

June 2024  
Attempt

# DRAFTING

Chapter - 03

Drafting and Conveyancing

*Handwritten Notes*

CS VIKAS VOHRA | Corporate BaBa





## Rules governing offers

- clear, definite, complete & final
- communicated to offeree
- Implied / Express
- General / specific

## Modes of Revocation

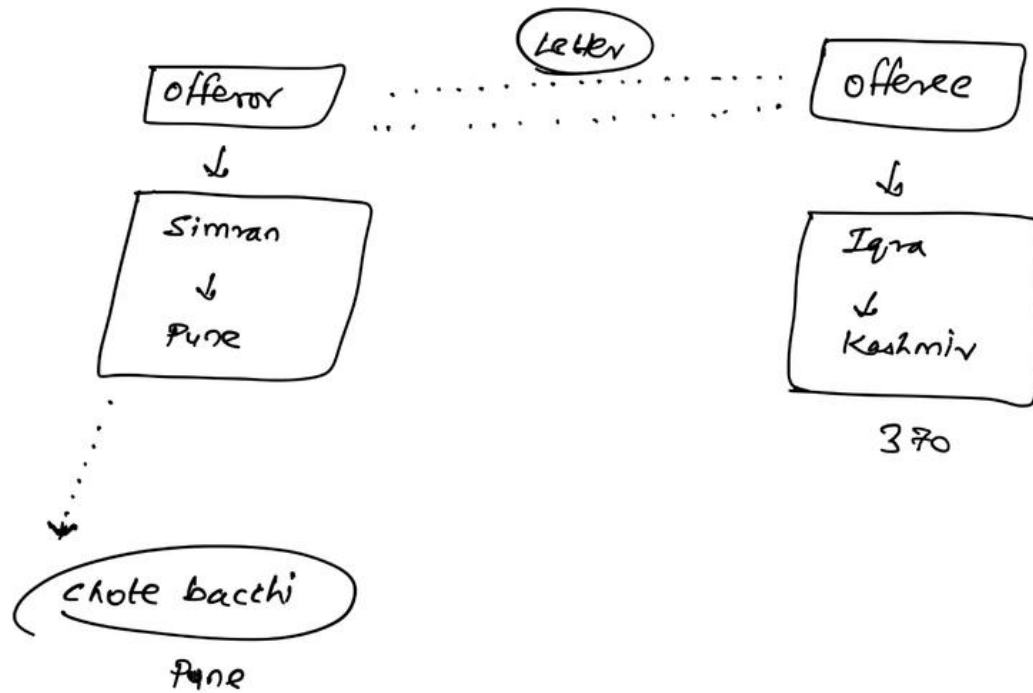
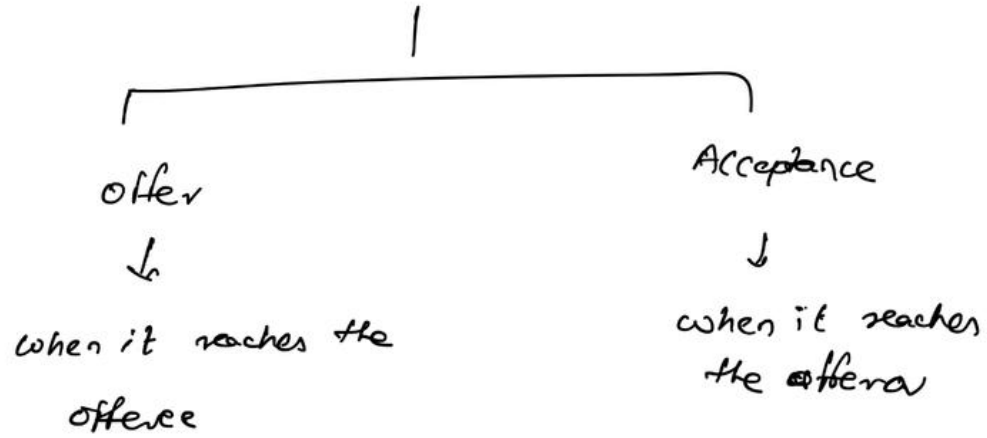
- Revocation was part of offer
- Time lapses
- Failure to fulfil a condition precedent
- Death / insanity

offer vs Invitation to an offer

mere statement of intention → Incomplete

Negotiations → counter offer

# Completion & Revocation of offer & Acceptance



offer — Letter of acceptance is out of the control of offeror

Revocation →

Acceptance — TTY it reaches the offeror.

Acceptance

↓

promise or set of promises forming consideration for each other

Conditions

- Absolute & unqualified
- In the mode prescribed
- Within the time allowed

Consideration



something in return



desire of the promisor



past / present / future



To do / not to do something



money / money's worth

Essentials

→ legal tender of the country

→ may be adequate / inadequate

Privity of contract

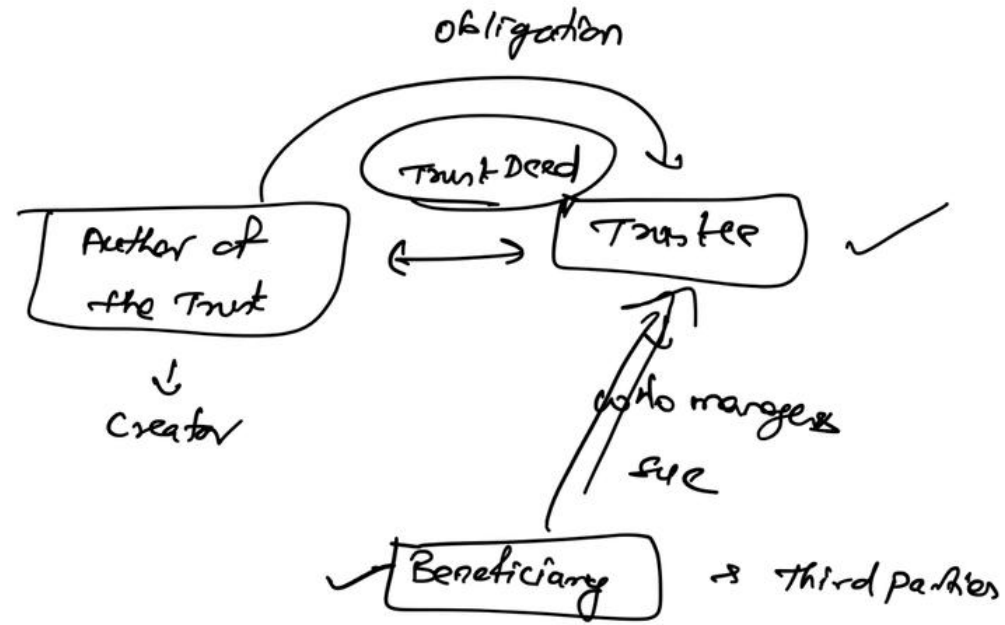
↓

a third party to a contract cannot sue upon  
parties to the contract

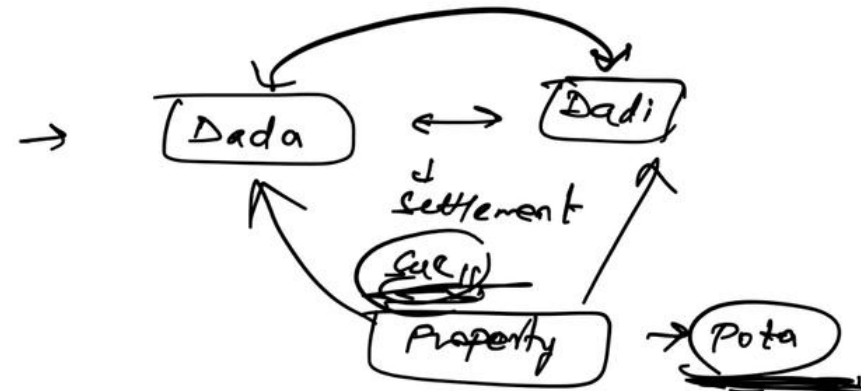
↓

Exception

→ Trust relations →



→ Family settlements →



## Exceptions

- Agreement in writing + Regd + out of natural love and affection + standing in near relation to each other
- Past act done
- Agency
- Time barred suit

## Coercion

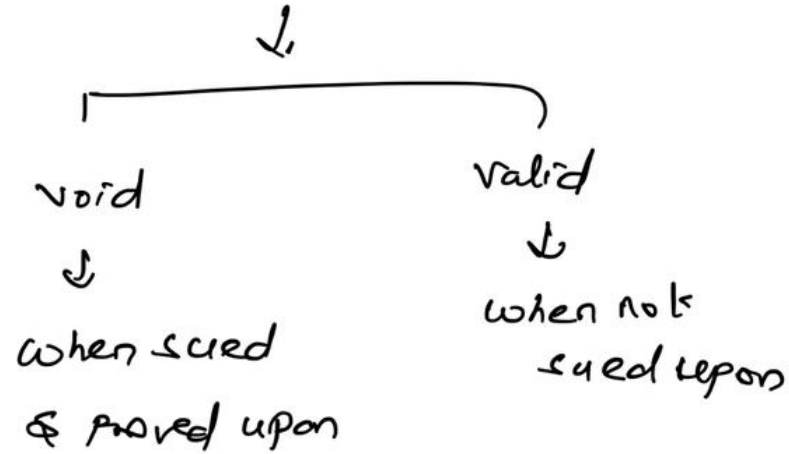


A party threatens the other party to commit an act



voidable in the eyes of law

< Voidable in the eyes of law



Undue Influence

↓

relationship between the parties is such where one party is in a position to dominate the will of the other

Party.

↓

voidable contract

→ Fiduciary relationship

→ mental capacity is affected - temporarily / Permanent

Fraud



any act with the intent to deceive the  
other party



void - if established upon

Misrepresentation

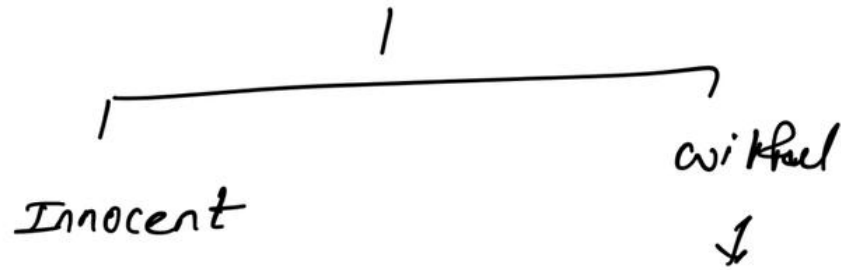


To represent incorrect facts about a particular sub.

# Misrepresentation



To represent incorrect facts about a particular sub.

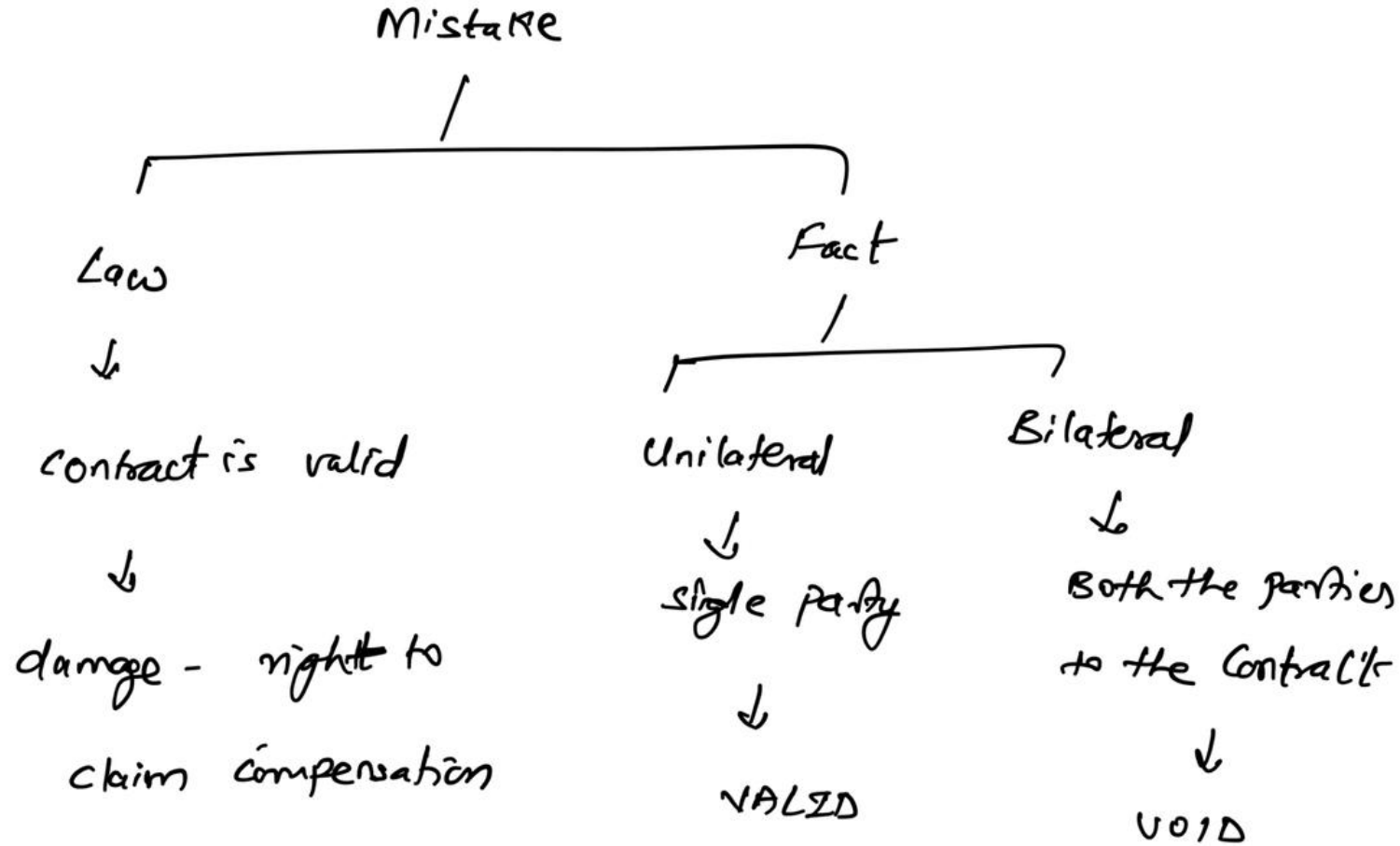


↓  
offeror himself  
is unaware of  
correct facts

↓  
offeror is aware of  
correct facts but still  
misuses his position to  
gain advantage over the

↓  
Remedy - Restitution of  
original rights

offer  
↓  
void: compensation  
can be claimed

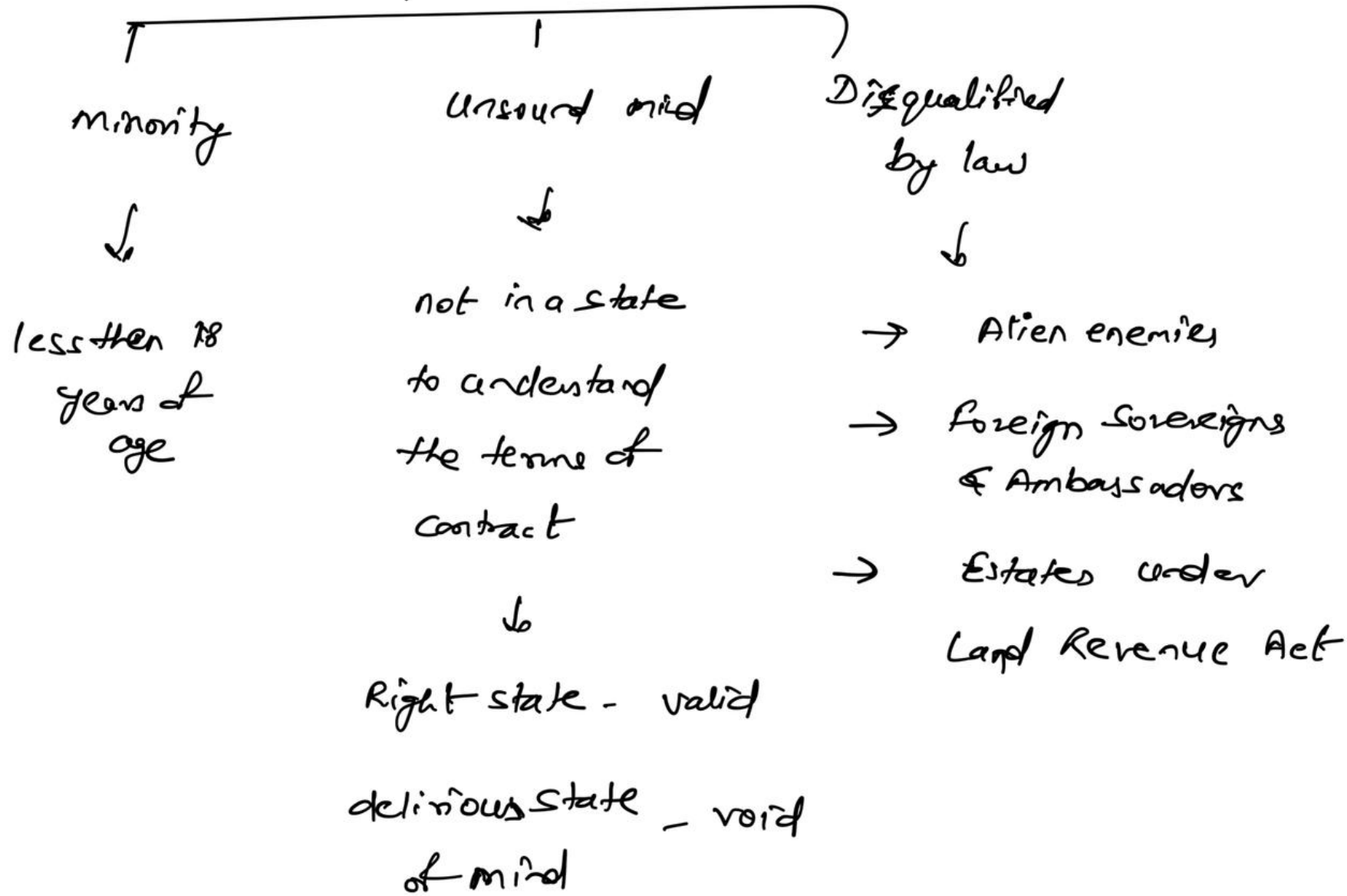


Competency of parties



Contracting parties must be competent to enter into a contract

# ① Incompetency



Contingent Contract



Performance of such a contract depends

upon happening or non happening of an event



Contingency shouldn't be a condition of

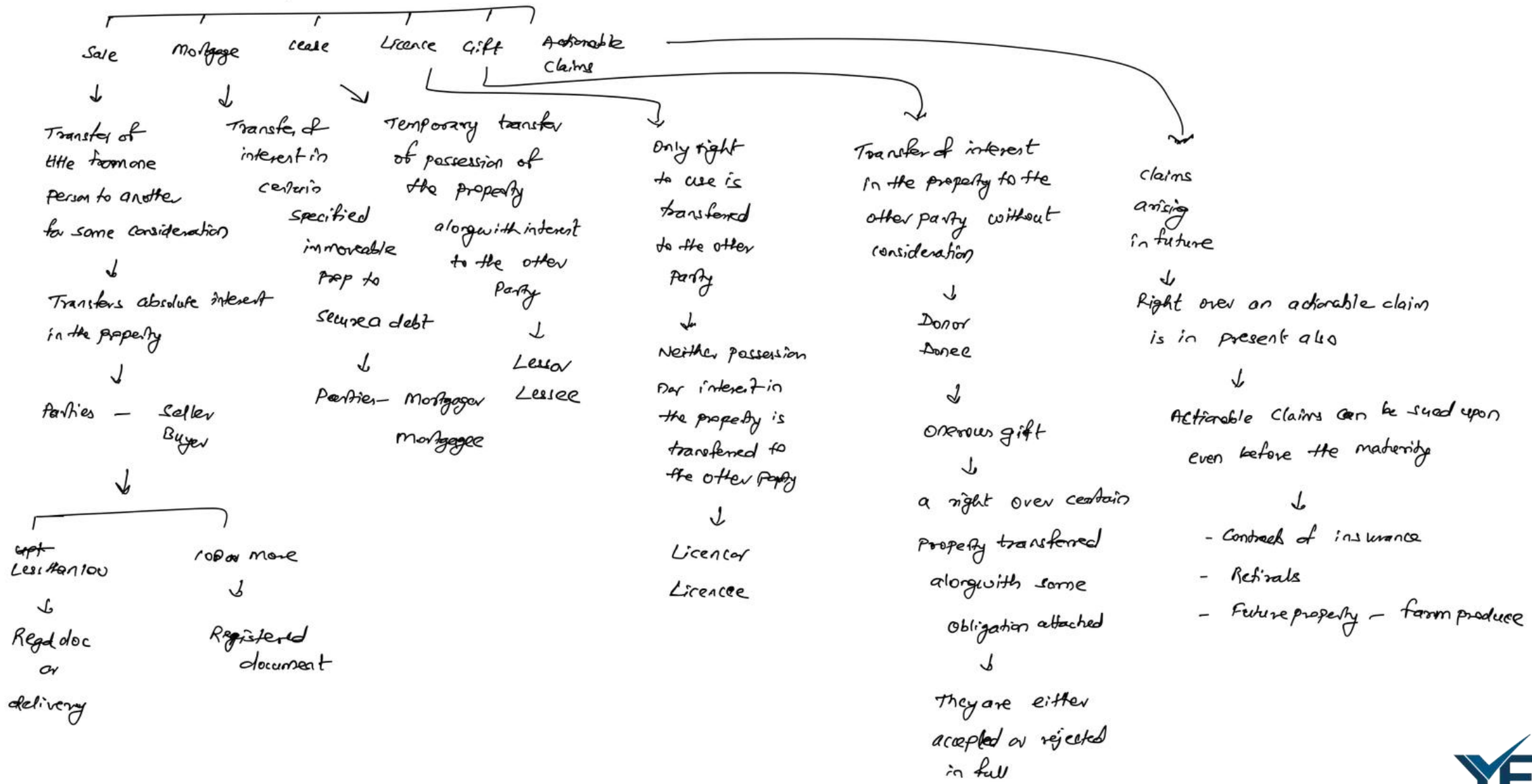
impossibility - VOID



normal cases - valid contracts



TOPA, 1882



# Indian Stamp Act, 1899



To levy & collect stamp duty is a power of the state



What is liable to be stamped - Document which qualifies to be an **instrument**



document by which certain rights, benefits, interests are being transferred to the other party.

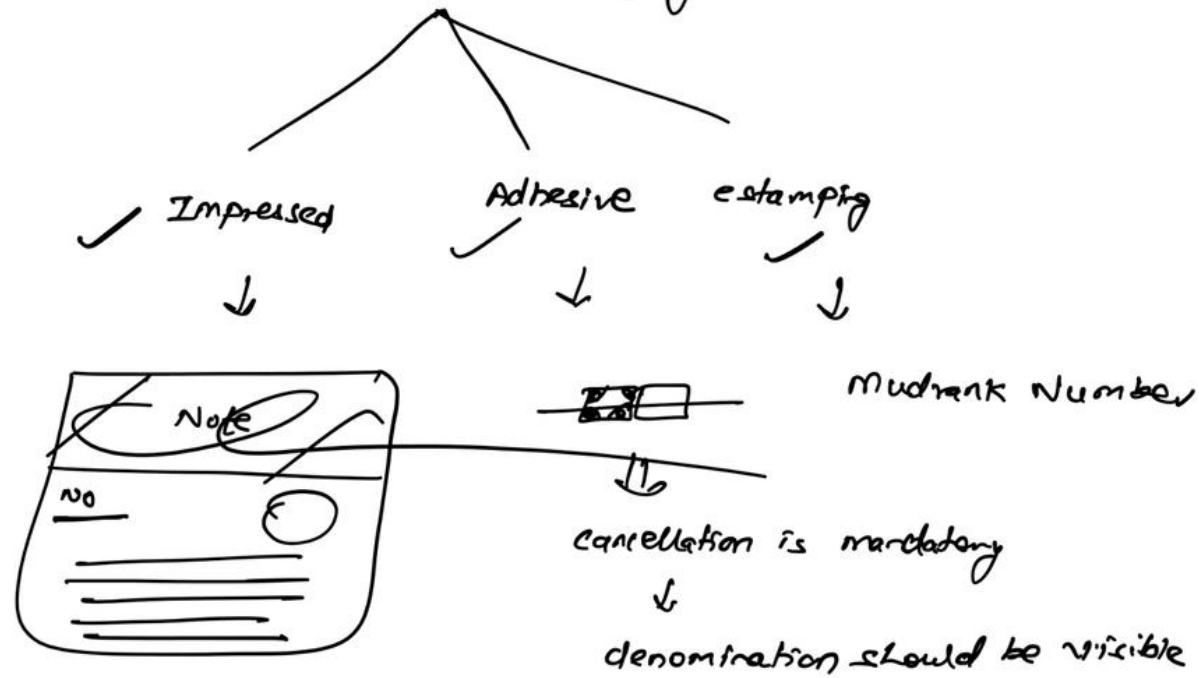
• 25% (Rent & term & 10% of dep & term)

**Schedule I**



Rate of stamp duty

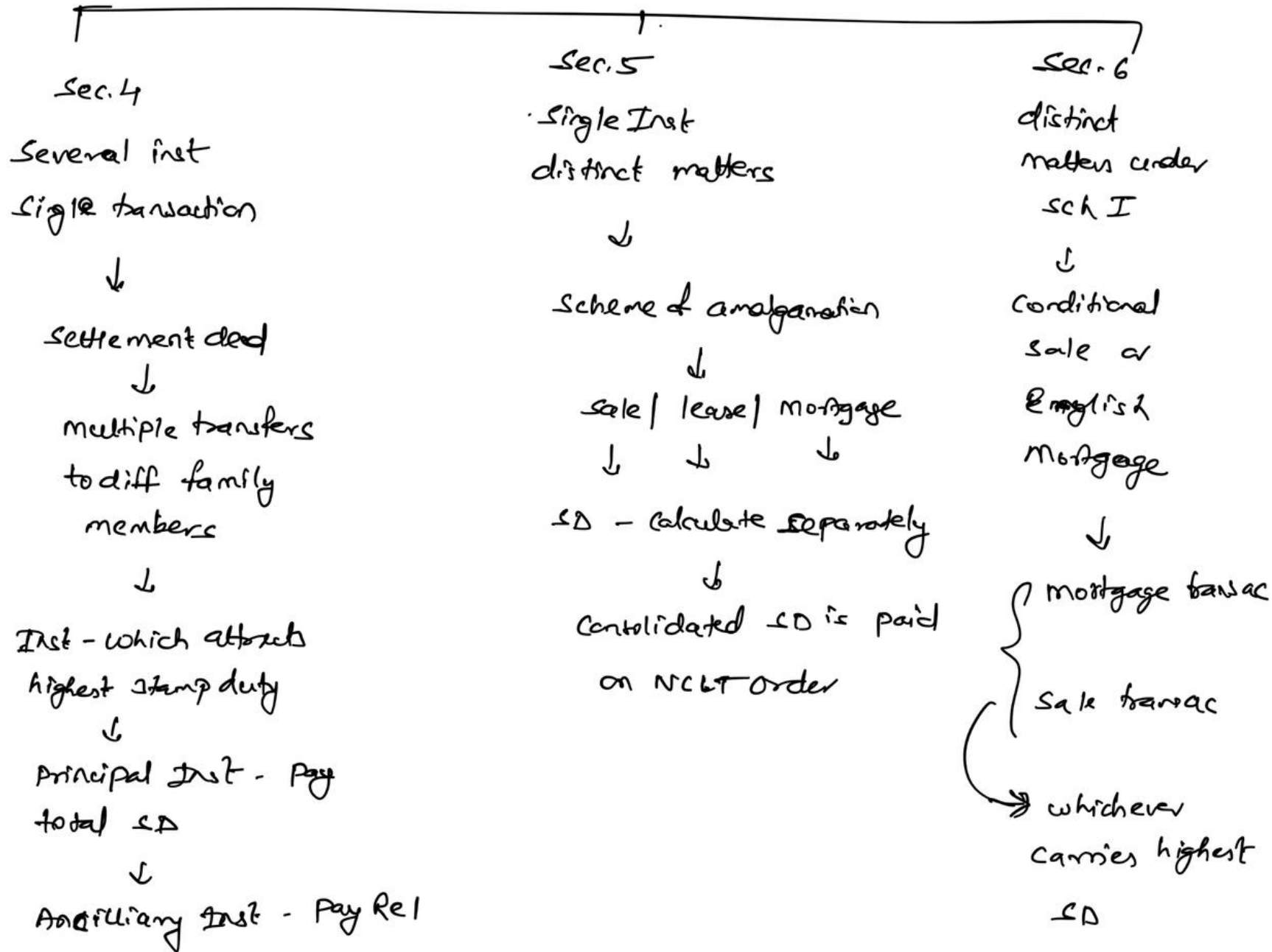
## Modes of stamping



Instruments chargeable with duty

- Any inst executed after 1 July 1899
- promissory note/ bill of exchange - made payable in India
- Any instrument except promissory note/ bill of exchange which relates to any property ~~to any property~~ in India

# Payment of stamp duty



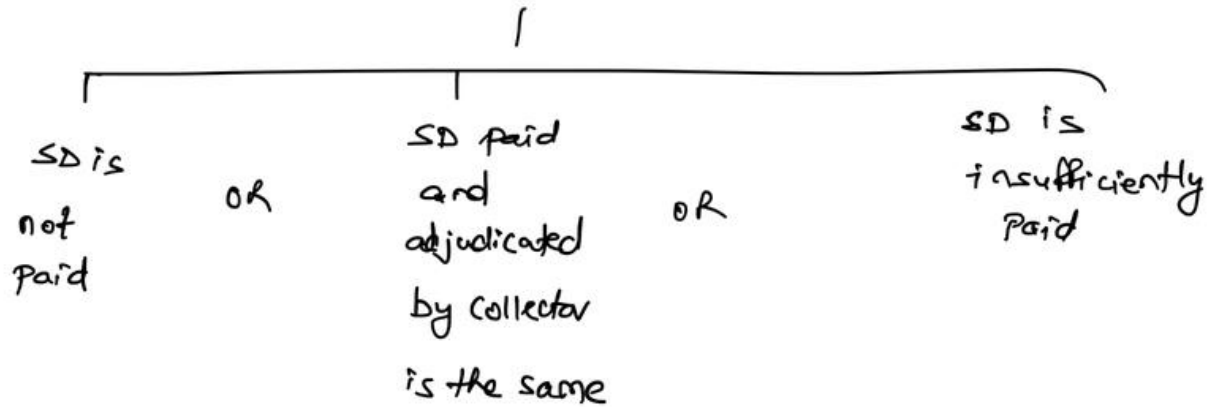
## Adjudication of stamp duty (sec. 31)

↓  
App with collector of stamps +  
copy of the instrument

↓  
collector of stamps adjudicates &  
informs the value of stamps

Certificate by collector (sec. 32)

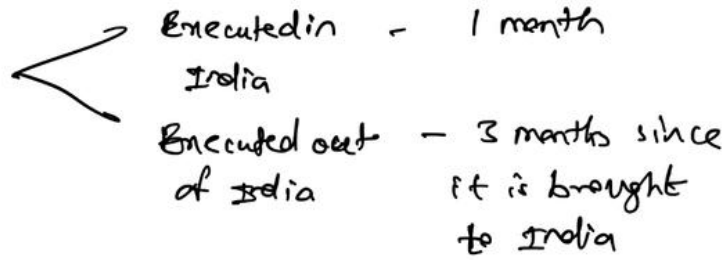
↓  
on receipt of inst. collector identifies that



↓  
collector issues certificate regarding  
full / part / non payt of SD

Exceptions →

Time period of adjudication



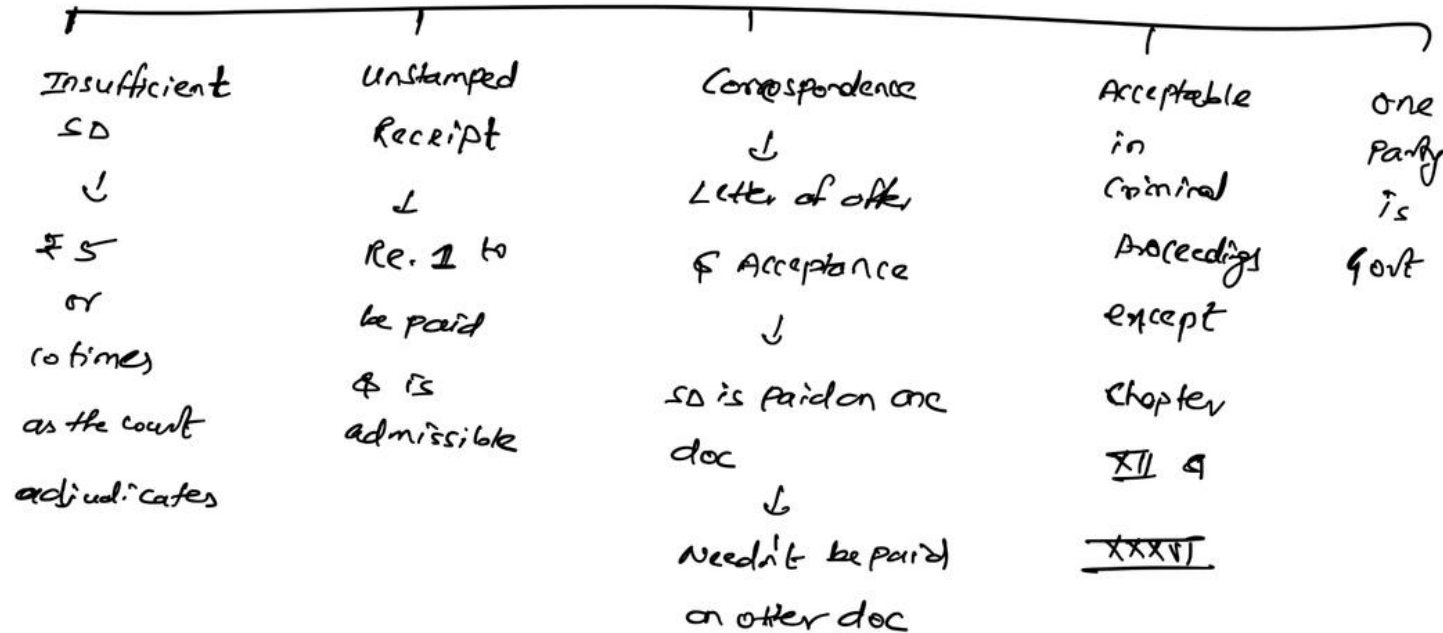
Instrument not duly stamped - Inadmissible in Evidence



Primary rule → Inadmissible in evidence



Exceptions



Admission of instrument insufficiently stamped

↓  
once admitted, court cannot refuse  
admission of document

↓  
Exception - Sec. 61 of ISA

Admission of improperly stamped instrument

↓  
stamp duty - sufficient

Description - x  
of transaction

↓  
doc. is valid & sufficiently stamped

# Power of attorney



document by which certain rights of  
one party are transferred to the other  
Principal Agent /  
Attorney holder



→ Parties - Donor & Donee

→ Document - executed by donee under his seal  
= & signature

↓  
effect as if its executed by  
the donor

→ Effect in law of a POA - same as if the  
document is executed by  
Principal

→ Any third party under POA is discharged from its liability if they have acted upon a POA and made payment to the Donee even though POA was revoked/ death/ or insolvency of Donor

→ Rights of Receiver in case of insolvency remains in case of the donor's insolvency

Deposit of original instruments - HC/DC

→ Original copy shall be deposited with concerned HC/DC along with affidavit

→ HC/DC maintains a separate file

- <
- Document must be duly stamped as per ~~state~~ state laws
  - Certified copies may be obtained of the original documents on request

POA by married women

↓  
she can write a POA  
as if she is unmarried

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# DRAFTING

Chapter - 07

Art of Opinion Writing

*Handwritten Notes*

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## Chapter - 7

①

### ART OF OPINION WRITTING

→ Purpose of opinion writing

- ① Lawfulness of an action
  - To know if it's lawful or not.
- ② Legal consequences
  - If it has any consequences otherwise.
- ③ Answer questions
  - To seek professional opinion on a matter.
- ④ Regulatory requirement
  - If it's mandated by law.
- ⑤ Compliance
  - To know legal compliances
- ⑥ Protective shield
  - To be used as evidence

⑦ Designed to mislead

- People seek multiple opinions and use the one in their favour <sup>②</sup>

⑧ Contractual Requirements

- Some contracts require expert's opinion

⑨ Due-diligence

- client's requirement to obtain daily report

## Types of Legal Opinions

① Advise on transactions

- To know if the transaction needs regulatory requirements

② Advise on law

- clients would want to know application of law in present situation
- One must run through relevant cases and principle of law before advising

③ Opinion on facts

- Parties would want to check their side of legal strength
- Also, one would want to know it's own witnesses and their opponent

#### ④ Advise on Evidence

- Parties may need to check how admissible is their evidence

③

#### Quality of writing

- 1) Primary Purpose - Advise to client or a layman in simple language
- 2) Good opinion should avoid technical words and heavy verbosity
- 3) clarity through proper planning & thought
- 4) Opinion which is precise yet complete is more preferred

#### Form of Opinion Letters

##### 1] Introductory Matter

- Title, date, addressee

##### 2] Introduction

- Opening para should give introduction to legal opinion
- opinion writer must help querier to arrive at right question
- check through multiple ways if all the questions are addressed

- Proceed only after the client has given a go ahead.

(4)

### 3] Definition

- Define all the principle terms used in opinion.

### 4] Understanding Facts

- Set out all material facts in logical order.
- Opinion giver should be satisfied of each fact reviewed/assumed.
- If only documents and certificates are considered then this should be stated:
  - a) certificate of public officials
    - certificates may be required from various state agencies.
    - for ex. land details from state government website
  - b) officer's certificates
    - To check authenticity of referenced documents
    - for example certified copies of company's records like MOA, AOA, minutes etc.
    - factual matters non-verifiable by opinion writer
    - obtain copies of original agreements executed & officer's certificate thereon

## 5) Research on Relevant Case Laws

(5)

- Quote relevant judgements relating to case facts
- find highest court's judgement as that's most impactful
- If there is statutory provision cite that as well to make the case strong

## 6) Expression of Opinion

- This indicates that opinion giver has made his investigation before writing this opinion
- Do not forget to answer the primary question

## 7) Qualifications

- Qualifications are assumptions considered while expressing opinion
- It forms strong precedent based upon which opinion is given
- Qualifications once written needn't be written again

## 8] Special Matters

6

### a] Reliance on local council

- In case if foreign law is involved, opinion from local council may be considered
- Local lawyers will have better knowledge of local laws

### b] Reliance on special council

- An experts' council opinion should be considered on critical matters
- Adds good value to the case's defense

### 9] Signature

- firm name, officers name, designation

### 10] Disclaimer

- It must state the limitation of time information provided and documents referred

# Things to be kept in mind while opinion writing (7)

## 1] Cost Effect

- Understand client's cost expectations & then invest time & resources as cost is one of the most important factors

## 2] Scope

- Opinion giver must have knowledge & resources on the subject matter
- Understanding client's full facts are equally important

## 3] Confirmations of fact

- Distinction should be drawn between matter of law & factual matters
- opinion must be based on law points considering functions

## 4] Significant legal uncertainty

- If opinion is doubtful, giver must state qualifications
- It may be in the form of discussion then uncertain opinion

## 5] Fraudulent or Misleading Opinion

Opinion should not be based upon false assumptions / beyond professional competence

## 6] Time to prepare opinion letter

- If less time was available while giving opinion it should be stated in disclaimer

## Standards applicable to preparation of an opinion

- 1] Generally, expected to be well read & should possess diligence, prudence & professional space
- 2] Customary practice - Attorney normally dis-claims his opinion however his opinions should be based upon researched law & factual information

3] fraudulent / misleading opinions = professional should not render an opinion that are misleading to the recipient (9)

4] Ethical issues - A professional while delivering an opinion must consider ethical principles.

Company Secretary Auditing Standard [CSAS] on opinion writing

→ It lays down the standards for evaluation of conclusion from audit evidence and opinion

Process of forming an opinion - CSAS-3

1] Materiality

- Principle of completeness to consider all audit evidence
- Principle of objectivity to ensure that reports are factually correct

◀ Principle of timeliness to submit within due time

(10)

- Principle of contradictory process to consider responses from different persons

### ] Precedences & Practices

- Adhere to generally accepted precedences & practices

### ] Third party Report

- Indicate the fact of use of third party opinion
- Also mention if it's provided by auditee
- Consider the important findings
- Check veracity third party opinion

### 4] Form of an opinion

#### A] Unmodified opinion

- It is given when the auditor concludes that there is compliance

< with applicable laws then records considered are free from the statement (1)

## B] Modified Opinions

- The auditor shall give modified opinion when:
  - There is non-compliance with applicable laws
  - Records are free from mis-statement
  - Unable to obtain <sup>not</sup> sufficient evidence

## c] Limitation

- Auditor shall request the appointing authority to remove the limitation
- If appointing authority refuses to remove the limitation, auditor shall communicate the matter to management

## 5] Auditor's Responsibility

- Auditor should express opinion on compliance with applicable laws & maintenance of records

- Auditor to also ensure that the audit was as per applicable standards

12

## 6] Format of the report

- Report to be addressed to appointing authority
- Detailed enough to serve intended purpose
- should be in the specified format
- Supporting documents must be attached as proof
- Signed along with name, registration no., membership no., date, place and assistant of fellow member

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# DRAFTING

Chapter - 08

Commercial Contract Management

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## CHAPTER 8 - COMMERCIAL CONTRACT MANAGEMENT

①

### Significance of Contract

- Avoids misunderstanding & legal disputes
  - Both parties aware of rules & obligations
  - Avoids conflicts
- Acts as a record
  - Used for future reference
  - Reminds of tenure, scope & time for performance
- Evidence in court of law
  - Case be used in case of breach of contract
- Increases operational efficiency
  - Performance on one side; Payment by other

→ Proof of details

(2)

- Clarity on services provided by one
- Consideration is clear too.

→ Provides security

- clarity on tenure, responsibilities and breach

→ Provides confidentiality

- Non disclosure clauses secure info on data, scope of work & payment details.

→ Prevents conflicts & minimizes risk

- Better clarity regarding the deal

→ Record of Commitment

- Rights over each other as both are bound.

## Negotiation of best terms with vendor

3

→ Make a plan

- Have clarity on terms you want
- Review your rights & obligations
- Work on exit clauses properly

→ Build a foundation of communication

- Speak in person if possible
- Respond timely
- Consider a single point of contact

→ Be proactive in communication

- Try to be proactive about your need to renegotiate

→ Research pricing

- Understand quality of product & its competitive pricing
- Find a worried vendor as he always offers you better

pricing -

---

→ Learn from them

- Treat your vendors as industry experts
- seek their help more often respectfully

→ Sell the vendor

- Find vendors interest and hit a deal as that would fetch you better pricing

→ Get quotes

- find vendors and get competitive quotes
- Make your deal more negotiable

→ Try a different angle

- offer alternatives like lumpsum payt, more qty etc

→ Talk to customers

- speak to the vendors customers to know reviews & pricing

→ Lead with a deposit

- find payment terms suitable to them

(4)

→ Be Patient

- Have plan B ready always
- stay confident & calm to get better deals

→ Be partners

- offer your vendors something that is mutually beneficial

→ Stay strong

- Vendors don't want clients who are overly complicated
- Build trust by keeping your commitments.

→ Find a win-win solution

- suggest ways that would benefit both.

## General Conditions of a Contract

- 1) Name & particulars of parties
- 2) Definitions
- 3) Interpretation clause
- 4) Scope of work
- 5) Warranties
- 6) Contractual period
- 7) Cost
- 8) Mode of payment
- 9) Effective date
- 10) Rights & obligations
- 11) Termination
- 12) Withdrawal (same as termination)
- 13) Disclaimer
- 14) Indemnity
- 15) Liability
- 16) Confidentiality
- 17) Force majeure
- 18) Jurisdiction
- 19) Dispute
- 20) Damages
- 21) Precedence, if any

## Execution & its significance

7



signing by both the parties



- Reduces litigation possibilities
- Hard work may go waste

## Contract documents - meaning & importance

- Contract Agreement
  - Specifies rights & obligations
- Scope of work
  - Specific work of both the parties
- Addendum
  - Attached with the original contract

- General Conditions
  - depending upon the subject matter are decided
- Special Conditions
  - specific requirements related to work
- Bill of quantities
  - Allows the contractor to bill the work executed
- Schedule
  - performance schedule
- Budgets
  - Estimated cost
- Drawings
  - Details of work to be executed

8

→ Insurance

- to protect goods from damages

→ Bonding

- performance or payment bonds

→ Technical specs

- Material, labour and equipment cost.

### Maintenance of Contract documents

Process of organising & storing documents in physical or electronic form.

manual document  
management system (DMS)

Electronic document  
management system (EDMS)

# Tracking of contracts - stages

Draft of document by one party



Review & Negotiations  
↓  
Reviewed by legal professionals of both parties



Approval & Execution



Storage



Performance  
↓  
execution of contract



Reporting & Analytics



Amendments  
↓  
changes to existing terms



Extension or Expiration

## Golden rules for tracking a Contract

(11)

- Know the place of storage
  - use contract management software to track location
  - system for organising repository
- Determine the requirements of tracking
  - seek clarity on due dates, performance, payment obligations, termination etc
- Be proactive, not reactive
  - Regularly review agreements
  - Note imp dates for performance
- Keep stakeholders informed
  - communicate with vendors frequently to maintain relations



- Streamline the process with software
  - Repository gives a centralized storage system
  - Custom reporting tools to your needs
  - Keep notifications on for updates

Maintaining relations with vendors

- Choose suppliers with similar philosophy
  - Supplier should have good guaranteed warranties
- Understand suppliers needs
  - make it easy for your vendors to follow timelines
- Be a great customer
  - Know what you would love as a customer and do the same for vendors

→ Regular Communication

13

→ Timely feedback

- be calm and communicate with ease with vendors

→ Reward good service with loyalty

- Appreciate for all the good done.

Modification in terms of contract & cost

modification may happen with mutual consent

↓

if it's beyond the scope, quantum meruit compensation  
can be claimed - as much as earned / performed

↓

↓  
Conditions for claiming compensation

- Claimant has performed his part lawfully
- Claimant isn't acting gratuitously.
- Other person has enjoyed what done by claimant.

(14)

Action in case of breach of contract

Suffering party has right to claim compensation (s. 73)

↓  
Indirect loss can also be claimed by suffering party if the possibility of loss was informed in advance to defaulting party.

↓  
Party in default is obligated to compensate



If penalty is decided in advance, it has to be paid by defaulting party. (S. 74)



If one party rescinds the contract, he can claim compensation.



Damages can only be claimed by a party who has suffered losses



If it is a term of contract that any third party suffering loss may claim compensation too, then the third party can also claim damages.



Interest on damages may also be claimed, if its a custom.

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# DRAFTING

Chapter - 09

Judicial & Administrative Framework

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## CHAPTER 9

# JUDICIAL & ADMINISTRATIVE

## FRAMEWORK

### Supreme Court

- Highest court of the country
- Comprises of C.J.I & other judges - Total 34 judges
- Carries original appellate & advisory jurisdiction
- Power to hear writs as well - Article 32

### High Court

- Every state shall have a high court
- Total 25 high courts in India
- Carries original as well as advisory jurisdiction
- Power to announce punishment for contempt of court

## Lower Courts

②

- Established by various state governments for every district.
- Under the administrative control of high court
- Headed by a district judge
- Subordinate courts are junior civil judge court, principle junior & senior civil judge court
- Criminal court at district level is headed by sessions' judge
- Subordinate courts - JMSE / JMFC / CJM.

## Revenue Courts

- Courts but not part of judiciary
- Looks after matters relating to stamp duty, registration
- Hierarchy - Tehsildar → sub-divisional officer, District collector → Board of revenue

## E-courts

— ⑧

- Based upon national policy and action plan for implementation of information and communication technology [ICT]
- E-courts mission mode project is monitored and funded by department of justice, ministry of law
- Objects
  - Efficient and time-bound citizen centric services
  - Support system & courts
  - Transparency in accessibility of information
  - Enhance judicial productivity
- Success of E-court mission project can be attributed to three factors
  - Free & open source software [FOS]
  - Core periphery model has been implemented for the policy & decision making at the national level i.e. supreme court, parliament, high court
  - Focused on citizen centric keeping the litigant in mind

# Types of Tribunals

(4)

## → DRT

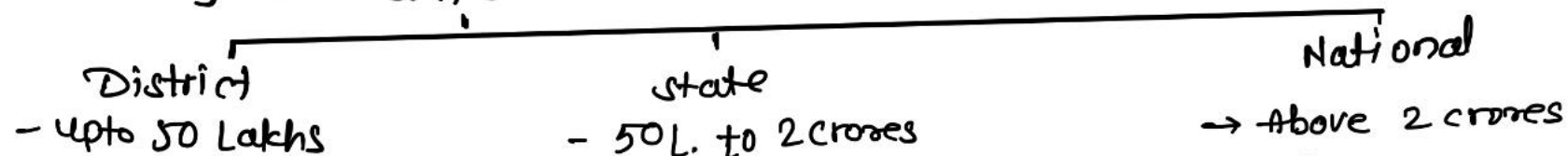
- Object is to receive claim applications from banks & F.I.'s, against defaulting borrowers
- Aid to banks, F.I.'s, to reduce NPA's.
- Earlier these cases were filed before civil courts

## → NCLT

- Formed as per Companies Act, 2013, effective from 1<sup>st</sup> June 2016
- Looks after activities of CLB / BIFR / appellate authority of BIFR / winding up and restructuring matters of H.C.

## → Consumer Forums

- Three tier redressal mechanism containing district, state & national level consumer forums
- Pecuniary jurisdiction



- To decide the complaint within 3 months : where no analysis or testing is required
- within 5 months if analysis & testing is required.

< within 3 months of receipt of complaint

- E-daakhil portal initiated by C.G. for filing complaint electronically ⑤

#### → Motor accident claims tribunal

- Deals with matters relating to motor accident victims or their next of kin
- Preceded over by judicial officers under the supervision of high court

#### → Central administrative tribunal

- To hear matters relating to non-observation of terms of service of govt. servants

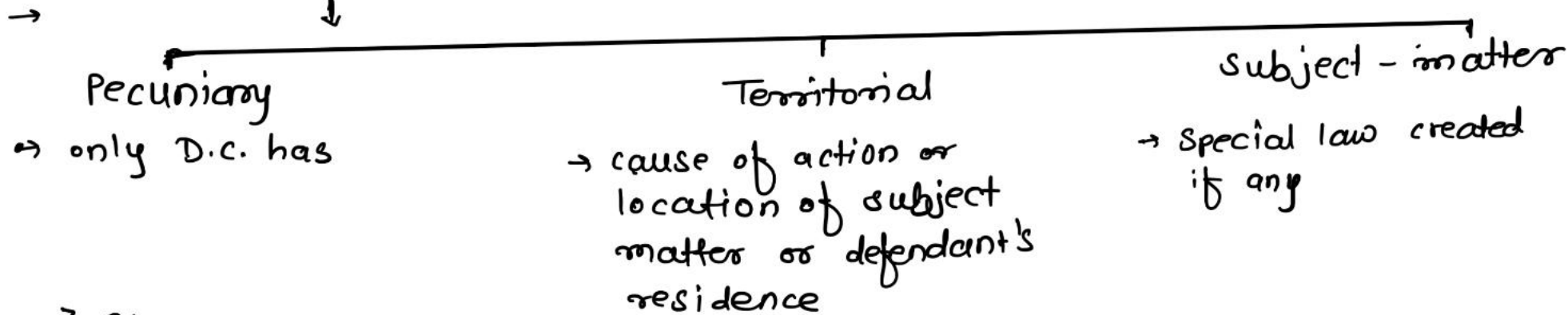
#### → National Green Tribunal

- Looks after cases related to environmental protection, conservation of forests, natural resources, compensation of damages to persons & property
- Matters to be decided within 6 months of filing

# Civil court working - procedure

6

## 1] Jurisdiction



## 2] Stay

- court's power to stay a suit
- foreign court proceedings does not affect Indian court proceedings

## 3] Res-judicata

- no case can be filed on the same subject before two courts at the same time

## 4] Plaint

- Document filed stating facts in matter, cause of action and applicant's grounds for submission of disputes

## 5] Summons

Issued by the court to the defendant seeking his reply  
May also be issued for appearance of parties or submission of documents

## 6] Appearance of Party

Parties must appear before the court as per summons  
On the date of hearing, if plaintiff is unavailable - matter is dismissed  
Defendant unavailable - matter is decided ex-parte.

## 7] Adjournment

Either of the parties on sufficient grounds may seek a fresh date of hearing and adjourn the matter

## 8] Ex-parte decree

- If defendant is not present the date of hearing court may order ex-parte
- On sufficient cause being shown ex-parte may be set aside

### 9) Interlocutory Proceedings

- Application filed to seek interim relief during the pendency of proceedings
- Injunction is the most common form of interim relief

### 10) Examination of parties

- At first hearing the court ascertains if the case is admissible or not
- It shall be an oral examination

### 11) Production of documents

- All documentary evidence in support of claims must be submitted at the start
- Later on it can only be admitted with the permission of the court

### 12) Framing of issues

- Issues may be framed from allegations submitted and documents produced & interrogations.
- Jurisdiction & limitation period is also identified

### 13) Summoning & attendance of witnesses

- Court summons the parties for appearance in person as well as production of documents

→ court has powers to recall any witness

14] Affidavit

→ Any submissions made, documents produced or statements given; during examination & cross examination shall be supported by an affidavit.

15] Final Argument

→ All the parties are allowed to present their final arguments before the judge decides upon the matter.

16] Judgement

- statement given by the judge based upon which decree is granted
- Judge fixes a day on which judgement is pronounced
- Time taken beyond 30 days for pronouncing judgement must be reasoned

17] Decree and Execution

→ After passing the decree, its execution has started based upon its oral or written application



# Criminal Trial

warrants cases	Summons cases
<ul style="list-style-type: none"> <li>• offence punishable with death, life imprisonment or imprisonment exceeding 2 years.</li> <li>• charges must be mentioned</li> <li>• Personal appearance of accused is mandatory</li> <li>• warrants case can not be converted into summons case</li> <li>• Accused can examine &amp; cross examine more than once</li> </ul>	<ul style="list-style-type: none"> <li>• offences punishable with imprisonment upto 2 years</li> <li>• charges may not be mentioned</li> <li>• Personal appearance of accused is not mandatory</li> <li>• Summons cases can be converted into warrants cases</li> <li>• Gets only one opportunity to cross-examine the witness</li> </ul>



# Stages of Criminal Trial - warrant case

(ii)

## 1] F.I.R.

→ FIR puts the case into motion and filed by the aggrieved

## 2] Investigation

→ The investigating officer examines the facts & circumstances collects evidence and submits a police report with the magistrate

## 3] charges

→ charges are framed in writing based upon the report

## 4] Plea of guilty

→ Accused is given an opportunity to plead guilty innocent.

## 5] Prosecution Evidence

→ If accused pleads not guilty then the prosecution has to produce evidence to prove the guilt of accused

## 6) Statement of the accused

→ Accused is to be heard and given an opportunity to explain the facts and circumstances of the case

## 7) Defense evidence

→ Defense can produce oral and documentary evidence

## 8) Judgement

→ Court gives final decision by way of judgement after hearing both the parties

## Criminal Trial in summons case

### 1) Pre-trial

→ F.I.R. and investigation

### 2) charges

→ May not be in writing

→ Accused is brought before the magistrate and state the facts orally

### 3) Plea of guilty

→ Magistrate will ask the accused if he pleads guilty or has any defense

#### 4] Absence of the accused

- In case of petty offences, accused can accept his guilt without appearing
- Magistrate can convict the accused.

#### 5] Prosecution & defence evidence

- The accused does not plead guilty then the trial starts.
- Both parties can submit their evidence

#### 6] Judgement

- Based upon all the submissions the judge pronounces his judgement
- Decision may be appealed

### Summary trial

- offences punishable with imprisonment up to 6 months can go under summary trial
- Punishment by way of imprisonment can not be given of more than 3 years
- Trial is similar to summons case



## Reference & Revision under Cr.P.C.

### Reference :

- Subordinate court to high court can make reference to high court.
  - If the case involved questions validity of any act, ordinance or regulation
  - court must believe that such act, ordinance or regulation is invalid or inoperative
  - Court shall set-out opinion & reasons for making a reference

### Revision :

- Revision lies in both pending & decided cases.
- Object is to enable the correctness of the judgement passed
- Empowers the H.C. or sessions court to call for any records of any inferior court to find out whether the orders passed is legal, correct & proper.
- High court can recall to examine the record of any proceeding of sessions judge as well

## Proceeding

- Not only restricted to cases of commission or trial but includes judicial proceedings before any inferior criminal court
- It's not the nature of proceeding but the nature of the court which is considered
- Revisional court has powers to order release of offenders on bail or bond.

## No Second-Revision

- Revision application is allowed only once
- Allowed to be made directly to the H.C. as well
- If it's made to sessions' judge, it can not be made to high court in that case and vice-versa.
- As a general rule such application should always be made to the lowest court having power

## Power of Revision of Sessions Judge

(16)

- Sessions judge has same powers as that of H.C.
- Decision of sessions judge shall be final on an application for revision
- Not allowed to approach high court or any other court then

## Revisional powers of High Court

- High court can exercise revisional power either suo moto or on petition of any aggrieved party
- High court may exercise any of the powers as a court of appeal subject to exceptions
  - High court is empowered u/s 386(a) to reverse an order of acquittal into conviction & vice-versa but the same can not be done in case of revision.
  - In appeal high court will interfere if it is satisfied about the guilt of the accused but in revision it may interfere only when it is brought to notice
  - Appeal can not be dismissed without an O.O.B.H. to the accused but in revision accused is given O.O.B.H. only if the order passed is pre-judicial

## No Revision where Right to Appeal Exists

→ where the party has right to file an appeal but does not exercise so it can not file a petition for revision also

## Revision may be treated as appeal

→ It is when a party has filed a revision application believing that no right of appeal exists, such revision may be treated as appeal.

## Enhancement of Sentence

- High court would interfere where it is convinced that the sentence passed is grossly inadequate
- District magistrate, sessions judge or government pleader may draw H.C. attention on sentence which requires enhancement
- High court may grant any sentence as prescribed under I.P.C. except in cases tried by magistrate's

## Reduction of Sentence

→ If after hearing the govt. pleader H.C. concludes that sentence imposed needs reduction, it can do so under its revisional jurisdiction

## Fact finding

- High court will not go into the question of sufficiency of material before the lower court / its decision
- Where the trial has fully dealt with the matter H.C. will not interfere & disturb the trial court's order

## Reference, Review & Revision under C.P.C.

### Reference

- A reference can be made to H.C. when the presiding judge has a reasonable doubt on the point of law or usage
- Where the court is of the opinion that the act, ordinance or regulation is invalid or inoperative

### Reference under rule-7

→ where the court is of the opinion that it has more power to refer, to make a reference, the court still has a discretion to make / refuse to make a reference

### References by sub-judge

→ sub-ordinate judge should submit the record of the case to the district judge for orders

### Character of Suit to be described

→ True character should be described with accuracy

### Party should be heard before

→ No reference to be made unless an o.o.B.H. given against such reference

### Objections of parties to be placed on record

→ The court shall certify that an opportunity is given & shall place on record the objections

(20)

Notice of Reference is to the parties

→ The court making reference shall give notice either orally / in writing to such parties as attended / represented

① Date fixed for appearance in High court

→ Allow reasonable time to the parties and which shall not be less than 1 month

Necessary records to be sent along with order

→ Court making reference shall forward all the record of the suit in which reference is made

Reminder from high court if no reply received

→ If intimation of date is being fixed within 2 months of making such reference, attention of the registrar should be drawn

# Review

- Reconsideration of it's own decision by the same court
- It is influenced from the thought that an act of the court shall pre-judice no man
- Not all orders & decrees can be reviewed

# Rules of Review

- No application for review shall be granted without previous notice to opposite party to appear
- Where the application for review is heard by more than one judge and the court is equally divided, the application shall be rejected
- An order of the court rejecting the review application shall not be appealable while an application granting review may be appealable
- An application to review an order shall not be entertained

## Difference between Appeal & Review

22

- Powers of a review can only be exercised for correcting a mistake and not to substitute a view
- Powers of review should only be exercised within the limit of statute
- Once a review petition is dismissed no further petition can be entertained
- Where an appeal has been preferred a review application does not lie but an appeal may be filed after an application for review

## Illegally or with material irregularity

- High court may satisfy itself on three matters
  - 1] Orders of sub-ordinate court is within its jurisdiction
  - 2] Case is one in which court ought to exercise its jurisdiction.
  - 3] Court has exercised jurisdiction <sup>not</sup> illegally or with material irregularity

If the high court is satisfied upon three matters, it has no power to interfere.

- where there is conscious violation of rule of law, case is of material irregularity calling for interference in revision

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Attempt

# DRAFTING

## Chapter - 10 Pleadings

*Handwritten Notes*

**CS VIKAS VOHRA** | Corporate BaBa



## CHAPTER - 10 PLEADINGS

①

### Meaning of pleadings

- It means plaint / written statement
- Document through which facts are presented for trial
- Gives clarity to court as well as parties about what they are contesting
- Submitted by plaintiff is called as plaint ;
- Submitted by defendant is called as written statement
- Material omission in pleadings can lead to serious consequences
- No additional submissions allowed without court's permission.
- Pleadings may also include counterclaims by defendant
  - Set-off
  - Counter-claims

## Main object of Pleadings

②

- Defines issue of facts and question of law.
- Provides fair opportunity to opponent to submit his reply
- Creates a permanent record of the matter in litigation

## Importance of pleadings

- Demands high degree of skill and should only be stated by advoc
- No relief if not pleaded for
- No pleading no evidence — can not be sustained

## Fundamental Rules of Pleadings

- Facts and not law
- Only and only material facts
- Only facts and no evidence
- Must state material facts concisely

## 1] Facts & not law

③

- pleaders must narrate facts and not legal references drawn.
- It's the judge who draws inferences from these facts.
- where a party pleads that act of defendant was unlawful or negligence such pleading would be bad.
- In a declaratory suit plaintiff must show that he was related to the deceased and also the relationship of other claimants
- In a money suit he must prove the facts showing his title to the money.

## 2] Material facts

- material means necessary for formulating a complete cause of action.
- responsibility of the lawyer to sort material & immaterial facts so that judge focuses on only material points.
- Include facts which have a direct & immediate bearing on the case and omit secondary / incidental facts
- whether a fact is material or not will depend upon circumstances of the case
- A fact which may appear initially <sup>material</sup> may become immaterial later
- for ex. → In a suit of <sup>defamation</sup> it is material to prove that the words used were intended to defame or were so understood by men at large

## Exceptions

④

### 1) Condition Precedent

- Performance of any condition precedent need not be pleaded as it shall be implied
  - But where condition precedent is a material condition, it can be pleaded  
eg. requirement of architects' certificate before commencement of work

### 2) Presumption of law

- In case of a 'matter of fact' which is already presumed to be in favour of party 'A' | the burden to prove it lies; on party 'B', there is no need for party 'A' to allege it in the pleadings unless the other party (i.e. party 'B') specifically denies it

### 3) Matters of inducement

- Such facts include names of the parties, their relationship, professions as to how the dispute arose between the parties

## Rule 3 facts not Evidence

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- Pleading must contain only facts but not the evidence
- Initially only facts are to be narrated and later evidence is narrated by way of facts
- It is upon the advocate and court to identify evidence as if evidence is presented it will reduce the impact of material facts
- Material facts on which the party pleadings relies are called *facta probanda* while the means by which they are proved is called *probandia*.

## Rule 4 facts to be stated concisely

- Material facts shall be divided into paragraphs, numbered consecutively,
- Dates, sums & numbers shall be expressed in figures
- Pleading should be brief & to the point

## Pleading Must Be Signed

⑥

→ Party or person duly authorised

## Verification of pleading

→ Must be verified by a person acquainted with the facts of case  
→ Signed by the person making it and should specify date & place.

## Amendment of Pleadings

→ Amendment introduces new case, new cause of action, new relief, correct description,  
→ Court may allow amendment of the plaint even if limitation period has expired

## Dilatory Plea

→ only raises formal objections but do not give any substantial reply to the merit of the case

## Interlocutory Application

→ Application filed for seeking interim relief during the pendency of suit

## Written Statement

⑦

- Reply to the plaint by the defendant is written statement.
- Before drafting W.S. it's important for pleaders to examine the plaint carefully
- If defendant thinks allegations are embarrassing, he should apply to have it struck out
- If there are several defendants a joint defense can be filed, if the claims are similar. If the defences are different, different written statements should be filed.

## How to draft a written statement

### 1) Denial

- The strongest defence in a trial is a denial as then burden of proof shifts on plaintiff

### 2) Dilatory plea

- They only raise formal objections & do not give any substantial reply to the case eg. court fee.

## 8) Objections to point of law

→ Law points should not be objected to, only facts must be

⑧

## 4) Special Defense

→ It is a plea where the defendant admits the allegation but seeks to destroy its effect

## 5) Set-off and counter-claim

→ where the plaintiff sues a defendant for recovery of money the defendant can defend the suit & can claim a set-off.

→ Set-off can be of two types

- legal set-off

- equitable set-off

→ Counter-claim must be treated as a plaint, it has the same effect as a cross-suit

## Drafting of Written Statement

- 9

- 1) Deny the allegations of plaintiff which are incorrect, perverse or false
- 2) Denial is considered to be the simplest defense as it shifts the burden of proof upon the plaintiff
- 3) Attach necessary proof, documents, invoice, chalan, etc. e
- 4) Ensure that no para of the plaint is left unattended else it amounts to admission
- 5) Signing - Individual party / his attorney, in case of partnership - partner, in case of company - director/s / managers etc. At the time of filing of petition, pleadings are signed by person not authorized it may be ratified subsequently
- 6) Must be supported by an affidavit duly notarized by an oath commissioner.
- 7) Each page must be duly numbered
- 8) Amendment in pleading shall only be allowed with the permission of court
- 9) where pleading is against fraud or misrepresentation it may be stated
- 10) Relief not prayed for will not be allowed.

## Notice

10

- know specific law which governs a notice
- should be in writing
- should be signed by giver or his agent
- There are two types of notices
  - Given by person to other before taking any action  
for ex. notice of termination of lease before due date
  - Notice served by a private person to government / public authority  
So that grievance could be redressed

## Original Petition

- Suit filed for the first time is original petition.
- All the courts in India have original side.

## Execution of Petition

Oral Application

written Application

<

→ Decree for payment of money  
Decree holder can request  
at the time of passing of  
decree

→ Request shall be in writing  
and signed & verified by  
the applicant

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## Special leave Petition

→ Under Article 186 on question of law, where no appeal is allowed,  
SLP could be filed seeking leave of the court to file an appeal  
before the supreme court

## Revision

→ High court may call for record of any case where lower court  
has

- excessively exercised jurisdiction
- failed to exercise jurisdiction

## Criminal Miscellaneous Petition

12

- It means mixture of various things not connected with each other
- When a petition is filed seeking interim relief it's a miscellaneous petition
- Memo may not be treated as petition
- In criminal cases it is called as criminal miscellaneous petition

## Memorandum of Appeal

- Application asking appellate court to revise sub-ordinate court's decision
- It's not a natural right but the one created by statute
- Right of appeal is a substantive right
- First Appeal - Against original decree
- Second Appeal - lies only to high court on a substantial question of law
- MOA contains the grounds on which judicial examination is invited

# Kinds of Appeal

18

## 1] Appeal from Original Decree

→ Passed by a court exercising original jurisdiction

## 2] Second Appeal

→ lies to high court against sub-ordinate court where the case involves substantial question of law

## 3] Appeal from Orders

→ Usually not allowed unless some law permits so

## 4] Appeal to Supreme Court

→ where a case involves substantial question of law  
→ In the opinion of high court it needs to be decided by supreme court

Appeal in constitutional cases

→ Appeal in criminal cases → Usually not allowed unless supreme court allows so.

# Writ Petition

14

→ Article 32 - Supreme court, Article 226 - High court.

→ Types of writs

## • Habeas Corpus

- It means to have a body
- Available to a person whose confined without legal justification
- Court questions the authority as to why the person is arrested & set him free if no lawful justification

## • Mandamus

- It means to have a command
- Issued against a court, corporation or govt. when they fail to fulfill a public duty

## • Prohibition

- Issued to sub-ordinate court for exercising jurisdiction not vested in it.
- Issued during the pendency of the trial

## • Certiorari

- Issued against lower court/tribunal when they have wrongfully exercised their jurisdiction
- Issued during the pendency of the suit

• Quo-warranto

- It means 'what is your authority'
- Under this a public authority is questioned about whether they are qualified to hold that position

Affidavit

- A statement or declaration - on oath by deponent
- should include only what is necessary
- Person making it should be fully described
- should be drawn in first person
- Divided into paragraphs, numbered consecutively
- Person/place should be fully described
  - ↑ referred
- Starts with
  - I affirm or I make oath
- Should be restricted to matters within the personal knowledge of declarant
- should state the source from which the information is produced.
- should be authenticated by deponent in the presence of Oath commissioner or notary public or magistrate
- should be chargeable with stamp duty mostly on non-judicial stamp paper.

## Improper Admissions in Pleadings

(16)

- No where defined in C.P.C. but admission is
- Admission - statement made by a party - oral, documentary or electronic to any relevant fact
- A party can admit the case of other party by serving a notice
- Other party has to admit the document within 7 days of service
- If no denial within stipulated time - it amounts to admission

## Legal Notice

- Legal intimation sent to opponent
- Indicates that aggrieved is preparing a lawsuit to be filed -
- formal communication to initiate legal proceedings
- Opportunity to opponent to re-consider his legal position or settle the dispute outside the court
- Matters could be settled through negotiation, mediation / arbitration

## Procedure of Sending Legal Notice

- 1) Address to the person against whom grievance arises.
- 2) Sent on a plaint paper or lawyer's letter head.
- 3) Must specify time period to respond - normally 30-60 days.
- 4) Signature - lawyer's / sender
- 5) Serviced through registered post / courier with acknowledgement dill.



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# DRAFTING

## Chapter - 11

### Art of Advocacy & Appearance

*Handwritten Notes*

**CS VIKAS VOHRA** | Corporate BaBa



# Ch-11 Art of Advocacy & Appearances.

①

## □ Professional Etiquettes

Etiquette → fine art of behaving in front of others;  
→ set of practices/form, that are followed in a wide variety of situations.

### 1) Dressing Etiquettes

- What to wear } key to looking good
- How to wear }
- wear → neat / Pressed formal clothes  
choose corporate shoes for the office.
- shoes → polished.
- Nails → clean
- clothes → Comfortable / carry them well.
- For men → ties should compliment  
→ keep hair (including facial hair) neatly trimmed/set.

- women
  - avoid wearing exposing dresses
  - little but natural makeups.
  - Heels - appropriate/modest height.

2) Etiquettes when attending hearings.

In court room -

- Don't chew gum, beetle leaf, tabacco, etc.
- Don't enter in an inebriated state.
- Turn off/silent - mobile - before entering.
- Enter silently and bow to the judge.
- Observe silence.
- Loose sheets → securely fastened / indexed / tagged.
- Polite / courteous manner.
- maintain decorum.
- support and Complement Court efforts.
- Don't capture photos/videos.
- Bow to the judge, before leading.



### 3) Handshake Etiquette

- Handshake → Positive first impression.
- Firm handshake → indicates → Confidence/assertion
- Always rise when introducing / being introduced.
- Shake hands with right hand.
- Shake hands firmly (no bone-crushing grip) and only one squeeze.
- Only for few seconds.
- Pump up & down → Once/twice.
- Make eye contact while shaking hands.

### 4) Communication Etiquettes

- Speak politely & listen to others.
- On the phone greet while starting and ending the call.
- Don't interrupt in between; speak after the other person has finished.
- Show interest.
- Stand about arm's distance.
- Question in a friendly / not prying manner.

- Make eye contact — while talking
- Avoid → Foul language / gossip
- Keep Conversation → short / on point
- Even if the client speak rudely → maintain politeness  
→ avoid replying back in harsh tone.

### 3) Invitation Etiquette.

- Your response to an invitation → shows your social skill.

↓  
reflects negatively → if your response / Lack of response

↓  
Costs time / money to your host.

- Reply timely → so that the host can make proper arrangements.
- RSVP card not included → respond by calling / note.
- If you cancel after accepting invitation.

↓  
phone your regrets and send a note of regret.

- <
- Don't ask to bring a guest
  - Arrive promptly, not early.
  - Mingle / Converse — with other guests.
  - Don't overstay.
  - Extend your thanks as you leave.

### ➤ Dinning Etiquettes.

- Be courteous during the official dinner.
- Offer the seat to the guest first.
- Be punctual and thank the host
- Wait for the host's signal.
- Initiate conversation while waiting for food.
- Wait until everyone is served
- Chew quietly.
- Don't speak with mouthful
- Avoid pointing knives / Forks



Allow guests to select the menu / wine

- If something unwanted is in the mouth, place a napkin in front of the mouth while taking it out.
- Learn basic table manners.

→ General Etiquettes. [in Meetings]

- Be Punctual
- Turn off / Silence the phone during meetings.
- Don't take a call during meetings.
- Important call → discreetly excuse yourself and take the call in a private area
- In meetings, stand up to greet the seniors.
- Overlook funny / embarrassing sounds.
- If you forgot the name — Ask them politely saying "Sorry I can't remember your name"
- Keep an arms distance while having a conversation.



## < A Court Craft

7

1) CS → authorised representative in tribunals

↓  
necessary to learn court craft for effective delivery of results.

2) Court Craft / Art of Advocacy → means to convince the judge and others that my position is the proper interpretation.

→ aim is to make the judge prefer your version of the truth.

↓  
also useful in

- Client interviews
- negotiations
- meetings
- Client seminars
- Public Lectures.

- ③ • Technical / Legal knowledge — essential
- Better knowledge leads to Better advocacy skills and greater impact.
- Good advocacy / negotiating skills — Compensate for lack of appropriate knowledge.

▣ Preparatory points

- Take minute facts from the client.
- Carefully listen what client is saying.
- Question the client, to understand the facts correctly.
- Convey the client's correct legal position.

▣ Drafting of Pleading

- Important factors while drafting pleading :
  - 1) Quote the relevant provision in the petition.
  - 2) Draft prayer for interim relief —————> innocuous but satisfies the requirements.



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3) Don't suppress facts.

4) Highlight material   
 → facts   
 → legal provision   
 → Court decisions

5) State important points at the outset.

A) If you are an opponent

- reply to the petition at the earliest
- Take all possible preliminary allegations.
- reply to each paragraph (allegation) of the petition.

B) For Petitioner

After receiving the reply → File the rejoinder.

[Reply to each specific points raised by the opponent.]



### < c] Oral pleading

- Prepare before presenting the case.
- Read
  - Petition
  - Provisions of Law
  - Judgements.
- Note down → relevant points
- keep Copies of judgements for → court / opponents.

### d] While presenting your case.

- Submit the citations to the Court master.
- Start your address with humble note
- Refer
  - order — to be challenged
  - relief — to be prayed.
- Briefly state facts.
- Issues → formulate / categorise / address them one by one.
- For each issue → state relevant
  - Facts
  - Provisions
  - Judgements
- Complete all points slowly / firmly
- Conclude the argument.

- Permit the opponent Counsel uninterruptly interrupt if facts are twisted
- Be prepared for alternative reliefs.

E] As Regards Advocacy.

CS should be able to:

- Identify
  - the client's goals
  - factual material (analyse them)
  - Legal context.
- Summarise → strengths/weaknesses of the case.
- Develop a presentation strategy
- Structure → fact
  - Simple narrative form.
  - Legal framework → in simple form
  - Submissions → in a series of proposition.
- Understand
  - Purpose
  - technique
  - tactics.
 of
  - examination
  - cross-examination.
  - re-examination.

# Conduct and Etiquette

## 1) Duty to the Court

• CS → before Court/tribunal → Conduct himself with dignity & self respect.

↓  
shall

not be servile → his right/duty to file a Complaint → against the judicial officer on proper grounds.

• CS no illegal influence → Court  
Private Communication with the judge → forbidden.

• CS → stops client from → unfair practices.  
    → don't represent clients → who does so.  
    → don't just be → mouth piece of clients  
    [exercise own judgement]  
    → avoid → serious attacks in pleadings.  
            → intemperate language in arguments.

• CS shall not → appear/act/plead/practice → before the court/tribunal/authority if CS is related to the court/tribunal/authority.



- CS shall not appear → for any Organisation/institution.  
if he is a member of the executive Committee of such an Organisation/institute.
- CS shall not act/plead → in matters in which he has → a pecuniary interest.

## 2) Duty to clients.

- CS shall not withdraw acceptance → without sufficient cause & reasonable/sufficient notice to the client.
- CS → shall not appear in a case → in which he will be a witness.
- CS → at acceptance of engagement and continuance thereof  
shall disclose his interests, (if any) → clients  
that may affect his judgement.
- Duty of CS → to fearlessly uphold the interests of his clients. [fair/honourable means]  
↓  
defend an accused → regardless of his opinion. → no man should be convicted without adequate evidence.



- CS shall not be a party to fomenting of litigation.  
↳ don't take instructions → other than client
- CS shall not abuse or take advantage → of confidence reposed by the client.

### 3) Duty to opponent

- CS shall not communicate/negotiate → with the other party represented by advocate except through that advocate.
- CS → do best to carry out legitimate promises made to → the opposite party.

### ▣ Important principles of Advocacy for CS

- Act in   
↳ best interest of the client  
↳ accordance with the client's instructions.
- Keep the client informed.
- Carry out instructions diligently.
- Act impartially and offer independent advice.
- Maintain Client Confidentiality.
- Be updated about the status of case.
- Understand the procedural requirements.

## < Advocacy Tips

While pleading, a judge looks for

- 1) Clarity — judges have limited time.
- 2) Credibility — judge need to believe what you are saying is true and you are on the right side.
- 3) Demeanour — we collect most of our information through eyesight. Make them believe what you say.
- 4) Voice Modulation — It allows you to emphasize on important points.  
Don't raise your voice and use anger strategically.
- 5) Eye Contact — while pleading maintain eye contact.
- 6) Confident Temperament & Precise Communication → Confidence helps in presenting the case.  
Precise Communication will make the judge listen carefully.

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7) Psychology → Understand the judge's psychology.

8) Be likeable → Be more likeable than your opponent unfamiliar judge  $\xrightarrow{\text{convert}}$  sympathetic towards you.

9) Learn to listen

10) Knowledge & preparation → Knowledge of subject matter / and preparation of a case is the most important skill for winning a case

11) Order sheet → maintained by the court master and contains all order by the judge. CS should keep track of the order sheet.

Appearance Etiquettes

1) Arguments on Preliminary Submission

• Preliminary submission - true/correct facts regarding the issue + facts not disclosed by opposite party

↓  
provision of law + legal objections relevant/applicable to the issue.



- Before the preparation of the Preliminary Submission

↓  
 the authorized representative should be thorough with the law and its interpretation.

↓  
 so that it is accepted and upheld by the Presiding Officer/Court/Tribunal.

- Eg. If a claim by the opposite party is evidently barred by limitation.

↓  
 object to it in the Preliminary Submission.

↓  
 objection shall be supported by Law and relevant cases.

2) Arguments on Merits.

- Arguments on Merits → arguments related to the facts pleaded by the parties.

- while arguing on merits → Authorised Representative should point out pleadings and relevant evidence thereof.

[oral / documentary]

- Any Contradiction in the pleading of the opposing party and evidence thereof  
 ↳ shall be pointed out.

- Eg. where an Contract of service is pleaded → but there is no evidence to support it,

↓  
it should be pointed out that the opposing party has failed to prove that such a contract exists.

- Any relevant fact/ Contradictions in the opposition's evidence → shall also be highlighted

### 3) Closing Arguments.

- Very important stage of hearing.
- It requires a professional, to present before the tribunal what he intends the tribunal to decide.
- Effective closing argument → can turn around the case in your favour.
- Therefore it should be made with extra caution and preparation.

### 4) Other important points

- Note down all the points and cover them during arguments.
- Keep sufficient copies of the material [Acts/cases/reference books]
- Understand the intentions of the clients.
- Take advice from clients with respect to the reliefs.

Pre-Requisites for Entering Appearance.

- 1) Legal Pleading / written statement
- 2) Drafting of Affidavit in Evidence
- 3) Rule of adverse inference.
- 4) Understanding Jurisdiction.
- 5) Prepare approach plan.

Legal Pleading / written Submissions.

- legal pleading / submission under the hearing → Preliminary Submission.
- legal provision under Preliminary Submission → clear & applicable to the issue.

• Eg. where an unregistered agreement forms basis of a claim → But such agreement required compulsory registration u/s 17 of the Registration Act.

↓  
a legal plea should be taken that such an agreement should not be submitted as evidence



< • Similarly legal plea could be taken in following cases (Special defences)

- 1) The suit is not maintainable for want of notice.
- 2) The plaint does not disclose cause of action.
- 3) Plaintiff has no right to sue
- 4) Suit barred by the principle of
  - res-judicata
  - waiver
  - estopped
  - acquiescence
  - special enactment.
- 5) The Court has no jurisdiction.
- 6) Suit is barred by limitation.
- 7) Suit is premature.

**Drafting of Affidavit in Evidence**

- Evidence are tailored according to pleadings. No extraneous evidence can be looked without specific pleading (Habib Khan v. Valasula Devi)
- Following should be kept in mind.
  - 1) Best evidence → of a person who was personally involved.

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2) If the petitioner himself is involved → he should file affidavit in evidence.

3) Allegations / →  
charges / → } relating to facts → should be reproduced duly supported  
grounds → } by documentary evidence.

4) Issues relating to engineering / medical / technology / science or other complex issues. → file an evidence of expert.  
If necessary, the expert may be called for cross-examination.

5) Besides the leading evidence on the points → also file documents / papers / books / register.

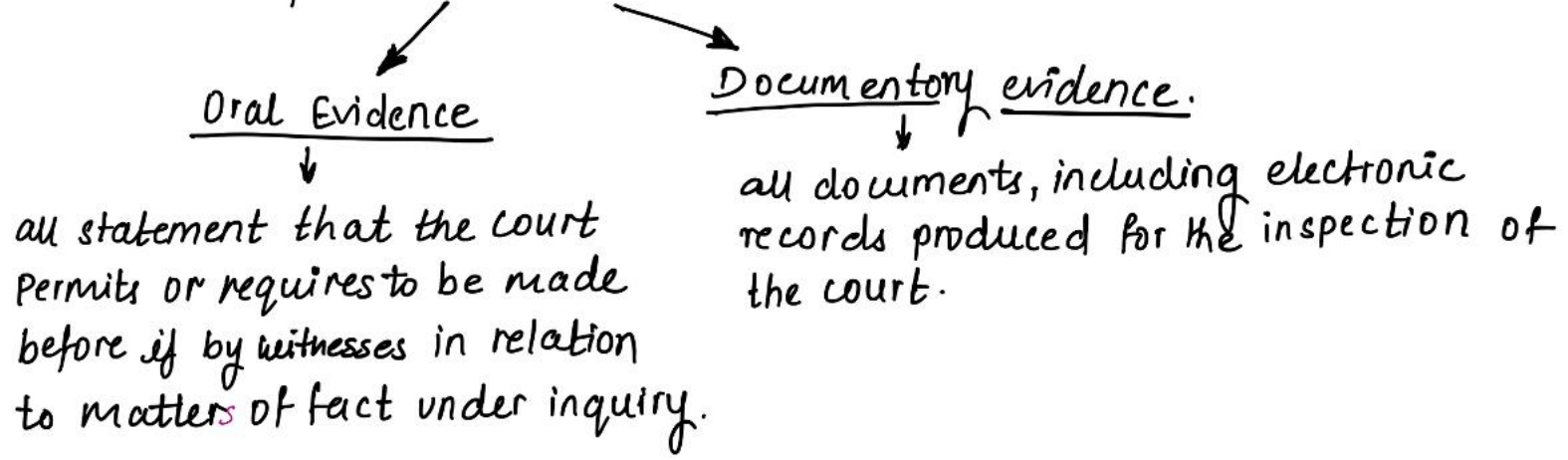
6) Any party may also bring any outside witness. → if facts / circumstances so warrant → and permitted by the court.  
↓  
to demolish the defence / case.

7) While tendering an affidavit - in - evidence. → the party may bring the original of papers / documents / books / register.

However, only a photocopy cannot be relied up, in an absence of original document as an evidence.



< Section 3 of Evidence Act 1872.



□ Rule of Adverse Inference.

- 1) It's the duty of the party who is in possession of the evidence to produce it.
  - ↳ if not produce — an adverse inference is drawn against such party.
- 2) It's the duty of the party to produce evidence of some expert, where the issue involves complex issues.

□ Understanding the Jurisdiction of the tribunal.

- It's a waste of time to file a case in wrong jurisdiction.
- Therefore, it's important to understand the jurisdiction of the tribunal before filing the matter.



## □ Prepare Approach Plan.

- Prepare an outline plan before striving.
- A plan can help to move in a direction.
- After a plan, it becomes easy to handle the case effectively.

## □ Guidelines For Professional Dress of CS

- Look professional rather than trendy.  
Highly trained and well groomed professional will win respect & honour of clients.
- Professional Dress

### Male Members



Navy blue suit + white shirt  
+ tie (or)  
Navy blue suit  
(or)  
Navy blue safari suit.

### Female Members.



Sober coloured saree or other dress  
+  
Navy blue jacket.

• Member in employment → Dress specified by employer.

• Practicing CS → appearing before a tribunal/quasi-judicial body

↓  
Dress Code prescribed by ICSI [Guidelines for Attire & Conduct of Company Secretaries], 2020.

□ ICSI [Guidelines for Attire and Conduct of Company Secretaries], 2020.

### 1) Objective

- a) Provide the rules of etiquette/decorum for appearance
- b) Ensure respect for authority.
- c) Maintain dignity of profession of CS.
- d) Prevent CS from Contempt of Court.
- e) Preventing CS from wearing unsuitable/unconventional/inappropriate attire.
- f) Build a brand/image for CS amongst regulators.

### 2) Applicability

On all CS appearing before any statutory body, court, tribunal & quasi-judicial body.



- h) Gaudy accessories.
- i) Medical equipment
- k) Bright Coloured clothes.
- l) Medallions (except as allowed by Constitutional rights)

s) Exceptions.

- a) Turbans in sober colours [religious, cosmetic, or legitimate purpose]
- b) Head gear
- c) Hearing aids for people with hearing loss.
- d) All male — clean shave or properly trimmed beards.

June 2024  
Attempt

# DRAFTING

## Chapter - 12 “Applications, Petitions & Appeals under Companies Act, 2013”

*Handwritten Notes*

**CS VIKAS VOHRA** | Corporate BaBa



# CHAPTER - 12 APPLICATIONS, PETITIONS AND APPEALS UNDER COMPANIES ACT, 2013

①

## Procedure Before NCLT (Rule 20)

- 1] Formats
  - English or to be translated in English
- 2] Title - Before the NCLT, bench-name
- 3] Paragraph - Divided into paras & numbered consecutively
- 4] Date - Gregorian calendar
- 5] Description of parties - full name, age, address, parent's
- 6] Numbering of parties - should be numbered consecutively, name & description of each party to be allotted
- 7] Mention of the provision of law

## Particulars in the address (Rule 21)

Name of the road, street, division, house no., town, village, pin-code, fax, mobile, e-mail

## Initialling Alteration (Rule 22)

→ Any correction to be initialed

## Presentation of petition or appeal (Rule 23)

- 1] Presentation in triplicate filed in person or authorize representative, advocate with fee
- 2] Verification to be accompanied by documents, certified by authorized representative or advocate.
- 3] Document with index - in triplicate
- 4] Copies for other parties
- 5] Serving copies - opposite side or his representative
- 6] Processing fee

## Presentation of Joint Petition (Rule 23A)

→ If petition represents interest of more than one person, a joint petition could be accepted.

## Number of Copies (Rule 24)

→ Three for NCLT, one for each party

## Lodging of caveat (Rule 25)

→ Caveat may be filed before NCLT in form NCLT-3C, remains valid for 90 days

## Endorsement and Verification (Rule 26)

→ Name & signature of authorized representative or the party concerned

## Translation of documents (Rule 27)

→ English or copy translated in English

## Endorsement & scrutiny of petition (Rule 28)

→ Person in charge of the filing counter affixes date stamp of NCLT & also his initials on the stamp fixed

- <
- (4)
- Particulars of documents to be entered in the register and assign a diary number which shall be entered below the date stamp
  - To be sent for scrutiny
  - If found to be defective on scrutiny, to be written for compliance
  - If not complied within 7 days - to be placed before registrar who may pass appropriate orders
  - on sufficient cause shown, registrar may give additional time for compliance
  - If no compliance is done then also, registrar may decline to register the pleading

### Registration of proceedings admitted (Rule 29)

- On admission, the same shall be numbered & registered in the appropriate registrar

### Calling for records (Rule 30)

- The registrar shall if so directed by NCLT, call for records

### Production of Authorization (Rule 81)

- A certified copy of the resolution of the association empowering such persons may be produced for authorization

## Interlocutory Applications (Rule 82)

5

→ Application for stay, direction or condonation of delay may be filed

## General Procedure (Rule 84)

- If no rules provided for a particular situation, principle of natural justice shall be applied.
- Every application, or petition to be filed in form **NCLT-1** and attachments in form **NCLT-2**
- Interlocutory application - **NCLT-1**, Attachments in form - **NCLT-3**.
- Advertisements & notices in form **NCLT-4**,
- Notice by NCLT to opposite party - in form **NCLT-5**.
- Affidavit in form **NCLT-6**.

## Advertisement detailing petition (Rule 85)

- Unless NCLT otherwise orders, application or petition to be advertised in form **NCLT-3A**
- 14 days before date of hearing in English & vernacular newspapers.
- Copy of advertisement on website in case of company
- Affidavit to be filed 3 days before date of hearing
- If rules of advertisement are not complied, NCLT may either dismiss the petition or issue further directions

→ Else, NCLT may dispense advertisement requirement

⑥

### Notice to opposite Party (Rule 37)

- NCLT issues notice copy in form **NCLT-5** to opposite party
- Respondent may either in person or through representative contest the notice with a reply in affidavit
- If respondent does not appear - matter can be decided ex-parte

### Service of Notice (Rule 38)

- To be served by post / courier / email / hand delivery
- File affidavit of service of notice along with proof of delivery with registrar
- NCLT after identifying numbers of respondents and their place of residence direct notice of petition or application to be served in any manner just & convenient
- Notice may also be served on an authorized representative or any person authorized to accept
- charges of service of notice to be deposited with the registry of NCLT by the petitioner

## Multiple Remedies (Rule 38A)

⑦

→ One petition can claim more than one relief provided they are connected to each other

## Production of evidence by affidavit (Rule 39)

→ Every document to be submitted before NCLT must be backed by an affidavit in form **NCLT-7**

## Production of additional evidence (Rule 40)

- Without progressing the document to the inspector no party presenting agreement shall submit any additional evidence before the bench
- Additional evidence shall be made available to the parties other than the party adducing the evidence

## Filing of reply by respondent (Rule 41)

- File reply either in person or through authorized person with the registry
- Copy of the reply to be served on the applicant also
- The respondent shall admit/deny/rebut the facts

## Filing of rejoinder (Rule 42)

- If additional facts presented by respondent then petitioner may be allowed file rejoinder

## Powers of bench to call for further information (Rule 43)

- Bench may require the parties to produce such documentary or other evidence
- Bench may for inquiry / investigation admit such documentary or other mode of recording in electronic form
- forensic examination may be ordered in case of forgery / fabrication of statutory records

## Hearing of petition on application (Rule 44)

- NCLT shall notify date and place of hearing by general / special order where before hearing applicant desires to withdraw his petition, he shall file an application to that effect

## Rights of a party to appear before NCLT (Rule 45)

- May appear either in person or authorized representative (A.R.)
- A.R. shall file Vakalatnama / memorandum of appearance in form **NCLT-12** via
- Govt. may authorize an officer / advocate to represent before NCLT
- NCLT may call upon the registrars to call upon the ROC to submit information on the affairs of the company

→ No audio/video recording of the proceeding by party I.A.R.

### Consequence of non-appearance of applicant (Rule 48)

- Dismissal of application on the side of merit
- If sufficient cause shown for non-appearance within 30 days, NCLT shall make an order restoring the same

### Ex-parte hearing (Rule 49)

- If respondent is not present then NCLT may adjourn or hear & decide or decide ex-parte
- on sufficient cause being shown ex-parte order may be set aside

### Registry to send certified copy (Rule 50)

- certified copy of the final order free of cost → to the parties

### Power to Regulate (Rule 51)

- NCLT may regulate its own procedure based upon principles of natural justice

### Summoning of witnesses & recording evidence (Rule 52)

- NCLT shall issue summons of appearance for such witnesses as it considers necessary
- Person so summoned shall be entitled to travelling & other daily allowances sufficient

## Substitution of Legal Representatives (Rule 53)

10

- If a party dies / is adjudged insolvent or in case of company being wound up, the proceeding shall not abate and may be continued by or against the executor
- Death of the party - legal representative of the deceased party may apply within 90 days for being brought on record

## Pleadings before NCLT (Rule 55)

- No pleadings without the lieu of the court

## Application for Execution (Rule 56)

- Application in form **NCLT-8**

## Amicus Curiae (Rule 61)

- NCLT may permit any person including professionals to communicate views to NCLT as amicus curiae
- May permit amicus curiae to have access to pleadings of the party
- NCLT may direct either both parties to bear the expenses
- Judgement shall be transmitted to the parties & to amicus curiae

## Presentation & Scrutiny (Rule 68)

→ If a person is aggrieved the decision of registrars or officiating officers, an appeal shall be made within 15 days to the president or any other bench members authorized by president, the decision shall be final

## Application for calling directions to call AGM. (Rule 74)

- Application by member in form **NCLT-1**
- copy to be served to ROC

## Inspection of minutes book of G.M. (Rule 76)

→ Application by member in form **NCLT-9** before NCLT

## Application under section 241 (Rule 81)

- To be filed in form **NCLT-1**
- where it represents class of persons, matter of consent to be signed by rest of the members
- copy of the application to be served on the company & other respondents



## Withdrawal of application u/s 241 (Rule 82)

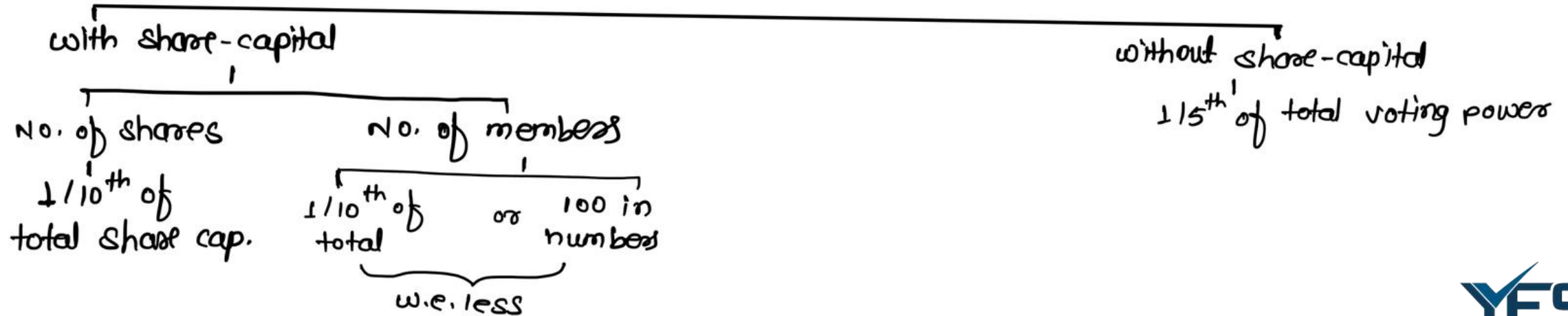
(12)

→ can not be withdrawn without the leave of NCLT

## Application under section 243 (Rule 83)

- shall be made in form **NCLT-1** for leave
- Notice update of hearing to be served on central govt. not less than 15 days before the hearing

## Right to apply u/s 245 (Rule 84)



## Conducting a class action suit (Rule 85)

(12)

### → Grounds

- whether the class has many members
- common questions of law or fact
- whether the claims or defences are of the class
- whether representative parties were fairly & adequately protect the interests of the class

## Rule of 'opt-out' (Rule 86)

- Members of class action is entitled to opt-out any time after its institution in form **NCLT-1**
- A class member receiving a notice is deemed to be a member of the class unless expressly opting out
- A class member opting out shall not be precluded from pursuing a claim against the company on an individual basis

## Publication of Notice (Rule 87)

- Public notice shall be issued by NCLT as per form **NCLT-13** to all the class members by
  - Publication of the same within 7 days - English & vernacular language news paper
  - Public notice on the website of the company, NCLT, MCA, ROC, S.E.

- <
- Date of publication in news papers is date of service (14)
- cost/expenses to be borne by the applicant & later defrayed by company, person responsible

### Inspection of records (Rule 114)

- Parties / A.R. allowed to inspect - application in writing to registrar
- A person not a party to the proceeding may also be allowed to inspect by general / special order

### Power to Exempt (Rule 14)

- NCLT may exempt - any party from compliance, from any rules

### Power to extend time (Rule 15)

- NCLT may extend time in the interest of justice or an application made.

## NCLAT Rules

15

→ Rules of NCLT shall apply to NCLAT in the same way

### Sitting of NCLAT

→ At New Delhi

### Presentation of Appeal - (Rule 22)

- Shall be presented in form **NCLAT-1** in triplicate by the party or his A.R.
- Accompanied by certified copy of the order
- All documents with index in triplicate
- sufficient no. of copies for service on the opposite parties
- Processing fee to be paid

### Title of affidavits - (Rule 67)

→ Before the NCLAT

### Suo-moto summoning of documents (Rule 74)

→ Form **NCLAT-6**

## Marking of documents - (Rule 75)

16

- If relied upon by appellant's side - A series
- If relied upon by respondent's side - B series
- Appellate tribunal exhibits - C series

## Order - (Rule 88)

- Final decision by way of judgement

## Operative portion of the order - (Rule 89)

- In clear and precise terms in the last paragraph

## Placing of Supreme court orders before NCLAT - (Rule 101)

- An interim or final order passed by Supreme court against NCLAT decision  
- same shall be placed before chairperson or members

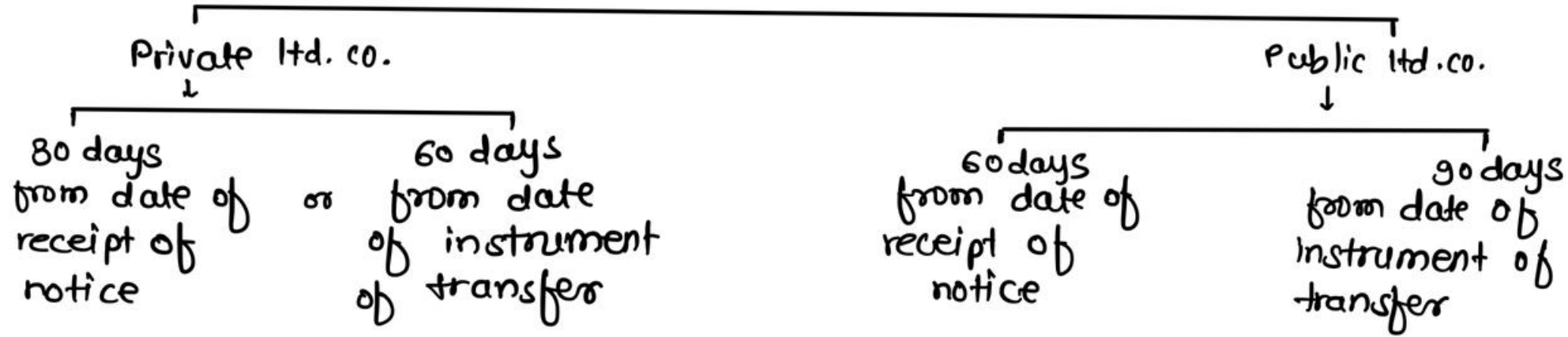
## Filing of electronic media - (Rule 103)

- Filing of appeal through electronic mode and rectification of defects by mail or internet

# Appeal to NCLT against refusal to transfer of shares

(17)

↓  
- Appeal to NCLT in form → **NCLT-1**



↓  
Tribunal after hearing the parties may either dismiss the appeal or by order direct the registration of transfer or transmission.

↓  
Direct rectification of the register and the company to pay damages

↓  
Person contravenes order of tribunal

fine - 1-5 lakhs

Imprisonment → 1-3 yrs.

## who can file an appeal?

18

- Member / Aggrieved person / company
- foreign members / debenture holders / competent court outside India

## Time limit for filing an appeal

- No time limit, should approach the court within reasonable time
- Limitation act - 3 years from cause of action

## Powers of Tribunal to call G.M.

- NCLT may either suo moto or on application of director / member of the company order a meeting of the company, pass consequential directions
- Such meeting conducted shall be deemed to be meeting of the company

# Procedure of application before NCLT

(19)

- Preparation of application
  - Bench having territorial jurisdiction / Application in form **NCLT-1** / prepared in triplicate / by separate application apply to the president for bench other than the one having territorial jurisdiction
- Sequence
  - General heading in form **NCLT-4** / jurisdiction / limitation period / facts of the case / relief sought / details of fees paid
- Affidavit
  - Applicant / A.R. in form **NCLT-6**
- Filing of vakalatnama in form **NCLT-12**
- Memo of appearance in form **NCLT-12** - CALCS/CMA in practice
- Interlocutory Application - **NCLT-1** (+) attachments - **NCLT-3**
- Non-appearance of applicant - dismiss / decide on merit
- Application for restoration - 30 days
- Application may be advertised in form **NCLT-3A** - 14 days before hearing
  - English / vernacular language newspapers

< Exit opportunity to decending shareholders

20

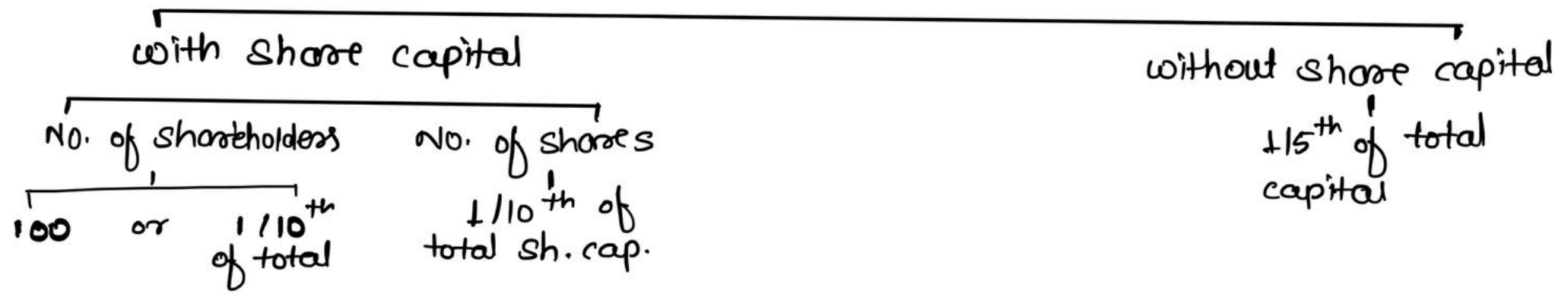
→ Acquirer has 90% or more shares of target company

↓  
make an offer to acquire shares within 4 months

↓  
within 2 months after expiry of 4 months give notice to acquire shares of decending shareholders

Right to apply u/s 241

↓  
Application to NCLT



## Application for class action

(21)

→ It brings together similar individual actions under a single law suit reducing the multiplicity of similar cases and the cost

## Types of class action suit

Product liability class action

Defective product /  
deficient services  
harm many people

consumer class action

violation of  
consumer laws,  
illegal charges, etc.

employment class action

contravention of  
labour laws

securities class action

Improper conduct  
or mismanagement

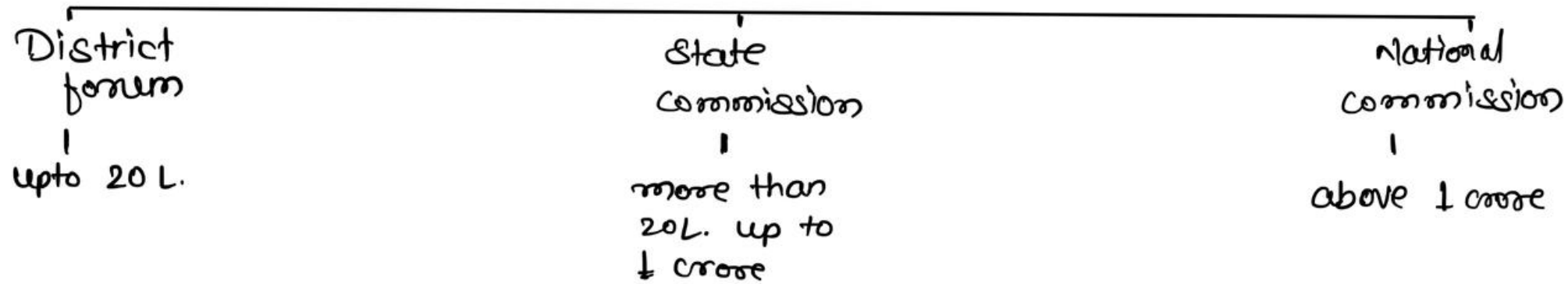
## Actions under C.P.C. - conditions

- Numerous parties present
- Same interest
- Action is maintainable
- Court must issue notice to all interested parties
- No part of the action can be withdrawn
- If person suing is not acting with diligence, court can substitute him with other person with the same interest

## Actions under COPRA

(21)

→ Complaint can be filed in relation to goods sold or delivered or services provided



## Actions under Competition act

- Must be filed before competition appellate tribunal (compact)
- Conduct of parties may affect numerous parties
- Application could be made for recovery of any loss/damage

## Public Interest Litigation (PIL)

→ PIL also represents interest of general public

class action suit

P. I. L.

- can be filed against any entity including pvt. entities
- Representative must suffer injury

- only against state or public authorities or H.C. or S.C.
- No such requirement

## Industrial Disputes Act

23

→ Representation through collective bargaining by employees / workers

## Persons against which class action can be filed

→ Company / directors / auditors / expert - who made a misleading statement

## Factors taken into account by NCLT

- whether applicant is acting in good faith
- Evidence of involvement of any person other than directors / officers
- whether an action can be brought on their own
- Views of the members / depositors who have no personal interest
- whether cause of action is an act or omission

## Place of Institution

→ NCLT

## Cost and Expenses

24

- company & person responsible
- Cost and application - person who does it

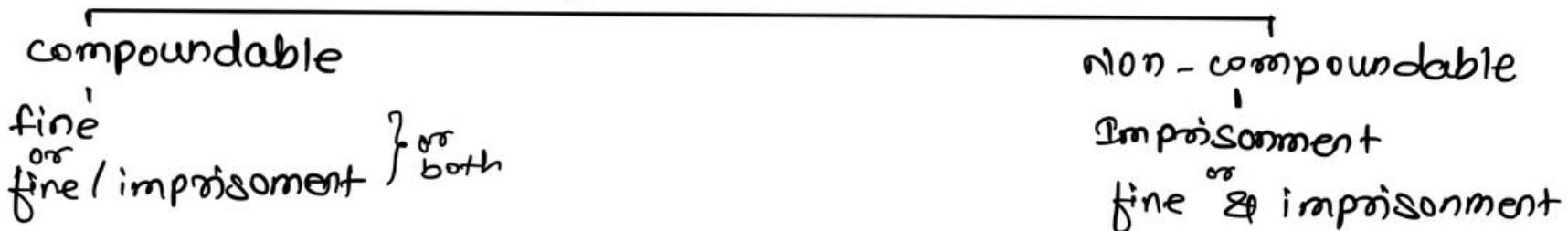
## Consequences of non-compliance with tribunal orders

- Company - fine - 5 to 25 Lakhs
- officer - fine - 25k to 1 Lakh & imprisonment upto 3 yrs

## Meaning of compounding

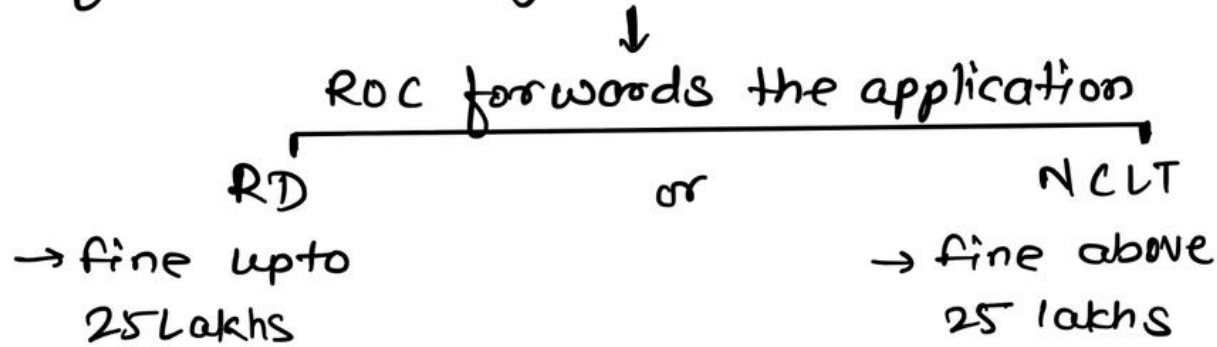
- whenever there is any offence in which imprisonment is not mandatory
- And no similar kind of offence is compounded in previous 3 yrs
- Punishment can be upto the maximum stated amount

↓  
offences



< Application for compounding shall be made to ROC - form **GNIL-1**

25



### Adjudication of Penalties

- C.G. may appoint officers not below the rank of registrar
- A.O. may either impose penalty on officers in default or direct such co./officers to rectify the default
- Penalty may be levied only after giving an O.O.B.H. to the co./officers
- Aggrieved person may prefer an appeal to R.D. - 60 days from date of order
- R.D. may after giving an O.O.B.H. pass necessary order.

## Who can file a petition for winding up?

26

- company, contributory, registrar, person authorized by C.O., debt holders
- Employees only have a representative right except in their capacity as a creditor
- Petition for winding up shall be presented in form → **WIN 1 / WIN 2** to be filed in triplicate
- Must be verified by an affidavit - petitioner / in case of body corporate - director / cs / authorized person
- Affidavit shall be in form **WIN 3**

## Disposal of cases by NCLT/NCLAT

- To be disposed of within 3 months of presentation,
- In case of delay - record reasons in writing
- President / chair person may extend the period of disposal - not exceeding 90 days

## Appeal

- NCLT  $\xrightarrow{45 \text{ days}}$  NCLAT  $\xrightarrow{60 \text{ days}}$  Supreme Court
- on sufficient cause being shown, period for appeal may be extended

## Constitutional powers under article - 226 & 227 (27)

- High court's powers under A-226 & 227 forms basic structure of constitution and hence can never be taken away
- If a direct appeal is filed before Supreme court, H.C. will not interfere in writ petition unless there is a violation of principles of natural justice / lack of jurisdiction

### Affidavit

- Title - before the NCLAT
- Form of affidavit as per form NCLAT-4
- Third person is entitled to attest - notary / public / oath commissioner with his seal
- Affidavit of illiterate / visually challenged person - attester shall certify that affidavit was read / translated / explained in his presence and he understood and marked in the presence of the attester - NCLAT 5
- Identification of deponent - if not known to attester, his identity shall be testified by a person known to him with his sign.
- Annexures to affidavits - make endorsement by putting marks & sign

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## Filing of Interlocutory application

28

→ In form → **NCLAT 2**

## E-filing of documents before NCLT & NCLAT

- Both NCLT & NCLAT have instructed that all appeals, applications / replies be filed electronically
- Filing of hard copies is not mandatory
- Has made the job of corporates & professionals much easier.

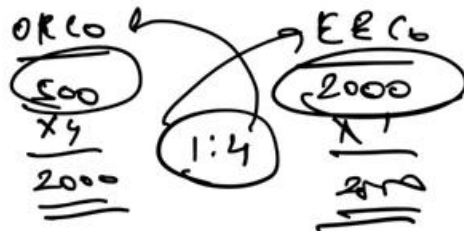
# Provisions under Sec. 230-232 of Companies Act, 2013

(29)

Laws applicable

- Cos Act, 2013
- Indian Stamp Act, 1899
- Income Tax Act, 1961
- Competition Act, 2002
- SEBI (LODR) Reg, 2015
- NCLT Rules

Appointed Date -

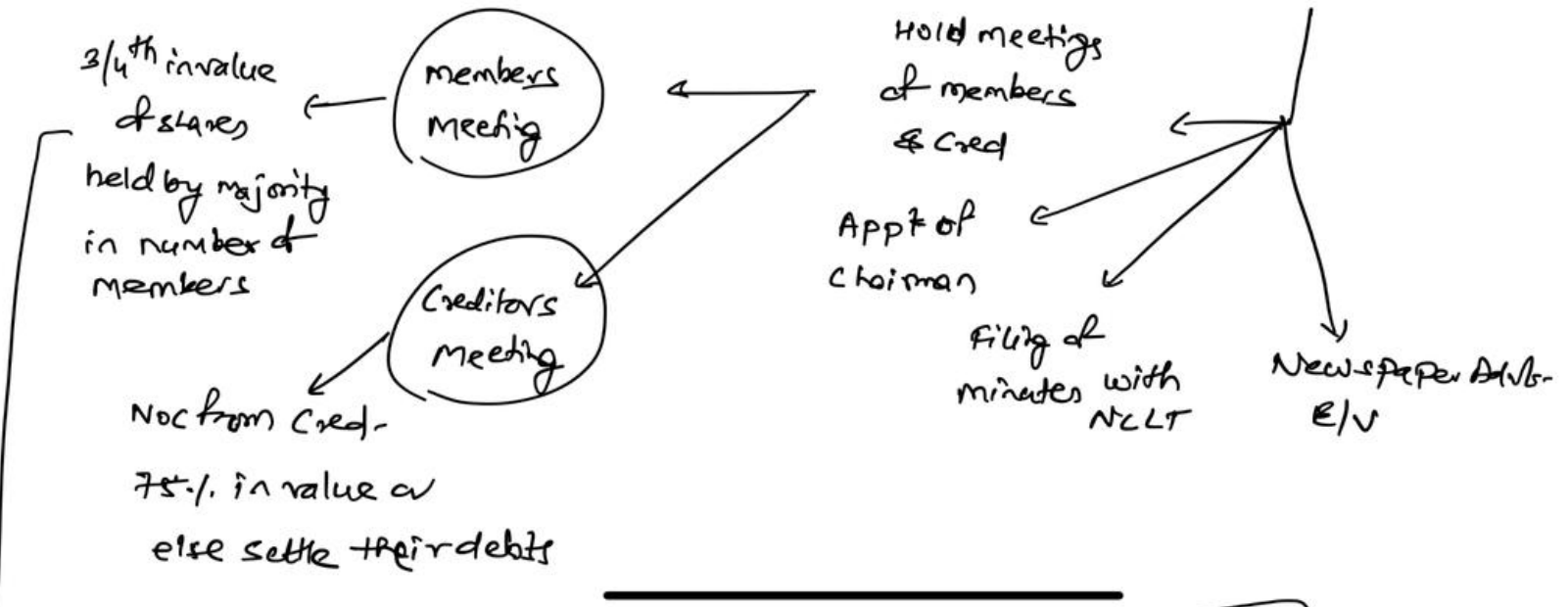
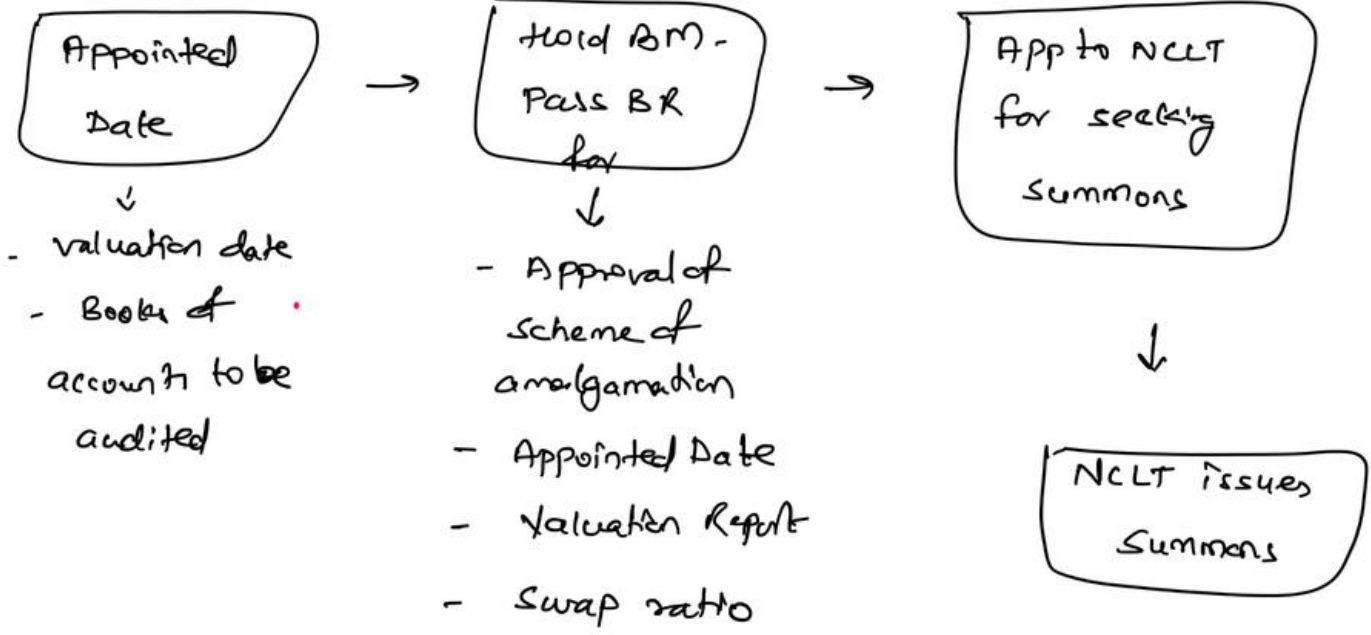


↓  
date of which value of assets & liab is taken into consideration - start date of process of amalgamation

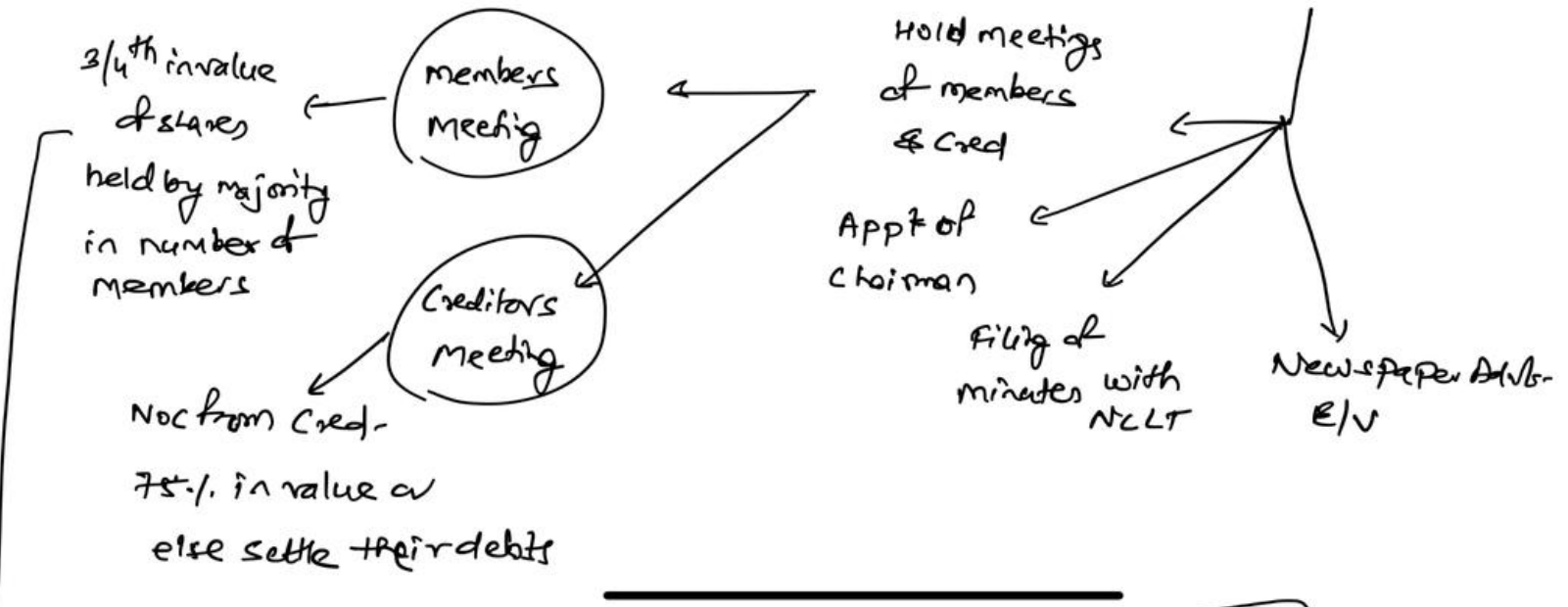
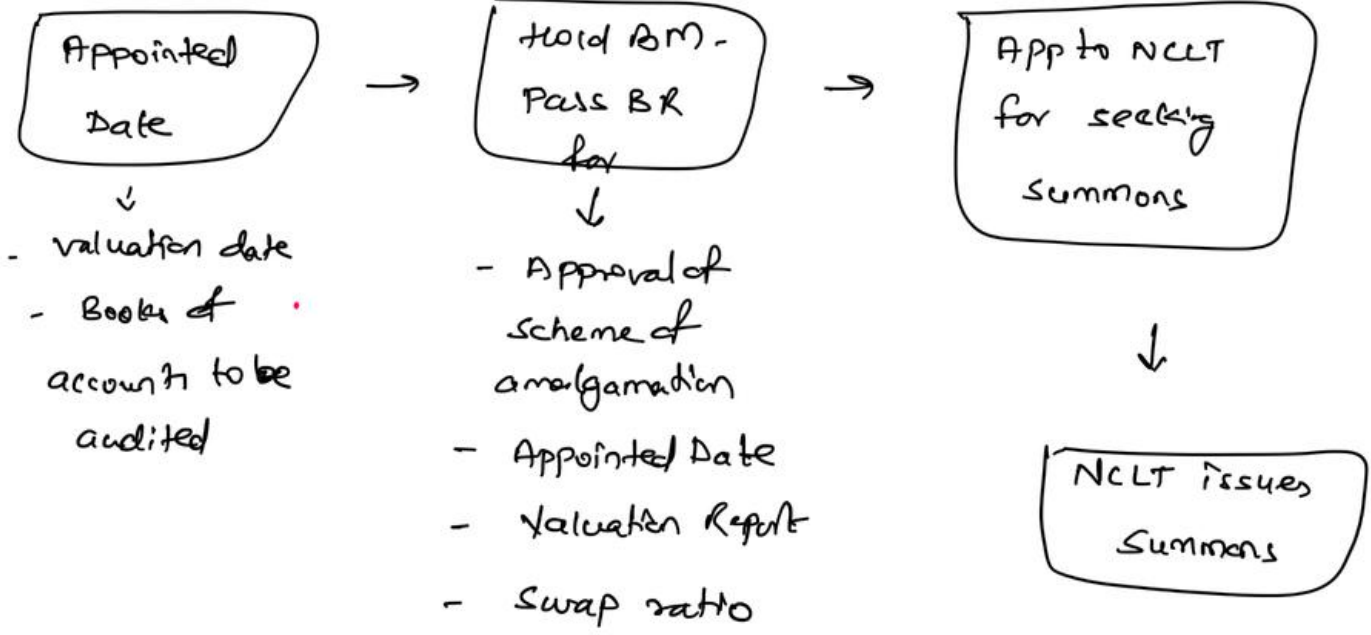
Effective Date -

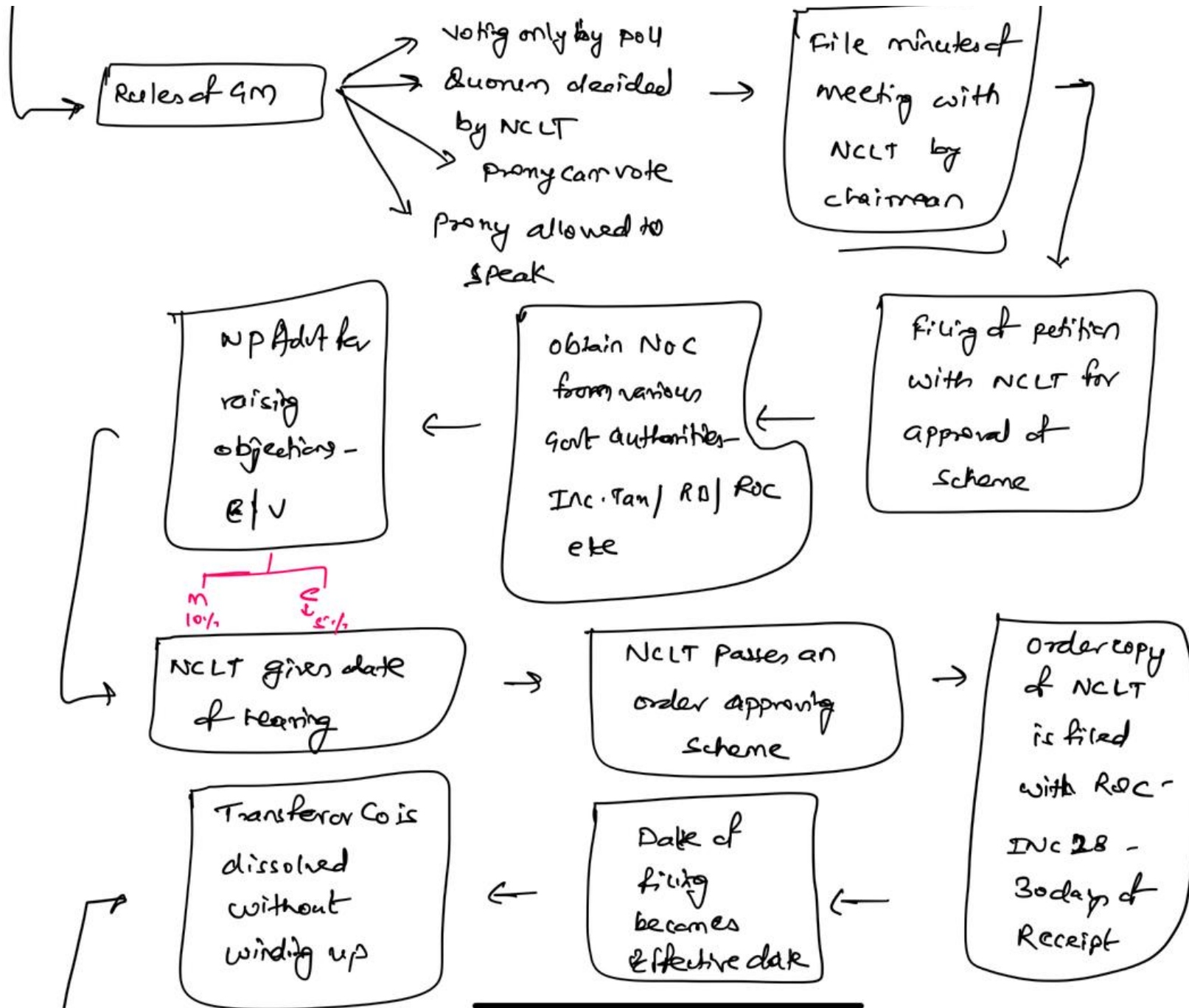
↓  
date on which order of NCLT is filed with RoC in form INC 28. End date of process of amalgamation.

Process of amalgamation - 230-232



Process of amalgamation - 230-232



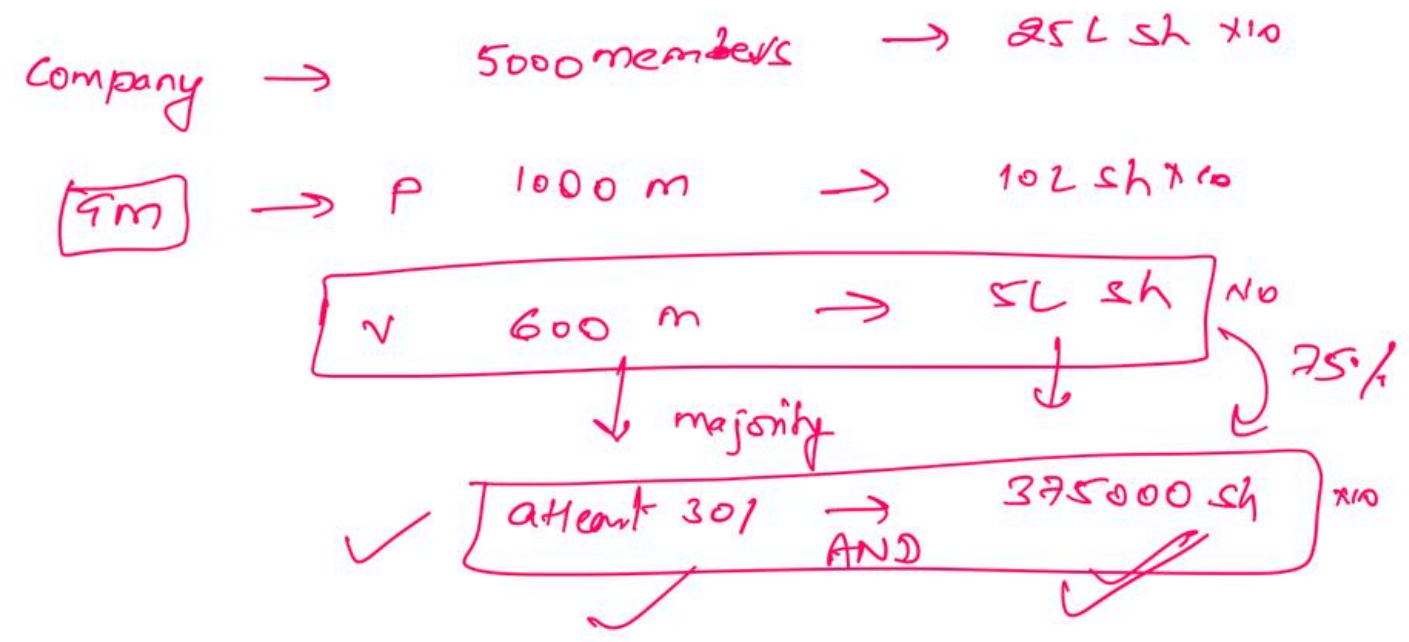




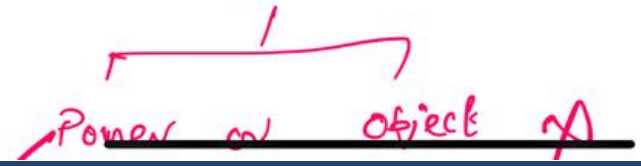
Copy of NCLT order is attached to MoA & AoA in future

32

Voting Calculation



Amalgamation

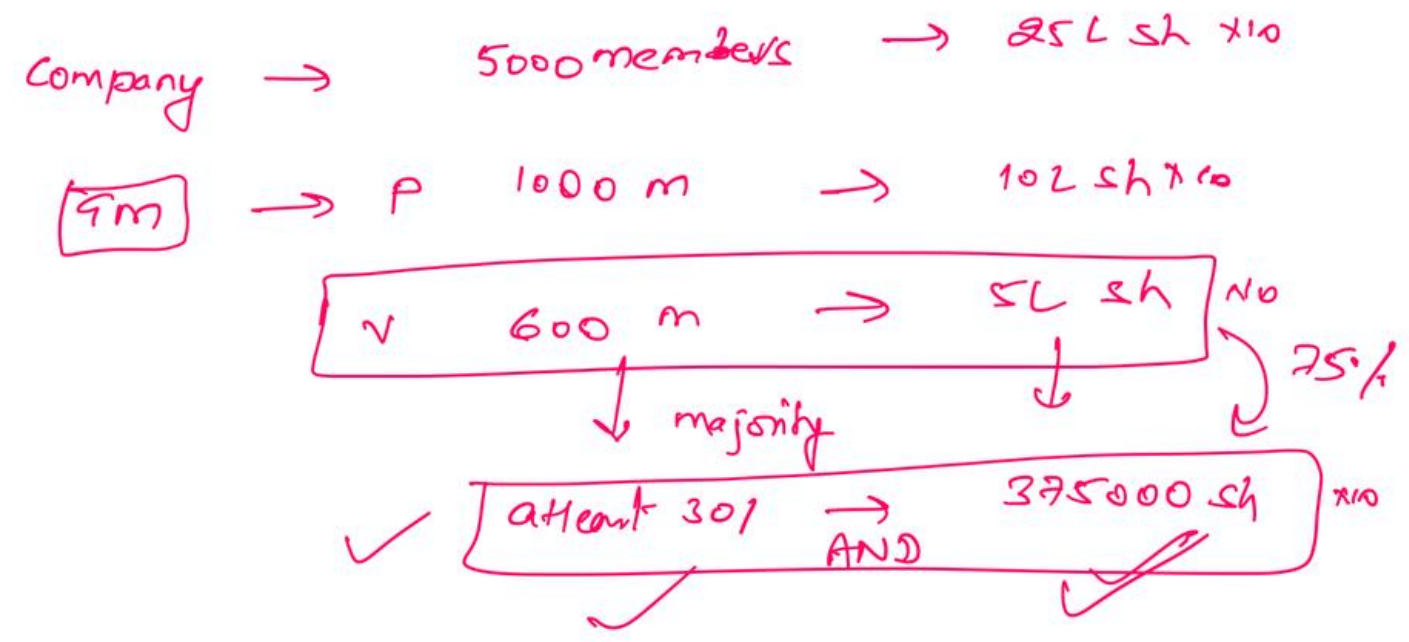




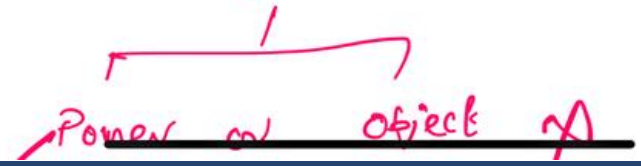
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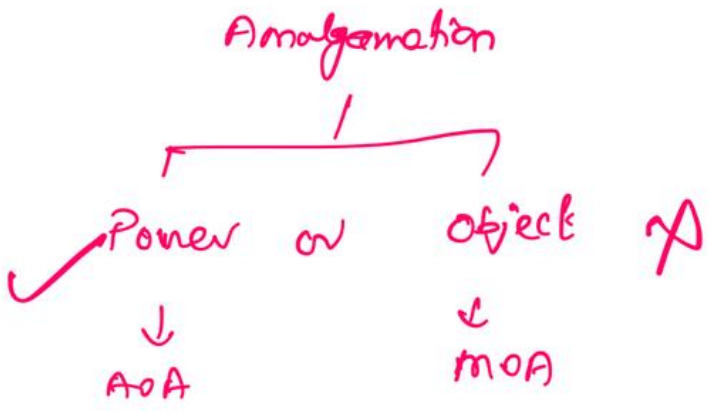
32

Voting calculation



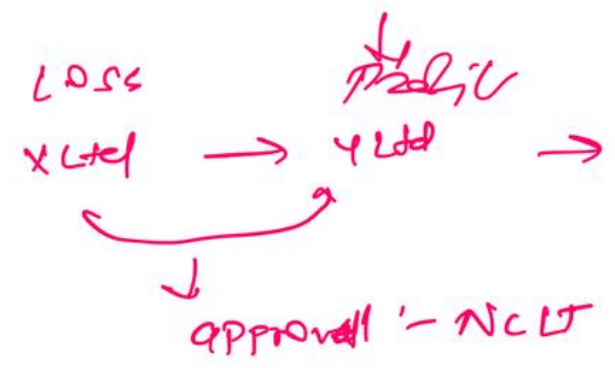
Amalgamation





↓

scheme of amalgamation - Binding on all ✓



If it is against the interest of stakeholders, NCLT has powers to pass a winding up order as well

Merger of small Cos (2013)

34

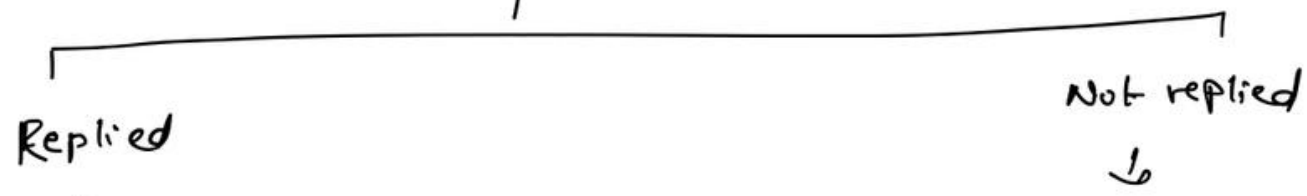
↓  
Applicability → Merger of two small Cos  
two startups  
one start up & one small Co  
MC & WOS

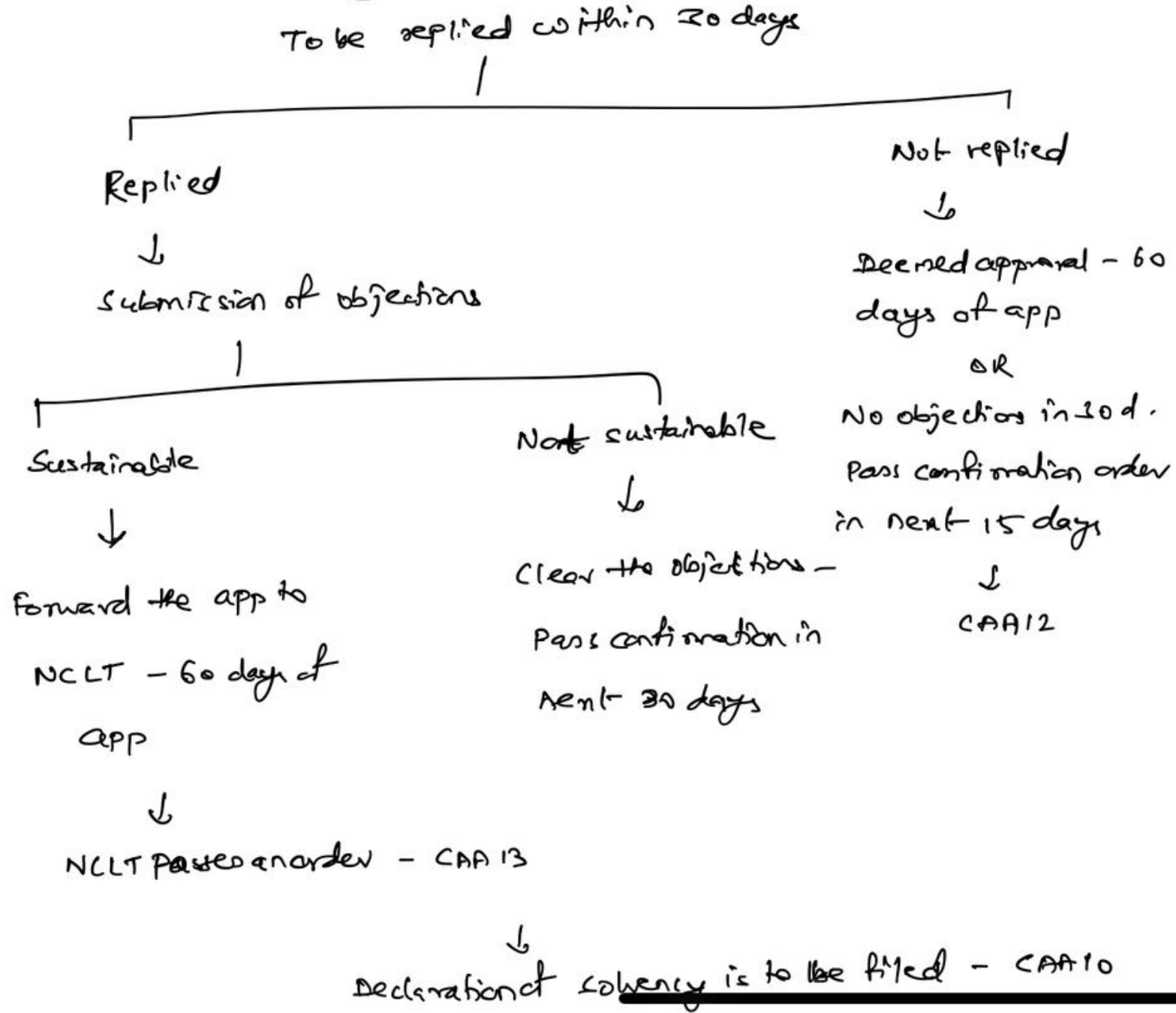
↓  
copy of scheme is filed with CG (RD)

↓  
Approval of members & creditors - 90% in value

↓  
copy of scheme is forwarded to RoC/OL

↓  
To be replied within 30 days





Dec 2024  
Attempt

# DRAFTING

## Chapter - 13 Adjudication and Appeals

*Handwritten Notes*

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## Powers to issue orders &amp; levy penalty

- Interest of investors
- Affairs of intermediary are detrimental to the interest of investors
- proper management of intermediary/person

## Powers of adjudicating officer

- App't of adjudicating officer - Not below the rank of division chief.

examine witnesses on record, pass necessary order

②

- modification - If SEBI has grounds to believe that order passed by AO is erroneous to the investors securities, the same could be modified.
- Time period for modification - 3 months - date of passing order or app. filed for modification.
- Opportunity of being heard before passing the order.

## Procedure for holding Inquiry

3

- show cause notice - sent by SEBI/ An to the person/Co/ intermediary explaining the nature of default & punishment.
- Date of Appearance - At least 14 days after the expiry of service of notice
- Personal appearance - Co/intermediary - Prac prof / Lawyer / Authorized Representative
- Content of notice = Nature of offence & punishment
- Enforcement - SEBI has power to enforce attendance



of witnesses and personal appearance of parties

- Documents - Summen to seek documents & records and personal attendance of parties
- Order - Passed by SEBI / AO final & binding.

Factors to be taken into account for quantum of penalty

- Unfair gain to one party
- Amount of loss suffered by investors
- ...



Deposit of penalty

→ Deposited to Consolidated Fund of India

Order of Board / AO

→ Imposition of penalty - SEBI / AO by an order in writing

levy penalty

→ Quantum of penalty

→ unfair gain

→ Amount of loss to investors



Date & sign - signed by AO authorised & dated the  
same day

⑥

Content of order - Nature of default  
- punishment imposed

Rectification of error - within 15 days of passing of order,  
it could be rectified.

Service of Notice



## Service of Notice

7

→ Hand Delivery

→ By post → Regd post / Speed post + AD

→ By email / electronic instant messaging service

↓

→ By Fax → No. of pages to be reported

digitally signed

→ Stick at some conspicuous place

→ NP Advt - English / vernacular → region of opposite party

## Modes of recovery

- Attachment & sale of moveable property
- Attachment & sale of immovable property
- Appt of Receiver/ Manager
- Attachment of bank accounts
- Arrest of the person

## Continuance of proceedings

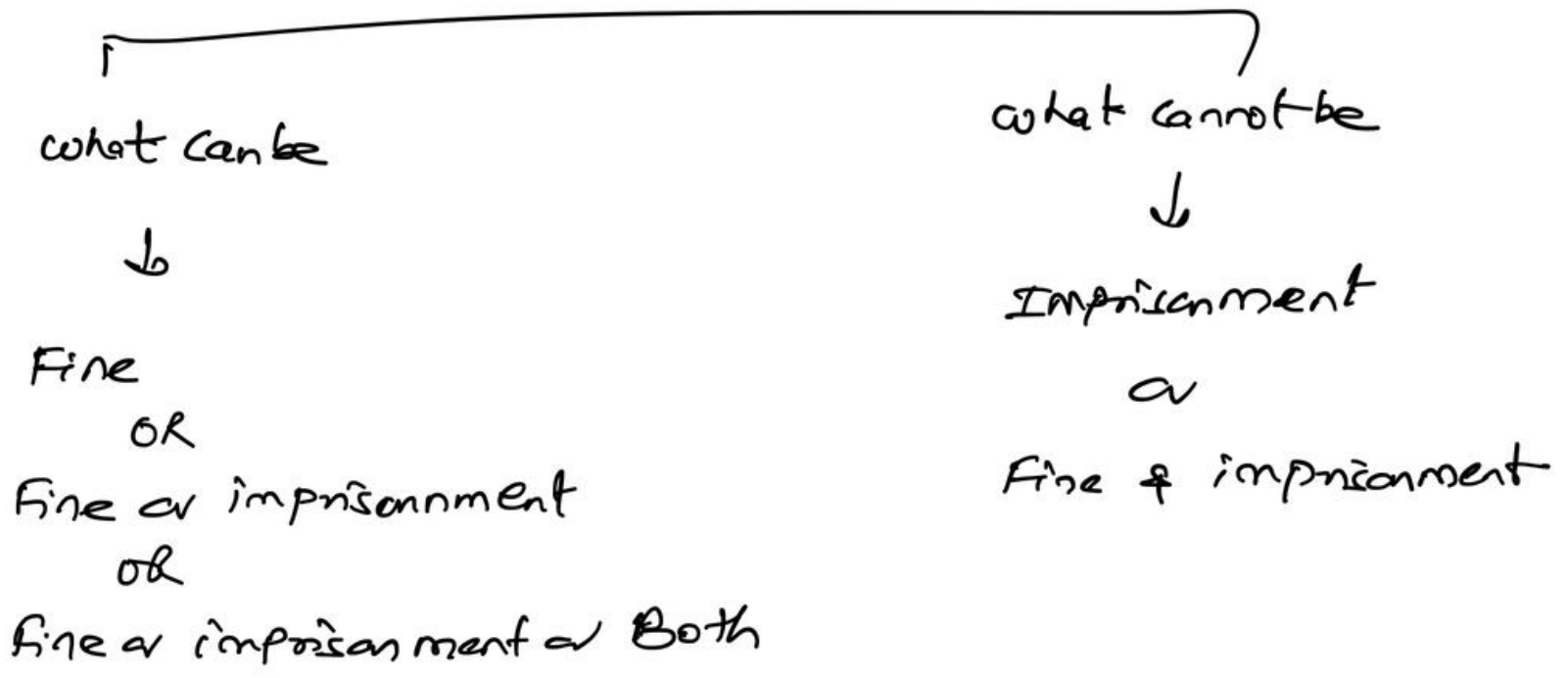
⑨

- If order is passed against a person, he is liable to pay the amount of penalty
- If the person has died - Recovery from the ~~so~~ estate of deceased.
- Max amount of liab on legal heirs - as recovered from the estate of the deceased

Compounding of offence under SEBI/SCRA/Depositories Act



offences of same nature can be clubbed together while granting punishment :



# Settlement Proceedings / Consent Order



- A proceeding to avoid long drawn litigations from both the ends
- Can only be initiated once a complaint is registered by SEBI

## Settlement of proceedings

- Initiated with an app filed by any person before SEBI intending to settle the dispute
- SEBI may after taking into consideration nature of default may agree for settlement.



→ No appeal lies in case of consent order

(12)

→ penalty amount is deposited in CFI

### Application for settlement (Reg. 3)

Any person against whom proceedings have been initiated & are pending may apply to SEBI for settlement.



Accompanied by a non-refundable fee



Applicant must make full disclosure in the application with respect to default.



Must make one application for settlement of all the proceedings that have been initiated.



If app is not complete, it may be returned by Board.

Applicant may submit revised & complete application within 15d of communication from SEBI.

(13)

↓  
In case if applicant is an association / Firm / Body Corp / LLP - it must be executed by person in charge

### Limitation (Reg. 4)

No application to be considered by SEBI if it is made 60 days after of service of show cause notice or supplementary notice (later)

### Scope of Settlement Proceedings (Reg 5)

→ No app shall be considered by SEBI, if :-

(a) Earlier app is rejected

(b) audit or investigation is not complete

(c) monies due under an order are liable for recovery.

→ SEBI may not settle proceedings if default has

(a) market wide impact

(b) caused loss to large number of investors

(c) affected the integrity of market.

→ SEBI may not settle the specified proceedings where the applicant is a wilful defaulter / FEO / defaulted in payt of fees or penalty.

## Rejection of application (Reg. 6)

15

- Applicant refuses to respond/communicate to SEBI
- Does not submit info/ delays submission of info called
- Applicant does not appear before Internal Committee.
- Violates any undertaking.
- Applicant does not remit the settlement amount.
- Fails to comply with conditions precedent

## Withdrawal of application (Reg 7)

- may be withdrawn prior to communication of decision to panel of WTM

## Effect of Pending application on specified proceedings (Reg. 8)

16

- Filing a settlement application shall not affect continuance of proceedings
- where app is filed in case of proceedings against the applicant, such proceedings shall not be initiated till the app is rejected or withdrawn.

## Settlement Terms (Reg. 9)

- Suspension / Cessation of business activities
- Exit from management
- Disagreement on account of action



- Refraining from acting as partner / Director / officer of intermediary (17) or a company.
- Cancel securities & reduce holdings where securities are issued fraudulently.
- Lock in of securities



Settlement amount shall be deposited to Consolidated Fund of India.



App fee + legal costs - Credited to SEBI General Fund.



Amount of profits made / losses avoided - deposited to



## Factors to be considered to arrive at settlement (Reg. 10)

18

- Conduct of the applicant during the specified proceedings
- Role played by the applicant in case of alleged default.
- Nature, gravity & impact of alleged default.
- Any other pending proceeding of non compliance under securities laws
- Extent of loss to investors / gains made by applicant
- Compliance schedule proposed by applicant
- Economic benefits accruing to any person from non-compliance.

## High Powered Advisory Committee (Reg. 11)

(19)

- SEBI shall form HPAC for consideration & recommendation of terms of settlement.
- Constitution → Judicial member - SC/HC Judge
  - 3 External experts - knowledge in securities laws.
- Term - 3 years + Extension of 2 years
- Quorum - 3
- Meetings - manner specified by SEBI

## Internal Committee (Reg. 12)

- Formed by SEBI + Constitution - SEBI Board member → min rank chief general manager. -

## Proceedings before internal committee (Reg. 13)

20

Internal Committee may:

- call for relevant info / documents with the applicant
- personal appearance of applicant
- permit the applicant to submit revised settlement terms within a period not exceeding 15 days.

## Proceedings before HPAC (Reg. 14)

HPAC shall consider proposed settlement terms along with:

- Application / undertaking / waivers of applicant
- factors specified in Reg. 10
- settlement terms
- other relevant material.

## Action on the recommendation of HPAC (Reg. 15)

21

- Panel of WTM shall consider recommendation of HPAC
- where WTM accepts HPAC recommendation, applicant will be issued a notice of demand within 7 days of decision of panel.
- Applicant shall:
  - Remit the settlement amount - within 30 days
  - Undertake in writing to abide by settlement terms.

## Summary settlement procedure (Reg. 16)

Before initiating any specified proceeding, SEBI issues a notice of summary settlement upon the noticee to file a settlement app & amount as specified in the summary settlement notice.

Settlement notice could be initiated for full defaults:

22

- Delayed disclosures / filing
- Non Disclosures
- Disclosures not made in specified formats
- Delayed compliances in any req. of law.

↓

SEBI shall have power to modify enforcement action

↓

Noticee may within 30 days of receipt of settlement:

- file a settlement app
- Remit the settlement amount
- seek rectification of calculations of settlement amount
- Comply with other non monetary terms.

Settlement with Confidentiality (Reg. 19)

An applicant shall fulfill the following

- Cease to participate in violation of securities laws.
- provide true info of documents / evidence / records
- Co-operate fully throughout the investigation / inspection
- Not conceal / destroy / manipulate relevant documents



SEBI may levy further restrictions as it deems fit.



SEBI may assure of confidentiality and mark the status of app depending upon its priority.



SEBI may reject the app anytime if the documents/evidence is found to be incomplete/false and communicate the same to applicant. (24)

### Confidentiality (Reg. 22)

Full shall be treated as confidential:

- Identity of applicant seeking confidentiality
- Info/documents/evidence furnished.

Not treated confidential if:

- Disclosure is required by law
- Applicant has agreed to such disclosure
- Public disclosure by applicant.

## Settlement of proceedings before AO/SEBI (Reg. 23)

25

shall dispose off respective proceedings by an appropriate order.

## Service & Publication of settlement order (Reg. 25)

Served upon applicant + SEBI website.

## Effect of settlement order on third party / other proc. (Reg. 27)

- Not admissible as evidence in any other proceeding nor will it affect rights of any third party
- where applicant is also noticee along with any other person in any proceeding - AO/Board shall make necessary observations in respect of applicant.

Revocation of settlement order (Reg. 28)

If SEBI comes to know that applicant has not made full & true disclosure or violated undertakings, settlement order shall stand revoked.



No amount paid shall be refunded.

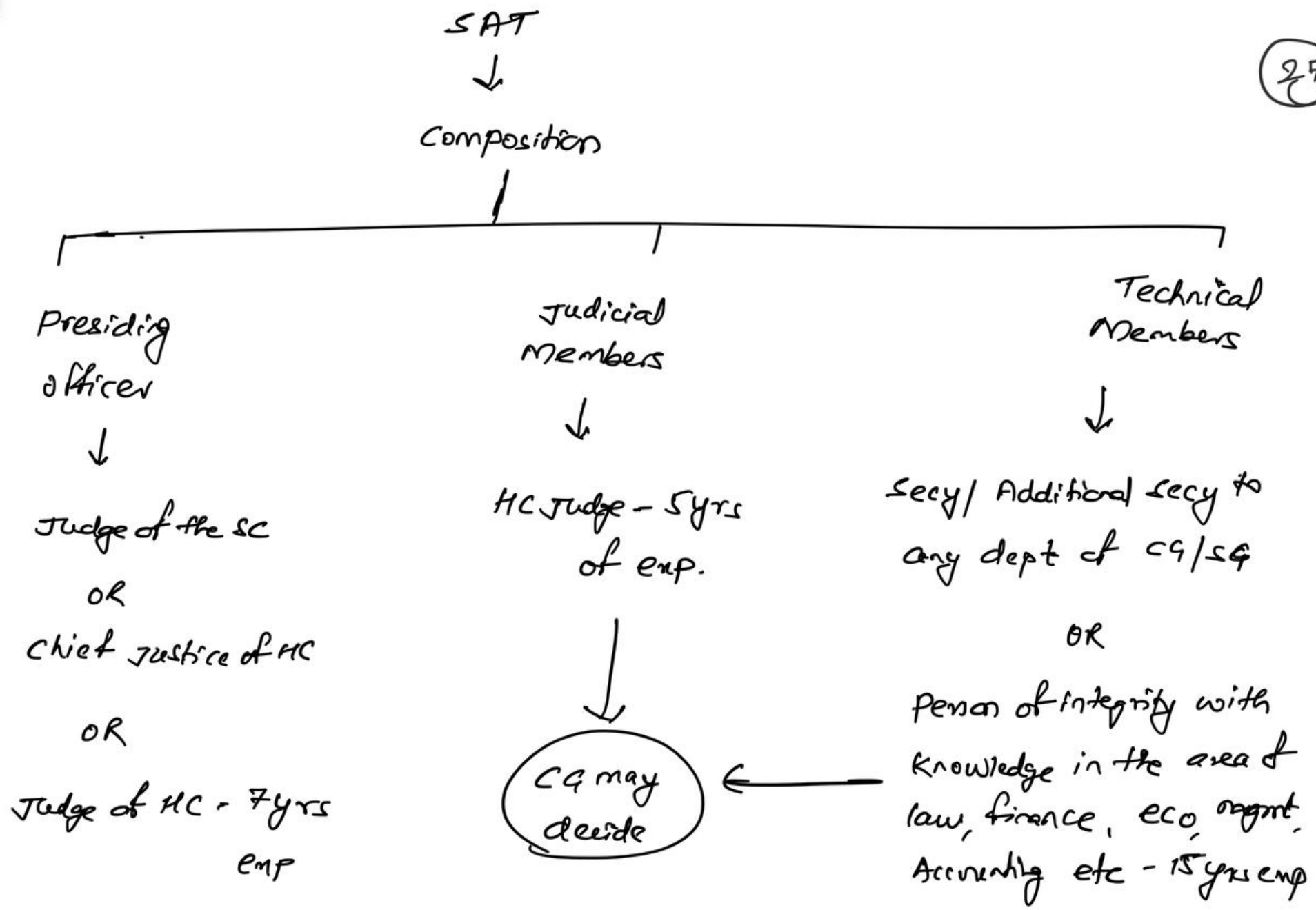
Confidentiality of information (Reg. 29)

No info recd by SEBI shall be disclosed to public if the same affects SEBI/applicant.



where app is withdrawn/rejected - applicant/Board shall not rely upon or introduce as evidence before any court/tribunal any proposals made or info submitted.





Term - 5 yrs ; max age - 70 yrs

Who appoints & Remuneration → CG may decide

Matters → Capital markets / IRDA / PF

Appeal → SEBI / AO / PFRDA / IRDA

↓ 45d  
SAT

↓ 60d  
SC

if reasonable cause is shown, then this time period could be extended.

Time period for disposal of matter



As expeditiously as possible ~~and~~ not more than 6 months.

Right of legal representation



In person / through some practising professional



In case of Co / Body Corp - Director / officer

Invalidation of proceedings



No order of CG shall invalidate proceedings if it is regarding

## Sittings of SAT

→ Either at Hd - Mumbai or such other offices of SAT

## Language

→ English or Hindi

→ If not in this, then a translated copy thereof

## Appeal to be in writing

→ In English, properly typed, cyclostyled, neatly presented

→ Full size paper, single side prints, double spacing & arguments

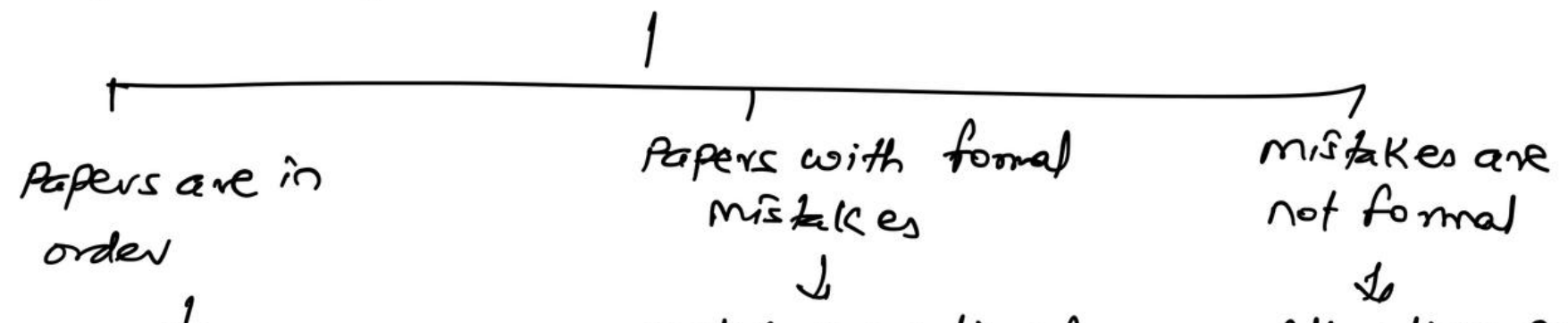


- 5 copies to be submitted for SAT
- Additional copies as number of defendants
- Full size envelopes with names of each defendant.

**Presentation of Appeal**

→ Submission of memorandum of appeal to SAT- Registrar

↓  
Registrar may on inspection either accept / reject the papers





If documents are not submitted within allowed time period <sup>(32)</sup>



Registrar may reject the case filed



Order of registrar can be appealed before presiding officer within 15d of receipt of order.

**Fees to be paid**

Penalty	Fees
upto 10000	500
10K - 1L	1200
Above 1L	1200 + 500 per lakh sub for a man



## Contents of memorandum

- All the allegations to be presented pointwise
- Must be serially numbered.

## Documents to accompany memorandum of appeal

- 5 copies to be sent ~~of~~ to Registrar, SAT
- At least one certified copy with appeal document

## Plural appeals

- Single appeal under single order unless all orders are consequential or connected.

## Notice of appeal to Respondent

34

- Sent by Registrar - SAT to Respondents
- ~~to~~ Hand delivered / speed post / Regd post.

## Reply by the Respondent

- Respondent submits his reply before SAT within 30 days of receipt.
- Copy of ~~reply~~ reply is also provided to the Appellant
- Reply also to be made in 5 copies

## Date of hearing

→ SAT intimates the same to both the parties.

## Hearing of appeal

→ Both the parties to be present either in person or through a practising professional or a representative.

→ If appellant is not present - matter could be dismissed

→ If Respondent is not present - matter could be decided

en parte

## Dress Code

36

- PO / TM / JM - Black Pant / white shirt / Black Coat
- Representative - Western formals / Indian formals - Kurta / Pyjama / Dhobi with a coat /
- Female members - Indian formals / saree with a black coat / western formals.

## Order to be signed & dated

- Signed by Presiding officer & 2 other members
- Absence of PO - Any other member authorized.

## Publication of orders

→ If required orders may be published in any press/joc

## Communication of orders

→ Copy to the concerned parties including SERI/AO

## Fee for inspection

→ ₹ 20 per hour/ part thereof; Min ₹ 100

→ No typed folio - ₹ 5/-

→ Typed folio - ₹ 10/-

## Additional functions of Registrar

38

- Receipt of appeals / application / order copies
- Issuance of summons to respondent
- Fixing date of appeal in consultation with PO
- Permission of inspection in various matters.
- Obtaining copies of other court orders
- Collection of reply and providing copies thereof
- To fill the bench in the absence of PO.

Seal & Emblem

→ As provided by CG

Appeal to SC

→ Within 60 days of receipt of order.

→ Extension may be granted on sufficient cause being shown.

June 2025  
Attempt

# DRAFTING

## Chapter - 14

### Appearances Before other Regulatory and Quasi Judicial Authorities

*Handwritten Notes*

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# Ch. 14 Appearances Before other Regulatory and Quasi Judicial Authorities. ①

## 1) Procedure for Appearance.

### 1) Preparation of the case.

- Prepare the case thoroughly before appearing.
- This includes
  - ↳ reviewing documents
  - ↳ identifying legal issues
  - ↳ preparing arguments evidences.

### 2) Appointment of legal Counsel

Appointment of Legal Counsel - experienced in representing clients.

- Legal Counsel - provide valuable guidance.

### 3) Compliance with procedural rules.

- Essential to comply → Procedural rules } of Authority
  - ↳ deadlines.
- Failure to comply → adverse consequences.  
[including dismissal of case]

- 4) Conduct during the proceedings.
  - Maintain a Professional/respectful demeanour.
  - Include → addressing authority with appropriate language.
    - ↳ presenting arguments clearly/concisely.
    - ↳ No disrespectful or disruptive behaviour.

5) Compliance with orders.

- Important to comply → orders } given by an authority.
  - ↳ direction
- Failure to comply → adverse consequences [fines/penalties/sanctions]

Right to Legal Representation

- Its a fundamental right of every person to have access to legal counsel and representation.
- It's recognised by the International Human Rights law.



• In Criminal cases, the accused has the right

to be represented  
by a lawyer

to receive legal aid  
if they can't afford it.

• In Civil cases, the accused has the right

to be represented  
by a lawyer.

however, there may be legal aid  
in all cases.

• Importance

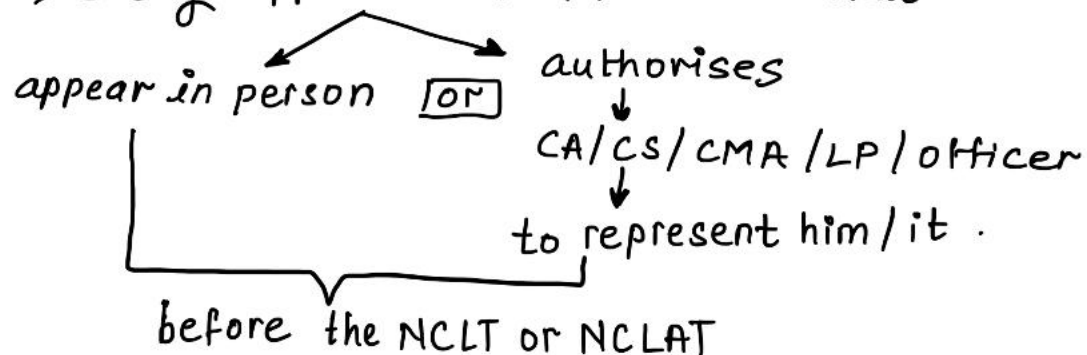
→ ensures legal proceedings are  
fair and just

→ ensures rights / interest of individual  
are protected & advanced.

• May be Restricted in → administrative proceedings  
↳ disciplinary proceedings.

**Appearance under the Companies Act, 2013**

Sec 432 → every applicant / appellant shall



1) Appearance before ROC

↓  
in matters related to

- filing of returns / documents
- inspection of books / records.
- verification of registered office address

2) Appearance before NCLT

↓  
in proceedings related to

- M/A approvals
- Insolvency / Bankruptcy
- disputed related to interpretations.

< 3) Appearance before SFIO

- SFIO is a specialized investigating agency
- Investigates
  - fraud cases
  - financial irregularities cases.
- Company appears in the investigation of
  - Corporate fraud
  - Money Laundering
  - other financial crimes.

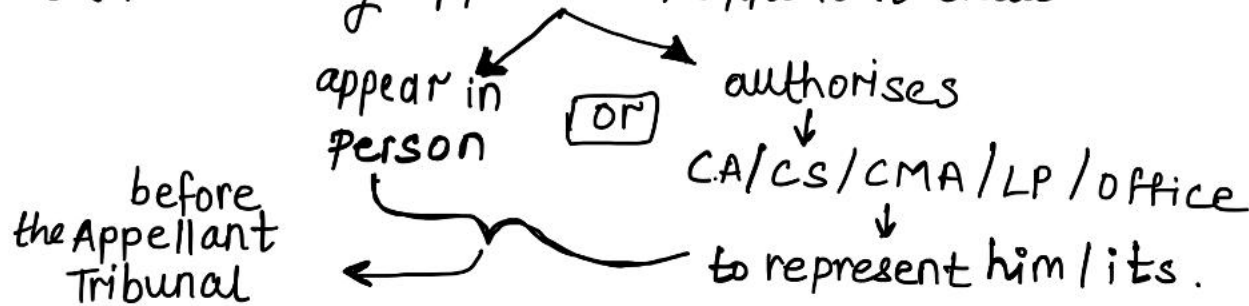
4) Appearance before SEBI

in compliance and enforcement matters related to

- Insider trading.
- Market Manipulation
- Disclosure Requirements.

□ Appearance under the TRAI Act, 1997

Sec 17 → every applicant/appellant shall



1) Appearance before the TRAI in tariff-related matters.

TRAI → regulates tariffs charged by telecom company.  
 ↳ may hold hearings and  
 ↳ require company to present evidence / arguments .

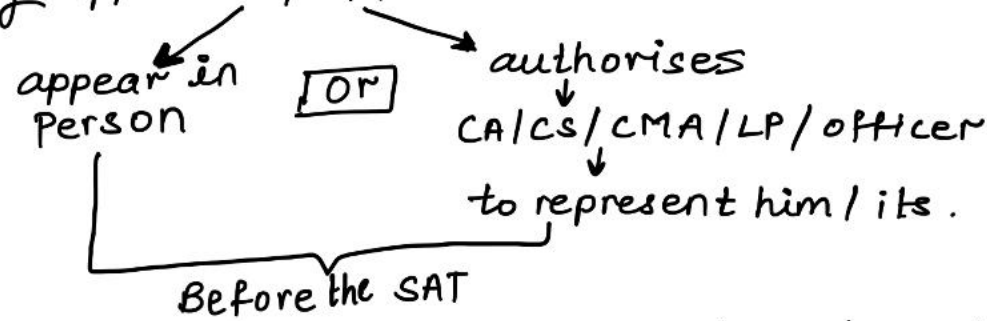
2) Appearance before the TRAI in consumer-related matters.  
 matters such as → quality of service  
 ↳ billing disputes  
 ↳ Unsolicited Commercial Communications.

3) Appearance before the TRAI in licensing-related matters.  
 matters such as {  
 - eligibility criteria  
 - license fees  
 - Conditions for license renewal.

4) Appearance before the TRAI in disputes and grievances  
 related to telecom services / licenses / tariffs

Appearance under the SEBI Act, 1992

Sec 15 V → every applicant/appellant shall



1) Appearance before SEBI in Compliance related matters

- Power to investigate and take enforcement actions against Company / Intermediaries for non-compliance.
- SEBI → may issue an SCN  
           ↳ may require parties → to appear  
   ↳ to provide evidence / arguments.

2) Appearance before SEBI in investigation.

- Power to investigate → Market Manipulation  
                                   ↳ insider trading  
                                   ↳ other fraudulent practices.
- SEBI may require parties → to appear  
   ↳ to provide evidence / arguments



- 3) Appearance before SEBI in adjudication proceedings.
  - Power to adjudicate disputes / grievances related to the securities market.
  - SEBI may require parties
    - to appear
    - to provide evidence / arguments.

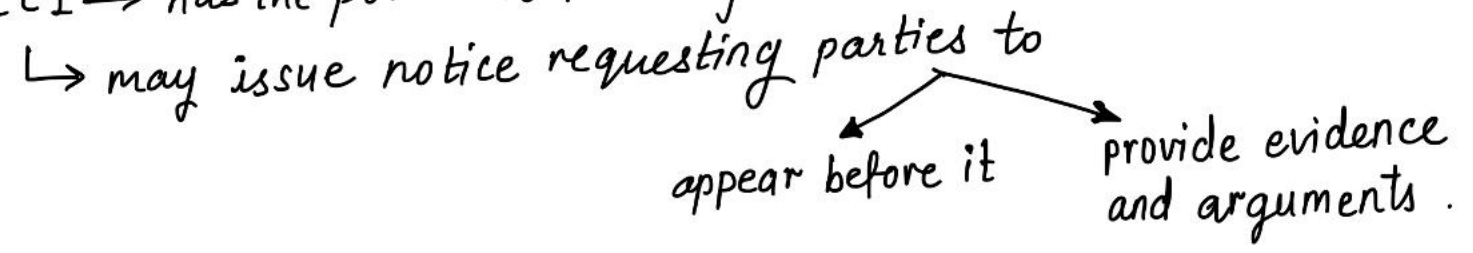
4) Appearance before SEBI in adjudication proceedings.



Appearance under the Competition Act, 2002.

Sec 35 → authorises PCs to appear before CCI.

1) Complaint and Information matters.  
CCI → has the power to investigate anti-competitive practices.



### 2) Combination Matters

CCI has the power to review

- mergers
- acquisitions
- other forms of combination.

↓

that have an adverse effect on competition.

→ may require parties to present

- arguments
- evidence.

### 3) Appeal and Review Matters



### 4) Leniency Matters.

CCI runs a leniency program to encourage Company / Individuals to disclose anti-competitive practices.

### □ Appearance under Real Estate (Regulation and Development) Act, 2016.

Sec 56 → A PCS can appear before

- Appellate Tribunal
- Regulatory Authority
- Adjudicating officer

↓

on behalf of the applicant / appellant

< 1) Complaint Manner

RERA → Provides for filing a complaint by aggrieved parties against real estate developers / promoters.

2) Registration Matters.

RERA → provides → registration of real estate projects by the developer / promoter; For this, they may appear & provide evidence / arguments.

3) Dispute Resolution Matters

RERA → provides → dispute resolution related to real estate projects  
↓  
Parties to provide evidence / arguments

4) Appeal Matters



# Appearance under the RBI Act, 1934

CS while appearing before RBI facilities



1) Understand the provisions

- Study the specific Sections / regulations → to understand the responsibilities relating to appearance.

2) Prepare relevant informations.

- gather necessary → information
  - ↳ documents
  - ↳ reports
  - ↳ records
 } relating to the matters.

- including
  - ↳ Financial Statement
  - ↳ Compliance reports
  - ↳ Board resolution

### 6) Maintain professionalism

- maintain professional demeanor
- Dress appropriately.
- Arrive on time.
- Engage in Constructive dialogue
- Information — correct / clear / concise.

### 7) Comply with RBI's instructions.

Follow any specific instructions

Including → providing information / documents  
adhering to timeline other procedural requirements.

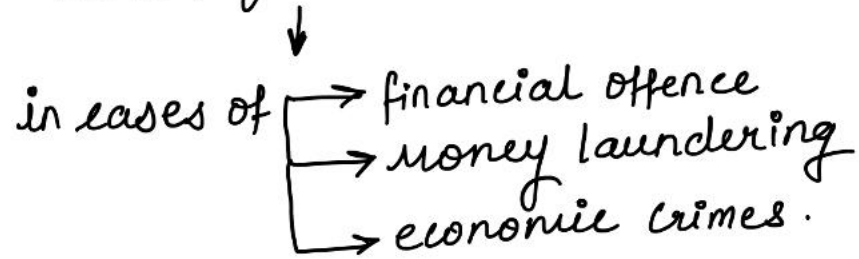
### 8) Facilitate Communications.

- CS facilitates communication between the Company and the RBI.
- information — accurate / relevant.
- address concern / query raised by RBI.



### Appearance before the ED.

- CS is required to appear before ED



- CS → crucial role
  - Compliance
  - provide relevant information.

- Guidelines for appearance before ED
  - ↓ same as
  - appearance before RBI.

### Appearance before the Stock-Exchange

- Matters related to
  - Compliance
  - regulatory requirements
  - trading activities
  - listed securities.

- Guidelines for appearance before stock-exchange  
     ↓ same as  
     RBI .

▣ Appearance before the IPR-Authorities

- Matters relating to
  - trademark registration
  - Patent application
  - Copyright disputes .
- Guidelines for appearance before IPR-Authorities  
     ↓ same as  
     RBI .

▣ Appellate Authorities under Companies Act, 2013

Supreme Court	1
NCLAT	2
NCLT	16
RD	7
ROC	25



- Guidelines for appearance before stock-exchange  
     ↓ same as  
     RBI .

▣ Appearance before the IPR-Authorities

- Matters relating to
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- Guidelines for appearance before IPR-Authorities  
     ↓ same as  
     RBI .

▣ Appellate Authorities under Companies Act, 2013

Supreme Court	1
NCLAT	2
NCLT	16
RD	7
ROC	25



### 1) NCLAT

• Sec 408 → CG

constitutes → NCLT

Consists of

President

Judicial/Technical Members.

• NCLAT → Principal bench - Delhi

↓

hear appeal against

→ Tribunal/NPRA under Companies Act, 2013

→ direction/decision/order under Competition Act.

• Appeal — within 45 days.

### 2) Supreme Court

NCLAT

↓  
[order]

appeal  
within  
60 days

→ Supreme Court

### 3) Regional director

Statutory Authority  $\xrightarrow{\text{appointed by}}$  Central Government.



ROC  $\xrightarrow{\text{appointed U/S 396}}$

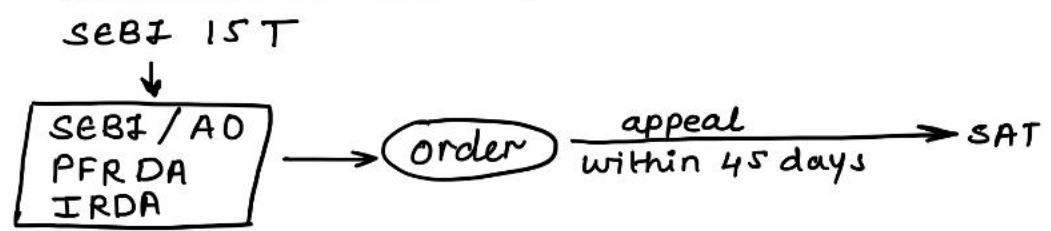
- Primary duty  $\rightarrow$  registering company and ensuring compliance by company.
- Functions as registry of records.

RD  $\rightarrow$  supervises  $\rightarrow$  working of officers of R.D / official liquidator under its jurisdiction.

$\rightarrow$  maintains liaison between State Govt / Central Govt.

CG  $\rightarrow$  exercises administration through  $\rightarrow$  RD

### Appellate Authority Under SEBI Act 1992



## → Procedure for filing appeal

### 1) Filing of appeal

- must be filed within 45 days
- must be filed in prescribed format
- must include all relevant documents / evidence

### 2) Service of notice

- After the notice
- SAT will serve the notice to SEBI / officers. giving them opportunity to reply

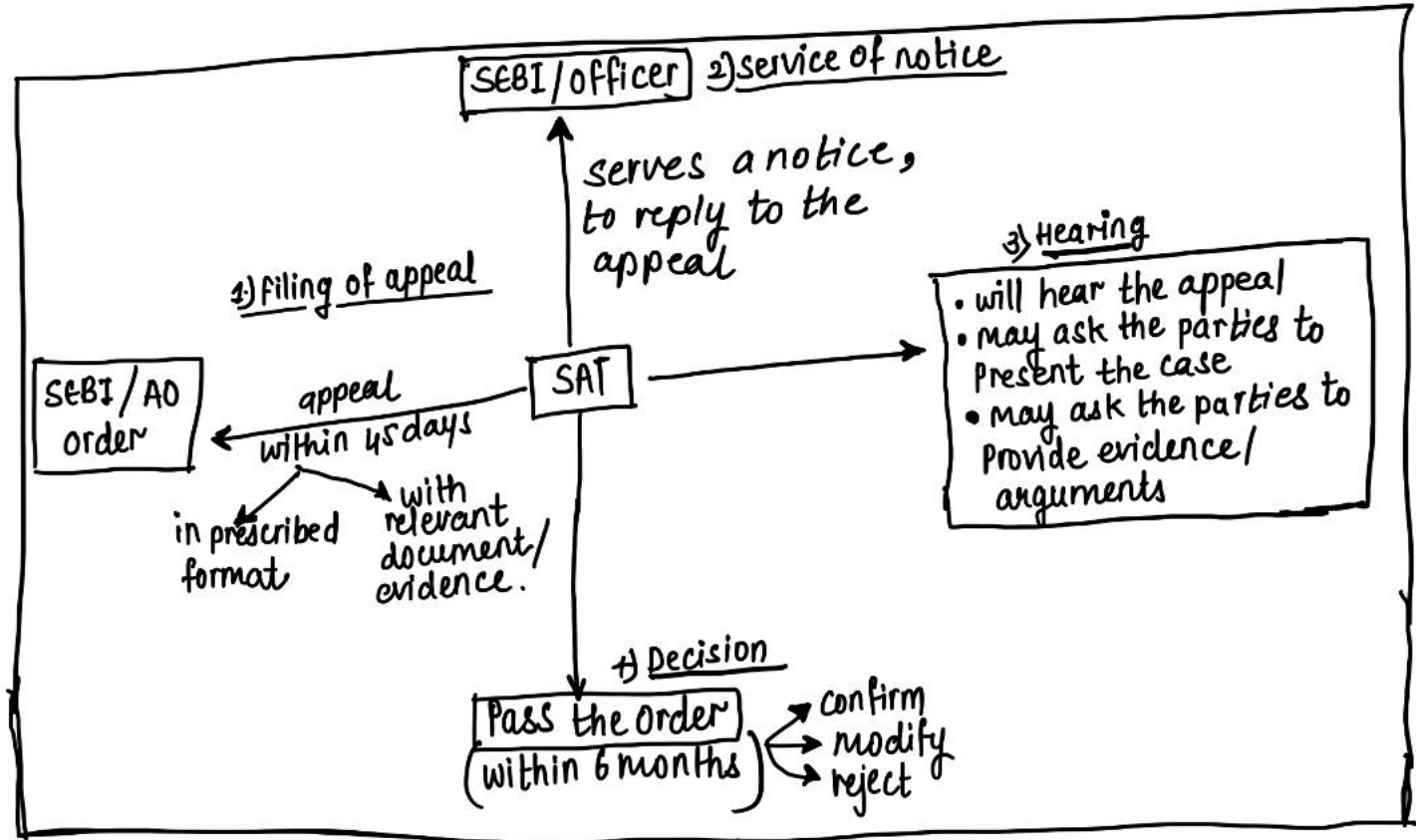
### 3) Hearings

- SAT will hear the appeal.
- SAT may ask parties → present their case  
→ provide evidence / arguments.
- SAT → may seek → clarification / further information.

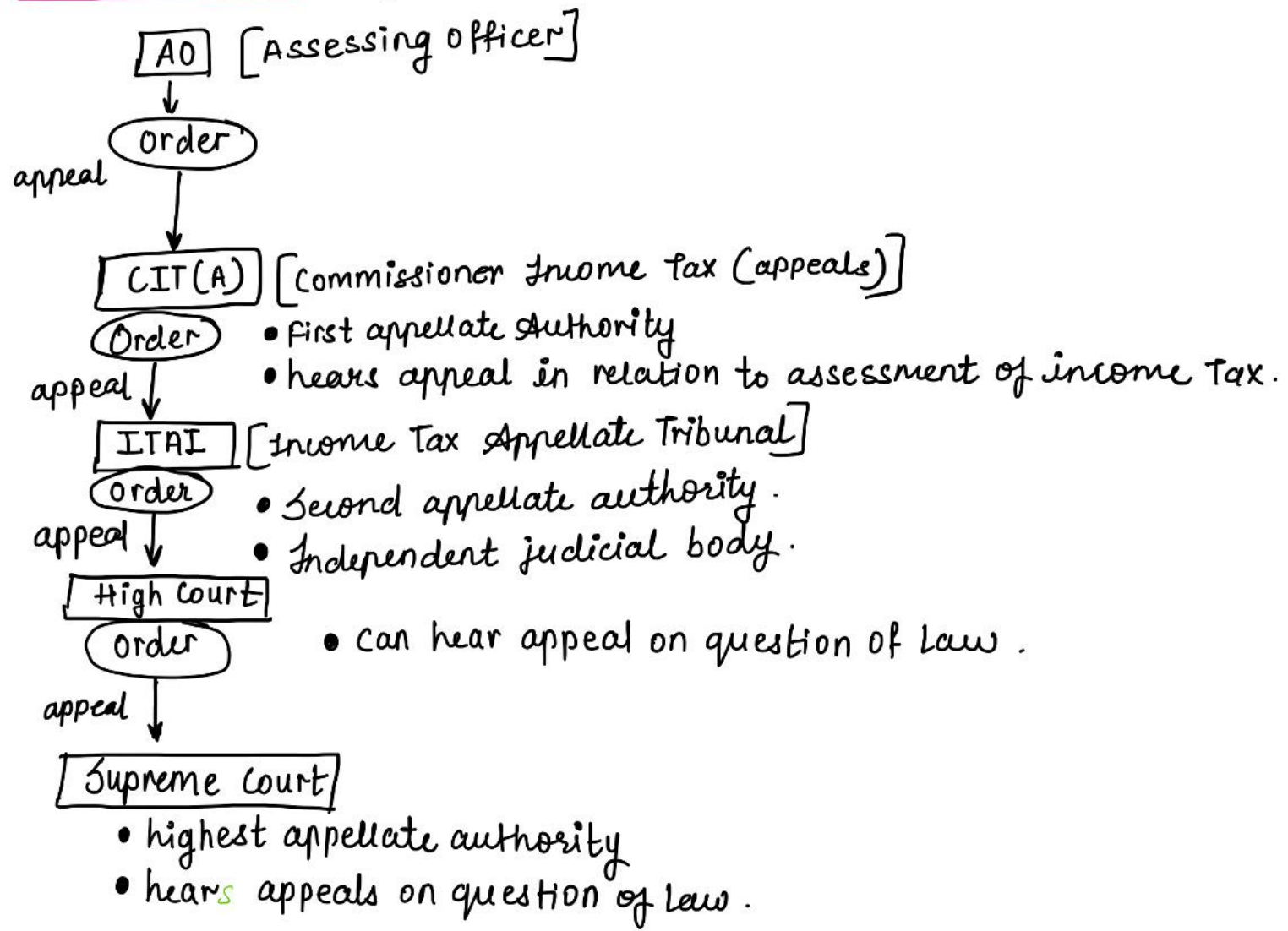
### 4) Decision

- After hearing the appeal
- SAT will pass the order → confirm  
→ reject  
→ modify
- SAT → decision → binding on the parties.

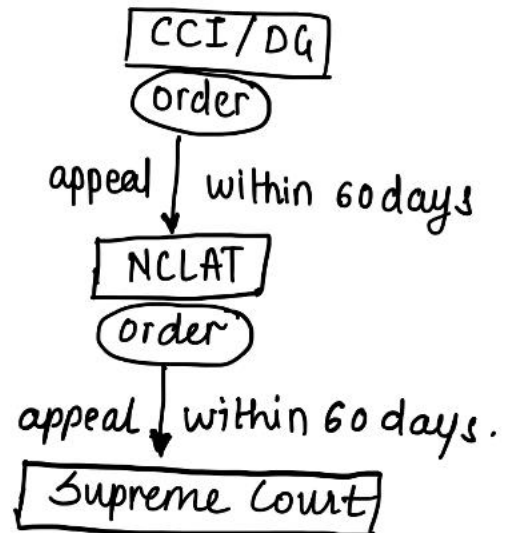
→ SAT as expeditiously as possible  
within 6 months → Pass the order



Appellate Authority under the Income-Tax Act, 1961



## Appellate Authority under the Competition Act, 2002



- can hear appeal on Question of law

**Note:-** The High Court may also hear an appeal

↓  
against the order of DG/CCI the constitution of India.

↓  
Under Article 226 of

↓  
which allows judicial review of orders by an administrative body.