

Companies (Court) Rules, 1959

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Companies (Court) Rules, 1959

In exercise of the powers conferred by sub-sections (1) and (2) of section 643 of the Companies Act, 1956, and of all other powers enabling, the Supreme Court of India, after consulting the High Courts, hereby makes the following rules :-

PART 1

GENERAL

1. Short Title And Commencement :-

These rules shall be cited as THE COMPANIES (COURT) RULES, 1959, and shall come into force on the 1st day of October, 1959.

2. Interpretation :-

In these rules, unless the context or subject-matter otherwise requires,

(1) The Act means the Companies Act, 1956.

(2) Advocate means, in the case of a High Court, having ordinary original jurisdiction every person entitled to appear and plead in such jurisdiction of such High Court, and includes an Attorney of such Court, and in the case of every other High Court, every person entitled to appear and plead in such High Court, and in the case of a District Court every person entitled to appear and plead in such

Court : Provided that in respect of the service of notices and processes which under these rules may be served on an Advocate on behalf of any party, or the filing of an appearance on behalf of any party, Advocate shall mean only a person entitled to act for a party under the rules of the Court, whether or not he is entitled also to plead.

(3) Certified means in relation to a copy, certified as provided in section 76 of the Indian Evidence Act, 1872.

(4) Code means the Code of Civil Procedure, 1908.

(5) Court means the Court having jurisdiction under the Act.

(6) Filed means filed in the office of the Registrar.

(7) High Court and District Court mean respectively the High Court and District Court having jurisdiction under the Act.

(8) Judge means in the High Court, the Judge for the time being exercising the jurisdiction of the High Court under the Act, and in the District Court, the Judge of that Court exercising jurisdiction under the Act.

(9) Judges summons means a summons returnable before the Judge in Chambers or in Court.

(10) Prescribed means prescribed by these rules ; and prescribed charges and prescribed fees mean charges or fees prescribed by these rules and where they are not so prescribed, prescribed by the rules of the Court in respect of analogous matter in its other proceedings.

(11) "Registrar" means, in the High Court, the Registrar of the High Court, and includes the Prothonotary Master and Assistant Master, and such other officer as may be authorised by the Chief Justice to perform all or any of the duties assigned to the Registrar under these rules and in the District Court, such officer of that Court as may be authorised by the High Court to perform all or any of the duties assigned to the Registrar under these rules.

(12) Reserve Bank means the Reserve Bank of India and includes its branches and agencies.

(13) The rules means these rules ; and include the prescribed forms.

(14) Sealed means sealed with the seal of the Court.

(15) Section means section of the Act. Save as aforesaid, and unless the context otherwise requires, words and expressions contained in these rules shall bear the same meaning as in the Act, and the General Clauses Act, 1897 (X of 1897) shall apply for the interpretation of these rules as it applies for the interpretation of an Act of Parliament.

3. Proceedings To Be Neat And Legible :-

All petitions, applications, affidavits and other proceedings presented to the Court shall be written, typewritten, cyclostyled, or printed neatly and legibly on substantial paper of foolscap size, and separate sheets shall be stitched together. Numbers and dates shall be expressed in figures, and where dates given are not according to the English Calendar the corresponding English dates shall also be given.

4. Form Of Proceedings :-

Every proceeding shall be dated and shall be instituted in the matter of the Companies Act, 1956, and in the matter of the company to which it relates. The contents shall be divided into separate paragraphs which shall be numbered serially. The general heading in all proceedings before the Court, and in all advertisements and notices, shall be in Form No. 1.

5. Language Of Proceedings :-

Every petition, application, affidavit or other proceeding shall be in the language of the High Court and except in so far as the Court may otherwise order, no document in a language other than the language of the High Court shall be accepted for use in any proceeding, unless translated into the language of the High Court in accordance with the rules and practice of the Court.

6. Practice And Procedure Of The Court And Provisions Of The Code To Apply :-

Save as provided by the Act or by these rules the practice and procedure of the Court and the provisions of the Code so far as applicable, shall apply to all proceedings under the Act and these rules. The Registrar may decline to accept any document which is presented otherwise than in accordance with these rules or the practice and procedure of the Court.

7. Power Of Court To Enlarge Or Abridge Time :-

The Court may, in any case in which it shall deem fit, extend or abridge the time appointed by these rules or fixed by an order of the Court for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

8. Computation Of Time :-

(a) Where any particular number of days not expressed to be clear days, is prescribed the same shall be reckoned exclusively of the first day and inclusively of the last day, unless the last day shall happen to fall on a day on which the offices of the Court are closed, in which case the time shall be reckoned exclusively of that day also and of any succeeding day or days on which the offices of the Court continued to be closed.

(b) Where any particular number of days expressed to be clear days, is prescribed, the same shall be reckoned exclusively of both the first and the last day.

9. Inherent Powers Of Court :-

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Court to give such directions or pass such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.

10. Applications How Made :-

Unless otherwise provided by these rules or permitted by the Judge, all applications under the Act shall be made by a petition or by a Judges summons as hereinafter provided.

11. Petitions :-

The following applications shall be made by petition -

- (1) Applications under section 17 to confirm an alteration of the memorandum of association.
- (2) Applications under section 79 to sanction issued of shares at a discount.
- (3) Applications under section 101 to confirm reduction of share capital.
- (4) Applications under section 107 to cancel any variation of the rights of holders of any class of shares.
- (5) Applications under section 141 for rectification of the register of charges.
- (6) Applications under section 155 for rectification of the Register of Members.
- (7) Applications under section 186 by a Director or Member of a Company for calling a meeting of the Company.
- (8) Applications under section 203 to restrain a fraudulent person from managing companies, or for leave by a person restrained to be a director of, or to manage, a company.
- (9) Applications under section 237 for an order that the affairs of a

company ought to be investigated.

(10) Applications under section 391(2) to sanction a compromise or arrangement.

(11) Applications under section 395(1) or 395(2) for the purpose of preventing, or settling the terms, of the acquisition by a transferee-company of the shares of a dissenting shareholder.

(12) Applications under section 397 for relief against oppression.

(13) Applications under section 398 for relief in case of mismanagement.

(14) Applications under section 407(1)(b) by a director, or manager, whose agreement is terminated for leave to act as the managing or other director, or manager of the Company.

(15) Applications under section 439 for the winding-up of a company, or under section 583 for the winding up of an unregistered company, or under section 584 for the winding-up of a foreign company.

(16) Applications under section 517 to set aside an arrangement between a company about to be or in the course of being wound-up (voluntarily) and its creditors.

(17) Applications under section 522 to continue a voluntary winding-up subject to the supervision of the Court.

(18) Applications for a declaration under section 542 (XI Schedule) in the course of proceedings under section 397 or 398 that a person who was knowingly a party to carrying on business in a fraudulent manner shall be personally liable for all or any of the debts or other liabilities of the company.

(19) Applications by a creditor or member under section 543 (XI Schedule) in the course of proceedings under section 397 or 398, to enquire into the conduct of any of the persons mentioned in section 543 (XI Schedule) and compel him to repay or restore any money or property to the company or pay compensation.

(20) Applications under section 559 for declaring the dissolution of a company void.

(21) Applications under section 560(6) to restore a company's name to the Register of Companies.

(22) Applications under section 579 to confirm the alteration in the form of the constitution of a company by substituting a memorandum and articles for a deed of settlement.

(23) Applications under section 633(2) by an officer of a company for relief.

(b) Judges summons -All other applications under the Act or under these rules shall be made by a judges summons, returnable to the

Judge sitting in Court or in Chambers as hereinafter provided.

12. Matters To Be Heard In Open Court And In Chambers :-

(a) The following matters shall be heard in open Courts :

(1) Petitions.

(2) Applications under section 43 for relief in case of default by a private company in complying with the provisions of its articles.

(3) Applications under section 75(4) for relief in case of default in delivering documents to the Registrar of Companies.

(4) Applications under section 89(3) for directions regarding termination of disproportionately excessive voting rights in existing companies.

(5) Applications under section 250 for a direction that shares or debentures shall cease to be subject to restrictions imposed by the Central Government under the said section.

(8) Applications under section 391(1) for convening meetings of creditors and/or members of a company or any class of them.

(9) Proceedings under section 394 for reconstruction or amalgamation of companies.

(10) Public examination under section 478 or section 519.

(11) Applications for a declaration under section 542 that a person who was knowingly a party to carrying on business in a fraudulent manner shall be personally liable for all or any of the debts or other liabilities of the company.

(12) Applications under section 543 to enquire into the conduct of a promoter, director, etc., and compel him to repay or restore any money or property to the company or pay compensation.

(13) Applications under section 545(1) for prosecution of delinquent officers and members of a company.

(14) Applications under section 555(7) by a person claiming to be entitled to any money paid into the Companies Liquidation Account.

(15) Applications for committal of any person for contempt.

(16) Appeals from any act or decision of the Official Liquidator.

(17) Applications relating to the admission or rejection of proofs.

(18) (a) Such other matters and applications as the Judge may from time to time by general or special order direct to be heard in open Court : Provided that the Court may, if it thinks fit, direct that the hearing or any part of the hearing of any of the said matters, shall be held in Chambers.

(b) Every other matter or application may be heard and determined in Chambers provided that the Judge may adjourn any such matter

into Court.

13. Registers To Be Kept :-

There shall be kept, in every Court, the following Registers, relating to proceedings under the Act and these rules :-

(1) Company Petitions Register in which shall be entered and numbered serially all the petitions filed under the Act or these rules with particulars as to :-

- (i) Date of presentation,
- (ii) Name of company,
- (iii) Names of parties and their Advocates,
- (iv) Provision of law under which the petition is made,
- (v) Nature of relief sought,
- (vi) Date and nature of order made,
- (vii) Date of filing appeal, if any,
- (viii) Date of disposal of appeal, and
- (ix) Result of judgment in appeal.

(2) Company Applications Register in which shall be entered and numbered serially all applications other than petitions with particulars as to :-

- (i) Date of presentation,
- (ii) Name of company,
- (iii) Number of main proceeding, if any, to which the application relates,
- (iv) Names of parties and their Advocates,
- (v) Provision of law, if any, under which the application is made,
- (vi) Nature of relief sought,
- (vii) Date and nature of order made,
- (viii) Date of filing of appeal, if any,
- (ix) Date of disposal of appeal, and
- (x) Result of judgment in appeal.

(3) Liquidations register in which shall be entered company wise, under a separate heading for each company ordered to be wound-up, briefly and in chronological order, all proceedings in winding-up until conclusion of the winding-up.

(4) Company documents register in which shall be entered under a separate heading for each company any valuable securities such as negotiable instruments, documents of title and the like that may be filed in proceedings before the Court.

(5) Appearance Book in which shall be entered the appearances filed by or on behalf of any creditor or contributory under Rule 230(2) of these rules. Nothing in these rules shall affect the

discretion of the Court to direct the keeping of any other register that may be deemed necessary.

14. Serial Number Of Proceedings :-

Every petition or application shall bear its distinctive serial number, and an interlocutory application shall bear, besides its own serial number, the serial number of the main proceeding to which it relates. Every order made, process issued or document filed, shall bear the serial number of the proceedings to which it relates.

15. Process To Be Sealed :-

All petitions, applications and affidavits, upon being filed and all orders, summonses, warrants or processes of any kind (including notices issued by Court) and certified copies, of any proceedings, shall be sealed.

16. Inspection And Copies Of Proceedings :-

Save as otherwise provided in these rules, the rules of the Court for the time being in force relating to search and to the certification and grant of copies including the fees and said charges payable for the same, shall apply to proceedings under the Act and these rules, as they apply to other proceedings in the Court.

17. Forms :-

The forms set forth in Appendix I, where applicable, shall be used with such variations as circumstances may require.

18. Affidavits :-

(a) Every affidavit shall be drawn up in the first person and shall state the full name, age, occupation and the place of abode of the deponent. It shall be signed by the deponent and sworn to in the manner prescribed by the Code or by the rules and practice of the Court.

(b) Every exhibit annexed to an affidavit shall be marked with the number of the proceedings to which it relates, and shall be initialled and dated by the authority before whom it is sworn.

(c) Except with the leave of the Judge, no affidavit having inter-lineation, alteration or erasure, shall be filed in Court unless such inter-lineation or alteration is initialled by the authority before whom it is sworn, or, in the case of an erasure the words and figures written on the erasure are rewritten in the margin and initialled by such authority.

19. Form Of Judges Summons And Service Thereof :-

(1) A Judges summons shall be in Form No. 2 and shall, unless otherwise provided by these rules or permitted by the Judge, be supported by an affidavit.

(2) The summons, together with a copy of the affidavit, shall be served upon every person against whom an order is sought and such other person as the Judge may direct, in person or by prepaid registered post, or upon his advocate, where he appears by advocate, or in such other manner as the Judge may direct.

(3) Unless otherwise provided by these rules or by an order of Court, a summons which is an interlocutory application in a proceeding, shall be served not less than 4 clear days before the day named in the summons for the hearing thereof, and where the summons is other than interlocutory, it shall be served not less than fourteen days before the date fixed for the hearing thereof.

20. Issue Of Summons :-

Every summons, together with duplicates of the same for service thereof, shall be prepared by the applicant or his advocate and issued from the office of the Registrar.

21. Affidavit Verifying Petition :-

Every petition shall be verified by an affidavit made by the petitioner or by one of the petitioners, where there are more than one, and in the case the petition is presented by a body corporate, by a director, secretary or other principal officer thereof ; such affidavit shall be filed along with the petition and shall be in Form No. 3 : Provided that the Judge or Registrar may, for sufficient reason, grant leave to any other person duly authorised by the petitioner to make and file the affidavit.

22. Enclosures To Petition :-

Unless dispensed with by the Judge or Registrar, every petition and application mentioned in Appendix II hereof, shall be accompanied by the documents set opposite thereto in column (4) of the said Appendix.

23. Summons For Direction :-

(a) Where a petition is presented under paragraphs (1), (3), (4), (22) and (23) of Rule 11, an application shall, in every case, be made by summons to the Judge in Chambers for directions as to the advertisement of the petition, the notices to be served and the proceedings to be taken. Except where, in any particular case, a

different form is prescribed by these rules, such summons shall be in Form No. 4.

(b) The summons shall be posted for hearing before the Judge in Chambers at the next Chamber sittings, and the Judge may make such orders thereon and may give such directions as may seem to him appropriate.

(c) No summons for directions shall be necessary in the case of other petitions, but the petition shall, upon admission, be placed before the Judge in Chambers for fixing the date of hearing and directions as to the advertisement of the petition and the notices to be served, and such other directions as may be necessary.

24. Advertisement Of Petition :-

(1) Where any petition is required to be advertised, it shall, unless the Judge otherwise orders, or these rules otherwise provide, be advertised not less than fourteen days before the date fixed for hearing, in one issue of the Official Gazette of the State or the Union Territory concerned, and in one issue each of a daily newspaper in the English language and a daily newspaper in the regional language circulating in the State or the Union Territory concerned, as may be fixed by the Judge.

(2) Except in the case of a petition to wind-up a company the Judge may, if he thinks fit, dispense with any advertisement required by these rules.

25. Contents Of Advertisement :-

Except as otherwise provided in these rules, such advertisement shall be in Form No. 5, and shall state the date on which the petition was presented, the name and address of the petitioner and his advocate, the nature of the petition and the date fixed for hearing. It shall, unless otherwise ordered, further state that any person who intends either to oppose or support the petition at the hearing should send notice of his intention to the petitioner or his advocate so as to reach him not later than two days previous to the day fixed for the hearing, and in the case of a petition for a winding-up, not later than 5 days previous to the day fixed for the hearing of the petition.

26. Service Of Petition :-

Every petition shall be served on the respondent, if any, named in the petition and on such other persons as the Act or these rules may require or as the Judge or the Registrar may direct. Unless

otherwise ordered, a copy of the petition shall be served along with the notice of the petition.

27. Notice Of Petition And Time Of Service :-

Notice of every petition required to be served upon any person shall be in Form No. 6, and shall, unless otherwise ordered by Court or provided by these rules, be served not less than 14 days before the date of hearing. "Provided always that such notice when by the Act or under these Rules is required to be served on the Central Government, the same shall, unless otherwise ordered by the Court, be served not less than 28 clear days before the date of hearing".

28. Service On Company :-

(1) Where a petition is presented against a company, it shall be accompanied by a notice of the petition in the prescribed form together with a copy of the petition for service on the company and an envelope addressed to the company at its registered office or its principal place of business and sufficiently stamped for being sent by registered post for acknowledgment. The Registrar shall immediately on the admission of the petition send the notice together with the copy of the petition to the company by registered post.

(2) Every petition and, save as otherwise provided by these rules or by an order of Court, every application, shall unless presented by the company, be served on the company at its registered office, or if there is no registered office, at its principal or last known principal place of business, by leaving a copy thereof with an officer or employee of the company, and in case no such person is available, in such manner, as the Judge or Registrar may direct, or, by sending a copy thereof by prepaid registered post addressed to the company at its registered office, or, if there is no registered office, at its principal or last known principal place of business, or to such person and at such address as the Judge Registrar may direct. Where the company is being wound-up the petition or application shall also be served on the liquidator, if any, appointed for the purpose of winding-up the affairs of the company.

29. Petitioner To Effect Service :-

Save as otherwise provided by these rules and subject to any directions of the Judge or Registrar, the petitioner, applicant or any other person having the conduct of proceedings in Court, shall be

responsible for the service of all notices, summons and other processes and for the advertisement and publication of notices, required to be effected by these rules or by order of Court.

30. Affidavit Of Service :-

(1) An affidavit or affidavits stating whether the petition has been advertised as prescribed by Rule 24 and whether the notices, if any, have been duly served upon the persons required to be served shall be filed not less than 3 days before the date fixed for hearing. Such proof of the advertisement or of the service, as may be available shall be filed along with the affidavit.

(2) An affidavit of service on a company or its liquidator shall be in Form No. 7 or 8 as the case may be.

31. Procedure On Default Of Compliance As Regards Advertisement And Service Of Notice :-

In default of compliance with the requirements of the rules or the directions of the Judge or Registrar, as regards the advertisement and service of the petition, the petition shall, on the date fixed for hearing be posted for orders of the Judge and the Judge may either dismiss the petition or give such further directions as he thinks fit.

32. Mode Of Service And Service When Deemed To Be Effected :-

(1) Save as otherwise provided by these rules or by an order of Court, all notices, summonses, and other documents required to be served on any person, may be served either personally by delivering a copy thereof to such person or upon his advocate where he appears by advocate or, except where personal service is required by prepaid registered post for acknowledgment due addressed to the last known address of such person. In the case of service by registered post where no acknowledgment signed by the addressee or his duly authorised agent is received, orders of Court shall be obtained as to the sufficiency of service or as to the further steps to be taken for service as the Court may direct : Provided that where a notice, summons or other document has to be served on any class of persons such as shareholders, debenture-holders, creditors and the like, the same may be sent by prepaid registered post or by ordinary post under certificate of posting, as may be provided by these rules or by an order of Court, and unless otherwise ordered by the Court, the service shall be deemed to be

effected at the time when the said notice, summons or other document ought to be delivered in the ordinary course of post by the post office, and notwithstanding the same is returned undelivered by the post office.

(2) Where notice of any petition, application, summons or other proceeding has to be given to the Central Government under these rules, it shall be addressed to and served on the Secretary to Government of India, Department of Company Law Administration, New Delhi, or such other officer at the Central Government may authorise to receive notices on its behalf.

(3) Where any person has to be served at an address outside India, the notice or other process to be served on him shall, subject to orders of the Court, be sent to such address by prepaid airmail registered post for acknowledgment due.

33. Validity Of Service And Of Proceedings :-

No service under these rules shall be deemed invalid by reason of any defect in the name or description of a person in the list of contributories or in the petition, summons, notice or other proceeding, provided that the Court is satisfied that such service is in other respects sufficient ; and no proceedings under the Act or these rules shall be invalidated by reason of any formal defect or irregularity ; unless the Judge before whom the objection is taken is of the opinion that substantial injustice has been caused by such defect or irregularity and that the injustice cannot be remedied by an order of Court.

34. Notice To Be Given By Persons Intending To Appear At The Hearing Of Petition :-

Every person, who intends to appear at the hearing of a petition, whether to support or oppose the petition, shall serve on the petitioner or his advocate, notice of his intention at the address given in the advertisement. The notice shall contain the address of such person, and be signed by him or his advocate, and save as otherwise provided by these rules shall be served (or if sent by post, shall be posted in such time as to reach the addressee) not later than two days previous to the day of hearing, and in the case of a petition for winding-up not later than five days previous to the day of hearing. Such notice shall be in Form No. 9, with such variations as the circumstances may require, and where such person intends to oppose the petition, the grounds of his opposition, or a copy of his affidavit, if any, shall be furnished along with the notice. Any person who has failed to comply with this rule

shall not except with the leave of the Judge, be allowed to appear at the hearing of the petition.

35. List Of Persons, Intending To Appear, To Be Filed :-

The petitioner or his advocate shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear at the hearing of the petition. Such list shall be in Form No. 10, and shall be filed in Court before the hearing of the petition.

36. Procedure At Hearing Of Petition :-

At the hearing of the petition, the Judge may either dispose of the petition finally, or give such directions as may be deemed necessary for the filing of counter-affidavit and reply affidavits, if any, and for service of notice on any person who, in his opinion, has been omitted to be served or has not been properly served with the notice of the petition and may adjourn the petition to enable the parties to comply with his directions. Except as otherwise ordered by the Judge, it shall not be necessary to give notice of the adjourned hearing to any person.

37. Order To Be Drawn Up :-

(1) Every order, whether made in Court or in Chambers, shall be drawn up by the Registrar, unless in any proceeding or class of proceedings the Judge or the Registrar, shall direct that the order need not be drawn up. Where a direction is given that no order need be drawn up, the note or memorandum of the order signed or initialled by the Judge making the order or by the Registrar shall be sufficient evidence of the order having been made. The date of every order shall be the date on which it was actually made, notwithstanding that it is drawn up and issued on a later date.

(2) Where costs are awarded to a party in any proceeding and such costs have to be taxed, the order shall direct that the party liable to pay the costs shall pay the same when taxed, and where the costs have been fixed by the Court or ascertained by taxation prior to the drawing up of the order, the order shall direct the payment of the amount of such costs by the party liable to pay the same.

PART 2

PROCEEDINGS IN MATTERS OTHER THAN WINDING-UP

38. Form Of Petition Under Section 17 And Summons For Directions :-

A petition under section 17 to confirm an alteration of the memorandum of a company shall set out succinctly particulars of its

registration, its share capital where it has a share capital, the original object and the alterations proposed to be effected, the passing of the special resolution and the reasons for the alteration, the debentures, if any, issued by the company and its present financial position. The petition shall be in Form No. 11. It shall be accompanied by a summons for directions and shall be supported by an affidavit in Form No. 12.

39. Direction At Hearing Of Summons :-

Upon the hearing of the summons for directions, the Court shall give such directions as it may think fit for the advertisement of the petition ; and the service of notices on the debenture-holders and creditors of the company, if any, and such other persons whose interest will, in the opinion of the Court, be affected by the alteration. The order on the summons shall be in Form No. 13. The notice shall be in Form No. 14. Where the Court thinks fit to dispense with the notice required by section 17(3)(a) in the case of any person or class of persons, it shall record its reasons for doing so.

40. Notice To Registrar Of Companies And Central Government :-

Notice of the petition and the date of the hearing thereof shall in every case be given to the Registrar of Companies, and where the petitioner is a limited company, registered without the word limited under section 25, such notice shall also be given to the Central Government.

41. Procedure Where Creditors Are Entitled To Object :-

Where the Court is of the opinion that the creditors or any class of them are entitled to object to the proposed alteration, the Court may give such directions as it may think fit with respect to the settlement of the list of creditors, service and publication of notices, hearing of objection and the adjudication of claims, etc., and provisions of Rr. 49 to 61 of these rules applicable in respect of a petition for confirming the reduction of share capital, shall, if the Court so directs, and to the extent specified in such direction, apply with such variations as may be necessary.

42. Order Confirming Alteration :-

An order confirming an alteration in the memorandum of association shall be in Form No. 15 with such variations as may be necessary. Confirmation of alteration in the constitution of a company

43. Petition Under Section 579 :-

A petition under section 579 to confirm an alteration in the constitution of a company by substituting a memorandum and articles for a deed of settlement shall be in Form No. 16, and Rules 38 to 42 relating to a petition under section 17 shall apply mutatis mutandis to petition under section 579. ISSUE OF SHARES AT A DISCOUNT [Section 79]

44. Petition For Sanctioning The Issue Of Shares At A Discount :-

A petition under section 79 to sanction the issue of shares at a discount, shall be in Form No. 17, and where the rate of discount proposed is higher than ten per cent, it shall be accompanied by the order of the Central Government sanctioning the higher rate, in addition to the documents set out in Appendix II.

45. Order Sanctioning Issue To Be Delivered To Registrar Of Companies :-

Unless in any particular case the Court shall otherwise direct, every order sanctioning the issue of shares at a discount shall contain a direction that a certified copy of such order be delivered to the Registrar of Companies for registration within one month from the date of order and that the order shall not take effect until such certified copy has been so delivered.

46. Form Of Petition For Reduction Of Share Capital And Summons For Directions :-

A petition to confirm a reduction of the share capital of a company shall be in Form No. 18, and shall be accompanied by a summons for directions in Form in 19.

47. Procedure On Hearing Of Summons :-

Upon the hearing of the summons, if the Judge is satisfied that the proposed reduction does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and does not think fit to direct that the procedure prescribed in section 101(2) shall apply, he shall fix a date for hearing of the petition and give such directions as he may think fit as to the advertisement of the petition. The petition shall be posted for hearing on the date fixed, and upon the hearing thereof, the Judge may confirm the reduction on such terms and conditions as he may think fit.

48. Directions At The Hearing Of Summons :-

Where the proposed reduction involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital and, in any other case, if the Judge thinks fit to direct that the procedure prescribed in section 101(2) shall apply, the Judge may, upon the hearing of the summons or upon any adjourned hearing thereof, or upon the hearing of any subsequent application, give such directions as he may think fit as to the proceedings to be taken, and more particularly with respect to the following matters, that is to say -

(a) the proceedings to be taken for settling the list of Creditors entitled to object, including the dispensing with the observance of the provisions of section 101(2) as regards any class or classes of creditors ;

(b) fixing the date with reference to which the list of such creditors is to be made out,

(c) the publications of notices ; and

(d) generally fixing the time for and giving directions as to all other necessary or proper steps in the matter. The order made upon the summons under this rule shall be in Form No. 20, with such variations as the circumstances may require

49. List Of Creditors :-

The company shall, within the time allowed by the Judge, file a list in Form No. 21 made out by an officer of the company competent to make the same, containing the names and addresses of the creditors of the company to whom the enquiry extends as on the date fixed by the Judge under the last preceding rule, and the respective amounts due to them in respect of debts, claims or liabilities to which the enquiry extends or in case of any such debt payable on a contingency or not ascertained, or any such claim admissible to proof in a winding-up of the company, the value, so far as can be justly estimated, of such debt, or claim.

50. Affidavit Verifying List Of Creditors :-

Such list shall be verified by an affidavit made by an officer of the company competent to make the same, who, in such affidavit, shall state his belief that the list verified by such affidavit is correct, that the estimated values, as given in the list, of the debts payable on a contingency or not ascertained, or of any claims admissible to proof in a winding-up, are just and proper estimates of the values of such debts and claims respectively, and that there was not, at the date fixed by the Judge under rule 48, any debt, claim or liability which

if that date were commencement of the winding-up of the company, would be admissible in proof against the company, except the debts, claims and liabilities set forth in such list and any debts, claims or liabilities to which the enquiry does not extend, and shall state the source of his knowledge or information and the grounds of his belief regarding the matters deposed to in such affidavit. Such affidavit shall be in Form No. 22, with such variations as the circumstances of the case may require.

51. Inspection Of List Of Creditors :-

Copies of such list shall be kept at the registered office of the company and at the office of the advocate for the company, and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of one rupee.

52. Notice To Creditors :-

The company shall, within seven days after the filing of the list of creditors referred to in rule 49 or such further or other time as the Judge may allow, send to each creditor whose name is entered in the said list, a notice of presentation of the petition and of the said list, stating the amount of the proposed reduction of capital and the amount or estimated value of the debt or the contingent debt or claim or both for which such creditors name is entered in the said list, and the time, as fixed by the Judge, within which if he claims to be entitled to be entered on such list as a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his advocate if any, to the advocate of the company. Such notice shall be in Form No. 23 ; and shall, unless the Judge otherwise directs, be sent by prepaid registered post for acknowledgment addressed to each creditor at his last known address or place of abode : Provided that where his address is not known to the company, the Judge may direct notice to be given to such creditor in such manner as he may think fit.

53. Advertisement Of Petition And List Of Creditors :-

Notice of the presentation of the petition and of the list of creditors under rule 49, shall, within seven days after the filing of the said list or such further or other times as the Judge may allow, be advertised by the company in such manner as the Judge shall direct. Such notice shall state the amount of the proposed reduction of capital, and the places, where the aforesaid list of

creditors may be inspected, and the time as fixed by the Judge within which creditors of the company who are not entered but claim to be entitled to be entered on the said list, must send in their names and addresses and the particulars of the debts or claims and the names and addresses of their advocates, if any, to the advocate of the company. Such notice shall be in Form No. 24.

54. Affidavit Of Service :-

The company shall, as soon as may be, file an affidavit proving the despatch and publication of the notices referred to in rules 52 and 53. Such affidavit shall be in Form No. 25.

55. Affidavit By Company As To The Result Of Rules 52 And 53 :-

The company shall within the time fixed by the Judge, file a statement signed and verified by the advocate of the company stating the result of the notices mentioned in rules 52 and 53 respectively and verifying a list containing the names and addresses of the persons, if any, who shall have sent in the particulars of their debts or claims in pursuance of such notices respectively and the amounts of such debts or claims. Such statement shall be accompanied by an affidavit made by a competent officer or officers of the company who shall, in such list, distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly or as to any and what part thereof, disputed by the company, and which (if any) of such debts and claims are alleged by the company to be wholly, or as to any and what part thereof not included in the enquiry. Such affidavit shall also state which of the persons, who are entered in the list as creditors and which of the persons, who have sent in particulars of their debts or claims in pursuance of such notices as aforesaid, have been paid or have consented to the proposed reduction. Such statement and affidavit shall be in Form No. 26.

56. Procedure Where Claim Is Not Admitted, And Proof Of Debt :-

If the company contends that a person is not entitled to be entered in the list of creditors in respect of any debts or claim, whether admitted or not, or if any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then, and in every such case, unless the company is willing to set apart and appropriate in such manner as the Judge shall direct, the

full amount of such debt or claim, the company shall, if the Judge thinks fit so to direct, send to the creditor a notice in Form No. 27, that he is required to come in and establish his title to be entered on the list, or as the case may be, to come in and prove such debts or claim or such part thereof as is not admitted by the company on the day fixed by the Judge. Such notice shall be served not less than four clear days before the date fixed by the Judge. An affidavit by a creditor in proof of his debt shall be in Form No. 28. Where the creditor is for good reason personally unable to make the affidavit, his authorised agent may make the same.

57. Costs Of Proof :-

The costs of proof of a debt or claim or any enquiry under the preceding rules shall be in the discretion of the Judge.

58. Certificate By The Judge As To Creditors :-

The result of the settlement of the list of creditors shall be stated in a certificate which shall be prepared by the advocate of the company and signed by the Judge. Such certificate shall -

- (1) specify the debts or claims (if any) which have been disallowed ;
- (2) distinguish (a) the debts or claims, the full amount of which the company is willing to set apart and appropriate ;
(b) the debts or claims (if any) the amount of which has been fixed by enquiry and adjudication in the manner provided by section 101(2) and these rules ; and
(c) the debts or claims (if any) the full amount of which the company does not admit or is not willing to set apart and appropriate or the amount of which has not been fixed by enquiry and adjudication as aforesaid ; and
- (3) show (a) which of the creditors have consented to the proposed reduction, and the total amount of the debts due to them ; and
(b) the total amount of the debts or claim the payment of which has been secured in the manner provided by section 101(2) and the persons to or by whom the same are due or claimed. The said certificate shall also state what creditors have under rule 56 come in and sought to establish their title to be entered on the list and whether such claims have been allowed or not, but it shall not be necessary to make in such certificate any further or other reference to any creditors who are not entitled to be entered in the list or to any debts or claims to which the enquiry does not extend or to show therein the several amounts of the debts or claims of any persons who have consented to the proposed reduction or the

payment of whose debts or claims has been secured as aforesaid.

59. Hearing Of Petition :-

After the expiry of not less than fourteen days from the filing of the certificate mentioned in the preceding rule, the petition shall be set down for hearing. Notice of the date fixed for the hearing of the petition shall be advertised within such time and in such newspaper or newspapers as the Judge may direct and shall be in Form No. 29.

60. Who May Appear And Oppose :-

Any creditor included in the certificate whose debt or claim has not, before the hearing of the petition, been discharged or determined or been secured in the manner provided by section 101(2)(c) and who has not before the hearing consented in writing to the proposed reduction of capital may, if he thinks fit, upon giving two clear days notice to the advocate for the company of his intention to do so, appear at the hearing of the petition and oppose it. The costs of his appearance shall be in the discretion of the Judge.

61. Directions At Hearing :-

At the hearing of the petition the Judge may, if he thinks fit, give such directions as may seem proper with reference to securing in the manner mentioned in section 101(2)(c) the debts or claims of any creditors who do not consent to the proposed reduction, and the further hearing of the petition may be adjourned to enable the company to comply with such directions.

62. Order On Petition :-

Where the Judge makes an order confirming a reduction, such order shall include directions -

(a) as to the manner in which, the times at which and the newspaper or newspapers in which, notice of the registration of the order and of the minute as approved by the Judge under rule 63 shall be published,

(b) as to the period commencing on or after the date of the order, during which the words and reduced shall be added to the name of the company as the last words thereof, in case the Court thinks fit to direct under section 102(2)(a) that the words shall be so added, and

(c) as to the publication, if the Judge so directs, of the reasons for reduction or the causes that led to it or such other information in relation thereto as the Judge may require to be published under section 102(2)(b).

63. Minute :-

Unless the form of the minute has been approved by the Judge at the time of making the order confirming the reduction, the company shall, within seven days from the date of the said order, file for the approval of the Judge a draft of the minute containing the particulars required by section 103(1)(b), and shall take an appointment for approval of the same. The advocate for the company shall attend when the minute comes up before the Judge for approval, The order confirming the reduction of capital and approving the minute shall be in Form No. 30 with such variations as may be necessary.

64. Advertisement Of Reasons For Reduction Of Capital :-

Where the Judge makes an order under section 102(2)(b) directing the company to publish the reasons for the reduction or such other information in regard thereto as the Court may direct, unless the form of the statement to be published has been approved by the Judge at the time of making the order, the company shall, within seven days of the order, file, for the approval of Judge, a draft of the statement and shall take an appointment for approval of the same. The advocate for the company shall attend when the statement comes up for approval before the Judge. The statement as approved shall be published in the same newspapers in which notice of the registration of the order and the minute had been directed to be published.

65. Form Of Minute And Notice Of Registration :-

The minute may be in Form No. 31, and the notice of registration of the order and the minute shall be in Form No. 32.

66. Petition To Cancel Variation Of Rights :-

(1) Where a petition to cancel a variation of the rights attaching to any class of shares is made on behalf of the shareholders of that class entitled to apply for cancellation under section 107 by one or more of them, the letter of authority signed by the shareholders so entitled, authorising the petitioner or petitioners to present the petition on their behalf, shall be annexed to the petition, and the names and addresses of all the said shareholders and the number of shares held by each of them shall be set out in the schedule to the petition.

(2) The petition shall set out the particulars of registration and the share capital, the different classes of shares into which the share

capital of the company is divided and the rights attached to each class of shares, the provisions of the memorandum or articles authorising the variation of the rights attached to the various classes of shares, the total number of shares of the class whose rights have been varied, the nature of the variation made, and so far as may have been ascertained by the petitioner, the number of shareholders of the class who gave their consent to the variation or voted in favour of the resolution for variation and the number of shares held by them, the number of shareholders who did not consent to the variation or who voted against the resolution, and the number of shares held by them, and the date or dates on which the consent was given or the resolution was passed, and the reasons for opposing the variation.

67. Summons For Directions To Convene A Meeting :-

An application under section 391(1) for an order convening a meeting of creditors and/or members or any class of them shall be by a Judges summons supported by an affidavit. A copy of the proposed compromise or arrangement shall be annexed to the affidavit as an exhibit thereto. Save as provided in rule 68 hereunder, the summons shall be moved ex parte. The summons shall be in Form No. 33, and the affidavit in support thereof in Form No. 34.

68. Service On Company :-

Where the company is not the applicant, a copy of the summons and of the affidavit shall be served on the company, or, where the company is being wound up on its liquidator, not less than 14 days before the date fixed for the hearing of the summons.

69. Directions At Hearing Of Summons :-

Upon the hearing of the summons or any adjourned hearing thereof, the Judge shall, unless he thinks fit for any reason to dismiss the summons, give such directions as he may think necessary in respect of the following matters :-

- (1) determining the class or classes of creditors and/or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement ;
- (2) fixing the time and place of such meeting or meetings ;
- (3) appointing a chairman or chairmen for the meeting or meetings to be held, as the case may be ;
- (4) fixing the quorum and the procedure to be followed at the meeting or meetings, including voting by proxy ;

- (5) determining the values of the creditors and/or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held ;
- (6) notice to be given of the meeting or meetings and the advertisement of such notice ;
- (7) the time within which the chairman of the meeting is to report to the Court the result of the meeting ; and such other matters as the Court may deem necessary. The order made on the summons shall be in Form No. 35 with such variations as may be necessary.

70. Proxies :-

- (1) Voting by proxy shall be permitted, provided a proxy in the prescribed form duly signed by the person entitled to attend and vote at the meeting is filed with the company at its registered office not later than 48 hours before the meeting.
- (2) Where a body corporate which is a member or creditor (including holder of debentures) of a company authorises any person to act as its representative at the meeting, of the members or creditors of the company, or of any class of them, as the case may be, a copy of the resolution of the Board of Directors or other governing body of such body corporate authorising such person to act as its representative at the meeting, and certified to be a true copy by a director, the manager, the secretary, or other authorised officer of such body corporate shall be lodged with the company at its registered office not later than 48 hours before the meeting.
- (3) Rules 227 to 229 of these rules relating to proxies shall also apply to proxies lodged under this rule.

71. Application For Stay :-

An application under sub-section (6) of section 391 for stay of the commencement or continuation of any suit or proceeding against the company may be moved by a Judges summons ex parte, provided that where a petition for winding-up the company or a petition under section 397 or 398 is pending, notice of the application shall be given to the petitioner in such petition.

72. Application To Vacate Or Vary Order Of Stay :-

Where an order has been made staying the commencement or continuation of any suit or proceeding under subsection (6) of section 391, any person aggrieved by such order may apply to the Court by a Judges summons to vacate or vary such order. Notice of the application shall be given to the applicant at whose instance

the order of stay was made and to such other persons as the Court may direct.

73. Notice Of Meeting :-

The notice of the meeting to be given to the creditors and/or members, or to the creditors or members of any class, as the case may be, shall be in Form No. 36, and shall be sent to them individually the Chairman appointed for the meeting, or, if the Court so directs, by the company (or its liquidator), or any other person as the Court may direct, by post under certificate of posting to their last known address not less than 21 clear days before the date fixed for the meeting. It shall be accompanied by a copy of the proposed compromise or arrangement and of the statement required to be furnished under section 393, and a form of proxy in Form No. 37.

74. Advertisement Of The Notice Of Meeting :-

The notice of the meeting shall be advertised in such newspapers and in such manner as the Judge may direct, not less than 21 clear days before the date fixed for the meeting. The advertisement shall be in Form No. 38.

75. Copy Of Compromise Or Arrangement To Be Furnished By The Company :-

Every creditor or member entitled to attend the meeting shall be furnished by the company, free of charge and within 24 hours of a requisition being made for the same, with a copy of the proposed compromise or arrangement together with a copy of the statement required to be furnished under section 393, unless the same had been already furnished to such member or creditor.

76. Affidavit Of Service :-

The chairman appointed for the meeting of the company or other person directed to issue the advertisement and the notices of the meeting shall file an affidavit not less than seven days before the date fixed for the holding of the meeting or the holding of the first of the meetings, as the case may be showing that the directions regarding the issue of notices and the advertisement have been duly complied with. In default thereof, the summons shall be posted before the Judge for such orders as he may think fit to make.

77. Result Of The Meeting To Be Decided By Poll :-

The decisions of the meeting or meetings held in pursuance of the

order made under rule 69 on all resolutions shall be ascertained only by taking a poll.

78. Report Of The Result Of The Meeting :-

The chairman of the meeting, (or where there are separate meetings, the chairman of each meeting) shall, within the time fixed by the Judge, or where no time has been fixed, within seven days after the conclusion of the meeting, report the result thereof to the Court. The report shall state accurately the number of creditors or class of creditors or the number of members or class of members, as the case may be, who were present and who voted at the meeting either in person or by proxy, their individual values and the way they voted. The report shall be in Form No. 39.

79. Petition For Confirming Compromise Or Arrangement :-

Where the proposed compromise or arrangement is agreed to, with or without modification, as provided by sub-section (2) of section 391, the company, (or its liquidator, as the case may be), shall, within seven days of the filing of the report by the chairman, present a petition to the Court for confirmation of the compromise or arrangement. The petition shall be in Form No. 40. Where a compromise or arrangement is proposed for the purposes of or in connection with scheme for the reconstruction of any company or companies, or for the amalgamation of any two or more companies, the petition shall pray for appropriate orders and directions under section 394. Where the company fails to present the petition for confirmation of the Compromise or arrangement as aforesaid, it shall be open to any creditor or contributory as the case may be, with the leave of the Court, to present the petition and the company shall be liable for the cost thereof. Where no petition for confirmation of the compromise or arrangement is presented, or where the compromise or arrangement has not been approved by the requisite majority under section 391(2) and consequently no petition for confirmation could be presented, the report of the chairman as to the result of the meeting made under the preceding rule shall be placed for consideration before the Judge for such orders as may be necessary.

80. Date And Notice Of Hearing :-

The Court shall fix a date for the hearing of the petition, and notice of the hearing shall be advertised in the same papers in which the notice of the meeting was advertised, or in such other papers as the Court may direct, not less than 10 days before the date fixed

for the hearing.

81. Order On Petition :-

Where the Court sanctions the compromise or arrangement, the order shall include such directions in regard to any matter and such modifications in the compromise or arrangement as the Judge may think fit to make for the proper working of the compromise or arrangement. The order shall direct that a certified copy of the same shall be filed with the Registrar of Companies within 14 days from the date of the order, or such other time as may be fixed by the Court. The order shall be in Form No. 41, with such variations as may be necessary.

82. Application For Directions Under Section 394 :-

Where the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or the amalgamation of any two or more companies, and the matters involved cannot be dealt with or dealt with adequately on the petition for sanction of the compromise or arrangement, an application shall be made to the Court under section 394, by a summons supported by affidavit, for directions of the Court as to the proceedings to be taken. Notice of the summons shall be given in such manner and to such persons as the Court may direct.

83. Directions At Hearing Of Application :-

Upon the hearing of the summons or upon any adjourned hearing thereof the Court may make such order or give such directions as it may think fit, as to the proceedings to be taken for the purpose of reconstruction or amalgamation, as the case may be, including, where necessary, an inquiry as to the creditors of the transferor company and the securing of the debts and claims of any of the dissenting creditors in such manner as to the Court may seem just.

84. Order Under Section 394 :-

An order made under section 394 shall be in Form No. 42 with such variation as the circumstances may require.

85. Compromise Or Arrangement Involving Reduction Of Capital :-

Where a proposed compromise or arrangement involves a reduction of capital of the company, the procedure prescribed by the Act and these rules relating to the reduction of capital, and the requirements of the Act and these rules in relation thereto, shall be

complied with, before the compromise or arrangement so far as it relates to reduction of capital, is sanctioned.

86. Report On Working Of Compromise Or Arrangement :-

At any time after the passing of the order sanctioning the compromise or arrangement, the Court may, either of its own motion or on the application of any person interested, make an order directing the company, or, where the company is being wound-up, the liquidator, to submit to the Court within such time as the Court may, fix, a report on the working of the said compromise or arrangement. On a consideration of the report, the Court may pass such orders or give such directions as it may think fit.

87. Liberty To Apply :-

(1) The company, or any creditor or member thereof, or in case of a company which is being wound-up, the liquidator, may, at any time after the passing of the order sanctioning the compromise or arrangement, apply to the Court for the determination of any question relating to the working of the compromise or arrangement.

(2) The application shall in the first instance be posted before the Court for directions as to the notices and the advertisement, if any, to issue, as the Court may direct.

(3) The Court may, on such application, pass such orders and give such directions as it may think fit in regard to the matter, and may make such modifications in the compromise or arrangement as it may consider necessary for the proper working thereof, or pass such orders as it may think fit in the circumstances of the case.

88. Petition Under Section 397 Or 398 :-

(1) Where a petition is presented under section 397 or 398 on behalf of any members of a company entitled to apply under section 399(1), by any one or more of them, the letter of consent signed by the rest of the members so entitled authorising the petitioner or petitioners to present the petition on their behalf, shall be annexed to the petition, and the names and addresses of all the members on whose behalf the petition is presented shall be set out in a schedule to the petition, and where the company has a share capital, the petition shall state whether the petitioners have paid all calls and other sums due on their respective shares. Where the

petition is presented by any member or members authorised by the Central Government under section 399(4), the order of the Central Government authorising such member or members to present the petition shall be similarly annexed to the petition. A petition under section 397 shall be in Form No. 43, and a petition under section 398 shall be in Form No. 44.

(2) A petition under section 397 or 398 shall not be withdrawn without leave of the Court, and where the petition has been presented by a member or members authorised by the Central Government under subsection (4) of section 399, notice of the application for leave to withdraw shall be given to the Central Government.

89. Notice To Central Government :-

Save where a petition is presented by or on behalf of the Central Government under section 401, notice shall be given to the Central Government of every petition under section 397 or 398, and a copy of the petition shall be served on the Central Government along with the notice of the date of hearing, not less than 14 clear days before the date fixed for the hearing of the petition.

90. Order Involving Reduction Of Capital Or Alteration Of Memorandum :-

Where an order under section 397 or 398 involves a reduction of capital or alteration of the memorandum of association, the provisions of the Act and these rules relating to such matters shall apply as the Court may direct.

91. Application Under Section 407(1)(B) For Leave To Act As Managing Director, Etc :-

An application under clause (b) of sub-section (1) of section 407 for leave to any of the persons mentioned therein, to be appointed, or to act, as the managing or other director, or manager of the company, shall state whether notice of the intention to apply for such leave has been given to the Central Government and shall be accompanied by a copy of such notice. Notice of the date of hearing of the petition together with a copy of the petition shall be served on the Central Government not less than 14 clear days before the date fixed for the hearing. RESTORATION OF THE NAME OF A COMPANY TO THE REGISTER OF COMPANIES [Section 560(6)]

92. Notice To Registrar Of Companies :-

A petition under section 560(6) to restore the name of a company to the Register of Companies shall be served on the Registrar of

Companies and on such other persons as the Court may direct, not less than 14 days before the date fixed for the hearing of the petition.

93. Delivery Of Order And Advertisement Thereof :-

Where the Court makes an order restoring the name of a company to the Registrar of Companies, the order shall direct that the petitioner to deliver to the Registrar of Companies a certified copy thereof within 14 days from the date of the order, and that on such delivery, the Registrar of Companies do, in his official name, advertise the order in the Gazette of the State or Union Territory concerned.

94. Registrars Costs Of Petition :-

Unless for any special reasons the Court shall otherwise order, the order shall direct that the petitioners do pay to the Registrar of Companies his costs of, and occasioned by, the petition.

PART 3

WINDING-UP

95. Petition For Winding-Up :-

A petition for winding-up a company shall be in Form No.45, 46 or 47, as the case may be, with such variations as the circumstances may require, and shall be presented in duplicate. The Registrar shall note on the petition the date of its presentation.

96. Admission Of Petition And Directions As To Advertisement :-

Upon the filing of the petition, it shall be posted before the Judge in Chambers for admission of the petition and fixing a date for the hearing thereof and for directions as to the advertisements to be published and the persons, if any, upon whom copies of the petition are to be served. The Judge may, if he thinks fit, direct notice to be given to the company before giving directions as to the advertisement of the petition.

97. Petition By A Contingent Or Prospective Creditor :-

A petition for the winding-up of a company presented by a contingent or prospective creditor shall be accompanied by an application under section 439(8) for the leave of the Court for the admission of the petition. No advertisement of the petition shall be made unless the leave has been granted, or where the leave has been granted subject to any conditions precedent to the admission of the petition, unless such conditions have been satisfied.

98. Copy Of Petition To Be Furnished :-

Every contributory or creditor of the company shall be entitled to be furnished by the petitioner or by his advocate with a copy of the petition within 24 hours of his requiring the same on payment of the prescribed charges.

99. Advertisement Of Petition :-

Subject to any directions of the Court, the petition shall be advertised within the time and in the manner provided by rule 24 of these rules. The advertisement shall be in Form No. 48.

100. Application For Leave To Withdraw Petition :-

(1) A petition for winding-up shall not be withdrawn after presentation without the leave of the Court.

(2) An application for leave to withdraw a petition for winding-up which has been advertised in accordance with the provisions of Rule 99 shall not be heard at any time before the date fixed in the advertisement for the hearing of the petition.

101. Substitution Of Creditor Or Contributory For Original Petitioner :-

Where a petitioner -

(1) is not entitled to present a petition, or

(2) fails to advertise his petition within the time prescribed by these rules or by order of Court or such extended time as the Court may allow, or

(3) consents to withdraw the petition, or to allow it to be dismissed, or the hearing to be adjourned or fails to appear in support of his petition when it is called on in Court on the day originally fixed for the hearing thereof, or any day to which the hearing has been adjourned, or

(4) if appearing, does not apply for an order in terms of the prayer of his petition, or, where in the opinion of the Court there is other sufficient cause for an order being made under this rule, the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who, in the opinion of the Court, would have a right to present a petition, and who is desirous of prosecuting the petition.

102. Procedure On Substitution :-

Where the Judge makes an order substituting a creditor or contributory as petitioner in a winding-up petition, he shall adjourn the hearing of the petition to a date to be fixed by him and direct

such amendments of the petition as may be necessary. Such creditor or contributory shall, within seven days from the making of the order, amend the petition accordingly, and file two clean copies thereof together with an affidavit in duplicate setting out the grounds, on which he supports the petition. The amended petition shall be treated as the petition for the winding-up of the company and shall be deemed to have been presented on the date on which the original petition was presented.

103. Affidavit-In-Opposition :-

Any affidavit intended to be used in opposition to the petition shall be filed not less than five days before the date fixed for the hearing of the petition, and a copy of the affidavit shall be served on the petitioner or his advocate forthwith. Copies of the affidavit shall also be given to any creditor or contributory appearing in support of the petition who may require the same, on payment of the prescribed charges.

104. Affidavit In Reply :-

An affidavit intended to be used in reply to the affidavit filed in opposition to the petition shall be filed not less than two days before the day fixed for the hearing of the petition, and a copy of the affidavit in reply shall be served on the day of the filing thereof on the person by whom the affidavit in opposition was filed or his advocate.

105. Stay Of Suit Or Proceeding Pending Petition :-

An application under section 442 for stay of any suit or proceeding shall be made upon notice to all the parties to the suit or proceeding sought to be stayed.

106. Appointment Of Provisional Liquidator :-

(1) After the admission of a petition for the winding-up of a company by the Court, upon the application of a creditor, or a contributory, or of the company, and upon proof by affidavit of sufficient ground for the appointment of a Provisional Liquidator, the Court, if it thinks fit, and upon such terms as in the opinion of the Court shall be just and necessary, may appoint the Official Liquidator to be Provisional Liquidator of the company pending final orders on the winding-up petition. Where the company is not the applicant, notice of the application for appointment of Provisional Liquidator shall be given to the company unless the Court, for special reasons to be recorded (in writing), dispenses with the

notice.

(2) The order appointing the Provisional Liquidator shall set out the restrictions and limitations, if any, on his powers imposed by the Court. The order shall be in Form No. 49, with such variations as may be necessary.

107. Rules Applicable To Provisional Liquidator :-

The rules relating to Official Liquidators shall apply to Provisional Liquidators, so far as applicable, subject to such directions as the Court may give in each case.

108. Costs, Etc., Of Provisional Liquidator :-

Subject to any order of the Court, all the costs, charges and expenses properly incurred by the Official Liquidator, as Provisional Liquidator, including such sum as is or would be payable to the Central Government under the scale of fees for the time being in force applicable where the Official Liquidator acts as liquidator of the company, shall be paid out of the assets of the company.

109. Notice To Official Of Order :-

Where an order for the winding-up of a company or for the appointment of a Provisional Liquidator has been made, the Registrar shall forthwith send to the Official Liquidator of the Court notice of the order under the seal of the Court in duplicate in Form No. 50 or 51, as case may be, together with a copy of the petition and the affidavit, if any, filed in support thereof.

110. Contents Of Winding-Up Order And Order Appointing Provisional Liquidator :-

An order to winding-up a company or for the appointment of a Provisional Liquidator shall contain at the foot thereof a note stating that it will be the duty of such of the persons as are liable to make out or concur in making out the company's statement of affairs under section 454, to attend on the Official Liquidator at such time and place as he may appoint and to give him all information he may require.

111. Order To Be Sent To Official Liquidator And Form Of Order :-

(1) The order for winding-up shall be drawn up by the Registrar as soon as possible, and after it is signed and sealed two certified copies thereof duly sealed shall be sent to the Official Liquidator. The order shall be in Form No. 52 with such variations as may be

necessary.

(2) Except where the company is the petitioner, the Official Liquidator shall cause a sealed copy of the order to be served upon the company by pre-paid registered post addressed at its registered office (if any), or, if there is no registered office, and its principal or last known principal place of business, or upon such other person or persons or in such manner as the Court may direct.

112. Directions On Making The Winding-Up Order :-

At the time of making the winding-up order, or at any time thereafter, the Court shall give directions as to the advertisement of the order and the persons, if any, on whom the order shall be served and the persons, if any, to whom notice shall be given of the further proceedings, in the liquidation, and such further directions as may be necessary.

113. Advertisement Of The Order :-

Save as otherwise ordered by the Court, every order for the winding-up of a company by the Court, shall within 14 days of the date of making the order, be advertised by the petitioner in one issue each of a newspaper in the English language and a newspaper in the regional language circulating in the State or the Union Territory concerned and shall be served by the petitioner upon such person, if any, and in such manner as the Judge may direct. The advertisement shall be in Form No. 53.

114. Official Liquidator To Take Charge Of Assets And Books And Papers Of Company :-

On a winding-up order being made, the Official Liquidator attached to the Court shall forthwith take into his custody or under his control all the property and effects and the books and papers of the company, and it shall be the duty of all persons having custody of any of the properties, books and papers of the company, to deliver possession thereof to the Official Liquidator.

115. Form Of Proceedings After Winding-Up Order Is Made :-

After a winding-up order is made, every subsequent proceeding in the winding-up shall bear the original number of the winding-up petition besides its own distinctive number, but against the name of the company in the cause-title, the words in liquidation shall appear in brackets.

116. Application For Stay Of Winding-Up Proceedings :-

An application under section 466 for stay of proceedings in the winding-up shall be made upon notice to the parties to the winding-up petition and to such other persons as the Court may direct, and where the application is made by any person other than the Official Liquidator, notice shall be given to the Official Liquidator. Where an order is made staying proceedings, the order shall direct that the applicant shall forthwith file a certified copy thereof with the Registrar of Companies.

117. Application For Leave To Commence Or Continue Suit Or Proceeding :-

An application under section 446(1) for leave of the Court to commence or continue any suit or proceeding against the company shall be made upon notice to the Official Liquidator and the parties to the suit or proceeding sought to be commenced or continued.

118. Application For Transfer Of Suit Or Proceeding :-

(1) An application under section 446(3) for the transfer to the Court of any suit or proceeding by or against the company pending in any other Court shall be made on notice to the Official Liquidator where he is not the applicant and to the parties to the suit or proceeding sought to be transferred.

(2) Where an order is made for the transfer of a suits and proceeding pending in any other Court to the Court, the Registrar of the Court shall transmit without delay a certified copy of the order to the Court in which such suit or proceeding is pending, and that Court shall, on receipt of the order, transmit the records of the suit or proceeding to the Court.

(3) Upon the making of an order for winding-up, all suits and proceedings by or against the company then pending or thereafter instituted in the Court or transferred to the Court, shall be assigned to and placed in the list of the Judge for the time being exercising jurisdiction under the Act. TRANSFER OF WINDING-UP PROCEEDINGS

119. Application For Transfer :-

(1) Where a winding-up order has been made by a High Court, and application for a direction that all subsequent proceedings in the winding-up be had in a District Court subordinate to the High Court or in any other High Court or in a District Court (subordinate thereto), shall be made to the High Court that made the winding-

up order by the Official Liquidator of that Court, or by the Official Liquidator of the Court to which proceedings are sought to be transferred, or by a creditor or contributory of the company.

(2) An application for the transfer of winding-up proceedings from a District Court to the High Court or to another District Court shall be made to the High Court by the Official Liquidator attached to the first mentioned District Court, or by the Official Liquidator attached to the High Court, or by a creditor or contributory of the company.

(3) Notice of every application for transfer of winding-up proceedings shall be given to the Official Liquidators of both the Court from which and the Court to which the proceedings are sought to be transferred, and to the parties to the winding-up petition, and if so ordered by the Court, by advertisement in such newspapers as the Court may direct.

(4) An order transferring winding-up proceedings from the High Court to a District Court or from one District Court to another shall be in Form No. 54.

120. Transmission Of Records Upon Transfer Of Proceeding

:-

(1) Where an order is made transferring the winding-up proceedings in a High Court to another Court, the Registrar of the High Court shall, without delay, transmit the records of the proceedings together with a certified copy of the order of transfer to the Court to which the proceedings are transferred.

(2) Where the High Court makes an order withdrawing to its own file the winding-up proceedings in a District Court, the Registrar of the High Court shall forthwith forward a certified copy of the order to the said District Court, and that Court shall, on receipt of the order, despatch without delay the records of the proceedings to the High Court.

(3) Where the High Court makes an order transferring the winding-up proceedings in a district Court to another District Court, the Registrar of the High Court shall forthwith forward a certified copy of the order to each of the said District Courts, and the Court whose proceedings are transferred shall, on receipt of the order, despatch without delay the records of the proceedings to the District Court to which they are transferred.

121. Proceedings To Be Re-Numbered :-

Where proceedings are transferred, they shall receive a new distinctive number in the Court to which they are transferred, but

below the new number in the cause-title, the previous number shall be shown in brackets as follows :

(Transferred petition No..... of 19..... of the High Court/District Court of.....)

122. Notice To Official Liquidator :-

The Registrar of the Court to which the proceedings are transferred shall, on receipt of the order of transfer, give notice thereof to the Official Liquidator attached to the Court, and the said Official Liquidator shall thereupon give notice of the transfer to the Registrar of Companies.

123. Official Liquidator Of Transferee Court To Be Liquidator :-

(1) Upon an order being made by the High Court, either of its own motion or upon application made to it as aforesaid, transferring the winding-up proceedings, the Official Liquidator attached to the Court to which the proceedings are transferred shall become the Liquidator of the Company in the place of the Official Liquidator of the Court which made the winding-up order, and the winding-up proceedings shall be continued in the Court to which the proceedings are transferred in the same manner as if the Court had passed the order for winding-up.

(2) Upon the order for transfer being made, the Official Liquidator of the Court whose proceedings are transferred shall forthwith hand over and transfer to the Official Liquidator of the Court to which they are transferred, all the property and assets and the books and papers of the company in liquidation in his hands, subject to the retention out of the assets of the costs or expenses incurred by him prior to the transfer. STATEMENT OF AFFAIRS

124. Notice To Submit Statement :-

A notice by the Official Liquidator requiring any of the persons mentioned in sub-section

(2) of section 454 to submit and verify a statement of affairs of the company shall be in Form No. 55 and shall be served by the Official Liquidator as soon as may be after the order for winding-up or the order appointing the Official Liquidator as Provisional Liquidator is made.

125. Application By Official Liquidator Under Section 454(2) :-

The Official Liquidator may apply by summons to the Court for an

order directing any person who, in his opinion, is liable to furnish a statement of affairs under section 454, to prepare and submit such a statement or concur in making the same. Notice of the application shall be served on the person against whom the order is sought. Where the Court makes the order, such order shall be in Form No. 56 with such variations as may be necessary.

126. Preparation Of Statement Of Affairs :-

Any person who under section 454 is required to submit and verify a statement as to the affairs of the company shall be furnished by the Official Liquidator with the necessary forms and shall be given such instructions and afforded such reasonable facilities for preparing the statement as the Official Liquidator may in his discretion consider necessary.

127. Form Of The Statement :-

The statement as to the affairs of the company to be submitted under section 454 shall be in Form No. 57 and shall be made out in duplicate, one copy of which shall be verified by affidavit. An affidavit of concurrence in the statement of affairs shall be in Form No. 58. The verified statement and the affidavit of concurrence, if any, shall be submitted to the Official Liquidator within the time prescribed by the section, or, within such extended time not exceeding three months from the "relevant date", as defined in the section as the Official Liquidator or the Court may, for special reasons, appoint. The Official Liquidator shall cause the verified statement of affairs and the affidavit of concurrence, if any, to be filed in the Court and shall retain the duplicate thereof for his records.

128. Extension Of Time For Submitting Statement :-

(1) Where any person required to submit a statement of affairs under section 454 requires an extension of time for submitting the same, he shall apply in the first instance to the Official Liquidator who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings. The certificate shall be in Form No. 59.

(2) Where the Official Liquidator refuses to grant an extension of time for submitting the statement of affairs the person required to submit the statement may apply to the Judge in Chambers for extension of time on notice to the Official Liquidator.

129. Expenses Of Preparing The Statement :-

(1) Any person required to make or concur in making any statement of affairs of the company, shall submit to the Official Liquidator for his sanction, a statement, of the estimated costs and expenses of the preparation and making of the statement and shall, after the submission of the statement of affairs, submit his bill of actual expenses.

(2) Except by order of the Court, no person shall be paid out of the assets of the company any costs or expenses which have not been sanctioned by the Official Liquidator, nor shall such costs and expenses be paid until the statement of affairs verified by affidavit has been submitted to the Official Liquidator.

(3) Any person who has made or concurred in making the said statement and affidavit and whose bill or costs and expenses has not been allowed in full by the Official Liquidator, may, within 14 days of the notice of the order of the Official Liquidator disallowing any part of his bill, apply by summons to the Judge in Chambers upon notice to the Official Liquidator for sanction of the amount disallowed or any part thereof and the Judge may pass such order thereon as may seem just.

130. Officers Of Company To Attend And Give Information :-

The Official Liquidator may from time to time hold personal interviews with any such person, as is mentioned in sub-section (2) of section 454 for the purpose of investigating the company's affairs, and it shall be the duty of every such person to attend on the Official Liquidator at such time and place as the Official Liquidator may appoint and give the Official Liquidator all information that he may require and answer all such questions as may be put to him by the Official Liquidator. The Official Liquidator shall maintain minutes of the interview held by him or memoranda containing the substance of such interviews.

131. Duty Of Person Making Or Concurring In Statement :-

After the statement of affairs of the company has been submitted to the Official Liquidator it shall be the duty of every person who has made or concurred in making it, if and when required, to attend on the Official Liquidator and answer all such questions as may be put to him, and give all such further information as may be required of him by the Official Liquidator in relation to the statement of affairs.

132. Default In Complying With Section 454 :-

Any default on the part of any person in complying with the requirements of section 454 shall be reported to the Court by the Official Liquidator, and the Court may thereupon pass such orders or give such directions as it may think fit.

133. Dispensing With Statement Of Affairs :-

An application to dispense with the requirements of section 454 shall be supported by a report of the Official Liquidator showing the special circumstances which, in his opinion, render such a course desirable. Where an order is made dispensing with the requirements the Court may give such consequential or other directions as it may think fit.

134. Liquidator Involuntary Winding-Up Or Winding-Up Subject To Supervision, To Submit Statement :-

Where before the making of the winding-up order the company was being wound-up voluntarily or subject to the supervision of the Court, the Official Liquidator may require any liquidator or liquidators in such winding-up to furnish him, not later than 14 days of his making the requisition, or such other time as he may fix, with a statement as to the manner in which the winding-up was conducted, how the assets of the company were dealt with, and the position of the liquidation on the date of the order for winding-up by the Court ; and on the requisition being made, it shall be the duty of the liquidator or liquidators so required to furnish the statement within the time limited. Where the liquidator or liquidators fail to furnish the statement as required, the Official Liquidator may apply to the Court for such directions as may be necessary. REPORTS BY OFFICIAL LIQUIDATOR UNDER SECTION 455 AND SUMMONS FOR DIRECTIONS

135. Preliminary Report By Official Liquidator :-

The preliminary report to be submitted by the Official Liquidator under sub-section (1) of section 455 shall be in Form No. 60 with such variations as may be necessary.

136. Inspection Of Statement And Preliminary Report :-

Every creditor or contributory, by himself, or by his agent, shall be entitled to inspect the statement of affairs submitted under section 454 or the statement submitted by a liquidator under rule 134 of these Rules, and the preliminary report of the Official Liquidator submitted under section 455(1), on payment of a fee of Re. 1 and to obtain copies thereof or extracts therefrom on payment of the prescribed charges.

137. Further Report By Official Liquidator :-

(1) Where the Official Liquidator makes a further report under sub-section (2) of section 455, such report shall state whether in the opinion of the liquidator, any fraud has been committed by any person in the promotion or formation of the company or by any officer in relation to the company since its formation, and shall set out the names of the persons by whom the fraud, in his opinion, was committed and the facts on which such opinion is based. The report shall set out in a narrative form the facts and matters which the liquidator desires to bring to the notice of the Court.

(2) Where the Official Liquidator makes a further report under sub-section (2) of section 455, the Registrar shall fix a date for the consideration thereof by the Judge and notify the date on the notice board of the Court and to the Official Liquidator.

138. Consideration Of Report By Court :-

The consideration of the report (or reports) made by the Official Liquidator pursuant to sub-section (2) of section 455, shall be before the Judge in Chambers, and the Official Liquidator shall personally or by counsel attend the consideration thereof and give the Court any further information or explanation with reference to the matters contained therein which the Court may require. On a consideration of the report (or reports) the Court may pass such orders and give such directions as it may think fit including directions under section 478.

139. Summons For Directions To Be Taken Out By Official Liquidator :-

(1) As soon as practicable after the winding-up order is made and, in any event, not later than seven days after the filing of his preliminary report under subsection (1) of section 455, the Official Liquidator shall take out a summons for directions with regard to the settlement of the list of contributories and the list of creditors and the exercise by the Official Liquidator of all or any of the powers under section 457(1) and any other matters requiring directions of the Court. Notice of the summons shall be given to the petitioner on whose petition the order for winding-up was made. Upon the hearing of the summons, the Court, after hearing the Official Liquidator and any other person appearing on notice or otherwise, may give such directions as it shall think fit in regard to the said matters, including the fixing of dates for the settlement of

the list of contributories and for the filing of proofs by the creditors of the company in respect of their debts and their claims for priority, if any, under section 530.

(2) Where the preliminary report of the Official liquidator is not filed prior to the hearing of the summons and any of the matters in the summons cannot be properly or fully dealt with, without a perusal of such report, the Court may adjourn the hearing of any such matter or matters on the summons until after the submission of the preliminary report. COMMITTEE OF INSPECTION

140. First Meeting Of Creditors And Contributories :-

The meetings of the creditors and contributories under section 464 for the purpose of determining whether there shall be a Committee of Inspection ; and if so, what shall be its composition, shall be convened, held and conducted in the manner hereinafter provided by these rules for the holding and conducting of meetings of creditors and contributories.

141. Official Liquidator To Report Result Of Meeting And Apply For Directions :-

(1) As soon as possible after the holding of the said meetings, the Official Liquidator shall report the result thereof to the Court. Such report shall be in Form No. 61.

(2) Where the meeting of the contributories has accepted in its entirety the decision of the creditors meeting as regards the constitution and composition of a Committee of Inspection and the persons who are to be members thereof, a committee shall, subject to the provisions of section 465(1), be constituted in accordance with such decision, and the Official Liquidator shall set out in his report the names of the members of the Committee so constituted.

(3) Where the meeting of the contributories has not accepted the decision of the creditors meeting in its entirety, the Official Liquidator shall, at the time of making his report as aforesaid, apply to the Court for directions as to whether there shall be a Committee of Inspection, and if so, what shall be its composition, and who shall be the members thereof, and the Court shall thereupon fix a date for the consideration of the resolutions and determination of the meetings of the creditors and contributories. Notice of the date so fixed shall be advertised by the Official Liquidator in such manner as the Court shall direct not less than seven days before the date fixed. The advertisement shall be in Form No. 62.

(4) On the date fixed for hearing of the said application for

directions, the Court may, after hearing the Official Liquidator and any creditor or contributory who may appear, appoint a Committee of Inspection, or dispense with the appointment of a Committee of Inspection, or pass such orders or give such directions in the matters, as the Court may think fit.

142. Application For Order Not To Fill Vacancy In Committee :-

An application by the Official Liquidator under the proviso to subsection (9) of section 465 for an order that a vacancy occurring in the Committee of Inspection shall not be filled, shall be made upon notice to the remaining members of the Committee of Inspection and such other persons as the Court may direct.

143. Liquidator And Members Of The Committee Dealing With Companys Assets :-

Neither the Liquidator nor any member of the Committee of Inspection shall, while acting as liquidator or member of such committee in any winding-up, either directly or indirectly, by himself or any employer, partner, clerk, agent, servant, or relative, become purchaser of any part of the companys assets, except by leave of the Court. Any such purchase made contrary to the provisions of this rule may be set aside by the Court on the application of the liquidator or of a creditor or contributory, as the case may be, and the Court may make such order as to costs as it may think fit.

144. Committee Of Inspection Not To Make Profit :-

No member of the Committee of Inspection shall, except under and with the sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent, servant or relative, be entitled to derive any profit from any transaction arising out of the winding-up or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator for or on account of the company. Where any profit or payment has been made contrary to the provisions of this rule, such payment shall be disallowed or the profit shall be recovered, as the case may be, on the audit of the liquidators accounts or otherwise.

145. Cost Of Obtaining Sanction Of Court :-

In any case in which sanction of the Court is obtained under the last two preceding rules, the costs of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained

and shall not be payable out of the companies assets.

146. Order Sanctioning Payment To Committee :-

Where the sanction of the Court to payment to a member of the Committee of Inspection for services rendered by him in connection with the administration of the companys assets is obtained, the order of the Court shall specify the nature of the services, and such sanction shall only be given where the service performed is of a special nature. Except by the express sanction of the Court, no remuneration shall be paid to a member of the Committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee.

147. Fixing A Date For Proving Debts :-

Subject to the provisions of the Act, and in a winding-up by the Court, subject to the directions of the Court, the Official Liquidator in a winding-up by the Court shall, and the Liquidator in any other winding-up may, fix a certain day, which shall be not less than 14 days from the date of the notice to be given under the next succeeding Rule, on or before which the creditors of the company are to prove their debts or claims and to establish any title they may have to priority under section 530, or to be excluded from the benefit of any distribution made before such debts or claims are proved, or, as the case may be, from objecting to such distribution.

148. Notice To Creditors :-

(1) The liquidator shall give not less than 14 days notice of the date so fixed by advertisement in one issue of a daily newspaper in the English language and one issue of a daily newspaper in the regional language circulating in the State or Union Territory concerned, as he shall consider suitable. Such advertisements shall be in Form No. 63.

(2) The Liquidator shall also give not less than 14 days notice of the date fixed, in a winding-up by the Court, to every person mentioned in the statement of affairs, as a creditor, who has not proved his debt and to every person mentioned in the statement of affairs as a preferential creditor, whose claim to be a preferential creditor has not been established or is not admitted, or where there is no statement of affairs, to the creditors as ascertained from the books of the company and, in any other winding-up, to each person who, to the knowledge of the Liquidator, claims to be a creditor or preferential creditor of the company and whose claim has not been

admitted, to the last known address or place of abode of such person. Such notice shall be in Form No. 64 or 65 as the case may be, and shall be sent to each creditor by pre-paid letter post under certificate of posting.

(3) All the rules hereinafter set out as to the admission or rejection of proofs shall apply with necessary variations to any claim to priority as a preferential creditor.

149. Proof Of Debt :-

(1) In a winding-up by the Court, every creditor shall, subject as hereinafter provided, prove his debt, unless the Judge in any particular case directs that any creditors or class of creditors shall be admitted without proof.

(2) Formal proof of the debts mentioned in paragraph (d) of subsection (1), of section 530 shall not be required, unless the Official Liquidator shall in any special case otherwise direct, in a winding-up by the Court.

150. Mode Of Proof And Verification Thereof :-

A debt may be proved by delivering or sending by post to the Liquidator, an affidavit verifying the debt made by the creditor or by some person authorised by him. If the affidavit is made by a person authorised by the creditor, it shall state the authority and means of knowledge of the deponent. A creditor need not attend upon the investigation unless required to do so by the Liquidator.

151. Contents Of Proof :-

An affidavit proving a debt shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The affidavit shall state whether the creditor is a secured creditor, or a preferential creditor, and if so, shall set out the particulars of the security or of the preferential claims. The affidavit shall be in Form No. 66.

152. Workmens Wages :-

In any case where there are numerous claims for wages or accrued holiday remuneration by workmen and other employed by the company, it shall be sufficient if one proof in Form No. 67 for all such claims is made either by a foreman or some other person on behalf of all such creditors. Such proof shall have annexed thereto as forming part thereof, a schedule setting forth the names of the workmen and others and the amounts severally due to them. Any

proof made in compliance with this Rule shall have the same effect as if separate proofs had been made by each of the said workmen and others.

153. Production Of Bills Of Exchange And Promissory Notes

:-

Where a creditor seeks to prove in respect of a bill of exchange, promissory note or other negotiable instrument or security of a like nature on which the company is liable, such bill of exchange, note, instrument or security shall be produced before the Liquidator and be marked by him before the proof is admitted.

154. Value Of Debts :-

The value of all debts and claims against the company shall, as far as is possible, be estimated according to the value thereof at the date of the order of the winding-up of the company or where before the presentation of the petition for winding-up, a resolution has been passed by the company for voluntary winding-up, at the date of the passing of such resolution.

155. Discount :-

A creditor proving his debt shall deduct therefrom all trade discounts, if any.

156. Interest :-

On any debt or certain sum payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order, or the resolution as the case may be, the creditor may prove for interest at a rate not exceeding four per cent per annum up to that date from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made, giving notice that interest will be claimed from the date of demand until the time of payment.

157. Periodical Payments :-

When any rent or other payment falls due at stated period, and the order or resolution to wind-up is made at any time other than one of those periods, the persons entitled to the rent for a proportionate part thereof up to the date of winding-up order or resolutions accrued due from day to day. Provided that where the Liquidator remains in occupation of the premises demised to a company which is being wound-up, nothing herein contained shall

prejudice or affect the right of the landlord of such premises to claim payment by the company, or the liquidator, of rent during the period of the company's or liquidator's occupation.

158. Proof Of Debt Payable At A Future Time :-

A creditor may prove for a debt not payable at the date of the winding-up order or resolution, as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of four per cent per annum computed from the date of declaration of the dividend to the time when the debt would have become payable according to the terms on which it was contracted.

159. Examination Of Proof :-

The Liquidator shall, with all convenient speed, examine every proof of debt lodged with him and the grounds of the debt. He may call for the production of the vouchers if any referred to in the affidavit of proof or require further evidence in support of the debt. If he requires further evidence, or requires that the creditor should attend the investigation in person, he shall fix a day and time at which the creditor is required to attend or to produce further evidence and send a notice to such creditor in Form No. 68 by pre-paid registered post so as to reach him not later than 7 days before the date fixed.

160. Official Liquidators Right To Summon Any Person In Connection With The Investigation :-

The Official Liquidator in winding-up by the Court may summon any person whom he may deem capable of giving information respecting the debts to be proved in liquidation and may require such person to produce any documents in his custody or power relating to such debts and shall tender with the summons such sum as appears to the Official Liquidator sufficient to defray the traveling and other expenses of the person summoned for one day's attendance. Where the person so summoned fails without lawful excuse to attend or produce any documents in compliance with the summons or avoids or evades service, the Official Liquidator may apply to the Court for the issue of a warrant for the apprehension of such person and the production before him of such documents as may be required, or for other appropriate orders.

161. Oaths :-

For the purpose of his duties in relation to the admission of proof of debts the Official Liquidator may administer oaths and take

affidavits.

162. Costs Of Proof :-

Unless otherwise ordered by the Judge, a creditor shall bear the costs of proving his debt.

163. Acceptance Or Rejection Of Proof To Be Communicated

:-

After such investigation as he may think necessary, the liquidator shall in writing admit or reject the proof in whole or in part. Every decision of the Liquidator accepting or rejecting a proof, either wholly or in part, shall be communicated to the creditor concerned by post under certificate of posting where the proof is admitted and by registered post for acknowledgment where proof is rejected wholly or in part, provided that it shall not be necessary to give notice of the admission of a claim to a creditor who has appeared before the Liquidator and the acceptance of whose claim has been communicated to him or his agent in writing at the time of acceptance. Where the Liquidator rejects a proof, wholly or in part, he shall state the grounds of the rejection to the creditor in Form No. 69. Notice of admission of proof shall be in Form No. 70

164. Appeal By Creditor :-

If a creditor is dissatisfied with the decision of the Liquidator in respect of his proof, the creditor may, not later than 21 days from the date of service of the notice upon him of the decision of the Liquidator, appeal to the Court against the decision. The appeal shall be made by a Judges summons, supported by an affidavit which shall set out the grounds of such appeal, and notice of the appeal shall be given to the Liquidator. On such appeal, the Court shall have all the powers of an appellate Court under the Code.

165. Procedure Where Creditor Appeals :-

(1) The liquidator shall, upon receiving notice of the appeal against a decision rejecting a proof wholly or in part, file with the Registrar such proof with the order containing the grounds of rejection.

(2) It shall be open to any creditor or contributory to apply to the Court for leave to intervene in the appeal, and the Court may, if it thinks fit, grant the leave subject to such terms and conditions as may be just. Where such leave has been granted notice of the hearing of the appeal shall be given to such creditor or contributory.

166. Official Liquidator Not To Be Personally Liable For Costs :-

The Official Liquidator shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part.

167. Proofs And List Of Creditors To Be Filed In Court :-

In a winding-up by the Court, the Official Liquidator shall, within three months from the date fixed for the submission of proofs, under Rule 147 of these Rules or such further time as the Court may allow, file in Court a certificate in Form No. 71 containing a list of the creditors who submitted to him proofs of their claims in pursuance of the advertisement and the notices referred to in Rule 148, the amounts of debt for which they claimed to be creditors, distinguishing in such list the proofs admitted wholly, the proofs admitted or rejected in part, and the proofs wholly rejected. The proofs, with the memorandum of admission or rejection of the same in whole or in part, as the case may be, endorsed thereon, shall be filed in Court along with the certificate.

168. List Of Creditors Not To Be Varied :-

The list as certified by the Official Liquidator and filed in Court shall be the list of the creditors of the company, and shall not be added to or varied except under orders of Court and in accordance with such orders. Where an order is made adding to or varying the list of creditors, the Official Liquidator shall amend the list in accordance with such order.

169. Notice Of Filing The List And Inspection Of The Same :-

Upon the filing of the certificate containing the list of creditors as settled by the Official Liquidator, the Registrar shall notify the filing thereof on the Court notice board, and the certificate and the list of creditors as settled and the proofs relating thereto shall be open to the inspection of every Creditor or contributory on payment of a fee of one rupee.

170. Procedure In The District Court Regarding Proof Of Claims :-

Rules 163 to 169 of these Rules shall not apply to proceedings in a winding-up in the District Court and in lieu thereof Rules 171 to 175 of these Rules shall apply.

171. List Of Proofs And Summons For Directions :-

Where the winding-up is in a District Court, the Official Liquidator attached to the Court shall, after such investigation as he may think necessary, make out and file in the Court, within two months of the date fixed for submissions of proofs under Rules 147 of these Rules, or within such extended time as the Court may allow, a list verified by his affidavit of all the debts and claims sent to him, distinguishing in such list which of the debts and claims or parts thereof are in his belief justly due and proper to be allowed without further evidence, with the reasons for his belief, and which of them ought to be proved by the creditors, and shall also file with the list all the proofs and the evidence received by him from the several creditors in connection with their claims. He shall at the same time take out a summons for the settlement of the list of creditors by the Court. The affidavit verifying the list shall be in Form 72 and the summons shall be in Form No. 73.

172. Direction At Hearing Of Summons :-

It shall not be necessary to issue notice of the summons in the first instance and the summons shall be posted before the Court for directions together with the list of creditors and the affidavit verifying the same, filed by the Official Liquidator. Upon the hearing thereof, the Court may allow such of the debts and claims or such parts thereof as in the opinion of the Court do not require further proof, and shall require further proof of such of the debts and claims or part thereof as in the opinion of the Court require to be proved by the claimants. The Court shall fix a date for the adjudication of the claims which are to be proved, and shall adjourn the summons to the date so fixed.

173. Notice To Be Given To Creditors :-

Not less than 14 days before the date fixed for the proof of claims under the last preceding Rule, the Official Liquidator shall give notice by registered post individually to each of the creditors who are required to prove their debts or claims or parts thereof, as the case may be, to come in and prove before the Court on the date fixed. Such notice shall be in Form No. 74. The Official Liquidator shall also give notice of the admission of their claims by post individually to the creditors whose claims have been admitted.

174. Settlement Of List Of Creditors :-

On the date fixed or on any adjourned date, the Court shall, after hearing such evidence as may be tendered, adjudicate upon the claims and settle the list of creditors. The settlement of the list of

creditors shall be recorded in a certificate signed by the Judge in Form No. 75.

175. Inspection Of The List Of Creditors And The Proofs Filed :-

The list of creditors as settled and the proofs filed shall be open to the inspection of every creditor and contributory on payment of a fee of one rupee.

176. Expunging Of Proof :-

(1) If after the admission of a proof, the Liquidator has reason to think that the proof has been improperly admitted or admitted by a mistake, he may apply to the Court upon notice to the creditor who made the proof, to expunge the proof or reduce its amount, as the case may be.

(2) Any creditor or contributory may also apply to the Court to expunge a proof or reduce the amount thereof, if the Liquidator declines to move in the matter, and on such application, the Court may pass such orders as it may think just.

177. Procedure On Failure To Prove The Debt Within The Time Fixed :-

If any creditor fails to file proof of his debt with the Liquidator within the time specified in the advertisement referred to in Rule 148, such creditor may apply to the Court for relief, and the Court may, thereupon, adjudicate upon the debt or direct the Liquidator to do so.

178. Right Of Creditor Who Has Not Proved Debt Before Declaration Of Dividend :-

Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the Liquidator available for distribution of dividend, any dividend or dividends which he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

179. Payment Of Subsequent Interest :-

In the event of there being a surplus after payment in full of all the claims admitted to proof, creditors whose proofs have been admitted shall be paid interest from the date of the winding-up

order or of the resolution as the case may be, up to the date of the declaration of the final dividend, at a rate not exceeding 4 per cent per annum, on the admitted amount of the claim, after adjusting against the said amount the dividends declared as on the date of the declaration of each dividend. SETTLEMENT OF THE LIST OF CONTRIBUTORIES IN A WINDING-UP BY THE COURT

180. Provisional List Of Contributories :-

(1) Unless the Court dispenses with the settlement of a list of contributories, the Official Liquidator shall prepare and file in the Court not later than 21 days after the date of the order on the application for directions referred to in Rule 139 of these Rules, a provisional list of contributories of the company with their names and addresses, the number of shares or the extent of interest to be attributed to each contributory, the amount called up and the amount paid up in respect of such shares or interest, and distinguishing in such list the several classes of contributories.

(2) The list shall consist of every person who was a member of the company at the commencement of the winding-up or his representative, and shall be divided into two parts, the first part consisting of those who are contributories in their own right, and the second part, of those who are contributories as being representatives of, or liable for the debts of, others. The lists shall be in Form No. 76.

181. Notice To Be Given Of Date Of Settlement Of List :-

(1) Upon the filing of the provisional list, the Official Liquidator shall, subject to any directions of the Judge on the application for directions referred to in Rule 189 of these Rules, fix a date not later than one month from the date of the filing of the provisional list for the settlement of the list before him, and shall give notice thereof to every person included in such list, stating in such notice in what character and for what number of shares or extent of interest such person is included in the list, the amount called up and the amount paid up in respect of shares or interest. Such notice shall be in Form No. 77 and shall be sent by pre-paid letter post under certificate of posting to every person included in the list at the address mentioned therein so as to reach him in the ordinary course of post not later than 14 days before the date fixed for the settlement.

(2) The person who posted the notices shall swear to an affidavit in

Form No. 78 relating to the despatch thereof and the affidavit shall be filed with the proceedings.

182. Settlement Of The List :-

On the date fixed for the settlement of the list, the Official Liquidator shall hear any person who objects to being settled as a contributory or to being settled as a contributory in such character or for such number of shares or extent of interest as is mentioned in the provisional list, and after such hearing, shall finally settle the list. The list when so settled shall be the list of contributories of the company.

183. Certificate Of Final Settlement To Be Filed In Court :-

Within 7 days after the settlement of the list the Official Liquidator shall file in Court a certificate of the list of contributories as finally settled by him. Such certificate shall be in Form No. 79.

184. Notice Of Settlement To Contributories :-

(1) Upon the filing of the certificate, the Official Liquidator shall forthwith give notice to every person placed on the list of contributories as finally settled, stating in what character and for what number of shares or interest he has been placed on the list, what amount has been called up and what amount paid up in respect of such shares or interest and in the notice he shall inform such person that any application for the removal of his name from the list or for a variation of the list, must be made to the Court within 21 days from the date of service on the contributory of such notice. Such notice shall be in Form No. 80, and shall be sent to each person settled on the list by pre-paid registered post for acknowledgment at the address mentioned in the list as settled.

(2) An affidavit of service relating to the despatch of the notices to the contributories under this Rule shall be sworn to by the persons who despatched the said notices and shall be filed in Court within 14 days of the filing by the Official Liquidator of his certificate of the list of contributories under Rule 183 of these rules. Such affidavit shall be in Form No. 81.

185. Supplemental List Of Contributories :-

The Official Liquidator may from time to time add to the list of contributories by a supplemental list or lists and any such addition shall be made in the same manner in all respects as the settlement of the original list. A supplemental list shall be in Form No. 82.

186. Variation Of List :-

(1) Save as provided in the last preceding Rule, the certificate of the list of contributories shall not be varied, and no person settled on the list as a contributory shall be removed from the list, or his liability in any way varied, except by order of Court and in accordance with such orders.

(2) Where the Court makes an order varying the list of contributories, the Official Liquidator shall amend the list in accordance with the order of the Court.

187. Application By Official Liquidator For Rectification Of List :-

If after the settlement of the list of contributories the Official Liquidator has reason to think that a contributory who had been included in the provisional list has been improperly or by mistake excluded or omitted from the list of contributories as finally settled or that the character in which or the number of shares or extent of interest for which he has been included in the list as finally settled or any other particular contained therein requires rectification in any respect, he may, upon notice to the contributory concerned, apply to the Court for such rectification of the list as may be necessary and the Court may, on such application, rectify or vary the list as it may think fit.

188. Application By Contributory To Vary The List :-

Subject to the power of the Court to extend the time or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to his being settled on the list of contributories as finally settled by the Official Liquidator shall be entertained after the expiration of 21 days from the date of service on such person of the notice of the settlement of the list. An order varying a list of contributories shall be in Form No. 83, and an order rectifying the Register of Members and the list of contributories shall be in Form No. 84.

189. Official Liquidator Not To Be Personally Liable For Costs :-

The Official Liquidator shall not in any case be personally liable to pay any costs of, or in relation to, an application to set aside or vary his act or decision settling the name of a person on the list of contributories of a company.

190. Settlement Of The List Of Contributories In District Courts :-

Where winding-up proceedings are heard in a District Court, the Court shall settle the list of contributories and Rules 181 to 189 of these Rules shall not apply and in lieu thereof Rules 191 to 194 of these Rules shall apply to proceedings in a District Court.

191. Notice To Be Given Of Date Of Settlement :-

(1) In a District Court, upon the filing of the provisional list of contributories mentioned in Rule 180, the Official Liquidator shall obtain an appointment from the Judge to settle the list, and shall give notice of the date appointed to every person included in such list, stating in such notice in what character and for what number of shares or extent of interest such person is included in the list, the amount called up and the amount paid up in respect of such shares or interest, and informing such person by such notice that if he intends to object to his being settled as a contributory in such character and for such number of shares or interest as mentioned in the list, he should file in Court his affidavit if any in support of his contention and serve a copy of the same on the Official Liquidator not less than 2 days before the date fixed for the settlement, and appear before Court on the date appointed for the settlement in person or by advocate. Such notice shall be in Form No. 85, and shall be sent by registered post for acknowledgment to every person included in the list so as to reach him in the ordinary course of post not less than 14 days before the date fixed for the settlement.

(2) The person who posted the notices shall swear to an affidavit in Form No. 78 relating to the despatch thereof, and file the same in Court not later than 2 days before the date fixed for the settlement of the list.

192. Settlement Of The List :-

On the date appointed for the settlement of the list, the Court shall hear any person who objects to being settled as a contributory or as a contributory in such character or for such number of shares or extent of interest as is mentioned in the list, and after such hearing, shall finally settle the list. The list when settled shall be certified by the Judge under his signature and shall be in Form No. 86.

193. Supplemental List Of Contributories :-

The Court may from time to time add to the list of contributories by a supplemental list or lists and any such addition shall be made in the same manner in all respects as the settlement of the original list.

194. Application For Rectification Of List :-

If after the settlement of the list of contributories the Official Liquidator has reason to think that a contributory who had been included in the provisional list has been improperly or by mistake excluded or omitted from the list of contributories as finally settled or that the character in which or the number of shares or extent of interest for which he has been included in the list as finally settled or any other particular contained therein, requires rectification in any respect, he may, upon notice to the contributory concerned, apply to the Court for such rectification of the list as may be necessary, and the Court may on such application, rectify or vary the list as it may think fit.

195. List Of Contributories Consisting Of Past Members :-

It shall not be necessary to settle a list of contributories consisting of the past members of a company, unless so ordered by the Court. Where an order is made for settling a list of contributories consisting of the past members of a company, the provisions of these Rules shall apply to the settlement of such list in the same manner as they apply to the settlement of the list of contributories consisting of the present members.

196. List Of Contributories Under Section 104(1)(B) :-

Where, on the application of a creditor made under section 104(1) (b) the Court thinks fit to direct that a list of persons liable to contribute to his debt or claim be settled, such lists shall be settled in the same manner as a list of ordinary contributories of a company in a winding-up. GENERAL MEETINGS OF CREDITORS AND CONTRIBUTORIES IN A WINDING-UP BY COURT AND OF CREDITORS IN A CREDITORS VOLUNTARY WINDING-UP

197. Court Meetings, Liquidators Meetings And Voluntary Liquidation Meetings :-

(1) In addition to the meeting of creditors and contributories which may be directed to be held by the Court under section 557, hereinafter referred to as Court meetings of creditors and contributories, the Official Liquidator may, in a winding-up by the Court, as and when he thinks fit, summon and hold meetings of the

creditors and contributories, hereinafter referred to as Liquidators meetings of creditors and contributories, for the purpose of ascertaining their wishes in all matters relating to the winding-up and such meetings shall be summoned, held and conducted in the manner provided by these Rules and subject to the control of the Court.

(2) In a creditors voluntary winding-up, the liquidator may himself from time to time summon, hold and conduct meetings of creditors for the purpose of ascertaining their wishes in all matters relating to the winding-up - (Such meetings and all meetings of creditors which a liquidator of a company is by the Act required to convene in or immediately before such a voluntary winding-up and all meetings convened by a creditor in a voluntary windingup under these Rules are hereinafter called voluntary liquidation meetings.)

198. Application Of Rules To Meetings :-

Except where and so far as the nature of the subject-matter or the context may otherwise require, the Rules as to meetings as hereinafter set out shall apply to Court meetings, Liquidators meetings of creditors and contributories and voluntary liquidation meetings, provided that in the case of Court meetings, the Rules shall apply only subject to any directions given by the Court.

199. Notice Of Meeting :-

(1) The liquidator shall summon all meetings of creditors and contributories by giving not less than 14 days notice of the time and place appointed for the meeting by advertisement in one daily newspaper in the English language and one daily newspaper in the regional language circulating in the State or Union Territory concerned as the liquidator may consider suitable, and by sending individually to every creditor of the company notice of the meeting of creditors, and to every contributory of the company notice of the meeting of contributories, by prepaid letter post under certificate of posting so as to reach such person in the ordinary course of post not less than 14 days before the date fixed for the meeting.

(2) The notice to each creditor shall be sent to the address given in his proof or, if he has not proved, to the address given in the statement of affairs, or, if there is no statement of affairs, to the address given in the books of the company, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the books of the company as the address of such

contributory or to such other address as may be known to the person summoning the meeting.

(3) In the case of meetings under section 506, the continuing liquidator, or if there is no continuing liquidator, any creditor may summon the meeting.

(4) The notices shall be in such of the Forms Nos. 87 to 91 as may be appropriate, and forms Nos. 90 and 91 may be used suitably altered in the case of voluntary liquidation meetings.

(5) This Rules shall not apply to meetings under section 500 or 509.

200. Place And Time Of Meeting :-

Every meeting shall be held at such place and time as the person convening the same considers most convenient for the majority of the creditors or contributories or both. Different times or places or both may, if thought fit, be appointed for the meetings of creditors and the meetings of contributories.

201. Notice Of First Or Other Meeting To Officers Of Company :-

(1) In a winding-up by the Court, the Official liquidator shall also give to each of the officers of the company, who in his opinion ought to attend the first or any other meeting of creditors or contributories, fourteen days notice of the time and place appointed for such meeting. The notice may either be delivered personally or sent by registered post for acknowledgment as may be convenient. It shall be the duty of every Officer who receives notice of such meeting to attend if so required by the Liquidator, and if any such officer fails to attend the Liquidator may report such failure to the Court. Such notice shall be in Form No. 92.

(2) The Official Liquidator, if he thinks fit, may instead of requiring any of the officers of the company to attend the meeting as aforesaid, require such officer to answer any interrogatories or to furnish in writing any information that he may require for purposes of such meeting, and if such officer fails to answer the interrogatories or furnish such information, he shall report such failure to the Court.

202. Proof Of Notice :-

An affidavit by the clerk of the Official Liquidator, or by any person who sent the notices, that such notices have been duly sent, shall be sufficient evidence of the notices having been sent to the

persons to whom the same were addressed. In the case of Court meetings, the affidavit shall be filed in Court and in the case of Liquidators meetings, the affidavit shall be filed with the Official Liquidator. Such affidavit shall be in Form No. 93

203. Costs Of Calling Meetings At The Instance Of Creditor Or Contributory :-

Where a creditor or contributory desires the liquidator to convene a meeting the liquidator may require such creditor or contributory to deposit as a condition precedent thereto a sum sufficient for the costs thereof, to be computed as hereinafter provided ; and on any application to the Court by a creditor or contributory to direct the Liquidator to convene a meeting the Judge may, if he thinks fit, require the applicant to deposit a similar sum for such costs. Such sum shall include all disbursements necessary to be made for printing, stationery postage and hire of room, to be calculated at the rate of Re. 1 for each creditor or contributory up to the first 25 creditors or contributories, 50 Paise for each creditor or contributory for the next 75 creditors or contributories, 25 Paise for each creditor or contributory above the first 100 creditors or contributories. The sum so deposited shall be repaid to the person depositing the same out of the assets of the company, if the Court shall by order, or if the creditors shall by resolution, so direct. This Rule shall not apply to meetings to be summoned by the Official Liquidator under section 460(3)(b) or to a meeting summoned at the instance of a creditor under section 506.

204. Chairman Of Meeting :-

Where a meeting is summoned by the liquidator, the liquidator or some person nominated by him, shall be the chairman of the meeting. The nomination shall be in Form No. 94. At every other meeting of creditors or contributories, not being Court meetings of creditors and contributories, the chairman shall be such person as the meeting by resolution shall appoint. This Rule shall not apply to meetings under section 500.

205. Resolution At Creditors Meeting :-

At a meeting of creditors, a resolution shall be deemed to be passed, when a majority in number and value of the creditors present personally or by proxy and voting on the resolution have voted in favour of the resolution. In a winding-up by the Court, the value of a creditor, shall, for the purposes of a first meeting of the creditors or of a meeting held under section 464, be deemed to be

the value as shown in the books of the company, or the amount mentioned in his proof, whichever is less, and for the purposes of any other meeting, the value for which the creditor has proved his debt or claim.

206. Resolution Of Contributories Meeting :-

At a meeting of the contributories, a resolution shall be deemed to be passed when a majority in number and value of the contributories present personally or by proxy and voting on the resolution have voted in favour of the resolution. The value of the contributories shall be determined according to the number of votes to which each contributory is entitled as a member of the company under the provisions of the Act, or the regulations of the company, as the case may be.

207. Copies Of Resolutions To Be Filed :-

In a winding-up by the Court, the Official Liquidator shall file in Court a copy certified by him of every resolution passed at a meeting of creditors or contributories. The Registrar shall keep in each case a file of such resolutions.

208. Non-Receipt Of Notice By A Creditor Or Contributory :-

Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the Court otherwise orders, be valid notwithstanding that some creditors or contributories may not have received the notice sent to him.

209. Adjournments :-

The chairman may, with the consent of the meeting, adjourn it from time to time, but the adjourned meeting shall be held at the same place as the original meeting unless in the resolution for adjournment another place is specified or unless the Court otherwise orders.

210. Quorum :-

A meeting may not act for any purpose except for adjournment thereof unless there are present or represented thereat in the case of a creditors meeting at least three creditors entitled to vote or in the case of a meeting of contributories at least three contributories or all the creditors entitled to vote or all the contributories if the number of creditors entitled to vote or the number of contributories as the case may be shall not exceed three.

211. Procedure In The Absence Of Quorum :-

If, within half an hour from the time appointed for the meeting, a quorum of creditors or contributories, as the case may be, is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day, or time or place as the chairman may appoint, but the day appointed shall be not less than 7 or more than 14 days from the day from which the meeting was adjourned. If at such adjourned meeting, a quorum be not present, two creditors or contributories present in person shall form a quorum and may transact the business for which the meeting was convened.

212. When Creditor Can Vote :-

In the case of a meeting of creditors held under section 464 or of any adjournment thereof a person shall not be entitled to vote as a creditor unless he has duly lodged with the Official Liquidator not later than the time mentioned for that purpose in the notice convening the meeting, a proof of the debt which he claims to be due to him from the company. In the case of other meetings of creditors a person shall not be entitled to vote as a creditor unless he has lodged with the Official Liquidator a proof of the debt which he claims to be due to him from the company and such proof has been admitted wholly or in part before the date on which the meeting is held : Provided that this Rule and the next four following Rules shall not apply to a Court meeting of creditors held prior to the meeting of creditors under section 464 : Provided further that this Rules shall not apply to any creditors or class of creditors who by virtue of these Rules or any directions given thereunder are not required to prove their debts, or to any voluntary liquidation meetings.

213. Case To Which Creditors My Not Vote :-

A creditor shall not vote in respect of any unliquidated or contingent debt or any debt value of which is not ascertained, nor shall a creditor vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him unless he is willing to treat liability to him thereon of every person who is liable thereon antecedently to the company, and against whom no order of adjudication has been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for purposes of dividend, to deduct it from his proof.

214. When Secured Creditor Can Vote :-

(1) For the purposes of voting at a meeting, in a winding-up by the Court, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to vote only in respect of the balance due to him, if any, after deducting the value of his security.

(2) For the purposes of voting at any voluntary liquidation meeting, a secured creditor shall, unless he surrenders his security, lodge with the liquidator, or where there is no liquidator, at the registered office of the Company, before the meeting, a statement giving the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled to vote only in respect of balance due to him, if any, after deducting the value of his security.

215. Effect Of Voting By A Secured Creditor :-

If a secured creditor votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security was due to inadvertence.

216. Procedure When Secured Creditor Votes Without Surrendering Security :-

The liquidator may within 28 days from the date of the meeting at which a secured creditor voted on the basis of his valuation of the security, require him to give up the security for the benefit of the creditors generally on payment of the value so estimated by him, and may, if necessary, apply to the Court for an order to compel such creditor to give up the security : Provided that the Court may, for good cause shown, permit a creditor to correct his valuation before being required to give up the security, upon such terms as to costs as the Court may consider just.

217. Admission Or Rejection Of Proofs For Purposes Of Voting :-

The chairman shall have power to admit or reject a proof for the purposes of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether a proof shall be admitted or rejected, he shall mark it as objected to and allow the creditor to vote subject to the vote being declared invalid in the event of the objection being sustained.

218. Minutes Of Proceedings :-

(1) The chairman shall cause minutes of the proceedings at the meeting to be drawn up and fairly entered in the Minute Book and the minutes shall be signed by him or by the chairman of the next meeting.

(2) A list of creditors and contributories present at every meeting shall be made and kept as in Form No. 95.

219. Report Of Court Meetings :-

Where a meeting is summoned under the direction of the Court, the chairman shall, within the time fixed by the Court, or if no time is fixed, within 7 days of the conclusion of the meeting, report the result thereof to the Court. Such report shall be in Form No. 96.

PROXIES INRELATION TO A WINDING-UP BY COURT AND TO MEETINGS OF CREDITORS IN A CREDITORS VOLUNTARY WINDING-UP

220. Voting By Proxies :-

A creditor or contributory may vote either in person or by proxy. Where a person is authorised in the manner provided by section 187 to represent a Corporation at any meeting of creditors or contributories, such person shall produce to the Official Liquidator or other chairman of the meeting a copy of the resolution so authorising him. Such copy must be certified to be a true copy by a director, the manager, the secretary or other officer of the company duly authorised in that behalf who shall certify that he is so authorised.

221. Form Of Proxies :-

A creditor or contributory may give a general proxy or a special proxy to any person. A general proxy shall be in Form No. 97 and a special proxy in Form No. 98.

222. Proxies To Liquidator Or Chairman :-

A creditor or contributory in a winding-up by the Court may appoint the Official Liquidator, and in a voluntary winding-up, the liquidator, or if there is no liquidator, the chairman of the meeting, to act as his general or special proxy.

223. Use Of Proxies By Deputy :-

Where an Official Liquidator who holds any proxies cannot attend the meeting for which they are given, he may in writing depute some person under his official control to use the proxies on his behalf and in such manner as he may direct.

224. Forms To Be Sent With Notice :-

Forms of proxies shall be sent to the creditors and contributories with the notice summoning the meeting. No name shall be inserted or printed in the form before it is sent.

225. Proxies To Be Lodged :-

A proxy shall be lodged not later than 48 hours before the meeting at which it is to be used, with the Official liquidator in a winding-up by the Court, with the company at its registered office for a meeting under section 500, and with the liquidator, or if there is no liquidator, with the person named in the notice convening the meeting to receive the same, in a voluntary winding-up.

226. Rule 226 :-

Holder of proxy not to vote on matter in which he is financially interested No person acting either under a general or special proxy, shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the assets of the company otherwise than as a creditor ratably with the other creditors of the company.

227. Minor Not To Be Appointed Proxy :-

No person shall be appointed as a general or special proxy who is a minor.

228. Filling In Proxy Where Creditor Or Contributory Is Blind Or Incapable :-

The proxy of a creditor or a contributory blind or incapable of writing may be accepted if such creditor or contributory has attached his signature or mark thereto in the presence of a witness who shall add to his signature his description and address : provided that all insertions in the proxy are in the handwriting of the witness and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request and in the presence of the creditor or contributory before he attached his signature or mark.

229. Proxy Of Person Not Acquainted With English :-

The proxy of a creditor or contributory who does not know English may be accepted if it is executed in the manner prescribed in the last preceding Rule and the witness certifies that it was explained to the creditor or contributory in the language known to him, and gives the creditors or contributories name in English below the signature.

230. Attendance At Proceedings :-

(1) Save as otherwise provided by these Rules or by an order of Court, every person for the time being on the list of contributories of the company and every creditor whose debt has been admitted by Official Liquidator wholly or in part shall be at liberty at his own expense to attend the proceedings before the Court or before the Official Liquidator and shall be entitled upon payment of the costs occasioned thereby to have notice or all such proceedings as he shall, by request in writing addressed to the Official Liquidator, desire to have notice of ; but if the Court shall be of opinion that the attendance of any such person has occasioned any additional costs which ought not to be borne by the funds of the company, it may direct such costs or a gross sum in lieu thereof to be paid by such person and such person shall not be entitled to attend any further proceedings until he had paid the same.

(2) No contributory or creditor shall be entitled to attend any proceedings before the Judge, unless and until he or an Advocate on his behalf has filed an appearance with the Registrar. The Registrar shall keep an "Appearance Book" in which all such appearances shall be entered. Such book shall be open to the inspection of the Official Liquidator.

231. Representation Of Creditors And Contributories Before Court :-

The Court may, if it thinks fit, appoint from time to time any one or more of the creditors or contributories to represent before the Court at the expense of the company all or any class of creditors or contributories upon any question or in relation to any proceedings before the Court, and may remove any person so appointed, if more than one person is appointed under this Rule to represent one class, the persons so appointed, shall employ the same advocate to represent them, and where they fail to agree as to the advocate to be employed, the judge may nominate an advocate for them.

COLLECTION AND DISTRIBUTION OF ASSETS IN A WINDING-UP BY COURT

232. Powers Of Official Liquidator :-

The duties imposed on the Court by sub-section (1) of section 467 with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities shall be discharged by the Official Liquidator as an officer of the Court subject to the control of the Court and to the proviso in

section 643(2).

233. Official Liquidator To Be In The Position Of A Receiver

:-

For the discharge by the Official Liquidator of the duties imposed by sub-section (1) of section 467 and the last preceding Rule the Official Liquidator shall, for the purpose of acquiring and retaining possession of the property of the company, be in the same position as if he were a Receiver of the property appointed by the Court, and the Court may on his application enforce such acquisition or retention accordingly.

234. Companys Property To Be To Surrendered To Official Liquidator On Requisition :-

The powers conferred on the Court by section 468 may be exercised by the Official Liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker or agent or officer of a company which is being wound-up under order of the Court, shall on notice from the Official Liquidator and within such time as he shall by notice require, pay, deliver, convey, surrender or transfer to or into the hands of the Official Liquidator any money; property or documents, books or papers which happen to be in his hands for the time being and prima facie entitled. Where the person so required fails to comply with the notice, the Official Liquidator may apply to the Court for appropriate orders. The notice shall be in Form No. 99. CALLS IN A WINDING-UP BY THE COURT

235. Calls By The Liquidator :-

Subject to the proviso to sub-section (2) of section 643, the powers and duties conferred upon the Court by section 470 in relation to making calls, may be exercised by the Official Liquidator as hereinafter provided.

236. Official Liquidator To Realise Uncalled Capital :-

Notwithstanding any charge or encumbrance on the uncalled capital of the company, the Official Liquidator shall alone be entitled to call and realise the uncalled capital of the company and to collect the arrears if any due on calls made prior to the winding-up, but shall hold all moneys so realised subject to the rights, if any, of the holder of any such charge or encumbrance.

237. Application For Leave To Make Call :-

(1) The Official Liquidator shall not make any call without obtaining the leave of the Court for the purpose.

(2) At any time after the settlement of the list of contributories, the Official Liquidator may apply by summons to the Court for leave to make a call on the contributories. The summons shall state the proposed amount of such call and shall be in Form No. 100. It shall be supported by the affidavit of the Official Liquidator which shall be in Form No. 101.

238. Notice Of Application :-

Notice of an application for leave to make a call shall be served on every contributory proposed to be included in such call, by post under certificate of posting so as to reach such contributory, in the Ordinary course of post not less than 7 clear days before the date appointed for the hearing thereof, or if the Court so directs, notice of the application may be given by advertisement in Form No.102, in such papers as the Court shall direct not less than 7 clear days before the date appointed for the hearing, without a separate notice to each contributory. The affidavit of service relating to the despatch of notice to each contributory, or to the advertisement, as the case may be, shall be filed three days before the date fixed for the hearing.

239. Order Granting Leave To Make A Call And Document Making The Call :-

The order granting leave to make a call shall be in Form No. 103, and shall contain directions as to the time within which such calls shall be paid. When an order has been made granting leave to make a call the Official Liquidator shall file in Court document making the call in Form No. 104 with such variations as circumstances may require.

240. Service Of Notice Of Call :-

Soon after filing the document making the call under the last preceding Rule, the Official Liquidator shall serve by registered post a copy of the order granting leave to make the call upon each of the contributories included in such call together with a notice in Form No. 105 specifying the amount or balance due from such contributory in respect of such call. The order granting leave to make a call need not be advertised unless the Court otherwise orders for any special reason.

241. Order For Payment Of Call :-

The Official liquidator may apply to the Court for an order against

any contributory or contributories for payment of moneys due on the calls made by him. The application shall be made by summons in Form No. 106 and shall be supported by an affidavit in Form No. 107. Notice of the application together with a copy of the affidavit shall be served on the contributory by registered post for acknowledgment not less than 14 days before the date fixed for the hearing of the summons. The order for payment shall be in Form No. 108.

242. Other Moneys Due By Contributories :-

When any money is due to the company from a contributory or from the estate of the person whom he represents, other than moneys due on calls made subsequent to the winding-up but including moneys due on calls made prior to the winding-up the Official Liquidator may make an application to the Court supported by an affidavit for an order against such contributory for the payment of such moneys. Notice of the application shall be given to such contributory by registered post not less than 14 days prior to the date fixed for the hearing of the application. EXAMINATION UNDER SECTIONS 477 AND 478

243. Application For Examination Under Section 477 :-

(1) An application for the examination of a person under section 477 may be made ex-parte, provided that where the application is made by any person other than the Official Liquidator, notice of the application shall be given to the Official Liquidator.

(2) The summons shall be in Form No. 109 and, where the application is by the Official Liquidator, it shall be accompanied by a statement signed by him setting forth the facts on which the application is based. Where the application is made by a person other than the Official Liquidator, the summons shall be supported by an affidavit of the applicant setting forth the matters in respect of which the examinations sought and the grounds, relied on in support of the summons.

244. Directions At Hearing Of Summons :-

Upon the hearing of the summons the Judge may, if satisfied that there are grounds for making the order, make an order directing the issue of a summons against the person named in the order for his examination and/or for the production of documents. Unless the Judge otherwise directs the examination of such person shall be held in Chambers. The order shall be in Form No. 110.

245. Examination On Commission Or By Interrogatories :-

The Court may, if it thinks fit, instead of issuing a summons to any person for his appearance before the Court for examination, issue a commission to the District Judge within whose jurisdiction such person resides for the examination of such person, or make an order for his examination by interrogatories, as the Court may think fit.

246. Service Of The Summons :-

The summons issued in pursuance of the order shall be in Form No. 111 and shall be served on the person to be examined not less than 7 days before the date fixed for the examination. When the summons is served in person there shall be paid or tendered to the person summoned along with the summons a reasonable sum for his expenses to be fixed by the Judge or Registrar with due regard to the scale of fees in force in the Court. When the summons is served by registered post, such sum shall be sent to such person by postal money order.

247. Conduct Of The Examination :-

(1) The Official Liquidator shall have the conduct of an examination under section 477, provided that the Court may, if for any reasons it thinks fit to do so, entrust the conduct of the examination to any contributory or creditors. Where the conduct of the examination is entrusted to any person other than the Official Liquidator, the Official Liquidator shall nevertheless be entitled to be present at the examination in person or by advocate, and may take notes of the examination for his own use and put such questions to the person examined as the Court may allow.

(2) Save as aforesaid, no person shall be entitled to take part in an examination under section 477 except the Official Liquidator and his advocate, but any person examined shall be entitled to have the assistance of his advocate, who may re-examine the witness : Provided that the Court may permit, if it thinks fit, any Creditor or contributory to attend the examination subject to such conditions as it may impose.

(3) Notes of the examination may be permitted to be taken by the witness or any person on his behalf on his giving an undertaking to the Court that such notes shall be used only for the purpose of the re-examination of the witness. On the conclusion of the examination, the notes shall, unless otherwise directed, be handed over to the Court for destruction.

248. Notes Of The Deposition :-

(1) The notes of the deposition of a person examined under section 477 shall be signed by such person and shall be lodged in the office of the Registrar. But the notes shall not be open to the inspection of any creditor, contributory or other person, except the Official Liquidator, nor shall a copy thereof or extract therefrom be supplied to any person other than the Official Liquidator, save upon orders of Court.

(2) The Court may from time to time give such general or special directions as it shall think expedient as to the custody and inspection of such notes and the furnishing of copies thereof or extracts therefrom.

249. Order For Public Examination Under Section 478 :-

(1) Where an order is made for the examination of any person or persons under section 478, the examination shall be held before the Judge : provided that in the case of a High Court, the Judge may direct that the whole or any part of the examination of any such person or persons be held before any of the officers mentioned in sub-section (10) of the said section as may be mentioned in the order. Where the date of the examination has not been fixed by the order, the Official Liquidator shall take an appointment from the Judge, or officer before whom the examination is to be held as to the date of the examination. The order directing a public examination shall be in Form No. 112.

(2) The Judge may, if he thinks fit, either in the order for examination or by any subsequent order, give directions as to the specific matters on which such person is to be examined.

250. Notice Of Public Examination :-

Not less than 7 clear days before the date fixed for the examination, the Official Liquidator shall give notice thereof to the creditors and contributories of the company of advertisement in Form No. 113 in such newspapers as the Judge shall direct, and shall within the same period, serve, either personally or by registered post, on the person or persons to be examined, a notice in Form No. 114 of the date and hour fixed for the examination and the officer before whom it is to be held, together with a copy of the order directing the examination. Where a public examination is adjourned, it shall not be necessary to advertise the adjournment or serve notice thereof unless otherwise ordered.

251. Adjournment Of Public Examination To Court :-

Where on an examination held before an officer appointed by the Judge under Rule 249 of these rules such officer is of the opinion that the examination is being unduly or unnecessarily protracted or, for any other sufficient cause, he is of the opinion that the examination should be held before the Judge, such officer may adjourn the examination of any person, or any part of the examination to be held before the Judge and submit his report to the Judge. The judge may thereupon hold the examination himself or pass such orders as he may think fit.

252. Procedure For Contumacy :-

If a person examined before an officer appointed by the Judge under Rule 249 of these rules refuses to answer to the satisfaction of such officer any question which he may put or allow to be put such officer shall report such refusal to the Judge and upon such report being made the person in default shall be in the same position and be dealt within the same manner as if he had made default in answering before the Judge. The report shall be in writing and shall set forth the question or questions put and the answer or answers given (if any) by the person examined, and the officer shall notify the person examined of the date when he should attend before the Judge. The report shall be in Form No. 115. Upon receiving the report, the Judge may take such action thereon as he shall think fit.

253. Notes Of Examination :-

The notes of every public examination shall, after being signed as required by sub-section (8) of section 478, form part of the records of winding-up. The Official Liquidator, the person examined and any creditor or contributory of the company, shall be entitled to obtain a copy thereof from the Court on payment of the prescribed charges.

254. Shorthand Notes Of Examination Under Sections 477 And 478 :-

In respect of any examination under section 477 or 478, the Court may order that the evidence be taken down in shorthand. Where such order is made, the Judge or the officer before whom the evidence is taken shall nominate a person to take down the evidence and the costs, if any, occasioned thereby shall be paid out of the assets of the company. The shorthand note of the examination shall be transcribed and the transcript shall be read

over to or by the person examined, and signed by him.

255. Application Under Section 478(7)(A) :-

An application under sub-section (7)(a) of section 478 by any person ordered to be publicly examined to be exculpated from any charges made or suggested against him, shall be made upon notice to the Official Liquidator and to such other persons as the Court may direct.

256. Default In Attending Examination Under Section 477 Or 478 :-

(1) If any person who has been directed by the Court to attend for examination under section 477 or section 478 fails to attend at the time and place appointed for holding or proceeding with the same and no good cause is shown by him for such failure, or if before the day appointed for such examination the Official Liquidator satisfies the Court that such person has absconded or that there is reason to believe, that he is about to abscond with the view of avoiding the examination, the Court may, if satisfied that notice of the date and hour fixed for the examination was duly served on such person, issue without any further notice a warrant in Form No. 116 for the arrest of the person required to attend, or make such other order as the Court thinks just.

(2) Every warrant of arrest of any person issued under these rules shall remain in force until it is cancelled by the Court which issued it or by the Court to which appeals ordinarily lie from the decisions of such Court, or until it is executed.

257. Prison To Which Person Arrested Or Warrant Is To Be Taken :-

Where the Court issues a warrant for the arrest of a person under these Rules, the prison (to be named in the warrant) to which the person shall be committed shall, unless the Court otherwise orders, be the prison to which commitments are made by the Court in the exercise of its ordinary civil jurisdiction. A warrant committing a person to prison shall be in Form No. 117 and an order releasing him on bail in Form No. 118.

258. Execution Of Warrant Of Arrest Outside Ordinary Jurisdiction Of Court :-

(1) Where a warrant has been issued by the Court under these Rules for the arrest of any person who is or is believed to be

outside the ordinary jurisdiction of the Court, the Court issuing the warrant may send the warrant of Arrest for execution to the District Court or, to the Court of Small Causes at Bombay, Calcutta or Madras (if the warrant has to be executed in any of these places) within the ordinary jurisdiction of which such person shall then be or be believed to be, with a requisition in Form No. 119 annexed thereto under the seal of the Court requesting execution of the warrant by the Court to which it is sent and the last mentioned Court shall seal the warrant with its seal and shall cause the arrest to be made by its own officers or by a Court subordinate to itself and all police officers shall aid and assist within their respective jurisdictions in the execution of such warrant.

(2) The Court making the arrest shall send the person arrested in proper custody to the Court by which the warrant of arrest was originally issued, unless he furnishes the required security to the satisfaction of the former Court for his appearance before the latter Court, in which case the Court shall release him on such security and inform the Court by which the warrant of arrest was originally issued accordingly.

259. Public Examination Under Section 519 :-

Where, in a voluntary winding-up, an order is made under section 519 for the public examination of any of the persons mentioned in the said section, the rules relating to a public examination under section 478 in a winding-up by the Court shall apply mutatis mutandis in respect of such examination. APPLICATION AGAINST DELINQUENT DIRECTORS PROMOTERS AND OFFICERS OF THE COMPANY

260. Applications Under Section 542 Or 543 :-

An application under sub-section (1) of section 542 or under sub-section (1) of section 543, shall be made by a summons returnable in the first instance in chambers. The summons shall state the nature of the declaration or order for which the application is made, and the grounds of the application, and shall be served on every person against whom an order is sought not less than 8 days before the day named in the summons for the hearing of the application. It shall not be necessary to file any affidavit or report before the return of the summons. The summons shall be in Form No. 120 or 121 with such variations as may be necessary.

261. Directions At Preliminary Hearing Of Summons :-

On the return of the summons the Court may give such directions

as it shall think fit as to whether points of claim and defence are to be delivered, as to the taking of evidence wholly or in part by affidavit or orally, as to the cross-examination, before the Judge on the hearing, either in Court or in Chambers, of any deponents to affidavits in support of or in opposition to the application, as to any report it may require the Liquidator to make, and generally as to the procedure on the summons and for the hearing thereof. Points of claim to be delivered shall be in Form No. 122 or 123 with such variations as may be necessary.

262. Liberty To Apply For Further Directions :-

Where the Court has directed that points of claim and defence shall be delivered, it shall be open to either party who wishes to apply for any further direction as to any interlocutory matter, to apply, by restoration, of the summons, before the summons has been set down for trial, for such direction, upon giving two clear days notice in writing to the other party stating the grounds of the application. A copy of the notice shall be filed with the Registrar two clear days before the day fixed for the hearing of the application. DISCLAIMER

263. Application For Disclaimer :-

(1) An application for leave to disclaim any part of the property of a company pursuant to sub-section (1) of section 535 shall be made by a summons supported by an affidavit setting out of the full facts relating to the property and the parties interested nature of their interests, and stating whether the company is solvent any notice has been served on the liquidator by any party under sub-section (4) of the said section requiring him to elect whether or not he will disclaim.

(2) Forms Nos. 124 to 130 shall be used in respect of the matters to which they relate with such variations as may be necessary.

264. Preliminary Hearing Of The Summons :-

The summons shall be posted before the Court ex-parte in the first instance for directions as to the persons on whom notice of the summons should be served, and the Court shall thereupon fix a date for the hearing of the summons and give such directions as may be necessary as to the persons on whom notice of the summons should be served.

265. Claimant To Furnish Statement Of His :-

Where a person claims to be interested in any part of the property of the company which the Liquidator wishes to disclaim, such

person shall, if so required by the Liquidator, furnish a statement of the interest claimed by him.

266. Service Of Notice :-

Notice of the date fixed for the hearing of the summons shall be in Form No. 131 and shall be served not less than 7 days before the date fixed for the hearing, together with a copy of the summons and of the affidavit filed in support thereof. The notice shall require that any affidavit-in-opposition to the summons shall be filed in Court and a copy thereof served on the Liquidator of the company not later than 2 days before the date fixed for the hearing.

267. Order Granting Leave To Disclaim :-

On the hearing of the summons, the Court may after hearing the Liquidator and such parties as may appear in response to the notices issued, and such other persons appearing and interested as the Court may think fit to hear, grant leave to the Liquidator and to disclaim on such terms and conditions if any, as to the Court may seem just. The order granting leave to disclaim shall be in Form No. 132.

268. Disclaimer To Be Filed In Court :-

Every disclaimer shall be filed in Court by the Liquidator and shall not be operative until it is so filed. Where the disclaimer is in respect of a leasehold interest, it shall be filed in Court forthwith. Notice of the filing of the disclaimer shall be given to the persons interested in the property. The disclaimer shall contain particulars of the interest disclaimed and a statement of the persons to whom notice of the disclaimer has been given. A disclaimer shall be in Form No. 133, and a notice of disclaimer in Form No. 134. Where a disclaimer has been filed in Court, the Liquidator shall file a copy thereof with the Registrar of Companies.

269. Vesting Of Disclaimed Property :-

Where the disclaimed property is a leasehold interest and an application is made under sub-section (6) of section 535 for an order vesting the property in any person and it appears that there is an underlessee or mortgagee or holder of a charge by way of demise in respect of such property, claiming under the company, the Court may direct that notice shall be given to such underlessee, mortgagee or holder of charge, that if he does not elect to accept and apply for a vesting order upon the terms required by the abovementioned sub-section and such other terms as the Court may think just, within a time to be fixed by the Court and stated in

the notice, he will be excluded from all interest in and security upon the property. The Court may adjourn the application for such notice to be given and for such under-lessee, mortgagee or holder of charge, to be added as a party to and served with a copy of the application, and to make, if he sees fit, such election and application as is mentioned in the notice. If at the expiration of the time so fixed by the court, such under-lessee, mortgagee or holder of charge, fails to make such election and application, the Court, may make an order vesting the property in the applicant or other person who, in the opinion of the Court, may be entitled thereto, and excluding such under-lessee, mortgagee or holder of charge, from all interest in or security upon the property. An order requiring parties interested in a disclaimed lease to apply for a vesting order or to be excluded from all interest in the lease shall be in Form No. 135, and an order vesting lessee and excluding persons who have not elected to apply, shall be in Form No. 136. COMPROMISE OR ABANDONMENT OF CLAIMS

270. No Claim To Be Compromised Or Abandoned Without Sanction Of Court :-

In a winding-up by or subject to the supervision of the Court, no claim by the company against any person shall be compromised or abandoned by the Liquidator without the sanction of the Court upon notice to such person as the Court may direct.

271. Application For Sanction Of Compromise :-

Every application for sanction of a compromise or arrangement with any person under clauses (ii) and (iii) of subsection (1) of section 546 shall be accompanied by a copy of the proposed compromise or arrangement and shall be supported by an affidavit of the Liquidator stating that for the reasons set out in the affidavit he is satisfied that the proposed compromise or arrangement is beneficial to the company. The Court may, if it thinks fit, direct notice of the application to be given to the Committee of Inspection, if there is one, and to such other person as it may think fit. SALES BY THE OFFICIAL LIQUIDATORS

272. Sale To Be Subject To Sanction And To Confirmation By Court :-

Unless the Court otherwise orders, no property belonging to company which is being wound-up by the Court shall be sold by the Official Liquidator without the previous sanction of the Court, and every sale shall be subject to confirmation by the Court.

273. Procedure At Sale :-

Every sale shall be held by the Official Liquidator, or, if the Judge shall so direct, by an agent or an auctioneer approved by the Court, and subject to such terms and conditions, if any, as may be approved by the Court. All sales shall be made by public auction or by inviting sealed tenders or in such manners as the Judge may direct.

274. Expenses Of Sale :-

Where property forming part of a company's assets is sold by the Official Liquidator through an auctioneer or other agent, the gross proceeds of the sale shall, unless, the Court otherwise orders, be paid over to the Liquidator by such auctioneer or agent and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent in accordance with the scales, if any, fixed by the Court.

275. Declaration Of Dividend Or Return Of Capital :-

No dividend to creditors or return of capital to contributories shall be declared by the Official Liquidator without the sanction of the Court.

276. Notice Of Declaration :-

The Official Liquidator shall give notice of the declaration of dividend not less than one month prior to the date fixed for the payment thereof. Unless otherwise directed by the Judge, such notice shall be given by advertisement in such newspapers as the Judge shall direct and by sending by prepaid letter post under certificate of posting a notice to every person whose name appears in the list of creditors as on such date. The advertisement shall be in Form No. 137 and the notice to creditor in Form No. 138.

277. Form Of Authority To Pay Dividend :-

A person to whom dividend is payable may lodge with the Official Liquidator an authority in writing to pay such dividend to another person named therein. Such authority shall be in Form No. 139.

278. Transmission Of Dividends By Post :-

Dividends and returns of capital may, at the request and risks of the person to whom they are payable, be transmitted to him by registered post or by money order, as may be appropriate.

279. Form Of Order Directing Return Of Capital :-

Every order by which the Official liquidator is authorised to make a return to contributories of the company, shall, unless the Court

otherwise directs, contain or have appended thereto a schedule or list (which the Official Liquidator shall prepare) setting out in a tabular form the full names and addresses of the persons to whom the return is to be paid, and the amount of money payable to each person, and particulars of the transfers of shares (if any) which have been made or the variations in the list of contributories which have arisen since the date of the settlement of the list of contributories and such other information as may be necessary to enable the return to be made. The schedule or list shall be in Form No. 140 with such variations as circumstances shall require and the Official Liquidator shall send a notice of return to each contributory by ordinary post under certificate of posting in Form No. 141.

280. Payment Of Dividend Or Return Of Capital Due To A Deceased Creditor Or Contributory :-

Where a claim made in respect of a dividend due to a deceased creditor or a return of capital due to a deceased contributory is Rs. 500 or less, the Official Liquidator may, upon satisfying himself as to the claimants right and title to receive the dividend or the return as the case may be, apply to the Court for sanctioning the payment of such dividend or return to the claimant without the production of a succession certificate or like authority. Where the Court sanctions the payment, the Official Liquidator shall make the payment upon obtaining a personal indemnity from the payee.

TERMINATION OF WINDING-UP

281. Official Liquidator To Apply For Dissolution :-

As soon as the affairs of the company have been fully wound-up, the Official Liquidator in a winding-up by the Court shall file his final account into Court and apply for orders as to the dissolution of the company subject to his final account being passed in accordance with these Rules. The application shall not be set down for hearing until the completion of the audit of the final account and the filing of the auditors certificate in relation thereto.

282. Dissolution Of The Company :-

Upon the hearing of the application, the Court may, after hearing the Official Liquidator and any other person to whom notice may have been ordered by the Court, upon perusing the account as audited, make such orders as it may think fit as to the dissolution of the company, the application, subject to the provisions of the Act, of the balance in the hands of the Official Liquidator or the payment thereof into the Companies Liquidation Account in the

public account of India in the Reserve Bank of India, and the disposal of the books and papers of the company and of the Liquidator.

283. Liquidator To Pay The Balance Into Public Account :-

Upon an order for dissolution being made, the Official Liquidator shall forthwith pay into the Companies Liquidation Account in the public account of India in the Reserve Bank of India any unclaimed dividends payable to creditors or undistributed assets refundable to contributories in his hands on the date of the order of dissolution, and such other balance in his hands as he has been directed by the Court to deposit into the Companies Liquidation Account in the Reserve Bank of India. Every order of dissolution shall direct that the Official Liquidator do forward a certified copy of the order to the Registrar of Companies not later than 14 days from the date of the order. Along with the copy of the order shall be filed with the Registrar of Companies, a statement signed by the Official Liquidator that the directions of the Court regarding the application of the balance as per his final account have been duly complied with.

284. Conclusion Of Winding-Up :-

The winding-up of a company shall, for purposes of section 551, be deemed to be concluded-

(a) in the case of a company wound-up by order of the Court, at the date on which the order dissolving the company has been reported by the Liquidator to the Registrar of Companies ;

(b) in the case of a company wound-up voluntarily, or under the supervision of the Court, at the date of the dissolution of the company, unless at such date any fund or assets of the company remain unclaimed or undistributed in the hands or under the control of the Liquidator, or any person who has acted as Liquidator, in which case the winding-up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account in the Reserve Bank of India.

285. Application To Declare Dissolution Void :-

An application under section 559 shall be made upon notice to the Central Government and the Registrar of Companies. Where the Court declares the dissolution to have been void, the order shall direct that the applicant do file a certified copy of the order with the Registrar of Companies not later than 21 days from the date of

the order. REGISTERS AND BOOKS OF ACCOUNT OF THE OFFICIAL LIQUIDATOR

286. Registers And Books To Be Maintained By The Official Liquidator :-

(1) The Official Liquidator shall maintain the following Registers and Books :- 1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. Register of Liquidations in Form No. 142-A. Central Cash Book in Form No. 142-B. Companys Cash Book in FormNo. 142-C. General Ledger in Form No. 142-D. Cashiers Cash Book in Form No. 142-E. Bank Ledger in Form No. 142-F. Register of Assets in Form No. 142-G. Securities and Investment Register in Form No. 142-H. Register of Book Debts and Outstandings in Form No. 142-I. Tenants Ledger in Form No. 142-J. Suits Register in Form No. 142-K. Decree Register in Form No. 142-L. Sales Register in Form No. 142-M. Register of Claims and Dividends in Form No. 142-N. Contributories Ledger in Form No. 142-O. Dividends Paid Register in Form No. 142-P. Commission Register in Form No. 142-Q. Suspense Register in Form No. 142-R. Documents Register in Form No. 142-S. Books Register in Form No.142-T. Register of unclaimed dividends and undistributed assets, deposited into the companies liquidation account in the Reserve Bank, in Form No. 142-U, and 22. A Record Book for each company in which shall be entered all minutes of proceedings and the resolutions passed at any meeting of the creditors or contributories or of the Committee of Inspection, the substance of all orders passed by the Court in the liquidation proceedings, and all such matters other than matters of account as may be necessary to furnish a correct view of the administration of the companys affairs. In maintaining the registers and books mentioned above, the Official Liquidator shall follow the instructions contained in the respective forms prescribed for the said books and registers.

(2) The Official Liquidator shall, in addition to the Registers and Books prescribed above, maintain such books as may be necessary for the proper and efficient working of his office such as Petty Cash Register, Correspondence Register, Despatch Register, Daily Register of Money Orders and Cheques received, and so on, and shall also keep the necessary files of correspondence and of proceedings in respect of each company under liquidation in his charge.

(3) Where the accounts of the company are incomplete, the Official

Liquidator shall, with all convenient speed, as soon as the order for winding-up is made, have them completed and brought up-to-date.

(4) (i) Where the Official Liquidator is authorised to carry on the business of the company he shall keep separate books of account in respect of such business and such books shall, as far as possible, be in conformity with the books already kept by the company in the course of its business. The Official Liquidator shall incorporate in the Central Cash Book and in the companys Cash Book, the total weekly amounts of the receipts and payments on such trading account.

(ii) The trading account shall from time to time not less than once in every month, be verified by affidavit, and the Official Liquidator shall thereupon submit such account to the Committee of the Inspection (if any) or such member thereof as may be appointed by the Committee for that purpose, who shall examine and certify the same.

(5) The Official Liquidator shall also keep a counterfoil Receipt Book in triplicate in Form No. 143 the leaves of which shall be machine numbered serially, from which shall be issued all receipts for payment made to the Official Liquidator. The duplicate and the triplicate shall bear the same number as the original.

(6) The Official Liquidator shall keep proper vouchers for all payments made or expenses incurred by him. The vouchers shall be serially numbered.

(7) In respect of companies the winding-up of which was commenced under the Act prior to the coming into force of these Rules and is pending on the date these rules come into force, the Official Liquidator shall, as soon as may be and not later than 3 months after the coming into force of these rules or such extended time as may be allowed by the Court, prepare and bring up-to-date the books and registers prescribed under sub-rule (1) of this rule, provided that the Court may, if it thinks fit, dispense with this requirement in any particular case. BANKING ACCOUNT OF THE OFFICIAL LIQUIDATOR

287. All Money To Be Paid In To The Reserve Bank :-

(1) The Official Liquidator shall pay into the public account of India in the Reserve Bank of India (hereinafter referred to as the Bank) to the credit of an account in his Official name, all moneys received by him as the Official Liquidator of any company, and the realisations of each day shall be paid into the Bank without

deduction not later than the next working day of the Bank, provided that the remittance of money into the Bank may be deferred until the realisations exceed Rs. 100. The money needed for meeting expenses or for making payments in cash shall be drawn from the Bank by cheques drawn upon the Bank by Official Liquidator. All payments out of the account by the Official Liquidator above Rs. 50 shall ordinarily be made by cheques drawn against the said account.

(2) The Official Liquidator shall maintain a Bank remittance challan book in counterfoil, the leaves of which shall be serially numbered in which the acknowledgment of the Bank shall be obtained for all moneys (whether in cash or cheque) deposited into the Bank to the credit of the account mentioned in clause (1) above. The Form of the challan book shall be settled by the Official Liquidator in consultation with the bank.

288. Bills, Cheques And Securities To Be Deposited Into Bank :-

All bills, cheques, hundies notes and other securities of a like nature payable to the company or to the Official Liquidator thereof shall, as soon as they come into the hands of the Official Liquidator, be deposited by him with the Bank for the purpose of being presented for acceptance and payment or for payment only, as the case may be, and the proceeds when realised shall be credited by the Bank to the account of the Official Liquidator.

289. Payments Into Bank Under Section 471 :-

Where the Court makes an order directing any person to pay any money due to the company into the public account of India, in the Reserve Bank of India instead of the Official Liquidator, the person so directed shall, at the time of making the payment, produce to the Bank a certified copy of the order or a payment in challan endorsed by the Official Liquidator under his signature. The money so paid shall be credited to the Official Liquidators account with the Reserve Bank of India. The person making the payment shall give notice thereof to the Official Liquidator and produce before him the Bank receipt relating thereto.

290. Official Liquidators Dividend Account :-

The Official Liquidator shall also open a separate dividend account for each company under liquidation either in the State Bank of India or its subsidiaries, or, with the sanction of the Court, in any other Scheduled Bank, as may be convenient, under the name the

Dividend Account of..... (name of the company) in liquidation by the Official Liquidator, into which account he shall, upon a declaration of dividend being made in the winding-up of any company, deposit by transfer from his account, with the Reserve Bank of India the total amount of the dividend payable upon such declaration. There shall be a separate account in respect of each declaration of dividend. All payments of dividend shall be made from the said Official Liquidators dividend account and any unpaid balance in the account shall be transferred back to the Official Liquidators account in the Reserve Bank of India before being paid into the companies liquidation account as unclaimed dividends. All payments of dividends above Rs. 50 shall ordinarily be made by cheques drawn against the said account.

291. Fees To Be Credited To Central Government :-

In every winding-up where the Official Liquidator becomes or acts as Liquidator, there shall be paid into the public account of India in the Reserve Bank of India to the credit of the Central Government, from out of the assets of the company in liquidation (or by the petitioner as provided in clause (1) below), the fees determined in accordance with the following provisions :-

(1) Where the Official Liquidator acts as provisional Liquidator only. Such fees as the Court may consider reasonable, to be paid out of the assets of the company or by the petitioner as the Court may direct, in respect of the services of the Official Liquidator as Provisional Liquidator.

(2) Where a winding-up order is made and the Official Liquidator acts as liquidator of a company.

(i) Upon the total assets, including produce of calls on contributories, interest on investments and rents from properties, realised or brought to credit by the Official Liquidator, after deducting sums on which fees are chargeable under clauses (3) and (4) below and the amount spent out of the money received in carrying on the business of the company, upon each years collections. On the first Rs. 10,000 or fraction thereof ... 3 per cent. On the next Rs. 40,000 or fraction thereof ... 2 per cent. On the next Rs. 50,000 or fraction thereof ... 1 per cent. Above Rs. 1,00,000 ... 3/4 per cent.

(ii) On the total amount distributed in dividend or paid to contributories, preferential creditors, and debenture-holders by the Official Liquidator, half the above percentages.

(3) Where the Official Liquidator collects, calls or realises property

for debenture-holders. The same scale of fees as under clause (2) to be paid out of the proceeds of such calls or property.

(4) Where the Official Liquidator realises property for secured creditors other than debenture-holders. On the amount realised for each secured creditor.- On the first Rs. 10,000 or fraction thereof 4 per cent. On the next Rs. 40,000 or fraction thereof 2 1/2 per cent. On the next Rs. 50,000 or fraction thereof 2 per cent. Above Rs. 1,00,000 1 1/2 per cent.

(5) When the Official Liquidator acts as trustee, under a scheme of arrangement, such fees not exceeding the scale of fees under clause (2) above, as the Court shall allow.

(6) When the Official Liquidator performs any special duties not provided for above such fees as the Court may fix on the application of the Official Liquidator, in addition to any other fees payable.

(7) Where the Official Liquidator acts as liquidator in a creditors voluntary winding-up, such fees as the Court may fix, not exceeding the scale under clause (2) above.

(8) Where under section 527, the Court appoints any persons who are already liquidators in a winding-up subject to the supervision of the Court to be additional liquidators in a winding-up of the company by the Court, subject to the control of the Official Liquidator, such fees as may be fixed by the Court after taking into consideration the remuneration payable to such additional liquidators.

(9) Where the Court has sanctioned the reconstruction of the company under liquidation or a scheme of arrangement of its affairs, or where for any reason the Court is of the opinion that the fees prescribed in paragraphs (2) and (3) above would be excessive, such reduction may be made in the said fees as the Court thinks fit.

292. Where The Company Has No Available Assets :-

Where a company against which a winding-up order has been made has no available assets, the Official Liquidator may, with the leave of the Court, incur any necessary expenses in connection with the winding-up out of any permanent advance or other fund provided by the Central Government, and the expenses so incurred shall be recouped out of the assets of the company in priority to the debts of the company : Provided that where any money has been advanced to the Official Liquidator by the petitioning or other creditor or contributory for meeting any preliminary expenses in

connection with the winding-up, the Official Liquidator may incur any necessary expenses out of such amount, and the money so advanced shall be paid out of the assets of the company in priority to the debts of the company. INVESTMENT OF SURPLUS FUNDS

293. Investment Of Moneys :-

All such money for the time being standing to the credit of the Official Liquidator at the Bank as is not immediately required for the purposes of winding-up, shall be invested in Government securities or in interest bearing deposits in the State Bank of India, or, with the previous sanction of the Court, in interest bearing deposits in any other Scheduled Bank, in the name of the Official Liquidator as Official Liquidator of the company to which the funds belong.

294. Official Liquidator To Examine The Accounts For Purposes Of Investment :-

The Official Liquidator shall, at the end of every three months, examine the account of each liquidation in his charge to ascertain what moneys are available for investment, and shall make an entry at the end of every three months in the Record Book relating to the company of his having examined the account for the purpose and of the decision taken by him regarding the investment, and in case he decides not to invest any surplus funds, the reasons for such decision.

295. Investments To Be Made By The Bank :-

All investments shall be made by the Bank upon the written request of the Official Liquidator. The securities shall be retained in the Bank in the name and on behalf of the Official Liquidator, and shall not be sold except by the Bank and under the written instructions of the Official Liquidator. When the securities are sold the proceeds shall be credited by the Bank to the account of the Official Liquidator.

296. Dividend And Interest To Be Credited :-

All dividends and interest accruing from any securities or investments shall from time to time be received by the Bank and placed to the credit of the account of the Official Liquidator and intimation thereof shall be given to the Official Liquidator, who shall thereupon credit such dividend or interest in his accounts to the company to which the security or the investment relating thereto belongs.

297. Refunds Of Income-Tax :-

The Official liquidator shall claim such refunds of income-tax as may be due in respect of any dividends or interest received on the securities or investments and credit the same when realised to the appropriate account. FILING AND AUDIT OF THE OFFICIAL LIQUIDATORS ACCOUNT

298. Half-Yearly Accounts To Be Filed :-

Unless otherwise ordered by the Court, the Official Liquidator shall file his accounts into Court twice a year. Such accounts shall be made up to the 31st of March and 30th of September every year, the account for the period ending 31st March being filed not later than the 30th of June following, and account for the period ending 30th September, not later than the 31st of December following : Provided that the final account of the Official Liquidator shall be filed as soon as the affairs of the company have been fully wound-up, irrespective of the period prescribed above.

299. Form Of Account :-

The account shall be a statement of receipts and payments in Form No. 144 and shall be prepared in accordance with the instructions contained therein. Three copies thereof shall be filed, and the account shall be verified by an affidavit of the Official Liquidator in Form No. 145. The final account shall be in Form No. 146.

300. Nil Account :-

Where the Official Liquidator has not during the period of account received or paid any sum of money on account of the assets of the company, he shall file an affidavit of no receipts or payments on the date on which he shall have to file his accounts for the period.

301. Registrar To Send Copy Of Account To The Auditor :-

As soon as the accounts are filed, the Registrar shall forward to the auditor one copy thereof for purposes of audit with a requisition in Form No. 147 requesting that the accounts may be audited and a certificate of audit issued to the Court not later than 2 months from the date of receipt of the copy of the account.

302. Audit Of The Official Liquidators Accounts :-

The accounts shall be audited by one or more Chartered Accountants appointed by the Court, or, if the Court so directs, by the Examiner of Local Fund Accounts of the State concerned. The audit shall be a complete check of the accounts of the Official Liquidator and of each of the companies in liquidation in his charge.

The Official Liquidator shall produce before the auditor all his books and vouchers for the purposes of the audit, and shall give the auditor all such explanations as may be required of him in respect of the accounts.

303. Audit Certificate To Be Filed :-

After the audit of each of the accounts of the Official Liquidator filed in Court, the auditor shall forward to the Registrar a certificate of audit relating to the account with his observations and comments, if any, on the account, together with a copy thereof and shall forward another copy to the Official Liquidator. The Registrar shall file the original certificate with the records and forward the copy to the Registrar of Companies together with a copy of the account to which it relates.

304. Audit Fees :-

(1) Audit fees according to the following scale on the gross amount brought to credit, including the produce of calls on contributories interest on investments and rents from properties, but after deducting (a) the amount spent out of the money received in carrying on the business of the company and

(b) the amounts paid by the Official Liquidator to secured creditors (other than debenture-holders), shall be paid to the auditor and debited to the account of the liquidation to which the audit relates

:- On the amount brought to credit including the produce of calls on contributories, interest on investments and rents from properties, but after deducting

(a) the amount spent out of the money received in carrying on the business of the company, and

(b) amounts paid by the Official Liquidator to secured creditors (other than debenture-holders) ... 1/2 per cent. On disbursements, other than payments to secured creditors not being debenture holders. ... 1/2 per cent.

(2) Where the audit is by the Examiner of Local Funds Accounts, audit fees calculated on the above scale shall be paid into the public account of India in the Reserve Bank of India to the credit of State Government concerned.

305. Inspection Of The Account And Certificate Of Audit :-

Any creditor or contributory shall be entitled to inspect the accounts and the auditors certificate in the office of the Court on payment of a fee of Re. 1, and to obtain a copy thereof on payment of the

prescribed charges.

306. Account And Auditors Report To Be Placed Before Judge :-

Upon the audit of the account, the Registrar shall place the statement of account and the auditors certificate before the Judge for his consideration and orders.

307. Legal Assistance For The Official Liquidator :-

The Official Liquidator shall, as far as possible, personally appear and conduct all proceedings before the Court in the liquidation, provided that the Official Liquidator may apply to the Court for sanction to employ an advocate or advocates to assist him, and the Court may on such application, sanction such employment or pass such further or other orders as it may think fit.

308. Employment Of Additional Or Special Staff :-

Where the Official Liquidator is of opinion that the employment of any special or additional staff is necessary in any liquidation, he shall apply to the Court for sanction, and the Court may sanction such staff as it thinks fit on such salaries and allowances as to the Court may seem appropriate.

309. Apportionment Of Expenses Of Common Staff :-

Where any staff is employed to attend to the work of more than one liquidation, or any establishment or other charges are incurred for more than one liquidation, the expenses incurred on such staff and the common establishment and other charges, shall be apportioned by the Official Liquidator between the several liquidations concerned in such proportions as he may think fit, subject to the directions of the Judge, if any.

310. Applications Under Section 463(2) And Section 545(3)

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An application under section 463(2) to examine on oath the liquidator or any other person concerning the winding-up, and an application under section 545(3) for an order conferring on any person designated by the Central Government the powers of investigating the affairs of the company concerned, shall be made ex parte and shall be supported by an affidavit stating the circumstances in which the application is made.

311. Annual Statement By The Official Liquidator Under Section 551 :-

(1) The Official Liquidator shall file his first annual statement under section 551(1) within one month after the expiry of a year from the date of commencement of the winding-up and thereafter his subsequent statements at intervals of one year until the conclusion of the winding-up. The annual statements to be filed by the Official Liquidator shall be in Form No. 148.

(2) Upon the filing of the statement, the Registrar shall obtain orders of the Judge fixing a date for a consideration thereof and notify the date on the notice board of the Court and to the Official Liquidator. The Official Liquidator shall attend the consideration of the statement and shall give the Judge any explanation or information with reference to the matters contained therein as the Judge may require.

(3) Any creditor or a contributory shall be entitled to inspect the statement on payment of a fee of Re. 1 and to obtain a copy thereof on payment of the prescribed charges. VOLUNTARY WINDING-UP AND WINDING-UP SUBJECT TO SUPERVISION

312. Applicability Of Rules :-

(1) Where an application is made to the Court under the provisions of the Act in the voluntary winding-up of a company, whether or not an order shall have been made that the voluntary winding-up shall continue subject to the supervision of the Court, these Rules, so far as may be, shall be applied to the subject-matter and mode of such application.

(2) Save as aforesaid, Rules which from their nature and subject-matter, or by the headlines above the group in which they are contained or by their terms are made applicable only to proceedings in a winding-up by the Court or only to such proceedings and to proceedings in a creditors voluntary winding-up, shall not apply to proceedings in a voluntary winding-up, or, as the case may be, in a members voluntary winding-up, whether any such voluntary winding-up is or is not being continued under the supervision of the Court.

313. Declaration Of Solvency In A Members Voluntary Winding-Up :-

The declaration of solvency to be made by the directors of a company under section 488(1), shall be in Form No. 149, with such variations as the circumstances may require.

314. Statement To Be Laid Before Meeting Of Creditors

Under Section 495(1) :-

The statement of the assets and liabilities of the company to be laid before a meeting of creditors by a liquidator in a members voluntary winding-up under section 495(1) shall be in Form No. 150 with such variations, as may be necessary. LIQUIDATOR IN VOLUNTARY WINDING-UP

315. Notice Of Appointment Of Liquidator :-

The notice of his appointment which every liquidator is required to publish in the Official Gazette under section 516, shall be in Form No. 151 and the notice of the appointment to be delivered to the Registrar of Companies shall be in Form No. 152.

316. Order For Winding-Up Subject To Supervision :-

Upon an order being made for the winding-up of a company subject to the supervision of the Court, the liquidator of the Company shall within 21 days from the date of the order advertise the order in one issue of the Official Gazette of the State or Union Territory concerned, and in one issue of a newspaper in the English language or a newspaper in the regional language circulating in the State or Union Territory concerned, as the Court may direct, and also within the said period file a certified copy of the order with the Registrar of Companies.

317. Security By Liquidator Appointed By Court :-

(1) Unless otherwise ordered, every liquidator appointed by the Court in a voluntary winding-up, other than the Official Liquidator shall, before entering upon his duties as liquidator, furnish security in such sum and in such manner as the Court may direct, for the due discharge of his duties as liquidator. The cost of furnishing the required security, including any premiums which he may pay to a Guarantee Society, shall be borne by the liquidator personally, and shall not be charged against the assets of the company as an expense incurred in the winding-up.

(2) If it shall appear at any time to the Court that the security furnished by the liquidator is inadequate, the Court may require the liquidator to furnish additional security. Where the security furnished is excessive, the liquidator may apply to the Court for reducing the amount of security, and the Court may make such order thereon as it thinks fit.

318. Limit Of Remuneration Of Liquidator :-

A liquidator shall not, under any circumstances whatever, make any

arrangement for, or accept from any advocate, auctioneer or any other person connected with company of which he is the liquidator, or employed in or in connection with the winding-up of the company, any gift, remuneration, or pecuniary or other benefit whatever beyond the remuneration to which under the Act and the Rules he is entitled as liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to any such person.

319. Restriction On Purchase Of Goods By Liquidator :-

Where the liquidator carries on the business of the company, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connection with him is of such a nature as would result in his obtaining directly or indirectly any benefit out of the transaction. Where the liquidator applies for sanction, he shall disclose in his application the nature of his interest in the transaction, and the cost of obtaining sanction of Court shall be borne by the liquidator personally.

320. Office Of Liquidator Vacated By His Insolvency :-

A liquidator against whom an order of adjudication is made shall thereby vacate his office, and for the purposes of the application of the Act and the Rules, he shall be deemed to have been removed.

321. Resignation Of Liquidator :-

(1) In a members voluntary winding-up, a liquidator who desires to resign his office, shall summon a meeting of the company and submit his resignation to it.

(2) In a creditors voluntary winding-up, a liquidator who desires to resign his office shall summon separate meetings of the creditors and contributories of the company to decide whether or not his resignation shall be accepted. If the creditors and contributories by ordinary resolution both agree to accept the resignation of the liquidator, the resignation shall take effect. In any other case, the liquidator shall report to the Court the result of the meetings and apply for appropriate orders of the Court and the Court may, upon such application, determine whether or not the resignation of the liquidator shall be accepted, and may give such directions and make such orders as it considers necessary.

(3) The liquidator shall, along with his resignation, submit an account of his acts and dealings as liquidator and a statement as to

the position of the liquidation, in a form in all respects similar to the statement prescribed under these Rules under section 551(1), commencing from the date when the last previous statement, if any, under the said section terminated, or from the date of his appointment as liquidator, whichever is later, and brought down to the date of his resignation.

(4) The expenses of summoning a meeting of the company under sub-rule (1) of this rule, or of the meetings of creditors and contributories under sub-rule (2) and of the application to be made to the Court under sub-rule (2), shall be part of the expenses of the liquidation.

322. Duty Of Liquidator Upon Resignation :-

Upon a liquidator resigning or being released or removed from his office, he shall deliver over to the new liquidator all books kept by him, and all other books, documents, papers and accounts in his possession relating to the company or to the office of the liquidator.

323. Books To Be Kept By The Liquidator :-

(1) The liquidator shall keep proper books of account showing all receipts and payments made by him in the course of the liquidation.

(2) In a creditors voluntary winding-up, he shall keep such books as the Committee of Inspection, or if there is no such Committee, as the creditors, direct, and submit all the books and accounts and documents and papers in his possession relating to his office as liquidator or to the company, to the Committee of Inspection, or if there is none, to the creditors whenever required by the Committee or creditors as the case may be.

(3) In addition to the books of account, the liquidator shall keep a record book in which shall be entered all minutes of proceedings and the resolutions passed at any meeting of the creditors or contributories or of the Committee of Inspection, particulars of all his transactions and negotiations in relation to the winding-up and all such matters other than matters of account as may be necessary to furnish a correct view of the administration of the company's affairs. He shall also keep a book showing the dates at which all notices to creditors and shareholders were sent out and posted. The person who despatched the notices shall initial the entries in the book relating thereto.

(4) The accounts of the liquidator shall be open to the inspection of every creditor or contributory during office hours upon payment of

a fee of Re. 1 for every hour of inspection or part thereof.

324. Banking Account Of The Liquidator :-

The liquidator shall open a special account of the liquidation called the "Liquidation Account of..... Company Ltd." Company Private Ltd." Company." in a Scheduled Bank, or with the previous sanction of the Court, in any other Bank, as provided in section 553(1) into which he shall pay all money received by him as liquidator, and the realisations of each day shall be paid into the said account without deduction not later than the next working day of the Bank, provided that the remittance of moneys into the Bank may be deferred until the realisations exceed Rs. 100. The money needed for meeting the expenses of liquidation or for making any payments by the liquidator in cash shall be drawn from the Bank by cheques drawn upon the Bank by the liquidator. All payments by the liquidator above Rs. 50 shall ordinarily be made by cheque. Unless the contrary appears, all references in these Rules to the Bank in a voluntary winding-up shall mean references to the Bank in which an account has been opened as aforesaid.

325. Bills, Cheques And Securities To Be Deposited In Bank :-

All bills, cheques, hundis, notes and other securities of a like nature payable to the company or to the liquidator thereof shall, as soon as they come into the hands of the liquidator be deposited by him with the Bank for the purpose of being presented for acceptance and payment or for payment only, as the case may be, and the proceeds when realised shall be credited by the Bank to the account of the liquidator.

326. Investment Of Surplus Funds :-

(1) All such moneys for the time being standing to the credit of the liquidation account as is not immediately required for the purposes of the winding-up, shall be invested by the liquidator in Government or trust securities or in interest bearing deposits in a Scheduled Bank.

(2) Rules 294 to 297 of these Rules relating to investments shall apply mutatis mutandis to investments made by the liquidator in every voluntary windingup.

327. Liquidators Statements Under Section 551 :-

In a voluntary winding-up or a winding-up under the supervision of the Court, the statements required to be filed under section 551

with respect to the proceedings in and position of the liquidation of a company the winding-up of which is not concluded within a year after its commencement, shall be filed with the Registrar of Companies twice in every year as follows :-

(1) The first statement, commencing from the date when a liquidator was first appointed and brought down to the end of twelve months from the commencement of the winding-up shall be filed within one month from the expiration of such twelve months, and subsequent statements shall be filed at intervals of half a year, each statement being brought down to the end of the half year for which it is filed. Where the winding-up is concluded before the expiration of a half-yearly interval, the final statement of account brought down to the close of the winding-up shall be filed forthwith.

(2) Where the time for filing the statement has expired the Court may on application extend the time, and unless the Court otherwise orders, the costs of such application shall be borne by the liquidator personally.

(3) The statements shall be in Form No. 153 (with such variations as may be necessary in the case of the final account) and shall be prepared in accordance with the instructions contained in the Form, and verified by an affidavit in Form No. 154.

(4) Where the liquidator has not, during any period for which the statement has to be filed, received or paid any money on account of the company, he shall, at the period when he is required to file his statement, file with the Registrar of Companies the prescribed statement in the above Form No. 153, in duplicate, containing the particulars therein required with respect to the proceedings in and the position of the liquidation, together with an affidavit of no receipt or payment.

(5) Every statement shall be filed in duplicate with the Registrar of Companies, and, in a winding-up under the supervision of the Court, a copy of the statement shall also be filed in the Court, within the time prescribed in clause (1) above.

328. Annual Statement Under Sections 496(1)(B) And 508(1)(B) :-

The statement to be laid in the case of members voluntary winding-up before a general meeting of the company under section 496(1)(b) and, in the case of a creditors, voluntary winding-up, before a general meeting of the company and a meeting of the creditors under section 508(1)(b), shall be prepared in the same

form as the Liquidators statements under section 551.

329. Notice Convening Final Meeting And The Account To Be Laid Before The Meeting :-

The notice convening the final meeting of the company in a members voluntary winding-up, or the final meetings of the company and the creditors in a creditors voluntary winding-up, shall be in Form No. 155. The Account of the winding-up to be laid by the liquidator before the said meeting or meetings shall be in Form 156. In a winding-up subject to supervision of the Court, a copy of the account shall also be filed in the Court.

330. Consideration By Court Of The Statements Under Section 551 And Final Account In A Winding-Up Subject To The Supervision Of The Court :-

In a winding-up subject to the supervision of the Court, upon the filing into Court of each of the statements under section 551(1) referred to in rule 327 or of the account referred to in the last preceding Rule, the Registrar shall obtain orders of the Judge fixing a date for the consideration thereof by the Judge, and notify the date on the notice board of the Court and to the liquidator. The liquidator shall attend the consideration of the statement or of the final account, as the case may be, and shall give the Judge such further explanation or information with reference to the matters contained therein as the Judge may require.

331. Returns To Registrar Of Companies :-

The returns to be made to the Registrar of Companies under sub-sections (3) and (4) sections 497 and 509 shall be in Forms Nos. 157 and 158 respectively.

332. Inspection By Creditor Or Contributory Of Statements Filed By Liquidator :-

Any creditor or contributory of a company which is being wound-up shall be entitled to inspect any of the statements filed under sections 496, 497, 508, 509 and 551 on payment of a fee of Re. 1 each, and to obtain a copy thereof or extract therefrom on payment of the prescribed charges.

333. Audit Of The Liquidators Account :-

The company in general meeting in a members voluntary winding-up, and the creditors in a creditors voluntary winding-up, may, if and when they think fit, appoint an auditor to audit the accounts of the liquidator, and shall fix the fees to be paid to such auditor.

334. Applications Under Section 518 :-

(1) An application under section 518 shall be made by a Judge summons, and notice of the application shall be given to the liquidator where he is not the applicant, to the respondents, if any, named in the application, and to such other persons and in such manner as the Court may direct.

(2) Where an order is made under section 518 staying the proceeding in the winding-up, the order shall direct that the applicant at whose instance the order for stay was made shall, within ten days of the making of the order, file a certified copy thereof with the Registrar of Companies. PAYMENT OF UNCLAIMED DIVIDENDS AND UNDISTRIBUTED ASSETS INTO THE COMPANIES LIQUIDATION ACCOUNT IN A WINDING-UP

335. Statement To Accompany Payment :-

(1) The statement to be furnished, under section 555(3) to the officer appointed by the Central Government, by the Official Liquidator in a winding-up by the Court and by a Liquidator in a voluntary winding-up, when making any payment of unclaimed dividends or undistributed assets into the Companies Liquidation Account in the Reserve Bank of India under sections 555(1) and (2), shall be in Form No. 159.

(2) The Liquidator shall, whenever called upon by the Central Government to do so, certify whether a person claiming payment from the Companies Liquidation Account under section 555(7) is or is not entitled to the whole or any part of the amount claimed.

336. Unclaimed Dividends Or Undistributed Assets Under Investment :-

For purposes of payment of unclaimed dividends and undistributed assets into the Companies Liquidation Account, money invested or deposited at interest by the liquidator shall be deemed to be money in his hand, and when such money forms part of the unclaimed dividends or undistributed assets of the company, the liquidator shall realise the investment or withdraw the deposit and shall pay the proceeds into the Companies Liquidation Account.

337. Application By Person For Payment Of Money Paid Into The Companies Liquidation Account :-

An application under sub-section (7)(a) of section 555 by any person claiming to be entitled to any money paid into the

Companies Liquidation Account for payment of such money shall state whether the applicant had made an application to the Central Government for the payment, and, if so, the result of the application.

338. Cost And Expenses Payable Out Of The Assets In A Winding-Up By The Court :-

(1) The assets of a company in a winding-up by the Court remaining after payment of the fees and expenses properly incurred in preserving, realising or getting in the assets including, where the company has previously commenced to be wound-up voluntarily, such remuneration, cost and expenses as the Court may allow to the liquidator in such voluntary winding-up, shall, subject to any order of the Court and to the rights of secured creditors if any, be liable to the following payments which shall be made in the following order of priority, namely :- First.-the taxed costs of the petition including the taxed costs of any person appearing on the petition, whose costs are allowed by the Court. Next.-the costs and expenses of any person who makes, or concurs in making, the Company's statement of affairs ; Next.-the necessary disbursements of the Official Liquidator other than expenses properly incurred in preserving, realising or getting in the properties of the company ; Next.-the cost of any person properly employed by the Official Liquidators ; Next.-the fees to be credited to Government under section 451(2) ; Next.-the actual out of pocket expenses necessarily incurred by the members of the Committee of Inspection, and sanctioned by the Court.

(2) Save as otherwise ordered by the Court no payments in respect of bills of advocates, shall be allowed out of the assets of the company without proof that the same have been considered and allowed by the taxing officer of the Court. The taxing officer shall before passing the Bills or charges of an advocate, satisfy himself that the appointment of an advocate to assist the liquidator in the performance of his duties has been duly sanctioned.

(3) Nothing contained in this Rule shall apply to or affect costs which, in the course of legal proceedings by or against the company which is being wound-up by the Court, are ordered by the Court in which such proceedings are pending, to be paid by the company or the liquidator, or the rights of the person to whom such costs are payable.

339. Taxation Of Costs In Bombay, Calcutta And Madras :-

Notwithstanding anything contained in these rules, costs of all proceedings under the Act or these Rules in the High Courts of Bombay, Calcutta and Madras shall be taxed in accordance with the rules and the scale of fees in force in the said High Courts respectively and in accordance with the practice and procedure in the said respective Courts.

340. Registrar To Be Taxing Officer :-

The Registrar shall be the Taxing Officer of the Court for the purpose of these rules

341. Costs In The Discretion Of The Court :-

(1) Costs shall be in the discretion of the Court and no costs of, or incidental to, a proceeding shall be allowed between party and party, unless the same are expressly awarded by an order of the Court.

(2) The Court may, in any proceeding where costs are awarded to a party, direct payment of a sum in gross in lieu of taxed costs.

342. Costs To Be Taxed In Accordance With The Practice And Procedure Of The Court :-

Save as provided by these Rules, the costs shall be taxed in accordance with the practice and procedure of the Court relating to taxation in its other proceedings.

343. All Proper Charges To Be Allowed :-

The taxing officer shall allow all such costs, charges and expenses as appear to have been necessary and proper, and shall not allow any costs, charges or expenses which appear to him to have been incurred or increased unnecessarily or through negligence or mistake.

344. Contents Of Bill Of Costs :-

Every bill of costs shall be properly dated throughout, and shall show in separate columns professional charges and out-of-pocket expenses. The bill shall be signed by the advocate of the party on whose behalf it is presented, or, where the party has appeared, in person in the proceedings to which the bill relates, by the party or his duly authorised agent.

345. Vouchers To Be Filed :-

Every bill of costs shall, wherever possible, be accompanied by vouchers, and every item of disbursement and the nature thereof shall be distinctly specified, and no payment out-of-pocket shall ordinarily be allowed except on production of the necessary voucher, and, in the case of advocates fees in a taxation between party and party, without a certificate signed by the advocate that the fee has been paid : Provided that in the case of an advocate appearing for the Government or for the Official Liquidator, the fee may be allowed without the production of a certificate that the fee has been paid.

346. Time For Lodging Bill :-

(1) Within four weeks from the date of the order awarding costs to any party, or within such further time as the Court may allow, the party to whom costs have been awarded shall lodge the bill of costs and vouchers with the Taxing Officer, and shall serve a copy of the bill on the party liable to pay the costs and file proof of such service with the Taxing Officer. The Taxing Officers shall fix a date for taxation of the bill and notify the parties of the date fixed.

(2) A bill of costs presented out of time shall be returned to the party and the Taxing Officer shall not receive or tax the bill without an order of the Court.

347. Bill Of Costs By Advocate Or Other Person Employed By Official Liquidator :-

Every advocate, accountant, auctioneer or other person employed by the Official Liquidator in a winding-up by the Court, shall, on request by the Official Liquidator (to be made in sufficient time before the declaration of a dividend) deliver his bill of costs or charges to the Official Liquidator, and if he fails to do so within 4 weeks of the receipt of the request or such extended time as the Court may allow the Official Liquidator shall declare and distribute the dividend without regard to such persons claim and the claim shall be forfeited : Provided that the Court may, at any time before the declaration of the final dividend, for good cause shown, restore the claim and order the bill to be received without prejudice to the distribution of dividends declared prior to the making of the order. The request by the Official Liquidator shall be in Form No. 160 and shall be served personally or by registered post.

348. Scale Of Advocates Fees :-

Save as otherwise provided by these Rules or by an order of the

Court, the Taxing Officer shall allow on taxation fees to advocates not exceeding the scales set out in Appendix III, hereof, having regard to the nature and complexity of the case.

349. Fees In Misfeasance Proceeding :-

In a proceeding against the promoters or officers of a company under section 542 or 543, the fees to advocates shall, subject to any order of the Court and to Rule 351 hereunder, be allowed on the same scale as if the proceeding were a suit for the amount claimed in such proceeding, and the scales of fees relating to suits in the Courts concerned shall be applied to such proceedings.

350. Fees When Proceeding Is Compromised :-

Where a proceeding is compromised prior to its being set down for hearing, the fees to be allowed to advocates between party and party shall be not more than half the amounts specified in Appendix III.

351. Fees To More Than One Advocate :-

The Taxing Officer shall not allow a fee for more than one advocate for the same party unless the Court has certified for more than one advocate. Where such a certificate is given, the fee for the second advocate shall be allowed at three-fifths of the fee prescribed in Appendix III.

352. Costs Of Parties Having Common Interest :-

(1) Where two or more petitions or applications raise a common issue and are heard together and decided by a common judgment, unless the Court otherwise orders, only one set of costs shall be allowed to all the parties together in the said petitions or applications who have a common interest.

(2) Where different parties in the same proceeding have a common interest, only one set of fees shall be allowed to all of them together, though they may be represented by different advocates, unless the Court otherwise orders.

353. Courts Power To Fix A Fee :-

(1) Nothing in these Rules shall be deemed to prevent the Court from fixing a fee for any matter not provided for in these Rules, or from fixing a higher or lesser fee than the fees prescribed in Appendix III, if in any particular case the Court considers it necessary to do so in the interest of justice.

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

354. Reference To Judge In Chamber :-

Where any question arises in taxation on which the Taxing Officer considers it necessary to obtain the directions of the Court he may refer the matter to Judge in Chambers for necessary directions, and the taxation shall proceed in accordance with such directions.

355. Allowance To Witnesses :-

The allowances to be made to witnesses shall be on the same scales as are in force in the Court in respect of its other proceedings.

356. Taxation Between Advocate And Client :-

(1) Where a dispute arises between an advocate and his client as to the fees and charges payable to the advocate, either party may apply to the Judge in Chambers for an order to have the bill taxed, and on an order for taxation being made, the Taxing Officer may proceed to tax the bill. The application when made by the advocate shall be accompanied by a copy of the bill to be taxed : Provided that where the client has expressed his consent in writing to the taxation of costs between himself and his advocate in any proceeding, the advocate may present the bill of costs in such proceedings for taxation without an order of the Judge, and the Taxing Officer shall thereupon proceed to tax the bill.

(2) In every case of taxation between advocate and client, the client shall be duly summoned by the Taxing Officer to attend the taxation, and the summons shall be served not less than 14 days prior to the date fixed for taxation.

(3) Subject to any agreement in writing to the contrary, the rules regulating the taxation of costs between party and party shall be applicable, as far as may be, to taxation between advocate and client : Provided that all such charges and expenses as in the opinion of the Taxing Officer where necessary or proper or where incurred at the instance of the client, shall be allowed.

(4) No agreement between the advocate and his client to pay fees higher than those prescribed in Appendix III shall be recognised unless the same has been recorded in writing and is signed by the client and has been filed along with the appearance of the advocate in the case.

(5) Where the Taxing Officer is of opinion that any such agreement as aforesaid is unfair or unreasonable, he may refer the matter to the Judge who may thereupon make such order as he thinks just, and the taxation shall proceed in accordance with such order.

(6) This Rule shall not apply to a taxation of a bill of costs and between an advocate employed by the Official Liquidator and the Official Liquidator, which shall be taxed, subject to any order of the Court, according to the rules regulating taxation of costs between party and party.

357. Review Of Taxation :-

(1) Any party who is dissatisfied with the allowance or disallowance by the Taxing Officer of all or any of the items in the Bill of Costs, may, within 10 days of the passing of the Bill on taxation, apply to the Taxing Officer to review his decision in respect thereof.

(2) An application for review shall be made by a summons returnable before the Taxing Officer, and shall be accompanied by a statement of objections specifying the items or parts of the Bill with respect to which the review is sought and the grounds of objection. The summons together with a copy of the statement shall be served on the opposite party not less than four clear days before the date fixed for hearing the review.

(3) Upon an application to review his order, the Taxing Officer shall reconsider the taxation and may, where he thinks fit, receive further evidence in respect thereof, and shall state in a certificate the grounds of his decision on such review.

358. Appeal Against Review :-

(1) Any party dissatisfied with the decision of the Taxing Officer on review may, not later than seven days from the date of the decision, or such further time as the Judge may allow, appeal to the judge in Chambers against the decision of the Taxing Officer. The appeal shall be made by a judges summons and shall be accompanied by a memorandum setting out the grounds of appeal. The summons together with a copy of the memorandum shall be served on the opposite party not less than four clear days before the date fixed for the hearing. On such appeal, the Judge may pass such orders as may seem just.

(2) Subject to the orders of Court on such appeal, if any, the decision of the Taxing Officer shall be final.

359. Certificate Of Taxation :-

Upon the Bill of Costs being taxed and subject to the orders of the judge on appeal, if any, the Taxing Officer shall issue a certificate of taxation showing the amount as taxed.

PART 5

MISCELLANEOUS

360. Inspection Of File :-

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

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

361. Saving Of Rules Under Special Acts :-

Nothing in these rules shall affect the operation of any rules framed under the Banking Companies Act, 1949 or the Insurance Act, 1938, or other Special Acts relating to any class of companies and these Rules shall apply to such Companies subject to the Rules, if any, made under the special Acts.