YES ACADEMY
CA | CS | LAW

4TH EDITION

CS PROFESSIONAL

Applicable for Dec 25/June 26

DRAFTING, PLEADINGS & APPEARANCES

CS Vikas Vohra *Corporate BaBa*

HIGHLIGHTS

- As per new ICSI modules
- Colored book for better learning
- Important concepts highlighted for quick revision

PART - 2

TEAM YES

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संदेश

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Welcome to YES Family!!

To begin with, we endorse our heartfelt thank you for showing your trust and confidence in YES Academy. We take pride to welcome you to this prestigious Academy, foundations of which are based on commitment, quality education and integrity. It has been our constant endear our to deliver better and better. In our attempt to achieve mark of excellence and beyond, we would be even more grateful to have received your continued faith and love. We assure you, your trust will not go in vain and as reflected by our Vision Statement, we would continue to produce Best Company Secretaries as we have been doing for almost a decade now.

Combined experience of Team YES is 40 years+ and adding value each day. We have delivered outstanding results in the past with a bouquet of All India Rankers at all the levels of CS Course and with your efforts, we are confident, we will grow together.

Student convenience has always occupied a centre place at YES Academy and we strive to improve ourselves each day as we sincerely believe that improvement always has its own space, no matter what. Any suggestions from you are always welcome. Though Team shares a very good rapport with all of its students and the students feel very comfortable talking to any of their Teachers, still, if you wish to send us a suggestion, please feel free to write to us yesacademypune@gmail.com or get in touch with us at 8888 235 235 / 8888545 545.

We assure you the best of success and pride. And yes, its not just a bond of 3 years of your term, but a relationship for life now. We welcome you in advance to this prestigious course of Company Secretaries.

On behalf of TEAM YES

CS VIKAS VOHRA
(Founder)

CA CS HARISH A. MATHARIYA
(Founder)

Whether you like it or not, the inherent question in everyone is – Whats in it for me? It will be your folly to ignore this aspect of life. Some are motivated by money, some by a sense of purpose, some by a learning environment, some need cool environments and some need challenging environments. Nothing works for all. Something works for all. Everybody has a dominant need, which keeps changing as they keep growing. Every heart has a yearning. In that sense, we are all the same and we are all different.

The key is to take others perspective into consideration. Unless you see the world the way other sees it, you cannot empower the world to see it the way you see it. Leadership is to step into others shoes and then empowering them to walk in the direction that's right for them and that's good for all. There is no one way for all the people. Leadership has to be customized.

People relate to you not for what you are with them but for what they can be when they are with you. Deep relationships are not built by making you understand me but in giving you the confidence that I have understood you. Even with children, they find you interesting only if you talk to them about what they are interested in. once they develop that interest in your company, then you can empower them.

The secret is – **TO SEE THROUGH OTHERS EYES!!!!**

MY LOVE AND RESPECT TO.....

To **Rajlaxmi** – My Soul. You are around.
To my **Mummy** – You are my source of inspiration, your sacrifices showed me the right path every time I went wrong
To my **Papa** – You taught me the ability to bounce back and stand still, come what may
To every **Student** – Glad to have found so many teachers in you, my source of happiness, my strength
To my **Competitors** – You added meaning and worth to my name – Vikas. Thank you for being so strong and amazing. You bring out the best in me

To **my Team** – I can fight the world, when someone goes on to argue that you guys aint the best. Because you certainly are.

To **YES Academy** and to every person around, my well wishers, my critics for helping me rise in every walk. Its your blessings, which lets me survive and go far.

VIKAS VOHRA (Corporate Baba)

SANDESH....

Dear Reader,

At the outset, let me first take this opportunity to thank you for spending some of your valuable time with my words. I feel pleased to present to you, notes on updated notes for **Drafting, Pleadings & Appearances** for **CS Professional (NEW Syllabus)**.

While writing this book, I have taken every possible effort to cover each and every legal point as may be applicable to you and in the most lucid language, so this sums up the entire syllabus. Howsoever, there is always a scope for improvement. I shall highly appreciate any changes, corrections, errors, interpretations suggested by you so that the same can be incorporated in the subsequent editions. You may write to me at vikasvohralectures@gmail.com or get in touch directly on my cell at +91 8888 078 078.

Many a times, while speaking with students, I come across this question about the opportunities for a Company Secretary and their scope in the times to come. I shall be wrong; if I simply quote that life would be simple post completion of the Course. Perhaps, the times ahead poses a lot of challenges and like I always say the only thing, which shall survive in the long run, shall be the Power of Knowledge and the ability to express the same and apply. Readers, empower yourself so robustly that as and when a challenge arises, it turns its way and says: let's catch hold of a weaker one.

It's said, "Fortune favors the brave". You give your best shot and leave the rest upon god to decide. Realize your strengths, work on your weaknesses, grab the best possible opportunity and overcome your threats. Different people define success differently as it means different to different. Realize your **"Being Successful"** factors and start chasing them every morning as you get up.

"Do everything no matter how unglamorous, to the best of your ability"

Because in the end, what shall matter would be quality of life you spent and the smiles you lent to the people around you !!!!

With this, I wish you all a happy reading and I hope that you fall in love with this subject. I wish you all good luck and that you achieve what all you work for. Keep working, keep reading, keep spreading love, happiness and smile. You shall be a part of my prayers. I promise to serve you with the best. Someday, we shall once again meet AT THE TOP....

Try to

Reinvent

Yourself

VIKAS VOHRA (Corporate Baba)

+91 8888 078 078

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PART I – DRAFTING & CONVEYANCING
(70 marks)

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PART II – PLEADINGS & APPEARANCES
(30 marks)

CHAPTER 9 – JUDICIAL & ADMINISTRATIVE FRAMEWORK

TYPES OF COURTS AND THEIR JURISDICTION

Broadly speaking there are two types of courts- civil and criminal. Then there are Constitutional Courts. The framework of the current legal system has been laid down by the Indian Constitution and the judicial system derives its powers from it but the system has been inherited from the British rule that preceded independence.

SUPREME COURT

1. According to Article 124 of the Constitution, there shall be a Supreme Court of India consisting of a Chief Justice of India and other Judges.
2. Supreme Court of India is the highest level of court of Indian juridical system. It plays the role of the guardian of the Constitution of India.
3. The present strength of Supreme Court is 34 including the Chief Justice of India.
4. The Supreme Court exercises original jurisdiction exclusively to hear the cases of disputes between the Central Government and the State Governments or between the States.
5. The Supreme Court has original but not exclusive jurisdiction for enforcement of Fundamental Rights as per the provision of Constitution of India through the way of writs. This court is also an appellate court.
6. Supreme Court has the power to withdraw or transfer any case from any High Court. The Supreme Court has the authority to review any verdict ordered. The order of Supreme Court is binding on all courts across India.
7. Advisory jurisdiction: The Supreme Court has the option to report its opinion to the President about any questions raised of public importance referred to it by the President.

HIGH COURTS

1. Article 226 of Constitution of India has given the power to the High Courts to issue different writs for the enforcement of Fundamental Rights guaranteed under the Constitution.

2. According to Article 226 of the Constitution of India, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, or for the enforcement of any of the rights conferred by Part III and for any other purpose.
3. However, the power conferred on a High Court by article 226 shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.
4. High Courts also hear appeals against the orders of lower courts. High courts are empowered to practice superintendence over all the courts and tribunals effective within the regional jurisdiction of the High Court.
5. All the High Courts have the power to pronounce punishment for contempt of court. The High Courts are confined to the jurisdiction of State, group of States or Union Territory.

LOWER COURTS

1. The District Court in India are established by the respective State Government in India for every district or more than one district taking into account the number of cases, population distribution in the district.
2. These courts are under administrative control of the High Court of the State to which the district concerned belongs. The court at the district level has a dual structure that runs parallel- one for the civil side and one for the criminal side.
3. The civil side is simply called the District Court and is headed by the district judge. There are additional district judges and assistant district judges who are there to share the additional load of the proceedings of District Courts. These additional district judges have equal power like the district judges for the jurisdiction area of any city which has got the status of metropolitan area as conferred by the state government. These district courts have the additional jurisdictional authority of appeal handling over the subordinate courts in their jurisdiction.
4. The subordinate courts covering the civil cases, in this aspect are considered as Junior Civil Judge Court, Principal Junior and Senior Civil Judge Court, which are also known as Subordinate Courts. All these courts are treated with ascending orders.

5. The criminal court at the district level is headed by the Sessions Judge. Usually there are Additional Sessions Judges as well in the Court to share the workload of the Sessions Judge. The subordinate courts covering the criminal cases are Second Class Judicial Magistrate Court, First Class Judicial Magistrate Court, and Chief Judicial Magistrate Court along with family courts which are established to deal with the issues related to disputes of matrimonial issues only. The status of Principal Judge of family court is at par with the District Judge.
6. The court of the district judges is the highest civil court in a district. It exercises both judicial and administrative powers. It has the power of superintendence over the courts under its control.

REVENUE COURTS

1. These are courts but are not a part of Judiciary because they come under the administration of the State governments.
2. Revenue courts deal with matters pertaining to stamp duty, registration etc.
3. At the lowest level, we have the 'Tehsildar' or Assistant Tehsildar. Above it is the office of the 'Sub-Divisional Officer' (SDO). Then comes the office of District Collector and above it is the 'Board of Revenue'. The Board of Revenue is the highest decision making body at the State level.

E-COURTS

1. The e-Courts Project was conceptualized on the basis of the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005" submitted by e-Committee, Supreme Court of India with a vision to transform the Indian Judiciary by ICT enablement of Courts.
2. E-committee is a body constituted by the Government of India in pursuance of a proposal received from the than Hon'ble Chief Justice of India to constitute an e-Committee to assist him in formulating a National policy on computerization of Indian Judiciary and advise on technological communication and management related changes.

3. The e-Courts Mission Mode Project, is a Pan-India Project, monitored and funded by Department of Justice, Ministry of Law and Justice, Government of India for the District Courts across the country.

The objective of the e-court mission project are:

- To provide efficient & time-bound citizen centric services delivery as detailed in e-Court Project Litigant's Charter.
- To develop, install & implement decision support systems in courts.
- To automate the processes to provide transparency in accessibility of information to its stakeholders.
- To enhance judicial productivity, both qualitatively & quantitatively, to make the justice delivery system affordable, accessible, cost effective, predictable, reliable and transparent.

There is an Online Analytical Processing, and Business Intelligence Tools that will help in the summation of multiple databases into tables with summarized reports for preparation of informative management system and dashboards for effective Court and Case Management.

According to Objective Accomplishment Report of eCourts Project of eCommittee of Supreme Court of India, the success of eCourts mission Project can be attributed to three systemic and structural factors:

Firstly, the entire Project has been conceptualized and implemented in Free and Open Source Software (FOSS). This is perhaps the largest FOSS based project in the world and has resulted in an estimated saving of Rs. 340 crore to the Exchequer excluding huge recurrent cost of license fee and maintenance, simultaneously providing freedom to customize and use the system software.

Secondly, the core-periphery model has been utilized and implemented in the software development. The core is sacrosanct and is decided by the e-Committee and contains data that is available for policy and decision making at the national level – Supreme Court, Parliament and Central Government. Each High Court has full freedom to develop its periphery modules based on the High Court Rules, the Civil and Criminal Court Manuals. These periphery

modules are intended for State level utilization – High Court and District Courts, State Legislature and State Government.

Thirdly, the e-Courts Project has been focused on being citizen-centric, keeping the litigant in mind. This focus has resulted in remarkable coordination and teamwork between hundreds of judicial officers (Trainers and Master Trainers) and court staff (District System Administrators and System Administrators).

ECOURTS SERVICES

As per the data of May 2023, there are 39 High Courts Complexes and 3479 complexes under the e-Court Services. The website https://ecourts.gov.in/ecourts_home/index1.php provides the updated data with respect to High Court Complexes/District and Taluka Court Complexes' Pending cases, disposed cases and cases listed as on date. The parties can search the status of the cases, caveats and courts orders online.

The services of the Supreme Courts are also available on the website https://main.sci.gov.in/. The services inter alia includes:

1. Cause List
2. Latest Updates
3. Latest Judgments
4. Listing notices
5. E-SCR(Supreme Court of India reportable judgments)
6. Online Appearances
7. Live Streaming of Cases
8. Physical Hearing (Hybrid Options).

TYPES OF TRIBUNALS/QUASI-JUDICIAL BODIES

Tribunals in India are a part of the Executive branch of the Government which are assigned with the powers and duties to act in judicial capacity for settlement of disputes. Part XIV of

the Constitution of India makes provisions for establishment and functioning of the Tribunals in India.

Some of the important Tribunals are as follows:

1. **DEBT RECOVERY TRIBUNAL (DRT)**

The Debt Recovery Tribunals have been constituted under Section 3 of the Recovery of Debts and Bankruptcy Act, 1993 (RDBA). The original aim of the Debts Recovery Tribunal was to receive claim applications from Banks and Financial Institutions against their defaulting borrowers. (DRT) was established for expeditious adjudication and recovery of debts due to banks and financial institutions in order to reduce the non-performing assets of the Banks and Financial Institutions.

Prior to the introduction of Debt Recovery Tribunal, petitions had to be filed separately for adjudication of cases and execution proceedings in different courts depending upon their jurisdiction.

The e-DRT project has also been implemented in all DRTs and DRATs. This project aims to bring in improved access, efficiency and transparency. e-DRT provides access to e-filing, e-payment of fees, cause list generation and a case information system that enables viewing of case status, orders and judgments.

2. **NATIONAL COMPANY LAW TRIBUNAL**

National Company Law Tribunal (NCLT) is a quasi-judicial body exercising equitable jurisdiction, which was earlier being exercised by the High Court or the Central Government. It has been established by the Central government under section 408 of the Companies Act, 2013 with effect from 1st June 2016. The Tribunal has powers to regulate its own procedures.

The establishment of the National Company Law Tribunal (NCLT) consolidates the corporate jurisdiction of the following authorities:

i) Company Law Board

ii) Board for Industrial and Financial Reconstruction

iii) The Appellate Authority for Industrial and Financial Reconstruction

iv) Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High Courts.

3. CONSUMER FORUM/COMMISSIONS

To protect the rights of the consumers in India and establish a mechanism for settlement of consumer disputes, a three-tier redressal forum containing District, State and National level consumer forums/ commissions have been set up. The District Consumer Forum/Commission deals with consumer disputes involving a value of upto Rs. 50 Lakh rupees. State Commission has jurisdiction in consumer disputes having a value of exceeds 50 lakh rupees but does not exceed 2 crore rupees. The National Commission deals in consumer disputes above Rs. 2 crores, in respect of defects in goods and or deficiency in service. It is important to note that consumer courts do not entertain complaints for alleged deficiency in any service that is rendered free of charge or under a contract of personal service.

The Consumer Protection Act, 2019 stipulates that every complaint shall be disposed of as expeditiously as possible and endeavour shall be made to decide the complaint within a period of 3 months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within 5 months if it requires analysis or testing of commodities.

The Act also provides consumers the option of filing complaint electronically. To facilitate consumers in filing their complaint online, the Central Government has set up the E-Daakhil Portal. E-Daakhil has many features like e-Notice, case document download link & VC hearing link, filing written response by opposite party, filing rejoinder by complainant and alerts via SMS/Email. Presently, facility of E-Daakhil is available in 544 consumer commissions, which includes the National Commission and consumer commissions in 21 states and 3 UTs.

4. MOTOR ACCIDENT CLAIMS TRIBUNAL (MACT)

The Motor Accidents Claims Tribunal deals with matters related to compensation of motor accidents victims or their next of kin. Victims of motor accident or legal heirs of motor accident

victims or a representing Advocate can file claims relating to loss of life/property and injury cases resulting from Motor Accidents. Motor Accident Claims Tribunal are presided over by Judicial Officers from the State Higher Judicial Service and are under direct supervision of the Hon'ble High Court of the respective state.

5. **CENTRAL ADMINISTRATIVE TRIBUNAL (CAT)**

Central Administrative Tribunal is a multi-member body to hear on cases filed by the staff members alleging non-observation of their terms of service or any other related matters and to pass judgments on those cases.

6. **NATIONAL GREEN TRIBUNAL (NGT)**

National Green Tribunal was established for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation of damages to persons and property and for related matters. The Tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same.

PROCEDURAL ASPECTS OF WORKING OF CIVIL COURTS

1. **JURISDICTION**

- The Civil Procedure Code 1908 stipulates that the courts shall have jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred.
- If the court does not have any jurisdiction at all, the parties cannot subsequently confer it by an agreement.
- The onus of proving that the court does not have jurisdiction lies on the party who disputes the jurisdiction. The jurisdiction is basically of three types.

(a) **Pecuniary**

(b) **Territorial:** The territorial jurisdiction is conferred on a court by following factors:-

(i) By virtue of the fact of residence of the Defendant

(ii) By virtue of location of subject matter within jurisdiction of the court.

(iii) By virtue of cause of action arising within jurisdiction of such court.

(c) As to subject matter: For example, Motor Vehicles Act provides for special tribunal for matters under it. Similarly disputes relating to terms of service of government servants go to Administrative Tribunals.

2. STAY

- With the object of preventing courts of concurrent jurisdiction simultaneously trying two parallel suits in respect of the same matter in issue, Civil Procedure Code has vested inherent power in the court to stay the suit.
- The pendency of a suit in Foreign Court does not preclude the courts in India for trying a suit founded on same cause of action.
- The application for stay of suit is maintainable at any stage of the suit. The court does not have option to refuse on ground of delay.

3. RES JUDICATA AND BAR TO FURTHER SUITS

The basic principle is that a final judgement rendered by a court of competent jurisdiction is conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim.

4. PLAINT

- The entire legal machinery under the Civil Law is set in motion by filing of plaint and hence plaint is the actual starting point of all pleadings in a case.
- Where the Plaintiff sues upon a document in his possession or power he shall produce it in the court when plaint is presented.
- If the document is not in his possession, the Plaintiff will state in whose possession it is.
- A document, which has to be produced and has not been produced at the time of presenting the plaint cannot be received in evidence at the hearing of the suit without permission from the concerned court.
- The court has power to reject the plaint on following grounds:

(i) Where it does not disclose the cause of action.

(ii) Where the relief claimed is undervalued and Plaintiff fails to correct the valuation within the time fixed.

(iii) If the relief is properly valued but insufficient court fee / stamp is paid and the Plaintiff fails to make good such amount.

(iv) Where the suit appears to be barred by any law, from the statements in the plaint.

5. SUMMONS

- When the suit is duly instituted summons may be issued to Defendant to appear and answer the claim.
- It is a process directed to a proper officer requiring him to notify the person named, that an action has been commenced against him, in the court from where process is issued and that he is required to appear, on a day named and answer the claim in such action.
- Defendant to whom a summons has been issued may appear in person or by a pleader duly instructed or by a pleader accompanied by some person who is able to answer all questions.
- To expedite the filing of reply and adjudication of claim, the court may direct filing of written statement on date of appearance and issue suitable summons for that purpose. Failure to do so may result in Ex-parte judgement.

6. APPEARANCE OF PARTIES

- On the day fixed in the summons the Defendant is required to appear and answer and the parties shall attend the court unless the hearing is adjourned to a future day fixed by the court.
- If the Defendant is absent court may proceed ex-parte.
- Where on the day so fixed it is found that summons has not been served upon Defendant as consequence of failure of Plaintiff to pay the court fee or postal charges the court may dismiss the suit.
- Where neither the Plaintiff nor the Defendant appears the court may dismiss the suit.
- If the Defendant appears and Plaintiff does not appear and the Defendant does not admit the Plaintiff's claim wholly or partly, court shall pass order dismissing the suit.

- If Defendant appears and admits part or whole of the claim the decree will be passed accordingly.
- If the Plaintiff shows sufficient cause reopening of the matter is mandatory.

7. ADJOURNMENTS

Courts have the power to adjourn a case and take it up on a future date. Adjournments frequently sought by the parties contribute significantly to the delays caused in deciding the matters. The granting of adjournments is at the discretion of the court. The rules governing adjournments are considerably strict if applied in their true spirit.

8. EX-PARTE DECREES

A decree against the Defendant without hearing him or in his absence can be passed under the following circumstances:-

(i) Where any party from whom a written statement is required fails to present the same within the time permitted or fixed by the court, the court shall pronounce judgement against him, or make such order in relation to the suit and on pronouncement of such judgement a decree shall be drawn up.

(ii) Where Defendant has not filed a pleading, it shall be lawful for the court to pronounce judgement on the basis of facts contained in the plaint, except against person with disability.

(iii) Where the Plaintiff appears and Defendant does not appear when suit is called up for hearing and summons is property served the court may make an order that suit will be heard ex parte.

If an exparte decree is passed and the Defendant satisfies that he was prevented by sufficient cause then he has the following remedies open:

(i) Prefer appeal against decree.

(ii) Apply for Review.

(iii) Apply for setting aside the Ex-parte Decree.

9. INTERLOCUTORY PROCEEDINGS

- The intervention of the court may sometimes be required to maintain the position as it prevailed on the date of litigation. In legal parlance it is known as "status quo".

- It means preserving existing state of things on a given day. In that context interlocutory orders are provisional, interim, temporary as compared to final.
- It does not finally determine cause of action but only decides some intervening matter pertaining to the cause. One of the most common interlocutory reliefs sought is that of 'injunction'.

10. EXAMINATION OF PARTIES

Examination of parties is an important stage after appearance. At first hearing of the suit the court shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the plaint or written statement. Such admissions and denials shall be recorded. The examination may be an oral examination.

11. PRODUCTION OF DOCUMENTS

- The parties or their pleaders shall produce at or before the settlement of issues, all documentary evidence of every description in their possession or power, on which they intend to rely, and which has not been filed in the court or ordered to be produced.
- No documentary evidence in the possession or power of any party, which should have been but has not been produced in accordance with the aforesaid requirements, shall be subsequently admissible.

12. FRAMING OF ISSUES

- The court shall at first hearing, after reading the plaint and written statement ascertain upon what material propositions of facts or law parties are at variance.
- Court is required to pronounce judgement on all the issues. Issues may be framed from allegations made on oath by the parties or in answer to interrogatories or from contents of documents produced by either party.
- If the court is of the opinion that the case or any part thereof may be disposed of on issue of law only, it may first try it, if issue relates to:-

(i) Jurisdiction of the court,

(ii) Bar to the suit created by law for the time being in force.

13. SUMMONING AND ATTENDANCE OF WITNESSES

- On the date appointed by the court and not later than 15 days after the date on which issues are settled parties shall present in court a list of witnesses whom they propose to call either to give evidence or to produce documents.
- If signature of witness is not taken on any part of deposition or correction it does not make deposition invalid.
- The court also has the power to recall any witness who is already called earlier and put such questions as deemed fit.

14. AFFIDAVITS

Affidavit shall contain only such facts as the deponent is able of his own knowledge to prove except on interlocutory applications. The affidavits have to be properly verified to avoid any dispute at a later stage. Even if evidence is given on affidavit the court may direct that such person will be produced for cross-examination.

15. FINAL ARGUMENT

- Once the documents have been exhibited in the court and the witness(es) of both the sides examined and cross-examined, the stage is set for final arguments.
- It allows both the sides to present its case after taking into account the submissions made by the witnesses of the other party and the documents produced by it. It can, therefore, be said to be an opportunity for both the sides to present a summary of their case or defence.

16. JUDGEMENT

Judgement means the statement given by the judge on ground of which a decree is passed. The court after the case has been heard shall pronounce judgement in open court either within one month of completion of arguments or as soon thereafter as may be practicable, and when the judgement is to be pronounced judge shall fix a day in advance for that purpose. Where judgement is not pronounced within 30 days from the date on which hearing of case was concluded, the court shall record the reasons for such delay

17. DECREE AND EXECUTION

After the decree is passed the process of execution which involves actual implementation of the order of the court through the process of the court starts the entire process of executing of decree.

APPELLATE FORUM

- Under the Civil Procedure Code, an appeal may be an appeal from order or an appeal from decree.
- All orders are not appealable and complete discerption of the appealable orders has been given in Code of Civil Procedure .
- The appeal has to be preferred within prescribed limitation period before the appellate court. The limitation period for appeal to High Court is 90 days and appeal to District Court is 30 days.
- If the period of limitation is expired, then application for condonation of delay also is required to be moved.
- The Code of Criminal Procedure, 1973 also contains elaborate provisions on appeals against a judgment or order of the criminal courts.
- Appeals to the Sessions Court and to the High Court are largely governed by the same set of rules and procedure. But the High Court being the highest appellate court within a state, has been given primacy in many cases where appeal is permissible.
- Thus, District and Sessions Court and High Courts are the most common appellate forums.
- The Supreme Court is the appellate court of last resort and enjoys very wide plenary and discretionary powers in the matters of appeal.
- Under Article 136 of the Constitution, the Supreme Court also enjoys a plenary jurisdiction in matters of appeal. However, Article 136 is not a regular forum of appeal at all. It is a residual provision which enables the Supreme Court to interfere with the judgment or order of any court or tribunal in India in its discretion.

REFERENCE, REVIEW AND REVISION UNDER CIVIL PROCEDURE CODE

REFERENCE (SECTION 113 AND ORDER XLVI)

(a) A reference should be made to the High Court by a District Judge or Judge of a Court of Small Causes, under the provisions of Section 113 and Order XLVI, Rule 1 of the Code of Civil Procedure, only when the presiding Judge entertains a reasonable doubt on the point of law or usage having the force of law referred, and not merely on the importunity of pleaders.

(b) Now where a Court finds that it is necessary for the disposal of a case to decide a question about the validity of any Act, Ordinance or Regulation and the Court is of the opinion that the Act, Ordinance of Regulation is invalid or inoperative but has not been so declared by the High Court of that State or the Supreme Court, the Court shall refer the matter in the manner laid down for the opinion of the High Court.

Reasonable doubt on a point of law

A subordinate Court cannot be supposed to entertain a reasonable doubt on a point of law if it has been decided clearly in a ruling of the High Court, unless some doubt has been thrown on the correctness of the same by a ruling of the Supreme Court. Nor has an Appellate Court, which has no jurisdiction to hear an appeal, any jurisdiction to make a reference.

Mode of reference

In making a reference the presiding Judge should be careful to conform to the requirements of Order XLVI, Rule 1, of the Code of Civil Procedure by:

(i) drawing up a statement of the facts;

(ii) stating the point on which doubt is entertained; and

(iii) stating his opinion on such point.

References under Order XLVI, Rule 7

A reference may be made only when it appears to the District Court that a Court subordinate to it has by reason of erroneously holding a suit to be cognizable by a Court of Small Causes, or not to be so cognizable, failed to exercise a jurisdiction vested in it by law, or exercised a

jurisdiction not so vested; unless this condition is fulfilled – that is, unless the Court is itself of opinion that one of these errors has been committed, – it has no power to refer; when that condition is fulfilled, the Court still has a discretion to make or refuse to make a reference unless it be required to make it by a party. In the latter case, the Court is bound to make a reference.

References by Sub-Judge as a Court of appeal

If a Subordinate Judge sitting as a Court of appeal is of opinion that a reference ought to be made under Order XLVI, Rule 7, of the Code of Civil Procedure, he should submit the record of the case to the District Judge for orders with a statement of reasons.

Character of suit to be described in reference

It is essential that the true character of the suit should be described with precision and accuracy in the heading of the reference.

Parties should be heard before making reference

A reference by a Civil Court under Order XLVI, Rule 6 or 7, of the Code of Civil Procedure shall not be made until the parties to the suit have had an opportunity of showing cause against such reference in the Court which proposes to make it.

Objections of parties to be placed of record

The Court making a reference under any of the sections mentioned in the preceding paragraph shall in its order of reference, certify that such opportunity has been given, and shall place on record the objections, oral or written (if any), of any party against the making of such reference.

Notice of references to parties

The Court making the reference shall give notice, either orally or in writing, to such parties as attended or are represented in Court when the order of reference is made –

(i) that the attendance of the parties in the High Court at the hearing of the reference is not obligatory;

(ii) that any party desirous of attending at such hearing must enter an appearance at the office of the Deputy Registrar on or before a date to be specified in the notice.

Date fixed for appearance in High Court

The date specified shall be such as to allow a reasonable time for the parties to appear in the High Court, and shall be a date not less than one month in advance of the date of making the reference.

Court shall satisfy that parties have been informed

The Court shall certify in its order

(1) that the notice required has been duly given, orally or in writing as the case may be, and

(2) the date specified in such notice.

Necessary records to be sent along with order of reference

The Court making the reference shall forward, with its order, the record of the suit in which the reference is made and of all proceedings (if any) by way of execution or otherwise in such suit subsequent to the decree, and also the records of any other connected proceedings necessary for consideration of the reference in the High Court.

Reminder from High Court if no reply received

Whenever it is found that a reference made to the High Court has not been replied to, or intimation of a date having been fixed given within two months of making such reference, the attention of the Registrar should be drawn to the fact.

REVIEW (SECTION 114)

Review means re-examination or re-consideration of its own decision by the very same court. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit' which means an act of the court shall prejudice no man. The other maxim is, 'lex non cogit ad impossibillia' which means the law does not compel a man to do that what he cannot possibly perform.

An 'aggrieved' person is one who has suffered a legal grievance, i.e., against whom a decision has been pronounced which has wrongfully affected his title or wrongfully deprived him of something which he was entitled to. All decrees or orders cannot be reviewed.

DIFFERENCE BETWEEN APPEAL AND REVIEW

Scope of an application for review is much more restricted than that of an appeal. The Supreme Court in **Lily Thomas vs. Union of India, AIR 2000 SC 1650,** has held that the power of review can only be exercised for correction of a mistake and not to substitute a view and that the power of review could only be exercised within the limits of the statute dealing with the exercise of such power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained.

Where an appeal has been preferred, a review application does not lie. But an appeal may be filed after an application for review. In such event the hearing of the appeal will have to be stayed. If the review succeeds the appeal becomes infructuous for the decree appealed from is superseded by a new decree. No court can, however, review its order after it has been confirmed on appeal.

A party who is not appealing from a decree or order may, however, apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.

ORDER XLVII OF CPC DEALS WITH REVIEW

Rule 4: No application for review shall be granted without previous notice to the opposite party to appear and oppose the application. It shall also not be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge at the time of the passing of the decree or order, without strict proof of such allegation.

Rule 6: Where the application for a review is heard by more than one judge and the court is equally divided, the application shall be rejected. Where there is a majority, the decision shall be according to the opinion of the majority.

Rule 7: An order of the court rejecting the application for review shall not be appealable, but an order granting the application may be objected to at once by an appeal from the order granting the application or in any appeal from the decree or order finally passed or made in the suit. In case the application has been rejected on failure of the applicant to appear, the court may restore the rejected application to the file on being satisfied that the applicant was prevented by sufficient cause from appearing upon such terms as to costs or otherwise as it thinks fit.

Rule 9: No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained.

REVISION (SECTION 115)

(1) The High Court may call for the record of any case which has been decided by any court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears-

(a) To have exercised a jurisdiction not vested in it by law, or

(b) To have failed to exercise a jurisdiction so vested, or

(c) To have acted in the exercise of its jurisdiction illegality or with material irregularity;

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

SCOPE

Section 115 empowers the High Court to satisfy itself on three matters:

(a) that the order of the subordinate court is within its jurisdiction;

(b) that the case is one in which the court ought to exercise jurisdiction; and

(c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision.

In order for Section 115 to come into picture, it is necessary to establish three conditions. These conditions are as under:

(a) That the order impugned amounts to be a case decided;

(b) That the order impugned is not directly liable to be challenged by way of appeal from the order itself before the same court before which the revision has been filed;

(c) That the order impugned suffers from jurisdictional error.

ILLEGALLY OR WITH MATERIAL IRREGULARITY

The words 'illegally' and 'material irregularity' in Section 115 do not cover either error of fact or of law. These words do not refer to the decision arrived at but to the manner in which it is reached. The errors as contemplated relate to material defects of procedure.

Section 115 empowers the High Court to satisfy itself upon three matters, viz.,

(a) that the order of the subordinate court is within its jurisdiction,

(b) that the case is one in which the court ought to exercise jurisdiction, and

(c) that in exercising jurisdiction the court has not acted illegally that is in breach of some provision of law, or with material irregularity.

If the High Court is satisfied upon those three matters, it has no power to interfere because it differs, however profoundly, from the conclusions of the subordinate court upon questions of fact or law. The High Court will not interfere with an incorrect decision of the lower court where there is no question of lack of jurisdiction or material irregularity in procedure. Where there is a willful disregard or conscious violation of a rule of law or procedure the case is one of material irregularity calling for interference in revision.

APPLICABILITY OF CIVIL PROCEDURE CODE ON TRIBUNALS

The Code of Civil Procedure is applicable on the Tribunals in a restricted manner. There is no straight jacketed rule which can be applied to find out which provision of the Civil Procedure Code is applicable on a particular tribunal. The provisions of Civil Procedure Code are made applicable on the tribunals by the legislations (including delegated legislation) controlling the functioning of the tribunal.

APPLICABILITY OF CIVIL PROCEDURE CODE ON NATIONAL COMPANY LAW TRIBUNAL

According to rule 57 of NCLT Rules, on receipt of an application under rule 56, NCLT shall issue a process for execution of its order in such Form as provided in the Code of Civil Procedure, 1908. Further, NCLT shall consider objection, if any, raised by the respondent and make such order as it may deem fit and shall issue attachment or recovery warrant in such form as provided in the Code of Civil Procedure, 1908.

Rule 126 of NCLT Rules: Form and contents of the affidavit

An affidavit before NCLT shall conform to the requirements of order XIX, rule 3 of Civil Procedure Code, 1908.

Rule 131 of NCLT Rules: Application for production of documents, form of summons

Except otherwise provided in the NCLT Rules, discovery or production and return of documents shall be regulated by the provisions of the Code of Civil Procedure, 1908.

Rule 135 of NCLT Rules: Procedure for examination of witnesses, issue of Commissions

The provisions of the Orders XVI and XXVI of the Code of Civil Procedure, 1908, shall mutatis mutandis apply in the matter of summoning and enforcing attendance of any person and examining him on oath and issuing commission for the examination of witnesses or for production of documents.

APPLICABILITY OF CIVIL PROCEDURE CODE ON SEBI AND SAT

SEBI

SEBI shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely :

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place;

(iv) inspection of any book, or register, or other document or record of the company referred to in sub- section (2A)

(v) issuing commissions for the examination of witnesses or documents.

SAT

According to section 15U of SEBI Act, 1992, SAT shall not be bound by the procedure laid down by the CPC, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of SEBI Act, and of any rules, SAT shall have powers to regulate their own procedure including the places at which they shall have their sittings.

Further, the Securities Appellate Tribunal shall have, for the purposes of discharging their functions under SEBI Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely :

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte;

(h) any other matter which may be prescribed.

APPLICABILITY OF NEW CRIMINAL LAWS

The new criminal laws i.e. Bharatiya Nyaya Sanhita 2023 (BNS), Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS) and Bharatiya Sakshya Adhiniyam 2023 (BSA) have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively with effect from 1st July, 2024.

By virtue of the New Criminal Laws, the designation of Metropolitan Magistrate has not been included under Bharatiya Nagarik Suraksha Sanhita, 2023.

TYPES OF CRIMINAL TRIAL

According to the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), a criminal trial is of three types. Depending upon the type of criminal trial the different stages of a criminal trial are discussed below.

WARRANT CASES

According to section 2(1)(z) of BNSS, "warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a Magistrate. Later, if the Magistrate is satisfied that the offence is punishable for more than two years, he sends the case to the Sessions court for trial. The process of sending it to Sessions court is called "committing it to Sessions court".

Important features of a warrant case are:

- Charges must be mentioned in a warrant case
- Personal appearance of accused is mandatory
- A warrant case cannot be converted into a summons case
- The accused can examine and cross-examine the witnesses more than once.
- The Magistrate should ensure that the provisions of Section 230 are complied with.

Section 230 of BNSS, include the supply of copies such as police report, FIR, statements recorded or any other relevant document to the accused.

DIFFERENT STAGES OF CRIMINAL TRIAL IN A WARRANT CASE WHEN INSTITUTED BY THE POLICE REPORT (SECTION 261 TO 273)

1) **First Information Report:** Under Section 173 of BNSS, an FIR or First Information Report is registered by any person. FIR puts the case into motion. An FIR is information given by someone (aggrieved) to the police relating to the commitment of an offense.
2) **Investigation:** The next step after the filing of FIR is the investigation by the investigating officer. A conclusion is made by the investigating officer by examining facts and circumstances, collecting evidence, examining various persons and taking their statements in writing and all the other steps necessary for completing the investigation and then that conclusion is filed to the Magistrate as a police report.
3) **Charges:** If after considering the police report and other important documents the accused is not discharged then the court frames charges under which he is to be tried. In a warrant case, the charges should be framed in writing.
4) **Plea of guilty:** After framing of the charges the accused is given an opportunity to plead guilty, and the responsibility lies with the judge to ensure that the plea of guilt was voluntarily made. The judge may upon its discretion convict the accused.
5) **Prosecution evidence:** After the charges are framed, and the accused pleads not guilty, then the court requires the prosecution to produce evidence to prove the guilt of the accused. The prosecution is required to support their evidence with statements from its witnesses. This

process is called "examination in chief". The magistrate has the power to issue summons to any person as a witness or orders him to produce any document.

6) **Statement of the accused:** Section 351 of BNSS gives an opportunity to the accused to be heard and explain the facts and circumstances of the case. The statements of accused are not recorded under oath and can be used against him in the trial.

7) **Defence evidence:** An opportunity is given to the accused to produce evidence so as to defend his case. The defense can produce both oral and documentary evidence.

8) **Judgment:** The final decision of the court with reasons given in support of the acquittal or conviction of the accused is known as judgment. In case the accused is acquitted, the prosecution is given time to appeal against the order of the court. When the person is convicted, then both sides are invited to give arguments on the punishment which is to be awarded. This is usually done when the person is convicted of an offence whose punishment is life imprisonment or capital punishment.

STAGES OF CRIMINAL TRIAL IN A WARRANT CASE WHEN PRIVATE COMPLAINT INSTITUTES CASE

1. If the police refuses to register an FIR, one can directly approach the criminal court under Section 175 of BNSS.
2. On the filing of the complaint, the court will examine the complainant and its witnesses to decide whether any offence is made against the accused person or not.
3. After examination of the complainant, the Magistrate may order an inquiry into the matter by the police and to get him submit a report for the same.
4. After examination of the complaint and the investigation report, the court may come to a conclusion whether the complaint is genuine or whether the prosecution has sufficient evidence against the accused or not.
5. If the court does not find any sufficient material through which he can convict the accused, then the court will dismiss the complaint and record its reason for dismissal.
6. After examination of the complaint and the inquiry report, if the court thinks that the prosecution has a genuine case and there are sufficient material and evidence with the

prosecution to charge the accused then the Magistrate may issue a warrant or a summon depending on the facts and circumstances.

SUMMONS CASES

According to section 2(1)(x) of BNSS, "summons-case" means a case relating to an offence, and not being a warrant-case.

A summons case does not require the method of preparing the evidence. Nevertheless, a summons case can be converted into a warrant case by the Magistrate if after looking into the case he thinks that the case is not a summon case.

Important points about summons case

- A summons case can be converted into a warrant case
- The person accused need not be present personally
- The person accused should be informed about the charges orally. No need for framing the charges in writing.
- The accused gets only one opportunity to cross-examine the witnesses.

STAGES OF CRIMINAL TRIAL IN A SUMMONS CASE

1) **Pre-trial:** In the pre-trial stage, the process such as filing of FIR and investigation is conducted.
2) **Charges:** In summons trials, charges are not framed in writing. The accused appears before the court or is brought before the court then the Magistrate would orally state the facts of the offense he is answerable.
3) **Plea of guilty:** The Magistrate after stating the facts of the offence will ask the accused if he pleads guilty or has any defense to support his case. If the accused pleads guilty, the Magistrate records the statement in the words of the accused as far as possible and may convict him on his discretion.
4) **Plea of guilty and absence of the accused:** In cases of petty offences, where the accused wants to plead guilty without appearing in the court, the accused should send a letter containing

an acceptance of guilt and the amount of fine provided in the summons. The Magistrate can on his discretion convict the accused.

5) **Prosecution and defense evidence:** In summons case, the procedure followed is very simple and elaborate procedures are eliminated. If the accused does not plead guilty, then the process of trial starts. The prosecution and the defense are asked to present evidence in support of their cases. The Magistrate is also empowered to take the statement of the accused.

6) **Judgment:** When the sentence is pronounced in a summons case, the parties need not argue on the quantum of punishment given. The sentence is the sole discretion of the judge. If the accused is acquitted, the prosecution has the right to appeal. This right to appeal is also extended to the accused.

SUMMARY TRIAL (SECTION 283 TO SECTION 288 OF BNSS)

Cases which generally take only one or two hearings to decide the matter comes under this category. The summary trials are reserved for small offences to reduce the burden on courts and to save time and money. Those cases in which an offence is punishable with an imprisonment of not more than six months can be tried in a summary way. The point worth noting is that, if the case is being tried in a summary way, a person cannot be awarded a punishment of imprisonment for more than three months.

Stages of Criminal Trial in Summary Cases

- The procedure followed in the summary trial is similar to summons-case.
- Imprisonment up to three months can be passed.
- In the judgment of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons.

REFERENCE AND REVISION UNDER BHARATIYA NAGARIK SURAKSHA SANHITA

REFERENCE [SECTION 436(1)]

Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefore, and refer the same for the decision of the High Court.

REVISION

1. Sections 438 to 445 of BNSS deals with the revisional jurisdiction of the High Court and the Sessions Court. Revision lies both in pending and decided cases and it can be filed before a High Court or a Court of Sessions.
2. The object of the revision is to confer upon superior criminal courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice.
3. The purpose of revision is to enable the revision court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of the inferior criminal court.
4. The High Court or the Sessions Judge have the power to interfere at any stage of the proceeding, i.e., the case and they are under a legal duty to interfere when it is brought to their notice that some person has been illegally prosecuted or subjected to harassment, or some material error of law or procedure has been committed by an inferior Court which has resulted in miscarriage of justice.
5. The revisional jurisdiction of the High Court or a Sessions Judge under Section 438 extends only to the 'inferior Criminal Courts' and it does not include a civil or revenue Court acting under Section 379 of BNSS. The Sessions Judge is inferior to the High Court and, therefore,

the High Court can call for and examine the record of any proceeding before the Sessions Judge.

PROCEEDING [SECTION 438 (1)]

1. It is not only confined to cases related to a commission or trial of an offence but include all judicial proceedings taken before an inferior Criminal Court even though they are not related to any specific offence.
2. The real test is not the nature of the proceeding but nature of Court in which such proceeding is held. If it is held in an inferior Criminal Court, the revisional jurisdiction of the High Court or Sessions Judge would extend to such proceeding under Section 438 (1).
3. The revisional Court has the power to order the release of offender on bail or bond under Section 438(1). The discretion in this regard should, however, be used judicially considering all the circumstances of the case.
4. Dismissal of revision by the High Court without assigning reasons is not sustainable and matter may be remitted to the Court for reconsideration.

INTERLOCUTORY ORDER [SECTION 438 (2)]

1. What is an interlocutory order has always been a debatable issue, more so, because it has not been defined anywhere in BNSS. An order which is not final but merely provisional or temporary is generally called an interlocutory order.
2. But the true test of determining whether or not, an order is interlocutory in nature is whether the order in question finally disposes of the rights of the parties or leaves the case still alive and undecided. For instance, grant or cancellation of bail, adjournment of cases, etc. are interlocutory orders.
3. The Supreme Court has, however, held that the term 'interlocutory order' as used in Section 438(2) should be given liberal construction in favour of the accused in order to ensure fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted to 'intermediate' or 'quasi-final' orders which are not purely interlocutory in nature.

NO SECOND REVISION [SECTION 438 (3)]

1. Section 438(3) permits only one revision therefore if an application is made to a Sessions Judge and he is of the opinion that it should be referred to the High Court, then a fresh application for revision can be made to the High Court.
2. But the sub-section bars an application for the revision to the High Court if a person has already applied for it to the Sessions Judge or vice versa.
3. A person can directly move a revision application to the High Court without first approaching the Sessions Judge. But if he moves the Sessions Judge he cannot thereafter approach the High Court for another revision.
4. The general rule in this regard is that a concurrent jurisdiction is conferred on two Courts, the aggrieved party should ordinarily first approach the inferior Court, i.e., the Sessions Judge in the context of Section 438(3) unless exceptional grounds for taking the matter directly to the higher Court (High Court in this case) are made out.
5. Under Section 439 of BNSS, the revision Court may make an order for further inquiry.
6. Further inquiry entails supplemental inquiry upon fresh evidence. The power under Section 439 of BNSS is not co-extensive with Section 438 of BNSS but extends far wider as the record can 'otherwise' be examined by the revision Court without recourse to Section 438 of BNSS.

SESSIONS JUDGE'S POWERS OF REVISION (SECTION 440 OF BNSS)

1. In the case of any proceeding the record of which has been called for by himself, the Sessions Judge may exercise all or any of the powers which may be exercised by the High Court under Section 442(1) of the Sanhita.
2. Where any application for revision is made by or on behalf of any person before the Sessions Judge, the decision of the Sessions Judge thereon in relation to such person shall be final and no further proceeding by way of revision at the instance of such person shall be entertained by the High Court or any other Court.
3. Thus, while hearing a case records of which have been called for revision by himself, the Sessions Judge has the same powers as the High Court has under Section 442 of the Sanhita.

4. An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter.

5. The High Court can exercise revisional powers under this section either *suo motu*, that is, on its own initiative or on a petition of any aggrieved party or any other person. The exercise of revisional power by the High Court is, however, subject to **two limitations** which are as follows:

a. Where a person or someone on his behalf has made an application for revision before the Sessions Judge under Section 440 (3), no further revision can be entertained by the High Court at the instance of such person; and

b. Where an appeal lies but it was not availed of by the person, no revision can be entertained by the High Court at the instance of the party who could have appealed but did not do so.

The High Court may even direct additional evidence to be taken in case of a revision against discharge of the accused in the interest of justice. But otherwise the jurisdiction of the High Court in a criminal revision is drastically restricted and it cannot embark upon re-appreciation of the evidence.

Section 442(1) provides that in the exercise of revisional jurisdiction, the High Court may exercise any of the powers conferred on it as a Court of Appeal subject to exceptions. These exceptions are:

a. In an appeal, the High Court is empowered under Section 427(a) to reverse an order of acquittal into conviction and vice versa, but in its revisional power it cannot convert a finding of acquittal into a conviction as per sub-section (3) of Section 442. It has no jurisdiction to convert finding of acquittal into one of conviction by seeking recourse to indirect method of ordering retrial.

b. In appeal, the High Court will interfere if it is satisfied about the guilt of the accused but in revision it may interfere only when it is brought to its notice that there has been miscarriage of justice.

c. An appeal cannot be dismissed unless the accused or his pleader is afforded an opportunity to be heard but in revision the accused is to be given opportunity to be heard only if the order to be passed is going to be prejudicial to him.

The revisional power of the High Court may be said to be wider in scope than its appellate powers in the sense that the High Court can correct irregularities or improprieties of procedure which come to its notice. Again, the provision of abatement of appeal on death of the accused does not apply to revision petition and it can exercise its revisional power even after the death of the accused.

As already discussed in the context of Section 438 (2) the High Court shall not use its revisional power in relation to an interlocutory order passed by an inferior criminal Court in any appeal, inquiry, trial or other proceeding.

Though the High Court is not empowered to set aside an order of acquittal in exercise of its revisional jurisdiction but where the acquittal is based on compounding of an offence and the compounding is invalid in law, such an acquittal may be set aside by the High Court in the exercise of revisional powers.

Though the High Court has no power to set aside an order of acquittal and convert it into conviction of the accused under this section but it has the power to direct re-trial of the case when there has been patent illegality or gross miscarriage of justice in the findings of the inferior Court.

The High Court should order re-trial of the case under its revisional jurisdiction only in very exceptional cases where the "interests of public justice require interference for the correction of gross miscarriage of justice". It cannot be exercised merely because the inferior Court has misappreciated the evidence or taken a wrong view in interpreting any provision of law.

NO REVISION WHERE RIGHT TO APPEAL EXISTS

Section 442(4) provides that the party having right of appeal cannot apply for revision. BNSS provides a remedy, by way of appeal under Chapter XXXII and if the party does not file an appeal against an order of the inferior criminal Court, he will not be permitted to prefer a revision against that order. But legal bar does not stand in the way of High Court's exercise

of power of revision *suo motu*. It can itself call for the records of proceedings of any inferior criminal Court and has power to enhance the sentence by exercising its revisional jurisdiction.

REVISION MAY BE TREATED AS APPEAL

Section 442(5) vests a discretionary power in the High Court to treat a revision petition as an appeal and deal with it under its appellate jurisdiction under Chapter XXXII. But it can do so when an appeal against the order of the inferior Court lies but the petitioner has filed a revision under an erroneous belief that an appeal does not lie and when it is in the interest of justice to do so.

ENHANCEMENT OF SENTENCE

The High Court, under its revisional jurisdiction does not exercise power of enhancing the sentence in every case in which the sentence passed appears to be inadequate. It would interfere when it is convinced that the sentence passed is manifestly and grossly inadequate. The District Magistrate, a Sessions Judge or the Government pleader may draw the attention of the High Court to a sentence which is inadequate and deserves to be enhanced or the High Court can also suo motu call for the record of a particular case where it is of the opinion that the sentence awarded is grossly inadequate.

There is no limitation on the power of the High Court as regards enhancement of sentence to the extent of maximum prescribed by the BNS, except in cases tried by Magistrates. But before doing so, the Court has to be issued a show-cause notice against the enhancement of his sentence.

REDUCTION OF SENTENCE

If after hearing the State, i.e., the Government pleader, the High Court comes to a conclusion that the sentence imposed on the accused is too severe and needs to be reduced, it may reduce

it exercising its revisional jurisdiction. However, it cannot be reduced below the prescribed statutory limit, if any, provided in the Bharatiya Nyaya Sanhita or the relevant Act.

FACT FINDING

The jurisdiction of the High Court in revision of criminal cases is severely restricted and confined only to the questions of law. It cannot embark upon a re-appreciation of evidence. The High Court does not normally interfere with a concurrent finding of fact. The High Court in exercise of its revisional power will not go into the question of sufficiency of material before the lower Court for its decision or order. Where the trial has dealt with the matter fully, the High Court will not interfere and disturb the order of the trial Court. While disposing of revision petition the High Courts must ensure that the principles of natural justice are not violated.

CHAPTER 10 - PLEADINGS

INTRODUCTION & MEANING OF PLEADINGS

1. Pleading shall mean plaint or written statement.
2. Mogha has elaborated this definition when he remarked that "pleadings are statements in writing drawn up and filed by each party to a case, stating what his contentions will be at the trial and giving all such details as his opponent needs to know in order to prepare his case in answer".
3. Before the trial of a civil suit starts, it is highly desirable that the Court should know exactly what it has to decide upon, and the parties should know exactly what they are contesting about. The most satisfactory method of achieving this object would be one by which each party in turn is obliged to state his own case, and answer the case of the opponent before the trial comes on. Such statement of the parties and the replies to them are known as pleadings.
4. The document stating the cause of action and other necessary details and particulars in support of the claim of the plaintiff is called the "plaint". The defence statement containing all material facts and other details filed by the defendant is called the "written statement". The written statement is filed by the defendant as an answer to the contentions of the plaintiff and it contains all material and other objections which the defendant might place before the court to admit or deny the claim of the plaintiff.
5. Any material omission in the pleading can entail serious consequences, because at the evidence and argument stages, parties are not permitted to depart from the points and issues raised in the pleadings, nor can a party be allowed to raise subsequently, except by way of amendment, any new ground of claim or any allegation of fact inconsistent with the previous pleadings of the party pleading the same. In some cases, the court may allow amendment of the plaint or the written statement on the application of a party to the suit. Another case of departure is where the defendant pleads for set-off or that of the counter-claim.
6. Pleadings contain material facts, contentions and claim of the plaintiff, and the material facts, contentions, denials or admissions of claims by the defendants. There may also be counter claims by the defendant which may be of two categories –

(i) A claim to set-off against the plaintiff's demand is covered by order VIII Rule 6, and

(ii) Independent counter claims which is not exactly set off but falls under some other statute.

MAIN OBJECT OF PLEADINGS

1) To define the issue of fact and question of law to be decided between the parties;
2) To give fair notice of the case which has to be met so that the opposite party may direct his evidence to the issue disclosed by them; and
3) To provide a brief summary of the case of each party, which is readily available for reference and from which the nature of the claim and defence may be easily apprehended, and to constitute a permanent record of the questions raised in the action and of the issues decided therein, so as to prevent future litigation upon matters already adjudicated upon between the litigants.

IMPORTANCE OF PLEADINGS

1. The importance of the art of pleading is insufficiently realised in this country. It demands a high degree of skill, and the final form of any pleading should be stated only by advocates who have the necessary skill and experience.
2. No relief based on any ground not set out as pleading can be granted.
3. A party urging a ground which is entirely a legal ground may be allowed to set it up at a later stage but plea based on a question of fact or a mixed question of law and fact cannot be allowed to be taken at a later stage.
4. A finding based on no pleading and no evidence, cannot be sustained.

RULE OF PLEADING AND A RULE OF PROOF

It is necessary to keep in mind the distinction between a rule of pleading and a rule of proof. That inconsistent pleading can be pleaded it in the alternative is a well-established rule of pleading, but the proof of a plea depends upon the provisions of substantive law.

FUNDAMENTAL RULES OF PLEADINGS

The four fundamental rules of pleadings are:

1) That a pleading shall contain, only a statement of facts, and not Law;
2) That a pleading shall contain all material facts and material facts only;
3) That a pleading shall state only the facts on which the party pleading relies and not the evidence by which they are to be proved;
4) That a pleading shall state such material facts concisely, but with precision and certainty.

RULE 1: FACTS AND NOT LAW

1. One of the fundamental rules of pleadings is that a pleading shall contain and contain only a statement of facts and not law.
2. The duty of the pleader is to set out the facts upon which he relies and not the legal inferences to be drawn from them. And it is for the judge to draw such inferences from those facts as are permissible under the law of which he is bound to take judicial notice.
3. Thus, where a party pleads that the act of the defendant was unlawful, or that the defendant is guilty of negligence, or that the defendant was legally bound to perform specific contract, such a pleading would be bad. In such cases, the plaintiff must state facts which establish the guilt or negligence of the defendant, or how the particular act of the defendant was unlawful, of the fact leading to the contract which thus bound the defendant.
4. Thus, in a declaratory suit, it is not enough to plead that the plaintiff is the legal heir of the deceased for this is an inference of law. The plaintiff must show how he was related to the deceased, and also show the relationship of other claimants, and other material facts to show that he was nearer in relation to the deceased than the other claimants.
5. Similarly, on money suit it is not enough that the plaintiff is entitled to get money from the defendant. He must state the facts showing his title to the money. For example, he should state that the defendant took loan from the plaintiff on a particular date and promised to return the money along with specified interest on a fixed date, and that he requested the defendant to return the said amount after such date but then he refused to return the money. If some witnesses were present when the money was lent or when the demand was made or

when the refusal by the defendant was made, the fact should be stated specifically, for at the time of the trial the Court may order the plaintiff to adduce evidence in support of his statement, and then he can rely on the evidence of the witnesses in whose presence he had lent money or in whose presence he had made a demand for the return of the money.

6. In a matrimonial petition, it is not enough to state that the respondent is guilty of cruelty towards the petitioner- wife and that she is entitled to divorce. The petitioner must state all those facts which establish cruelty on the part of the respondent. She may state that her husband is a drunkard and comes home fully drunk and in a state of intoxication he inflicted physical injuries on her, she should specify dates on which such incidents took place; or that the husband used to abuse her or beat her in the presence of her friends and relations or that after her marriage she was not allowed to visit her parents or that he was forcing her to part with her dowry, giving threats of physical beating; or that immediately after her marriage till date the respondent did not even talk to her, nor he cohabited with her. It is such facts which can establish physical or mental cruelty.
7. Omission to state all the facts renders the pleading defective whatever inferences of law might otherwise have been pleaded. Such a plaint may be rejected on the ground that it discloses no cause of action. For example, in a suit for recovery of money for the goods sold, the defendant should not just take the plea that he is not liable. Such a statement is a plea of law and can hardly stand and in spite of his good defence his case will fail. In such a case the defendant must clearly state that he did not purchase any goods from the plaintiff nor was there an agreement to do so. He may also state that though the goods were sent to him, but he did not take the delivery as he had placed no order therefore or that the goods were sold to him on credit and the money was to be paid to the plaintiff after the sale of such goods and the goods were still lying with him unsold, and that he was willing to return the goods to the plaintiff in accordance with the written or oral understanding that in case of the goods remaining unsold the same shall be taken back by the plaintiff. Such facts would be valid pleas.
8. In another example of a suit for defamation and damages, it is not sufficient for the plaintiff to state that the defendant defamed him and therefore he was entitled to damages or special damages. The plaintiff must state all the facts of the defendant act or acts such as his public utterances in which he named the plaintiff and made remarks about his character or profession

or the publications in which he was painted in a manner as would in the opinion of a common man lower him in the eyes or estimation of society. Wherever possible, the plaintiff must give the exact words spoken or used in the entire sentence or statement and also give the general, grammatical or implied meaning of such words spoken or used. Wherever there is any ambiguity, he may take the plea of "inuendo" and state how such a remark was commonly understood by persons known to him. Thus, the plaintiff should build his case on facts from which the conclusion would naturally and logically follow.

The rule that every pleading must state facts and not law is subject to the following exceptions:

i. Foreign Law
ii. Customs
iii. Mixed question of law and fact
iv. Legal Pleas
v. Inferences of law.

RULE 11: MATERIAL FACTS

1. The word material means necessary for the purpose of formulating a complete cause of action. Cause of action mean – every fact which if traversed, it would be necessary for the plaintiff to prove in order to support his right to the judgement of the Court.
2. When a litigant comes to a legal practitioner, he brings all facts and circumstances pertaining to a case. In fact, he tries to narrate each and every event which may possibly have a remote bearing upon the case. Not all such facts are important. If everything were to be included in the plaint, then the plaint is likely to become so voluminous that the learned judge is likely miss the essential track and be guided by the inessentials.
3. What is necessary therefore are the facts which are material; facts which have a direct and immediate bearing on the case, facts which are secondary or incidental may easily be omitted. Of course, the lawyer must weigh each fact and test its significance and relevance in relation to the given case. Marshalling of facts is what a good lawyer would always do before he sets them down in form of a plaint.
4. This rule is embodied in Order VI Rule 2 and it requires that –

I. The party pleading must plead all material facts on which he intends to rely for his claim or defence as the case may be; and

II. He must plead material facts only, and that no fact which is not material should be pleaded, nor should the party plead evidence, nor the law of which a Court may take a judicial notice[3].

Whether a particular fact is material or not will depend upon the circumstances of the case. A fact may not appear to be material at the initial stage but it may turn out to be material at the time of the trial. Thus if a party is not able to decide whether a fact is material or not, or if he entertains a reasonable doubt as to the materiality of a particular fact, it would be better to include than to exclude, because if a party omits to state or plead any material fact, he will not be permitted to adduce evidence to prove such a fact at the trial unless the pleading is amended under Order VI Rule 17. The general rule is that a party cannot prove a fact which he has not pleaded.

INSTANCES OF MATERIAL FACTS:

1. In a suit for damages for injuries sustained in a collision, the plaintiff in framing his statement of claim should set out the circumstances of the collision, so far as they are known to him, with clearness and accuracy to enable his adversary to know the case he has to meet, he should also state in particular terms the particular acts of negligence which, according to him, caused the collision.

2. In a suit for ejectment of a trespasser from the land and for injunction it is material to allege that defendant "threatens and intends to repeat the illegal act" similarly, if a party seeks a stay order against any authority's act of demolition his premises, shop or building he must allege that he is owner of the property and the plans or the map thereof was duly sanctioned by the appropriate authority. Or if a government land, he must allege that he has been in undisturbed possession thereof for over twelve years. Such facts are material, because if proved, they will establish the cause of action.

3. In a suit for defamation, it is material to allege that the words were intended to defame the plaintiff or at least they were so understood by men at large, if the words are ambiguous, then "innuendo" must be pleaded that they were ironically used or were intended so to be understood.

4. Where a party claims the benefit of a special rule or custom then he must allege all facts which bring the case within the ambit of that special rule or custom. For example, where a marriage between two sapindas or between two persons within the degrees of prohibited relationship is challenged in some property matter, the party that is challenging the validity of the marriage must allege that there was no custom governing the parties which permitted or sanctioned such a marriage between sapindas. It is material to allege the existence of a long-established family or caste custom governing the parties to the marriage which permitted or sanctioned such a marriage.

5. In a money suit, it is material to allege part-payment of the loan and also any other fact which gives a new lease of three years' time to the loan in order to save the suit from the bar of limitation.

6. When a plaintiff bases his claim on some document, it is material to state the effect of such a document. For example, where the case is based on a sale-deed, it is material to state that a particular person has sold property to him by a sale-deed dated so and so which was duly registered.

7. In a suit for specific performance of a contract, it is material to allege that the plaintiff has always been willing and is willing to perform his part of the contract.

EXAMPLE OF FACTS NOT MATERIAL

1. In a suit on a promissory note, it is not material to state that the plaintiff requested the defendant to make the payment and he refused, because no demand is necessary when the promissory note becomes due and it is payable immediately.

2. Similarly in a suit for recovery of money for the goods sold, it is not material to state that the goods belonged to the plaintiff or that the goods were sold to the defendant on the belief that he would honestly make the payment.

3. In the case of damages, general damages are presumed to be the natural or probable consequence of the defendant's act. Such damages need not be proved. But special damages will not be presumed by law to be the consequence of the defendant's act but will depend on the special circumstances of the case. Therefore, it will have to be proved at the trial that the plaintiff suffered the loss and also that the conduct of the defendant resulted in the loss so suffered by the plaintiff. In such cases the proof of special damages is essential to sustain an action. A person has no right of action in respect of a public nuisance unless he can show some special injury to himself which is over and above what is common to others.

EXCEPTION TO THE GENERAL RULES:

The second fundamental rule of pleading, namely, that every pleading must state all the material facts and the material facts only is subject to the following well known exceptions:

i. **Condition Precedent:** The performance of occurrence of any condition precedent need not be pleaded as its averments shall be implied in the pleading. But where a party chooses to contest the performance or occurrence of such condition, he is bound to set-up the plea distinctly in his pleading. For example, X agrees to build a house for Y at certain rate. A condition of the contract is that payment should only be made upon the certificate of Y's architect that *** amount is due. If X desires to file a suit for money against Y, the obtaining and presenting of the certificate from Y's architect is a condition precedent to X's right of action. Here it is not necessary of Y to state in his plaint that he has obtained the said certificate. He can draft a plaint showing a good prima facie right to the agreed amount without mentioning any certificate. It will be for Y to plead that the architect has never certified that the amount is due.

ii. **Presumption of Law:** Order VI Rule 13, C.P.C., provides that neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied. For example, in a suit on a promissory note the plaintiff need not allege consideration as Section 118 of Negotiable instruments Act, 1881 raises a presumption in his favour. It is also not necessary to state that the defendant executed the bond of his own free will and without any force or fraud because the burden of proving any fact invalidating the bond lies upon the defendant.

iii. **Matters of Inducement:** Another exception to the general rule is regarding facts which are merely introductory. Such facts only state the names of the parties, their relationships, their professions and such circumstances as are necessary to inform the Court as to how the dispute has arisen. Such facts are hardly necessary or material to the pleading, but they are generally tolerated and are set in the pleadings by both the parties in order to facilitate the court to take a stock of the situation of the parties. It is better if such prefatory remarks are cut down to the minimum.

RULE III: FACTS NOT EVIDENCE

1. The third fundamental rule of pleadings is that only facts must be stated and not the evidence as there is a tendency among the litigants to mix up the bare facts with the facts which are in reality the evidence.
2. Order VI Rule 2 of C.P.C. enjoins that every pleading shall contain a statement of the material facts on which the party pleading relies for his claim or defence but not the evidence by which they are to be proved.
3. At the initial stage only, the former facts have to be narrated, and when the state of evidence comes, then the other facts will be represented as a part of evidence in order to establish the first set of facts.
4. The reason behind the rule stating evidence is that if the evidence were also allowed to be stated in the pleading, then there shall remain no limit of details and the chief object of the pleading would disappear.

5. Evidence also consists of facts. Then how to distinguish between the two kinds of facts (i.e., material facts and evidence)? Long back in **Ratti Lal v Raghu AIR 1954 VP 53,** the question was answered thus: Material facts are those facts which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

6. Evidence also consists of facts and in order to distinguish between the two kinds of facts, the material facts on which the party pleading relies for his claim or defence are called facta probanda and the facts by means of which they (i.e., material facts) are be proved are called facta probantia.

(a) **Facta probanda:** The facts which are to be proved. These are the facts on which a party relies and are ought to be stated in the pleading.

(b) **Facta probantia:** These are the facts which are not to be stated because by their means facta probanda are proved. Thus, these facts are the evidence as to the existence of certain facts on which the party relies for his cause of action or defiance as the case may be. Facta probanda are not facts in issue, but they are relevant in that at the trial their proof will establish the existence of facts in issue. No doubt in certain cases both the facts in issue and their facts in evidence are mixed up and are almost indistinguishable. They should not be stated in the pleading.

For ex., A was married to B in accordance with a particular custom governing marriage between A and B. In this case the "custom" is both a fact in issue and a fact in evidence, because once the custom is proved, then the marriage also, stands proved. In the pleading, it is sufficient to allege that the marriage was celebrated in accordance with a particular custom. At the evidence stage, it will be sufficient to refer to the manual of customary law which records customs.

RULE IV: FACTS TO BE STATED CONCISELY AND PRECISELY

Order VI Rule 2 enjoins that every pleading must state the material facts concisely, but with precision and certainty. It is a rule to be observed in all courts that a party complaining of an injury and suing for redress, can recover only secundum allegata et probata. The material facts should be stated in the pleading in a concise form but with precision and certainty the pleading shall be divided into paragraphs, numbered consecutively. Dates, sums and numbers shall be

expressed in figure. What this rule means is that the pleading should be brief and to the point. Another point to remember is that no doubt brevity and conciseness are the rule, but brevity should not be at the cost of precision or clarity.

The following points should be kept in mind while drafting a pleading: -

a) The names of persons and places should be accurately given and correctly spelt; spellings adopted at one place should be followed throughout the pleading.

b) Facts should be stated in active and not in the passive voice omitting the nominative.

c) All circumstances and paraphrases should be avoided.

d) 'Terse', 'Short', 'Blunt' sentences should be used as far as possible. All 'its' and 'buts' should be avoided.

e) Pronouns like "he" "she" or "that" should be avoided if possible. Anyway, such pronouns when used should clearly denote the person or the thing to which such pronouns refer.

f) The plaintiff and the defendant should be referred not only by their names. It is better to use the word "plaintiff" or "defendant".

g) Things should be mentioned by their correct names and the description of such things should be adhered to throughout.

h) Where an action is found on some statute, the exact language of the statute should be used.

i) In any pleading, the use of "if", "but" and "that" should be, as far as possible, avoided. Such words tend to take away the "certainty" and can cause ambiguity.

j) Necessary particulars of all facts should be given in the pleading. If such particulars are quite lengthy, then they can be given in the attached schedule, and a clear reference made in the pleading. Repetitions should be avoided in pleadings.

k) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph (Order VI Rule 2). The division of the pleading into paragraphs should be so done as to endure that each paragraph deals with one fact. At the same time, the entire pleading should appear a running and well-knit matter, must not look like isolated fact placed together. Inter-relations ships of paragraphs must seem to exist. All the relevant facts must be stated in strict chronological order.

l) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words.

OTHER RULES

PLEADING MUST BE SIGNED

Order VI Rule 14 makes it obligatory that the pleading shall be signed by the party and his pleader (if any). However, where a party pleading is, by reason of absence or for other good cause, unable to sign the pleading it may be signed by any person duly authorized by him to sign the same or to sue or defend on his behalf.

VERIFICATION OF PLEADING

Order VI Rule 15, states every pleading shall be verified at the foot by any of the parties pleading or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. The person verifying shall specify, by reference to the numbered paragraphs of the pleading what he verifies of his own knowledge and what he verified upon on received and believed to be true. The verification shall be signed by the person making it and the date on which and the place at which it was signed.

STRIKING OUT PLEADINGS

It is no difference to an application to strike out impertinent matter, it will make the pleading inconsistent and insufficient, for the pleading should be amended if necessary.

AMENDMENT OF PLEADINGS

The court always give leave to amend the pleading of a party. However, negligence or carelessness may have been the first omission and however late the proposed amendment and amendment may be allowed if it can be made without injustice to the other side. The amendment introduces new case, new cause of action, new or alternative relief, correct description, change in the character of suit, to be considered on the basis of the fact and circumstances of each case. The amendment can be allowed at any stage. There is no invariable

rule that an amendment which deprives the opposite party of the plea of limitation should always be refused. The court is, however entitled to allow amendment of the plaint even after the period of limitation has expired, holds that the omission was due to a Bonafide mistake on the part of the plaintiff. Rule of amendment of pleadings is essentially a rule of justice, equity and good conscience.

INCONSISTENT DEFENCES

A defence cannot be ruled out merely because it is inconsistent with another defence. It is certainly open to a party to raise inconsistent defences in the alternative, but at the time when evidence is led, he has got to elect as to which of the alternative inconsistent defences he is going to prove.

CIVIL PLEADINGS

1. **Classes of Civil Courts –** Besides the Supreme Court and High Courts, there are Civil Courts at District level. Highest among them is Court of District Judge, followed by Additional District Judges. The lower Civil Courts are divided in two forms e.g., one by territorial limits and secondarily pecuniary limit. The territorial limit is by jurisdiction of the court and by pecuniary limit it is divided into Civil Judge (Senior Division), Civil Judge (Junior Division) and Small Cause Court. When a suit is filed, if it is of civil in nature, it is filed by a complaint which is submitted to computerized filing centre of a District.
2. **In money suits:** Where the plaintiff seeks the recovery of money, the plaint shall state the precise amount claimed. But where the plaintiff sue for mesne profits, or for an amount which will be found due to him on taking unsettled accounts between him and the defendant, or for movables in the possession of the defendant, or for debts of which the value he cannot, after the exercise of reasonable diligence, estimate, the plaint shall state approximately the amount or value sued for.
3. **Where interest is sought in the suit –**

(1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out.

(2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 and, furthermore, if the plaintiff is doing so under the terms of a contract or under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

(3) Pleadings shall also state—

(a) the rate at which interest is claimed;

(b) the date from which it is claimed;

(c) the date to which it is calculated;

(d) the total amount of interest claimed to the date of calculation; and

(e) the daily rate at which interest accrues after that date.

4. **Where the subject-matter of the suit is immovable property:** Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

5. **When plaintiff sues as representative:** Where the plaintiff sues in a representative character the plaint shall show not only that he has an actual existing interest in the subject- matter, but that he has taken the steps (if any) necessary to enable him to institute a suit concerning it.

DILATORY PLEAS

Pleas which merely delay the trial of a suit on merits have been characterized as 'dilatory pleas'. They simply raise formal objections to the proceedings and do not give any substantial reply to the merits of the case, e.g., the plea that the court-fee paid by the plaintiff is not sufficient. Such pleas should be raised at the earliest opportunity.

INTERLOCUTORY APPLICATION

Interlocutory means not that decides the cause but which only settles some intervening matter relating to the cause. After the suit is instituted by the plaintiff and before it is finally

disposed off, the court may make interlocutory orders as may appear to the court to be just and convenient.

Interlocutory orders may take various shapes depending upon the requirement of the respective parties during the pendency of the suit e.g., Applications for appointment of Commissioner, Temporary Injunctions, appointment of Receivers, payment into court, security for cause etc.

PLAINT STRUCTURE

PLAINT: Plaint shall contain the following particulars:

(a) The name of the Court in which the suit is brought;

(b) The name, description and place of residence of the plaintiff;

(c) The name, description and place of residence of the defendant, so far as they can be ascertained;

(d) Where the plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;

(e) The facts constituting the cause of action and when it arose;

(f) The facts showing that the Court has jurisdiction;

(g) The relief which the plaintiff claims;

(h) Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished; and

(i) A statement of the value of the subject-matter of the suit for the purposes of jurisdiction and of court fees, so far as the case admits.

FORMAT OF PLAINT

SUIT FOR EJECTMENT AND ARREARS OF RENT IN THE COURT OF SMALL CAUSE

CIVIL ORIGINAL JURISDICTION

Suit No. _____ of 2024

IN THE MATTER OF

A, son of _____ age _____ resident of _____

Plaintiff

VERSUS

B, son of _____ age _____ residents of _____

Defendant

AND IN THE MATTER OF

Suit for Ejectment, Arrears of Rent

The above-named plaintiff states as follows:

1) That the plaintiff is owner of the house no. _____ situated at and is surrounded by follows:

Towards East _____

Towards West _____

Towards North _____

Towards south _____

2) That the defendant became a tenant to the plaintiff under verbal agreement made on in respect to the house at a monthly rent of rupees _____ and has the possession of the house since above mentioned date of agreement.

3) That the defendant has made default in payment of rent of _____ from (date).

4) That the plaintiff has served a notice to quit the house within 30 days of the notice to the defendant and pay the entire arrears of rent from (date). That the said notice was served

upon the defendant on October (date) yet the defendant has not vacated the house nor paid the arrears of rent from _____ Hence defendant is liable to ejectment.

5) That total sum of rupees _____ is due to the plaintiff as against the defendant that is Rupees _____ on account of arrears of rent and Rupees _____ on account of damages for use & occupation from _____

6) That the cause of action arose on _____ when the period of stipulated in the said notice is expired.

7) That the defendant resides at _____ within the jurisdiction of court.

8) That the valuation of the suit for purpose of the jurisdiction & payment of court fees is Rupees _____ and has been paid.

Therefore the plaintiff claims-

a) That the decree of ejectment be passed in favour of the plaintiff.

b) That the decree of arrears of rent from _____ to _____ be passed in favour of plaintiff.

c) That a decree for Rupees _____ on account of damages for use & occupation at rate of rupees per month from _____ to _____ the date of suit, of be passed in favour of plaintiff.

d) That a decree for further damages is passed in fovour of plaintiff against the defendant.

e) That the cost of the suit be allowed to the plaintiff.

A

Plaintiff

Through Advocate

VERIFICATION

I A, age _____ son of _____ address _____, plaintiff do hereby confirm that all the facts stated above are true to the best of my knowledge, information & belief

A

Plaintiff

Place:

Date:

WRITTEN STATEMENT

1. Written statement is the statement or defence of the defendant by which he either admits the claim of the plaintiff or denies the allegations or averments made by the plaintiff in his plaint.
2. Before proceeding to draft a written statement, it is always necessary for a pleader to examine the plaint very carefully and to see whether all the particulars are given in it and whether the whole information that he requires for fully understanding the claim and drawing up the defence is available. If any particulars are wanting, he should apply that the plaintiff be required to furnish them before the defendant files his written statement. If he cannot make a proper defence without going through such particulars and/ or such documents referred to in the plaint, and that the defendant is not in possession of such copies, or the copies do not serve the required purpose, the defendant should call upon the plaintiff to grant him inspection of them and to permit him to take copies, if necessary, or, if he thinks necessary, he may apply for discovery of documents.

3. If he thinks any allegation/ allegations in the plaint are embarrassing or scandalous, he should apply to have it struck out, so that he may not be required to plead those allegations.
4. If there are several defendants, they may file a joint defence, if they have the same defence to the claim. If their defences are different, they should file separate written statements, and if the defences are not only different but also conflicting, it is not proper for the same pleader to file the different written statements. For instance, if two defendants, executants of a bond, are sued on the bond, and their plea is one of satisfaction, they can file a joint written statement. If the plaintiff claims limitation from the date of certain acknowledgement made by one defendant and contends that the acknowledgement saves limitation against the other also, the defendants may file separate written statements.

HOW TO DRAFT A WRITTEN STATEMENT

It is convenient to adopt the following order for the several pleas:

(i) **Denials:** A defendant is said to take the defence of denial when he totally and categorically, denies the allegations contained in the plaint. It is also called 'traverse'. Admissions and denials of the material facts alleged in the plaint should be given in the opening paragraphs of the body of the written statement. It may be emphasized that bare denials are in themselves valid defences to the claim made in the plaint.

Rules as to denials: a. Denials must be specific, b. Denials must not be evasive.

(ii) **Dilatory pleas:** Pleas which merely delay the trial of a suit on merits have been characterized as 'dilatory pleas'. They simply raise formal objections to the proceedings and do not give any substantial reply to the merits of the case, e.g., the plea that the court-fee paid by the plaintiff is not sufficient. Such pleas should be raised at the earliest opportunity.

(iii) **Objections to point of law:** By such an objection, the defendant means to say that even if the allegations of fact (made in the plaint) be supposed to be correct, still the legal inference which the plaintiff claims to draw in his favour from those facts is not permissible.

(iv) **Special defence (confession and avoidance):** Special defence is more appropriately called the plea of confession and avoidance. It is a plea whereby the defendant admits the allegations made in the plaint but seeks to destroy their effect by alleging affirmatively certain facts of his own, showing some justification or excuse of the matter charged against him or some discharge or release from it.

(v) **Set off and counter-claim:** According to Black's Law Dictionary set off is the defendant's counter demand against the plaintiff, arising out of a transaction independent of the plaintiff's claim. Where the plaintiff sues a defendant for the recovery of money the defendant can defend that suit and he can 'claim a set-off in respect of any claim of his own'. An analysis of sub-rule (1) of Rule 6 of Order VIII would reveal that a claim by way of a set-off is allowed in the following conditions:

a. the sum claimed must be ascertained sum of money,
b. it must be legally recoverable,
c. it must be recoverable by the defendant,
d. it must be recoverable from the plaintiff,
e. the sum claimed by the defendant must not exceed the pecuniary limits of the jurisdiction of the Court, both parties must fill the same character as they fill in the plaintiff's suit.

Set-off may be of two kinds: legal set-off and equitable set-off. The counter claim is the claim made by the defendant against the averments made by the plaintiff in his plaint. Black's Law Dictionary defines it as a claim for relief asserted against an opposing party after an original claim has been made, especially a defendant's claim in opposition to or as a set-off against the plaintiff's claim. Counter claim must be treated as a plaint. It shall have the same effect as a cross suit so as to enable the Court to pronounce judgement in the same suit, both on the original claim and on the counter claim.

DRAFTING OF REPLY/WRITTEN STATEMENT – IMPORTANT CONSIDERATIONS

At the time of drafting the reply or written statement, one has to keep the following points in mind:-

(i) One has to deny the averment of the plaint/petition which are incorrect, perverse or false. In case, averment contained in any para of the plaint are not denied specifically, it is presumed to have been admitted by the other party by virtue of the provisions of Order VIII, Rule 5 of the Code of Civil Procedure. It must be borne in mind that the denial has to be specific and not evasive (Order VIII, Rule 3 & 4 CPC) However, general allegation in the plaint cannot be said to be admitted because of general denial in written statement. **[Union v. A. Pandurang, AIR 1962 SC 630]**

(ii) If the plaint has raised a point/issue which is otherwise not admitted by the opposite party in the correspondence exchanged, it is generally advisable to deny such point/issue and let the onus to prove that point be upon the complainant. In reply, one has to submit the facts which are in the nature of defence and to be presented in a concise manner. **[Syed Dastagir v. T.R. Gopalakrishnan Setty 1999 (6) SCC 337.]**

(iii) Attach relevant correspondence, invoice, challan, documents, extracts of books of accounts or relevant papers as annexures while reply is drafted to a particular para of the plaint;

(iv) The reply to each of the paras of the plaint be drafted and given in such a manner that no para of the plaint is left unattended. The pleadings are foundations of a case. **[Vinod Kumar v. Surjit Kumar, AIR 1987 SC 2179.]**

(v) After reply, the same is to be signed by the constituted attorney of the opposite party. If the opposite party is an individual, it could be signed by him or his constituted attorney or if the opposite party is a partnership firm, the same should be signed by a partner who is duly authorised under the Partnership Deed, because no partner has an implied authority to sign pleadings on behalf of the partnership firm by virtue of Section 22 of the Indian Partnership Act, 1932. In case of a body corporate, the same could be signed by any Director, Company

Secretary, Vice-President, General Manger or Manager who is duly authorised by the Board of Directors of the company because any of the aforesaid persons per se are not entitled to sign pleadings on behalf of the body corporate.

It may be noted that if the plaint or reply is not filed by a duly authorised person, the petition would be liable to be dismissed [Nibro Ltd. v. National Insurance Co. Ltd., AIR 1991 Delhi 25; Raghuvir Paper Mills Ltd. v. India Securities Ltd. 2000 Corporate Law Cases 1436]. However, at the time of filing of petition, if the pleadings are signed by a person not authorised, the same could be ratified subsequently. [United Bank of India v. Naresh Kumar, AIR 1997 SC 2.]

(vi) The reply/written statement is to be supported by an Affidavit of the opposite party. Likewise, the Affidavit will be sworn by any of the persons aforesaid and duly notarized by an Oath Commissioner. The Affidavit has to be properly drawn and if the affidavit is not properly drawn or attested, the same cannot be read and the petition could be dismissed summarily. [Order VI, Rule 15 CPC]. The court is bound to see in every case that the pleadings are verified in the manner prescribed and that verifications are not mere formalities.

(vii) The reply along with all annexures should be duly page numbered and be filed along with authority letter if not previously filed.

(viii) At the time of filing of reply, attach all the supporting papers, documents, documentary evidence, copies of annual accounts or its relevant extracts, invoices, extracts of registers, documents and other relevant papers.

(ix) It may be noted that if any of the important points is omitted from being given in the reply, it would be suicidal as there is a limited provision for amendment of pleadings as provided in Order VI, Rule 17 CPC, and also the same cannot be raised in the Affidavit-in-Evidence at the time of leading of evidence. Because if any point has not been pleaded in the pleadings, no evidence could be led on that point. General rule is that no pleadings, no evidence. [Mrs. Om Prabha Jain v. Abnash Chand Jain, AIR 1968 SC 1083; 1968 (3) SCR 111.]

(x) If a party is alleging fraud, undue influence or misrepresentation, general allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice, however, strong the language in which they are couched may be, and the same applies to undue influence or coercion. [Afsar Shaikh v. Soleman Bibi, AIR 1976, SC 163; 1976 (2) SCC 142]. While pleading against fraud or misrepresentation, party must state the requisite particulars in the pleadings. [K Kanakarathnam v. P Perumal, AIR 1994 Madras 247.]

(xi) It is well settled that neither party need in any pleadings allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side unless the same has first been specifically denied. [Order VI, Rule 13 CPC; Sections 79 and 90 of Indian Evidence Act.]

(xii) In every pleading, one must state specifically the relief which the party is claiming from the court or tribunal or forum. While framing the prayer clause, one should claim all possible relief as would be permissible under the pleadings and the law [Order VII, Rule 7 CPC]. The general principle is that the relief if not prayed for, will not be allowed. [R Tiwary v. B Prasad, AIR 2002 SC 136.]

FORMAT OF WRITTEN STATEMENT

IN THE COURT OF SMALL CAUSE

SUIT FOR EJECTMENT & ARREARS OF RENT

SUIT NO. _____ OF 2024

IN THE MATTER OF

A, son of _____ age _____ resident of _____

Plaintiff

VERSUS

B. son of age _____ age _____ resident of _____

Defendant

AND IN THE MATTER OF

Ejectment of House

That the above-named defendant submits as under:

1) That the defendant admits the facts as stated in point 1 of the plaint.

2) That rent agreement was executed between plaintiff and the defendant dated _____ as specified in point 2, which also the defendant admits.

3) That the defendant denies the contentions as made in point 3 of the plaint regarding non-payment of rent from _____ to _____

4) That the defendant confirms service of legal notice. However, he denies non-payment of rent and liability of ejectment of said property as specified in point 4.

5) That the defendant confirms payment of rent duly and also no damage to any of the property was made and hence he denies the contents of point 5.

6) That there is no cause of action prima facie as there is no default as specified in point 6.

7) That the defendant admits jurisdiction of this Hon'ble Court as specified in point 7

8) That the court fee is appropriate as specified in paint 8

ADDITIONAL PLEAS

a) That the defendant confirms the payment of rent to the plaintiff's authorised agents from the months from _____ to _____ and he further confirms that rent only for the month of _____ is pending, which also the defendant is ready to pay but kept in on hold due to institution of this suit.

b) That there being no grounds for cause of action, may this suit be dismissed with appropriate cost.

B
Defendant
Through Advocate

VERIFICATION

I A, age _____ son of _____ address _____ plaintiff do hereby confirm that all the facts stated above are true to the best of my knowledge, information & belief.

B
Defendant

Date:
Place:

NOTICE

1. There is no self-contained general law relating to notices laying down therein what exactly constitutes a notice.
2. The subject of notice falls under two categories. Firstly, the giving of notice by an individual to others before taking action which would affect the other person. Such a notice by an individual may require the other person to do a certain thing failing which legal action would be taken. For example, a notice under section 106 of the transfer of property act 1882 determine

the lease and asking the lessee to vacate the premises falls under this category. Similarly, when a private person intends to proceed against the government or a public authority by filing a suit, a notice under section 80 of the CPC is an essential requisite so that the government or public authority may, before the suit is filed redress the grievance of the private person and avoid litigation. A partner withdrawing from partnership giving a notice also falls under this category.

3. Essential requisites of notice is that it should be in writing and signed by the notice giver or by his authorised agent. Merely typing the name of the person who gives the notice is not sufficient. The notice should be definite and should state in unequivocal terms that the tenancy stands terminated from the specified therein.

NOTICE OF SUIT UNDER SECTION 80, C.P. CODE AGAINST A PUBLIC OFFICER OF A STATE GOVERNMENT

Registered AID

Dated

To,
XYZ
Official Designation

Subject: Notice under section 80 of the code of civil procedure

Dear Sir,

Please take notice that my client _____ son of _____ residing at _____ intends to bring a suit against Mr. A, a public officer of the government of Department of Electricity in a competent court of law on the course of action stated herein under and for reliefs appearing below:

Cause of action for suit

i) _____

ii) _____

Relief sought for

_____

Yours faithfully,

Sd/-

PQ

Advocate

NOTICE OF EJECTMENT UNDER SECTION 106 OF THE TRANSFER OF PROPERTY ACT FORMAT

NOTICE OF EJECTMENT

THROUGH ADVOCATE

(SECTION 106 OF THE TRANSFER OF PROPERTY ACT, 1882)

REGD A/D / U.P.C.

Dated _____

Advocate Name ____

Address_____

Phone no. ___

To ___

Sub: NOTICE UNDER SECTION 106 OF THE TRANSFER OF PROPERTY ACT, 1882 FOR EJECTMENT

Dear Sir,

Under the instructions from and on behalf of my client Sh.___S/O___ R/O__(hereinafter referred to as "my client"), I serve you with the following notice:

1. That the house bearing no._____ situated at__in_city is owned by my client. That you approached my client and requested my client to give the said property on lease to you.
2. That my client has inducted you as the tenant in respect of the said property. That the agreed monthly rent for the said property is Rs__per month.
3. I hereby give you notice that you are to quit and vacate the said property below of which you are now in possession of as a monthly (or yearly) tenant under my said client immediately on the expiry of the last day of_____20XX.
4. On and from the____ of_____ (month next following the last day of the month on which the tenant is required to quit) the tenancy hereto before subsisting shall terminate and all relationship of landlord and tenant between my client and you shall absolutely cease.
5. You are requested to deliver vacant possession of the said premises unto my client on that date as stated above.
6. In case of your failure to quit the premises as desired, you will be considered as a trespasser and ejected in due course of law and you will have to pay damages at rate of Rs.__per _____until you are evicted.

Yours faithfully,

Advocate

PETITIONS

ORIGINAL PETITION

1. Suits are filed to lodge money claims in civil courts working under District Courts while petitions are filed in High Courts which are above District Courts seeking some directions against the opposite party; mostly the Government.
2. There is no legal term like original suit or original petition. Suit of a civil nature is ordinarily tried in civil court.
3. In practice, the words 'petitions' and 'suits' are generally used to mean formal applications for seeking legal remedy. The suit which is initially filed in the first court for the first time is referred as original suit. Petitions are Writ Petitions, Arbitration Petitions, Miscellaneous Petitions etc. & not the original petition.
4. After judgment in suit or petition, if any aggrieved party challenges it, then it is by filing appeal in the higher court which is ordinarily called as Appeal but often in some court it is termed as Letters Patent Appeal (LPA) & as Special Leave Petition (SLP) in Supreme Court.

EXECUTION PETITION

Application for Execution of decree

Application for execution of a decree shall be made by a holder of a decree who desires to execute it to the appropriate court which passed it or to the officer appointed in this behalf.

Application for execution of a decree may be either (1) Oral; or (2) written.

(a) **Oral Application:** Where a decree is for payment of money the court may on the oral application of the decree holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgement debtor, prior to the preparation of a warrant if he is within precincts of the court.

(b) **Written Application:** Every application for the execution of a decree shall be in writing, signed and verified by the applicant or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case

SPECIAL LEAVE PETITION

In suitable cases, where some arguable questions, mostly on legal points are involved, the Constitution confers under Article 136 wide discretionary powers on the Supreme Court to entertain appeals even in cases where an appeal is not otherwise provided for. But so far as questions of fact, as distinct from questions of law, is concerned, it is only in rare or exceptional cases that the Supreme Court interferes and that too when finding of the High Court or the lower Court is such that it shocks the conscience of the court.

SPECIMEN FORM OF A PETITION FOR SPECIAL LEAVE

SPECIAL LEAVE PETITION

BEFORE THE HON'BLE
SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL PETITION NO _____ OF 2024

IN THE MATTER OF

A, age _____ son of _____ resident of _____

.... PETITIONER

VERSUS

B, age _____ son of _____ resident of _____

.... RESPONDENT I

C Pvt Ltd, a company formed and registered under the provisions of Companies Act, 2013 having its registered office at _____ represented through Mr. X, Director

.... RESPONDENT II

AND IN THE MATTER

Winding up under Companies Act, 2013

May it please the Chief Justice of Hon'ble Supreme Court and his fellow lordships.

FACTS OF THE CASE

1. That C Pvt Ltd is a registered company and is in the business of manufacture of _____

2. That A and B are the promoters, directors and also the shareholders of the company having 50% each.

3. That C Pvt Ltd is in the manufacture of an essential commodity and hence quite significant from the economy perspective.

4. That at the board meeting of the company held on _____, certain disputes started to arise between the directors of the company and the some were prolonged in the subsequent board meetings as well, completely affecting the structure of decision making process that no board meeting could result into any concrete decision making on any of the company's business activity since then and therefore has a significant impact on the operations of the company.

5. That the other director was not even willing to induct any other person as the director on the board of the company.

6. That having gone through the circumstances stated above, Mr. B. moved the Hon'ble High Court by filing a petition for winding up of the company. Copy of the petition is marked and annexed as Annexure 1.

7. That upon the hearings which took place before the Hon'ble High Court, it passed a winding up order dated _____ Copy of which is marked and annexed as Annexure 2.

GROUNDS FOR PETITION

The Hon'ble High Court while passing an order of winding up did not duly take into consideration the following facts, which may affect / impact the said decision. Such grounds are as follows:

a) That the company of is in the business of manufacture of _____ which is an essential commodity and winding up order would prejudice the overall economic interests.

b) That the company employs nearly 3000 people and such winding up order would affect their personal interests as well.

c) That the company has been profitable from the very first year of operations and has been duly paying all its taxes.

d) That an alternative remedy by way of appointment of a director to expedite the decision making process could help in easier relief instead of a winding up order.

e) That this leave petition is well within the limitation period and falls within the complete jurisdiction of this Hon'ble Supreme Court.

PRAYER

Based upon the facts stated above and grounds cited, the petitioner most humbly prays to grant this special leave petition and provide a fresh date of hearing to reconsider the decision order passed by the Hon'ble High Court.

sd/-

Petitioner

VERIFICATION

I, A age _____ son of _____ address _____ do hereby confirm that all the facts stated above are true to the best of my knowledge, information and belief.

Date:

Place:

Petitioner

REVISION

Section 115 of the Code of Civil Procedure, 1908, deals with revisionary jurisdiction of the High Courts. The Section lays down:

(1) The High Court may call for the record of any case which has been decided by any Court sub-ordinate to such High Court and in which no appeal lies thereto, and if such sub-ordinate Court appears:

(a) to have exercised a jurisdiction not vested in it by law; or

(b) to have failed to exercise a jurisdiction so vested; or

(a) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit.

(2) The High Court shall not, under this Section vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

SPECIMEN FORM OF REVISION

BEFORE THE HON'BLE HIGH COURT OF JUDICATURE AT _____

CIVIL APPELLATE JURISDICTION

REVISION PETITION NO. _____ OF 2024

IN THE MATTER OF

A, age _____ son of _____ resident of _____

.... PETITIONER

VERSUS

B, age _____ son of _____ resident of _____

.... RESPONDENT

AND IN THE MATTER OF

Revision petition against
the Hon'ble District Court
order dated _____

May it please the Chief Justice of Hon'ble High Court and his fellow lordships.

The petitioner most respectfully submits as under:

FACTS OF THE CASE

1. That your petitioner filed a suit against the respondent for eviction of possession of a residential apartment situated at _____

2. That the Hon'ble court summoned the respondent and the respondent through its counsel appeared before the district court after filing its written statement

3. That the district court on the 1st date of hearing order your petition to produce necessary evidence & also testify the context of plaint.

4. That on the next date of hearing, the petitioner presented two witnesses and recorded their statement before the Hon'ble District Court.

5. That the Hon'ble court insisted the petitioner to present more witnesses without the assistance of the court and therefore, the Hon'ble Court referred to take record the statements of witnesses which were presented before the Hon'ble Court.

6. That on the next date of hearing, the Hon'ble District Court passed on order in favour of the defendant which affects the rights of petitioner.

7. That this Hon'ble District Court order has caused great prejudice to the petitioner & hence this revision petition.

8. That the Hon'ble District Court passed this order without providing an opportunity to present additional evidence to the petitioner and hence it failed to exercise its jurisdiction fully.

9. In light of the facts and circumstances stated above, the petitioner prays that this Hon'ble court be pleased to set aside the District Court order, allowed this revision petition & also provide assistance for summoning the plaintiff witnesses & also allow legal cost for this petition.

sdl-

Advocate for the petition

VERIFICATION

I A age _____ son of _____ address _____ do hereby confirm that all the facts stated above are true to the best of my knowledge, information & belief.

Date:

Place:

Petitioner

CRIMINAL MISCELLANEOUS PETITION

1. The filing of Criminal Miscellaneous Petition will start even before registering the case by way of anticipatory bail application.
2. According to Oxford Dictionary meaning, Miscellaneous means consisting of mixture of various things that are not usually connected with each other.
3. When a petition is filed seeking interim relief, it is registered as miscellaneous petition.
4. A Memo filed before the Court of Law need not be treated as Petition.
5. The main difference between Petition and Memo is that Memo is nothing but bringing a fact to notice before a Court of Law and no relief can be sought for in a Memo and notice to the opposite party is not required.
6. However, where a Petition is filed requiring some relief from the court, a notice to opposite party is mandatory in most of the cases. No order be passed on Memo (Held in a decision held in between Syed Yousuf Ali Vs. Mohd. Yousuf and Others reported in 2016 (3) ALD 235)
7. When a Miscellaneous Petition is filed in Criminal cases, it is registered as Criminal Miscellaneous Petition. As soon as a Petition is filed, primary duty of the Court is to see whether the relief sought is provided under Criminal Procedure Code or not.
8. If it is provided, the Petition shall be called in Public Court by assigning a particular miscellaneous number and notices shall be ordered to the opposite party. Having heard both the parties, a speaking order has to be pronounced. In day to day, Criminal Courts come across several Miscellaneous Petitions seeking different reliefs.

MEMORANDUM OF APPEAL

1. Although Appeal has not been defined in the Code of Civil Procedure, 1908 yet any application by a party to an appellate Court, asking it to set aside or revise a decision of a subordinate Court is an "appeal".
2. A right of appeal is not a natural or inherent right but is a creature of a statute. It is the statute alone to which the Court must look to determine whether a right of appeal exists in a particular instance or not.

3. The right of appeal is not a matter of procedure, but is a substantive right and can be taken away only by a subsequent enactment, if it says so expressly or by necessary intendment and not otherwise.
4. Appeal from original degree is known as first appeal. Second appeal means the appeal from the decree or judgement from the appellate Court. Second appeal only lies to the High Court. First appeal lies to any appellate Court. First appeal lies on the ground of question of law as well as question of facts. Second appeal can only lie on the ground of substantial question of law.
5. Memorandum of appeal contains the grounds on which the judicial examination is invited. It is a notice to the Court that such specific grounds are proposed to be urged on behalf of the appellant, as also a notice to the respondent that he should be ready to meet those specific grounds.
6. The theory of an appeal is that the suit is continued in the Court of appeal and re-heard there. An appeal is essentially a continuation of the original proceedings.

APPEAL	REVISION
An appeal is a complaint to a superior court of an injustice done or error committed by an inferior court with a view to its correction or reversal.	In a case where an appeal does not lie against a final order, the aggrieved party can file a revision before the High Court (and no other court).

The Code of Civil Procedure, 1908 provides for four kinds of appeals:

(1) **Appeals from original decrees** may be preferred from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court on points of law as well as on facts.

(2) **Second Appeals** lie to the High Court from every decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law. Under Section 100 to the Civil Procedure Code, an appeal may lie from an appellate decree passed ex parte.

(3) **Appeals from Orders** under Sections 104 to 106 would lie only from the following Orders on grounds of defect or irregularity of law:

(a) An Order under Section 35A of the Code allowing special costs;

(b) An Order under Section 91 or Section 92 refusing leave to institute a suit;

(c) An Order under Section 95 for compensation for obtaining arrest, attachment or injunction on insufficient ground;

(d) An Order under the Code imposing a fine or directing the detention or arrest of any person except in execution of a decree; and

(e) Appealable Orders as set out under Order XLIII, Rule 1.

(4) **Appeals to the Supreme Court,** the highest Court of Appeal, lie in the following cases:

(1) Section 109 of the Code of Civil Procedure, 1908 provides an appeal shall lie to the Supreme Court from any judgement, decree or final order in a civil proceeding of a High Court, if the High Court certifies:

(i) that the case involves a substantial question of law of general importance; and

(ii) that in the opinion of the High Court the said question needs to be decided by the Supreme Court."

(2) Articles 132 to 135 of the Constitution deal with ordinary appeals to the Supreme Court:

(i) **Appeals in Constitutional cases:** Clause (1) of the Article 132 of the Constitution provides that an appeal shall lie to the Supreme Court from any judgement, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceedings, if the High Court certifies under Article 134A that the case involves a substantial question of law as to interpretation of the Constitution.

(ii) **Appeals in civil cases:** Article 133 deals with appeals to the Supreme Court from decisions of High Court in civil proceedings. For an appeal to the Supreme Court the conditions laid down in this article must be fulfilled.

These conditions are:

(a) the decision appealed against must be a "judgement, decree or final order" of a High Court in the territory of India,

(b) such judgement, decree or final order should be given in a civil proceeding, and

(c) a certificate of the High Court to the effect that (i) the case involves a substantial question of law, and (ii) in the opinion of the High Court the said question needs to be decided by the Supreme Court.

(iii) **Appeals in criminal cases:** A limited criminal appellate jurisdiction is conferred upon the Supreme Court by Article 134. It is limited in the sense that the Supreme Court has been constituted a Court of criminal appeal in exceptional cases where the demand of justice requires interference by the highest Court of the land.

DRAFTING GROUNDS OF APPEALS

(i) Grounds of objection should be written distinctly and specifically;

(ii) They should be written concisely;

(iii) They must not be framed in a narrative or argumentative form; and

(iv) Each distinct objection should be stated in a separate ground and the grounds should be numbered consecutively.

These rules are simple but are most important and must be carefully remembered and observed while drafting Grounds of Appeal.

RELIEF SOUGHT IN APPEAL

It is nowhere expressly provided in the Code that the relief sought in appeal should be stated in the memorandum of appeal. The absence of prayer for relief in appeal does not appear to be fatal and the Court is bound to exercise its powers under Section 107 of the Code and to give to the appellant such relief as it thinks proper. However, it is an established practice to mention in the memorandum of appeal, the relief sought by the appellant.

SIGNATURE

A memorandum of appeal need not be signed by the appellant himself. It may be signed by him or by his counsel but if there are several appellants and they have no counsel, it must be signed by all of them. It is not required to be verified.

SPECIMEN FORM OF APPEAL TO THE HIGH COURT

BEFORE THE HON'BLE HIGH

COURT OF JUDICATURE AT _____

CIVIL APPEALLATE JURISDICTION

APPEAL No. _____ of 2024

IN THE MATTER OF

A Ltd, a company formed and registered under the provisions of Companies Act, 2013 having its registered office at _____ represented through Mr. X, MD

.... APPEALLANT

VERSUS

B Ltd, a company formed and registered under the provisions of Companies Act, 2013 having its registered office at _____ represented through Mr. Y, Director

.... RESPONDENT

May it please the Chief Justice of Hon'ble _____ High Court and his fellow lordships

The appellant company most respectfully showeth:

FACTS OF THE CASE

1. That the appellant company is in the manufacturing of _____ goods and operates from its factory premises situated at _____

2. That the defendant is in the trading business of _____ and has been purchasing goods from the company since past 10 years.

3. That the defendant vide an order dated _____ placed an order worth Rs. 1 crore (rupees one crore only) with the appellant dated _____ to which the appellant agreed and to supply the same and hence an agreement was executed between both the parties, copy of which is marked and annexed as annexure 1.

4. That as per the terms of this agreement, the buyer i.e. B Ltd was to make an advance payment of 50% i.e. Rs. 50,00,000 (Rupees fifty lakhs only) and the same was duly paid by the buyer vide cheque no. _____ drawn on _____ dated _____ which was duly honoured, copy of the cheque is marked and annexed as annexure 2.

5. That the balance amount was to be paid after 30 days and since no payment was received by the appellant on the given day, it sent a reminder for payment and subsequent follow ups & on non-receipt of any response, a legal notice was also served requesting payment dated _____ which was also not responded to. Copy of the reminders and notice is marked and annexed as annexure 3.

6. That the appellant on non-receipt of any communication filed a plaint before the Hon'ble District Court of Judicature at _____ dated for recovery of balance amount. Copy of the plaint is marked and annexed as annexure 4.

7. That the Hon'ble High Court duly summoned the defendant and accordingly the defendant submitted a written statement and also appeared before the Hon'ble Court through its counsel.

8. That after taking into consideration the facts of the case and hearing both the parties the Hon'ble District Court pronounced its judgement and passed a decree in favor of the defendant dated _____. Copy of judgement and decree is marked and annexed as annexure S.

GROUNDS

Aggrieved by the order passed by the Hon'ble. District Court, the appellant submits the appeal before this Hon'ble High Court upon the following:

A. That the decree passed by the Hon'ble District Court is erroneous both on facts as well as low

B. That the Hon'ble District Court failed to consider the evidence duly submitted and passed a decree without appropriately taking it on record including the documentary evidence, details of supply and acknowledged delivery challan.

C. That the cost of this litigation along with court fee including the advocate's fee is Rs. _____

D. That this appeal is well within the limitation period and this Hon'ble High Court has appropriate jurisdiction to hear this matter.

Based upon the facts stated above and grounds specified, the appellant company most respectfully submits as under:

1. To set aside the order passed by the Hon'ble District Court of Judicature at _____

2. To order to the defendant to pay the balance amount of Rs. _____ along with interest @ 18% p.a.

3. To order legal costs including the advocate's fees, court fee, etc. to be reimbursed at actuals.

sd/-

Advocate on behalf of appellant

VERIFICATION

Verified on day, date that the facts stated in the appeal are true to the best of my knowledge, information & belief.

APPELLANT

WRIT PETITION

The Supreme Court and High Courts are authorized to issue five types of writs, under Articles 32 and 226 respectively. In fact, under Article 32, the Supreme Court can empower any other Court to issue the writs. But there has been no provision made so far by the court of law therefore to date only the Supreme Court and the High Courts can issue the writs. Earlier the High court of Bombay Madras and Calcutta had the power of issuing these writs, but after 1950 under Article 226 of the Constitution of India all the high courts were eligible to issue the writs

	WRIT UNDER ARTICLE 32	WRIT UNDER ARTICLE 226
Type of Rights	Article 32 is a fundamental right.	Article 226 is a constitutional right.
Suspension of Articles	Article 32 can be suspended if the President declares an emergency.	Article 226 cannot be suspended even during an emergency.
Scope	Article 32 has a limited reach since it only applies when a fundamental right has been violated.	Article 226 on the other hand, has a greater reach since it applies not only to violations of fundamental rights but also to violations of legal rights.
Territorial jurisdiction	Under Article 32, the Supreme Court has the authority to issue writs across India. As a result, the	Article 226, on the other hand, allows the High Court to issue a writ exclusively in its own local

	Supreme Court's territorial jurisdiction is broader and expanded.	jurisdiction. As a result, the territorial authority of High Courts is narrower and limited.
Dismissal	Since Article 32 is a basic right, the Supreme Court cannot dismiss it.	Article 226 gives the High Court discretionary power, which means it is up to the High Court to decide whether or not to issue a writ.

TYPES OF WRITS

Writ of Habeas Corpus

The words 'habeas corpus' literally means 'to have a body'. It is a remedy available to a person who is confined without legal justification. Through this writ, the court lets it know the reasons for detention of the person and if there is no justification, order the authority concerned to set the person free. The writ of habeas corpus, thus, entails the authority to produce the person before the court. The applicant of this writ may be the prisoner or any person on his behalf to safeguard his liberty. It seeks immediate relief from unlawful detention, whether in prison or private custody.

The writ of habeas corpus is the nature of an order calling upon the person who has detained another to produce the latter before the Court in order to let the Court know, the ground of his detention and to set him free if there is no legal justification. This is a very powerful safeguard to the subject against arbitrary acts of private individuals and also executives.

Writ of Mandamus

Mandamus literally means a command. This writ of command is issued by the Supreme Court or High Court when any government, court, corporation or any public authority has to do a public duty but fails to do so. To invoke the performance of such duty, this writ of mandamus is issued. It should be noted that it should not be discretionary duty of the authority which is

challenged. It should be a compulsory one; the applicant too should have a legal right to enforce such performance. It may further be noted that this writ cannot be issued against President or the Governor.

Writ of Prohibition

Writ of Prohibition is issued by Supreme Court or High Court to subordinate court preventing latter from usurping the jurisdiction which is legally not vested in it. The writ lies in both for excess of jurisdiction or absence of jurisdiction. It is generally issued before the trial of the case or during the pendency of the proceeding but before the order is made. It may be noted that this writ is available against judicial and quasi-judicial body.

Writ of Certiorari

If any lower court or a tribunal gives its decision but based on wrong jurisdiction, the affected party can move this writ for a direction against such lower court or tribunal to ignore such decisions based on wrong jurisdiction. The writ of certiorari is issued to sub-ordinate judicial or quasi-judicial body by Supreme Court or High Court when they act:

(a) Without or in excess of jurisdiction;
(b) In violation of the prescribed procedure;
(c) In contravention of principles of natural justice;
(d) Resulting in an error of law apparent on the face of record.

The writs of prohibition and certiorari are of the same nature, the **only difference being that the writ of prohibition is issued at an earlier stage, before the order is made and the writ of certiorari is available on a later stage i.e., after the order has been passed.**

Writ of Quo Warranto

The term 'Quo Warranto' means "what is your authority". Whenever any public office is held by any one not qualified to hold it, it can be challenged by this writ by any person. An order issued by the court to such an authority to explain under what valid grounds he is holding such a post. If it is found on investigation that he is not entitled to the office, the court may restrain him from acting in the office and declare the office to be vacant.

This is a procedure by which the Court enquires into the legality of the claim which a party asserts to a public office and to oust him. For this purpose, the office must be a public office and is created by a statute or by the Constitution. There must be a violation of the Constitution or the statute in appointing such person to that office. The basic thing is that the public has an interest to see that an unlawful claimant does not usurp a public office.

SPECIMEN FORM OF WRIT PETITION

BEFORE THE HON'BLE HIGH
COURT OF JUDICATURE AT _____

CIVIL ORIGINAL JURISDICTION

WRIT PETITION NO. _____ OF 2024

IN THE MATTER OF

A, age _____ son of _____ resident of _____

...PETITIONER

VERSUS

B Ltd, a company formed and registered under the provisions of Companies Act, 2013 having its registered office at _____ represented through Mr. Y, Director

.... RESPONDENT 1

C, MD of the company

.... RESPONDENT 2

AND IN THE MATTER OF

Writ petition under
Article 226 of Indian Constitution

May it please the Chief Justice of the Hon'ble Supreme Court and his fellow lordships;

FACTS OF THE CASE

1. That the petitioner is an Indian citizen residing at and is former employee of respondent 1.

2. That the respondent 1 is a company having its registered office situated at _____ while respondent 2 is Managing Director of respondent 1.

3. While respondent 2 is Managing Director of respondent 1.

4. That the petitioner was working with the company as a senior manager since past 15 years.

5. That by letter dated _____ services of respondent 1 without assigning any reason and the said letter was signed by respondent 2.

6. That as per the company's policy, letter of termination has to be a reasoned one and a proper notice is to be served giving an opportunity of being heard to the subject party.

The petitioner, therefore, is desirous of moving this Hon'ble Supreme Court by filing a writ under Article 32 of Indian Constitution.

GROUNDS

That the following grounds of disputes exist between the parties.

A) That respondent 1 and 2 did not serve any prior notice before terminating the services of the petitioner and hence breaches his right of natural justice.

B) That as per co. rules, before such termination, an inquiry proceeding is to be initiated, wherein the grounds of termination are informed to the concerned employee. No such Inquiry proceedings took place.

C) That this Hon'ble court is the appropriate jurisdiction to hear this matter and this petition is well within limitation period.

PRAYER

That the petitioner most humbly prays that:

1. The termination order passed by the respondents be set aside with immediate effect and the services of the petitioner be resumed upon the original terms.

2. The petitioner be paid compensation for the service period lost as per the terms of his contract.

3. The petitioner be awarded with suitable cost of litigation including court & advocates fee

sdl-
Advocate on behalf of appellant

VERIFICATION

I A age _____ son of _____ address _____ do hereby confirm that all the facts stated above are true to the best of my knowledge, information and belief.

Date
Place

Appellant

AFFIDAVIT

An affidavit is a statement or declaration on oath by the deponent. A Court may order that any particular fact or facts may be proved by affidavit or that the affidavit of any particular witness may be read at the hearing.

The following rules should be remembered when drawing up an affidavit:

(1) Not a single allegation more than is absolutely necessary should be inserted;

(2) The person making the affidavit should be fully described in the affidavit;

(3) An affidavit should be drawn up in the first person;

(4) An affidavit should be divided into paragraphs, numbered consecutively, and as far as possible, each paragraph should be confined to a distinct portion of the subject;

(5) Every person or place referred to in the affidavit should be correctly and fully described, so that he or it can be easily identified;

(6) When the declarant speaks of any fact within his knowledge he must do so directly and positively using the words "I affirm" or "I make oath and say";

(7) Affidavit should generally be confined to matters within the personal knowledge of the declarant, and if any fact is within the personal knowledge any other person and the petitioner can secure his affidavit about it, he should have it filed. But in interlocutory proceedings, he is also permitted to verify facts on information received, using the words "I am informed by so and so" before every allegation which is so verified. If the declarant believes the information to be true, he must add "and I believe it to be true".

(8) When the application or opposition thereto rests on facts disclosed in documents or copies, the declarant should state what is the source from which they were produced, and his information and belief as to the truth of facts disclosed in such documents;

(9) The affidavit should have the following oath or affirmation written out at the end:

"I solemnly affirm that my declaration is true, that it conceals nothing and that no part of it is false". Any alterations in the affidavit must be authenticated by the officer before whom it is sworn.

An affidavit has to be drawn on a non-judicial Stamp Paper as applicable in the State where it is drawn and sworn. It shall be authenticated by the deponent in the presence of an Oath

Commissioner, Notary Public, Magistrate or any other authority appointed by the Government for the purpose.

(10) Affidavits are chargeable with stamp duty under Article 4, Schedule I, Stamp Act, 1899. But no stamp duty is charged on affidavits filed or used in Courts. Such affidavits are liable to payment of Court fee prescribed for the various Courts.

SPECIMEN AFFIDAVIT OF CREDITOR IN PROOF OF HIS DEBT IN PROCEEDING FOR THE LIQUIDATION OF A COMPANY

BEFORE THE HON'BLE HIGH COURT OF JUDICATURE AT _____

CIVIL ORIGINAL APPLICATION

APPLICATION NO _____ OF 2024

IN THE MATTER OF

Winding up proceedings under Companies Act, 2013 of _____

I, A, age _____ son of _____ address _____ do hereby confirm that all the facts as stated below are true to the best of my knowledge, information and belief and no material facts have been concealed:

1. That the above named company placed an order with me vide an order dated _____ against which 50% of the amount was paid and the balance 50% i.e. _____ is yet due and therefore the company remains indebted towards me.

2. That I annexed the following documents as a proof of debt.

3. That I further confirm that neither me nor any other party on my behalf has received any amount from the company and the company continues to remain indebted towards me.

Date

Place DEPONENT

VERIFICATION

I, A, age _____, the above named deponent, verify that the contents of paragraphs 1 to 3 of this affidavit are true to the best of my personal knowledge and belief.

Dated _____

I _____ son of _____ resident of _____ declare, from a perusal of the papers produced by the deponent before me that I am satisfied that he is Shri A.B. Solemnly affirmed before me on this _____ day of _____ 20 _____ of _____ time) by the deponent.

sdl-

(Notary)

INDEMNITY BONDS & UNDERTAKINGS

As per Section 124 of the Indian Contract Act of 1872, an Indemnity bond refers to an agreement between two persons or parties, where one person promises to make payment for the losses and damages of another person caused by his/her conduct or by another party.

IMPROPER ADMISSIONS IN PLEADINGS

1. Improper admissions is not used anywhere in CPC, however admission is defined.
2. An admission is a statement made by the parties to a legal proceeding, either oral, documentary or contained in electronic form, which suggests an inference with respect to any fact in issue or relevant fact.
3. A party can admit the case of the other party, entirely or partially, by giving a notice. The notice should be in writing. A party may issue a notice to the other party to admit or refuse to admit any document.
4. The opposite party has to admit the document within 7 days of the service of notice. If the party on whom the notice is served refuses or neglects to admit the document, the onus of bearing the cost of proving the document will be on the refusing or neglecting party.
5. If a notice of admission has been issued by one party and the other party does not specifically deny the document or does not admit it in his pleading or reply, it will be deemed that the document has been admitted. The only exception is where the opposite party is a disabled person.
6. The Courts have the power to make a judgement in regards to any oral or written admission made by the parties at any stage of the proceedings. Such admission may be made in the pleading or otherwise.

REJECTIONS IN PLEADINGS

When any plaint is presented to the court, then it is the first duty of the court to examine the plaint properly for the determining, whether it should be tried, or returned, or rejected and in order to determine the question regarding the rejection of the plaint, and it is also the

responsibility of the court to take consideration of other material facts too. The plaint will be rejected in the following cases: -

1. Where plaint does not disclose the cause of action,
2. Where relief claimed is undervalued,
3. Where plaint is insufficiently stamped,
4. Where suit is barred by law,
5. Where plaint is not in duplicate, and
6. Where there is non-compliance with statutory provisions.

LEGAL NOTICE AND ITS REPLIES

1. A legal notice is basically a legal intimation that is sent to the opponent.
2. It indicates that the aggrieved is preparing a lawsuit to be filed against the concern, in the case the demand that is mentioned in the notice does not get fulfilled.
3. Therefore, a legal notice can be defined as a formal communication to any legal entity or to a person, informing the other party about the intention of undertaking legal proceedings against them.
4. The legal notice serves the purpose of giving an opportunity to the opposite party to reconsider his legal position and to make amendments or afford restitution without proceeding to a Court of Law.
5. The notice helps to settle the disputes outside the Court. Majority of matters settle before the trial commences.
6. The notice gives the opportunity to the opposite party to rethink or reconsider their stance.
7. To avoid a legal dispute the parties can take necessary actions if in their opinion the case can be settled. The parties can settle the matter through negotiation, mediation or arbitration.
8. The Legal Notice acts as a warning against the offender, a fair chance is given to both the parties to resolve their dispute, and provide an amicable settlement.

Legal notice must mention the following points

- Name and address of the parties
- Facts and grievances

- Compensation
- Signature

The procedure of sending a legal notice includes -

i. The legal notice must be addressed to the person against whom the grievances arise.

ii. A legal notice must be sent on a plain paper or on the letterhead of a lawyer.

iii. The legal notice must categorically mention the time period in which the addressee must respond to the notice, the time period can be 30 to 60 days. The time period must be stipulated within which the other party is expected to fulfil the demands.

iv. The legal notice should be signed by the lawyer as well as the sender.

v. The legal notice must be sent either through a registered post or courier. It is advisable to ensure that the acknowledgement is retained.

SPECIMEN FORMAT: LEGAL NOTICE: FILED BY VENDOR FOR PAYMENT OF IMMOVABLE PROPERTY

Ref. No. _____

Dated_____

REGD. A.D.

SUB.: LEGAL NOTICE

To,

_____

Dear Sir/Madam,

Pursuant to the instructions from and on behalf of my client_____, resident of _____ I do hereby serve you with the following Legal Notice: -

i. That my client had entered into an agreement of sale dated__with you.

ii. That the sale agreement was for the selling of house no._____, situated at_____for a consideration of Rs._.

iii. That according to the clause____ of the agreement, the said transaction is to be completed within months from the date of said agreement.

iv. That my client was and is still willing and ready to execute a sale deed in your favour or in favour of any person as you may direct in accordance with the terms of the said agreement, but it couldn't be done because of the default of the payment.

I hereby call upon you to have the deed of conveyance executed by my client against payment of the balance of the consideration money on or before the_____ day of__, 20 in terms of the said agreement, failing which the said agreement will stand cancelled and the earnest money paid by you will stand forfeited. However, this is without prejudice to the rights of my client to recover all costs, damages, losses and expenses incurred by him by reason of your default in performing the said agreement.

A copy of this Notice is kept in my office for record and further necessary action and you are also advised to keep the copy safe as you would be asked to produce in the court.

(_____)

CHAPTER II - ART OF ADVOCACY & APPEARANCES

PROFESSIONAL ETIQUETTES

Etiquette is the fine art of behaving in front of others. It is a set of practices and forms which are followed in a wide variety of situations. Many people consider it to be a branch of decorum, or general social behavior. Each society has its own distinct etiquette, and various cultures within a society also have their own rules and social norms.

DRESSING ETIQUETTE

With every organization program comes the inevitable question : What do I wear? Knowing what to wear, or how to wear something, is key to looking great in any event.

- Always wear neat and nicely pressed formal clothes. Choose corporate shares while you are picking up clothes for your office wear.
- Ties for men should compliment.
- Women should avoid wearing exposing dresses and opt for little but natural make-ups. Heels should be of appropriate or modest height.
- Men need to keep their hair (including facial hair) neatly trimmed and set.
- Always polish your shoes.
- Keep your nails clean.
- Wear clothes which you are comfortable in and can carry well. This is very important while you are in a business meeting or client presentation.

ETIQUETTE WHEN ATTENDING HEARINGS

All members appearing before any quasi-judicial body shall endeavour to adhere to the following:

(a) Do not enter the court room chewing gum, beetle leaf, tobacco, gutka or pan masala.

(b) Do not enter the court room in an inebriated state.

(c) Switch off all mobile and other beeping devices or put them on silent mode before entering the courtroom as these may disrupt the proceedings.

(d) Enter the courtroom silently and bow to the Judge as a sign of respect before proceeding to your seat.

(e) Silence must be observed at all times during the hearing.

(f) Ensure that all loose sheets of papers are securely fastened, indexed and tagged so as not to waste the time of the court in locating the documents.

(g) Behave in a polite and courteous manner with all present in the court room and maintain decorum.

(h) Make all efforts to support and complement court efforts and see that the administration of justice does not fail on account of apathy or neglect.

(i) Do not attempt to capture photographs or audio/video record the proceedings.

(j) As a sign of courtesy to the Judge, bow to the Judge just before leaving the courtroom.

HANDSHAKE ETIQUETTE

Etiquette begins with meeting and greeting. A handshake is a big part of making a positive first impression. A firm shake is an indication of being confident and assertive. The following basic rules will help you get ahead in the workplace.

- Always rise when introducing or being introduced to someone.
- Shake hands with your right hand.
- Shake hands firmly (but not with a bone crushing or fish-limp grip), and with only one squeeze.
- Hold is for a few seconds (only as long as it takes to greet the person), and pump up and down only once or twice.
- Make eye contact while shaking hands.

COMMUNICATION ETIQUETTES

- Always speak politely. Listen to others attentively. A good listener is always dear to every client.
- While speaking over telephones, always greet the other person while starting and ending the call.
- Speak only when the other person has finished talking instead of interrupting in between.
- Show interest in what other people are doing and make others feel good.
- Stand about an arm's length away while talking to others.
- Question another person in a friendly, not prying, manner.
- Make eye contact when talking to others.

- Be polite, Avoid foul language, unkind statements, and gossip.
- Keep your conversations short and to the point.
- Maintain your sobriety and politeness even if the client speaks something offensive or rude and avoid replying back in harsh tone/words.

INVITATION ETIQUETTE

How you respond to an invitation says volumes about your social skills. It reflects negatively on your manners if your response (or lack of response) to an invitation costs time or money for your host.

- Reply by the date given in the invitation, so that the host or hostess knows what kind of arrangements to make for the event, food is not wasted, and unnecessary expense is eliminated.
- If an RSVP card is not included, respond by calling or sending a brief note.
- If you cancel after initially accepting an invitation, phone your regrets as soon as possible. Send a note of regret following the phone conversation.
- Don't ask for permission to bring a guest unless the invitation states.
- Arrive at the event promptly, but not too early.
- Mingle and converse with the other guests.
- Don't overstay your welcome.
- Extend your thanks as you leave.

DINING ETIQUETTES

- Always be courteous while official dinners. Offer the seat to your guest first. If you are the guest, be punctual and thank the host for the dinner.
- Wait until you receive your host's signal.
- Initiate conversations while waiting for the food.
- Never begin eating any course until everyone has been served or the host/hostess has encouraged you to do so.
- Chew quietly, don't speak with your mouth full.
- Avoid pointing the knife or fork towards the other person while eating and speaking.
- Allow your guest to select the menu and wine.

- If something unwanted has gone to your mouth, place the napkin in front of your mouth tactfully and bring it out instead if putting your hand inside the mouth to get rid of it.
- Learn the basic table manners before you go out to dine with a potential client or an important business meet.

That apart, you must pay special attention to the following general etiquettes:

- Always be punctual at your workplace;
- During a meeting, turn off your mobile phone or put it on silent mode. It is considered extremely impolite to allow a mobile phone to ring during a meeting and take a call while sitting in a meeting. In case it is a must to receive a phone call, it is best to discreetly excuse yourself from the meeting and take it out into the hall or private area;
- When in a meeting room, always stand up to greet the seniors if they arrive after you;
- Try to ignore and overlook funny or embarrassing sounds when in a meeting or official conversation;
- If you have forgotten somebody's name ask him/her politely saying that you are sorry that you cannot remember the name;
- Always keep a comfortable distance while conversing with others; Avoid standing or sitting too close to the other person. An arm's length would be ideal to maintain the comfort zone.

COURT CRAFT

Company Secretaries act as an authorized representative before various Tribunals/quasi judicial bodies. It is necessary for them to learn art of advocacy or court craft for effective delivery of results to their clients when they act as an authorized representative before any tribunal or quasi-judicial body.

For winning a case, art of advocacy is important which in essence means to convince the judge and others that may position in the case is the proper interpretation. Advocacy / court craft is learned when we enter the practising side of the profession. The aim of advocacy is to make judge prefer your version of the truth.

Apart from the legal side of the profession, advocacy is often useful and sometimes vital, in client interviewing, in negotiation and in meetings, client seminars and public lectures. It is a valuable and lifelong skill worth mastering.

Technical and legal knowledge about the area in which Company Secretaries are acting is essential. Better their knowledge, the better their advocacy skills and the greater their impact. Good advocacy or negotiating skills will not compensate for lack of appropriate knowledge.

PREPARATORY POINTS

There are certain basic preparatory points which a Company Secretary should bear in mind when contacted by a client.

- Take minute facts from the client;
- Lend your complete ears to all that client has to say;
- Put questions to the client while taking facts so that correct/relevant facts can be known;
- Convey to the client about exact legal position in context of relief sought by the client;

DRAFTING OF PLEADINGS

Some of the important factors which may be borne in mind while making written pleadings are as under:

- Quote relevant provisions in the petition and excepts of observations made by the Courts relevant to the point;
- Draft prayers for interim relief in such a manner which though appears to be innocuous but satisfy your requirements;
- Do not suppress facts;
- Highlight material facts, legal provisions and Court decisions, if any;
- State important points at the outset together with reference to relevant provisions / judgements.

IF YOU ARE OPPONENT

- File your reply to the petition at the earliest opportunity;
- Take all possible preliminary contentions together with reference to relevant law point and judgements;
- Submit your reply to each paragraph of the petition.

IF YOU ARE FOR THE PETITIONER

- File your rejoinder upon receiving the reply at the earliest opportunity;
- Meet clearly with the specific points raised by the opponent in the reply affidavit.

ORAL PLEADINGS

Effective oral pleadings are relevant both at the stage of actual presenting a case before CLB/NCLT or other tribunals. Following aspects could be relevant at both these stages:

- Preparation before presentation of the case;
- Carefully read your petition, provisions of law and judgements;
- Jot down relevant points on a separate sheet of paper together with relevant pages of the compilation;
- Keep copies of judgements to be relied ready for the Court and for your opponent(s).

WHILE PRESENTING YOUR CASE

- Submit a list of citations to the Court Master before opening of case; Start your address with humble note;
- Refer to the order sought to be challenged or reliefs sought to be prayed;
- State brief facts;
- Formulate issues/points, categorise them and address them one by one;
- Take each point, state relevant facts, provisions of law and relevant binding decisions;
- Hand over Xerox copies of binding decisions to the Court Master while placing reliance;
- Refer to relevant pages of the compilation, provisions of law and judgements;
- Complete all points slowly but firmly;
- Conclude your arguments by reiterating your points in brief;

- Permit the opponent counsel uninterruptedly. However, if facts are being completely twisted, interrupt depending upon the relevant circumstances;
- Take instructions from client in advance with respect to alternative reliefs.

AS REGARDS ADVOCACY

Company Secretaries should be able to:

1. Identify the client's goals;
2. Identify and analyse factual material;
3. Identify the legal context in which the factual issue arises;
4. Relate the central legal and factual issues to each other;
5. State in summary from the strengths and weaknesses of the case from each party's perspective;
6. Develop a presentation strategy;
7. Outline the facts in simple narrative form;
8. Structure and present in simple form the legal framework of the case;
9. Structure the submission as a series of propositions based on the evidence;
10. Identify, analyse and assess the specific communication skills and techniques;
11. Demonstrate an understanding of the purpose, techniques and tactics of examination, cross-examination and re-examination to adduce, rebut and clarify evidence;
12. Demonstrate an understanding of the ethics, etiquette and conventions of advocacy.

CONDUCT AND ETIQUETTE

DUTY TO THE COURT

i. A Company Secretary shall, during the presentation of his case and while otherwise acting before a Court/Tribunal, conduct himself with dignity and self-respect. He shall not be servile and whenever there is proper ground for serious complaint against a judicial officer, it shall be his right and duty to submit his grievance to proper authorities.

ii. A Company Secretary shall maintain towards the Courts a respectful attitude, bearing in mind that the dignity of the judicial office is essential for the survival of a free community.

iii. A company Secretary shall not influence the decision of a Court by any illegal or improper means. Private communications with the judge relating to a pending case are forbidden.

iv. A Company Secretary shall use his best efforts to restrain and prevent his client from resorting to sharp and unfair practices or from doing anything in relation to the Court, opposing counsel or parties which the Company Secretary himself ought not to do. A Company Secretary shall refuse to represent the client who persists in such improper conduct. He shall not consider himself a mere mouthpiece of the client, and shall exercise his own judgement in the use of restrained language in correspondence, avoiding scurrilous attacks in pleadings, and using intemperate language during arguments in Court.

v. A Company Secretary shall not enter appearance, act, plead or practice in any way before a Court/Tribunal or any other Authority, if the sole or any member thereof is related to the Company Secretary.

vi. A Company Secretary shall not appear in or before any Court or Tribunal or any other Authority for or against an organization or an institution, society or corporation, if he is a member of the Executive Committee of such organization or institution or society or corporation.

vii. A Company Secretary should not act or plead in any matter in which he is himself pecuniarily interested.

DUTY TO CLIENT

i. A Company Secretary shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client.

ii. A Company Secretary shall not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case, it becomes apparent that he is a witness on a material question of fact, he should not continue to appear if he can retire without jeopardizing his client's interest.

iii. A Company Secretary shall at the commencement of his engagement and during the continuance thereof, make all such full and frank disclosures to his client relating to his connection with the parties and any interest in or about the controversy as are likely to affect his client's judgement in either him or continuing the engagement.

iv. It shall be the duty of a Company Secretary to fearlessly uphold the interest of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as

to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.

v. A Company Secretary shall not at any time, be a party to fomenting of litigation. A Company Secretary shall not act on the instructions of any person other than his client or his authorized agent.

vi. A Company Secretary shall not do anything whereby be abuses or takes advantage of the confidence reposed in him by his client.

DUTY TO OPPONENT

i. A Company Secretary shall not in any way communicate or negotiate upon the subject matter of controversy with any party represented by an Advocate except through that Advocate.

ii. A Company Secretary shall do his best to carry out the legitimate promise/promises, made to the opposite-party.

IMPORTANT PRINCIPLES

Some of the important principles of advocacy a Company Secretary should observe include :

1. Act in the best interest of the client;
2. Act in accordance with the client's wishes and instructions;
3. Keep the client properly informed;
4. Carry out instructions with diligence and competence;
5. Act impartially and offer frank, independent advice;
6. Maintain client confidentiality.
7. Keep a track of the status of the case and take follow up whenever necessary. This can ensure the timely completion of the case.
8. Understand the requirements of the procedure before the tribunal.

ADVOCACY TIPS

Some of the tips given by legal experts which professionals like Company Secretaries should bear in mind while appearing before Tribunals or other quasi-judicial bodies are given herein below. They say while pleading, a judge in your pleadings looks for :

i. **Clarity:** the judge's time is limited, so make the most of it.

ii. **Credibility:** The judge needs to believe that what you are saying is true and that you are on the right side.

iii. **Demeanour:** We don't have a phrase 'hearing is believing". The human animal which includes the human judge, is far more video than audio. They way we collect most of our information is through our eyesight.

iv. **Eye contact:** While pleading, maintain eye contact with your judge.

v. **Voice modulation:** Voice modulation is equally important. Modulating your voice allows you to emphasize the points you want to emphasize. Be very careful about raising your voice. Use your anger strategically. But use is rarely. Always be in control of it.

vi. **Confident temperament and precise communication:** The appearance of a confident company secretary can be helpful for him to present his case. Precise communication will make the judges to listen carefully.

vii. **Psychology:** Understand judge's psychology as your job is to make the judge prefer your version of the truth.

viii. **Be likeable:** At least be more likeable than your opponent. If you can convert an unfamiliar Bench into a group of people who are sympathetic to you personally, you perform a wonderful service to your client.

ix. **Learn to listen.**

x. **Knowledge and Preparation:** Knowledge of the subject matter and proper preparation of the case is of utmost importance and comes before any other skill a professional can have for winning a case.

xi. **Order sheet:** Order sheet are maintained in every proceedings by the Court Master and shall contain all orders passed by the Appellate Tribunal from time to time. A Professional should keep track of the Order Sheets and try to obtain if allowed by the rules pertaining to the proceedings.

APPEARANCE ETIQUETTES

ARGUMENTS ON PRELIMINARY SUBMISSIONS

Preliminary submissions should primarily confine to the true and correct facts regarding the issue involved and which have been suppressed or not disclosed by the other side in the pleadings. Additionally the provisions of law or legal objections relevant and applicable to the issues involved in the matter should also be mentioned so as to demonstrate that the relief being claimed by the opponent is not eligible to be granted and/or that the relief being claimed by the party being represented by a lawyer/authorized representative should ordinarily be allowed as per those provisions of law. Before incorporating such facts and/or provisions of law in the write-up, an authorized representative should be thorough with the provisions of law and interpretation, thereof, based upon relevant judgments so as to ensure that the submissions being made on behalf of the client are accepted and upheld by the Presiding Officer/Court/Tribunal as the case may be. Thus, for eg., if a claim being opposed by an authorized representative is evidently barred by limitation, such an objection should be taken in the preliminary submissions/objections. Such type of submissions/objections should be duly supported by law on the point or by relevant case law/judgments.

ARGUMENTS ON MERITS

Such arguments as relate to the facts pleaded by the parties are termed as arguments on merits. While addressing arguments on merits, an authorized representative should carefully point out the pleadings of the parties and the relevant evidence in support thereof, lead by the parties, both oral as well as documentary. An authorized representative should ensure that all or any contradiction in the pleadings of the opponent and the evidence in support of such pleadings are duly pointed out while submitting his/her arguments. Thus, where an agreement/contract of service is pleaded and there is no evidence either oral or documentary on record in support of such an agreement/contract, it should be specifically pointed out that the opponent has failed to prove/establish that such an agreement/contract actually exists or that the same had actually been executed at all. Similarly, where notice is alleged to have been served prior to filing of the case and there is no documentary evidence like postal receipt/courier receipt placed on record by the opponent, it should be pointed out that the opponent has failed

to establish that the notice had actually been served. Furthermore, the relevant facts and/ or contradictions extracted from the opponent or his/her witness during the course of cross-examination and relating to the factual issues involved in the matter, should be highlighted so as to draw attention of the Court/ Tribunal towards such facts/contradictions.

CLOSING ARGUMENT

Closing arguments are very important stage for a hearing. It requires a professional to present before the tribunal what he intends a tribunal to decide. Effective closing arguments can turn the case around in case of doubts in the minds of the members of the tribunal. Therefore, closing arguments should be made with extra caution and preparation.

OTHER IMPORTANT POINTS

1. Make a note of all important points and ensure the coverage of all the points during the hearing. Additional notes of the arguments of the other Party's professional can also be supportive.
2. Keep sufficient copies of the material you want the tribunal to reply such as copy of the Act, Cases, reference books etc.
3. Understand the intention of the client for filling the case and act according to the extent possible.
4. Take the advice from the client with respect to all the possible reliefs he may agree.
5. Keep the record of all the hearings he/she is handling and maintain a diary so that no case hearing is missed by mistake.

PRE-REQUISITES FOR ENTERING APPEARANCE

LEGAL PLEADINGS/WRITTEN SUBMISSIONS

As already pointed out above, legal pleadings/submissions should be taken under the heading "preliminary submissions/objections". While taking such plea one should ensure that the legal provisions and/or interpretation, thereof, is very clear and directly applicable to the issues involved in the matter. Thus, where an unregistered agreement/contract forms the basis of a claim set up by a party and such an agreement/ contract compulsorily requires registration

under Section 17 of the Registration Act, a legal plea should be taken that since the agreement/contract is not a registered document, the same could not be looked into or relied upon by the Court for the reasons that the same cannot be read in evidence. Similarly, all other legal submissions which go to the root of the controversy and which are sufficient as well as material for adjudication of the issues involved, should be taken in opposition to the claims put forth by the opponent. Some illustrations are as under:

(i) Suit is not maintainable for want of statutory notice etc.

(ii) Plaint does not disclose cause of action.

(iii) Plaintiff has no right to sue.

(iv) Suit barred by principles of res-judicata.

(v) Suit barred by principles of waiver, estoppel, acquiescence.

(vi) Suit is barred by special enactment.

(vii) Court has no jurisdiction.

(viii) Suit is barred by limitation.

(ix) Suit is premature, and so on.

Some of these are known technically as 'special defences'. In a suit based on contract, defendant may admit that he made the contract, but may avoid the effect of admission by pleading performance, fraud, release, limitation etc.

DRAFTING OF AFFIDAVIT IN EVIDENCE – IMPORTANT CONSIDERATIONS

It is well settled that evidence should be tailored strictly according to the pleadings. No extraneous evidence can be looked into in absence of specific pleadings **(Habib Khan v. Valasula Devi, AIR 1997 A.P 52)**. The following must be kept in mind while preparing the affidavit-in-evidence by the parties –

(ii) The best evidence is that of a person who was personally involved in the whole transaction. In case, that person is not available for any reason, then any other person who has joined in his place to make deposition by way of his affidavit.

(iii) In case, the petitioner himself was involved in the execution of a contract, he should file affidavit-in- evidence.

(iv) The allegations or charges or grounds relating to facts should be re-produced duly supported by documentary evidence.

(v) In case, the point or issue pertains to engineering, medical, technology, science or other complex or difficult issues, then the evidence of expert is to be filed in the form of his Affidavit. If necessary, the said witness has to appear before the Forum for the purpose of cross-examination by the counsel for the other party. For example, hand-writing or finger print experts etc.

(vi) Besides the leading evidence on the points raised by the petitioner or by the opposite party in his written statement/reply, if possible, the party who is filing the affidavit-in-evidence should also file documents, papers or books or registers to demolish the defence or case set up by the opposite party.

(vii) It is also permissible for any party to bring any outside witness (other than the expert witness) in support of his case if the facts and circumstances of the case so warrant and permitted by the Court/ Tribunal.

(viii) At the time of tendering affidavit-in-evidence, the party must bring alongwith it either the original of papers, documents, books, registers relied upon by it or bring with it the carbon copy of the same. It may be noted that only photocopy of any paper or document (in the absence of its reply, original or carbon copy) cannot be relied upon and tendered as an evidence.

Evidence, as defined in Section 3 of the Evidence Act, 1872 means and includes–

(1) all statements which the Court permits or requires to be made before it by witnesses in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the Court; such documents are called documentary evidence.

RULE OF ADVERSE INFERENCE

No evidence is required of matters which are, either formally admitted for the purposes of the trial, in civil cases, by the pleadings, by answer to interrogatories, by agreement or otherwise and in criminal cases, as regards proof of those documents admitted under Section 294 of the Code of Criminal Procedure, 1973.

It is incumbent upon a party in possession of best evidence on the issue involved, to produce such evidence and if such party fails to produce the same, an adverse inference is liable to be drawn against such party. The Court will be justified in drawing an adverse inference against that party. **[Ms. Shefali Bhargava v. Indraprastha Appollo Hospital & Anr., 2003 NCJ 787 (NC)].**

It is equally incumbent upon a party to produce evidence of some expert where the issue involved is a complex or difficult one as for instance, issues pertaining to engineering, medical, technology or science etc. Since the court cannot constitute itself into an expert body and contradict the claim/proposition on record unless there is something contrary on the record by way of expert opinion or there is any significantly acclaimed publication or treatise on which reliance could be based. **[Dr. Harkanwaljit Singh Saini v. Gurbax Singh & Anr., 2003 NCJ 800 (NC)].**

UNDERSTANDING THE JURISDICTION OF THE TRIBUNAL

A case filled without understanding the jurisdiction of the tribunal can only waste the time of a Practising company secretary, client and also the tribunal. Therefore, it is of paramount importance to understand the jurisdiction of the tribunal before filling any matter. Filling a case with the tribunal not having jurisdiction can also degrade the value of a professional before the client and he may perceice the professional as less knowledgeable professional. It can impact the future opportunities that can come to a Professional.

PREPARE APPROACH/PLAN

A Professional should prepare an outline plan for which he should further strive. The plan can help a professional move in a direction. After a plan, it will be easy for a professional to take the case forward effectively.

DRESS CODE

In professional life it is important to look presentable because personal appearance counts. How you look can be a major factor in how you are perceived by others. How you look, talk, act and work determines whether you are a professional or an amateur. The way you dress, speaks volumes about who you are as a person and as a professional. Whenever you enter a room for the first time, it takes only a few seconds for people you have never met to form perceptions about you and your abilities. Your clothes and body language always speak first. So it is important that your image gives people the right impression.

Some of the perceptions people can form solely from your appearance are: your professionalism; your level of sophistication; your intelligence and your credibility. Whether these perceptions are real or imagined, they underscore how your appearance instantly influences the opinions of strangers, peers, and superiors. Being well dressed in a corporate setting can influence not just perceptions, but also promotions.

A dress code is a set of rules governing a certain combination of clothing. Apart from the legal profession, professional dress code standards are established in major business organizations and these have become more relaxed in recent decades. Dress codes vary greatly from company to company, as different working environments demand different styles of attire. Even within companies, dress codes can vary among positions.

Getting dressed for work is to project a professional and competent image. It has been observed that the professionals who do not take the time to maintain a professional appearance or those who have never learned how to dress properly for their chosen field of work, are not being taken seriously by co-workers and present the image of not being able to perform satisfactorily on the job.

GUIDELINES FOR PROFESSIONAL DRESS OF COMPANY SECRETARIES

If you are concerned about your career, you will be more concerned with looking professional than looking trendy. If you look and behave like a highly-trained and well-groomed professional, you will win the respect and honour of your valued clients.

To enhance the visibility and brand building of the profession and ensuring uniformity, the Council of the Institute of Company Secretaries of India has prescribed the following guidelines for professional dress for members while appearing before judicial/quasi-judicial bodies and tribunals:

(a) The professional dress for male members will be navy blue suit and white shirt with a tie (preferably of the ICSI) or navy blue buttoned-up coat over a pant or a navy blue safari suit.

(b) The professional dress for female members will be saree or any other dress of a sober colour with a navy blue jacket.

(c) Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.

(d) Practising Company Secretaries appearing before any tribunal or quasi-judicial body should adhere to dress code if any prescribed for appearing before such tribunal or quasi-judicial body or attire prescribed by ICSI (Guidelines for Attire and Conduct of Company Secretaries), 2020.

ICSI (GUIDELINES FOR ATTIRE AND CONDUCT OF COMPANY SECRETARIES), 2020

OBJECTIVE

The objective of issuing these Guidelines is to:

(a) Provide the rules of etiquette and decorum for appearance before the courts, statutory bodies and quasi-judicial bodies such as NCLT, NCLAT, SEBI, CCI, etc.

(b) Ensure respect for authority and to maintain dignity of the profession of company secretaries.

(c) Prevent company secretaries from contemptuous behavior to the judicial authorities.

(d) Guide company secretaries as to which attire is considered unsuitable, unconventional or inappropriate and interfering with the orderly administration of justice.

(e) Project a professional image amongst the regulators and build a brand for the profession of Company Secretaries.

APPLICABILITY

These Guidelines shall be applicable on all company secretaries appearing before any statutory body, courts, tribunals or quasi-judicial bodies on behalf of their employer or their clients.

DRESS CODE

Male Members:

a. Navy Blue Suit (Coat & Trouser), preferably with CS Logo/ Insignia OR
Navy Blue Blazer over a sober coloured Trouser, Insignia
b. Neck Tie (ICSI)
c. White full sleeve Shirt
d. Formal Shoes

Female Members:

a. Navy Blue corporate suit (Coat & Trouser), preferably with CS Logo/ Insignia OR
Saree / any other dress of sober colour with Navy Blue Blazer with CS logo, Insignia
b. A sober footwear like Shoes/Bellies/Wedges, etc.

RESTRICTED ITEMS

The following items of attire shall not be worn in any case:

a. Clothes that are too revealing or not fitting well.
b. Unpolished shoes.
c. Short or skirts.
d. Scarfs, Caps, Hats and Helmet.
e. Hand Gloves.
f. Face Masks and veils.
g. Sports shoes, slippers, sandals.
h. Singlets, T-shirts, Jeans.
i. Casual wear or traditional wear.

j. Gaudy accessories of attire.

k. Medallions, except where the professional has a constitutional right thereto.

l. Medical equipment which would force the trial judge to either grant a continuance or influence the judge in any manner prejudicial to the administration of justice.

m. Earphones, headphones and any other electronic communication equipment.

n. Brightly coloured pieces of attire which may be disruptive, distractive or depreciative of the solemnity of the judicial proceedings.

o. Pieces of jewellery or watches with the purpose to attract attention and amounting to exhibitionism.

EXCEPTIONS

Due care has been exercised not to impose rigid standards not directly related to judicial administration.

Exceptions have however been made for the following:

a. Turbans, may be worn for religious, cosmetic or other legitimate purposes in sober colours which do not distract the jury so as to interfere with or impede the functioning of the judicial authority.

b. Head gear, adhering to good sense of community standards and having a balance between the professionals attire may be worn.

c. Hearing aids, so that a person with hearing loss can listen, communicate, and participate more fully in daily activities.

d. All male members shall be clean shaven, except when properly trimmed beards are adorned as a sign of self-expression, or as a religious or cultural symbol.

CHAPTER 12 - APPLICATIONS, PETITIONS AND APPEALS UNDER COMPANIES ACT, 2013

NCLT RULES

PROCEDURE BEFORE NCLT (RULE 20)

1. **Formats:** Every appeal or petition or application or caveat petition or objection or counter presented to the NCLT shall be in English and in case it is in some other Indian language, it shall be accompanied by a copy translated in English and shall be fairly and legibly type written, lithographed or printed in double spacing on one side of standard petition paper with an inner margin of about four centimeter width on top and with a right margin of 2.5 cm, and left margin of 5 cm, duly paginated, indexed and stitched together in paper book form.
2. **Cause Title:** The cause title shall state "Before the National Company Law Tribunal" and shall specify the Bench to which it is presented and also set out the proceedings or order of the authority against which it is preferred.
3. **Paragraphed:** Appeal or petition or application or counter or objections shall be divided into paragraphs and shall be numbered consecutively and each paragraph shall contain as nearly as may be, a separate fact or allegation or point.
4. **Date:** Where Saka or other dates are used, corresponding dates of Gregorian Calendar shall also be given.
5. **Description of Parties:** Full name, parentage, age, description of each party and address and in case a party sues or being sued in a representative character, shall also be set out at the beginning of the appeal or petition or application and need not be repeated in the subsequent proceedings in the same appeal or petition or application.
6. **Numbering of Parties:** The names of parties shall be numbered consecutively and a separate line should be allotted to the name and description of each party. These numbers shall not be changed and in the event of the death of a party during the pendency of the appeal or petition or matter, his Legal heirs or representative, as the case may be, if more than one shall be shown by sub-numbers. Where fresh parties are brought in, they may be numbered consecutively in the particular category, in which they are brought in.
7. **Mention of the provision of Law** Every proceeding shall state immediately after the cause title the provision of law under which it is preferred.

PARTICULARS TO BE SET OUT IN THE ADDRESS FOR SERVICE (RULE 21)

(a) the name of the road, street, lane and Municipal Division or Ward, Municipal Door and other number of the house;

(b) the name of the town or village;

(c) the post office, postal district and PIN Code; and

(d) any other particulars necessary to locate and identify the addressee such as fax number, mobile number, valid e-mail address, if any.

INITIALLING ALTERATION (RULE 22)

Every interlineations, eraser or correction or deletion in any appeal or petition or application or document shall be initialled by the party or his authorised representative presenting it.

PRESENTATION OF PETITION OR APPEAL (RULE 23)

1. **Presentation in triplicate:** Every petition, application, caveat, interlocutory application, documents and appeal shall be presented in triplicate by the appellant or applicant or petitioner or respondent, as the case may be, in person or by his duly authorised representative or by an advocate duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.
2. **Verification:** Every petition or application or appeal may be accompanied by documents duly certified by the authorised representative or advocate filing the petition or application or appeal duly verified from the originals.
3. **Document with Index:** All the documents filed in NCLT shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.
4. **Copies for other parties:** Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed under these rules.
5. **Serving copies:** In the pending matters, all applications shall be presented after serving copies thereof in advance on the opposite side or his authorised representative.

6. **Processing Fee:** The processing fee prescribed by these rules, with required number of envelopes of sufficient size and notice forms shall be filled alongwith memorandum or appeal.

PRESENTATION OF JOINT PETITION (RULE 23A)

The NCLT Bench may permit more than one person to join together and present a single petition if it is satisfied, having regard to the cause of action and the nature of relief prayed for, that they have a common interest in the matter. Such permission shall be granted where the joining of the petitioners by a single petition is specifically permitted by the Act.

NUMBER OF COPIES TO BE FILED (RULE 24)

The appellant or petitioner or applicant or respondent shall file three authenticated copies of appeal or petition or application or counter or objections, as the case may be, and shall deliver one copy to each of the opposite party.

Number of copies: 3 Copies to the NCLT 1 Copy to each party

LODGING OF CAVEAT (RULE 25)

Any person may lodge a caveat in triplicate in any appeal or petition or application that may be instituted before NCLT by paying the prescribed fee after forwarding a copy by registered post or serving the same on the expected petitioner or appellant and the caveat shall be in the Form No. NCLT 3C. NCLT may pass interim orders in case of urgency. The caveat shall remain valid for a period of ninety days from the date of its filing.

ENDORSEMENT AND VERIFICATION (RULE 26)

1. At the foot of every petition or appeal or pleading there shall appear the name and signature of the authorised representative.
2. Every petition or appeal shall be signed and verified by the party concerned in the manner provided by these rules.

TRANSLATION OF DOCUMENT (RULE 27)

A document other than English language intended to be used in any proceeding before NCLT shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by authorised representative engaged on behalf of parties in the case or if the authorised representative engaged in the case authenticates such certificate or prepared by a translator approved for the purpose by the Registrar on payment of such charges as he may order.

ENDORSEMENT AND SCRUTINY OF PETITION OR APPEAL OR DOCUMENT (RULE 28)

The person in charge of the filing-counter shall immediately on receipt of petition or appeal or application or document affix the date stamp of NCLT thereon and also on the additional copies of the index and return the acknowledgement to the party and he shall also affix his initials on the stamp affixed on the first page of the copies and enter the particulars of all such documents in the register after daily filing and assign a diary number which shall be entered below the date stamp and thereafter cause it to be sent for scrutiny.

If, on scrutiny, the appeal or petition or application or document is found to be defective, such document shall, after notice to the party, to returned for compliance and if there is a failure to comply within seven days from the date of return, the same shall be placed before the Registrar who may pass appropriate orders.

The Registrar may for sufficient cause return the said document for rectification or amendment to the party filing the same, and for this purpose may allow to the party concerned such reasonable time as he may consider necessary or extend the time for compliance.

Where the party fails to take any step for the removal of the defect within the time fixed for the same, the Registrar may, for reasons to be recorded in writing, decline to register the pleading or document.

REGISTRATION OF PROCEEDINGS ADMITTED (RULE 29)

On admission of appeal or petition or caveat or application, the same shall be numbered and registered in the appropriate register maintained in this behalf and its number shall be entered therein.

CALLING FOR RECORDS (RULE 30)

On the admission of appeal or petition or application the Registrar shall, if so directed by NCLT, call for the records relating to the proceedings from any adjudicating authority and retransmit the same.

PRODUCTION OF AUTHORISATION FOR AND ON BEHALF OF AN ASSOCIATION (RULE 31)

Where an appeal or application or petition or other proceeding purported to be instituted by or on behalf of an association, the person or persons who sign (s) or verify(ies) the same shall produce along with such application, for verification by the Registry, a true copy of the resolution of the association empowering such person(s) to do so. Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorization.

INTERLOCUTORY APPLICATIONS (RULE 32)

Every Interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in prescribed form and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.

GENERAL PROCEDURE (RULE 34)

1. In a situation not provided for in these rules, NCLT may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice.
2. The general heading in all proceedings before NCLT, in all advertisements and notices shall be in Form No. NCLT. 4.
3. Every petition or application or reference shall be filed in form as provided in Form No. NCLT. I with attachments thereto accompanied by Form No NCLT.2 and in case of an interlocutory application, the same shall be filed in Form No. NCLT. I accompanied by such attachments thereto along with Form No NCLT. 3.
4. Every petition or application including interlocutory application shall be verified by an affidavit in Form No. NCLT.6. Notice to be issued by NCLT to the opposite party shall be in Form NCLT-5.

ADVERTISEMENT DETAILING PETITION (RULE 35)

1. Where any application, petition or reference is required to be advertised, it shall, unless NCLT otherwise orders, be advertised in Form NCLT-3A, not less than fourteen days before the date fixed for hearing, at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situate, and at least once in English language in an English newspaper circulating in that district.
2. Where the advertisement is being given by the company, then the same may also be placed on the website of the company, if any.
3. An affidavit shall be filed to the Tribunal, not, less than three days before the date fixed for hearing, stating whether the petition has been advertised in accordance with this rule and whether the notices, if any, have been duly served upon the persons required to be served. Affidavit shall be accompanied with such proof of advertisement or of the service, as may be available.
4. Where the requirements of this rule or the direction of NCLT, as regards the advertisement and service of petition, are not complied with, NCLT may either dismiss the petition or give such further directions as it thinks fit.

5. NCLT may, if it thinks fit, and upon an application being made by the party, may dispense with any advertisement required to be published under this rule.

NOTICE TO OPPOSITE PARTY (RULE 37)

1. NCLT shall issue notice to the respondent to show cause against the application or petition on a date of hearing to be specified in the Notice. Such notice in Form No NCLT.5 shall be accompanied by a copy of the application with supporting documents.
2. If the respondent does not appear on the date specified in the notice in Form No. NCLT.5, NCLT, after according reasonable opportunity to the respondent, shall forthwith proceed ex-parte to dispose of the application.
3. If the respondent contests to the notice received under sub-rule (1), it may, either in person or through an authorised representative, file a reply accompanied with an affidavit and along with copies of such documents on which it relies, with an advance service to the petitioner or applicant, to the Registry before the date of hearing and such reply and copies of documents shall form part of the record.

SERVICE OF NOTICES AND PROCESSES (RULE 38)

1. Any notice or process to be issued by NCLT may be served by post or by courier or at the e-mail address as provided in the petition or application or in the reply.
2. The notice or process if to be served physically may be served in any one of the following modes as may be directed by the Tribunal:

(a) by hand delivery through a process server or respective authorised representative;
(b) by registered post or speed post with acknowledgment due or by courier; or
(c) service by the party himself.

3. Where a notice issued by NCLT is served by the party himself by hand delivery, he shall file with the Registrar or such other person duly authorised by the Registrar in this behalf, the acknowledgment together with an affidavit of service and in case of service by registered post or by speed post, file with the Registrar, or such other person duly authorised by the Registrar in this behalf, an affidavit of service of notice alongwith the proof of delivery.

4. Notwithstanding anything contained in sub-rules (1) and (2), NCLT may after taking into account the number of respondents and their place of residence or work or service could not be effected in any manner and other circumstances, direct that notice of the petition or application shall be served upon the respondents in any other manner, including any manner of substituted service, as it appears to the Tribunal just and convenient.
5. A notice or process may also be served on an authorised representative of the applicant or the respondent in any proceeding or on any person authorised to accept a notice or a process, and such service on the authorised representative shall be deemed to be a proper service.
6. Where NCLT directs a service under sub-rule (4), such amount of charges, as may be determined by NCLT from time to time, but not exceeding the actual charges incurred in effecting the service, shall be deposited with the Registry of NCLT by the petitioner or applicant.

MULTIPLE REMEDIES (RULE 38A)

A petition shall be based upon a single cause of action and may seek one or more reliefs provided that the reliefs are consequential to one another.

PRODUCTION OF EVIDENCE BY AFFIDAVIT (RULE 39)

1. NCLT may direct the parties to give evidence, if any, by affidavit.
2. Where NCLT considers it necessary in the interest of natural justice, it may order cross examination of any deponent on the points of conflict either through information and communication technology facilities such as video conferencing or otherwise as may be decided by NCLT, on an application moved by any party.
3. Every affidavit to be filed before the Tribunal shall be in Form No. NCLT.7.

PRODUCTION OF ADDITIONAL EVIDENCE BEFORE THE BENCH (RULE 40)

1. Notwithstanding anything contained in rule 39, the parties to the proceedings shall not be entitled to produce before the Bench additional evidence, either oral or documentary, which

was in the possession or knowledge but was not produced before the Inspector, appointed by the Central Government for the purpose of investigating the affairs of the concerned company, during investigation under Chapter XIV of the Companies Act, 2013 but if the Bench requires any additional evidence or document to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or if the Inspector so appointed for the said purpose has not given sufficient opportunity to the party to adduce evidence, the Bench, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence be produced.

2. Such document may be produced or such witness examined or such evidence adduced either before the Bench or before such authority as the Bench may direct.
3. If the document is directed to be produced or witness examined or evidence adduced before any authority, the party shall comply with the direction of the Bench and after compliance, send the document, the record of the deposition of the witness or the record of the evidence adduced, to the Bench.
4. Additional evidence or document shall be made available by the Bench to the parties to the proceedings other than the party adducing the evidence and they shall be afforded an opportunity to rebut the contents of the said additional evidence.

FILING OF REPLY AND OTHER DOCUMENTS BY THE RESPONDENTS (RULE 41)

1. Each respondent may file his reply to the petition or the application and copies of the documents, either in person or through an authorised representative, with the registry as specified by NCLT.
2. A copy of the reply or the application and the copies of other documents shall be forthwith served on the applicant by the respondent.
3. To the reply or documents filed under sub-rule (1), the respondent shall specifically admit, deny or rebut the facts stated by the applicant in his petition or application and state such additional facts as may be found necessary in his reply.

FILING OF REJOINDER (RULE 42)

Where the respondent states such additional facts as may be necessary for the just decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent.

POWER OF THE BENCH TO CALL FOR FURTHER INFORMATION OR EVIDENCE (RULE 43)

1. The Bench may before passing orders on the petition or application, require the parties or any one or more of them, to produce such further documentary or other evidence as it may consider necessary-

(a) for the purpose of satisfying itself as to the truth of the allegations made in the petition or application; or

(b) for ascertaining any information which, in the opinion of the Bench, is necessary for the purpose of enabling it to pass orders in the petition or application.

2. The Bench may, for the purpose of inquiry or investigation, admit such documentary and other mode of recordings in electronic form including e-mails, books of accounts, book or paper, written communications, statements, contracts, electronic certificates and such other similar mode of transactions as may legally be permitted to take into account of those as admissible as evidence under the relevant laws.

3. Where any party preferring or contesting a petition of oppression and mismanagement raises the issue of forgery or fabrication of any statutory records, then it shall be at liberty to move an appropriate application for forensic examination and the Bench hearing the matter may, for reasons to be recorded, either allow the application and send the disputed records for opinion of Central Forensic Science Laboratory at the cost of the party alleging fabrication of records, or dismiss such application.

HEARING OF PETITION OR APPLICATIONS (RULE 44)

1. NCLT shall notify to the parties the date and place of hearing of the petition or application in such manner as the President or a Member may, by general or special order, direct.

2. Where at any stage prior to the hearing of the petition or application, the applicant desires to withdraw his petition or application, he shall make an application to that effect to NCLT, and NCLT on hearing the applicant and if necessary, such other party arrayed as opposite parties in the petition or the application or otherwise, may permit such withdrawal upon imposing such costs as it may deem fit and proper for NCLT in the interests of the justice.

RIGHTS OF A PARTY TO APPEAR BEFORE NCLT (RULE 45)

(1) Every party may appear before NCLT in person or through an authorised representative, duly authorised in writing in this behalf.

(2) The authorised representative shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in Form No. NCLT. 12 representing the respective parties to the proceedings.

(3) The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an advocate to represent in the proceedings before NCLT.

(4) The officer authorised by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor.

(5) During any proceedings before NCLT, it may for the purpose of its knowledge, call upon the Registrar of Companies to submit information on the affairs of the company on the basis of information available in the MCA21 portal, Reasons for such directions shall be recorded in writing.

(6) There shall be no audio or video recording of the Bench proceedings by the parties or their authorised representatives.

CONSEQUENCE OF NON-APPEARANCE OF APPLICANT (RULE 48)

1. Where on the date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, NCLT may, in its discretion, either dismiss the application for default or hear and decide it on merit.

2. Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies NCLT that there was sufficient cause for his non-appearance when the petition or the application was called for hearing, NCLT shall make an order restoring the same.

EX-PARTE HEARING AND DISPOSAL (RULE 49)

1. Where on the date fixed for hearing the petition or application or on any other date to which such hearing may be adjourned, the applicant appears and the respondent does not appear when the petition or the application is called for hearing, NCLT may adjourn the hearing or hear and decide the petition or the application ex-parte.
2. Where a petition or an application has been heard ex-parte against a respondent or respondents, such respondent or respondents may apply to NCLT for an order to set it aside and if such respondent or respondents satisfies NCLT that the notice was not duly served, or that he or they were prevented by any sufficient cause from appearing when the petition or the application was called for hearing, NCLT may make an order setting aside the ex-parte hearing as against him or them upon such terms as it thinks fit.

REGISTRY TO SEND CERTIFIED COPY (RULE 50)

The Registry shall send a certified copy of final order passed to the parties concerned free of cost and the certified copies may be made available with cost as per Schedule of fees, in all other cases.

POWER TO REGULATE THE PROCEDURE (RULE 51)

NCLT may regulate its own procedure in accordance with the rules of natural justice and equity, for the purpose of discharging its functions under the Companies Act, 2013.

SUMMONING OF WITNESSES AND RECORDING EVIDENCE (RULE 52)

1. If a petition or an application is presented by any party to the proceedings for summoning of witnesses, NCLT shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.
2. Where summons are issued by NCLT under sub-rule (1) to any witness to give evidence or to produce any document, the person so summoned shall be entitled to such travelling and daily allowance sufficient to defray the travelling and other expenses as may be determined by the Registrar which shall be deposited by the party as decided by the Registrar.

SUMMONING OF WITNESSES AND RECORDING EVIDENCE (RULE 52)

1. If a petition or an application is presented by any party to the proceedings for summoning of witnesses, NCLT shall issue summons for the appearance of such witnesses unless it considers that their appearance is not necessary for the just decision of the case.
2. Where summons are issued by NCLT under sub-rule (1) to any witness to give evidence or to produce any document, the person so summoned shall be entitled to such travelling and daily allowance sufficient to defray the travelling and other expenses as may be determined by the Registrar which shall be deposited by the party as decided by the Registrar.

SUBSTITUTION OF LEGAL REPRESENTATIVES (RULE 53)

1. Where a party to a proceeding pending before a Bench dies or is adjudged insolvent or, in the case of a company, being wound up, the proceeding shall not abate and may be continued by or against the executor, administrator or other legal representative of the parties or by or against the assignee, receiver or liquidator, as the case may be.
2. In the case of death of a party during the pendency of the proceedings before NCLT, the legal representative of the deceased party may apply within ninety days of the date of such death for being brought on record.
3. Where no petition or application is received from the legal representatives within the period specified in sub-rule (2), the proceedings shall abate:

Provided that for good and sufficient reasons shown, NCLT may allow substitution of the legal representatives of the deceased at any time before disposing the petition on merits.

PLEADINGS BEFORE NCLT (RULE 55)

No pleadings, subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal may think fit.

APPLICATION FOR EXECUTION (RULE 56)

For execution of order passed by NCLT, the holder of an order shall make an application to NCLT in Form NCLT.8.

EFFECT OF NON-COMPLIANCE (RULE 58)

Failure to comply with any requirement of these rules shall not invalidate any proceeding, merely by reason of such failure, unless the Tribunal is of the view that such failure has resulted in miscarriage of justice

AMICUS CURIAE (RULE 61)

1. NCLT may, as its discretion, permit any person or persons, including the professionals and professional bodies to render or to communicate views to NCLT as amicus curiae on any point or points or legal issues as the case may be as assigned to such amicus curiae.
2. NCLT may permit amicus curiae to have access to the pleadings of the parties and NCLT shall enable the parties to submit timely observations on brief provided by the amicus curiae.
3. NCLT shall be at liberty to direct either of the parties or both the parties to the proceedings involving a point on which the opinion of the amicus curiae has been sought, to bear such expenses or fee as may be ordered by NCLT.
4. The judgment and any appended opinions shall be transmitted to the parties and to amicus curiae.

PRESENTATION AND SCRUTINY OF PETITIONS OR APPLICATIONS (RULE 63)

In case of the scrutiny of the petitions or applications as provided in Part III and elsewhere in these rules, if any person is aggrieved of the decision of the Registrar or such other officer officiating as the Registrar of the Benches, an appeal against the order of the Registrar shall be made within fifteen days of the making of such order to the President of the Principal Bench and at other places to any Member of the Bench designated by the President, and whose decision thereon shall be final.

APPLICATION FOR CALLING OR OBTAINING A DIRECTION TO CALL ANNUAL GENERAL MEETING (RULE 74)

1. An application under section 97 for calling or obtaining a direction to call the annual general meeting of the company shall be made by any member of the company in Form No. NCLT. 1 and shall be accompanied by the documents specified in Annexure B.
2. A copy of the application shall be served on the Registrar of Companies on or before the date of hearing.

INSPECTION OF MINUTE-BOOKS OF GENERAL MEETING (RULE 76)

Where any member has requested the company for inspection of minute-book of general meeting on payment of requisite fee and the company refused to give such inspection, he may apply to NCLT in Form No NCLT-9 for direction to the company for inspection of minute-book of general meeting.

APPLICATION UNDER SECTION 241 (RULE 81)

1. An Application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act, shall be filed in the Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.

2. Where an application is presented under section 241 on behalf of any members of a company entitled to apply under sub-section (1) of the said section, by any one or more of them, the letter of consent signed by the rest of the members so entitled authorising the applicant or the applicants to present the petition on their behalf, shall be annexed to the application, and the names and addresses of all the members on whose behalf the application is presented shall be set out in a schedule to the application, and where the company has a share capital, the application shall state whether the applicants have paid all calls and other sums due on their respective shares.
3. A copy of every application made under this rule shall be served on the company, other respondents and all such persons as NCLT may direct.

WITHDRAWAL OF APPLICATION FILED UNDER SECTION 241 (RULE 82)

1. An application under clause (a) or clause (b) of sub-section (1) of section 241 of the Companies Act, 2013 shall not be withdrawn without the leave of NCLT.
2. An application for withdrawal under sub-rule (1) shall be filed in the Form NCLT-9.

APPLICATION UNDER SECTION 243 (RULE 83)

1. An application under clause (b) of sub-section (1) of section 243 of the Companies Act, 2013 for leave to any of the persons mentioned therein to be appointed or to act as the managing director or other director or manager of the company, shall be filed as per the appropriate Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.
2. An application under sub - rule (1) shall state whether a notice of intention to apply for such leave, as required under the proviso to sub-section (1) of section 243 of the Act, has been given to the Central Government and such application shall also be accompanied by a copy of such notice.
3. The notice of the date of hearing of the application together with a copy of the application shall be served on the Central Government not less than fifteen days before the date fixed for the hearing.

RIGHT TO APPLY UNDER SECTION 245 (RULE 84)

1. An application under sub-section(1) of section 245, read with sub-section (3) of section 245 of the Act, shall be filled in Form NCLT-9.
2. A copy of every application under sub-rule (1) shall be served on the company, other respondents and all such persons as NCLT may direct.
3. In case of a company having a share capital, the requisite number of member or members to file an application under section 245(1) shall be -

(i) (a) at least five per cent. of the total number of members of the company; or
(b) one hundred members of the company, whichever is less; or

(ii) (a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company;
(b) member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.

(4) The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -

(i) (a) at least five per cent. of the total number of depositors of the company; or
(b) one hundred depositors of the company, whichever is less; or;

(ii) depositor or depositors to whom the company owes five per cent. of total deposits of the company.

CONDUCTING A CLASS ACTION SUIT (RULE 85)

1. Without prejudice to the generality of the provisions of sub-section (4) of section 245 of the Companies Act, 2013 NCLT may while considering the admissibility of an application under the said section, in addition to the grounds specified therein, take into account the following:

(a) whether the class has so many members that joining them individually would be impractical, making a class action desirable;

(b) whether there are questions of law or fact common to the class;

(c) whether the claims or defences of the representative parties are typical of the claims or defences of the class;

(d) whether the representative parties will fairly and adequately protect the interests of the class.

2. For the purposes of clause(c) of sub-section (4) of section 245, while considering the desirability of an individual or separate action as opposed to a class action, NCLT may take into account, in particular, whether admitting separate actions by member or members or depositor or depositors would create a risk of:-

(a) inconsistent or varying adjudications in such separate actions; or

(b) adjudications that, as a practical matter, would be dispositive of the interests of the other members;

(c) adjudications which would substantially impair or impede the ability of other members of the class to protect their interests.

RULE OF OPT-OUT (RULE 86)

1. A member of a class action under section 245 of the Companies Act, 2013 is entitled to opt-out of the proceedings at any time after the institution of the class action, with the permission of NCLT, as per Form No. NCLT – 1.

2. For the purposes of this rule, a class member who receives a notice under clause (a) of sub section of section 245 of the Companies Act, 2013 shall be deemed to be the member of a class, unless he expressly opts out of the proceedings, as per the requirements of the notice issued by NCLT in accordance with rule 38.

3. A class member opting out shall not be precluded from pursuing a claim against the company on an individual basis under any other law, where a remedy may be available, subject to any conditions imposed by NCLT.

PUBLICATION OF NOTICE (RULE 87)

(1) For the purposes of section 245(5)(a) of the Companies Act, 2013 on the admission of an application filed under section 245(1) of the Companies Act, 2013 a public notice shall be issued by NCLT as per Form No NCLT-13 to all the members of the class by-

(a) publishing the same within seven days of admission of the application by NCLT at least once in a vernacular newspaper in the principal vernacular language of the State in which the

registered office of the company is situated and at least once in English in an English newspaper that is in circulation in that State;

(b) requiring the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper. Such notice shall also be placed on the websites of NCLT and the Ministry of Corporate Affairs, the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange where the company has any of its securities listed, until the application is disposed of by NCLT.

2. The date of issue of the newspaper in which such notice appears shall be considered as the date of serving the public notice to all the members of the class.

3. The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant.

INSPECTION OF THE RECORDS (RULE 114)

1. The parties to any case or their authorised representative may be allowed to inspect the record of the case by making an application in writing to the Registrar and by paying the fee prescribed thereof.

2. Subject to such terms and conditions as may be directed by the President by a general or special order, a person who is not a party to the proceeding, may also be allowed to inspect the proceedings after obtaining the permission of the Registrar in writing.

INHERENT POWERS (RULE 11)

Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the NCLT to make such orders as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

POWER TO EXEMPT (RULE 14)

NCLT may on sufficient cause being shown, exempt the parties from compliance with any requirement of these rules and may give such directions in matters of practice and procedure, as it may consider just and expedient on the application moved in this behalf to render substantial justice.

POWER TO EXTEND TIME (RULE 15)

NCLT may extend the time appointed by these rules or fixed by any order, for doing any act or taking any proceeding, upon such terms, if any, as the justice of the case may require, and any enlargement may be ordered, although the application therefore is not made until after the expiration of the time appointed or allowed.

NCLAT RULES

Many rules provided under NCLT rules are mutatis mutandis similar to the rules made under NCLAT Rules. However, other different rules of NCLAT are discussed hereunder:

SITTING OF APPELLATE TRIBUNAL (RULE 8)

NCLAT shall hold its sitting at its headquarters in New Delhi.

PRESENTATION OF APPEAL (RULE 22)

(1) Every appeal shall be presented in Form NCLAT-I in triplicate by the appellant or petitioner or applicant or respondent, as the case may be, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every appeal shall be accompanied by a certified copy of the impugned order.

(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.

TITLE OF AFFIDAVITS (RULE 67)

Every affidavit shall be titled as "Before the National Company Law Appellate Tribunal." followed by the cause title of the application or other proceeding in which the affidavit is sought to be used.

SUO MOTO SUMMONING OF DOCUMENTS (RULE 74)

Notwithstanding anything contained in these rules, the NCLAT may, suo moto, issue summons for production of public document or other documents in the custody of a public officer in Form NCLAT-6.

MARKING OF DOCUMENTS (RULE 75)

1. The documents when produced shall be marked as follows:

(a) if relied upon by the appellant's or petitioner's side, they shall be numbered as'A' series.

(b) if relied upon by the respondent's side, they shall be marked as 'B' series.

(c) The Appellate Tribunal exhibits shall be marked as 'C' series,

2. NCLAT may direct the applicant to deposit with NCLAT by way of Demand Draft or Indian Postal Order drawn in favour of the pay and Accounts Officer, Ministry of Corporate Affairs, New Delhi, a sum sufficient to defray the expenses for transmission of the records before the summons is issued.

ORDER (RULE 88)

The final decision of NCLAT on an appeal or proceedings before NCLAT shall be delivered by way of Judgment.

OPERATIVE PORTION OF THE ORDER (RULE 89)

All orders or directions of the Bench shall be stated in clear and precise terms in the last paragraph of the order.

PLACING OF SUPREME COURT ORDERS BEFORE NCLAT (RULE 101)

Whenever an interim or final order passed by the Supreme Court of India in an appeal or other proceeding preferred against a decision of NCLAT is received, the same shall forthwith be placed before the Chairperson or Members for information and kept in the relevant case file and immediate attention of the Registrar shall be drawn to the directions requiring compliance.

FILLING THROUGH ELECTRONIC MEDIA (RULE 103)

NCLAT may allow filing of appeal or proceedings through electronic mode such as online filing and provide for rectification of defects by e-mail or internet and in such filing, these rules shall be adopted as nearly as possible on and form a date to be notified separately and the Central Government may issue instructions in this behalf from time to time.

APPERANCES - SOME DO'S AND DON'TS

DO'S

- Ensure that the dress code is properly followed not only for company secretary in practice who is going to appear before NCLT but also, by a person accompanying him as an assistant.
- Carry all papers, documents, reference materials etc. If, possible carry extra copies of material, for submission to NCLT and the opponent. Reach at the place of hearing before time.

- Study the case thoroughly. Know the weak and strong points of the case.
- Prepare a list of points on which arguments would be addressed to the Court.
- Study the decided case laws.
- Wherever possible, study the cases decided by the member of NCLT in similar matters earlier. This will facilitate to know the mind of member of NCLT, how he decides or interprets situation, whether he is strict etc.
- Note down important dates, case citation and important event. If possible memorize the same. Even if everything is memorised keep one printed copy of summary. Always make photocopies of judgment relied upon by you. Also prepare paper book of those judgment and should be page numbered.
- Decide what you are going to speak before NCLT and what points to be covered and emphasized.
- One must be able to counter any matters or points raised by the members of the NCLT or opposite party. Since this situation will have to be dealt extempore for which you must be thorough about your client's case. If you are not well prepared for case, request for time to submit your representation in a short time.
- Prepare for eventualities like if judgment comes against your client, opposite party asking for adjournment etc.
- Maintain the decorum of the office of NCLT.
- Maintain your independent view.
- During the hearing, wherever possible make the atmosphere humorous & to appreciate the Court on any given opportunity for its dexterity.
- Please supply photocopies of extracts of sections of various acts on which reliance has been placed during arguments for convenience of the court while the Court is writing the judgment.
- While addressing the arguments to the NCLT, be polite and soft and at the same time firm and confident. While arguments, please do not leave an impression that you are unsure" on law and /or facts.

DON'TS

- If you are not aware of any matter, do not speak lie or imaging anything. Rather inform
- NCLT clearly and seek time to clarify the point from your client.
- Do not forget to carry relevant papers, materials and documents.

- Do not forget to be in dress code.
- Do not speak in language other than official language of NCLT.
- Do not speak in between while member of NCLT or other party is speaking.
- Never use words or language derogatory or insulting to others.
- Even if you know things better, do not impress upon NCLT that you are superior.
- Do not look at pocket of client or benefits to client.
- Never promise to client on outcome of the case before NCLT.

APPEAL TO NCLT AGAINST NOTICE OF REFUSAL TO TRANSFER SHARES

Section 58 deals with the Appeals against the refusal for registration of transfer or transmission of securities

If a **private company** refuses the registration of securities the transferee may appeal to NCLT against the refusal in **Form NCLT-1** within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

If a **public company without sufficient cause** refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer or intimation of transmission, appeal to NCLT in **Form NCLT-1.**

REFUSAL TO TRANSFER SHARES - WHETHER PERMISSIBLE?

The grounds/reasons on which a Public Company can refuse to register transfer of shares have not been specifically enumerated under the Companies Act. However, the provision of 111A (2) of the Companies Act, 1956 allowed the Board of Directors to refuse to register transfer of

shares "**for sufficient cause**" Gujarat Machinery Manufactures Ltd. v. Nile Ltd.(2001) 105 Com Cas 817 (CLB). It is now well-settled that the words "**sufficient cause**" should not be given a restricted meaning. The Company is fully entitled to examine as to whether formalities required, such as signatures, stamp etc., have been fulfilled and that **transfer would not involve violation of any other provision of the Companies Act, SEBI Act, or Regulations issued by SEBI, SICA or any other law for the time being in force**. The Company, however, cannot act arbitrarily and will have to justify its action if questioned by the Company Law Board. It may be noted that under the scheme of Sec 108A to 108D of Companies Act, 1956, the Central Government while granting or declining to grant the approval for acquisition of shares, required to examine various factors such as:

- the impact of the acquisition on the management of the company,
- whether such an impact is desirable, the existing legal obligation of the company,
- whether such transfer itself would place the company in a situation to make a breach of certain existing contractual obligations of the company, thereby exposing the company to an action in law etc.

REFUSAL TO REGISTER TRANSFER OF SHARES UNDER SECTION 58 OF COMPANIES ACT, 2013

(1) The securities or other interest of any member in a public company shall be freely transferable;

(2) The transferee may **appeal to the Tribunal** against the refusal within a period of **thirty days** from the date of receipt of the notice or in case no notice has been sent by the company, within a period of **sixty days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.

(3) If a **public company** without sufficient cause **refuses to register** the transfer of securities within a period of **thirty days** from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of **sixty days** of such refusal or where no intimation has been received from the company, within **ninety days** of the delivery of the instrument of transfer or intimation of transmission, appeal to the Tribunal.

(4) The Tribunal, while dealing with an appeal made under sub-section (3) or sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order –

(a) **direct that the transfer or transmission shall be registered** by the company and the company shall comply with such order within a period of **ten days** of the receipt of the order; or

(b) **direct rectification of the register under Section 59 of Companies Act, 2013** and also **direct the company to pay damages**, if any, sustained by any party aggrieved.

(5) If a person contravenes the order of the Tribunal under this section, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

APPEAL AGAINST THE RECTIFICATION OF REGISTER OF MEMBERS (Section 59)

If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register, is, without sufficient cause, omitted therefrom, or if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the person aggrieved, or any member of the company, or the company may appeal to NCLT in **Form NCLT-1** or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.

As per **Rule 70(5) of NCLT Rules, 2016** on any petition under section 59, the Tribunal may-

(a) decide any question relating to the title of any person who is a party to the petition to have his name entered in, or omitted from, the register;

(b) generally decide any question which is necessary or expedient to decide in connection with the application for rectification.

WHO CAN FILE AN APPEAL?

Unlike an appeal under Section 58 on refusal to register the transfer/ transmission of Securities, wherein only transferee can appeal to Tribunal, an appeal under section 59 for rectification of Register of members can be made by a member of the company or any aggrieved person or by the Company itself.

Further in case of foreign members or debenture holders residing outside India, the appeal can be preferred at competent court outside India. In this regard, Central Government will specifically notify competent courts outside India which could hear matters for rectification.

TIME LIMIT FOR FILING OF APPEAL

It is important to note for seeking rectification under this Section there is no time limit provided. As per the decided case laws under section 111A of 1956 Act, courts have held though there is no time limit, the aggrieved person should approach court within reasonable time. Section 137 of Limitation Act also may come into play wherein limitation of three years may start from date of knowledge of cause of action.

APPLICATION TO NCLT FOR DIRECTION FOR CALLING THE AGM AND OTHER MEETINGS

SECTION 97 : POWER OF TRIBUNAL TO CALL ANNUAL GENERAL MEETING

(2) If any default is made in holding the annual general meeting of a company under section 96, the Tribunal may, notwithstanding anything contained in this Act or the articles of the company, on the application of any member of the company, call, or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient.

(3) A general meeting held in pursuance of sub-section (1) shall, subject to any directions of the Tribunal, be deemed to be an annual general meeting of the company under this Act.

SECTION 98 : POWER OF TRIBUNAL TO CALL MEETING OF MEMBERS, ETC.

(1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either suo moto or on the application of any director or member of the company who would be entitled to vote at the meeting,—

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company;

(2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

CAN A COMPANY MAY APPLY FOR CALLING AGM?

CLB in its decision in Cannanore Whole Body CT Scan and Research Centre P. Ltd. Vs Saibunnisa S.V. (1998) stated as "It is clear that a member and not the company is empowered to invoke the provisions of Sec 167. Any application, if filed by the Company will be bad in law and will be treated ab initio defective as Company can't seek direction against itself." Also an applicant, whose membership has been disputed by the company by showing that he has transferred his entire shareholding, has no Locus standi to make an application under the Section. M. Sampath vs. AKMN Cylinders (P.) Ltd. (1998).

PROCEDURE OF APPLICATION

1. **Preparation of Application/Petition to be filed:**

a. Every petition or application shall be filed before the Bench having territorial jurisdiction.

b. Every application/petition before the tribunal shall be filed in **NCLT form No.1 [Rule 34(3)]** with attachment thereto accompanied by FORM NO. NCLT 2.

c. Every application/petition to be filed with the tribunal shall be prepared in triplicate.

d. The applicant may, by way of a separate application, apply to the President and the President may thereupon for the reasons to be recorded, direct a Bench other than the Bench which has territorial jurisdiction to adjudicate upon it. [Rule 16(d)].

2. **Sequence in which details to be mentioned in every application/ petition:-** Every application/petition the following sequence while mentioning the facts in the application/petition namely;

a. General heading of all proceedings before the Tribunal shall be as per **NCLT Form No.4 [Rule 34(2)]**.

b. Then details of Applicants/Petitioners to be mentioned.

c. **To mention the jurisdiction of the Bench**–The jurisdiction of the bench is to be mentioned.

d. **Limitation period to be mentioned** i.e. whether the present application/petition is within the limitation period or not.

e. **Facts of the case to be mentioned:** It is required to mention the reasons for not holding the AGM in Detail.

f. **Relief sought from the tribunal to be mentioned:** In the Prayer for relief the direction of the tribunal can be sought to call or direct the calling of AGM of the Company and such other direction as the Hon'ble Tribunal may deems fit.

g. **Details of Bank Draft evidencing the payment of prescribed fees:** Appropriate amount is required to be paid as fees for filing the application in the form of Bank draft. The details of the same are also to be mentioned by giving following details i.e. (a) Bank Draft No, (b) Branch on which it is drawn, (c) Name of the Issuing branch, (d) Date and (e) Amount.

3. **Affidavit accompanying the petition:** Every Application/Petition filed before the Tribunal shall be accompanied by a duly notarized affidavit of the authorized representative/s of the applicant/ petitioner in the Form No.NCLT 6 [Rule 34(4)].

4. **Filing of Vakalatnama:** Every application/Petition should also be accompanied by the Vakalatnama of the Advocate/Legal practitioner representing the client in the Form NCLT 12.

5. **Memo of Appearance:** A memo of appearance is required to be filed in the form NCLT 12 by the practicing Company Secretary or Chartered Accountant or Cost Accountant appearing before the tribunal for representing their client.

6. **An Interlocutory Application** shall be filed in FORM No. NCLT 1 accompanied by such attachment thereto along with FORM No. NCLT 3.

8. Where on date fixed for hearing of the petition or application or on any other date to which such hearing may be adjourned, the applicant does not appear when the petition or the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit.

9. Where the petition or application has been dismissed for default and the applicant files an application within thirty days from the date of dismissal and satisfies the Tribunal that there was sufficient cause for his non-appearance when the petition or application was called for hearing, the Tribunal shall make an order restoring the same.

10. Application, petition or reference, if required, shall be advertised in Form No. NCLT 3A at least 14 days before the date fixed for hearing the application/petition in at least 2 newspaper one in English and another in the vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated.

APPLICATION FOR CALLING OR OBTAINING A DIRECTION TO CALL ANNUAL GENERAL MEETING (SECTION 97)

Every Application under Section 97 for calling or obtaining a direction to call the Annual General Meeting of the company shall be made by any member of the Company in **Form No. NCLT 1.**

APPLICATION FOR COMPROMISE AND ARRANGEMENTS INCLUDING MERGERS AND AMALGAMATIONS

APPLICATION FOR ORDER OF MEETING (RULE 3)

(1) An application of section 230(1) of the Companies Act, 2013 may be submitted in Form No. NCLT-1 along with:-

(i) a notice of admission in Form No. NCLT-2;

(ii) an affidavit in Form No. NCLT-6;

(iii) a copy of scheme of compromise or arrangement, which should include disclosures as per section 230(2) of the Companies Act, 2013; and

(iv) fee as prescribed in the Schedule of Fees.

(2) Where more than one company is involved in a scheme in relation to which an application under sub-rule (1) is being filed, such application may, at the discretion of such companies, be filed as joint- application.

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

(4) The applicant shall also disclose to the Tribunal in the application under sub-rule (1), the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme.

(5) A member of the company shall make an application for arrangement, for the purpose of takeover offer in terms of section 230(11), when such member along with any other member holds not less than three- fourths of the shares in the company, and such application has been filed for acquiring any part of the remaining shares of the company.

(6) An application of arrangement for takeover offer shall contain:

(a) the report of a registered valuer

(b) details of a bank account, to be opened separately, by the member wherein a sum of amount not less than one-half of total consideration of the takeover offer is deposited.

Section 230(1) - Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them,

the Tribunal may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Companies Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Rule 5 - deals with the provisions relating to Directions at hearing of the application

Upon hearing the application under section 230(1) of the Companies Act, 2013 NCLT shall, unless it thinks fit for any reason to dismiss the application, give such directions as it may think necessary in respect of the following matters:

(a) determining the class or classes of creditor or of members whose meeting or meetings have to be held for considering the proposed compromise or arrangement; or dispensing with the meeting or meeting for any class or classes or creditors in terms of section 230(9);

(b) fixing the time and place of the meeting or meetings;

(c) appointing a Chairperson and scrutinizer for the meeting or meetings to be held, as the case may be and fixing the terms of his appointment including remuneration;

(d) fixing the quorum and the procedure to be followed at the meeting or meetings, including voting in person or by proxy or by postal ballot or by voting through electronics means;

(e) determining the values of the creditors or the members, or the creditors or member of any class, as the case may be, whose meetings have to be held;

(f) notice to be given of the meeting or meetings and the advertisement of such notice;

(g) notice to be given to sectoral regulators or authorities as required under section 230(5);

(h) the time within which the chairperson of the meeting of the meeting is required to report the result of the meeting to the tribunal; and

(i) such other matters as the Tribunal may deem necessary.

Rule 6 - Notice of meeting

Where a meeting of any class or classes of creditors or members has been directed or to be convened, the notice of the meeting pursuant to the order of the Tribunal to be given in the manner provided in sub-section (3) of section 230 of the Companies Act shall be in Form No. CAA.2 and shall be sent individually to each of the creditors or members.

Section 230(3)

Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a notice of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company, which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed:

Rule 7 - Advertisement of the notice of the meeting

The notice of the meeting under section 230(3) of the Companies Act, 2013 shall be advertised in Form No. CAA.2 in at least one English newspaper and in at least one vernacular newspaper having wide circulation in the state in which the registered office of the company is situated, or such newspaper as may be directed by the Tribunal and shall also be placed, not less than thirty days before the date fixed for the meeting, on the website of the company of the SEBI and the recognized stock exchange where the securities of the company are listed:

Provide that where separate meetings of classes of creditors or members are to be held, a joint advertisement for such meetings may be given.

Rule 8 - Notice to statutory authorities

(1) For the purpose of section 230(5) of the Companies Act, 2013 the notice shall be in Form No. CAA.3, and shall be accompanied with a copy of the scheme of compromise or arrangement, the explanatory statement and the disclosures mentioned under rule 6, and shall be sent to.-

(i) the Central Government, the Registrar of Companies, the Income-tax authorities, in all cases;

(ii) the Reserve Bank of India, the Securities and Exchange Board of India, the competition commission of India, and the stock exchanges, as may be applicable;

(iii) other sectoral regulators or authorities, as required by Tribunal.

(2) The notice of the authorities mentioned in sub-rule (1) shall be sent forthwith, after the notice is sent to the members or creditors of the company, by registered post or by speed post or by courier or by hand delivery at the office of the authority.

(3) It the authorities referred to under sub-rule (1) desire to make any representation under section 230(5), the same shall be sent to the Tribunal within a period of thirty days from the date of receipt of such notice and copy of such representation shall simultaneously be sent to the concerned companies and in case of representation is received within the stated period of thirty days by the Tribunal, it shall be presumed that the authorities have no representation to make on the proposed scheme of compromise or arrangement.

Section 230(5)

A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.

Rule 14 - Report of the result of the meeting by chairperson

The chairperson of the meeting (or where there are separate meetings, the chairperson of each meeting) shall, within the time fixed by the tribunal, or where no time has been fixed, within three days after the conclusion of the meeting submit a report to the Tribunal on the result of the meeting in Form No. CAA.4.

Rule 15 - Petition for confirming compromise or arrangement

Where the proposed compromise or arrangement is agreed to by the members or creditors or both as the case maybe with or without modification, the company (or its liquidator), shall, within seven days of the filing of the report by the chairperson, present a petition to the tribunal in Form No CAA 5 for sanction of the scheme of compromise or arrangement.

Rule 21 - Statement of compliance in mergers and amalgamations

For the purpose of section 232(7) of Companies Act, 2013 every company in relation to which an order is made under section 232(3) of the Companies Act, 2013 shall until the scheme is fully implemented, file with the registrar of companies, the statement in Form No.CAA.8 within two hundred and ten days from the end of each financial year.

Section 232(3)

The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person. Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(d) dissolution, without winding-up, of any transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

(f) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;

(g) the transfer of the employees of the transferor company to the transferee company;

(h) where the transferor company is a listed company and the transferee company is an unlisted company,—

(A) the transferee company shall remain an unlisted company until it becomes a listed company;

(B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal. Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the Securities and Exchange Board under any regulations framed by it;

(i) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be set-off against any fees payable by the transferee company on its authorised capital subsequent to the amalgamation; and

(j) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out. Provided that no compromise or arrangement shall be sanctioned by the Tribunal unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.

Section 232(7)

Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied with in accordance with the orders of the Tribunal or not.

RULE 25 - MERGER OR AMALGAMATION OF CERTAIN COMPANIES

(1) The notice of the proposed scheme, under clause (a) of section 233 of the Companies Act, to invite objections or suggestions from the Registrar and official liquidator or persons affected by the scheme shall be in **Form No CAA 9.**

(1A) A scheme of merger or amalgamation under section 233 of the Companies Act may be entered into between any of the following class of companies, namely:-

(i) two or more start-up companies; or

(ii) one or more start-up company with one or more small company.

(2) For the purposes of of section 233(1)(c) of the Companies act the declaration of solvency shall be filed by each of the companies involved in the scheme of merger or amalgamation in **Form No.CAA.10** along with the fee as provided in the companies (Registration offices and fees) Rules, 2014, before convening the meeting of members and creditors for approval of the scheme.

(3) For the purpose of clause (b) and (d) of sub-section (1) of section 233 of the Act, the notice of the meeting to the members and creditors shall be accompanied by-

(a) a statement , as far as applicable, referred to in sub section (3) of section 230 of the act read with sub rule (3) of rule 6 hereof ;

(b) The declaration of solvency made in pursuance of clause (c) of sub-section (1) of section 233 of the Act in **Form No.CAA.10;**

(c) A copy of the scheme.

(4) (a) For the purposes of sub-section (2) of section 233 of the Act, the transferee company shall, within seven days after the conclusion of the meeting of members or class of members or creditors, file a copy of the scheme as agreed to by the members and creditors, along with a report of the result of each of the meetings in **Form no. CAA.11** with the central government.

Copy of the scheme shall also be filed , along with **Form No. CAA.11** with-

(i) the registrar of companies in **form no. GNL-1**; and

(ii) the official liquidator through hand delivery or by registered post or speed post.

(5) Where no objection or suggestion is received within a period of thirty days of receipt of copy of scheme under sub-section (2) of section 233, from the Registrar of Companies and Official Liquidator by the Central Government and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may, within a period of fifteen days after the expiry of said thirty days, issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12.

Provided that if the Central Government does not issue the confirmation order within a period of sixty days of the receipt of the scheme under sub-section (2) of section 233, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

(6) Where objections or suggestions are received within a period of thirty days of receipt of copy of scheme under sub-section (2) of section 233 from the Registrar of Companies or Official Liquidator or both by the Central Government and –

(a) such objections or suggestions of Registrar of Companies or Official Liquidator, are not sustainable and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may within a period of thirty days after expiry of thirty days referred to above, issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12.

(b) the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in the interest of creditors, it may within sixty days of the receipt of the scheme file an application before the Tribunal in Form No. CAA.13 stating the objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act:

Provided that if the Central Government does not issue a confirmation order under clause (a) or does not file any application under clause (b) within a period of sixty days of the receipt of the scheme under subsection (2) of section 233 of the Act, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

(7) The confirmation order of the scheme issued by the central government or tribunal under sub section (7) of section 233 of the Act, shall be filed, within thirty days of the receipt of the order of confirmation, in **Form INC-28**.

(8) For the purpose of this rule, it is clarified that with respect to schemes of arrangement or compromise falling within the purview of section 233 of the act, the concerned companies may, at their discretion, opt to undertake such schemes under sections 230 to 232 of the Act, including where the condition prescribed in clause (d) of sub-section (1) of section 233 of the act has not been met.

MERGER OR AMALGAMATION OF A FOREIGN COMPANY WITH A COMPANY AND VICE VERSA (RULE 25A)

(1) A foreign company incorporated outside India may merge with an Indian company after obtaining prior approval of Reserve Bank of India and after complying with the provisions of sections 230 to 232 of the Act and these rules.

(2) The transferee company shall ensure that valuation is conducted by valuers who are members of a recognised professional body in the jurisdiction of the transferee company and further that such valuation is in accordance with internationally accepted principles on accounting and valuation. A declaration to this effect shall be attached with the application made to Reserve Bank of India for obtaining its approval.

(3) The concerned company shall file an application before the Tribunal as per provisions of section 230-232 of the Act and these rules after obtaining approvals specified.

(4) Notwithstanding anything contained in sub-rule (3), in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate which has been incorporated in a country which shares land border with India, a declaration in Form No. CAA-16 shall be required at the stage of submission of application under section 230 of the Act.

SECTION 233

(1) Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly- owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:—

(a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;

(b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;

(c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and

(d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty- one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

(2) The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the Central Government, Registrar and the Official Liquidator where the registered office of the company is situated.

(3) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the Central Government shall register the same and issue a confirmation thereof to the companies.

(7) A copy of the order under sub-section (6) confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.

Rule 26 - Notice to dissenting shareholders for acquiring the shares

For the purposes of sub-section (1) of section 235 of the Act, the transferee company shall send a notice to the dissenting shareholder(s) of the transferor company, in Form No.CAA.14 at the last intimated address of such shareholder for acquiring the shares of such dissenting shareholders.

SECTION 235(1)

Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

Rule 28 - Circular containing scheme of amalgamation or merger

(1) For the purposes of section 238(1)(a) of the Companies Act, every circular containing the offer of scheme or contract involving transfer of shares or any class of shares and recommendation to the members of the transferor company by its directors to accept such offer, shall be accompanied by such information as set out in Form No. CAA.15.

(2) The circular shall be presented to the Registrar for registration.

FORM NO. CAA.1

[Pursuant to section 230(2)(c)(i) and rule 4]

CREDITOR'S RESPONSIBILITY STATEMENT

I/ We,_____, the creditors of M/s_____for an amount of Rs _____ as on_____do hereby declare that I / we have read and understood the proposed corporate debt restructuring scheme and am / are of the view that it is in my/our best interest to concur with the scheme.

I/ We further declare that the debt is owed to me / us by the company or the liability was created by the company in my/ our favor in good faith and in the ordinary course of business of the company;

I/We believe that the scheme does not give me/us any fraudulent preference at the cost of any secured/ unsecured Creditors.

Signature of creditor/s

Date:

Place:

FORM NO CAA 2

[Pursuant to Section 230 (3) and rule 6 and 7)]

Company Petition No_____of 20

_____ Applicant(s)

NOTICE AND ADVERTISEMENT OF NOTICE OF THE MEETING OF CREDITORS OR MEMBERS

Notice is hereby given that by an order dated the_____ 20_____ the_____ Bench of the National Company Law Tribunal has directed a meeting (or separate meetings) to be held of

[here mention 'debenture holders' or 'first debenture holders' or' second debenture holders' or 'unsecured creditors' or 'secured creditors' or 'preference shareholders' or 'equity shareholders' as the case may be whose meeting or meetings have to be held] of the said company for the purpose of considering, and if thought fit, approving with or without modification, the compromise or arrangement proposed to be made between the said company and [here mention the class of creditors or members with whom the compromise or arrangement or amalgamation is to be made] of the company aforesaid.

In pursuance of the said order and as directed therein further notice is hereby given that a meeting of [here set out the class of creditors or members whose meeting has to be held] of the said company will be held at _____ on_____day of_____20_____ at___ _____o'clock in the noon at which time and place the said [here mention the class of creditors or members] are requested to attend [Where separate meetings of classes of creditors or members are to be held, set them out separately with the place, date and time of the meeting in each case.]

Copies of the said compromise or arrangement or amalgamation, and of the statement under section 230 can be obtained free of charge at the registered office of the company or at the office of its authorized representative Shri _____at____Persons entitled to attend and vote at the meeting (or respective meetings), may vote in person or by proxy, provided that all proxies in the prescribed form are deposited at the registered office of the company at _____ not later than 48 hours before the meeting.

Forms of proxy can be had at the registered office of the Company.

The Tribunal has appointed Shri_____ and failing him, Shri_____as chairperson of the said meeting (or several meetings). The abovementioned compromise or arrangement or amalgamation, if approved by the meeting, will be subject to the subsequent approval of the tribunal.

Dated this_____day of_____20_____

Chairperson appointed for the meeting

FORM NO. CAA.3

[Pursuant to section 230(5) and rule 8]

In the Matter of compromise and / or arrangement of

NOTICE TO CENTRAL GOVERNMENT, REGULATORY AUTHORITIES

To,

The Central Government/

The Registrar of Companies/

The Income-Tax Authorities/

[in all cases]

The Reserve Bank of India/

The Securities and Exchange Board of India/

The Stock Exchanges of ..... /

The Competition Commission of India/

[as may be applicable]

Other sectoral regulator or authorities

[As required by Tribunal]

Notice is hereby given in pursuance of sub-section (5) of section 230 of the Companies Act, 2013, that as directed by the_____ Bench of the National Company Law Tribunal at_____ by an order dated_____ under sub-section (1) of section 230 of the Act, a meeting of the members and / or creditors of (Company's name)_____shall be held on_____to consider the scheme of compromise and / or arrangement of_____with_____at_____ _____-

A copy of the notice and scheme of the compromise or arrangement are enclosed.

You are hereby informed that representations, if any, in connection with the proposed compromise and / or arrangement may be made to the Tribunal within thirty days from the

date of receipt of this notice. Copy of the representation may simultaneously be sent to the concerned company(ies).

In case no representation is received within the stated period of thirty days, it shall be presumed that you have no representation to make on the proposed scheme of compromise or arrangement.

Authorized Signatory

Dated this_____day of 20_____

Place:

Enclosures :

i) Copy of notice with statement as required under section 230(3);

ii) Copy of scheme of compromise or arrangement

FORM NO. CAA.5

[Pursuant to section 230 and rule 15(1)]

[HEADING AS IN FORM NCLT 4]

Petition to sanction compromise or arrangement

The petition of_____Ltd, (*in liquidation by its liquidator) the petitioner above named is as follows:-

1. The object of this petition is to obtain sanction of Tribunal to a compromise or arrangement whereby (here set out the nature of the compromise or arrangement).
2. The company was incorporated under the_____Act_____with a nominal capital of Rs _____divided into shares of Rs_____ each of which_____ shares were issued and Rs was paid up on each share issued.
3. The objects for which the company was formed are as set forth in the company's Memorandum of Association. They are: (Set out the principal objects).

4. [Here set out the nature of the business carried on by the company, its financial position and the circumstances that necessitated the compromise or arrangement and the benefits sought to be achieved by the compromise or arrangement and its effect].
5. The compromise or arrangement was in the following terms:-[Here set out the terms of the compromise or arrangement].
6. By an order made in the above matter on _____the petitioner was directed to convene a meeting of [here set out the class of creditors or members of whom the meeting was to be held] of the company for the purpose of considering and, if thought fit approving with or without modifications. The said compromise or arrangement and the said order directed that [...] or failing him [...] should act as chairperson of the said meeting and should report the result thereof to this Tribunal.
7. Notice of the meeting was sent individually to the [here mention the class of creditors or members to whom the notice was sent] as required by the order together with a copy of the compromise or arrangement and of the statement required by section 231, 232 read with section 230 of the Act and a form of proxy. The notice of the meeting was also advertised as directed by the said order in (here set out the newspapers).
8. On the_____, a meeting of (here mention the class of creditors or members whose meeting was convened) of the company duly convened in accordance with the said order, was held at _____ and the said____, acted as the chairperson of the meeting.
9. The said_____, has reported the result of the meeting to this Hon'ble Tribunal.
10. The said meeting was attended by (here set out the number of the class of creditors or members, as the case may be, who attended the meeting either in person or by proxy), and the total value of their [here mention debts, debentures or shares, as the case may be] is Rs _____[in the case of shares, the total number and value of the shares should be mentioned] representing [_____ percentage] of the total value of debts or debentures or shares_____of the company. The said compromise or arrangement was read and explained by the said_____, to the meeting and it was resolved unanimously [or by a majority of_____ votes against _____votes] as follows:-[Here set out the resolution as passed].
11. The sanctioning of the compromise or arrangement will be for the benefit of the company.
12. Notice of this petition need not be served on any person. The petitioner therefore prays:

(1) That the said compromise or arrangement may be sanctioned by the Tribunal as to be binding on all the [here set out the class of creditors or members of the company on whom the compromise or arrangement is to be binding] of the said company and on the said company.

(2) Or such other order may be made in the premises as to the Tribunal shall deem fit.

Verification etc. Petitioner

[Note: (1) The affidavit in support should verify the petition and prove any matters not proved in any prior affidavit, such as advertisement, holding of meetings, posting of notices, copies of compromise or arrangement and proxies etc., and should exhibit the report of the chairperson and verify the same]

Note: (2) If the company is being wound-up, say so.

Note: (3) If any modifications were made in the compromise or arrangement, at the meeting, they should be set out in separate paragraph.

* To be inserted where the company is being wound-up.

FORM NO. CAA.8

[Pursuant to section 232(7) and rule 21]

In the Matter of compromise and / or arrangement of

Statement to be filed with Registrar of Companies

1.

(a) Corporate identity number (CIN) of company:

(b) Global location number (GLN) of company:

2.

(a) Name of the company:

(b) Address of the registered office of the company:

(c) E-mail ID of the company:

3. Date of Board of Directors' resolution approving the scheme

4. Date of Order of Tribunal approving the Scheme under Section 232(3)

5. Details regarding:-

a) Completed actions under the Order

b) Pending actions under the Order with status

Declaration of compliance of scheme as per the Order of the Tribunal

I, the Director / Company Secretary of _____ do solemnly affirm and declare that we are in compliance with the Order of the Tribunal dated _____.

A copy of the scheme of the compromise or arrangement is enclosed.

_____

Director / Company Secretary

_____

Chartered Accountant in practice / Cost Accountant in practice / Company Secretary in practice

Date:

Place:

Attachments:-

1) **Scheme of Compromise or Arrangement**
2) **Details of Compliance of the Scheme**
3) **Other Attachments, if any**

FORM NO. CAA.9

[Pursuant to section 233(1)(a) and rule 25(1)]

Notice of the scheme inviting objections or suggestions

Notice is hereby given by M/s _____ (transferor / transferee company) that a scheme of merger or amalgamation is proposed to be entered with M/s _____ (transferor / transferee company) and in pursuance of sub-section (1)(a) of Section 233 of the Companies Act, 2013, objections or suggestions are invited in respect of the scheme.

A copy of the scheme of merger or amalgamation is enclosed.

Objections or suggestions are invited from –

(i) the Registrar (mention the details of the Registrar of the area where the registered office of the transferor/ transferee company is situated);

(ii) Official Liquidator (mention the details of the Official Liquidator of the area where the registered office of the transferor company is situated); and

(iii) Any person whose interest is likely to be affected by the proposed scheme.

Any person mentioned in (i) , (ii) or (iii) above, desirous of providing objections or suggestions in respect of the scheme should send their objections or suggestions within thirty days from the date of this notice to _____(the Central Government at _____ (address) and to Shri _____ (address) being authorised representative of the transferor company).

Date :

Place :

Sd/- (mention the details of the authorised representative of the transferor company).

Enclosure: A copy of the scheme of merger or amalgamation

FORM NO.CAA.11

[Pursuant to section 233(2) and rule 25(4)]

Notice of approval of the scheme of merger

(To be filed by the transferee company to the Central Government, Registrar and the Official Liquidator)

1.

(a) Corporate Identity Number (CIN) :

(b) Global Location Number GLN) :

2.

(a) Name of the transferee company:

(b) Registered office address:

(c) E-mail id:

3. Whether the transferor and transferee are:

- Small companies
- Holding and wholly owned subsidiaries

4. Details of transferor

(a) Corporate Identity Number (CIN):

(b) Global Location Number GLN):

Name of the company:

Registered office address:

E-mail id:

5. Brief particulars of compromise or arrangement involving merger:

6. Details of approval of the scheme of merger by the transferee company:

(a) Approval by members

(i) Date of dispatch of notice to members:

(ii) Date of the General meeting:

(iii) Date of approval of scheme in the General meeting:

(iv) Approved by majority of: (members or class of members holding atleast ninety percent of the total number of shares)

(b) Approval by creditors

(i) Date of dispatch of notice to creditors:

(ii) Date of the meeting of creditors:

(iii) Date of approval of scheme in creditors meeting:

(iv) Approved by majority of: (at least nine tenth in value of creditors)

7. Details of approval of the scheme of merger by the transferor company:

(a) Approval by members

(i) Date of dispatch of notice to members:

(ii) Date of the General meeting:

(iii) Date of approval of scheme in the General meeting:

(iv) Approved by majority of: (members or class of members holding atleast ninety percent of the total number of shares)

(b) Approval by creditors

(i) Date of dispatch of notice to creditors:

(ii) Date of the meeting of creditors:

(iii) Date of approval of scheme in such meeting:

(iv) Approved by majority of: (at least nine tenths in value of creditor)

DECLARATION

I_____the director of the transferee company hereby declares that-

(i) Notice of the scheme as required under section 233(1)(a) was duly sent to the Registrars and Official Liquidators of the place where the registered office of the transferor and transferee companies are situated and to all other persons who are likely to be affected by the scheme and a copy of the same has been attached herewith;

(ii) the objections to the scheme have been duly taken care of to the satisfaction of the respective persons;

(iii) the scheme has been approved by the members and creditors of the transferee and transferor company by the requisite majority in accordance with section 233(1)(b) and (d) respectively;

(iv) all the requirements under section 233 of the Act and the rules made there have been complied with; and

(v) to the best of my knowledge and belief the information given in this application and its attachments is correct and complete;

Signature

Date:

Place:

Attachments:

1. Copy of the scheme approved by both creditors and members;
2. Notice sent in accordance with section 233(1)(a);
3. Optional attachments, if any.

FORM NO. CAA.14

[Pursuant to section 235(1) and rule 26]

NOTICE TO DISSENTING SHAREHOLDERS

To,

_____

_____

Notice for acquiring_____shares held by you in M/s__(hereinafter called 'the transferor company')

Notice is hereby given by M/s_____(hereinafter called 'the transferee company') that an offer made by the transferee company on_____to all the shareholders of the transferor company for acquisition of the shares or class of shares at the price of_____has been approved by the holders of_____in value of the shares, being not less than nine-tenth in value of the said shares (other than shares already held at the date of the offer by the transferee company either by itself or by its nominees or subsidiaries).

In pursuance of the provisions of sub-section (1) of section 235 of the Companies Act 2013, notice is further given that the transferee company is desirous of acquiring_____shares held by you in the transferor company at a price of Rs_____, being the price paid to the approving shareholders.

Take further note that if you are not in favour of such acquisition of your shares by the transferee company, then you may apply to the Tribunal within one month hereof. Unless an application is made by you as aforesaid or unless on such application the Tribunal orders otherwise, the transferee company will be entitled and bound to acquire the aforesaid shares held by you in the transferor company on the terms of the above mentioned offer.

Signature

(On behalf of transferee company)

Date:

Place:

APPLICATION IN CASE OPPRESSION AND MISMANAGEMENT & CLASS ACTIONS

APPLICATION TO TRIBUNAL FOR RELIEF IN CASES OF OPPRESSION, ETC

(1) Any member of a company who complains that –

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter."

(3) Where in the opinion of the Central Government there exist circumstances suggesting that—

(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.

(5) Every application under sub-section (3)—

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.

It may be relevant to note that under the 1956 Act, oppression was defined under section 397 & mismanagement was under section 398, however now in the 2013 Act, both now stands merged in a single section under section 241 as far as the meaning of oppression & mismanagement, whereas the powers are defined under section 242.

However in order to understand the meaning of oppression & mismanagement, following judgments are relevant to understand:

"In Re.:V.S Krishnan vs. Westfort Hi-Tech Hospital Ltd. [2008] 142 Comp. Cas. 235 (SC).

The apex court after considering various judgments passed over the years and after considering the facts of the case has held that following conditions are required to be satisfied for invoking section 397.

Oppression would be made out:

(a) Where the conduct is harsh, burdensome and wrong.

(b) Where the conduct is mala fide and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-a-vis the others.

(c) The action is against probity and good conduct.

(d) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether

it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression under Sections 397 and 398.

(e) Once conduct is found to be oppressive under Sections 397 and 398, the discretionary power given to the Company Law Board under Section 402 to set right, remedy or put an end to such oppression is very wide.

(f) As to what are facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact."

Further the judgment of **Bengal Luxmi Cotton Mills Ltd. [1965] 35 Comp Cas. 187 (Cal.)** has held:

"If an applicant before the court wants the court to rely upon charges of fraud and other misconduct and investigate them, he must give particulars. Mere vague allegations of fraud and other misconduct would not be enough, and the court should decline to embark upon an enquiry into such charges of fraud and misconduct. If a minority group of shareholders has not in its possession all the particulars of fraud or other misconduct, it should not expect the court to make any order in its favour after making a rambling enquiry into vague and indefinite charges of fraud made in the petition.

It may be that in some cases the petitioner has not in his possession all the particulars of fraud, but in such a case he would be entitled to discovery, in order to obtain materials for giving the particulars. But, nevertheless, the particulars must be given. If the applicant, in the instant case, did not have the particulars, he could have, and he should have, applied for particulars, if he wanted to rely on the charge of fraud. But merely because the minority group of shareholders generally has not got in its possession all the particulars of fraud or other misconduct, it is not excused or exonerated from giving particulars of fraud or other alleged acts of misappropriation or other misconduct.

The apex court In Re. **Shanti Prasad Jain v. Kalinga Tubes Ltd. [1965] 35 Comp Cas 351 (SC)** has also held that

"The appellant and his group would not get any relief by calling a general meeting of the company, and the facts and circumstances aforesaid would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. Therefore the appellant prayed for directions under Section 397 of the Act, as the winding up of the company which was in a prosperous condition would unfairly prejudice the appellant and other members of the minority group and redress against such oppression could be given by the High Court by making suitable directions in that behalf. The affairs of the company were being conducted in a manner prejudicial to the interest of the company for reasons already stated and there had been a material change in the management or control of the company by alteration in its board of directors and by fraudulent changes introduced in the ownership of the company's shares and by reason of the wrongful act and conduct of the Patnaik and Loganathan groups.

In Harmer's case, it was held that "the word 'oppressive' meant burdensome, harsh and wrongful". It was also held that " the section does not purport to apply to every case in which the facts would justify the making of a winding up order under the ' just and equitable' rule, but only to those cases of that character which have in them the requisite element of oppression."

The phrase "oppressive to some part of the members" suggests that the conduct complained of "should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fairplay on which every share holder who entrusts his money to a company is entitled to rely. But, apart from this, the question of absence of mutual confidence per se between partners, or between two sets of shareholders, however relevant to a winding up, seems to me to have no direct relevance to the remedy granted by Section 210.

It is oppression of some part of the shareholders by the manner in which the affairs of the company are being conducted that must be averred and proved. Mere loss of confidence or pure deadlock does not come within Section 210. It is not lack of confidence between shareholders per se that brings Section 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs and oppression involves

at least an element of lack of probity or fair dealing to a member in the matter of his proprietary right as a shareholder."

As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of Section 397, It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to Section 397."

Thus the meaning of words oppression & mismanagement has to be considered & understood in light of the above judgments. Of course every case depends upon on its own fact, however the above broadly spells out the scope of oppression and mismanagement.

POWERS OF TRIBUNAL (SECTION 242)

(1) If, on any application made under section 241, the Tribunal is of the opinion –

(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was

just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1) an order under that sub-section may provide for –

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

The earlier provision under 1956 Act had provided powers to grant final relief under section 402 & interim relief's under section 403. The present Act now provides for all the powers to grant relief's under section 242. The present section provides extensive specific powers to tribunal to grant relief's by tribunal, though some of the sub section have not been notified as highlighted above.

However in order to understand the powers of tribunal, the following issues & judgments will highlight the powers and relief's which could be granted by the tribunal :

In Re. Dale & Carrinton Investment (P.) Ltd. v. P. K. Prathapan [2004] 122 Comp Cas. 161 (SC), it was held –

In the present the court was concerned with the propriety of issue of additional share capital by the Managing Director in his own favour. The facts of the case do not pose any difficulty particularly for the reason that the Managing Director has neither placed on record anything to justify issue of further share capital nor it has been shown that proper procedure was followed in allotting the additional share capital. Conclusion is inevitable that neither the allotment of additional shares in favour of Ramanujam was bonafide nor it was in the interest of the company nor a proper and legal procedure was followed to make the allotment. The motive for the allotment was malafide, the only motive being to gain control of the company. Therefore, in our view, the entire allotment of shares to Ramanujam has to be set aside.

PRINCIPLE OF CORPORATE DEMOCRACY

On Removal of director without special notice

– Manmohan Singh Kohli (Capt.) v. Venture India Properties P. Ltd., (2005) 123 Com cases 198 : 2005 CLC 1311 : (2004) 6 Comp LJ 452 (CLB)

The dispatch of notice is not bad in law because it is sent from some other post office which is not situated near to the company's registered or working office.

The removal of director without serving the notice u/s 284 is invalid and is an act of oppression & mismanagement. Consequently, the director shall be restored to his original position as director and all subsequent actions taken by the company in this regard would also be null and void.

– B.V. Thirumalai v. Best Vestures Trading P. Ltd., (2004) 4 Comp LJ 519 (CLB)

It is settled proposition of law that further shares could be issued only for the benefit of the company and not with a view to create a new majority, even if the powers to issue shares is vested in the Board. If the purpose of allotment of shares is for upsetting the existing shareholding to the detriment of one group, then such an allotment of shares is to be held an act of oppression.

The procedure u/s 284 for the removal of director shall be followed;
An extraordinary general meeting being conducted without a board meeting is invalid & the director removed at such meeting is invalid and he is entitled to receive the pending remuneration.

If it is proved that a director is fooled by the other for resigning from the post of directorship shall be considered an act of oppression more so, when the company is a family company.

– Naginder Singh Shiena v. R.S. Infrastructures Ltd., (2007) 139 Com Cases 246 : (2008) 86 SCL 90 (CLB)

If it is established that the resolutions in the EOGM were passed with a view to oust the directors from the management of the company and take control of the affairs of the company, then, the same could be agitated in a petition under Sections 397/398 of the Act.

In case of closely held companies, the removal of any shareholder from the board who has been associated with the company for long, could be considered to be an act of oppression and could be agitated in a petition under Sections397/398 of the Act.

ON REMOVAL OF DIRECTOR WITHOUT VALID MEETING

Badri Nath Galhotra v. Aanaam P. Ltd., (2007) 135 Com Cases (2007) 76 SCL 241 (CLB)

If a director in a company in the nature of a quasi Partnership, is removed, it would amount to oppression Board meeting without the quorum is invalid.

REMOVAL OF MANAGING DIRECTOR

SVT Spg. Mills P. Ltd. v. M. Palanisami, (2009) 95 SCL 112 (Mad)

Whether qualification shares are held by the director or not could be decided on evidence but right of the director could not be decided in maintainability of application.

Pooja Joshi v. Century gases & Petro Chemicals Ltd., (2004) 50 SCL 556 (CLB)

Where a suit has been filed against the MD and in the meanwhile a compromise is arrived between the company and the MD and MD neither honors the terms of the compromise nor appears at the hearings, in such a situation the director remaining is entitled to manage and control the affairs of the company.

Mahendra Sahai v. Dhruv Theatres and Productions P. Ltd., (2004) 56 SCL 339 : (2005) 126 Com Cases 164 (CLB)

If it is proved that the shareholding of the MD is fraudulently reduced then he shall be re-instated with his original shareholding, or if he is willing to part with shares, then the company should purchase the shares on valuation to be made by an independent valuer.

REMOVAL OF PROMOTER DIRECTOR

Scholastica Antorny v. Azhimala Beach Resorts P. Ltd., (2007) 78 CLA 224 : (2007) 139 Com Cases 618 (CLB)

The principle of legitimate expectation shall be applied for a promoter- director that it must form part of the board of directors of the Company and can't be removed merely because of not attending an AGM.

LEGITIMATE EXPECTATION IN JOINING COMPANY

Synchron Machine Tools P. Ltd. v. U.M. Suresh Rao, (1994) 79 Com Cases 868 (Kar)

If the affairs of the company are left to be controlled only by only two rival directors, deadlock in its affairs is bound to result so the aggrieved director shall part way with the shares of the company.

DIRECTION FOR PARTING OF WAYS ON VALUATION

Surendra Goyal v. Nile Aqua faucets P. Ltd., (2008) 142 Com Cases 634 : (2008) 88 SCL 224 (CLB)

In a situation where there are counter allegations by one against the other of causing loss to the company and of the other of sale of properties of the company inspite of the CLB restraining it by interim order. The aggrieved shareholder/director shall be directed to part way the shares of the company. The valuer for the purpose is to be appointed with the consensus of the parties or in the alternative a lumpsum amount acceptable to the petitioner may be paid by the respondents to the petitioner with the direction to the petitioner to go out of the company.

ALLOTMENT IN VIOLATION OF STATUTORY PROVISIONS

BNS Steel Trading P. Ltd. v. Orissa Sponge Iron to Steel Ltd., (2010) 154 Com Cases 357 : (2010) 2 Comp LJ 425 : (2010) 96 CLA 199 (CLB)

An allotment of shares in violation of sec.77(2) is not a ground of oppression and such allotment shall not be cancelled even if the shareholders of the company feel oppressed.

ISSUE OF FURTHER CAPITAL AND IMPROPRIETY IN RIGHTS ISSUES

PIK Securities P. Ltd. v. United Western bank P. Ltd., (2001) 4 Comp LJ 81 : (2001) 44 CLA 184 : (2001) 33 SCL 671 (CLB-Del)

As far as the need for additional capital is concerned, it is a managerial decision and a judicial forum, should not interfere with the decision of the Board except when the increase in the share capital is with an ulterior motive and not for the bonafide needs of the company, but, in the garb of raising capital, shares are issued either to consolidate one's position or with a view to create a new majority or to convert a majority into a minority. In such cases, a petition under section 397/398 can be maintained.

Satish Chandra Sanwalka v. Tinplate dealers Assn. P. Ltd., (2001) 3 Comp LJ 284 : (2001) 107 Com Cases 98 : (2001) 32 SCL 338 :(2001) 43 CLA 97 (CLB - Del)

If an existing group of shareholders are not allotted any share in new allotment then such act is an oppressive one and the company shall be directed to transfer suitable number of shares in order to maintain their previous shareholding ratio.

Hardeep Kaur Thinlac Enterprises P. Ltd., (2004) 122 Com cases 944 : (2005) 57 SCL 459 (CLB)

There is no illegality in making further issue of shares where the company needed money for cash payments. Also, the aggrieved shareholders whose shareholding has been reduced or disturbed by such allotment shall be given an option to part with their shares.

Ashok Kumar Oswal v. Panchsheel Textile Mfg. & Trading Co. P. Ltd., (2002) 110 Com Cases 800 : 2001 CLC 1236 : (2002) 38 SCL 252 : (2002) 48 CLA 274 : (2002) 3 Comp LJ 224 (CLB)

Once it is proved that the additional issue of shares is done to gain control, then deemed knowledge and consent of the aggrieved shareholders taken earlier shall be immaterial and such a case is an oppressive one.

Dileep Makhija v. Arun Mittal, (2003) 47 SCL 241: (2004) CLC 209 : (2004) 118 Com Cases 694 : (2004) 59 CLA 177 (Delhi)

No petition a director shall be entertained to whom notice of meeting was not given, if he didn't object to the meetings held earlier.

ALLOTMENT OF SHARES IN FAMILY COMPANY

Navin Ramji Shah v. Simplex Engineering & Foundry Co. P. Ltd., (2007) 76 CLA 1 : (2007) 136 Com Cases 770 (CLB)

In a family company, mere disturbance in the shareholding of existing shareholders is a valid ground of oppression and the Board may order for winding up of the company after considering the interests of the shareholders and the aggrieved shareholders shall be directed to part way the shares of the company and the valuation of shares to be made by an independent valuer.

Ashok K Jain v. Naprod Life Sciences P. Ltd., (2009) 151 Com Cases 212 : (2009) 92 CLA 148 (CLB)

Even if the company is a family company, the rival shareholders shall not be allowed to enter into any settlement during the pendency of the civil suit and the Board appoints an administrator to safeguard the interest of the company and make the Board run the company effectively.

Amrit lal Seth v. Seth hotels P. ltd., (2009) 95 SCL 161 : (2010) 95 CLA 489 : (2009) 148 Comp Cas 651 (CLB)

In a family company of only 4 directors, it is assumed that every director shall be knowing about new allotments and in case it is proved that the director remains unknown about the new allotments then laches shall be applied for filing of petition against the other directors.

ARBITRATION AND RELIEF

Das Lagerway Wind Turbines P. Ltd. v. Cynosure Investments P. Ltd., (2007) 80 CLA 211 (Mad)

Arbitrator cannot grant relief claimed by person in company petition. The scope of the petition filed under Sections 397 and 398 is quite distinct from the scope of the arbitration clause contained in an agreement and reliefs claimed in the company petition cannot be granted by arbitrator and it can be granted by Company Law Board alone by virtue of Sections 397, 398, 402 and 403 of the Companies Act.

Sudershan Chopra (Smt.) v. Company Law Board, (2004) 58 CLA 362 : (2004) 52 SCL 429 [P & H]

Even if arbitration clause is provided in the articles of the company for any dispute among the shareholders, the Court's jurisdiction under Ss. 397 and 398 cannot stand fettered. The shareholder can file suit against the company in case of oppression. The statutory jurisdiction of the Company Law Board and the right of appeal against its orders cannot be ousted even by the consent of parties.

Airtouch International (Mauritius) ltd., v. RPG Cellular Investments and Holdings P. Ltd., (2004) 121 Com Cases 647 : 2004 CLC 987 : (2004) 53 SCL 1 (CLB)

If there is dispute arose out of the shareholders agreement and such agreement provides for the arbitrator to handle the dispute , in such a case CLB shall not entertain the petition.

Premier Automobiles Ltd., v. Fiat India P. Ltd., (2007) 137 Com Cases 737 : (2006) 6 Comp LJ 595 : (2007) 77 SCL 38 (CLB)

If in the shareholders' agreement that of joint venture, company is not a party, the company is only a party of the escrow agreement i.e. agreement related only to the safe custody of the share certificates and has nothing to do with the affairs of the company, the shareholders are allowed to file petition u/s 397.

Rajendra Kumar Tekriwal v. Unique Construction P. Ltd. (2009) 147 Com Cases 737: (2008) 82 CLA 274 (CLB)

The action of the Company and its Board of Directors in removing the shareholders of the company is illegal and is a matter covered under section 397 and can't be referred to arbitration.

CONSEQUENCE OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS (SEC 243)

(1) *Where an order made under section 242 terminates, sets aside or modifies an agreement such as is referred to in sub-section (2) of that section, –*

(a) *such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;*

(b) *no managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company.*

(1A) The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

(1B) Notwithstanding anything contained in any other provision of Companies Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.]

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

(2) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) or sub-section (1A), and every other director of the company who is knowingly a party to such contravention, shall be punishable with fine which may extend to five lakh rupees.

RIGHT TO APPLY UNDER SECTION 241

(1) The following members of a company shall have the right to apply under section 241, namely:–

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause or clause (b) so as to enable the members to apply under section 241.

Explanation. – For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

APPLICATION /PETITION/ APPEAL IN THE FORM OF AFFIDAVIT UNDER SECTION ____ OF THE ACT FOR.....

I, ... solemnly affirm and say as follows:

1. I am the Managing Director or Chairman of the Board of Directors/a director/ ..... Of the above named company, and I have been a of the company since..... 201. ..... [the capacity in which the deponent swears to the affidavit should be set out.]
2. I have read the petition now shown to me and state that the statements made in paragraph ____ to ____ thereof are correct and true to my knowledge.
4. Facts of the order against which appeal or review is filed.
5. The facts of the case are given below: (give here a concise statement of facts and other grounds in a chronological order, each paragraph containing as neatly as possible as separate issue, fact or otherwise).
6. **Jurisdiction of the Tribunal:** The applicant/ petitioner/ appellant declares that the matter of application/petition/ appeal falls within the jurisdiction of the Tribunal.
7. **Limitation:** The applicant/ petitioner/ appellant further declares that the application/petition/ appeal is within the limitation as prescribed in the provision of section read with section 433 of the Act.
8. **Matter not pending with any other Tribunal etc:** The applicant/ petitioner/ appellant further declares that the matter regarding with this application/ petition/ appeal has been made is not pending before any Tribunal of law or any other authority or any other Tribunal.
9. Particulars in respect of the fee paid in terms of the Schedule of Fees of these rules:
   1. Amount of fees
   2. Name of the Bank on which Demand Draft is drawn or Online Payment is made
   3. Demand draft number.
10. **Details of Index:** An index containing the details of the documents to be relied upon is enclosed.
11. **List of enclosures:**
12. It is therefore prayed that directions may please be given:

1. **Relief(s) sought:** In view of the facts mentioned in paragraph 5 above, the applicant/ petitioner/ appellant prays for the following relief(s) (Specify below the relief(s) sought explained the grounds for relief(s) and the legal provisions, if any, relied upon).
2. **Interim order, if prayed for:** Pending final decision of application/ petition/ appeal, the applicant/ petitioner/ appellant prays for the following interim relief: (Give here the nature of the interim relief prayed for with reasons)

Dated this_____day of_____20_____

(Signature of the applicant/ petitioner/ appellant)

Solemnly affirmed before me at on this (month)_____day of_____20_____

(signature)

APPLICATION FOR CLASS ACTIONS

1. Individual shareholders generally do not take legal action against a company, either on account of lack of enough motivation or finding it economically unaffordable, or because the law requires a certain percentage of shareholding for proceeding against a company.
2. Thus, small and retail investors generally find it difficult to be heard and instead their grievances are redressed either from the company or courts in general.
3. Class action suits seem to provide an answer to this problem by bringing together similar individuals under a single lawsuit, thereby supporting the cost of litigation and inspiring the required confidence.
4. Thus, Class action is simply filing a law suit in a larger group instead of individual suits where there are numerous persons having the same interest in that suit.

TYPES OF CLASS ACTION SUITS

a. **Product liability/Personal Injury Class Actions:** Such law-suits are brought when a defective product or deficient service harms many people, for example, a drug with harmful side effects, or causing "mass accident".

b. **Consumer Class Actions:** Most common type of class action suits, these class actions suits are generally brought when a company's systematic and illegal practices harm a group of consumer, such as violation of consumer protection laws, illegal charges and penalties etc.

c. **Employment Class Actions:** Brought on behalf of employees of a company for contravention of the Labor laws, such as unpaid overtime, safety violations, workplace discrimination among others.

d. **Securities Class Actions:** Securities class actions are lawsuits brought on behalf of a group of investors who have been injured as a result of a improper conduct, corporate or otherwise by the management of a company. It includes all illegal practices ranging from misstating earnings to concealing or misrepresenting risks and all unethical practices.

Two factors are always present in every class action suit (pre-requisites) are:

1. The issues in dispute are common to all the members of the class (group), and
2. The persons affected are so large in number that it is impracticable to bring them all before the court.

ACTIONS UNDER THE CPC

Actions under CPC can be filed by the concerned persons before a court by seeking the permission of the court or by the direction of the court. The action must be filed before the appropriate court with requisite territorial and pecuniary jurisdiction. While territorial jurisdiction is determined based on (among others) cause of action and/or locations of defendants, pecuniary jurisdiction is based on the valuation of the lawsuit, and differs across different states in India.

To bring an action the following conditions must be met:

(a) Numerous parties must be present in the representative action.

(b) All parties must share the same interest (commonality of interest).

(c) The action is maintainable only upon seeking prior permission of the court.

(d) On permission being given by court, the court must issue notice to all the interested parties.

(e) No part of the action can be withdrawn or a compromise recorded unless notice is given to all interested persons.

(f) If the person suing or defending in representative capacity is not acting with due diligence, the court can substitute in his place any other person with the same interest in the representative action.

Consequently, a decree passed by the court in a representative action will be binding on all persons on whose behalf, or for whose benefit, the suit was instituted, or defended.

In addition, section 91 empowers two or more persons to file a suit with the permission of the court to seek a declaration and injunction or any such other relief against public nuisance or other wrongful act affecting, or likely to affect the public. Such an action can be brought even if no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

ACTIONS UNDER THE CONSUMER PROTECTION ACT (CPA)

The CPA seeks to provide simple and speedy redressal to consumer disputes by establishing quasi-judicial machinery at district, state and national levels. Depending on the value of the claim, a complaint under the CPA can be filed before the:

(a) District Forum (for claims of up to INR 20 lakhs). This is a consumer dispute redressal forum established by the State Government in each district of the State by notification.

(b) State Commission (for claims of between INR 20 lakhs and INR 1 crore). This is a Consumer Disputes Redressal Commission established by the State Government in the State by notification.

(c) National Commission (for claims of more than INR 1 crore). This is the Consumer Disputes Redressal Commission established by the Central Government by notification.

Under section 12(1)(c) of the CPA, one or more consumers with the same interest (as well as consumers acting on behalf of, or for the benefit of all consumers) can file a complaint with the District Forum in relation to:

(a) Any goods sold or delivered, or agreed to be sold or delivered.

(b) Any service provided, or agreed to be provided.

(c) Such a complaint can only be filed with the permission of a District Forum.

ACTIONS UNDER THE COMPETITION ACT

1. Applications under the Competition Act must be filed before the Competition Appellate Tribunal (COMPAT).
2. The Competition Act recognises that the conduct of parties may affect numerous parties for whom an individual claim may not be viable, accordingly, it provides for class actions as a form of redressal for numerous parties affected by anti-competitive conduct.
3. Where numerous persons with the same interest have suffered loss or damage caused by the anti-competitive conduct of an enterprise, one or more such persons as well as persons acting for and on behalf of all persons can make an application to the COMPAT for the recovery of compensation for any loss or damage suffered.

However, an application for compensation can only be made to the COMPAT either:

(a) When the CCI or the COMPAT has determined in the prior proceedings that there has been a violation of the provisions of the Competition Act.

(b) Where section 42A or section 53Q(2) of the Competition Act apply. These provisions provide a right to make an application for compensation when parties have suffered damage as a result of an enterprise contravening directions from the CCI or COMPAT.

In such cases, the provisions of CPC apply subject to the following modifications:

(a) Every reference therein to a lawsuit must be construed as a reference to the aforementioned application to the COMPAT.

(b) Every reference to a decree must be construed as a reference to the order of the COMPAT.

PUBLIC INTEREST LITIGATION

Public Interest Litigation ("PILs") in common parlance means a legal action filed for the interest of general public. Class Action has been brought up on the same lines but there are some key differences between the two of them. Class Action can be filed against any entity including private entities whereas PILs can only be filed against State or Public Authorities in High Court or Supreme Court. Representative in the Class Action Suit must suffer an injury or have interest in the claim whereas there is no such requirement in PIL for the plaintiff.

INDUSTRIAL DISPUTES/COLLECTIVE BARGAINING UNDER THE INDUSTRIAL DISPUTES ACT (IDA)

1. Representative actions through collective bargaining can be said to be permitted under the IDA, as industrial jurisprudence is based on class-action or representative litigation.
2. The IDA permits collective bargaining by employees/workers as represented by their unions.
3. The concept was evolved to enable poor workmen to unite together and press their demand collectively in order to confront a powerful employer.

CLASS ACTION SUITS UNDER THE COMPANIES ACT, 2013 AND NCLT RULES

This provision provides that a lawsuit can be filed, or any other action may be taken by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus under the following provisions of 2013 Act:

- Section 34 (criminal liability for misstatements in a prospectus).
- Section 35 (civil liability for misstatements in a prospectus).
- Section 36 (punishment for fraudulently inducing persons to invest money).

PERSONS ELIGIBLE TO LAUNCH CLASS ACTION SUITS

Only members and depositors can bring class action suits.

As per Section 245(3)(i), the requisite numbers of members who can maintain a Class Action are specified as under:

(a) In the case of a company having a share capital, more than one hundred members of the company or such percentage of the total number of its members as may be prescribed, whichever is less; or any member or members holding more than such percentage of the issued share capital of the company as may be prescribed.

(b) In case of a company not having share capital more than one- fifth of the total number of its members.

As per Section 245(3)(ii), the number of depositors required to file class action are more than 100 in number or more than such percentage of the total number of depositors as may (be prescribed, whichever is less, or (any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

PERSONS AGAINST WHICH ACTION CLASS ACTIONS CAN BE FILED

Class actions may be filed against:

(a) The company or its directors;

(ii) The auditor;

(iii) Any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful actor conduct or any likely act or conduct on his part.

FACTORS TAKEN INTO ACCOUNT BY NCLT

According to Section 245(4), while considering the application, the NCLT shall take into account:

(1) whether the applicants are acting in good faith;

(2) evidence as to the involvement of any person other than the directors or officers of the company;

(3) whether the applicants could have pursued the action in their own and individual rights;

(4) evidence as to the views of the members or depositors who have no personal interest, direct or indirect in the matter in question;

(5) whether the cause of action is an act or omission that is yet to occur can be authorized by the company before it occurs or ratified by the company before it occurs;

(6) whether the cause action is an act or omission that has already occurred can be ratified by the company.

PLACE OF INSTITUTION

Section 245(1) of the Companies Act provides that class action lawsuits initiated under the Companies Act must be initiated before the National Company Law Tribunal (NCLT).

COSTS AND EXPENSES

Costs and expenses with regard to class action suits shall be borne by the company and the person responsible for the onerous act. It is pertinent to note here that the section casts the liability to bear costs of application upon the person who does or is responsible for such act.

CONSEQUENCES OF NON-COMPLIANCE WITH THE ORDERS OF THE TRIBUNAL

In the event of non-compliance of the order passed by the Tribunal under Section 245(7):

(a) A company shall be punishable- with fine which shall not be less than 5 lakh rupees but which may extend to 25 lakh rupees; and

(b) every officer of the company who is in default can be punished with imprisonment for a term upto 3 years and imposed a fine of not less than Rs.25,000 extendable upto Rs.1 lakh.

PROCEDURAL ASPECTS RELATING TO CLASS ACTION SUIT (AS PER NCLT RULES, 2016)

RULE OF OPT-OUT

Rule 86 of NCLT Rules deals with opting out of class action suit and stipulates that:

(1) A member of a class action under section 245 of the Act is entitled to opt-out of the proceedings at any time after the institution of the class action, with the permission of the Tribunal, as per **Form No. NCLT-1.** A copy of Form NCLT-1.

(2) A class member who receives a notice under Section 245(5)(a) of the 2013 Act shall be deemed to be the member of a class, unless he expressly opts out of the proceedings, as per the requirements of the notice issued by the Tribunal.

(3) A class member opting out shall not be precluded from pursuing a claim against the company on an individual basis under any other law, where a remedy may be available, subject to any conditions imposed by the Tribunal.

PUBLICATION OF NOTICE

Rule 87 of NCLT Rules deals with publication of Notice and stipulates that:

(1) On the admission of an application filed under Section 245(1), a public notice shall be issued by the Tribunal as per **Form No. NCLT-13** to all the members of the class by-

(a) publishing the same within seven days of admission of the application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the State in which the registered office of the company is situated and at least once in English in an English newspaper that is in circulation in that State;

(b) requiring the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper. The Rules also prescribe that the aforesaid notice is also required to be placed on the websites of NCLT and the Ministry of Corporate Affairs, the concerned Registrar of Companies and in respect of a listed company on

the website of the concerned stock exchange where the company has any of its securities listed, until the application is disposed of by the NCLT.

(2) The date of issue of the newspaper in which such notice appears shall be considered as the date of serving the public notice to all the members of the class.

(3) The cost or expenses connected with the publication of the public notice under this rule shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act in case order is passed in favour of the applicant.

LIMITATION

The 2013 Act and the Limitation Act do not provide for a specific period within which a specialised class action for securities litigation under section 245 must be made. However, Article 137 of the schedule to the Limitation Act prescribes a maximum period of three years for a cause of action for which no specific period is prescribed. Accordingly, the limitation period for such actions will be deemed to be three years (however, this remains untested).

APPLICATION FOR COMPOUNDING

MEANING OF COMPOUNDING

Compounding of Offence is not defined under Companies Act, 2013, but as per Black's Law Dictionary, Compound means to settle a matter by a money payment, in lieu of other liability.

Compounding of offence may be summed up as a judicial settlement mechanism whereby the default is made good by paying the penalty in lieu of undergoing consequences of lengthy prosecution for the offence committed.

Therefore, compounding crime consists of receipt of some consideration (termed as a compounding fee) in return for an agreement not to prosecute one who has committed an offence/default of technical in nature which enables the defaulters to avail peace and honorable discharge and avoid cumbersome trial.

Hence, when compounding is done, the prosecution is converted into fine i.e. condonation of prosecution by imposing penalty.

NATURE OF OFFENCES WHICH CAN BE COMPOUNDED

Section 441 of the Companies Act 2013 classifies Offences/ defaults which are punishable with fine only or with imprisonment or fine or both, can be compounded either by the National Company Law Tribunal, Regional Director with or without the permission of the Special Court. In other words, the offences, which are punishable with imprisonment only or imprisonment and fine, cannot be compounded.

JURISDICTION FOR COMPOUNDING OF OFFENCES

The power of compounding which is vested with National Company Law Tribunal/Regional Director/ Person authorized by Central Government is categorized in a following arrangement:

- If the **fine does not exceed Rs. 25 lakhs,** the offence can be compounded by the Regional Director or any other officer as may be authorized by the Central Government;
- If the **offence is punishable with fine exceeding Rs 25 lakhs**, the same can be compounded by the National Company Law Tribunal; and,

If the offence punishable with imprisonment or fine/ with imprisonment or fine or with both shall be compoundable with the permission of Special Court. Application for Compounding can be filled in e-form **GNL-1.**

PROCEDURE FOR COMPOUNDING OF OFFENCE

- Prepare the compounding application alongwith the following documents:
- Affidavit verifying the application
- Memorandum of appearance or Power of Attorney
- Copy of notice from RoC if any
- Other necessary documents
- File e-form GNL-1

- Joint application by the Company and Officer in default can be made
- Based on the quatum of penalty, ROC will forward the application to RD or NCLT
- Passing of order by RD or NCLT
- File e-form INC 28 for intimation of Order.

ADJUDICATION AND E-ADJUDICATION

SECTION 454 OF THE COMPANIES ACT, 2013 PROVIDES THE SUBSTANTIVE LAW RELATING TO ADJUDICATION OF PENALTIES FOR COMPANIES

The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of Companies Act in the manner as may be prescribed.

The adjudicating officer may, by an order-

(a) impose the penalty on the company, the officer who is in default, or any other person, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, to rectify the default, wherever he considers fit.

However, in case the default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub- section (2) of section 137 and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.

The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company, the officer who is in default or any other person.

Any person aggrieved by an order made by the adjudicating officer under sub-section (3) may prefer an appeal to the Regional Director having jurisdiction in the matter.

Every appeal as mentioned above shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person.
The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

PETITION FOR WINDING UP

According to section 272(1), subject to the provisions of this section, a petition to NCLT for the winding up of a company shall be presented by—

(a) the company;
(b) any contributory or contributories;
(c) all or any of the persons specified in clauses (a) and (b);
(d) the Registrar;
(e) any person authorised by the Central Government in that behalf; or
(f) in a case falling under clause (c) of sub-section (1) of section 271, by the Central Government or a State Government.

Section 272(2) provides that a contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.

Section 272(3) provides that the Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) of that section. Provided that the Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition. Provided further that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations. Section 272(4) provides that a petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.

Section 272(5) provides that a copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.".

THE COMPANIES (WINDING UP) RULES, 2020

Petition for winding up (Rule 3)

(1) For the purposes of sub-section (1) of section 272, a petition for winding up of a company shall be presented in Form WIN 1 or Form WIN 2, as the case may be, with such variations as the circumstances may require, and shall be presented in triplicate.

(2) Every petition shall be verified by an affidavit made by the petitioner or by the petitioners, where there are more than one petitioners, and in case the petition is presented by a body corporate, by the Director, Secretary or any other authorised person thereof, and such affidavit shall be in Form WIN 3.

FORM WIN I

[See rule 3(I)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH AT

IN THE MATTER OF_____LTD (give the name of the company) (Company incorporated under Companies Act,_____)

Petition No_____of 20

Petitioner Petition of winding-up

The petition of (full name, description, occupation and address of petitioner) showeth:

1. The address of the petitioner above named for the service of all notices, processes, etc., is that of his representative Shri at_____.
2. The company above named, viz., (hereinafter referred to as 'the company') was incorporated in the month of_____19____/20____. under the (Companies Act,_____) as a public (private) company limited by shares/limited by guarantee/as an unlimited company.
3. The registered office of the company is situated at____.
4. The nominal capital of the company is Rs.divided into_____shares of Rs_____each. The amount of capital paid up or credited as paid-up is Rs_____(or as the case may be.
5. The objects for which the company was incorporated are (herein set out the main objects) and any matter considered necessary for furtherance thereof set forth in the memorandum of association thereof.

6,7,8 etc. [Here set out in numbered paragraphs, as may be necessary, the facts on which the petitioner relies in support of the petition. Where the petitioner is a contributory, the petition should state whether the conditions of sub-section (2) of section 272 are satisfied. Where the petition is presented by the Registrar of Companies or by a person authorised by the Central Government, the order' of sanction or authorisation of the Central Government should be annexed to the petition. After setting out the facts conclude as follows:

PRAYER

The petitioner, therefore, prays as follows:-

(1) That the____Co., Ltd. be wound up by the Tribunal under the provisions of the Companies Act, , and

(2) Such other order may be made in the premises as shall be just.

Representative of Petitioner

Petitioner

Note: It is intended to serve this petition on ___

ENCLOSURES

1. Where the petition is presented by the Registrar of Companies or a person authorized by the Central Government, the order of sanction or authorisation of the Central Government.
2. Statement of affairs in FORM WIN4 _____ in case winding up petition is being filed by the company.

FORM WIN 2

[See rule 3(1)]

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

_____ BENCH AT

IN THE MATTER OF_____LTD (give the name of the company) (Company incorporated under Companies Act,_____)

Petition No_____of 20

Company Limited – Petitioner Petition by company

The petition of_____Co. Ltd., the petitioner herein, showeth as follows:-

1. The address of the petitioner above named for the service of all notices, processes, etc., is that of his representative Shri at.
2. The company above named, viz., (hereinafter referred to as 'the company') was incorporated in the month of____ 19 ___ /20__ . under the (Companies Act,_____) as a public (private) company limited by shares/limited by guarantee/as an unlimited company.
3. The registered office of the company is situated at_____.
4. The nominal capital of the company is Rs_____divided into_____shares of Rs _____each. The amount of capital paid up or credited as paid-up is Rs____(or as the case may be.
5. The objects for which the company was incorporated are (herein set out the main objects) and any matter considered necessary for furtherance thereof set forth in the memorandum of association thereof.
6. Where the company is already being wound-up voluntarily or by the Tribunal, the facts showing that the voluntary winding-up or winding-up by the Tribunal, as the case may be, cannot be continued with due regard to the interests of the creditors or contributories or both, should be set out.
7. By a special resolution of the company duly passed in accordance with section 271 of the Companies Act, 2013, at a general meeting thereof, held on the_____ day of_____ 20____, after due notice as provided in the Act, it was resolved unanimously (or, by a majority of. votes against votes) as follows:-

(Here set out the resolution)

[Here set out in paragraphs the facts relating to the financial position of the company and the circumstances that have led to the passing of the special resolution.]

8. The petitioner therefore prays as follows:-

(1) That the____Co., Ltd., may be wound-Up by the Tribunal under the provisions of the Companies Act, , and

(2) Such other order may be made in the premises as shall be just.

Representative for the Petitioner

Petitioner

APPEALS BEFORE NCLAT (Section 420)

National Company Law Tribunal may pass any orders it thinks fit, as long as it gives the parties before it, an opportunity of being heard. The powers of the Tribunal are, therefore, extremely wide and there are no restrictions on the kind of relief that it can grant in a particular case. The Tribunal may also rectify any mistake that is apparent on the face of the record within two years from the date of the order.

APPEAL FROM THE ORDERS OF NCLT (SECTION 421)

(1) any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

(2) no appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.

(3) every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees as may be prescribed. Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of **forty-five days** from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

"ANY PERSON AGGRIEVED" MEANS

In common judicial parlance the term person aggrieved by a decision includes :

(a) a person whose interests are adversely affected by the decision; or

(b) in the case of a decision by way of the making of a report or recommendation – a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation.

A party or a person is aggrieved by a decision only when it operates directly and injuriously upon his personal, pecuniary or proprietary rights. A person who feels disappointed with the result of a case is not a person aggrieved. The order must cause him a legal grievance by wrongfully depriving him of something.

Who is a 'person aggrieved' also was debated and decided in catena of judicial pronouncements. In FERTILIZER COOPERATION KAMGAR UNION v. UNION OF INDIA, AIR 1981 SC 344 and BANGALORE MEDICAL TRUST VS. MUDDAPPA, AIR 1991 SC 1902 the Court found that question of 'person aggrieved' is different from the question whether the petitioner is entitled to relief as prayed by him. The expression 'person aggrieved' denotes an elastic and to some extent an elusive concept. According to traditional theory, only a person whose right has been infringed can apply to the court but the later view as referred to above has liberalised the concept of aggrieved person and the right duty pattern commonly found in adversarial litigation has been given up. The only limitation is that such a person should not be a total stranger known as meddlesome interloper.

In the case of Ayaaub Khan Noor Khan Pathan v. State of Maharashtra [(2013) 4 SCC 465], the Hon'ble Supreme Court has held that only a person who has suffered a legal injury can challenge an act/action/order etc. in a court of law by way of a writ under Article 226 of the Constitution of India. Writs under Article 226 of the Constitution of India are maintainable either for the purpose of enforcing a legal or fundamental right or when there is a sustainable complaint by the petitioner that there has been a breach of statutory duty on part of the authority qua him and to his prejudice thus making out a judicially enforceable right of his for enforcement. It has been held in the aforesaid case by the Hon'ble Supreme Court that it is implicit in the exercise of the extraordinary equitable jurisdiction of the High Courts that the relief prayed for must be for the enforcement of a legal right. A "legal right" has been held to mean entitlement arising out of legal rules. Concluding in para 17 of the aforesaid report on

the question as to **who is a "person aggrieved"**, the Hon'ble Supreme Court has held that "in view of the above, law on the said point can be summarised to the effect that a person who raises a grievance must show how he has suffered a legal injury".

LIMITATION PERIOD FOR FILING APPEAL

The Supreme Court in the case of N. Balakrishnan v. M. Krishnamurthy AIR 1998 SC 3222 has held that unless there is a deliberate, malafide or gross negligence, reasonable delay should be condoned in as much as a person does not benefit by filing a petition with delay. Once no malafides or illegal motive can be imputed to a person to file a petition with delay, delay should ordinarily be condoned.

A question arises, whether provisions of Section 5 of Limitation Act, 1963, are applicable to an appeal filed under Section 421 of Companies Act 2013.

Words used in (3) proviso to Section 421 of 2013 Act are "not exceeding 45 days" thereby clearly prescribing time limit of only 45 days, in addition to initial period of 45 days allowed under Section 421(3), to enable a party to file an appeal against the orders of Tribunal. The said proviso clearly shows that power vested in Appellant Tribunal to condone delay on sufficient cause being shown is directory and subject to discretion vested in the Appellant Tribunal. However, maximum period to extent of which such delay is capable of being condoned is mandatorily prescribed and not open to exercise of any discretion. Therefore, words "not exceeding 45 days" would amount to an express exclusion within meaning of Section 29(2) of the Limitation Act, 1963 and would therefore bar application of Section 5 of Act, 1963 to Section 421 of Companies Act 2013. In view thereof, scheme of Act, 2013, surely supports curtailment of Appellant Tribunal's powers by exclusion of operation of Section 5 of Act, 1963. The legislative intent as reflected from the Companies Act, 2013, resulting in the constitution of the NCLAT and the Section 421 providing for a limited appeal make it abundantly clear that the Legislature intended to restrict the power of the Appellant Tribunal to condone the delay beyond the period exceeding 45 days and thus prescribed in a mandatory language as under:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

The Hon'ble Supreme Court in Union of India v. Popular Construction Co. [2001] 8 SCC 470, if there were any residual doubt on the interpretation of the language used in Section 10F, the legislative intent behind the constitution of the Company Law Board and the object of insertion of Section 10F would resolve the issue involved of curtailment of the court's power with the exclusion of the operation of Section 5 of the Limitation Act, 1963.

"DELAY SHALL BE CONDONED WHEN SPECIAL STATUTE ITSELF EXPRESSLY PROVIDES FOR IT."

Manohar Lal Sharma v. Union Of India (UOI) and ANR. 2009 (6) ALD 315, [2009] 152 Comp Cas 412 (AP), (2010) 1 Comp LJ 19 (AP)

As to the applicability of Section 5 of the Limitation Act, the learned judge considered the question in the light of the law laid down by the apex court in

Union of India v. Popular Construction Co. [2001] 8 SCC 470 : AIR 2001 SC 4010 and Gopal Sardar v. Karuna Sardar [2004] 4 SCC 252, and laid down as follows):

"There is no dispute that the Companies Act, 1956, is a special law. Under the normal circumstances, the provisions of the Limitation Act will have application to all appeals and applications under the Companies Act, unless a different period of limitation is prescribed. As noticed herein above, the company law itself has prescribed a period of limitation for filing the appeal and also for condonation of delay. Hence, condonation of delay for filing the appeal beyond the prescribed period of limitation is by virtue of the proviso to Section 10F. This proviso can be considered to be akin to Section 5 of the Limitation Act. However, the proviso imposes limitation for extension of time in filing the appeal beyond the prescribed period of limitation, the expression used in Section 10F being 'further period not exceeding, sixty days'... The proviso to Section 10F has created an absolute bar for extension of period of limitation beyond sixty

days apart from the period of limitation of sixty days prescribed under Section 10F. The expression 'not exceeding' does not permit any further extension and it seems that the true import, purport and construction of the proviso is to restrict the total period of limitation to 120 days, i.e., sixty days principal and sixty days by extension subject to existence of sufficient cause in a given case. Any other interpretation would amount to committing violence to the statute itself which is impermissible under law.

YET AGAIN, THE COURT RULED

...it is abundantly clear that where particular statute does not apply to Section 5 of the Limitation Act expressly or even impliedly in a special or local law itself, it shall be presumed that the exclusion is express. Section 29(2) of the Act not only excludes the application of Section 5 of the Limitation Act but also other sections from Sections 4 - 24 (inclusive). Thus, Section 14 also stands excluded from its application for purposes of either condoning the delay or exclusion of the period on the ground envisaged therein notwithstanding existence of sufficient cause. Thus, even if the period spent before the Hon'ble Delhi High Court constitutes sufficient cause for extension of period under Section 5 read with Section 14 of the Limitation Act, these sections cannot be applied de hors proviso to Section 10F to extend the limitation beyond sixty days in addition to the original period of sixty days (total 120 days) for filing an appeal as proviso to Section 10F does not permit such extension."

Any appeal filed beyond the maximum period prescribed in the special statutes will be barred by limitation. **Kabul Chawla v. CPI India Real Estate Ventures Limited and Ors.** Therefore no appeal will be entertained by the Appellate Tribunal after the expiry of 45+45=90 days.

In **'Union of India vs. M/s. Popular Construction Co.', AIR 2001 SC 4010** the Supreme Court has held that the provisions of Section 5 cannot be invoked since in Section 34(3) of Arbitration Act, 1996, while fixing the time period for filing objections challenging the Award of the Arbitral Tribunal, the words used "but not thereafter" meaning thereby the legislature intended that no further time can be granted to the petitioner for filing objections under Section 34(3) of Arbitration Act, 1996 by invoking the provisions of Section 5 of Limitation Act. Therefore, to sum up, if the words used in any particular legislation convey legislative

intent that the petitioner shall not be entitled to further time by invoking the principle of Section 5 of Limitation Act, then the provisions Limitation Act, 1963 shall not apply.

"SUFFICIENT CAUSE"

A litigant who failed to file an Appeal before the appellant Tribunal within the permissible time period as fixed then he can file it after the expiry of the prescribed time period provided he has "sufficient cause" for non- filing the Appeal within the time period. In Dinabandhu Sahu v. Jadumoni, Mangaraj, AIR 1954 SC 411, the Supreme Court approve of the dicta in Krishna v. Chathappan, that 'sufficient cause' should receive a liberal construction so as to advance substantial justice, when no negligence, nor inaction, nor want of bonfide is imputablle to the appellant. If sufficient cause is shown, the court has to exerciseits discretion in favour of the appellant. The true guide for the court in its exercise of such discretion is wether the appellant had acted with reasonable diligence in prosecuting his appeal. But the circumstances of each case must be examined to see whether they fall within or without the terms of this general rule.

In Maniben Devraj Shah v. Municipal Corporation of Brihan Mumbai, (2012) 5 SCC 157, the Supreme Court has ruled thus:
What needs to be emphasized is that even though a liberal and justice-oriented approach is required to be adopted in the exercise of power under Section 5 of the Limitation Act and other similar statutes, the courts can neither become oblivious of the fact that the successful litigant has acquired certain rights on the basis of the judgment under challenge and a lot of time is consumed at various stages of litigation apart from the cost.

What colour the expression "sufficient cause" would get in the factual matrix of a given case would largely depend on bona fide nature of the explanation. If the court finds that there has been no negligence on the part of the applicant and the cause shown for the delay does not lack bona fides, then it may condone the delay. If, on the other hand, the explanation given by the applicant is found to be concocted or he is thoroughly negligent in prosecuting his cause, then it would be a legitimate exercise of discretion not to condone the delay.

It is axiomatic that condonation of delay is a matter of discretion of the Court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncontainable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory.

"APPEAL FROM AN ORDER OR DECISION"

A similar phrase has been used in several statutes. The expression "any decision or order", is of wide amplitude and would include all orders or decisions passed by the Board. Cf. **Kantilal Shah v. CC 1982 ELT 902(CAL).**

The expression is wide enough to include interlocutory orders passed by the board. An appeal against an order which did not decide the rights of the parties is maintainable. **Gharib Ram Sharma v. Daulat Ram Kashyab, (1994) 80 Com Cases.**

Where in a case before the Bombay High Court, during the pendency of an appeal against dismissal of a winding up petition, an application was made to CLB [now Tribunal under the 2013 Act] for appointment of an administrator for prevention of mismangement under scetopn 398 of 1956 Act[corresponding to section 241 of the 2013 Act] and the same was admitted under an order that the matters of mismanagement would not be raised in the winding up petition and an appeal was made to the same High Court against this order also. The court refused to dismiss it summarily but ordered that if an adminsitrator was appointed by the CLB, 14 days' time should be given to any aggrieved party to prefer an appeal against an order. **Thakur Savadikar & Co. (P.) Ltd. v. S.S. Thakur, (1996) 23, CORPT LA 170(BOM).**

An order of the CLB in a matter for reference to arbitration under section 8 of the Arbitration and Conciliation Act,1996 is not appealable in view of the fact that scetion 5 of that Act permits appeals to judicial authorities only in the matters specified in that section and the

order of reference is not one of those matters. Hind Samachar Ltd. v.. Union of India (UOI) and Ors.

OPPORTUNITY OF BEING HEARD

SECTION 421(4) OF COMPANIES ACT 2013

Opportunity to be heard means the chance to appear before a court or Tribunal to present evidence and argument before being punished by governmental authority. An opportunity to be heard before penalty or punishment is imposed for contempt is an indispensable essential to the administration of due process of law as contemplated by the constitutional inhibition.

What is "opportunity of being heard"? The Karnataka High Court in Karibasappa Kuravateppa Maradibankar vs. Assistant Commissioner, ILR 1997 Karnataka 2236 held:

It is well settled that the right of oral or personal hearing is not an essential element of natural justice. No doubt, a person sought to be proceeded against is entitled to a right of defence, but that does not necessarily imply a personal hearing. Even an opportunity to file a written representation complies with the principles based on the requirement of natural justice... It is well settled that whether oral hearing should be given or written representation will meet the ends of justice depends on the facts of each case. It is only in such cases which require determination of disputed question of fact, where personal hearing becomes incumbent. If not otherwise provided in the statute itself, 'hearing' does not mean grant of a personal hearing as mandatory. In the present case, the facts were not at all in dispute. The decision of the Assistant Commissioner is based on clear and unambiguous provisions of law. Therefore, non-grant of personal hearing cannot be said to be fatal.

EXPEDITIOUS DISPOSAL BY TRIBUNAL AND APPELLATE TRIBUNAL (Section 422)

Section 422 of the Companies Act 2013 provides for expeditious disposal of applications and petitions filed before the Tribunal and Appellate Tribunal. Where the Tribunal or the Appellate Tribunal does not dispose of the matter before it within three months of its presentation, the Tribunal or the Appellate Tribunal is required to record the reasons for such delay. And after

considering the reasons so recorded the President or the Chairperson has the discretion to extend the period for disposal of the matter, not exceeding ninety days.

APPEAL TO SUPREME COURT (SECTION 423)

Any person aggrieved by an order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the Appellate Tribunal to him on any question of law arising out of such order.

The Supreme Court may allow it to be filed within a further period not exceeding sixty days, if it is satisfied, that the appellant was prevented by sufficient cause from filing the appeal with this period.

POWER UNDER ARTICLE 226 AND 227 NOT TAKEN AWAY

It was held in L. Chandra Kumar V. Union of India and Satyanarayan v. Atmaram that the High Court's power under Articles 226 & 227, being a part of the basic structure of the Constitution, can never be taken away. Practically, however, since a direct appeal has been provided to the Supreme Court under section 423 of the Companies Act, 2013, the High Court will not interfere in a writ petition from the order of the Tribunal or the Appellate Tribunal unless there is a violation of the principles of natural justice or a lack of jurisdiction.

PROCEDURE FOR FILING AN APPEAL BEFORE NCLAT AGAINST THE ORDERS OF NCLT

PRESENTATION OF APPEAL

(1) Every appeal shall be presented in Form **NCLAT-1** in triplicate by the appellant or petitioner or applicant, in person or by his duly authorised representative duly appointed in this behalf in the prescribed form with stipulated fee at the filing counter and non-compliance of this may constitute a valid ground to refuse to entertain the same.

(2) Every appeal shall be accompanied by a certified copy of the impugned order of NCLT.

(3) All documents filed in the Appellate Tribunal shall be accompanied by an index in triplicate containing their details and the amount of fee paid thereon.

(4) Sufficient number of copies of the appeal or petition or application shall also be filed for service on the opposite party as prescribed.

(5) In the pending matters, all other applications shall be presented after serving copies thereof in advance on the opposite side or his advocate or authorised representative.

(6) The processing fee prescribed by the rules, with required number of envelopes of sufficient size and notice forms as prescribed shall be filled along with memorandum of appeal.

Rule 23 of NCLAT Rules, 2016 - Number of copies to be filed

The appellant or petitioner or applicant shall file three authenticated copies of appeal or counter or objections, and shall deliver one copy to each of the opposite party.

Rule 24 of NCLAT Rules, 2016- Endorsement and verification

At the foot of every appeal or pleading, there shall appear the name and signature of the authorised representative and every appeal or pleadings shall be signed and verified by the party concerned in the manner provided by these rules.

Rule 25 of NCLAT Rules, 2016- Translation of document

(1) A document other than English language intended to be used in any proceeding before the Appellate Tribunal shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by the authorised representative engaged on behalf of parties in the case.

Fee for filing an Application - Rule 55 of NCLAT Rules, 2016

(1) Fee for filing appeal or interlocutory application, and process fee shall be Rs. 5000/-.

(2) The fee and process fee shall be deposited by separate demand draft or Indian Postal Order favouring the Pay and Accounts Officer, Ministry of Corporate Affairs, payable at New Delhi. The Appellate Tribunal may, to advance the cause of justice and in suitable cases, waive payment of such fee or portion thereof, taking into consideration the economic condition or

indigent circumstances of the petitioner or appellant or applicant or such other reason, as the case may be.

AFFIDAVITS

Rule 67 of NCLAT Rules, 2016- Title of affidavits.-

Every affidavit shall be titled as "Before the National Company Law Appellate Tribunal." followed by the cause title of the application or other proceeding in which the affidavit is sought to be used.

Rule 68 of NCLAT Rules, 2016. Form and contents of the affidavit.-

The affidavit as per **Form NCLAT-4** shall conform to the requirements of order XIX, rule 3 of Civil Procedure Code, 1908 (5 of 1908).

Rule 69 of NCLAT Rules, 2016. Persons authorised to attest.-

Affidavits shall be sworn or attested by a Notary Public or Oath Commissioner who shall affix his official seal.

Rule 70 of NCLAT Rules, 2016. Affidavits of illiterate, visually challenged persons.-

Where an affidavit is sworn or affirmed by any person who appears to be illiterate, visually challenged or unacquainted with the language in which the affidavit is written shall be in **Form NCLAT-5**, the attestor shall certify that the affidavit was read, explained or translated by him or in his presence to the deponent and that he seemed to understand it, and made his signature or mark in the presence of the attestor.

Rule 71 of NCLAT Rules, 2016. Identification of deponent.-

If the deponent is not known to the attestor, his identity shall be testified by a person known to him and the person identifying shall affix his signature in token thereof.

Rule 72 of NCLAT Rules, 2016-. Annexures to the affidavit.-

(1) Document accompanying an affidavit shall be referred to therein as Annexure number and the attestor shall make the endorsement thereon that this is the document marked putting the Annexure number in the affidavit.

(2) The attestor shall sign therein and shall mention the name and his designation.

FILING OF INTERLOCUTORY APPLICATION

Rule 31 of NCLAT Rules, 2016-

Every interlocutory application for stay, direction, condonation of delay, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall be in Form **NCLAT-2** and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing a affidavit supporting the application.

CASE STUDY ON MERGERS & AMALGAMATIONS

HIJ Infocom Ltd is a listed company at NSE and BSE with market capitalization of Rs. 21.3 cr. The Authorised Share Capital of the Company is Rs. 15 cr divided into 1,50,00,000 Equity shares of Rs. 10 each and the paid up share capital is Rs. 7.5 cr.

It began its operations in 1992 as a hardware items provider, before growing to include software services, IT training, consulting, and, eventually, Total IT Solutions that include LPO, BPO, and KPO services and now has five manufacturing sites in Jammu, Noida, and Jharkhand that produce a wide range of goods. It has installed over 50,000 PCs and servers around the country, and the company now employs over 450 employees. It has fought through adversity and remains committed to its goal of being one of the world's top IT solutions providers. Revenue of the company has been increased to Rs. 70 cr from Rs. 42 cr in the last quarter of 2022-23. Promoters hold 58.33% stake in the company. Company has taken the consent of the Shareholders of the company via Extra ordinary general meeting held on 22nd April, 2021 for the amalgamation with the I Kall Ltd. I Kall ltd, a listed company at NSE and BSE with market capitalization of Rs. 15.91 cr. The Authorised Share Capital of the Company is Rs. 11

cr divided into 1,10,00,000 Equity shares of Rs. 10 each and the paid up share capital is Rs. 9 cr. I Kall is a global pioneer in networking and connection devices for consumers, small companies, medium to big corporations, and service providers, and is amongst the best hardware companies in India. Since 1976, the firm has developed from humble beginnings in Maldives to an award-winning worldwide brand with over 1500 workers in 40 countries. I Kall is establishing the groundwork for a more connected, intelligent, and easy society today. The I Kall style of doing business has been defined by an unwavering dedication to client satisfaction, an unfettered desire to succeed, seamless teamwork, and strong business ethics. The Growth of the company has seen from its Profit which has been significantly raises from Rs. 82.5 cr in the last quarter to Rs. 155.78 cr in this period.

In this regard, draft a Specimen Petition between two Companies to Amalgamate by Sale of I Kall ltd to HIJ Infocom Ltd to be filed before NCLT. Assume necessary facts.

CASE STUDY ON OPPRESSION AND MISMANAGEMENT

Bell Cements Ltd., a public ltd company which is among the Top 50 Companies in Cement in terms of sales. Incorporated in 1989 by renowned family based out of Kolkata. The company set-up the first Cement Plant in 1995 with an installed capacity of 0.6 Mtpa.

Today, the total Cement production capacity of the Company is 29.30 Million tons. Current Revenue of the company is Rs. 9,455 cr and market capitalization of Rs. 45,411 cr. Around 1700 employees are working in the organization. Also, the total market share of the company is 6%. The main product of the company is Portland cement, manufactured in eight state-of-the-art production facilities that include Integrated Cement plants and Grinding units. However, the directors are managing the affairs of the company in a manner prejudicial to the interests of the company. Mostly, decisions w.r.t investing funds of the company, borrowing monies, giving loans or giving guarantee or provide security in respect of loan have been taken without conducting the physical meeting. No notice of the meeting has been sent and no resolutions has been filed with the Registrar of Companies. As this shows the clear violation of Section 179 of the Companies Act, 2013.

As a Shareholder, draft a specimen application to be filed with National Company Law Tribunal for prevention of Oppression and Mismanagement. Assume necessary facts.

CASE STUDY ON CLASS ACTION

EBC JCK ltd., a listed company at NSE and BSE with market capitalization of Rs. 36.3 cr. In the last three decades, it has developed from a single production unit to become India's major integrated steel corporation, with a capacity of 25 MTPA in India and the Japan. Since its inception, the company has always been on the cutting edge of research and development. In addition to construction and infrastructure, the products are used in several other industries including automobile, electrical applications, appliances, etc. The company also uses the latent heat generated inside its furnaces to generate electricity, which is mostly used for internal consumption. According to reports, its revenue increased from Rs 71.3 crore in the fiscal year 20-21 to Rs 139.11 crore in the fiscal year 21-22. The company's PBT margin increased from 6.42 in the previous year to 13.71 in fiscal year 21–22, resulting in an increase in PAT from Rs. 2.46 crore to Rs. 7.07 crore. However, it is being noticed by the employees that board of directors of the company are not working for the benefit of the company. Funds of the company have been rotated to the personal accounts of the directors. Also, they have been fraudulently using the properties of the company for their own personal use. Directors are not following the rules and regulation of the organization. 65 Shareholders holding 15% of equity shareholding of the Company joined together to file a class action suit.

Can they take action under section 245 of the Companies Act, 2013? If yes, Draft a specimen application to be filed with National Company Law Tribunal on behalf of members for restraining its directors from committing an act which is ultra vires the articles or memorandum of the company. Assume necessary facts.

CASE STUDY ON COMPOUNDING

Timber Industries Pvt. Ltd., incorporated in the year 1981 has grown over the last two decades as one of India's leading aluminium extrusion profile manufacturing companies. In the last three years, its production has increased manifold reaching nearly 8000 tonnes. Today Timber has more than 8,000 special aluminium extruded shapes, tools, dies, cuts and profiles that are consistently used for domestic and export purposes.

Headquartered in Banglore, Timber Industries is a manufacturer of all-alloy aluminium rods, floors, grills, railings, aluminium scrap, aluminium/aluminium wire, and EC grade wire rods used for redrawing into Wires / Strips for the manufacture of Cables, Conductors, Transformer Wires / Strips and various hardware / General Engineering Components. For the year ended March 2021, Timber Industries total income from operations stood at INR 71.20 crores, and EBITDA was INR 0.75 crore. With the global fluctuation in commodity markets, the financials of the company have been impacted badly. Yet, the management seems to be very positive about the future outlook. However, the company has failed to file its Financial Statements to the Registrar of Companies of the last three financial years and there was a non-compliance with CSR related provisions.

This default has been noticed by the new director of the company and all the previous forms have been duly filed with the Registrar.

In this regard, draft an application for compounding to be filed for making the default good before NCLT. Assume necessary facts.

CASE STUDY ON WINDING UP

DVR Ltd is a listed company at NSE and BSE with market capitalization of Rs. 111.78 cr. Company came out with IPO in the year 2012 and they have been in the industry for several years and have established themselves as a pioneer in developing innovative drone solutions for various industries. They specialize in providing drone solutions for agriculture, surveying, mapping, and infrastructure development. Their drones are designed to be efficient, cost-

effective, and reliable, making them a top choice for many businesses. Their drones are equipped with advanced imaging solutions that enable businesses to gather accurate data and make informed decisions. However, from the past few years company is struggling in its business. Losses of the company has been rapidly increased to Rs. 115 cr from Rs. 75 cr in the last year. All the directors have been resigned from their post and new directors were appointed. Due to this financial crunch, company is unable to pay salary to its employees. Also, the company has taken huge amounts of Secured loans from Banks and various financial institution which they are unable to pay. Promoters have pledged their entire shareholding of 26% in order to pay their debts.

In this regard, draft a petition for Voluntary wind up by the Company to National Company Law Tribunal. Assume necessary facts.

E-FILING OF DOCUMENTS BEFORE NCLT & NCLAT

NCLT and NCLAT have also taken necessary steps to update themselves and make the system of access to justice for corporates and individuals convenient.

NCLAT vide order dated 15th May, 2023 has instructed that the Appeals / Interlocutory Applications/Reply/Rejoinder etc. should be e-filed through e-filing portal (https://efiling.nclat.gov.in) w.e.f. 04.01.2021. Further, the Competent Authority directed that the filing of hard copies of Appeals/ Interlocutory Applications/ Reply / Rejoinder etc. shall not be mandatory. The Standard Operating Procedures (SOPs)/ Orders/ Circulars/ Notices issued by the NCLAT from time to time regarding filing of Appeals/ Interlocutory Applications / Reply / Rejoinder etc. are also required to be read accordingly.

Both, NCLT and NCLAT have devised the systems to provide various services such as Daily Cause List, Case Status, Judgments, Daily orders etc, electronically through their respective websites. Further, NCLT and NCLAT are maintaining their e-filing portal at the link https://efiling.nclt.gov.in/mainPage.drt and https://efiling.nclat.gov. in/mainPage.drt respectively. This has made the work of professionals and Corporate much easier, faster and convenient.

CHAPTER 13 – ADJUDICATIONS & APPEALS UNDER SEBI LAWS

POWERS TO ISSUE DIRECTIONS AND LEVY PENALTY UNDER SECTION 11B OF SEBI ACT, 1992

If after making or causing to be made an enquiry, the Board is satisfied that it is necessary–

(i) in the interest of investors, or orderly development of securities market; or

(ii) to prevent the affairs of any intermediary or other persons referred to in section 12 of SEBI Act, 1992 being conducted in a manner detrimental to the interest of investors or securities market; or

(iii) to secure the proper management of any such intermediary or person.

It may issue such directions, –

(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A of SEBI Act, 1992, as may be appropriate in the interests of investors in securities and the securities market.

CASE STUDY
CENTURY ENKA LIMITED VS. SECURITIES AND EXCHANGE BOARD OF INDIA & ORS. BEFORE SAT (DATED 25.03.2022)

The facts leading to the filing of the present appeal is, that Mr. B. K. Birla was a non-independent non- executive director in the appellant company and died on July 3, 2019 thereby causing a vacancy in the board of directors. This vacancy was required to be filled up and eventually an independent director was appointed on February 5, 2020.

Admittedly, after July 3, 2019 on account of demise of Mr. B.K. Birla, the composition of the board of directors reduced from 6 to 5 directors. The vacancy so caused was eventually filled up on February 5, 2020.

Regulation	Fine payable and / or other action to be taken for non-compliance in respect of listed entity
Regulation 17(1) Non-compliance with the requirements pertaining to the composition of the Board including failure to appoint woman director	Rs. 5000/- per day

The appellant being aggrieved filed an application before SEBI for waiver of the fine which was rejected by SEBI by an order dated June 30, 2021.

The stock exchanges in their orders have levied a fine holding that the exchange has decided to provide a period of three months or time till the next board meeting whichever is later to enable the companies to fill the vacancy in consonance with the provisions of Regulation 25(6) of the LODR Regulations and since the appellant failed to fill the vacancy within three months, the penalty has been imposed from October 3, 2019 under Regulation 17 of the LODR Regulations. The same view was taken by SEBI in its order of June 30, 2021.

ORDER

It is observed that the approach adopted by the respondent is totally illegal and against the provisions of law. The provisions under the LODR Regulations are required to be complied by the companies including the appellant. Non-compliance of various provisions may entail imposition of fine as per the circular dated May 3, 2018. This circular has been issued in exercise of the powers under Section 11A(2) of the Securities and Exchange Board of India Act, 1992(hereinafter referred to as 'SEBI Act') read with Sections 9 and 21 of Securities Contract (Regulations) Act, 1956 (hereinafter referred to as 'SCR Act') and read with Regulation 98 of the LODR Regulations. This circular has the force of law. Under Annexure 1 to the circular a fine of Rs. 5,000/- per day can be imposed for non-compliance of Regulation 17(1) of the LODR Regulations.

Regulation 17(1) states that the board of directors shall comprise of not less than 6 directors. If there are less than 6 directors, the said regulation is violated and fine can be imposed but the question is that there is no time line provided under Regulation 17(1) to fill the vacancy caused by the reason of death, resignation, etc. If no time line is provided, the question of imposition of fine at the rate of Rs.5,000/- per day does not arise.

In this regard, Regulation 25(6) of the LODR Regulations provides certain obligations with respect to independent directors, namely, that where an independent director who resigns or is removed from the board of directors, the said independent director would be replaced by a new independent director at the earliest but not later than the immediate next meeting of the board of directors or three months from the date of such vacancy whichever is later. Such provision is missing under Regulation 17(1). Consequently, so long as the period of filing the vacancy in the board of directors under Regulation 17(1) is not framed, no fine could be imposed.

Further, the exchange cannot on its own take a decision for imposition of fine. Fine can only be imposed by statutes or by circular which has the force of law. In the instant case, nothing has been brought on record to show that the stock exchange has the power to frame such laws nor anything has been brought on record to indicate that SEBI has framed such laws under Section 11A of the SEBI Act read with Sections 9 and 21 of the SCR Act and read with Regulation 98 of the LODR Regulations.

Thus, the impugned orders cannot be sustained and are quashed.

CASE STUDY
IGNORANCE OF LAW IS NOT AN EXCUSE FOR ESCAPING FROM LIABILITY OF VIOLATION OF LAW

The Appellant, Mega Resources Limited, is aggrieved by the order dated 13.08.2014 passed by the Adjudicating Officer, SEBI imposing a penalty of Rs. 2,00,000/- under Section 15A(b) of the SEBI Act and Rs. 50,00,000/- under Section 15 H(ii) of the SEBI Act for failure on the

part of the appellant to comply with the provisions of Regulation 7(1) read with Regulation 7(2) and Regulation 11(1) read with Regulation 14(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The appellant has admitted that pursuant to the acquisition of 25000 equity shares through off-market transactions the shareholding of the Promoters/Promoter Group of the Company had increased from 50.46% to 60.46% of the Target Company. This triggered Regulation 11(1) of the erstwhile SAST Regulations along with the requirement of submission of certain disclosures under Regulation 7(1) and 7(2) of the erstwhile Regulations. It is admitted by the appellant that the non-compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any malafide intentions.

However, it is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor ever absolve the wrongdoer of his crime or misconduct. Further, the appellant contended that in the matter of imposition of penalty, the Section 15(H)(ii) of the SEBI Act, 1992 was amended dated October 29, 2002 and the penalty for non-disclosure of acquisition of shares and takeovers was enhanced from a maximum of Rs.5 lakh to Rs.25 crore. It is argued that since the violation in Appeal was committed in February, 2001, the appellant would be governed by the erstwhile provisions of Section 15H(ii) of the SEBI Act, which existed on the date of violation in question.

DECISION

It is true that the maximum monetary penalty imposable for non-disclosure of acquisition of shares and takeovers under the erstwhile SEBI Act on the date of violation by the Appellant was Rs. 5 Lakh and by the amendment dated October 29, 2002 it is up to Rs. 25 Crore or three times of the amount of profits made out of such failure, whichever is higher. However, the moot point in this connection to be noted is that as on October 29, 2002 the obligation to make disclosure and public announcement under Regulations 7(1) read with 7(2) and 11(1) read with 14(1) continued. Therefore, because the violation was continued even after October

29, 2002, the appellant has been rightly imposed penalty under the amended provisions of Section 15H(ii) of the SEBI Act.

POWER TO ADJUDICATE UNDER SEBI ACT, 1992 (SECTION 15I), SECTION 23I OF SECURITIES CONTRACTS (REGULATIONS) ACT, 1956 AND SECTION 19H OF DEPOSITORIES ACT, 1996

- **Appointment of Adjudicating Officer:** SEBI may appoint any officer not below the rank of a Division Chief of SEBI to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.
- **Power of Adjudicating Officer :** While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections as specified above, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.
- **Call of Record by SEBI-** The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify.
- **Opportunity of being heard:** No such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter.
- **Effect after expiry of period:** Further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal, whichever is earlier.

PROCEDURE FOR HOLDING OF INQUIRY [RULE 4 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 AND SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

(1) **Show Cause Notice:** In holding an inquiry, whether any person has committed contraventions as specified in any of sections mentioned above, the SEBI (Board) or the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.

(2) **Content of Notice:** Every notice to any such person shall indicate the nature of offence alleged to have been committed by him.

(3) **Date of Appearance:** If, after considering the cause, shown by such person, the Board or the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.

(4) **Personal Hearing:** On the date fixed, the Board or the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.

(5) **Opportunity to produce Evidence:** The Board or the adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the Board or the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872. The Board may appoint a presenting officer in an inquiry under this rule.

(6) **Enforcement of Attendance:** While holding an inquiry under this rule, the Board or the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any

document which, in the opinion of the Board or the adjudicating officer, may be useful for or relevant to, the subject-matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

FACTORS TO BE TAKEN INTO ACCOUNT WHILE ADJUDGING QUANTUM OF PENALTY (SECTION 15J OF SEBI ACT & SECTION 23 J OF SECURITIES CONTRACTS (REGULATIONS) ACT, 1956 AND SECTION 19-I OF DEPOSITORIES ACT, 1996)

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

CREDITING SUMS REALISED BY WAY OF PENALTIES TO CONSOLIDATED FUND OF INDIA

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

ORDER OF THE BOARD OR THE ADJUDICATING OFFICER [RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 AND SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005]

(1) **Imposition of Penalty:** If, upon consideration of the evidence produced before the Board or the adjudicating officer, the Board or the adjudicating officer is satisfied that the person has become liable to penalty, he may, by order in writing, impose such penalty as he thinks fit in accordance with the provisions of the relevant sections.

(2) **Quantum of Penalty:** While adjudging the quantum of penalty as stipulated under the above mentioned sections, the Board or the adjudicating officer shall have due regard to the following factors, namely : –

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default ;

(b) the amount of loss caused to an investor or group of investors as a result of the default ;

(c) the repetitive nature of the default.

(3) **Content of Order:** Every order made shall specify the provisions of the Act in respect of which default has taken place and shall contain brief reasons for such decisions.

(4) **Date & Sign:** Every such order shall be dated and signed by the Board or the adjudicating officer.

(5) **Rectification of Error:** The Board or the adjudicating officer who has passed an order, may rectify any error apparent on the face of record on such order, either on its own motion or where such error is brought to his notice by the affected person within a period of fifteen days from the date of such order.

SERVICE OF NOTICES AND ORDERS [RULE 7 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, DEPOSITORIES (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 AND SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005]

(1) A notice or an order issued under these rules shall be served on the person through any of the following modes, namely:–

(a) by delivering or tendering it to that person or his duly authorised agent; or

(b) by sending it to the person by fax or electronic mail or electronic instant messaging services along with electronic mail or by courier or speed post or registered post.

Provided that the courier or speed post or registered post shall be sent to the address of his place of residence or his last known place of residence or the place where he carried on, or

last carried on, business or personally works, or last worked, for gain, with acknowledgment due.

Provided further that a notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned.

Provided also that a notice sent through electronic mail or electronic instant messaging services along with electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.

(2) In case of failure to serve a notice or an order through any one of the modes, the notice or order may be affixed on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided, or carried on business or personally works, or last worked, for gain and a written report thereof shall be prepared in the presence of two witnesses.

(3) In case of failure to affix the notice or order on the outer door as provided under sub-rule (2), the notice or order shall be published in at least two newspapers, one of which shall be in an English daily newspaper having nationwide circulation and another shall be in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.

RECOVERY OF AMOUNTS [SECTION 28A OF SEBI ACT, 1992, SECTION 23 JB OF SECURITIES CONTRACT (REGULATION) ACT, 1956 AND SECTION 19-IB DEPOSITORIES ACT, 1996]

(a) attachment and sale of the person's movable property;
(b) attachment of the person's bank accounts;
(c) attachment and sale of the person's immovable property;
(d) arrest of the person and his detention in prison;
(e) appointing a receiver for the management of the person's movable and immovable properties,

The person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers.

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer, pursuant to non-compliance with any direction issued by the Board shall have precedence over any other claim against such person.

CONTINUANCE OF PROCEEDINGS [SECTION 28B OF SEBI ACT, 1992, SECTION 23 JC OF SECURITIES CONTRACT (REGULATION) ACT, 1956 AND SECTION 19-IC OF DEPOSITORIES ACT, 1996]

(1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased. A legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

(2) Every legal representative shall be personally liable for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.

(3) The liability of a legal representative under this section shall be limited to the extent to which the estate of the deceased is capable of meeting the liability.

CASE LAWS ON INSIDER TRADING

SUN INFOWAYS LIMITED

The said appeal was filed against the order dated November 6, 2006 passed by the Adjudicating Officer, SEBI. The Adjudicating Officer in his order inter alia found Mrs. Sadhana Nabera guilty of insider trading and had levied Rs.5 lakhs penalty on her. While allowing the said appeal, the Hon'ble SAT observed, "We are of the considerate opinion that Nabera as an auditor could not be expected, much less reasonably, to have access to the information of merger of Zap with the company which was a policy decision.

In view of the above, we are of the view that Nabera had no concern with the information pertaining to the merger of Zap with the company nor was it a part of his duty to have access to such information while performing his duties. No company would allow such sensitive information to reach the auditor till it has been made public.

KEDAR NATH AGARWAL V SECURITIES AND EXCHANGE BOARD OF INDIA

The allegation that the stock broker had failed to prescribe the code of internal procedures and conduct for the prevention of insider trading; the Enquiry Officer observed that no specific instance has been pointed out where the stock broker or any of its associated entities had traded as an "insider" after having access to any price sensitive information. Though, the Enquiry Officer had not viewed this as a serious issue, the tribunal was of the view that the same is not in accordance with the provisions of Regulation 12 of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992. The stock broker, being an intermediary recognized as such under Section 12 of the SEBI Act, and is very much active in the securities market, needs to comply with the aforesaid provision.

RAKESH AGRAWAL VS. SEBI

In 1996, managing director of ABS Industries Ltd., signed a deal with Bayer AG, a German business, which agreed to purchase 51% of ABS Industries Ltd.'s shares. Following UPSI's announcement of the acquisition, the accused sold a significant portion of his ABS Industries ownership, which he owned through his brother- in-law. Considering the brother-in-law to be a well-connected individual, SEBI held that Managing Director was guilty of insider trading and directed him to deposit Rs. 34 lakhs with Investor Protection Funds of Stock Exchange, Mumbai and NSE (in equal proportion i.e. Rs.17 lakhs in each exchange) to pay any investor who may make a claim afterwards.

On appeal to the Securities Appellate Tribunal (SAT), it was concluded that even if Managing Director had traded securities while in possession of UPSI, he was not guilty of insider trading because his actions were in the best interests of the company (as Bayer AG was not willing to acquire the company unless it could obtain a minimum of 51% of the shares) and there was no intention to make a profit.

Further, SAT decided that in order to penalise an insider for violating the Regulations, it must be proven that the insider benefited unfairly from the trade. The tribunal also rejected SEBI's argument that insider trading jurisprudence is founded on the concept of 'disclose or abstain', and that an insider in possession of UPSI cannot trade in a company's stocks until he reveals the UPSI. After revisiting the entire jurisprudence of insider trading on requirement of Mens Rea under Indian legal system, the tribunal held that: "Taking into consideration the very objective of the SEBI Regulations prohibiting the insider trading, the intention/motive of the insider has to be taken cognizance of. It is true that the regulation does not specifically bring in mens rea as an ingredient of insider trading. But that does not mean that the motive need be ignored."

HINDUSTAN LEVER LIMITED VS. SEBI

Hindustan Lever Ltd. **("HLL")** bought 8 lakh shares of Brook Bond Lipton India Ltd. **("BBLIL")** from Public Investment Institution, Unit Trust of India **("UTI")** two weeks prior to the public announcement of the merger of two companies, i.e., HLL and BBLIL.

SEBI, suspecting insider trading, issued a Show Cause Notice **("SCN")** to the Chairman, all Executive Directors, the Company Secretary and the then Chairman of HLL.

London-based Unilever was the parent company of HLL and BBLIL, and were operating under the same management. SEBI determined that HLL and its directors were insiders because they had prior knowledge of the merger. SEBI further determined that HLL was in the possession of UPSI as mentioned under Section 2(k) of the 1992 Regulations, which included any information regarding amalgamation/mergers/takeovers that "is not widely known or published by such company for general information, but which if published or known, is likely to substantially impact the price of securities of that company in the market".

OBSERVATIONS MADE BY SAT

The issue before SAT was whether HLL was an insider and the information held by the HLL constituted UPSI. The SAT concurred with the SEBI order that the information accessible to HLL in regard to the merger went beyond self-generated information, i.e., information derived from the company's own decision-making. In addition, SAT stated that the presence of directors who were common to both HLL and BBLIL, as well as a common parent company in Unilever, indicated that they (i.e., HLL and BBLIL) were effectively managed together. As a result, HLL could be classified as an insider under the 1992 Regulations, and it was reasonable to assume that HLL was privy to the BBLIL board's decision-making on the merger issue.

SAT observed that even in the merger of two healthy companies, there are synergistic

possibilities that might lead to price sensitivity for either company, on the subject of whether the information shared with HLL constituted UPSI. As a result, SAT concurred with SEBI's judgment that merger information was price sensitive (albeit not "unpublished").

THE OUTCOME OF THE DECISION

This decision of the SAT led to an amendment in the definition of "unpublished" under Section 2(k) which stated, "unpublished" means information which is not published by the company or its agents and is not specific in nature."

COMPOUNDING PROVISIONS UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 ("SEBI ACT"), SECURITIES CONTRACTS (REGULATION) ACT, 1956 (SCRA) & DEPOSITORIES ACT, 1996

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending. . Thus, if the offence is punishable with fine only or imprisonment or fine or with fine or imprisonment or both alone can be compounded.

The contours and the essential elements of Section 24A of the SEBI Act were recently explored and elaborately explained by the Hon'ble Supreme Court ("**Court**") in Prakash Gupta v. Securities and Exchange Board of India ("**Prakash Gupta**").

CASE STUDY

PRAKASH GUPTA V. SECURITIES AND EXCHANGE BOARD OF INDIA, DATED JULY 23, 2021

FACT OF THE CASE

The appellant is being prosecuted for an offence under Section 24(1) of the Securities and Exchange Board of India Act, 1992 ("SEBI Act"). The appellant sought the compounding of the offence under Section 24A. By an order dated 15 November 2018, the Additional Sessions Judge – 02 Central District at Tis Hazari Courts, Delhi ("Trial Judge"), rejected the application, upholding the objection of the Securities and Exchange Board of India that the offence could not be compounded without its consent.

Mr. Prakash Gupta, director of Ideal Hotels & Industries Limited ("Company"), was accused of having engaged in price rigging and insider trading during the Initial Public Offer ("IPO") of the Company, in violation of Regulations 4(a) and (e) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, along with other provisions of the Takeover Regulations, 1994 and 1997.

On 27 June 1996, SEBI received a complaint alleging that certain Delhi/Bombay based brokers had, on the instructions of the Company, purchased its shares and that huge deliveries were kept outstanding in the grey market. SEBI also received an anonymous complaint in October 1996, alleging price rigging and insider trading in the scrip of the Company.

During its investigation, SEBI obtained the details of the top brokers who traded in the shares of the Company during this period on the Delhi Stock Exchange and Bombay Stock Exchange, and also of their clients who had made significant purchases or sales on the scrip. Consequently, SEBI came up with the name of six entities who had purchased approximately 51 per cent of the 38 lac equity shares on offer during the period between 28 January 1996 and 29 February 1996. They were found to have continued buying shares even after that period, and had ultimately purchased 28,38,000 equity shares, which was approximately 75 per cent of the post issue floating stock of the Company. As such, it was assumed that these entities were, therefore, responsible for the upward price movement in the scrip.
A criminal complaint was filed against Mr. Gupta before the Trial Court alleging the above violations and an Adjudicating Officer under the SEBI Act was appointed.

Prior to any orders in the aforesaid proceedings, the Chairman of SEBI, under the provisions

of the SEBI Act, allowed Mr. Gupta to purchase the shares of the shareholders at a higher price than that fixed during the IPO, thereby supposedly resolving the issue. However, the AO, pursuant to noting the offences committed by Mr. Gupta, levied a fine of INR 20,000 on him and other co-promotors. This penalty too was paid by the accused.

Thereafter, a compounding application under Section 24A of the SEBI Act was filed by Mr. Gupta before the Trial Court which was objected to by the High Powered Advisory Committee ("HPAC") of SEBI. The Trial Court rejected the compounding application on the grounds that SEBI had not provided its consent to the same, which was upheld by the High Court of Delhi. Hence, the present appeal before the Court.

ISSUE

Whether under section 24A of the SEBI Act, the express consent of SEBI is required prior to the compounding of offences by the Securities Appellate Tribunal or the court before which proceedings are pending?

OBSERVATION

While a plain reading of the section 24A does not provide for the consent of SEBI, it was considered whether such consent should be read into Section 24A, on the grounds of casus ommisus.

In the present case, it is evident that Section 24A does not stipulate that the consent of SEBI is necessary for the SAT or the Court before which such proceedings are pending to compound an offence. Where Parliament intended that a recommendation by SEBI is necessary, it has made specific provisions in that regard in the same statute. Section 24B provides a useful contrast. Section 24B(1) empowers the Union Government on the recommendation of SEBI, if it is satisfied that a person who has violated the Act or the Rules or Regulations has made a full and true disclosure in respect of the alleged violation, to grant an immunity from prosecution for an offence subject to such conditions as it may impose.

The second proviso clarifies that the recommendation of SEBI would not be binding upon the Union Government. In other words, Section 24B has provided for the exercise of powers by the Central Government to grant immunity from prosecution on the recommendation of SEBI. In contrast, Section 24A is conspicuously silent in regard to the consent of SEBI before the SAT or, as the case may be, the Court before which the proceeding is pending can exercise the power. Hence, it is clear that SEBI's consent cannot be mandatory before SAT or the Court before which the proceeding is pending, for exercising the power of compounding under Section 24A.

DECISION

In the present case, we are clearly of the view that the nature of the allegations against the appellant are such so as to preclude a decision to compound the offences.

1. The factors as listed in the Frequently Asked Questions in relation to the 'Guidelines for Consent Order and for considering requests for composition of offences' dated April 20, 2007 should be adhered to;
2. The opinion of SEBI and its HPAC must be given due deference as the same indicates their position on the effect that non-prosecution of the offence may have on market structures. The Securities Appellate Tribunal or the courts should only differ from the opinion of SEBI/ the HPAC, if it has reasons to believe that the said opinion is mala fide or manifestly arbitrary;
3. The principle behind the compounding proceeding should be that the aggrieved party has been restituted and that it has consented to end the dispute. Since the aggrieved party may not be before the court, and that the offences are usually of public nature, it becomes even more essential to rely on SEBI's opinion to understand if restitution has taken place; and
4. Even if restitution has taken place, but the offence is of public character and non-prosecution of the same would affect the public at large, such offence should not be compounded.

The judgment of the Supreme Court in Prakash Gupta is significant as it not only underlines the importance of the role played by SEBI in market regulation and redressal of investors, but also appreciates the intention of the legislators while doing so. Further, it fills in the

lacune that earlier existed by providing detailed guidelines on the factors to be take into consideration while passing an order under Section 24A of the SEBI Act.

SETTLEMENT PROCEEDINGS / CONSENT ORDERS UNDER SEBI LAWS - APPLICABLE FOR COMPOSITION OF OFFENCE

1. Consent order may be passed at any stage after probable cause of violation has been found under SEBI Laws. However, in the event of a serious and intentional violation, the process should not be completed till the fact finding process is completed whether by way of investigation or otherwise.
2. Compounding of Offence can take place after filing criminal complaint by SEBI. Where a criminal complaint has not yet been filed but is envisaged, the process for consent orders will be followed.
3. Under securities laws, SEBI pursues two streams of enforcement actions i.e., Administrative/Civil (or) Criminal.
4. Administrative/civil actions include issuing directions such as remedial orders, cease and desist orders, suspension or cancellation of certificate of registration and imposition of monetary penalty under the respective statutes and action pursued or defended in a court of law/tribunal. Criminal action involves initiating prosecution proceedings against violators by filing complaint before a criminal court.

SETTLEMENT OF ADMINISTRATIVE AND CIVIL PROCEEDINGS. (SECTION 15JB OF SEBI ACT & SECTION 23 JA OF SECURITIES CONTRACTS (REGULATIONS) ACT, 1956 AND SECTION 19-IA OF DEPOSITORIES ACT, 1996)

- Notwithstanding anything contained in any other law for the time being in force, any person, against whom any proceedings have been initiated or may be initiated, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.
- The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such

other terms as may be determined by the Board in accordance with the regulations made under SEBI Act, 1992.

- No appeal shall lie under section 15T of SEBI Act, 1992, section 23 L of Securities Contracts (Regulations) Act, 1956 and section 23A of Depositories Act, 1996 against any order passed by the Board or adjudicating officer, as the case may be, under this section.
- All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.

SEBI (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018

APPLICATION FOR SETTLEMENT (REGULATION 3)

(1) A person against whom any specified proceedings have been initiated and are pending or may be initiated, may make an application to the Board in the Form specified in Part-A of Schedule-I.

(2) The application made above shall be accompanied by a non-refundable application fee as specified in Part-B of Schedule I and the undertakings and waivers as specified in Part-C of Schedule-I.

(3) The applicant shall make full and true disclosures in the application in respect of the alleged default(s). Provided that the facts established against the applicant or admitted in any ongoing or concluded proceedings in India or outside India, with respect to the same cause of action, under any law, shall be deemed to be admitted by the applicant in respect of the proceedings proposed to be settled.

(4) The applicant shall make one application for settlement of all the proceedings that have been initiated or may be initiated in respect of the same cause of action.

(5) An application that is not complete in all respects or does not conform to the requirements of these regulations shall be returned to the applicant.

(6) The applicant whose application has been returned under sub- regulation (5) may, within fifteen days from the date of communication from the Board, submit the complete and revised application that conforms to the requirements of these regulations.

(7) Where the applicant is an association or a firm or a body corporate or a limited liability partnership, the application and undertakings and waivers shall be executed by the person in charge of, and responsible for the conduct of the business of such firm or association or body corporate and the same shall bind the firm or association, the body corporate and any officer who is in default.

(8) An application for settlement of defaults related to disclosures, shall to the extent possible, be made after making the required disclosure.

LIMITATION (REGULATION 4)

An application in respect of any specified proceeding pending before the Board shall not be considered if it is made after sixty days from the date of service of the notice to show cause or supplementary notice(s) to show cause, whichever is later.

SCOPE OF SETTLEMENT PROCEEDINGS (REGULATION 5)

(1) No application for settlement of any specified proceedings shall be considered, if:

(a) an earlier application with regard to the same alleged default had been rejected;

(b) the audit or investigation or inspection or inquiry, if any, in respect of any cause of action, is not complete, except in case of applications involving confidentiality; or

(c) monies due under an order issued under securities laws are liable for recovery under securities laws.

(2) The Board may not settle any specified proceeding, if it is of the opinion that the alleged default, -

i. has market wide impact, or

ii. caused losses to a large number of investors, or

iii. affected the integrity of the market.

(3) Without prejudice to the generality of the foregoing provisions, for settling any specified proceeding the Board may inter alia take into account the following factors, -

(a) whether the applicant has refunded or disgorged the monies due, to the satisfaction of the Board;

(b) whether the applicant has provided an exit or purchase option to investors in compliance with securities laws, to the satisfaction of the Board;

(c) whether the applicant is in compliance with securities laws or any order or direction passed under securities laws, to the satisfaction of the Board;

(d) any other factor as may be deemed appropriate by the Board.

(4) Without prejudice to sub-regulations (1) and (3), the Board may not settle the specified proceedings where the applicant is a wilful defaulter, a fugitive economic offender or has defaulted in payment of any fees due or penalty imposed under securities laws.

(5) Nothing contained in these regulations shall be construed to restrict the right of the Panel of Whole Time Members to consider or reject any application in respect of any specified proceeding without examination by the Internal Committee or the High Powered Advisory Committee.

REJECTION OF APPLICATION (REGULATION 6)

(1) An application may also at any time be rejected on the following grounds:

(a) Where the applicant refuses to receive or respond to the communications sent by the Board;

(b) Where the applicant does not submit or delays the submission of information, document, Revised Settlement Terms, etc., as called for by the Board;

(c) Where the applicant who is required to appear, does not appear before the Internal Committee on more than one occasion;

(d) Where the applicant violates in any manner the undertaking and waivers as provided in Part-C of the Schedule-I;

(e) Where the applicant does not remit the settlement amount within the period specified in clause (a) of sub-regulation (2) of regulation 15 and/or does not abide by the undertaking and waivers;

(f) Where the applicant fails to comply with the condition precedent(s) for settlement within the time as required by the Internal Committee.

(2) The rejection under sub-regulation (1) shall be communicated to the applicant:

Provided that the applicant shall continue to be bound by the waivers given in respect of limitation or laches in respect of the initiation or continuation or restoration of any legal

proceeding and the waivers given under sub-paras (d), (e), (f) and (g) of para 12 of the undertaking and waivers as provided in Part-C of the Schedule-I.

WITHDRAWAL OF APPLICATION (REGULATION 7)

(1) An application may be withdrawn at any time prior to the communication of the decision of the Panel of Whole Time Members under regulation 15.

(2) An applicant who withdraws an application under sub-regulation (1) shall not be permitted to make another application in respect of the same default:

Provided that, as may be recommended by the High Powered Advisory Committee, such an application may be considered subject to an increase of atleast fifty percent over the settlement amount determined in accordance with Schedule-II of these Regulations.

EFFECT OF PENDING APPLICATION ON SPECIFIED PROCEEDINGS (REGULATION 8)

(1) The filing of an application for settlement of any specified proceedings shall not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the application is disposed of.

(2) Where the application is filed in case of proceedings that may be initiated against the applicant, such proceedings shall not be initiated till the application is rejected or withdrawn:

Provided that, the filing of an application shall not prohibit the initiation of any proceedings, in so far as may be deemed necessary for the purpose of issuance of interim civil and administrative directions to protect the interests of investors and to maintain the integrity of the securities markets.

SETTLEMENT TERMS (REGULATION 9)

(1) The settlement terms may include a settlement amount and/or non-monetary terms, in accordance with the guidelines specified in Schedule-II.

(2) The non-monetary terms may include the following:

(a) Suspension or cessation of business activities for a specified period;

(b) Exit from Management;

(c) Disgorgement on account of the action or inaction of the applicant;

(d) Refraining from acting as a partner or officer or director of an intermediary or as an officer or director of a company that has a class of securities regulated by the Board, for specified periods;

(e) Cancel securities and reduce holdings where the securities are issued fraudulently, including bonus shares received on such securities, if any, and reimburse any dividends received, etc.;

(f) Lock-in of securities;

(g) Implementation of enhanced policies and procedures to prevent future securities laws violations as well as agreeing to appoint or engage an independent consultant to review internal policies, processes and procedures;

(h) Provide enhanced training and education to employees of intermediaries and securities market infrastructure institutions;

(i) Submit to enhanced internal audit and reporting requirements;

(j) Restraining from accessing the securities market and/or prohibiting from buying, selling or otherwise dealing in securities, directly or indirectly and associating with the securities market in any manner for a specific period.

(3) The settlement amount, excluding the legal costs and disgorged amount, shall be credited to the Consolidated Fund of India.

(4) The application fee referred to in sub-regulation (2) of regulation 3 and the legal costs, if any, forming part of the settlement amount shall be credited to the Securities and Exchange Board of India General Fund.

(5) The amount of profits made or losses avoided by the applicant that may be disgorged as part of the settlement terms, shall be credited to the Investor Protection and Education Fund.

FACTORS TO BE CONSIDERED TO ARRIVE AT THE SETTLEMENT TERMS (REGULATION 10)

While arriving at the settlement terms, the factors indicated in Schedule-II may be considered, including but not limited, to the following:

(a) conduct of the applicant during the specified proceeding, investigation, inspection or audit;

(b) the role played by the applicant in case the alleged default is committed by a group of persons;

(c) nature, gravity and impact of alleged defaults;

(d) whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded;

(e) the extent of harm and/or loss to the investors' and/or gains made by the applicant;

(f) processes that have been introduced since the alleged default to minimize future defaults or lapses;

(g) compliance schedule proposed by the applicant;

(h) economic benefits accruing to any person from the non-compliance or delayed compliance;

(i) conditions which are necessary to deter future non-compliance by the same or another person;

(j) satisfaction of claim of investors regarding payment of money due to them or delivery of securities to them;

(k) any other enforcement action that has been taken against the applicant for the same violation;

(l) any other factors necessary in the facts and circumstances of the case.

HIGH POWERED ADVISORY COMMITTEE (REGULATION 11)

(1) The Board shall constitute a High Powered Advisory Committee for consideration and recommendation of the terms of settlement.

(2) The High Powered Advisory Committee shall consist of a Judicial member who has been the Judge of the Supreme Court or a High Court and three external experts having expertise in securities market or in matters connected therewith or incidental thereto.

(3) The term of the members of the High Powered Advisory Committee shall be three years which may be extended for a further period of two years.

(4) The quorum for a meeting of the High Powered Advisory Committee shall be of three members.

(5) The High Powered Advisory Committee shall conduct its meetings in the manner specified by the Board in this regard: Provided that:

(i) where any member of the High Powered Advisory Committee seeks recusal, the remaining two or more members may submit their recommendation on the terms of settlement;

(ii) where no consensus or majority may be reached, the recommendation made by the Judicial member shall be considered to be the recommendation of the High Powered Advisory Committee and in case of recusal of the Judicial member, the recommendations of the remaining two or more members shall be submitted for consideration to the Panel of Whole Time Members; and

(iii) where all or all but one of the members of the High Powered Advisory Committee recuse themselves in respect of an application, the Board may constitute another High Powered Advisory Committee.

INTERNAL COMMITTEE(S) (REGULATION 12)

(1) Internal Committee(s) shall be constituted by the Board.

(2) The Internal Committee(s) shall comprise of an officer of the Board not below the rank of Chief General Manager and such other officers as may be specified by the Board.

PROCEDURE OF SETTLEMENT

PROCEEDINGS BEFORE THE INTERNAL COMMITTEE (REGULATION 13)

(1) An application shall be referred to an Internal Committee to examine whether the proceedings may be settled and if so to determine the settlement terms in accordance with these regulations.

(2) The Internal Committee may:

(a) call for relevant information, documents, etc, pertaining to the alleged default(s) in possession of the applicant or obtainable by the applicant;

(b) call for the personal appearance of the applicant before it;

(c) permit the applicant to submit revised settlement terms within a period not exceeding fifteen working days from the date of the Internal Committee meeting.

(3) The proposed settlement terms, if any, shall be placed before the High Powered Advisory Committee.

PROCEEDINGS BEFORE THE HIGH POWERED ADVISORY COMMITTEE (REGULATION 14)

(1) The High Powered Advisory Committee shall consider the proposed settlement terms placed before it along with the following:

(a) the application, undertaking and waivers of the applicant;

(b) factors specified in regulation 10;

(c) settlement terms or revised settlement terms proposed by the applicant;

(d) any other relevant material available on record.

(2) The High Powered Advisory Committee may seek revision of the settlement terms and refer the application back to the Internal Committee.

(3) The recommendations of the High Powered Advisory Committee shall be placed before the Panel of Whole Time Members.

ACTION ON THE RECOMMENDATION OF HIGH POWERED ADVISORY COMMITTEE (REGULATION 15)

(1) The Panel of Whole Time Members shall consider the recommendations of the High Powered Advisory Committee and may accept or reject the same:

Provided that where the recommendations of the High Powered Advisory Committee to settle the specified proceedings are rejected, the panel of Whole Time Members shall record reasons for rejection of the recommendations.

(2) Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -

(a) remit the settlement amount forming part of the settlement terms, not later than thirty calendar days from the date of receipt of the notice of demand;

(b) fulfil/undertake in writing to abide by, the other settlement terms, if any, within the time provided to the applicant.

1) **What is a Consent Order?**

Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws. It may settle all issues or reserve an issue or claim, but it must precisely state what issues or claims are being reserved. A Consent Order may or may not include a determination that a violation has occurred.

2) **What is Compounding of Offence?**

A Compounding is a process whereby an accused pays compounding charges in lieu of undergoing consequences of prosecution.

3) **What are Administrative/Civil enforcement actions?**

Administrative/Civil enforcement actions include issuing directions, suspension or cancellation of certificate of registration, imposition of monetary penalty, pursuing suits and appeals in Courts and Securities Appellate Tribunal (SAT).

4) **What is Prosecution?**

Filing of criminal complaints before various criminal courts by SEBI for violation of provisions of securities laws which may lead to imprisonment and/ or fine.

5) **What is the objective of Consent Order?**

Consent Order provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrance without resorting to litigation, lengthy proceedings and consequent delays.

6) **What is the objective of Compounding of Offence?**

Compounding of offence allows the accused to avoid a lengthy process of criminal prosecution, which would save cost, time, mental agony, etc in return for payment of compounding charges.

7) **Who can seek settlement of proceedings through consent order and compounding?**

Any person who is notified that a proceeding may or will be initiated/instituted against him/her, or any party to a proceeding already initiated/instituted, may, at any time, propose

in writing for settlement.

SUMMARY SETTLEMENT PROCEDURE (REGULATION 16)

(1) Notwithstanding anything contained in Chapter VI, before initiating any specified proceeding, the Board may issue a notice of summary settlement in the format as specified in Part-A of Schedule-III, calling upon the noticee to file a settlement application under Chapter-II and submit the settlement amount and/or furnish an undertaking in respect of other nonmonetary terms or comply with other non-monetary terms, as may be specified in the summary settlement notice in respect of the specified proceeding(s) to be initiated for the following defaults,-

i. Delayed disclosures, including filing of returns, report, document, etc.;

ii. Non-disclosure in relation to companies exclusively listed on regional stock exchanges which have exited;

iii. Disclosures not made in the specified formats;

iv. Delayed compliance of any of the requirements of law or directions issued by the Board;

v. Such other defaults as may be determined by the Board.

(2) Notwithstanding anything contained in the notice of settlement, the Board shall have the power to modify the enforcement action to be brought against the noticee and the notice of settlement shall not confer any right upon the noticee to seek settlement or avoid any enforcement action.

(3) The noticee may, within thirty calendar days from the date of receipt of the notice of settlement, -

(a) file a settlement application in the Form specified in Part-A of Schedule-I along with non-refundable application fee as specified in Part-B and the undertakings and waivers as specified in Part-C of Schedule-I;

(b) remit the settlement amount as specified in the notice of settlement;

(c) comply or undertake to comply with other non-monetary terms as specified in the notice of settlement, as the case may be; and

(d) seek rectification of the calculation of the settlement amount, as communicated in the notice of settlement, at the time of filing the settlement application and in all such cases, the

decision of the Board shall be final and remittance shall be done within thirty calendar days from the date of receipt of the decision of the Board.

(4) Upon being satisfied with the remittance of settlement amount and undertaking furnished in respect of the non-monetary terms or compliance with non-monetary terms, if any as detailed in the settlement notice, the Board shall pass an order of settlement under regulation 23.

SETTLEMENT WITH CONFIDENTIALITY (REGULATION 19)

(1) An applicant shall fulfil the conditions of this Chapter, including –

(a) cease to participate in the violation of securities laws from the time of the disclosure of information, unless otherwise directed by the Board;

(b) provide and continue to provide complete and true disclosure of information, documents and evidence, which is in his possession or he is able to obtain, to the satisfaction of the Board in respect of the alleged contravention of the provisions of securities laws;

(c) co-operate fully, continuously and expeditiously throughout the investigation, inspection, inquiry or audit and related proceedings before the Board; and

(d) not conceal, destroy, manipulate or remove the relevant documents in any manner that may contribute to the establishment of the alleged violation.

(2) Where an applicant fails to comply with the conditions mentioned in this regulation, the Board may rely upon the information and evidence submitted by the applicant in any proceedings.

(3) Board may subject the applicant to further restrictions or conditions, as deemed fit, after considering the facts and circumstances of the case.

(4) For the purpose of seeking confidentiality, the applicant or its authorized representative may make an application containing all the relevant disclosures pertaining to the information as specified in Schedule-IV for furnishing the information and evidence relating to the commission of any violation of securities laws.

(5) Upon being satisfied the Board may assure the benefit of confidentiality and shall thereupon mark the status of the application depending upon its priority and convey the same to the applicant in writing.

(6) The Board may, for reasons to be recorded in writing, at any stage, reject the application if the information, documents or evidence is found to be incomplete or false to the knowledge of the applicant.

(7) The rejection of the application for confidentiality shall be communicated to the applicant.

PROCEDURE (REGULATION 20)

The provisions of Chapters IV to VI of these regulations may be applied mutatis mutandis to a settlement application filed under this Chapter and a settlement order passed accordingly.

CONFIDENTIALITY AND ASSURANCE (REGULATION 21)

For the purposes of providing the applicant with interim confidentiality and assurance from being proceeded with, the Board may not initiate regulatory measures when the Board has a reasonable belief that the information provided to it relates to a possible securities law violation that has occurred, is ongoing or about to occur.

CONFIDENTIALITY (REGULATION 22)

The following shall be treated as confidential, -

(a) the identity of the applicant seeking confidentiality; and

(b) the information, documents and evidence furnished by the applicant under this Chapter.

Provided that, the identity of the applicant or such information or documents or evidence may not be treated as confidential if, –

(i) the disclosure is required by law;

(ii) the applicant has agreed to such disclosure in writing; or

(iii) there has been a public disclosure by the applicant.

SETTLEMENT ORDERS

SETTLEMENT OF PROCEEDINGS BEFORE THE ADJUDICATING OFFICER AND THE BOARD (REGULATION 23)

The Whole Time Member, Adjudicating Officer or the competent officer of the Board before whom the proceedings are pending, shall dispose of the respective proceedings, by an appropriate order, on the basis of the approved settlement terms.

SETTLEMENT OF THE PROCEEDINGS PENDING BEFORE THE TRIBUNAL OR ANY COURT (REGULATION 24)

Save as otherwise provided in these regulations, the provisions with regard to settlement of specified proceedings shall mutatis mutandis apply to an application for settlement of any proceeding pending before the Tribunal or any court.

SERVICE AND PUBLICATION OF SETTLEMENT ORDER (REGULATION 25)

Settlement orders shall be served on the applicant and shall also be published on the website of the Board

SETTLEMENT SCHEMES (REGULATION 26)

Notwithstanding anything contained in these regulations, the Board may specify a settlement scheme for any class of persons involved in respect of any similar specified defaults.

EFFECT OF SETTLEMENT ORDER ON THIRD PARTY RIGHTS OR OTHER PROCEEDINGS (REGULATION 27)

(1) A settlement order under these regulations shall not be admissible as evidence in any other proceeding relating to an alleged default not covered under the settlement order nor affect the right of third parties arising out of the alleged default.

(2) Where any applicant who obtains a settlement order is also noticee along with any other person in any civil and administrative proceeding, the Adjudicating Officer or the Board while disposing proceedings against such other person may make necessary observations in respect of the applicant in so far as is necessary to prove the act of another.

(3) Where any person has obtained a settlement order, which contains observations in respect of any other person for the commission of an alleged default, such an order shall not in itself be admissible as evidence against such other person.

REVOCATION OF THE SETTLEMENT ORDER (REGULATION 28)

(1) If the applicant fails to comply with the settlement order or at any time after the settlement order is passed, it comes to the notice of the Board that the applicant has not made full and true disclosure or has violated the undertakings or waivers, settlement order shall stand revoked and withdrawn and the Board shall restore or initiate the proceedings, with respect to which the settlement order was passed.

(2) Whenever any settlement order is revoked, no amount paid under these regulations shall be refunded.

CONFIDENTIALITY OF INFORMATION (REGULATION 29)

(1) All information submitted and discussions held in pursuance of the settlement proceedings under these regulations shall be deemed to have been received or made in a fiduciary capacity and the same may not be released to the public, if the same prejudices the Board and/or the applicant.

(2) Where an application is rejected or withdrawn, the applicant and the Board shall not rely upon or introduce as evidence before any court or Tribunal, any proposals made or information submitted or representation made by the applicant under these regulations.

PROCEDURE FOR COMPOSITION (REGULATION 33)

The provisions of Chapters IV to VI and Schedule-II may be applied mutatis mutandis for determining the terms while processing a compounding application.

IN THE MATTER OF R. JHUNJHUNWALA AND ORS.

The Securities and Exchange Board of India (SEBI) has moved to settle an 'insider trading' case involving investors who were accused of unusual dealing in shares of Aptech Computers.

One of the investor has management control over Aptech and is also on the board of the company. In September 2016, the share price of Aptech hit a 10 per cent upper circuit as Investor's brother and sister picked up 2.5 lakh and 5 lakh shares respectively.

Both these trades combined were worth more than ₹100 crore then. There were trades executed by others as well. In just a few days, Aptech announced its entry into the pre-school education segment.

Shareholding of promoters led by the one of investor's family has increased to around 48 per cent in Aptech since the prominent investor first picked up a 10 per cent stake in the company in 2005. SEBI found that there existed unpublished price sensitive information in Aptech when the high-profile investors were dealing in the company shares.

SEBI had alleged that One of the investors and others traded in Aptech when in possession of unpublished price sensitive information (UPSI). In September 2016, Aptech had announced its foray into the preschool segment. As per the SEBI order, this was an UPSI between March 14, 2016 and September 7, 2016, the date of official announcement.
It is alleged that two persons/investors were in possession of the UPSI and communicated the same to other applicants. On the basis of the UPSI, investors are alleged to have traded in the scrip of Aptech during the UPSI period.

The investors settled the case under SEBI's consent route where an alleged wrongdoer can close investigations and adjudications into the matter with SEBI without admitting or denying

guilt and charges against them. The total charges paid by one of the investor amount to `18.5 crore, of which the disgorgement amount is nearly `6 crore. His wife has paid `3.2 crore. Aptech board members, including investor and director have paid ₹6.2 crore and `1.7 crore respectively.

SECURITIES APPELLATE TRIBUNAL

COMPOSITION OF SECURITIES APPELLATE TRIBUNAL (SECTION 15L)

The Securities Appellate Tribunal shall consist of a Presiding Officer and such number of Judicial Members and Technical Members as the Central Government may determine.

Every Bench constituted shall include at least one Judicial Member and one Technical Member;

(a) the Benches of the Securities Appellate Tribunal shall ordinarily sit at Mumbai and may also sit at such other places as the Central Government may, in consultation with the Presiding Officer, notify.

The Presiding Officer may transfer a Judicial Member or a Technical Member of the Securities Appellate Tribunal from one Bench to another Bench.

QUALIFICATION FOR APPOINTMENT AS PRESIDING OFFICER OR MEMBER OF SECURITIES APPELLATE TRIBUNAL. (SECTION 15M)

A person shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member of the Securities Appellate Tribunal, unless he –

(a) is, or has been, a Judge of the Supreme Court or a Chief Justice of a High Court or a Judge of High Court for at least seven years, in the case of the Presiding Officer; and

(b) is, or has been, a Judge of High Court for at least five years, in the case of a Judicial Member; or

(c) in the case of a Technical Member:

(i) is, or has been, a Secretary or an Additional Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government or a State Government; or

(ii) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than fifteen years, in financial sector including securities market or pension funds or commodity derivatives or insurance.

The Presiding Officer and Judicial Members of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee. (Section 15MA)

The Technical Members of the Securities Appellate Tribunal shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee consisting of the following, namely:--

(a) Presiding Officer, Securities Appellate Tribunal – Chairperson;

(b) Secretary, Department of Economic Affairs – Member;

(c) Secretary, Department of Financial Services – Member; and

(d) Secretary, Legislative Department or Secretary, Department of Legal Affairs – Member.

A member or part time member of the Board or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, or any person at senior management level equivalent to the Executive Director in the Board or in such Authorities, shall not be appointed as Presiding Officer or Member of the Securities Appellate Tribunal, during his service or tenure as such with the Board or with such Authorities, as the case may be, or within two years from the date on which he ceases to hold office as such in the Board or in such Authorities.

TENURE OF OFFICE OF PRESIDING OFFICER AND OTHER MEMBERS OF SECURITIES APPELLATE TRIBUNAL (SECTION 15N)

The Presiding Officer or every Judicial or Technical Member of the Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, and shall be eligible for reappointment for another term of maximum five years.

Provided that no Presiding Officer or the Judicial or Technical Member shall hold office after he has attained the age of seventy years.

PROCEDURE AND POWERS OF THE SECURITIES APPELLATE TRIBUNAL

(1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely : –

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte ;

(g) setting aside any order of dismissal of any application for default or any order passed by it ex parte ;

(h) any other matter which may be prescribed.

APPEAL TO THE SECURITIES APPELLATE TRIBUNAL

i) Any person under SEBI Act, 1992 aggrieved, –

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer under this Act; or

(c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority.

(ii) Any person under Securities Contract (Regulation) Act, 1956 aggrieved, –

(a) by the order or decision of the recognized stock exchange; or

(b) the adjudicating officer; or

(c) any order made by the Securities and Exchange Board of India under sub-section (3) of section 23-I.

(iii) any person aggrieved under Depositories Act, 1996

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the regulations made thereunder,

(b) or by an order made by an adjudicating officer under this Act.

may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed.

Further the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and

Development Authority, as the case may be, the parties to the appeal and to the concerned Adjudicating Officer.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

RIGHT TO LEGAL REPRESENTATION

The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

ORDERS CONSTITUTING APPELLATE TRIBUNAL TO BE FINAL AND NOT TO INVALIDATE ITS PROCEEDINGS (SECTION 15R OF SEBI ACT, 1992)

No order of the Central Government appointing any person as the Presiding Officer or a Member of a Securities Appellate Tribunal shall be called in question in any manner, and no act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal.

FORM AND PROCEDURE OF APPEAL (RULE 4)

(1) A memorandum of appeal shall be presented in the Form by any aggrieved person in the registry of the Appellate Tribunal within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar.

(2) A memorandum of appeal sent by post shall be deemed to have been presented in the registry on the day it was received in the registry.

SITTINGS OF APPELLATE TRIBUNAL (RULE 5)

(1) The Appellate Tribunal shall hold its sitting either at a place where its office is situated or at such other place falling within its jurisdiction, as it may deem fit by the Appellate Tribunal.

(2) In the temporary absence of the Presiding Officer, Government may authorise one of the two other Members to preside over the sitting of the Tribunal either at a place where its office is situated or at such other place falling within its jurisdiction as it may deem fit by the Appellate Tribunal.

LANGUAGE OF APPELLATE TRIBUNAL (RULE 6)

(1) The proceedings of the Appellate Tribunal shall be conducted in English or Hindi.

(2) No appeal, application, representation, document or other matters contained in any language other than English or Hindi, shall be accepted by Appellate Tribunal, unless the same is accompanied by a true copy of translation thereof in English or Hindi.

APPEAL TO BE IN WRITING (RULE 7)

(1) Every appeal, application, reply, representation or any document filed before the Appellate Tribunal shall be typewritten, cyclostyled or printed neatly and legibly on one side of the good quality paper of foolscap size in double space and separate sheets shall be stitched together and every page shall be consecutively numbered and filed in the manner provided in sub-rule (2).

(2) The appeal under sub-rule (1) shall be presented in five sets in a paper book along with an empty file size envelope bearing the full address of the respondent and in case the respondents are more than one, then sufficient number of extra paper books together with empty file size envelope bearing full addresses of each respondent shall be furnished by the appellant.

PRESENTATION AND SCRUTINY OF MEMORANDUM OF APPEAL (RULE 8)

(1) The Registrar shall endorse on every appeal the date on which it is presented or deemed to have been presented and shall sign endorsement.

(2) If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number.

(3) If an appeal on scrutiny is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant to rectify the same in his presence and if the said defect is not formal in nature, the Registrar may allow the appellant such time to rectify the defect as he may deem fit. If the appeal has been sent by post and found to be defective, the Registrar may communicate the defects to the appellant and allow the appellant such time to rectify the defect as he may deem fit.

(4) If the appellant fails to rectify the defect within the time allowed, the Registrar may by order and for reasons to be recorded in writing, decline to register such memorandum of appeal and communicate the order to the appellant within seven days thereof.

(5) An appeal against the order of the Registrar shall be made within 15 days of receiving of such order to the Presiding Officer or in his temporary absence, to the Member authorized under sub-rule (2) of rule 5, whose decision thereon shall be final.

FEE (RULE 9)

(1) Every memorandum of appeal shall be accompanied with a fee provided in sub-rule (2) and such fee may be remitted in the form of crossed demand draft drawn on any nationalised bank in favour of "the Registrar, Securities Appellate Tribunal" payable at the station where the registry is located.

(2) The amount of fee payable in respect of appeal against adjudication orders made under Chapter VIA of the Act shall be as follows : –

AMOUNT OF PENALTY IMPOSED	AMOUNT OF FEES PAYABLE
Less than rupees ten thousand	Rs. 500
Rupees ten thousand or more but less than one lakh	Rs. 1,200

Rupees one lakh or more	Rs. 1200 plus Rs. 500 for every additional one lakh of penalty or fraction thereof, subject to a maximum of Rs. 1,50,000.
Amount of fee payable in respect of any other appeal against an order of the Board under the Act shall be rupees five thousand only	

CONTENTS OF MEMORANDUM OF APPEAL (RULE 10)

(1) Every memorandum of appeal filed under rule 4 shall set forth concisely under distinct heads, the grounds of such appeal without any argument or narrative, and such ground shall be numbered consecutively and shall be in the manner provided in sub-rule (1) of rule 7.

(2) It shall not be necessary to present separate memorandum of appeal to seek interim order or direction if in the memorandum of appeal, the same is prayed for.

DOCUMENTS TO ACCOMPANY MEMORANDUM OF APPEAL (RULE 11)

(1) Every memorandum of appeal shall be in five copies and shall be accompanied with copies of the order, at least one of which shall be a certified copy, against which the appeal is filed.

(2) Where a party is represented by an authorised representative, a copy of the authorisation to act as the authorised representative and the written consent thereto by such authorised representative, shall be appended to the appeal.

PLURAL REMEDIES (RULE 12)

A memorandum of appeal shall not seek relief or reliefs therein against more than one order unless the reliefs prayed for are consequential.

NOTICE OF APPEAL TO THE RESPONDENT (RULE 13)

Copy of the memorandum of appeal and paper book shall be served by the Registrar on the respondent as soon as they are registered in the registry, by hand delivery, or by Registered Post or Speed Post.

FILING OF REPLY TO THE APPEAL AND OTHER DOCUMENTS BY THE RESPONDENT (RULE 14)

(1) The respondent may file five complete sets containing the reply to the appeal along with documents in a paper book form with the registry within one month of the service of the notice on him of the filing of the memorandum of appeal.

(2) Every reply, application or written representation filed before the Appellate Tribunal shall be verified in the manner provided for, in the Form.

(3) A copy of every application, reply, document or written material filed by the respondent before the Appellate Tribunal shall be forthwith served on the appellant, by the respondent.

(4) The Appellate Tribunal may, in its discretion, on application by the respondent allow the filing of reply referred to in sub-rule (1) after the expiry of the period referred to therein.

DATE OF HEARING TO BE NOTIFIED (RULE 15)

The Appellate Tribunal shall notify the parties of the date of hearing of the appeal in such manner as the Presiding Officer may by general or special order direct.

HEARING OF APPEAL (RULE 16)

(1) On the day fixed or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Securities Appellate Tribunal shall, then, if necessary, hear the Board or its authorised representative against the appeal, and in such case the appellant shall be entitled to reply. During the course of the hearing of appeal the written arguments could be supplemented by time-bound oral arguments.

(2) In case the appellant does not appear in person or through an authorised representative when the appeal is called for hearing, the Securities Appellate Tribunal may dispose of the appeal on the merits. Provided that where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Securities Appellate Tribunal that there was sufficient cause for his non- appearance, when the appeal was called for hearing, the Securities Appellate Tribunal shall make an order setting aside the ex parte order and restore the appeal.

DRESS REGULATIONS FOR THE PRESIDING OFFICER, MEMBERS AND FOR THE REPRESENTATIVE OF THE PARTIES (RULE 17)

(1) The dress of the Presiding Officer shall be white or striped or black pant with black coat over white shirt and band or buttoned up black coat and band. The dress for the two other Members shall be white or striped or black pant with black coat over white shirt and black tie or buttoned up black coat. In the case of a female Presiding Officer or a Member, the dress shall be black coat over a white saree.

(2) Every authorised representative, other than a relative or regular employee of the party shall appear before the Appellate Tribunal in his professional dress if any, and if there is no such dress, a male, in a suit or buttoned-up coat over a pant or national dress that is a long buttoned-up coat on dhoti or churidar pyjama, and a female, in a coat over white or any other sober coloured saree or in any other sober dress.

(3) All other persons appearing before the Appellate Tribunal shall be properly dressed.

ORDER TO BE SIGNED AND DATED (RULE 18)

(1) Every order of the Appellate Tribunal shall be signed and dated by the Presiding Officer and the two other members. The Presiding Officer will have powers to pass interim orders or injunction, subject to reasons to be recorded in writing, which it considers necessary in the interest of justice.

(2) Orders shall be pronounced in the sitting of the Appellate Tribunal by the Presiding Officer or in case of the temporary absence of the Presiding Officer, by the Member authorized under sub-rule (2) of rule 5.

PUBLICATION OF ORDERS (RULE 19)

The orders of the Appellate Tribunal, as are deemed fit for publication in any authoritative report or the press may be released for such publication on such terms and conditions as the Presiding Officer may lay down.

COMMUNICATION OF ORDERS (RULE 20)

A certified copy of every order passed by the Appellate Tribunal shall be communicated to the Board, the Adjudicating Officer and to the parties, as the case may be.

ORDERS AND DIRECTIONS IN CERTAIN CASES (RULE 21)

The Appellate Tribunal may make, such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

FEE FOR INSPECTION OF RECORDS AND OBTAINING COPIES THEREOF (RULE 22)

(1) A fee of rupees twenty, for every hour or part thereof of inspection subject to a minimum of rupees one hundred shall be charged for inspecting the records of a pending appeal by a party thereto.

(2) A fee of rupees five for a folio or part thereof not involving typing and a fee of rupees ten for a folio or part thereof involving typing of statement and figures shall be charged for providing copies of the records of an appeal, to a party thereto.

WORKING HOURS OF THE APPELLATE TRIBUNAL (RULE 23)

(1) The office of the Appellate Tribunal shall observe such public and other holidays as observed by the offices of the Central Government in the locality where the office of the Appellate Tribunal is situated.

(2) The Appellate Tribunal shall, subject to any other order made by the Presiding Officer, remain open on working days from 10 AM to 6.00 PM. But no work, unless of an urgent nature, shall be admitted after 4.30 PM on any working day.

(3) The sitting hours of the Appellate Tribunal shall ordinarily be from 10.30 AM to 1.00 PM and 2.00 PM to 5.00 PM, subject to any order made by the Presiding Officer.

HOLIDAY (RULE 24)

Where the last day for doing any act falls on a day on which the office of the Appellate Tribunal is closed and by reason thereof the act cannot be done on that day, it may be done on the next day on which that office opens.

FUNCTIONS OF THE REGISTRAR (RULE 25)

(1) The Registrar shall discharge his functions under the general superintendence of the Presiding Officer or in the temporary absence of the Presiding Officer, the Member authorized. He shall discharge such other functions as are assigned to him under these rules by the Presiding Officer or in the temporary absence of the Presiding Officer, by the Member authorized, by a separate order in writing.

(2) He shall have the custody of the records of the Appellate Tribunal.

(3) The official seal of the Appellate Tribunal shall be kept in the custody of the Registrar.

(4) Subject to any general or special direction by the Presiding Officer, or in the temporary absence of the Presiding Officer, the Member authorized under sub-rule (2) of rule 5, the official seal of the Appellate Tribunal shall not be affixed to any order, summons or other process save under the authority in writing from the Registrar.

(5) The official seal of the Appellate Tribunal shall not be affixed to any certified copy issued by the Appellate Tribunal, save under the authority in writing of the Registrar.

ADDITIONAL FUNCTIONS AND DUTIES OF REGISTRAR (RULE 26)

(i) to receive all appeals, replies and other documents;

(ii) to decide all questions arising out of the scrutiny of the appeal before they are registered;

(iii) to require any appeal presented to the Appellate Tribunal to be amended in accordance with the rule;

(iv) subject to the directions of the Presiding Officer, or in his temporary absence, the member authorized under sub-rule (2) of rule 5, to fix date of hearing of the appeal or other proceedings and issue notices thereon;

(v) to direct any formal amendment or records;

(vi) to order grant of copies of documents to parties to proceedings;

(vii) to grant leave to inspect the record of the Appellate Tribunal;

(viii) to dispose of all matters relating to the service of notices or other processes, application for the issue of fresh notice or for extending the time for or ordering a particular method of service on a respondent including a substituted service by publication of the notice by way of advertisement in the newspapers; and

(ix) to requisition records from the custody of any court or other authority.

SEAL AND EMBLEM (RULE 27)

The official seal and emblem of the Appellate Tribunal shall be such as the Central Government may specify.

APPEAL TO SUPREME COURT

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order.

The Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

EXAMPLE OF SYNCHRONISED TRADING TO UNDERSTAND FACTORS TO BE TAKEN INTO ACCOUNT WHILE ADJUDGING QUANTUM OF PENALTY

SEBI suspected manipulation in the trading of Futures & Options segment (F&O), and found that the company and some other firms had undertaken fictitious trades.

Order of Adjudicating Officer

According to the A.O., a manipulative/deceptive devise had been used for synchronization and reversal of trades and the trades were essentially fraudulent/fictitious in nature and resulted in creating a misleading appearance of active trading in those securities.

Judgement of SAT

However, the Order was struck down by the Securities Appellate Tribunal (SAT) in 2011 on grounds that synchronization and reversal of trades effected by the parties with a significant price difference, some in a few seconds and majority, in any case, on the same day had no impact on the market, had not affected the NIFTY index in any manner nor induced investors. SAT held that such trades are illegal only when they manipulate the market in any manner and induce investors.

Judgement of Supreme Court

It was held that the trade reversals in the instant case amply demonstrated that the parties did not intend to transfer beneficial ownership through these transactions. Rather, the repeated reversals adversely affected the price discovery system, deprived other market players from participating in the trades, were a misuse of market mechanism and therefore violative of transparent norms of trading in securities.

Considering the perfect matching of quantity, price and time and sale in the impugned transactions, parties being persistent in the number of such trade transactions with huge price variations (without any major variation in the price of the underlying securities) wherein one party repeatedly booked profits whilst the other repeatedly incurred losses, the Supreme Court noted that it would be too naïve to hold that such transactions were by mere coincidence.

ROLE OF MENS REA IN LEVYING PENALTY

Under the SEBI Act, 1992, SCRA, 1956 and the Depositories Act, 1996 (collectively also known as securities laws), SEBI pursues two streams of enforcement actions i.e., Administrative /Civil (or) Criminal. Administrative/civil actions include issuing directions such as remedial orders, cease and desist orders, suspension or cancellation of certificate of registration and imposition of monetary penalty under the respective statutes and action pursued or defended in a court of law/tribunal.

Criminal action involves initiating prosecution proceedings against violators by filing complaint before a criminal court.

CHAPTER 14 – APPEARANCES BEFORE OTHER REGULATORY AND QUASI JUDICIAL AUTHORITIES

PROCEDURE FOR APPEARANCE

1. **Preparation of the case**

Before appearing before a regulatory or quasi-judicial authority, it is essential to prepare the case thoroughly. This includes reviewing all relevant documents, identifying key legal issues, and preparing arguments and evidence to support the case.

2. **Appointment of legal counsel**

It is advisable to appoint legal counsel who is experienced in representing clients before the specific regulatory or quasi-judicial authority. Legal counsel can provide valuable guidance and represent the client in the proceedings.

3. **Compliance with procedural rules**

It is essential to comply with all procedural rules and deadlines of the regulatory or quasi-judicial authority. Failure to comply with these rules can result in adverse consequences, including dismissal of the case.

4. **Conduct during the proceedings**

It is important to maintain a professional and respectful demeanor during the proceedings. This includes addressing the authority with appropriate language, presenting arguments clearly and concisely, and refraining from any behavior that may be deemed disrespectful or disruptive.

5. **Compliance with orders**

It is important to comply with any orders or directions given by the regulatory or quasi-judicial authority. Failure to comply with these orders can result in adverse consequences, including fines, penalties, or other sanctions.

RIGHT TO LEGAL REPRESENTATION

1. The right to legal representation is a fundamental right that is recognized in most legal systems around the world. This right ensures that individuals have access to legal counsel and representation, particularly in legal proceedings where their rights or interests are at stake.
2. The right to legal representation is also recognized in international human rights law, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
3. In criminal cases, for example, the accused person has a right to be represented by a lawyer and to receive legal aid if they cannot afford one. Similarly, in civil cases, parties have a right to be represented by a lawyer, although legal aid may not be available in all cases.
4. The right to legal representation is essential for several reasons. First, it helps to ensure that legal proceedings are fair and just.
5. Second, legal representation can help to ensure that the rights and interests of individuals are protected and advanced.
6. In some cases, the right to legal representation may be limited or restricted. For example, in certain administrative proceedings or disciplinary proceedings, parties may not have a right to legal representation. However, even in such cases, parties may still be entitled to a fair hearing and other procedural safeguards.

APPEARANCE UNDER THE COMPANIES ACT, 2013

Section 432 of the Companies Act, 2013 dealing with right to legal representation envisages that the applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal.

1. **Appearance before the Registrar of Companies (ROC)**

The ROC is a regulatory authority responsible for administering the provisions of the Companies Act, 2013. Companies and their officers may be required to appear before the ROC in relation

to various compliance matters, such as filing of returns and other documents, inspection of books and records, and verification of registered office address.

2. **Appearance before the National Company Law Tribunal (NCLT)**

The NCLT is a quasi-judicial body that adjudicates disputes and grievances related to companies and their affairs. Parties may be required to appear before the NCLT in various types of proceedings, such as merger and acquisition approvals, insolvency and bankruptcy proceedings, and disputes related to the interpretation of the Companies Act, 2013.

3. **Appearance before the Serious Fraud Investigation Office (SFIO)**

The SFIO is a specialized investigating agency that is empowered to investigate cases of fraud and financial irregularities related to companies. Parties may be required to appear before the SFIO in connection with investigations related to corporate fraud, money laundering, and other financial crimes.

4. **Appearance before the Securities and Exchange Board of India (SEBI):**

SEBI is a regulatory authority that is responsible for regulating and overseeing the securities market in India. Companies and individuals may be required to appear before SEBI in connection with various compliance and enforcement matters, such as insider trading, market manipulation, and disclosure requirements.

APPEARANCE UNDER THE TRAI ACT, 1997

Section 17 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 authorizes Company Secretaries to present his or its case before the Appellate Tribunal.

1. **Appearance before the TRAI in tariff-related matters**

The TRAI has the power to regulate the tariffs charged by telecom service providers in India. In this context, the TRAI may hold hearings and require telecom service providers and other parties to appear before it to provide evidence and arguments on tariff-related matters.

2. **Appearance before the TRAI in consumer-related matters**

The TRAI is responsible for protecting the interests of telecom consumers in India. In this context, the TRAI may hold hearings and require telecom service providers and other parties to appear before it to provide evidence and arguments on consumer-related matters, such as quality of service, billing disputes, and complaints related to unsolicited commercial communications.

3. **Appearance before the TRAI in licensing-related matters**

The TRAI is responsible for granting and revoking licenses for telecom service providers in India. In this context, the TRAI may hold hearings and require parties to appear before it to provide evidence and arguments on licensing-related matters, such as eligibility criteria, license fees, and conditions for license renewal.

4. **Appearance before the TRAI in disputes and grievances**

The TRAI has the power to adjudicate disputes and grievances related to the telecommunications industry in India. In this context, the TRAI may hold hearings and require parties to appear before it to provide evidence and arguments on disputes and grievances related to telecom services, licenses, and tariffs.

APPEARANCE UNDER THE SEBI ACT, 1992

Securities and Exchange Board of India (SEBI) Act, 1992 under Section 15V permits the appellant either to appear in person or authorise one or more of practising Company Secretaries, Chartered Accountants, Cost Accountants or Legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

1. **Appearance before SEBI in compliance-related matters**

SEBI has the power to investigate and take enforcement action against companies and intermediaries engaged in the securities market for non-compliance with SEBI regulations and guidelines. In this context, SEBI may issue show cause notices and require parties to appear before it to provide evidence and arguments on compliance-related matters.

2. **Appearance before SEBI in investigations**

SEBI has the power to investigate cases related to market manipulation, insider trading, and other fraudulent practices in the securities market. In this context, SEBI may require parties to appear before it to provide evidence and arguments in connection with investigations.

3. **Appearance before SEBI in adjudication proceedings**

SEBI has the power to adjudicate disputes and grievances related to the securities market. In this context, SEBI may require parties to appear before it to provide evidence and arguments in connection with adjudication proceedings related to violations of SEBI regulations and guidelines.

4. **Appearance before SEBI in appeals**

The SEBI Act, 1992 provides for appeals against SEBI orders and decisions to the Securities Appellate Tribunal (SAT) and to the Supreme Court. In this context, parties may be required to appear before SAT or the Supreme Court to provide evidence and arguments in connection with appeals.

APPEARANCE UNDER THE COMPETITION ACT, 2002

Sections 35 of the Competition Act, 2002 authorizes Company Secretaries in practice to appear before Competition Commission of India.

1. **Appearance before the CCI in complaint and information matters**

The CCI has the power to initiate investigations into anti-competitive practices based on complaints or information received from various sources. In this context, the CCI may issue notices and require parties to appear before it to provide evidence and arguments in connection with such investigations.

2. **Appearance before the CCI in combination matters**

The CCI has the power to review mergers, acquisitions, and other forms of combinations that may have an adverse effect on competition in India. In this context, the CCI may require parties to appear before it to provide evidence and arguments in connection with such reviews.

3. **Appearance before the CCI in appeal and review matters**

The Competition Act, 2002 provides for appeals against CCI's orders to the National Company Law Appellate Tribunal (NCLAT) and to the Supreme Court. In this context, parties may be required to appear before the NCLAT or the Supreme Court to provide evidence and arguments in connection with such appeals.

4. **Appearance before the CCI in leniency matters**

The Competition Act, 2002 provides for a leniency program to encourage companies and individuals to come forward and disclose anti-competitive practices. In this context, parties seeking leniency may be required to appear before the CCI to provide evidence and arguments in connection with such disclosures.

APPEARANCE UNDER REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

As per Section 56 of the Real Estate (Regulation and Development) Act, 2016 a Company Secretary holding certificate of practice can appear before Appellate Tribunal or a Regulatory Authority or Adjudicating Officer on behalf of applicant or appellant.

1. **Appearance before the RERA in complaint matters**

The RERA provides for the filing of complaints by aggrieved parties against real estate developers and promoters for non-compliance with the provisions of the Act. In this context, parties may be required to appear before the RERA to provide evidence and arguments in connection with such complaints.

2. **Appearance before the RERA in registration matters**

The RERA provides for the registration of real estate projects by developers and promoters. In this context, parties may be required to appear before the RERA to provide evidence and arguments in connection with the registration of such projects.

3. **Appearance before the RERA in dispute resolution matters**

The RERA provides for the resolution of disputes related to real estate projects by the RERAs. In this context, parties may be required to appear before the RERA to provide evidence and arguments in connection with such disputes.

4. **Appearance before the Appellate Tribunal in appeal matters**

The RERA provides for the filing of appeals against orders and decisions of the RERAs to the Appellate Tribunal. In this context, parties may be required to appear before the Appellate Tribunal to provide evidence and arguments in connection with such appeals.

APPEARANCE UNDER THE RESERVE BANK OF INDIA ACT, 1934

When Company Secretaries are required to make an appearance, they play a crucial role in ensuring compliance with regulatory requirements and facilitating communication between the organization and the Reserve Bank of India (RBI).

1. **Understand the provisions:** Familiarize yourself with the relevant provisions of The Reserve Bank of India Act, 1934 that require the appearance of Company Secretaries. The study of the specific sections and regulations to grasp the scope of responsibilities and obligations associated with these appearances.

2. **Prepare relevant information:** Gather all the necessary information, documents, reports, and records related to the matter at hand. This may include financial statements, compliance reports, board resolutions, or any other relevant documentation that pertains to the appearance.

3. **Consult with internal stakeholders:** Engage with relevant internal stakeholders, such as senior management, legal teams, and compliance departments, to understand the organization's position, address any concerns, and ensure alignment with the RBI's requirements.

4. **Engage legal counsel:** Depending on the complexity of the matter and the potential legal implications, it may be advisable to seek guidance from legal counsel experienced in RBI-related matters. They can provide legal advice and help you navigate the regulatory requirements.

5. **Prepare for the appearance:** Develop a clear understanding of the issues to be discussed during the appearance and prepare your responses accordingly. Consider the questions that may arise and ensure that you have a comprehensive understanding of the organization's compliance status and any remedial actions taken, if applicable.

6. **Maintain professionalism:** When appearing before the RBI, maintain a professional demeanor. Dress appropriately, arrive on time, and demonstrate respect towards the RBI officials. Engage in constructive dialogue and provide accurate information in a clear and concise manner.

7. **Comply with RBI's instructions:** Follow any specific instructions or guidelines provided by the RBI regarding the appearance. This may involve providing requested information or documents, adhering to timelines, or following any other procedural requirements specified by the RBI.

8. **Facilitate communication:** As a Company Secretary, you play a crucial role in facilitating effective communication between the organization and the RBI. Ensure that accurate and relevant information is conveyed during the appearance, and address any queries or concerns raised by the RBI officials.

9. **Take notes and maintain records:** Keep detailed records of the discussions, decisions, and outcomes of the appearance. Maintain accurate minutes of meetings, correspondence, and any other relevant documentation for future reference.

10. **Follow up and compliance:** After the appearance, collaborate with internal stakeholders to address any follow-up actions required by the RBI. Ensure that the organization promptly complies with any directives, rectification measures, or additional information requests provided by the RBI.

APPEARANCE BEFORE THE ENFORECEMENT DIRECTORATE

The Company Secretaries may be required to appear before the Enforcement Directorate (ED) in cases related to financial offenses, money laundering, or economic crimes. As a Company Secretary, our role is crucial in facilitating compliance and providing relevant information. The general guidelines which are applicable to Appearance under RBI is same as when appearing before the Enforcement Directorate.

APPEARANCE BEFORE THE STOCK EXCHANGES

When making an appearance before stock exchanges, it typically involves matters related to compliance, regulatory requirements, or specific inquiries related to trading activities or listed securities. The general guidelines which are applicable to Appearance under RBI and ED are same as when appearing before the Stock Exchanges.

APPEARANCE BEFORE THE IPR AUTHORITIES

When making an appearance before Intellectual Property Rights (IPR) authorities, it typically relates to matters such as trademark registrations, patent applications, copyright disputes, or other intellectual property-related issues. The general guidelines which are applicable to Appearance under RBI, ED and Stock Exchanges are same as when appearing before the IPR Authorities.

APPELLATE AUTHORITIES UNDER THE COMPANIES ACT, 2013

The Companies Act, provides for various provisions related to the establishment of Appellate Authorities for hearing appeals against orders and decisions of the National Company Law Tribunal (NCLT).

1. National Company Law Appellate Tribunal (NCLAT)

As per Section 408 of the Companies Act, 2013, the Central Government constituted Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under the Act or any other law for the time being in force.

The NCLAT is the principal Appellate Authority established under the Companies Act, 2013. It hears appeals against orders and decisions of the NCLT, which is the adjudicating authority under the Act. The NCLAT has its principal bench in New Delhi and may hold sittings in other parts of India as well.

National Company Law Appellate Tribunal may hear appeals against, –

(a) the order of the Tribunal or of the National Financial Reporting Authority under the Companies Act, 2013; and

b) any direction, decision or order referred to in section 53A of the Competition Act, 2002 in accordance with the provisions of that Act.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees as may be prescribed.

2. Appeal to Supreme Court

As per Section 423 of the Companies Act, 2013 any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date

of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order.

3. **Regional Director**

The Regional Director is a statutory authority appointed by the Central Government under the Companies Act, 2013. The Regional Director has the power to hear appeals against orders and decisions of the Registrar of Companies (RoC), which is the authority responsible for the registration of companies under the Act.

The Regional Directors supervise the working of the offices of the Registrars of Companies and Official Liquidators located in different locations in the country. They also maintain liaison between the respective State Governments and the Central Government on matters relating to the administration of the Companies Act, 2013. The Regional Directors have been delegated powers to directly take up work and dispose off certain business under the provisions of Companies Act.

Registrars of Companies (ROCs) appointed under Section 396 of Companies Act, 2013 are vested with the primary duty of registering companies in States and Union Territories and ensuring that such companies comply with statutory requirements under the Act. These offices function as a registry of records, relating to the companies registered with them. The records are available for inspection by the public on payment of the prescribed fee. The Central Government exercises administrative control over these offices through the respective Regional Directors.

APPELLATE AUTHORITIES UNDER SEBI ACT

Appeal to the Securities Appellate Tribunal

The Securities Appellate Tribunal (SAT) is an appellate tribunal established under the Securities and Exchange Board of India (SEBI) Act, 1992, to hear appeals against orders passed by SEBI or its officers.

As per Section 15T of the SEBI Act, 1992, any person aggrieved by an order of the Securities Exchange Board of India (Board) or by an order made by an adjudicating officer under the SEBI Act or by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority.

The procedure for filing an appeal with the SAT involves the following steps:

1. **Filing of appeal:** The appellant must file an appeal with the SAT within 45 days from the date of the order passed by SEBI or its officers. The appeal must be filed in the prescribed format and must include all relevant documents and evidence to support the appeal.\

2. **Service of notice:** Once the appeal is filed, the SAT will serve notice to SEBI or its officers, giving them an opportunity to file a reply to the appeal.

3. **Hearing:** The SAT will hear the appeal and may ask the parties to present their case and provide evidence in support of their arguments. The SAT may also seek clarification or further information from the parties if required.

4. **Decision:** After hearing the appeal, the SAT will pass an order either confirming, modifying or setting aside the order passed by SEBI or its officers. The SAT's decision is binding on all parties involved.

The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

APPELLATE AUTHORITIES UNDER THE INCOME-TAX ACT, 1961

1. **Commissioner of Income Tax (Appeals) [CIT(A)]**

The CIT(A) is the first appellate authority under the Act. It hears appeals filed by taxpayers against the orders passed by the Assessing Officer (AO) in relation to the assessment of income tax.

2. **Income Tax Appellate Tribunal (ITAT)**

The ITAT is the second appellate authority under the Act. It hears appeals filed by taxpayers against the orders passed by the CIT(A) and other tax authorities. The ITAT is an independent judicial body and has the power to confirm, modify, or set aside the order of the CIT(A) or any other tax authority.

3. **High Court**

The High Court has the jurisdiction to hear appeals against the orders passed by the ITAT. The High Court can hear appeals on questions of law arising out of the order of the ITAT.

4. **Supreme Court of India**

The Supreme Court of India is the highest appellate authority under the Act. It can hear appeals against the orders passed by the High Court on questions of law.

APPELLATE AUTHORITIES UNDER THE COMPETITION ACT, 2002

1. **National Company Law Appellate Tribunal (NCLAT):**

The NCLAT is a quasi-judicial body established under the Companies Act, 2013, and also acts as the appellate tribunal for competition-related matters. The NCLAT hears appeals against orders passed by the Competition Commission of India (CCI) and orders of the Director-General (DG) of the CCI.

2. **High Courts:**

High Courts have jurisdiction to hear appeals against the orders of the CCI or the DG. Appeals to High Courts are filed under Article 226 of the Constitution of India, which allows for the judicial review of decisions taken by administrative bodies.

3. **Supreme Court of India:**

The Supreme Court of India is the highest court of appeal in the country and has the power to hear appeals against the orders of the NCLAT. Appeals to the Supreme Court are usually filed in cases where the NCLAT has erred in law or where there is a substantial question of law to be decided.

APPEARANCE UNDER THE COMPETITION ACT, 2002

According to section 35(2) of the Competition Act, 2002, a party may call upon experts from the fields of economics, commerce, international trade or from any other discipline to provide an expert opinion in connection with any matter related to a case.

A CS in a competent professional that may give advices to the parties under section 35(2) on calling upon by any party.

ESSAR STEEL MATTER FOR CIRP

Essar Steel, one of India's leading steel producers, was among the first companies to be referred to the National Company Law Tribunal (NCLT) under the Corporate Insolvency Resolution Process (CIRP) provisions of the Insolvency and Bankruptcy Code (IBC), 2016. The company had been facing financial difficulties for several years, with a debt of around Rs 54,000 crore. Following its referral to the NCLT, a resolution professional was appointed to oversee the CIRP process. Several bids were received for the company, including those from Tata Steel and JSW Steel, both leading players in the Indian steel industry.

After evaluating the bids, the committee of creditors (CoC) approved the resolution plan submitted by JSW Steel, which involved the acquisition of Essar Steel's assets for a total consideration of Rs 19,700 crore.

However, the resolution plan faced several legal challenges, including objections raised by Essar Steel's former promoters, the Ruia family, and Standard Chartered Bank, one of the company's creditors. The Ruia family claimed that the resolution plan undervalued the company's assets, while Standard Chartered Bank argued that it was being discriminated against compared to other creditors.

The legal challenges led to a protracted legal battle that lasted for over two years and involved multiple rounds of litigation in various courts, including the Supreme Court of India. The case also highlighted several issues with the implementation of the IBC, including the need for a clear framework for dealing with operational creditors and the importance of balancing the interests of different stakeholders.

Despite the challenges, the resolution plan was eventually approved by the Supreme Court, and JSW Steel took over the assets of Essar Steel. The resolution of Essar Steel was a significant milestone in the implementation of the IBC and demonstrated the potential of the CIRP process in resolving distressed assets and preserving value for stakeholders.

This case study highlights the challenges involved in the CIRP process and underscores the importance of a transparent and efficient resolution process that enables the resolution of distressed assets while protecting the interests of different stakeholders. It also highlights the need for a clear and predictable legal framework for dealing with distressed assets and the importance of balancing the interests of different stakeholders in the resolution process.

CASE STUDY ON CORPORATE INSOLVENCY RESOLUTION PROCESS

CIRP OF JAYPEE INFRATECH LIMITED (JIL)

A case study of a company going through the Corporate Insolvency Resolution Process can provide insights into the various stages and challenges faced by a Company and the resolution professional appointed to manage the process. Let's take the example of the case of Jaypee Infratech Limited (JIL), a real estate company in India.

In August 2017, JIL was declared insolvent by the National Company Law Tribunal (NCLT) after it failed to repay its debts to lenders. The company had borrowed heavily from various banks and financial institutions to fund its real estate projects, but it was unable to complete the projects due to various reasons, including delays in obtaining regulatory approvals and disputes with landowners.

The NCLT appointed an insolvency resolution professional (IRP) to manage the CIRP process for JIL. The IRP invited bids from potential investors to take over the company and complete the pending real estate projects. However, no resolution plan was approved by the creditors, and the CIRP process had to be extended several times.

In June 2019, the Supreme Court of India ordered that the CIRP process be completed within 90 days and that only two bidders, the Suraksha Group and the NBCC, be allowed to submit their resolution plans. The Suraksha Group's bid was approved by the creditors, but it was challenged by the homebuyers who had invested in JIL's real estate projects and had not received possession of their flats.

The case went back to the Supreme Court, which directed the Suraksha Group to modify its resolution plan to address the concerns of the homebuyers.

The Suraksha Group submitted a revised plan, which was approved by the creditors in March 2021.

The CIRP process for JIL, which was expected to be completed within 270 days, took more than three and a half years, highlighting the challenges faced by companies going through the process. The delay in the resolution process caused financial losses to the creditors, including banks and homebuyers, and also impacted the real estate sector as a whole.

In conclusion, the case of Jaypee Infratech Limited highlights the importance of a timely and efficient Corporate Insolvency Resolution Process to protect the interests of all stakeholders. The CIRP process needs to be streamlined and simplified to ensure that financially distressed companies can quickly restructure or liquidate their assets to repay their debts, and that the interests of all stakeholders, including creditors and homebuyers, are protected.

JET AIRWAYS

Jet Airways was one of India's leading airlines until it suspended its operations in April 2019 due to financial difficulties. The airline had accumulated a debt of over Rs 8,000 crore and had been facing financial troubles for several years.

Following its suspension, the airline was referred to the National Company Law Tribunal (NCLT) under the Corporate Insolvency Resolution Process (CIRP) provisions of the Insolvency and Bankruptcy Code (IBC), 2016.

The resolution professional appointed by the NCLT invited bids from interested parties to take over the airline and revive its operations. Several bids were received, including those from a consortium led by UK-based Kalrock Capital and UAE-based entrepreneur Murari Lal Jalan, and another from a consortium led by Canadian investor Sivakumar Rasiah.

After evaluating the bids, the committee of creditors (CoC) approved the resolution plan submitted by the consortium led by Kalrock Capital and Murari Lal Jalan. The plan involved the acquisition of the airline's assets, including its brand, aircraft, and other infrastructure, and the revival of its operations.

However, the resolution plan faced several challenges, including the reluctance of the aviation regulator, the Directorate General of Civil Aviation (DGCA), to grant the necessary approvals for the revival of the airline. There were also legal challenges raised by some of the airline's creditors.

Despite the challenges, the resolution plan was eventually approved by the NCLT, and the consortium led by Kalrock Capital and Murari Lal Jalan took over the airline. The new management has since been working on reviving the airline's operations and restoring its position in the Indian aviation market.

This case highlights the challenges involved in the CIRP process, particularly in the context of the aviation sector, which is subject to a complex regulatory framework. It also underscores the importance of a robust and transparent resolution process that enables the efficient resolution of distressed assets and the preservation of value for stakeholders.

CASE STUDY ON COMBINATIONS UNDER THE COMPETITION ACT, 2002

ACQUISITION OF FLIPKART BY WALMART

A case study of a combination under the Act can provide insights into the legal requirements and procedures for compliance.

One such case study is the acquisition of Flipkart, an Indian e-commerce company, by Walmart, a US- based multinational retail corporation. In May 2018, Walmart announced its acquisition of a 77% stake in Flipkart for $16 billion, making it the largest e-commerce deal in India and the largest acquisition by Walmart to date.

The acquisition was subject to the approval of the Competition Commission of India (CCI), as it met the threshold for a combination under the Act. The parties filed a notice with the CCI, providing details of the combination and its potential effects on competition in the market.

The CCI conducted a thorough examination of the combination, considering factors such as market share, competition, and consumer welfare. The CCI also invited comments from stakeholders, including competitors and consumers, and held hearings to assess the potential impact of the combination on the market.

After a detailed examination, the CCI approved the combination, subject to certain conditions. The conditions included ensuring that Flipkart remained a separate entity and not a subsidiary of Walmart, and that Walmart did not have a controlling influence over Flipkart's operations.

The CCI also directed the parties to submit periodic reports on the compliance with the conditions imposed by the CCI. The parties complied with the conditions, and the combination was completed in August 2018.

The Flipkart-Walmart combination is a prime example of the rigorous examination conducted by the CCI in assessing combinations and ensuring fair competition in the market. The CCI's approval of the combination, subject to conditions, ensured that the interests of all stakeholders, including competitors and consumers, were protected.

In conclusion, the Flipkart-Walmart combination case study highlights the legal requirements and procedures for compliance with the Competition Act, 2002, and the role of the CCI in ensuring fair competition in the market. Combining parties must ensure that their combination complies with the Act and seek the approval of the CCI to avoid any potential penalties or adverse effects on the market.

RELIANCE INDUSTRIES LIMITED (RIL) AND FUTURE GROUP

In August 2020, Reliance Industries Limited (RIL) announced its plans to acquire the retail and logistics assets of Future Group in a deal worth $3.4 billion. The deal involved the transfer of Future Group's retail, wholesale, logistics, and warehousing businesses to Reliance Retail Ventures Limited (RRVL), a subsidiary of RIL.

The Competition Commission of India (CCI) initiated an investigation into the combination under Section 6(2) of the Competition Act, 2002, which empowers the CCI to examine any combination that is likely to cause an appreciable adverse effect on competition within the relevant market in India.

After conducting a detailed analysis of the transaction, the CCI approved the deal subject to certain conditions. The CCI imposed several conditions to ensure that the combination did not result in any adverse impact on competition in the relevant market, particularly in the retail and e-commerce sectors.

One of the key conditions imposed by the CCI was that the deal could not lead to an exclusive supply agreement between RIL and Future Group, which could have resulted in an unfair advantage for Reliance in the retail market. The CCI also mandated that Future Group maintain a level playing field for all sellers on its platforms and that it continues to operate independently of RIL.

However, Amazon, which had a 49% stake in Future Coupons, a promoter group entity of Future Retail, approached the Singapore International Arbitration Centre (SIAC) to seek a stay on the Future-Reliance deal. Amazon argued that Future Group had breached the terms of their agreement by selling its assets to Reliance without seeking Amazon's consent.

The SIAC ruled in favor of Amazon and issued an interim stay on the Future-Reliance deal. The matter is currently under litigation in various Indian courts.

This case highlights the complexities involved in assessing the impact of combinations on competition, particularly in the context of the rapidly evolving e-commerce and retail sectors. It also underscores the need for careful consideration of the legal implications of agreements between companies, and the importance of adhering to contractual obligations.

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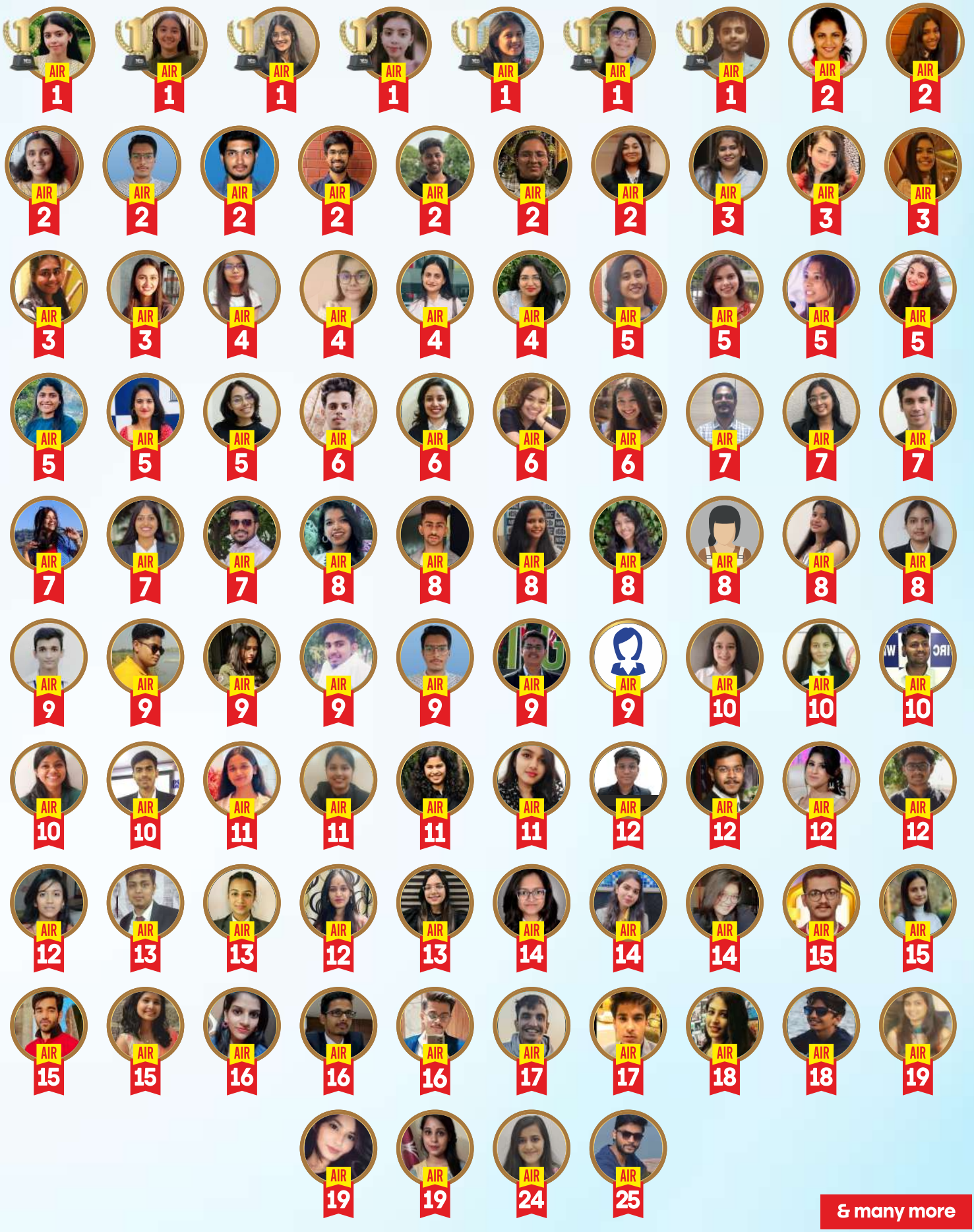

& many more

CS Vikas Vohra
Founder - YES Academy

Vikas is a Commerce and Law Graduate and a Company Secretary by profession. He has to his credit, few other Certifications and specialisations in Corporate and Securities Laws. On the teaching side, he has taught more than 50,000 students.

He is also a speaker at various Management Institutes and ICSI on various Corporate matters and Entrepreneurship. In his previous assignments, he worked as an Associate Vice President with LexValueAdd Consulting Private Limited, an Investment Banking firm based out of Mumbai.

He has significant hands on experience in Mergers and Acquisitions, Public Offerings and consequent listing of the Shares and GDR's on the Bourses, fund raising and Deal Structuring. Before that he also worked with Kirloskar Brothers Investments Limited & Bajaj Auto Limited wherein, he was deeply involved in various M&A activities.

Vikas is presently the Founder of YES Academy for CS, Pune He is also a Co-Founder of PapaZapata (Mexican food chain) & GujjuKhakhra (Indian Breads). He enjoys writing poetry and doing meditation in his free time.

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Office 30A, 1st Floor, Gate No. 1, Kumar Prestige Point,
Behind BSNL Office, Bajirao Road, Shukrawar Peth, Pune - 411 002

8888 235 235 | 8888 545 545
yesacademypune@gmail.com

yesacademy.co.in
/yesacademyforcs
/yesacademyforcs
/yesacademyforcs