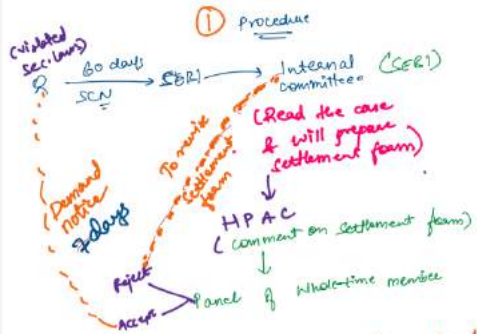


Settlement Proceedings under SFO Act, 1992



(Settlement factors page 554, 555)

② One application of settlement for all the offences is allowed.

③ Scope of Settlement -

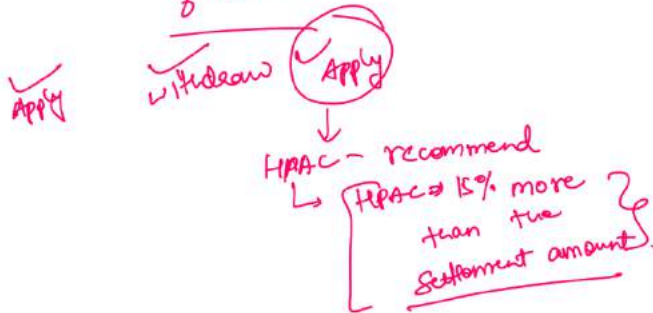
- Disallowed:
 - Earlier rejected
 - Audit/Investigatory Enquiry is pending
 - monies under Securities law is pending.
 - wilful defaulters.

- may/may not

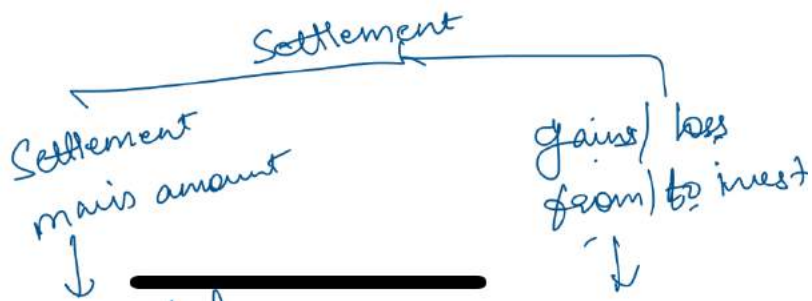
- make wider impact (include trading)
- loss of huge no. of investors
- Integrity

④ Withdrawal of settlement application

↳ Yes - any time before the consent order of WSM.



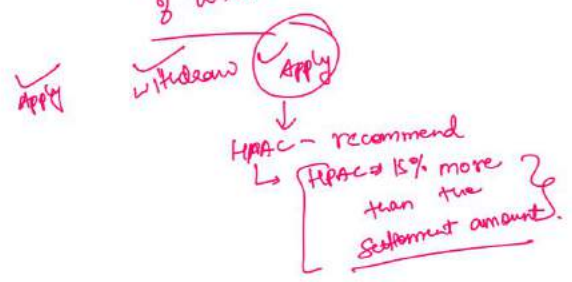
⑤



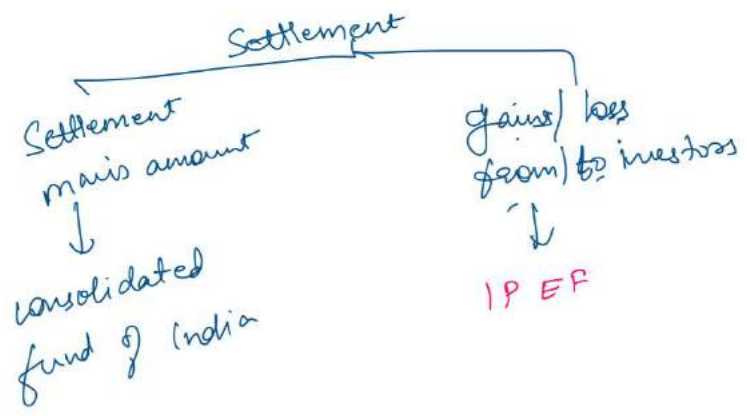
- May | may not
 - make wider impact (Trade trading)
 - loss of high no. of investors
 - Integrity

④ Withdrawal of settlement application

Yes - anytime before the consent order of WSM.



⑤



<u>IPEF</u>	<u>IPEF</u>
<ul style="list-style-type: none"> ✓ Company law ✓ MCA ✓ Amount lying in Escrow A/c for 7 years will be T/F to IPEF 	<ul style="list-style-type: none"> ✓ SGR laws ✓ SEBI ✓ Amount earned by violating sec. laws will be T/F to IPEF

SCA/Supplementary SW 30 days Consent App. X

30 CD + 15 days Centenary only for payment



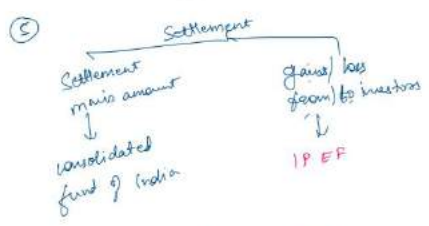
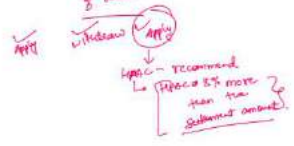
3. The application of settlement for all the offences is allowed.

2. Scope of Settlement
- Resolution
 - Securities related
 - Audit/financial/other liability
 - money under Securities law
 - pending
 - useful defences

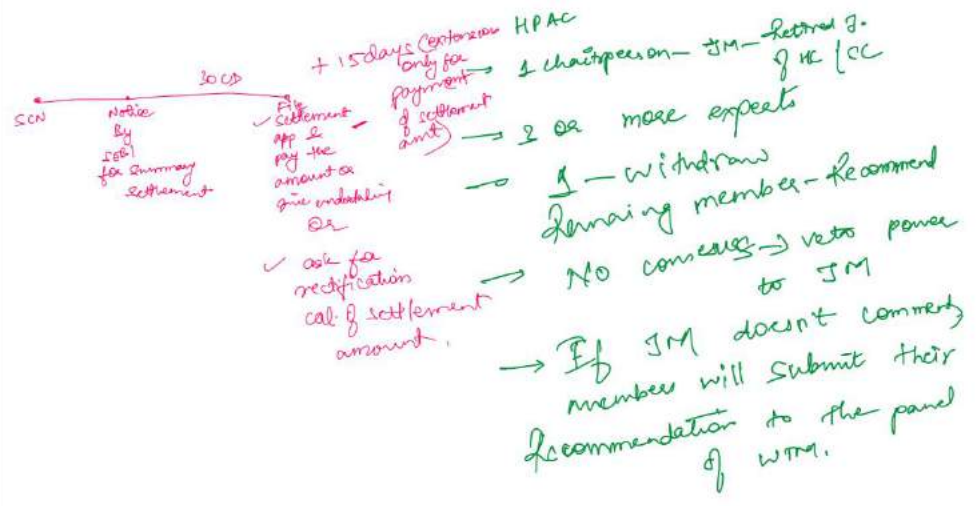
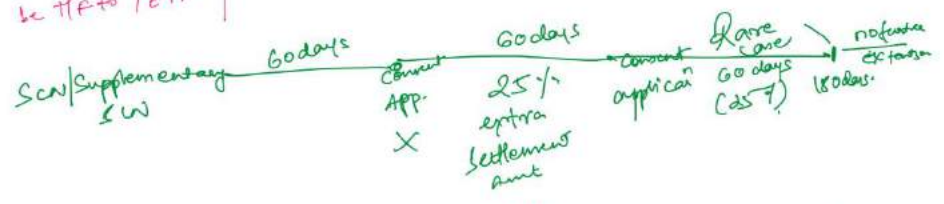
- may not
- make with target (highly risky)
- less of high on of Target
- Target

4. Withdrawal of settlement application

Layer - any time before the consent order of WTRM.



- | | |
|--|--|
| <p><u>I E P F</u></p> <ul style="list-style-type: none"> Company law MCA Amount lying in Escrow A/c for 7 years will be TRP to IEPF | <p><u>I P E F</u></p> <ul style="list-style-type: none"> SBI laws SEBI Amount earned by violating sec. laws will be TRP to IPEF |
|--|--|





Text Mode

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NCLAT-1 → presentation of appeal in triplicate by appellants

NCLAT-2 → Interlocutory application

NCLAT-3 → Application for requesting inspection

NCLAT-4 → Affidavit

NCLAT-5 → Affidavit of illiterate, visually challenged person

NCLAT-6 → Swo-moto summoning for production of documents

NCLAT-7 → Recording of deposition of witnesses

NCLAT-8 → Discharge certificate by NCLAT

NCLAT-9 → SLP.

Text Mode

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suffi

appeallant authority

Order of the appeal will be passed and a copy of it will be served to both the parties. (dated & signed).

Serving of notice

- 1) hand delivery or,
- 2) fax, e-mail, courier, speed post, regd. post → last known residential address. or place of business.
- 3) affixing the notice outside the residential house or place of business
- 4) publishing notice in NTE newspaper

Minimus

and to a copy of it will be given to both the parties. (dated & signed).

Serving of notice

- 1) hand delivery or,
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- 3) affixing the notice outside the residential house or place of business
- 4) publishing notice in NTE newspaper

Act, 2013

60 days + (E)

SEBI act

AO / SEBI
↓ US days + (E)

SCRA

AO / SEBI
↓ US days + (E)

FEMA

AO
↓ US days
SIC Appeals

Co. Act, 2013

CS. 45(1) AO

↓ 60 days + (E)
RD

SEBI act

AO / SEBI

↓ US days + (E)

SAT

SCRA

AO / SEBI

↓ US days + (E)

SAT

Powers of AO

- ✓ Summon & enforce attendance
- ✓ production of evidence

Powers of AO (Same as powers of AO under Co. Act, 2013)

Powers of AO (Same)

Factors considered by AO

- ✓ size of co.
- ✓ injury to public interest
- ✓ nature of default
- ✓ repetition of default
- ✓ disproportionate gain
- ✓ amount of loss caused to investors.

Factors to be considered (15 J)

Factor to be considered.

Minimum

SEBI act

AO / SEBI
 ↓ us days + (E)
 SAT

SCRA

AO / SEBI
 ↓ us days + (E)
 SAT

FCMA

AO of Enforcement
 directorate
 ↓ us days + (E)
 SD (Appeals)
 ↓ us days + (E)
 Appellate
 Tribunal
 ↓ 60 days + (E)
 HC

Powers of AO
 (Same as
 powers of AO
 under Co. Act,
 2013)

Powers of
 AO
 (same)

Factors to
 be considered
 (15 J)

Factor to
 be considered
 (23 J)

power of AO

✓ same as +

✓ order of in civil

public interest
 ult
 ult
 gain
 loss caused

- ✓ disproportionate gain
- ✓ amount of loss caused to investors
- ✓ repetitive nature

Recovery same

Recovery

- ✓ attachment and sale of movable p.
- ✓ " of person's

→ def
 for
 → d
 a
 →

FCMA

AO of Enforcement
Directorate

↓ 15 days + (E)

SDC Appeals

↓ 15 days + (E)

Appellate
Tribunal

↓ 60 days + (E)

HC

Power of AO

✓ Same as W. Act

+
✓ Order of arrest and detention
in civil prison if:-

→ defaulter is likely to
transfer, conceal or
remove his properties

→ defaulter is likely to
abscond

→ defaulter has refused
or neglected fee or
of AO.

Minimum

Recovery
same

restored
nature

at and sale
value p.
of person's

- Factor to be considered (23 J)
- disproportionate gain
 - amount of loss caused to investors
 - repetitive nature
- Recovery same
- Recovery
- attachment and sale of movable p.
 - " of person's bank accounts
 - " " of person's immovable properties
 - arrest and detention in prison
 - Appt. of Receiver.

Minimum

power of AO

- same as w. Act
- order of arrest and detention in civil prison if:-
 - defaulter is likely to transfer, conceal or remove his properties
 - defaulter is likely to abscond
 - defaulter has refused or neglected fees of AO.

- arrest warrant will be against the defaulter & he must be presented 24 hours before time of arrest

- Release from ... if amount exceeds ... Release ... amount ...

Home

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View

Class Notebook



Text Mode

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✓ arrest warrant will be issued against the defaulter and therefore, he must be presented within 24 hours before AO from the time of arrest (travelling time will be excluded)

✓ Release from detention
 → if amount of default exceeds 1 cr -
 Release after 3 years
 → if amount is less than 1 cr -
 Release after 6 m.

✓ Power to recover arrears within 90 days from issue of penalty.

powers of SD (appeals) + powers of Appellate T

Page 6.64

[Amount of fees payable

powers of SD (appeals) + powers of Appellate Tribunal

Page 664

Amount of fees payable for appeal

Amt of penalty imposed.	Amount of fees for appeal
Less than ₹10000 -	₹500
10000 to ₹1 lac	₹1200
1 lac or more	1200 + 500 for every additional one lac but max 15000

15000 to 90000 act

Every amount paid shall be non-refundable regardless of acceptance or rejection of appeal. Non-payment or insufficient payment of fees of appeal is sufficient reason for rejection.

Minimum

Difference Between Sec 441 & Sec 454

Sec 441 (Compounding Of Offences)	Sec 454 (Adjudication Of Penalties)
1) A compounding order is generally not appealable unless the victim is aggrieved by the compounding order.	1) Adjudication order is appealable.
2) Order always be on consensus & not arbitrary.	2) The adjudicating officer's order is more arbitrary & not on consensus, though a reasonable opportunity may be given to the company & officer in default.
3) Power under section 441 are exercised by different authorities.	3) Power of adjudication vests only with the regional director.
4) There is monetary limit for initiating adjudication at any authority.	4) There is no such monetary limit to adjudicate in such case.
5) Cannot directly adjudicate until the	5) Not to wait for the permission of RD, it can directly adjudicate.

appeal is sufficient reason for rejection.

❖ Difference Between Sec 441 & Sec 454

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4) There is monetary limit for initiating adjudication at any authority.	4) There is no such monetary limit to adjudicate in such case.
5) Cannot directly adjudicate until the appeal is made to him.	5) Not to wait for the permission of RD, it can directly adjudicate.
6) There is time limit on compounding, that is once it is compounded not to be compounded within 3 years.	6) There is no such time limit on adjudicating.
7) RD has power of compounding upto fine of Rs.25 Lakh directly.	7) RD has power of adjudication only when a appeal against ROC order is made within 60 days to RD.
8) Compounding by RD or NCLT is made as per NCLT Rules, 2016.	8) For Adjudication u/s 454 the adjudicating officer has to adopt the Companies (Adjudication of penalties) Rules, 2014 framed by govt.
9) Compounding is prohibited whenever investigation has been initiated or is pending under the Act.	9) Adjudication proceedings can be initiated & continued while the investigation is in progress.
10) In compounding application, there is no need to give any opportunity to defaulting parties of being heard, since the section does not provide for, though natural justice demands such an opportunity.	10) The Adjudicating officer shall before imposing any penalty, give a reasonable OBH to the company, it's officer in default or any other person.
11) For contravention / violation of any section where time has been stipulated, the defaulting parties can seek compounding whether show cause notice is issued or not.	11) The Adjudicating officer is authorized u/s 454(3) with a power to impose penalty, stipulated under the section which has been involved.
12) While compounding since it is more subjective in nature, a lot of concessions can be given by NCLT or RD depending on the facts of given case.	12) The Adjudicating Officer has not right to go into the merits & demerits of the default, but can only revise the quantum of penalty, if any, upwards & not downwards.

◆ Offences and Penalties under SEBI Act, 1992

Penalty - Min 1 Lakh upto 1 Lakh for each day of default OR Rs.1 Crore, Whichever is less.	Penalty not exceeding '5 times of the amount of brokerage charged in excess of specified brokerage but min. 1 Lakh, whichever is higher'.	Penalty :- min. 1 Lakh, max. the amount of contract note required to be issued.	Min. 10 Lakhs but upto 25 Crores OR 3 times of the profit made whichever is higher.	Min. 1 Lakh. max. 1 Crore
<ol style="list-style-type: none"> 1) Sec 15A :- Failure to furnish any document / returns / books to SEBI. 2) Sec 15B :- Failure by any registered intermediary to enter into agreement with clients. 3) Sec 15C :- Failure to redress investor's grievances within specified time. 4) Sec 15D :- Default by mutual funds to obtain certificate of registration of dispatch unit certificates or invest money collected. 5) Sec 15E :- Failure to observe rules & regulations of SEBI by AMC. 6) Sec 15EA :- Failure to comply with SEBI Regulations in respect of AIF / InvIT / REIT. (Refer Note) 7) Sec 15F :- Failure to deliver any securities or make payment of amount due to investors within specified period, by stock broker. 	<ol style="list-style-type: none"> 1) Sec 15F :- Penalty for Stock Broker 	<ol style="list-style-type: none"> 1) Sec 15F :- Penalty for Stock Broker 	<ol style="list-style-type: none"> 2) Sec 15G :- Penalty for Insider Trading 3) Sec 15H :- Non-disclosure of acquisition of Shares & Takeover 4) Sec 15HA :- For Fraudulent & Unfair Trade Practices (min. 5 Lakhs) 	<ol style="list-style-type: none"> 1) Sec 15HB :- Penalty for contravention where no separate penalty has been provided.

Act

SEBI Act

SCRA

Identification of events & corporate actions

- P - Product launch
- A - Awarding / termination of employees
- D - Disruption in operations
- M - MOA (amendments)
- A - Agreements (major)
- N - Nature of (change) business

- P - Proceedings of EGM
- E - Effect of change in regulatory framework
- R - Restructuring (debt)
- F - Fraud by directors.

- G - Guarantee by co.
- O - One time settlement with
- D - Directors (change)
- O - Other major development
- W - Winding up
- N - Notices (SCN)

Minimum