

Date..06/04/2025..

CHAPTER - 6

NON-COMPLIANCES, PENALTIES AND ADJUDICATION

# Difference b/w Civil law and Criminal law

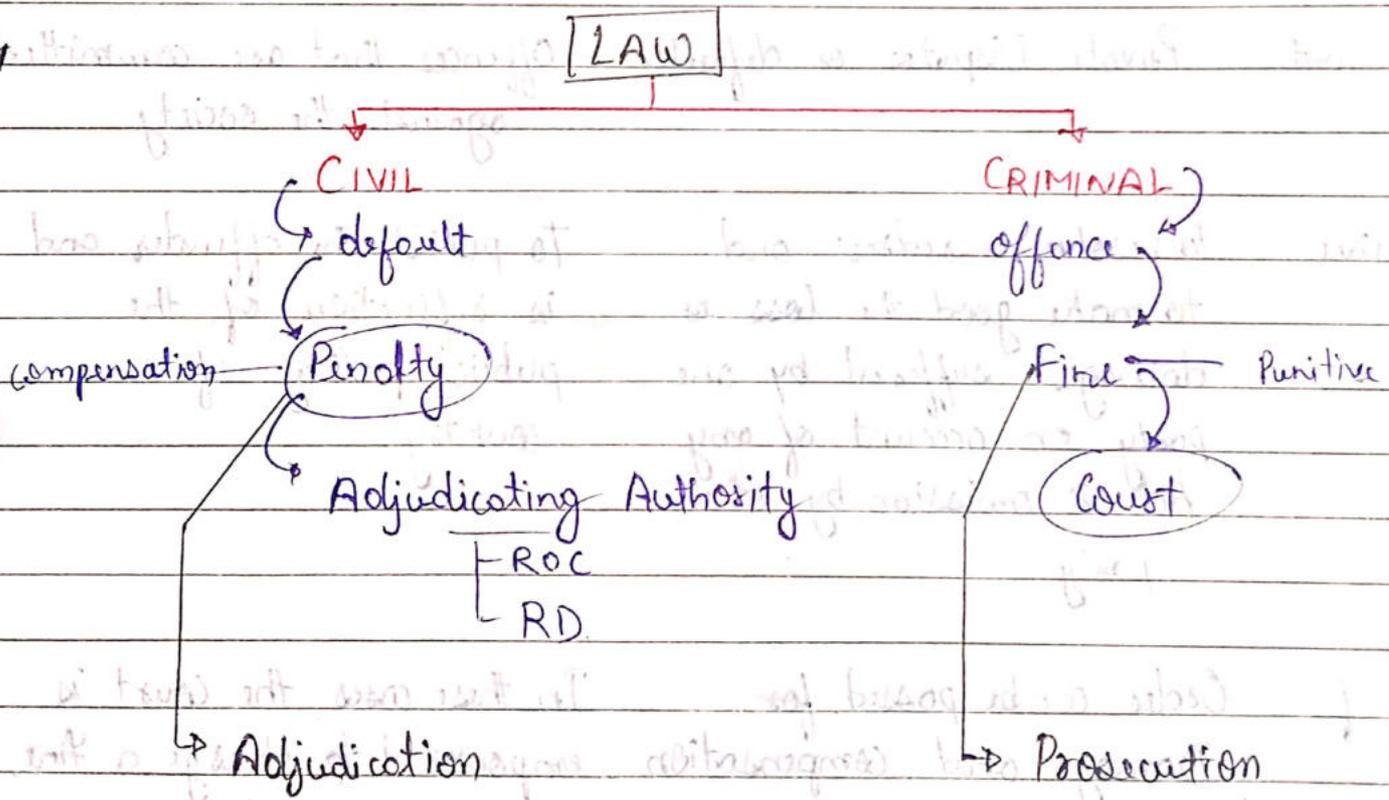
Particulars	CIVIL LAW	CRIMINAL LAW
1) Deals with	Private Disputes or defaults	Offences that are committed against the society
2) Objective	To resolve or redress and [to make good the loss or damages] suffered by one party on account of any Act or omission by other party	To punish the offender and is reflection of the public policy of a country. (set on example)
3) Power of Court	Order can be passed for <u>Damage</u> and <u>compensation</u>	In these cases the court is empowered to charge a fine, <u>imprison</u> the guilty of a crime, or <u>discharge</u> the defendant or life imprisonment or death penalty
4) Principle	Pre-ponderance of Evidence (party with the Burden convinces court-juror (Judge) that there is >50% chance that claim is true ↑ more long	Beyond reasonable doubt

Date.....

Q.] Companies Act is a Civil law or a Criminal law?

Ans Companies Act, 2013 is a Civil and Criminal law both because of the language used in the Act.

Non-compliance of provision attract penalties hence it is a civil law and Non-compliance or contravention at times attract fine or imprisonment which denotes the Criminal nature of the Act.



Date.....

# # Difference between Fine and penalty

## Fine

1. A "fine" is a penalty of money that a court of law or other authority decides has to be paid as punishment for a crime or other offence.
2. Fine has been used as punishment for criminal offence.
3. Fine can be imposed only by court of law  
 ↓  
 ∴ Special Court  
 4/18/435
4. Fine is imposed as a punitive measure.

## Penalty

1. "Penalty" is a punishment imposed for "breaking a law, rule or contract".  
 In general language a penalty is imposed by an appropriate authority when a person not complied with law but have not committed any offence.
2. Penalty has been used to indicate civil offence.
3. Penalty may be imposed even by an administrative officer/ adjudicating authority (ROC/RO)
4. Penalty is imposed as a compensatory measure for breach of civil obligation.

# Offence ← Sec 2(n) of CrP.C., 1973

Cognizable Offence

Non-Cognizable Offence  
Sec 2(1) of CrP.C.

- X Bailable
- Serious offence
- warrant X

- Bailable ✓
- less serious offence
- warrant ✓

→ In Companies Act, 2013

offence involving frauds

Offence not involving fraud

- COGNISABLE OFFENCE
- NON-Bailable
- warrant X

- NON-COGNISABLE OFFENCE
- Bailable ✓
- warrant ✓

exception for Co's Act

→ Cognisable offence → Fraud

Nobody can be arrested without the warrant.

### # Offences to be Cognizable and Non-Bailable u/p 212 (6)

212 (6) → deals with offences covered u/p 447  
i.e. Fraud

#### COGNIZABLE AND NON-BAILABLE

Prosecutor has the right to oppose the Application

- ↳ exception :
  - ✓ Person who is under the age of 16
  - ✓ Sick
  - ✓ Woman
  - ✓ Infirm

### # Classification of Offences

- ① Compoundable & Non-Compoundable offence
- ② Offence involving Fraud & Offence not involving Fraud
- ③ Cognizable & Non-Cognizable offence

#### COMPOUNDABLE

- ↳ Settlement
- Fine
- Fine or imprisonment
- Fine or imprisonment or Both

#### NON-COMPOUNDABLE

- Imprisonment only
- Imprisonment and fine
- Inspection, Inquiry, Investigation } → Pending
- Same offence repeated within 3 years already been compounded

# # Decriminalization of Offences / Ease of Doing Business

Mr. Injeti Srinivas Committee



Co's (Amendment) Act, 2019

Further amend → Review

as Govt feel the need to further liberalise

Committee i.e. [Co. Law Committee]

Co's (Amendment) Act, 2020

\* Imprisonment → fine → Penalty

↓  
omit/removed

⊕ Default ⊗ non-compliance of such <sup>\*</sup> reduced penalty leads to [Withdrawal of Benefits]

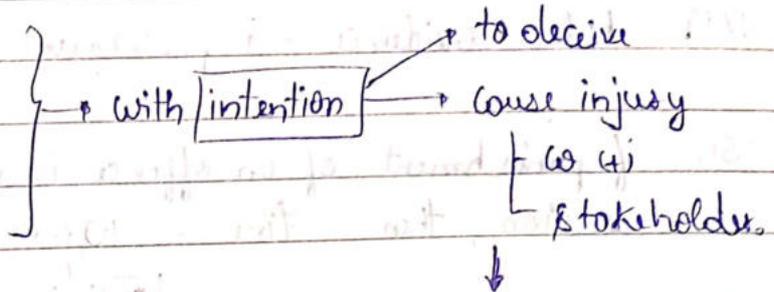
i.e. Pvt. Co → exemptions

- ① Buy-Back → ineligible
- ② Directors → Disqualify
- ③ Inactive Co. → classify

# Section 447

Definition:

- ✓ Act
- ✓ Omission
- ✓ Concealment of fact
- ✓ Abuse of position



irrespective of wrongful gain @ loss

Punishment

↳ Imprisonment → Minimum 6 Months to Maximum 10 years

Nature of



offence

Fine → Amt involved in fraud to 3 times the amt involved in fraud.

↳ Non-compoundable

Limit

If amt. involved in FRAUD is 10 Lakh @ 1% of T.O



≥ 10L @ 1% of T.O

< 10L @ 1% of T.O



Imp: 6M to 10 years

Imp. upto 5 years

Non-compoundable

↳

Fine = Amt involved to 3X in fraud

↳ compoundable

Fine - upto 50L

Both

Public interest involved:

Imp. : Min ~~6 months~~ → 10 yrs  
Min 3 years to Max 10 years



Fine : Amt involved in to 3 times fraud

- # 447: Fraud.
- # 448: False ~~St~~ Statement → Punishment u/a 447.
- # 449: False evidence → punishment → Imp: 3yrs → 7yrs  
↳ Fine: upto 10L.
- # 450: if punishment of an offence is not given under any of section, then fine = 10,000 (Min)

continuing offence

Co	OID
(Max) 10000₹ per day upto 2Lakh	1000₹ per day (Max) upto 50K

- # 451: Repeated default → within 3yrs → Fine: 2 times of
- # 452: wrongful withholding of property

↳ Punishment: fine - [1lakh ₹ to 5lakh ₹]  
Imprisonment - Max 2yrs [1-2yrs]

Q.1 (Mrs. Geda) is MD of HEL Ltd, She has been arrested under offence covered u/a 447 of Companies Act, 2013 on a complaint made by the Director of SFIO. Geda seeks your legal advice to know the conditions under which she can be released on bail. [June 2019]

• Offences involving fraud or not involving fraud

447 → Cognizable & Non-Bailable offence

↓  
212(G) - Sick } if Special Court u/a 435.  
- infirm }  
- imprisonment }  
- death }  
- life }  
- transportation }  
- fine }  
- forfeiture of property }  
- forfeiture of right of abode }  
- forfeiture of other rights }  
- forfeiture of other interests }

Date.....

Ans of Q.1]

• Offences under Companies Act, 2013 are categorised as Offences involving fraud and Offences not involving fraud.

• According to Companies Act, 2013, Offences included under the Act are Non-Cognizable [except for offence given under Section 212(6), offences involving fraud.]

• Cognizable Offences are Serious offence and Non-Bailable where the offender shall not be released on Bail (unless);

1) The Public prosecutor has been given an opportunity to oppose the application of release, and

2) Where the court is satisfied that there are reasonable ground of believing that the offender is not guilty.

3) However a person who is under the age of 16 years (♂) is a women (♀) is sick (♂) infirm may be released on Bail if the special court directs.

• In the Instant case, Mrs. Geta, A/D of H E L Ltd is arrested u/s 447 on the complaint of Director of SFIO, Section 447 is a cognizable & Non-Bailable offence but we advised that she can be released on bail as she is a women but only if special court directs.

Q.

Date.....

Q2. What are penal provisions under Co's Act, 2013 for giving incorrect Secretarial Audit report?

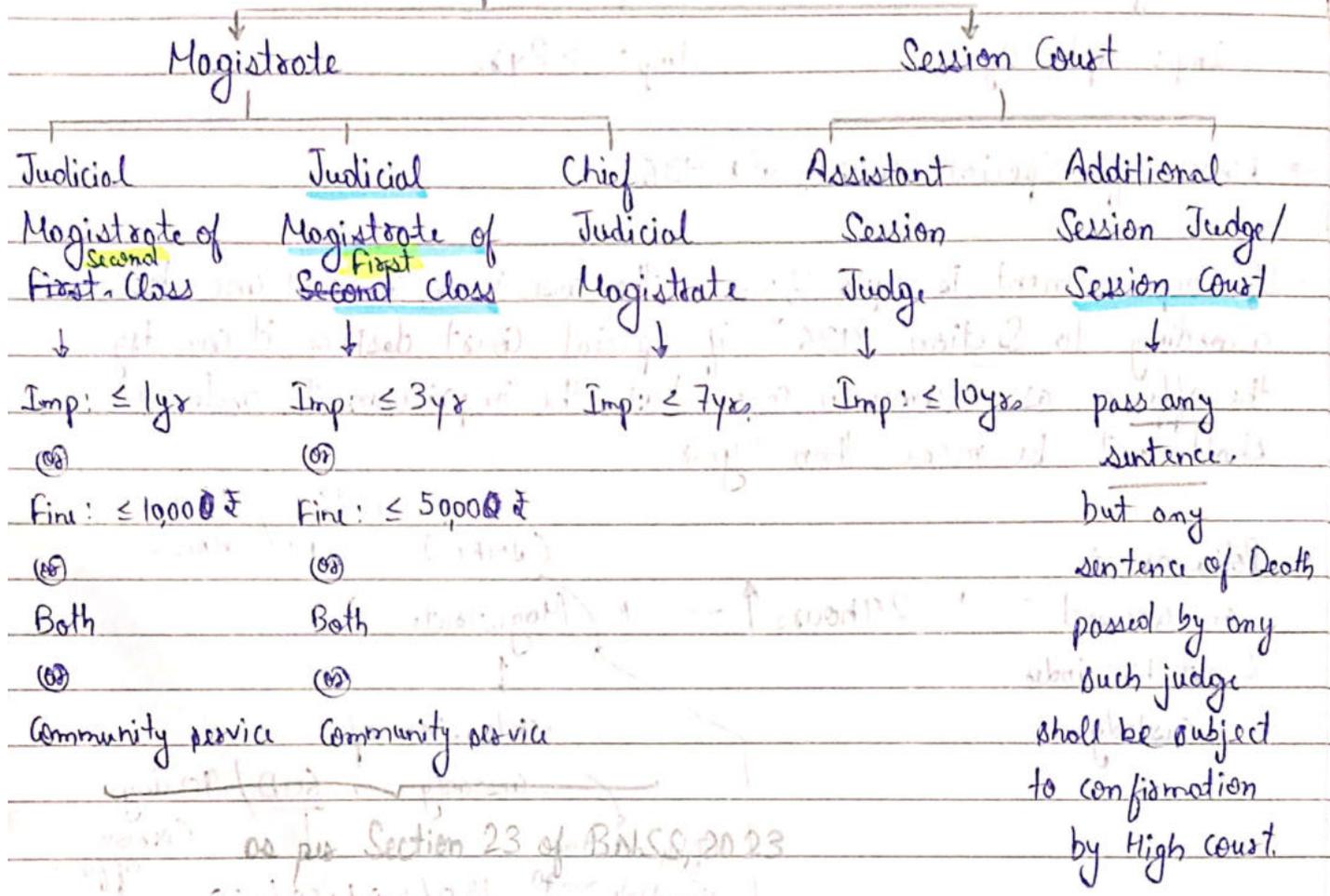
Ans.

- According to Section 448 of Companies Act, 2013; if in any return, report, financial statement, certificate, prospectus, any person makes a statement knowing it to be false, he shall be liable u/s 447.
- As per Section 447, Fraud means any act, omission, concealment of fact, abuse of authority with intention to deceive & intention to cause injury to company or stakeholders irrespective of wrongful gain or wrongful loss.
- A person liable u/s 447 shall be punishable with imprisonment from 6 months to 10 years and fine involving amount involved in the fraud to 3 times the amount involved in the fraud, if the amount involved in fraud is at least 10 lakhs or 1% of Turnover whichever is less.
- However, if the amount involved is less than 10 lakhs & 1% of Turnover and does not involve public interest then the punishment shall be imprisonment upto 5 years & fine upto 50 lakhs ₹ or Both.
- However if the public interest is involved, punishment shall be minimum imprisonment of 3 years to max. imprisonment of 10 years, [and] fine should be amount involving in fraud to 3 times the amount involved in fraud.

Date.....

# # Special Court u/s 435

## → Hierarchy of Criminal Court\*



## → Special Court u/s 435

Speedy trial of OFFENCES <sup>who?</sup> ~~CG~~ (1) in consultation of with CJ of HC

Existing Courts\* → (designate) as Special Court

Offences done under Co's Act, 2013 for which Imp: upto 2yrs

JMFC → Special Court

offences done under Co's Act, 2013 for which Imp: 2yrs or more

Session Court → Special Court

→ Types of cases:

Summon case

Warrant case

✓ long trials/procedures

✓ chargesheet files

✓ in trials, proving of all the charges which are imposed



Imp: upto 2 yrs

Imp: > 2 yrs

→ Power of Special Court u/s 436:

• If imprisonment is upto 3 years, the case is a warrant case but according to Section 436, if special court desires it can try the offence as Summon case but the imprisonment ordered shall not be more than 1 year.

• Police arrest on accused & put him under custody

Sec 167 / 187 (JMFC) CrPc / BNSS

→ 24 hours ↑ →

Magistrate

extension of

custody → 60D / 90 days

(Serious offences)

(By executive Magistrate, min 70)

15D / 15D / 15D / 15D

extend

Custody

→ further extension is not

needed

→ Matter will be transferred to Special Court

• Appeal from Special Court:

High Court

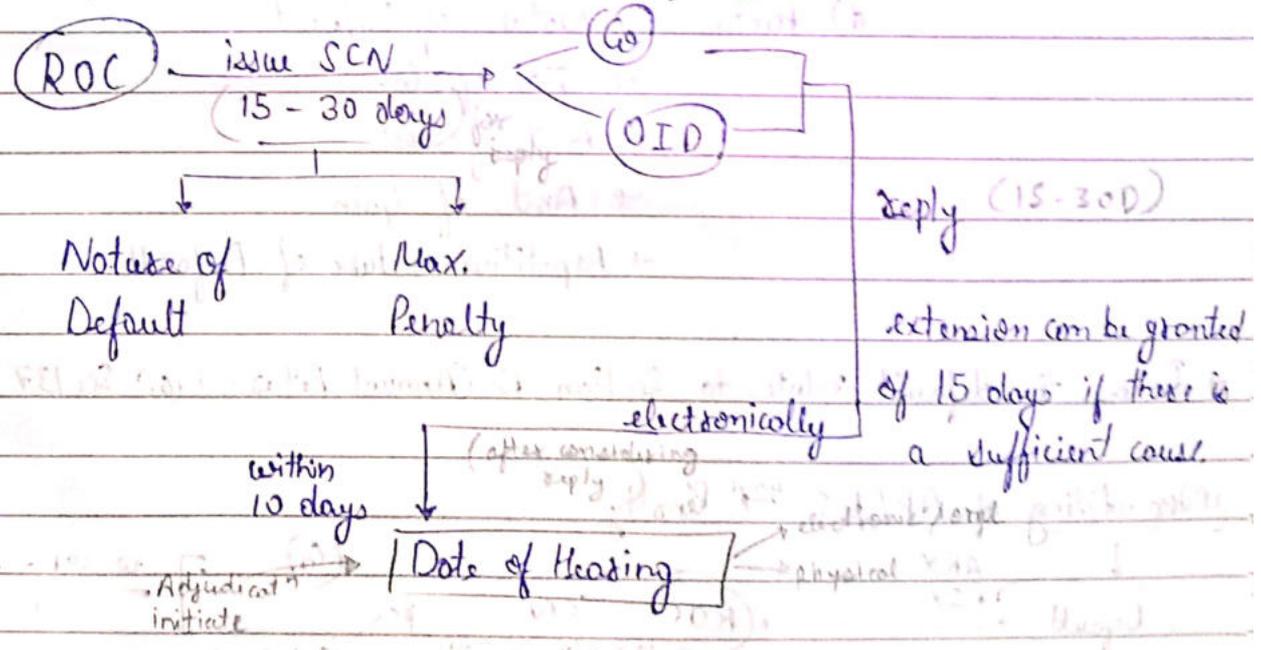
further extend (or) Bail

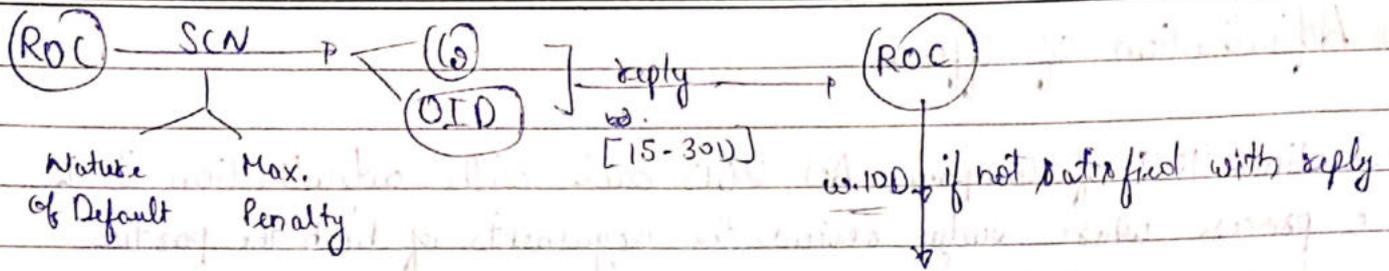
## # Adjudication of Offences

- Section 454 of Companies Act, 2013 deals with adjudication. It is a process where Judge reviews the arguments of both the parties and gives a decision.
- Earlier, the provisions under Companies Act, 1956 did not give judicial power to administrative authorities like ROC or RD. The Show-cause notice that was issued by ROC led to a legal proceeding before a magistrate if the company or officer-in-default committed a default.
- However, J.J. Irani Committee recommended the concept of In-House Adjudication to empower ROC.
- Thus Section 454 of Companies Act, 2013 was incorporated which gave power to Central Government and officially ROC and RD were appointed as Adjudicating Authority.

### → Adjudication Procedure under Co's Act.

In a (Co), if there is default or likelihood of Default then,





Nature of Default  
Max. Penalty

Date of Hearing

- call for documents & records
  - enforce the attendance of any witness
- 1) OOBH
  - 2) Summon

3) Order

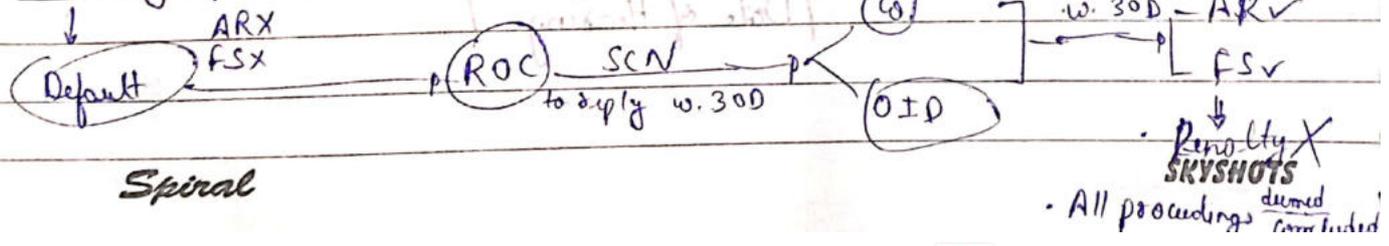
Impose Penalty on the basis

Copy to both parties

- Imposed by Adjudicating Officer
- Paid on MCA portal
- Transfer to Consolidated fund of India
- Factors
  - Nature of Default
  - Size of Co.
  - Amt of loss
  - Amt. of Gain
  - Repetitive nature of Default

# In case, the default relates to Section 42 (Annual Returns) or Sec 137 (Fin. Stat)

Non-filing of AR/FS → Penalty

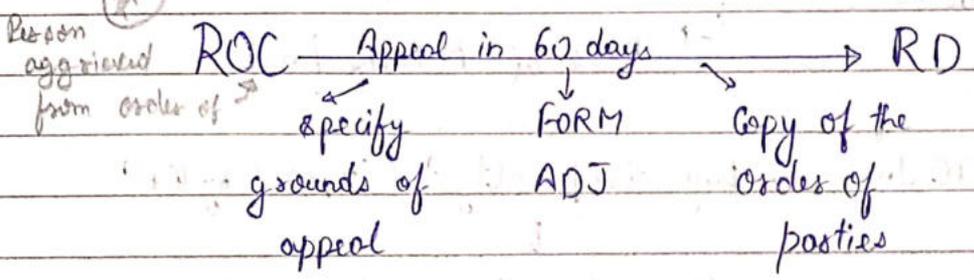


Spiral

Date.....

∴ Default of Sec 12 @ Sec 137, has been rectified prior to, or within 30 ~~thirty~~ days of issue of show-cause notice, then No penalty shall be imposed and all the legal proceedings shall be deemed to be included.

# Appeal to Regional Director



[RD] → ① Enclosurement of Date of Appeal

→ ② Scrutinise

error/ defect in appeal (✓)

error/ defect in appeal (X)

allow appellent to rectify within 14 days

Registers the appeal +

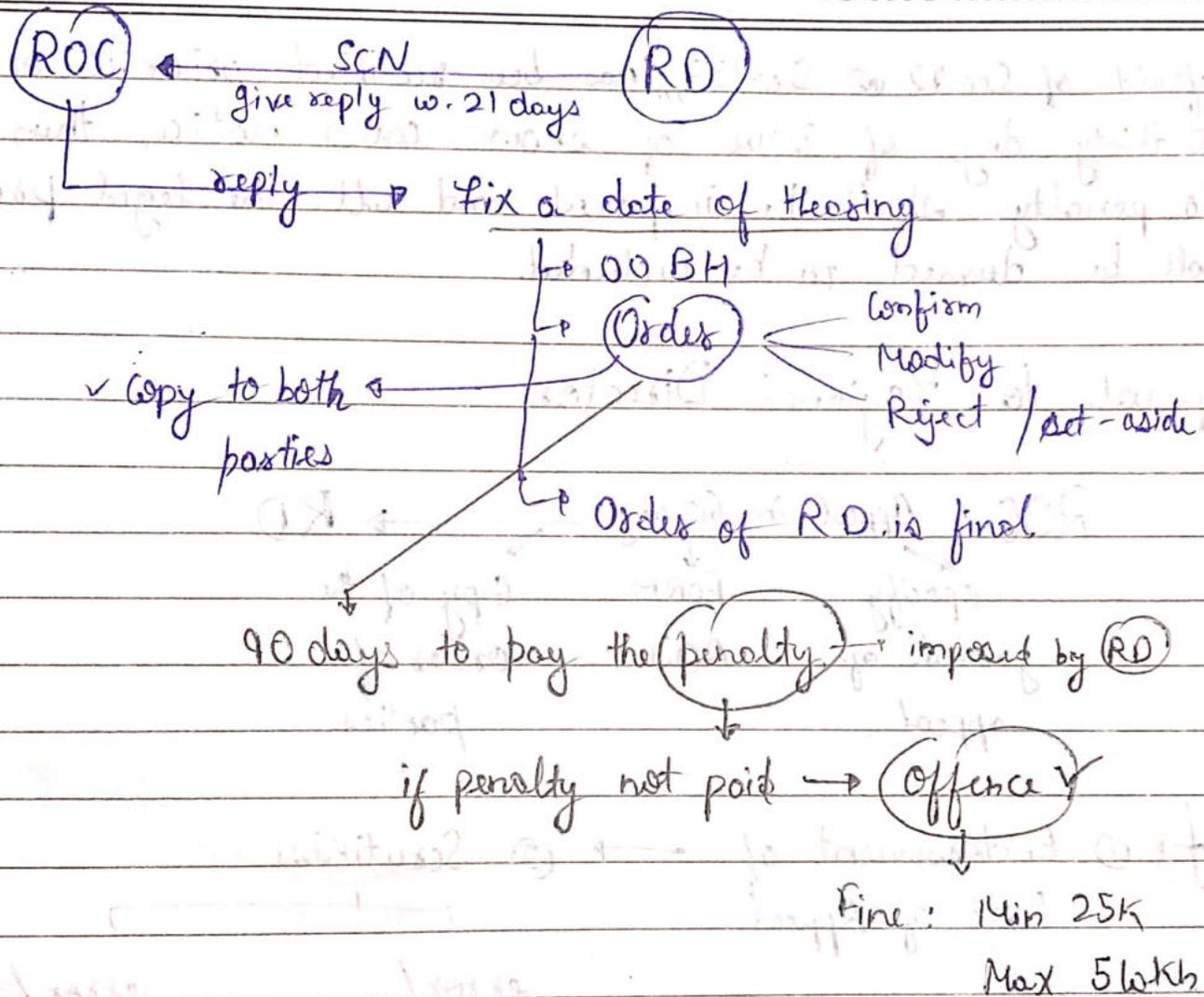
Failed to rectify ↓ w. 7 days

give a serial number

(RD) → pass (+) order the appeal

(-) reject the appeal

Date.....



Q2 The CS of a Company was [allotted Quarters] during the tenure of his employment. He has retired on 31<sup>st</sup> March, 2019. As per the terms of his employment, he is required to vacate his quarters within 1 month of his ceasing to be in employment i.e. by 30<sup>th</sup> April, 2019. He seeks one year to vacate the premises on the ground of his children's education. The Company wants him to vacate as it has to allot it to the new CS. What would be your advice to the Company under the given circumstances? (Dec 2020 4M)

Ans - In the Instant case, Company Secretary retired and was supposed to vacate his quarters within 1 month of his ceasing to be in employment. However because he seeks one year to vacate the premise and Company wants to allot it to New Company Secretary, we would advice that under the given circumstances Company can file a suit under section 452 i.e. wrongful withholding of property.

- According to Section 452 of Companies Act, 2013 if any officer or employee of a Company -
  1. Wrongfully obtains possession of any property; or
  2. Having any such property wrongfully withholds and misuses the property then Company can file a suit for wrongful withholding of property
- The Employee or officer shall be punishable with fine not less than 1 lakh ₹ extended to 5 lakh rupees.
- Employee and Officer-in-default might undergo any imprisonment for a term which may extend to 2 years.

Date.....

Q.4 Enumerate the Adjudicating Authorities under Companies Act, 2013  
Write the procedure for Adjudication in brief.

Ans. Section 454 deals with Adjudication, and by this section Central Government has power to appoint ROC and RD as adjudicating authority.

- If a Company and its officers may make a default, then it is ROC who has power to adjudging penalty. But before adjudging penalty, the adjudicating officer will issue a show-cause notice to the Company or Officers-in-default, which is for not less than 15 Days & maximum 30 days, to show cause why the penalty should not be imposed on it or him.
- Every notice issued, shall clearly indicate the nature of default or maximum penalty and reply to such notice should be made in electronic mode only w. 15-30 days & such period of reply can be extended by 15 days if there is a sufficient cause.
- After submitting reply, the adjudicating officer is of the opinion that physical appearance is required, then w. 10 days he shall issue a notice and fixes a date of appearance.
- On the date fixed for hearing & after giving a ROOBH, the Adjudicating officer may pass the order in writing within 30 days, and such copy of order shall be made of copy of such order shall be sent to both parties.
- In such order, ROC may impose penalty on the Company or Officers-in-default, to rectify the default, on the basis of the following factors:

Date.....

- a) Nature of Business
- b) Size of the Company
- c) Repetitive nature of default
- d) Wrongful loss or wrongful gain

• Amount of penalty should be transferred to Consolidated Fund of India and shall be paid through MCA portal only

• In case default relates to non-compliance of Annual Return or financial statement and such default is rectified either prior to, or within 30 days, of the issue of notice by A.O.

• No penalty shall be imposed and all proceedings shall be deemed to be concluded.

# Kodagu Heritage - Case Summary → note give reply of SCN

• This case is violation of Section 12 of Companies Act, 2013. According to Section 12 of Companies Act INC-22 is to be filed within 30 days from the date of incorporation as a verification for registered office. In the instant case, Company filed the form INC-22 after 3 years of incorporation.

• Adjudicating Officer u/p 454 issued a Show-cause Notice to Company and Officers-in-default for non-compliance of Section 12 of Companies Act.

• Company and officers-in-default admitted the violation.

• Adjudicating Officer impose a penalty of 1 lakh ₹ which was to be paid by each Company and officer-in-default.

not explicit to SCN.

Date.....

## # M/s. Joy Teescom (Bengaluru) Pvt. Ltd - Case Summary

• This case is violation of Section 12 of Companies Act, 2013. According to Section 12 of Companies Act INC-22 is to be filed within 30 days from the date of incorporation as a verification for registered office.

• In the instant case, after the verification of records authorities came to the conclusion that there is non-compliance with Section 12 and INC-22 has not been filed.

• Adjudicating Officer u/s 454 of Companies Act, 2013 issued a show-cause notice to Company and Officer-in-default.

• Since the Company and officer-in-default failed to submit the reply and present before the adjudicating authority, a penalty of ₹ 1 lakh on each Company & officer-in-default was imposed for non-compliance & absence.

• The penalty is to be paid on MCA portal and if the company fails to pay the penalty within 90 days it becomes an offence and Company will be liable to pay a fine of minimum ₹ 25,000 to maximum 5 lakh ₹.

Date.....

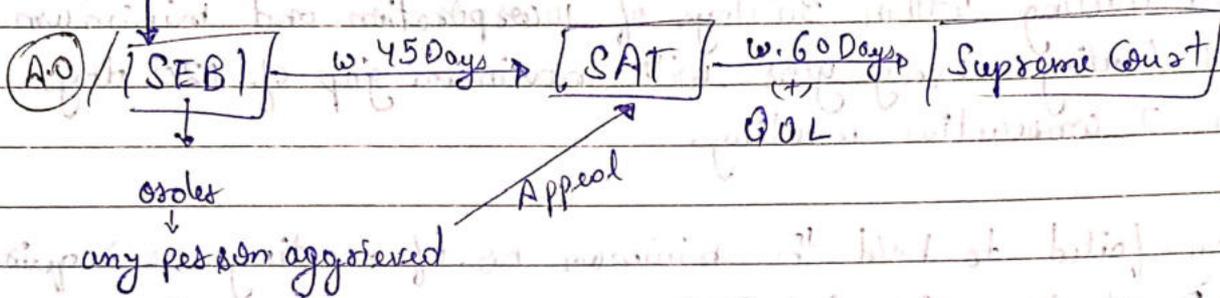
# Narang's International Hotels Pvt. Ltd - Case Summary

- In the instant case, there is a violation of Section 173 under Companies Act, 2013. According to Section 173, Company should hold 1<sup>st</sup> Board meeting within 30 days of incorporation and minimum 4 Board Meeting every year with maximum gap of 120 days between 2 consecutive meetings.
- Company failed to hold the minimum no. of meetings as required u/a 173 of Companies Act, 2013.
- An extension was given of 180 days. However there was still a delay in conducting Board meeting.
- RD u/a 454 of Companies Act, 2013, issued a show-cause notice to the Company and Officers-in-default. Company and officers-in-default accepted the non-compliance and a penalty of ₹ 25,000 on each of the directors of the Company was imposed.
- Factors considered before adjudging the penalty are as following:
  - a) Size of the Company
  - b) Nature of Default
  - c) Disproportionate amount of gain
  - d) Amount of loss
  - e) Repetitive Nature of Default.

# # Penalties and Adjudication under SEBI Act, 1992

Securities Market

(if there is a default)



How case represents :

XYZHV. SEBI

Representatives

Enforcement Directorate / Dept

Litigation

Prosecution

Settlement

Appeal

Complaint

Settlement Proceeding

Internal Committee (IC)

High Powered

Panel of whole-time

Advisory Committee (HPAC)

Members

ll 13  
Date.....

Q. Arun, an individual shareholder of M/s. BEL Ltd. is holding 2% of the voting rights. He made a complaint before the Adjudicating Authority that investments proposed to be made by the Co. are without any adequate security and prayed for injunction to restrain the Co. from making such investments. Whether Arun will succeed in his attempt? Explain with decided case law.

Ans. Similar set of facts were held in the case of Bharat Insurance Ltd V. Kanhya Lal. In the Instant case plaintiff filed a complaint against the Company because company made several investments without adequate/proper security which was contrary to the provision of Memorandum of Company. Object clause of Memorandum of Company provided that Company can ~~pr~~ advance money on the security of land, house, property etc situated in India. However since the Company made several investment without security, it was an Ultra-Vires Act and hence the case was maintained.

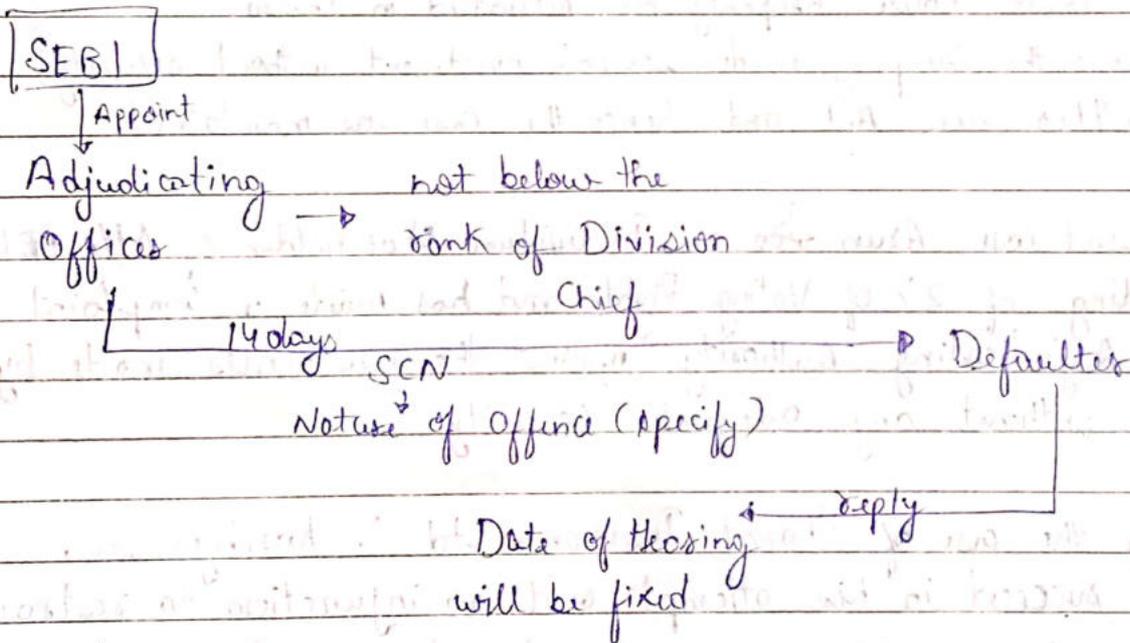
• In the present case, Arun ~~is~~ an Individual shareholder of M/s BEL Ltd with a holding of 2% of Voting Rights and has made a complaint before the Adjudicating Authority against the investments made by the Company without any adequate security.

• Considering the case of Bharat Insurance Ltd V. Kanhya Lal, Arun will succeed in his attempt and an injunction to restrain the Company from making such investment will be given.

→ Continuance of Proceedings

- (i) When a person dies, his legal representative is ~~to~~ liable to pay the amount which the deceased was liable to pay.
- (ii) The liability of legal Representative shall be limited to the extent of estate ~~acq~~ acquired of the deceased.
- (iii) However, if the legal Representative creates a charge on the estate he shall be personally liable to pay the amount of charge that has been created.
- (iv) Proceeding for disgorgement, refund and recovery will be initiated against the legal representative.

→ SEBI procedure for holding enquiry & imposing penalties  
Rules, 2005:



- copy to both the parties
- Order
- (1) AO will explain the offence that has been committed
  - (2) OOBH → opportunity to produce evidence
  - (3) Summon
  - (4) Proceed with Inquiry.

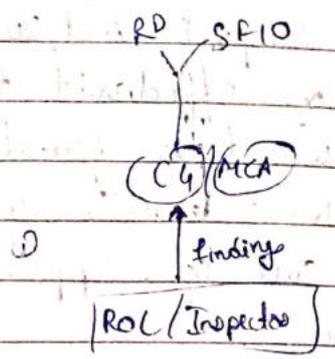
- 1) Impose Penalty
- 2) Factors Spiral
  - Amnt. of loss
  - Amnt. of Gain
  - Repetitive nature
- 3) Rectification of Order

Copy to both the parties

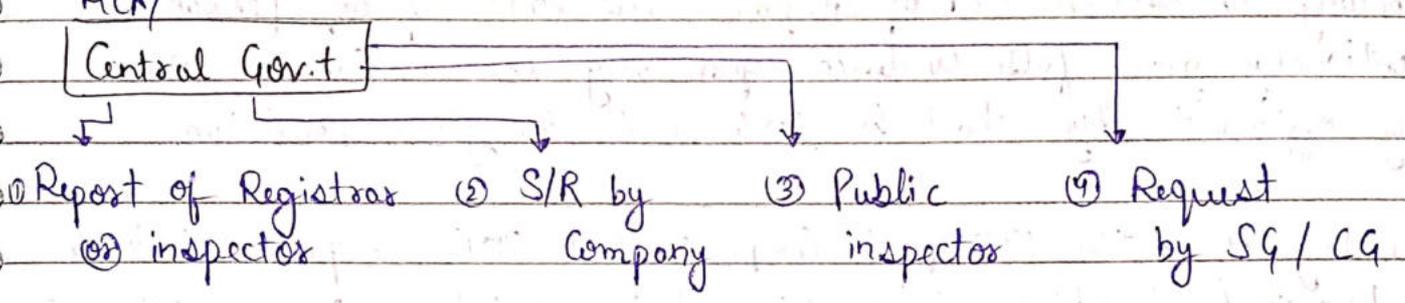
Date.....

Order

- 1) Impose penalty
- 2) factors
  - Amt. of loss
  - Amt. of Gain
  - Repetitive nature
- 3) Rectification of Orders



# Investigation procedure by SFIO :-

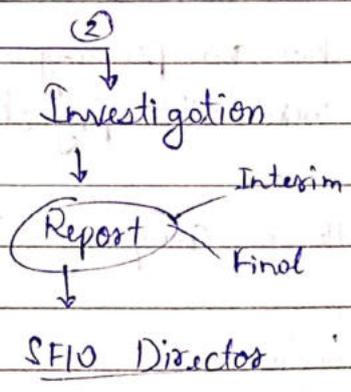


then, Investigation is offered by CG to

SFIO + Director (Joint Secretary)

Investigating Officer

If finds any officer violating u/s 447



a) Permission of Director

b) 24 hrs -> report (within copy of Arrest), SFIO

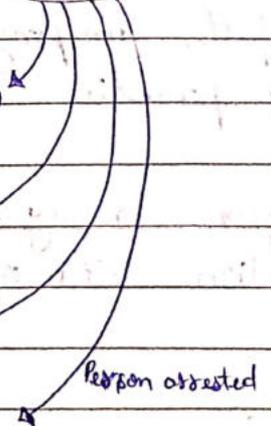
c) Govt Co / Foreign Co -> Permission of CG

d) Maintain Register of Arrest

e) Preserve that registers for 5 years

f) w. 24 hrs taken to Special Court

Arrest



Apply for Disgorgement

Tribunal

ask SFIO to initiate Prosecut

Special Court

SKYSHOTS

Date.....

Q. The BOD of BJI Pvt. Ltd made an App<sup>n</sup> to ROC u/s 248(2) of Companies Act, 2013 for removal of name of Co. The BOD submitted an affidavit that Co. has no pending liabilities. However, it was later found that few amt. were still payable to creditors. What penalties can be levied under Companies Act, 2013 for such an application?

Ans

### Provision

- According to Section 449 of Companies Act, 2013 if any person intentionally gives false evidence upon any examination on oath or any affidavit they shall be liable under the given provision.
- According to Section 448 of the Companies Act, 2013 a person is liable for knowingly making false statement in any return, report, statement or document required for the purpose of the provision of the Act.

### Fact

- In the instant case, BJI Pvt. Ltd submitted an affidavit that Company has no pending liabilities however it was found that few amounts were still payable to creditors.

• Hence, Company is found guilty u/s 449 and 448 of Companies Act, 2013

### Conclusion

- With reference to above provisions & facts, Company is found guilty u/s 448 and 449 and following penalties will be levied:

(i) Imprisonment not less than 3 years to 7 years, and fine extending to 10 lakh rupees as per Section 449 of Companies Act, 2013

Date.....

ii) Shall be liable u/a 447 according to Section 448 of Companies Act, 2013.

• Punishment of Section 447 (i.e. fraud)

a) If amount involving fraud is <sup>less than</sup> upto 10 lakh ₹ or 1% of T.O whichever is less, then imprisonment of upto 5 years or fine of upto ₹ 50 lakh @ both.

b) If amount involving fraud is atleast 10 lakh Rs. @ 1% of T.O whichever is less, then imprisonment from 6 Months to 10 years and fine involving Amount of fraud involved to 3 in forced to 3 times the amount involved in fraud.

# PENALTIES UNDER SEBI :

A. Penalty :  
 ↓  
 Min : 1 Lakh Rs.  
 Max : 1 Lakh Rs / day  
 Subject to  
 Max 1 Crore Rs.  
 [continuing failure]

B. Penalty :  
 ↓  
 Min : 1 Lakh Rs  
 Max : 1 Lakh Rs / day  
 Subject to  
 Max 1 crore ₹ 3 times the  
 amt. of gains  
 made

- 15A. For failure to furnish information, return, etc. to maintain Books of A/c or records.
- 15B. For failure by any person to enter into agreement with client.
- 15C. For failure to redress investors' grievances
- 15D. For certain defaults in case of Mutual Funds.
- 15E. For failure to observe rules & reg<sup>n</sup> by an AMC.

Higher  
 ↓  
 15EA  
 • For default in case of AIF, InvIT, and REIT

C. Penalty :  
 ↓  
 Min : 10 Lakh ₹  
 Max : 25 Crore ₹ 3 times  
 the profit  
 made  
 Higher

- 15EAB • For default in case of investment advisers & research analyst
- 15F (W & L) For default in case of stock Brokers\*  
 • For contravention where no separate penalty has been provided.

15G ↓      ↓      ↓  
 • For Insiders Trading      • For non-disclosure of acquis<sup>n</sup> of Shares & Takeover.

15F(b) : Penalty  
 ↓  
 Min : 1 Lakh ₹  
 Max : 5X amt of Brokerage charged in excess

↓  
 where Stock Broker charges an amount of Brokerage which is in SKYSHOTS excess of the Brokerage specified.

Date.....

D. Penalty



Min.: <sup>5</sup> 5 lakh ₹

Max.: 25 crore ₹ (or) 3X profit

mode

Higher



15HA

• for fraudulent & unfair trade practices

E. Penalty



Min.: 1 lakh ₹

Max.: 10 crore ₹

(or)

3X profit

mode



15HAA • for alteration, destruction etc of records [and] failure to protect the electronic database of Boord.



# # FEMA

- ① Adjudicating Officers [A.O] → appointed by CG
- Initiate process of adjudication → on complaint made by CG
- Resolve matter within 1 year
- Extension → Reason

→ Powers are similar to

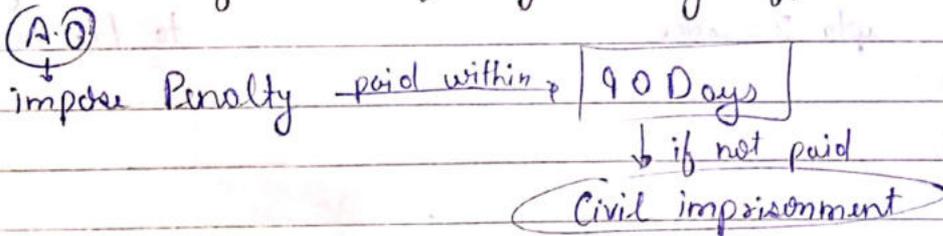
**Civil Court**

- ① Summon
- ② Issuing Inquiry
- ③ Issuing Commission
- ④ Discovery of Docs & records
- ⑤ Any other orders that the Court may deem fit in the interest of Justice.

**FEMA → Taxation Procedure ①**

- ① Order → Penalty copy to both parties

## ② Enforcement of orders of Adjudicating Officers (A.O):



Before Imprisonment → summon → to show-cause why imprisonment should not be given

\* Warrant (arrest) →

(if A.O believes that defaulter will abscond)

→ Penalty ✓ (if paid)  
No Arrest

**Spiral**

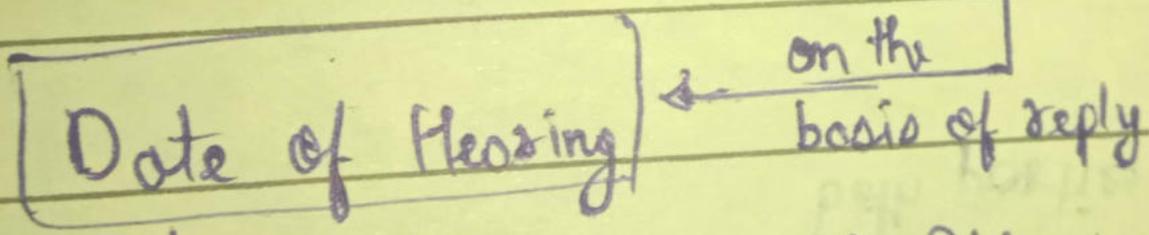
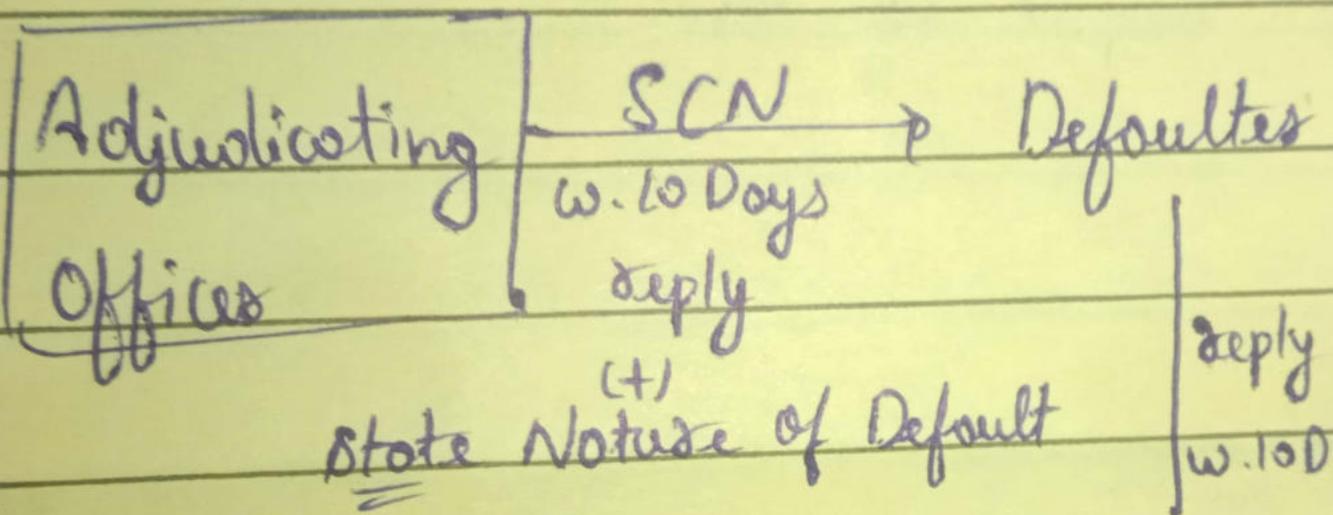
→ (A.O) will give OOBH, on the basis of detecting

\* Detention Arrest

[extend the custody period of those who already arrested]

**SKYSHOTS**

# FEMA → Inquiry Procedure ①



- ① explaining the offence (2) OOBH ✓
- ③ Summons
  - witness
  - Document
  - Impose Penalty
- ④ Order
  - Penalty
  - copy to BOTH PARTIES with

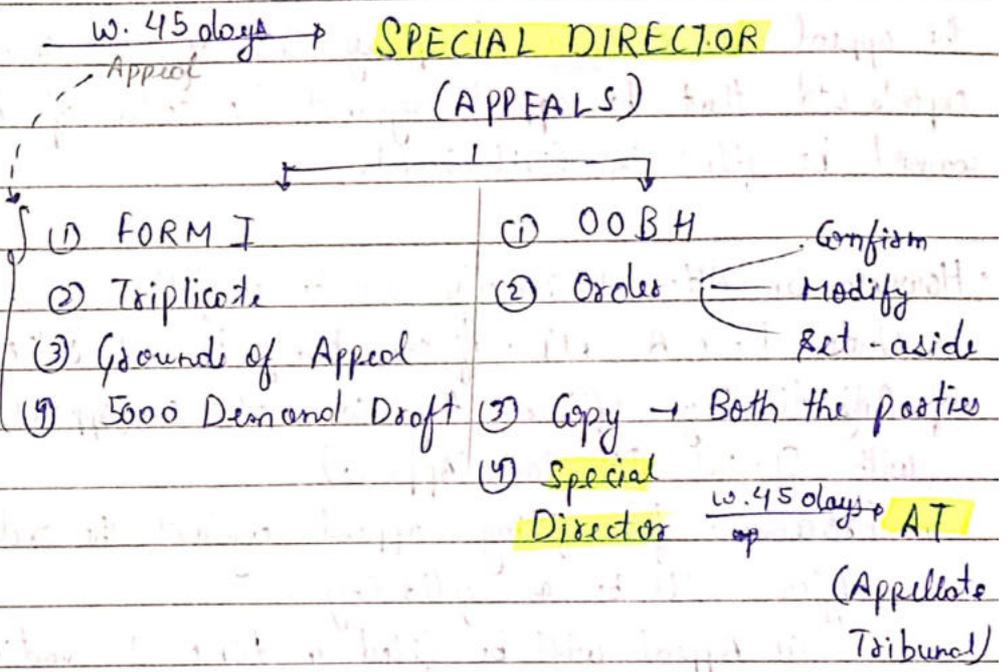
Person is detained on Civil Prison on

Certificate of Execution

Demand of Amount → above 1 cr → 3 years  
" " " " " " → Below 1 cr → 6 Months.

③ # Special Director (Appeal under FEMA)

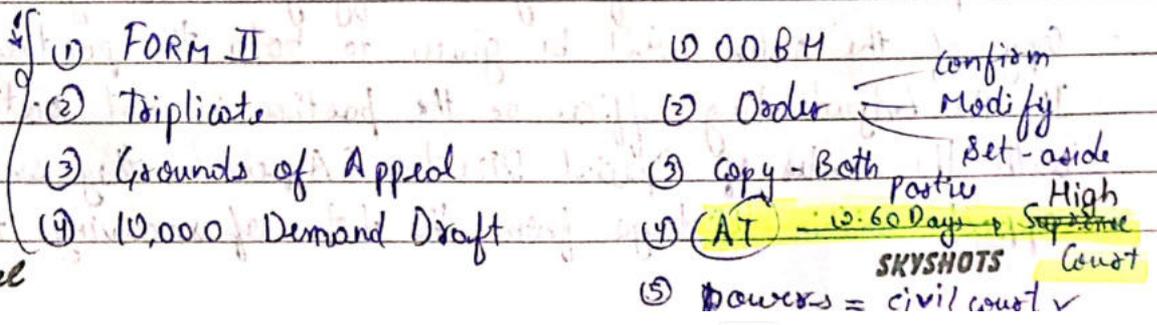
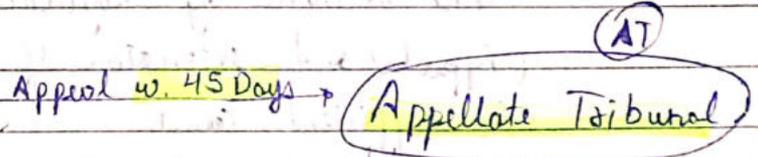
Any Person aggrieved from the order of A.O



⑤ Powers are similar to civil courts.

④ # Appellate Tribunal

Any Person aggrieved from the order of Special Director



Spiral

Date.....

Q7 ABC Exports Ltd. aggrieved by an order of Adjudicating Authority under FEMA, 1999, wants to file an Appeal against the order in Civil Court. As a CS, advise ABC Exports Ltd. whether the Civil Court has jurisdiction to entertain such a suit? If not, suggest an alternative remedy.

Ans. Civil Court under FEMA, 1999 does not have jurisdiction to entertain the appeal hence as a Company Secretary we would advise ABC Exports Ltd. that the appeal against the order of Adjudicating Officer cannot be filed in Civil Court.

• However, an Alternate remedy can be as following:

Under FEMA, 1999; if the party is not satisfied with the order of Adjudicating Officer they can make an appeal against the order with Special Director (Appeals)

→ Procedure for filing appeal against the order of Adjudicating Officer will be as following:

- (i) Appeal will be filed in FORM I and in triplicate manner
- (ii) A demand Draft or cash of Rupees 5000 will be submitted
- (iii) Grounds of Appeal will be specified while filing the appeal.
- (iv) Appeal can be filed within 45 days from the date of the order received by Adjudicating Officer before Special Director (Appeals) and extension of 45 days can be granted if there is sufficient cause.

- Special Director (Appeals) will give an opportunity of being heard and pass the order confirming, modifying or setting - aside.

- Copy of the order will be given to both the parties.

- If the Adjudicating Officer or the parties is not satisfied with the order of Special Director (Appeals), they can file an appeal within 45 days from the date of receiving the order

Spiral

SKYSHOTS



Date.....

before Appellate Tribunal.

- Powers of Special Director (Appeals) are similar to Civil Court.

• Hence, as an alternative remedy ABC Exports Ltd. should file an appeal before Special Director (Appeals) against the order of Adjudicating Authority.

Q. XYZ Software Technologies Ltd of Bengaluru was engaged in business of Software exports but failed to realise the forex due on its exports to India, the Adjudicating Authority imposed a penalty under FEMA. Being aggrieved by the penalty, Company seeks an advice to file an Appeal. Advise the company.

Ans → Under FEMA, 1999 any Person aggrieved from the order of Adjudicating officer may file an appeal against the order of Adjudication officer with Special Director (Appeals) within 45 days from the date of order passed by Adjudicating officer.

→ Hence Procedure for filing appeal against the order of Adjudicating officer:

- (i) Appeal will be filed in FORM I and in a triplicate manner
- (ii) A Demand Draft or cash of Rs. 5000 will be submitted.
- (iii) Grounds of Appeal will be specified while filing the appeal.
- (iv) Appeal can be filed within 45 days from the date of order received by Adjudicating officer before Special Director (Appeal) and extension of 45 days can be granted if there is a sufficient cause.

→ Special Director will give an opportunity of being heard & pass the order confirming, modifying or setting aside.

Spiral

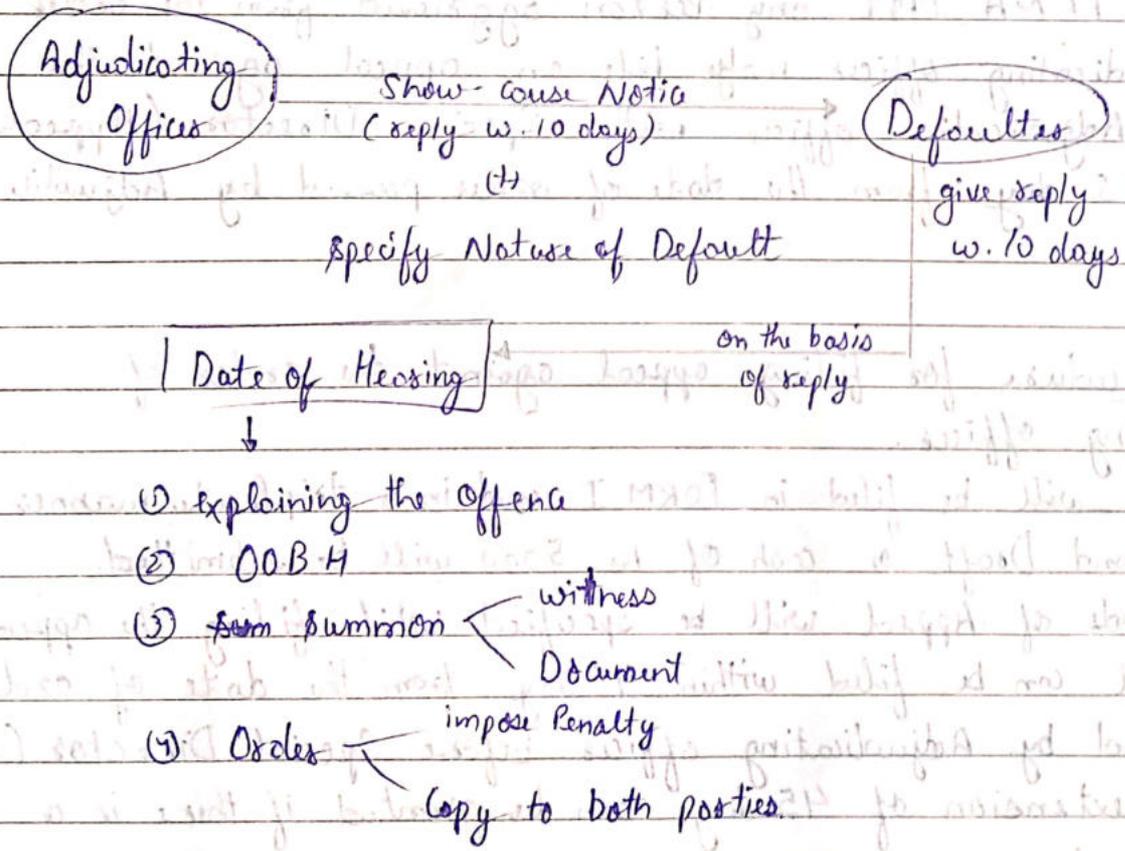
SKYSHOTS



- Copy of Order will be given to both the parties
- If the Adjudicating officer or the parties is not satisfied with the order of Special Director (Appeals), they can file an appeal within 45 days from date of receiving the order before Appellate Tribunal
- Powers of Special Director (Appeals) are similar to Civil Court

Hence we would advise that XYZ Software Technologies Ltd. should file an appeal against the order of Adjudicating Authority before Special Director (Appeals) with keeping in mind the above said provisions.

### # FEMA - INQUIRY PROCEDURE



# Penalties under SCRA:

<p>(A) Imprisonment : 1yr → 10 yrs                  (or) Fine : upto 25 crores                  (or) Both</p>	<p>(B) Min : 1 lakh ₹                  Max : 1 lakh/day to 1 cr ₹                  [continuing failure]</p>	<p>(D) Min : 5 crore ₹                  Max : 25 crore ₹                  (or)                  3X profit made                  Higher</p>
<p>↓                  23(a) fails to comply with any requisition made u/s 6(4)</p>	<p>23A                  • fails to furnish any Books, return, info docs etc.</p>	<p>23GA ↓                  Where Stock Exch</p>
<p>(b) enters into any contract in contravention of provision u/s 13/16</p>	<p>23B                  • fails to maintain Books of A/c.</p>	<p>(or) "Clearing Corp"                  fails to conduct its Business with its members / any issues</p>
<p>(c) contravenes the provision u/s 17/17A/19</p>	<p>23C                  • enters into an agreement with its clients → fails to enter.</p>	<p>(E) Min : 1 lakh ₹                  Max : 1 crore ₹</p>
<p>(d) enters into any contract in derivative in contravention of Section 18A.</p>	<p>23D                  • [Broker (or) Co] → fails to redress the grievances of its investors</p>	<p>23H ↓                  Where no penal has been provided.</p>
<p>(e) Any person - owns or keep a place other than RSE which is used for entering into any contracts in contravention of any provisions of this Act.</p>	<p>23E                  • [Broker / Sub-Broker] → fails to segregate money of its clients</p>	<p>(F) Min : 5 lakh ₹                  Max : 25 crore ₹</p>
<p>(f) manages / controls / assists in keeping any place other than RSE which is used for entering / performing any contracts in contravention of any of provision of this Act.</p>	<p>23F : Co / Person managing CIS / MF / REIT InvITs / AIF fails to comply with listing conditions</p>	<p>23G : RSE fails or neglects to furnish periodical return to SEBI</p>
<p>(g) not being a member of RSE / his agent → willfully represents (or) induce any person</p>	<p>23G : RSE fails or neglects to furnish periodical return to SEBI</p>	<p>23H ↓                  Where no penal has been provided.</p>

Date..26/04/25.....

## # TRIBUNALS (NCLT & NCLAT)

NCLT → President

NCLAT → Chairperson + Judicial  
Members

} appointed  
after consultation  
of

Chief  
Justice of  
India

NCLT → Judicial (+) Technical  
Member Member

NCLAT → Technical  
Member

} appointed on  
the recommendation  
of

Selection  
Committee

↓ consists of

c/p - a) CJI

Member - b) Judge of Supreme Court/  
Chief Justice of HC

Member - c) Secretary in MCA

Member - d) Secretary in Ministry  
of Law & Justice