



## PREFACE

Hello Students,

This book of “DRAFTING, PLEADING AND APPEARANCES” is prepared from the study material provided by the Institute of Company Secretaries of India (ICSI). This is to inform you, that I have covered the entire syllabus as provided by the institute but with a better presentation so as to make learning for you more interesting. I personally believe that this subject’s paper expects detailed answers which is why a good amount of content has been included in your notes.

Best wishes,

CS Somya Kataria

# INDEX

<u>S.NO</u>	<u>TITTLE</u>	<u>PAGE NO.</u>
<b>9.</b>	<b>Judicial &amp; Administrative framework</b>	9.1 – 9.27
<b>10.</b>	<b>Pleadings</b>	10.1 – 10.31
<b>11.</b>	<b>Art of Advocacy and Appearances</b>	11.1 – 11.19
<b>12.</b>	<b>Applications, Petitions and Appeals under Companies Act, 2013</b>	<b>MODULE</b>
<b>13.</b>	<b>Adjudications and Appeals under SEBI Laws</b>	13.1 – 13.50
<b>14.</b>	<b>Appearance before other Regulatory and Quasi-judicial Authorities</b>	14.1 – 14.18

**UNIT : 9**

**Judicial & Administrative Framework**

**TRIBUNALS**

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.

1. **Debt Recovery tribunal (DRT):**

The Debt Recovery Tribunals have been constituted under Section 3 of the Recovery of Debts Due to Banks and Financial Institutions (RDDBFI) Act, 1993. 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. DRT acts as a single judicial forum for adjudication of cases as well as execution of the decrees passed for recovery of debts due to banks and financial institutions under RDDBFI Act and Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests (SARFAESI) Act, 2002.

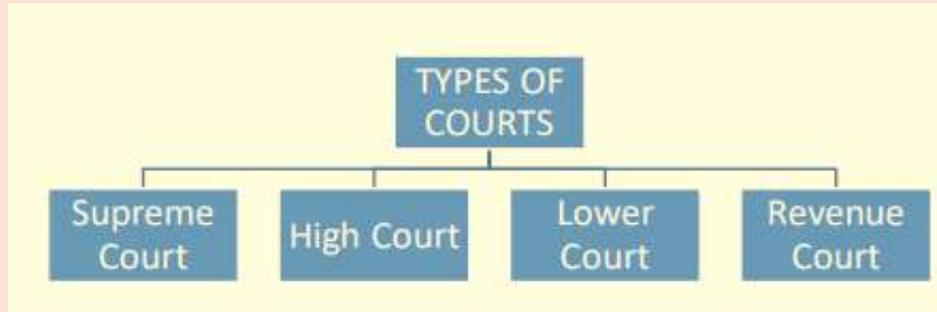
2. **NCLT:**

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.

	<p>The establishment of the National Company Law Tribunal (NCLT) consolidates the corporate jurisdiction of the following authorities:</p> <ul style="list-style-type: none"> <li>i. Company Law Board</li> <li>ii. Board for Industrial and Financial Reconstruction.</li> <li>iii. The Appellate Authority for Industrial and Financial Reconstruction.</li> </ul> <p>Jurisdiction and powers relating to winding up restructuring and other such provisions, vested in the High Courts.</p>
3.	<p><b>Consumer Forum:</b></p> <p>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 has been set up. (District: upto 20 lakhs, State: upto 1 crore, National: above 1 cr). Free services are not entertained.</p>
4.	<p><b>Motor Accident Claims Tribunal (MACT):</b></p> <p>It 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.</p>
5.	<p><b>Central Administrative Tribunal:</b></p> <p>For adjudication of disputes with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or other local authorities within the territory of India or under the control of Government of India.</p>

6. **National green tribunal:**

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.



i. **Supreme court:**

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. 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.

Supreme Court has the power to exercise extra ordinary jurisdiction to hear any appeal related to any matter for which any court or tribunal had decided with judgment through the option of special leave petition except the case of tribunal related to Armed Forces.

ii. **High Court:**

High Courts also hear appeals against the orders of lower courts. Article 227 of Indian Constitution has empowered all High courts to practice superintendence over all the courts of tribunal effective within the regional jurisdiction of the High Court. All the High Courts have the power to pronounce punishment for contempt of court.

iii.

**Lower Courts:**

The court at the district level has a dual structure that runs parallel- one for the civil side and one for the criminal side. 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.

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.

iv.

**Revenue Courts:**

These are 'courts' but are not a part of Judiciary because they come under the administration of the State governments. Revenue courts deal with matters pertaining to stamp duty, registration etc.

	<b>CIVIL COURTS</b>
1.	<b>Jurisdiction:</b> The jurisdiction is basically of three types.
a)	<b>Pecuniary</b>
b)	<b>Territorial:</b> The territorial jurisdiction is conferred on a court by following factors:- <ul style="list-style-type: none"> <li>i. By virtue of the fact of residence of the Defendant.</li> <li>ii. By virtue of location of subject matter within jurisdiction of the court.</li> <li>iii. By virtue of cause of action arising within jurisdiction of such court.</li> </ul>
c)	<b>As to subject matter:</b> 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. ( The first and fundamental rule governing jurisdiction is that suit shall be instituted in the court of lowest grade competent to try it.)
2.	<b>Stay:</b> 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.	<b>Res Judicata and bar to further suits:</b> 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. The principle of res judicata applies only under following circumstances: <ul style="list-style-type: none"> <li>❖ The matter directly and substantially in issue has been directly and</li> </ul>

	substantially in issue in a former suit between same parties or between whom they claim litigation under the same title.
❖	The matter is in the court competent to try such subsequent suit or the suits in which such issue has been subsequently raised and has been heard and finally decided.
4.	<b>Plaint:</b> Plaint is the actual starting point of all pleadings in a case. Though the law has not laid down any tight jacket formats for plaints, its minimum contents have been prescribed. 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:
❖	Where it does not disclose the cause of action.
❖	Where the relief claimed is undervalued and Plaintiff fails to correct the valuation within the time fixed.
❖	If the relief is properly valued but insufficient court fee / stamp is paid and the Plaintiff fails to make good such amount.
	Where the suit appears to be barred by any law, from the statements in the plaint.
5.	<b>Summons:</b> 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. Where the court is satisfied that there is reason to believe that the Defendant is keeping out of the way for purpose of avoiding service or that for any others

	<p>reason the summons cannot be served in ordinary way the court shall order summons to be served by affixing copy thereof in conspicuous part of the house.</p>
6.	<p><b>Appearance of parties:</b></p> <p>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.</p> <p>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.</p>
7.	<p><b>Adjournments:</b></p> <p>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.</p>
8.	<p><b>Ex-parte decrees:</b></p> <p>A decree against the Defendant without hearing him or in his absence/in absence of his defence can be passed under the following circumstances:-</p> <ul style="list-style-type: none"> <li>❖ Where any party from whom a written statement is required fails to present the same within the time permitted or fixed by the court, as the case may be the court shall pronounce judgement against him, or make such order in relation to the suit as it thinks fit and on pronouncement of such judgement a decree shall be drawn up.</li> <li>❖ Where Defendant has not filed a pleading, it shall be lawful for the court to</li> </ul>

	pronounce judgement on the basis of facts contained in the plaint, except against person with disability.
❖	Where the Plaintiff appears and Defendant does not appear when suit is called up for hearing and summons is properly served the court may make an order that suit will be heard ex parte.
	If an ex parte 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.	<b>Interlocutory proceedings:</b> 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. The procedure followed in the court is that the separate application for interim relief is moved at the time of filing of suit or at a subsequent stage.
10.	<b>Written statement:</b> The Defendant is required to file a written statement of his defence at or before the first hearing or such time as may be allowed along with the list of documents relied upon by him. If Defendant disputes maintainability of the suit or takes the plea that the transaction is void it must be specifically stated. A general denial of grounds alleged in the plaint is not sufficient and denial has to be specific.
11.	<b>Examination of parties:</b>

	Where admission of facts have been made either in the pleading or otherwise, whether orally or in writing, the court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for determination of any such question between the parties, make such order or give such judgement as it may think fit.
12.	<b>Production of documents:</b> 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.
13.	<b>Framing of issues:</b> 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.
14.	<b>Summoning and attendance of witness:</b> 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. The judge shall make or dictate on a typewriter or cause to be mechanically recorded, a memorandum of the substance of deposition of witnesses. A witness

	<p>may be examined on commission also. If signature of witness is not taken on any part of deposition or correction it does not make deposition invalid.</p>
15.	<p><b>Affidavits:</b></p> <p>Affidavit shall contain only such facts as the deponent is able of his own knowledge to prove except on interlocutory applications on which statement of belief may be admitted provided grounds are stated. The affidavits have to be properly verified to avoid any dispute at a later stage.</p>
16.	<p><b>Final argument:</b></p> <p>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.</p>
17.	<p><b>Judgement:</b></p> <p>Where judgment 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. The last paragraph of the judgment shall indicate in precise terms the relief, which has been granted by such judgment. Every endeavor shall be made to ensure that the decree is drawn as expeditiously as possible and in any case within 15 days from the date on which the judgment is pronounced.</p> <p>The court also has the power to award 'cost'. If on any date fixed for hearing, a party to the suit fails to take step or obtains adjournment for producing evidence, the court may also award costs for causing delay. If the court finds, that the claim or defense as against the objector is false or vexatious to the knowledge of the party by whom it has been put forward, and if such claim is</p>

disallowed, abandoned or withdrawn, court holding the claim false or vexatious may order compensatory costs.

18. **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.

**TYPES OF CRIMINAL TRIALS**

1. **Warrant cases**

A warrant case is one which relates to offences 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.

A. Different stages of criminal trial when instituted by police report:

1)	<b>FIR:</b> An FIR is information given by someone (aggrieved) to the police relating to the commitment of an offense.
2)	<b>Investigation:</b> 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)	<b>Charges:</b> If 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)	<b>Plea of guilty:</b> 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.
5)	<b>Prosecution evidence:</b> The prosecution is required to support their evidence with statements from its witnesses. This process is called "examination in chief".
6)	<b>Statement of the accused:</b> The statements of accused are not recorded under oath and can be used against him in the trial, instead he is given opportunity of being heard.
7)	<b>Defense evidence:</b> 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)	<p><b>Judgement:</b> 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.</p>
B.	<p>Different stages of criminal trial when Private complaint institutes case: It may sometimes happen that the police refuses to register an FIR. In such cases one can directly approach the criminal court under Section 156 of CrPC. 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. After examination, the court may accept the appeal, and then the Magistrate may issue a warrant or a summon depending on the facts and circumstances.</p>
2.	<p><b>Summon cases:</b> Those cases in which an offence is punishable with an imprisonment of fewer than two years is a summon case. Stages of Criminal Trial in Summary Cases:</p> <ul style="list-style-type: none"> <li>• The procedure followed in the summary trial is similar to summons-case.</li> <li>• Imprisonment up to three months can be passed.</li> <li>• In the judgement of a summary trial, the judge should record the substance of the evidence and a brief.</li> <li>• statement of the finding of the court with reasons.</li> </ul>
<p><b>REFERENCE AND REVISION UNDER CRIMINAL PROCEDURE CODE</b></p>	
	<p>Court subordinate to the High Court to make a reference to the High Court under sub-section (1) if following conditions exist: –</p>
1.	<p>The case pending before it must involve a question as to validity of any Act,</p>

	<i>Ordinance or Regulation. A mere plea raised by a party challenging the validity of an Act is not sufficient to make a reference to the High Court.</i>
II.	<i>Secondly, the Court should be of the opinion that such Act, Ordinance Regulation, as the case may be, is invalid or inoperative but has not been so declared by High Court or by the Supreme Court.</i>
III.	<i>While making a reference to the High Court, the Court shall refer to the case setting out its opinion and reasons for making a reference</i>
	<b>REVISION</b>
	<i>Section 397 empowers the High Court and the Sessions Judge to call for records of any inferior Criminal Court and examine them for themselves as to whether a sentence, finding or order of such inferior Court is legal, correct or proper and whether the proceedings of such Court are regular or not, with a view to prevent miscarriage of justice and perpetuation of illegality.</i>
	<i>The revisional Court has the power to order the release of offender on bail or bond under Section 397 (1). The discretion in this regard should, however, be used judicially considering all the circumstances of the case. Dismissal of revision by the High Court without assigning reasons is not sustainable and matter may be remitted to the Court for reconsideration.</i>
	<b>No Second revision:</b>
	<i>Sub-section (3) of Section 397 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. But the sub-section bars an application for the revision to</i>

the High Court if a person has already applied for it to the Sessions Judge or vice versa.

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.

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 397(3) unless exceptional grounds for taking the matter directly to the higher Court (High Court in this case) are made out.

**Sessions Judge's powers of revision (Section 399 of CrPC)**

a. 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 401(1) of the Code.

b. Where any proceeding by way of revision is commenced before a Sessions Judge under sub-section (1), the provisions of sub-sections (2), (3), (4) and (5) of Section 401 shall, so far as may be, applied to such proceeding and references in the said sub-sections to the High Court shall be construed as references to the Sessions Judge.

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.

**No Revision where right to Appeal exists:**

The Cr.P.C. provides a remedy, by way of appeal 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\

**Enhancement or reduction of sentence:**

There is no limitation on the power of the High Court as regards enhancement of sentence to the extent of maximum prescribed by the Penal Code, 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.

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.

**REFERENCE, REVIEW AND REVISION UNDER CIVIL PROCEDURE**

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 'act us curiae neminem gravabit' which means an act of the court shall prejudice no man. The other maxim is, 'lex non cogit ad impossibilia' which means the law does not compel a man to do that what he cannot possibly perform.

Review- Subject as aforesaid, any person considering himself aggrieved –

- a) by a decree or order from which an appeal is allowed by this Code, but

from which no appeal has been preferred,

b) by a decree or order from which no appeal is allowed by, this Code, or

c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

Conditions precedent for review are as follows:

1) **Discovery of new and important matter or evidence:**

An application for review on the ground of discovery of new evidence should show that:

- i. such evidence was available and of undoubted character;
- ii. that the evidence was so material that its absence might cause a miscarriage of justice; and
- iii. that it could not with reasonable care and diligence have been brought forward at the time of the decree

2) **Mistake or error apparent on the face of the record:**

The mistake is not limited to a mistake of fact. It may be of law. It should be an error which can be seen by a mere perusal of the record without reference to any other extraneous matter. Failure of the court to take into consideration an existing decision of the Supreme Court taking a different or contrary view on a point covered by its judgment would amount to a mistake or error apparent on the face of the record. But a failure to take into consideration a decision of the High Court would not amount to any mistake or error apparent on the face of the record.

3) **Any other sufficient reason:**

Any excusable failure to bring to the notice of the court new and important matter or evidence or Mistake.

**DIFFERENCE BETWEEN APPEAL AND REVIEW:**

- A. There are definitive limits to the exercise of the power of review and it cannot be exercised on the ground that the decision was "erroneous on merits. That would be the province of a Court of Appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate Court.
- B. Scope of an application for review is much more restricted than that of an appeal.
- C. power of review can only be exercised for correction of a mistake and not to substitute a view, Where an appeal has been preferred a review application does not lie.
- D. 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.

**RULES OF REVIEW UNDER XLVII OF CPC**

**RULE 1:** review proceedings are not by way of an appeal and have to be strictly confined to the Scope.

**RULE 4:** No application for review, however, 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 of CPC**

The section reads as follows:

- 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 illegally or with material

irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

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.

The power of the High Court under Section 115 is exercisable in respect of 'any case which has been decided'. The word "case" is something wider but not wide enough to include every order passed by a court during the pendency of a suit. It would include a decision on any substantial question in controversy between the parties affecting their rights, even though such order is passed in the course of the trial of the suit.

**E-Courts**

The eCourts 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 eCommittee, Supreme

Court of India with a vision to transform the Indian Judiciary by ICT enablement of Courts.

Ecommittee is a body constituted by the Government of India in pursuance of a proposal received from the than Hon'ble the Chief Justice of India to constitute an eCommittee to assist him in formulating a National policy on computerization of Indian Judiciary and advise on technological communication and management related changes.

The eCourts 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 ecourt mission project are:

- To provide efficient & time-bound citizen centric services delivery as detailed in eCourt 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.

a)	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.
b)	The Judicial Management Information System will be helpful in litigations and adjudication pattern analysis and also the impact analysis of any variation in governing factors relating to law, amendments, jurisdiction, recruitment etc. It will also serve as judicial performance enhancing measure for policy makers to be used for decision support system.
c)	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:
d)	Firstly, the entire Project has been conceptualized and implemented in Free and Open Source Software. 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 customise and use the system software.
e)	Secondly, the core-periphery model has been utilized and implemented in the software development. The core is sacrosanct and is decided by the eCommittee and contains data that is available for policy and decision making at the national level – Supreme Court, Parliament and Central Government. Of course, the core data can be accessed and utilized for policy and decision making at the State level.

*ECourts Services*

As per the data of May 2023, there are 39 High Courts Complexes and 3479 complexes under the eCourt Services. The website [https://ecourts.gov.in/ecourts\\_home/index1.php](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)

*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*

*It should also be noted that, by the terms of 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.*

- *Character of suit to be described in reference*
- *Parties should be heard before making reference*
- *Objections of parties to be placed of record*
- *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.

- Necessary records to be sent along with order of reference
- 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.

**APPLICABILITY OF CIVIL PROCEDURE CODE ON TRIBUNALS**

**Applicability of Civil Procedure Code on National Company Law Tribunal**

Rule 57 of NCLT Rules: Issue of process of execution

According to rule 57 of NCLT Rules, on receipt of an application under rule 56 the 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**

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**

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.

## LESSON 10

## PLEADINGS

## INTRODUCTION

## What is a Pleading?



Vide Order VI Rule 1 of the Code of Civil Procedure, 1908 *“Pleading” shall mean ‘plaint’ or ‘written statement’*. *“pleadings are statements, written, 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”* words ‘plaints’ and ‘complaints’ are nearly synonymous. In both, the expression of grievance is predominant. Verily, when a suitor files a statement of grievance he is the plaintiff and he files a ‘complaint’ containing allegations and claims remedy.

Order IV Rule 3 states *“every suit shall be instituted by presenting a plaint in duplicate to the Court or such officer as it appoints in this behalf”*. Similarly Order VIII Rule 1 defines that when a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the

written statement of his defence, if any, within thirty days from the date of service of summons on that defendant. 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".

**OBJECT OF PLEADING**

1. The whole **object of pleading** is to give a fair notice to each party of what the opponent's case is. Pleadings bring forth the real matters in dispute between the parties.
2. The **facts admitted by any parties need not be pursued or proved**. Thus the pleadings save the parties much bother, expense and trouble of adducing evidence in support of matters already admitted by a party, and they can concentrate their evidence to the issue framed by the Court in the light of the facts alleged by one party and denied by the other.
3. The parties come to know beforehand what points the opposite party will raise at the trial, and thus they are prepared to meet them and are not taken by surprise, which would certainly be the case if there were no obligatory rules of pleadings whereby the parties are compelled to lay bare their cases before the opposite party prior to the commencement of the actual trial.
4. The **object of the pleadings is three-fold**. They are
  - a) to define the issues involved between the parties;
  - b) to provide an opportunity to the opposite party or other side to meet up the particular allegation raised against him or her, and
  - c) to enable the Court to adjudicate the real issue involved between the parties

**FUNDAMENTAL RULE OF PLEADING**

It is a rule to observe in all Courts that a party complaining of an injury and suing for redress, can recover only *secundum allegata et probate*. The provisions of law under which the suit has been instituted should also be mentioned<sup>2</sup>. The pleas should be specifically mentioned, as the evidence cannot be looked into in the absence of a specific plea or point. The Court will however see the substance, if the plea is not properly worded. The four fundamental rules of pleadings are:

**Rule 1: Facts and not Law:**

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. *A judge is bound to apply the correct law and draw correct legal inferences* and facts, even if the party has been foolish to make a written statement about the law applicable of those facts. If a plaintiff asserts a right in him without showing on what facts his claim of right is founded or asserts that defendant is indebted to him or owes him a duty without alleging the facts out of which indebtedness or duty arises, his pleading is bad.

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.

**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.

**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 such and such date and promised to return the money along with specified interest on a particular date, and that he requested the defendant to return the said amount after the date but that he refused to return the money.

**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 used to come 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.

**Negligence and damages:** it is not enough for him to state negligence. First of all the plaintiff must state those facts which establish the defendant's duty towards the plaintiff. Thereafter, he must state how and in what manner the defendant was guilty of negligence. Thus he must state all the facts on which his plaint is based.

**Omission to State the facts:** Omission to state all the fact 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.

**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. 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.

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 II: Material Facts:**

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. every pleading shall contain and contain only, a statement of the material fact as on which the party pleading relies for his claim or defence.

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.

**How to decide on materiality?**

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**

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.

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.

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.

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.

**Instances of Immaterial facts**

**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.

**suit for recovery of money :** 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.

**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.	<p><b>Condition Precedent:</b> “Any condition Precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant, as the case may be; and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.”</p> <p>For example, X agrees to build a house for Y at certain rates. A condition of the contract is that payment should only be made upon the certificate of Y’s architect that so much 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.</p>
ii.	<p><b>Presumption of Law:</b> 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.</p> <p>For example in a suit on a promissory note the plaintiff need not allege consideration as Sec.118 of Negotiable instruments Act, 1881 raises a presumption in his favour. t. In Sethani v. Bhana<sup>4</sup>, a sale deed was executed by tribal a woman who was old, illiterate and blind, in favour of one of her relatives with whom she was living till her death and was dependent on him. It was held that it was upon that relative to prove that the sale-deed was executed under no undue influence. A party should not plead anything which the law presumes in his favour.</p>

iii.	<p><b>Matters of Inducement:</b> 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.</p>
	<p><b>Rule III: Facts not Evidence:</b></p> <p>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 in <i>Ratti Lal v. Raghu</i> 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. 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 <i>facta probanda</i> and the facts by means of which they (i.e. material facts) are to be proved are called <i>facta probantia</i>.</p>
a)	<p><b>Facta probanda:</b> 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.</p>
b)	<p><b>Facta probantia:</b> These are the facts which are not to be stated because by their means <i>facta probanda</i> 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 defence as the case may be. <i>Facta probanda</i> 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 these facts in evidence are mixed up and are almost indistinguishable. They should not be stated in the pleading.</p> <p>For ex., A was married to B in accordance with a particular custom governing</p>

marriage between A and B. In this case the “custom” is a both 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.

The following rules have been enacted under the Code of Civil Procedure, 1908 and hereunder we elaborate them with the help of suitable illustrations:

A. **Mental Condition:** Order VI Rule 10 clearly says that wherever it is material to allege malice, fraudulent intention, knowledge or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred. Thus it is sufficient to allege that the defendant has cheated the plaintiff to the extent of Rs. 10,000/- It is not necessary, nor would it be in order, to plead how the defendant has cheated the plaintiff. The “how” part would be evidentiary and should not be pleaded. In a suit for malicious prosecution the plaintiff should only allege that the defendant was actuated by malice in prosecuting him. It should not stated the details of any previous hostility of the defendant’s previous conduct towards the plaintiff.

B. **Notices:** Rule 11 of Order VI lays down that wherever it is material to allege notice to any person of any fact, matter or thing, it shall be sufficient to allege such notice as a fact unless the form or the precise terms of such notice or the circumstances from which such notice is to be inferred, are material. In many cases notice has to be alleged as a material fact.  
For ex., in a suit to recover trust property from a person to whom a trustee has given it in breach of the trust or in a suit where priority for subsequent transfer

is claimed. In such cases, it is sufficient to allege notice as a fact.

C. **Implied Contract or Relation:** Order VI Rule 12 directs that wherever any contract or any relation between any persons is to be implied from a series of letter or circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters conversations or circumstances without setting them out in detail. And if in such case the person pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances he may state the same in the alternative.

D. **Presumptions of Law:** Order VI Rule 13 states that neither party need in any pleading allege any matter of fact which the law presumes in this favour or as to which the burden of proof lies upon the other side unless the same has first been specially denied.

**Exception:** The only exception to the third fundamental rule of pleadings is to be found in the case of writ petitions and election-petitions. In such petitions it is necessary to state matters of evidence in support of the allegations made therein.

**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. This rule is that 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. There should be no obscurity or Vagueness.

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

CIVIL PLEADINGS



Besides the Supreme Court, 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.

**PLAINT:**

Particulars to be contained in complaint provided under order VII, Rule 1. According to this rule the complaint 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.
	<div style="text-align: center;"> <p>Study Materials Unit-III Topic: <b>Plaint and written statement</b> <b>(Sample)</b> Plaint for recovery of money and written statement in reply of that plaint Plaint IN THE COURT OF THE III ADDITIONAL JUNIOR CIVIL JUDGE : CITY CIVIL COURT : AT HYDERABAD: O.S. No. of 2007</p> <p>Mr. Rama Rao S/o..... Aged .... Years OCC:..... R/o: Hyderabad ..... Plaintiff</p> <p style="text-align: center;">Vs.</p> <p>Mr. Appa Rao S/o..... Aged .... Years OCC:..... R/o: Hyderabad ..... Defendant</p> <p>PLAINT FILED UNDER SECTION 26 READ WITH ORDER VII OF CPC</p> <p>III. BRIEF FACTS OF THE CASE:</p> </div>
✓	<p><b>In money suits:</b> 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, [136][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].</p>
✓	<p><b>Where the subject-matter of the suit is immovable property:</b> 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</p>

can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

4. **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.

### WRITTEN STATEMENT

A written statement is required to be filed by the defendant in answer to the claim made by the plaintiff in his plaint which is delivered to the defendant along with the summons to attend at the first hearing of the suit.

- 1) The written statement must **specifically deal with each allegation of fact** in the plaint and when a defendant denies any fact, he must not do so evasively but answer the same in substance.
- 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.
- 3) If any particulars are wanting, he should apply that the plaintiff be required to furnish them before the defendant files his written statement.
- 4) 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.
- 5) 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.

- 6) 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.

### TYPES OF DEFENCES

1. **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.

2. **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.

3. **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.

4.	<p><b>Special defence (confession and avoidance):</b> 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.</p>
5.	<p><b>Set off and counter-claim:</b> 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'.</p>
6.	<p>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:</p> <ol style="list-style-type: none"> <li>a. the sum claimed must be ascertained sum of money,</li> <li>b. it must be legally recoverable,</li> <li>c. it must be recoverable by the defendant,</li> <li>d. it must be recoverable from the plaintiff,</li> <li>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.</li> </ol>
	<p><b>Drafting of Reply/Written Statement – Important Considerations</b></p>
	<p>At the time of drafting the reply or written statement, one has to keep the following points in mind:-</p>
i.	<p>One has to deny the averment of the plaint/petition which are incorrect, perverse</p>

	<p>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 8, Rule 5 of the Code of Civil Procedure. It must be borne in mind that the denial has to be specific and not evasive.</p>
ii.	<p>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.]</p>
iii.	<p>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;</p>
iv.	<p>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.]</p>
v.	<p>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. 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.</p>
vi.	<p>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</p>

	duly notarised 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 6, Rule 15 CPC]. The court is bound to see in every case that the pleadings are verified in the manner prescribed and those 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 6, Rule 17 CPC, and also the same cannot be raised in the Affidavit-in-Evidence at the time of leading of evidence.
x.	If a party is alleging fraud, undue influence or mis-representation, 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.
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.
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.
	<b>INTERLOCUTORY ORDERS</b>
	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. The power to grant Interlocutory orders can be traced to Section 94 of C.P.C. Section 94 summarizes general powers of a civil court in regard to different types of Interlocutory orders. It provides for supplemental proceedings. The detailed procedure has been set out in the Schedule I of the C.P.C which deals with Orders and Rules.



**AFFIDAVIT**



An affidavit is a sworn statement in writing made specially under oath before an authorized officer. Therefore, great care is required in drafting it. A Court may, at any time, for sufficient reason 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.

1. Affidavits to be produced in a Court must strictly conform to the provisions of

	order XIX, Rule 1 of the Code of Civil Procedure, 1908 and in the verification it must be specified as to which portions are being sworn on the basis of personal knowledge and which, on the basis of information received and believed to be true. In the latter case, the source of information must also be disclosed.
2.	affidavit should be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory application, on which statements on his belief may be admitted; provided that the grounds of such belief are stated. The following rules should be remembered when drawing up an affidavit.
a.	Not a single allegation more than is absolutely necessary should be inserted;
b.	The person making the affidavit should be fully described in the affidavit;
c.	An affidavit should be drawn up in the first person;
d.	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 (Order XIX Rule 5);
e.	Every person or place referred to in the affidavit should be correctly and fully described, so that he or it can be easily identified;
f.	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";
g.	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" or "I make oath and say" (Order XIX Rule 8).
h.	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;

i. The affidavit should have the following oath or affirmation written out at the end: "I swear that this my declaration is true, that it conceals nothing, and that no part of it is false". or "I solemnly affirm that this 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. An affidavit 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.

j. 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.

**EXECUTION OF PETITION**

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. In case the decree has been sent to another court than the application shall be made to such court.

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

**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.

**Written Application:** Every application for the execution of a decree shall be in writing save as otherwise provided sub-rule (1) (above) 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, and shall contain in a tabular form the following particulars, namely :

- |      |   |
|------|---|
| A.   | the No. of the suit;  |
| B.   | the name of the parties;  |
| C.   | the date of the decree;   |
| D.   | whether any appeal has been preferred from the decree;  |
| E.   | whether any, and (if any) what, payment or other adjustment of the matter in controversy has been made between the parties subsequently to the decree;  |
| F.   | whether any, and (if any) what, previous applications have been made for the execution of the decree, the dates of such applications and their results;   |
| G.   | the amount with interest (if any) due upon the decree, or other relief granted thereby, together with particulars of any cross decree, whether passed before or after the date of the decree sought to be executed; |
| H.   | the amount of costs (if any) awarded;   |
| a)   | the name of the person against whom execution of the decree sought; and   |
| b)   | the mode in which the assistance of the court is required, whether—   |
| i.   | by the delivery of any property specifically decreed;   |
| ii.  | by the attachment or by the attainment and sale, or by the sale without attachment, of any property;  |
| iii. | by the arrest and detention in prison of any person;  |
| iv.  | by the appointment of a receiver;   |
| v.   | otherwise, as the nature of the relief granted may require.   |

**MEMORANDUM OF APPEAL AND REVISION**

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”. A right of appeal is not a natural or inherent right but is a creature of a statute.

A memorandum of appeal is meant to be a succinct statement of the grounds upon which the appellant proposes to support the appeal. 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.

**How right to appeal is a right created by a statute?**

In Gujarat Agro Industries Co. Ltd. v. Municipal Corporation of the City of Ahmedabad & Ors., (1999) 4 SCC 468, the apex Court held that the right of appeal though statutory, can be conditional/qualified and such a law cannot be held to be violative of Article 14 of the Constitution. An appeal cannot be filed unless so provided for under the statute and when a law authorizes filing of an appeal, it can impose conditions as well. Thus, it is evident from the above that the right to appeal is a creation of Statute and it cannot be created by acquiescence of the parties or by the order of the Court.

An appeal may be divided into three parts:

- a) formal part, known as the memorandum of appeal,
- b) material part, grounds of appeal, and
- c) relief sought for

As a general rule, in the grounds of appeal, the following points may be raised:

1.	any mistake committed by the lower Court in weighing the evidence;
2.	any mistake in the view of law entertained by the lower Court;
3.	any misapplication of law to the facts of the case;
4.	any material irregularity committed in the trial of the case;
5.	any substantial error or defect or procedure
6.	and the defect, error or irregularity of any inter-locutory order passed in the case, whether the same was appealable or not. A ground taken but not pressed in the first Appellate Court cannot be revived in second appeal. A defendant can question the propriety of ex parte proceedings in an appeal from the decree. The general rule, besides being subject to Section 100 of the Code, is also subject to two conditions:
1)	that the mistake of the lower Court should be material i.e., it should be such as affects the decision, and
2)	that the objection taken must be such as arises from the pleadings and evidence in the lower Court.
	<b>Drafting Grounds of Appeals</b>
1.	Grounds of objection should be written distinctly and specifically;
2.	They should be written concisely;
3.	They must not be framed in a narrative or argumentative form; and
4.	Each distinct objection should be stated in a separate ground and the grounds should be numbered consecutively.
	<b>Relief Sought in Appeal</b>
	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.

**TYPES 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.

In the second appeal, the High Court may, if the evidence on the record is sufficient, determine any issue necessary for the disposal of the appeal:

- a) which has not been determined by the Lower Appellate Court or both by the Court of first instance and the Lower Appellate Court, or
- b) which has been wrongly determined by such Court or Courts by reason of a decision on such question of law as is referred in Section 100 of the Code (Section 103).

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:, 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.” Order 45 of the Code of Civil Procedure, 1908 provides rules of procedure in appeals to the Supreme Court.
	(2) To be continued on the next page
2)	Articles 132 to 135 of the Constitution deal with ordinary appeals to the Supreme Court:
i.	<b>Appeals in Constitutional cases:</b>
•	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.	<b>Appeals in civil cases:</b> 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.	<b>Appeals in criminal cases:</b> 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. There are two modes by which a criminal appeal from any “judgement, final order or sentence” in a criminal proceeding of a High Court can be brought before the Supreme Court:
	1) Without a certificate of the High Court.
	2) With a certificate of the High Court.
	3) Appeal by Special Leave
	In appeals, as a general rule, the parties to an appeal are not entitled to produce additional evidence, whether oral or documentary, but the Appellate Court has discretion to allow additional evidence in the following circumstances:
a.	When the lower Court has refused to admit evidence which ought to have been admitted;
b.	When the party seeking to produce additional evidence establishes that he could not produce it in its trial Court for no fault of his;
c.	The Appellate Court requires any document to be produced or any witness to be

	examined to enable it to pronounce judgement; and
d.	For any other substantial cause
	<b>REVISION</b>
•	Section 115 of the Code of Civil Procedure, 1908 provides for the remedy of revision. In a case where an appeal does not lie against a final order the aggrieved party can file a revision before the High Court (an no other court).
•	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 subordinate 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
c.	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:
	Provided that the High Court shall not, under the Section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where:
a)	the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding; or
b)	the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it was made.
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.”

**LEGAL NOTICE AND ITS REPLIES**

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. 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. The notice helps to settle the disputes outside the Court. 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.



## UNIT 11

## Art of Advocacy and Appearances

## DRAFTING OF AFFIDAVIT IN EVIDENCE

The following must be kept in mind while preparing the affidavit-in-evidence by the parties –

- i. 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.
- ii. In case, the petitioner himself was involved in the execution of a contract, he should file affidavit in- evidence.
- iii. The allegations or charges or grounds relating to facts should be re-produced duly supported by documentary evidence.

It may be noted that in the affidavit in evidence, the position of law or legal provisions or principle of law are not reproduced because the position of law or settled principles of law are not required to be proved by any party and they are deemed to exist and any party can argue and take help of those settled position of law while arguing their case before the Court or Tribunal or Forum and need to be proved by filing an evidence. [Section 5, Indian Evidence Act.]

- iv. 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

	<p>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.</p>
v.	<p>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.</p>
vi.	<p>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.</p>
vii.	<p>At the time of tendering affidavit-in-evidence, the party must bring along with it either the original of papers, documents, books, registers relied upon by it or bring with it the carbon copy of the same.</p>
	<p>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.</p>
	<p><b>RULE OF ADVERSE INFERENCE</b></p>
•	<p>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.</p>
•	<p>The Court will be justified in drawing an adverse inference against that party.[Ms.</p>

*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)].*

**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.*
- *Before incorporating such facts and/or provisions of law in the write-up, a lawyer/ 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 a lawyer/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 MERIT**

- Such arguments as relate to the facts pleaded by the parties are termed as arguments on merits. While addressing arguments on merits, a lawyer/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.

- **INSTANCES**

- 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.

- 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.

Some illustrations are as under:

- i. Suit is not maintainable for want of statutory notice etc.
- ii. Complaint 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.

**INTRODUCTION**

- 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 my 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;
- ❖ Give correct picture of judicial view to the problem posed by the client.

**DRAFTING OF PLEADINGS**

Pleadings could be both written and oral. Mastering both the kinds of pleadings is must for effective delivery of results to the clients. 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 excerpts 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
	<b>ORAL PLEADINGS</b>
	Effective oral pleadings are relevant both at the stage of preparation of the case before actual presentation and also 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.

**IMPORTANT PRINCIPLES OF ADVOCACY**

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.

**ADVOCACY TIPS**

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

viii.

*Learn to listen.*

ix.

*Entertain your judge. Humour will often bail you out of a tough spot*

**DUTY OF COMPANY SECRETARY**

<u>DUTY TOWARDS THE COURT</u>	<u>DUTY TOWARDS THE CLIENT</u>
<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.</i>	<i>Accompany Secretary shall not ordinarily withdraw from engagements once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client</i>
<i>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.</i>	<i>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.</i>
<i>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.</i>	<i>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.</i>

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.

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

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.

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

**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.

❖ Being corporate professionals, you must practice some basic etiquette tips that would help you to go up the ladder of success in the workplace. These include

*Dressing Etiquette; Introduction and Greeting Etiquettes; Conversation Etiquette; Communication Etiquettes; Invitation Etiquette and Dining Etiquettes etc.*

**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 shades 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.*

**ICSI GUIDELINES FOR PROFESSIONAL DRESS OF COMPANY SECRETARY**

*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 if allowed the aforesaid professional dress.
	It may be pointed out that any person whether a lawyer, pleader or authorized representative representing a litigant before any Court of law or a Tribunal or any other authority discharging the functions of a Court/a quasi judicial authority, should comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman.
	<b>HANDSHAKE ETIQUETTES</b>
	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 it 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.

❖	<i>If an RSVP card is not included, respond by calling or sending a brief note.</i>
❖	<i>If you cancel after initially accepting an invitation, phone your regrets as soon as possible. Send a note of regret following the phone conversation.</i>
❖	<i>Don't ask for permission to bring a guest unless the invitation states.</i>
❖	<i>Arrive at the event promptly, but not too early.</i>
❖	<i>Mingle and converse with the other guests.</i>
❖	<i>Don't overstay your welcome.</i>
	<b>DINNING ETIQUETTES</b>
❖	<i>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.</i>
❖	<i>Wait until you receive your host's signal.</i>
❖	<i>Initiate conversations while waiting for the food.</i>
❖	<i>Never begin eating any course until everyone has been served or the host/ hostess has encouraged you to do so.</i>
❖	<i>Chew quietly; don't speak with your mouth full.</i>
❖	<i>Avoid pointing the knife or fork towards the other person while eating and speaking.</i>
❖	<i>Allow your guest to select the menu and wine.</i>
❖	<i>If something unwanted has gone to your mouth, place the napkin in front of your mouth tactfully and bring it out instead of putting your hand inside the mouth to get rid of it.</i>
❖	<i>Learn the basic table manners before you go out to dine with a potential client or an important business meet.</i>

ICSI (Guidelines for Attire and Conduct of Company Secretaries), 2020

Preamble

Attire reflect personality, lifestyle and standardisation of a professional more so when he appears before various quasi-judicial forums. The recognition of company secretaries to appear before quasi-judicial bodies on behalf of their clients is a privilege coupled with conditions. One such condition is to dress appropriately, support the court's authority and dignity and maintain decorum. The dressing requirements for appearing before statutory bodies and quasi-judicial bodies are unwritten. A company secretary appearing before any statutory body or quasi-judicial body on behalf of his employer or clients stands there in his capacity as an officer of the court. He is duty bound to support the judge's authority and dignity by following the rules.

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 behaviour 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 colored Trouser, Insignia
- b) Neck Tie (ICSI)
- c) White full sleeve Shirt
- d) Formal Shoe

**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:

- Clothes that are too revealing or not fitting well.
- Unpolished shoes.
- Short or skirts.
- Scarfs, Caps, Hats and Helmet.
- Hand Gloves.
- Face Masks and veils.
- Sports shoes, slippers, sandals.
- Singlets, T-shirts, Jeans.
- Casual wear or traditional wear.
- Gaudy accessories of attire.
- Medallions, except where the professional has a constitutional right thereto.
- 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
- Earphones, headphones and any other electronic communication equipment.
- Brightly colored pieces of attire which may be disruptive, distractive or depreciative of the solemnity of the judicial proceedings.
- 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 professional's 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 13

## Adjudications and Appeals under SEBI Laws

## Penalties under Depositories Act, 1996

Section 19A	<p>a) Penalty for failure to furnish information, return, etc.</p> <p>b) to furnish any information, document, books, returns or report to the Board to file any return or furnish any information, books or other documents within the time specified therefor in the regulations or bye-laws</p> <p>c) to maintain books of account or records, fails to maintain the same, he shall be liable to:</p>	1 lac- 1 cr
Section 19B	Penalty for failure to enter into an agreement.	1 lac to 1 cr
Section 19C	Penalty for failure to redress investors' grievances.	1 lac to 1 cr
Section 19D	Penalty for delay in dematerialisation or issue of certificate of securities.	1 lac to 1 cr
Section 19E	Penalty for failure to reconcile records.	1 lac to 1 cr

	Section 19F	Penalty for failure to comply with directions issued by Board under section 19 of the Act.	1 lac to 1 cr
	Section 19FA	Penalty for failure to conduct business in a fair manner	a penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher.
	Section 19G	Penalty for contravention where no separate penalty has been provided.	a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.
	Non-compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015		

	Sl. No.	Regulations under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	Fine payable and/or other action to be taken for non-compliance in respect of listed entity
	1.	Regulation 6(1) Non-compliance with requirement to appoint a qualified company secretary as the compliance officer	Rs. 1000 per day
	2.	Regulation 7(1) Non-compliance with requirement to appoint share transfer agent	Rs. 1000 per day
	3.	Regulation 13(1) Failure to ensure that adequate steps are taken for expeditious redressal of investor complaints	Rs. 1000 per day
	4.	Regulation 13(3) Non-submission of the statement on shareholder complaints within the period prescribed under this regulation or under any circular issued in respect of redressal of investor grievances	Rs. 1000 per day
	5.	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

## CS EXECUTIVE

6.	<p style="text-align: center;"><i>Regulation 17(1A)</i></p> <p><i>Non-compliance with the requirements pertaining to appointment or continuation of Non-executive director who has attained the age of seventy five years</i></p>	<p><i>Rs. 2000 per day</i></p>
7.	<p style="text-align: center;"><i>Regulation 17(2)</i></p> <p><i>Non-compliance with the requirements pertaining to the number of Board meetings</i></p>	<p><i>Rs. 10,000 per instance</i></p>
8.	<p style="text-align: center;"><i>Regulation 17(2A)</i></p> <p><i>Non-compliance with the requirements pertaining to quorum of Board meetings.</i></p>	<p><i>Rs. 10,000 per instance</i></p>
9.	<p style="text-align: center;"><i>Regulation 18(1)</i></p> <p><i>Non-compliance with the constitution of audit committee</i></p>	<p><i>Rs. 2000 per day</i></p>
10.	<p style="text-align: center;"><i>Regulation 19(1)/ 19(2)</i></p> <p><i>Non-compliance with the constitution of nomination and remuneration committee</i></p>	<p><i>Rs. 2000 per day</i></p>
11.	<p style="text-align: center;"><i>Regulation 20(2) / (2A)</i></p> <p><i>Non-compliance with the constitution of stakeholder relationship committee</i></p>	<p><i>Rs. 2000 per day</i></p>
12.	<p style="text-align: center;"><i>Regulation 21(2)</i></p> <p><i>Non-compliance with the constitution of risk management committee</i></p>	<p><i>Rs. 2000 per day</i></p>
13.	<p style="text-align: center;"><i>Regulation 23(9)</i></p> <p><i>Non-compliance with disclosure of related party transactions on consolidated basis.</i></p>	<p><i>Rs. 5000 per day</i></p>

14.	Regulation 24A Non-compliance with submission of secretarial compliance report	Rs. 2000 per day
15.	Regulation 27(2) Non-submission of the Corporate governance compliance report within the period provided under this regulation	Rs. 2000 per day
16.	Regulation 28 (1) Non-compliance with obtaining in-principal approval of stock exchange(s) before issuance of securities	Rs. 50,000 per instance
17.	Regulation 29(2)/29(3) Delay in furnishing prior intimation about the meeting of the board of directors	Rs. 10,000 per instance of non-compliance per item
18.	Regulation 31 Non-submission of shareholding pattern within the period prescribed	Rs.2000 per day
19.	Regulation 31A(3)(a) Non-compliance pertaining to delay in submission of reclassification application to stock exchanges	Rs. 5,000 per day
20.	Regulation 32(1) Non-submission of deviations/ variations in utilization of issue proceeds	Rs.1000 per day
21.	Regulation 33 Non-submission of the financial results within the period prescribed under this regulation	Rs. 5,000 per day

	(Levy of fine is in addition to the requirement of providing reasons for non-submission of the financial result as per circular no. CIR/CFD/CMD-1/142/2018 dated November 19, 2018)	
22.	Regulation 34 Non-submission of the Annual Report within the period prescribed under this regulation	Rs. 2,000 per day
23.	Regulation 42(2)/42(3)/ 42(4)/42(5) Delay in/ non-disclosure of record date/ dividend declaration or non-compliance with ensuring the prescribed time gap between two record dates/ book closure dates	Rs. 10,000 per instance of non-compliance per item
24.	Regulation 43A Non-disclosure of Dividend Distribution Policy in the Annual Report and on the websites of the entity	Rs. 25,000 per instance
25.	Regulation 44(3) Non-submission of the voting results within the period provided under this regulation	Rs. 10,000 per instance of non-compliance
26.	Regulation 44(5) Non-convening of annual general meeting within a period of five months from the close of financial year	Rs. 25,000 per instance
27.	Regulation 45(3) Non-obtaining approval of stock exchange(s) before filing request for change of name with Registrar of Companies	Rs. 25,000 per instance

	<p>28. Regulation 46 Non-compliance with norms pertaining to functional website</p>	<p>Advisory/warning letter per instance of non-compliance per item Rs. 10,000 per instance for every additional advisory/ warning letter exceeding the four advisory/ warning letters in a financial year</p>						
<p>Fine to be levied in case of non-compliance(s) by issuers of listed Non-convertible Securities w.e.f. August 01, 2022</p>								
<p>The recognized stock exchanges is required to take action for non-compliance with the provisions of the SEBI LODR Regulations &amp; circulars/ guidelines issued thereunder, by an entity having listed Non-Convertible Securities, as under:</p>								
	<table border="1"> <thead> <tr> <th data-bbox="289 1314 456 1738">Sl. No.</th> <th data-bbox="456 1314 1094 1738">Regulation</th> <th data-bbox="1094 1314 1521 1738">Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Securities</th> </tr> </thead> <tbody> <tr> <td data-bbox="289 1738 456 1902">1.</td> <td data-bbox="456 1738 1094 1902">Regulation 6(1)</td> <td data-bbox="1094 1738 1521 1902">Rs.1000 per day</td> </tr> </tbody> </table>	Sl. No.	Regulation	Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Securities	1.	Regulation 6(1)	Rs.1000 per day	<p>Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Securities</p>
Sl. No.	Regulation	Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed its Non-Convertible Securities						
1.	Regulation 6(1)	Rs.1000 per day						

	Non-compliance with requirement to appoint a qualified company secretary as the compliance officer	
2.	Regulation 7(1) Non-compliance with requirement to appoint share transfer agent.	Rs.1000 per day
3.	Regulation 13(1) Failure to ensure that adequate steps are taken for expeditious redress of investor complaints	Rs.1000 per day
4.	Regulation 13(3) Non-submission of the statement on debenture holder complaints within the period prescribed under this regulation or under any circular issued in respect of redress of investor grievances	Rs.1000 per day
5.	Regulation 50(1) Delay in furnishing intimation about board meeting.	Rs. 5,000 per instance of non-compliance per item
6.	Regulation 50(2) Delay in furnishing intimation about meeting of shareholders or holders of non-convertible securities	Rs. 5,000 per instance of non-compliance per item
7.	Regulation 52(1) / 52(2)(a) / 52(2)(d) / 52(2)(f)	Rs. 5,000 per day

	Non-submission of quarterly and year to date standalone financial results on a quarterly basis within the period prescribed under this Regulation under Regulation 52(1)/ Unaudited financial results submitted without limited review report under Regulation 52(2)(a)/ Non-submission of annual audited standalone and consolidated financial results within the period prescribed under Regulation 52(2) (d)/ Non-submission of statement of assets & liabilities and cash flow statement as required under Regulation 52(2)(f)	
8.	Regulation 52(4) / 52(6) Non-disclosure of line items prescribed under Regulation 52(4) along with the quarterly / annual financial results / non-disclosure of items pertaining to non-convertible securities as prescribed under Regulation 52(6) as notes to financials	Rs. 1,000 per day
9.	Regulation 52(7)/ (7A) Non-submission of statement indicating the utilization of issue proceeds/ material deviation in the use of proceeds	Rs. 1,000 per day
10.	Regulation 53(2)	Rs. 2,000 per day

	Non-submission of annual report within the period prescribed under this regulation.	
11.	Regulation 54 (2)/ (3) Non-disclosure of extent and nature of security created and maintained with respect to secured listed non-convertible debt securities in the financial statements	Rs. 1,000 per day
12.	Regulation 57(1) Non-disclosure of information related to payment obligations.	Rs. 2,000 per day per ISIN
13.	Regulation 57(4) Non-submission of details of payable interest/dividend/principal obligations during the quarter	Rs. 1,000 per ISIN
14.	Regulation 57(5) Non-submission of certificate confirming the payment of interest/dividend/principal obligations due in the quarter or non-submission of details of all unpaid interest/dividend/principal obligations at the end of the quarter.	Rs. 1,000 per ISIN
15.	Regulation 59 (1) Failure to obtain prior approval of stock exchange for any structural change in non-convertible securities	Rs. 50,000 per instance

	16.	Regulation 60 (2) Delay in submission of the notice of record date	Rs. 10,000 per ISIN
	17.	Regulation 62 Non-compliance with norms pertaining to functional website	Advisory/warning letter per instance of non-compliance per item  Rs. 10,000 per instance for every additional advisory/warning letter exceeding the four advisory/warning letters in a financial year.
<i>Fine to be levied in case of non-compliances by issuers of listed Commercial Papers</i>			
	Sl. No.	Clause	Fine payable and/or other action to be taken for non-compliance in respect of an entity having listed Commercial Paper
	1.	Non-submission of financial results within the prescribed period	Rs. 5,000 per day

2.	Non-disclosure of line items prescribed under Regulation 52(4) of SEBI LODR Regulations along with the financial results	Rs. 1,000 per day
3.	Non-submission of certificate regarding fulfillment of payment obligations	Rs. 1,000 per day per ISIN

**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.*

*For the aforesaid period from July 4, 2019 to February 5, 2020 on account of non-compliance of the Regulation 17(1) of the LODR Regulations, BSE and NSE has imposed a fine for the quarter ended December 31, 2019 and again for the quarter ended March 31, 2020 under circular dated May 3, 2018 issued by SEBI as under:*

*Regulation*

*Fine payable and / or other action to be taken for non-compliance in respect of listed entity*

	<p>Regulation 17(1) Non-compliance with the requirements pertaining to the composition of the Board including failure to appoint woman director</p>	<p>Rs. 5000/- per day</p>
	<p>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.</p>	
	<p>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</p>	
	<p>consonance with the provisions of Regulation 25(6) of the LODR Regulations</p>	
	<p>and since the appellant failed to fill the vacancy within three months, the</p>	
	<p>penalty has been imposed from October 3, 2019 under Regulation 17 of the</p>	
	<p>LODR Regulations. The same view was taken by SEBI in its order of June 30,</p>	
	<p>2021.</p>	
	<p><b>ORDER</b></p>	
	<p>It is observed that the approach adopted by the respondent is totally illegal and</p>	
	<p>against the provisions of law. The provisions under the LODR Regulations are</p>	
	<p>required to be complied by the companies including the appellant. Non-</p>	
	<p>compliance of various provisions may entail imposition of fine as per the circular</p>	
	<p>dated May 3, 2018. This circular has been issued in exercise of the powers</p>	
	<p>under Section 11A(2) of the Securities and Exchange Board of India Act,</p>	
	<p>1992(hereinafter referred to as 'SEBI Act') read with Sections 9 and 21 of</p>	
	<p>Securities Contract (Regulations) Act, 1956 (hereinafter referred to as 'SCR</p>	
	<p>Act') and read with Regulation 98 of the LODR Regulations. This circular has</p>	

the force of law. Under Annexure I 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 filling 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.

## 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**

**For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB of SEBI Act, 1992, Sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H of Securities Contracts (Regulations) Act, 1956 and Section 19A, 19B, 19C, 19D, 19E, 19F, 19FA and 19G of Depositories Act, 1996 :**

- *Appointment of Adjudicating Officer: The Securities and Exchange Board of India may appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India 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 under section 15T of SEBI Act, 1992, section 23L of Securities Contract (Regulation) Act, 1956 and section 23A of Depositories Act, 1996 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- DISCUSSED IN DD*

### **CASE LAWS**

*In the case of SEBI v. Bhavesh Pabari, a full bench of the Hon'ble Supreme Court held that an AO has the right and discretion to determine the quantum of fine when any provisions specified in the SEBI Act or SCRA are not complied with.*

*The decision broadened the application of Section 15J of the SEBI Act and highlighted that the three reasons listed therein must only be regarded as illustrative and not exhaustive in nature, hence allowing the AO to assess the punishment after a consideration of all aggravating and mitigating factors. This decision has evolved considerably over the years, to now recognise the ability of AOs to not impose penalties at all, even in cases where a non-compliance is identified, but is not significant enough to merit a penalty.*

*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]- DISCUSSED IN DD

**CASE LAWS**

In the matter of Mahamaya Steel Industries Limited (BEFORE THE ADJUDICATING OFFICER SECURITIES AND EXCHANGE BOARD OF INDIA), dated October 05, 2018

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 ("SEBI ACT") READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

*Facts of the Case*

Securities and Exchange Board of India pursuant to BSE report, observed that some promoters of Mahamaya Steel Industries Limited undertook certain transactions in the shares of the Company during 2016 for which disclosures were required to be made under regulation 7(2)(a) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations"). However, it was observed that one of the promoters (hereinafter referred to as "Noticee") failed to comply with the disclosure requirements under PIT Regulations.

In the instant matter, the following issues arise for consideration and determination:-

(a) Whether the Noticee have violated the provisions of regulations 7(2)(a) of

PIT Regulations?

- (b) Do the violation, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of SEBI Act for the alleged violation?; and,
- (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

The Noticee had submitted that she is not a promoter but she is a part of the promoter group as per the definition provided in 2(zb) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009. However, on perusal of the website of BSE, it is observed that the Noticee had herself made disclosures under the promoter category under regulation 7(2) read with 6(2) of PIT Regulations.

Regulation 6(2) of the PIT Regulations states that: "The disclosures to be made by any person under this Chapter shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions."

This provision clearly shows that intent of the legislation. It is not only the promoters, but all those who are related to them may be privy to unpublished price sensitive information and are required to disclose the change in their shareholding to the public. In such situations, we cannot take the narrow interpretation of the provision and excuse the Noticee considering that she is not a promoter but part of the promoter group. As she is the spouse of one of the promoters, viz. Anand Kumar Agrawal, she was liable to make disclosures under regulation 7(2)(a) of PIT Regulations. Moreover, she had been making disclosures under PIT Regulations as promoter.

Order

In view of the above, it is established that the Noticee did not comply with regulation 7(2)(a) of PIT Regulations.

The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...".

In view of the above, it is established that the Noticee did not comply with regulation 7(2)(a) of PIT Regulations. Therefore, Noticee is liable for a penalty under section 15 A(b) of SEBI Act.

After examination, it did not bring out the disproportionate gain or unfair advantages to the Noticee and loss caused to investors as a result of non-disclosure of change of shareholding. The Noticee failed to make the relevant disclosure on more than one occasion. Hence it can be said that the violation is repetitive in nature.

In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of section 15-J of the SEBI Act, in exercise of the powers conferred upon under section 15-I (2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticee stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, monetary penalty is imposed under section 15A (b) of SEBI Act of Rs. 2,00,000/- (Rupees Two Lakh only) for violation of regulation 7(2)(a) of PIT Regulations.

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]-  
DISCUSSED IN DD

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]- DISCUSSED IN DD

### CASE LAWS

#### Case Laws on Insider Trading

In *Re 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.”

Explanation – Speculative reports in print or electronic media shall not be considered as published information”.

By the same Amendment, SEBI also introduced a new provision, Section 2(ha) which defined “price sensitive information” to include any information relating to an amalgamation, merger or takeover as deemed price sensitive information, regardless of whether such information actually has any affect the price of the securities in the market. However, the amendments did not definitively and expressly define “generally available information” and then 2015 regulations finally came out defining what constitutes UPSI by stating “generally available information” under Section 2(1)(e) which stated, “generally available information” means information that is accessible to the public on a non-discriminatory basis;”.

COMPOUNDING PROVISIONS UNDER THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 (“SEBI ACT”), SECURITIES CONTRACTS (REGULATION) ACT, 1956 (SCRA) & DEPOSITORIES ACT, 1996

**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-promoters. 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 addressal 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**

SETTLEMENT AND SETTLEMENT PROCEEDINGS CONSENT ORDER UNDER SEBI LAWS

CONSENT ORDER

Consent order is the order passed by the authorities to ensure settlement between the regulator and a person (Party) who may prima facie be found to have violated securities laws. However, if Board is of the opinion that consent cannot be reached between the parties, it may initiate proceedings before the appropriate authority.

Consent orders tries to achieve twin goals of remedy and deterrence without resorting to litigation, lengthy proceedings and consequent delays. Therefore, it has been decided that administrative or civil actions may be settled between SEBI and a person (party) who may prima facie be found to have violated the securities laws or against whom administrative or civil action has been commenced for such violation.

SEBI has issued a set of regulations to deal with settlement and procedure of settlement. These have been dealt in detail further.

SECURITIES AND EXCHANGE BOARD OF INDIA (SETTLEMENT PROCEEDINGS) REGULATIONS, 2018

APPLICATION FOR SETTLEMENT

APPLICATION FOR SETTLEMENT

Any person against whom any proceeding has been initiated or can be initiated

can make an application to the Board.

Applicant has to make complete disclosures about the alleged defaults in the application.

If complete detail are not provided by the applicant and his application is returned, he has to submit a complete application within 15 days from the date of communication received from the Board.

The application made should be accompanied by non-refundable fees, undertakings and waivers.

**LIMITATION ON APPLICATION**

Any application made after the expiry of 60 days from the date on which the show cause notice was received, will not be considered, unless it is shown that there was a sufficient cause for delay.

The provisions of this regulation shall not apply in the case of proceedings pending before the Tribunal or any court.

**SCOPE OF SETTLEMENT**

**REJECTION OF APPLICATION**

An application made to the Board can anytime be rejected on the following grounds:

The applicant refuses to receive or respond to the communications sent by the Board;

The applicant does not submit or delays the submission of information, document, etc., as called for by the Board

The applicant who is required to appear, does not appear before the Internal Committee on more than one occasion

The applicant does not remit the settlement amount within the period specified and/or does not abide by the undertaking and waivers.

**WITHDRAWAL OF APPLICATION**

An application can be withdrawn before the decision is communicated by the panel of members. However, once the application is withdrawn no application can be made for a similar default provided that on the recommendation of the High- Powered Advisory Committee, such an application may be considered subject to an increase of at least fifty percent over the settlement amount determined.

**TERMS OF SETTLEMENT**

**SETTLEMENT TERMS**

Settlement terms includes a settlement amount and non-monetary terms which includes the following:

Suspension or cessation of business activities for a specified period;

Exit from Management;

Disgorgement on account of the action or inaction of the applicant;

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;

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.;

Lock-in of securities;

Implementation of enhanced policies and procedures to prevent future securities laws violations and agreeing to appoint an independent consultant to review internal policies, processes and procedures.

Provide training and education to employees of intermediaries and securities market infrastructure institutions.

**FACTORS TO BE CONSIDERED TO ARRIVE AT THE SETTLEMENT TERMS**

Following factors have to be taken into consideration to arrive at the settlement terms, however, these factors are not restricted:

nature, gravity and impact of alleged default the extent of harm and/or loss to the investors' and/or gains made by the applicant;

the role played by the applicant in case the alleged default is committed by a group of persons

processes that have been introduced since the alleged default to minimize future defaults or lapses;

economic benefits accruing to any person from the non-compliance or delayed compliance;

whether any other proceeding against the applicant for non-compliance of securities laws is pending or concluded

any other enforcement action that has been taken against the applicant for the same violation any other factors necessary taking into consideration the facts and circumstances of the case.

**COMMITTEES**

**HIGH POWERED ADVISORY COMMITTEE**

The Board shall constitute a High-Powered Advisory Committee for consideration and recommendation of the terms of settlement.

**Composition:**

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.

**Term: 3 years**

Quorum: three members

High Powered Committee shall conduct its meetings in the manner specified by the Board however, if no consensus could be reached between the members, decision of judicial member will be considered as the final decision.

**INTERNAL COMMITTEE**

Internal Committee is also constituted by the Board.

**Composition:**

an officer of the Board not below the rank of Chief General Manager  
 such other officers as specified by the Board

**PROCEDURE OF SETTLEMENT**

**PROCEEDINGS BEFORE THE INTERNAL COMMITTEE**

*Application is referred to Internal Committee which can call for additional information, documents or personal appearance of applicants. It can also ask the applicant to submit revised settlement terms within a period not exceeding 10 working days.*

*The proposed settlement terms, if any, shall be placed before the High-Powered Advisory Committee.*

**PROCEEDINGS BEFORE THE HIGH-POWERED ADVISORY COMMITTEE**

*Internal committee will place settlement terms before the High-powered committee and the committee would take into consideration the application, settlement terms and any material available on record and seek revision of terms and refer application back to Internal Committee, if required.*

*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**

*The Panel of Whole Time Members shall consider the recommendations of the High Powered Advisory Committee and may accept or reject the same where the recommendations are rejected, the panel of Whole Time Members shall record reasons for rejection of the recommendations and communicate the*

same to the applicant and where the recommendations are accepted, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall 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

**SUMMARY SETTLEMENT PROCEDURE**

Before initiating any specified proceedings, Board may issue a notice of summary settlement, calling upon the person to whom the notice is served to file an application and submit a settlement amount or submit any undertaking in non-monetary terms. Provided that, the specified proceeding(s) shall not be settled under this Chapter, if in the opinion of the Board, the applicant has failed to make a full and true disclosure of facts or failed to co-operate in the required manner

The noticee may, within thirty calendar days from the date of receipt of the notice of settlement-

File a settlement application

remit the settlement amount as specified in the notice of settlement

comply or undertake to comply with other non-monetary terms as specified in the notice of settlement

ask for rectification of the calculation of the settlement amount, as communicated in the notice of settlement.

Noticee has to remit the amount within 30 days from the date of receiving the notice. However, if the Board deems fit, in a case of delay, it can grant an extension of not more than 15 days.

After receiving the settlement amount and being sure that noticee will comply with the terms of the settlement agreement, Board may pass an order 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.

**SETTLEMENT ORDERS**

The Adjudicating Officer shall pass an appropriate order to dispose of the proceeding pending before him on the basis of the approved settlement terms. This order should contain the details of the alleged default, relevant provisions of the securities laws, brief facts and circumstances relevant to the alleged default, the admissions made by the applicant, if any and the settlement terms. Settlement orders shall be served on the applicant and shall also be published on the website of the Board.

A settlement order under these regulations shall not be admissible as evidence in any other proceeding.

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.

**APPEAL AGAINST THE ORDERS**

Right to appeal is a right available to an aggrieved party. Usually the justice is served fairly and equitably in every trial. However, in certain cases there may be a miscarriage of justice. Hence, right to appeal is a right provided under every law.

Companies Act, 2013, Foreign Exchange Management Act, 1999, SEBI Laws, Taxation laws all provide for the right of appeal against the order passed. The provisions of Chapters IV to VI and Schedule-II may be applied mutatis mutandis for determining the terms while processing a compounding application.

**CASE LAWS**

*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

#### Establishment of Securities Appellate Tribunals (Section 15K)

Securities Appellate Tribunal (SAT) is a statutory body established under the provisions of Section 15K of the Securities and Exchange Board of India Act, 1992 to hear and dispose of appeals against orders passed by the Securities and Exchange Board of India or by an adjudicating officer under the Act

#### 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, by notification, to exercise the powers and discharge the functions conferred on the Securities Appellate Tribunal under this Act or any other law for the time being in force.

Subject to the provisions of this Act, –

- (a) the jurisdiction of the Securities Appellate Tribunal may be exercised by Benches thereof;
- (b) a Bench may be constituted by the Presiding Officer of the Securities Appellate Tribunal with two or more Judicial or Technical Members as he may deem fit.  
Every Bench constituted shall include at least one Judicial Member and one Technical Member;
- (c) 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 15 M)**

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,

- (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

	<p>Ministry or Department of the Central Government or any equivalent post in the Central Government or a State Government;</p> <p>or</p> <p>(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.</p>
	<p>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)</p>
	<p>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:-</p>
	<p>(a) Presiding Officer, Securities Appellate Tribunal – Chairperson;</p>
	<p>(b) Secretary, Department of Economic Affairs – Member;</p>
	<p>(c) Secretary, Department of Financial Services – Member; and</p>
	<p>(d) Secretary, Legislative Department or Secretary, Department of Legal Affairs – Member.</p>
	<p>The Secretary, Department of Economic Affairs shall be the Convener of the Search-cum-Selection Committee.</p>
	<p>The Search-cum-Selection Committee shall determine its procedure for recommending the names of persons to be appointed as mentioned above.</p> <p>(Section 15MB)</p>
	<p>A member or part time member of the Board or the Insurance Regulatory and</p>

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.(Section 15U of SEBI Act, Section 22 B of Securities Contract(Regulation) Act, 1956 and Section 23B of Depositories Act, 1996)- DISCUSSED IN DD**

**ADDITIONAL PROCEDURES**

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.

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 : -

*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 under sub-rule (2) of rule 5.
- 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 under sub-rule (2) of rule 5, 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)

In addition to the functions and duties assigned in the rules, the Registrar shall have the following functions and duties subject to any general or special order of the Presiding Officer or in his temporary absence, the Member authorized under sub-rule (2) of rule 5, namely :-

- 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



## Chapter 14

## Appearance before other Regulatory and Quasi-judicial Authorities

## Quasi-Judicial Authority

A quasi-judicial authority is an administrative body or agency that has been granted the power to make decisions that affect the legal rights, duties, or privileges of individuals or entities. These authorities are authorized to conduct hearings, take evidence, and make findings of fact and law, which are binding on the parties involved. Quasi-judicial authorities are distinct from judicial authorities, which are courts that have the power to hear and determine legal disputes.

## 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.

**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, as the case may be.

Some of the key provisions related to appearance under the Companies Act, 2013, are as follows:

1. *Appearance before the Registrar of Companies (ROC)*

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.	<p>Appearance before the National Company Law Tribunal (NCLT)</p> <p>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.</p>
3.	<p>Appearance before the Serious Fraud Investigation Office (SFIO)</p> <p>The SFIO is a specialized investigating agency that is empowered to investigate cases of fraud and financial irregularities related to companies.</p>
4.	<p>Appearance before the Securities and Exchange Board of India (SEBI):</p> <p>Companies and individuals may be required to appear before SEBI in connection with various 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.</p>
<b>APPEARANCE UNDER THE TRAI ACT, 1997</b>	
	<p>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. As per the Explanation appended to the Section 'Company Secretary' means a Company Secretary as defined in clause (c) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of Section 6 of that Act.</p>
1.	<p>Appearance before the TRAI in tariff-related matters</p> <p>Hold hearings and require telecom service providers and other parties to appear</p>

	before it to provide evidence and arguments on tariff-related matters.
2.	Appearance before the TRAI in consumer-related matters 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 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 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.
<b>APPEARANCE UNDER THE SEBI ACT, 1992</b>	
	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 may issue show cause notices and require parties to appear before it to provide evidence and arguments on compliance-related matters.

2.	<p><i>Appearance before SEBI in investigations</i></p> <p><i>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.</i></p>
3.	<p><i>Appearance before SEBI in adjudication proceedings</i></p> <p><i>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.</i></p>
4.	<p><i>Appearance before SEBI in appeals</i></p> <p><i>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.</i></p>
<b>APPEARANCE UNDER THE COMPETITION ACT, 2002</b>	
	<p><i>Sections 35 of the Competition Act, 2002 authorises Company Secretaries in practice to appear before Competition Commission of India.</i></p>
1.	<p><i>Appearance before the CCI in complaint and information matters</i></p> <p><i>the CCI may issue notices and require parties to appear before it to provide evidence and arguments in connection with such investigations.</i></p>
2.	<p><i>Appearance before the CCI in combination matters</i></p> <p><i>the CCI may require parties to appear before it to provide evidence and</i></p>

	arguments in connection with such reviews.
3.	Appearance before the CCI in appeal and review matters 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 parties seeking leniency may be required to appear before the CCI to provide evidence and arguments in connection with such disclosures.
<b>APPEARANCE UNDER REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016</b>	
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 as the case may be.	
Hence a Company Secretary holding certificate of practice can –	
<ul style="list-style-type: none"> <li>• Represent a person (promoter) before any real estate regulatory authority for registration of real estate project,</li> <li>• Represent a person before real estate appellate tribunal.</li> <li>• Represent a person before Adjudicating Officer.</li> </ul>	
Some of the key provisions related to appearance under the RERA are as follows:	
1.	Appearance before the RERA in complaint matters 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
	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
	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
	parties may be required to appear before the Appellate Tribunal to provide evidence and arguments in connection with such appeals.
<b>APPEARANCE UNDER THE RESERVE BANK OF INDIA ACT, 1934</b>	
	Under the Reserve Bank of India Act, 1934, certain provisions require the appearance of Company Secretaries for specific matters related to banking and financial institutions.
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, if necessary: 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.	<p><i>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.</i></p>
10.	<p><i>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.</i></p>
	<p><b>APPEARANCE BEFORE THE ENFORCEMENT DIRECTORATE</b></p>
	<p><i>The Company Secretaries may be required to appear before the Enforcement Directorate (ED) in cases related to financial offenses, money laundering, or economic crimes. The general guidelines which are applicable to Appearance under RBI is same as when appearing before the Enforcement Directorate.</i></p>
	<p><b>APPEARANCE BEFORE THE STOCK EXCHANGES</b></p>
	<p><i>The general guidelines which are applicable to Appearance under RBI and ED are same as when appearing before the Stock Exchanges.</i></p>
	<p><b>APPEARANCE BEFORE THE IPR AUTHORITIES</b></p>
	<p><i>The general guidelines which are applicable to Appearance under RBI, ED and Stock Exchanges are same as when appearing before the IPR Authorities.</i></p>
	<p><b>APPELLATE AUTHORITIES UNDER THE COMPANIES ACT, 2013</b></p>

1.	<b>National Company Law Appellate Tribunal (NCLAT)</b>
	Under Section 410 of the Companies Act, 2013, the Central Government constituted an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a Chairperson and such number of Judicial and Technical Members, as the Central Government may deem fit, to be appointed by it by notification, for hearing 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.
	Section 421 of the Companies Act, 2013 provides that any person aggrieved
	by an order of the Tribunal may prefer an appeal to the Appellate Tribunal
	within a period of forty-five days. (Further extension 45 days)
	On the receipt of an appeal, the Appellate Tribunal shall, after giving the
	parties to the appeal a OBH.
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 (Further extension 60 days)
3.	Regional Director
	<ul style="list-style-type: none"> <li>The Regional Director is a statutory authority appointed by the Central Government under the Companies Act, 2013.</li> </ul>
	<ul style="list-style-type: none"> <li>The Regional Director has the power to hear appeals against orders and</li> </ul>
	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.
- 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

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 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.

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**

The following are the 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. The CIT(A) has the power to confirm, modify, or set aside the order of the AO.

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. The NCLAT has the power to confirm, modify, or set aside any order passed by the CCI or the DG.

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.

**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

CASE STUDY ON CORPORATE INSOLVENCY RESOLUTION PROCESS

Corporate Insolvency Resolution Process (CIRP) is a legal process that helps financially distressed companies to restructure or liquidate their assets to repay their debts to creditors. It is governed by the Insolvency and Bankruptcy Code, 2016 (IBC) and aims to provide a time-bound and structured mechanism for the resolution of insolvency in a fair and transparent manner.

1. 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.

2. 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.