

## Chapter 7: Relief and Remedies

## WHAT IS COMPOUNDING?

- Compounding of offences is a legal process where an offender admits to committing an offence and settles the matter by paying a penalty, avoiding prosecution.
- Introduced in the Companies Act, 1988 (Section 621A) as a result of the Sachar Committee's recommendations.
- The process involves three key elements:
  - a. Acknowledgement of the offence.
  - b. Agreement not to prosecute by the authorities.
  - c. Payment of a compounding fee to resolve the issue.
- Once the compounding fee is paid, the offender is no longer considered in default, and the offence is considered settled.
- The compounding fee is determined case-by-case by the relevant authority (e.g., RD/NCLT).
- This mechanism helps resolve minor offences quickly and avoid prolonged litigation.
- It is sometimes called "composition of offences" in other countries.
- Example: A company was allowed to compound an offence by paying a fee after submitting a defective form for share allotment.

### **CASE LAW: P P Varkey v. STO (1999):**

- Once an offence is compounded, no further penalty or prosecution can be pursued for that offence.

### **S Viswanathan v. State of Kerala (1993):**

- After compounding, neither the department nor the assessee can challenge the compounding decision.

### **Reliance Industries Ltd. (1997):**

- Compounding is a compromise where both the offender and authorities agree to settle the issue and avoid further legal action.

## What is an Offence?

An offence is any act or failure to act that is punishable by law.

### **Corporate offences are divided into:**

- Civil Offences: Involve legal disputes (e.g., contract issues).
- Criminal Offences: Involve breaking the law and can lead to penalties.
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**Offences can be:**

- Compoundable: Can be settled by paying a fine.
- Non-Compoundable: Cannot be settled and require legal proceedings.

## COMPOUNDING OF OFFENCES UNDER THE COMPANIES ACT, 2013:

- **Section 441** of the Companies Act, 2013 allows companies, directors, or officers to settle offences by paying a penalty, avoiding long legal processes.
- It overrides the **Code of Criminal Procedure (CrPC)**, allowing specific offences under the Act to be compounded.
- The **J.I.K. Industries Ltd. case (2012)** confirmed that offences under the Companies Act can be compounded despite the CrPC.
- Unlike other laws, **Section 441** appoints specific authorities to handle the compounding process and does not follow the CrPC's usual procedure (Section 320).

## PERSONS ELIGIBLE TO APPLY FOR COMPOUNDING:

- A **company** (through any director authorized by the board).
- **Officers in default** (those responsible for non-compliance and liable for prosecution).

## WHO WILL BE CONSIDERED AS AN "OFFICER IN DEFAULT"?

An "Officer in Default" includes:

1. **Whole-time directors.**
2. **Key managerial personnel.**
3. **Directors specified by the board**, or all directors if none are specified.
4. **People responsible for maintaining accounts** or participating in defaults.
5. **Advisors whose instructions the board follows regularly** (except professional advisors).
6. **Directors aware of or consenting to violations.**
7. **Share transfer agents, registrars, and merchant bankers** involved in share transfers.

In short, it is anyone responsible for or involved in company violations.

## **BENEFITS OF COMPOUNDING:**

1. **Prevents future offences.**
2. **Avoids heavy fines.**
3. **Keeps business running smoothly.**
4. **Maintains the company's reputation.**
5. **Reduces court workload.**
6. **Quicker process.**
7. **No director disqualification.**

## **OFFENCES THAT CAN BE COMPOUNDED:**

- **Fines only.**
- **Fines and/or imprisonment.**

## **OFFENCES THAT CANNOT BE COMPOUNDED:**

1. **Offences punishable with imprisonment only.**
2. **Offences punishable with both imprisonment and fine.**
3. **If an investigation is ongoing.**
4. **If the offence was compounded within the last 3 years for a similar offence.**

In short, offences involving only imprisonment or under investigation, or repeated offences, cannot be compounded.

## **CASE LAWS RELATED TO COMPOUNDING OF OFFENCES:**

### **1. In Re Cibersites India (Pvt) Ltd. (2021):**

- The company applied for compounding for offences under Sections 125, 138, and 142.
- Since the violations were unintentional and non-criminal, the NCLT took a lenient view and imposed a fine based on the value of the offences.

### **2. Capital Small Finance Bank Ltd. vs. Registrar of Companies (2021):**

- The company breached the thresholds under Section 67(3) due to a bona-fide mistake.
- No complaints or investigations were pending. Since the company voluntarily applied and had not compounded similar offences in the last three years, the NCLT allowed compounding.

### 3. M/S UW International Training & Education Centre for Health Pvt. Ltd. (NCLT Delhi):

- The company delayed issuing share certificates, violating Section 56(4)(a).
- The NCLT imposed a penalty of Rs. 10,000 for the delay, even though the maximum penalty could have been higher.
- The NCLT highlighted that in compounding cases, the penalty can be lower than the prescribed amount based on factors like the nature of the violation and intent.

### 4. NCLAT's Guidance (Viavi Solutions India Ltd., 2016):

- NCLT can reduce penalties in suo-motu compounding cases by considering factors like the gravity of the offence, intent, default period, and whether the company acted voluntarily.

## EFFECT OF INVESTIGATION ON COMPOUNDING:

- Under **Section 441(1)** of the Companies Act, 2013, if an **investigation** has already started or is about to start, the **compounding authority's power** to compound offences is blocked.

### Case Scenario:

- If there is an ongoing investigation or an application for one, the **Tribunal** may delay the compounding application until the investigation matter is resolved.
- However, just the **possibility** of an investigation is not enough to deny a compounding application.
- The **compounding authority** has discretion and may still refuse compounding based on the merits of the case.

## WHEN COMPOUNDING CAN BE DONE:

- **Compounding** applies to offences punishable with a **fine**, like failing to file documents, not holding an Annual General Meeting, or not maintaining statutory registers.
- It can be done **before** or **after** a prosecution has started.

# WHO ARE THE COMPOUNDING AUTHORITIES/WHO CAN COMPOUND THE OFFENCE?

## CASE LAWS:

### 1. UW International Training & Education Centre (NCLT Delhi):

- The company was late in issuing share certificates.
- The NCLT said the minimum fine applies only in criminal cases, and compounding can be done with a warning or admonishment.

### 2. Registrar of Companies vs. Gyan Chand Agarwal (NCLAT):

- The company violated Section 165 for 849 days.
- The NCLAT increased the fine to INR 42,45,000, as the minimum fine was not followed.

## CASE LAW: Pahuja Takii Seed Ltd. vs. ROC, NCT of Delhi & Haryana (NCLAT, 2018)

### 1. Key Questions Addressed:

- **Can a company and its officers jointly apply for compounding?**
  - Yes, the NCLAT ruled that there is no restriction on filing a joint application for compounding by the company and its officers. It avoids multiple proceedings and inconsistent findings.

- **Can a joint application be filed for offences committed in different years?**
  - Yes, the NCLAT clarified there is no bar on filing a single application for the same offence committed in different financial years.
  
- **Does the Tribunal have jurisdiction to compound offences with fines lower than its monetary jurisdiction?**
  - Yes, the Tribunal has the power to compound offences, even if the fine is below the monetary limit. Only the Regional Director and Central Government officers have limits, but the Tribunal does not.
  
- **How is the Rs. 25 lakh limits calculated for the Regional Director's jurisdiction?**
  - The fine limit is calculated per applicant, not for the entire joint application. If a company's fine is below Rs. 25 lakhs but the officers fine exceeds it, separate applications can be filed.

#### **In Short:**

- ✓ Joint applications for compounding by the company and its officers are allowed.
- ✓ No restriction on compounding offences from different years.
- ✓ The Tribunal can compound offences without financial limits, while the Regional Director has limits.
- ✓ The Rs. 25 lakh fine limit is calculated per applicant.

### **COMPOUNDING OF REPEATED OFFENCES:**

- Sub-section 2 of Section 441 states that if a company or its officer commits a similar offence within 3 years of a previous compounding, the offence cannot be compounded again.
- However, after 3 years, any second or subsequent offence will be treated as a first offence and can be compounded.
- This rule applies specifically to repeated offences and creates a restriction on compounding for offences committed within the 3-year period.

**In short:** No compounding for similar offences within 3 years, but after 3 years, the offence can be treated as a new one and compounded.

### **Can an offence be compounded if repeated within 3 years?**

- If a company or its officer commits the **same offence** within **3 years** after it was previously compounded, the offence **cannot be compounded** again.
- **Section 451** applies in this case, which states that if the same offence is repeated within 3 years, the fine will be **doubled**, and **imprisonment** can also apply.

### Example:

- If a company commits the same offence in **2015-16, 2016-17, and 2017-18**, it can be compounded for those years.
- However, if the offence is repeated in **2019-20**, it **cannot** be compounded because it falls within 3 years of the previous compounding.

**In short:** If the same offence happens again within 3 years of compounding, it cannot be compounded.

## APPLICATION TO REGISTRAR OF COMPANIES - SECTION 441(3):

1. **Application:** Apply for compounding through the Registrar of Companies (RoC), who will forward it to the relevant authority.
2. **Informing RoC:** After compounding, the company must notify the RoC within 7 days.
3. **Before Prosecution:** If compounding is done before prosecution, no prosecution can be initiated.
4. **After Prosecution:** If done after prosecution starts, the Registrar will inform the court, and the company/officer will be discharged.
5. **Filing Documents:** The Tribunal or authorized body can order the company to file required documents and pay necessary fees.

In essence, after applying for compounding, the process involves notifying the RoC, and depending on whether prosecution has started, different legal steps are taken.

## CASE LAWS ON COMPOUNDING OF OFFENCES:

1. **Schneider Electric IT Business India Pvt. Ltd.:**
  - ✓ Offences can be compounded even if prosecution is ongoing.
  - ✓ No need for prior court approval.
  - ✓ Once compounded, the court will discharge the company or its officers.
2. **RSPL Limited:**
  - ✓ Despite a 4-year delay in filing a report, the NCLT allowed compounding.
  - ✓ The company's sincere efforts to correct the mistake were considered.

## ILLUSTRATION:

### Are these offences compoundable?

1. Fraudulent duplicate share certificates:
  - Yes, it is compoundable (punishable by fine).
  - Compounded by the Regional Director (RD) or NCLT.

2. Failure to keep proper books of accounts:
  - Yes, it is compoundable.
  - Compounded by the Regional Director (RD).
3. Tampering with meeting minutes:
  - No, it is not compoundable (punishable by imprisonment and fine).

**PQR Ltd. failed to file return of allotment against the 16 lakh shares allotted by the Board of directors at its meeting held on 20th April, 2019 and got order for compounding of offence on 10th June, 2020. The company again failed to file return of allotment against the 11 lakh shares allotted by the Board of directors at its meeting held on 4th March, 2022. What options are available to the company in respect of this default ?**

PQR Ltd. cannot apply for compounding for the failure to file the return of allotment of shares allotted in 2022, as it had already compounded a similar offence in 2020. Under Section 441(2) of the Companies Act, 2013, a company can only compound a similar offence once within 3 years.

**However, the company has other options:**

1. Adjudication: The adjudicating officer can impose a penalty on the company or its officers for the default.
2. Condonation of Delay: The Central Government can condone the delay in filing the return of allotment for valid reasons under Section 460(b).

### **CASE LAWS:**

***V Bagi v. State of Karnataka (1992)***, held that a person who has agreed to the compounding of an offence cannot file an appeal against the order.

***P P Varkey v. STO (1999)***, the court held that once an offence is compounded, no penalty or prosecution can follow for the same offence. This is true for both the company and the officers involved.

***S Viswanathan v. State of Kerala (1993)***, the court ruled that once the offence is compounded, neither the department (or regulatory authorities) nor the offender can challenge the order. This principle prevents the reopening of the matter or revisiting the facts after an agreement has been reached, even if the actual violation was more severe than initially recognized.

## **PROCEDURE FOR COMPOUNDING OF OFFENCE UNDER THE COMPANIES ACT, 2013:**

1. **Check if the Offence is Compoundable:**
  - Ensure the offence is compoundable under the Act.
  - Rectify the default before proceeding.

## 2. Board Resolution:

- Hold a board meeting to decide on the offence and fine.
- File E-Form MGT-14 (for public companies) to submit the board resolution to the ROC.
- Authorize a director/officer to submit the application and appoint professionals (lawyers, CS, CA).

## 3. File Application for Compounding:

- Prepare a detailed application in triplicate, including: Board resolution, affidavit, company profile, and notice from ROC (if any).
- File the application through E-Form GNL-1 with a fee of Rs. 1000.

## 4. ROC Review:

- ROC forwards the application and comments to NCLT/Regional Director based on the fine amount.

## 5. Notice and Hearing:

- NCLT/RD sends a notice to the company for a personal hearing.
- The authorized representative must admit the contravention.

## 6. Payment of Fees:

- Pay the compounding fees within the specified time.

## 7. Order by NCLT/RD:

- The concerned authority issues a compounding order.

## 8. Intimation to ROC:

- Notify the ROC of the compounding order within 7 days using E-Form INC-28.

## **SPECIMEN BOARD RESOLUTION FOR COMPOUNDING OF OFFENCE UNDER COMPANIES ACT 2013:**

**RESOLVED THAT** pursuant to Section [mention section] of the Companies Act, 2013 and relevant rules, the Board hereby approves the filing of an application for compounding of offences under the Act for the Company, its Directors, and Officers in Default.

**RESOLVED FURTHER THAT** Mr. ABC, Director of the company is authorized on behalf of the Company to:

- Sign, execute, and submit all necessary documents (e.g., Petition, Affidavits, Declarations) required for compounding the offence.
- Appoint and delegate powers to Practicing Professionals, Consultants, or Lawyers to handle the application and represent the Company before the Regulatory Authority.
- Sign and submit any electronic forms to the relevant authorities (e.g., NCLT, ROC) in relation to the application.

d. Address any queries related to the application and take necessary actions without needing further approval from the Board.

**RESOLVED FURTHER THAT** Ms. DDD, Company Secretary in whole-time practice, is authorized to represent the Company before the authority for compounding the offence.

**RESOLVED FURTHER THAT** a certified true copy of this resolution be submitted to the concerned authority when required.

### **Is there any discretionary power to reject the Application?**

No, the NCLT or the RD cannot reject a compounding application at their discretion. They are required to consider the application properly before making a decision (**In Re Amadhi Investments Ltd.**).

### **Whether NCLT has powers to review its own decision?**

The NCLAT, in the case **APC Credit Rating Pvt. Ltd. Vs. Registrar of Companies (2018)**, held that while NCLT does not have inherent power to review its decision, it can rectify any obvious mistake in the record under Section 420(2) of the Companies Act, 2013. Therefore, the NCLT can review its orders to correct errors, but this power is limited and dependent on the Act's provisions.

## **OTHER PROVISIONS OF COMPOUNDING OF OFFENCES UNDER SECTION 441 OF THE COMPANIES ACT, 2013:**

- **Payment to the Government:** The compounding authority (Tribunal or Regional Director) may require the company or officer to pay a specified amount to the Central Government before the offence is considered compounded. Only after the payment is made will the offence be officially compounded.
- **Maximum Compounding Fee:** The amount specified by the authority cannot exceed the maximum fine that could be imposed if the offence were prosecuted.
- **Additional Fees:** When determining the compounding fee, the authority will consider any additional fees the company would have paid under Section 403(2) of the Companies Act. Before applying for compounding, the company must resolve the default or failure to ensure the additional fee is accounted for.

## **PENALTY FOR NON – COMPLIANCE OF ORDER OF COMPOUNDING AUTHORITIES:**

- **Section 441(5):** If a company officer or employee fails to comply with an order from the NCLT, RD, or an authorized officer, the fine for the offence will be twice the amount specified for that offence.
- **Section 441(6):** Offences punishable only with imprisonment, or with both imprisonment and fine, cannot be compounded.

## COMPOSITION OF CERTAIN OFFENCES:

- Under the SEBI Laws (SEBI Act, Securities Contracts Act, and Depositories Act), penalties are provided for violations.
- Section 24A of the SEBI Act, Section 23N of the Securities Contracts Act, and Section 22A of the Depositories Act allow certain offences to be compounded.
- Offences that are punishable with a fine only, or with imprisonment or fine (or both), can be compounded either before or after proceedings have started.
- These offences can be compounded by the Securities Appellate Tribunal or the court handling the case.
- The Supreme Court elaborated on the details of Section 24A of the SEBI Act in the Prakash Gupta v. SEBI case.

## **CASE LAW: Prakash Gupta v. Securities and Exchange Board of India, dated July 23, 2021**

### **Facts:**

- Prakash Gupta, a director of Ideal Hotels & Industries, was accused of price rigging and insider trading during the company's IPO in 1996.
- SEBI investigated and found brokers who had bought a large portion of the company's shares, driving up the price.
- Gupta paid a penalty of INR 20,000 after an investigation, and later filed a compounding application under Section 24A of the SEBI Act.
- SEBI objected to the compounding request, stating its consent was necessary. The Trial Court rejected the application, and the High Court upheld this decision.

### **Issue:**

- Does Section 24A of the SEBI Act require SEBI's express consent for compounding offences?

### **Observations:**

- Section 24A does not explicitly require SEBI's consent for compounding by the Securities Appellate Tribunal (SAT) or the court.
- The Court compared it to Section 24B, which specifically requires SEBI's recommendation for immunity from prosecution. Since Section 24A does not mention SEBI's consent, the Court ruled it isn't mandatory.
- However, the Court acknowledged that SEBI's opinion is important for market regulation and public interest.

## Judgment:

- The Court ruled that the nature of Gupta's allegations made compounding inappropriate in this case.
- It highlighted factors to consider before compounding an offence:
  1. The guidelines from SEBI's HPAC should be followed.
  2. SEBI's opinion should be respected unless proven to be unfair.
  3. Restitution to the aggrieved party should be ensured.
  4. Public interest must be considered, especially for public offences.
- The judgment emphasized SEBI's crucial role in market regulation and the importance of restitution and public interest when considering compounding.

## SETTLEMENT PROCEEDINGS / CONSENT ORDERS UNDER SEBI LAWS-APPLICABLE FOR COMPOSITION OF OFFENCE:

- Consent Orders can be issued after a violation is found, but for serious violations, they are only considered after a full investigation.
- Compounding Offences: Can happen after SEBI files a criminal complaint, or before if a complaint is expected.
- **Advantages:** They help resolve issues quickly, saving time and costs by avoiding lengthy legal proceedings.
- **What is a Consent Order?** It settles disputes between SEBI and violators, but doesn't always confirm a violation. It may not address all issues.
- **SEBI's Authority:** A consent order does not prevent SEBI from taking further action if necessary.

## **Enforcement Actions:**

- **Administrative/Civil:** Orders like penalties, suspension, or cancellation of registrations.
- **Criminal:** SEBI can file criminal complaints in court.

## SETTLEMENT ORDER – LOTUS CHOCOLATE COMPANY LIMITED (FEBRUARY 29, 2024):

- **Issue:** The promoter of Lotus Chocolate Company acquired 1,000 equity shares in 2011, but mistakenly did not include them in the shareholding details filed with the stock exchange under the LODR Regulations. Additionally, three promoters' shareholdings (12,500 shares each) were not included in filings from December 31, 2010, to September 30, 2012.

- **Corrective Action:** The company filed revised shareholding details for the period December 31, 2010, to December 31, 2021, on June 29, 2023.
- **Settlement:** The company voluntarily applied for settlement of any enforcement actions due to the delayed compliance. After discussions with SEBI's Internal Committee, the company proposed revised settlement terms on November 27, 2023.
- **HPAC Review:** The High-Powered Advisory Committee (HPAC) recommended settling the matter for a payment of INR 7,14,400 on December 21, 2023.
- **Final Decision:** SEBI's panel accepted the settlement terms on January 19, 2024, and the case was settled without further proceedings, based on the agreed terms.

## SETTLEMENT OF ADMINISTRATIVE AND CIVIL PROCEEDINGS:

- **Who Can Apply:** Any person facing or likely to face proceedings under certain sections of the SEBI Act can apply to SEBI to settle the matter.
- **Settlement Process:** SEBI will consider the nature and impact of the violation and may agree to settle the case for a payment or other terms decided by SEBI.
- **Regulations:** The settlement will follow the procedures specified in SEBI's regulations.
- **No Appeal:** There is no right to appeal the settlement decision under this section.
- **Payment:** All settlement amounts (except disgorgement and legal costs) will go to the Consolidated Fund of India.

## CASE LAW: Kapashi Commercials Ltd. (July 10, 2020):

- **Issue:** Shareholders of Kapashi Commercials Ltd., a BSE-listed company, were accused of violating takeover norms by making delayed disclosures about changes in their shareholding.
- **Settlement:** The shareholders settled the case with SEBI by paying over Rs. 34 lakhs.
- **Regulations:** The issue was related to non-compliance with the Substantial Acquisition of Shares and Takeovers (SAST) Regulations.

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

- ❖ SEBI has issued these regulations under various sections of the SEBI Act, the Securities Contracts (Regulation) Act, and the Depositories Act.
- ❖ The regulations, notified on November 30, 2018, outline the terms, procedure, and related matters for settlement proceedings.

## Application for Settlement (Regulation 3):

1. **Who can apply:** Any person facing ongoing or potential proceedings can apply for settlement to SEBI.
2. **Requirements:** The application must include a non-refundable fee, along with undertakings and waivers as per SEBI's guidelines.
3. **Disclosure:** The applicant must provide full and accurate details about the alleged default(s). Facts from other related proceedings (in India or abroad) will be considered admitted by the applicant.
4. **Single Application:** Only one application is allowed per cause of action.
5. **Incomplete Applications:** If the application is incomplete or does not meet requirements, it will be returned. The applicant can resubmit it within 15 days.
6. **Who Can Apply:** Associations, firms, companies, or LLPs must have the responsible person file the application, which binds the organization and any defaulting officer.
7. **Timing for Disclosures:** Applications regarding disclosure defaults should be filed after making the required disclosures, if possible.

## LIMITATION (REGULATION 4):

1. **Time Limit:** An application for settlement cannot be considered if it has made more than 60 days after receiving the notice to show cause or any supplementary notice, whichever is later.
2. **Exclusions:** This rule does not apply to proceedings before the Tribunal or any court.

## SCOPE OF SETTLEMENT PROCEEDINGS (REGULATION 5):

1. **Application Rejections:** Settlement applications will not be considered if:
  - ✓ The same application for the same default was previously rejected.
  - ✓ The investigation or inquiry regarding the issue is incomplete (except for confidential cases).
  - ✓ There is an outstanding recovery order under securities laws.
2. **Settlement Not Allowed:** The Board may refuse settlement if:
  - ✓ The alleged default affects the market as a whole.
  - ✓ It causes significant losses to many investors.
  - ✓ It harms market integrity.

3. **Factors for Settlement:** The Board will consider:
  - ✓ Whether the applicant has returned the owed money.
  - ✓ Whether the applicant has provided a solution (like an exit option) for affected investors.
  - ✓ Whether the applicant is following securities laws.
  - ✓ Any other factors the Board deems important.
  
4. **Exclusions:** The Board will not settle if the applicant is a:
  - ✓ Willful defaulter.
  - ✓ Fugitive economic offender.
  - ✓ Person who has not paid due fees or penalties under securities laws.
  
5. **Discretion of the Panel:** The Panel of Whole-Time Members can reject or approve any application without reviewing it with the Internal Committee or High-Powered Advisory Committee.

## **REJECTION OF APPLICATION (REGULATION 6):**

An application can be rejected if:

1. The applicant does not respond to the Board.
2. The applicant delays submitting required documents.
3. The applicant misses meetings with the Internal Committee.
4. The applicant breaks the agreed terms.
5. The applicant does not pay the settlement amount on time.
6. The applicant does not meet the conditions for settlement.

If rejected, the applicant is still bound by the terms set earlier.

## **WITHDRAWAL OF APPLICATION (REGULATION 7):**

1. An application can be withdrawn before the final decision is made.
2. If withdrawn, the applicant cannot reapply for the same issue unless a higher settlement fee (at least 50% more) is paid, as recommended by the advisory committee.

## EFFECT OF PENDING APPLICATION ON SPECIFIED PROCEEDINGS (REGULATION 8):

1. Ongoing proceedings continue, but the final order is paused until the settlement application is decided.
2. If an application is filed to stop new proceedings, they will not begin until the application is accepted or rejected. However, actions to protect investors can still happen.
3. If only some people in a group file for settlement, it does not stop proceedings for those who have not filed. Decisions made will depend on the settlement outcome for those who did apply.

## SETTLEMENT TERMS (REGULATION 9):

1. **Settlement Terms:** Can include a monetary settlement amount and/or non-monetary terms based on guidelines.
2. **Non-Monetary Terms** may include:
  - Suspension of business activities for a period.
  - Exit from management or directorship.
  - Disgorgement (returning profits from actions or inactions).
  - Restrictions on acting as a partner, officer, or director of a regulated company for a period.
  - Cancellation of fraudulent securities and reimbursement of any related dividends.
  - Lock-in of securities.
  - Implementing improved policies and procedures.
  - Providing training to employees and enhancing audits and reporting.
  - Restrictions on accessing or trading in the securities market for a period.
3. **Settlement Amount:** Excludes legal costs and disgorged amounts, and is credited to the Consolidated Fund of India.
4. **Legal Costs:** Fees and costs related to legal proceedings go to SEBI's General Fund.
5. **Disgorged Profits:** Any profits made or losses avoided by the applicant will be credited to the Investor Protection and Education Fund.

## FACTORS FOR SETTLEMENT TERMS (REGULATION 10):

When determining settlement terms, SEBI considers various factors, such as:

1. **Applicant's conduct** during the investigation or audit.
2. **Role in a group** if multiple parties are involved.
3. **Severity and impact** of the violation.
4. **Other pending or concluded proceedings** against the applicant.

5. **Harm to investors** or profits made by the applicant.
6. **Steps taken** to prevent future violations.
7. **Compliance plans** proposed by the applicant.
8. **Economic benefits** gained from non-compliance.
9. **Measures needed** to prevent future violations.
10. **Investor compensation** (money or securities).
11. **Previous enforcement actions** for the same violation.
12. **Other relevant factors** based on the case.

### **HIGH POWERED ADVISORY COMMITTEE (REGULATION 11):**

1. **Constitution:** SEBI forms a High-Powered Advisory Committee to recommend settlement terms.
2. **Members:** The committee includes:
  - ✓ A judicial member (former Supreme Court or High Court Judge).
  - ✓ Three external experts in the securities market.
3. **Term:** Members serve for 3 years, extendable by 2 more years.
4. **Quorum:** A meeting requires at least three members.
5. **Meetings:** Can be held in-person or via electronic means.
6. **Decision-Making:**
  - ✓ If a member recuses, the remaining members can decide.
  - ✓ In case of a tie, the Judicial member's recommendation prevails.
  - ✓ If most members recuse, the Board may form a new committee.

### **INTERNAL COMMITTEE(S) (REGULATION 12):**

1. SEBI will form Internal Committee(s).
2. The committee will include a senior officer from SEBI (at least a Chief General Manager) and other officers as specified by SEBI.

## Internal Committee Proceedings (Regulation 13)

1. The Internal Committee decides if a settlement is possible and what the terms should be.
2. It may:
  - Ask the applicant for relevant documents or information.
  - Request the applicant's appearance (in person or via video).
  - Set conditions for the applicant to fulfil.
  - Allow the applicant to revise settlement terms within 15 days.
3. The settlement terms are then sent to the High-Powered Advisory Committee for approval.

## PROCEEDINGS BEFORE THE HIGH-POWERED ADVISORY COMMITTEE (REGULATION 14):

1. The Committee reviews:
  - The applicant's application, undertakings, and waivers.
  - Relevant factors (as per Regulation 10).
  - The proposed settlement terms.
  - Any other relevant information.
2. If needed, the Committee can ask for revised terms and send the application back to the Internal Committee.
3. The Committee's recommendations are then presented to the Panel of Whole Time Members.

## ACTION ON SETTLEMENT RECOMMENDATION (REGULATION 15):

1. **Panel of Whole Time Members (WTM) Decision:**
  - The WTM reviews the **High-Powered Advisory Committee's** (HPAC) recommendation and can either **accept** or **reject** it. If rejected, the WTM must give reasons for the decision.
2. **If Accepted:**
  - The applicant gets a **demand notice** within **7 working days**.
  - They must pay the settlement amount **within 30 days** using a specific payment method.
  - The applicant must also **agree to other terms** (like changes in business practices).
3. **If Rejected:**
  - The case is sent back for further review and **revised settlement terms** are proposed.

## Summary Settlement Procedure (Regulation 16)

### 1. Pre-Initiation of Proceedings:

Before starting any proceedings, the **Board** can issue a **Summary Settlement Notice** for specific defaults, such as:

- Late disclosures or filing.
- Non-disclosure for companies listed on regional exchanges.
- Non-compliance with law or Board directions.

### 2. Notice Details:

The notice asks the **noticee** to:

- File a **settlement application**.
- Pay the **settlement amount**.
- Comply with other **non-monetary terms**.

If the **Board** feels the noticee has not disclosed fully or cooperated, settlement can be denied.

### 3. Action Within 30 Days:

The noticee has **30 days** to:

- Submit the application with required fees and waivers.
- Pay the settlement amount.
- Agree to or comply with non-monetary terms.
- Request correction of the settlement amount calculation.

The Board may extend the deadline by up to **15 days** if needed.

### 4. Final Approval:

Once the settlement amount is paid and the terms are met, the Board will issue a **settlement order**.

## REGULATION 17:

If the noticee:

- Does not file a settlement application or pay the settlement amount.
- Fails to meet the non-monetary terms or withdraws the application before the Board makes a decision.

Then, the **Board** can start the legal proceedings. The noticee can only file for settlement **after** the proceedings with the **Adjudicating Officer** or **Board** are concluded.

## SETTLEMENT WITH CONFIDENTIALITY (REGULATION 19):

1. **Conditions for Confidentiality:** The applicant must admit to violations (for settlement purposes) and provide full cooperation in investigations or audits against others.
  - The applicant must:
    - Stop participating in the violation.
    - Provide complete, accurate information and documents.
    - Cooperate continuously with investigations.
    - Not destroy or hide any relevant documents.
2. **Applicability:** Applies to violations other than disclosure and reporting defaults.
3. **When to Apply:** Confidentiality requests can only be made before or during an ongoing investigation.
4. **Non-Compliance:** If the applicant does not follow these rules, the Board can use their information in other proceedings.
5. **Additional Conditions:** The Board may impose more conditions on the applicant as needed.
6. **Application Process:** The applicant must submit all relevant details and evidence to the Board.
7. **Approval of Confidentiality:** If the Board is satisfied, it will assure confidentiality and notify the applicant.
8. **Rejection:** If the information is incomplete or false, the application can be rejected, and the applicant will be informed.

## PROCEDURE (REGULATION 20):

- The rules from previous chapters apply to settlement applications.
- Applicants must submit their documents as specified by the Board.

## CONFIDENTIALITY AND ASSURANCE (REGULATION 21):

- The Board may hold off on regulatory action if the applicant's info suggests a potential securities violation.

## **CONFIDENTIALITY (REGULATION 22):**

- The applicant's identity and their provided info are kept confidential unless:
  - ✓ The law requires disclosure.
  - ✓ The applicant agrees to disclose it.
  - ✓ The applicant publicly shares it.

## **SETTLEMENT ORDERS (REGULATION 23):**

- The officer handling the case will close it based on the approved settlement terms.
- The settlement order will summarize:
  - The alleged default(s).
  - Relevant laws.
  - Facts and circumstances.
  - Admissions by the applicant (if any).
  - The settlement terms agreed upon.

## **SETTLEMENT OF PROCEEDINGS BEFORE TRIBUNAL OR COURT (REGULATION 24):**

- The settlement process applies to cases pending in the Tribunal or court as well.
- The settlement proposal and terms (or rejection) are submitted to the Tribunal or court for approval.

## **SERVICE AND PUBLICATION OF SETTLEMENT ORDER (REGULATION 25):**

- Settlement orders are served to the applicant and published on the Board's website.
- Orders related to confidentiality won't disclose the applicant's identity, but will mention the violated securities laws.

## **SETTLEMENT SCHEMES (REGULATION 26):**

- The Board can create settlement schemes for specific groups or similar defaults.
- A settlement order under such a scheme is considered valid under these regulations.

## EFFECT OF SETTLEMENT ORDER ON THIRD PARTY RIGHTS OR OTHER PROCEEDINGS (REGULATION 27):

1. **No Impact on Other Proceedings:** A settlement order cannot be used as evidence in other cases involving different defaults or affect third-party rights related to the same default.
2. **Observations in Civil and Administrative Proceedings:** If the applicant is involved in proceedings with others, the Adjudicating Officer or Board can make observations about the applicant to prove the actions of others. However, these observations will follow the settlement order unless it is revoked.
3. **Settlement Order Not Admissible Against Others:** If a settlement order mentions another person's involvement in a default, it cannot be used as evidence against them.

## REVOCATION OF THE SETTLEMENT ORDER (REGULATION 28):

1. **Failure to Comply:** If the applicant does not follow the settlement order or if it is found that they didn't fully disclose information or broke their promises, the settlement order will be revoked, and the Board will restart the proceedings.
2. **No Refund:** If the settlement order is revoked, any amount paid will not be refunded.

## CONFIDENTIALITY OF INFORMATION (REGULATION 29):

- Information in settlement proceedings is confidential.
- Rejected or withdrawn applications cannot use their proposals or information as evidence.
- If a settlement order is revoked, this rule does not apply.
- Information given can still be used if it leads to discovering new facts.

## CASE LAW: SEBI Settlement Order (Mansun Consultancy Pvt. Ltd. & others, May 25, 2023):

- **Allegation:** Mansun Consultancy Pvt. Ltd. and its directors, Mr. P R Sundar and Ms. Mangayarkarasi Sundar, were accused of providing investment advisory services without SEBI registration, violating Section 12(1) of the SEBI Act and SEBI (Investment Advisers) Regulations, 2013.
- **Key Findings:**
  - ✓ Mr. P R Sundar ran a website offering advisory services, with fees paid through the company's bank account.
  - ✓ The company gave advice on securities transactions, falling under SEBI's definition of "investment advice."

- **Settlement Proposal:**
  - ✓ **Settlement Amount:** Rs. 15,60,000 per applicant, totalling Rs. 46,80,000.
  - ✓ **Disgorgement Amount:** Rs. 6,07,69,863, including 12% interest from June 1, 2020.
  - ✓ **Restrictions:** Applicants must refrain from buying, selling, or dealing in securities in India for 1 year.
- **Outcome:**
  - ✓ The High-Powered Advisory Committee (HPAC) recommended the settlement terms.
  - ✓ SEBI accepted the settlement and disposed of the case based on the prescribed terms, as per the SEBI Act and Settlement Regulations.

### **CASE LAW: SEBI Settlement Order Summary (NSE Glitch, June 20, 2023):**

- **Incident:** On February 24, 2021, the NSE halted trading due to a system glitch caused by telecom link issues. This impacted trading operations.
- **Allegations:** SEBI investigated NSE and NSE Clearing Ltd. (NCL) for:
  - Failure to monitor vendor services for critical activities.
  - Inadequate system preparedness for disaster recovery.
  - Failures in trade execution, risk management, and infrastructure capacity.
- **Settlement Terms:**
  - Total Settlement Amount: Rs. 72.64 crore.
    - NSE's Contribution: Rs. 49.77 crore.
    - NCL's Contribution: Rs. 22.88 crore.
  - Non-monetary punishment: For NSE, NCL, and their employees.
- **Outcome:** NSE and NCL agreed to the settlement, resolving the case without further proceedings.

### **COMPOUNDING PROVISIONS UNDER THE COMPETITION ACT, 2002:**

- **New Rule:** The Competition (Amendment) Act, 2023 allows compounding of offences not punishable by imprisonment alone.
- **Who Can Compound:** The Appellate Tribunal or a court handling the case can settle the offence before or after proceedings.
- **Effective Date:** The change became effective on May 18, 2023.

## COMPOUNDING PROVISIONS UNDER FEMA (FOREIGN EXCHANGE MANAGEMENT ACT, 1999):

### PENALTIES UNDER FEMA (SECTION 13):

- Penalties for contravention of FEMA provisions can be up to three times the amount involved (if quantifiable), or Rs. 2 lakhs (if not quantifiable).
- Continuing violations may incur an additional penalty of Rs. 5,000 per day.

### POWER TO COMPOUND CONTRAVENTION (SECTION 15):

- Contraventions can be compounded upon an application within 180 days.
- Once compounded, no further proceedings can be initiated for that contravention.

### FOREIGN EXCHANGE (COMPOUNDING PROCEEDINGS) RULES, 2000:

- The Central Government has established rules for the compounding process.

### WHO CAN COMPOUND:

- **RBI Officers:** Officers not below the rank of Assistant General Manager.
- **ED Officers:** Officers not below the rank of Deputy Director or Deputy Legal Adviser.

**HAWALA TRANSACTIONS:** Section 3(a) of FEMA prohibits dealing or transferring foreign exchange to unauthorized persons (related to Hawala transactions).

### POWER OF RESERVE BANK TO COMPOUND CONTRAVENTION (FEMA):

- **Contravention of FEMA (except Section 3(a)) can be compounded based on the amount involved:**
  - Up to Rs. 10 lakhs: Assistant General Manager (RBI)
  - Rs. 10 lakhs to Rs. 40 lakhs: Deputy General Manager (RBI)
  - Rs. 40 lakhs to Rs. 100 lakhs: General Manager (RBI)
  - Rs. 100 lakhs or more: Chief General Manager (RBI)
- **Condition:** The amount involved must be quantifiable for compounding.
- **Authority:** RBI officers exercise compounding powers under the direction of the RBI Governor.

## POWER OF ENFORCEMENT DIRECTORATE TO COMPOUND CONTRAVENTIONS (FEMA):

- **For contravention of Section 3(a) of FEMA, the compounding authority depends on the amount involved:**
  - ✓ Up to Rs. 5 lakhs: Deputy Director of Enforcement Directorate
  - ✓ Rs. 5 lakhs to Rs. 10 lakhs: Additional Director of Enforcement Directorate
  - ✓ Rs. 10 lakhs to Rs. 50 lakhs: Special Director of Enforcement Directorate
  - ✓ Rs. 50 lakhs to Rs. 1 crore: Special Director with Deputy Legal Adviser
  - ✓ Rs. 1 crore or more: Director of Enforcement with Special Director
- **Condition:** The amount involved must be quantifiable for compounding.
- **Authority:** Officers in the Directorate of Enforcement have compounding powers, subject to the direction of the Director of Enforcement.

## LIMIT FOR COMPOUNDING:

1. **Time Limit:** A contravention cannot be compounded if it happens within 3 years of a previous one being compounded. After 3 years, it can be treated as a first-time contravention and compounded.
2. **Appeals:** If an appeal is filed, the contravention cannot be compounded.

## COMPOUNDING PROCEDURE:

1. **Application Process:**
  - Submit the application either on your own or as advised, using the prescribed format.
  - Pay ₹5000 fee (via DD) to the Directorate of Enforcement.
2. **Document Submission:** The Compounding Authority may ask for relevant documents or information.
3. **Compounding Decision:** The authority will pass the compounding order within **180 days** after giving the person a chance to be heard.
4. **Serious Cases:** If the contravention is serious (e.g., money laundering), the case is sent to the Adjudicating Authority.
5. **Before Adjudication:** If compounding happens before the inquiry, no further inquiry will be held for that contravention.
6. **After Complaint:** If compounding happens after a complaint, the Adjudicating Authority will be notified, and the person is discharged.

## **FACTORS CONSIDERED WHILE CONSIDERING COMPOUNDING APPLICATION:**

The following indicative factors, may be taken into consideration for the purpose of passing compounding order and adjudging the quantum of sum on payment of which contravention shall be compounded:

- Unfair gain from the violation.
- Loss to authorities or the government.
- Benefits from delayed or avoided compliance.
- History of repeat violations.
- Conduct and honesty during the hearing.
- Any other relevant factors.

## **PAYMENT OF AMOUNT COMPOUNDED AND CERTIFICATE OF COMPOUNDING:**

- The payment for compounding must be made by demand draft to the Compounding Authority within 15 days.
- If payment is not made on time, the compounding application is considered void, and regular penalties apply.
- Once the payment is made, a certificate of compounding will be issued.

## **CONTENTS OF THE ORDER OF THE COMPOUNDING AUTHORITY:**

- ✓ The order will detail the violated rules and contravention.
- ✓ It will be signed, dated, and sealed by the Compounding Authority.
- ✓ Copies will be provided to the applicant and Adjudicating Authority.

## **CASE LAW: M/s Candor View India Private Limited, Compounding order dated October 30, 2018 Reserve Bank of India, Bengaluru**

- M/s Candor View India Private Limited applied for compounding on July 6, 2018, for violating FEMA regulations.
- The contravention involved a delay in allotting shares to foreign investors beyond 180 days after receiving inward remittances.
- The company received foreign remittances of Rs. 5,00,000 in 2016 and allotted shares on May 26, 2017, which was beyond the 180-day limit.
- The Reserve Bank of India had granted prior approval for the allotment.
- A compounding application was filed, and the contravention was compounded.
- The penalty for the contravention was reduced to Rs. 31,500 considering the circumstances.

**CASE LAW: Mrs. Joyce Lynn Peters v. Reserve Bank of India and others (Writ Petition No. 26425 of 2017, Karnataka High Court**

- Mrs. Joyce Lynn Peters was issued a show cause notice in 2011 for violating the Foreign Exchange Management Act (FEMA)'s provisions related to capital account transactions.
- After receiving the notice, she applied for compounding, but the application was rejected by the Reserve Bank of India (RBI) and Enforcement Directorate (ED), citing that compounding was not allowed during ongoing adjudicatory proceedings.
- The petitioner challenged the rejection in the Karnataka High Court (KHC), which allowed her to reapply within two weeks. However, her second application was also rejected, this time due to Rule 11 of the Compounding Rules, which bars compounding if an appeal is pending.
- The petitioner then filed another writ petition challenging the rejection.
- Karnataka High Court ruled in favor of the petitioner, stating that relying on Rule 11 was incorrect. The court quashed the rejection and directed the respondents to reconsider the application within 8 weeks.

**LATE SUBMISSION FEE (LSF) SYSTEM UNDER FEMA:**

1. **Introduction of LSF:** The Reserve Bank of India (RBI) introduced the LSF system to simplify the process of regularizing delayed reporting for Foreign Investment (FI), External Commercial Borrowing (ECB), and Overseas Investment (OI) transactions.
2. **LSF Notification:**
  - The concept of LSF was introduced in 2017 for Foreign Investment transactions.
  - It was extended to External Commercial Borrowings (ECB) in 2019 and to Overseas Investment (OI) in 2022.
3. **Purpose:** LSF provides a simpler and faster alternative to the complicated process of filing a compounding application and paying penalties for delayed reporting.
4. **LSF Applicability:**
  - Applicable to reporting delays for Foreign Investment (FI), External Commercial Borrowing (ECB), and Overseas Investment (OI) transactions.
  - LSF applies to reporting delays only and does not cover other FEMA violations, which would still require adjudication or compounding.

## 5. LSF Calculation:

- Basic LSF: ₹7,500 for reports such as FCGPR (B), FLA Returns, Form OPI, etc.
- LSF for transactions with flows: ₹7,500 + (0.025% × Amount Involved × Years of Delay).
- Cap on LSF: The maximum LSF amount is capped at 100% of the amount involved in the delayed reporting.

## 6. LSF Payment Deadline:

- The LSF must be paid within 30 days from the date of the issued advice. If not paid within this period, the notice becomes void.
- If the applicant later requests LSF payment for the same delay, the date of the new application will be treated as the reference date for calculating the delay.

7. **Eligibility for LSF:** The facility for LSF is available up to three years from the due date of reporting. It also applies to delayed submissions under older FEMA regulations.

8. **Penalties for Non-Compliance:** If the applicant does not make the necessary submission or payment of LSF, they are liable for penal action under FEMA.

## 9. LSF Procedure:

- The applicant submits the delayed report to the AD Bank, which forwards the case to RBI.
- RBI condones the delay, issues a conditional acknowledgment, and once LSF is paid, a final acknowledgment is issued.
- LSF payments are non-refundable.

## 10. LSF vs Compounding:

- The option to opt for LSF is available for regularizing reporting delays without undergoing the full compounding process.
- If the applicant does not choose LSF, the option to go through the compounding process is still available.

## 11. Uniform LSF Matrix:

- As of September 30, 2022, a uniform LSF matrix is applied to all reporting delays, across FI, ECB, and OI transactions.
- The LSF for delayed reporting will be calculated based on the specific type of report (e.g., Form FCGPR, Form ECB, Form ODI, etc.).

## MEDIATION & CONCILIATION:

- Mediation and conciliation help reduce court cases by resolving disputes outside the court system.
- Mediation involves a neutral third-party helping parties negotiate a settlement, while the parties control the outcome.
- Conciliation is similar but the conciliator may suggest settlement terms.
- Conciliation was introduced in 1947 and mediation in 1999 under Indian law.
- Section 89 of the CPC allows courts to refer cases to mediation or conciliation if a settlement seems possible.
- The Salem Advocate Bar Association case in 2005 led to rules that guide the use of ADR in India.
- Both methods offer quicker, non-court solutions to disputes.

## DIFFERENCE BETWEEN MEDIATION AND CONCILIATION:

Basis for Comparison	Mediation	Conciliation
Meaning	A structured process where the mediator helps parties reach a settlement.	The conciliator helps parties reach an agreement, often after the dispute arises.
Participation of Third Party	Mediator has less involvement in resolving the dispute.	Conciliator has more involvement in resolving the dispute.
Terms for Settlement	Mediator does not suggest terms; settlement is voluntary.	Conciliator suggests terms based on the issues discussed.
Decisions	Decision is called a "settlement."	Decision is called an "award."

## ADVANTAGES OF MEDIATION AND CONCILIATION:

- **Informal:** The process is flexible and does not require formal rules, attorneys, or witnesses.
- **Confidential:** Everything discussed remains private, with no information shared outside the mediation.
- **Quick and Inexpensive:** Mediation usually takes less time and costs less than traditional court procedures.
- **Mediator's Role:** The mediator helps the parties identify their interests and find solutions. They can explore issues beyond the original dispute and resolve some while agreeing to disagree on others.
- **Non-adjudicatory:** Both mediation and conciliation involve a neutral third-party helping parties reach a mutually agreed solution without making decisions for them.

## **MEDIATION & CONCILIATION UNDER THE COMPANIES ACT, 2013 (SECTION 442):**

- Section 442 allows mediation and conciliation to resolve disputes at any stage of proceedings.
- It offers an alternative to lengthy and expensive court processes.
- The Central Government must maintain a panel of qualified experts to mediate disputes during proceedings before the government or tribunals.

## **RULE 3 OF THE COMPANIES (MEDIATION AND CONCILIATION) RULES, 2016 PROVIDES FOR THE PANEL OF MEDIATORS OR CONCILIATORS:**

- ✓ The Regional Director creates a panel of qualified mediators and conciliators for each region.
- ✓ The panel is published on the Ministry of Corporate Affairs' website or any other notified site.
- ✓ Interested individuals with the required qualifications can apply using Form MDC-1.
- ✓ If an application is rejected, the Regional Director must provide written reasons.
- ✓ The Regional Director invites applications every February to update the panel, which becomes effective from 1st April each year.

## **RULE 4 PRESCRIBES QUALIFICATIONS FOR EMPANELMENT:**

To be eligible, a person must meet at least one of the following criteria:

1. Supreme Court Judge
2. High Court Judge
3. District and Sessions Judge
4. Member or Registrar of a National Tribunal
5. Officer in Indian Corporate Law/Legal Service with 15 years of experience
6. Qualified legal practitioner for 10+ years
7. Professional (Chartered Accountant, Cost Accountant, Company Secretary) with 15 years of practice
8. Member or President of a State Consumer Forum
9. Expert in mediation/conciliation with proper training

## **RULE 5 DISQUALIFICATIONS FOR EMPANELMENT:**

Rule 5 lists reasons a person cannot be a mediator or conciliator. They are disqualified if they:

1. Are bankrupt or in the process of becoming bankrupt.
2. Have been convicted of a serious crime.
3. Have been fired from a government job.
4. Have been punished in a disciplinary case.
5. Have a conflict of interest or are related to anyone involved in the dispute.

### **NOTE:**

- ❖ Any party in a case can request to refer the matter to the Mediation and Conciliation Panel during proceedings.
- ❖ The request must be made in the prescribed format and with the required fees.
- ❖ The Central Government, Tribunal, or Appellate Tribunal will appoint experts from the panel.
- ❖ The Central Government, Tribunal, or Appellate Tribunal can also refer the case to the panel on their own if deemed necessary.
- ❖ The fees and terms for the experts are as prescribed by the relevant rules.

## **RULE 6 STIPULATES CONDITIONS FOR APPLICATION FOR APPOINTMENT OF MEDIATOR OR CONCILIATOR:**

Rule 6 covers the process for appointing a mediator or conciliator:

### **1. Choosing a Mediator**

- Parties can agree on one mediator.
- If they cannot agree, the Central Government, Tribunal, or Appellate Tribunal can nominate or appoint one.

2. **Application:** Apply using Form MDC-2 with a Rs. 1000 fee.

3. **Expert Appointment:** After the application, the relevant authority will appoint experts from the panel.

4. **Suo Motu Referral:** The authority can also refer a case to the panel on their own if needed.

## **DELETION FROM THE PANEL (RULE 7):**

- The Regional Director can remove someone from the panel after giving them a chance to be heard and recording reasons in writing.

## **WITHDRAWING NAME FROM PANEL (RULE 8):**

- A person wanting to withdraw from the panel must apply to the Regional Director with reasons.
- The Regional Director will decide within 15 days and update the panel.

## **DUTY OF MEDIATOR/CONCILIATOR TO DISCLOSE (RULE 9):**

- Mediators/conciliators must disclose any situation that could affect their impartiality or independence to the Central Government, Tribunal, or Appellate Tribunal.
- They must also inform the parties about such situations as soon as they arise during the mediation or conciliation process.

## **WITHDRAWAL OF APPOINTMENT (RULE 10):**

- If a mediator or conciliator's impartiality is in doubt, the Central Government, Tribunal, or Appellate Tribunal can withdraw their appointment and appoint a new one.
- The mediator/conciliator can also choose to withdraw themselves and request a replacement.

## **SECTION 442(5): TIMEFRAME AND OBJECTIONS**

- The Mediation and Conciliation Panel must resolve matters within 3 months and send its recommendations to the relevant authority.
- If any party disagrees with the recommendation, they can file objections with the Central Government, Tribunal, or Appellate Tribunal.

## **PROCEDURE FOR DISPOSAL OF MATTERS (RULE 11):**

### **1. Mediation/Conciliation Process:**

- The mediator sets the dates and times for sessions, where all parties must be present.
- The session is held at a place decided by the relevant authority or as agreed by the parties and mediator.
- The mediator can have joint or separate meetings with parties.
- 10 days before the session, each party must provide a brief memorandum to the mediator with the issues to resolve and any required information.

- Each party must also give any other information requested by the mediator.
- Based on the provided information and after consulting both parties, the mediator will issue an order agreed upon by both.

## **2. Multiple Mediators/Conciliators:**

- If there are multiple mediators, they first agree with the party who nominated them and then work together with the other mediators to resolve the dispute.

## **MEDIATOR OR CONCILIATOR NOT BOUND BY THE INDIAN EVIDENCE ACT, 1872 OR THE CODE OF CIVIL PROCEDURE, 1908 (RULE 12):**

- ❖ Mediators or conciliators are not bound by the Indian Evidence Act, 1872 or the Code of Civil Procedure, 1908.
- ❖ They must act fairly and justly, considering the parties' rights, obligations, trade practices, and the circumstances of the dispute.

## **REPRESENTATION OF PARTIES (RULE 13):**

- ✓ Parties must usually be present or can attend through an authorized attorney.
- ✓ With the mediator's permission, parties can be represented by a lawyer.
- ✓ The mediator or relevant authority can require a party to appear in person.
- ✓ A party living outside India can attend through an authorized representative with the mediator's permission.

## **CONSEQUENCES OF NON-ATTENDANCE OF PARTIES AT SESSIONS OR MEETINGS ON DUE DATES (RULE 14):**

If a party misses two consecutive sessions without a valid reason, the mediation or conciliation is considered failed, and the mediator will report it to the relevant authority.

## **ADMINISTRATIVE ASSISTANCE (RULE 15):**

With consent, the mediator can arrange for help from an institution or person to assist with the proceedings.

## OFFER OF SETTLEMENT BY PARTIES (RULE 16):

Parties can offer a settlement to the other party at any stage, with or without prejudice, by notifying the mediator or conciliator.

## ROLE OF MEDIATOR OR CONCILIATOR (RULE 17):

- ✓ The mediator/conciliator helps parties resolve the dispute by facilitating communication, clarifying issues, and exploring solutions.
- ✓ They cannot impose terms unless both parties agree.

## PARTIES ALONE RESPONSIBLE FOR TAKING DECISION (RULE 18):

The mediator/conciliator does not make decisions or guarantee a settlement. The parties are fully responsible for the outcome.

## TIME LIMIT FOR COMPLETION OF MEDIATION OR CONCILIATION (RULE 19):

- Mediation/conciliation must be completed within 3 months from the appointment of an expert.
- If not completed, the process ends, but the Tribunal/Appellate Tribunal can extend it for up to 3 more months.

## PARTIES TO ACT IN GOOD FAITH (RULE 20):

All parties must participate in the process with the intention of settling the dispute.

## CONFIDENTIALITY, DISCLOSURE AND INADMISSIBILITY OF INFORMATION (RULE 21):

1. ***Information Disclosure:*** The mediator must share any factual information received from one party with the other, unless the information is given confidentially by a party.

2. **Confidential Documents:** Records and documents created by the mediator are confidential and cannot be shared with authorities or anyone else.
3. **Parties' Duty to Maintain Confidentiality:** Parties must keep everything discussed during mediation or conciliation confidential and cannot use it in other legal proceedings. This includes:
  - Views expressed by parties
  - Confidential documents
  - Proposals or views from the mediator
  - Admissions made by parties
4. **No Recording:** There must be no audio or video recording of the mediation or conciliation process.
5. **No Statements Recorded:** The mediator cannot record statements made by the parties or witnesses.

## **PRIVACY (RULE 22):**

Mediation or conciliation sessions are private. Only those representing the parties (as per Rule 13) can attend, unless the parties and mediator agree to allow others.

## **PROTECTION OF ACTION TAKEN IN GOOD FAITH (RULE 23):**

- ✓ Mediators or conciliators are not liable for anything done in good faith during the process.
- ✓ They cannot be forced to testify or appear in court about their actions, information received, or documents prepared during mediation or conciliation.

## **COMMUNICATION BETWEEN MEDIATOR OR CONCILIATOR AND THE CENTRAL GOVERNMENT OR THE TRIBUNAL OR THE APPELLATE TRIBUNAL (RULE 24):**

- The mediator or conciliator should not communicate with the Central Government, Tribunal, or Appellate Tribunal about the case to maintain neutrality.
- If communication is necessary, it must be in writing, and copies should be shared with the parties.
- Communication can only be about:
  1. A party failing to attend.
  2. The parties' consent.
  3. The mediator's assessment that the case isn't suitable for settlement.
  4. The dispute being settled.

## **SETTLEMENT AGREEMENT (RULE 25):**

- If the parties reach an agreement, it must be written and signed by the parties and their counsel (if applicable).
- The signed agreement is submitted to the mediator/conciliator, who forwards it to the relevant authority with a covering letter.
- If no agreement is reached or the mediator believes a settlement is not possible, they must report this to the relevant authority in writing.

## **FIXING DATE FOR RECORDING SETTLEMENT AND PASSING ORDER (RULE 26):**

- ✓ The relevant authority must schedule a hearing within 14 days of receiving the mediator's report.
- ✓ If the dispute is settled, an order will be passed based on the agreement.
- ✓ If only certain issues are settled, the authority will continue deciding the remaining issues.

## **EXPENSES OF THE MEDIATION AND CONCILIATION (RULE 27):**

- The relevant authority (Central Government, Tribunal, or Appellate Tribunal) will set the mediator's fee, preferably as a lump sum, not per session.
- Mediation/conciliation costs, including the mediator's fee and administrative expenses, will be shared equally by the parties, unless directed otherwise.
- Each party covers the cost of their own witnesses, experts, and documents.
- Before starting, the mediator may ask parties to deposit an equal share of the estimated costs.
- If a party does not pay, the relevant authority will issue directions, and the mediation/conciliation will only begin after the payment is made. If payment is not made, the process is considered terminated.

## **ETHICS TO BE FOLLOWED BY MEDIATOR OR CONCILIATOR (RULE 28):**

The mediator or conciliator must:

- Follow rules carefully and with diligence.
- Avoid conduct that could be seen as unprofessional.
- Maintain integrity and fairness in the process.
- Ensure parties understand the process.
- Be qualified to handle the assignment professionally.
- Disclose any interests that may affect impartiality.

- Communicate appropriately and avoid bias.
- Keep confidentiality and trust.
- Follow the law in all proceedings.
- Respect the parties' self-determination to reach an agreement.
- Set reasonable expectations about confidentiality and avoid guaranteeing outcomes.

If any party feels the mediator's conduct violates these ethics, they can report it to the Regional Director.

## **RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS (RULE 29):**

- Parties cannot start arbitration or court proceedings during mediation or conciliation, unless they believe it is necessary to protect their rights.

## **Matters Not for Mediation or Conciliation:**

- Issues related to inspections or investigations under Chapter XIV of the Act.
- Matters involving defaults or offenses where one or more parties have applied for compounding.
- Cases involving serious fraud, forgery, impersonation, coercion, etc.
- Cases related to criminal or non-compoundable offenses.
- Matters affecting public interest or many people who are not part of the case.

**BINDING ORDER OF PANEL:** As per Rule 18, the mediator or conciliator cannot impose a decision. The parties are solely responsible for making decisions, so the panel's order is not binding.

**FRAUD AND CRIMINAL CASES:** Fraud, along with serious criminal offenses, cannot be referred to mediation or conciliation. These are non-compoundable offenses, and Rule 30 lists such matters as not eligible for mediation or conciliation.

## **ELIGIBILITY OF A COMPANY SECRETARY AS MEDIATOR/CONCILIATOR:**

- ✓ A Company Secretary with at least 15 years of continuous practice is eligible to be appointed as a mediator or conciliator (Rule 4).
- ✓ However, they will be disqualified under Rule 5 if they are an undischarged insolvent, convicted of moral turpitude, dismissed from government services, or have conflicts of interest related to the case.

## **SETTLEMENT AGREEMENT:**

- If the parties reach a settlement, it must be written, signed by the parties, and possibly their counsel. The mediator or conciliator will then submit it to the Central Government or relevant authority (Rule 25).
- If no agreement is reached, the mediator or conciliator will inform the Central Government or relevant authority in writing.