Appearance before other Regulatory and Quasi-judicial Authorities

Lesson 14

KEY CONCEPTS

■ Appearance ■ Regulatory authorities ■ Quasi Judicial Authorities ■ Right to Legal Representation

Learning Objectives

To understand:

- Concept of Appearances and the recognitions of Company Secretaries to appear before various tribunals/ quasi-judicial authorities such as National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), Securities Appellate Tribunal, Competition Commission of India etc.
- Appearances before authorities such as RD/SFIO/RBI/ED/Stock Exchange/RERA/RERA Appellate Tribunal/IPR Authorities
- The provisions of various corporate and other laws, rules and regulations related to appearances
- The importance for professionals to possess a professional look and demeanor to project a professional and competent image in the corporate world as well as while appearing before the tribunals and other quasi-judicial bodies.
- The legal provisions pertaining to appearance before various tribunals/quasi-judicial bodies
- Case Study on Corporate Insolvency Resolution Process
- Case study on combinations under the Competition Act, 2002

Lesson Outline

- Introduction
- Procedure for Appearance
- Right to legal representation
- Appearance under the Companies Act, 2013
- Appearance under TRAI Act, 1997
- Appearance under SEBI Act, 1992
- Appearance under the Competition Act, 2002
- Appearance under the Income-tax Act, 1961
- Appearance under Real Estate (Regulation and Development) Act, 2016
- Appearance under the Reserve Bank of India Act, 1934
- Appearance before the Enforcement Directorate
- Appearance before the Stock Exchanges
- Appearance before the IPR Authorities
- Appellate Authorities under the Companies Act, 2013
- Appellate Authorities under SEBI Act
- Appellate Authorities under the Income-tax Act, 1961
- Appellate Authorities under the Competition Act, 2002
- Case Study on Corporate Insolvency Resolution Process
- Case study on combinations under the Competition Act, 2002
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other references (Including Websites / Video Links)

REGULATORY FRAMEWORK

- The Companies Act, 2013
- The TRAI Act, 1997
- The SEBI Act, 1992
- The Income Tax Act, 1961
- The Competition Act, 2002
- Real Estate (Regulation and Development) Act, 2016

INTRODUCTION

The corporate sector has recognized the role of the Company Secretaries as a compliance officer and as a nodal point of contact between the company and its shareholders, debenture holders, depositors, financial institutions and the Government. The Company Secretaries in practice are rendering value added services to corporate sector as independent professionals. Apart from this, a Company Secretary can appear as an authorized representative before NCLT, Competition Commission of India (CCI), Securities Appellate Tribunal (SAT), Telecom Regulatory Authority of India (TRAI) and various other Tribunals.

Appearance before other regulatory and quasi-judicial authorities may be required in various legal matters. These authorities include the National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), Competition Commission of India (CCI), Securities and Exchange Board of India (SEBI), and various other tribunals, commissions, and authorities.

Quasi-Judicial Authority

A quasi-judicial authority is an administrative body or agency that has been granted the power to make decisions that affect the legal rights, duties, or privileges of individuals or entities. These authorities are authorized to conduct hearings, take evidence, and make findings of fact and law, which are binding on the parties involved. Quasi-judicial authorities are distinct from judicial authorities, which are courts that have the power to hear and determine legal disputes.

Quasi-judicial authorities are established by law and are typically created to regulate specific industries or sectors, such as securities, telecommunications, and real estate. Examples of quasi-judicial authorities in India include the Securities and Exchange Board of India (SEBI), the Telecom Regulatory Authority of India (TRAI), and the Real Estate Regulatory Authority (RERA). These authorities have been granted powers to regulate and enforce compliance with laws related to their respective industries and are empowered to adjudicate disputes and impose penalties or sanctions.

Quasi-judicial authorities are required to follow the principles of natural justice, which include the right to be heard, the right to present evidence, and the right to a fair and impartial hearing. Parties before quasi-judicial authorities also have the right to legal representation and to appeal against the decisions of the authorities to higher courts or tribunals.

These authorities play an important role in regulating and enforcing compliance with laws related to specific industries or sectors in India. They are authorized to make binding decisions that affect the legal rights, duties, or privileges of individuals or entities and are required to follow the principles of natural justice.

PROCEDURE FOR APPEARANCE

The procedure for appearing before these authorities may vary depending on the specific authority and the nature of the legal matter. However, some general guidelines for appearance before regulatory and quasi-judicial authorities are as follows:

1. **Preparation of the case**

   Before appearing before a regulatory or quasi-judicial authority, it is essential to prepare the case thoroughly. This includes reviewing all relevant documents, identifying key legal issues, and preparing arguments and evidence to support the case.

2. **Appointment of legal counsel**

   It is advisable to appoint legal counsel who is experienced in representing clients before the specific regulatory or quasi-judicial authority. Legal counsel can provide valuable guidance and represent the client in the proceedings.

3. **Compliance with procedural rules**

   It is essential to comply with all procedural rules and deadlines of the regulatory or quasi-judicial authority. Failure to comply with these rules can result in adverse consequences, including dismissal of the case.

4. **Conduct during the proceedings**

   It is important to maintain a professional and respectful demeanor during the proceedings. This includes addressing the authority with appropriate language, presenting arguments clearly and concisely, and refraining from any behavior that may be deemed disrespectful or disruptive.

5. **Compliance with orders**

   It is important to comply with any orders or directions given by the regulatory or quasi-judicial authority. Failure to comply with these orders can result in adverse consequences, including fines, penalties, or other sanctions.

   The appearance before regulatory and quasi-judicial authorities requires thorough preparation, compliance with procedural rules, professional conduct during the proceedings, and compliance with any orders or directions given by the authority. Seeking the guidance of experienced legal counsel can help ensure a successful outcome in the proceedings.

RIGHT TO LEGAL REPRESENTATION

The right to legal representation is a fundamental right that is recognized in most legal systems around the world. This right ensures that individuals have access to legal counsel and representation, particularly in legal proceedings where their rights or interests are at stake. The right to legal representation is also recognized in international human rights law, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

In many legal systems, the right to legal representation is enshrined in law and guaranteed by the constitution. In criminal cases, for example, the accused person has a right to be represented by a lawyer and to receive legal aid if they cannot afford one. Similarly, in civil cases, parties have a right to be represented by a lawyer, although legal aid may not be available in all cases.

The right to legal representation is essential for several reasons. First, it helps to ensure that legal proceedings are fair and just. Legal representation can help to balance the power dynamic between parties, particularly in cases where one party has greater resources or influence than the other. Second, legal representation can help to ensure that the rights and interests of individuals are protected and advanced. This is particularly important in cases where fundamental rights, such as the right to life, liberty, and property, are at stake.

In some cases, the right to legal representation may be limited or restricted. For example, in certain administrative proceedings or disciplinary proceedings, parties may not have a right to legal representation. However, even in such cases, parties may still be entitled to a fair hearing and other procedural safeguards.

In conclusion, the right to legal representation is a fundamental right that is essential for ensuring fair and just legal proceedings. This right helps to balance the power dynamic between parties, protects the rights and interests of individuals, and promotes the rule of law.

APPEARANCE UNDER THE COMPANIES ACT, 2013

Under the Companies Act, 2013, the right to legal representation is recognized and protected in certain situations. The Act allows for companies to be represented in legal proceedings by authorized representatives, such as Company Secretaries, who are appointed by the Company.

Section 432 of the Companies Act, 2013 dealing with right to legal representation envisages that the applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.

However, it is important to note that the right to legal representation under the Companies Act, 2013, is limited in certain respects. For example, the Act does not provide for the appointment of legal representatives for individual directors or officers of the company who may be named as parties in legal proceedings. In such cases, individual directors or officers may need to seek their own legal representation.

Under the Companies Act, 2013, there are various situations where a person may be required to appear before regulatory or quasi-judicial authorities. These appearances may be required in the context of compliance and enforcement proceedings, such as investigations, inspections, and adjudication of disputes.

Some of the key provisions related to appearance under the Companies Act, 2013, are as follows:

1. **Appearance before the Registrar of Companies (ROC)**

   The ROC is a regulatory authority responsible for administering the provisions of the Companies Act, 2013. Companies and their officers may be required to appear before the ROC in relation to various compliance matters, such as filing of returns and other documents, inspection of books and records, and verification of registered office address.

2. **Appearance before the National Company Law Tribunal (NCLT)**

   The NCLT is a quasi-judicial body that adjudicates disputes and grievances related to companies and their affairs. Parties may be required to appear before the NCLT in various types of proceedings, such as merger and acquisition approvals, insolvency and bankruptcy proceedings, and disputes related to the interpretation of the Companies Act, 2013.

3. **Appearance before the Serious Fraud Investigation Office (SFIO)**

   The SFIO is a specialized investigating agency that is empowered to investigate cases of fraud and financial irregularities related to companies. Parties may be required to appear before the SFIO in connection with investigations related to corporate fraud, money laundering, and other financial crimes.

4. **Appearance before the Securities and Exchange Board of India (SEBI):**

   SEBI is a regulatory authority that is responsible for regulating and overseeing the securities market in India. Companies and individuals may be required to appear before SEBI in connection with various compliance and enforcement matters, such as insider trading, market manipulation, and disclosure requirements.

In conclusion, under the Companies Act, 2013, there are various situations where a person may be required to appear before regulatory or quasi-judicial authorities. It is important to comply with these requirements and to seek legal advice and representation as necessary to protect one's rights and interests.

APPEARANCE UNDER THE TRAI ACT, 1997

Section 17 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 authorizes Company Secretaries to present his or its case before the Appellate Tribunal. As per the Explanation appended to the Section 'Company Secretary' means a Company Secretary as defined in clause (c) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub- section (1) of Section 6 of that Act.

The Telecom Regulatory Authority of India (TRAI) is an independent regulatory authority established under the TRAI Act, 1997, to regulate the telecommunications industry in India. The TRAI Act, 1997, empowers the TRAI to issue regulations, guidelines, and orders for the telecommunication sector in India. In this context, the TRAI may require certain parties to appear before it in various proceedings.

Some of the key provisions related to appearance under the TRAI Act, 1997, are as follows:

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

   The TRAI has the power to regulate the tariffs charged by telecom service providers in India. In this context, the TRAI may hold hearings and require telecom service providers and other parties to appear before it to provide evidence and arguments on tariff-related matters.

2. **Appearance before the TRAI in consumer-related matters**

   The TRAI is responsible for protecting the interests of telecom consumers in India. In this context, the TRAI may hold hearings and require telecom service providers and other parties to appear before it to provide evidence and arguments on consumer-related matters, such as quality of service, billing disputes, and complaints related to unsolicited commercial communications.

3. **Appearance before the TRAI in licensing-related matters**

   The TRAI is responsible for granting and revoking licenses for telecom service providers in India. In this context, the TRAI may hold hearings and require parties to appear before it to provide evidence and arguments on licensing-related matters, such as eligibility criteria, license fees, and conditions for license renewal.

4. **Appearance before the TRAI in disputes and grievances**

   The TRAI has the power to adjudicate disputes and grievances related to the telecommunications industry in India. In this context, the TRAI may hold hearings and require parties to appear before it to provide evidence and arguments on disputes and grievances related to telecom services, licenses, and tariffs.

   In conclusion, under the TRAI Act, 1997, parties may be required to appear before the TRAI in various proceedings related to the regulation of the telecommunications industry in India. It is important to comply with these requirements and to seek legal advice and representation as necessary to protect one's rights and interests.

APPEARANCE UNDER THE SEBI ACT, 1992

Securities and Exchange Board of India (SEBI) Act, 1992 under Section 15V permits the appellant either to appear in person or authorise one or more of practising Company Secretaries, Chartered Accountants, Cost Accountants or Legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

The Securities and Exchange Board of India (SEBI) is the regulator of the securities market in India. SEBI is empowered under the SEBI Act, 1992 to regulate and oversee the functioning of securities markets, to protect the interests of investors and to promote the development of the securities market in India. SEBI has the power to investigate, regulate, and take enforcement action against companies, intermediaries, and individuals engaged in the securities market. In this context, the SEBI Act, 1992 provides for various provisions related to appearance before SEBI.

Some of the key provisions related to appearance under the SEBI Act, 1992, are as follows:

1. **Appearance before SEBI in compliance-related matters**

   SEBI has the power to investigate and take enforcement action against companies and intermediaries engaged in the securities market for non-compliance with SEBI regulations and guidelines. In this context, SEBI may issue show cause notices and require parties to appear before it to provide evidence and arguments on compliance-related matters.

2. **Appearance before SEBI in investigations**

   SEBI has the power to investigate cases related to market manipulation, insider trading, and other fraudulent practices in the securities market. In this context, SEBI may require parties to appear before it to provide evidence and arguments in connection with investigations.

3. **Appearance before SEBI in adjudication proceedings**

   SEBI has the power to adjudicate disputes and grievances related to the securities market. In this context, SEBI may require parties to appear before it to provide evidence and arguments in connection with adjudication proceedings related to violations of SEBI regulations and guidelines.

4. **Appearance before SEBI in appeals**

   The SEBI Act, 1992 provides for appeals against SEBI orders and decisions to the Securities Appellate Tribunal (SAT) and to the Supreme Court. In this context, parties may be required to appear before SAT or the Supreme Court to provide evidence and arguments in connection with appeals.

   Under the SEBI Act, 1992, parties may be required to appear before SEBI in various proceedings related to the regulation of the securities market in India. It is important to comply with these requirements and to seek legal advice and representation as necessary to protect one's rights and interests.

APPEARANCE UNDER THE COMPETITION ACT, 2002

Competition Authorities and the Companies world over avail services of professionals to guide and advise them on various aspects of competition law. Professionals also assist companies in designing, implementing and maintaining effective competition compliance programmes.

Sections 35 of the Competition Act, 2002 authorises Company Secretaries in practice to appear before Competition Commission of India. Besides, there are a number of concepts and terms such as value of assets, turnover, determination of market, relevant market, geographic market which require active professional involvement and advice. Further, Competition Act, 2002 provides a number of factors to be considered by the Competition Commission of India in determining appreciable adverse effect on competition.

The Competition Act, 2002 is the primary legislation governing competition law in India. The Competition

Commission of India (CCI) is the regulatory body responsible for enforcing competition law in India. The CCI has the power to investigate, regulate, and take enforcement action against companies, intermediaries, and individuals engaged in anti-competitive practices. In this context, the Competition Act, 2002 provides for various provisions related to appearance before the CCI.

Some of the key provisions related to appearance under the Competition Act, 2002 are as follows:

1. **Appearance before the CCI in complaint and information matters**

   The CCI has the power to initiate investigations into anti-competitive practices based on complaints or information received from various sources. In this context, the CCI may issue notices and require parties to appear before it to provide evidence and arguments in connection with such investigations.

2. **Appearance before the CCI in combination matters**

   The CCI has the power to review mergers, acquisitions, and other forms of combinations that may have an adverse effect on competition in India. In this context, the CCI may require parties to appear before it to provide evidence and arguments in connection with such reviews.

3. **Appearance before the CCI in appeal and review matters**

   The Competition Act, 2002 provides for appeals against CCI's orders to the National Company Law Appellate Tribunal (NCLAT) and to the Supreme Court. In this context, parties may be required to appear before the NCLAT or the Supreme Court to provide evidence and arguments in connection with such appeals.

4. **Appearance before the CCI in leniency matters**

   The Competition Act, 2002 provides for a leniency program to encourage companies and individuals to come forward and disclose anti-competitive practices. In this context, parties seeking leniency may be required to appear before the CCI to provide evidence and arguments in connection with such disclosures.

   Under the Competition Act, 2002, parties may be required to appear before the CCI in various proceedings related to the regulation of competition in India. It is important to comply with these requirements and to seek legal advice and representation as necessary to protect one's rights and interests.

5. **Company Secretary as an expert**

   According to section 35(2) of the Competition Act, 2002, a party may call upon experts from the fields of economics, commerce, international trade or from any other discipline to provide an expert opinion in connection with any matter related to a case. A CS in a competent professional that may give advices to the parties under section 35(2) on calling upon by any party.

APPEARANCE UNDER REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

The Real Estate (Regulation and Development) Act, 2016 (RERA) is a legislation enacted by the Indian Parliament to regulate and promote the real estate sector. The Act provides for the establishment of Real Estate Regulatory Authorities (RERAs) in each state and union territory of India to oversee the implementation of the Act and to resolve disputes related to real estate projects. The Act also provides for the establishment of an Appellate Tribunal to hear appeals against orders and decisions of the RERAs.

As per Section 56 of the Real Estate (Regulation and Development) Act, 2016 a Company Secretary holding certificate of practice can appear before Appellate Tribunal or a Regulatory Authority or Adjudicating Officer on behalf of applicant or appellant as the case may be.

Hence a Company Secretary holding certificate of practice can –

- Represent a person (promoter) before any real estate regulatory authority for registration of real estate project,
- Represent a person before real estate appellate tribunal.
- Represent a person before Adjudicating Officer.

In this context, the RERA provides for various provisions related to appearance before the RERAs and the Appellate Tribunal. Some of the key provisions related to appearance under the RERA are as follows:

1. **Appearance before the RERA in complaint matters**

   The RERA provides for the filing of complaints by aggrieved parties against real estate developers and promoters for non-compliance with the provisions of the Act. In this context, parties may be required to appear before the RERA to provide evidence and arguments in connection with such complaints.

2. **Appearance before the RERA in registration matters**

   The RERA provides for the registration of real estate projects by developers and promoters. In this context, parties may be required to appear before the RERA to provide evidence and arguments in connection with the registration of such projects.

3. **Appearance before the RERA in dispute resolution matters**

   The RERA provides for the resolution of disputes related to real estate projects by the RERAs. In this context, parties may be required to appear before the RERA to provide evidence and arguments in connection with such disputes.

4. **Appearance before the Appellate Tribunal in appeal matters**

   The RERA provides for the filing of appeals against orders and decisions of the RERAs to the Appellate Tribunal. In this context, parties may be required to appear before the Appellate Tribunal to provide evidence and arguments in connection with such appeals.

   Under the RERA, parties may be required to appear before the RERAs and the Appellate Tribunal in various proceedings related to the regulation and promotion of the real estate sector in India. It is important to comply with these requirements and to seek legal advice and representation as necessary to protect one's rights and interests.

APPEARANCE UNDER THE RESERVE BANK OF INDIA ACT, 1934

Under the Reserve Bank of India Act, 1934, certain provisions require the appearance of Company Secretaries for specific matters related to banking and financial institutions. When Company Secretaries are required to make an appearance, they play a crucial role in ensuring compliance with regulatory requirements and facilitating communication between the organization and the Reserve Bank of India (RBI). Here are some key considerations for the professionals appearing under The Reserve Bank of India Act, 1934:

1. **Understand the provisions:** Familiarize yourself with the relevant provisions of The Reserve Bank of India Act, 1934 that require the appearance of Company Secretaries. The study of the specific sections and regulations to grasp the scope of responsibilities and obligations associated with these appearances.
2. **Prepare relevant information:** Gather all the necessary information, documents, reports, and records related to the matter at hand. This may include financial statements, compliance reports, board resolutions, or any other relevant documentation that pertains to the appearance.
3. **Consult with internal stakeholders:** Engage with relevant internal stakeholders, such as senior

management, legal teams, and compliance departments, to understand the organization's position, address any concerns, and ensure alignment with the RBI's requirements.

4. **Engage legal counsel, if necessary:** Depending on the complexity of the matter and the potential legal implications, it may be advisable to seek guidance from legal counsel experienced in RBI-related matters. They can provide legal advice and help you navigate the regulatory requirements.

5. **Prepare for the appearance:** Develop a clear understanding of the issues to be discussed during the appearance and prepare your responses accordingly. Consider the questions that may arise and ensure that you have a comprehensive understanding of the organization's compliance status and any remedial actions taken, if applicable.

6. **Maintain professionalism:** When appearing before the RBI, maintain a professional demeanor. Dress appropriately, arrive on time, and demonstrate respect towards the RBI officials. Engage in constructive dialogue and provide accurate information in a clear and concise manner.

7. **Comply with RBI's instructions:** Follow any specific instructions or guidelines provided by the RBI regarding the appearance. This may involve providing requested information or documents, adhering to timelines, or following any other procedural requirements specified by the RBI.

8. **Facilitate communication:** As a Company Secretary, you play a crucial role in facilitating effective communication between the organization and the RBI. Ensure that accurate and relevant information is conveyed during the appearance, and address any queries or concerns raised by the RBI officials.

9. **Take notes and maintain records:** Keep detailed records of the discussions, decisions, and outcomes of the appearance. Maintain accurate minutes of meetings, correspondence, and any other relevant documentation for future reference.

10. **Follow up and compliance:** After the appearance, collaborate with internal stakeholders to address any follow-up actions required by the RBI. Ensure that the organization promptly complies with any directives, rectification measures, or additional information requests provided by the RBI.

    It is important to note that the specific procedures and requirements for Company Secretaries appearing under The Reserve Bank of India Act, 1934 may vary depending on the particular circumstances and the RBI's instructions. Collaborating closely with internal stakeholders and seeking appropriate legal advice can help ensure compliance and successful outcomes.

APPEARANCE BEFORE THE ENFORCEMENT DIRECTORATE

The Company Secretaries may be required to appear before the Enforcement Directorate (ED) in cases related to financial offenses, money laundering, or economic crimes. As a Company Secretary, your role is crucial in facilitating compliance and providing relevant information. The general guidelines which are applicable to Appearance under RBI is same as when appearing before the Enforcement Directorate.

It is important to note that the specific procedures and requirements for appearances under the Enforcement Directorate Act may vary depending on the nature of the case, the specific provisions invoked, and the Enforcement Directorate's instructions. Working closely with legal counsel and following their guidance is essential to ensure compliance, protect your rights, and effectively navigate the proceedings.

APPEARANCE BEFORE THE STOCK EXCHANGES

When making an appearance before stock exchanges, it typically involves matters related to compliance, regulatory requirements, or specific inquiries related to trading activities or listed securities. The general guidelines which are applicable to Appearance under RBI and ED are same as when appearing before the Stock Exchanges.

The specific procedures, rules, and requirements for appearances before stock exchanges can vary depending on the exchange, the nature of the case, and the specific rules and regulations in place.

APPEARANCE BEFORE THE IPR AUTHORITIES

When making an appearance before Intellectual Property Rights (IPR) authorities, it typically relates to matters such as trademark registrations, patent applications, copyright disputes, or other intellectual property-related issues. The general guidelines which are applicable to Appearance under RBI, ED and Stock Exchanges are same as when appearing before the IPR Authorities. The specific procedures, rules, and requirements for appearances before IPR authorities may vary depending on the jurisdiction and the specific intellectual property laws in place.

APPELLATE AUTHORITIES UNDER THE COMPANIES ACT, 2013

The Companies Act, 2013 is a legislation enacted by the Indian Parliament to regulate the incorporation, management, and dissolution of companies in India. The Act provides for various provisions related to the establishment of Appellate Authorities for hearing appeals against orders and decisions of the National Company Law Tribunal (NCLT).

The following are the Appellate Authorities under the Companies Act, 2013:

1. **National Company Law Appellate Tribunal (NCLAT)**

   As per Section 408 of the Companies Act, 2013, the Central Government constituted Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to exercise and discharge such powers and functions as are, or may be, conferred on it by or under the Act or any other law for the time being in force.

   The NCLAT is the principal Appellate Authority established under the Companies Act, 2013. It hears appeals against orders and decisions of the NCLT, which is the adjudicating authority under the Act. The NCLAT has its principal bench in New Delhi and may hold sittings in other parts of India as well.

   Under Section 410 of the Companies Act, 2013, the Central Government constituted an Appellate Tribunal to be known as the National Company Law Appellate Tribunal consisting of a Chairperson and such number of Judicial and Technical Members, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against, –

   (a) the order of the Tribunal or of the National Financial Reporting Authority under the Companies Act, 2013; and

   b) any direction, decision or order referred to in section 53A of the Competition Act, 2002 in accordance with the provisions of that Act.

   Section 421 of the Companies Act, 2013 provides that any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.

   Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

   It may be noted that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

   On the receipt of an appeal, the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

2. Appeal to Supreme Court

As per Section 423 of the Companies Act, 2013 any person aggrieved by any order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of receipt of the order of the Appellate Tribunal to him on any question of law arising out of such order:

It may be noted that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

3. Regional Director

The Regional Director is a statutory authority appointed by the Central Government under the Companies Act, 2013. The Regional Director has the power to hear appeals against orders and decisions of the Registrar of Companies (RoC), which is the authority responsible for the registration of companies under the Act. The Regional Directors supervise the working of the offices of the Registrars of Companies and Official Liquidators located in different locations in the country. They also maintain liaison between the respective State Governments and the Central Government on matters relating to the administration of the Companies Act, 2013. The Regional Directors have been delegated powers to directly take up work and dispose off certain business under the provisions of Companies Act.

Registrars of Companies (ROCs) appointed under Section 396 of Companies Act, 2013 are vested with the primary duty of registering companies in States and Union Territories and ensuring that such companies comply with statutory requirements under the Act. These offices function as a registry of records, relating to the companies registered with them. The records are available for inspection by the public on payment of the prescribed fee. The Central Government exercises administrative control over these offices through the respective Regional Directors.

4. Company Law Board (CLB)

The Company Law Board was the Appellate Authority established under the Companies Act, 1956. However, it has been dissolved and its functions have been transferred to the NCLT and NCLAT under the Companies Act, 2013.

In conclusion, the Companies Act, 2013 provides for the establishment of the NCLAT and the Regional Director as Appellate Authorities for hearing appeals against orders and decisions of the NCLT and the RoC respectively. It is important to comply with the provisions of the Act and to seek legal advice and representation as necessary to protect one's rights and interests.

APPELLATE AUTHORITIES UNDER SEBI ACT

Appeal to the Securities Appellate Tribunal

The Securities Appellate Tribunal (SAT) is an appellate tribunal established under the Securities and Exchange Board of India (SEBI) Act, 1992, to hear appeals against orders passed by SEBI or its officers. The SAT is an independent judicial body that has the power to confirm, modify or set aside any order passed by SEBI or its officers.

As per Section 15T of the SEBI Act, 1992, any person aggrieved by an order of the Securities Exchange Board of India (Board) made under the SEBI Act, 1992 or the rules or regulations made thereunder; or by an order made by an adjudicating officer under the SEBI Act; or by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

An appeal to the SAT can be made by any person aggrieved by an order passed by SEBI or its officers, including individuals, companies, and other entities. The grounds for appeal may include errors in the order, procedural irregularities, or violations of the principles of natural justice. Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed.

The procedure for filing an appeal with the SAT involves the following steps:

1. **Filing of appeal:** The appellant must file an appeal with the SAT within 45 days from the date of the order passed by SEBI or its officers. The appeal must be filed in the prescribed format and must include all relevant documents and evidence to support the appeal.

2. **Service of notice:** Once the appeal is filed, the SAT will serve notice to SEBI or its officers, giving them an opportunity to file a reply to the appeal.

3. **Hearing:** The SAT will hear the appeal and may ask the parties to present their case and provide evidence in support of their arguments. The SAT may also seek clarification or further information from the parties if required.

4. **Decision:** After hearing the appeal, the SAT will pass an order either confirming, modifying or setting aside the order passed by SEBI or its officers. The SAT's decision is binding on all parties involved.

The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be the parties to the appeal and to the concerned Adjudicating Officer.

The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

The SAT provides a mechanism for individuals, companies, and other entities to challenge orders passed by SEBI or its officers. The SAT's independent and impartial approach ensures that decisions are made fairly, and aggrieved parties have a right to appeal against the order.

APPELLATE AUTHORITIES UNDER THE INCOME-TAX ACT, 1961

The Income Tax Act, 1961 (the Act) is the primary legislation that governs the taxation of income in India. The Act provides for various appellate authorities to hear appeals and review orders passed by lower tax authorities. These appellate authorities play a crucial role in ensuring the effective implementation of the provisions of the Act and providing taxpayers with a mechanism to challenge tax assessments and orders.

The following are the appellate authorities under the Income Tax Act, 1961:

1. **Commissioner of Income Tax (Appeals) [CIT(A)]**

   The CIT(A) is the first appellate authority under the Act. It hears appeals filed by taxpayers against the orders passed by the Assessing Officer (AO) in relation to the assessment of income tax. The CIT(A) has the power to confirm, modify, or set aside the order of the AO.

2. **Income Tax Appellate Tribunal (ITAT)**

   The ITAT is the second appellate authority under the Act. It hears appeals filed by taxpayers against the orders passed by the CIT(A) and other tax authorities. The ITAT is an independent judicial body and has the power to confirm, modify, or set aside the order of the CIT(A) or any other tax authority.

3. **High Court**

The High Court has the jurisdiction to hear appeals against the orders passed by the ITAT. The High Court can hear appeals on questions of law arising out of the order of the ITAT.

4. **Supreme Court of India**

The Supreme Court of India is the highest appellate authority under the Act. It can hear appeals against the orders passed by the High Court on questions of law.

The appellate authorities under the Income Tax Act, 1961, provide a mechanism for taxpayers to challenge tax assessments and orders. These authorities ensure that the implementation of the provisions of the Act is fair and impartial and that taxpayers' rights are protected.

APPELLATE AUTHORITIES UNDER THE COMPETITION ACT, 2002

The Competition Act, 2002 (the Act) is a legislation in India that aims to promote and sustain competition in the market, protect consumer interests, and prevent anti-competitive practices. The Act provides for the establishment of various appellate authorities to ensure the effective implementation of its provisions. These appellate authorities play a critical role in adjudicating disputes and resolving appeals related to competition law violations.

The following are the appellate authorities under the Competition Act, 2002:

1. **National Company Law Appellate Tribunal (NCLAT):**

The NCLAT is a quasi-judicial body established under the Companies Act, 2013, and also acts as the appellate tribunal for competition-related matters. The NCLAT hears appeals against orders passed by the Competition Commission of India (CCI) and orders of the Director-General (DG) of the CCI. The NCLAT has the power to confirm, modify, or set aside any order passed by the CCI or the DG.

2. **Supreme Court of India:**

The Supreme Court of India is the highest court of appeal in the country and has the power to hear appeals against the orders of the NCLAT. Appeals to the Supreme Court are usually filed in cases where the NCLAT has erred in law or where there is a substantial question of law to be decided.

Essar Steel matter for CIRP

Essar Steel, one of India's leading steel producers, was among the first companies to be referred to the National Company Law Tribunal (NCLT) under the Corporate Insolvency Resolution Process (CIRP) provisions of the Insolvency and Bankruptcy Code (IBC), 2016. The company had been facing financial difficulties for several years, with a debt of around Rs 54,000 crore.

Following its referral to the NCLT, a resolution professional was appointed to oversee the CIRP process. Several bids were received for the company, including those from Tata Steel and JSW Steel, both leading players in the Indian steel industry.

After evaluating the bids, the committee of creditors (CoC) approved the resolution plan submitted by JSW Steel, which involved the acquisition of Essar Steel's assets for a total consideration of Rs 19,700 crore.

However, the resolution plan faced several legal challenges, including objections raised by Essar Steel's former promoters, the Ruia family, and Standard Chartered Bank, one of the company's creditors. The Ruia family claimed that the resolution plan undervalued the company's assets, while Standard Chartered Bank argued that it was being discriminated against compared to other creditors.

The legal challenges led to a protracted legal battle that lasted for over two years and involved multiple rounds of litigation in various courts, including the Supreme Court of India. The case also highlighted several issues with the implementation of the IBC, including the need for a clear framework for dealing with operational creditors and the importance of balancing the interests of different stakeholders.

Despite the challenges, the resolution plan was eventually approved by the Supreme Court, and JSW Steel took over the assets of Essar Steel. The resolution of Essar Steel was a significant milestone in the implementation of the IBC and demonstrated the potential of the CIRP process in resolving distressed assets and preserving value for stakeholders.

This case study highlights the challenges involved in the CIRP process and underscores the importance of a transparent and efficient resolution process that enables the resolution of distressed assets while protecting the interests of different stakeholders. It also highlights the need for a clear and predictable legal framework for dealing with distressed assets and the importance of balancing the interests of different stakeholders in the resolution process.

CASE STUDY

CASE STUDY ON CORPORATE INSOLVENCY RESOLUTION PROCESS

Corporate Insolvency Resolution Process (CIRP) is a legal process that helps financially distressed companies to restructure or liquidate their assets to repay their debts to creditors. It is governed by the Insolvency and Bankruptcy Code, 2016 (IBC) and aims to provide a time-bound and structured mechanism for the resolution of insolvency in a fair and transparent manner.

1. CIRP of Jaypee Infratech Limited (JIL)

A case study of a company going through the Corporate Insolvency Resolution Process can provide insights into the various stages and challenges faced by a Company and the resolution professional appointed to manage the process. Let's take the example of the case of Jaypee Infratech Limited (JIL), a real estate company in India.

In August 2017, JIL was declared insolvent by the National Company Law Tribunal (NCLT) after it failed to repay its debts to lenders. The company had borrowed heavily from various banks and financial institutions to fund its real estate projects, but it was unable to complete the projects due to various reasons, including delays in obtaining regulatory approvals and disputes with landowners.

The NCLT appointed an insolvency resolution professional (IRP) to manage the CIRP process for JIL. The IRP invited bids from potential investors to take over the company and complete the pending real estate projects. However, no resolution plan was approved by the creditors, and the CIRP process had to be extended several times.

In June 2019, the Supreme Court of India ordered that the CIRP process be completed within 90 days and that only two bidders, the Suraksha Group and the NBCC, be allowed to submit their resolution plans. The Suraksha Group's bid was approved by the creditors, but it was challenged by the homebuyers who had invested in JIL's real estate projects and had not received possession of their flats.

The case went back to the Supreme Court, which directed the Suraksha Group to modify its resolution plan to address the concerns of the homebuyers. The Suraksha Group submitted a revised plan, which was approved by the creditors in March 2021.

The CIRP process for JIL, which was expected to be completed within 270 days, took more than three and a half years, highlighting the challenges faced by companies going through the process. The delay in the resolution process caused financial losses to the creditors, including banks and homebuyers, and also impacted the real estate sector as a whole.

In conclusion, the case of Jaypee Infratech Limited highlights the importance of a timely and efficient Corporate Insolvency Resolution Process to protect the interests of all stakeholders. The CIRP process needs to be streamlined and simplified to ensure that financially distressed companies can quickly restructure or liquidate their assets to repay their debts, and that the interests of all stakeholders, including creditors and homebuyers, are protected.

2. Jet Airways

Jet Airways was one of India's leading airlines until it suspended its operations in April 2019 due to financial difficulties. The airline had accumulated a debt of over Rs 8,000 crore and had been facing financial troubles for several years.

Following its suspension, the airline was referred to the National Company Law Tribunal (NCLT) under the Corporate Insolvency Resolution Process (CIRP) provisions of the Insolvency and Bankruptcy Code (IBC), 2016.

The resolution professional appointed by the NCLT invited bids from interested parties to take over the airline and revive its operations. Several bids were received, including those from a consortium led by UK-based Kalrock Capital and UAE-based entrepreneur Murari Lal Jalan, and another from a consortium led by Canadian investor Sivakumar Rasiah.

After evaluating the bids, the committee of creditors (CoC) approved the resolution plan submitted by the consortium led by Kalrock Capital and Murari Lal Jalan. The plan involved the acquisition of the airline's assets, including its brand, aircraft, and other infrastructure, and the revival of its operations.

However, the resolution plan faced several challenges, including the reluctance of the aviation regulator, the Directorate General of Civil Aviation (DGCA), to grant the necessary approvals for the revival of the airline. There were also legal challenges raised by some of the airline's creditors.

Despite the challenges, the resolution plan was eventually approved by the NCLT, and the consortium led by Kalrock Capital and Murari Lal Jalan took over the airline. The new management has since been working on reviving the airline's operations and restoring its position in the Indian aviation market.

This case highlights the challenges involved in the CIRP process, particularly in the context of the aviation sector, which is subject to a complex regulatory framework. It also underscores the importance of a robust and transparent resolution process that enables the efficient resolution of distressed assets and the preservation of value for stakeholders.

CASE STUDY

CASE STUDY ON COMBINATIONS UNDER THE COMPETITION ACT, 2002

Combinations refer to mergers, acquisitions, amalgamations, and any other form of consolidation between two or more enterprises. The Competition Act, 2002 (the Act) governs combinations in India and aims to ensure fair competition in the market and prevent abuse of market power.

1. Acquisition of Flipkart by Walmart

A case study of a combination under the Act can provide insights into the legal requirements and procedures for compliance.

One such case study is the acquisition of Flipkart, an Indian e-commerce company, by Walmart, a US-based multinational retail corporation. In May 2018, Walmart announced its acquisition of a 77% stake in Flipkart for $16 billion, making it the largest e-commerce deal in India and the largest acquisition by Walmart to date.

The acquisition was subject to the approval of the Competition Commission of India (CCI), as it met the threshold for a combination under the Act. The parties filed a notice with the CCI, providing details of the combination and its potential effects on competition in the market.

The CCI conducted a thorough examination of the combination, considering factors such as market share, competition, and consumer welfare. The CCI also invited comments from stakeholders, including competitors and consumers, and held hearings to assess the potential impact of the combination on the market.

After a detailed examination, the CCI approved the combination, subject to certain conditions. The conditions included ensuring that Flipkart remained a separate entity and not a subsidiary of Walmart, and that Walmart did not have a controlling influence over Flipkart's operations.

The CCI also directed the parties to submit periodic reports on the compliance with the conditions imposed by the CCI. The parties complied with the conditions, and the combination was completed in August 2018.

The Flipkart-Walmart combination is a prime example of the rigorous examination conducted by the CCI in assessing combinations and ensuring fair competition in the market. The CCI's approval of the combination, subject to conditions, ensured that the interests of all stakeholders, including competitors and consumers, were protected.

In conclusion, the Flipkart-Walmart combination case study highlights the legal requirements and procedures for compliance with the Competition Act, 2002, and the role of the CCI in ensuring fair competition in the market. Combining parties must ensure that their combination complies with the Act and seek the approval of the CCI to avoid any potential penalties or adverse effects on the market.

2. Reliance Industries Limited (RIL) and Future Group

In August 2020, Reliance Industries Limited (RIL) announced its plans to acquire the retail and logistics assets of Future Group in a deal worth $3.4 billion. The deal involved the transfer of Future Group's retail, wholesale, logistics, and warehousing businesses to Reliance Retail Ventures Limited (RRVL), a subsidiary of RIL.

The Competition Commission of India (CCI) initiated an investigation into the combination under Section 6(2) of the Competition Act, 2002, which empowers the CCI to examine any combination that is likely to cause an appreciable adverse effect on competition within the relevant market in India.

After conducting a detailed analysis of the transaction, the CCI approved the deal subject to certain conditions. The CCI imposed several conditions to ensure that the combination did not result in any adverse impact on competition in the relevant market, particularly in the retail and e-commerce sectors.

One of the key conditions imposed by the CCI was that the deal could not lead to an exclusive supply agreement between RIL and Future Group, which could have resulted in an unfair advantage for Reliance in the retail market. The CCI also mandated that Future Group maintain a level playing field for all sellers on its platforms and that it continues to operate independently of RIL.

However, Amazon, which had a 49% stake in Future Coupons, a promoter group entity of Future Retail, approached the Singapore International Arbitration Centre (SIAC) to seek a stay on the Future-Reliance deal. Amazon argued that Future Group had breached the terms of their agreement by selling its assets to Reliance without seeking Amazon's consent.

The SIAC ruled in favor of Amazon and issued an interim stay on the Future-Reliance deal. The matter is currently under litigation in various Indian courts.

This case highlights the complexities involved in assessing the impact of combinations on competition, particularly in the context of the rapidly evolving e-commerce and retail sectors. It also underscores the need for careful consideration of the legal implications of agreements between companies, and the importance of adhering to contractual obligations.

LESSON ROUND-UP

- A Company Secretary can appear as an authorized representative before NCLT, Competition Commission of India (CCI), Securities Appellate Tribunal (SAT), Telecom Regulatory Authority of India (TRAI) and various other Tribunals.
- Appearance before other regulatory and quasi-judicial authorities may be required in various legal matters.
- These authorities include the National Company Law Tribunal (NCLT), National Company Law Appellate Tribunal (NCLAT), Competition Commission of India (CCI), Securities and Exchange Board of India (SEBI), and various other tribunals, commissions, and authorities.
- The appearance before regulatory and quasi-judicial authorities requires thorough preparation, compliance with procedural rules, professional conduct during the proceedings, and compliance with any orders or directions given by the authority.
- The right to legal representation is a fundamental right that is recognized in most legal systems around the world. This right ensures that individuals have access to legal counsel and representation, particularly in legal proceedings where their rights or interests are at stake.
- In many legal systems, the right to legal representation is enshrined in law and guaranteed by the constitution. The right to legal representation is essential for several reasons. First, it helps to ensure that legal proceedings are fair and just.
- Under the Companies Act, 2013, the right to legal representation is recognized and protected in certain situations. The Act allows for companies to be represented in legal proceedings by authorized representatives, such as Company Secretaries, who are appointed by the company.
- Section 432 of the Companies Act, 2013 dealing with right to legal representation envisages that the applicant or the appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any officer to present his or its case before the Tribunal or the Appellate Tribunal, as the case may be.

- Under the Companies Act, 2013, there are various situations where a person may be required to appear before regulatory or quasi-judicial authorities. These appearances may be required in the context of compliance and enforcement proceedings, such as investigations, inspections, and adjudication of disputes.
- The ROC is a regulatory authority responsible for administering the provisions of the Companies Act, 2013. Companies and their officers may be required to appear before the ROC in relation to various compliance matters, such as filing of returns and other documents, inspection of books and records, and verification of registered office address.
- The NCLT is a quasi-judicial body that adjudicates disputes and grievances related to companies and their affairs. Parties may be required to appear before the NCLT in various types of proceedings, such as merger and acquisition approvals, insolvency and bankruptcy proceedings, and disputes related to the interpretation of the Companies Act, 2013.
- The SFIO is a specialized investigating agency that is empowered to investigate cases of fraud and financial irregularities related to companies. Parties may be required to appear before the SFIO in connection with investigations related to corporate fraud, money laundering, and other financial crimes.
- SEBI is a regulatory authority that is responsible for regulating and overseeing the securities market in India. Companies and individuals may be required to appear before SEBI in connection with various compliance and enforcement matters, such as insider trading, market manipulation, and disclosure requirements.
- Section 17 of the Telecom Regulatory Authority of India (TRAI) Act, 1997 authorizes Company Secretaries to present his or its case before the Appellate Tribunal. As per the Explanation appended to the Section 'Company Secretary' means a Company Secretary as defined in clause (c) of sub-section (1) of Section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of Section 6 of that Act.
- Sections 35 of the Competition Act, 2002 authorises Company Secretaries in practice to appear before Competition Commission of India.
- Competition Act, 2002 provides a number of factors to be considered by the Competition Commission of India in determining appreciable adverse effect on competition.
- The Competition Act, 2002 is the primary legislation governing competition law in India. The Competition Commission of India (CCI) is the regulatory body responsible for enforcing competition law in India.
- The Real Estate (Regulation and Development) Act, 2016 (RERA) is a legislation enacted by the Indian Parliament to regulate and promote the real estate sector.
- The Regional Director is a statutory authority appointed by the Central Government under the Companies Act, 2013. The Regional Director has the power to hear appeals against orders and decisions of the Registrar of Companies (RoC), which is the authority responsible for the registration of companies under the Act.
- Registrars of Companies (ROCs) appointed under Section 396 of Companies Act, 2013 are vested with the primary duty of registering companies in States and Union Territories and ensuring that such companies comply with statutory requirements under the Act.
- The Securities Appellate Tribunal (SAT) is an appellate tribunal established under the Securities and Exchange Board of India (SEBI) Act, 1992, to hear appeals against orders passed by SEBI or its officers.

- As per Section 15T of the SEBI Act, 1992, any person aggrieved by an order of the Securities Exchange Board of India (Board) made under the SEBI Act, 1992 or the rules or regulations made thereunder; or by an order made by an adjudicating officer under the SEBI Act; or by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.
- The Income Tax Act, 1961 (the Act) is the primary legislation that governs the taxation of income in India. The Act provides for various appellate authorities to hear appeals and review orders passed by lower tax authorities.
- The High Court has the jurisdiction to hear appeals against the orders passed by the ITAT.
- The Supreme Court of India is the highest appellate authority under the Act. It can hear appeals against the orders passed by the High Court on questions of law.
- The appellate authorities play a critical role in ensuring the effective implementation of the Competition Act, 2002, and providing a mechanism for parties to challenge orders passed by the CCI or the DG.
- Corporate Insolvency Resolution Process (CIRP) is a legal process that helps financially distressed companies to restructure or liquidate their assets to repay their debts to creditors.

GLOSSARY

Appearance: Appearance before other regulatory and quasi-judicial authorities may be required in various legal matters.

Legal Representation: It refers to the right of a person to be represented by a Company Secretary or an advocate in legal proceedings before a court, tribunal, or other judicial or quasi-judicial authority.

Quasi-Judicial authority: A quasi-judicial authority is an administrative body or agency that has been granted the power to make decisions that affect the legal rights, duties, or privileges of individuals or entities.

National Company Law Tribunal (NCLT): The NCLT is a quasi-judicial body that adjudicates disputes and grievances related to companies and their affairs. Parties may be required to appear before the NCLT in various types of proceedings, such as merger and acquisition approvals, insolvency and bankruptcy proceedings, and disputes related to the interpretation of the Companies Act, 2013.

National Company Law Appellate Tribunal (NCLAT): The NCLAT is a quasi-judicial body established under the Companies Act, 2013, and also acts as the appellate tribunal for competition-related matters. The NCLAT hears appeals against orders passed by the Competition Commission of India (CCI) and orders of the Director-General (DG) of the CCI. The NCLAT has the power to confirm, modify, or set aside any order passed by the CCI or the DG.

Competition Commission of India (CCI): The Competition Commission of India (CCI) is a statutory body established by the Indian government under the Competition Act, 2002. The CCI is responsible for promoting and ensuring fair competition in the Indian market and preventing practices that adversely affect competition.

Securities and Exchange Board of India (SEBI): SEBI is a regulatory authority that is responsible for regulating and overseeing the securities market in India. Companies and individuals may be required to appear before SEBI in connection with various compliance and enforcement matters, such as insider trading, market manipulation, and disclosure requirements.

Registrar of Companies (ROC): The ROC is a regulatory authority responsible for administering the provisions of the Companies Act, 2013. Companies and their officers may be required to appear before the ROC in relation to various compliance matters, such as filing of returns and other documents, inspection of books and records, and verification of registered office address.

Serious Fraud Investigation Office (SFIO): The SFIO is a specialized investigating agency that is empowered to investigate cases of fraud and financial irregularities related to companies. Parties may be required to appear before the SFIO in connection with investigations related to corporate fraud, money laundering, and other financial crimes.

Telecom Regulatory Authority of India (TRAI): The Telecom Regulatory Authority of India (TRAI) is an independent regulatory body established by the Indian government in 1997 under the Telecom Regulatory Authority of India Act, 1997. The TRAI is responsible for regulating the telecommunications sector in India, including telephony, broadcasting, and cable services.

TEST YOURSELF

(These are meant for recapitulation only. Answer to these questions are not to be submitted for evaluation.)

1. Describe key provisions related to appearance under the Companies Act, 2013.
2. Can a Company Secretary appear before Real Estate (Regulation and Development) Act, 2016? Comment.
3. What are the different Appellate Authorities under the Companies Act, 2013?
4. Describe the Appellate Authorities under the Income-Tax Act, 1961.
5. Enumerate key considerations for the professionals appearing under The Reserve Bank of India Act, 1934.

LIST OF FURTHER READINGS

- Bare Act of The Companies Act, 2013
- Bare Act of The TRAI Act, 1997
- Bare Act of The SEBI Act, 1992
- Bare Act of The Income Tax Act, 1961
- Bare Act of The Competition Act, 2002
- Bare Act of Real Estate (Regulation and Development) Act, 2016

OTHER REFERENCES (Including Websites/Video Links)

- https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks.html#
- https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=1&ssid=3&smid=0
- https://incometaxindia.gov.in/pages/acts/income-tax-act.aspx

WARNING

Regulation 27 of the Company Secretaries Regulations, 1982

In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or any Committee formed by the Council in this regard, may suo-moto or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity of being heard, suspend or debar him from appearing in any one or more examinations, cancel his examination result, or registration as a student, or debar him from re-registration as a student, or take such action as may be deemed fit.

It may be noted that according to regulation 2(ia) of the Company Secretaries Regulations, 1982, 'misconduct' in relation to a registered student or a candidate enrolled for any examination conducted by the Institute means behaviour in disorderly manner in relation to the Institute or in or around an examination centre or premises, or breach of any provision of the Act, rule, regulation, notification, condition, guideline, direction, advisory, circular of the Institute, or adoption of malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with writing of any examination conducted by the Institute, or tampering with the Institute's record or database, writing or sharing information about the Institute on public forums, social networking or any print or electronic media which is defamatory or any other act which may harm, damage, hamper or challenge the secrecy, decorum or sanctity of examination or training or any policy of the Institute.

PROFESSIONAL PROGRAMME
DRAFTING, PLEADINGS & APPEARANCES
GROUP 1 • PAPER 2

(*This test paper is for practice and self-study only and not to be sent to the Institute*)

Time allowed: 3 hours *Maximum Mark: 100*

Answer all Questions

PART I: DRAFTING AND CONVEYANCING

Question No. 1

(a) Zenith mortgages and transfers his property to Jacob with a condition that if he cannot pay Rs. 1 Crore along with interest at 12% per annum within a period of 1 year from 1st April, 2024, the property mortgaged is to be treated as Sale. However, if Zenith will pay the principal amount on or before 31st March, 2025, the sale shall become absolute. What kind of mortgage is suitable in the given situation? Draft an appropriate deed of mortgage for this purpose. Assume other necessary facts.

(5 marks)

(b) Ankush and Agar Upper LLP entered into a Service Contract in which Ankush will provide App development support and other services to the LLP on payment on the basis of a certain criteria. A dispute arose between the parties relating to alleged deficient services by Ankush. At later stage, they agreed for settlement of disputes through Arbitration. However, there was no clause in the above mentioned agreement pertaining to resolution of disputes through Arbitration.

Draft:

(i) An Arbitration Agreement for this purpose.

(ii) An Agreement of Reference to Sole Arbitrator.

(3+2= Total 5 marks)

(c) HR Head of LHTD Limited intends to recruit 1000 Customer Service Executives in the company. You are the Company Secretary of LHTD Limited. The HR Head has requested you to prepare a specimen agreement for this purpose. The Service Contract is to be signed by the Deputy Manager (HR) on behalf of the Company.

Prepare a Specimen Service Agreement for the Company.

(5 marks)

(d) You are a Company Secretary working with National Stock Exchange of India Ltd. (NSE). A trading member has been expelled by NSE. The chief manager has requested you to prepare a public notice for expulsion of the member and facility of online and offline lodging of the claim. Prepare the public notice. Assume other necessary facts.

(5 marks)

(e) ABC Limited a public limited company has been awarded a tender for supply of telephone instruments by a Statutory Authority. The statutory authority has asked for a Bank Guarantee in case the company is unable to supply the instruments. Prepare a Deed of Bank Guarantee for this purpose. Assume other necessary facts.

(5 marks)

Question No. 2

(a) You are a Practicing Company Secretary rendering your services across the country. M-DARS LLP has approached you to prepare a notice against Rahesh, a party whose cheque got dishonored for making a demand for the payment of the said amount of money, within fifteen days of the receipt of the said notice. The amount of cheque was Rs. 2,50,00,000/-.

Prepare a draft notice for this purpose. Assume other necessary facts.

(5 marks)

(b) Draft a Board Resolution for approval and adoption of CSR Policy.

(5 marks)

(c) Distinguish between Ordinary Resolution and Special Resolution.

(5 marks)

Question No. 3

(a) Makesh, Ruhal and Kohal intends to incorporate a Limited Liability Partnership(LLP). The proposed object of the LLP is manufacturing and assembling of Computers. Draft a Specimen of LLP Agreement. Assume other necessary facts.

(8 marks)

(b) Ankesh is the holder of 5,000 shares of Techotech Private Limited. Rankesh intends to purchase these shares at a price of Rs. 5,000/- per share. Ankesh has also agreed to sell the shares on this price. The sale of shares is also not restricted by the MOA and AOA of the company. Draft a Share Purchase Agreement between the company, Ankesh and Rakesh. Assume other necessary facts.

(7 marks)

Attempt all parts of either Q. No. 4 or Q. No. 4A

Question No. 4

(a) Distinguish between Simple Mortgage and English Mortgage.

(b) Is Registration of a Power of Attorney Compulsory? Draft a specimen power of attorney for negotiating and selling immovable property. Assume other necessary facts.

(c) Draft a specimen resolution of the members authorizing the company to make Investments, give Loans, Guarantees and provide security under Section 186 of the Companies Act, 2013. Assume other necessary facts.

(5 marks each)

OR (Alternate question to Q. No. 4)

Question No. 4A

(i) All agreements are contracts if they are made in compliance with section 10 of the Indian Contract Act, 1872. Explain the essential conditions as provided under the said provision? If the consent to an agreement is caused by coercion, what is its effect on the agreement as per Indian Contract Act, 1872?

(5 marks)

(ii) Ankesh wants to gift Anil a flat located in Mumbai. Whether this property is required to be registered compulsorily. If yes, where it should be presented for registration? Ankesh and Anil also does not know the value of the Property and therefore, want to apply to have the opinion of officer relating to the duty payable. Can the parties apply for adjudication of Stamp Duty?

Explain with the help of relevant provisions.

(5 marks)

(iii) Distinguish between Document Management and Contract Management.

(5 marks)

PART II: PLEADINGS AND APPEARANCES

Question No. 5

(a) XYZ Company Private Limited is in the business of providing rental accommodations on monthly basis to the tenants. Abhilas has taken a premises of the company on rent. It has been noticed by the officers of the company that Abhilas has damaged the property and also not keeping the property in good condition. In this regard, the Legal Head of the organization has requested you to prepare a plaint for Suit for Ejectment in the appropriate Court.

Prepare the plaint. Assume other necessary facts.

(5 marks)

(b) XYZ Ltd. is company incorporated under the provisions of the Companies Act, 2013. The company filed a suit for recovery of Rs. 15 lacs together with interest at the rate of 12% per annum and the cost of the suit, before the District Judge. The learned District Judge dismissed the appellant's suit on the ground that the evidence led by the parties does not establish the claim of the plaintiff. Prepare a Specimen form of Appeal to be filed with the High Court of Delhi. Assume other necessary facts.

(5 marks)

(c) Briefly explain Reference and Revision under the Bharatiya Nagarik Suraksha Sanhita, 2023 with the help of relevant provisions.

(5 marks)

Attempt all parts of either Q. No. 6 or Q. No. 6A

Question No. 6

(a) Prepare a specimen Affidavit of Creditor in proof of his debt in Proceeding for the Liquidation of Citrus Arc Private Limited. Assume other necessary facts.

(5 marks)

(b) A scheme involving the transfer of shares of in a company (the transferor company) to another company (the transferee company) has been duly approved by the holders of 95% in value of the shares whose transfer is involved. Draft a notice in Form No. CAA.14 for any dissenting shareholders stating that it desires to acquire his shares.

(5 marks)

(c) SEBI found that the company ZYX Private Limited has violated various regulations of SEBI (LODR) Regulations, 2015. The Board of Directors intends to apply for settlements for this Purpose. However, SEBI issued a notice of summary settlement. The Managing Director (MD) has asked you a Practising Company Secretary, about the matters that are eligible for summary settlement.

Prepare a note for the MD.

(5 marks)

OR (Alternate question to Q. No. 6)

Question No. 6A

(i) The adjudging officer issued a show cause notice to the company for non-compliance of section 135 of Companies Act, 2013. The company replied to the notice by accepting the non-compliance with a request to take lenient view while awarding the penalty. However, maximum amount of penalty was levied by the Adjudicating Officer. Company intends to file an appeal.

Prepare a note for the company:

(A) informing factors the adjudicating officer shall have due regard to.

(B) the provisions relating to appeal against the order of the adjudicating officer and time limit for the appeal.

(5 marks)

(ii) XYZ Limited has received a show cause notice from Competition Commission of India(CCI) that Joint Venture Agreement has caused an appreciable adverse effect on competition within the relevant market in India. CCI called upon the company to respond within thirty days of the receipt of the notice. The CEO of XYZ Limited knows a very renowned Company Secretary who a Key Managerial Personnel in ABC Limited. The renowned company secretary was also a Practising Company Secretary before being employed by ABC Limited.

The CFO and Company Secretary of XYZ Limited contends that the renowned company secretary is not eligible to present its case before the Commission.

You as a Practising Company Secretary, advice the company quoting the relevant provisions.

(5 marks)

(iii) What are the duties of a Company Secretary as a pleader towards the tribunal before which he/she is representing his/her client?

(5 marks)

***

To join Classes, please go through the contact details of Regional/Chapter Offices of the Institute of Company Secretaries of India as per details mentioned below

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