CHAPTER – 4
FINANCIAL DISCOULSURES, INVESTIGATIONS, COMPROMISE
AND WINDING UP OF LIMITED LIABILITY PARTNERSHIP

It is submitted that the prime purpose of economics in investment decisions is to provide a financial measure of worth accepting and man has always been a pioneering starting from the stone ages to the modern times. This is what makes the LLP a novel commercial business entity. Relatively, new-fangled concept for Indian business arena, LLP is clothed with a form of ‘body corporate’ and in substance it is a ‘partnership’.

4.1 Prologue

In the debates on the Bill (relating to LLP) in the House of Lords, Lord McIntosh from Haringey said that the Government aimed to create a new entity, “which falls under company law as far as possible and... falls under partnership law as little as possible.”¹

As against the foregoing chapter witnessed, internally, LLPs reflect a compromise between the principles of ordinary partnership law and companies, with some provisions, e.g. LLP Agreement and management being derived from ordinary partnership law, while others, e.g. the availability of the remedy for unfair prejudice derived from the company law.² The present chapter concerning the financial disclosures; investigation mechanism; compromise, arrangement or reconstruction of LLP and also its winding up and dissolution gives the snapshot impression that the provisions of the LLP are more akin to a company rather than to a partnership but again the incorporation process was closely analogous to that of company.

4.2 Pillars of a Business in Kautilya’s Arthashastra

A strong foundation is the key to any successful business. Your vision, your commitment, your purpose - all form the basis for an organization. They are the all-important

¹ Hansard, HL Vol. 608, col. 1353 (January 24, 2000). Lord McIntosh (30 April 1933 to 27 August 2010) was a British Labour politician.
pillars, the most essential part of any building. In the *Arthashastra*, Chanakya\(^3\) lists seven pillars for an organization. “The king, the minister, the country, the fortified city, the treasury, the army and the ally are the constituent elements of the state”, a close look at each of them is hereunder.\(^4\)

4.2.1 **Swami — The King (Leader):** All great organizations have great leaders. The leader is the visionary, the captain, the man who guides the organization. In today's corporate world we call him the Director or CEO etc. Without him we will lose direction.

4.2.2 **Amatya — The Minister (Manager):** The manager is the person who runs the show. He is the second-in-command of an organization. He is also the person whom you can depend upon in the absence of the leader. He is the man who is always in action. An extra ordinary leader and an efficient manager together bring into existence a remarkable organization.

4.2.3 **Janapada — The Country (Market):** No business can exist without its market capitalization. It is the area of your operation. The place from where you get your revenue and cash flow. You basically dominate this territory and would like to keep your monopoly in this segment.

4.2.4 **Durga — The Fortified City (Infrastructure / Head Office):** You need a control tower - a place from where all planning and strategies are made. It's from here that your central administrative work is done. It's the nucleus and the center of any organization.

4.2.5 **Kosha — The Treasury (Finance):** Finance is an extremely important resource. It is the backbone of any business. A strong and well-managed treasury is the heart of any organization. Your treasury is also your financial hub.

4.2.6 **Danda — The Army (Team):** When we go to war, we need a well-equipped and trained army. The army consists of your team members. Those who are ready to fight for the

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\(^3\) Chanakya (c. 350 - 283 BCE) was an Indian teacher, philosopher, and royal advisor. Originally a Professor of Economics and Political Science at the ancient Takshashila University, he is traditionally identified as Kautilya or Vishnu Gupta. He authored the ancient Indian political treatise called *Arthashastra* (Economics). As such, he is considered as the pioneer of the field of economics and political science in India, and his work is thought of as an important precursor to classical economics.

4.2.7 Mitra – The Ally (Mentor / Friend / Consultant): In life you should have a friend who is just like you. Being, in the same boat, he can identify with you and stay close. He is the one whom you can depend upon when problems arise. After all, a friend in need is a friend in deed.

Look at these seven pillars. Only when these are built into firm and strong sections can the organization shoulder any responsibility and face all challenges. And while building them, do not forget to imbibe that vital ingredient called values, speaking about which, in his book ‘Build to last’, Jim Collins has said, “Values are the roots from where an organization continuously gets its supply as well as grounding - build on them!”.5

4.3 Relationship of Accounting with the Law

It is observed that the Law regulates the behaviour of an individual, dictates his formal relationship with other persons, besides enumerating his economic rights and obligations. In fact, the domain of law is very vast and infuses every aspect of individual, society and social life.

Commercial law is society’s agency for social control of business, and accounting is the means by which the diversity of business is reduced to a common language.6 Accounting practices must be a faithful representation of the mandate as entailed in the concerned laws of the land. The accounting system operates within the economic system characterized by a given socio-political set up and is manifested in the law of the land. As far as the economic interest of an individual is concerned, there is no dearth of law in India and in other countries that has direct or indirect bearing on accounting. Some important such laws in India that directly or indirectly regulates accounting are the Companies Act, the Banking Regulation Act, the Indian Partnership Act and a host of mercantile and industrial laws such as the Indian Contract Act and the Factories Act, etc. In addition, there are elaborate revenue laws such as

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5 Ibid.

the Income Tax Act, the Central and Provincial Sales Tax Acts, the Wealth Tax Act, and the Gift Tax Act etc. which also influence accounting practices. Now, the LLP Act also joins the string of such laws.7

4.4 Financial Disclosures

The corporate scandals of Enron8 and WorldCom9 are an open secret and the Indian corporate story has not been a fairy saga as the recent corporate scam of Satyam10 has put the integrity and efficacy of corporate governance regulations under challenge.

Forewarned is Forearmed.11

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8 An American energy, commodities, and services company based in Houston, Texas. In late 2001, Enron filed for bankruptcy protection despite of the fact that the Chairman of the Audit Committee was no less than a person than the Dean of Stanford Business School.
9 For a time, WorldCom was the US’s second largest long distance phone company (after AT&T). On July 21, 2002, WorldCom filed for bankruptcy protection in the largest such filing in the US history at the time.
10 The accounts of Satyam Computer Services, once the fourth largest Information Technology Company in India, had been falsified; the scandal was publicly announced on January 7, 2009. The historic confession letter of former chairman Byrraju Ramalinga Raju (born on September 16, 1954, he founded Satyam Computers in 1987 and was its Chairman until January 7, 2009), admitting a fraud of Rs 78 billion has given a setback to the regulators and the investors. The multibillion dollar scam is unprecedented and idiosyncratic for two more reasons; firstly, Andhra based giant ‘Satyam’ was having illustrious personalities on its board, “Dr. (Mrs.) Mangalam Srinivasan (Management Consultant & Visiting Professor, University of California, Harvard University, American University, Tufts University, Northeastern University), Prof. M. Rammohan Rao (Dean, Indian School of Business), Mr. Vinod Dham (former Vice President of Intel’s Microprocessor Products Group and presently the founder Executive Managing Partner of NEA-Indo US Ventures), Prof. V.S. Raju (former Director of two Indian Institute of Technology), Prof. Krishna Palepu (Professors, Harvard Business School) and Mr. T.R. Prasad (former, Union Cabinet Secretary)” and secondly, the fact that company which was audited by one of the most prestigious audit firms ‘Pricewaterhouse Coopers’ and adopted most advanced accounting and transparent IFRS (International Financial Reporting Standards) accounting systems much ahead of time can penetrate such a colossal and a global fraud is clearly eye opening for corporate counsel worldwide. The Indian arm of ‘Pricewaterhouse Coopers’ was fined $6 million by U.S. Securities and Exchange Commission for not following the code of conduct and auditing standards while pursuing its duties while auditing the accounts of Satyam Computer Services. The sad part is that B. Ramalinga Raju along with 2 other accused of the scandal, had been granted bail from Supreme court on 4 November 2011 as the investigation agency CBI failed to file the charge-sheet even after more than 33 months Raju being arrested.
11 The meaning of the proverb is quite straightforward and literal - so long as it is understood that forearm is here the archaic verb meaning 'to arm in advance', rather than the noun forearm, that is, the part of the arm between the elbow and wrist. The saying is so straightforward in fact that it was originally simply 'forewarned, forearm'. It is found in that form in Robert Greene's A Notable Discovery of Coonsage (a.k.a. The Art of Conny-catchin), 1592. 'Forewarned, forearmed' transformed into the 'forewarned is forearmed' version we know now during the 18th century.
On the basis of the above stated proverb which means advance warning provides an advantage, financial disclosures are of vital importance for any body-corporate and LLP is no exception to that, as they not only provide a protective shield from corporate frauds but also provides transparency in its functioning. The financial disclosures paints a true and fair picture of the financial position, assets, liabilities, profits earned and the losses suffered. The term ‘Accounting’ is very aptly defined as under:  

Accounting is the art of recording, classifying and summarizing in a significant manner and in terms of money, transactions and events which are, in part at least, of a financial character, and interpreting the results thereof.

Around the world everyone is engaged in one or the other economic activity and without finance the operations of an economic activity cannot be undertaken. Business being an economic activity requires finance to initiate the business, to functionalize the business, to operate the business, to carry on the business, to expand the business and also to modernize the business. When finance is required at every step of the business transaction, there is a requirement that there should be proper financial disclosures. Chapter VII of the LLP Act and Rule 24 of the LLP Rules, 2009 deals with the financial disclosures. The various aspects related to financial disclosures are:

4.4.1 Maintaining Account Books

Maintaining account books means a systematic record of all the financial transactions carried out by a business entity so as to have true and fair view of the state of affairs of the business entity for the purpose of foresighted planning and decision making.

Money being the basis of commercial world, accounting is aptly called as the language of business as the basic function of any language is to serve as a means of communication and accounting communicates the true financial position and picture of the business entity

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12 The Terminology Committee of the American Institute of Certified Public Accountants defined Accounting in 1961.
14 The phrase, ‘true and fair view’ means that neither the books should suppress any transactions undertaken by the limited liability partnership nor the books should contain any fictitious transaction.
15 The quote is a common phrase in the 20th century books on accounting. Thomas Orrin McGrath was one of the first to use this phrase.
moreover the responsibility of learning accounting is very similar to the task of erudition a new language.

Luca F. Pacioli, the author of first book on book-keeping, ‘particularis de computis et scripturis’ published in 1494, is regarded as the Patriarch of Accounting. Even the Kautilya’s book ‘Arthashastra’ clearly indicates that Accounting was practiced in India twenty-four centuries ago and even today with the growing scales of business the need of accurate accounting and audit cannot be ruled out.

It is observed that unlike, traditional partnership where accounts means to merely determine the amount of profits to be shared between the partners, the LLP law provides that comprehensive provisions with respect to financial disclosures.

The LLP is required to maintain proper books of account annually which should contain all the receipts and expenditure, record of assets and liabilities, statement of cost of goods purchased, inventories, work-in-progress, finished goods and cost of goods sold and other particulars as decided by the partners which are sufficient to show and explain the transactions of the LLP so that the accurate financial position can be disclosed and the Statement of Account and Solvency. The accounting is to be based on double entry system either on cash basis or on accrual basis. The books are to be maintained at the registered office.

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**An Italian Mathematician (1445 to 1517).**

**The Arthashastra (Economics)** is an ancient Indian treatise on statecraft, economic policy and military strategy. It contains over 6000 verses divided into 150 chapters and 180 sections. Chanakya - probably the world’s first management Guru who lived in 3rd Century BC was well known for his management models and strategies. Used by various kings for managing and leading their kingdoms, the principles of the book are useful even in the modern corporate world.

**Section 34(1), The LLP Act, 2008 read with Rule 24(1) and (2), The LLP Rules, 2009.**

*The Rise of the Double-Entry System:* The destruction of the Roman and Byzantine civilizations was followed by a period of European history known as the Dark Ages. The feudal system of political organization rescued Europe from chaos and provided the stability necessary for the creation of economic surpluses. These surpluses represented the capital base on which the economic development of the Middle Ages was built. The conversion of a subsistence economy into a money economy was effected by the Norman adventurer-kings. The medieval period, therefore, saw the existence of conditions favorable for the development of accounting.

This development took place as several levels: government, business and the medieval manor. Apart from banking, the conduct of business was largely a function of small traders and artisans who kept accounting records of a crude memorandum nature, sufficient for their restricted information needs. Large-scale business operations were carried on by the banks and the church, the latter through the manorial system,
Generally, accounts include the trading and profit and loss account (although not to be filed with the Registrar); the balance sheet duly signed by a designated partner; an auditor’s and we find the banks using financial accounting based on principles which eventually became double-entry bookkeeping, and the manors using management accounting, based on essentially statistical models. We have mentioned the use of the bilateral account form long before this period. The integration of this form into a system of double-entry accounts appears to have evolved during the twelfth or thirteenth centuries A.D. It may or may not have been an invention of the Italians who at that time dominated banking, trade, and what little manufacturing there was. Largely as a result of the Liber Abacci of Leonardo of Pisa, the Italians adopted Arabic in place of Roman numerals, which was an additional factor favoring the expansion of the concept underlying accounting. Although it is believed that the idea of double-entry was originated by banks, the oldest surviving record which incorporates double-entry principles is the Giovanni Farolfi branch ledger (Salon, France) for the year 1299-1300. More familiar are the double-entry trading accounts of Donald Soranzo and Brothers, merchants of Venice, from the first quarter of the fifteenth century. The method of Venice became the model for the celebrated exposition of double-entry bookkeeping published by Pacioli in 1494. The first professional organization of accountants was founded in Venice in 1581. The method of Venice then spread throughout the world, partly through translations and plagiarisms, partly through being transplanted to other countries by Venetian traders and clerks. Giovanni Farolfi and Company was a firm of Florentine merchants, and it is noteworthy that the banking and manufacturing center of Florence experienced a parallel development of double-entry bookkeeping during the same period as Venice. In fact, Florentine accounting appears to have been more sophisticated than the method of Venice and more comparable with modern accounting systems. Datini (1335-1410) conducted a large-scale international business - what would today be called a multi-national corporation - using a full double-entry system of accounts for the control of foreign as well as domestic operations. The Medici not only kept complex accounts for their banking operations, but also integrated cost accounting records for textile manufacturing. In these latter records we find the first examples of accounting for depreciation, interest on capital, and cost of production.

The “Double Entry System” means that there are two aspects of each and every transaction (i.e. Debit and Credit) and both the aspects should be reflected in the Books of Account. The Double Entry System is most scientific system and under this Debit and Credit aspects affects two Accounts in the reverse direction. The word ‘debit’ (abbreviated as Dr.) is derived from the Latin word ‘debitum’ which means ‘due for that’; in short, the benefit receiving aspect of a transaction is known as debit. The word ‘credit’ (abbreviated as Cr.) is derived from the Latin word ‘creder’ which means ‘due to that’; in short, the benefit giving aspect of a transaction is known as credit. By convention, the left hand side of an account is termed as debit and right hand side of an account is termed as credit.

On the basis of Accounts- Personal, Real and Nominal, the fundamental rules are:
(a) Personal Account: (when a transaction involved with a person) Debit the receiver and credit the giver;
(b) Real Account: Debit what comes in and Credit what goes out; and
(c) Nominal Account: (All recurring expenses/incomes such as salary, Rent, Interest etc.) Debit all losses and expenses and Credit all gains and income.
report signed by the auditor (unless the company is exempted under the law) and the notes to the accounts.19

The term ‘financial year’ is defined as under:20

‘Financial year’, in relation to a limited liability partnership, means the period from the 1st day of April of a year to the 31st day of March of the following year: Provided that in the case of a limited liability partnership incorporated after the 30th day of September of a year, the financial year may end on the 31st day of March of the year next following that year.

The books of account thus prepared are to be preserved for eight years from the date on which they are made.21 The statement of account and solvency is to be prepared within six months from the end of the financial year which should be duly signed by designated partners and each designated partner shall be taken to be a party to its approval unless he shows that he took all reasonable steps to prevent their being approved and signed. The statement of account and solvency is to be filed in From 8 with the Registrar within a period of thirty days from the end of six months of the financial year to which it relates along with the fee as prescribed in Annexure ‘A’.22

4.4.2 Audit by Auditors

After the preparation of books of account there is a mandatory requirement of Audit as audit is sine qua non for any business. Audit not only ensures detection and prevention of errors but also of fraud. The statutory audit basically intends to ensure that the accounts and accounting reports/records are prepared as per the accounting standards and they reflect true picture. The two fold dogma with respect to audit states that, firstly, the audit should not be a lax audit and, secondly, the auditors should be independent of the management who are responsible for the accounts and the persons who receive them. Independence calls for that a

20 Section 2(1)(l), The LLP Act, 2008.
22 Section 34(2), (3) and (4), The LLP Act, 2008 read with Rule 24(4), (5), (6) and (7), The LLP Rules, 2009. The fee as per Annexure ‘A’ is Rs.5000/- for filing a document under Rule 34(1), The LLP Rules, 2009 and Rs.1000/- for any other form or Statement of Account and Solvency or notice or document.
partner or employee or any other person associated with the LLP or any related entity cannot become an auditor.\textsuperscript{23}

An audit can be defined as the examination of some or all of the following items:\textsuperscript{24}

- Determining the propriety, legality, and mathematical accuracy of proposed or consummated transactions;
- Ascertaining whether all transactions have been recorded;
- Determining whether transactions are accurately reflected in the accounts and in the statements drawn therefrom in accordance with accepted accounting principles.

The objectives of an audit include the detection of fraud, the detection of technical errors and the detection of errors of principle. Justice Lindley in his famous judgment, in the \textit{Re London and General Bank case},\textsuperscript{25} propounded that:

An auditor, however, is not bound to do more than exercise reasonable care and skill in making enquiries and investigations. He is not an insurer; he does not guarantee that the books do correctly show the true position...; he does not guarantee that his balance sheet is accurate according to the books...; if he did, he would be responsible for an error on his part, even if he were himself deceived without any want of reasonable care on his part say, by the fraudulent concealment of a book from him. ...it seems impossible to deny that for some purpose, and to some extent, an auditor is an officer...

Lopes L.J. held in his judgment in the case of \textit{Re Kingston Cotton Mill Co}.\textsuperscript{26} that auditors are the officers and must not be made liable for not tracing out ingeniously and carefully laid scheme of fraud when there is nothing to arouse their suspicion and when those frauds have been perpetrated by the tried servants... and have been undetected for years.

\textsuperscript{23} Accounts of the Limited Liability Partnerships are to be audited as per Rule 24 under Chapter VII of the \textit{LLP Rules}, 2009.
\textsuperscript{24} [2012] 108 CLA (Mag.) 47.
\textsuperscript{25} (1895) 2 Ch 673.
\textsuperscript{26} (1896) 2 Ch 279. However, in contrast to it, Lord Cranworth observed in \textit{Spackman v. Evans}, 2H.L.236, that the auditors are the agents.
As audit authenticates the accounts and in the audit requirement a simplified compliance regime for small LLPs is provided by exempting such LLPs from the requirement of audit through the notification of the Central Government. It is submitted that the only drawback of unaudited accounts is that the creditworthiness of the business entity always remains under a question mark. However, the exemption from the requirement of audit can neither be considered as exemption from delivering (unaudited) accounts to the Registrar nor any relaxation in the right of partners to receive and demand copies of the accounts. Meaning thereby, even if the audit requirement is exempted, still the LLP is required to send its accounts to the Registrar and also to its partners.

For a person to be an auditor of a LLP the qualification is that he should be a Chartered Accountant in practice. The designated partners are required to appoint auditor(s) for each financial year:

(a) at any time for the first financial year but before the end of the first financial year,

(b) at least 30 days prior to the end of the each financial year (other than the first financial year),

(c) to fill a casual vacancy in the office of auditor, including in the case when the turnover or contribution of a LLP exceeds the limits specified under sub-Rule (8),

or

(d) to fill up the vacancy caused by removal of an auditor.

Where no auditor is appointed in the above situations, any auditor in office shall be deemed to be re-appointed, unless the LLP Agreement requires actual reappointment, or the majority of partners have determined that he should not be re-appointed and have given a notice to this effect to the LLP.

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27 Rule 24(8), The LLP Rules, 2009.
28 Rule 24(9), (10), The LLP Rules, 2009. In Dharangdhara Chemical Works v. State of Saurashtra, AIR 1957 SC 264, it was held that the Chartered Accountant who is in whole-time employment of cannot appointed as an auditor as he happens to be the employee and there is difference between 'Contract of Service' and 'Contract for Service'.
29 Rule 24(11), The LLP Rules, 2009.
30 Rule 24(14), The LLP Rules, 2009.
In case the designated partners fail to appoint the auditor(s) the partners may do so. The auditor(s) of LLP holds the office in accordance as per the terms of appointment and continues to hold such office till the period the new auditors are appointed, or they are re-appointed.\textsuperscript{31}

The remuneration of an auditor appointed by the LLP is either fixed by the designated partners or as stated in the LLP Agreement.\textsuperscript{32} The partners of a LLP may remove an auditor as per the procedure laid down in the LLP Agreement and if the LLP Agreement is silent on the issue then the consent of all the partners is required for removal of the auditor from his office.\textsuperscript{33} An auditor of the LLP may resign his office by depositing a notice in writing to that effect at the LLP’s registered office and where an auditor is unwilling to be re-appointed, he shall give a notice in writing to that effect at the LLP’s registered office, not less than 14 days before the end of the time allowed for appointing the new auditor. The said notice to be effective should be accompanied by the statement of the circumstances connected with his ceasing to hold office and the auditor’s term comes to an end as on the date on which the notice is deposited or on such later date as may be specified in the notice.\textsuperscript{34}

The accounts are required to be audited as per the Rules of the Central Government; such Rules, \textit{inter-alia}, provides that any LLP, whose turnover in any financial year exceeds forty lakh rupees, or whose contribution exceeds twenty five lakh rupees, is required to get its accounts audited. However, if it is less and if the partners still want to get the accounts of such LLP audited, the accounts should be audited as per Rules and in case if it less and the partners do not want to get the accounts audited then in the Statement of Account and Solvency, a statement by the partners and certificate in form 8 is to be included acknowledging their responsibilities for complying with all the statutory requirements with respect to preparation of books.\textsuperscript{35}

\textsuperscript{31} Rule 24(12) and (13), \textit{The LLP Rules}, 2009.
\textsuperscript{32} Rule 24(17), \textit{The LLP Rules}, 2009.
\textsuperscript{33} Rule 24(18), \textit{The LLP Rules}, 2009.
\textsuperscript{34} Rule 24(19), \textit{The LLP Rules}, 2009.
\textsuperscript{35} \textit{Supra note 27}, read with Section 34(4), \textit{The LLP Act}, 2008. Form 8 is the declaration given by all designated partners that whether they are able to pay debts in full as they are due in the normal course of business and the due date for filling form 8 is October 30 each year.
After the audit of the account, which includes checking the accounts and the accounting records of the LLP, the auditor submits the audit report. The duly signed report of the auditor is delivered to the Registrar and it includes identifying the accounts of the LLP which were the subject of the audit and the financial accounting standard which was applied in their preparation, a description of the scope of the audit identifying the accounting standards used in the audit, a statement by the auditor highlighting his expert opinion regarding the preparation of accounts as per the statutory requirements and the relevant financial reporting framework giving a true and fair view of the financial affairs in the concerned LLP. In case of failure to comply with the provisions relating to maintenance of books of account, other records and audit, etc. then the LLP shall be punished with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every designated partner of such LLP shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.36

4.4.3 Annual Return

Annual return is a useful source of information to supplement the financial data contained in the annual accounts and is different from a statement of accounts and solvency of the LLP.

Accounting is the process of identifying, measuring and communicating economic information to permit informed judgments and decisions by users of the information.38

It is mandatory for every LLP to file an annual return duly authenticated with the Registrar within sixty days from the end of the financial year in form 11 along with the fee as prescribed in Annexure A.39 If the LLP is having turnover upto five crore rupees during the

36 Section 34(5), The LLP Act, 2008.
37 Susan Barber, Company Law, 70 (2001). Annual Accounts includes the Profit and Loss Account and the Balance Sheet within its preview.
39 Section 35(1), The LLP Act, 2008 read with Rule 25(1) and (3), The LLP Rules, 2009. Form 11 is Annual Return containing number of partners, total contribution received, details of partners/body corporate, summary of partners and the due date of filling form 11 is May 30 for each year.
corresponding financial year or contribution up to fifty lakh rupees, then along with the annual return, a certificate from a designated partner, other than the signatory to the annual return, is to be attached stating that the annual return contains true and correct information and in all other cases, the annual return is to be accompanied with a certificate from a Company Secretary in practice stating that the particulars from the books and records of the LLP are verified and were found to be true and correct.  

If any LLP fails to file an annual return then it will be punished with a minimum fine of twenty-five thousand rupees which may extend to five lakh rupees and the designated partner will be punished with a minimum fine of ten thousand rupees which may extend to one lakh rupees.  

Here, the researcher submits that there is need to spell out that under no circumstances the Registrar can advise the LLP on specific or technical accounting issues with respect to annual accounts and annual return. However, he can always highlight the broad-spectrum and give general guidelines.  

4.4.4 Documents available for Public Inspection in the Office of Registrar  

Filing of documents with the Registrar inculcates the sense of transparency and accountability in the administrative set up and it further gives rise to public access to the matters so filed. The documents/information will be available for inspection by any person includes incorporation document; names of partners and changes, if any, made therein; statement of account and solvency and annual return.  

All those documents which are filed with the Registrar they are available for public inspection on the payment of the prescribed fee. The fees for inspection of document and for obtaining any certified copy of the same is mentioned in Annexure ‘A’.  

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41 Section 35(2), The LLP Act, 2008.  
42 Section 35(3), The LLP Act, 2008.  
44 Ibid. The documents here includes incorporation document, names of partners and changes, if any, made therein, Statement of Account and Solvency and annual return.
4.4.5 **Penalty for False Statement**

If in any return, statement or other document required by or for the purposes of any of the provisions of the LLP Act, any person makes a statement which is false in any material particular knowing it to be false; or which omits any material fact knowing it to be material, he is punishable with imprisonment for a term which may extend to two years and shall also be liable to fine which may extend to five lakh rupees but which shall not be less than one lakh rupees.\(^{46}\)

4.4.6 **Power of Registrar to call Information from Limited Liability Partnerships**

Registrar is the one who looks after the administrative affairs of the LLP has the power to obtain the requisite information from the following:\(^{47}\)

- present or former partner
- present or former designated partner
- present or past employee

The main object of this is to facilitate the functioning as per the provisions of the LLP Act and accordingly the Registrar can ask any question or any declaration or any details or particulars in writing within a reasonable time period.\(^{48}\)

In case there is any default in answering of question or making of declaration or supplying of details or particulars asked for by the Registrar or if the Registrar is not satisfied with the reply or declaration or details or particulars provided, then Registrar can summon that person to appear before him or an inspector or any other public officer whom the

\(^{45}\) Rule 26, *The LLP Rules*, 2009. The fee as per Annexure A is Rs. 50/- for inspection of documents of a limited liability partnership under Section 36 and Rs. 5/- per page or fractional part thereof for copy or extract of any document under Section 36 of *The LLP Act*, 2008 to be certified by Registrar.

\(^{46}\) Section 37, *The LLP Act*, 2008.


\(^{48}\) *Ibid.*
Registrar may designate, to answer any such question or make such declaration or supply such details, as the case may be. 49

In case there is disobedience to summons or requisition of the Registrar without lawful excuse, the guilty will be punished with a minimum fine of two thousand rupees and maximum fine of twenty-five thousand rupees. 50

4.4.7 Compounding of Offences

In a vintage decision of Murray v. The Queen Empress, 51 it was stated that the compounding of an offence signifies “that the person against whom the offence has been committed has received some gratification, not necessarily of a pecuniary character, to act as an inducement of his desiring to abstain from a prosecution”

The LLP Act and the LLP Rules, 2009 contains the provision with respect to compounding of offences under Chapter VII, Section 39 and Chapter XVIII, Rule 41 respectively.

Compounding of Offences- The Central Government may compound any offence under this Act which is punishable with fine only, by collecting from a person reasonably suspected of having committed the offence, a sum which may extend to the amount of the maximum fine prescribed for the offence. 52

It is observed that here the law makes a provision for compounding of offences but the word ‘compounding of offences’ is nowhere defined. Basically, compounding of offences means the admission of guilt. The guilt may be admitted either **suo moto** or on receipt of notice of default or initiation of prosecution. The Central Government is empowered to compound the offences punishable with fine only by collecting a sum which can be equivalent to the maximum prescribed fine for that offence.

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49 Ibid.
50 Ibid.
51 (1894) 21 ILR 103 at 112. There is also another ruling of the same court, Kasum Bewa v. Bechu Bewa, (1899) 3 C.W.N. 322 which proceeds upon the same principle.
52 Section 39, The LLP Act, 2008. The corresponding provision is contained under Section 621A of the Companies Act, 1956 to compound offences punishable under the said Act whether committed by the Company or any officer thereof.
Whenever there is compounding of offence, the intimation of the same is given by the LLP to the Registrar in form 22 within seven days from the date of compounding and the application for the compounding of an offence is to be made in form 31 to the Registrar who forwards the same along with his comments to the Central Government. The compounding of offence is possible both, before the institution of prosecution as well as after the institution of prosecution.

The effect of compounding of offence is that where an offence is compounded before the institution of prosecution then no prosecution is instituted with respect to that offence. And where an offence is compounded after the institution of prosecution then Registrar is bound to bring the fact in the notice of the Court in writing. Moreover, the Central Government also has the power to direct the person/entity in default to file or submit the document within specified time along with fee and additional fee before allowing the compounding.

4.4.8 Destruction of Old Records

The provisions with respect to destruction of old records are enshrined under Chapter VII, Section 40 of the LLP Act and Chapter VIII, Rule 27 of the LLP Rules, 2009.

The Registrar may destroy any document filed or registered with him in physical form or in electronic form in accordance with such rules as may be prescribed.

The law provides the destruction of old records, but there are certain documents specified in Annexure ‘B’ to the LLP Rules, 2009 which are to be permanently preserved. The document to be permanently preserved includes incorporation document; notice of situation of registered office; information with regard to LLP Agreement or any changes made

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54 Rule 41(1), The LLP Rules, 2009.
58 Section 40, The LLP Act, 2008.
therein; and notice of other address of any LLP, at which documents to be served, notified to the Registrar.60

The rationale behind preserving above mentioned documents, pertaining to the LLP, is the fundamental importance of these records. Essentially, the records of the LLPs are to be preserved for the varied durations depending upon the nature of the record. The records can be destroyed as under:61

4.4.8.1 Records to be preserved for 21 years include all papers, registers, refund orders and correspondence relating to the limited liability partnership liquidation accounts.62

4.4.8.2 Records to be preserved for 5 years include copies of Government orders relating to limited liability partnership; registered documents of limited liability partnership which have been fully wound up and finally dissolved together with correspondence relating to such limited liability partnership; papers relating to legal proceedings from the date of disposal of the case and appeal, if any; copies of statistical returns furnished to Government; all correspondences including correspondences relating to scrutiny of accounts, annual returns, prosecutions, reports to the Central Government and the NCLT and the correspondences relating to complaints (in case of prosecution matter, the date is to be recorded from the date of disposal of the case and appeal, if any).63

4.4.8.3 Records to be preserved for three years include all books, records and papers, other than those specified above; and routine correspondence regarding payment of fees, additional filing fees and correspondence about the return of documents.64

The registered documents specified in Annexure ‘C’ to the LLP Rules, 2009 relating to any LLP in operation will be preserved for the period indicated hereunder.65

61 As per Rule 27(6), The LLP Rules, 2009; these Rules are in addition to and not in derogation of the Rules for the destruction of office records connected with accounts (Containing in Appendix 13 to the Compilation of the General Financial Rules) and the period prescribed under Record Retention Schedule for Records common to all departments and such other Rules.
64 Rule 27(2)(c), The LLP Rules, 2009.
<table>
<thead>
<tr>
<th>S. No.</th>
<th>Name of Document</th>
<th>Period of Preservation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Statement of compliance with requirements of the Act by an Advocate or Company Secretary or Chartered Accountant or Cost Accountant in whole time practice and by any person who subscribed his name to the incorporation document [Section 11(1)(c)]</td>
<td>5 years</td>
</tr>
<tr>
<td>2.</td>
<td>Notice of a person ceasing to be a partner and any change in the name or address of a partner</td>
<td>5 years</td>
</tr>
<tr>
<td>3.</td>
<td>Registered documents relating to LLP struck off under Section 75 together with correspondence or copy of the order of restoration of the LLP into the register</td>
<td>5 years</td>
</tr>
<tr>
<td>4.</td>
<td>Annual return of a LLP</td>
<td>5 years</td>
</tr>
<tr>
<td>5.</td>
<td>Consent of candidates to act as designated partner to be filed with the Registrar [Section 7(4)]</td>
<td>5 years</td>
</tr>
<tr>
<td>6.</td>
<td>Consent to act as a partner</td>
<td>5 years</td>
</tr>
<tr>
<td>7.</td>
<td>Statement by all the partners of firm containing particulars of firm along with application for its conversion into LLP</td>
<td>5 years</td>
</tr>
<tr>
<td>8.</td>
<td>Statement by all the shareholders containing particulars of private company/unlisted public company along with application for its conversion into LLP</td>
<td>5 years</td>
</tr>
<tr>
<td>9.</td>
<td>Certified copy of the order(s) of the NCLT under Section 60/61/62.</td>
<td>5 years</td>
</tr>
<tr>
<td>10.</td>
<td>Copy of the order of dissolution of a LLP by NCLT [Section 63]</td>
<td>5 years</td>
</tr>
<tr>
<td>11.</td>
<td>Statement of Account and Solvency</td>
<td>8 years</td>
</tr>
</tbody>
</table>
Further, the Registrar is required to maintain a Register of destroyed documents as specified in Annexure ‘D’ to the LLP Rules, 2009 wherein the brief particulars of the records destroyed will be entered along with the date and mode of destruction.66

The particulars of documents relating to LLP are:67

**Part I**

<table>
<thead>
<tr>
<th>Name of LLP</th>
<th>Act under which registered</th>
<th>Date on which finally dissolved or wound up or struck off</th>
<th>Description of documents destroyed</th>
<th>Date and mode of destruction with remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
<td>(5)</td>
</tr>
</tbody>
</table>

Particulars of documents other than those specified in Part I

**Part II**

<table>
<thead>
<tr>
<th>No. of the file of documents destroyed</th>
<th>Subject to which the document refers</th>
<th>Description of Documents Destroyed</th>
<th>Date and mode of Destruction with Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
</tr>
</tbody>
</table>

4.4.9 **Enforcement of duty to make returns**

If the LLP makes a default in filing with the Registrar any return, account or other document or the giving of notice to him of any matter; or fails to comply with any request of the Registrar to amend or complete and resubmit any document or to submit a fresh document, within fourteen days after service of a notice then the Registrar can make an application to the NCLT. The NCLT can make an order, with costs, directing that LLP or its designated partners or its partners to make good the default within time specified in the order. However, the operation of any other provision or any other law imposing penalties in respect of any default referred will not be limited.68

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It is submitted that sensing the importance of the various returns, accounts, documents and notice to be filed periodically with the Registrar, the provision in addition to penal consequences under LLP Act or any other enactments provides for the time bound direction from the NCLT to rectify the default or failure which can be with costs.

4.5 Investigation

The concept of investigation is dealt under Chapter IX of the LLP Act and Chapter IX of the LLP Rules, 2009 to ensure growth of LLPs to attain the ultimate end of the social and economic policies besides investigation in the public interest to protect from unscrupulous activities. The Central Government is having the power to appoint one or more competent persons as inspectors to investigate the affairs of a LLP if the NCLT, either suo moto, or on an application received from not less than one-fifth of the total number of partners of LLP, by order, declares that the affairs of the LLP ought to be investigated; or any Court, by order, declares that the affairs of a LLP ought to be investigated. And to report thereon in such manner as it may direct.69

The inspectors can be appointed by the Central Government if not less than one-fifth of the partners of the LLP make an application along with supporting evidence, as required by the NCLT to substantiate the case for investigation and the security amount (as prescribed under Rule 28 of the LLP Rules, 2009)70; or if the LLP makes an application that the affairs of the LLP ought to be investigated; or if, the Central Government is of the opinion that there are circumstances suggesting that the business is carried out with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the LLP was formed for any fraudulent or unlawful purpose; or that the affairs are not being conducted in accordance with the provisions of this Act; or there are sufficient reasons, on receipt of a

69 Section 43, the LLP Act, 2008. In B.M. Bajoria v. Union of India, (1972) 42 Com. Cases 338 (Del), the court held that the power of inspection is different from an inspection.

70 The amount of security is calculated on the basis of turnover, as stated in the Statement of Account and Solvency for the immediate preceding financial year, but not exceeding twenty five lakh rupees, for payment of costs of the investigation. If the turnover is upto one crore rupees then the amount of security is two lakh; if the turnover is one crore or more but less than five crore then five lakh; if turnover is five crore or more but less than ten crore then ten lakh and if turnover is ten crore or more then twenty-five lakh. Incase the Statement of Account and Solvency is not there for the preceding financial year, such amount of security as may be fixed by the Central Government.
report of the Registrar or any other investigating or regulatory agency, that the affairs of the LLP ought to be investigated.\textsuperscript{71}

It is worth noting here that only individuals can be appointed as an inspector and no firm, body corporate or other association can be appointed as an inspector.\textsuperscript{72}

\subsection{Investigation into the Affairs of Related Entities}

If the inspector thinks that for the purpose of investigation there is need to investigate the affairs of any entity which is or which was associated with the LLP or any present or former partner or designated partner then the inspector can do so after obtaining the prior approval of the Central Government and the Central Government before granting any such approval will give reasonable opportunity to such entity, partner or designated partner to show cause why such approval should not be granted. If the inspector investigates into the affairs of the related entities, partners or designated partner then the report thus prepared will specify about the affairs of that other entity or partner or designated partner if it is relevant.\textsuperscript{73}

\subsection{Production of Documents and Evidence}

The partners and designated partners of the LLP are duty bound to preserve and produce all books and papers before an inspector which are in their custody or power relating to the LLP or other entity besides extending all assistance relating to investigation.\textsuperscript{74}

\subsection{Powers of Inspector}

\subsubsection{Furnishing Information and Production of Book}

The inspector has the power to require any entity or any person to furnish such information, or produce such books or papers as he may consider necessary for the purpose of investigation.\textsuperscript{75}

\subsubsection{Custody of Books}

The inspector can keep in his custody any book and paper produced before him for thirty days and thereafter shall return the same and he can again call such book and paper if needed.\textsuperscript{76}

\textsuperscript{71} Supra note 69.
\textsuperscript{72} Section 45, The LLP Act, 2008.
\textsuperscript{73} Section 46, The LLP Act, 2008.
\textsuperscript{74} Section 47(1), The LLP Act, 2008.
\textsuperscript{75} Section 47(2), The LLP Act, 2008.
4.5.3.3 **Personal Appearance and Examination of Oath:** The inspector can require any partner or designated partner of the LLP to appear before him personally. Further, he can administer and examine on oath, any partner or designated partner of the LLP; or any other person in relation to the affairs of the LLP or any other entity, with the previous approval of the Central Government.\(^7\) When a person is examined on oath, the notes of examination will be taken down in writing and signed by the person examined and a copy of such notes shall be given to the person so examined and thereafter can be used as evidence by the inspector.\(^7\)

In case there is default on the part of any person, without reasonable cause, to produce any book or paper; or to furnish any information; or to appear personally or to answer any question put to him; or to sign the notes of any examination, then he will be liable for a minimum fine of two thousand rupees and a maximum of twenty-five thousand rupees and with a further fine of minimum fifty rupees and a maximum of five hundred rupees for every day after the first day after which the default continues.\(^9\)

4.5.3.4 **Seizure of documents:** If in the course of investigation, the inspector thinks that the books and papers related to the investigation may be destroyed, mutilated, altered, falsified or secreted then the inspector can make an application to the Judicial Magistrate of the first class, or the Metropolitan Magistrate having jurisdiction for an order to seize such books and papers. On the merits of the case, the Magistrate may, by order, authorize the inspector to enter with such assistance as may be required, the place or places where such books and papers are kept; to search that place or those places in the manner specified in the order; and to seize books and papers which the inspector considers it necessary for the purposes of his investigation.\(^8\) Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.\(^8\) All the books and papers thus seized are to be

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\(^7\) Section 47(3), The LLP Act, 2008.
\(^8\) Section 47(4), The LLP Act, 2008.
\(^9\) Section 47(6), The LLP Act, 2008.
\(^8\) Section 48(1) and (2), The LLP Act, 2008.
\(^8\) Section 48(4), The LLP Act, 2008.
kept in the custody of the inspector till the conclusion of the investigation and subsequently return it to the person from whom they were seized and intimate the Magistrate about return. However, the books and papers cannot be kept seized for a continuous period of more than six months and before returning them the inspector may, place identification marks on them or any part thereof.\textsuperscript{82}

4.5.4 Inspector's Report and its Evidentiary Value

The inspector gives the interim (if directed by the Central Government) and final reports to the Central Government in written and printed manner as per the direction of the Central Government. The copy of any report, other than interim, is forwarded to the LLP at its registered office besides the other entity or the person dealt with or related to the report. Moreover, the Central Government may on request and on payment of Rupees five per page make available the copy of such report to any person or entity affected by the report.\textsuperscript{83} Sensing the sanctity of the inspector's report, in \textit{Re, Pergamon Press Ltd.}\textsuperscript{84} it was held that the Inspector's Report is protected by absolute privilege. An authenticated copy of any report of inspector(s) is admissible in any legal proceeding as evidence in relation to any matter contained in the report, provided a copy of the report of inspector(s) is authenticated by the common seal, if any, of the LLP whose affairs have been investigated into; or by a certificate of a public officer having the custody of the report, under and in accordance with the provisions of Section 76 of the Indian Evidence Act, 1872 (Act No. 1 of 1872).\textsuperscript{85}

4.5.5 Fall Out of Inspector's Report

4.5.5.1 Prosecution: If the inspectors report finds any person, related to LLP or any other entity, guilty of any offence then the Central Government may prosecute that person to make him liable and it is the duty of all partners, designated partners, other employees and agents of the LLP or other entity, as the case may be, to give all assistance in connection with the prosecution which they can offer.\textsuperscript{86}

\textsuperscript{82} Section 48(3), \textit{The LLP Act}, 2008.
\textsuperscript{84} (1970) 3 All ER 535.
\textsuperscript{86} Section 50, \textit{The LLP Act}, 2008.
4.5.5.2 **Winding up:** And if the LLP is liable to be wound up under the LLP Act or under any other law and it appears to the Central Government on the basis of the inspectors report that it is expedient to wind up the LLP as the business of LLP was conducted with an intent to defraud its creditors, partners or any other person, or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive or unfairly prejudicial to some or any of its partners, or that the LLP was formed for any fraudulent or unlawful purpose; or that the affairs of the LLP are not being conducted as per the provisions of the LLP Act, then the Central Government will cause a petition of winding up presented before the NCLT on the ground that it is just and equitable to be wound up. However, if the LLP is already being wound up by the NCLT then the Central Government need not to get such petition presented.87

4.5.5.3 **Recovery of damage or property:** On the basis of the Inspector’s Report, the Central Government, in the public interest can bring proceedings for the recovery of any damage caused because of any fraud, misfeasance or other misconduct in connection with the promotion or formation or the management of the affairs, of such LLP or such other entity; or recover the property of the LLP or such other entity which was misapplied or wrongfully retained.88

4.5.5.4 **Expenses of investigation:** Initially all the expenses relating to investigation are defrayed by the Central Government and subsequently the Central Government can get that reimbursed from any person who is convicted on a prosecution, or who is ordered to pay damages or restore any property in proceedings may in the same proceedings be ordered to pay the said expenses to such extent as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be; any entity in whose name proceedings are brought as aforesaid will be liable to the extent of the amount or value of any sums or property recovered by it as a result of the proceedings; and unless, as a result of the investigation, a prosecution is instituted, any entity, a partner or designated partner or any other person dealt with by the report of the inspector shall be liable to reimburse the Central Government in respect of the whole of the expenses, unless and except in so far as, the Central Government otherwise directs; and the applicants for the investigation

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87 Section 51, The LLP Act, 2008.
88 Section 52, The LLP Act, 2008.
are liable to such extent, if any, as the Central Government may direct. Moreover, the cost or expenses incurred by the Central Government with respect to the proceedings for the recovery of damage or property is treated as investigation expense.  

4.6 Compromise, Arrangement or Reconstruction of Limited Liability Partnerships

Neither ‘reconstruction’ nor ‘amalgamation’ has a precise legal meaning. Where an undertaking is being carried by a company and is in substance transferred, not to an outsider, but to another company consisting substantially of the same shareholders with a view to its being continued by the transferee company, there is a reconstruction. Amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company becoming substantially the shareholders in the company which is to carry on the blended undertaking. There may be amalgamation either by transfer of two or more undertakings to a new company or by the transfer of one or more undertakings to an existing company.  

Merger is one of the most common forms of non-organic corporate restructure program that is adopted by the corporate world forged so as to achieve growth for the corporate entity as a whole. In the strict economic sense of the word it would mean the “union of two or more commercial interests, corporations, undertakings, bodies or any other entities. In the corporate business means the fusion of two or more corporations by the transfer of all property to a single corporation.  

With the liberalization of foreign direct investment policies, the mergers, acquisitions and alliance have become common activities and are growing at an ever increasing speed. Whether it is Indian companies wanting to expand by capturing foreign markets or foreign companies wishing to acquire market share in India, mergers and acquisitions have been used as means to achieve crucial growth and are becoming more and more accepted than ever as a tool for implementing business strategy. Major factors like favourable government policies, 

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89 Section 53, The LLP Act, 2008.
viable economy, additional liquidity in the corporate sector, and dynamic attitudes of Indian entrepreneurs have helped in facilitating the mergers and acquisitions transactions in India. Justice Dr. Dhananjay Chandrachud stated in Re Ion Exchange (India) Ltd.: 92

Corporate enterprise must be armed with the ability to be efficient and to meet the requirements of a rapidly evolving business reality. Corporate restructuring is one of the means that can be employed to meet the challenges and problems which confront business.

It is submitted that this concept is imbibed in the Companies Act, 1956 through Sections 391 to 394 and is extended to LLPs providing for the manner in which compromises or arrangements including mergers and amalgamations involving LLPs will be allowed. 93 However, as a result of compromise the LLP Agreement will also undergo alterations.

A LLP can enter into compromise or arrangement between:94

a) a LLP and its creditors; or

b) a LLP and its partners.

The NCLT, on the application of the LLP or any creditor or partner or liquidator can order a meeting of creditors or of partners and it should supported by an affidavit in form 20 and a copy of the proposed compromise or arrangement should also be annexed to the affidavit as an exhibit thereto. 95 If in that meeting the 3/4th in value of the partners or creditors agree to any compromise or arrangement and accordingly sanctioned by the NCLT then it shall be binding on all creditors or partners or the LLP or the liquidator as the case may be. 96

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92 [2001] 105 Comp Cas 115 (Bom).
94 Ibid.
95 Section 60(1), The LLP Act, 2008 read with Rule 35(1), The LLP Rules, 2009.
96 Section 60(2), The LLP Act, 2008. As per Rule 35(4), The LLP Rules, 2009 voting by proxy shall be permitted, provided a proxy in form 26 duly signed by the person entitled to attend and vote at the meeting is filed with the limited liability partnership at its registered office not later than 48 hours before the meeting. As per Rule 35(5), The LLP Rules, 2009 the notice of the meeting to be given to the creditors and/or partners, will be sent to them individually by the chairman appointed for the meeting, or, if the Tribunal so directs, by the limited liability partnership (or its Liquidator), or any other person as the Tribunal 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 along with statement showing material interest of the designated partners, if any, and a
The sanctioning order of the NCLT is to be filed by the LLP with the Registrar within thirty days after making such an order and shall have effect only after it is so filed in form 22 along with the fee as mentioned in Annexure A and in case a default is made then every designated partner of the LLP shall be punishable with fine which may extend to one lakh rupees.

In case the LLP is not the applicant, a copy of the summons in form 21 and the affidavit will be served on the LLP or where the LLP is being wound-up on its liquidator, not less than 14 days before the date fixed for the hearing of the summons. On hearing of the summons or any adjourned hearing thereof, the NCLT shall by order, unless it thinks fit for any reason to dismiss the summons, give such directions as it may think necessary with respect to the matters determining the creditors and/or of partners whose meeting or meetings have to be held for considering the proposed compromise or arrangement; fixing the time and place of such meeting or meetings; appointing a chairman for the meeting or chairmen for the meetings to be held; fixing the quorum and the procedure to be followed at the meeting or meetings, including voting by proxy; determining the values of the creditors and/or the partners, as the case may be, whose meetings have to be held; notice to be given of the meeting or meetings and the advertisement, if any, of such notice; the time within which the chairman of the meeting is to report to the NCLT the result of the meeting; and such other matters as the NCLT may deem necessary.

When the NCLT makes the order for compromise or arrangement, then the NCLT can supervise the carrying out of the compromise or an arrangement; and give directions or modify the compromise or arrangement for the proper working of the compromise or arrangement. And if the NCLT is satisfied that the sanctioned compromise or an...

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97 Section 60(3), The LLP Act, 2008 read with Rule 35(11), The LLP Rules, 2009. In computing the period of 30 days from the date of order, the requisite time for obtaining a certified copy of order shall be excluded.

98 Section 60(4), The LLP Act, 2008.

99 Rule 35(2) and (3), The LLP Rules, 2009.

100 Section 61(1), The LLP Act, 2008.
arrangement cannot work satisfactorily with or without modifications then it can make an order for winding up which will be deemed to be an order made under Section 64.\textsuperscript{101}

Reconstruction or amalgamation of the LLPs is facilitated if it is shown to the NCLT that:\textsuperscript{102}

a) compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of any LLP or LLPs, or the amalgamation of any two or more LLPs; and

b) under the scheme the whole or any part of the undertaking, property or liabilities of any LLP concerned in the scheme (in this section referred to as a ‘transferor LLP’) is to be transferred to another LLP (in this section referred to as the ‘transferee LLP’), the NCLT may either by the order sanctioning the compromise or arrangement or by a subsequent order make provisions for all or any of the following matters namely:

i) the transfer to the transferee LLP of the whole or any part of the undertaking, property or liabilities of any transferor LLP;

ii) the continuation by or against the transferee LLP of any legal proceedings pending by or against any transferor LLP;

iii) the dissolution without winding up of any transferor LLP;

iv) the provision to be made for any person who within such time and in such manner as the NCLT directs dissent from the compromise or arrangement; and

v) such incidental, consequential and supplemental matters as are necessary to secure that the reconstruction or amalgamation shall be fully and effectively carried out:

Provided that no compromise or arrangement proposed for the purposes of, or in connection with, a scheme for the amalgamation of a LLP, which is

\textsuperscript{101} Section 61(2), The LLP Act, 2008.

\textsuperscript{102} Section 62, The LLP Act, 2008.
being wound up with any other LLP or LLPs shall be sanctioned by the NCLT unless the NCLT has received a report from the Registrar that the affairs of the LLP have not been conducted in a manner prejudicial to the interests of its partners or to public interest.\textsuperscript{103}

Provided further that no order for the dissolution of any transferor LLP under clause \textit{(iii)} shall be made by the NCLT unless the Official Liquidator has on scrutiny of the books and papers of the LLP made a report to the NCLT that the affairs of the LLP have not been conducted in a manner prejudicial to the interests of its partners or to public interest.\textsuperscript{104}

Where an order provides for the transfer of any property or liabilities, then, that property will be transferred to and vests in the transferee LLP and the liabilities will be transferred to and becomes the liabilities of the transferee LLP. In the case of any property freed from any charge which is, by virtue of the compromise or arrangement, to cease to have effect if the order so directs.\textsuperscript{105} Within thirty days after the making of an order, every LLP in relation to which the order is made shall cause a certified copy thereof to be filed with the Registrar for registration.\textsuperscript{106} In case of any default in compliance, the LLP and every designated partner of the LLP is punishable with fine which may extend to fifty thousand rupees.\textsuperscript{107}

As Peter F. Drucker has rightly observed, that all great change in business comes from outside the firm not from inside.\textsuperscript{108} These provisions increase the attractiveness for forming a LLP. Generally, the corporate entities restructure to meet the changing requirements of business environment; however, the trend of corporate restructuring is ignited by the second generation economic reforms in India. The various advantages of corporate restructuring includes the economies of scale, optimum utilization of capacities and factors of production,
benefits of integration, synergistic operational advantages, financial strength, diversification, edge of brand-equity, sustainable growth and increase in efficiency. It is favorable for small and medium scale business houses as they can avail these benefits.\textsuperscript{109} The Pioneers of corporate reconstruction exercise in India include big shots like Ram Prasad Goenka, M.R.Chabria, Sudershan Birla, Vijaya Mallya, Srichand Hinduja, Murugappa family, Dhirubhai Ambani and Dilip Sanghvi etc.\textsuperscript{110}

4.7 Winding up of Limited Liability Partnership

Winding up is the penultimate stage in the life of the LLP. The LLP being an artificial person, the law alone gives birth to a LLP and law alone puts it to an end.\textsuperscript{111} Chapter XIII containing Sections 63 to 65 of the LLP Act deals with the winding up and dissolution of a LLP. It is submitted that in case of winding up all the assets of the LLP are sold and the proceeds are collected to discharge the liabilities on a priority basis. It is important here to explicitly specify that the winding up and dissolution is not one and the same thing. Dissolution means the putting an end to the \textit{jural} relations existing between the partners of the LLP.

4.7.1 Rules for Winding up and Dissolution

The Central Government in pursuance of the power to make Rules in relation to winding up and dissolution conferred under Section 65 read with Section 79 of the LLP Act has notified the LLP Rules, 2012. The LLP Rules, 2012 were notified on July 10, 2012 and they supersede the LLP Rules, 2010 which were earlier notified \textit{w.e.f}. March 30, 2010 vide Notification No. GSR 266(E).\textsuperscript{112}

4.7.2 Modes for Winding Up of Limited Liability Partnership

\textsuperscript{111} Section 2(1)(d), \textit{The LLP Act}, 2008.
\textsuperscript{112} F No. 1/7/2012-CL-V as issued by the Ministry of Corporate Affairs, Govt. of India.
The LLP Act provides the two modes of Winding up. It states that the winding up of a LLP may be either voluntary or by the NCLT. The wound up LLP can be dissolved thereafter.\footnote{Section 63, The LLP Act, 2008 read with Rule 4, The LLP Rules, 2012.}

The following chart highlights the modes for winding up of LLP:

\begin{center}
\begin{tikzcd}
\text{WINDING UP} \\
\quad \\
\text{VOLUNTARY WINDING UP} & \text{COMPULSORY WINDING UP} \quad \text{(By the NCLT)} \\
\quad & \\
\text{PARTNER’S VOLUNTARY WINDING UP} & \text{CREDITOR’S VOLUNTARY WINDING UP}
\end{tikzcd}
\end{center}

Whatever may be the mode, when a LLP is being wound up, every invoice, order for goods or business letter issued by or on behalf of the LLP or liquidator, or a receiver or designated partner shall contain a statement that the LLP is being wound up\footnote{Rule 52, The LLP Rules, 2012.} and all books and papers of the LLP and liquidator are \textit{prima facie} evidence of the truth of all matters purporting to be recorded therein\footnote{Rule 53, The LLP Rules, 2012.} giving the right to inspect books and papers to creditors and partners.\footnote{Rule 54, The LLP Rules, 2012.} The books and papers so maintained can be disposed of only after the affairs
of LLP are completely wound up and not before that. Moreover, all the money received by the liquidator in the winding up process is to be deposit the money in RBI or any scheduled bank and not in any private bank account.

These two broad modes of winding up are discussed hereunder:

4.7.2.1 Voluntary Winding up:

The voluntary winding up of LLP can be either partner’s voluntary winding up or the creditor’s winding up. In case of partner’s voluntary winding up, the designated partners make a statutory declaration of the solvency; where as in creditor’s voluntary winding up, there is no statutory declaration of solvency by the designated partners. The various stages involved in voluntary winding up are discussed as under:

4.7.2.1.1 Passing of Resolution: Voluntary Winding up of a LLP is possible in case a resolution with approval of at least three-fourths of the total number of its partners is passed to wind up the LLP and the copy of the resolution so passed is filed with the Registrar within thirty days in form 1. Also, there is requirement to obtain approval of creditors (secured or unsecured), if any, for winding up. The winding up is deemed to commence from the date the resolution stated above is passed and a statement as to the affairs of the LLP is to be filed within twenty-one days from relevant date or within such extended time not exceeding two months (including the period of twenty-one days) as the Liquidator or the Provisional Liquidator or the NCLT may for special reasons extend.

4.7.2.1.2 Declaration of solvency: A declaration of solvency is to be made by the majority of designated partners (not being less than two) in form 2, duly verified by the affidavit that either the LLP is not having any debt or it will pay all its debts in full within one year from the commencement of winding up. The said declaration is to be registered with the Registrar

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120 Rule 7, The LLP Rules, 2012. The declaration of solvency to be made by the partners of a LLP in form 2 as provided under the LLP Rules, 2012.
122 Rule 6, The LLP Rules, 2012. The expression ‘relevant date’ means, in a case where a Provisional Liquidator is appointed, the date of his appointment and in a case where no such appointment is made, the date of the winding up order.
in form 3 within 15 days of passing of the resolution along with a statement of assets and liabilities in form 4 for the period commencing from the date up to which the last account was prepared and ending with the latest practicable date immediately before the making of the declaration duly attested by at least two designated partners, declaring that the LLP is not being wound up to defraud any person and also the valuation report valuing the assets of the LLP. However, the LLP or its designated partner may satisfy the dues by repaying of creditors before the declaration of solvency.123

4.7.2.1.3 Meeting and consent of creditors: Before taking any action for winding up, the approval of creditors (secured or unsecured), if any is to be sought in the meeting of creditors regarding winding up. A copy of the aforesaid declaration the estimated amount of the claims due to each of the creditors and an offer for creditors to accept such claims shall send to the creditors by registered or speed post or any of the modes specified in Rule 15 of LLP Rules, 2009. Within thirty days of receipt of declaration, the creditors are bound to give to the LLP their opinion in respect of voluntary winding up proposed by the LLP or acceptance of offer for satisfaction of their claims. Where two-third of the creditors give their consent that:124

- in the interest of all the partners and creditors that the LLP be wound up voluntarily by partners, the LLP shall be wound up voluntarily by partners; or

- the debts of the creditors would not be payable from the proceeds of the assets of the LLP, the LLP may be wound up voluntarily by creditors.

- if the debts of the creditors would not be payable and it is proposed that the LLP to be wound up by the NCLT, the LLP shall file an application within 14 days thereafter.

Notice of any decision of creditors shall be given by the LLP to the Registrar in form 5 within 15 days of the receipt of consent of Creditors.

4.7.2.1.4 Publication of Resolution: Incase LLP is to be voluntary wound up by the creditors then within 14 days of the receipt of the creditors consent, LLP shall give notice of the

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123 *Supra* note 120.
resolution by advertisement in a newspaper circulating in the district where the registered office or the principal office of the LLP is situated.\textsuperscript{125}

4.7.2.1.5 Appointment of Liquidator and Committees: Within 30 days of the passing of the resolution where no creditors are subsisting or in case of creditors within 30 days of intimating the decision of the creditors to the Registrar, the liquidator will be appointed to carry on the winding up of LLP with the consent of the partners and his remuneration will be fixed. The LLP’s liquidator is bound to file a declaration in form 6 with the Registrar disclosing conflict of interest or lack of independence in respect of his appointment if any with the LLP or the creditors and the LLP shall give notice to the Registrar in form 10 within 10 days of the appointment of the liquidator. On the appointment of the LLP liquidator all the powers of the designated partner and other partner, if any shall cease.\textsuperscript{126} The accounts of the liquidator are to be audited in accordance with the manner specified in Rule 56.\textsuperscript{127} The partners or the creditors may appoint the committees as they consider appropriate to supervise the voluntary winding up and assist the Liquidator in discharge of his functions.\textsuperscript{128}

4.7.2.1.6 Liquidator’s Report: Liquidator is bound to report quarterly (quarters ending on 31st March, 30th June, 30th September and 31st December) on the progress of winding up of the LLP in form 8 to the partners or creditors, as the case may be, which shall be made before the end of the following quarter.\textsuperscript{129} If the report reflects the fraud committed materially affecting the rights of partners or creditors or interests of LLP or public then the NCLT may without prejudice to the continuation of process of winding up under these rules, order for investigation under Section 43 and on consideration of the report of such investigation. The NCLT may pass such order and give such directions as it may consider necessary including the power to transfer the winding up proceedings from voluntary winding up to compulsory winding up by NCLT.\textsuperscript{130}

\textsuperscript{125} Rule 9, The LLP Rules, 2012.
\textsuperscript{126} Rule 10, The LLP Rules, 2012.
\textsuperscript{127} Rule 15, The LLP Rules, 2012.
\textsuperscript{128} Rule 16, The LLP Rules, 2012.
\textsuperscript{129} Rule 17, The LLP Rules, 2012.
\textsuperscript{130} Rule 18, The LLP Rules, 2012.
4.7.2.1.7 Dissolution of Limited Liability Partnership: After winding up of the affairs of LLP, the liquidator prepares a report in form 9 describing the manner in which the winding up has been conducted and property has been disposed off its debts has been discharged. The approval of the partners or creditors is required on the said report and the final winding up accounts and explanation of the Liquidator in the meeting of partners or creditors. At least two-third of total number of partners or creditors are required to give their consent for the approval of report and the accounts satisfied by the liquidator. The resolution for such approval shall be passed within 30 days of the receipt of the report, winding up accounts and explanation for its dissolution. Within 15 days of the of the passing of the resolution, the Liquidator files with the Registrar a copy of the final winding up accounts, explanations and report in form 10 and file an application with the NCLT for passing an order of dissolution of LLP. The NCLT on the satisfaction for the duly follow up of the winding process pass an order for the dissolution of LLP within 60 days of the receipt of such application. The liquidator files a copy of the order for the dissolution of LLP with the Registrar within 30 days in form 11.131

4.7.2.1.8 Application of assets for satisfaction of liabilities: The sale proceeds from the assets of the LLP are collected and are applied in the satisfaction of liabilities of the LLP.132 All costs, charges and expenses properly incurred in the winding up, including the fee of the Liquidator is subject to the rights of secured creditors if any, and workmen, is paid out of the assets of the LLP in priority to all other claims.133

4.7.2.2 Compulsory Winding up:

The various stages involved in compulsory winding up by the NCLT are discussed as under:

4.7.2.2.1 Jurisdiction of NCLT: The NCLT has the jurisdiction to entertain, or dispose of:134

a) any suit or proceeding by or against the LLP;

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b) any claim made by or against the LLP, including claims by or against any of its branches in India;

c) any application made under Sections 60 to 62 of the LLP Act;

d) any scheme submitted under the LLP Act or any other law, for the time being in force, for revival and rehabilitation of LLP;

e) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of the LLP, whether such suit or proceeding has been instituted or such claim or question has arisen or arises or such application is made or has been made or such scheme is submitted or has been submitted, before or during the pendency of winding up petition or after the winding up order is made.

4.7.2.2.2 Grounds of Compulsory Winding up: The LLP Act provides various circumstances in which LLP may be wound up by the NCLT. They are discussed as under:

a) If the limited liability partnership decides that limited liability partnership be wound up by the NCLT: As the LLP Agreement governs the fate of the LLP to a great extent and LLP Agreement is nothing but the consensus of the partners, so if it decided by the LLP to be wind up by the NCLT then it comes within the preview of Section 64(a).

b) If, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two: If at any point of time the number of partners falls below the statutory limit then in addition to the consequences as enumerated under Section 6(2) dealt with in the preceding chapter, the NCLT has the ground to initiate the winding up of the said LLP.

c) If the limited liability partnership is unable to pay its debts: Every individual and entity hates losses, yet many individuals and entities suffer losses. The LLP is considered to be unable to pay its debts, firstly, if a notice is served on LLP at its

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135 Section 64, The LLP Act, 2008.
136 Ibid.
registered office for the demand of an amount exceeding one lakh rupees and the LLP has failed to pay the such amount within twenty-one days after the receipt of such demand or to provide adequate security or restructure or compound the debt to the reasonable satisfaction of the creditor; secondly, if any execution or other process issued on a decree or order of any Court or NCLT in favour of a creditor of the LLP is returned unsatisfied in whole or in part or, thirdly, if taking into account the contingent and prospective liabilities of the LLP it is proved to the satisfaction of the NCLT that the LLP is unable to pay its debts. The very existence of the LLP is attributed to the purpose of doing business and if the business cannot be carried on except at losses, making it unable to pay the debts, then the LLP is to be wound up.

d) If the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order: The Preamble of the Constitution of India speaks about constituting a Sovereign India and the Fundamental Duties covered under Article 51A, Part IV-A, inserted by means of 42nd Amendment of 1976, provides to uphold and protect the sovereignty, unity and integrity of India. Sovereignty, integrity of India, the security of the State or public order is the very foundations of human dignity and national character. They are indispensable for the progress, peace and prosperity of the nation as a whole as these promotes a spirit of patriotism and have moral impact and educative value upon the citizens. Accordingly, if any LLP acts against the interests of the sovereignty and integrity of India, the security of the State or public order then it is valid ground for winding up by the NCLT.

e) If the limited liability partnership has made a default in filing with the Registrar the statement of account and solvency or annual return for any five consecutive financial years: Being a body corporate, LLP is required to file returns

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periodically with the Registrar and are available to the public for inspection in order to ensure transparency and if any evasion is made for consecutively five years then the NCLT can wind up the LLP.

f) If the NCLT is of the opinion that it is just and equitable that the limited liability partnership be wound up: The NCLT may refuse to make an order of winding up, on the basis of just and equitable ground if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the LLP wound up instead of pursuing that other remedy.\textsuperscript{138}

In \textit{Hind Overseas (Pvt.) Ltd. v. Raghunath Prasad Jhunjhunwala}\textsuperscript{139}, the Supreme Court has said that the principles of ‘just and equitable’ clause baffle a precise definition. It must rest with judicial discretion of the court depending upon the facts and circumstances of each case. These are necessarily equitable considerations and may, in a given case, be superimposed on law. Whether it would be so done in a particular case cannot be put in the straitjacket of an inflexible formula. In \textit{Rajahmundry Electric Supply Corporation Ltd. v. Nageswara Rao}\textsuperscript{140}, it was held that the ‘just and equitable’ rule though wide has yet its own circumspection. It operates independently and has a precise import and content of its own. Justice, equity and good conscience is a salutary rule in jurisprudence which prompts the courts to act in real and compelling circumstances particularly because it relates to the winding up.

4.7.2.2.3 Petition for winding up: A petition for winding up can be presented before the NCLT by:\textsuperscript{141}

\begin{itemize}
  \item[a)] the LLP or any of its partner or partners,
  \item[b)] any secured creditor or creditors, including any contingent or prospective creditor or creditors,
  \item[c)] the Registrar, or
\end{itemize}

\textsuperscript{138} Rule 27(2), \textit{The LLP Rules}, 2012.
\textsuperscript{139} AIR 1976 SC 565.
\textsuperscript{140} AIR 1956 SC 213.
\textsuperscript{141} \textit{Supra note 45}.
d) any person authorised by the Central Government in that behalf,

e) the Central Government, in a case falling under Section 51 of the Act,

f) the Central Government or a State Government, in a case falling under clause
(d) Section 64.

4.7.2.2.4 Powers of NCLT: On hearing a winding up petition, the NCLT has the power to:142

a) dismiss it, with or without costs;

b) make any interim order, as it thinks fit;

c) direct the action for revival or rehabilitation of the LLP in accordance with
   procedure laid down in Sections 60 to 62 of the LLP Act;

d) appoint a “Liquidator” as provisional liquidator of the LLP till the making of a
   winding up order;

e) make an order for the winding up of the LLP with or without costs; or

f) any other orders or orders as may be considered fit:

Provided that the NCLT shall not refuse to make a winding up order on the
ground only that the assets of the LLP have been mortgaged for an amount equal
to or in excess of those assets or that the LLP has no assets.

4.7.2.2.5 Statement of Affairs: If prima facie the case of winding up is built in furtherance of
petition filed by any other person other than the LLP, the NCLT can direct the LLP to file
objections and statement of affairs. The statement as to the affairs of the LLP is to be filed
within twenty-one days from relevant date or within such extended time not exceeding two months
(including the period of twenty-one days) as the Liquidator or the Provisional Liquidator or
the NCLT may for special reasons extend. A LLP which fails to file the statement of affairs
forfeits the right to oppose the petition.143

143 Rule 28, The LLP Rules, 2012. The expression ‘relevant date’ means, in a case where a Provisional
Liquidator is appointed, the date of his appointment and in a case where no such appointment is made, the
date of the winding up order.
4.7.2.2.6 Appointment of Liquidator: For compulsory winding up or for the appointment of provisional liquidator, there is requirement of a liquidator who can be either ‘official liquidator’ or a liquidator appointed by an order of the NCLT from the panel maintained by the Central Government. On appointment as Provisional Liquidator or Liquidator from panel, such liquidator is required to file a declaration in the form 6 disclosing conflict of interest or lack of independence in respect of his appointment, if any, with the NCLT and such obligation shall continue throughout the term of his or its appointment. A liquidator shall be described by the style of “the liquidator” of the particular LLP and not by his or its name.\textsuperscript{144}

4.7.2.2.7 Communication of winding up order to the liquidator and the Registrar: The order of winding up made by the NCLT is to be intimated to the Liquidator and the Registrar in form 12 within a period not exceeding fifteen days from the date of passing of the order. On the receipt of the intimation, the Registrar makes an endorsement of order in his records and notify in the Official Gazette. On the receipt of the intimation, a notice shall be sent by Liquidator to the registered office of the LLP by registered post and Liquidator shall serve notice to the partners, designated partners, officers, employees including Chief Executive Officer, Chief Finance Officer and auditors and secured creditors, if any, within fifteen days of the receipt of the intimation, for the purpose of custody of the property, assets, effects, actionable claims, books of accounts or other documents.\textsuperscript{145} The winding up order operates in favour of all creditors and partners\textsuperscript{146} and the effect of winding up notice is that it is deemed to be a notice of discharge to the officers, employees and workmen of the LLP.\textsuperscript{147} On the basis of winding up order the custody of the LLP properties is taken over by the liquidator and he takes all the necessary steps to protect and preserve them.\textsuperscript{148}

\textsuperscript{144} Rule 29, \textit{The LLP Rules}, 2012. The Central Government is to maintain a panel consisting of the names of practicing chartered accountants, advocates, practicing company secretaries, practicing cost and works accountants or firms or bodies corporate having chartered accountants, advocates, company secretaries, cost and works accountants and such other professionals as may be notified by the Central Government or from a firm or a body corporate of persons having a combination of such professionals as may be notified by Central Government and having at least ten years' experience in company or limited liability partnership matters and such other qualifications and any other terms and conditions as may be notified by the Central Government.

\textsuperscript{145} Rule 31, \textit{The LLP Rules}, 2012.

\textsuperscript{146} Rule 32, \textit{The LLP Rules}, 2012.

\textsuperscript{147} Supra note 145.

\textsuperscript{148} Rule 36, \textit{The LLP Rules}, 2012.
4.7.2.2.8 Liquidator’s Report and Direction of the NCLT: Liquidator is bound to report quarterly (quarters ending on March 31, June 30, September, 30 and December 31) on the progress of winding up of the LLP in form 13 to the NCLT, which shall be made before the end of the following quarter. Within sixty days from the date of winding up order the Liquidator is to submit a report to the NCLT. On the consideration of the report the NCLT will fix a time limit within which the LLP will be dissolved after completing the entire proceedings.

4.7.2.2.9 Dissolution of Limited Liability Partnership: All the partners, designated partners, officers, employees (past and present) etc. are to cooperate with the liquidator and deliver him the property, books of accounts and all other documents. The assets are applied first for the payment of the cost including expenses, charges or fees and remuneration of the Liquidator incurred in the winding up process and thereafter, for the discharge of its liabilities. Also the NCLT can order the appointment of the Inspection Committee, with maximum twelve members, to act and assist the Liquidator. The liquidator is bound to maintain proper books of accounts and get them audited. The Central Government has the power to investigate the books of accounts and records of the Liquidator. The NCLT has the right to adjust the partners and distribute the surplus to those entitled.

From the above, it is deduced that the grounds for winding up as provided under Chapter XIII of the LLP Act are analogous to those in case of winding up of a company and hence it cannot be termed as *sui generis.*

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4.8 Miscellaneous Provisions

Under Chapter XIV the following miscellaneous provisions are dealt with:

4.8.1 Offences and Penalties

Where an offence is committed by a LLP and it is proved that the offence is committed with the consent or connivance of partner(s) or designated partner(s) of the LLP; or is attributed to any neglect on the part of the partner(s) or designated partner(s) then, the partner(s), designated partner(s) as well as the LLP is guilty of the offence and liable to be prosecuted and punished.\(^{159}\)

The offences under the LLP Act are punishable either by way of charging fine or through charging of fine as well as imprisonment with respect of violations relating to a false statement, carrying on business of LLP with intent to defraud or for any fraudulent purposes and intentionally making false statements or omitting any material fact, in any statement, return, document etc. under the LLP Act.

As discussed, under the head of ‘financial disclosure’ in this Chapter, the offences which are punishable with fine only can be compounded by collecting a sum not exceeding the amount of maximum fine prescribed for the offence by the Central Government.

It is submitted that the offences and penalties arising out of non-compliance of the provisions of the LLP Act are defined along with the substantive provisions. However, for non-compliance on procedural matters such as time limits for filing requirements, penalties are provided in a non-discretionary manner. The various provisions with respect to offences and penalties are discussed hereunder:

4.8.1.1 Compliance Management under the Act: The compliance management under the LLP Act ensures that LLPs file their documents with Registrars timely else comply with other procedural requirements. Various provisions require LLPs to file the documents like Statement of Account and Solvency, Annual Return and notices in respect of changes among partners etc. within the specifically indicated time. The Act contains provisions for allowing LLPs to file such documents even after their due dates upto 300 days on payment of

\(^{159}\) Section 76, The LLP Act, 2008.
additional fee of Rs. 100 for every day of such delay in addition of the requisite fee and no action for prosecution will be taken against them. In case there is delay of more than 300 days then the LLPs will be required to pay requisite filing fee, additional fee and will also be liable to be prosecuted.\textsuperscript{160}

4.8.1.2 \textit{Enhanced Punishment}: In case a LLP or any partner or designated partner of the LLP commits any offence for the second or subsequent time then the said LLP or the said partner or the said designated partner will be punished with imprisonment as provided and in case of offences for which the fine is prescribed either along with or exclusive of imprisonment then in that case with fine which will be twice the amount of fine for such offence.\textsuperscript{161}

4.8.1.3 \textit{General penalties}: Any person who is guilty of an offence for which punishment is not specifically expressed under the provision is liable to a minimum fine of five thousand rupees and it may extend to a maximum of five lakh rupees and with a further fine which may extend to fifty rupees for every day after the first day after which the default continues.\textsuperscript{162}

4.8.1.4 \textit{Penalty on non-compliance of any order passed by NCLT}: If any person fails to comply with any order made by the NCLT under the LLP Act then that person is punishable with a maximum imprisonment of six months and is also liable to a minimum fine of fifty thousand rupees.\textsuperscript{163}

4.8.2 \textit{Jurisdiction of Courts/NCLT}

Under the LLP Act, the Judicial Magistrate of the first class, or, the Metropolitan Magistrate, as the case may be, have the jurisdiction to try offences and impose punishment in respect to offences committed under the LLP Act.\textsuperscript{164}

The NCLT is empowered to exercise such powers and perform such functions which are conferred as per the LLP Act or any other law for the time being in force. Any person who is aggrieved by an order or decision of the NCLT can go for an appeal to the NCLAT and the

\textsuperscript{160} Section 69, \textit{The LLP Act}, 2008.
\textsuperscript{161} Section 70, \textit{The LLP Act}, 2008.
\textsuperscript{162} Section 74, \textit{The LLP Act}, 2008.
\textsuperscript{163} Section 73, \textit{The LLP Act}, 2008.
\textsuperscript{164} Section 77, \textit{The LLP Act}, 2008.
provisions of Sections 10FQ, 10FZA, 10G, 10GD, 10GE and 10GF of the Companies Act, 1956 will be applicable in respect of such appeal.\textsuperscript{165}

\subsection*{4.8.3 Striking off defunct Limited Liability Partnerships}

The words, ‘striking-off’ implies removal and ‘defunct’ implies non-operational. A LLP once incorporated comes into existence and cannot be removed from the Register of LLP maintained by the Registrar and moreover, there is no clause or provision to cancel the Certificate of Incorporation once issued. The only possibility is that either the LLP is amalgamated or wound up and dissolved. The short-cut to the dissolution of LLP is striking it off the Register of LLP maintained by the Registrar provided it is a defunct LLP.\textsuperscript{166}

The Registrar is empowered to strike off the names of LLPs which are not carrying on any business or operation either for a period of two year or more and the Registrar takes \textit{suo moto} action or for a period of one year or more and has made an application to the Registrar in form 24 with the consent of all partners for striking off its name, then the Registrar will send a notice to LLP and all its partners of his intention to strike off the name of the LLP from the Register and requesting them to send their representations within one month from the date of notice. The notice issued by the Registrar or the contents of application made by partners are also to be placed on the website of the Ministry of Corporate Affairs for a period of one month for the information of general public. Where the LLP is regulated under a special law and striking off is initiated with the consent of all partners then the approval of the regulatory body by which LLP is regulated is must.\textsuperscript{167}

As per the provisions of the LLP Act and LLP Rules, 2009 after giving an opportunity of being heard to the LLP concerned the name of the LLP is struck from the register after the expiry of the notice unless contrary is shown by the LLP to the satisfaction of the Registrar. Before passing an order of striking off the Registrar will satisfy that provision for realization and payment of all assets and liabilities is made. However, the power of the NCLT to wind up

\textsuperscript{165} Section 72, The LLP Act, 2008.
is not affected even if the name of LLP is struck off the register and also the liability of designated partners continues even after dissolution.\(^{168}\)

The fee of Rs. 500/- is prescribed along with an application for striking off the name of defunct LLP under Rule 37.\(^{169}\)

It is analyzed that since LLPs are governed by the LLP Agreement it is possible for the LLPs to make suitable clauses in such Agreement prescribing time limits or duration of LLPs. In such cases, provisions for striking off names can be used.

The Defunct Companies are dealt with under Section 560 of the Companies Act, 1956 and under the Companies Bill, 2013 Clause 455 deals with the concept of ‘dormant companies’.\(^{170}\) The numbers of defunct companies during the last three years are as under:\(^{171}\)

<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Defunct Companies</th>
</tr>
</thead>
<tbody>
<tr>
<td>December 31, 2010</td>
<td>1,75,804</td>
</tr>
<tr>
<td>December 31, 2011</td>
<td>2,20,906</td>
</tr>
<tr>
<td>December 31, 2012</td>
<td>2,35,485</td>
</tr>
</tbody>
</table>

4.8.4 Alteration of Schedules

The Central Government is empowered to alter the schedules attached to the LLP Act by a notification in the official gazette and such alteration will come into force on the date of notification or as specified in the notification provided that it is laid before both the Houses of Parliament, while it is in session, for a total period of thirty days comprising in one or more

\(^{168}\) Ibid. In Sukhbir Saran Bhatnagar v. Registrar of Companies, (1972) 42 Comp Cas. 408 (Del) it was held with respect to a company that if the Registrar has reasonable cause to believe that the company is not carrying on business or the company is not in operation, the Registrar may exercise the power to strike out the name of the company from the Register.


\(^{170}\) Dormant Companies do not have significant accounting transactions and are as such permitted to obtain the said status.

\(^{171}\) On the basis of figures collected for the Official website of the Ministry of Corporate Affairs, Govt. of India.
successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the alteration, or both Houses agree that the alteration should not be made, the alteration shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done in pursuance of that alteration.\textsuperscript{172}

4.8.5 \textbf{Rule Making Power}

The Central Government is empowered to make Rules by notification in the Official Gazette for the smooth implementation of the various provisions of the LLP Act.\textsuperscript{173}

The Rule made accordingly is to be laid, before each House of Parliament, while it is in session, for a total period of thirty days comprising in one or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the Rule, or both Houses agree that the Rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that Rule.\textsuperscript{174}

And thus, the law relating to the LLP banks heavily on the voluminous Rules framed hereunder. This compels to brood over, whether the LLP Act advances the Rule of Law or the Law of Rules!

\textsuperscript{172} Section 78, The LLP Act, 2008.\textsuperscript{173} Section 79, The LLP Act, 2008.\textsuperscript{174} Section 79(3), The LLP Act, 2008.