

ADJUDICATION, SPECIAL COURTS, NATIONAL COMPANY LAW TRIBUNAL & NATIONAL COMPANY LAW APPELLATE TRIBUNAL



LEARNING OUTCOMES

At the end of this Chapter, students will be able to –

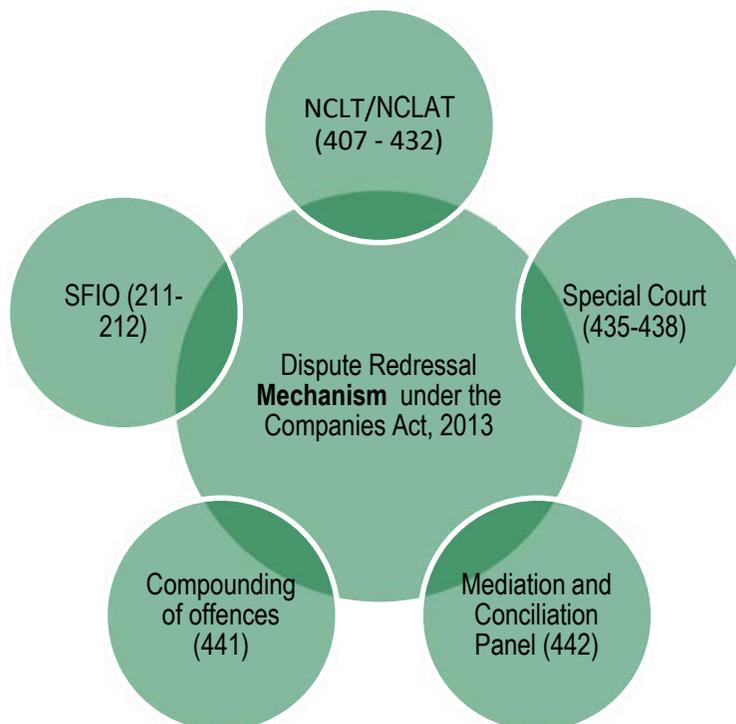
- ❑ Know about the various dispute resolution mechanism
- ❑ Explain the importance and need of NCLT and NCLAT, its working and appeal process and provisions related to transfer of pending proceedings.
- ❑ Identify the establishment of special courts and its Jurisdiction.
- ❑ Know of the procedure of appeal and revision.
- ❑ Elaborate about the Mediation and Conciliation Panel and its working.
- ❑ Determine the process of compounding of offences.
- ❑ Know of the power of Central Government to appoint company prosecutors, provisions related to appeal against acquittal, compensation for accusation and application that can be applied for imposing of fine.
- ❑ Explain the procedure related to adjudication of penalties.



1. INTRODUCTION

A dispute resolution mechanism is a process that deals with disputes arising between two or more parties involved in business or legal relationships.

Under the Companies Act 2013, following are dispute resolution mechanisms or forums:



Establishment of various Adjudication forums under the Companies Act 2013 with regard to the compounding of offences, Special court, and the establishment of mediation panel, SFIO, NCLT and NCLAT is a boon to ensure speedy and efficient resolution of company related disputes in India.

The setting up National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) with an objective of establishing a single forum to adjudicate all disputes relating to companies in India. This setting up a single forum dealing with all the matters under the Companies Act 1956 was not new and was introduced earlier by the Companies (Second Amendment) Act, 2002.

However, it was never notified due to challenge of the constitutional validity of the NCLT and NCLAT by Madras High court. However, the Supreme Court gave a ruling that the provisions of Companies (Second Amendment) Act, 2002 pertaining to transfer of several judicial and quasi- judicial powers under the Act to NCLT are constitutionally valid while holding that the qualifications of technical members and the Composition of selection committee of such members as prescribed in the statute had defects and that required correction.



2. NCLT AND NCLAT [SECTION 407 – 434]

The Companies Act, 2013 provides for the constitution of National Company Law Tribunal (NCLT) & National Company Law Appellate Tribunal (NCLAT). NCLT is set up to bring all lawsuits pertaining to companies under one body. It has replaced the Company Law Board (CLB), the Board for Industrial and Financial Reconstruction (BIFR) and the Appellate Authority for Industrial and Financial Reconstruction and will have judicial and technical members.

Vide Ministry of Corporate Affairs Notification S.O.1936 (E) dated 1st June 2016 read with section 434(1) (a) of the Companies Act, 2013, the Central Government hereby appoints the 1st day of June, 2016, on which all matters or proceedings or cases pending before the Board of Company Law Administration (Company Law Board) shall stand transferred to the National Company Law Tribunal and it shall dispose of such matters or proceedings or cases in accordance with the provisions of the Companies Act, 2013 or the Companies Act, 1956.

The provisions dealing with the various parts of NCLT and NCLAT are covered under the Chapter XXVII of the Companies Act, 2013.

NCLT is a quasi-judicial body that adjudicates matters pertaining to companies in India. The National Company Law Tribunal consisting of a President and such number of (Judicial and Technical) members, as the Central Government may deem necessary, to be appointed by notification, to exercise and discharge such powers and functions as conferred on it by or under this Act or any other law for the time being in force. [Section 408]

Any person aggrieved by the decision of NCLT may prefer an appeal to **NCLAT**. The Central Government shall, by notification constitute with effect from such date as may be specified therein, 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, for hearing appeals against, -

- (a) The order of the Tribunal or of the National Financial Reporting Authority under this Act; 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 410]

NCLT and NCLAT has provided a single window for settlement of all disputes relating to companies. Further, the provisions of the Insolvency and Bankruptcy Code, 2016 have already been incorporated in the Companies Act, thereby providing a complete harmony in working of NCLT in line with the Insolvency and Bankruptcy Code, 2016. Thus, NCLT and NCLAT is providing a one stop solution to almost all the disputes of the companies under the Companies Act, 2013.

Definitions [Section 407]

Section 407 of the Companies Act, 2013 explains chairperson, judicial members, member, president and technical member who all may be constituting the NCLT & NCLAT. The section defines the following key members –

		Definitions
Chairperson	Means	the Chairperson of the Appellate Tribunal
Judicial Member		a member of the Tribunal or the Appellate Tribunal appointed as such and includes the President or the Chairperson, as the case may be.
Member		a member, whether Judicial or Technical of the Tribunal or the Appellate Tribunal and includes the President or the Chairperson, as the case may be.
President		the President of the Tribunal
Technical Member		a member of the Tribunal or the Appellate Tribunal appointed as such

Order of Tribunal [Section 420]

- (1) **Reasonable opportunity of being heard:** The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.
- (2) **Amendment in order:** The Tribunal may, **at any time within 2 years from the date of the order**, with a view **to rectifying any mistake apparent from the record**, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:
Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.
- (3) **Send the copy of order to parties concerned:** The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

Example 1: An order made by NCLT was challenged in NCLAT by ABC Ltd. within 1 month of passing of such an order by NCLT. In the meantime, during the pendency of an appeal, one of the party to the NCLT suit notices mistake in the order passed by the NCLT. Accordingly the party files an application against the mistake for its rectification before NCLT. As per section 420 of the Companies Act, the Tribunal may, at any time within 2 years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties. But no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act. Therefore, application made by the party for rectification of error in the order, cannot be made.

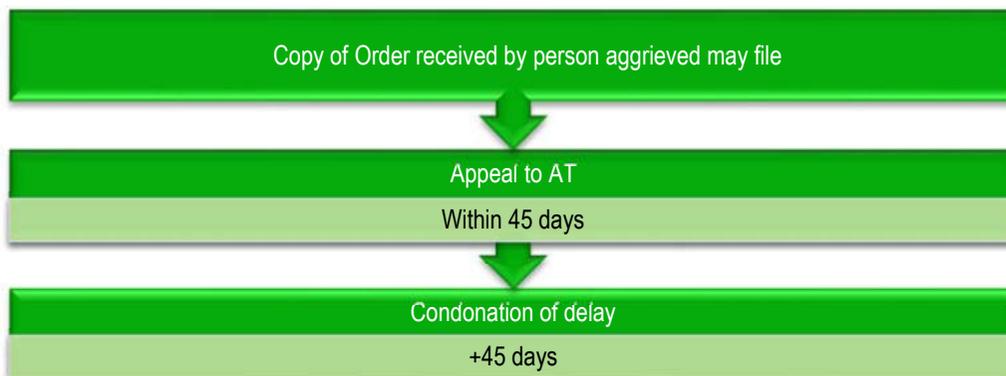
Anubhav Anilkumar Agarwal v. Bank of India, Company Appeal (AT) (Insolvency) No. 1504 of 2019, December 7, 2020, In this case it was held that Power of review has not been expressly conferred upon NCLAT under rule 11 of NCLAT Rules. However, said power under rule 11 can only be exercised for correction of a mistake.

Appeal from Orders of Tribunal [Section 421]

- (1) **Appeal to AT:** Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal (AT).
- (2) **When order made by consent of parties:** No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.
- (3) **Period for filing of appeal:** Every appeal under sub-section (1) (i.e., appeal to AT against order of Tribunal) shall be filed within a period of 45 days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of 45 days from the date aforesaid, but within a further period not exceeding 45 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

Explanation: It is to be understood that it is solely at the discretion of the Tribunal whether to provide extension or not by such number of days which shall however not exceed 45 days.



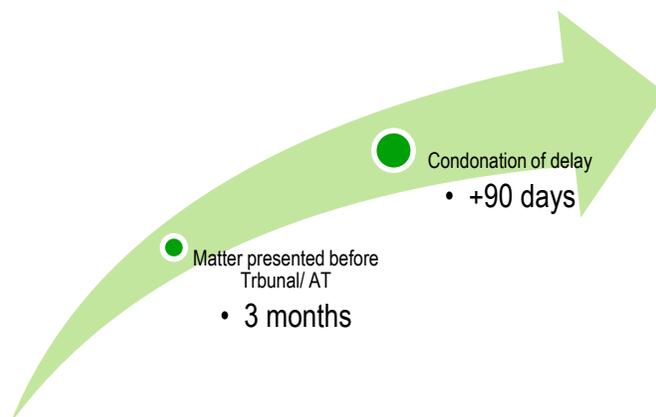
- (4) **Pass order after giving of reasonable opportunity of being heard:** On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (5) **Copy of order to tribunal and parties to appeal:** The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

Zee Entertainment Enterprises Ltd. v. Invesco Developing Markets Fund, Company Appeal (AT) No. 121 of 2021, October 7, 2021, it was decided that where respondent, a shareholder of Appellant Company had filed petition before NCLT for holding of Extraordinary General Meeting of appellant as soon as possible and NCLT by impugned order granted only two days to appellant to file its reply to said petition, NCLT had committed an error in not granting reasonable and sufficient time for filing a reply. Therefore, reasonable and sufficient opportunity should be given to appellant for filing a reply and after hearing both parties, NCLT should proceed further.

Expeditious Disposal by Tribunal and Appellate Tribunal [Section 422]

- (1) **Speedy disposal:** Every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavor shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal **within 3 months from the date of its presentation** before the Tribunal or the filing of the appeal before the Appellate Tribunal.
- (2) **Reasons to be recorded for delay:** Where any application or petition or appeal is not disposed of within the period specified in sub-section (1), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period not exceeding ninety days as he may consider necessary.

Explanation: The President or the Chairperson, as the case may be, are at a liberty to provide extension with any number of days which shall however not exceed ninety days. Further such extension is not mandatory in nature. If the President or the Chairperson, as the case may be, are of the view that no extension is to be provided, than they may not extend the period for disposing of the application or petition or appeal, as the case may be.



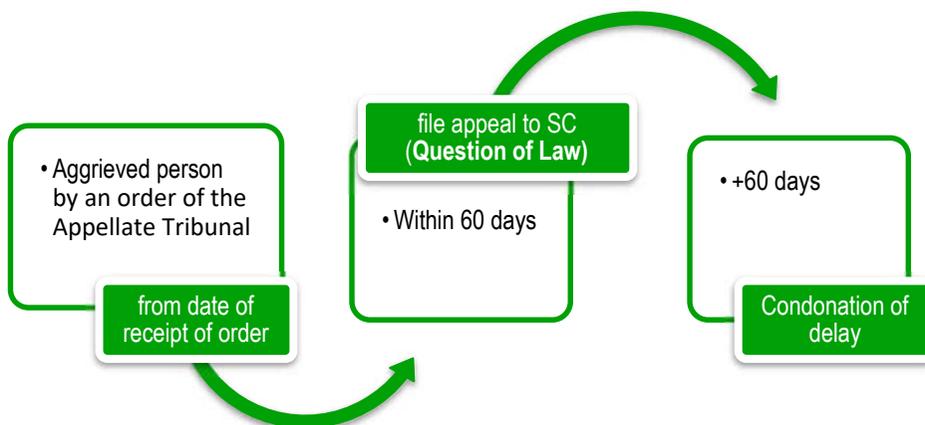
Example 2: Business of ABC Ltd. a public company is not been conducted and managed by directors in accordance with sound business principles or prudent commercial practices. The shareholders of Company has referred the same to the Tribunal on 15th September 2019 with a request to the Tribunal to inquire into the case and take action against the director of company. The Tribunal has, after making proper inquiry, passed the order against the directors on 16th March, 2020. In the given case order passed is not valid, as Tribunal have to pass order within 3 month from date of application and if not possible in 3 month then extension may be possible (if valid reason) for further 90 days i.e., latest by 14th March, 2020.

Appeal to Supreme Court [Section 423]

Any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

Explanation: It is to be understand that it is solely at the discretion of the Supreme Court whether to provide extension or not by such number of days which shall however not exceed 60 days.



Procedure before Tribunal and Appellate Tribunal [Section 424]

- (1) **Tribunal regulate their own procedure based on natural justice:** The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principals of natural justice, and, subject to the other provisions of this Act or the Insolvency and Bankruptcy Code, 2016 and of any rules made there under, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

- (2) **Vested with same power as that of a civil court:** The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act or under the Insolvency and Bankruptcy Code, 2016, 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) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any **public record or document** or a copy of such record or document from any office;
 - (e) issuing commissions for the **examination** of witnesses or documents.
 - (f) **dismissing a representation** for default or deciding it *ex parte*.
 - (g) **setting aside** any order of dismissal of any representation for default or any order passed by it *ex parte*; and
 - (h) **any other matter** which may be prescribed.
- (3) **Nature of decree and its execution:** Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—
- (a) in the case of an order against a company, the registered office of the company is situate; or
 - (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.
- (4) **Nature of proceedings:** All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Power to punish for contempt [Section 425]

The Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that—

- (a) the **reference therein to a High Court** shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and
- (b) the **reference to Advocate-General** in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.

HSBC Daisy Investments (Mauritius) Ltd. V. Anil Dhirubhai Ambani, Contempt Case (AT) Nos. 14 of 2018 & 3 of 2019 Company Appeal (AT) No.99 of 2018, July 23, 2019, it was decided that where consent terms had been arrived between petitioner and contemnors i.e. Reliance Inratel Ltd., by Appellate Tribunal's order dated 29-6-2018 and petitioners preferred contempt petitions under section 425 for initiating proceedings for contempt of disobedience of Appellate Tribunal's order dated 29-6-2018 alleging willful breach of undertaking given by contemnors, not following of 'Consent Terms' cannot be a ground for initiation of a contempt proceeding, and, therefore, no case was made out for initiation of contempt proceedings against any of alleged 'contemnors'- 'respondents' and, therefore, contempt application was dismissed.

Delegation of Powers [Section 426]

The Tribunal or the Appellate Tribunal may, by general or special order, direct, subject to such conditions, if any, as may be specified in the order, any of its officers or employees or any other person authorized by it to inquire into any matter connected with any proceeding or, as the case may be, appeal before it and to report to it in such manner as may be specified in the order.

Protection of Action Taken in Good Faith [Section 428]

No suit, prosecution or other legal proceeding shall lie against the Tribunal, the President, Member, officer or other employee, or against the Appellate Tribunal, the Chairperson, Member, officer or other employees thereof or liquidator or any other person authorized by the Tribunal or the Appellate Tribunal for the discharge of any function under this Act in respect of any loss or damage caused or likely to be caused by any act which is in good faith done or intended to be done in pursuance of this Act.

Power to Seek Assistance of Chief Metropolitan Magistrate, Etc. [Section 429]

1. **Request for custody or control on property, book of accounts or other documents:** The Tribunal may, in **any proceedings for winding up** of a company under this Act or in **any proceedings under the Insolvency and Bankruptcy Code, 2016**, in order to take into custody or under its control all property, books of account or other documents, **request, in writing**, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such company under this Act or of corporate persons under the said Code, are situated or found, to take possession thereof, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,—

- (a) take possession of such property, books of account or other documents; and
 - (b) cause the same to be entrusted to the Tribunal or other persons authorised by it.
- (2) **May act, as may necessary for securing compliance:** For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.
- (3) **No act to be called in question:** No act of the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

Civil Court Not to Have Jurisdiction [Section 430]

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter **which the Tribunal or the Appellate Tribunal is empowered** to determine by or under this Act or any other law for the time being in force and **no injunction shall be granted** by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

Vacancy in Tribunal or Appellate Tribunal not to Invalidate Acts or Proceedings [Section 431]

No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be.

Example 3: NCLT passed an order against Amma Ltd. on March 30, 2020. Amma Ltd. filed an Appeal with NCLAT on April 01, 2020, on the ground that the NCLT is not properly constituted according to the provisions of Companies Act, 2013. As per section 431 of the Companies Act, 2013, the company shall not question the proceeding of the tribunal on this ground.

Right to Legal Representation [Section 432]

A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, may either appear in person or authorize one or more Chartered Accountants or Company Secretaries or Cost Accountants or Legal Practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

Limitation [Section 433]

The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be.

Transfer of Certain Pending Proceedings [Section 434]

- (1) On such date as may be notified by the Central Government in this behalf, —

- (a) **all matters, proceedings or cases pending before the Board of Company Law Administration** (herein in this section referred to as the Company Law Board) constituted under the Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;
- (b) **any person aggrieved by any decision or order of the Company Law Board** made before such date may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order:

Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding 60 days; and

- (c) **all proceedings** under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:

Provided further that any party or parties to any proceedings relating to the winding up of companies pending before any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an application for transfer of such proceedings and the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 .

Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the Central Government.

Provided also that **only such proceedings relating to cases other than winding-up**, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal:

Provided further that –

- (i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings: or
- (ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts.

shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.

Provided also that **proceedings relating to cases of voluntary winding up of a company** where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.

- (2) The **Central Government may make rules** consistent with the provisions of this Act to **ensure timely transfer of all matters, proceedings or cases pending** before the Company Law Board or the courts, to the Tribunal under this section.

In Union Bank of India v. Nilkamal Ltd. IA No. 3 of 2021 Co. Pet. No. 1 of 2015, January 27, 2022, is decided in view of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018, there can be no doubt when a party applies even in a pending case seeking winding-up it is obligatory on part of the High Court or any other Courts before whom the proceedings are pending to remit the matter to the Tribunal. It would be pertinent to note herein that when the order dated 21st March 2017 was passed rejecting the application for transfer, at that stage, The Insolvency and Bankruptcy Code (second Amendment) Act, 2018 was not available for consideration. Pursuant to 2018 amendment, the present application can be filed by respondent-Union Bank of India. Therefore, it was held that, when a party applies even in a pending case seeking winding up, it is obligatory on part of High Court or any other Courts before whom proceedings are pending to remit matter to NCLT.

3. SPECIAL COURT [SECTION 435-438]

Establishment of Special Court [Section 435]

Section 435 of the Companies Act deals with the establishment of the Special Court. The provisions state the number of special court that may be established with the required number of judges for the working.

Establishment of number of special court: The Central Government may by notification-

- for the purpose of providing speedy trial of offences under this Act **except under section 452**, establish or designate as many Special Courts as may be necessary.

Composition: A Special Court shall consist of—

(a) a single judge holding office as Session Judge or Additional Session Judge	in case of offences punishable under this Act with imprisonment of two years or more; and
(b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class	in the case of other offences

Appointment: They shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

Offences Triable by Special Courts [Section 436]

(1) **Powers of special courts with respect to trial of offences:** Notwithstanding anything contained in the Code of Criminal Procedure (Cr. P. C), 1973, —

Powers of the special courts	Provisions
Offences that are triable by the special court	All offences specified under section 435(1) shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed.
In case of more than one Special Courts	Where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;
Where a person accused of, or suspected of the commission of, an offence under this Act	<p>Such person is forwarded to a Magistrate under section 167 of the Code of Criminal Procedure, 1973.</p> <p>(i) such Magistrate may authorize the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate,</p> <p>(ii) and seven days in the whole where such Magistrate is an Executive Magistrate:</p> <p>Provided that where such Magistrate considers that the detention of such person (upon or before the expiry of the period of detention) is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;</p>

Vested with same power as provided under the Cr. P.C	the Special Court may exercise the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section;
Cognizance of offence by special court	A Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

- (2) **Special Court to try an offence other than an offence under this Act:** When trying an offence under this Act, a Special Court **may also try** an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.
- (3) **Summary Trial:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973,

Power of special court on summary trial of an offence	Nature of summary trial
The Special Court may, if it thinks fit, try in a summary way any offence under this Act	Which is punishable with imprisonment for a term not exceeding three years
In the case of conviction in a summary trial	no sentence of imprisonment for a term exceeding one year shall be passed
When at the commencement of, or in the course of, a summary trial, it appears to the Special Court that – <ul style="list-style-type: none"> the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed, or that it is, for any other reason, undesirable to try the case summarily 	the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial .

Appeal and Revision [Section 437]

The **High Court** may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX which deals with **Appeals, Reference and Revision** of the Code of Criminal Procedure, 1973 on a High Court-

As if a **Special Court within the local limits of the jurisdiction of the High Court** were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Application of Code to Proceedings before Special Court [Section 438]

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be, and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

4. OFFENCES TO BE NON-COGNIZABLE [SECTION 439]

This section provides of the offences that are non-cognizable. According to this section:

Nature of Offences	Consequences
Every offence under the Companies Act, 2013 except the offences referred to section 212(6)	shall be deemed to be non-cognizable within the meaning of the Cr.P.C
Court shall take cognizance of any offence under the Companies Act which is alleged to have been committed by any company or any officer thereof	Only on the written complaint of the Registrar, a shareholder or a member of the company, or of a person authorized by the Central Government in that behalf. [Section 439(2)]
W.r.t. cognizance of offences relating to issue and transfer of securities and non-payment of dividend	The court may, on a complaint in writing by a person authorized by the Securities and Exchange Board of India, take cognizance [Section 439(2)]
Non-applicability of section 439(2)	To a prosecution by a company of any of its officers
Where the complainant is the Registrar or a person authorized by the Central Government	The presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial [Section 439(3)]
Non-applicability of section 439(2)	To any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX (Winding up) or in any

other provision of this Act relating to winding up of companies.

The liquidator of a company shall not be deemed to be an officer of the company.

[Section 439(4)]

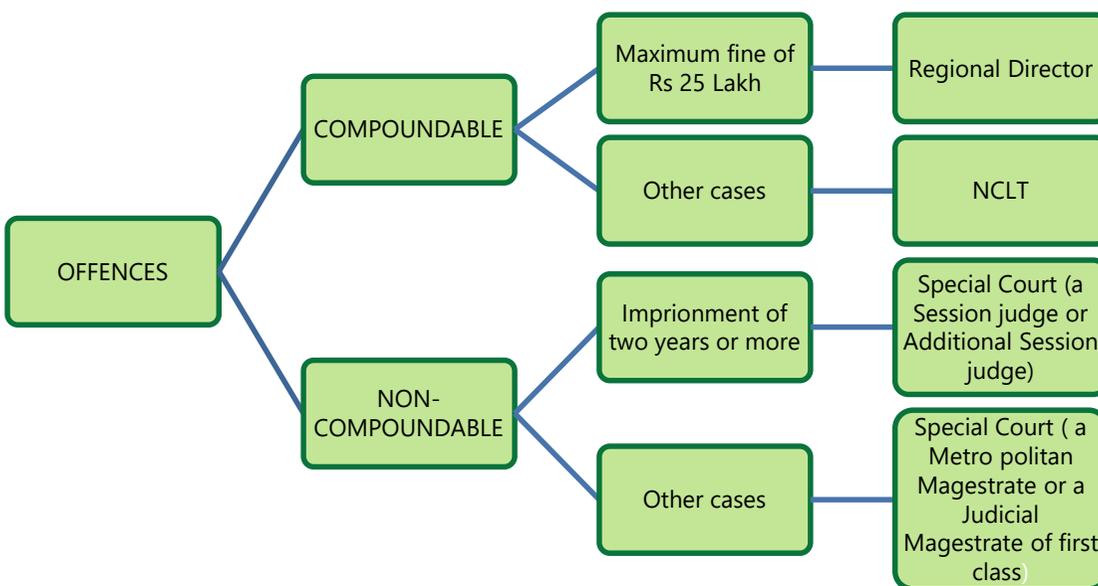
*As per the Notification G.S.R. 463(E) dated 5th June 2015, in case of a **government companies**, court shall take cognizance of an offence under this Act which is alleged to have been committed by any company or any officer thereof on the complaint in writing of a person authorized by the Central Government in that behalf.*

Explanation: Cognizable offence means an offence in which a police officer has the authority to make an arrest without a warrant and to start an investigation with or without the permission of a court. Cognizable offences are usually those offences which are serious in nature.

Whereas non-cognizable offence means an offence for which, and 'non-cognizable case' means a case in which, a police officer without any warrant has no authority to arrest.



5. COMPOUNDING OF CERTAIN OFFENCES [SECTION 441]



- (1) **Compounding of offences:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable under this Act (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by—

- (a) the **Tribunal**; or
- (b) where the maximum amount of fine which may be imposed for such offence does not exceed twenty-five lakh rupees, **by the Regional Director** or **any officer** authorized by the Central Government,

-on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be, may specify:

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Payment of sum by way of additional fee: Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account.

Exception : Provided also that any offence covered under this sub-section by any company or its officer **shall not be compounded** if the investigation against such company has been initiated or is pending under this Act.

- (2) **Non-Applicability of Sub-section (1):** Nothing in sub-section (1) shall apply to an offence committed by a company or its officer **within a period of three years** from the date on which a similar offence committed by it or him was compounded under this section.

Explanation—For the purposes of this section, —

- (a) **any second or subsequent offence committed after the expiry of a period of three years** from the date on which the offence was previously compounded, shall be deemed to be a first offence;
- (b) **"Regional Director"** means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

- (3) **Filing of an application for compounding :**

- (a) Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, **to the Tribunal or the Regional Director** or **any officer** authorized by the Central Government, as the case may be.
- (b) **Intimation of compounding:** Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall

be given by the company **to the Registrar within seven days** from the date on which the offence is so compounded.

(c) **When no prosecution to be instituted:**

(i) **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 or by any person authorized by the Central Government against the offender in relation to whom the offence is so compounded.

(ii) **Where the compounding of any offence is made after the institution of any prosecution**, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(4) **File or register return, account or other document :** The Tribunal or the Regional Director or any officer authorized by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order.

(5) **In case of contravention of an order:** If any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorized by the Central Government under sub-section (4), the **maximum amount of fine** for the offence proposed to be compounded under this section **shall be twice the amount** provided in the corresponding section in which punishment for such offence is provided.

(6) **Offences which cannot be compounded:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

(7) No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.

Process for compounding of an offence-

- Filing of an application to Registrar
- he will forward with his comments to Tribunal/RD/Officer authorised by CG
- Tribunal/RD/Officer may direct, by an order, any officer or other employee of the company
- to file or register with return, account or other document within such time as may be specified
- If any officer or other employee of the company who fails to comply with any order -
- the **maximum amount of fine** for the offence proposed to be compounded **shall be twice the amount** provided in the corresponding section in which punishment for such offence is provided.



6. MEDIATION AND CONCILIATION PANEL [SECTION 442]

- (1) **Mediation and Conciliation Panel:** The **Central Government** shall maintain a panel of experts to be called as the Mediation and Conciliation Panel.

Composition: It shall be consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before-

- the Central Government or
 - the Tribunal or
 - the Appellate Tribunal under this Act.
- (2) **Referring of matters by any parties to the proceedings to Mediation and Conciliation Panel:** Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).
- (3) **Suo moto referring of matters to Mediation and Conciliation Panel:** The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, *Suo moto*, refer any matter pertaining to such proceeding to such number of experts

from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.

- (4) **Fees and other conditions of experts:** The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.
- (5) **Procedure and disposal of matter:** The Mediation and Conciliation Panel shall follow such procedure as may be in Rule 11 and 19 of *the Companies (Mediation and Conciliation) Rules, 2016*, and dispose of the matter referred to it within a period of three months from the date of appointment of expert from the panel and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.
- (6) **Objection to the recommendation of the Mediation and Conciliation Panel:** Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.



7. SERIOUS FRAUD INVESTIGATION OFFICE [SECTION 211& 212]

Establishment of Serious Fraud Investigation Office (SFIO)

The Central Government shall, by notification, establish an office to be called the Serious Fraud Investigation Office to investigate frauds relating to a company.

Composition : The Serious Fraud Investigation Office shall be headed by a Director and consist of such number of experts from the different fields to be appointed by the Central Government from amongst persons of ability, integrity and experience in banking, corporate affairs, taxation, capital market etc.

Function of SFIO: where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

- (a) on receipt of a report of the Registrar or inspector under section 208;
- (b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;
- (c) in the public interest; or
- (d) on request from any Department of the Central Government or a State Government,

The Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

[For detail, refer chapter of Inspection, Inquiry and Investigation]

8. POWER OF CENTRAL GOVERNMENT TO APPOINT COMPANY PROSECUTORS [SECTION 443]

The Central Government may **appoint one or more persons**, as company prosecutors for the conduct of prosecutions arising out of this Act, generally, or for any case, or in any case, or for any specified class of cases in any local area.

The persons so appointed as company prosecutors shall have **all the powers and privileges conferred by the Code** on Public Prosecutors appointed under section 24 of the Code.

9. APPEAL AGAINST ACQUITTAL [SECTION 444]

The Central Government may, in any case arising under this Act, direct any-

- company prosecutor or
- authorize any other person either by name or by virtue of his office,

to present an appeal from an order of acquittal passed by any court, other than a High Court, and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

10. COMPENSATION FOR ACCUSATION WITHOUT REASONABLE CAUSE [SECTION 445]

The provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply *mutatis mutandis* to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

11. APPLICATION OF FINES [SECTION 446]

According to this section, the court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

12. FACTORS FOR DETERMINING LEVEL OF PUNISHMENT [SECTION 446A]

According to this section, the Court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely: —

- (a) size of the company.
- (b) nature of business carried on by the company.
- (c) injury to public interest.
- (d) nature of the default; and
- (e) repetition of the default.



13. LESSER PENALTIES FOR ONE PERSON COMPANIES OR SMALL COMPANIES [SECTION 446B]

According to this section, notwithstanding anything contained in this Act, if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be.

Explanation. —For the purposes of this section-

- (a) "Producer Company" means a company as defined in clause (l) of section 378A;
- (b) "start-up company" means a private company incorporated under this Act or under the Companies Act, 1956 and recognized as start-up in accordance with the notification issued by the Central Government in the Department for Promotion of Industry and Internal Trade.



14. ADJUDICATION OF PENALTIES [SECTION 454]

- (1) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as provided in Rule 3 of the Companies(Adjudication of Penalties) Rules, 2014.

Manner of adjudication of Penalties [Rule 3 of the Companies (Adjudication of Penalties) Rules, 2014]

- (i) **Appointment of Adjudicating officers:** The Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.
- (ii) **Issue of written notice by an adjudicating officer:** Before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner-
 - to the company and

- to officer of the company who is in default or
- any other person, as the case may be.

to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than thirty days from the date of service thereon), why the penalty should not be imposed on it or him.

(iii) **Manner of the written notice:** Every notice issued above shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by

- such company,
- officer in default, or
- any other person, as the case may be.

and also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed on the company, and each of the officers in default, or the other person.

(iv) **Period of filing reply to the notice:** The reply to such notice shall be filed in electronic mode only within the period as specified in the notice:

Provided that the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding fifteen days, if the company or officer in default or any person as the case may be, satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice within the stipulated period or the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.

(v) **Physical appearance:** If, after considering the reply submitted by such company, its officer, or any other person, as the case may be, the adjudicating officer is of the opinion that physical appearance is required, he shall issue a notice, within a period of ten working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative.

Provided that if any person, to whom a notice is issued under point (ii), desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance.

(vi) **Passing of an order by the adjudicating officer:** On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including an order for adjournment.

Provided that after hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice under point (ii) relevant for determination of the default.

- (vii) **Period for passing the order:** The adjudicating officer shall pass an order:
- (a) within 30 days of the expiry of the period referred in point (ii) or of such extended period as referred therein, where physical appearance was not required under point (v).
 - (b) within 90 days of the date of issue of notice under point (ii), where any person appeared before the adjudicating officer under point (v):

However, in case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the adjudicating officer and no such order shall be invalid merely because of its passing after the expiry of such 30 days or 90 days as the case may be.

- (viii) **Date and sign on order:** Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance under point (v).
- (ix) **Forwarding of copy of an order:** The adjudicating officer shall send a copy of the order passed by him
- to the concerned company,
 - officer who is in default or
 - any other person or
 - all of them and
 - to the Central Government and
 - a copy of the order shall also be uploaded on the website.
- (x) **Powers of Adjudicating Authority:** For the purposes of this rule , the adjudicating officer shall have the following powers, namely:-
- (a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;
 - (b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.
- (xi) **Failure to be present before the adjudicating authority:** If any person fails to reply or neglects or refuses to appear as required under point (v) or point (x) before the adjudicating officer, the adjudicating officer may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so.
- (xii) **Consideration to following factors while levying penalty:** While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely: -

- (a) size of the company.
- (b) nature of business carried on by the company:
- (c) injury to public interest.
- (d) nature of the default.
- (e) repetition of the default.
- (f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and
- (g) the amount of loss caused to an investor or group of investors or creditors as a result of the default:

However, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act.

- (xiii) **Fixed sum of penalty:** In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.
- (xiv) **Payment of penalty:** Penalty shall be paid through Ministry of Corporate Affairs portal only.
- (xv) **Sum to be credited to the Consolidated Fund of India:** All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

*Explanation: For the purposes of this rule, the term “specified manner” shall mean service of documents as specified under section 20 of the Act and the rules made thereunder and details in respect of address (including electronic mail ID) provided in the KYC documents filed in the registry shall be used for communication under this Rule.

- (2) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1).
- (3) The adjudicating officer may, by an order—
 - (a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and
 - (b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.

Provided that in case the default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub-section (2) of section 137 and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.

- (4) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company, the officer who is in default or any other person.
- (5) Any person aggrieved by an order made by the adjudicating officer may prefer an appeal to the Regional Director having jurisdiction in the matter.
- (6) Every appeal shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees in Rule 4 of the Companies (Adjudication of Penalties) Rules, 2014.
- (7) The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.
- (8)
 - (i) Where **company** fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.
 - (ii) Where **an officer of a company or any other person** who is in default fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be, within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.



15. PENALTY FOR REPEATED DEFAULT [SECTION 454A]

Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, **again commits such default within a period of three years** from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he **shall be liable for the second or subsequent defaults** for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.

TEST YOUR KNOWLEDGE**Multiple Choice Questions**

1. *As per the Companies Act, 2013, every petition filed before the Tribunal shall be disposed of:*
 - (a) *within 1 month from the date application is admitted*
 - (b) *within 2 months from the date of first hearing*
 - (c) *within 3 months from the date of its presentation*
 - (d) *within 6 months from its filing*

2. *Trial of an offence under the Companies Act, by special court shall be of such an offence:*
 - (a) *which is punishable with imprisonment for a term exceeding one year*
 - (b) *which is punishable with imprisonment for a term not exceeding one year*
 - (c) *which is punishable with imprisonment for a term exceeding three years*
 - (d) *which is punishable with imprisonment for a term not exceeding three years*

3. *Makhija Developers Limited, being unsatisfied with the order given by the NCLT, desires to prefer an appeal against the order of the NCLT. You, as a legal advisor to Makhija Developers Limited, are required to provide them with the best course of action available considering the provisions of the Companies Act, 2013.*
 - (a) *Makhija Developers Limited cannot prefer an appeal against an order passed by NCLT Mumbai u/s 9 of the Insolvency and Bankruptcy Code as Interim Resolution Professional is already appointed.*
 - (b) *Makhija Developers Limited may be able to prefer an appeal against the order passed by NCLT Mumbai within a period of 45 days from the date of order of copy made available to Makhija Developers Limited.*
 - (c) *Makhija Developers Limited cannot prefer an appeal against an order passed by NCLT Mumbai u/s 9 of the Insolvency and Bankruptcy Code as reasonable opportunity of being heard was given to Makhija Developers Limited.*
 - (d) *Makhija Developers Limited may be able to prefer an appeal against the order passed by NCLT Mumbai within a period of 60 days from the date of order of copy made available to Makhija Developers Limited.*

4. *Requisite number of shareholders of Vimaan Aerospace Limited, which has been incorporated under the Companies Act, 2013, filed an application with the National Company Law Tribunal (NCLT) under Section 241 highlighting the mismanagement in the conduct of the affairs of the company. Taking cognizance of the application, the National Company Law*

Tribunal (NCLT) passed an order under Section 420 on November 23, 2021, providing the sought after relief to the shareholders of Vimaan Aerospace Limited. On finding some mistake in the order, the shareholders brought the same to the notice of NCLT for rectification. You are required to select the correct statement from those given below as to the circumstances under which NCLT would be able to amend its order and the maximum period which the said order can be amended:

- (a) National Company Law Tribunal (NCLT) can amend its order to rectify any mistake apparent from the record when such mistake is brought to its notice by the parties and further, the order can be amended by NCLT at any time within a period of six months from the date of such order provided no appeal has been made against the said order.
- (b) National Company Law Tribunal (NCLT) can amend its order to rectify any mistake apparent from the record when such mistake is brought to its notice by the parties and further, the order can be amended by NCLT at any time within a period of one year from the date of such order provided no appeal has been made against the said order.
- (c) National Company Law Tribunal (NCLT) can amend its order to rectify any mistake apparent from the record when such mistake is brought to its notice by the parties and further, the order can be amended by NCLT at any time within a period of two years from the date of such order provided no appeal has been made against the said order.
- (d) National Company Law Tribunal (NCLT) can amend its order to rectify any mistake apparent from the record when such mistake is brought to its notice by the parties and further, the order can be amended by NCLT at any time within a period of three years from the date of such order provided no appeal has been made against the said order.

Descriptive Questions

1. In the annual general meeting of XYZ Ltd., while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were levelled against him by some members. This resulted into chaos in the meeting. The situation was normal only after the Chairman declared about initiating an inquiry against the director. Mr. X, however, could not be re-appointed in the meeting. The matter was published in the newspapers next day. On the basis of such news, whether the court can take cognizance of the matter and take action against the director on its own?

Justify your answer with reference to the provisions of the Companies Act, 2013.

2. What is the object of Constituting Panel for Mediation and Conciliation under the Companies Act, 2013? Who can file application for mediation and conciliation?
3. Mr. Joseph, a member of Armaments Ltd., is aggrieved due to failure of the company to make payment of dividend declared in the AGM held in August 2015. He makes a complaint, in writing, before the court of competent jurisdiction within the prescribed period of limitation, but the court refused to take cognizance of the alleged offence. Explain the legal position in this regard under the Companies Act, 2013.

Also state the offences under the Companies Act, 2013 which are cognizable and which are non-cognizable.

4. *Excel Ltd. committed an offence under the Companies Act, 2013. The offence falls within the jurisdiction of a special court of Bundi district in which the registered office of Excel Ltd was situated. However, in that Bundi district, there were two special courts one in X place and other in Y place. Identify the jurisdiction of special court for trial of an offence committed by Excel Ltd.*
5. *Before imposing penalty, the adjudicating authority issued a show cause notice to the company and its officers on 15th July, 2020 to represent before the adjudicating authority. The notice was served on them on 31st July 2020. State the time period within which the company and its officers who were called upon may be present before the Adjudicating authority.*
6. *On an application filed before Tribunal from one of the shareholders of Company, Tribunal (NCLT) passed order on 20th December 2019 without the consent of parties. Mr. Rama, one of the party to the proceeding whose family condition was not good so didn't take much interest in order of tribunal but after few days due to aggrieved by the order, he filed an appeal before Appellate Tribunal (NCLAT) on 15th March 2020 showing sufficient cause of delay for not filing appeal up to 45 days from the date of order. The Appellate Tribunal has passed an order dated 30th April 2020, Mr. Rama was not satisfied and made application to Supreme Court on 30th September 2020 against the order of the Appellate Tribunal.*

Considering the given situation, examine whether Appeal filed before the Supreme Court is admissible after showing cause of delay.

ANSWER KEYS

Answer to Multiple Choice Questions

1.	C	2.	d	3.	b	4.	c
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Descriptive Answers

1. Section 439 of the Companies Act, 2013 provides that offences under the Act shall be non-cognizable. As per this section:
 1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.
 2. No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder or a member of the company, or of a person authorized by the Central Government in that behalf.

Thus, in the given situation, the court shall not initiate any Suo moto action against the director Mr. X without receiving any complaint in writing of the Registrar of Companies, a shareholder of the company or of a person authorized by the Central Government in this behalf.

2. Under section 442 of the Companies Act, 2013, it is provided that the Central Government shall maintain a panel of experts for mediation between the parties during pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under the Act. In common parlance, mediation means intervention of some third party in a dispute with the intention to resolve the dispute. Similarly, conciliation means the powers of adjusting or settling disputes in a friendly manner through extra judicial means. The object behind the panel is to dispose the matter pending before the Government / Tribunal as mentioned above.

Filing of application: Application for mediation and conciliation can be made by:

- (A) any parties to the proceedings (It shall be accompanied with such fees and in such form as may be prescribed)
 - (B) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, Suo moto refer any matter pertaining to such proceeding to such number of experts as it may deem fit.
3. **Cognizance of offence:** A court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof only on the written complaint of -
 - (a) The Registrar,
 - (b) A shareholder of the company
 - (c) A member of the company, or
 - (d) Of a person authorised by the Central Government in that behalf.

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorized by the Securities and Exchange Board of India.

In the present case, Mr. Joseph, a member of Armaments Ltd. is aggrieved due to failure of the company to make payment of dividend declared in the AGM held in August 2015. He makes a complaint, in writing, before the court of competent jurisdiction within the prescribed period of limitation, but the court refused to take cognizance of the alleged offence.

Here, the Court shall take cognizance of the offence relating to nonpayment of dividend as the shareholder have made a complaint in writing before the competent jurisdiction.

Cognizable and non-cognizable offences: Overriding the provisions given under the Code of Criminal Procedure, 1973, every offence under the Companies Act, 2013 except the offences referred to in section 212(6) of the Companies Act, 2013, which deals with the investigation into affairs of company by serious fraud investigation office, shall be deemed to be non-cognizable within the meaning of the said Code.

Therefore, the offences as covered under section 212(6) shall now be deemed to be cognizable where police officer may arrest person without warrant and are non-bailable. The Companies Act, 2013 establishes the offence covered under section 212(6) as a public wrong which has to be prevented and controlled. This non-bailable nature of the offences deter the offender and the others from committing further and similar offences.

4. All offences which are punishable in this Act with imprisonment of 2 years or more, shall be triable only by the special court established for the area in which the registered office of the company in relation to which the offence is committed. According to section 436 where there are more special courts than one for such area, by such one of them as may be specified in this behalf by the High court concerned.

Accordingly, in the given case, there are more than one special court in Bundi district where registered office of Excel Ltd. is situated. The jurisdiction for trial in special court will be specified by H.C of the State (i.e. Rajasthan).

5. **Issue of written notice by an adjudicating officer:** Rule 3 of *the Companies (Adjudication of Penalties) Rules, 2014* read with section 454 of the Companies Act, 2013, states that before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner-

- to the company and
- to officer of the company who is in default or
- any other person, as the case may be

to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than thirty days from the date of service thereon), why the penalty should not be imposed on it or him.

Accordingly, the company and its officers shall be presented before the Adjudicating Authority on or before 30th August 2020 (being not more than 30 days from the date of service of notice thereon).

6. According to Section 423 of the Companies Act, 2013, any person aggrieved by an order of the Appellate Tribunal may prefer an appeal to the Supreme Court on any question of law arising out of Appellate Tribunal's order.

Every appeal shall be filed within a period of 60 days from the date on which a copy of the order of the Appellate Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed.

Supreme Court may entertain an appeal even after the expiry of the said period of 60 days from the date aforesaid, but within a further period not exceeding 60 Days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within period.

In above case, since Mr. Rama even aggrieved by order of Appellate Tribunal filed application before Supreme Court on 30th September 2020. But as Supreme Court can entertain appeal only up to 60 days + 60 Days (Extension if sufficient cause). Since this appeal was filed beyond 120 days by Mr. Rama, so, appeal filed before the Supreme Court is not admissible.

