

# **THE UTTARAKHAND VALUE ADDED TAX ACT, 2005**

## **Sec. 12: Liability in case of a Company:**

### **(1) Liability of Directors of Private Company in Liquidation:**

Notwithstanding anything contained in the Companies Act, 1956, when any private company is wound up after the commencement of this Act, and any tax assessed on the company under this Act for any period, whether before or in the course of or after its liquidation, can not be recovered, then, every person who was a director of the private company at any time during the period for which the tax is due shall be jointly and severally liable for payment of such tax unless he proves that the non-recovery can not be attributed to any gross neglect, misfeasance or breach of duties on his part in relation to the affairs of the company.

### **(2) Liability in case of Company in Liquidation**

#### **(a) Every person –**

- (i) who is a liquidator of any company which is being wound up whether under the orders of a court or otherwise; or
- (ii) who has been appointed the receiver of any assets of a company (herein after referred to as the "Liquidator"), shall, within 30 days after he has become such liquidator, give notice of his appointment as such to the assessing authority ;

(b) The assessing authority shall, after making such enquiries or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives notice of the appointment of the liquidator, the amount which in the opinion of the assessing authority would be sufficient to provide for any tax (including any penalty or interest) which is then, or is likely thereafter, to become payable by the company,

(c) The liquidator shall not part with any of the assets of the company or the properties in his hand until he has been notified by the assessing authority under clause (b) above and on being so notified, the liquidator shall set aside an amount equal to the amount notified by the assessing authority and, until he so sets aside such amount, he shall not part with any of the assets of the company or the properties in his hand:

Provided that nothing contained in this clause shall debar the liquidator from parting with such assets or properties in compliance with any order of a court or for the purpose of the payment of tax and penalty, if any, payable by the company under this Act or for making any payment to secure creditors whose debts are entitled under law to priority of payments over debts due to Government on the date of liquidation or for meeting such cost and expenses of the winding up of the company as are in the opinion of the assessing authority reasonable;

(d) If the liquidator fails to give notice in accordance with clause (a) or fails to set aside the amount as required by clause (c) or parts with any assets of the company or the properties in his hand in contravention of the provision of that clause, he shall be personally liable for the payment of tax, penalty and interest, if any which the company would be liable to pay under this Act:

Provided that if the amount of tax, penalty and interest, if any, payable by the company is notified under clause (b) the personal liability of the liquidator under this sub-section shall be to the extent of such amount:

(e) Where there are more liquidators than one, the obligation and liabilities attached to the liquidator under this section shall attach to all liquidators jointly and severally;

(f) the provisions of this section shall have effect notwithstanding any thing to the contrary contained in any other law for the time being in force;

(g) for the purpose of this section, the expressions "company" and "private company" shall have the meanings respectively assigned to them under clauses (i) and (ii) of sub-section (1) of section 3 of the Companies Act, 1956.

### (3) Amalgamation of Companies:

(a) When two or more companies are to be amalgamated by the order of a Court or of the Central Government and the order is to take effect from a date earlier to the date of order and any two or more such companies have sold or purchased any goods to or from each other in the period commencing on the date from which the order is to take effect and ending on the date of the order, then such transaction of sales and purchases will be included in the turnover of the sales or the purchases of the respective companies and will be assessed to tax accordingly;

(b) Notwithstanding any thing contained in the said order, for all the purposes of this Act, the said two or more companies will be treated as distinct companies and will be treated as such for all periods up to the date

of the said order and the registration certificates of the said companies will be cancelled where necessary, with effect from the date of the said order;

(c) Words and expressions used in this section, but not defined will have the respective meaning assigned to them in the Companies Act 1956.