

Introduction

The effectiveness of any statute, including the **Companies Act, 2013**, relies on its enforcement, particularly through the penal provisions. These provisions are crucial to regulate economic and social activities for the well-being of society and its stakeholders. Non-compliance with the provisions of the Act impacts the economy, requiring penalties to ensure adherence. The **Companies Act, 2013** includes both civil and criminal provisions, depending on the severity of violations.

Civil vs Criminal Law under the Companies Act

- **Civil Law:**
 - Deals with private disputes or defaults.
 - Aims to resolve issues and make good losses or damages suffered.
 - Court can only pass a judgment for compensating the aggrieved party.
- **Criminal Law:**
 - Deals with offences against society.
 - Aims to punish the offender, reflecting the public policy of a country.
 - Court has the authority to charge fines, imprison the guilty, or both.

Non-Compliance under the Companies Act, 2013

- The **Companies Act, 2013** specifies the necessary documents, filing requirements, and procedures for a company. Non-compliance attracts **fines** for delayed compliance and **penalties** for violations. In some cases, a **compounding procedure** can be applied to rectify the violation.

Difference between Fine & Penalty:

Fine	Penalty
A financial charge imposed by a court as punishment for an offence.	A punishment imposed for breaking a law or contract, usually a compensatory measure.
Imposed for criminal offences.	Imposed for civil breaches.
Imposed only by a court of law.	Can be imposed by administrative officers.
Used as a punitive measure .	Used to compensate or for breach of civil obligation.

Offences under the Companies Act, 2013

1. **Non-Cognizable Offences (Section 439):**
 - **Non-cognizable offences** are those for which a police officer cannot arrest without a warrant.

- **Example:** Violations of filing procedures or late compliance, where the offence is subject to **fine** rather than imprisonment.

2. **Cognizable and Non-Bailable Offences (Section 212(6)):**

- **Cognizable offences:** Police can arrest without a warrant.
- **Offences under Section 447** (fraud) are cognizable and non-bailable, meaning the accused cannot be released on bail unless certain conditions are met.

Penalties and Punishments under the Act:

1. **Section 447 - Fraud:**

- Fraud involving amounts of **₹10 lakhs** or more, or **1% of turnover** of the company, is punishable with imprisonment from **6 months to 10 years** and a fine that can be up to three times the amount involved in the fraud.
- For smaller frauds, imprisonment may extend to **5 years**, with a fine of up to **₹50 lakhs** or both.

2. **Section 448 - False Statement:**

- If false statements are made in any required documents, the individual is **liable to punishment under Section 447**.

3. **Section 449 - False Evidence:**

- Providing false evidence in an examination or affidavit is punishable with imprisonment from **3 to 7 years** and a fine up to **₹10 lakhs**.

4. **Section 450 - Punishment Where No Specific Penalty:**

- If no specific penalty is prescribed, a **penalty of ₹10,000** is imposed, with a **continuing penalty of ₹1,000 per day** until compliance is achieved, subject to a maximum of **₹2 lakh** for a company and **₹50,000** for an officer.

5. **Section 451 - Punishment for Repeated Default:**

- In case of repeated offences within **three years**, a company or officer will face **double the fine** for subsequent violations.

6. **Section 452 - Wrongful Withholding of Property:**

- If an officer or employee wrongfully withholds company property, they can face a fine of **₹1 lakh to ₹5 lakh**, and may be ordered to return the property.

Imprisonment for up to **2 years** may also be imposed.

7. **Section 453 - Improper Use of "Limited" or "Private Limited":**

- Misuse of the terms “**Limited**” or “**Private Limited**” in the name without proper incorporation can lead to a fine between **₹500 and ₹2000** per day of use.

Case Laws:

1. **In Re Komal Chadha Vs. Serious Fraud Investigation Office**

- **Issue:** Fraudulent diversion of funds and misleading banks.
- **Outcome:** Accused granted bail due to no evidence of tampering or witness intimidation.

2. **In Re Usha Martin Telematics Ltd. Vs. Registrar of Companies**

- **Issue:** Typographical error in meeting minutes recorded as de-registration of an NBFC.
- **Outcome:** Court quashed the complaint as there was no intent to deceive.

3. **In Re Doha Brokerage & Financial Services Ltd. Vs. Registrar of Companies**

- **Issue:** Violation of Section 19 regarding share allotment to subsidiary.
- **Outcome:** The company was ordered to pay a fine and the offence was compounded.

Decriminalization of Offences

The **Companies (Amendment) Act, 2019** and **2020** introduced provisions to reduce criminal liabilities for minor infractions. The aim is to **decriminalize certain offences** and focus on civil liabilities for procedural or technical non-compliance. This move aligns with efforts to **ease doing business** and foster corporate growth, while still maintaining a strict approach to fraudulent conduct.

This structure ensures that corporate entities comply with the statutory requirements of the **Companies Act, 2013** and emphasizes the importance of maintaining ethical and legal standards for business operations.

Establishment of Special Courts

The **Companies Act, 2013** includes provisions for the establishment of Special Courts under **Chapter XXVIII** (Sections 435 to 438). These provisions were not enforced until 2016. In February 2016, the **Companies Law Committee**, chaired by Shri Tapan Ray, recommended establishing Special Courts to

ensure faster prosecution of defaulting companies. This led to the notification of sections **435 to 438** in May 2016.

Structure of Special Courts

1. **Special Court Composition:**

- A **Single Judge**, who is either a **Session Judge** or **Additional Session Judge** for offences punishable with imprisonment for **2 years or more**.
- A **Metropolitan Magistrate** or **Judicial Magistrate of the First Class** for other offences.

2. **Appointment:**

- Judges are appointed by the **Central Government** with the concurrence of the **Chief Justice of the High Court**.

Offences Triable by Special Courts (Section 436)

1. **Jurisdiction:**

- Special Courts are designated based on the **registered office** of the company in relation to the offence.
- A Special Court may take cognizance of an offence upon a **complaint** or **police report**.

2. **Trial Process:**

- Special Courts may try **offences under this Act** in conjunction with other offences the accused may be charged with, according to the **Code of Criminal Procedure, 1973**.
- They can also conduct **summary trials** for offences punishable by **up to 3 years** imprisonment, provided the sentence does not exceed **1 year**.

Case Laws

1. **S. Satyanarayana Vs. Energo Masch Power Engineering & Consulting Pvt. Ltd. (Supreme Court of India)**

- **Issue:** The jurisdiction of Special Courts when offences are committed under both the **Companies Act** and the **Indian Penal Code (IPC)**.
- **Outcome:** It was held that the **Special Court** has the jurisdiction to try all offences arising from the same transaction to avoid **multiplicity of proceedings**.

2. **Roofit Industries Ltd. vs. SEBI (March 2024)**

- **Issue:** Failure of directors to distribute dividends as promised to shareholders.
- **Outcome:** The Special Court imposed a **₹5 lakh fine** on each director instead

of imprisonment, considering their age and health.

Section 438 - Application of the Code of Criminal Procedure, 1973

Section 438 applies the **Criminal Procedure Code** (CrPC) provisions to the proceedings before **Special Courts**, treating them as **Courts of Session** or **Magistrate Courts** for the purpose of adjudicating offences.

Importance of Special Courts

The **quantum of monetary impact** involved in corporate cases requires expertise and a **swift judicial process**. The establishment of Special Courts ensures **timely adjudication** and avoids delays in the prosecution of corporate violations, ensuring transparency and accountability.

Adjudication of Offences under the Companies Act, 2013

Adjudication is the process through which a **judge** or **arbiter** decides on disputes between parties. In the context of the **Companies Act, 2013**, adjudication is used to penalize **non-compliant companies** or **defaulting officers**.

Genesis of Adjudication

1. **Section 454 and Companies (Adjudication of Penalties) Rules, 2014** grant the **Registrar of Companies (ROC)** the responsibility to act as the **Adjudicating Officer** for penalties under the Act.
2. The **J.J. Irani Committee** recommended this adjudication mechanism to expedite the enforcement of penalties without the need for **legal proceedings**.

Adjudication Process

1. **Step 1: Issue of Show Cause Notice**
 - The **Adjudicating Officer** issues a notice to the company, officer, or person in default to explain why penalties should not be imposed.
 - The company must respond within **15-30 days**, with a possible extension of **15 days**.
2. **Step 2: Enquiry and Hearing**
 - If required, the **Adjudicating Officer** calls for a **physical appearance** within **10 working days** from receiving the reply.
3. **Step 3: Hearing and Decision**
 - The officer hears the case and may adjourn the hearing or ask for more clarifications before passing an order within **30-90 days**.
4. **Step 4: Final Order**

- The **Adjudicating Officer** imposes a penalty, which is enforced and communicated to the concerned parties.

Penalty Example

1. **Haridra Laxmi Property Management Pvt. Ltd.**
 - **Violation:** Late filing of **Form INC-20A** (Declaration of Commencement of Business).
 - **Penalty:**
 - Company: **₹50,000**
 - Each Officer in Default: **₹1,000 per day**, totaling **₹27,000** after **28 days** of delay.
 - **Total Penalty: ₹1,04,000.**
2. **M/s Krazzy Fin Pvt. Ltd.**
 - **Violation:** Issuing equity shares before completing the **vesting period**.
 - **Penalty:**
 - Company: **₹1,00,000**
 - Directors: **₹25,000 each**.
3. **M/s Herb Nutra Lab Pvt. Ltd.**
 - **Violation:** Incorrect allotment of shares through **private placement**.
 - **Penalty:**
 - Company: **₹9,00,000**
 - Directors: **₹9,00,000 each**
 - **Total Penalty: ₹36,00,000.**

Conclusion

The **Adjudication and Special Court provisions** in the **Companies Act, 2013** are essential tools for ensuring timely and effective enforcement of the law. By empowering **Registrars of Companies** with adjudication authority and establishing **Special Courts**, the Act aims to promote transparency, accountability, and quicker resolution of corporate violations.

Powers of Adjudicating Officer

The **Adjudicating Officer** under the **Companies Act, 2013** holds several powers to enforce compliance and impose penalties for non-compliance with the provisions of the Act. These powers include:

1. **Summoning and Enforcing Attendance:**
 - The officer can summon any person who has knowledge of the facts of the case to appear and give evidence.
 - The officer must record reasons in writing for summoning any individual.
2. **Ordering Production of Documents:**
 - The officer has the authority to direct any party to produce relevant

documents that may aid in adjudicating the matter.

3. **Penalty Imposition:**

- The officer can impose penalties on the company, officers in default, or any other responsible person for non-compliance with the provisions of the Act.
- In cases where the person fails to respond or appear as required, the officer can impose penalties in their absence, after recording reasons.

4. **Factors Considered for Penalty:**

- The size of the company and the nature of its business.
- The impact on public interest and the nature of the default.
- The repetition of the default and any unfair advantage gained.
- Loss caused to investors or creditors due to the default.

5. **Penalty Payment:**

- Penalties must be paid through the **Ministry of Corporate Affairs (MCA) portal** and all sums collected are credited to the **Consolidated Fund of India**.

6. **Minimum Penalty:**

- The penalty imposed cannot be less than the minimum prescribed penalty under the relevant section of the Act.

Appeal Against the Order of Adjudicating Officer

1. **Filing an Appeal:**

- An appeal against an adjudicating officer's order can be made to the **Regional Director (RD)** within **60 days** from the date of receipt of the order.
- The appeal should be filed in **Form ADJ** and must include the **grounds of appeal** and a certified copy of the order against which the appeal is sought.

2. **Registration of Appeal:**

- The **Regional Director** will endorse the appeal upon receipt, giving it a **serial number** if it is in order.
- If defects are found in the appeal, the appellant will have **14 days** to rectify them. If the appellant fails to do so, the appeal may be rejected.

3. **Disposal of Appeal:**

- The Regional Director serves the appeal to the **Adjudicating Officer** and allows them to file a response.
- A hearing is scheduled, and based on the hearing, the Regional Director will either **confirm, modify, or set aside** the original order.
- If the appellant or the adjudicating officer does not appear for the hearing, the Regional Director may dispose of the appeal **ex-parte**.
- If a party can justify their absence, the ex-parte order may be set aside, and the appeal may be restored.

4. **Failure to Comply with the Appeal Order:**

- If the company or officer in default fails to comply with the final order within **90 days**, they will be penalized:
 - **Company:** Fine of **₹25,000 to ₹5 Lakhs**.
 - **Officer in default:** Imprisonment of up to **6 months**, or a fine of **₹25,000 to ₹1 Lakh**, or both.

Case Law on Adjudication by SEBI

1. **Raghukul Shares India Pvt. Ltd.**

- **Violation:** Engaged in fraudulent practices, including large-scale reversal of trades in stock options to create artificial volume at the BSE.
- **Penalty:** SEBI initiated adjudication proceedings under the **SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003**.
- **Outcome:** The company was **struck off** from the records, and adjudication proceedings were **disposed off** due to the non-existence of the company.

2. **M/s Kodagu Heritage**

- **Violation:** The company delayed filing **Form INC-22** to verify its registered office within 30 days after incorporation, failing to comply for over 621 days.
- **Penalty:**
 - **Company:** **₹1 Lakh**
 - **Directors in Default:** **₹1 Lakh**
 - **Total Penalty:** **₹1 Lakh per person**.

3. **Ms Joy Ice Cream (Bangalore) Pvt. Ltd.**

- **Violation:** Non-filing of **Form INC-22** for change in registered office.
 - **Penalty:**
 - **Company:** ₹1 Lakh
 - **Directors:** ₹1 Lakh each.
4. **M/s Reliance Broadcast Network Ltd.**
- **Violation:** Failure to maintain the minimum number of directors between **October 2018 to December 2018**.
 - **Penalty:**
 - **Company:** ₹78,000
 - **Directors (CFO/CEO):** ₹78,000 each.
5. **Sunshakti Solar Power Projects Pvt. Ltd.**
- **Violation:** Delay in filing **Form PAS-3 (Return of Allotment)** and **PAS-4 (Letter of Offer)**.
 - **Penalty:**
 - **Company:** Penalty as per **Section 39(4)** and **Rule 12(1)** of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Conclusion

The **Adjudicating Officer** holds significant powers to impose penalties and ensure compliance with the **Companies Act, 2013**. Appeals against the officer's decisions can be filed with the **Regional Director**, and penalties are enforced strictly to encourage timely compliance. This adjudication process is crucial for maintaining corporate governance and upholding transparency within companies.

Test Yourself - Answers:

1. Question: Whether adjudicating officer can impose penalty on non-compliance or default under the provisions of Companies Act, 2013?

Answer:

Yes, under **Section 454(3)**, the **Adjudicating Officer** can impose a penalty for non-compliance or default under the **Companies Act, 2013**. The officer is also empowered to direct the company or any officer in default to rectify the violation where deemed fit.

- **Note:** If the default involves non-compliance with **Section 92(4)** or **Section 137 (1) or (2)**, and the default is rectified within **30 days** of the notice, no penalty will be imposed, and proceedings for the default shall be concluded.

2. Question: On whom penalties may be imposed by the adjudicating officer?

Answer:

Penalties may be imposed on:

- **Companies**
- **Officers in default**
- **Any other person** (this term was included by the **Companies (Amendment) Act, 2019**).

3. Question: Arun, an individual shareholder of M/s. BEL Ltd. is holding 2% of the voting rights. He made a complaint before the Adjudicating Authority that investments proposed to be made by the Company are without any adequate security and prayed for injunction to restrain the company from making such investments. Will Arun succeed in his attempt? Explain with decided case law.

Answer:

Yes, Arun will likely succeed in his attempt to restrain the company. If the directors are performing illegal or ultra vires acts, individual shareholders have the right to bring an action to prevent such activities. The majority cannot validate illegal or ultra vires actions.

Case Law:

In **Bharat Insurance Ltd. vs. Kanhya Lal (AIR 1935 Lah. 792)**, a shareholder sought an injunction to prevent the company from making investments that were contrary to its memorandum. The court ruled that if directors act **ultra vires**, an individual shareholder can maintain a suit to stop such actions. Hence, Arun can successfully request an injunction.

4. Question: Power of SEBI to Issue Directions and Levy Penalty [Section 11B]

Answer:

Under **Section 11B** of the **SEBI Act**, **SEBI** can issue directions to prevent fraudulent activities and ensure orderly market practices. SEBI can also direct any person who has made a wrongful gain or averted a loss through unlawful activities to **disgorge** the equivalent amount.

SEBI may issue directions to:

- Any person or class of persons related to securities.
- Companies regarding capital issues, transfer of securities, etc.

Penalty for non-compliance:

- **Section 15A:** Penalty for failure to file documents, returns, etc., with SEBI.
- Penalties for failures to comply with regulations on disclosures, redress of grievances, and other SEBI rules are typically a minimum **₹1 Lakh**, with **daily fines** for continuing defaults, subject to a maximum of **₹1 Crore**.

5. Question: Penalty for failure to furnish information, returns, etc.

Answer:

As per **Section 15A** of the **SEBI Act**, any person failing to:

- Furnish documents, returns, reports, books, or any other required information.
- File returns or provide documents within the specified time.
- Maintain books of accounts or records.

Will be liable to a penalty of:

- Minimum **₹1 Lakh**, which can extend to **₹1 Lakh per day**, with a cap of **₹1 Crore**.

6. Question: Penalty for failure to redress investors' grievances.

Answer:

Under **Section 15C** of the **SEBI Act**, if a listed company or intermediary fails to address investor grievances within the time specified by SEBI, the penalty imposed can be:

- Minimum **₹1 Lakh**, which can extend to **₹1 Lakh per day**, subject to a maximum of **₹1 Crore**.

7. Question: Penalty for insider trading.

Answer:

As per **Section 15G** of the **SEBI Act**, an insider who engages in insider trading or communicates unpublished price-sensitive information (UPSI) to others:

- Will be penalized with a fine not less than **₹10 Lakh** and may extend up to **₹25 Crore** or three times the amount of profits made from the trade, whichever is higher.

8. Question: Penalty for non-disclosure of acquisition of shares and takeovers.

Answer:

Under **Section 15H** of the **SEBI Act**, if a person fails to:

- Disclose the aggregate of shareholding before acquiring shares.
- Make a public offer or send a letter of offer to shareholders.

They shall face a penalty of:

- Minimum **₹10 Lakh**, which may extend to **₹25 Crore** or three times the profits made from such non-compliance, whichever is higher.

9. Question: Penalty for fraudulent and unfair trade practices.

Answer:

As per **Section 15HA** of the **SEBI Act**, any person indulging in fraudulent and unfair trade practices relating to securities will be liable for a penalty:

- Minimum **₹5 Lakh**, extending to **₹25 Crore** or three times the amount of profits made, whichever is higher.

Case Study Analysis:

Mega Resources Limited vs. SEBI

- **Facts:** Mega Resources failed to comply with SEBI's **SAST Regulations** regarding disclosure and open offers, arguing that their violation was unintentional.
- **Decision:** The court ruled that **ignorance of law is no excuse**, and SEBI rightly imposed penalties under the amended **SEBI Act**. The penalty of **₹50 Lakh** was upheld as just and reasonable.

This summary emphasizes the key regulatory provisions and the penalties associated with various violations under the **SEBI Act, 1992** and the **Companies Act, 2013**, including adjudication and appeals procedures.

Penalties under Securities Contracts (Regulation) Act, 1956

The **Securities Contracts (Regulation) Act, 1956** regulates stock exchanges and securities transactions, aiming to prevent undesirable speculation and to regulate trading outside recognized stock exchanges through licensed dealers. Below are key penalties specified under the Act:

1. Penalties under Section 23

- **Offenses Include:**
 - Failing to comply with requisitions or violating contract provisions under Sections 6, 13, 16, 17, 18A, 19, and others.
 - Entering into contracts violating provisions regarding derivatives or operating places for contracts outside recognized exchanges.
 - Misrepresentation of eligibility to perform securities transactions or engaging in canvassing for contracts in contravention of the Act.
- **Punishment:**
 - **Imprisonment:** Up to **10 years**.
 - **Fine:** Up to **₹25 crore**, or both.

2. Penalty for Failure to Furnish Information [Section 23A]

- **Failure to Furnish Required Information:**
 - Information, documents, reports, or books must be provided within specified timelines.
 - **Penalty:**
 - Minimum ₹1 lakh, can extend to ₹1 lakh per day for each continued failure, up to ₹1 crore.
- **Failure to Maintain Books:**
 - **Penalty:**
 - Minimum ₹1 lakh, can extend to ₹1 lakh per day for continued failure, up to ₹1 crore.

3. Penalty for Failure to Enter into Agreement [Section 23B]

- **Failure to Enter Agreement with Clients:**
 - Must enter into an agreement with clients under rules or bye-laws of a recognized stock exchange.
 - **Penalty:**
 - Minimum ₹1 lakh, can extend to ₹1 lakh per day, up to ₹1 crore.

4. Penalty for Failure to Redress Investors' Grievances [Section 23C]

- **Failure to Address Grievances:**
 - Failure to resolve investor grievances within the stipulated time.
 - **Penalty:**
 - Minimum ₹1 lakh, can extend to ₹1 lakh per day, up to ₹1 crore.

5. Penalty for Misuse of Clients' Securities [Section 23D]

- **Failure to Segregate Securities or Money of Clients:**
 - Stock brokers or sub-brokers must segregate client securities and funds. Failure to do so attracts penalties.
 - **Penalty:**
 - Minimum ₹1 lakh, can extend to ₹1 crore.

6. Penalty for Breaching Listing or Delisting Conditions [Section 23E]

- **Failure to Comply with Listing/Delisting Conditions:**
 - **Penalty:**

- Minimum ₹5 lakh, can extend to ₹25 crore.

7. Penalty for Excess Dematerialisation or Delivery of Unlisted Securities [Section 23F]

- **Excess Dematerialisation or Delivery of Unlisted Securities:**
 - Penalty for over-dematerializing securities or delivering unlisted securities.
 - **Penalty:**
 - Minimum ₹5 lakh, can extend to ₹25 crore.

8. Penalty for Failure to Furnish Periodical Returns [Section 23G]

- **Failure to Furnish Periodical Returns:**
 - Recognized stock exchanges failing to submit periodical returns or incorrect returns to SEBI.
 - **Penalty:**
 - Minimum ₹5 lakh, can extend to ₹25 crore.

9. Penalty for Conducting Business Contrary to Rules [Section 23GA]

- **Failure to Conduct Business According to Rules:**
 - If stock exchanges or clearing corporations fail to follow SEBI's regulations or directives.
 - **Penalty:**
 - Minimum ₹5 crore, can extend to ₹25 crore or 3x the amount of gains made, whichever is higher.

10. Penalty for Contravention Where No Specific Penalty is Provided [Section 23H]

- **Failure to Comply:**
 - Any person contravening provisions of the Act without a specific penalty.
 - **Penalty:**
 - Minimum ₹1 lakh, can extend to ₹1 crore.

Adjudication and Penalty Imposition Process Adjudicating Officer's Powers [Section 23I]

- The Securities and Exchange Board of India (SEBI) can appoint an officer to adjudicate cases under Sections 23A-23H.
- The officer can summon witnesses, enforce attendance, and impose penalties based on the severity of the violation.

- The **adjudicating officer** considers factors such as:
 - Disproportionate gain.
 - Loss caused to investors.
 - Repetitive nature of violations.

Settlement of Proceedings [Section 23JA]

- **Settlement Option:**
 - Defaulters can apply to SEBI for settling proceedings, subject to the payment of a specified amount.
 - All settlement amounts, excluding disgorgement, go to the **Consolidated Fund of India**.

Recovery of Penalty Amounts [Section 23JB]

- **Recovery Officer:**
 - If penalties are unpaid, the Recovery Officer can enforce the recovery through various means, such as:
 - Attachment of movable/immovable property.
 - Bank account attachment.
 - Arrest of the person.
- **Precedence:**
 - Recovery of penalty takes precedence over other claims.

Continuation of Proceedings After Death [Section 23JC]

- **Liability After Death:**
 - Legal representatives of a deceased person are liable for penalties if imposed before the person's death.
 - The proceedings can continue against the legal representative.

Appeal Process [Section 23L]

- **Appeals:**
 - Aggrieved parties can appeal against orders to the **Securities Appellate Tribunal (SAT)**.
 - Appeals must be filed within **45 days**, with possible extensions if sufficient cause is shown.

Other Key Sections

Section 23M:

- Penalty for violating provisions, failure to pay penalties, or non-compliance with SEBI's orders.
- **Imprisonment:** Up to **10 years**.
- **Fine:** Up to **₹25 crore** or both.

Section 23N:

- Certain offenses may be compounded by SAT or the court, before or after the initiation of proceedings.

Section 23O:

- **Immunity** can be granted by SEBI if a violator discloses the full truth about violations, subject to certain conditions.

Section 24:

- Company and its responsible officers (directors, managers) are liable for violations committed by the company.

This framework ensures compliance with the Securities Contracts (Regulation) Act and penalizes non-compliance, aiming to maintain the integrity of the securities market and protect investors.

Contravention, Penalties, Adjudication, and Appeal under FEMA (Foreign Exchange Management Act), 1999

Penalties under Section 13 of FEMA

- **Contravention of Act or Rules:**
 - **Penalty:**
 - Up to **3x the sum involved** if the amount is quantifiable.
 - **₹2 lakh** if the amount is not quantifiable.
 - For **continuing contravention**, an additional penalty of up to **₹5,000/day** after the first day.
- **Acquiring Foreign Exchange/Property Outside India:**
 - **Penalty:**
 - Up to **3x the sum involved**.
 - Confiscation of the equivalent value in **India** (foreign exchange, foreign securities, or immovable property).
 - **Imprisonment:**
 - Up to **5 years** and/or a fine.
- **Prosecution:**
 - The **Adjudicating Authority** can recommend prosecution.
 - **Director of Enforcement** can file a criminal complaint for prosecution.
- **Confiscation:**
 - **Currency, securities, or property** involved in the contravention may be confiscated to the **Central Government**.

Enforcement of Orders (Section 14)

- **Failure to Pay Penalty:**

- **Civil imprisonment** if penalty is not paid within **90 days** of notice.
- **Conditions for Arrest:**
 - **Failure to pay penalty** and attempts to obstruct recovery (e.g., transferring property dishonestly).
 - **Warrant for arrest** can be issued to ensure penalty payment.
- **Civil Prison Detention:**
 - If penalty remains unpaid, the defaulter can be detained in **civil prison** for up to:
 - **3 years** if penalty exceeds ₹1 crore.
 - **6 months** for smaller amounts.
- **Release:**
 - Defaulter can be released upon payment of the due penalty.

Recovery of Penalty Arrears (Section 14A)

- **Recovery by Enforcement Officer:**
 - The **Enforcement Officer** (Assistant Director or above) is authorized to recover penalties.
 - Powers similar to **Income-tax authorities** for recovery under the **Income-tax Act, 1961**.

Adjudicating Authority (Section 16)

- **Appointment:**
 - The **Central Government** appoints **Adjudicating Authorities** to adjudicate penalties under **Section 13**.
- **Role of Adjudicating Authority:**
 - Holds **inquiries** and provides an opportunity for the person in default to present their case.
- **Powers:**
 - Same powers as a **civil court** for issuing summons, examining witnesses, etc.
- **Appeal Process:**
 - The **Adjudicating Authority** must resolve complaints within **1 year**.

Appeal to Special Director (Appeals) (Section 17)

- **Eligibility:**
 - Appeals against **Assistant Director** or **Deputy Director** decisions go to the **Special Director (Appeals)**.
- **Timeframe:**
 - Appeals must be filed within **45 days** from receipt of the order.

- Can be extended if a valid reason is provided.
- **Procedure:**
 - The **Special Director (Appeals)** hears both parties and passes an order (confirming, modifying, or setting aside the previous order).
- **Power of Civil Court:**
 - Has powers similar to a **civil court**.

Appeal to Appellate Tribunal (Section 19)

- **Eligibility:**
 - **Central Government** or **aggrieved parties** can appeal to the **Appellate Tribunal**.
- **Deposit Requirement:**
 - **Penalty deposit** required with the **appeal** (exceptions can be made in hardship cases).
- **Timeframe:**
 - Appeals must be filed within **45 days**.
- **Disposal of Appeal:**
 - The **Appellate Tribunal** must resolve the appeal within **180 days**.

Procedure for Adjudication and Appeal (Foreign Exchange Management Rules, 2000)

- **Appointment of Adjudicating Authority (Rule 3):**
 - **Central Government** appoints Adjudicating Authorities to hold inquiries.
- **Inquiry Process (Rule 4):**
 - **Show Cause Notice** is issued to the person to explain the contravention.
 - **Opportunity to Produce Evidence** is provided.
 - **Summoning of Witnesses** may be done.
- **Appeals to Special Director (Appeals) (Rule 5):**
 - **Form of Appeal:** The appeal should set forth grounds concisely and include documents.
- **Appellate Procedure (Rule 10):**
 - **Appellate Tribunal** hears the appeal and issues orders confirming, modifying, or setting aside previous orders.

Key Sections Summary

- **Section 13:** Defines contraventions and penalties.

- **Section 14:** Enforcement mechanisms for non-payment of penalties.
- **Section 16:** Powers of Adjudicating Authorities.
- **Section 17:** Appeals to Special Director (Appeals).
- **Section 19:** Appeals to the Appellate Tribunal.
- **Section 28:** Procedure and powers of Appellate Tribunal and Special Director (Appeals).
- **Section 34:** Civil courts have no jurisdiction over matters adjudicated under FEMA.
- **Section 35:** Appeals to High Court on legal questions.

Test Yourself - Key Questions

1. **What triggers adjudication under Section 454?**
 - Non-compliance or default identified through inspection or investigation, and default must involve penalty (not fine).
2. **Who orders adjudication proceedings under Section 454?**
 - The **ROC** can initiate if the violation is identified through inspection, statutory audit, or secretarial audit. The **Central Government** appoints an independent officer for adjudication.
3. **How does Section 441 (Compounding) relate to Section 454 (Adjudication)?**
 - **Section 441** deals with compounding offenses (fine-related), while **Section 454** deals with adjudication of penalties. Both sections operate concurrently, but **adjudication** cannot be compounded.
4. **What is the role of SFIO in investigations?**
 - The **Serious Fraud Investigation Office (SFIO)** investigates company affairs in cases of fraud, public interest, or government orders, and submits reports to the **Central Government** for further action.
5. **How is the SFIO empowered to arrest individuals?**
 - The **SFIO** can arrest individuals under **Section 447** of the **Companies Act, 2013** with material evidence and approval from the **Director of SFIO**.

This detailed explanation covers the penalties, enforcement, adjudication, and appeal procedures under **FEMA** and the **Companies Act, 2013**.
Tribunals under the Companies Act, 2013 and Other Relevant Laws

National Company Law Tribunal (NCLT) & National Company Law Appellate Tribunal (NCLAT)

- **Constitution:**
 - **NCLT:** Established under **Section 408** of the **Companies Act, 2013**, with a President, Judicial Members, and Technical Members appointed by the **Central Government**.
 - **NCLAT:** Established under **Section 410** to hear appeals from NCLT or certain decisions under other laws (e.g., Competition Act, 2002).
- **Purpose:**
 - Aimed at **faster corporate dispute resolution**.
 - Established as part of **corporate governance reforms** recommended by the **Justice Eradi Committee** to ensure swift resolution of insolvency and winding-up cases.
- **Jurisdiction:**
 - **NCLT:** Deals with matters related to company law, such as company incorporation, corporate disputes, mergers, etc.
 - **NCLAT:** Hears appeals against NCLT decisions.

Qualification of NCLT & NCLAT Members (Sections 409, 411)

- **NCLT President:**
 - Must be a **former Judge of a High Court** for **5 years**.
- **NCLT Judicial Members:**
 - **Judges of High Courts** or **District Judges** with at least **5 years** of experience or **advocates** with at least **10 years** of experience.
- **NCLT Technical Members:**
 - Must have at least **15 years** of experience in corporate law, accounting, finance, or related fields.
- **NCLAT Chairperson:**
 - Must be a **former Judge of the Supreme Court** or **Chief Justice of a High Court**.
- **NCLAT Judicial Members:**

- **Judges of High Courts or Judicial Members of NCLT** with at least **5 years** of experience.
- **NCLAT Technical Members:**
 - Must have **25 years** of experience in industrial finance, management, reconstruction, etc.

Selection and Appointment of Members (Section 412)

- **Selection Committee:**
 - **Chief Justice of India** or nominee (Chairperson).
 - **Senior Judge of the Supreme Court or Chief Justice of a High Court.**
 - **Secretaries of the Ministry of Corporate Affairs and Ministry of Law and Justice.**
- **Appointment Process:**
 - After recommendations by the Selection Committee.
 - **Equal votes** in a meeting lead to a **casting vote** by the Chairperson.
- **Term of Office (Section 413):**
 - **NCLT President & Members:** 5 years (eligible for reappointment).
 - **NCLAT Chairperson & Members:** 5 years (eligible for reappointment).
 - Maximum age:
 - **NCLT President:** 67 years.
 - **NCLT Members:** 65 years.
 - **NCLAT Chairperson:** 70 years.
 - **NCLAT Members:** 67 years.

Powers of the Tribunal (Section 430)

- **No Civil Court Jurisdiction:**
 - Civil courts **cannot entertain** matters under the jurisdiction of NCLT/NCLAT.
- **Powers:**
 - NCLT has powers akin to a **civil court** for summoning witnesses, examining documents, and enforcing its orders.
- **Orders by NCLT/NCLAT:**
 - Orders are enforceable as **civil court** decrees.

Procedure and Powers of Tribunal (Section 424)

- **Regulation of Procedure:**
 - The Tribunal and Appellate Tribunal are not bound by the **Code of Civil**

Procedure, 1908 but must follow the **principles of natural justice.**

- **Powers:**
 - Same as a **civil court:**
 - **Summoning witnesses, examining on oath, requiring discovery/production of documents, and receiving evidence** on affidavits.
 - **Issuing commissions** for witness/document examination and **reviewing decisions.**
- **Enforcement:**
 - **Orders** of the Tribunal and Appellate Tribunal are enforceable as **decrees** in civil courts.

Appeal Process

- **Appeal from Tribunal (Section 421):**
 - **Appeal** to the **Appellate Tribunal** within **45 days** of receiving the order.
 - Appeal after 45 days is allowed with valid reasons.
- **Appeal to Supreme Court (Section 423):**
 - Any person can appeal to the **Supreme Court** within **60 days** on questions of law.

Securities Appellate Tribunal (SAT)

- **Jurisdiction:**
 - **Hears appeals** against orders by **SEBI or Adjudicating Officers** under SEBI regulations.
 - Also hears appeals under **PFRDA Act, 2013** and **IRDAI regulations.**
- **Established:**
 - Under **Section 15K** of the **SEBI Act, 1992.**

Forms Under NCLT Rules, 2016

1. **NCLT-1:** Petition/application or reference with attachments.
2. **NCLT-4:** General heading for proceedings.
3. **NCLT-6:** General affidavit verifying petition.
4. **NCLT-5:** Notice issued by the Tribunal.
5. **NCLT-12:** Memorandum of appearance.

Orders of the Tribunal (Section 420)

- **Opportunity for Hearing:**
 - Parties must be given a reasonable opportunity of being heard.
- **Mistake Rectification:**
 - The Tribunal can amend any order within **2 years** to correct mistakes.

Summary of Tribunal Powers

The NCLT and NCLAT play pivotal roles in ensuring corporate justice, with powers ranging from adjudicating insolvency matters, disputes, mergers, and winding-up processes, to making rulings on shareholders' rights, the appointment of directors, and company financial statements.

Compounding of Offences under the Companies Act, 2013

Ch-7

What is Compounding?

- **Compounding** refers to the voluntary act of admitting a contravention, pleading guilty, and seeking redress for the offence by paying a fine, instead of undergoing prosecution.
- **Offence** refers to an act or omission made punishable by law.
- **Settlement Mechanism:** Compounding acts as a settlement by paying a penalty in lieu of prosecution, preventing prolonged litigation.

Key Constituents of Compounding:

1. **Consciousness of Offence:**
Acknowledgement that the offence has occurred.
2. **Agreement Not to Prosecute:** Both parties agree not to continue prosecution.
3. **Receipt of Penalty:** Payment of a monetary penalty.

Case Law Examples:

- **Kiran Mazumdar Shaw Case (C.A. No. 161/621A/CB/2015 NCLT Bangalore):** Delay in filing Form 2 was compounded as the offence was unintentional, and a compounding fee was imposed.
- **P P Varkey v. STO (1999):** Once compounded, penalty or prosecution proceedings cannot proceed for the same offence.

What is an Offence?

- Defined under **Section 3(38) of the General Clauses Act, 1897:** Any act or omission punishable by law.
- Corporate offences are classified as **civil** or **criminal** and may be **compoundable** or **non-compoundable**.

Provisions for Compounding of Offences under the Companies Act, 2013 (Section 441)

- **Non-Obstante Clause:** Section 441(1) overrides provisions in the **Code of Criminal**

Procedure, 1973, allowing for the compounding of offences under the Act.

- **Eligible for Compounding:** Companies or its directors/officers can apply to the **Regional Director** or **NCLT** for compounding, avoiding long litigation.

Persons Eligible to Apply for Compounding:

- **Company** (through the authorized director).
- **Officers in default** (directors or key managerial personnel).

Who is an "Officer in Default"? (Section 2(60))

- **Whole-time director, key managerial personnel**, or any director who has consented to be responsible for the violation.
- Any person responsible for maintenance, filing, or distribution of accounts/records or authorized to permit or prevent defaults.

Benefits of Compounding Offences:

1. Acts as a **deterrent** against further offences.
2. Avoidance of **heavy fines** and penalties.
3. **Prevents disruption** of business activities.
4. **Maintains business dignity** and smooth functioning.
5. **Reduces court burden**.
6. **Faster resolution** of matters with summary proceedings.
7. **No disqualification** for directors.

Offences Eligible for Compounding:

- **Compoundable Offences:**
 - Offences punishable with **fine only**.
 - Offences punishable with **fine or imprisonment or both**.
- **Non-Compoundable Offences:**
 - Offences punishable with **imprisonment only**.
 - Offences punishable with **imprisonment and fine**.
 - Offences where **investigation** is already initiated or pending.
 - Offences committed **within 3 years** of a previous compounded offence.

Case Law Examples:

- **Cibersites India Pvt. Ltd. (CP - 42/2021, NCLT Bengaluru):** The court compounded offences related to **Section 125, 138, and 142** where violations were **unintentional** and not criminal in nature.
- **Capital Small Finance Bank Ltd. (NCLT Chandigarh, 26.11.2021):** Court compounded an offence under **Section 67(3)**

of the Companies Act, 1956, due to **bona-fide mistake** and lack of complaints.

- **UW International Training & Education Centre (NCLT Delhi):** The company delayed issuing share certificates, leading to a compounding application. The NCLT imposed a **lower penalty** of INR 10,000, observing that the delay was procedural, not intentional.

Effect of Investigation on Compounding

- **Investigation Pending:** If an investigation has been initiated or is pending, compounding is **not allowed**.
- **Compounding During Investigation:** The compounding authority may adjourn the matter until the investigation is resolved.
- **Suo Motu Compounding:** Even without an investigation, compounding may still be allowed based on the facts and circumstances.

When Can Compounding Be Done?

- Compounding can be done for offences **punishable by fine** (e.g., **failure to hold AGM, failure to file documents, failure to maintain statutory registers**).
- **Before or after prosecution:** Compounding can occur at any stage.

Who Can Compound an Offence?

1. **Regional Director:** Can compound offences with fines **up to Rs. 25 lakhs**.
2. **Tribunal (NCLT):** Can compound offences with fines **exceeding Rs. 25 lakhs**.

Case Law Examples on Compounding Authority:

- **UW International Training & Education Centre for Health Pvt. Ltd.:** NCLT held that the **penalty could be reduced and not constrained by the prescribed fine**.
- **Registrar of Companies cum Official Liquidator vs. Gyan Chand Agarwal:** NCLT imposed **INR 42,45,000** for default exceeding the prescribed limit of **849 days**.

Compounding of Offences: Pahuja Takii Seed Ltd. & Ors. vs. ROC, NCT of Delhi & Haryana (NCLAT)

Fact of the Case:

- **Appellants:** Companies and officers filed applications under **Section 441** of the **Companies Act, 2013** to compound offences.

- **Reason:** Corrective measures already taken by the company, but the application was dismissed by NCLT New Delhi Bench-III on 16th February, 2018.
- **Appeal:** The appeal was filed before NCLAT for determination on the following issues.

Key Questions for Determination:

1. **Joint Application for Compounding by Company & Officers:**
 - NCLAT observed that there is no **specific bar** for filing a **joint application** for compounding offences by a company along with its officers.
 - **Conclusion:** Joinder of parties in compounding applications is permitted as the facts for non-compliance are the same.
2. **Joint Application for Compounding Same Offence in Different Years:**
 - No restriction exists on filing a **single application** for compounding the same offence committed during **different financial years**.
 - **Conclusion:** No bar on joint applications for the same offence over multiple years.
3. **Jurisdiction of Tribunal for Compounding Offences:**
 - **Tribunal's Power:** NCLAT clarified that the **Tribunal** has jurisdiction to compound offences irrespective of the fine amount, while **Regional Director (RD)** has a limit of **Rs. 25 lakhs** for compounding.
 - **Conclusion:** The Tribunal has powers to compound all offences, regardless of the pecuniary limit.
4. **Quantum of Fine for RD's Jurisdiction:**
 - For RD, the **quantum of fine** is determined **per applicant**, not aggregated.
 - **Conclusion:** The fine limit of **Rs. 25 lakhs** applies per applicant, not for joint applications.

Compounding of Repeated Offences (Section 441(2)):

- **Three-Year Bar:** A similar offence cannot be compounded within **3 years** from the date of previous compounding.
- **Penalty for Repeated Offence:** If the same offence is repeated within three years, it is

mandatorily punishable with double the fine and possible imprisonment.

- **Exceptions:** If the same offence is committed after 3 years, it can be considered a **first offence**.

Case Scenarios:

- **Multiple Offences in Different Years:**
 - If the company committed an offence in **2015-16, 2016-17, and 2017-18** and sought compounding for the 2015-16 offence in **March 2019**, it can still compound the other years' offences.
 - **Offence after Compounding:** Offences committed after **2019-20** cannot be compounded, as **Section 441(2)** restricts the compounding for similar offences within 3 years.

Application to Registrar of Companies (Section 441(3)):

- **Step 1:** Check if the offence is **compoundable**.
- **Step 2:** Hold **Board Meeting** and **pass resolution** for compounding and appoint authorized representatives.
- **Step 3:** File the compounding application to **ROC (E-Form GNL-1)** with all necessary documents.
- **Step 4:** ROC forwards the application to **NCLT/ Regional Director**.
- **Step 5:** NCLT/RD sends a **hearing notice** to the company.
- **Step 6:** Pay compounding fees as directed.
- **Step 7:** NCLT/RD issues the compounding order and the company must inform ROC within **7 days**.

Case Laws on Compounding:

1. **Schneider Electric IT Business India Pvt. Ltd.:** Even if prosecution is pending, offences can be compounded, and no prior court permission is needed.
2. **RSPL Ltd.:** Delayed cost audit report filed after **4 years**; NCLT allowed compounding as the company made a **bona fide effort**.

Penalties for Non-Compliance of Compounding Orders:

- **Section 441(5):** If the company or officer fails to comply with the compounding order, the fine can be **twice the amount of the prescribed fine** for the offence.

Securities and Exchange Board of India Act, 1992 - SEBI Laws:

- **Section 24A:** Provides for the compounding of offences under SEBI Laws (not punishable by imprisonment only).
- **Prakash Gupta v. SEBI:**
 - Issue: Whether **SEBI's consent** is required before compounding offences.
 - **SEBI's Consent:** No express provision requires SEBI's consent under **Section 24A**; however, its opinion is influential in market-related cases.
 - **Judgement:** SEBI's consent is not mandatory for compounding under **Section 24A**, but its opinion should be respected unless proven **arbitrary or mala fide**.

Illustrations on Compoundable Offences:

1. **Fraudulent Issuing of Duplicate Share Certificates:**
 - **Compoundable:** Punishable under **Section 46(5)** of the Companies Act, 2013, and can be compounded by **RD/NCLT**.
2. **Failure to Keep Proper Books of Accounts:**
 - **Compoundable:** Can be compounded by the **Regional Director**.
3. **Tampering with Minutes of Meetings:**
 - **Non-Compoundable:** Punishable by **imprisonment and fine**, so it cannot be compounded under **Section 441**.

Director's Appeal on Compounding Fee:

- **Appeal:** A director cannot challenge the **compounding fee** once it has been paid and the offence is compounded.
- **Relevant Case: S V Bagi v. State of Karnataka (1992)** and **S Viswanathan v. State of Kerala (1993)** held that once an offence is compounded, it cannot be contested or appealed.

Procedure for Compounding Offence:

1. **Step 1:** Confirm if the offence is compoundable.
2. **Step 2: Board Resolution:** Pass a resolution authorizing filing of application and appointing authorized representatives.

3. **Step 3: Filing Application:** Submit the application (Form GNL-1) with necessary documents to ROC.
4. **Step 4: ROC Processing:** ROC forwards the application to NCLT or RD.
5. **Step 5: Hearing and Payment:** Attend hearing and pay compounding fees.
6. **Step 6: NCLT/RD Decision:** Receive and comply with the order.
7. **Step 7: Notify ROC:** Inform ROC within 7 days.

This structure helps companies and their officers to efficiently navigate the **compounding process** while ensuring compliance with the legal framework under the **Companies Act, 2013**.

Settlement Proceedings/Consent Orders under SEBI Laws

Overview of Consent Orders:

- **Consent Order:** A settlement mechanism under SEBI laws that allows parties to resolve violations without prolonged litigation.
- **Purpose:** Offers an alternative to long legal processes, enabling timely enforcement actions, ensuring deterrence, and reducing costs.
- **Applicability:** Can be applied **after** probable violation is found under SEBI laws but **before** criminal complaints are filed.
- **Nature of Consent Order:** It may or may not declare a violation occurred but serves to settle civil proceedings.
- **Limitations:** Cannot waive SEBI's statutory powers; if settlement fails, SEBI retains the right to pursue further actions.

Key Provisions Under SEBI Laws for Settlement:

- **Two Streams of Enforcement:**
 1. **Administrative/Civil:** Remedial actions such as **penalties, suspension, or cancellation** of certificates.
 2. **Criminal:** Prosecution by filing complaints in criminal courts.
- **When Applicable:** Consent orders are used for **administrative/civil proceedings**, reducing regulatory costs and saving time.
- **When Not Applicable:** Serious and intentional violations are not settled through consent until the investigation concludes.

Lotus Chocolate Company Limited (Settlement Order):

- **Background:** The company failed to report shareholdings of certain promoters between **2010-2012** and did not comply with **LODR** regulations.
- **Actions Taken:**
 1. Company filed revised shareholding details from **2010-2021**.
 2. Applied for **settlement** with SEBI for delayed compliance.
 3. **SEBI's HPAC** recommended the settlement for **₹7,14,400** as a penalty.
 4. SEBI accepted the settlement terms on **January 19, 2024**.

Settlement of Administrative and Civil Proceedings (Section 15JB):

- **Section 15JB** of the **SEBI Act, 1992** governs the settlement of administrative and civil proceedings.
- **Eligibility for Settlement:**
 - Any person against whom proceedings have been or could be initiated for alleged defaults (under Sections 11, 11B, 11D, 12, or 15-I).
 - Can apply to SEBI proposing to settle the issue on agreed terms, including payment of a fine.
- **Conditions:**
 - SEBI considers **nature, gravity, and impact** of the default when deciding whether to settle.
 - **No Appeal:** No appeal is allowed against any order passed by SEBI under this settlement process.
- **Settlement Amount:** Excluding **disgorgement and legal costs**, the amount paid is credited to the **Consolidated Fund of India**.

Case Study: Kapashi Commercial Ltd. (2020)

- **Violation:** Shareholders of **Kapashi Commercial Ltd.**, a **BSE-listed** company, were accused of **delayed disclosures** about their shareholding changes under **SAST Regulations**.
- **Settlement:**
 - The shareholders settled with **SEBI** by paying over **₹34 lakh** towards the settlement of alleged violations.
 - Application was filed to settle the case for **non-compliance** in the disclosure

- process regarding shareholding changes.
- SEBI accepted the settlement, thus avoiding further litigation and prosecution.

Important Considerations for Settlement:

1. **No Waiver of SEBI's Powers:** A **Consent Order** does not waive SEBI's powers to pursue further actions if the settlement fails or is not sufficient.
2. **Impact of Violation:** The **severity** of the violation and its **public impact** are critical factors in deciding whether to accept a consent order.
3. **Deterrence:** A primary goal of the settlement is **deterrence** against future violations by the same entity or other market participants.

Procedure for Settlement/Consent Orders:

1. **Initiating Settlement:**
 - The violator may approach SEBI to propose a settlement after probable cause is established.
2. **Internal Review:** SEBI's **Internal Committee** evaluates the proposal, considering the nature of the violation.
3. **Recommendation:** The **High Powered Advisory Committee (HPAC)** reviews and recommends settlement terms.
4. **SEBI's Approval:** The final settlement is approved by SEBI's panel of **Whole Time Members**.
5. **Payment:** The violator makes payment as per the **settlement terms**.
6. **Execution:** Upon payment, the settlement is finalized, and proceedings are closed.

Conclusion:

- **Consent Orders** serve as an efficient mechanism to settle disputes under SEBI regulations.
- They provide an alternative to **litigation**, saving time and resources, but they **cannot waive SEBI's authority**.
- This process helps **reduce regulatory burden** while ensuring compliance and deterrence through financial penalties.

Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018

1. Application for Settlement (Regulation 3)

- **Eligibility:** A person against whom proceedings are pending or may be initiated can apply to SEBI for settlement.
- **Application Requirements:**
 - Application must be complete and accompanied by a non-refundable fee.
 - Must include undertakings and waivers as per SEBI guidelines.
 - Full and true disclosure of the alleged default(s) must be made.
 - Applications can be filed for settlement of all related proceedings under the same cause of action.
 - Incomplete applications will be returned, with a 15-day window for resubmission.
 - Applications by firms or corporations must be executed by responsible officers.

2. Limitation (Regulation 4)

- **Time Limit:** Settlement applications must be filed within **60 days** from the notice of the show cause or supplementary notice, whichever is later.
- **Exclusion:** This does not apply to proceedings before the Tribunal or courts.

3. Scope of Settlement Proceedings (Regulation 5)

- **Ineligible Applications:**
 - If an earlier application for the same default was rejected.
 - If the audit/investigation is incomplete, except in cases of confidentiality.
 - If there are outstanding dues under securities laws.
- **Factors for Rejection:**
 - Market-wide impact, large investor losses, or market integrity issues.
 - Wilful defaulters, fugitive economic offenders, or those with outstanding fees or penalties.

4. Rejection of Application (Regulation 6)

- **Grounds for Rejection:**
 - Failure to respond to communications, non-submission of required information, or repeated failure to appear.
 - Violation of undertakings and waivers provided.
 - Non-remittance of the settlement fee within the specified time.

5. *Withdrawal of Application (Regulation 7)*

- **Conditions:**
 - The applicant may withdraw the application before the decision is communicated.
 - If withdrawn, the applicant cannot reapply for the same default but may apply with an increased settlement amount.

6. *Effect of Pending Application (Regulation 8)*

- **Proceedings During Application:**
 - Filing an application halts the passing of a final order until the settlement is disposed of.
 - If the applicant is one of several persons in proceedings, the application affects only the applicants, not others.

7. *Settlement Terms (Regulation 9)*

- **Monetary Terms:** The settlement amount, excluding legal costs and disgorged amounts, will be credited to the **Consolidated Fund of India**.
- **Non-Monetary Terms:** These may include:
 - Suspension or cessation of business, exit from management, disgorgement, enhanced policies, employee training, and restrictions on market access.

8. *High Powered Advisory Committee (Regulation 11)*

- **Composition:**
 - The committee includes a judicial member (former Supreme Court or High Court judge) and three external experts.
 - The committee reviews the settlement terms and makes recommendations.

9. *Internal Committee(s) (Regulation 12)*

- **Role:**
 - Examines the application to determine if settlement is possible and recommends terms.
 - Can request additional documents, require personal appearance, or allow submission of revised terms.

10. *Settlement Procedure (Regulation 13-15)*

- **Internal Committee:** Examines the application and prepares proposed settlement terms for review.
- **High Powered Advisory Committee:** Reviews terms, and if necessary, requests revisions before making a recommendation to SEBI's **Panel of Whole Time Members**.

- **Panel of Whole Time Members:** Accepts or rejects the settlement terms, and the applicant must comply with settlement terms within 30 days.

11. *Summary Settlement Procedure (Regulation 16)*

- **Eligibility:** Applies before initiating specified proceedings, typically for defaulting on disclosures or delayed compliance.
- **Process:** The noticee is given 30 days to submit a settlement application, remit the settlement amount, and comply with other terms.

12. *Settlement with Confidentiality (Regulation 19)*

- **Confidentiality Terms:**
 - Applicants can seek confidentiality if they admit their violation and cooperate in ongoing investigations.
 - Full cooperation and no destruction of relevant documents are required.

13. *Settlement Orders (Regulation 23)*

- **Final Settlement:** The Board, Adjudicating Officer, or competent officer disposes of the proceedings based on the settlement terms.
- **Details in Order:** Includes alleged defaults, applicable securities laws, and the settlement terms.

14. *Settlement of Proceedings Pending Before Tribunal or Court (Regulation 24)*

- **Application:** The settlement procedure applies mutatis mutandis to proceedings pending before a tribunal or court.

15. *Service and Publication of Settlement Order (Regulation 25)*

- **Publication:** Orders are served to the applicant and published on SEBI's website, with confidentiality for sensitive matters.

16. *Settlement Schemes (Regulation 26)*

- **Settlement Schemes:** SEBI may create schemes for specific classes of persons regarding similar defaults, and orders under these schemes are treated as regular settlement orders.

17. *Effect of Settlement Order on Third Party Rights (Regulation 27)*

- **Third Party Rights:** Settlement orders do not affect third parties or other ongoing proceedings unless explicitly stated.

18. *Revocation of Settlement Order (Regulation 28)*

- **Conditions for Revocation:**

- If the applicant fails to comply with the settlement order or fails to make true disclosures.
- No refund is made if the order is revoked.

19. Confidentiality of Information (Regulation 29)

- **Confidentiality:** Information and discussions during settlement proceedings are treated as confidential, and the applicant cannot use or rely on these during other proceedings unless required by law.

SEBI Settlement Orders in Practice

Case Study 1: Mansun Consultancy Pvt. Ltd. (May 2023)

- **Allegation:** Investment advisory without SEBI registration, violating Section 12(1) of SEBI Act.
- **Settlement Terms:**
 - ₹46.8 lakh settlement amount.
 - ₹6.07 crore disgorgement.
 - **One-year restriction** on securities trading.
- **Outcome:** Settlement accepted, avoiding further legal proceedings.

Case Study 2: NSE Trading Glitch (Feb 2021) (June 2023)

- **Allegation:** NSE's failure to ensure system preparedness during a glitch that halted trading.
- **Settlement:** NSE and NSE Clearing Ltd. paid ₹72.64 crore as settlement charges.
 - NSE paid ₹49.77 crore and NCL paid ₹22.88 crore.
 - Senior officials received non-monetary punishments.

Compounding Provisions under the Competition Act, 2002 (Section 59A)

- **Compounding of Offences:** Offences punishable under the Competition Act, 2002 may be compounded by the **Appellate Tribunal** or a court.
- **Exclusion:** Offences punishable with imprisonment or both fine and imprisonment cannot be compounded.

Compounding Provisions Under the Foreign Exchange Management Act, 1999 (FEMA)

1. Penal Provisions under FEMA (Section 13)

- **Penalties for Contravention:**

- **Up to 3x** the sum involved if the amount is quantifiable.
- **Up to Rs. 2 lakhs** if the amount is not quantifiable.
- **Continuing violations:** Penalty of **Rs. 5000/day** for each day the contravention continues.

2. Power to Compound Contravention (Section 15)

- **Compounding Application:**
 - Available within **180 days** from the receipt of the application by the Director of Enforcement or authorized officers.
 - Once compounded, no further proceedings will be initiated for that contravention.

3. Foreign Exchange (Compounding Proceedings) Rules 2000

- **Compounding Authorities:**
 - **RBI Officers:** From Assistant General Manager (for Rs. 10 lakh or less) to Chief General Manager (for Rs. 100 lakh or more).
 - **Enforcement Directorate (ED) Officers:** From Deputy Director (for Rs. 5 lakh or less) to Director (for Rs. 1 crore or more).

4. Power of Reserve Bank to Compound Contravention

- **Amount-Based Authority Assignment:**
 - **Up to Rs. 10 lakh:** Assistant General Manager of RBI.
 - **Between Rs. 10 lakh and Rs. 40 lakh:** Deputy General Manager of RBI.
 - **Between Rs. 40 lakh and Rs. 100 lakh:** General Manager of RBI.
 - **Rs. 100 lakh or more:** Chief General Manager of RBI.

5. Power of Enforcement Directorate to Compound Contraventions

- **ED's Jurisdiction:**
 - **Up to Rs. 5 lakh:** Deputy Director of ED.
 - **Between Rs. 5 lakh and Rs. 10 lakh:** Additional Director of ED.
 - **Between Rs. 10 lakh and Rs. 50 lakh:** Special Director of ED.
 - **Between Rs. 50 lakh and Rs. 1 crore:** Special Director with Deputy Legal Adviser of ED.
 - **Rs. 1 crore or more:** Director of ED with Special Director.

6. Time Limit for Compounding

- **3-Year Restriction:** No second or subsequent contravention can be compounded within 3 years of the previous contravention.
- **Appeals:** Compounding is not allowed if an appeal has been filed under Sections 17 or 19 of FEMA.

7. Procedure for Compounding

- **Application:** Submit to compounding authority with a **Rs. 5000 fee**.
- **Investigation:** The authority may request documents and information.
- **Decision:** The authority will issue a compounding order within **180 days**.

8. Factors Considered for Compounding

- **Considerations:**
 - **Gain from the contravention.**
 - **Loss caused to authorities.**
 - **Track record of compliance.**
 - **Conduct during the proceedings.**

9. Payment of Compounded Amount

- **Compounded Amount:** To be paid by **demand draft** within **15 days** from the compounding order.
- **Non-payment:** If not paid within the stipulated time, the person is deemed to have never applied for compounding, and normal provisions of FEMA will apply.

10. Contents of Compounding Order

- **Details:** The order must specify the contravention, applicable sections of FEMA, and the penalty imposed.
- **Signing:** The order is signed by the compounding authority.

11. Case Study: M/s Candor View India Private Limited (October 30, 2018)

- **Contravention:** Delay in allotment of shares to foreign investors beyond 180 days.
- **Penalty:** A compounding fee of **Rs. 31,500** was imposed.

12. Case Study: Mrs. Joyce Lynn Peters v. Reserve Bank of India (Writ Petition No. 26425 of 2017)

- **Issue:** Whether the pendency of an appeal bars compounding under FEMA.
- **Judgment:** Karnataka High Court allowed the petition, directing the respondents to consider the compounding application afresh.

13. Late Submission Fee (LSF) as an Alternative to Compounding

- **LSF Mechanism:** Introduced by RBI to regularize reporting delays for foreign

investment and external commercial borrowings (ECB).

- **LSF Computation:** LSF is calculated based on the type of reporting delay and the amount involved.

14. Uniform LSF Matrix (September 30, 2022)

- **Reporting Delays:**
 - **Form ODI Part-II/ APR, FCGPR (B), FLA Returns:** Rs. 7,500.
 - **FC-GPR, FCTRS, ECB forms:** Rs. 7,500 + 0.025% of the amount delayed.

15. Mediation and Conciliation Under the Companies Act, 2013 (Section 442)

- **Mediation & Conciliation:** Provides a mechanism for resolving disputes outside of litigation.
- **Mediation Process:** Neutral third-party facilitators help the disputing parties reach an agreement voluntarily.

16. Differences Between Mediation and Conciliation

Aspect	Mediation	Conciliation
Process	Structured, negotiable settlement	Settlement through negotiation and persuasion
Role of Third Party	Less involvement by mediator in the dispute resolution	More active involvement in settlement
Decision	"Settlement"	"Award"

17. Advantages of Mediation and Conciliation

- **Informal:** No formal rules of evidence.
- **Confidential:** Sessions are confidential.
- **Quick and Inexpensive:** Faster and cheaper than litigation.

18. Mediation & Conciliation Under Companies (Mediation and Conciliation) Rules, 2016

- **Panel of Experts:** The Central Government maintains a panel of mediators and conciliators for dispute resolution.
- **Qualifications for Mediators:** A person must have 15 years of continuous practice as a professional (Chartered Accountant, Company Secretary, etc.).

19. Ethics and Conduct of Mediators/Conciliators (Rule 28)

- **Ethical Guidelines:** Mediators must act impartially, ensuring fairness and confidentiality.

- **Consequences of Non-Attendance:** Non-attendance of parties leads to termination of mediation or conciliation.

20. Settlement Agreement (Rule 25)

- **Procedure:** If a settlement is reached, it must be documented and signed by the parties and their counsels.

This summary covers compounding provisions under FEMA, mediation, and conciliation processes, along with specific case studies and key points from the Companies Act.

Ch-8

Introduction to Audit and Corporate Governance Audit

Audit Overview

- **Definition:** Audit is an independent, systematic examination of an organization's financial statements, books, records, documents, and vouchers to ensure they provide a true and fair view.
- **Purpose:** It offers assurance to management and stakeholders on the company's financial health and compliance.
- **Legal Framework:**
 - Sections 139 to 147 of the Companies Act, 2013
 - **Audit Rules, 2014**
 - Applies to statutory, cost, internal, and secretarial audits.

Types of Audits

- **Financial Audit:** Includes Statutory Audit, Cost Audit, Internal Audit.
- **Compliance Audit:** Includes Secretarial Audit, CSR Audit, Corporate Governance Audit, and other specialized audits (e.g., Insider Trading, Cyber, Social, Forensic, Environmental).

Corporate Governance Audit (CGA)

Definition and Importance

- **Corporate Governance** ensures transparency, accountability, and ethical management of business practices.
- **Need for CGA:** Ensures the implementation of corporate governance principles, helping to avoid financial scandals and enhance stakeholder trust.

Provisions and Legal Framework

- Governed under the **Companies Act, 2013** and **SEBI (LODR) Regulations, 2015**.
- **Clause 49** (previously under Listing Agreement) and **Schedule II** of LODR

Regulations guide corporate governance audits for listed companies.

- **Objective:** To evaluate the effectiveness of governance practices and ensure transparency, integrity, and accountability.

Need for Corporate Governance Audit (CGA)

- **Monitoring Mechanism:** It ensures that management is accountable to the board and stakeholders, which improves market valuation and capital inflow.
- **Benefits:**
 - Improves company valuation.
 - Increases capital flows (domestic & global).
 - Enhances transparency, benefiting customers and investors.

Scope of Corporate Governance Audit

1. **Financial & Non-financial Disclosures:** Ensure transparency in reporting.
2. **Stakeholder Rights:** Check fairness in stakeholder treatment.
3. **Board of Directors:** Analyze composition, independence, and role of directors.
4. **Control Environment:** Audit accounting, internal/external audits, and risk management.
5. **Transparency in Financials:** Review the accuracy and fairness of disclosures.
6. **Executive Compensation:** Ensure fair compensation practices.

Role of Audit Committee in Corporate Governance

- **Mandate:** According to **Section 177** of the Companies Act, 2013 and **LODR Regulations, 2015**, listed companies must form an Audit Committee.
 - **Composition:** Minimum of 3 directors, with majority being **Independent Directors (IDs)**.
 - **Responsibilities:**
 - Oversee the financial reporting process.
 - Approve auditor appointments and remuneration.
 - Review financial statements and audit reports.
 - Monitor risk management systems.
 - Evaluate internal controls and audit effectiveness.