

## Chapter 6: Non-Compliances, Penalties and Adjudications

## INTRODUCTION:

- Laws are effective when they are enforced and violators are punished.
- Laws help ensure activities are conducted properly for the benefit of society and the economy.
- Violating laws, especially in areas like Company Law, FEMA, and Income Tax, can harm the economy.
- To prevent violations, laws include penalties like fines or imprisonment.
- The Companies Act, 2013 sets compliance rules to protect stakeholders' rights.
- Violating these rules leads to penalties and consequences.
- It's important to understand the difference between civil law and criminal law to grasp these provisions.

## DIFFERENCE B/W CIVIL LAW & CRIMINAL LAW:

Particulars	Civil Law	Criminal Law
Deals with	Private disputes or defaults	Offenses against society
Objective	To resolve disputes and compensate for loss or damage	To punish the offender and reflect public policy
Power of Court	Can only order compensation for damages	Can impose fines, imprisonment, or both
In Companies Act	"Liable to penalties" (civil violation)	"Punishable with fine and/or imprisonment" (criminal violation)

## NON-COMPLIANCES UNDER COMPANIES ACT, 2013:

- ❖ Non-Compliance Under Companies Act, 2013 (Simplified)
- ❖ Companies must follow rules on documents, procedures, and filing within deadlines.
- ❖ Delays result in fines, and violations lead to penalties.
- ❖ The Act allows a process to fix violations (compounding).
- ❖ Late compliance does not remove the violation; penalties still apply for the period of non-compliance.
- ❖ The company can apply to fix the issue, or the regulator may take action.

## DIFFERENCE B/W FINE & PENALTY:

Fine	Penalty
A money payment decided by a court for a crime or offense.	A punishment for breaking a law, rule, or contract.
Used for criminal offenses.	Used for civil offenses or non-compliance.
Imposed only by a court.	Can be imposed by administrative officers.
A punitive measure (punishment).	A compensatory measure (to address breach).

## OFFENCES TO BE NON-COGNIZABLE [SECTION 439:

- An offence is generally defined as a crime or illegal activity punishable by law.
- Under the Criminal Procedure Code (CrPC), an offence includes any act punishable by law.
- In a company, offences may occur by connivance (knowingly) or inadvertence (accidentally).
- Section 439 of the Companies Act states that most offences under the Act are non-cognizable, meaning a police officer cannot arrest without a warrant.
- The exception is for offences involving fraud (Section 212(6)), which are treated differently.

### Section 439 of the Companies Act :

1. **Court Cognizance:** A court cannot take action on offences committed by a company or its officers unless there is a written complaint from:
  - The Registrar,
  - A shareholder/member of the company, or
  - A person authorized by the Central Government.
  - However, the court can act on complaints regarding issues with securities or non-payment of dividends from someone authorized by SEBI.
  - A company can also prosecute its officers.
2. **Registrar's Presence:** If the Registrar or an authorized person files a complaint, their personal presence in court is not required unless the court demands it.
3. **Liquidator's Actions:** The provisions do not apply if the liquidator is taking action related to offences during the winding up of a company.

**Exception:** In the case of a government company, the words "the Registrar, a shareholder or member of the company" are omitted from the provision. (Notification dated 5th June 2015).

## OFFENCES TO BE COGNIZABLE AND NON-BAILABLE UNDER SECTION 212(6):

- **Cognizable Offence:** A crime where the police can arrest without a warrant (as per the CrPC).
- **Section 212(6):** Offences under Section 447 of the Companies Act (related to fraud) are **cognizable** and **non-bailable**.
  - **Bail Conditions:** The accused can only be released on bail if:
    1. The Public Prosecutor has the chance to oppose bail.
    2. The court is satisfied the accused is likely not guilty and won't commit further offences.
  - **Special Exceptions:**
    - Persons under 16, women, or those sick or infirm may be granted bail if the Special Court allows.
  - **Complaint Requirement:** For cognizable offences, a written complaint must come from:
    1. The Director of Serious Fraud Investigation Office (SFIO).
    2. An authorized officer of the Central Government.
- **Punishments for Offences:**
  - Offences are punishable by fines, imprisonment, or both, depending on the violation.
  - **Section 450:** If no punishment is specified, non-compliance results in:
    - A fine of ₹10,000, plus ₹1,000 per day for continuing violations (up to ₹2 lakh for companies, ₹50,000 for officers or others).
- **Types of Offences:**
  - **Fraud Offences:** Punishable under Section 447.
  - **Other Offences:** Punishable with fines and/or imprisonment, as per the respective sections.
- **Compoundable vs Non-Compoundable Offences:**
  - **Non-Compoundable:** Offences punishable with only imprisonment or both imprisonment and fine.
  - **Compoundable:** Offences punishable with fines only or fines and/or imprisonment.

## DECRIMINALISATION OF OFFENCES UNDER THE COMPANIES ACT, 2013- REDUCTION IN PENALTIES:

- **Reason for Change:** In 2018, the MCA formed a committee to review and reduce criminal penalties for certain offences, shifting some to civil liabilities.

➤ **Amendments:**

- ✓ The Companies (Amendment) Act, 2019 made changes to ease penalties and support business growth.
- ✓ The Companies (Amendment) Act, 2020 removed imprisonment for some offences, replacing fines with penalties.

➤ **Serious vs Minor Violations:**

- ✓ Serious crimes like fraud remain criminal.
- ✓ Minor violations are now handled through civil penalties.

➤ **Non-Compliance Consequences:**

- ✓ Non-compliance can lead to:
  - Loss of exemptions for private companies.
  - Ineligibility for share buy-backs.
  - Director disqualification.
  - Company becoming inactive.

## SECTION 447- PUNISHMENT FOR FRAUD:

• **Key Definitions:**

- **Fraud:** Any act, omission, or abuse of position to deceive, gain undue advantage, or harm the company's interests, shareholders, creditors, or others.
- **Wrongful Gain:** Gaining property unlawfully that one is not entitled to.
- **Wrongful Loss:** Losing property unlawfully that one is legally entitled to.

• **Punishments for Fraud:**

1. Fraud Amount  $\geq$  ₹10 Lakhs or 1% of Company's Turnover:
  - Imprisonment: 6 months to 10 years.
  - Fine: At least the amount involved in the fraud, up to three times the amount.
2. Fraud Involving Public Interest:
  - Imprisonment: Minimum 3 years.
3. Fraud Amount  $<$  ₹10 Lakhs or 1% of Company's Turnover (and no public interest involved):
  - Imprisonment: Up to 5 years.
  - Fine: Up to ₹50 Lakhs, or both.

### **CASE LAW: Komal Chadha Vs. SFIO (Delhi High Court, 2022)**

- **Accusations:** Komal Chadha, a director of PPPL, was accused of fraud for manipulating financial records and diverting funds to other entities, misleading banks for credit.
- **Role:** As a director, she was considered an "officer in default" for the company's actions.
- **Bail Request:** Komal Chadha sought bail, claiming no interference with the investigation.
- **Court Ruling:** The court granted bail, as there was no evidence of tampering or obstructing the investigation.

### **SECTION 448 - PUNISHMENT FOR FALSE STATEMENT:**

If a person makes a false statement in documents like financial reports, certificates, or returns, knowing it is false, or omits important facts, they can be punished under Section 447 (Fraud).

### **CASE LAW: Usha Martin Telematics Ltd. Vs. Registrar of Companies (Calcutta High Court, 2019)**

- **Facts:** The company mistakenly recorded in its board meeting minutes that it had applied to the Reserve Bank of India (RBI) for de-registration as an NBFC, which was incorrect. This was a typographical error since the company was never registered as an NBFC.
- **Action:** The error was later corrected by the company in a subsequent meeting. Despite this, a complaint was filed against the company for an offense under Section 448.
- **Court Decision:** The court ruled that the error was unintentional and did not reflect any intent to deceive or harm the company. As there was no fraudulent intent, the complaint was quashed.

### **SECTION 449 - PUNISHMENT FOR FALSE EVIDENCE:**

- **Offense:** Giving false evidence intentionally in any sworn statement or affidavit related to the Companies Act.
- **Punishment:**
  - **Imprisonment:** 3 to 7 years.
  - **Fine:** Up to ₹10 Lakhs.

## SECTION 450 - PUNISHMENT WHERE NO SPECIFIC PENALTY IS PROVIDED:

- **Offense:** If a company, its officers, or any other person violates any provision of the Companies Act or related rules, and no specific penalty is provided:
  - **Penalty:** ₹10,000.
  - **Continuing Violation:** Additional ₹1,000 for each day the violation continues, with a maximum of:
    - ₹2 Lakhs for the company.
    - ₹50,000 for officers or other persons.

### CASE LAW: Doha Brokerage & Financial Services Ltd. Vs. Registrar of Companies (NCLT, 2020)

- **Facts:** The company violated Section 19 by allotting shares to its subsidiary, which was prohibited.
- **Ruling:** The NCLT allowed the offense to be compounded with a fine of ₹5,000 for each director in default and ordered payment of the compounding fee.

## SECTION 451 - PUNISHMENT FOR REPEATED DEFAULT:

- **Offense:** If a company or its officer commits the same offense again within 3 years:
  - **Punishment:** The fine is doubled, and any imprisonment provided for the offense also applies.

### CASE LAW: Pahuja Takii Seed Ltd. Vs. Registrar of Companies (NCLAT, 2018)

- **Ruling:** The tribunal held that a single application can be filed to compound the same offense committed in different financial years by the company and its officers.

## SECTION 452 - PUNISHMENT FOR WRONGFUL WITHHOLDING OF PROPERTY:


- **Offense:** If a company officer or employee:
  - Wrongfully obtains or withholds the company's property or cash.
  - Misuses the property for unauthorized purposes.
- **Punishment:**
  - **Fine:** ₹1 lakh to ₹5 lakhs.
  - **Refund or Delivery:** The court may order the return of the property or cash. If not returned, the offender may face imprisonment up to 2 years.

- **Exception:** No imprisonment if the company has not paid the officer/employee due funds (e.g., provident fund, pension, or compensation under the Workmen's Compensation Act).

## SECTION 453 - PUNISHMENT FOR IMPROPER USE OF "LIMITED" OR "PRIVATE LIMITED":

- **Offense:** Using "Limited" or "Private Limited" in a company name without being a properly incorporated company with limited liability.
- **Punishment:** Fine of ₹500 to ₹2,000 for each day the name is improperly used.

## COMPREHENSIVE LIST OF PENALTIES UNDER THE COMPANIES ACT, 2013:

Section	Particulars	Penalty
Section 4(5)	Reservation of Name - Incorrect information given after reservation	Company name cancelled, Penalty up to ₹1 Lakh
Section 10A	Commencement of Business - Default in compliance	Company: ₹50,000, Officer: ₹1,000/day (max ₹1 Lakh)
Section 12(8)	Registered Office - Default in compliance	Company & Officer: ₹1,000/day (max ₹1 Lakh)
Section 15(2)	Alteration of Memorandum/Articles	₹1,000 for each copy without alteration
Section 16(3)	Rectification of Company Name	Company must register a new name assigned by Govt.
Section 17(2)	Copies of MOA, AOA, etc. to be provided to members	Company & Officer: ₹1,000/day (max ₹1 Lakh)
Section 33(3)	Issue of Application Forms for Securities	Company: ₹50,000 per default
Section 39(5)	Allotment of Securities - Defaults 	Company & Officer: ₹1,000/day (max ₹1 Lakh)

<b>Section 42(9)</b>	Private Placement - Default in filing return	Company, Promoters, Directors: ₹1,000/day (max ₹25 Lakh)
<b>Section 42(10)</b>	Private Placement - Contravention of rules	Penalty: Amount raised or ₹2 Crore (whichever is lower), Refund money with interest
<b>Section 53(3)</b>	Prohibition on Issue of Shares at Discount	Company & Officer: Penalty up to ₹5 Lakh, Refund money with 12% interest
<b>Section 56(6)</b>	Transfer & Transmission of Securities - Default	Company & Officer: ₹50,000
<b>Section 60(2)</b>	Publication of Capital Info on Company Letterheads	Company: ₹10,000, Officer: ₹5,000
<b>Section 64(2)</b>	Notice to Registrar for Share Capital Alteration	Company: ₹500/day (max ₹5 Lakh), Officer: ₹1 Lakh max
<b>Section 86</b>	Contravention of Charges Registration Provisions	Company: ₹5 Lakh, Officer: ₹50,000

Section	Description	Penalty on Company	Penalty on Officer(s)
88(5)	Register of Members	Rs. 3 Lakhs	Rs. 50,000
89	Declaration of Beneficial Interest	Rs. 50,000 (max Rs. 5 Lakhs for continuing default)	Rs. 1,000/day (max Rs. 5 Lakhs for company)
90	Register of Significant Beneficial Owners	Rs. 1 Lakh (max Rs. 5 Lakhs for continuing default)	Rs. 25,000/day (max Rs. 1 Lakh)
91(2)	Power to Close Register	Rs. 5,000/day (max Rs. 1 Lakh)	Same as company
92(5)	Annual Return	Rs. 10,000 (max Rs. 2 Lakhs)	Rs. 50,000 (max Rs. 50,000 for officer)
94(4)	Inspection of Registers	Rs. 1,000/day (max Rs. 1 Lakh)	Same as company
99	Default in holding meetings	Rs. 1 Lakh	Rs. 5,000/day (max Rs. 1 Lakh)
102(5)	Statement in Notice	Rs. 50,000 or 5x benefit	
105(3)	Proxies	Rs. 5,000	Same as company
111(5)	Circulation of Resolution	Rs. 25,000	Same as company
117(2)	Resolutions to be Filed	Rs. 10,000 (max Rs. 2 Lakhs)	Rs. 10,000 (max Rs. 50,000)
118	Minutes of Meetings	Rs. 25,000	Rs. 5,000
119	Inspection of Minutes	Rs. 25,000	Rs. 5,000
121	AGM Report to ROC	Rs. 1 Lakh (max Rs. 5 Lakhs)	Rs. 25,000 (max Rs. 1 Lakh)

124(7)	Unpaid Dividend Account	Rs. 1 Lakh (max Rs. 10 Lakhs)	Rs. 25,000 (max Rs. 2 Lakhs)
134(8)	Financial Statement & Board's Report	Rs. 3 Lakhs	Rs. 50,000
135	CSR Compliance	Rs. 1 Crore (or twice required amount)	Rs. 2 Lakhs
136(3)	Copies of Financial Statements	Rs. 25,000	Rs. 5,000
137(3)	File Financial Statements with ROC	Rs. 10,000 (max Rs. 2 Lakhs)	Rs. 10,000 (max Rs. 50,000)
140(3)	Auditor's Resignation	Rs. 50,000 (max Rs. 2 Lakhs)	Same as company
143(15)	Auditor Compliance	Rs. 5 Lakhs (listed)	Rs. 1 Lakh (others)
157(2)	Director ID Number	Rs. 25,000 (max Rs. 1 Lakh)	Rs. 25,000 (max Rs. 1 Lakh)
159	Director Default	Rs. 50,000	Rs. 500/day
165	Number of Directorships	Rs. 2,000/day (max Rs. 2 Lakhs)	Same as individual
172	Director Appointment	Rs. 50,000 (max Rs. 3 Lakhs)	Rs. 500/day
173(4)	Board Meeting Notice	Rs. 25,000	Same as company
178(8)	Nomination & Remuneration Committee	Rs. 5 Lakhs	Rs. 1 Lakh
184(4)	Disclosure of Director's Interest	Rs. 1 Lakh	Same as company
187(4)	Company Investments	Rs. 5 Lakhs	Rs. 50,000
188(5)	Related Party Transactions	Rs. 25 Lakhs (listed) Rs. 5 Lakhs (others)	Same as director
189(6)	Register of Contracts	Rs. 25,000	Rs. 25,000
190(3)	Employment Contract with Directors	Rs. 25,000	Rs. 5,000
191(5)	Payment to Director for Loss of Office	Rs. 1 Lakh	Same as company
197(15)	Managerial Remuneration	Rs. 5 Lakhs	Rs. 1 Lakh
203(5)	Appointment of Key Managerial Personnel	Rs. 5 Lakhs	Rs. 50,000 (max Rs. 5 Lakhs)
204	Secretarial Audit	Rs. 2 Lakhs	Same as company
232(8)	Merger & Amalgamation	Rs. 20,000 (max Rs. 3 Lakhs)	Same as company

238	Registration of Offer of Schemes	Rs. 1 Lakh	Same as director
247(3)	Valuation by Registered Valuers	Rs. 50,000	Same as valuer
378V	Meetings in Producer Companies	Rs. 5,000	Same as CEO
378X	Appointment of Secretary in Producer Company	Rs. 1 Lakh	Same as officer
403(2)	Fee for Filing Documents	Rs. 10,000	Same as company
405(4)	Furnishing Information to Central Government	Rs. 20,000 (max Rs. 3 Lakhs)	Rs. 1,000/day
446B	Penalty for Small Companies	Max 50% of penalty (Rs. 2 Lakhs)	Max 50% of penalty (Rs. 1 Lakh)
450	Default in Compliance	Rs. 10,000 (max Rs. 2 Lakhs)	Rs. 1,000/day (max Rs. 50,000)
454A	Repeated Default	Double penalty	Double penalty

## **ESTABLISHMENT OF SPECIAL COURTS:**

- ❖ Provisions for Special Courts are in Chapter XXVIII of the Companies Act, 2013 (Sections 435-438, 440).
- ❖ These provisions were not enforced until 2016.
- ❖ The Companies Law Committee report (2016) recommended establishing Special Courts for faster prosecution of defaulting companies.
- ❖ It suggested Special Courts at both Sessions Judge and subordinate levels.
- ❖ Section 435(1) allows the Central Government to establish Special Courts for speedy trials, excluding Section 452 offences.
- ❖ The Ministry of Corporate Affairs notified Sections 435-438 and 440 on May 18, 2016, making them effective.

### **Special Courts are structured as follows:**

- For offences with imprisonment of 2 years or more, a Session Judge or Additional Session Judge will preside.
- For other offences, a Metropolitan Magistrate or Judicial Magistrate of the First Class will preside.
- Judges are appointed by the Central Government with the approval of the Chief Justice of the High Court in their jurisdiction.

### **OFFENCES TRIABLE BY SPECIAL COURTS (SECTION 436):**

- Offences under Section 435(1) are only triable by the Special Court for the area where the company's registered office is located.
- If an accused person is forwarded to a Magistrate, the Magistrate can authorize detention for up to 15 days (for Judicial Magistrates) or 7 days (for Executive Magistrates).
- If detention is not necessary, the person must be forwarded to the Special Court.
- Special Courts can take cognizance of offences without needing a formal trial commitment.
- A Special Court can try other offences related to the accused during the same trial.
- For offences punishable by up to 3 years imprisonment, Special Courts may conduct a summary trial.
- In summary trials, imprisonment cannot exceed 1 year. If a longer sentence may be required, the trial will proceed as a regular trial after hearing both parties.

### **CASE LAW: In Re S. Satyanarayana Vs. Energo Masch Power Engineering & Consulting (P.) Ltd.**

- Even if accused of offences under both the Companies Act and IPC for the same facts or transaction, only the Special Court has the jurisdiction to try all the offences.
- This helps avoid multiple proceedings for the same matter.

### **CASE LAW: Roofit Industries Ltd. vs. SEBI**

- **Fact:** Three directors of Roofit Industries were found guilty for failing to distribute a promised 5% dividend in 2001. Due to their age and health, the court imposed a fine of ₹5 lakh each instead of a jail sentence.
- The complaint was lodged by SEBI, claiming the directors violated Section 621 of the Companies Act, 1956, by not paying the declared dividend within the 30-day period.
- **Order:** Special Court ordered a ₹5 lakh fine for each of the three directors, without jail sentences, for failing to pay the ₹80 lakh dividend.

**Section 438:** The Code of Criminal Procedure applies to Special Court proceedings, and the court is treated as either a Sessions Court or Magistrate's Court, with the prosecutor acting as a Public Prosecutor.

**Need for Special Courts (14.12.2018 Order):**

- Investigations must be completed within a time frame, but delays can be extended by the authority.
- Corporate cases have a big economic impact and need expertise, making Special Courts essential for timely handling.

**ADJUDICATION OF OFFENCES:**

- ❖ Adjudication is the process of resolving a dispute by a judge or arbitrator.
- ❖ The judge or arbitrator reviews evidence and arguments from both sides.
- ❖ They make a decision that determines the rights and responsibilities of the parties.
- ❖ In some cases, an arbitrator's decision may not be final until confirmed by a higher court or agreed upon by both parties.

**GENESIS OF ADJUDICATION:**

- Section 454 of the Companies Act, 2013, and related rules (2014) set the process for penalty adjudication.
- The Registrar of Companies (ROC) is in charge of deciding penalties in their area.
- Companies and officers must be given a chance to defend themselves before penalties are applied.
- Before the new law, penalties were hard to enforce due to lack of judicial powers.
- The J.J. Irani Committee recommended giving the ROC the power to impose penalties.
- This led to the creation of the rules for penalty adjudication under Section 454.

**APPOINTMENT OF ADJUDICATING OFFICER:**

- ✓ The Central Government can appoint adjudicating officers, at least at the rank of Registrar.
- ✓ These officers identify defaults and begin the penalty adjudication process.

## **ADJUDICATION PROCESS UNDER THE COMPANIES ACT, 2013:**

### **STEP-I: ISSUE OF SHOW CAUSE NOTICE TO COMPANY AND OFFICER IN DEFAULT:**

- The adjudicating officer sends a show cause notice to the company or person, giving 15 to 30 days to explain why a penalty should not be imposed.
- The notice details the violation and possible penalties.
- The reply must be submitted electronically within the given time frame.
- The officer can extend the reply period by 15 days if there is a valid reason.

### **STEP-II: ENQUIRY BY ADJUDICATION OFFICER- NOTICE FOR HEARING:**

- If needed, the adjudicating officer will schedule a hearing within 10 working days.
- The company or person can attend the hearing in person or through a representative.
- If the person wants to speak at the hearing, they can do so if mentioned in their reply.

### **STEP III- DATE OF HEARING:**

- On the hearing date, the adjudicating officer will give the person a chance to be heard.
- After hearing, the officer can pass an order, including granting an adjournment, and must record reasons in writing.
- The officer may also ask the person to submit additional replies on related issues before making a final decision.

### **STEP-IV-ORDER OF ADJUDICATING OFFICER:**

- The adjudicating officer must pass an order:
  - ✓ Within 30 days if no physical appearance was required.
  - ✓ Within 90 days if someone appeared in person.
- If the order is delayed, the officer must record the reason for the delay, but the order remains valid.
- The order must be dated, signed, and include reasons for any physical appearance requirement.
- A copy of the order will be sent to the concerned parties, the Central Government, and uploaded on the website.

## **(CRUX)**

- The adjudicating officer issues a show cause notice to the company/officer in default within 15-30 days (with a 15-day extension).
- The company/officer must reply to the notice.
- If needed, the officer may call for a physical hearing within 10 working days after receiving the reply.
- The adjudicating officer will pass an order within 30 days if no reply is received, or within 90 days if a hearing is held.
- Any person dissatisfied with the order can appeal to the Regional Director (RD) within 60 days of receiving the order.

## **MCA COMPLIANCE MONITORING SYSTEM - MCACMS PORTAL:**

- The MCA Compliance Monitoring System (MCACMS Portal) helps manage compliance and enforce penalties under the Companies Act, 2013.
- The portal allows for issuing show cause notices and submitting replies electronically.

### **Steps to file a reply to a show cause notice (SCN):**

1. Visit the MCA CMS portal.
2. Click on "Reply for Show Cause Notice."
3. Select the section for the SCN.
4. Enter the CMS reference number from the SCN and click "Search."
5. After validation, click "Send OTP."
6. Enter the OTP sent to the email address.
7. Click "Submit Reply" (Note: Once submitted, the reply cannot be changed).
8. A confirmation message will appear, and the "Action" tab will show the reply status.

### **CASE LAWS:**

1. **Haridra Laxmi Property Managements Pvt. Ltd.**
  - **Violation:** Late filing of Form INC 20A (28 days late) for declaring business commencement.
  - **Penalty:** Rs 50,000 for the company, Rs 1,000/day for officers (max Rs 1,00,000).
  - **Company's Argument:** Unintentional delay due to lack of knowledge.
  - **Final Penalty:** Company - Rs 50,000, Officers - Rs 27,000 each, Total: Rs 1,04,000.

## 2. M/s Krazzy Fin Pvt. Ltd.

- **Violation:** Issued shares before completing 1-year vesting period (violated Section 62).
- **Penalty:** Rs 1,00,000 for the company, Rs 25,000 each for three directors.
- **Company's Argument:** Small startup, unintentional error.
- **Final Penalty:** Company - Rs 1,00,000, Directors - Rs 25,000 each.

## 3. M/s Herb Nutra Lab Pvt. Ltd.

- **Violation:** Non-compliance in issuing equity shares through private placement (violation of Section 42).
- **Penalty:** Rs 9,00,000 for the company and Rs 9,00,000 each for the directors.
- **Company's Argument:** Fresh form will be filed.
- **Final Penalty:** Company - Rs 9,00,000, Directors - Rs 9,00,000 each, Total: Rs 36,00,000 (reduced to Rs 50,000 each after appeal).

## 4. M/s Contlo Technologies Pvt. Ltd.

- **Violation:** Delay in filing Form BEN-2 (163 days late).
- **Penalty:** Rs 1,81,500 for the company, Rs 57,600 for each officer.
- **Company's Argument:** Admitted the delay and filed the form belatedly.
- **Final Penalty:** Company - Rs 1,81,500, Officers - Rs 57,600 each.

## 5. M/s Reliance Broadcast Network Limited

- **Violation:** Not maintaining the minimum number of directors (19.10.2018 – 14.12.2018).
- **Penalty:** Company – Rs. 50,000, plus Rs. 500/day for continued failure (max Rs. 3 lakh); Officer – Rs. 1 lakh.
- **Final Penalty:** Company – Rs. 78,000, Officers – Rs. 78,000 each, Total: Rs. 2,34,000.

## 6. Saiyoga Nidhi Limited

- **Violation:** Not filing Form MGT-14 for Board resolution approval of financial statements.
- **Penalty:** Company – Rs. 87,700 for FY 2020-21, Rs. 54,200 for FY 2021-22; Officers – Rs. 1,50,000.
- **Final Penalty:** Company – Rs. 87,700 and Rs. 54,200; Officers – Rs. 1,50,000 each.

## 7. Sdu Holdings Private Limited

- **Violation:** Incomplete register of members (MGT-1).
- **Penalty:** Company – Rs. 3,00,000; Officer – Rs. 50,000.
- **Final Penalty:** Company – Rs. 3,00,000; Officer – Rs. 50,000; Total: Rs. 3,50,000.

### **POWERS OF ADJUDICATING OFFICER:**

The adjudicating officer has the following powers:

1. Summon and enforce the attendance of any person who knows about the case, with written reasons.
2. Order the production of evidence or documents that are relevant to the case.

### **PENALTY IMPOSED BY ADJUDICATING OFFICER:**

The adjudicating officer can:

1. Impose penalties on the company, officers, or others for non-compliance and require them to correct the default.
2. If someone fails to respond or appear, the officer can impose a penalty and explain the reasons in the order.

When deciding the penalty, the officer will consider factors like:

- Company size and business type.
- Impact on the public and investors.
- Nature and frequency of the default.
- Any unfair advantage gained due to the default.

The penalty will not be less than the minimum prescribed by law. Penalties are paid through the Ministry of Corporate Affairs portal, and the money goes to the Consolidated Fund of India.

If the default is corrected within 30 days of the notice, no penalty will be imposed.

The adjudicating officer must give a reasonable opportunity to be heard before imposing any penalty.

## **APPEAL AGAINST THE ORDER OF ADJUDICATING OFFICER {Rule 4 of the Companies (Adjudication of Penalties) Rules, 2014}}:**

- You can appeal an adjudicating officer's order to the Regional Director within 60 days.
- File the appeal in Form ADJ with the order's certified copy and your appeal reasons.
- If using a representative, include their authorization and consent.
- You can only appeal one order at a time, unless the appeals are related.

## **REGISTRATION OF APPEAL {Rule 5 of the Companies (Adjudication of Penalties) Rules, 2014}}:**

- The Regional Director will mark the date on the appeal and register it if it is correct.
- If the appeal has issues, the appellant has 14 days to fix them.
- If not fixed, the Regional Director can reject the appeal and inform the appellant in 7 days.
- The fixing period can be extended by 14 days with a valid reason.

## **DISPOSAL OF APPEAL BY REGIONAL DIRECTOR:**

- The Regional Director will send the appeal to the adjudicating officer and request a reply within 21 days, extendable by 21 days with a valid reason.
- The adjudicating officer must send a copy of their reply to the appellant.
- The Regional Director will set a hearing date at least 30 days after notifying both parties.
- If neither party appears, the case may be decided without them (ex-parte).
- The Regional Director can set aside an ex-parte order if the appellant shows a valid reason for missing the hearing.
- After hearing, the Regional Director will decide the case and send the order to both parties and the Central Government.
- Failure to comply with the order within 90 days may lead to fines or imprisonment.

## **SOME ORDERS OF ADJUDICATING AUTHORITY:**

### **CASE LAW: M/s Kodagu Heritage**

- M/s Kodagu Heritage, incorporated on April 11, 2017, failed to file Form INC-22 to verify its registered office within 30 days, filing it three years late on January 1, 2019.

- The company admitted the violation and attended a hearing, but the notice was not signed by all directors.
- A penalty of INR 1,000 per day was imposed for 621 days, totalling INR 1 lakh.
- The company must pay the INR 1 lakh penalty within 30 days via the MCA portal and submit proof of payment. They can appeal within 60 days to the Regional Director.

### **CASE LAW: Ms Joy Ice Cream (Bangalore) Private Limited**

- The company failed to file Form INC-22 to notify its registered office change within 30 days, as required by law. A letter sent to the company in 2018 was returned undelivered.
- The company and its officers did not attend the hearing, so a penalty of INR 1 lakh was imposed on both the company and its directors.
- They must pay the penalty within 30 days via the MCA portal. If unpaid within 90 days, the company faces additional fines, and officers may face imprisonment or higher fines.

### **CASE LAW: Narangs International Hotels Private Limited**

- **Violation:**
  - ✓ The company failed to comply with Section 173(1) of the Companies Act, 2013, which mandates that a company should hold its first Board meeting within 30 days of incorporation and at least four Board meetings every year, with no more than 120 days between consecutive meetings.
  - ✓ For the financial year 2020-21, the company did not hold the required number of Board meetings. Specifically, the gap between two consecutive meetings was 273 days (from December 13, 2019, to September 11, 2020), which exceeded the maximum limit of 180 days allowed by the MCA's circular dated March 24, 2020, due to COVID-19 restrictions. The correct gap, as per the extension, should have been no more than 180 days.
  - ✓ The delay in holding the meeting was 943 days, calculated from June 10, 2020 (considering the extension) instead of the original date of December 13, 2019.
- **Hearing:**
  - ✓ A notice was issued on March 18, 2021, by the Regional Director, giving the company and its officers an opportunity to be heard. In response, the company's representative appeared on March 25, 2021, and consented to pass necessary orders under the provisions of the Companies Act, 2013.
- **Factors Considered for Penalty:**
  - ✓ The adjudicating officer considered factors such as any unfair advantage or gain made by the company, any loss caused to investors, and whether the default was repetitive.
  - ✓ In this case, there was no evidence on record to quantify any unfair advantage or loss to investors. Additionally, it was difficult to assess the unfair advantage or investor loss in a case like this.

- **Penalty:**
  - ✓ After considering the facts and circumstances, the adjudicating officer imposed a penalty of INR 25,000 on each director of the company for violating Section 173 of the Companies Act, 2013.

### **CASE LAW: Sunshakti Solar Power Projects Private Limited**

- **Violation:** The company issued 37,500 Compulsorily Convertible Debentures (CCDs) worth INR 37.5 crore in the financial year 2017-18, but delayed filing the necessary forms. The **PAS-3** (Return of Allotment) was filed 69 days late, and the **PAS-4** (Letter of Offer) was filed 151 days late.
- **Action:** The company admitted the delays and explained that the delay in filing PAS-4 was unintentional. They requested relief for the delay under Rule 13 of the Companies (Share Capital and Debentures) Rules, 2014.
- **Penalty:** Since the default was related to delayed filings under Section 39(4) and Rule 12(1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, a penalty was imposed on the company and its officers for non-compliance.

### **PENALTIES AND ADJUDICATION UNDER SEBI ACT, 1992:**

- SEBI can impose penalties for violations under the SEBI Act, 1992.
- SEBI checks if an offense happened and then decides the penalty.
- The goal is to apply a penalty based on the seriousness of the offense.
- Sometimes, SEBI imposes penalties in a fixed, automatic way.
- The Securities Appellate Tribunal hears appeals against SEBI's decisions.
- The Tribunal has powers as per the SEBI Act or other laws.

### **The Enforcement Department handles various legal matters for SEBI, including:**

- **SAT Litigation Division:** Deals with appeals against SEBI orders at the Securities Appellate Tribunal (SAT). It works with senior advocates and law firms to represent SEBI's interests and assist with filing necessary documents.
- **Prosecution Division:** Manages criminal cases filed by SEBI in courts and works to secure convictions. It coordinates with public prosecutors and other agencies.
- **Settlement Division:** Handles applications for settling disputes through SEBI's Settlement Regulations. It calculates settlement amounts, organizes meetings, and works with committees to finalize settlement terms and seek approval from SEBI members.

## **OTHER JURISDICTIONS OF SAT:**

- **PFRDA:** SAT hears appeals against orders by the Pension Fund Regulatory and Development Authority (PFRDA) under the PFRDA Act, 2013.
- **IRDAI:** SAT hears appeals against orders by the Insurance Regulatory and Development Authority of India (IRDAI) under various insurance laws.

### **CASE LAW: Raghukul Shares India Private Limited**

- **Violation:** SEBI found large-scale reversal of trades in stock options, leading to artificial volume at BSE between April 1, 2014, and September 30, 2015. The company violated SEBI's Prohibition of Fraudulent and Unfair Trade Practices Regulations, 2003.
- **Arguments by the Company:** No reply was received from the company in response to the show-cause notice (SCN).
- **Response by the Adjudicating Officer (AO):** The company was listed as "Strike Off" on the MCA website, indicating it no longer exists. Since the company had been struck off, it could not be adjudicated upon as it was non-existent.
- **Final Penalty:** The case against Raghukul Shares India Pvt. Ltd. was disposed of as the company no longer existed.

### **QUESTION 1. Can the adjudicating officer impose penalties for non-compliance under the Companies Act, 2013?**

Yes, the adjudicating officer can impose penalties for non-compliance or default under the Companies Act, 2013. However, if the default is corrected within 30 days of receiving the notice, no penalty will be imposed.

### **QUESTION 2. Who can be penalized by the adjudicating officer?**

Penalties can be imposed on the company, its officers in default, and any other person.

### **QUESTION 3. Can Arun stop the company from making risky investments?**

Yes, Arun can succeed in his attempt. If directors make illegal or ultra vires (beyond the company's power) actions, an individual shareholder can bring an action to restrain the company. This was confirmed in the case of *Bharat Insurance Ltd. vs. Kanhya Lal*, where the court allowed a shareholder to seek an injunction when directors acted outside their authority in applying company funds.

## **POWER OF SEBI TO ISSUE DIRECTIONS AND LEVY PENALTY (SECTION 11B):**

### **SEBI has the authority to issue directions if it believes that action is necessary for:**

1. Protecting investors or ensuring orderly development of the securities market.
2. Preventing the activities of any intermediary or individual from harming investors or the securities market.
3. Ensuring proper management of any intermediary or individual.

### **SEBI can direct any person or company involved in the securities market to:**

- Disgorge any wrongful profit or loss avoided due to violations.
- Address issues related to capital issuance, securities transfer, or related matters to protect investors and maintain market integrity.

## **PENALTY FOR NON-COMPLIANCE (SECTION 15A OF SEBI ACT, 1992):**

If a person:

1. Fails to provide required documents or gives false information, they can be fined ₹1 lakh, increasing by ₹1 lakh per day, up to ₹1 crore.
2. Misses deadlines for filing documents or provides incorrect information, the same penalty applies.
3. Does not maintain required records, with the same penalty.

In essence, penalties are imposed for failing to submit or maintain documents, with fines growing daily, capped at ₹1 crore.

## **PENALTY FOR FAILURE TO ENTER INTO AGREEMENT WITH CLIENTS (SECTION 15B OF SEBI ACT, 1992):**

If a registered intermediary fails to enter into an agreement with their client, they can be fined:

- Minimum penalty: ₹1 lakh.
- Penalty increases by ₹1 lakh for each day the failure continues.
- Maximum penalty: ₹1 crore.

In short, intermediaries must have agreements with clients, and penalties grow daily for non-compliance, capped at ₹1 crore.

## **PENALTY FOR FAILURE TO REDRESS INVESTORS' GRIEVANCES (SECTION 15C OF SEBI ACT, 1992):**

If a listed company or registered intermediary fails to address investor grievances within the time specified by SEBI:

- Minimum penalty: ₹1 lakh.
- Penalty increases by ₹1 lakh for each day the failure continues.
- Maximum penalty: ₹1 crore.

In short, failure to resolve investor issues on time leads to daily penalties, capped at ₹1 crore.

## **PENALTY FOR DEFAULTS IN MUTUAL FUNDS (SECTION 15D OF SEBI ACT, 1992):**

A penalty of ₹1 lakh minimum, up to ₹1 crore (with ₹1 lakh per day of delay) applies to the following defaults:

1. **No Registration:** Operating without SEBI registration for collective investment schemes, including mutual funds.
2. **Non-Compliance with Registration Terms:** Failing to comply with conditions of SEBI registration.
3. **Failure to Apply for Listing:** Not applying for listing of schemes as required.
4. **Failure to Dispatch Unit Certificates:** Not sending unit certificates within the specified time.
5. **Failure to Refund Application Money:** Not refunding application money within the specified time.
6. **Failure to Invest Funds:** Not investing the collected funds as per regulations.

In all these cases, penalties accumulate daily until the default is corrected, with a maximum penalty of ₹1 crore.

## **PENALTIES FOR DEFAULTS UNDER SEBI ACT, 1992:**

### **1. Asset Management Companies (Section 15E):**

If an asset management company (AMC) of a mutual fund fails to comply with regulations, it faces a penalty of ₹1 lakh minimum, up to ₹1 crore (₹1 lakh per day of default).

### **2. Alternative Investment Funds, Infrastructure Investment Trusts, and Real Estate Investment Trusts (Section 15EA):**

Failure to comply with SEBI regulations or directions results in a penalty of ₹1 lakh minimum, up to ₹1 crore (₹1 lakh per day of default), or three times the amount of gains made from the default, whichever is higher.

### **3. Investment Advisers and Research Analysts (Section 15EAB):**

Investment advisers or research analysts failing to comply with SEBI regulations or directions face a penalty of ₹1 lakh minimum, up to ₹1 crore (₹1 lakh per day of default).

## **PENALTY FOR DEFAULT BY STOCK BROKERS (SECTION 15F OF THE SEBI ACT, 1992):**

**1. Failure to Issue Contract Notes:**

If a stock broker fails to issue contract notes as required by the stock exchange, the penalty is ₹1 lakh minimum, up to ₹1 crore for each contract note.

**2. Failure to Deliver Securities or Make Payment:**

If a stock broker fails to deliver securities or make payments on time, the penalty is ₹1 lakh minimum, up to ₹1 crore (₹1 lakh per day of default).

**3. Excessive Brokerage Charges:**

If a stock broker charges more than the specified brokerage, the penalty is ₹1 lakh minimum, up to five times the excess brokerage charged, whichever is higher.

## **PENALTY FOR INSIDER TRADING (SECTION 15G OF THE SEBI ACT, 1992):**

An insider who:

- Deals in securities, communicates unpublished price-sensitive information, or counsels/procures others to trade based on such information,
- Shall be liable to a penalty of at least ₹10 lakh, up to ₹25 crore or three times the profits made from insider trading, whichever is higher.

## **PENALTY FOR NON-DISCLOSURE OF ACQUISITION AND TAKEOVERS (SECTION 15H OF THE SEBI ACT, 1992):**

If a person fails to:

- Disclose shareholding before acquiring shares,
- Make a public announcement to acquire shares at a minimum price,
- Send a letter of offer to shareholders,
- Make payment for shares sold under the offer,

They may face a penalty ranging from ₹10 lakh to ₹25 crore, or three times the profits made from the failure, whichever is higher.

## **PENALTY FOR FRAUDULENT AND UNFAIR TRADE PRACTICES (SECTION 15HA OF THE SEBI ACT, 1992):**

If a person engages in fraudulent or unfair trade practices related to securities, they may face a penalty of:

- ✓ A minimum of ₹5 lakh,
- ✓ Up to ₹25 crore, or
- ✓ Three times the profits made from such practices, whichever is higher.

## **PENALTY FOR ALTERATION OR DESTRUCTION OF RECORDS & FAILURE TO PROTECT ELECTRONIC DATABASE (SECTION 15HAA OF SEBI ACT, 1992):**

If a person:

- Alters, destroys, or falsifies records or documents (including electronic) to obstruct SEBI investigations or proceedings.
- Unauthorisedly accesses, modifies, or downloads data from SEBI's database.
- Introduces a computer virus or disrupts the system database.
- Damages or destroys the regulatory data in the system.

They will face a penalty of:

- ✓ A minimum of ₹1 lakh,
- ✓ Up to ₹10 crore, or
- ✓ Three times the profits made from the act, whichever is higher.

## **PENALTY FOR CONTRAVENTION WITHOUT SPECIFIC PENALTY (SECTION 15HB OF SEBI ACT, 1992):**

If a person fails to comply with any provision, rule, regulation, or direction under the SEBI Act, and no specific penalty is mentioned, they will be liable for:

- A penalty of at least ₹1 lakh,
- Up to ₹1 crore.

## **POWER TO ADJUDICATE (SECTION 15 I):**

- The Board can appoint an adjudicating officer to investigate violations and impose penalties.
- The officer has the power to summon witnesses and request documents relevant to the inquiry.
- If a violation is found, the officer can impose a penalty.
- The Board can review the officer's decision and may increase the penalty if necessary.

- The person concerned must be given a chance to be heard before the penalty is increased.
- The review by the Board must occur within three months of the officer's decision or the appeal's conclusion.

## **HOLDING OF INQUIRY (RULE 4 SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995:**

- ❖ The Board or officer sends a notice to the person, asking why an inquiry should not be held, giving at least 14 days to respond.
- ❖ The notice explains the alleged offense.
- ❖ If an inquiry proceeds, the person is given a date to appear, either personally or through a representative.
- ❖ At the hearing, the offense and relevant laws are explained, and the person can present evidence.
- ❖ The hearing can be postponed if needed, and the Evidence Act does not apply strictly.
- ❖ The person can waive the notice and hearing if they choose.
- ❖ The Board may appoint a presenting officer.
- ❖ The Board or officer can summon people or documents related to the case.
- ❖ If someone fails to appear, the inquiry can continue without them, with reasons recorded.

## **ORDER OF THE BOARD OR THE ADJUDICATING OFFICER (RULE 5):**

If the Board or adjudicating officer is convinced by the evidence that a penalty is warranted under the relevant section, they can issue a written order to impose the appropriate penalty.

## **FACTORS TO BE TAKEN INTO ACCOUNT WHILE ADJUDGING QUANTUM OF PENALTY (SECTION 15 J):**

When deciding the penalty amount, the Board or adjudicating officer considers:

- The unfair gain or advantage made from the default, if measurable.
- The loss caused to investors due to the default.
- Whether the default is repetitive.

Additionally, penalties under specific sections (15A to 15E, parts of 15F, 15G, 15H, and 15HA) are always judged based on these factors.

## **CREDITING SUMS REALISED BY WAY OF PENALTIES TO CONSOLIDATED FUND OF INDIA (SECTION 15 JA):**

Any penalties collected under this Act are to be deposited into the Consolidated Fund of India.

## **SETTLEMENT OF ADMINISTRATIVE AND CIVIL PROCEEDINGS. (SECTION 15 JB):**

- A person facing proceedings under certain sections can apply to the Board for settlement.
- The Board may agree to the settlement based on the nature and impact of the default, with terms like payment by the defaulter.
- Settlement proceedings follow the procedures outlined in the regulations.
- No appeal can be made against the Board's decision.
- Settlement amounts, excluding disgorgement and legal costs, are credited to the Consolidated Fund of India.

## **UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, IN THE MATTER OF TRADING IN ILLIQUID STOCK OPTIONS AT BSE:**

- SEBI started adjudication proceedings against Sita Devi Bagaria for alleged violations related to fraudulent trading in stock options at BSE between April 1, 2014, and September 30, 2015.
- SEBI found that she had engaged in reversal trades, creating artificial volumes and misleading the market.
- A notice was issued to her in August 2022, asking why an inquiry should not be held.
- In December 2022, it was revealed that Sita Devi Bagaria had passed away in May 2021.
- Since she could no longer respond or face the charges, the proceedings were terminated, and the notice was disposed of.

## **CASE STUDY: Ignorance of law is not an excuse for escaping from liability of violation of law-**

- Mega Resources Limited appealed an order from SEBI's Adjudicating Officer, which imposed a penalty of Rs. 2,00,000 for non-compliance with disclosure regulations and Rs. 50,00,000 for failure to make an open offer after acquiring shares in 2001.
- The appellant admitted to the violations but claimed ignorance of the regulations, arguing that the penalty should be based on the old law, which had a maximum penalty of Rs. 5 lakh.
- The court ruled that ignorance of the law is not an excuse for violating it.
- It noted that the disclosure obligation continued after the 2002 amendment, which increased the maximum penalty to Rs. 25 crore.

- Since the violation continued after the amendment, the penalty of Rs. 50 lakh was upheld as reasonable.
- The appeal was dismissed.

## **PENALTIES UNDER SECURITIES CONTRACTS(REGULATION) ACT, 1956:**

The Securities Contracts (Regulation) Act, 1956 aims to regulate stock exchanges and transactions in securities to prevent undesirable speculation. It also oversees the buying and selling of securities outside of stock exchanges through licensing of security dealers.

### **Penalties under Section 23:**

**Persons found guilty of the following offenses can face penalties, including imprisonment and fines:**

1. Failure to comply with requisitions (e.g., failing to meet requests under section 6).
2. Contravention of contract regulations (e.g., violating sections 13, 16, 17, 17A, 19, or 18A).
3. Operating places for contracts outside recognized stock exchanges or allowing such places to be used for unlawful contracts.
4. Misrepresentation or inducement to engage in contracts through unauthorized agents or dealers.
5. Canvassing or advertising for illegal contracts.
6. Gathering people for illegal contract activities outside recognized exchanges.

**Offenders can face:**

- Imprisonment up to 10 years.
- Fines up to 25 crore rupees.
- Or both.

Violations of other sections (e.g., 21, 21A, 22) or failure to comply with orders from authorities can also result in similar penalties.

## **CHART SUMMARIZING THE PENALTIES:**

Section	Violation	Penalty
Section 23A	Failure to furnish required information, documents, returns, or reports, or failure to maintain books of account or records	Minimum: 1 lakh rupees, Up to 1 lakh/day, Max: 1 crore rupees

Section 23B	Failure to enter into an agreement with clients	Minimum: 1 lakh rupees, Up to 1 lakh/day, Max: 1 crore rupees
Section 23C	Failure to redress investor grievances within the specified time	Minimum: 1 lakh rupees, Up to 1 lakh/day, Max: 1 crore rupees
Section 23D	Failure to segregate client's securities/moneys or misuse of them	Minimum: 1 lakh rupees, Up to 1 crore rupees
Section 23E	Failure to comply with listing or delisting conditions	Minimum: 5 lakh rupees, Up to 25 crore rupees
Section 23F	Excess dematerialization or delivery of unlisted securities	Minimum: 5 lakh rupees, Up to 25 crore rupees
Section 23G	Failure to furnish periodical returns or comply with SEBI directions	Minimum: 5 lakh rupees, Up to 25 crore rupees
Section 23GA	Failure to conduct business in accordance with rules/regulations of SEBI	Minimum: 5 crore rupees, Up to 25 crore rupees or 3x gains
Section 23H	Failure to comply with any provision of the Act, rules, or exchange regs	Minimum: 1 lakh rupees, Up to 1 crore rupees

## POWER TO ADJUDICATE (SECTION 23I):

- **Who can adjudicate:** The Securities and Exchange Board of India (SEBI) can appoint an officer (at least the rank of Division Chief) as an adjudicating officer to investigate violations under Sections 23A to 23H.
- **Process:**
  - The adjudicating officer holds an inquiry and gives the person involved a chance to be heard.
  - The officer can summon witnesses, ask for documents, and gather relevant evidence.
- **Penalties:**
  - If the officer finds that a person has violated any of the provisions, they can impose a penalty based on the relevant section.
- **Review of Decision:**
  - SEBI can review the decision of the adjudicating officer if it believes the order is incorrect or not in the best interest of the securities market.
  - SEBI can increase the penalty after conducting its own inquiry.

- However, this review must happen within three months from the adjudicating officer's order or the disposal of an appeal, whichever comes first.
- The person involved must be given an opportunity to be heard before any enhanced penalty is imposed.

## **FACTORS FOR DETERMINING PENALTY (SECTION 23J):**

When deciding the penalty, SEBI or the adjudicating officer will consider:

1. **Gain or Advantage:** The amount of unfair gain made due to the default.
2. **Loss to Investors:** The amount of loss caused to investors because of the default.
3. **Repetitiveness:** Whether the default is repeated.

## **SETTLEMENT OF ADMINISTRATIVE AND CIVIL PROCEEDINGS (SECTION 23JA):**

- ✓ A person facing proceedings under Sections 12A or 23-I can apply to SEBI to settle the case by paying a sum or agreeing to other terms set by SEBI.
- ✓ SEBI will consider the nature and impact of the default before agreeing to the settlement.
- ✓ The settlement process follows the procedure specified by SEBI under the Securities and Exchange Board of India Act, 1992.
- ✓ No appeal can be made against the order passed by SEBI or the adjudicating officer in this process.
- ✓ Settlement amounts (excluding disgorgement and legal costs) are credited to the Consolidated Fund of India.

## **RECOVERY OF AMOUNTS (SECTION 23JB):**

- If a person fails to pay the penalty, disgorgement order, or fees due to SEBI, a **Recovery Officer** can take action to recover the amount due using various methods, such as:
  - ✓ Attaching and selling the person's movable property.
  - ✓ Attaching bank accounts.
  - ✓ Attaching and selling immovable property.
  - ✓ Arresting and detaining the person in prison.
  - ✓ Appointing a receiver to manage the person's property.

- The Recovery Officer can also seek help from local authorities to enforce recovery.
- Any property transferred to the person's spouse, minor child, or others for no proper consideration will still be included in the recovery process.
- **Recovery priority:** Recovery by the Recovery Officer takes priority over any other claims against the person.
- The term "Recovery Officer" refers to any officer authorized by SEBI to carry out recovery actions.

## CONTINUANCE OF PROCEEDINGS (SECTION 23JC):

- ❖ If a person dies, their legal representative must pay any dues or penalties the deceased would have owed, but only if the penalty was imposed before death.
- ❖ The legal representative is responsible for:
  - Continuing any proceedings for recovery or disgorgement.
  - Starting new proceedings that could have been started if the deceased were alive.
- ❖ The legal representative cannot sell or transfer assets from the deceased's estate while the liability is unpaid, and they are only liable for the value of the assets involved.
- ❖ The liability is limited to what the deceased's estate can pay.
- ❖ A **legal representative** includes anyone handling the deceased's estate or assets.

## CREDITING PENALTY SUMS TO CONSOLIDATED FUND OF INDIA (SECTION 23K):

Any penalties collected under this Act are deposited into the Consolidated Fund of India.

## APPEAL TO SECURITIES APPELLATE TRIBUNAL [SECTION 23L]:

- ❖ A person dissatisfied with an order from a stock exchange, adjudicating officer, or SEBI can appeal to the Securities Appellate Tribunal (SAT).
- ❖ The appeal must be filed within 45 days from receiving the order, in the prescribed form and fee.
  - SAT may accept an appeal after 45 days if there is a valid reason for the delay.
- ❖ SAT will hear both parties and may confirm, modify, or cancel the order.
- ❖ SAT will send a copy of the order to the parties and the adjudicating officer.
- ❖ Appeals will be handled as quickly as possible, with the goal of a final decision within 6 months.

## OFFENCES (SECTION 23M):

- If a person violates or attempts to violate the provisions of this Act, its rules, regulations, or by-laws (and no specific punishment is mentioned elsewhere), or fails to pay a penalty or comply with an order from the adjudicating officer or SEBI, they can face:
  - ✓ Imprisonment from **1 month to 10 years**.
  - ✓ A fine up to **₹25 crore**.
  - ✓ Or both imprisonment and fine.

## COMPOSITION OF CERTAIN OFFENCES (SECTION 23N):

- Offences punishable with a fine (but not imprisonment alone or both imprisonment and fine) can be settled before or after legal proceedings begin.
- The Securities Appellate Tribunal or the court handling the case can approve this settlement.

## POWER TO GRANT IMMUNITY (SECTION 23-O):

- The Central Government, on SEBI's recommendation, can grant immunity from prosecution or penalty to a person who fully discloses an alleged violation of the Act, its rules, or regulations.
- Immunity is not granted if prosecution has already started before the immunity application.
- The government can withdraw immunity if the person violates conditions or provides false information. In such cases, the person may be tried and penalized as if immunity was never granted.

## CONTRAVENTION BY COMPANIES (SECTION 24):

- If a company violates the Act, the person responsible for managing the company at the time, as well as the company itself, is liable for the violation.
- The individual can avoid punishment if they prove they didn't know about the violation or took steps to prevent it.
- If the violation occurred due to the consent, negligence, or involvement of a director, manager, secretary, or officer, they too can be held guilty and punished.
- "Company" includes bodies corporate, firms, and associations of individuals.
- "Director" includes partners in a firm and members controlling an association or body.

## **THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.:**

The Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005, set the process for conducting inquiries and imposing penalties under the Securities Contracts (Regulation) Act, 1956.

Rule 3 allows SEBI to appoint a Division Chief or higher officer to conduct an inquiry if there are grounds for adjudging violations under sections 23A to 23H of the Act.

### **Holding of Inquiry (Rule 4):**

1. **Show Cause Notice:** The Board or adjudicating officer issues a notice asking the person to explain why an inquiry should not be held (at least 14 days to respond).
2. **Content of Notice:** The notice must specify the alleged offense.
3. **Date of Appearance:** If the inquiry proceeds, a date is set for the person's appearance, either in person or through a representative.
4. **Personal Hearing:** On the fixed date, the alleged offense is explained to the person, and relevant laws are outlined.
5. **Opportunity to Present Evidence:** The person is allowed to provide documents or evidence, with hearings possibly being adjourned. Evidence does not have to follow the Evidence Act, 1872.
6. **Enforcement of Attendance:** The Board or officer can summon individuals to give evidence or present documents.
7. **Failure to Appear:** If the person fails to attend, the inquiry can proceed without them, with reasons recorded.

### **Order of the Board or Adjudicating Officer (Rule 5):**

1. **Imposition of Penalty:** If the evidence shows the person is liable for a penalty, the Board or adjudicating officer may impose a penalty as per the relevant sections of the law.
2. **Quantum of Penalty:** When deciding the penalty amount, the Board or officer considers:
  - ✓ The gain or unfair advantage from the violation.
  - ✓ The loss caused to investors.
  - ✓ Whether the violation is repeated.
3. **Content of Order:** The order must state the law violated and provide brief reasons for the decision.
4. **Date & Sign:** The order must be dated and signed by the Board or officer.
5. **Rectification of Error:** Any apparent errors in the order (e.g., typographical mistakes) can be corrected within 15 days, either on the Board's or officer's own motion or if pointed out by the affected person.

### **Copy of the Order (Rule 6):**

The Board or adjudicating officer must send a copy of every order to the person involved and to the Securities and Exchange Board of India (SEBI).

### **Service of Notices and Orders (Rule 7):**

#### **1. Notices/orders can be served in these ways:**

- ✓ Delivered personally or to an authorized agent.
- ✓ Sent by fax, email, instant messaging, courier, speed post, or registered post to the person's last known address.

#### **2. If service fails by the above methods:**

- ✓ The notice can be affixed at the person's last known residence or business address, with a report prepared in the presence of 2 witnesses.

#### **3. If affixing the notice also fails:**

- ✓ The notice may be published in two newspapers: one in English with nationwide circulation and the other in the local language where the person was last known to reside or work.

## **CONTRAVENTION AND PENALTIES, ADJUDICATION AND APPEAL UNDER FOREIGN EXCHANGE MANAGEMENT ACT (FEMA), 1999:**

The Foreign Exchange Management Act (FEMA), 1999 outlines penalties and procedures for violations.

### **Penalties (Section 13):**

#### **1. Contravention Penalties: If someone violates FEMA or its rules, they may face penalties:**

- Up to 3 times the amount involved if the sum can be measured.
- Up to 2 lakh rupees if the amount is not measurable.
- Additional penalty of up to 5,000 rupees per day if the violation continues.

#### **2. Violation involving foreign exchange, securities, or property:**

- If someone acquires foreign assets exceeding certain thresholds, they can be penalized:
  - Up to 3 times the value of the violation.
  - Confiscation of equivalent assets in India.

### 3. Prosecution:

- The Adjudicating Authority can recommend prosecution if they think it's necessary.
- The Director of Enforcement may direct criminal charges, and prosecution can lead to imprisonment (up to 5 years) and fines.

### 4. Court Proceedings:

- Prosecution for certain violations can only be initiated by an officer not below the rank of Assistant Director.

### 5. Confiscation:

- In addition to penalties, the adjudicating authority may order the confiscation of the property involved in the violation. This can include:
  - Foreign exchange or assets converted into other forms like bank deposits or Indian currency.

## **ENFORCEMENT OF THE ORDERS OF ADJUDICATING AUTHORITY (SECTION 14):**

1. If a person does not pay the penalty within 90 days of the notice, they may face civil imprisonment.
2. Before arresting someone, the Adjudicating Authority must issue a notice requiring the defaulter to appear and explain why they should not be imprisoned. Arrest can only happen if the person has hidden or transferred property to avoid payment, or if they have the means to pay but refuse or neglect to do so.
3. If the person is likely to abscond or delay payment, the Adjudicating Authority can issue an arrest warrant. If the defaulter does not appear as required, the Authority can also issue an arrest warrant.
4. Arrest warrants can be executed anywhere in India, by any Adjudicating Authority.
5. The arrested person must be brought before the issuing authority within 24 hours. If the defaulter pays the required amount and arrest costs, they will be released immediately.
6. While the case is pending, the person may be detained or allowed to go if they provide security to ensure their future appearance.
7. After inquiry, the person may be detained in civil prison:
  - ✓ For up to 3 years if the amount is over 1 crore rupees.
  - ✓ For up to 6 months for smaller amounts.
8. A person will be released from detention if the penalty is paid. Release doesn't remove the person's liability for the amount due, and they won't be re-arrested unless new legal actions are taken.

## **Power of recover arrears of penalty (Section 14A):**

- If a person does not pay the penalty within 90 days, the Adjudicating Authority can authorize an officer to recover the penalty.
- The officer will have the same powers as income tax authorities for tax recovery.
- The recovery process will follow the same rules as the Income Tax Act, 1961.

## **APPOINTMENT OF ADJUDICATING AUTHORITY (SECTION 16):**

- The Central Government can appoint officers as Adjudicating Authorities to handle cases of contravention.
- The person accused must be given a chance to defend themselves before a penalty is imposed.
- If the person may try to avoid the penalty, the authority can ask for a bond or guarantee.
- The government will define each authority's jurisdiction.
- The authority can only act on a written complaint from an authorized officer.
- The accused can appear in person or with a legal representative.
- The authority has civil court powers and follows legal procedures.
- Cases should be resolved within one year, and if delayed, reasons must be recorded.

## **APPEAL TO SPECIAL DIRECTOR (APPEALS) (SECTION 17):**

- The Central Government appoints Special Directors to handle appeals against Adjudicating Authorities' orders.
- Anyone dissatisfied with an Assistant or Deputy Director's order can appeal within 45 days.
- Late appeals can be accepted if there is a valid reason.
- The Special Director can confirm, change, or cancel the order after hearing both sides.
- The Special Director has civil court powers, and their proceedings are treated as judicial.

## **APPELLATE TRIBUNAL (SECTION 18):**

- ❖ The Appellate Tribunal under the Smugglers and Foreign Exchange Manipulators Act will also handle appeals under FEMA starting from the Finance Act, 2017.
- ❖ It will have the powers granted by FEMA.

## **APPEAL TO APPELLATE TRIBUNAL (SECTION 19):**

- Anyone unhappy with an order by an Adjudicating Authority or Special Director (Appeals) can appeal to the Appellate Tribunal.
- If appealing against a penalty, the person must deposit the penalty amount with the designated authority unless the Appellate Tribunal believes that paying it would cause undue hardship. In that case, the Tribunal can waive the deposit with conditions.
- Appeals must be filed within 45 days of receiving the order, with the required form, verification, and fee. The Tribunal can accept late appeals if there is a valid reason.
- After hearing both sides, the Appellate Tribunal can confirm, modify, or cancel the original order.
- The Tribunal will send a copy of the order to both parties and the concerned authority.
- Appeals should be resolved within 180 days. If not, the Tribunal must explain the delay.
- The Tribunal can review any order made by the Adjudicating Authority and take necessary actions.

## **PROCEDURE AND POWERS OF APPELLATE TRIBUNAL AND SPECIAL DIRECTOR (APPEALS) (SECTION 28):**

The Appellate Tribunal and Special Director (Appeals) have the following powers:

1. Procedure: They are not bound by the Code of Civil Procedure, 1908, but must follow the principles of natural justice. They can regulate their own procedure, except as otherwise specified by the Act.
2. Powers: They can:
  - Summoning and questioning witnesses under oath.
  - Requiring the discovery and production of documents.
  - Receiving evidence through affidavits.
  - Accessing public records or documents, subject to certain conditions.
  - Issuing commissions for witness or document examination.
  - Reviewing their decisions.
  - Dismissing cases for default or deciding them without parties (ex parte).
  - Setting aside decisions made in default or ex parte.
  - Any other powers prescribed by the government.
3. Execution: Their orders are like court judgments and can be enforced by civil courts.
4. Judicial Authority: Their proceedings are treated as legal matters, and they have powers similar to a civil court in some criminal cases.

## **CIVIL COURT NOT TO HAVE JURISDICTION (SECTION 34):**

Under Section 34, civil courts cannot handle any matters that the Adjudicating Authority, Appellate Tribunal, or Special Director (Appeals) are authorized to decide under this Act. Also, no court or authority can issue an injunction (order to stop action) regarding any action taken under this Act.

In simple terms, only the designated authorities under this Act can deal with these matters, and courts cannot interfere with their actions.

## **APPEAL TO HIGH COURT (SECTION 35):**

Under Section 35:

- A person can appeal to the High Court within 60 days of receiving the Appellate Tribunal's decision on any legal question.
- If the person could not file the appeal in time due to a valid reason, the High Court can extend the deadline by up to 60 more days.

Explanation:

- "High Court" means the court where the aggrieved person lives or does business.
- If the government is the aggrieved party, the High Court is based on where the respondent lives or does business.

## **FOREIGN EXCHANGE MANAGEMENT (ADJUDICATION PROCEEDINGS AND APPEAL) RULES, 2000:**

The Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000 were created to:

- Set rules for penalty inquiries.
- Guide the appeal process under the Foreign Exchange Management Act, 1999.

## **APPOINTMENT OF ADJUDICATING AUTHORITY (RULE 3):**

- ✓ The Central Government can appoint officers to act as Adjudicating Authorities to conduct inquiries under the Act.
- ✓ In short, the government selects who will handle the inquiries.

## **HOLDING OF INQUIRY (RULE 4):**

1. **Show Cause Notice:** The Adjudicating Authority must issue a notice to the person suspected of violating the law, asking why an inquiry should not be held. The person has at least 10 days to respond.
2. **Content of Notice:** The notice will specify what violation is alleged.
3. **Date of Appearance:** If the Adjudicating Authority decides to proceed, it will set a date for the person (or their representative) to appear.
4. **Personal Hearing:** The Authority will explain the violation to the person and their representative, showing which laws or rules were allegedly violated.
5. **Opportunity to Provide Evidence:** The person can present relevant evidence, and the hearing may be postponed if necessary. The Authority does not have to follow the Indian Evidence Act.
6. **Power to Summon:** The Authority can summon people with relevant information or documents to assist in the inquiry.
7. **Failure to Appear:** If the person does not appear, the Authority can proceed with the inquiry and record reasons for doing so.
8. **Decision and Penalty:** If the Authority finds a violation, it can impose a penalty as per the law.
9. **Order Details:** The order must explain which law was violated and why the penalty was imposed.
10. **Signed and Dated Order:** The order must be signed and dated by the Adjudicating Authority.
11. **Providing a Copy:** A free copy of the order will be given to the person, and additional copies can be obtained for a fee.
12. **Copying Fee:** Copies of documents cost Rs. 2 per page, payable in cash or by demand draft.

## **APPEAL TO SPECIAL DIRECTOR (APPEALS) (RULE 5):**

### **1. Appeal Format:**

- The appeal must be in Form I, signed, and filed in triplicate with 3 copies of the order.
- Pay a Rs. 5,000 fees (cash or demand draft).

### **2. Grounds of Appeal:**

- Clearly list the reasons for the appeal and include your address and the date you received the order.

### **3. Late Appeal:**

- If filed after 45 days, include a petition explaining the delay with supporting documents.

### **4. Service of Notice:**

- Notices are sent to the address provided in the appeal.

## **Procedure before Special Director (Appeals) (Rule 6):**

1. The Special Director sends the appeal and order to the Director of Enforcement.
2. Notices are sent to both parties for a hearing.
3. Both parties present their case on the hearing date.
4. If either party fails to appear, the Special Director can decide the case within 180 days.

## **CONTENTS OF THE ORDER IN APPEAL (RULE 7):**

- ✓ The order will be written and briefly explain the reasons.
- ✓ The Special Director will sign the order.

## **REPRESENTATION OF PARTY (RULE 8):**

The applicant can appoint a lawyer or chartered accountant to represent them in the appeal.

## **SERVICE OF NOTICES, REQUISITIONS OR ORDERS (RULE 9):**

Notices can be served by:

1. Direct delivery to the person or their representative.
2. Registered post to their address.
3. Affixing it on their door or a visible spot with witnesses.
4. Publishing in a newspaper if other methods fail.

## APPEAL TO THE APPELLATE TRIBUNAL (RULE 10):

### 1. Form of Appeal:

- The appeal must be in **Form II**, signed by the applicant, and filed in **triplicate** with 3 copies of the order.
- The appeal must include a **Rs. 10,000** fee (cash or demand draft).
- The applicant must **pay the penalty** imposed by the Adjudicating Authority or Special Director (Appeals) unless the Appellate Tribunal decides it is too harsh, in which case it can waive the deposit with conditions.

### 2. Grounds of Appeal:

- The appeal should clearly state the **grounds** of objection (without arguments) and include the **address for service**.
- It should also mention if the penalty and fee have been paid.

### 3. Late Appeal: If the appeal is filed after **45 days**, it must include a **petition** explaining the delay and supporting documents.

### 4. Service of Notice: Any notice will be served as per **Rule 14** at the address provided in the appeal.

## PROCEDURE BEFORE APPELLATE TRIBUNAL (RULE 11):

1. The Appellate Tribunal sends the appeal and order to the Director of Enforcement.
2. It sets a hearing date and notifies both parties.
3. Both parties present their case at the hearing.
4. If anyone fails to appear, the Appellate Tribunal can decide the case.

## CONTENTS OF THE ORDER IN APPEAL (RULE 12):

- ❖ The order will explain the decision briefly.
- ❖ It will be signed by the Chairman or Member.

## REPRESENTATION OF PARTY (RULE 13):

An applicant can appoint a lawyer or chartered accountant to represent them in the appeal.

## SERVICE OF NOTICES, REQUISITIONS OR ORDERS (RULE 14):

Notices can be served by:

- a. Direct delivery to the person or their representative.
- b. Registered post to the person's residence or business address.
- c. Affixing it on the door or a visible area of the person's premises, witnessed by two people.
- d. Publishing it in a widely circulated newspaper if other methods fail.

## PENALTY FOR REPEATED DEFAULT (SECTION 454A):

If a person or company repeats the same default within **3 years**, the penalty will be **double** the original amount.

In short, repeat offenders within 3 years face a penalty twice as much.

## DIFFERENCES BETWEEN SECTION 441 AND SECTION 454 UNDER THE COMPANIES ACT, 2013:

Aspect	Section 441 (Compounding)	Section 454 (Adjudication)
Monetary Limits	Up to Rs. 25 Lakhs by Regional Director or authorized officer; above Rs. 25 Lakhs by NCLT	No monetary limit for adjudicating officers
Basis of Order	Based on <b>mutual agreement</b> between both parties, with the compounding authority having the final say	More <b>arbitrary</b> order, though reasonable opportunity given before penalty imposition
Appeal	<b>Not appealable</b> once agreed upon	<b>Appealable</b> to higher authorities as per Section 454

## WHEN CAN ADJUDICATION BE ORDERED UNDER SECTION 454?

1. **Default/Non-compliance:** Adjudication happens if there's a default or non-compliance with the Companies Act, 2013.
2. **Sources of Default:** This can be identified through:
  - Inspection (Section 206)
  - Balance Sheet scrutiny
  - Auditors' or Secretarial Audit reports

### 3. **Fine vs. Penalty:**

- Adjudication applies only for penalties, not fines.
- If it is a fine, compounding can be considered instead.

## WHO ORDERS ADJUDICATION PROCEEDINGS UNDER SECTION 454?

- **Registrar of Companies (RoC)** cannot order adjudication himself if his office has identified the violation.
- The RoC can **only initiate** proceedings if the violation is identified by **someone independent** of his office (to avoid bias).

## CAN THE CENTRAL GOVERNMENT APPOINT THE ROC AS THE ADJUDICATING OFFICER?

- The **Central Government** can appoint the RoC as the adjudicating officer, but **not** in cases where his office has identified the violation.
- It is better for the **Regional Director** to avoid appointing the **same RoC** whose office identified the violation, to ensure fairness.

## 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?

- **Section 441 (Compounding):** Only the Regional Director can handle compounding and reduce penalties.
- **Section 454 (Adjudication):** The Registrar of Companies (RoC) handles adjudication, only imposing penalties, and cannot reduce them.
- **Parallel Use:** Both sections can be used for different violations, but not for the same violation at the same time.
- **Different Powers:** Regional Director/NCLT can offer more flexibility with penalties, while RoC under adjudication can only impose penalties without reducing them.

## WHEN A SUO MOTTO APPLICATION FOR COMPOUNDING IS MADE, HOW DOES SECTION 454 COME INTO PLAY?

- **Suo Moto Compounding:** If a defaulter applies for compounding, RD or NCLT decides whether to proceed with compounding or adjudication.
- **Section 454 (Adjudication):** If a compounding application is pending, Section 454 does not automatically apply. RoC must ask RD/NCLT for direction.
- **Adjudication vs. Compounding:** RD/NCLT can choose adjudication over compounding, but must justify the decision. The applicant can challenge this decision.
- **No Conflict:** Sections 441 (Compounding) and 454 (Adjudication) work separately. They do not override each other but can be used in different circumstances.

## COMPLAINT BY REGISTRAR AND SERIOUS FRAUD INVESTIGATION OFFICE:

The Serious Fraud Investigation Office (SFIO) is a government agency set up to investigate and prosecute white-collar crimes and frauds. It operates under the Ministry of Corporate Affairs and has experts in areas like law, accountancy, banking, and IT.

### **Key Points:**

- SFIO Investigation Triggers:
  - Report from the Registrar or inspector (Section 208).
  - Special resolution passed by a company for investigation.
  - Public interest concerns.
  - Court or Tribunal orders for investigation.
- **Structure:**
  - Headed by a Director (Joint Secretary level).
  - Other members include Additional Directors, Joint Directors, and experts in relevant fields like forensic auditing and corporate affairs.
- **Headquarters:** New Delhi, with regional offices in Mumbai, Chennai, Hyderabad, and Kolkata.

## SFIO Investigation under Section 212 of the Companies Act, 2013:

### **1. When SFIO Investigates:**

- ✓ Based on reports from the Registrar or Inspector (Section 208).
- ✓ Special resolution by a company requesting investigation.
- ✓ Public interest or request by the government.

## **2. Exclusive Investigation:**

- ✓ Once SFIO takes over, no other agency can continue the investigation.
- ✓ If another agency started, it must transfer all records to SFIO.

## **3. Investigation Process:**

- ✓ SFIO follows procedures in Chapter XIV of the Companies Act.
- ✓ The SFIO Director assigns officers to handle investigations.
- ✓ Company's responsibility: Officers must assist and provide documents.

## **4. Bail for Serious Offences (Section 447):**

- ✓ Cognizable offences (like fraud) do not allow easy bail.
- ✓ Exceptions: Bail can be granted to those under 16, women, or the sick if the court agrees.

## **5. Complaint for Court Action:**

- ✓ Court cases can only proceed with a written complaint from:
  - SFIO Director or
  - An authorized government officer.

## **POWER TO ARREST:**

### **1. Grounds for Arrest:**

- An SFIO officer (not below the rank of Additional Director) can arrest a person if they believe the person is guilty of an offence under Section 447 (fraud).
- The arrest is based on evidence in the officer's possession.

### **2. Arrest Procedure:**

- The officer must inform the arrested person of the grounds for the arrest.
- A copy of the arrest order and related evidence is sent to SFIO in a sealed envelope.

### **3. Post-Arrest Process:**

- The arrested person must be taken to a Special Court or Judicial Magistrate within 24 hours (excluding travel time).

## ARREST RULES BY SFIO (2017):

### 1. Arrest Authority:

- Director, Additional Director, or Assistant Director of SFIO can arrest a person based on evidence they have.
- The reason for arrest must be recorded in writing.

### 2. Approval Requirement:

- If Additional Director or Assistant Director arrests, they need prior written approval from the SFIO Director.
- For arrests related to Government or Foreign Companies, Central Government approval is required first.

### 3. Arrest Process:

- Arrest Order and Personal Search Memo must be signed by the officer and served to the arrestee.
- A sealed envelope with arrest documents must be sent to the SFIO Director within 24 hours.

### 4. Arrest Register:

- SFIO maintains an Arrest Register where details of the arrest (date, time, etc.) are logged.

### 5. Document Retention:

- Arrest documents must be preserved for five years from the final court order or appeal outcome.

### 6. Criminal Procedure:

- The Code of Criminal Procedure (CrPC) applies to arrests made under this section.

## REPORT TO CENTRAL GOVERNMENT:

1. **Interim Report:** SFIO may submit an interim report if asked by the government.
2. **Final Report:** After the investigation, SFIO sends the final report to the government.
3. **Government Action:** The government reviews the report and may order prosecution if necessary.
4. **Disgorgement:** If fraud is found, the government can ask for the return of benefits gained unfairly and hold wrongdoers liable.
5. **Special Court:** The investigation report is treated like a police report in court.

## **INFORMATION FROM OTHER DEPARTMENT(S):**

- Authorities (like police or tax) must give SFIO any relevant information for investigations.
- SFIO must share useful information with other agencies for their investigations.
- The Central Government handles investigations in cases of corporate fraud, like misappropriating funds.

### **Q1. How is an investigation by SFIO conducted?**

- SFIO follows the procedure outlined in Chapter XIV of the Companies Act, 2013.

### **Q2. When is an investigation assigned to SFIO?**

- The government assigns an investigation to SFIO when:
  - a) The Registrar or Inspector reports findings.
  - b) A company requests an investigation via special resolution.
  - c) It's in the public interest.
  - d) A government department requests it.

### **Q3. What are the terms of service for SFIO staff?**

- The service terms for SFIO staff are defined in the Companies (Inspection, Investigation, and Inquiry) Rules, 2014.

### **Q4. What is the composition of SFIO?**

- SFIO is led by a director and includes experts in banking, corporate affairs, law, taxation, IT, forensic auditing, and more.

### **Q5. How was SFIO established?**

- SFIO was established by the government on July 21, 2015, under the Companies Act, 2013, through a notification. It was previously set up in 2003.

## **TRIBUNALS:**

- **NCLT & NCLAT:** Established on June 1, 2016, under the Companies Act, 2013.
- **Purpose:** Improve corporate justice, speed up insolvency processes, and align with international standards.
- **Based on:** Justice Eradi Committee's recommendations for corporate law reforms.

- **NCLT:**
  - ✓ Handles corporate disputes and issues related to Indian companies.
  - ✓ Composed of a President, Judicial members, and Technical members, appointed by the Central Government.
  - ✓ Created under Section 408 of the Companies Act, 2013.
- **NCLAT:**
  - ✓ Hears appeals against NCLT decisions and orders under the Competition Act, 2002.
  - ✓ Composed of a Chairperson, Judicial members, and Technical members, appointed by the Central Government.
  - ✓ Created under Section 410 of the Companies Act, 2013.
- **Goal:** Faster resolution of corporate disputes, improving ease of doing business in India.

## QUALIFICATIONS FOR NCLT CHAIRPERSON AND MEMBERS (SECTION 409):

- **Chairperson:**
  - Must be or have been a High Court Judge for at least 5 years.
- **Judicial Member:**
  - Must meet one of the following:
    - Be or have been a High Court Judge, or
    - Be or have been a District Judge for at least 5 years, or
    - Have been an advocate for at least 10 years (experience as a judge, tribunal member, or in a law-related government role counts).
- **Technical Member:**
  - Must meet one of the following:
    - Have been in the Indian Corporate Law Service or Indian Legal Service for 15 years, holding a rank of Secretary or Additional Secretary, or
    - Have been a chartered accountant, cost accountant, or company secretary for at least 15 years, or
    - Have 15 years of experience in industrial finance, management, reconstruction, investment, or accountancy, or
    - Have been a presiding officer of a Labour Court or National Tribunal under the Industrial Disputes Act, 1947, for at least 5 years.

## QUALIFICATION OF PRESIDENT AND MEMBERS OF APPELLATE TRIBUNAL (SECTION 411):

- **Chairperson:**
  - Must be or have been a Supreme Court Judge or Chief Justice of a High Court.
- **Judicial Member:**
  - Must be or have been a High Court Judge, or
  - A Judicial Member of the Tribunal for 5 years.
- **Technical Member:**
  - Must have 25 years of experience in industrial finance, management, reconstruction, investment, or accountancy.

## SELECTION OF MEMBERS FOR TRIBUNAL AND APPELLATE TRIBUNAL (SECTION 412):

- **President & Chairperson/Judicial Members:**
  - Appointed after consulting the Chief Justice of India.
- **Other Members & Technical Members:**
  - Appointed based on a Selection Committee with:
    - ✓ Chief Justice of India (or nominee) – Chairperson
    - ✓ Senior Judge or Chief Justice – Member
    - ✓ Secretaries from Corporate Affairs & Law and Justice – Members
- **Tie in Voting:**
  - Chairperson has the casting vote.
- **Secretary, Ministry of Corporate Affairs:**
  - Acts as Convener of the Committee.
- **Note:**
  - Appointments remain valid despite any vacancies or defects in the Committee's formation.

## TERM OF OFFICE (SECTION 413):

- **Tribunal:**
  - President and Members: 5-year term, can be re-appointed for another 5 years.
  - President serves until age 67, other Members until age 65.
  - Must be at least 50 years old to be eligible.
  - Members can keep their old position for up to 1 year while serving.
- **Appellate Tribunal:**
  - Chairperson and Members: 5-year term, can be re-appointed for another 5 years.
  - Chairperson serves until age 70, other Members until age 67.
  - Must be at least 50 years old to be eligible.
  - Members can keep their old position for up to 1 year while serving.

## POWERS OF THE TRIBUNAL UNDER THE ACT:

- **No Civil Court Jurisdiction:** Civil courts cannot handle matters the Tribunal or Appellate Tribunal can decide.
- **No Injunctions:** Courts cannot stop actions taken by the Tribunal or Appellate Tribunal under this Act.
- **Key Powers of the Tribunal:**

Provision	Power
Section 7(7)	Order winding up if company was formed with false info.
Section 8(9)	Set conditions for surplus disposal after winding up.
Section 48(2)	Set aside changes to shareholders' rights.
Section 55(3)	Approve redemption of unredeemed preference shares.
Section 58(5)	Direct share transfer or register correction if refused.
Section 59(2) & (4)	Correct the register of members.
Section 61(1)(b) Proviso	Approve consolidation/division affecting voting rights.

## Procedure Before Tribunal and Appellate Tribunal (Section 424):

- **Not Bound by Civil Procedure Code:** The Tribunal and Appellate Tribunal follow principles of natural justice and can regulate their own procedure, not strictly bound by the Civil Procedure Code, 1908.
- **Powers of the Tribunal & Appellate Tribunal:**  
They have powers similar to a civil court in:
  - Summoning and examining witnesses under oath.
  - Requiring discovery and production of documents.
  - Receiving evidence through affidavits.
  - Requisitioning public records or documents.
  - Issuing commissions for witness or document examination.
  - Dismissing or deciding cases ex parte (in the absence of a party).
  - Setting aside default dismissals or ex parte orders.
  - Any other matters as prescribed.
- **Enforcement of Orders:**  
Orders by the Tribunal/Appellate Tribunal can be enforced like court decrees, and can be executed in the relevant court based on the company's or individual's location.
- **Judicial Nature of Proceedings:**  
Proceedings before the Tribunal/Appellate Tribunal are considered judicial and civil court proceedings for certain sections of the Indian Penal Code and the Code of Criminal Procedure.

## FORMS UNDER NCLT RULES, 2016:

Form No.	Description
NCLT-1	Petition/application/reference to be filed with the Tribunal, with attachments (including Form NCLT-2).
NCLT-4	General heading for proceedings.
NCLT-6	Affidavits verifying the petition.
NCLT-5	Notice issued by the Tribunal to the opposite party.
NCLT-12	Memorandum of appearance.

## **ORDERS OF TRIBUNAL (SECTION 420):**

- The Tribunal can pass orders after hearing both parties.
- It can correct mistakes in orders within 2 years, if pointed out by the parties.
- No changes can be made to orders that are being appealed.
- A copy of the order is sent to all parties.

## **APPEAL FROM ORDERS OF TRIBUNAL (SECTION 421):**

- ✓ A person can appeal to the Appellate Tribunal if dissatisfied with the Tribunal's order.
- ✓ No appeal if the order was made with both parties' consent.
- ✓ Appeals must be filed within 45 days of receiving the order.
- ✓ The Appellate Tribunal can accept appeals up to 45 days late if there's a valid reason.
- ✓ It will decide to confirm, change, or cancel the order.
- ✓ A copy of the order is sent to the Tribunal and the parties.

## **APPEAL TO SUPREME COURT (SECTION 423):**

- An appeal to the Supreme Court can be made within 60 days of receiving the Appellate Tribunal's order.
- The Supreme Court can extend the deadline by another 60 days if there is a valid reason for the delay.

## **SECURITIES APPELLATE TRIBUNALS (SAT):**

- SAT hears appeals against orders by SEBI or its officers under the SEBI Act, 1992.
- SAT also hears appeals against orders by:
  - ✓ PFRDA under the PFRDA Act, 2013.
  - ✓ IRDAI under various insurance laws.