh for subscription to or sale of such shares.

(2) In this sub-section the expression 'house' shall not include an office used for business purposes.

(3) Any person acting in contraventions of this section shall be liable to a fine not exceeding five hundred taka.

391. Provisions regarding charges.— The provisions of section 159 to 168 both inclusive, and 171 to 176, both inclusive, shall extend ot charge on properties in Bangladesh which are created and to charges on property in Bangladesh which is acquired, by a company incorporated outside Bangladesh which has an established place of business in Bangladesh :

Provided that, were a charge is created outside Bangladesh or the completion of the equisition of property takes place outside Bangladesh, sub-clause (i) of the proviso to sub-section (1) of section 159 and the proviso to sub-section (1) of section 160 shall apply as if the property wherever situated were situated outside Bangladesh.

392. Notice of appointment of receiver etc.— (1) The provisions of section 169 and 170 share apply to the case of all companies incorporated outside Bangladesh but having an established palce of business in Bangladesh.

(2) The provisions of section 181 shall apply to such companies to the extent of requiring them to keep at their pincipal place of busniess in Bangladesh the books of account required by that section with respect to money received and expended, sales and prchases made, and assets and liabilities in relation to its business in Bangladesh.

PART XI

SUPPLEMENTAL

Legal proceedings, offence, etc.

393. Cognizance of offence.— (1) No Court inferior to that of a Magistrate of the first class shall try any offence under this Act.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898(V of 1898),—

(a) every offence under this Act shall, for the purpose of the said Code, be deemed to be non-cognizable.

(b) where the compalinant is the Registrar, the personal attendance of the complamant before the Court trying the offence shall not be necessary unless the Court, for reasons to be recorded in writing, requires his personal attendance for the purpose of taking cognizance or holding trial.

394. Application of fines.— The court imposing any fine under this Act may direct that the whole or any part thereof be applied in or towards payment of the cost of the proceedings, or in or towards the rewarding of the person on whose information the fine is recovered.

395. Power to require limited company to give security for costs.— Where a limited company is plaintiff or

petitioner in any suit or other legal proceeding any Court having jurisdiction in the matter may, if it appears that there is reason to believe that the company will be unable to pay the cost of the defendant if suceesful in his defence, require sufficient security to be given for those costs, and may stay all procedings untill the security is given.

396. Power of Court to grant relief in certain cases.— (1) If in any proceeding for negligence, default, breach of duty or breach of trust against a person specified in sub-section (3), it appears to the Court hearing the case that person is or may be liable in respect of the negligence, default, breach of duty or breach of trust, but that he has acted honestly and reasonably, and that having regrd to all the circumstances of the case, including those connected with his appointment, he ought fairly to be excused for the negligence, default, breach of duty or breach of trust, that Court may relieve him, either wholly or partly, from his laibility on such terms as the Court may think fit.

(2) Where any person specified in sub-section (3) has reason to apprehend that any claim will or might be made aginst him in respect of any negligence, default, breach of duty or breach of trust, he may apply to the Court for relief, and the Court on any such application shall have the same power to relieve him under this sub-section of it would have under sub-section (1)

(3) The persons to whom this section applies are the following :—

(a) directors of a company;

(b) managers and managing agents of a company;

(c) officers of a company;

(d) persons eomployed by a company as auditors, whether they are or are not officers of the company.

COMMENTARY : Previous Act : s. 281

Powers of the High Court to give relief under sec. 281 (2) is limited to cases when proceeding against a person concerned was not before a Court under sec. 281(1).

Reliefs unde sec. 281 are available when the act complained of was the result of a bonafide mistake and all the facts are disclosed before the High Court. [(1958) 10 DLR 179].

397. Penalty for false statement.— Whoever in any return, report, certificate, balance-sheet or other documents, required by or for the purposes of any of the provisions of this Act, wilfully makes a statement false in any material particular, knowing it to be false, shall be punishable with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

398. Penalty for wrongful with holding of property.— Any director, managing agents, manager or other officer or employee of a company who wrongfully obtains possession of any property of a company, or having any such property in his posseession wrongfully withholds it or wilfully applies it to purposes other than those expressed or directed in the articles and authorised by this Act, shall on the complaint of the company or a creditor or contributory there-of, be punishable with fine not exceeding five thousand taka, and may be orderd by the Court trying the offence to deliver of or refund within a time to be fixed by the Court any such property improperly obtained or wrongfully withheld or wilfully misapplied, or in default to suffer imprisonment for a period not exceeding two years.

399. Penalty for misapplication of securities by employers.— (1) All moneys of securities deposited with a company by its employees in pursuance of their contracts of service, with the company shall be kept or deposited by the company in a special account to be opened by the company for this purpose in a scheduled bank as defined in the Bangladesh Bank

Order, 1972 (P. O. No. 127 of 1972) and no portion thereof shall be utilised by the company except for the purposes agreed to in the contract of service.

(2) Where a provident fund has been constituted by a company for its employees or any class of its employees, all moneys contributed to such fund whether by the company or, by the employees or acruing by way interest or otherwise to such fund shall be either deposited in a Post Office Saving Bank account or invested in securities mentioned or referred to in clauses (a) to (e) of section 20 of the Trusts Act, 1882 (II of 1882); and all moneys belonging to such fund which are so deposited or invested shall be so deposited or invested in such securities by annual instalments not exceeding ten in number and not less in amount in any year than one tenth of the whole amount of such moneys.

Provided that where the said one-tenth part of the whole amount of the moneys belonging to such fund exceeds the maximum amount which may be deposited in a Post Office Savings Bank account under the rules regulating such deposits for the time being in force, the excess amount may be kept or deposited in a special account to be opened for the purpose in such scheduled bank.

(3) Notwithstanding anything to the contrary in the rules of any fund to which sub-section (2) applies or in any contract between a company and its employees, no employee shall be entitled to receive in respect of such portion of the amount to his credit in such fund as is invested in accordance with the provisions of sub-section (2) interest at a rate exceeding the rate of interest yielded by such investment.

(4) An employee shall be entitled on request made in this behalf to the company to see the bank receipt for any money on security such as is refered to in sub-sections (1) and (2).

(5) Any director, managing agent, managing or other officer of the company who knowingly contravenses or permits or authorises the contravention of the provisions of this section shall be liable on conviction to a fine not exceeding five hundred taka.

(6) Nothing in sub-section (2) shall affect any right of any employee under the rules of a provident fund to obtain advance from or to withdraw money standing to his credit in the fund where the fund is a recognised provident fund within the meaning of clause (52) of section 2 of the Income Tax Ordinance, 1984 (XXXVI of 1984), or the rules of the fund containing provisions corresponding to rules 4,5,6,7,8 and 9 and 9 of the Income Tax (Provident fund Rule, 1984) or similar provisions of a similar Rules.

400. Penalty for improper use of the word "Limited". If any person or persons trade or carry on business under any name of title of which "Limited" is the last word, that person or those persons shall be liable to a fine not exceeding five hundred taka everyday upon which that name or title has been used.

401. Construction of "Registrar of Joint Stock Companies" in Act XXI of 1860.—In sections 1 and 18 of the Societies Registration Act, 1860 (XXI of 1860), for the registration of Literacy, Scientific and Charitable Societies, the words "Registrar of Joint Stock Companies" shall be construed to mean the Registrar under this Act.

402. Repeal and savings.— (1) The Companies Act. 1913 (VII of 1913,) hereinafter referred to as the said Act, is hereby repealed.

(2) Notwithstanding the repeal of the said Act—

(a) any order, rule, regulation, appointment, mortgage on other transfer deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of the said Act shall,

if in force of the commencement of this Act, comtinue to be in force and shall be effect as if made, directed, passed, given, taken, exceuted, issued done under or in pursuance of this Act;

(b) any person appointed to any office under or by virtue of the said Act shall be deemed to have been appointed to that office under or by virtue of this Act;

(c) the offices existing at the commencement of this Act for the registration of companies shall be continued as if they had been established under this Act;

(d) any register or other kept or made under the provisions of the said Act shall be deemed to be part of the register of other document to be kept or made under the corresponding provisions of this Act;

(e) all funds constituted and accounts kept under this said Act shall be deemed to be in continuation of the funds constituted and accounts kept under the corresponding provisions of this Act.

(3) Nothing in this Act shall affect the incorporation of any company registered under the said Act or the operation of the provisions of the Insurance Act 1938 (IV of 1938).

403. Section 6 of the General Clauses Act, 1897 to apply.— The mention of particular matters in section 402 or in any other provision of this Act shall not prejudice the general applieation of section 6 of the General Clauses Act. 1897 (X of 1897).

404. Publication of Authenatic English Text.— After the commencement of this Act, the Government shall, by notification in the official gazette publish a Text of this Act translated in English, and this Text shall be called the Authentic English Text of the Act :

Provided that in the event of conflict between the Act (Banglai Text) and be said English Text. the Act shall prevail.

SCHEDULE-I

(See section 2, 17, 18, 86, 367)

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES

Preliminary

1. In these regulations, unless the context otherwise requires—

   (a) expressions defined in the Companies Act, 1994 shall have the meanings so defined;

   (b) words importing the singular shall include the plural, and *vice versa* :

   (c) words importing the masculine gender shall be taken to include females: and

   (d) words importing persons shall include bodies corporate.

Business

2. In the case of commencement of the business of the company, the directors shall comply with to the restrictions on such commencement imposed by section 150 of the Companies Act, 1994 so far as those restrictions are binding upon the company.

Shares

3. Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special right previously conferred on the holders of existing shares, the company may, from time to time, by special resolution determine the following matters :—

   (a) issue of preference shares, deferred shares or shares having special right;

   (b) restrictions that may be imposed with regard to dividend, voting, return of share capital or any other matter;

(c) issue of any preference share on the terms that it is liable to be redeemed or that it is so lovable at the option of the company.

4. (1) If at any time the share capital is divided into different classes of shares, the rights attached to any such class, unless otherwise provided by the terms of issue of the shares of that class, may, subject to the provisions of section 71 of the Companies Act, 1994, be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of that class.

(2) To every separate general meeting mentioned in sub-regulation (1) shall, mutatis mutandis, apply, and to constitute a quoram in such meeting presence of two persons who hold or represent by proxy atleast one third of the issued shares of that class, shall be necessary.

5. No share shall be offered to the public for subscription except upon the terms that the amount payable on application shall be at least five per cent of the nominal value of the share; and the Directors shall, as regards any allotment of shares duly comply with such of the provisions of section 148 and 151 of the Companies Act 1994, as may be applicable thereto.

6. Every person whose name is entered as a member in the register of members shall, without payment, be entitled to a certificate under the common seal of the company specifying the share or shares held by him and the amount paid up thereon;

Provided that in respect of a share or shares held jointly by several persons the company shall not be bound to issue more than one certificate, and delivery of a certificate for one or more shares to one of several joint holders shall be sufficient delivery to all.

7. If a share certificate is defaced, lost or destroyed it may be renewed on payment of such fee, if any, not exceeding five taka, and on such terms, if any, as to evidence and indemnity as the directors think fit.

8. Except to the extent allowed by section 58 of the Companies Act, 1994 no part of the funds of the company shall be employed in the purchase of or in loans upon the security of, the company's shares.

Lien

9. (1) The Company shall have a lien on the following shares and also on all dividends payable thereon namely :—

(a) all shares, other fully paid up share, for all moneys, whether presently payable or not, called or payable at a fixed time in respect of that share; and

(b) all shares, other than fully paid up shares, standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company.

(2) The directors may at any time declare any share specified in sub-resolution (1) to be wholly or partly exempt from the provision of this Regulation.

10. The company may sell, in such manner as the directors think fit, any share on which the company has a lien :

Provided that no sale shall be made unless some money in respect of which the lien exists is payable in cash and a period of fourteen days had expired after a written notice, stating and demanding such money, has been served upon the holder of the share registered for the time being or upon the person entitled to the share by reason of the former's death or insolvency.

11. (1) The proceeds of the sale shall be applied in payment of such part of the amount in respect of

which the lien exists as is persently payable, and the resides shall, subject to a like lien for sums not presently payable as existied upon the shares prior to the sale, be paid to the persons entitled to the shares at the date of the sale.

(2) The purchaser shall be registered as the holder of the shares, and he shall not be bound to see to the aplication of the purchase-money, nor shall his title to the shares be affected by any irregularity or invalidity in the proceeding in reference to the sale.

Call on shares

12. The directors may from time to time make calls upon the members in respect of any money unpaid on their shares, provided that no call shall exceed one fourth of the nominal amount of the share, or be payable at less than one month from the last call; and each member shall, subject to receiving at least fourteen day's notice specifying the time or times of payment, pay to the company at the time or times so specified the amount called on his shares.

13. The joint-holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

14. If a sum called in respect of a share is not paid before or on the day appointed for paymeat thereof, the persons from whom the sum is due shall pay interest upon the sum at the rate of five percent per annum from the day appointed for the payment thereof to the time of the actual payment but the directors shall be at liberty to waive payment of that interest wholly or in part.

15. The provisions of these regulations as to payment of interest shall apply in the case of non-payment of any sum which, by the terms of issue of a share. Becomes payable at a fixed time, whether on account of the amount of the share or by way of premium.

16. The directors may make arrangements on the issue of shares for difference between the holders in the

amount of calls to be paid and in the times of payment.

17. The directors may, at their option receive from any member wiling to advance all or any part of the moneys uncalled and unpaid upon any shares held by him; and upon all or any of the moneys so advanced may, until at such rate not exceeding, without the sanction of the company in general meeting, six percent, as may be aggreed upon between the member paying the sum in advance and the directors.

Transfer and transmission of shares

18. The istrument of transfer of any share in the company shall be executed both by the transferor and transferee, and the transferor shall remain holder or the share until the name of the transferee is entered in the register of members in respect thereof.

19. Shares in the company shall be transferred in the following form or in a similar form generally used for this purpose or in any other similar form approved by the directors :

SHARE TRANSFER FORM

(a) Full name(s) and address (es) of Transfer or

.....

.....

(b) Full name(s) and addrees (es) of Transferee

.....

.....

(c) Mode of Transfer (Sale, Gift etc.)

.....

(d) Total number of the shares transferred

.....

(e) Serial Nos. of the shares

.....

.....

.....

.....

.....

(f) Consideration of transfer

.....

.....

I/We (Transferor's)

.....)

Name and address)

.....received as consideration

.....(taka or otherwise) from you (Transferee)

.....

..... (Name and address) for

.....

the shares bearing Sl. Nos. ..... of

.....

..... Co. Ltd. and hereby transferred those shares to you by way of .....

(sale or otherwise).

The conditions which were, in relation to those shares, applicable to the transferor immediately before the transfer shall be applicable to the transferee and the transferee or his executor/administrator/assignee shall hold the shares subject to the said conditions.

We i.e. both the transferor and the transferee on being agreed to the above conditions hereby excute this deed on the ..... day of ..... (month) of the year .....

(Transferor) (Transferee)

Witness to Transfer	Witness to Transfer
Signature	Signature
Name :	Name
Address:	Address:
Date :	Date:

20. (1) The directors may decline to register any transfer of shares not being fully paid up shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the company has lien.

(2) The directors may suspend the registration of transfer during the fourteen days immediately preceeding the ordinary general meeting in each year.

(3) The directors may decline to recognise any instrument of transfer or refuse to register such transfer, unless—

(a) a fee not exceeding taka ten as may be fixed by the company is paid to the company in respect thereof;

(b) the instrument of transfer is accompanied by the certificate of share to which it relates, and

(c) such evidence as the directors may reasonably require to show the right of the transferor to make the transfer has been furnished.

(4) If the directors refuse to register or decline to recognise the transfer of any shares, they shall, within two months after the date on which the transfer was lodged with the company, send to the transferee and transferor notice of the refusal or decline.

21. The executors or administrators of a deceased sole holder of a share shall be the only persons recognised by the company as having any title to the share. In the case of a share registered in the names of two or more holders, the survivor or survivors, or the executors of adminstrators of the deceased survivor or survivors shall be the only person recognised by the company as having any title to the share.

22. Any person becoming centitled to a share in consequence of the death or insolvency of a member shall, upon such evidence being produced as may from time to time be required by the derectors, have the right, either to be registered as a member in respect of the share or to make such transfer of the share as the decesed or insolvent person could have made.

(2) Notwithstanding the provisions of sub-regulation (1) the directors shall have the same right to decline to recognise the transfer or to refuse or suspend the registration of the transfer as they could have done under regulation 20, had the transfer been made by the deceased or insolvent shareholder before his death or insolvency.

23. A person becoming entitled to a share by reason of the death or insolvency of the holder shall be entitled to the same dividends and other advantages to which he would be entitled if he were the registered holder of the share, expect that he shall not before being registered as a member in respect of the share, be entitled in respect of it excercise any right conferred by membership in relation to meeting of the company.

Forfeiture of shares

24. If a member fails to pay any call or instalment of a call on the day appointed for payment thereof, the directors may, at any time thereafter as any part of such call or instalment remain unpaid serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have acrued.

25. The notice shall name a further day, not earlier than the expiration of fourteen days from the date of the notice, on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time so appointed, the shares in respect of which the call was made will be liable to be for feited.

26. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may, at any time thereafter but before the payment required by the notice has been made be forfeited by a resolution of the directors to that effect.

27. A feifieted share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit and at any time before a sale or disposition of the forfeiture may be cancelled on such terms as the directors think fit.

28. A person whose share have been forfeited shall cease to be a member in respect of the forfeitted shares but shall not withstanding, remain liable to pay to the company all moneys which at the date of forfeiture, were presently payble by him to the company in respect of the shares, but his liability shall cease if and when the company received payment in full of the nominal amount of the shares.

29. (1) A duly verified declaration in writing that the declarant is a director of the company, and that a share in the company has been duly forfeited on a date stated in the declaration, shall be conclusive evidence or the facts therein stated as against all persons claiming to be entitled to the share.

(2) Such declaration, and the receipt of the company for the consideration if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share.

(3) The person who becomes the shareholder under sub-regulation (2) shall be registered as the holder of the share and shall not be bound to see to the application of the purchase-money, if any, nor shall his title to the share be affected by any ireegularity or invalidity in the proceedings in reference to the forfeiture,sale or disposal of the share.

30. The provisions of these regulations as to for feiture shall apply in the case of non-payment of any sum which, by the terms of issue of a share, become payable at a fixed time, whether on account of the amount of the share, or by way of premium, as if the smae has been payable by virtue of a call duly made and notified.

Coversion of shares into stock

31. The directors may, with the sanction of the company previously given in general meeting convert any paid up shares into stock, and may with the like sanction reconvert any stock into paid up shares of any denomination.

32. The holders of stock may transfer the same, or any part thereof, in the same manner, and subject to the same conditions and regulations, as and subject to which, the shares from which the stock arose might, previous to conversion, have been transferred, or as near thereto as circumstances admit; but the directors may from time to time fix the minimum amount of the transferable stock not exceeding the nominal value of the shares from which the stock arose, and may also prohibit or restrict the transfer of such stock.

33. The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards dividends, voting at meetings of the company, and other matters, as if they held the shares from which the stock arose but no such privileges, except participation in the dividends and profits of the company, shall be conferred by any such aliquote part of stock as would not; if existing in shares, have conferred that privileges or advantages.

34. Such of the regulations of the company, other that those relating to share warrants, as are applicable to paid up shares, shall apply to stock, and the words "shares" and "share-holder" occurring therein shall include "stock" and "stock-holder".

Share Warrant

35. (1) The company may issue share-warrants, and accordingly directors, may, in their discretion, with respect to any share which is fully paid up on application in writing signed by the person registered as holder of the share, and authenticated by such evidence, if any, as the directors may from time to time require as to the indentity of the person signing the request, and on recieving the certificate, if any, of the share and the amount the stamp duty on the warrant and such fee as the directors may, from time to time require, issue under the company's seal a warrant, duly stamped, stating that the bearer of the warrnat is entitiled to the shares therein specified.

(2) Where such warrnat is issued, it shall be stated therein that dividents or other moneys on the shares specified in the warrnat may be paid by way of coupon or otherwise.

36. A shares warrant shall entitle the bearer to the share included in it, and the share shall be transfered by the delivery of the share warrnt and the provissions of the regulations of the company with respect to transfer and transmission of share shall not apply thereon.

37. The bearer of a share-warrant shall on surrender of the warrant to the company for cancellation and on payment of such sum as the directors may from time to time prescribe, be entitled to have his name entered as a member in the register of members in respect of the shares included in the warrant.

38. The bearer of a share-warrant may at any time deposit the warrant at the office of the company, and so long as the warrant remains so deposited the depositor shall have the same right of signing a requisition for calling a meeting of the company, and of attending and voting and exercising the other privileges of a member at any meeting held after the expiration of the day preceding the day of deposit, as if his name were inserted register of members as the holders of the

shares included in this share-warrant but not more than one person shall be recognised as depositor of the share-warrant and the company shall, on two days written notice, return the deposited share-warrant to the depositor.

39. Subject as herein otherwise expresly priovided no person shall, as bereer of a share-warrant, sign a requisition for calling meeting of the company, or attend, or vote or exercise any other privilege of a member at a meeting of the company, or be entitled to recieve any notice form the company; but the bearer of a share-warrant shall be entitiled in all other respects to the smae privilege and advantages as if he were named in the register of members as the holder of a share-warrant shall be entitled in all other respects to the same privilege and advantages as if he were named in the register of members as the holder of the shares included in the warrant, and he were a member of the company.

40. The directors may, from time to time, make rules as to the terms on which, if they shall think fit, a new share-warrant or coupon may be issued by way of renewall in case of defacement, loss or destruction.

Alternation of Capital

41. The directors may, with the sanction of the company in general meeting increase the share capital by such sum, to be divided into shares of such amount, as the resolution shall prescribe.

42. Subject to any resolution sanctioning the increase of share capital, all new shares shall, before issue be offered to such persons as at the date of the offer are entitled to recieve notices from the company of general meetings in proportion to the mount of the existing shares to which they are entitled. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer if not accepted, will be deemed to be declined, and after the expiration of that time or on the receipt of an

intimation from the person to whom the offer is made that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company. The directors may likewise so dispose of any new shares which, by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares, cannot, in the opinion of the directors, be conveniently offered under this Regulation.

43. The new shares shall be subject to the same provisions with reference to the payment of calls lien transfer, transmission forfeiture and otherwise as the shares in the original share capital.

44. The company may by ordinary resolution—

(a) consolidated and divide its share capital into shares of larger amount than its existing shares:

(b) by sub-division of its existing shares or any or then, divided the whole or any part of its share capital into shares of smaller amount than is fixed by the memorandum of association subject, nevertheless, to the provision of paragraph (d) of sub-section (1) of section 53 of the Companies Act, 1994;

(c) cancel any shares which, at the date of the passing of the resolution have not been taken or aggreed to be taken by any person.

45. The company may be special resolutin, reduce its share capital in any manner and with, and subject to, any incident authorised and consent required by law.

General meetings

46. The statutory general meeting of the company shall be held within the period required by section 83 of the Companies Act, 1994.

47. A general meeting shall be held within eighteen months from the date of its incorporation and thereafter once at least in every year at such time not being more than

fifteen months after the holding of the last precedings general meeting and at such place as may be prescribed by the company in general meeting.

48. The above mentioned general meeting shall be called ordinary meetings; and all other general meetings shall be called extraordinary.

49. The directors may, whenever they think fit call an extraordinary general meeting and extraordinary general meetings shall also be called on such requisition, or in default, may be called by such requisitionists, as provided by section 84 of the Companies Act, 1994. If at any time there are not within Bangladesh sufficient directors capable of acting to form a quorum, any director or any two members of the company may call an extraordinary general meeting in the same manner as nearly as possible as that in which meetings may be called by the directors.

Proceedings at general Meeting

50. Subject to the provisions of sub-section (2) of section 87 of the Companies Act, 1994 relating to special resolution, fourteen days notice shall be served; in recovering this fourteen days the day on which the notice is served or deemed to be served shall be excluded but the day for which notice is given shall be included in the notice the place, the day and the hour of meeting and, in case of special business, the general nature of that business shall be given in manner herinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting to such persons as are under the Companies Act, 1994, or the regulations of the company, entitled to receive such notice from the company, but the accidental ommision to give notice to or the non receipt of notice by any members shall not invalidate the proceedings at any general meeting.

51. All business shall be called special business that are transacted at an extraordinary meeting but the

sanctioning a dividend the consideration of the accounts balance-sheets and the ordinary reprt of the directors, and auditors, the election of directors and other officers in the place of those retiring by rotation, and the fixing of the remneration of the auditors shall not be called special business.

52. No business shall be transacted at any general meeting unless aquourm of members is present at the time when the meeting proceeds to transact business and save as herein otherwise provided, two members in the case of a private company and five members in the case of any other company personally present shall be a quorum.

53. If within half an hour from the time appointed for the meeting a quorum is not present the meeting if called upon the requistion of members, shall be dissolved, in any other case, it shall stand adjourned to the same day in the next week at the same time and place, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

54. The Board of Directors shall select one of their members as its Chairman who shall preside at every general meeting of the Company :

Provided that the Chairman and the managing director shall not be the same person.

55. If at any meeting the Chariman is not present within thirty minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be the chairman.

56. The Chairman may, with the consent of any meeting at which a quorum is present and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for ten days or more, notice of the adjourned meeting

shall be given as in the case of an adjournment or of the business to be transacted at an adjourned meeting.

57. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is before or on the declaration of the result of the show of hands, demanded in accordance with the provisions of clause (c) of sub-section (1) of section 85 of the Companies Act, 1994, and unless a poll is so demanded a declaration by the chairman that a resolution has on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

58. If a poll is demanded it shall be taken in such manner as the chairman directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

59. In the case of an equality of votes, whether on a show of hands or on a poll, the Chairman of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

60. A poll demanded on the election of Chairman or on question of adjournment shall be taken forthwith, A poll demanded on any other question shall be agken at such time as the Chairman of the meeting directs.

Votes of Members

61. On a show of hands every member present in prerson shal have one vote. On a poll, every member shall have one vote in respect of each share or each hundred taka of stock held by him.

62. In the case of joint-holders, the vote of the senior who tenders a vote, whether in person or by proxy, shall

be accepted to the exclusion of the votes of the other joint-holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

63. A member of unsound mind or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote whether on a show of hands or on poll, by his committee or other legal guardian, and any such committee or guardian may vote by proxy.

64. No member shall be entitled to vote at any general meetting unless all caits or other sums presently payable by him in respect of shares in the company have been paid.

65. On a poll, votes may be given either personally or by proxy, but a mmeber company shall not vote by proxy so long a resolution of its directors in accordance with the provisions of section 86 of the Companies Act, 1994, is in force.

66. The instrument appointing a proxi shall be in writing under the hand of the appointor or of his attorney duly authorised in writting, or if the appointor is a body corporate either under the common seal or under the hand of an officer or attorney so authorised.

67. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notrially certificd copy of that power or authority, shall be deposited at the registered office of the company not less than forty-eight hours before the time for holding the meeting at which the person named in the instrument proposes to vote and in default the instrument of proxy shall be treated as valid.

68. An instrument appointing a proxy may be in the following form, or in any other similar form which the directors shall approve :

.....

Company, Limited

"I of in the district of

being a member of the

Company Limited hereby appoint..... Address

.....

as my proxy to vote for me and on my behalf at the ordinary extraordinary general meeting of the company to be held on the day of

and at any adjournment thereof"

(Please mention-membership No. or other indentity No. and share No.)

.....

(Signature with date)

Directors

69. The number of the directors and the names of the first directors shall be determined in writing by a majority of the subscribers of the memorandum of association.

70. Subject to the provisions, if any, in any law for the time being in force, the remuneration of the directors shall from time to time be determined by the company in general meeting.

71. The qualification of a director shall be the holding of at least one share in the company, and it shall be his duty to company with the provisions of section 97 of the Companies Act, 1994.

Powers and duties of directors

72. The business of the company shall be managed by the directors, who may pay all expenses incurred in forming and registering the company, and may exercise all such powers of the company as are not, by the Companies Act, 1994 or by these regulations, required to be exercised by the company in general meeting subject nevertheless to any of these regulations, to the provisions of the said Act, and to such provisions being not incinsistent with the aforesaid regultions, as may be prescribed by the company in general meetting; but no provision made by the company in general meeting shall invalidate any

prior act of the directors which would have been valid if that provision had not been made.

73. The directors may from time to time appoint one or more of their body to the office of managing director or manager for such term, and at such remuneration, whether by way of salary, or commission, or participation in profits, or partly in one way and partly in another as they may think fit; and a director so appointed shall not, while holding that office, be subject to retirement by rotation, or taken into account in determining the time of retirement of directors, but his appointment shall be subject to determination ipso facto if he ceases for any cause to be a director or if the company in general meeting resolve that his tenure of the office of managing director or manager be determined.

74. The amount for the time being remaining undercharged o moneys borrowed or raised by the directors for the purposes of the company otherwise than by the issue of share capital, shall not at any time exceed the issued share capital of the company without the sanction of the company in general meeting.

75. The directors shall duly comply with the provisions of the Companies Act, 1994, and in particular with the provisions in regard to the registration of the particulars of mortgages and charges affecting the property of the company or created by it, and keeping a register of the directors, and sending to the Register and annual list of members and a summary of particulars relating there to and notice of any consolidation or increase of share capital or conversion of shares into stock, and copies of special resolutions and a copy of the registrar of directors and notifications of any changes therein.

76. (1) The directors shall cause minutes to be made in books provided for the purpose –

(a) of all appointments of officers made by the directors ;

(b) of the names of the directors present at each meeting of the directors and of any committee of the directors ;

(c) of all resolutions and proceedings at all meetings of the company and of the directors, and of committees of directors.

(2) Every director present at any meeting of directors or committee of directors shall sign his name in a book to be kept for that purpose.

The Seal

77. The common seal of the company shall not be affixed to any instrument except by the authority of a resolution of the Board of Directors and in the presence of at least two directors including the managing director or the chief executive by whatever name called and of the secretary or such other person as the directors may appoint for the purpose, and those two directors and secretary or other person as aforesaid shall sign every instrument or which the seal of the company is so affixed in their presence.

78. The office of a director shall be vacated if the director—

(a) fails to obtain within the time specified in sub-section (1) of section 97 of the Companies Act, 1994 or at any time thereafter ceases to hold the share qualification necessary for his appointment; or

(b) is found to be of unsound mind by a court of competent jurisdiction; or

(c) is adjudged insolvent; or

(d) Fails to pay calls made on him in respect of shares held by him within six months from the date of such calls being made; or

(e) Whithout the sanction of the company in general meeting accepts or holds any office of profit under

the company other than that of the managing director or manager, or legal or technical adviser,. or

(f) absents himself from three consecutive meetings of the directors without leave of absence from the Board of Directors; or

(g) accepts a loan from the Company ; or

(h) is concerned or participates in the profits of any contract with the company ; or

(i) is punished with imprisonment for a term exceeding six months :

Provided that no director shall vacate his office only by reason of his being member of any other company which has entered into contracts with or done a work for such other company of which he is director, but a director shall not vote in respect of any such contract or work and if he does so vote his vote shall not be counted.

Rotation of Directors

79. At the first ordinary meeting of the company, the whole of the directors shall retire from office and at the ordianry meeting in every subsequent year, one-third of the directors for the time being or, if their number is not three or a multiple of three, then the number nearest to one-third shall retire from office.

80. The directors to retire in every year shall be those who have been longest in office since their last clection, but as between person as who became directors on the same day those to retire shall, unless they otherwise agreed among themselves, be determined by lot

81. Aretiring director shall be eligible for re-clection.

82. The company at the general meeting at which a director retires in manner aforesaid may fill in the vacated office by electing a person thereto.

83. If at any meeting at which an election of directors ought to take place, the offices of the vacating

directors are not filled in, the meeting shall stand adjourned till the same day in the next week and shall be held at the same time and place and if at the adjourned meeting the offices of the vacating directors are not filled in, the vacating directors or such of them as have not had their office filled in shall be deemed to have been reelected at the adjourned meeting.

84. Subject to the provisions of section 90 and 91 of the Companies Act, 1994, the company may from time to time in general meeting increase or reduce the number of directors and may also determine in what rotation the increased or reduced number is to go out of office.

85. Any casual vacancy occurring in the Board of Directors may be filled in by the directors but the person so chosen shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is appointed was last elected a director. A director so chosen shall be known as an alternative director.

86. The directors shall have power at any time, and after the expiry of a specified period to appoint a person as an additional Director who shall retire from office at the next following ordinary general meeting but shall be eligible for election by the company at that meeting as an additional director.

87. The company may, by extraordinary rsolution, remove any director before the expriration of his period of office, and may by, an ordinary resolution, appoint another person in his stead; the person so appointed shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is apointed was last elected a director.

Proceedings of directors

88. The directors may meet together for the disposal of business and adjourn and otherwise regulate their meetings as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In

cases of an equality of votes, the Chairman shall have a second or casting vote. A director may, and Secretary on the requisition of a director shall at any time, summon a meeting of directors.

89. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall, when the number of directors exceeds three be three.

90. The continuing directors may act notwithstanding any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the company as the necessary quorum of directors, after may act for the purpose of increasing the number of directors, to that number, or of summoning a general meeting of the company, but for no other purpose.

91. The directors shall determine the period for which the Chairman shall hold office.

92. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think it; any committee so formed shall, in the exercise of the powers so delegated, conform to any restriction and regulations that may be imposed on them by the directors.

93. A committes may elect a chairman of their meetings; if no such chairman is elected or if at any meeting the chairman is not present thirty minutes after the time appointed for holding the same the members present may choose one of their number to the chairman of the meeting.

94. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majourty votes of the members present and in case of an equality of votes, the chairman shall have a second casting vote.

95. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a

director, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividend and Reserve

96. The company in general meeting may declare dividends but no dividends shall exceed the amount recommended by the directors; When a dividend is declared it shall be paid within two months from the date of its declaration :

Provided that the period of two months shall not apply in case where –

(a) there is a dispute regarding the right to receive the payment; or

(b) the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

97. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the company.

98. No dividend shall be paid otherwice than out of profits of the year or any other undistributed profits.

99. Subject to the rights of person, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares; but if and so long as nothing is paid upon any of the shares in the company, dividends may be declared and paid according to the nominal value of the shares. No. amount paid on a share in advance of calls shall, while carrying interest, be treated for the purpose of this Regulation as paid on the share.

100. The directors may, before recommending any dividend set aside out of the profits of the company

such sums as they think proper as a reserve ot reserves which shall at the discretion of the directors be applicable for meeting contingencies or for equalizing dividends. or for any other purpose to which the profits of the company may be properly applied and pending such application may, at the like discretion, either be employed in the busines of the company or be invested in such investments as the directors may from time to time think fit.

101. If several persons are registered as joint-holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

102. Notice of any dividend that may have been declared shall be given in manner hereinafter mentioned to the persons entitled to share therein.

103. No Dividend shall best interest against the company.

Accounts

104. Director shall cause to be kept proper books of account with respect to –

(a) all sims of money received and expended by the company and the matters in respect of which the receipts and expenditure take place;

(b) all sales and purchases of goods by the company ;

(c) the assets and liabilities of the company ;

(d) cost accounts, where applicable

105. The books of account shall be kept at the registered office of the company or at such other place as the directors shall think fit and shall be open to inspection by the directors during business hours.

106. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the company or any of them shall be open to the inspection of members not being directors and no member not being a directors shall

have any right oi inspecting any account or book or document of the company except as conferred by law or authorised by the director or by the company in general meeting .

107. The directors shall as required by sections 183 and 184 of of the Companies Act, 1994, cause to be prepared and to be laid before the company in general meeting such profit and loss accounts or income and expenditure accounts, balance-sheet and reports as are referred to in those sactions.

108. The profit and loss account shall in addition to the matters referred to in sub-section (2) of secction 185 of the Companies Act, 1994 show, arranged under the most convenient heads, the amount of gross income, and in the case of a banking company, the amount of any provision made to the satisfaction of the auditors, for bad and doubtful debts distinguishing the several sources from which it has been drived, and the, amount of gross expenditure distingushing the expenses of the establishment salaries and other like matters.

(2) Every item of expenditure fairly chargeable against the year's income shall be brought into account so that a just balance of profit and loss may be laid before the meeting, and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

109. A balance-sheet shall be made out in every year and laid before the company in general meeting the balance-sheet shall be made up to a date not more than nine months before such meeting. The blance -sheet shall be accompanied by a report of the directors as to the state of the company's affairs, and the amount, if any, which they propose to carry to a reserve fund.

110. A copy of the balance-sheet and report shall, fourteen days previous to the meeting, in be sent to the persons entitled to receive notice of general meetings the manner in which notice are to be given hereunder.

111. The directors shall in all respect comply with the provisions of sections 181 to 191 of the Companies Act. 1994

Audit

112. Auditors shall be appointed and their duties regulated in accordance with sections 212 and 213 of the Companies Act 1994.

Notice

113. A notice may be given by the company to any member either personally or by sending it by registered post to him to his registered address or, if he has no registered address in Bangladesh, to the address, if any, within Bangladesh supplied by him to the company for the giving of notice to him.

114. If a member has no registered address in Bangladesh, and has not supplied to the company an address within Bangladesh for the giving of notice to him a notice addressed to him and advertised in a newspaper circulating in the neighbourhood of the registered office of the company shall be deemed to be duly given to him on the day on which the advertisement appears.

115. A notice may be given by the company to the joint holders of a share by giving the notice to the joint-holder named brst in the register in respect of the share.

116. A notice may be given by the company to the persons entitled to a share in consequence of the death or insolvency of a member by sending if through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or assignee of the insolvent or by any like description, at

the address, if any, in Bangladesh supplied for the purpose by giving the notice in any manner in which the same might have been given if the death or insolvency had not occurred.

117. Notice of every general meeting shall be given in some manner herein before authorised to -

(a) every member of the company including bearers of share warrants except those members who have no registered address within Bangladesh and have not supplied to the company an address within Bangladesh for the giving of notices to them and

(b) every person entitled to a share in consequence of the death or insolvency of a member, who but for his death or insolvency, would be entitled to receive notice of the meeting.

SCHEDULE II

(See sections 348 and 363)

TABLE OF FEES TO BE PAID TO THE REGISTRAR

I By a company having a share capital :

(Fees)

(Taka)

(1) For registration of a company whose nominal share capital does not exceed Tk. 120,000

20.000

(2) For registration of a company whose nominal share capital exceeds Tk.20,000 the above fee of taka 120.00 with the following additional fees regulated according to the amount of nominal capital that is say–

(a) For every 10,000 taka of nominal share capital, or part of 10,000 taka after the first 20,000 taka up to 50,000 taka 60.00

(b) For every 10,000 taka of nominal share capital, or part of 10,000 taka after the first 50,000 taka up to 10,00,000 taka 15.00

(c) for every 10,000 taka of nominal share capital, or part of 10,000 taka after the first 10,00,000 taka up to 50,00,000 taka 8.00

(d) For every 1,00,000 taka of nominal share capital or part of 1,00,000 taka after the first 50,00,000 taka up to any limit. 15.00

(3) For registration of any increase of share capital made after the first registration of the company, the same fee as would have been payable if such increased share capital had formed part of the original share capital at the time of registration.

(4) For registration of any existing company except such companies as are by this Act exempted from payment or fees in respect of registration, the same fee as is charged for registraing a new company.

(5) For filing any document by this Act required or authorised to be filed, other than the memorandum or the abstract required to be filed, with the Registrar by a receiver or the statement required to be filed with the Registrar by the liquidator in a winding up 20.00

(6) For making a record of any fact by this Act required or authorised to be recorded by the Registrar 20.00

(7) For registration of mortgages debentures and charges–

(a) Where the total amount secured either by mortgages or debentures or charges does not exceed taka 5 lac

50.00

(b) For every 5 lac taka or part of 5 lac taka, after the first 5 lac taka up to 50 lac taka. 40.00

(c) For every 5 lac taka or part of 5 lac taka, after the first 50 lac taka up to any limit; 20.00

(d) For inspection of the register of mortgage and charge

10.00

(e) For registration of appointment of the receiver

20.00

(8) For registration of any increase in the secured amount made after the first registration of mortgage or debentures or charges the same fees per 5 lac taka, or part of 5 lac taka as would have been payable if such increased amount had formed part of the original amount at the time of registration.

II By a company not having share capital and a company registered under licence granted under section 28.

(1) For registration of a company whose number of members as stated in the articles of association, does not exceed 20 200.00

(2) For registration of a company whose number of members, as stated in the articles of association exceeds 20, but does not exceed 100 500.00

(3) For registration of a company whose number of members as stated in the articles of association, exceeds 100, but is not stated to be unlimited the above fee of tk 500 and for every 100 members, or less number than 100 members after the first 100 members 50.00

(4) For registraton of a company whose number of members is stated in the articles of association to be unlimited 1500.00

5) For registration of any increase in the number of members made after the registration of the company, the same fees at the rate prescribed in sl. nos (1) (2), (3) and (4) above, as if such increase has been stated in the articles of association at the time of registration.

Provided that no one company shall be liable to pay on the whole a greater fee than tk. 1500 in respect of its number of members, taking into account the fee paid on the first registration of the company ...

(6) For registration of any existing company except such companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registration as a new company .....

(7) For filing any document by this Act required or authorised to be filed other than memorandum or the abstract required to be filed with the Registrar by a receiver or the statement required to be filed with the Registrar by a liquidator in a winding up –

(a)In case of a memorandum 100.00

(b)In case of any other document 10.00

(8) For making a record of any fact by this Act authorised or required to be recorded by the Registrar 20.00

(9) For registration of mortgage, debentures and charges

(a) Where the total amount secured by mortagage or debenture or charges does not exceed taka 5 lac 50.00

(b) For every 5 lac taka or part of 5 lac taka after the first 5 lac taka up to 50 lac taka 40.00

(c) For every 5 lac taka or part of 5 lac taka, after the first 50 lac taka up to any limit 20.00

(d) For inspection of the register of mortgage and charge 10.00

(e) For registration of appointment of the receiver 20.00

(10) for registration of any increase in the secured amount made after the first registration of mortgage or debenture or charge, the same fees per 5 lac taka or part thereof, as would have been payable if such increased amount had formed part of the orginal amount at the time of registration.

III By a company established outside Bangladesh which has aplace of business in Bangladesh :

(1) For filing any document by this Act required or authorised to be filed, other than the memorandum or the abstract required to be filed with the Registrar by

a receiver or the statement required to be filed with the Registrar by the liquidator in a winding up

(a) in case of memorandum and articles of association 100.00

(b) in case of the documents 10.00

(2) For registration of mortgages debentures and charge

(a) Where the total amount secured by mortgage or debenture or charges does not exceed taka 5 lac 50.00

(b) For every 5 lac taka or part of 5 lac taka, after the first 5 lac taka up to 50 lac taka 40.00

(c) For every 5 lac taka or part of 5 lac taka, after the first 50 lac taka up to any limit 10.00

(d) For inspection of the register of mortgage and charge 20.00

(e) For registration of appointment of the receiver 20.00

(3) For registration of any increase in the secured amount made after the first registration of mortgage or debenture or charge the same fees per 5 lac taka or part thereof as would have been payable if such increased amount had formed part of the original amount at the time of registration.

IV. General :

(1) For inspection of records issue of certified copies etc

(a) For inspection of records 10.00

(b) For copy of certificate of incorporation 15.00

(c) For copy of certificate of commencement of business 15.00

(d) Copying of documents at taka one for each 100 words or part thereof subject to a minimum of Tk. 10.00 10.00

(e) Comparison of documents at 50 poisa for each hundred words or part thereof subject to a minimum of taka 5 for each document

(2) For each application to the Registrar for information as to whether name of the company or the proposed change of name of the registered company is available or not 5.00

3) For filing or registration of any document or return by this Act required or authorised to be filed or registered or for any fact by this Act, required or authorised to be registered or filed with the Registrar after the time specified, Taka. 1.00 for each day of default subject to a maximum of taka 500.00

Schedule III

Matters to be specified in prospectus and report to be set out therein.

PART I

MATTERS TO BE SPECIFIED

1. (a) Save as hereinafter provided in clause 27, the following particulars the names, addresses, descriptions and occupations of the signatories to the memorandum and the number of shares subscribed for by them

(b) The number and classes of shares if any, and the nature and extent of the interest of the holders in the property and profits of the company.

(c) The number of redeemable preference shares intended to be issued, with the date of redemption or, where no date is fixed the period of notice required for redeeming the shares and the proposed method of redemption.

(2) (1) The number of shares, if any, fixed by the articles as the qualification of a director.

(2) Any provision in the articles as to the remuneration of the directors whether for their services to the

company as directors, managing directors or otherwise.

3. (I) The names, addresses, descriptions and occupations of

(a) the directors or proposed directors ;

(b) the managing director or proposed managing director, if any;

(c) the managing agent or proposed managing agent, if any;

(d) the manager or proposed manager, if any;

Provided that –

(i) where any such person is already a director, managing director or manager of any other company, or

(ii) where any such person, including a firm or body corporate, is already a managing agent of any other company.

the matters to be specified under this clause shll include the names of all the companies in which such person is a director, managing director or managing agent or manager, and where any such person is a firm or a body corporate, the said particulars shall also be given in respect of every partner of the firm, or as the case may be in respect of every director of the body corporate.

(2) Any provision in the articles or in any contract which has been entered into as to the appointment of a managing director, managing agent or manager, the remuneration payable to him or them and the compensation, if any, payable to him or them for loss of office.

4. In the case of a company managed by a managing agent which is a body corporate the subscribed capital of that body.

5. Where shares are offered to the public for subscription particulars as to –

(a) the minimum amount which in the opinion of the directors or of the signatories of the memorandum must be raised by the issue of those shares in order to provide the sums, required to be provided in respect of each of the following heads and distinguishing the amount required under each head :

(i) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(ii) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for any shares in the company;

(iii) the repayment of any money borrowed by the company in rspect of any of the matters specified in sub-clause (I) and (II)

(iv) working capital ;

(v) any other expenditure, stating the nature and purpose thereof and the estimated amount in each case;

(b) if any part of the amount specified in clause (a) is defrayed in any manner otherwise than those specified in that clause, then the amount so defrayed and the balance.

(c) if the amounts to be provided in respect of the matters specified in clause (a) and (b) otherwise than out of the proceeds of the issue than the sources out of which those amounts are to be provided.

6. The time of the opening of the subscription lists

7. The amount payable on application and allotment on each share, and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding

years, the amount actually allotted, and the amount, if any paid on the shares so allotted.

8. The substance of any contract or arrangement or proposed contract or arrangement, whereby any option or preferential right of any kind has been or is proposed to be given to any person to subscribe for any share, in or debentures of a company, giving the number, description and amount of any such shares or debentures shall and including the following particulars of the option or right–

(a) the period during which the option or right is exerciseble ;

(b) the price to be paid for shares or debentures subscribed for under the option or right ;

(c) the consideration, if any, given or to be given for the option or for the right thereto;

(d) the names, addresses, descriptions and occupations of the person, to whom the option or the right thereto has been given or, is proposed to be given, if given to existing shareholders or debentue holders as such, the description and the number of the relevant shares or debentures;

(e) any other material fact or circumstances relevant to the grant of the option or right.

Explanation :- Subscibing for shares or debentures shall, for the purpose of this clause, including acquiring them from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale shall be deemed to subscription for such share or debentime.

9. The number, description and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued as fully or partly paid up otherwise than in cash, and in latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or agreed to be issued.

10. The amount paid or payable by way of premium, if any, on each share which has been issued within the two years preceding the date of the prospectus, or is to be issued, stating the dates or proposed dates of issue and, where some shares have been or are to be issued at a premimium and other shres of the same class at a lower premium, or at part or at a discount, the reasons for the differentiation and how any premiums received have been or are to be disposed of.

11. Where any issue of shares or debentures, is underwritten, the name of the underwriters, and the opinion of the directors that the resources of the underwriters are sufficient to discharge their obligations.

12. (1) The following particulars as respects any property to which this clause applies is specified in sub-clause (2)

    (a) the names, addresses, descriptions and occupations of the vendors;

    (b) the amount payable in cash, shares or debentures to the vendor and, where there is more than one separate vendor, or the company is a sub-pruchaser, the amount so payable to each vendor specifying separately the amount, if any, paid or payable for goodwill.

    (c) the nature of the title or interest in such property acquired or to be acquired by the company;

    (d) short particulars of any transaction relating to the transaction of the property completed within the two preceding years in which any vendor of the property to the company or any person who is, or was at the time of the transaction, a promoter or a director or proposed director of the company had any interest direct or indirect specifying the date of the transaction and the name of such promoters, director for proposed director and stating the amount payable by or to such vendor,

promoter, director or proposed director in respect of the transaction.

(2) The property to which sub-clause (1) applies is property purchased or acquired, by the company or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus or the purchased or acquisition of which has no been completed at the date of the issue of the prospectus, other than property—.

(a) the contract for the purchase or acquistion whereof was entered into in the ordinary course of the company's business, the contract not being made in contemplation of the issue nor the issue in consequence of the contract; or

(b) as respects which the amount of the purchase money is not material.

13. The amount, if any, paid within the two preceding years, or payable as commission to any person including commission to sub-under writers who is a promoter or officer of the company, for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscription, for any shares in or debentures of the company, and giving also the following particulars namely :

(a) the name, address, description and a occupation of each person;

(b) particulars of the amounts which each has underwritten or sub-underwritten as aforesaid;

(c) the rate of the commission payable to each for such underwriting or sub-underwriting;

(d) any other material term or condition of the underwriting or sub-underwriting contract with each such person; and

(e) where any such person is a company or a firm, the nature of any interest, direct or indirect, in

such company or firm of any promoter or officer of the company in respect of which the prospectus is issued.

14. The amount or estimated amount of preliminary expenses and the persons by who any of those expenses have been paid or are payable, and amount or estimated amount of the expenses of the issue and the persons by whom any of those expenses have been paid or are payable.

15. Any amount or benefit, paid or given within the two preceding years or intended to be paid or given to any promoter, and the consideration for the payment or the giving of the benefit.

16. (1) The dates of, parties to and general nature of every contract appointing or fixing the remuneration of a managing director, managing agent or manager whenever entered into, that is to say, whether within, or more than two years before the date of the prospectus;

(2) The dates, parties and the general nature of every other material, contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus.

(3) A reasonable time and place at which any such contract or a copy thereof may be inspected.

17. The names and addresses of the auditors, if any, of the company.

18. (1) Full particulars of the nature and extent of the interest, if any, of every directors or promoter in the promotion of the company; or in any property acquired by the company within two years of the date of the prospectus or proposed to be acquired by it.

(2) Where the interest of such director or promoter consists in being a member of a firm or company, the nature and extent of the interest of the firm or

company, with a statement of all sums paid or agreed to be paid to him or to other firm or company in cash or shares or otherwise by any person either to induce him to become, or to qualify him as a director or otherwise for services rendered by him or by the firm or company in connection with the promotion or formation of the company.

19. If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

20. Where the articles of the company impose any restrictions upon the members of the company in respect of the right to attend, speak or vote at meetings of the company or of the right to transfer shares, or upon the directors of the company in respect of their powers of management, the nature and extent of those restrictions.

21. (1) In the case of a company which has been carrying on business, the length of time during which the business of the company has been carried on.

(2) If the company proposes to acquire a business which has been carried on for less than three years, the length of time during which the business has been carried on.

22. (1) If any reserves or profits of the company or any of its subsidaries have been capitalised, particulars of the capitalisation.

(2) particulars of the surplus arising from any revaluation of the assets of the company or any of its subsidiaries during the two years preceding the date of the prospectus and the manner in which such surplus has been dealt with.

23. A reasonable time and place at which copies of all balance sheets and profit and loss accounts, if any, on

which the report of the auditors is based, may be inspected.

Explanation :— In this regulation "report" means a report prepared under Part II of the schedule and on the basis of which the company's balance sheet and Profit and Loss account is prepared.

PART II

(SCHEDULE-III)

REPORTS TO BE SET OUT

24. (1) The auditors of the company shall prepare a report on the following, namely :—

(a) Profits and losses, and assets and liabilities, in accordance with sub-clause (2) or (3), as the case may be;

(b) the rates of the dividends, if any, paid by the company in respect of each class of shares in the company for each of the five financial years immediately preceding the issue of the prospectus, giving particulars of each such class of shares on which the dividends have been paid and also particulars of the cases in which no dividend has been paid on any of those classes of shares for any of those years;

(c) if no accounts have been madeup in respect of any of the said financial years, or part thereof ending on a date immediately preceding three months prior to the issue of the prospectus (hereinafter referred to as the said period), then the following matters :—

(i) a statement that such accounts have not been made up;

(ii) an account of the profit and loss of the company up to a date prior to the issue of the prospectus which date is not beyond one hundred and eighty days including the said period (three months);

(iii) the accounts referred to in sub-clause (ii) may indicate as to whether any adjustment has been made or yet to be made and the nature of the adjustment;

(iv) a certificate that the profit and loss account and the assets and liabilities of the company have been examined by the auditors and found to be correct by them.

(2) If the company has no subsidiaries, the report shall as regards,

(a) profits and losses, deal with the profits or losses of the company, distinguishing it of a items of a non-recurring nature, in respect of each of the five financial years immediately preceding the issue of the prospectus; and

(b) assets and liabilities, deal with the assets and liabilities of the company at the last date to which the accounts of the company were made up.

(3) If the company has subsidiaries, the report shall as regards,

(a) profits and losses, deal separately with the company's profits or losses as provided by sub-clause (2) and in addition deal either—

(i) as a whole with combined profits or losses of its subsidiaries, so far as they concern members of the company; or

(ii) individually with the profits or losses of each subsidiary, so far as they concern members of the company; or

(iii) instead of dealing separately with the company's profits or losses, deal as a whole with the profits or losses of the company and, so far as they concern members of the company, with the combined profits or losses of its subsidiaries; and

(b) assets and liabilities, deal separately with the company's assets and liabilities as provided by sub-clause (2) and, in addition, deal either—

(i) as a whole with the combined assets and liabilities of its subsidiaries, with or without the company's assets and liabilities; or

(ii) individually with the assets and liabilities of the each subsidiary;

(c) the assets and liabilities of the subsidiaries indicate the allowance to be made for persons other than members of the company.

25. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly—

(i) in the purchase of any business; or

(ii) in the purchase of an interest in any business and by reason of that purchase or, anything to be done in consequence thereof, or in connection therewith, the company will become entitled to an interest as respect either the capital or profits and losses or both, in such business exceeding fifty per cent thereof;

a report shall be made by accountants, who shall be named in the prospectus, upon the profits or losses of the business for each of the five financial years immediately preceding the issue of the prospectus; and the assets and liabilities of the business at the last date to which the accounts of the business were made up.

26. (1) If—

(a) the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in any manner resulting in the acquisition by the company of shares in any other body corporate; and

(b) by reason of that acquisition or anything to be done in consequence thereof or in connection therewith that body corporate will become a subsidiary of the company;

a report made by accountants who shall be named in the prospectus upon the profits or losses of the other body corporate for each of the five financial years immediately preceding the issue of the prospectus; and the assets and liabilities of the other body corporate at the last date to which the accounts of the body corporate were made up.

(2) The said report shall—

(a) indicate how the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be acquired, have concerned members of the company and what allowance would have fallen to be made, in relation to assets and liabilities so dealt with, for holders of other shares, if the company had at all material time held the shares to be acquired; and

(b) where the other body corporate has subsidiaries, deal with the profits or losses and the assets and liabilities of the body corporate and its subsidiaries in the manner provided by sub-clause(3) of clause 24 of this Schedule in relation to the company and its subsidiaries.

SCHEDULE-III

PART III

PROVISIONS APPLYING TO PARTS I AND II OF THE SCHEDULE

27. Clause 1 so far as it relates to particulars of the signatories of the memorandum and the shares subscribed for by them, and clause, so far as it relates to preliminary expenses, of this Schedule shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

28. Every person shall, for the purposes of this Schedule, be deemed to be a vendor who has entered into any contract, absolute or conditional for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a) the purchase money is not fully paid at the date of the issue of the prospectus;

(b) the purchase money is to be paid or satisfied, wholly or in part, out of the proceeds of the issue offered for subscription by the prospectus;

(c) the contract depends for its validity or fulfilement on the result of that issue.

29. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, the expression "purchase money" inlcuded the consideratior for the lease, and the expression "sub-purchase" included a sub-lessee.

30. If, in the case of a company which has been carrying on business for less than five years or in the case of a business which has been carried on for less than five years, the accounts of the company or the business have been accordingly made for any number of years or period less than five year (e.g. four/three/two/one etc.) then, the provisions of part II of this Schedule shall have effect as if any references to five years in that Part were the references to the said less number of years or to the said period less than five years.

31. Where the five financial years immediately preceding the issue of the prospectus which are referred to in Part II of this Schedule or in this Part cover a period of less than five years, reference to the said five financial years in either Part shall have effect as if references to a number of financial years the aggregate period covered by which is not less than five years immediately preceding the issue of the prospectus

were substituted for reference to the five financial years aforesaid.

32. Any report required by Part II of this Schedule shall either—

(a) indicate by way of note any adjustments as respects the figures of any profits or lossess or assets and liabilities dealth with by the report which apperar of the persons making the report necessary; or

(b) make those adjustments and indicate that adjustment have been made.

33. Any report by accountants required by Part II of this Schedule—

(a) shall be made by accountants qualified under the companies Act, 1994 for appointment as auditors of a company; and

(b) shall not be made by any accountant who is an officer or servants, or a partner or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

Explanation :— For the purpose of this clause, the expression "officer" shall include a proposed director but not an auditor.

SCHEDULE-IV

(See section 141)

Form of statement in lieu of Prospectus to be delivered to the Registrar by a company which does not issue a Prospectus or which does not go to allotment on a Prospectus and reports to be set out therin.

PART-I

Form of statement in lien of Prospectus and Particulars to be included thereir

For registration of the Statement in lien of Prospectus delivered to the Registrar pursuant to section 141 of the Companies Act, 1994 for registration by .....

..... Co. Ltd.

Subjects on which Particulars given	Particulars
1. (a) Nominal share capital of the company	1. (a) Taka.....
(b) Nominal value of each share	(b) Taka .....
(c) Total number of shares (specify the class):	(c).....
..... shares	.....
..... shares	.....
2. (a) The amount, if any, the above share capital consisting of redeemable preference shares	(2) (a) Total amount; Taka .....
	Number of shares:—
	Nominal value of each share .....
(b) The carlie to date on which the company has the power to redeem	(b) Date .....
3. names, addresses and occupation of the following:	
(a) Directors or proposes directors	(a) .....
(b) Managing Director or proposed Managing Director;	(b) .....
(c) Managing agent or proposed Managing agent, if any;	(c) .....

	(d) Manager or proposed Manager	(d) .....
4.	Any provision in the articles or in any contract irrespective of the time when it entered into as to the appointment of, and remuneration payable to, the persons referred in (a) (b), (c) and (d) of SI. No. : 3	4 (a) provision ..... (b) Remuneration ....
5.	If the share capital is divided into different classes of shares—	5. .....
	(a) the right of voting at meetings of the company conferred by such shares	(a) .....
	(b) the rights is respect of the capital and dividends, attached to the overall Classes of shares	(b) .....
6.	Number of shares and debentures issued or agreed to be issued as fully or partly paid up otherwise then in cash.	6.(a) Fully paid up shares : (1) Nominal value of each share Taka..... (2) Total number of shares..

(3) Total amount paid :

Taka .....

(b) partly paid up shares :—

(1) Nominal value of each share

Taka .....

(2) Total number of shares.....

.....

(3) Total amount of money partly paid on those shares,

Taka .....

(4) Amount of money unpaid.....

Taka.....

(c) Fully paid up Debentures :—

(1) Nominal value of each Debenture

Taka .....

(2) Total number of Debentures.....

(3) Total amount paid

Taka.....

(d) Partly paid up debentures....

(1) Nominal value of each :

Taka .....

(2) Total number of debentures:—

Taka.....

(3) Total amount of money partly paid on those debentures :—

Taka.....

(4) amount of money unpaid :—

Taka.....

7. The consideraton for the intended issue of those shares and debentures

7. Consideration :—

(a) for shares : Taka .....

(b) For Debentures : Taka.....

8. (a) Number, description and amount of any shares or debentures which any person has been or; in respect of which he is entitled to be given an option to subscribe for or to acquire from a person to whom they have been allotted or agreed to be allotted with a view to his offering them for sale.	8. (a) (1) Shares :— Nominal value of such share Taka..... Total number of shares..... Total value : Taka..... Discription ..... 2. Debentures :— Nominal value of each Taka Total number of Debentures Total value Taka..... Description.....
(b) Period during which option is exercisable.	(b) Until
(c) Price to be paid for shares or debentures subscribed for or acquired under the option.	(c) Taka
(d) Consideration for the option or right to option.	(d) Consideration
(e) Persons to whom option or right to option was given or, if given to existing share holders of debenture holders as such, the relevant shares or debentures.	(e) (1) Names and addresses of persons etc..... (2) Description of shares/ Debentures..... .....

9.(a) Names, ocuupation and addresses of vendors of property purchases of vendors of property purchased or acquired or propsed to be purchase or acquisition was entered in the ordinary course of the business intended to be carried on by the company or the amount of the purchase money is not mentioned (Amount in cash, shars of debentures. payable to each separate vendor to be stated).	9.(a) Names, addresses and occupation of each vendor/transferer or and the amount paid in cash/or other wise :..... 1. Name and address ..... 2. Cash Tk..... 3. Shares Tk..... 4. Debentures Tk.....
(b) Total amount if any, paid or payable, in cash, shares or debentures, for any such property, specifying amount, if any, paid or payable for goodwill.	(b) (1) Total amount Taka..... Cash Tk..... Shares Tk..... Debentures Tk..... (2) For goodwill Tk.....
10. Short particulars of any transaction relating to each property specified in Sl. No. 9 which was completed within the two preceding vendor and in which any vendor to the company or any person who is, or was at the time thereof, a promoter, director or proposed director of the company had any interest, direct or indirect.	10. (a) Transaction..... (b) Interest therein of directors etc..... .....
11(a) Amount, if any, paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	11.(a) Commission :— Amonunt paid..... Amount payable .....

12. (b) Rate of the comission	Reate per cent.....
(c) The number of shares, if any, which persons have agreed to subscribe for a commission.	(c) shares.....
12. If it is proposed to acquire an business the amount as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the five years immediately preecding the date of this statement : Provided that in the case of a business which has been carried on for less than five years and the accounts of which have only been made up in respect of four years, three years, two years or one year, the above requirements shall have effect as if reference to four years, three years, two years or one year, as the case may be, were substituted for references to five years, and in any such case the statement shall say how long the business to be acquired has been carried on.	12
13. (a) Estimated amount of preliminary expernses.	13. (a) Tk. .....
(b) by whom (promotor or others) those expenses have been paid or are payable.	(b) Names and addresses..... .....
(c) Amount paid or intended to be paid to any promotor and the consideration for the payment.	(c) Name of Promotor Amount Tk..... Consideration.....

(d) Any other benefit given or intended to be given to any promoter and the Consideration for giving of benefit.	(d) Name of promotor:..... Nature and value of benefit : Considenration .....
14. Dates of, parties to, and general nature of, the following :—	14.
(a) contract appointing or fixing the remuneration of directors, managing director, managing agent, or manager : and	(a) (1) Date of contract ..... (2) Nature of contract..... (3) Remuneration of the appointed person.
(b) every other material contract	(b) other material contract :—
other than—	(i) .....
(i) contracts entered into in the ordinary course of the business intended to be carried on by the company; or	
(ii) entered into more than two years before the delivery of this statement.	(ii) .....
15. Time and place at which the following contracts/ documents may be inspected:—	15.
(a) written original contractor its copy	(a) Time and place..... .....
(b) in the case of an unwritten contract, a memorandum giving full particulars thereof	(b) Time and palce..... .....

(c) If the contract is partly or wholly written in a foreign language other than English a copy of its English translation (in whole) or, as the case may be, a copy of the translation of its relevant portion in English (In such cases the translation must be certified to be an correct translation).	(c) Time and place..... .....
16. Names and addresses of the auditors of the company, if any.	16.
17.(a) Full particulars of the nature and extent of the interest of every director, managing director, managing agent or manager in the promotion of, the company:—	(a)
(b) The interest of any of the above persons in a property proposed to be a acquired by the compnay:—	(b)
(c) where the interest of a director consists of being a partner in a firm, the nature and extent of his interest in the firm :—	(c)
(d) The following particulars in respect of clause (c) above :—	
(i) a statement of all sums paid on agreed to be paid to the director or the firm in cash or shares or othersise or to any person either to induce him to become, or to qualify his or his firm as, a director :—	(i)

(ii) a statement of all sums shares or otherwise paid or agreed to be paid to the director or to his firm for services rendered by him or his firm in connection with the promotion of formation of the company. (ii)

Signature of the persons above named an direction, proposed directors, or to their agents and soliset in writing

Dated :

SCHEDULE IV

PART - II

REPORTS TO BE SET OUT

1. Where it is proposed to acquire a business, a report made by accountants who shall be named in the statement, upon the following,—

   (a) the profits or losses of the business in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar : and

   (b) the assets and liabilities of the business as on the last date to which the accounts of the business were made up.

2. (1) Where it is proposed to acquire shares in a body corporate which by reason of the acquisition or anything to be done in consequence there of or in connection therewith will become a subsidiary of the company, a report made by accontants who shall be named in the statement, with respect to the profits and losses and assets and liabilities of the other body corporate in accordance with sub-clauses (2) and (3) of this clause, as the case may require, indicating how

the profits or losses of the other body corporate dealt with by the report would, in respect of the shares to be qcquired, have concerned members of the company, and what allowances would have fallen to be made, in relation to assets and liabilities so dealt with for holder of other shares, if the company had at all material times held the shares to be acquired.

(2) If the other body corporate referred to in sub-clause (1) has no subsidiaries the report referred to in that sub-clause shall state the following :—

(a) the profits or losses of the boy corporate in respect of each of the five financial years immediately preceding the delivery of the statement to the Registrar; and

(b) the assets and liabilities of the body corporate as on the last date to which the accounts of the body corporate were made up.

(3) If the other body corporate referred to in sub-clause (1) has subisdiaries, the report referred to in that sub-clause state the following :—

(a) the other body corporate's profits or losses as provided by sub-clause

(2) and in addition the following :—

(i) the combined profits or losses of the body corporate including that of its subsidiaries, so far as they concern members of the other body corporate; or

(ii) individually the profits or losses of each subsidiary, so far as they concern members of the other body corporate, or

(b) instead of stating separately with the other body corporate's profits or losses, as per sub-clause (2) the total profits or losses of the other body corporate and, so for as they concern members of the other body corporate, with the combined profits or losses of its subsidiaries, and

(c) the other body corporate's assets and liabilities as provided by sub clause (2) and, in addtition, the following :—

(i) as a whole the combined assets and liabilities of its subsidiares, with or without the other body corporate's assets and liabilities; and

(ii) individually with the assets and liabilities of each subsidiary; and

(d) as respects the assets and liabilities of the subsidiaries, the allowance to be made for persons other than members of the company.

SCHEDULE IV

PART III

PROVISIONS APPLYING TO PARTS I AND II OF THIS SCHEDULE

1. In this Schedule, the expression "vendor" includes a vendor as defined in Part III of Schedule III and the expression "financial year" has the same meaning assigned to it in that part of that Schedule.

2. If in the case of a business which has been carried on, or of a body corporate which has been carrying on business, for less than five financial years, the accounts of the business or of the body corporate have only been made up in respect of any poriod less than five years e.g. four year's three years, two years or one year, Part II of this Schedule shall have effect as if reference to four financial years, three financial years, two financial years or one financial year, as the case may be, were substituted for reference to five financial years.

3. Any report required by Part II of this Schedule shall either—

(a) indicate by way of note any adjustments as respect the figures of any profits or losses or assets and liabilities dealt with by the report which

appear to the persons making the report necessary; or

(b) make those adjustments and indicate that adjustments have been made.

4. Any report by accountants required by part II of this Schedule—

(a) shall be made by accountants qualified under the Companies Act, 1994 for appointment as auditors of a company; and

(b) shall not be made by any accountant who is an officer or servant or a partner or in the employment of an officer or servant, of the company or of the company's subsidiary or holding company or of a subsidiary of the company's holding company.

Explanation:— For the purposes of this clause the expression : officer" shall include a proposed director but not an auditor.

SCHEDULE V

(see section 231)

Form of statement in lieu of Prospectus to be deliverd to the Registrar by a Private Company on becoming a Public Company and Report to be set out therein.

PART - I

Form of statement in lieu of Prospectus and particulars contend therein

For registration of the

Statement in lieu of Prospectus

delivered to the Registrar

pursuant to section 231 of the

Companies Act, 1944 for registration by

..... Co. Ltd.

Subjects on which particulars given	Particulars

1(a) Nominal share capital of the company	1 (a) Taka .....
(b) Nominal value of each share	(b) Taka .....
(c) Total numbers of shares (specify the class) : ..... shares ..... shares	(a) ....
2.(a) The amount if any, of the above share capital consisting of redeemable preference shares	(2) Toatl amount Taka .... Number of shares :- Niminal value of each share .....
(b) The earliest date on which the company has the power to redeem	(b) Date .....
3. Names, addressess and occupations of the following :-	
(a) Directors or proposed directors	(a) .....
(b) Manging Director or Proposed Managing Director,	(b) .....
(c) Managing Agent or proposed Managing Agent, if any :	(c) .....
(d) Manager or proposed Manager	(d) .....
4.Any special provision in the article or irrespective of the time of execution of any contract the special provision in such contract, addcording to which the persons referred to in item nos. (a), (b), (c) or (d) of Sl. 3 are to be paid any remuneration.	4. (a) Special Provisions ..... (b) Remuneration ....

5. (a) Amount of issued share capital	5. (a) Tk . .....
(b) Total number of shares issued	(b) ..... shares
(c) Amount of commission paid in connection with such issue	(c) Tk. .....
6. (a) Amount of discount, if any, allowed on the issue of any shares.	6. (a) Tk .....
(b) So much of the issue as has not been written off at the date of the Statement	(b) Tk. .....
7. Unless more than two years have clapsed since the date on which the company was entitled to commence business	7.
(a) Amount of estimated preliminary expenses :–	(a) Tk. .....
(b) By Whom (promoter or others) those exapenses have been paid or payable : –	(b) Name and address ....
(c) Amount paid or intended to be paid to any promoter and consideration for such payment	(c) Name of promoter .... Amount ..... Consideration .....
(d) Any benefit given or intended to be given to any promoter and consideration for giving of such benefit	(d) Name of Promoter ..... Nature and value of benefit ..... Consideration .....
8. If the share capital is divided into different classes of shares	8.

(a) the right of voting at meetings of the company confered by such shares,	(a) .....
(b) the right in respect of capital and dividend attached to the several classes of shares.	(b) .....
9. Number and amount of shares and debentures issued within the two years preceeding the date of this statement as fully or partly paid up otherwise than for cash or agreed to be so issued at the date of this statement.	9. (a) Fully paid up shares :- (1) Nominal value of each share Taka ..... (2) Total number of shares (3) Total amount paid : Taka ..... (b) Partly paid up shares :- (1) Nominal value of each share Taka ..... (2) Total number of shares ..... (3) Total amount of money partly paid on those shares taka ..... (4) Amount of money unpaid Taka ..... (c) Fully paid up debentures : (1) Nominal value of each Debenture Taka ..... (2) Total number of Debentures ..... (3) Total amount paid Taka ..... (d) Partly paid up debentures:- (1) Nominal value of each: Taka ..... (2) Total number of Debentures: ..... (3) Total amount of money partly paid on those Debentures:- Taka ..... (4) Amount of money unpaid :- Taka .....

10. The consideration for the intended issue of those shares and debentures	10. Consideration :- (a) For shares : Taka ..... (b) For Debentures Taka .....
11. (a) Number description and amount of any shares or debentures which any person has, or in respect of which he is entitled to be given an option to subscribe for or to acquire from a persons to whom they have been allotted or agreed to be allotted with a view to his offiering them for sale.	11. (a) (1) shares :- Nominal value of each shares Taka ..... Total number of shares ..... Total value ..... Description ..... (2) Debentures :- Nominal value of each. Tk..... Total number of Debentures total value ..... Description .....
(b) Period during which option is Exercisable.	(b) Until .....
(c) Price to be paid for shares or debentures subscribed for or required under the option	(c) Taka .....
(d) consideration for the option or right to option	(d) Consideration.....
(e) Persons to whom option or right to option was given or, if given to existing share holders or debenture holders as such, the relevant shares or debentures.	(e) (1) Names and addresses of persons etc..... (2) Desciption of shares/ Debentures.....

12. (a) Names, occupations and addresses of vendors of property purchased or acquired or proposed to be purchased or acquired by the company, except where the contract for its purchase or acquisition was entered in the ordinary course of the business intended to be caried on by the company or the amount of the purchase money is not significeant and the cont. act is not related to the company when it was private.	12. (a) Names, addresses and occupations of each vendors/ transferer Name and addresses ....
(b) Amount in cash, shares or debentures payable to each separate vendor to be stated.	(b) Amount paid in cash/shares etc to each vendor cash ..... Taka ..... Shares ..... Taka ..... Debentures ..... Taka .....
(c) Total amount, if any, paid or payable in cash, sharcs or debentures, for any such property specifying the amount if any paid or payable for goodwill.	(c) (1) Total amount ..... Taka ..... Cash Tk. ..... Shares Tk. ..... Debentures Tk..... (2) For goodwill Tk .....
13. Short particulars of any transaction relating to each property specified is sl. No. 12 which was completed within the two preceding year s and which any vendor to the company or any person who is or was at the time thereof a promoter, director or proposed director of the company had any interest direct or indirect.	13.(a) Transaction ..... (b) Interest therein of directors etc ....

14. (a) Amount, if any, paid or payable as commission for subscribing or agreeing to subscribe or procuning or agreeing to procure subscriptions for any shares or debenture in the company.	14. (a) Commission :- Amount paid ..... Amount payable .....
(b) Rate of the commission	(b) Rate percent .....
(c) The number of shares, if any which persons have agreed to subscribe for a commission.	(c) Shares .....
15. If it to proposed to acquire any business the amount, as certified by the persons by whom the accounts of the business have been audited, of the not profits of the business in respect of each of the five years immediately preceding the date of this statement: Provided that in the case of a business which has been carried on for less than five years and the accounts of which have only been made up in respect of four years, three years, two years or one year or less the above requirements shall have effect, as. If reference to four years, three years, two years or one year as the case may be, were substituted for reference to five years and in any such case the statement shall any how long the business to be acquired has been carried on :	15.

16. Dates of, parties to and general nature of the folowing:-	16.
(a) Contract appointing or fixing the remuneration of directors, managing director, managing agent or manager; and	(1) Date of contract ..... (2) Nature of control (3) Remuneration of the appointed person ..... (4) Parties to the contract
(b) every other material contract, other than-	(b) other material contract :
(i) contracts entered into in the ordinary course of the busines intended to be carried on by the company : or	(i) .....
(ii) Contracts entered into more than two years before the delivery of this statement.	(ii) .....

17. Time and place at which the follwing contracts/ documents may be Inspected. :–	17.
(a) written original contract or its copy ;	(a) Time and place .....
(b) In the case of an unwritten contract, a memorandum giving full particulars of thereof;	(b) Time and place .....
(c) If the contract is partly or wholly written in a foreign language other than English a copy of its English translation (in whole) or, as the Case may be, a copy of the translation of its relevant portion in english. (in such cases the translation must be crtified to be a correct translation).	(c) Time and place
18. Names and addresses of the auditors of the company, if any	18.
19. (a) Full particulars of the nature and extent of the interest of every director, managing director, managing agent or manager in the promotion of the compay:-	19(a)
(b) The interest of any of the above persons is a property proposed to bea aequired by the company :–	(b)
(c) Where the interest of a director consists of being a partner is a firm, the nature and extent of the interest of the firm :-	(c)

(d) The following particulars, is prospect of clause (c) above:-

(i) a statement of all sums paid or agreed to be paid to the director or the than firm in cash or shares or otherwise or to any person either to in- duce him to become, him or his firm as, a director:- (i)

(i) a statement of all sums. shares or otherwise paid or agreed to be paid to the director or to his firm for services rendered by him or his firm in connection with the promotion or formation of the company. (ii)

20. (a) The rate of dividend, it of the company has paid any dividend for the financial year immediately preceeding this statement or for the period after the incorporation of the company, which ever is less, for the different classes, of shares, (a)

(b) If any divident the amount been paid for any of this said financial years for any class of. shares, the particulars of such year and class. (b)

Signature of the directors or proposed directors or their agents auhorised in writing

Signature and date

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