

## DISTRIBUTION OF PROCEEDS

WINDING UP	INSOLVENCY AND BANKRUPTCY CODE	SARFAESI
<p><b>Section 326 of the Companies Act, 2013:</b> In the <b>winding up of a company</b> under this Act, the <b>following debts SHALL be paid in PRIORITY TO ALL OTHER DEBTS</b>:—</p> <p>(a) workmen's dues; and (b) <b>where a secured creditor has realised a secured asset, so much of the debts due to such secured creditor as could not be realised by him or the amount of the workmen's portion in his security</b> (if payable under the law), whichever is less, <b>pari passu with the workmen's dues</b>:</p> <p>Provided that in case of the winding up of a company, <b>the sums</b> referred to in sub-clauses (i) and (ii) of clause (b) of the Explanation, <b>which are payable for a period of two years preceding the winding up order</b> or such other period as may be prescribed, <b>shall be paid in priority to all other debts</b> (including debts due to secured creditors), within a period of <b>30 DAYS</b> of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.</p> <p>The <b>debts payable under the proviso shall be paid in full before any payment is made to secured creditors</b> and thereafter debts payable under that subsection shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.</p> <p><b>Illustration</b> The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000.</p> <p><b>In a winding up, SUBJECT TO THE PROVISIONS OF SECTION 326, there SHALL be paid in priority</b> to all other debts,—</p> <p>(a) <b>all revenues, taxes, cesses and rates due</b> from the company to the Central Government or a State Government or to a local authority at</p>	<p>Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the <b>proceeds from the sale of the liquidation assets shall be distributed</b> in the <b>following order of priority</b> and within such period and in such manner as may be specified, namely :—</p> <p><b>ORDER OF PRIORITY IN DISTRIBUTION OF PROCEEDS:</b></p> <p>(a) the <b>insolvency resolution process costs and the liquidation costs paid in full;</b></p> <p><b>(b) the following debts which shall rank equally between</b> and among the following :—</p> <p>(i) <b>workmen's dues</b> for the period of <b>24 MONTHS</b> preceding the <b>liquidation commencement date</b>; and</p> <p><b>(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security</b> in the manner set out in section 52;</p> <p>(c) <b>wages and any unpaid dues owed to employees other than workmen</b> for the period of <b>12 MONTHS</b> preceding the liquidation commencement date;</p> <p>(d) <b>financial debts owed to unsecured creditors;</b></p> <p>(e) the <b>following dues shall rank equally between and among the following</b>:—</p> <p>(i) any <b>amount due to the Central Government and the State Government including</b> the amount to be received on account of the <b>Consolidated Fund of India and the Consolidated Fund of a State</b>, if any, in respect of the whole or any part of</p>	<p>(1) Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.</p> <p>(2) Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights.</p> <p><i>Provided that in the case of a company in liquidation, the amount realised from the sale of secured assets shall be distributed in accordance with the provisions of Act: Provided further that in the case of a company being wound up on or after the commencement of this Act, the secured creditor of such company, who opts to realise his security instead of relinquishing his security and proving his debt under the Act, 1956, may retain the sale proceeds of his secured assets after depositing the workmen's dues with the liquidator in accordance with the provisions of the Act:</i></p>

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<p>the relevant date, and having become due and payable <b>within the 12 months immediately before that date;</b></p> <p>(b) <b>all wages or salary including wages payable for time</b> or piece work and salary earned wholly or in part by way of commission of any employee in respect of services rendered to the company and due for a <b>period not exceeding four months within the 12 months immediately before the relevant date</b>, subject to the condition that the amount payable under this clause to any workman shall not exceed such amount as may be notified;</p> <p>(c) <b>all accrued holiday remuneration becoming payable</b> to any employee, or in the case of his death, to any other person claiming under him, on the termination of his employment before, or by the winding up order, or, as the case may be, the dissolution of the company;</p> <p>(d) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company, <b>all amount due in respect of contributions payable during the period</b> of twelve months immediately before the relevant date by the company as the employer of persons under the Employees' State Insurance Act, 1948 or any other law for the time being in force;</p> <p>(e) unless the company has, at the commencement of winding up, under such a contract with any insurer as is mentioned in section 14 of the Workmen's Compensation Act, 1923, <b>rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any employee of the company:</b>            Provided that where any compensation under the said Act is a weekly payment, the amount payable under this clause shall be taken to be the amount of the lump sum for which such weekly payment could, if redeemable, be redeemed, if the employer has made an application under that Act;</p> <p>(f) <b>all sums due to any employee from the provident fund</b>, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company; and</p> <p>(g) <b>the expenses of any investigation held in pursuance</b> of sections 213 and 216, in so far as they are payable by the company.</p>	<p>the period of two years preceding the liquidation commencement date;</p> <p>(ii) debts <b>owed to a secured creditor</b> for any amount unpaid following the enforcement of security interest;</p> <p>(f) <b>any remaining debts</b> and dues;</p> <p>(g) <b>preference shareholders</b>, if any; and</p> <p>(h) <b>equity shareholders or partners</b>, as the case may be.</p>	<p><i>Provided also that the liquidator referred to in the second proviso shall intimate the secured creditor the workmen's dues in accordance with the provisions of the 1956 (1 of 1956) and in case such workmen's dues cannot be ascertained, the liquidator shall intimate the estimated amount of workmen's dues under that section to the secured creditor and in such case the secured creditor may retain the sale proceeds of the secured assets after depositing the amount of such estimated dues with the liquidator: Provided also that in case the secured creditor deposits the estimated amount of workmen's dues, such creditor shall be liable to pay the balance of the workmen's dues or entitled to receive the excess amount, if any, deposited by the secured creditor with the liquidator:</i></p> <p><i>Provided also that the secured creditor shall furnish an undertaking to the liquidator to pay the balance of the workmen's dues, if any.</i></p> <p><i>Explanation.—For the purposes of this subsection,— (a) "record date" means the date agreed upon by the secured creditors representing not less than [sixty per cent] in value of the amount outstanding on such date; (b) "amount outstanding" shall include principal, interest and any other dues payable by the borrower to the secured creditor in respect of secured asset as per the books of account of the secured creditor. (10) Where dues of the secured creditor are not fully satisfied with the sale proceeds of the secured assets, the secured creditor may file an application in the form and manner as may be prescribed to the Debts Recovery Tribunal having jurisdiction or a competent court, as the case may be, for recovery of the balance amount from the borrower</i></p>