

# Voluntary Winding up under Companies Act 1956

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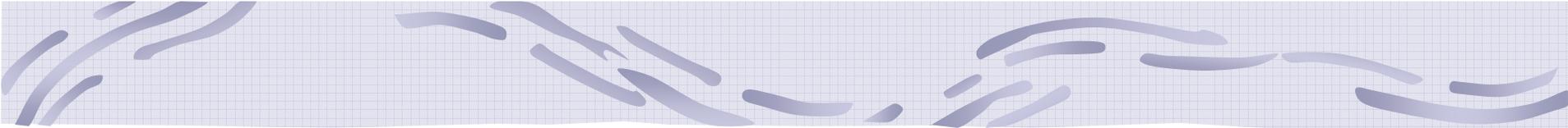
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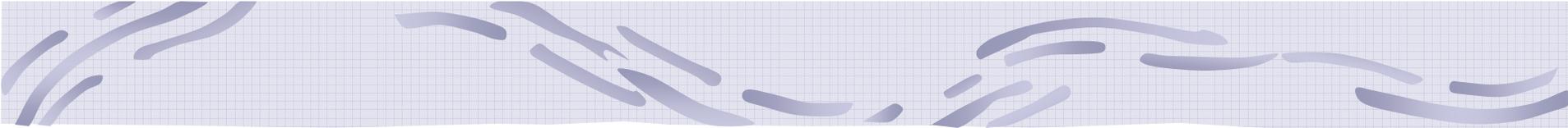


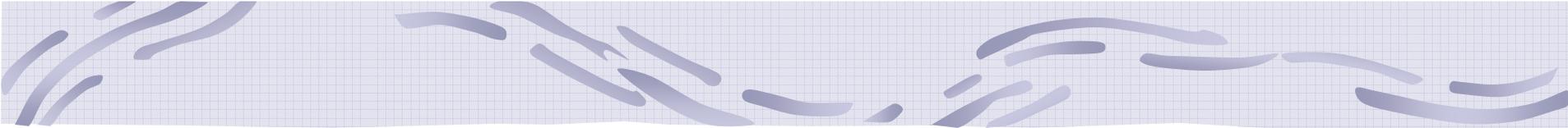
## Provisions under Companies Act 1956

- Winding up by the Court - Section 433-483
  - Voluntary winding up - Section 484-521
  - Winding up subject to the supervision of Court  
( **omitted by companies second amendment, act 2002**) - Section 522-527
  - General provision applicable to all above kind of winding up - Section 528-559
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# Winding Up By Court (Circumstances)

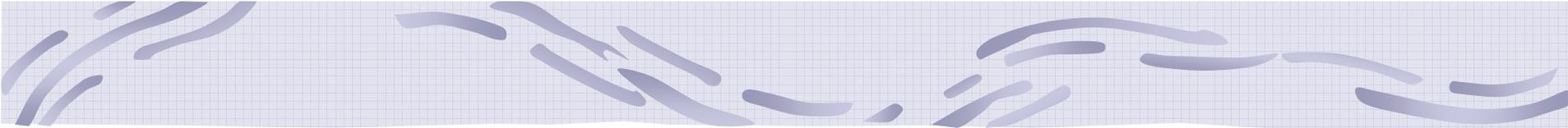
- If the company has, by special resolution, resolved that the company be wound up by the Tribunal.
- If default is made in delivering the statutory report to the Registrar or in holding the statutory meeting.
- If the company does not commence its business within a year from its incorporation or suspends its business for a whole year.
- If the number of members is reduced, in the case of a public company, below seven, and in the case of a private company, below two;
- If the company is unable to pay its debts.

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- If the Tribunal is of the opinion that it is just and equitable that the company should be wound up.
  - If the company has made a default in filing with the Registrar its balance sheet and profit and loss account or annual return for any five consecutive financial years.
  - If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
  - If the Tribunal is of the opinion that the company should be wound up under the circumstances specified in section 424G.



# Kinds of Voluntary Winding Up

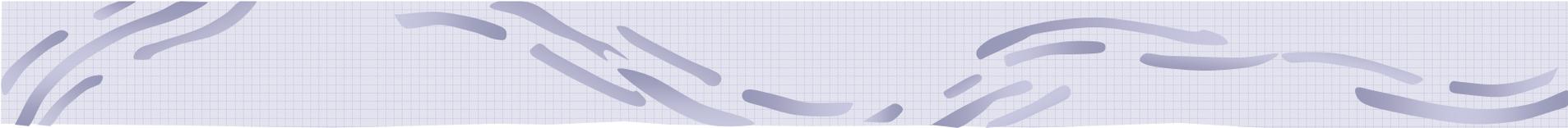
- A. Member's Voluntary Winding up  
When a declaration of solvency has been made by directors and filed with ROC.
- B. Creditor's Voluntary Winding up
  - i) When no declaration of solvency has been made and delivered by the Directors to ROC
  - ii) When liquidator appointed by the company is of the opinion that the company will not be able to pay off its debts completely within the period as mentioned in declaration of the solvency.



## Voluntary Winding Up (Section 484-521)

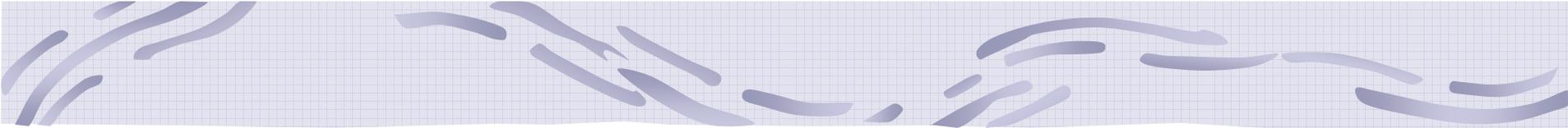
### **When company may be wound up voluntarily.**

- When period, if any fixed for the duration of company by its articles has expired or
- The event, if any, has occurred or the occurrence of which the Articles of Association provides that the company is to be dissolved and the company in General Meeting passes an ordinary resolution requiring the company to be wound up voluntarily.
- If the company passes a Special Resolution that the company be wound up voluntarily.



## Who Involves In Voluntary Winding Up

- Company
- Liquidator
- Registrar Of Companies
- Official Liquidator
- High Court



## Role of Company In Voluntary Liquidation

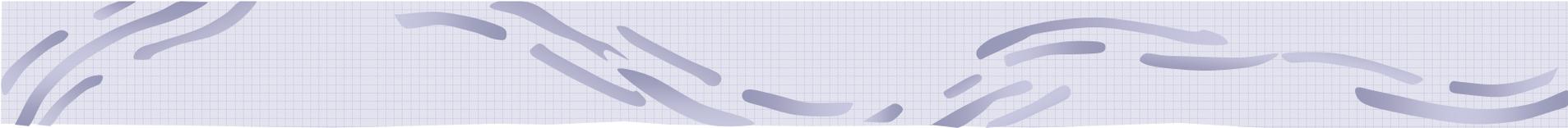
### A - Member's Voluntary Winding Up

1. To convene a Board Meeting:

(a) To make a declaration of solvency in Form 149 under Rule 313 of Company Court Rules 1959

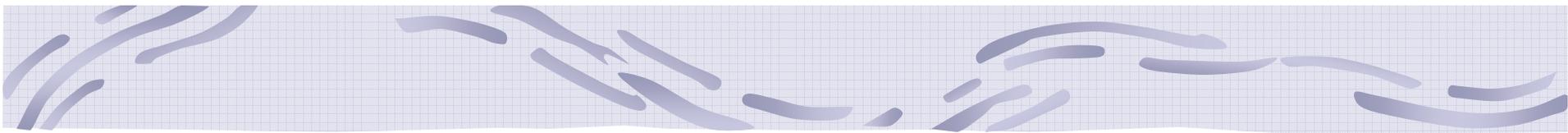
- If Directors are of the opinion that company has no debts or will pay its debts within 3 years.
- Should be signed by directors or majority of Directors of the company
- Verified by affidavit.
- 5 weeks before the date of General Meeting.

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- \* Declaration should be accompanied by :
    - Audited Balance Sheet and Profit & Loss account as on the nearest practicable date before declaration & Auditor's Report thereon.
    - (b) Resolve that company will be wound up under section 484
    - (c) Approval of draft declaration & affidavit.
    - (d) Authority to director to sign and deliver the declaration to Roc
    - (e) To approve draft Resolution to be passed in the Meeting of Shareholders.

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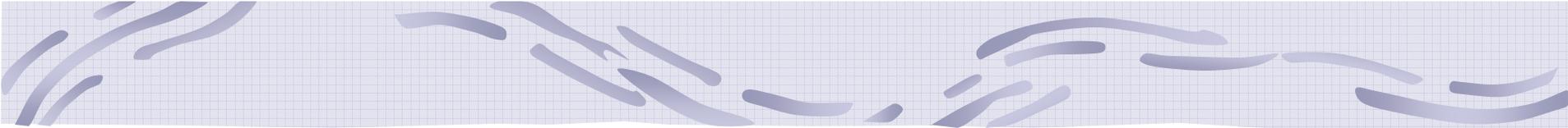
(f) To appoint liquidator (s) and fix their remuneration.

- One or more person can be appointed as liquidator.
- Body corporate cannot be appointed, however, body corporate of professionals as approved by Central Govt. can be appointed.
- CA firm can be appointed as liquidator.
- The remuneration fixed by the members in meeting cannot be increased.

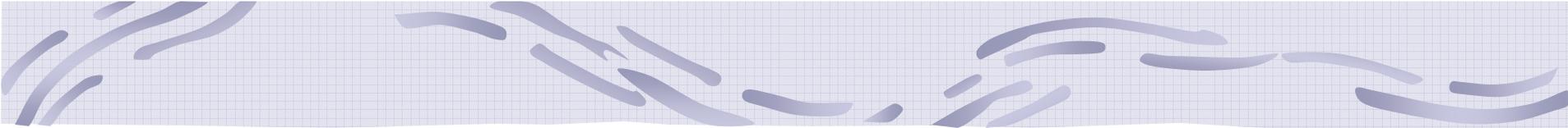
(g) To fix date, time and venue for holding General Meeting & approve the draft notice.

2. To issue notice for General Meeting

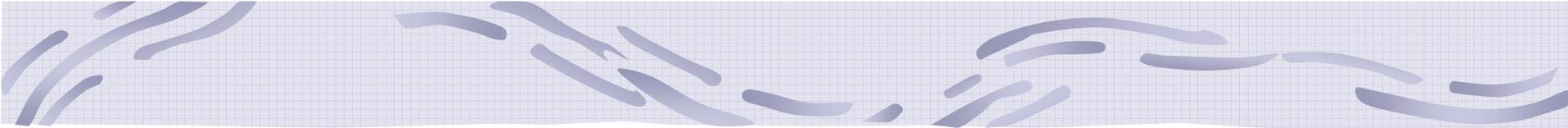
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3. To file the declaration duly verified by an affidavit before a Judicial Magistrate with concerned ROC before the date of General Meeting in e-form 62.
  4. To hold General Meeting and pass Ordinary or Special Resolution as applicable.
    - (a) For winding up
    - (b) For appointment of liquidator
  5. To forward copies of notices and proceedings of general meeting to Stock Exchange promptly (if applicable).

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6. To file notice for the appointment of the liquidator within 10 days from the date of passing of Resolution of winding up to the Registrar of Companies (e-form 62).
- The vacancy in the office of the liquidator will be filled by company in its general meeting and fresh notice will be given to ROC within 10 days of such appointment.

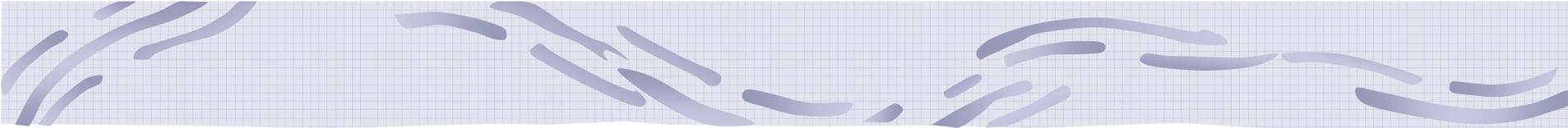
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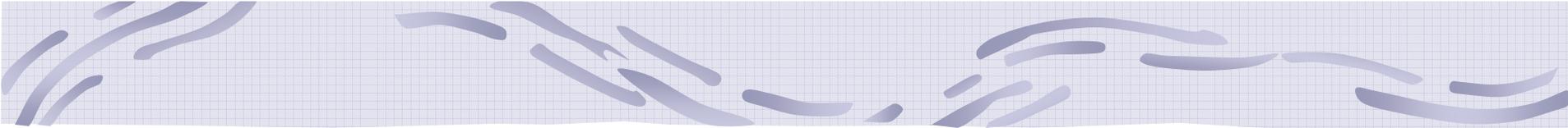


7. To submit a statement of affairs of the company in Form-57 duly verified by Affidavit in form-58 within 21 days of commencement of winding up to the liquidator.

The Statement of Affairs primarily includes :-

- Assets, liabilities and debts
  - Name, address and other particulars of creditors, secured and unsecured. In case of secured creditors the nature of security be mentioned.
  - Details of debts due to company.
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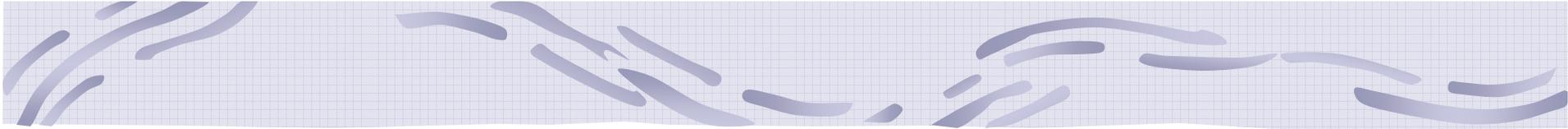
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8. To file Form-23 for Ordinary / Special Resolution passed in General Meeting with ROC within 30 days from the date of passing Special Resolution.
  9. To give notice of Special Resolution passed through an advertisement in Official Gazette and also in newspaper within 14 days of passing of resolution.
  10. To forward six copies of notice of Resolution advertised as above with the Stock Exchange.



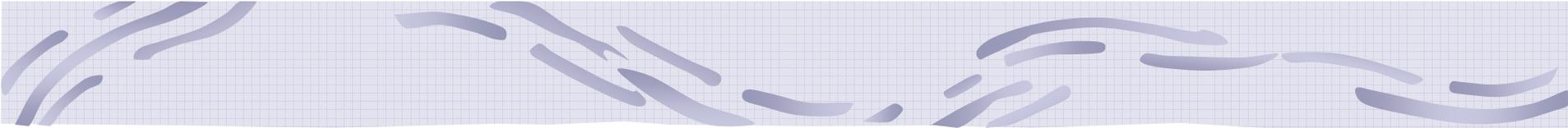
## Role Of Liquidator in Voluntary Liquidation

- To file notice of his appointment with Registrar of Companies within 30 days of his appointment (Form-152) (e-form 62)
- To publish the notice of his appointment in Official Gazette (Form 157) within 30 days of his appointment.
- To give notice of his appointment to the Income Tax office of the company within 30 days of his appointment (section 138 of Income Tax Act)
- To do process of collection from Assets and payments to creditors.

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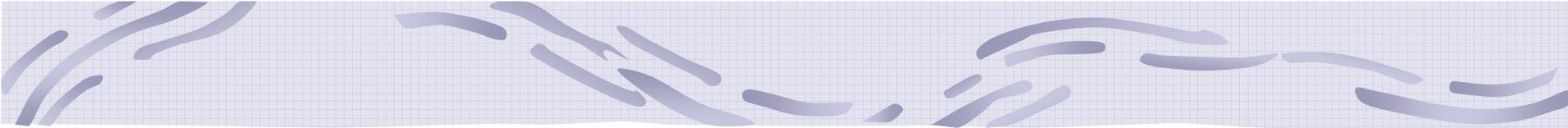
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- In case liquidator forms an opinion that company shall not be able to pay its debts within the period specified in declaration of solvency and period has expired before the debts having been paid in full, he will call the meeting of creditors individually and lay in the meeting, statement of Assets & Liabilities of companies form 150 of Company Court Rule.
  - If process of winding up continues for more than one year:-
    - i. Call General Meeting within 3 months from end of every year from the date of commencement of winding up (can be longer period as Central Government may allow).
    - ii. Lay the liquidators account before the meeting in Form 153 and verified an Affidavit in Form 154.

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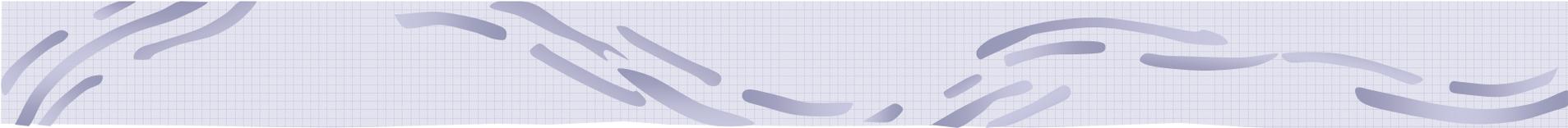
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- iii. Get statement Audited 1<sup>st</sup> year (from the date of appointment of liquidator to the end of the twelve months)
  - iv. Thereafter every six months (Form 153 of Company Court Rules). Even if there is no receipt or payment during the period NIL statement has to be prepared and delivered to the ROC.
- Get the statements verified through affidavit in form 154 and file the same with ROC twice in every year.

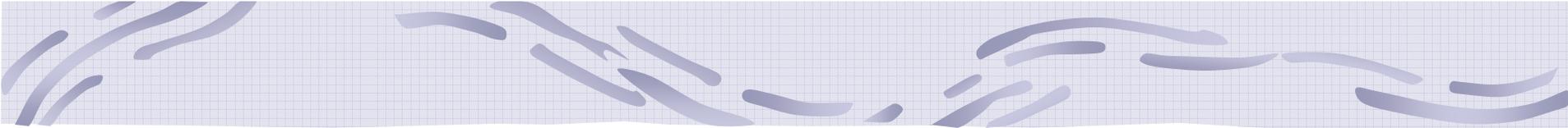
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- To complete the winding up process by realizing all assets and paying of all liabilities. Priority of the payment normally are :
    - All taxes, cess, revenue dues to Central & State Govt.
    - Dues of the employees
    - Secured loans
    - Unsecured loans
  - To pay the surplus (if any) to the shareholders.
  - To prepare Liquidator's Account of winding up in form-156 and get the same audited.
  - To call the final General Meeting by giving notice in Form-155 by Advertisement not less than one month before the meeting in Official Gazette and newspapers.
  - To hold the meeting and pass the Special Resolution for disposal of books and papers of the company.

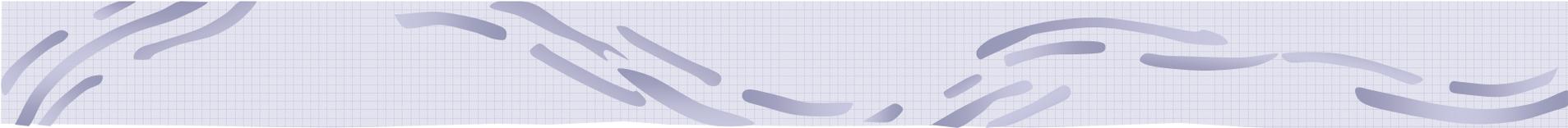
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- To file a copy of above accounts in Form-157 (on stamp paper) with the Roc and Official Liquidator within a week of final meeting of Members or creditors (whichever is later)
  - In case quorum is not present in final meeting file Form-158 with ROC and OL.
  - **To file copy of order of High Court in Form-21 with ROC within 30 days from the receipt of order or within such other time as extended by the Court / Tribunal.**



## Role of Registrar of Companies in Voluntary Liquidation

- To register the Liquidator's Accounts (Form-157) forthwith.
- To submit its report to official liquidator for compliances.

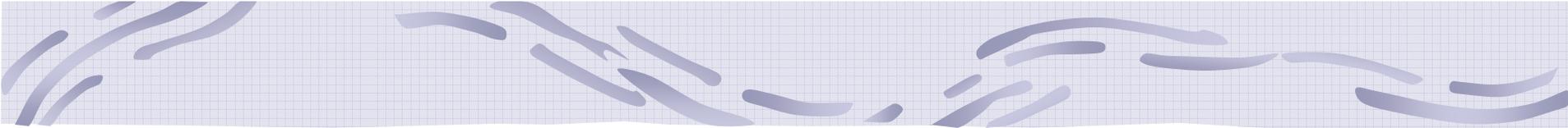


## Role Of Official Liquidator in Voluntary Liquidation

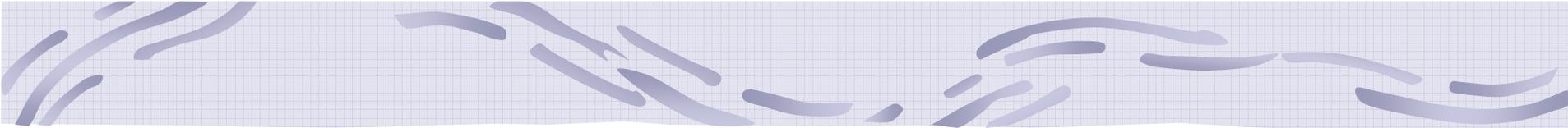
The Official Liquidator will verify the following statutory records of the company under voluntary liquidation as a part of the verification process :

- Memorandum & Articles of Association
- Balance Sheets and Profit & Loss Accounts
- List of Directors since Incorporation
- List of Shareholders since incorporation

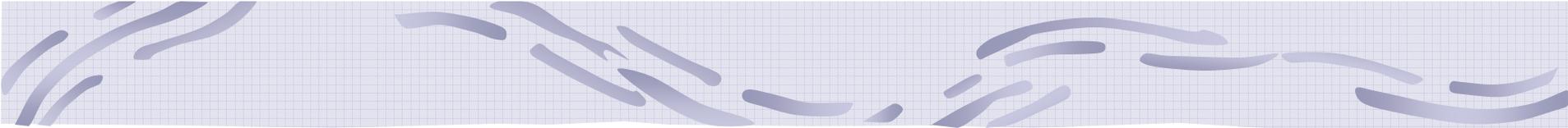
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- Minute Books (Director Meeting and General Meeting)
  - Members register, Directors Register and other statutory books
  - Copy of bank accounts which liquidator operated.
  - No Dues Certificate from Income Tax Department.
  - Declaration of solvency in Form-149
  - Verify Form 152 the notice of Appointment of Liquidator along with filing receipt.
  - Verify Form-57and 58 submitted by the company to Liquidator
  - Verify Form-23 along with filing challan.

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- Form-157 filed by liquidator which should be on judicial stamp paper.
  - Verify Liquidator's Accounts Form-156.
  - Form-155 relating to the notice published in Official Gazette and Newspaper.
  - Verify the ROC report received and take necessary actions.
  - Verify Form-157 and 158 (final Liquidator's Account)
  - Other Statutory Accounts, papers and register as prescribed in section 209 of Companies Act 1956: Books of Accounts i.e. Cash Book, Journal Ledger and Subsidiary Ledger where all receipt, payments, sales, purchases, assets and liabilities are recorded.

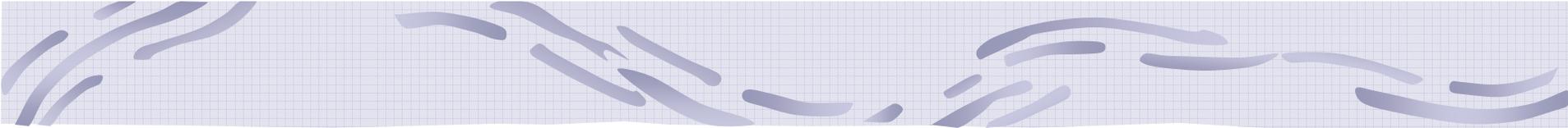
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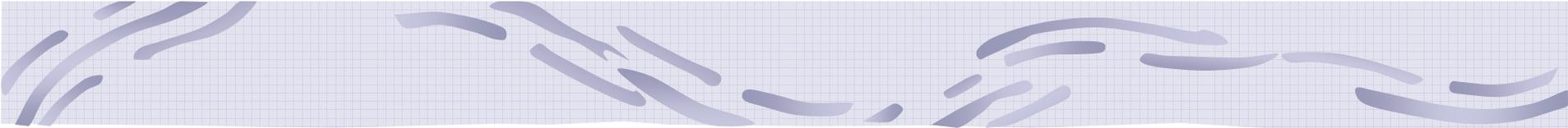
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- To see compliance of filing of various forms and documents with Registrar of Companies.
  - Affidavit from the liquidator for any undisclosed liability.
  - To submit report to the concerned High Court that whether Affairs of the company have been conducted in the manner prejudicial to the interest of its members or to public interest or not?
  - To do further investigation as per the directions of High Court (if any) and submit its report.

## Role Of High Court in Voluntary Liquidation

- In case OL submit His report that the affairs of the company have not been conducted in a manner prejudicial to the interest of the members of the company or to the public interest. The High Court shall pass the order
- Company shall be deemed to be dissolved from the date of submissions of Report by OL.
- In case OL submit his report that the affairs of the company have been conducted in a manner prejudicial to the interest of the members of the company or to the public interest.

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- High Court shall by order direct OL to make further investigation.
  - On receipt of such report of OL, High Court may either pass an order for winding up from the date as specified in said order by High Court or may make such other order as court may deem fit.
  - High court may in fit case declare the dissolution void within 2 years from the date of dissolution on application made by :-
    - i. Liquidator of company
    - ii. Any other person who appears to the Court to be interested.



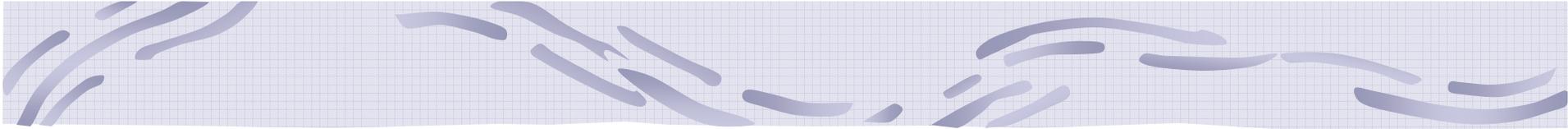
## Effect of Voluntary Winding Up

- The company shall cease to carry on its business from the commencement of winding up except so far as may be required for the beneficial winding up of such business.
- Provided that the Corporate State and Corporate Powers shall continue until it is dissolved.
- Other income like Interest & Rental – Company shall be continue to be assessed notwithstanding voluntary winding up.

## B - Creditor's Voluntary Winding Up

- Company to call meeting of creditors in addition to the meeting of shareholders
- Advertise the notice of meeting of creditors in Official Gazette and Newspapers.
- Lay full statement of Company's Affairs with complete list of creditors and estimated liabilities in meeting.
- Appoint one of their members to preside above meeting.
- Notice of resolution be given to Registrar.
- Resolution passed in creditor's meeting shall have effect only if it passed after passing the resolution in General Meeting.

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- Appointment of Liquidator and fixing of remuneration
    - If nomination for different person to act as a liquidator is made by members and creditors then the person nominated by creditors will be the liquidator.
    - If there is any difference of opinion about the appointment of liquidator then any director, member, creditor, may move to High Court or Tribunal within 7 days of the appointment of Court's order in this regard will be operative.
  - Other procedure is same as in Member's Voluntary winding up.

# CASE LAWS

## Section 486 : Commencement of Winding up

- The omission to convene a meeting of creditors under section 500 and subsequent holding thereof will not effect the date of commencement.

**GR Deo Vs. F Korium (1946) 16 Com Laws 104**

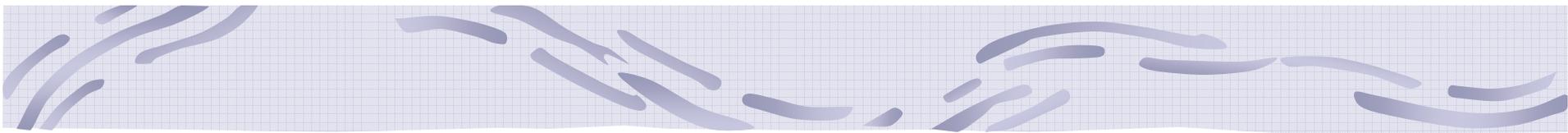
## Section 487 : Effects of Voluntary Winding up

- A voluntary winding up does not operate as a stay of any existing proceeding or prevent the Institution of new proceeding.

**Knowles Vs Scoh (1891) 1 Ch. 717**

**Pulsford Vs. Devenish (1903) 2 Ch. 625**

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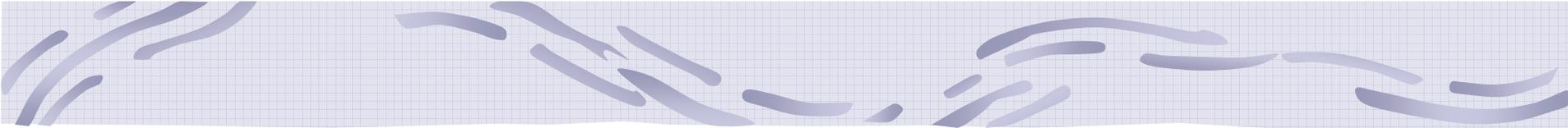
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- Liability of Director resigning before winding up- held prosecution of such Director not permissible.

**Dilip Singh T.V. state TN (2002) 112 Com Cases 195 (MAD)**

- Mere presentation of petition of winding up would not prevent company from continuing its business and its directors shall not ceased to be Directors until an order of winding up is passed

**Arkay Industries Limited Vs. State of Maharashtra (1999)32 CLA 94 (B04)**

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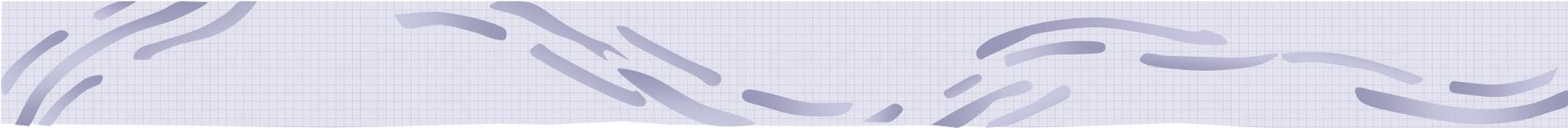
## **Section 529 (A) :**

- The wages and emoluments of workers upto the date of closure of company shall rank in priority over secured creditors.

**KTC Tyres (India) Ltd. (2003) 52 CLA 191 (KER)**

- The dues of workers and dues to secured creditors are to be treated pari-passu and prior to all dues and this section overrides all other claims of other creditors even where a decree has been passed by Court / Tribunal

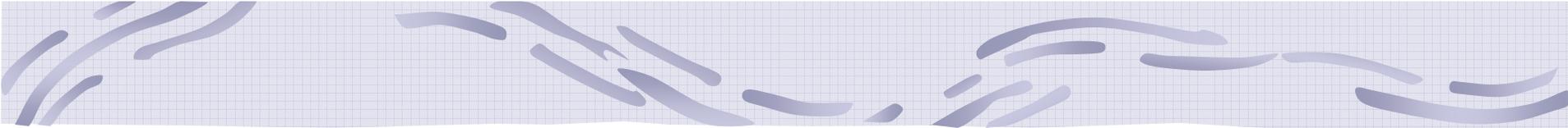
**ONGC Vs. Official Liquidator, Anilica Mills Co. Ltd. (2005) 57 SCL 184 (Guj.)**



## Position in relation to Compulsory Winding up

While the pendency of voluntary winding up is no bar to an application for winding up by or under the supervision of court, it has been held that passing of Resolution for voluntary winding up, while a petition for compulsory winding up is pending and with the knowledge of later would be contempt of Court

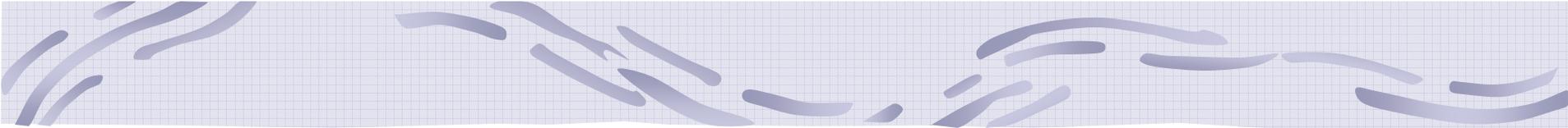
**Parsonage & Co. (1901) 2 Ch 424**



## **Section 485:**

A failure to advertise, may be considered to be an irregularity and curable. This will not affect the validity of winding up.

**Bhargwa SP Vs. Rameshwar Shastri  
(1952) 22 Com Cases 106 :  
AIR1952MB3**



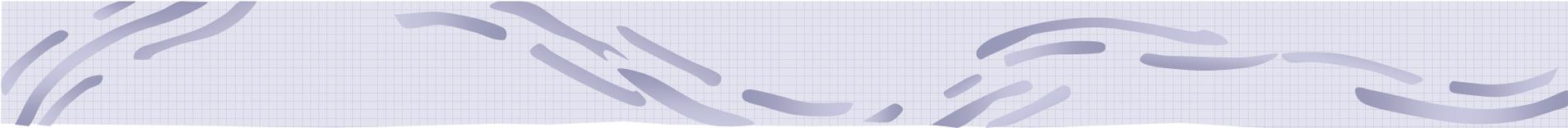
## **Section 488 :**

Where resolution for voluntary winding up is passed by the Members but the provisions of section 488 have not been complied with, the winding up shall not be a Member's Voluntary winding up

**Vasica Vs. janta Rubber Works A6R (1950)**

**ShargvaSP Vs. Rameshwar Shastri AIR (1952)  
MB3**

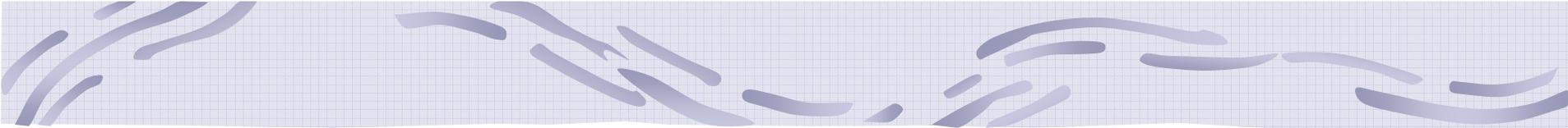
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## **Section 488:**

In case of non-compliance of section 488 and also noncompliance of provisions of section 500 to 509 (creditors voluntary winding up) not complied with, the proceedings relating to voluntary winding up taken by the company shall void-ab-initio.

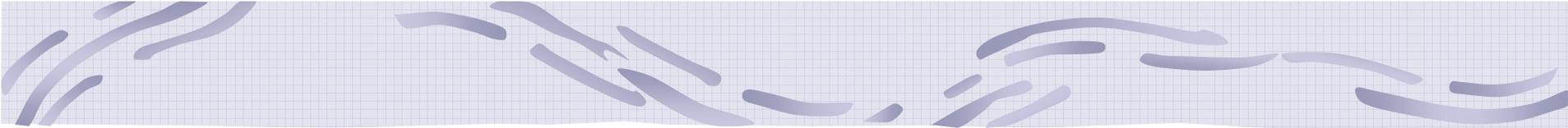
**M Laxmiah Vs. ROC Trivendram  
(unreported case decided by Kerala  
High Court)**



# Position of Liquidator after Dissolution

The liquidator's power came to an end with the dissolution and he has no power (for e.g. to execute sale deed). He became functus officio on the dissolution and exercise of all the powers by him will be void.

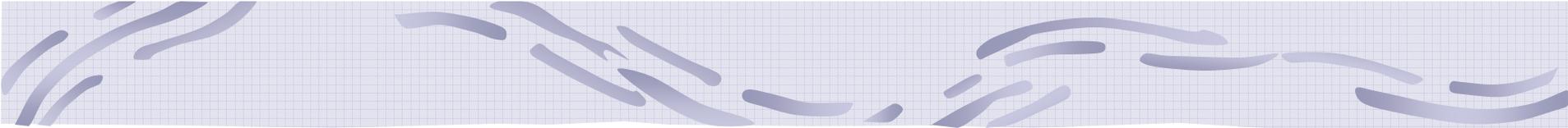
**Shankar Lal Vs. Narendra Bhahdur Tandon**



# Remuneration of Liquidator

When voluntary liquidation is superseaded by the compulsory winding up the court may review the amount of fee of liquidation.

**Moretimers (London) Ltd. (1937) 1  
CH 289**



THANK YOU