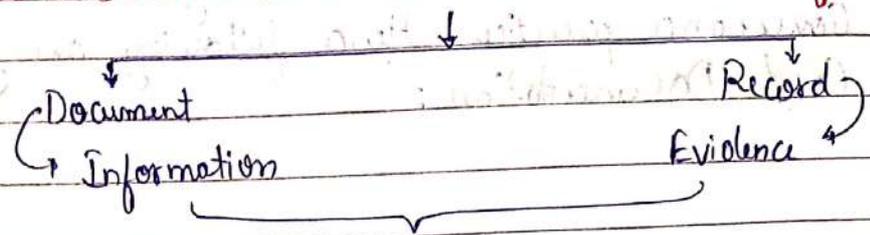


Date... 09/05/2025.

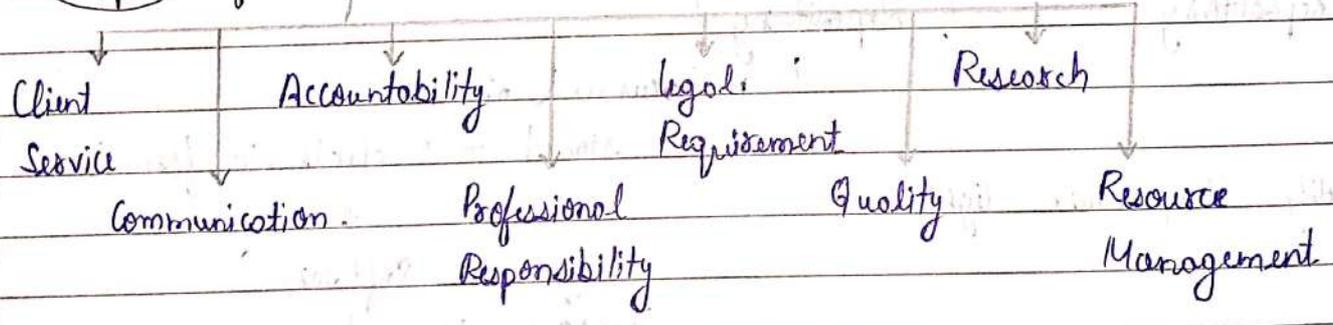
CHAPTER 2 - Documentation and Maintenance of Records



Role of (CS) in documentation

- a) Maintenance of Records - Primary Responsibility of CS
- b) Ensure the Confidentiality of the document - Duty of CS
- c) CS checks - Document is consistent with prior records
- d) Storing, maintaining, retrieving, certifying and explaining corporate documents
- e) Documents relating to subsidiaries, joint ventures, consortiums, and other entities also

Purpose of Documentation



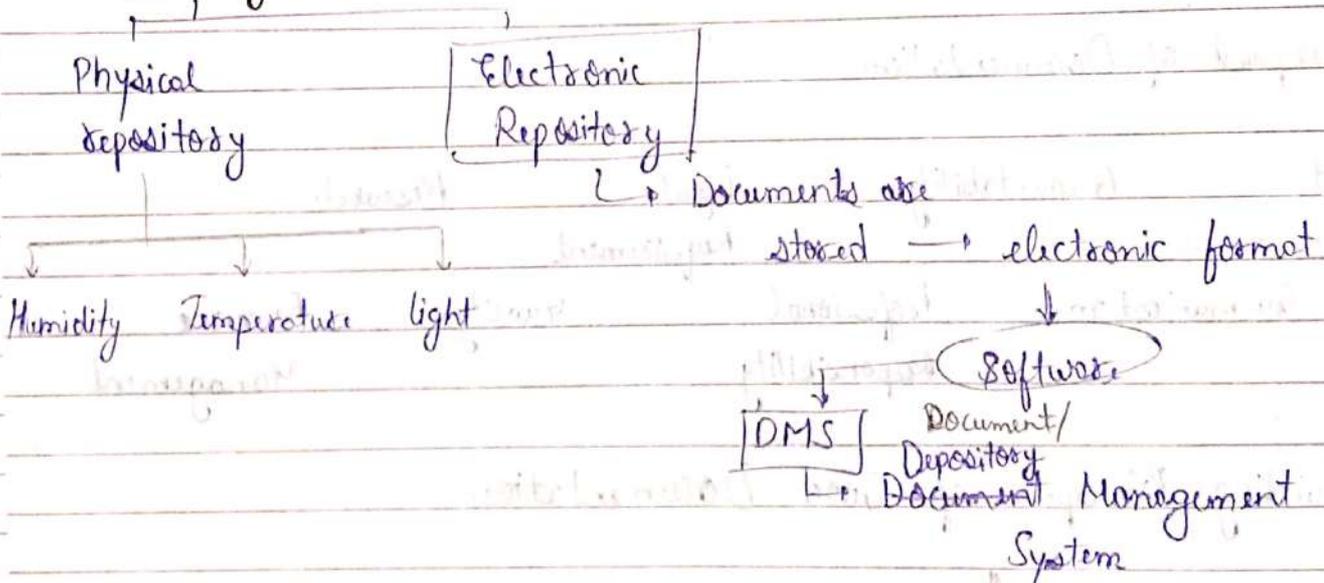
Guiding Principles of Good Documentation

- The word documents is written, printed or electronic matter that provides information. Electronic records, Audio - video tapes, e-mail, check lists, charts, working notes, reports are all included in Documents.

• A Good Document ensures compliance in the organization and Good Corporate Governance practices. Hence following are guiding principles for **Good Documentation**:

- a) Clear
- b) Concise
- c) Complete
- d) Contemporaneous
- e) Consecutive
- f) Correct
- g) Comprehensive
- h) Collaborative
- i) Client - Centric.

Repository → Place where you store documents



Advantage

- ✓ Tracking of check-in (or) check-out by various offices
- ✓ locking & unlocking of Document
- ✓ Simultaneous editing
- ✓ Document version control
- Spiral ✓ Ease in Audit trail ✓ Annotation

Electronic Records / Electronic Repository

Advantages

1. Cost Effective
2. Ease of use
3. Labour Savings
4. Search Ability
5. Portability
6. Version tracking

Disadvantages

1. Software risk
2. format risk
3. Reliability
4. Portability

Physical repository → Setting up of record room

Temperature Humidity (30-40%) light

Care of record is taken by three concept :

- a) Keeping together
- b) Ensure life cycle
- c) Record Preservation

Maintenance & Inspection of Records

Section 120

Maintenance of Documents in Electronic format (+)

Inspection → Docs will be given electronically

Rule 27

Every listed Co. (+)

Company with having 1000 shareholders

Docs will be maintained in electronic format

RRR

Rule 28

Maintenance (+)
Security of Electronic Records

Managing Director (+)

Company Secretary (if any)

- [Rule 27] provides that -
- (1) R/R/R (Retrievable / Reproducible / Readable)
 - (2) Cannot be altered / edited
 - (3) Can be updated
 - (4) Capable of digitally dated (+) signed (DSC)
 - (5) Information given under the statute is included

Case law

1 S. M/s. SDU Holdings Pvt Ltd [Non-compliance w.r.t. Register of Members]

In the instant case, ROC ordered inspection u/s 206 of Companies Act, 2013 and discovered that company's FORM No. MGT-1 was incomplete. ROC issued a show-cause notice to Company and Officer-in-Default. After the personal hearing, ROC decided to impose the penalty on the Company & Officer-in-default.

2 M/s. Indiabulls Real Estate Ltd [Non-compliance w.r.t. Secretarial Standards]

- In the instant case, ROC issued an adjudication order for non-compliance with Secretarial standards 1 & 2
- An Order u/s 206 of the Co's Act, 2013 for inspection was given by Central Govt and it was noticed that attendance register was not serially numbered and was maintained in a loose-leaf
- ROC issued a show-cause notice to Company & Officer-in-default. After personal hearing, ROC imposed a penalty for non-compliance with Secretarial standards on Company & Officer-in-default.

Date.....

3 Arjun Pandit Rao Khotkar V. Kailash Kushan Rao Gosontyal

- This case is about the interpretation of Section 65B of Indian Evidence Act.
- In the instant case, the case of Shafiqi Mohammad V. State of Himachal Pradesh was asked to be reconsidered by a larger Bench of Supreme Court.
- In Shafiqi Mohammad case, it was declared that electronic evidence is admissible as evidence u/s 65A and 65B of Indian Evidence Act. The case stated that only electronic evidence will be admissible as evidence based on its authenticity and a certificate u/s 65B produced by the person submitting the evidence.
- However, in this case (Arjun V. Kailash) Supreme Court did not agree with the rules specified in the case of Shafiqi Mohammad and declared that a certificate u/s 65B cannot be obtained by individuals not in possession of electronic device. Court clarified that an application can be made to a judge for the production of certificate u/s 65B even if the person in the possession of the electronic device refuses to provide it.

Date.....

4. M/s. Michelin India Pvt. Ltd [Non-compliance w.r.t Board Report]

• In the instant case, Adjudication Order was issued and penalty was imposed for the non-compliance with Section 134 of Companies Act, 2013

• RD upon examination highlighted the deficiency in Company's Internal financial control and Auditor's inability to obtain sufficient and appropriate audit evidence. Auditor's noticed the absence of Back-up of documents maintained in electronic format and Board of Directors did not give any explanation for the observations of Auditor in Board Report.

• Hence, Regional Director imposed a penalty on the Company and Officers-in-default for violation of provision of Companies Act, 2013

5. Anil Kumar Poddar V. Bonanza Industries Ltd.

• In the instant case, a shareholder filed an application to direct the Company to allow him inspect the registers & records of the Company

• Company replied that the applicant only held 10 shares and repeatedly demanded documents & records maintained by the Company under Companies Act, 2013, for harassment. All the statutory records of Company are available on the MCA portal and a certified copy of the records can be obtained from ROC.

• Hence, the Court concluded that Applicant's repeated filing of application is not genuine and, he is not acting in good faith and therefore Court dismissed the application.

Special

SKYSHOTS



Preservation of Records

Regⁿ 9 of
SEBI (LODR) Regⁿ 2015

every listed company should
have a preservation policy
in which the records are
classified at least in 2 categories:

- (i) Records which are Permanent
in nature
- (ii) Records which are to be preserved
for at least 8 years

Regⁿ 30(8) of
SEBI (LODR) Regⁿ, 2015

Disclosures given by listed
entity of events or
information shall be
placed on the website for
a minimum period of
5 years

→ Factors to be considered for preservation policy of Companies

- a) Analysing existing systems
- b) Organising and controlling the records
- c) Physical protection for records
- d) Managing the record centre
- e) Managing Archives

a) Analysis of existing system - (i) reviewing applicable laws
(ii) reviewing organizational policies
(iii) assessing the resources
for e.g: Facilities, staff etc

b) Organising & Controlling the records - (i) developing a Business Plan
(ii) Managing and creating the files
(iii) Building a record-keeping system

Date.....

c) Physical Protection to records - i) Identifying important records
ii) Maintaining & preserving identified records

d) Managing Record Centres - i) Developing a record centre
ii) Transferring & storing the records in Record Centre as per the schedule
iii) Disposing the records according to the schedule

e) Managing Archives - i) Acquiring archives (old records)
ii) arranging archives as per archival principles
iii) providing public access to archives

pg. 217

Q. To assure the Best Quality of documents, the records should be maintained of the [activities affecting quality of the records.]
Comment

Ans: To assure the Best Quality of documents, following records should be maintained as an evidence to ensure Quality:

- (a) Operation logs
- (b) Results of reviews
- (c) Inspection
- (d) Monitoring of work performance
- (e) Information analysis

• Also by keeping the care of records, we can assure the best quality of documents, the care of records is governed by 3 main main concepts.

Date.....

1. Keeping together:

- The records must be kept together with the department which created the document, in the original order as it existed at the time of creation.
- This becomes very important when documents are to be presented as an evidence as it helps to understand who created, or used a record, and where, when & why.

2. Ensure life cycle

- every record follow a 'life-cycle', and pass through 3 main phases;
 - (a) Current Phase: Records are ~~used~~ used regularly in the conduct of current business.
 - (b) Semi-Current Phase: Records are used less frequently in the conduct of current business.
 - (c) Non-Current Phase: Records are destroyed unless they are required to be preserved.

3. Record Preservation:

- It should be preserved through consistent range of actions from development of record keeping system to creation & preservation of records and their use as pre archives.

Date..20 May..2025..

CHAPTER 3: Signing and Certification

#1 Pre-Certification:

- Pre-certification means certification of correctness of document by Practising Company Secretary.
- Initially, the concept of Pre-Certification started with registration of charge to avoid the delays
- (Signing & Certification of documents are two different concepts where certification can only be done by a Practising Company Secretary (PCS))
- Pre-Certification as a concept is important because it:
 - (a) ensures correctness
 - (b) Good Governance
 - (c) Pre-emptive steps
 - (d) Self-regulation

#2 Historical Background

(1) to avoid delay in registration of charges



(2) MCA → issued 2 circulars → advising ROC → forms should be duly certified



(3) Nareesh Chandra Committee → recommended → system of Pre-Certification



(4) Companies (Amended) Bill, 2003 → documents/
returns/
Forms } Pre-certified

Spiral (5) Co's Act, 2013 → Pre-Certification introduced

SKYSHOTS



Date.....

#3 Various Certifications by PCS

- ii INC-20A : Declaration of Commencement of Business - By Directors w. 180 days from incorporation of Co.
- iii PAS-3 : Return of Allotment → within 30 days of allotting Shares/ Securities
- iiii SH 7 : Alteration of Share Capital → w. 30 days from alteration of Share Capital
- iv INC 22 : Registered Office
- v INC 28 : Order of CG

- Charges related forms :
- vi CHG 1 : Application of Change^{Regⁿ} of Change
 - vii CHG 2 : Certificate of Registratⁿ of Change
 - viii CHG 3 : Modification
 - ix CHG 4 : Satisfaction
 - x CHG 57 : Register of Charge
 - xi CHG 8 : Appⁿ for condonation of delay to CG

(xii) CHG 9 : Regⁿ of Debentures (Charge of Deb.)

Director related forms

- (xiii) DIR 3 : Appⁿ for allotment of DIN
- (xiv) DIR 3 KYC : Appⁿ for filing KYC of Director
- (xv) DIR 6 : Intimation of changes specified in DIN Appⁿ
- (xvi) DIR 8 : Intimation by a Director to a (Co) about his/ her disqualification
- (xvii) DIR 9 : Disqualification of directors to be intimated to (RoC) by the (Co)
- (xviii) DIR 10 : Appⁿ for removal of Disqualified director

Spiral

SKYSHOTS

Date.....

(xix) DIR 11: Notice of designation by Director to ROC

(xx) DIR 12: Particulars of Directors & KMP appointed and any changes

(xxi) MR 1: Return filed for → Appointment — { MD
WTD
Manager

(xxii) MR 2: Appⁿ to CG for — { Appointment/
Re-appointment } ← { WTD
Remuneration } ← { MD
Manager

(xxiii) AOC 4: Financial Statements

(xxiv) MGT 7: Annual Returns

(xxv) MGT 7A: Annual Return of OPC & Small Co's

(xxvi) MGT 8: Certification of Annual Return (by PCS)

(xxvii) DIR 3: DIRV

(xxviii) DIR 3 KYC: KYC

(xxix) CHG 1: Appⁿ for regⁿ of Change

(xxx) MBPI: Disclosure of Interest of Directors

(xxxi) ADT 1: Appointment of Auditor

(xxxii) MGT 1: Register of Member

(xxxiii) DIR 12: Particulars of Directors & KMP appointed

(xxxiv) INC 22: Regd. Office

(xxxv) INC 28: Order of CG

(xxxvi) ~~MGT 14~~ MGT 14: Filing of Resolⁿ to ROC

(xxxvii) MBMSC 1: Appⁿ for obtaining status of Dormant Co. → ROC

(xxxviii) MSC 4: Appⁿ for seeking status of Active Co.

(xxxix) MSC 3: Return of Dormant Co. &

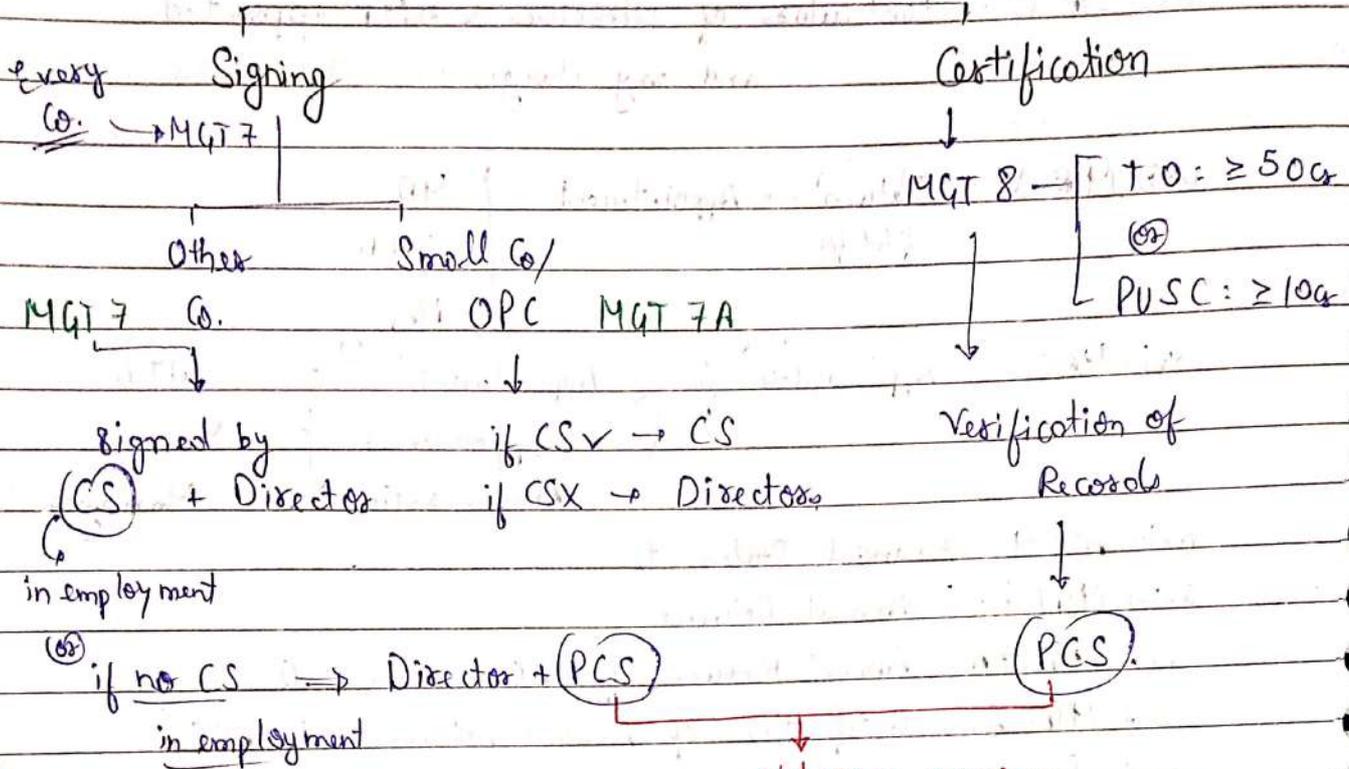
(xl) GNL 1: Appⁿ to ROC

(xli) GNL 3: Details about Officer-in-Default

(xlii) NDH 1: Return of Compliance

(xliii) NDH 3: Half-Yearly Return

#4 Concept of Different Professional.



[Concept of Different Professional]

Makes Checker concept.

- Every Co. has to file an Annual Return with ROC w. 60 days from Annual General Meeting.
- In case of Small Co and One-person Co. if there is a Company Secretary in employment, the Annual Return will be signed by a CS else it will be signed by a Director.
- However in case of other Co's, if there is a Company Secretary in employment the Annual Return will be signed by CS and Director. In case there is no CS in employment, Annual Return will be signed by a Director and PCS.

Date.....

- Every Company whose either Turnover is 50 cr or above (or) Paid-up share Capital is 10 cr or above has to certify Annual return by a PCS and submit form MGT-8 along with MGT-7 to ROC.
- The Practicing Company Secretary signing the Annual Return cannot be same as the PCS certifying Annual Return. This is called as Concept of Different Professionals where the PCS signing the Annual Return and certifying the same cannot be the same person.
[Also known as Maker-checker Concept]

#5 Certification (by PCS):

These documents will be verified by PCS:

- Registers and Records to write ony 5 register
- Alteration in MOA/AOA
- Closure of Register of Members
- Loans to Directors
- Agreement with Related Party (RPT)
- Declaration of Dividend (or) transfer of unclaimed Dividend to JEPP.
- Appointment / Re-appointment / Filling vacancies of Auditors
- Director's Report & Audited financial statements
- Status of Company [Active / Dormant]
- Filing of forms and Returns
- List of promoter
- Shareholding pattern
- Minutes of BM/GM / Committee Meeting
- Notes / Agenda

#6 FORMS under LLP Act

- FORM 3 → LLP agreement + change
- FORM 4 → DP → ~~DP~~ appointment / Change
- FORM 11 → Annual Return
- FORM 15 → Registered Office

#7 Authentication of Documents

Rule 8(1)/(2)/(5)

↳ every e-form

↓
authorised

↳ using

Digital
signature

- by
- MD
 - CS
 - any KMP
 - Director

Rule 8(6)

↓

Scan → original → signed document → Blank space X



Rule 8(7)

(CS in job) Sign certify (PCS)

↓
→ has to verify all the docs

Date.....

#9 MGT-7

(a) ~~Prac~~ Company Secretary ~~and~~ PCS and Director will certify that:

(1) The facts disclosed in the Annual Return are correct and adequate.

(2) Company has complied with the provisions of Companies Act, 2013 and other applicable laws.

(b) Company Secretary / PCS and Director in case of Private Company certifies:

(1) The Company has not issued any invitation to the public to subscribe the securities of the Company.

(2) If the members of the Company exceeds 200, the same has been disclosed in Annual Return.

(c) Company Secretary / PCS and Directors certifies:

(1) All the forms and attachments to Annual Return are true, correct and complete and no material information has been suppressed.

(2) All the attachments are complete and legible.

Date.....

#10 Consequences of Non-filing of Annual Returns

DIRECTOR

COMPANY

(1) Penalty of 10,000 ₹

~~u/s 450~~
~~u/s 42(5)~~ ↳ continuing default: 100 ₹/day
upto 50,000

(1) Penalty of ₹ 10,000

↳ continuing
~~u/s 450~~
~~42(5)~~ default: 100 ₹/day
upto 2lakh

(2) Not filed for continuous period
of 3 F.Y.

↓
Disqualified for a period of 5 year
[No Appointment @ re-appointment]
in any company.

(2) Not filed for continuous
period of 2 years

↓
Dormant Co. Inactive
Co.

(3) Penalty for Mis-statement

u/s 448 → Section 447

Imprisonment & Fine
6M - 10yrs

↓
Amt involving fraud

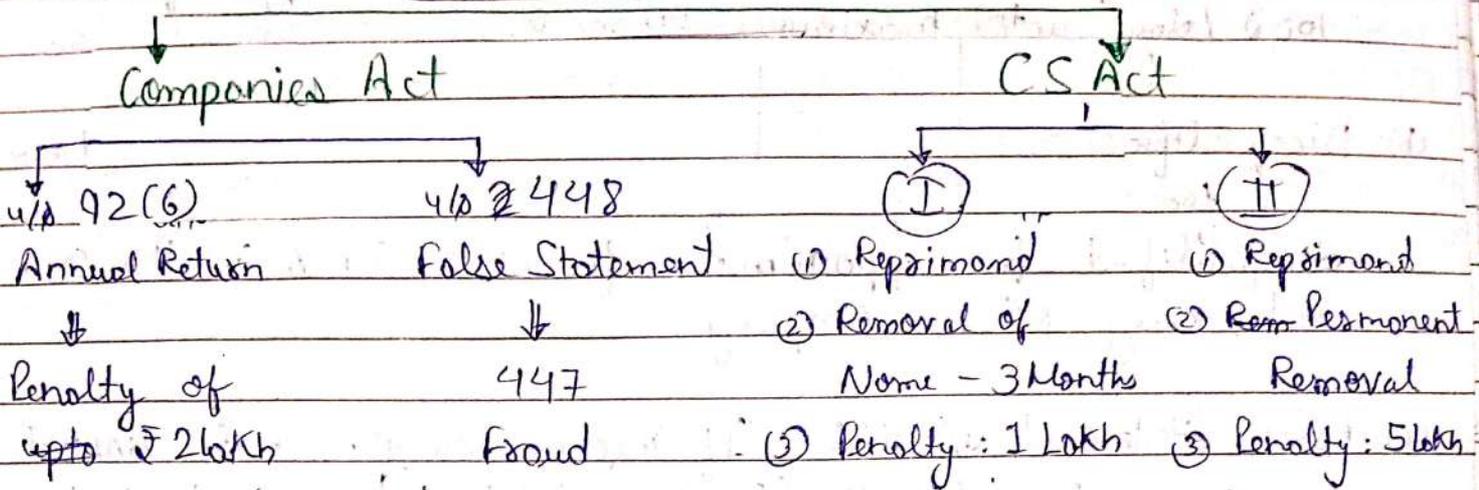
3X

(3) Not filed for continuous
period of 5 years

↓
COMPULSORY
Winding-up

(4) Class Action Suit u/s 245

#11 Consequences of Wrong Audit Certification of Annual Return [PCS]



Ques Azza Ltd has not been compliant in filing the Annual Return for more than 2 years. Explain in brief the penal provisions which will apply to the Directors of the Co. for not filing the Annual Return.

- (1) AR
- (2) Si

(1) Annual Return has to be filed in FORM MGT-7 by every Co. within 60 days from Annual General Meeting. However if Co. does not hold an Annual General Meeting it is still mandatory to file Annual Return within 60 days from the scheduled date of AGM.

(2) In the instant case, Azza Ltd, a public Co. has failed to file Annual Return for more than 2 years. In consequence of which director and Company will be liable to pay a penalty for non-filing of Annual Return.

(3) Penal Provisions which will apply to Directors for Non-filing of Annual Return are as following:

Date.....

(a) Penalty u/s 92: Directors will be liable to a penalty of 10,000 ₹ (cond) in case of continuing default 100 ₹ / day upto maximum 50,000 ₹.

(b) Disqualified u/s 164(2): If Co. fails to file Annual Return for continuous period of 3 years, Directors will be disqualified for appointment for next 5 f.y. in the Co. and every other Company.

(c) False Statement u/s 448: If information give in the Annual return is false, the Directors will be liable u/s 448 for false statement, punishable as per Section 447
(Hint: explain Sec 447)

(d) Class Action Suit u/s 245: It can be filed against the Directors.

Q2(1) + Q2(2)

Q2 Nixal Ltd has a PUSC of ₹ 8 crore and for the year ended March 31, 2021 the Co. reported a T.O. of ₹ 55 cr. The MD is of the view that the Co. does not require a CS to sign its Annual return, Is the MD's view correct.

Ans

• As per Section 203 of the Companies Act, 2013 read with Rule 8 & 8 A of the Companies Rules, 2014, every listed Company and every other public Company ~~or~~ Private Company having a Paid-up share Capital of 10 crore ~~or~~ more shall have whole-time Company Secretary as KMP.

• In the Instant case, Nixal Ltd

• As per Section 92 of the Companies Act, 2013, Every Company shall file an Annual return; signed by Company Secretary and Director

Spiral

SKYSHOTS



Date.....

Equal in case if there is no CS, then An it shall be signed by Practicing Company Secretary and Director; within 60 days from the end date of Annual General Meeting ~~IX~~

• In the instant case, Nixal Ltd is a public Co having Paid-up Share Capital of ₹ 8 crore. Hence requirement of appointing a Company Secretary is not mandatory for Nixal Ltd.

• Hence ^{So} if there is No Company Secretary in the Nixal Ltd, then Annual returns shall be signed by Practicing Company Secretary and Director.

• Hence MD's view of that Company does not require a Company Secretary is incorrect if appointment of CS as per Section 203 is not required but in that case Company requiring a Practicing CS to sign its Annual Return.

• Also as per Section 12(2) of Co's Act, 2013; Nixal Ltd had a Turnover of ₹ 55 crore, So it requires Certification of final Annual Return by a Company Secretary in practice.

Date.....

Q3 Whether Non-filing of Annual Return is a compoundable?

Ans

(i) Section 441 of Companies Act, 2013 deals with compounding which means settlement or admission of Guilt by the accused.

(ii) As per Section 441, offences involving fine or fine or imprisonment or both are compoundable offences. Compounded by making an application to compounding authorities i.e. ~~RoC~~ RD or NCLT.

(iii) According to Section 92 of Companies Act, Every Company has to file an Annual Return within 60 days from the date of Annual General Meeting in FORM MGT-7 with ROC. Every Company which either has a Turnover of 50 crore or more or Paid-up share capital of 10 crore or more has to file MGT-8 i.e. Certificate by PCS with ROC.

(iv) If Company fails to file the Annual Return within the given time period as a consequence of penalty of 10,000 ₹ will be imposed and in case of continuing failure further penalty of 100 ₹/day subject to a maximum of 2 lakh ₹ in case of Company and 50,000 ₹ in case of Director will be imposed.

(v) However, as per Section 441 of Companies Act, 2013, Non-filing of Annual Return is a compoundable offence. According to Section 92 when 30 days show-cause Notice is received by RoC No penalty will be imposed if before or during the show-cause notice, Annual Return and financial statement are filed to ROC.

19-3-18

Date.....

Q. It is a well-established principle in any auditing practice that an Auditor is not expected to carry out 100% checking of every piece of paper generated by the Co., in arriving at the final facts & figures represented in the end document. Comment

Ans

1. A PCS has to verify the documents properly as he has to certify the annual return, but question arises in the extent of detailed verification that has to be done before certifying Annual Return

2. But a PCS cannot be expected to every entry of Register of Member or transfer of shares or other documents required.

3. Therefore, certain techniques of sample checking & test checking should be used before forming an opinion that document being certified projects a true & fair view.

4. Below mentioned are few guidelines which can be adopted while deciding about the extent of checking required:

(a) Internal Control: If appropriate internal control exists, and operate effectively, need for detailed checking is reduced.

(b) Materiality: The sample chosen for detailed checking should be representative of whole.

(c) Risk Assessment: PCS perform risk assessment to identify the 'High risk' areas. These 'High risk' areas shall be subjected to more extensive verifications.

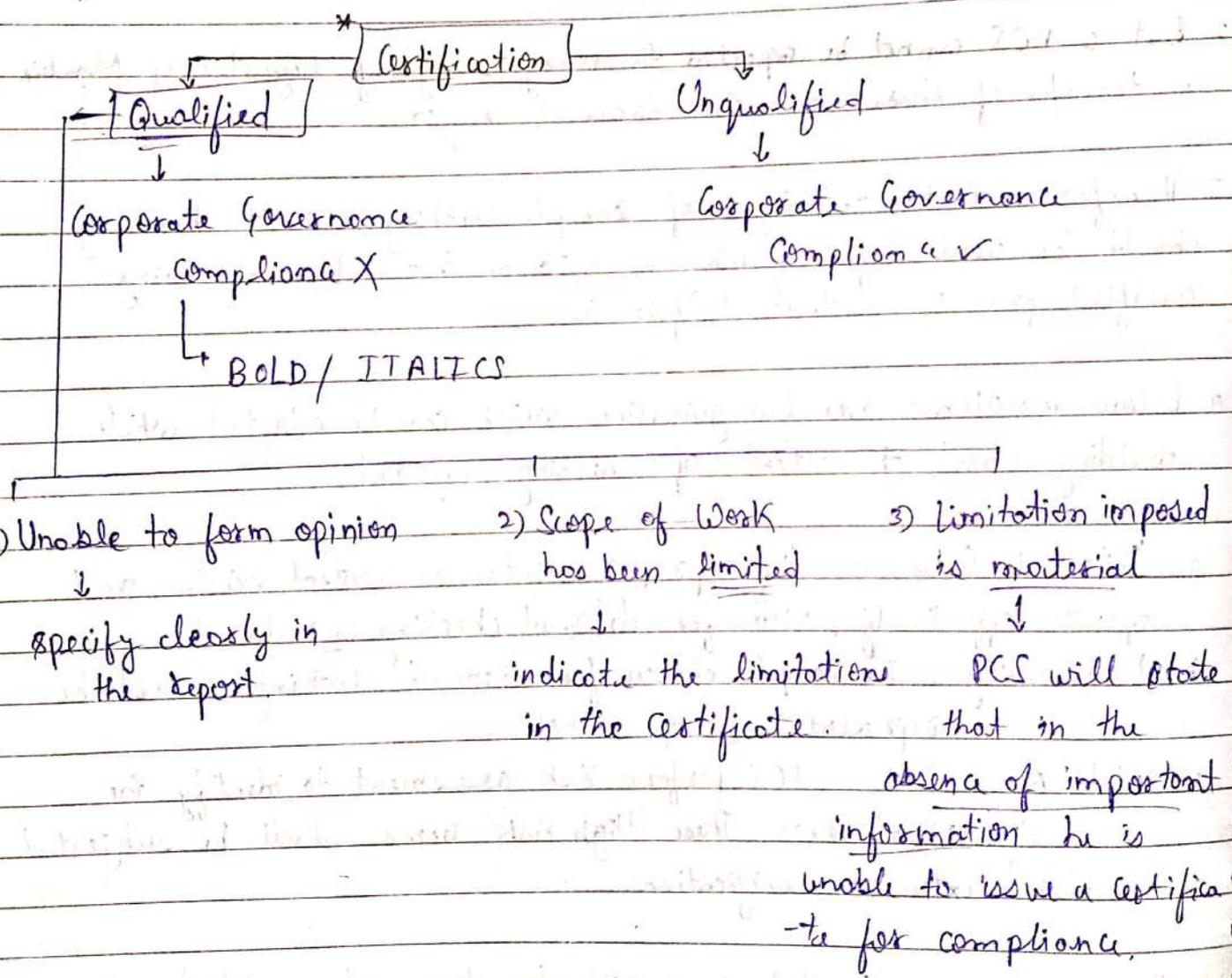
5. Professional is ultimately responsible for documents certified, thus, he should be careful & safeguard himself against any possible charge of negligence in respect of inaccurate or incomplete statement Spiral certified by him.

SKYSHOTS



#12 Corporate Governance Compliance Certification by PCS

- Regulation 46 of SEBI (LODR) Regn, 2015
- * Certification by PCS (Statutory Auditor [PCA])
- Quarterly Certification - submitted w. 21 days from the end of the quarter
- Objective or Purpose : (a) Transparency / (b) Proper disclosures about loans / Guarantees will be provided by the listed entity



Date.....

#13 Register of Certification

The PCS should maintain the register for the all attestation/certification services, which includes:

- ① Signing of Annual Return [MGT-7]
- ② Certification of Annual Return [MGT-8]
- ③ Secretarial Audit - [Sec 204]
↳ Report → MR-3
- ④ Internal Audit - [Sec 138]
- ⑤ Regⁿ 24 A of SEBI (LODR) Regⁿ, 2015 → Material Unlisted subsidiary
↳ [Secretarial Audit]
- ⑥ Regⁿ 40(a) of SEBI (LODR) Regⁿ, 2015 → Transfer of securities ("certificate")
- ⑦ Corporate Governance
Compliance Certification → SEBI (LODR) Regⁿ, 2015 → Quarterly
[w. 21 days from end]
- ⑧ All e-forms
- ⑨ Internal Audit $\begin{cases} \rightarrow$ Depository Participants
 \rightarrow Merchant Bankers
- ⑩ Due - Diligence of Bank

Date.....

#14 Pre-Certification under SEBI Regulation:

1. SEBI (LODR) Regⁿ, 2015 → Regⁿ 40(9) → Transfer certificate

certificates
have been
issued

F.Y. end w. 30 Days → Certificate for transfer
by (PCS) was made

↳ Regⁿ 24A

↳ Secretarial Audit
Report of Material
Unlisted Subsidiary

w. 30 days
from date of
lodgement for
transfer

2. Regⁿ 55A

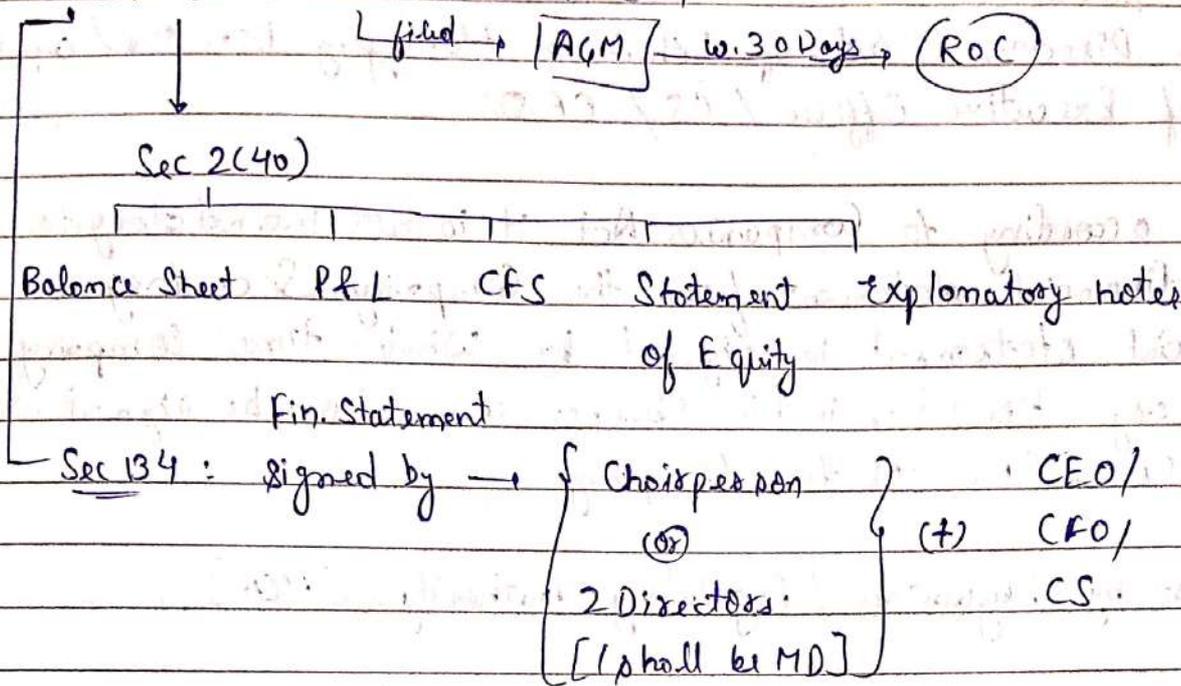
2. SEBI (Depositories & Participants) Regulations, 2018

On Quarterly Basis,
an Audit report
has to be filed by a PCS
for Reconciliation of Total
Issued Capital

↳ Regⁿ 76:

↳ Reconciliation of Share Capital Audit Report

#15 Financial Statement FORM → AOC-4



Q6 Is it mandatory to sign financial Statement from the CS?

Ans

As per Section 2(40), financial Statement should include:

- (a) Balance Sheet
- (b) Profit & loss A/c
- (c) Cash Flow Statement
- (d) Statement of change in Equity
- (e) Explanatory Note.

Financial Statement and a copy of consolidated financial statement is attached to the notice of AGM and within 30 days from the date of AGM, AOC-4 and AOC-4 CFS has to be filed with ROC.

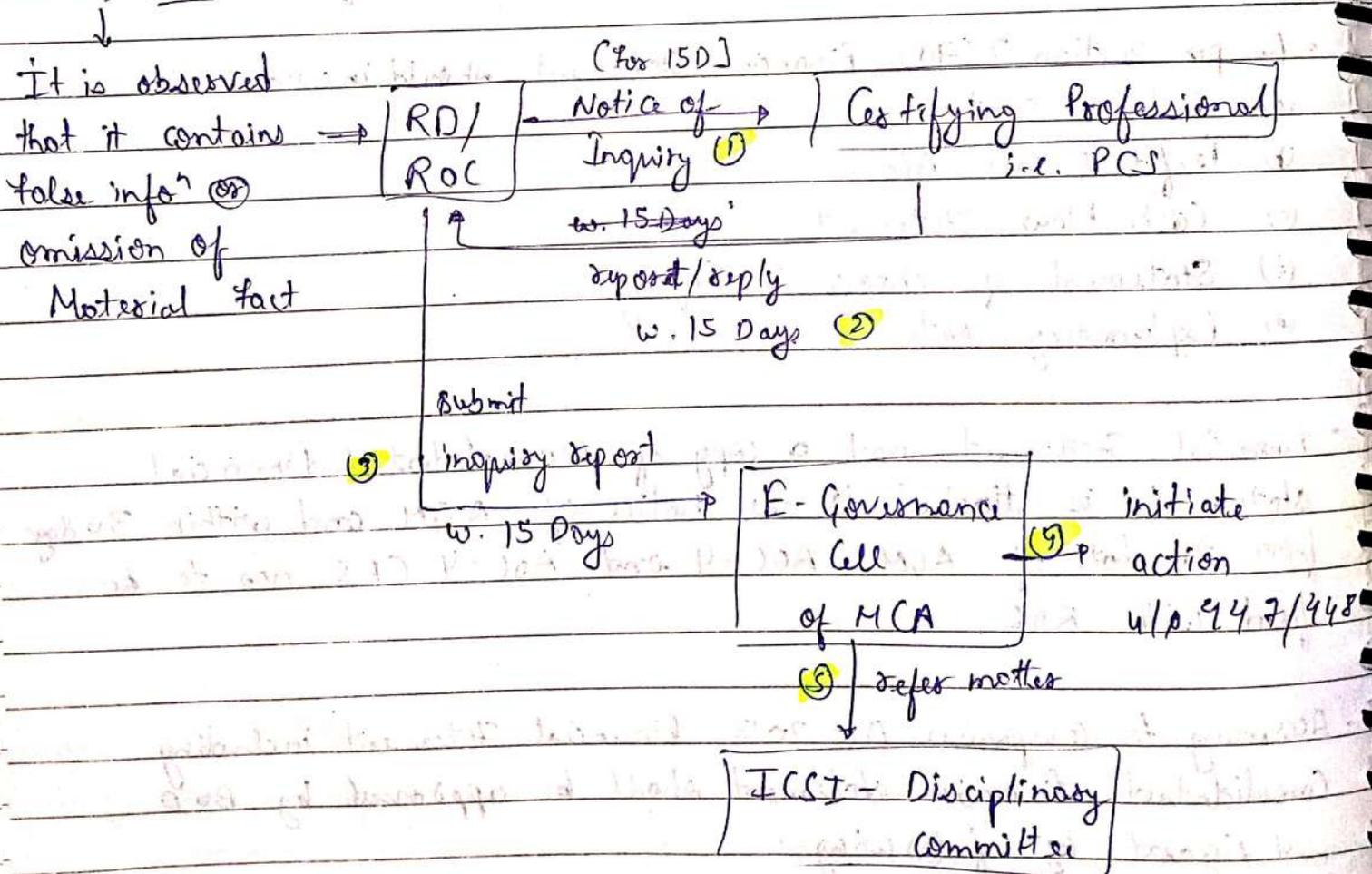
According to Companies Act, 2013 financial Statement including consolidated financial statement shall be approved by BOD and signed by following:

- (i) Chairperson
- (ii) Two Directors (out of 1 shall be Managing Director) and
- (iii) Chief Executive Officer / CS / CFO

Hence, according to Companies Act, it is not mandatory to sign financial statement from the Company Secretary. Financial statement is signed by whole-time Company Secretary. However in his absence can also be signed by CEO / CFO of the Company.

#16 Action by Regulators / Regulatory Authority [MCA]

On filing of Docs with ROC/RD.



Date.....

#17 Corporate Governance and SEBI (LODR) Regⁿ, 2015

Corporate Governance principles

Rights of Shareholders *

- 1) Right to participate & vote in General Meeting
- 2) Right to be informed about fundamental Corporate Changes
- 3) Opportunity to ask questions to Board of Directors
- 4) Should be allowed to exercise their Ownership rights.
- 5) Redressal of Grievances of Shareholders.
- 6) Protection of Minority Shareholders against the abuse of Majority Shareholders.

Timely information

Shareholders should be timely informed about:

- i) Rights attached to their class of shares
- ii) Capital Structure or any arrangements that enables the shareholder to obtain control disproportionate to their control.
- iii) Date, place & time of the meeting (e.g. SR equity shares)

Equitable Treatment *

- i) Some class of shareholders shall be treated equally.
- ii) Provisions of the Co. should not make it difficult or expensive to cast vote.
- iii) Shareholder's Participation in Key corporate decisions like nomination of Members of Board of Directors
- iv) Voting Rights by Foreign Shareholders to be facilitated
- v) framework to avoid Insider Trading.

Spiral

SKYSHOTS



Role of Stakeholders in Corporate Governance

- 1) listed Co. should also ^{respect} the Right of Stakeholders
- 2) Redress the grievances of Stakeholders
- 3) Whistle Blower policy.

Disclosure and Transparency (most imp.)

- (i) Minutes of the Meeting
- (ii) Information should be prepared according to prescribe Accounting & Financial standards.
- (iii) Timely access to information by users.

Responsibility of Board

Disclosure of Information



- Disclosure of Material interest in any transaction
- Ensure transparency to Shareholder
- Ensure Good Corporate Governance Practices.

Key function



- 1) Monitoring of Corporate Governance Practices implemented in the Co. and making changes if needed.
- 2) Transparency in nomination of Board of Directors to ensure diversity of thoughts, knowledge, experience, perspective
- 3) Appointment of KMP
- 4) Integrity of Accounting & Financial system
- 5) Monitor & manage if there is conflict of interest of Mgmt & Shareholders.

CHAPTER 7 - RELIEF AND REMEDIES

COMPOUNDING - Section 491

- 1) Settlement
- 2) Admission of guilt by the accused.
- 3) Authority
 - ↳ RD → upto 25 lakh
 - ↳ NCLT → above 25 lakh

Compoundable Offence

- 1) Fine
- 2) Fine or imprisonment
- 3) Fine or imprisonment or Both

Non-Compoundable

- 1) Imprisonment only
- 2) Imprisonment & Fine
- 3) Inquiry } Pending
Investigation }
Inspection }
- 4) If the same offence is repeated w. 3yrs of compounding, the offence will not be compoundable

Offences → Compounding

Compounding order against Appeal X

Date.....

Q1 Enumerate the Compounding Authorities under Co's Act, 2013. Write the procedure for compounding in Brief.

Ans

1. Section 441 of Companies Act, 2013 deals with Compounding. As per Section 441 Central Government has the power to designate compounding authorities & Central Govt has vested the power of compounding with Regional Director and NCLT.

2. Regional Director ^{can} compound contravention upto 25 lakh and NCLT can compound contravention beyond 25 lakh.
[Pahuja Takji Case]

3. Hint: Also add definition of Compounding.

Q2 Discuss the objective of Providing Compounding & its economy benefit.

[Hint: Compounding def + Benefits]

Ans • Compounding refers to the exercise of "Voluntarily admitting the contravention", pleading guilty and seeking redressal for same.
In simple words, we can say Admission of guilt by Accused.

• However, in Companies Act, 2013 there is no definition of word compounding. But Section 441 of Co's Act, 2013 deals with compounding of offence.

• Ben Objective of Compounding is:

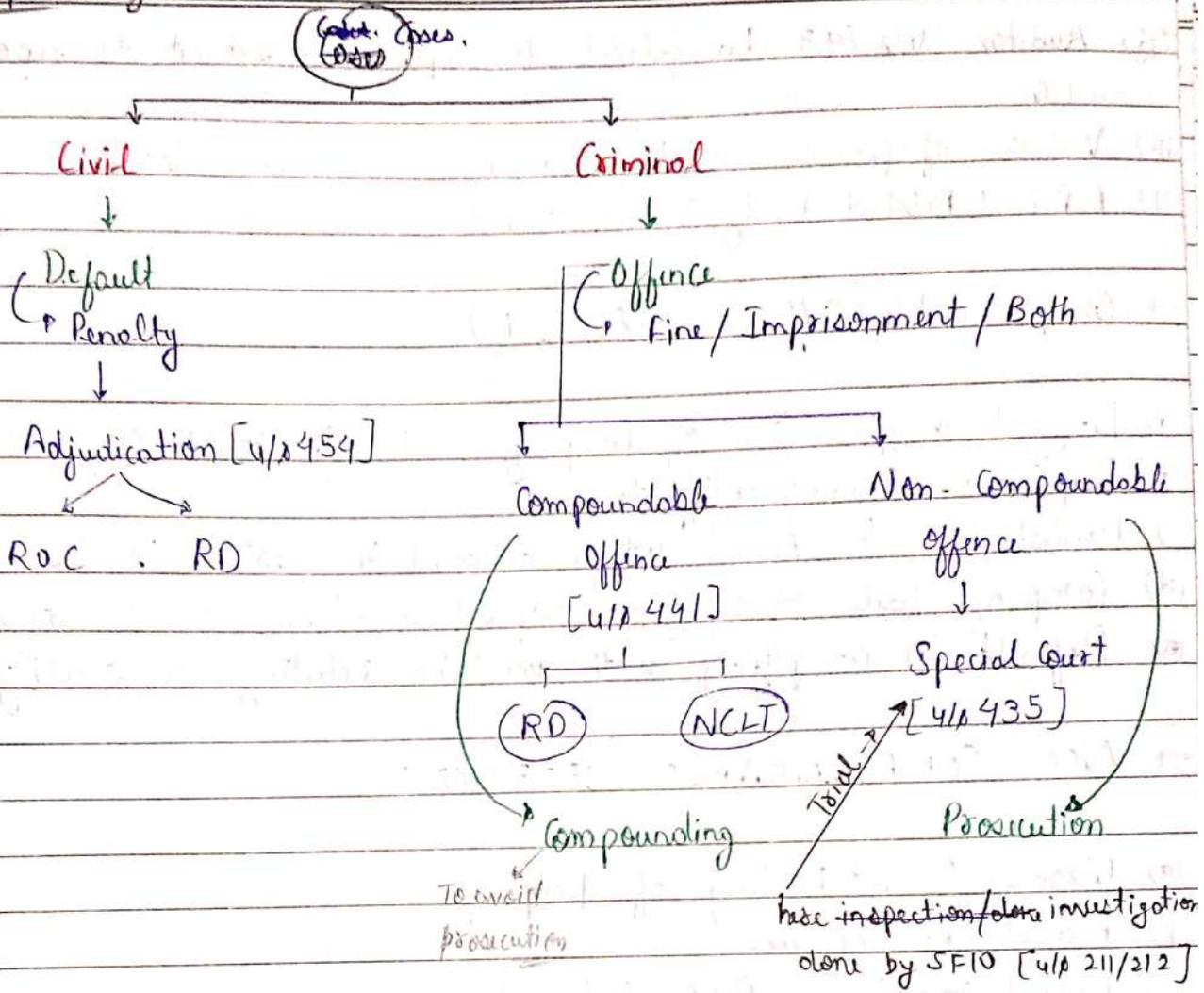
- It acts as a deterrent and prevents commission of offence.
- Avoid Heavy fines & penalty.
- Keep the flow of Business unhindered / ^{Cont}maintain continuity.
- Help to maintain Dignity.
- Does not burden court with case.

Spiral

SKYSHOTS



→ For concept clarity



→ COMPOUNDABLE OFFENCE [Regional Director]

- a) issue of prospectus
- b) Shareholder's right
- c) Default in complying with order of Tribunal
- d) Order of Tribunal for confirmation of Reduction of Share Capital has not been published
- e) Non-compliance with the order of Tribunal for redemption of debentures.
- f) Failure to maintain register of members
- g) Certification of Annual Return by a Company Secretary in Practice
- h) Failure to keep Books of Accounts
- i) Financial Statements.

Spiral

SKYSHOTS

Date.....

i.e. Fraud

(j) Auditor u/s 143 has failed to comply and submit the report to Cg

(k) Violation of provision relating to loan, Guarantee, Security

(l) RPT (Related Party Transaction)

→ Compoundable Offence (NCLT)

(a) Default in formation of Company with Charitable Object

(b) Duplicate share certificate

(c) Punishment for fraud whose amount involved is less than 10L

(d) Company fails to repay the deposit or interest on the deposits

(e) Default in complying with provision relating to security

→ NON-COMPOUNDABLE OFFENCES

(a) Wrongful withholding of property

(b) Fraud by officers

(c) Fraud involving Public interest

(d) Failure to keep Books of A/c [before winding up]

(e) Purposely giving false evidence

(f) Non-compliance with the order of Tribunal

(g) Non-compliance with the direction of Registrar (ROC) or

inspector

(h) Non-compliance with the provisions of loans & investments

(i) Failure to provide Books & documents during investigation

(j) Political Contribution

(k) Failure to distribute Dividend

(l) Tampering with minutes of the meeting

(m) Non-compliance of Auditor of Section 139 & 143 of the Act

(n) Non-compliance of the provisions by the Valuer

(o) Pictending to be the owner of the shares

Date... 28/04/2025...

Q3 Whether an offence punishable under the relevant provisions of the Companies Act, 2013 with 'fine only' or with 'imprisonment or fine', if repeated within a period of 3 years results into a mandatory imprisonment for the defaulters and whether the same can be compounded or not?

Ans

Section 441 of the Companies Act, 2013 deals with Compounding of offence. Compounding means settlement or admission of Guilt by the accused. In case of compoundable offences when the order of compounding is passed no appeal will be allowed.

Following offences are compoundable under Companies Act, 2013:

- Offences involving fine
- Offences involving fine or imprisonment
- Offences involving fine or imprisonment or both

Following offences are non-compoundable under Companies Act, 2013:

- Offences punishable with imprisonment and fine.
- Offences punishable with imprisonment only.
- Offe Order of inspection, inquiry or investigation is passed.
- Offence has been committed within a period of 3 years or from the date on which the similar offence was compounded.

Considering the above provisions, in the given case where an offence is punishable with fine only or with imprisonment or fine is compoundable in nature. However if the same offence is repeated it cannot be compounded because if an offence is committed by a Company or its officers within a period of 3 years from the date on which the similar offence was committed and compounded, compounding will not be allowed as per Section 441.

Prinal

SKYSHOTS



Date.....

- Moreover, if the similar offence is repeated within 3 years, Company and Officers-in-Default will be liable to pay a penalty of twice the amount of penalty imposed earlier, as per Section 451 of Companies Act, 2013.

Qy The Company committed a Compoundable offence during the Financial Year 2015-16, 2016-17 & 2017-18. On application of the Company the offence was compounded for the year 2015-16 vide order dated 31st March, 2019. The Company has committed the same offence during 2018-19 & also wants to go for compounding of the same. Can the Company get the offence compounded for the years 2016-17, 2017-18 & 2018-19?

Ans

Section 441 of Companies Act, 2013 deals with Compounding which means admission of guilt by the accused.

- According to Section 441, if the Company or Officers-in-default commits a similar offence within a period of 3 years from the date on which the offence was compounded, an application for compounding cannot be filed.

In the instant case, Company has committed a Compoundable offence during the Financial year 2015-16, 2016-17, 2017-18, 2018-19. Since no order for compounding has been passed before 31st March, 2019, Company can get the offence compounded for 2015-16, 2016-17, 2017-18 and 2018-19 as these offences were committed prior to Compounding Order. However if the same offence was committed in 2019-20 then the compounding will not be allowed because if the similar offence is repeated within 3 years from the date of order of compounding it is not compoundable.

[Pohuja Takii Case - Joinder of Application]

Spiral

SKYSHOTS



Date.....

Q5 An offence under the Companies Act, 2013 was compounded by the Co. and Compounding Order was issued by the Compounding Authority specially for offences by the Company & the Directors of the Company as officers-in-default. The Company has paid the Compounding fee. However, one of the Director, who is also a party to the Compounding as Officers-in-default feels that Compounding fee is high and he would like to go for an Appeal. Evaluate whether the Director will be allowed to make an appeal. Also indicate the penal provision for non-compliance of Compounding Orders.

Ans • Hint : Section 441 (+) defⁿ of compounding (1) Basics of Compounding

compounding
authorities compoundable/
Non-compoundable
offence

• In the instant case, Directors of the Company are not satisfied by the Compounding fees imposed by Compounding authorities.

• According to S. Viswanathan V. State of Kerala, it was held that once the offence has been compounded it cannot be challenged before any authority. In view of this it can be said that Directors will not be allowed to make an appeal against the order of compounding.

PROCEDURE OF COMPOUNDING UNDER COMPANIES ACT, 2013

① Whether offence is compoundable / Non-Compoundable?

↓
Compoundable offence ✓

② Hold Board Meeting

- Application for Compounding
 - Authorise director to sign + submit the application
 - Appoint CA/CS/lawyer to appear before authority
- decide/resolve
- copy of resolution ↓
ROC in FORM MGT-14

③ Apply for compounding

- GNL I + ROC
- triplicate
- Affidavit
- copy of notice of ROC
- MOA [Memorandum of Appearance]

④ i ROC

forward the Appⁿ

- RD (upto 25 lakhs)
- NCLT (Beyond 25 lakhs)

⑤
Notice of Appearance
↓
Order

inform ROC in 7 days about order

copy of order in 30 days [INC-28]

↳ (Order of Compounding)

Date.....

Q.6 State whether the following offences under Co's Act, 2013 are compoundable. If Yes, mention the authority.

- 1) failure to comply with the provisions related to transfer & transmission of securities. NCLT - Compoundable
- 2) Company fails to repay the deposits or any interest within the given time period. NCLT - Compoundable
- 3) failure to distribute dividend w. 30 days. → Non-compoundable - Special Court
- 4) Contravention of provisions relating to charges. → Compoundable (RD)

MOST IMPORTANT

Q.7 When there is a provision for compounding u/s 441. How does Section 454 come into play? Does Section 454 override Section 441 since it is a later section? Or do both sections play parallelly? Which section prevails?

Ans

Hint : 1. Section 441

2. Section 454

3. Comparison b/w 441 & 454 (last question) → p.g. 6.56

4. Conclusion - 441 & 454 do not clash, they prevail parallelly

- Section 441 of the Companies Act, 2013 deals with Compounding of offences. Compounding means settlement or admission of guilt by the accused.
- In case of compoundable offence, when order of compounding is passed no appeal will be allowed.
- Following offences are compoundable under Companies Act, 2013
 - a) offences involving fine
 - b) offences involving fine or imprisonment only
 - c) offences involving fine or imprisonment or both
- Under Section 441, Compounding Authorities are Regional directors who can compound contravention upto 25 lakh & NCLT who can

Spiral

SKYSHOTS



Date.....

Ans to Q. no. 7

1. Section 441 of Companies Act, 2013 deals with Compounding. Compounding means settlement and admission of guilt by the accused. Under Companies Act, 2013 only offences are compoundable & no appeal lies against the order of compounding. RD/NCLT have been vested with the powers of compounding where RD can compound the offences upto 25 lakh and NCLT can compound the offence beyond 25 lakh. [Pahuja Takkii Case]

2. Section 454 of Companies Act, 2013 deals with Adjudication and authorise ROC and RD as adjudicating authorities. Appeal against the order of ROC will be filed before RD, and the order of RD is final.

3. As per Section 441, if the offence is compoundable Company passes a resolution in the Board Meeting and files an application of compounding with ROC in form GNL-1. Hence Prima-facie section 454 does not come into play.

4. ROC forwards the application of Compounding to respective compounding authorities. However the compounding authorities may reject the application for compounding and agree for adjudication after giving justified reasons.

5. Section 441 & 454 does not contradict each other because Section 454 gives administrative powers in the hand of ROC rather than launching a criminal proceeding before special court under section 435 of Companies Act, 2013.

6. Section 454 does ~~not~~ ^{not} override Section 441 because once the

Spiral

SKYSHOTS



Date.....

- Q.8 Thinking Star limited, a Public Ltd Co. was into manufacturing of steel and steel products. The Co. wanted to expand its operations and to fund the same, it evaluated various options including Bank loan, private placement, etc. However due to a paucity (shortage) of time the Co. went ahead & funded its operations by issuing shares to a friend of Mr. XY, the managing Director of the Co. on pvt. placement basis.
- The Co. failed to comply with the provisions of Co's Act, 2013. Mr. XY was not willing to act, unless there was any notice from the regulators.
 - Mr. S, the Corporate Adviser to the Co suggested Mr. XY to compound the offence as it would be in the best interest of the Co.
 - Under the Co's Act, 2013, where a Co. seeks compounding before institution of any prosecution, whether any prosecution shall be instituted in relation to such offences either by RoC or any person authorised by CG?

Ans. Section 441 of the Companies Act, 2013 deals with compounding of offences. Compounding means settlement or admission of guilt by accused. Under Companies Act, 2013 only offences are compoundable and no appeal lies against the order of compounding. RD/NCLT have been vested with powers of compounding where RD can compound the offences upto 25 lacs and NCLT can compound the offences above 25 lacs.

- Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the Company against offender in relation to whom the offence is so compounded.
- Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought

Spiral

SKYSHOTS

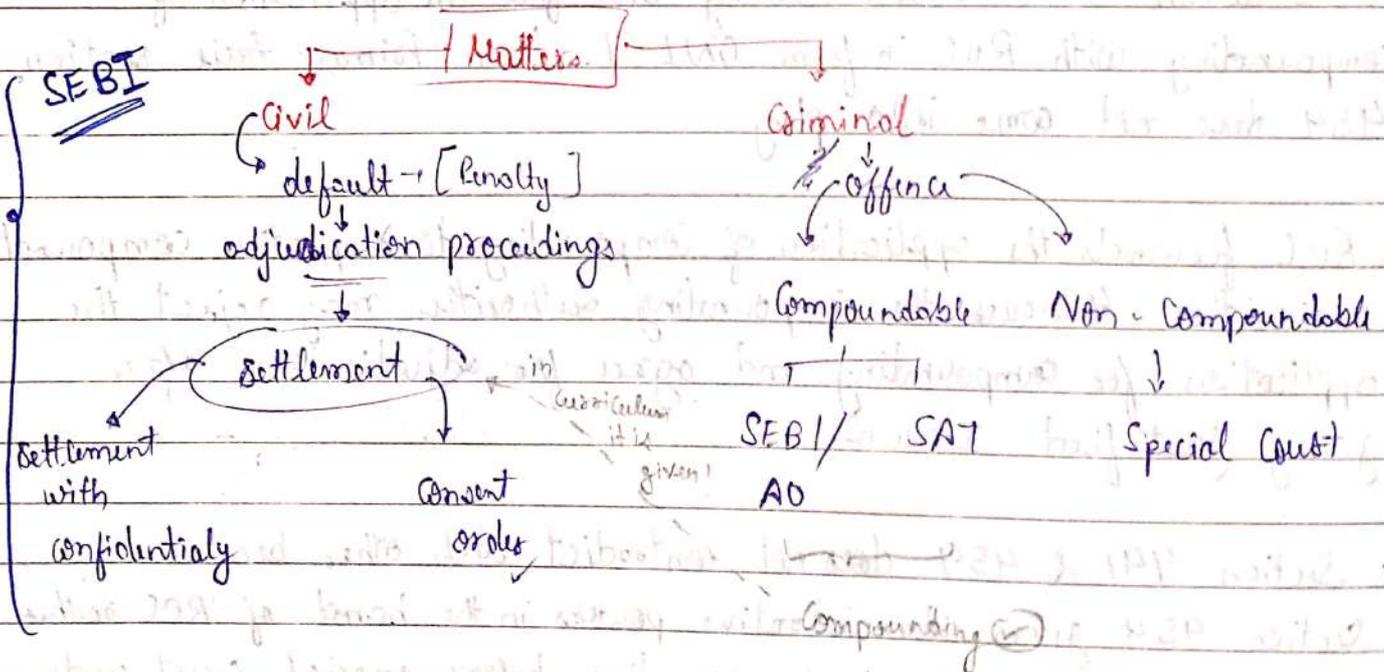
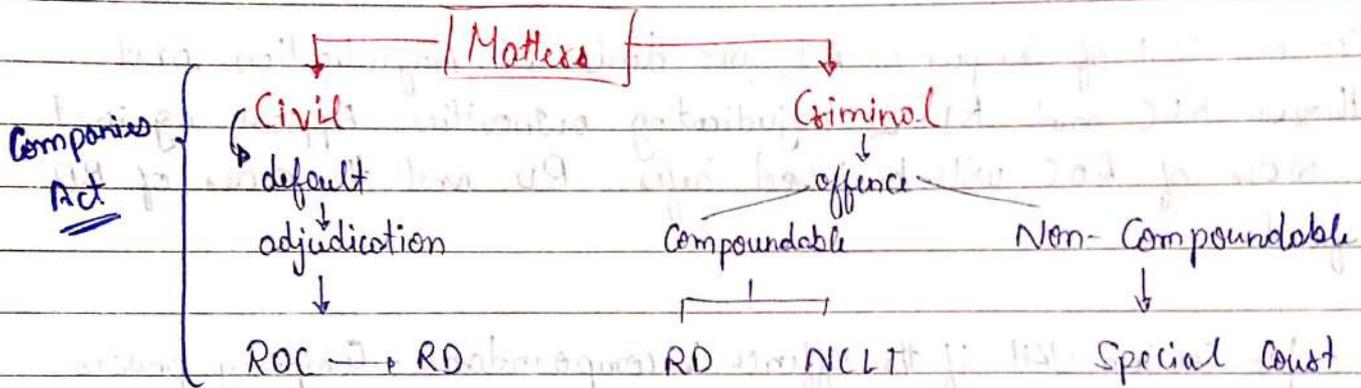
Date.....

by the Registrar in writing, to the notice of the Court in which the prosecution is pending & on such notice of compounding of the offence being given, the Company or its Officer in relation to whom the offence is so compounded shall be discharged.

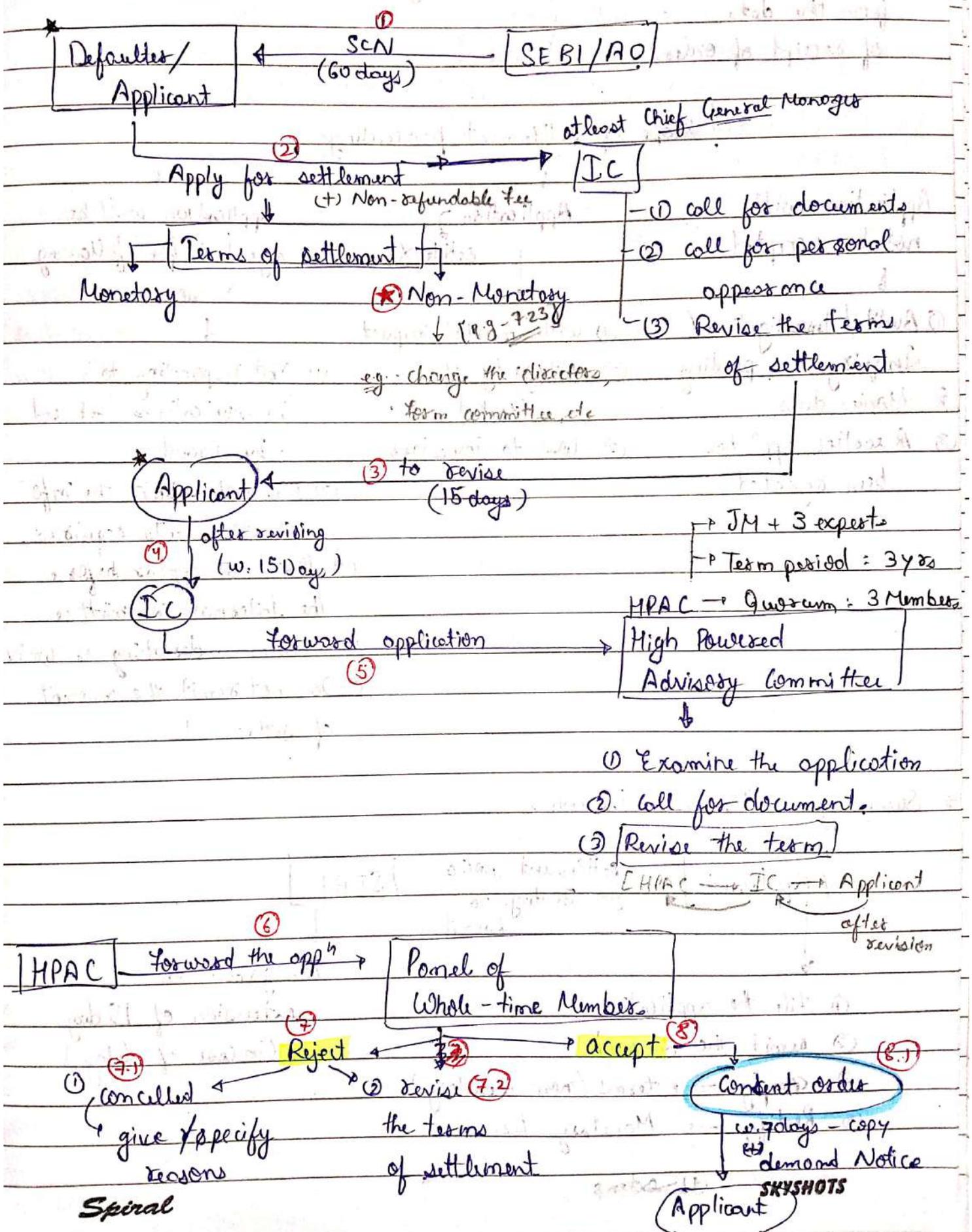
- Hence In the instant case, given offence is compounded before the institution of any prosecution. ^{Hence} ~~so~~ with reference to above provisions stated, No prosecution shall be instituted in relation to such offence either by ROC or any person authorised by CG.

application has been rejected, Section 454 becomes applicable if RD/NCLT agree for adjudication. However to a suo-moto compounding application if ROC acts as the adjudicating officer then the order can be challenged before the same RD.

• Lastly, the powers of for compounding are vested w/a 441 with RD/NCLT. However the powers of adjudication is vested with ROC/RD w/a 454 of Companies Act, 2013.



Settlement Procedures under SEBI



8.2 Applicant w. 30 days → make payment
(from the date of receipt of order)

Scope of settlement proceedings

Application will not be accepted

Application → settle X

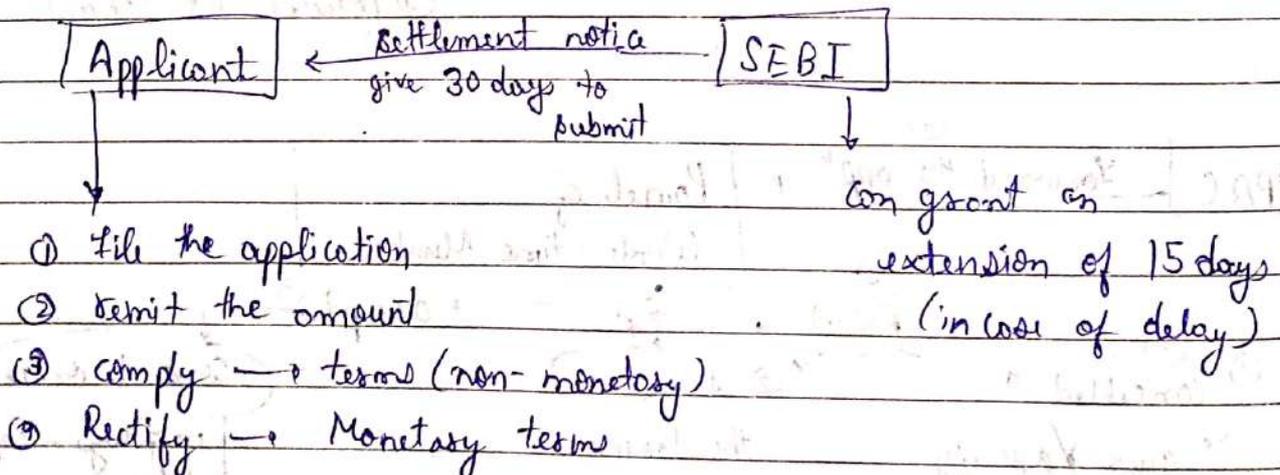
Application will be rejected for following reasons:

- ① Audit/ Investigation/ Inquiry → pending
- ② Monies dues
- ③ A earlier app' has been rejected

- ① wide market impact
- ② Integrity of Market
- ③ loss to investors

- ① Not responding to communications sent by Board.
- ② Does not submit the infoⁿ documents required
- ③ Does not appear before the Internal Committee
- ④ Violates undertaking or waiver
- ⑤ Does not admit the amount of settlement.

Summary Settlement Procedure



Date.....

Q. A practicing Company Secretary (PCS) since 2020 with LLB degree intends to be empanelled as Mediator or conciliator under Companies (Mediation & Conciliation) Rules, 2016. Can he be empanelled? If not, why?

Ans.

• Mediation and Conciliation is an Alternative Dispute Resolution (ADR) Mechanism, where parties mutually agree to resolve the dispute.

• As per Companies (Mediation and Conciliation) Rules, 2016 RD has been vested with the power of appointment of Mediators & conciliators in panel of experts. Those who are qualified and do not possess any disqualification can make an application for appointment in panel of experts to RD in Form MDC-1.

• Qualifications for appointment of Mediator & Conciliator are as following:

a) Judge of Supreme Court

b) Judge of High Court

c) District & Session's Judge

d) Legal Practitioner for ^{not} less than 10 yrs.

e) CA/CS/CMA in continuous practice for not less than 15 yrs.

f) Expert in Mediation & Conciliation

g) has been a Member of Tribunal.

• Disqualifications:

a) is an undischarged insolvent

b) convicted for an offence of Moral Turpitude.

c) removed from the service of Government

d) Any Disciplinary proceedings has been initiated.

Date.....

• In the instant case, the PCS who has been in practice since 2020 cannot be empowered as Mediator or conciliator under Companies (Mediation & Conciliation) Rules, 2016 unless he complete an experience of not less than 15 years as a practicing Company Secretary.

Q10 SEBI issued an order against the directors of the Shyam & Co Ltd, a listed entity against their failure to comply with some of the provisions of SEBI (LODR) Regn, 2015 & levied penalty for the same. However, the directors of the Co. are of the opinion that penalty levied by SEBI for non-compliance of provisions are not applicable to the Co. Advise Co. the legal recourse available to it, quoting the relevant provisions of law.

X Compounding & Settlement
order has already given

Ans: As a Company Secretary, I would advise if directors of the Company are not satisfied by the penalty levied then they can make an appeal against the order of Adjudicating officer to SAT.

• Following would be the procedures to make an appeal:

a) Appeal to SAT within 45 days.

b) Opportunity of being heard

c) Order of SAT — confirm / Modify / set-aside

d) Copy of order to both the parties

e) Appeal to Supreme Court within 60 days only if there is a Question of law.

f) Powers are similar to Civil Court i.e.

- Summoning and enforcing the attendance of persons

- Issuing commission to witness the person & document.

- Discovery of document.

- any other order as it deems fit.

Date..05/May/2025..

Q11 P is the MD of AMR Ltd who committed a fraud against the Company. A Judicial proceeding has been initiated against P for fraud committed by him. Now P wants to settle the case through Mediation or Conciliation. Can P's case be referred to Mediation or Conciliation.

Ans

• Mediation or Conciliation is an Alternative Dispute Resolution (ADR) Mechanism, where parties mutually agree to resolve the dispute.

- Following cases cannot be referred for Mediation or Conciliation:
 - a) Cases involving serious allegations of fraud, forgery, coercion, impersonation etc.
 - b) Cases involving criminal Prosecution and are Non-Compoundable, Com Offence
 - c) Cases involving Public Interest
 - d) Matters where inspection or investigation is initiated (or) on application for compounding is filed.

• In the instant case, P who is the MD of AMR Ltd has committed a fraud against the Company & wants to settle the case through Mediation or conciliation. According to Companies Act (Mediation or Conciliation) Rules, 2016 Matters related to fraud cannot be settled through Mediation or Conciliation.

• Hence, P's case cannot be referred for Mediation or Conciliation.

Date.....

Q.12 What is a Settlement Agreement as per Co's Act, 2013 and the Co's (Mediation or Conciliation) Rules, 2016?

- ① Mediation or Conciliation (M or C)
- ② Provisions of Co's Act deals with M or C
- ③ Settlement Agreement

Ans

- Mediation or Conciliation is an Alternative Dispute Resolution (ADR) Mechanism, where parties mutually agree to resolve the dispute.
- In an ongoing proceeding with the Tribunal, if parties *suo-moto* agree to continue such proceeding with ADR mechanism @ Tribunal may *suo-moto* refer a matter before the panel, in public interest, then parties will appoint a sole Mediator or sole conciliator.
- If party are unable to agree upon a sole mediator or sole conciliator @ not able to find, then Central Govt may ask each party to nominate a Mediator or Conciliator @ the Central Govt or Tribunal may themselves appoint the Mediator or Conciliator.
- Tribunal or Central Govt, on receipt of application (i.e. FORM MDC-2) may appoint a Mediator or Conciliator from panel of expert. Such Mediator or Conciliator assist the parties in amicably resolving their dispute and ^{reached} brings them to an agreement which is called as Settlement agreement.
- Where an agreement is reached b/w parties, such shall be submitted to the Mediator @ Conciliator, who then forwards it to the CG @ Tribunal or panel if no agreement is reached b/w parties or no settlement is possible, Mediator or Conciliator will inform the same to CG @ Tribunal.
- CG, NCLT @ NCLAT, shall fix a date of hearing w: 14 days from date of receipt of report & on the said date if CG or NCLT is satisfied, **SKYSHOTS** it passes a necessary order.

Date.....

II CONSENT ORDER

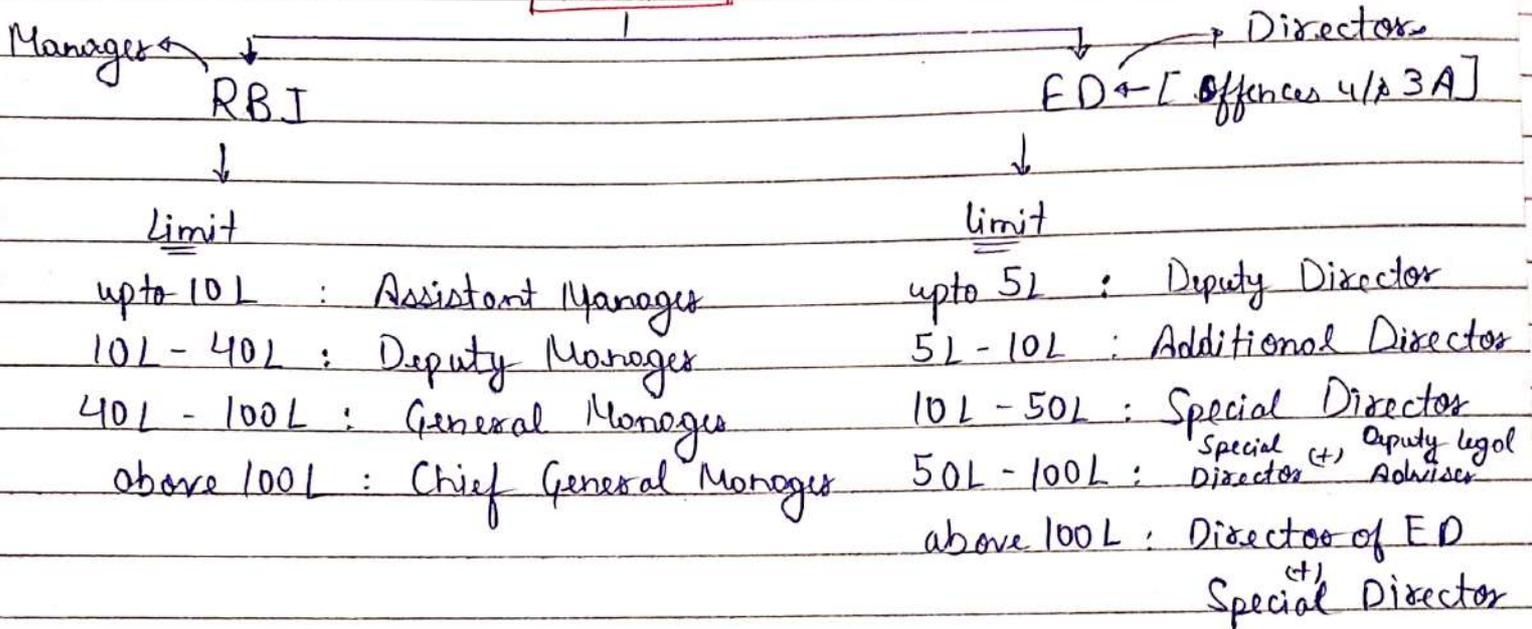
- SEBI has two streams of enforcement action i.e. administrative & Civil (and) Criminal. Administrative or Civil Action include passing of Orders like Suspension, cancellation of Certificate of registration, Penalty etc. However, Criminal Action involves initiating Proceeding before a Criminal Court (Special Court).
- Consent Order is the order settling the civil dispute between Regulator and Defaulters who may have violated the provisions of law.
- Consent Order achieves the twin goals by imposing an appropriate sanction and creating deterrence (SR) without resorting to tedious & (lengthy) process of litigation.
- Consent Order can be passed at any stage after the violation has been found under SEBI laws.

[Also mention a Case law]

Date 07/05/2025...

Compounding Provisions under the FEMA, 1999

FEMA



→ Procedure for compounding:

