

## Topics covered

Snapshot containing links to my Video Lectures-Slide -2

1. The Limitation Act, 1963 -Slide Nos.3-85
2. The Prevention of Corruption Act 1988 (Definition of Public Servant and sections 7 to 16 read with section 29A of the IBC) -Slide Nos.86-136
3. The Prevention of Money Laundering Act, 2002 (Sections 2 to 8, 48, 63, 67,71 and 72)-Slide No.137-213
4. The Recovery of Debts and Bankruptcy Act, 1993 -Slide No,214-242
5. The Arbitration and Conciliation Act, 1996 -Slide No.243-357
6. The Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002-Slide no.358-486
7. The Micro, Small and Medium Enterprises Development Act, 2006 (Classification of enterprises, Advisory Committee, Memorandum of micro, small and medium enterprises, Delayed payments to micro and small enterprises) -Slide no.487-542
8. Real Estate (Regulation and Development) Act, 2016 (Sections 2, 4, 5, 11, 17, 18, 20, 23, 31, 34, 36, 37, 38, 40, 41, 42, 58, 59, 69, 70,71, 79, 80, 85, 86, 88, 89, 90)-Slide No.543-719

Act	Link for Video	
The Limitation Act, 1963  Limitation Act and IBC  CPC	<a href="https://youtu.be/oDnfEiRPupY">https://youtu.be/oDnfEiRPupY</a>  <a href="https://youtu.be/ECulzeQdaE0">https://youtu.be/ECulzeQdaE0</a>  <a href="https://youtu.be/_4C9Z9sF6_g">https://youtu.be/_4C9Z9sF6_g</a>	
The Prevention of Money Laundering Act, 2002 The Prevention of Corruption Act 1988	<a href="https://youtu.be/QuhxbqVOs0A">https://youtu.be/QuhxbqVOs0A</a>	
The Recovery of Debts and Bankruptcy Act, 1993	<a href="https://youtu.be/1ywl1WyHpAY">https://youtu.be/1ywl1WyHpAY</a> <a href="https://fb.watch/fIZFeQSAep/">https://fb.watch/fIZFeQSAep/</a>	
The Arbitration and Conciliation Act, 1996	<a href="https://youtu.be/U399jPLABpA">https://youtu.be/U399jPLABpA</a>	
SARFAESI Act	<a href="https://youtu.be/jrXLJd47PwY">https://youtu.be/jrXLJd47PwY</a> <a href="https://youtu.be/FrApDPCW7kA">https://youtu.be/FrApDPCW7kA</a>	
MSME Development Act	<a href="https://youtu.be/6uDL04SOSYc">https://youtu.be/6uDL04SOSYc</a>	

## Limitation Act Notes

### Introduction

- Generally suits have more limitation period than appeals or application. This is because in suits the whole procedure is starting whereas in appeals and applications procedure is already in process.
- Limitation Act is based on the doctrine of laches. Public policy requires that the dispute between the parties should not remain uncertain for a long period of time. This is because-1) the proceeding may become stale; 2) witness may not be interested in giving evidence; 3) they may have forgotten the whole facts; 4) chances of fabrication more.
- Limitation Act can be divided into 3 parts- 1) general bar under Section 3; 2) exception under 4- 11; 3) Exclusions under 12-24.
- Limitation Act favours the plaintiff, applicant or the petitioner by providing the exceptions wherein they are allowed to file the appeal, application or suit even after the expiry of the PP. In exclusion, the time specified in the exclusion sections are added to the PP. The exclusions under 12-24 favour the defendant or the respondent. Hence the Limitation Act balance the interest of the plaintiff and the defendant. Thereby the whole Act is based on the balancing of the interest.
- **Doctrine of lex fori: law of the forum** means L. Act of that Court will apply wherein the suit, appeal or application has been filed. **Lex loci: law of the land.**
- **Pari Materia:** Pari means equal whereas materia means material. It means that the terms which have not been defined in a particular law but it has been in other laws then the same meaning will apply as in the case of the other law.

- The parties can neither increase or decrease the limitation period by agreement nor can the defendant waive the defence of limitation by agreement. The Court is also not allowed under Section 151 CPC to reduce or increase the limitation period nor can the court refuse to dismiss the suit, appeal or application if the PP has expired. This is evident from the use of the word 'shall' under Section 3.
- The limitation Act only bars the remedy but it does not extinguish the cause of action. Hence in this manner it is procedural in nature as the right stays intact. But Section 25-27 not only bars the remedy but also extinguishes the right after the expiry of the limitation period and hence LA becomes substantive law.
- **Prescribed Period:** Section 2j: POL means the time period prescribed in the Schedule of the Act whereas the PP means POL computed in accordance with the provisions of the Act.
- **Date of Reckoning:** means the date from which the counting is done i.e day from which the POL starts. **Section 12(1)** of the Act provides that the day of reckoning shall be excluded. For example if wants to file an application for setting aside the ex parte decree then the period of limitation is 3 years. The PP will be 3years+1 day if no other exclusions are to be added.

**Section 3: (1) Subject to the provision of Section 4-24, every suit, appeal or application filed after the PP shall be dismissed even if no defence of limitation had been set up**

**2) a) the suit is said to be instituted when i) the suit is presented in proper office of the court; ii) in the case of a pauper, when the application for leave to sue as a pauper is made; iii) in case of a claim against a company being wound up, when the application is made to the Official Liquidator.**

**b) in case of counter claim or set off, it shall be treated as a separate suit and it shall be considered to instituted i) in case of set off, it is said to be instituted on the date when the suit in which set off is claimed is instituted; ii) in case of counter claim, it is said to be instituted on the date when the counter claim is made.**

**c) in case of application by motion to the HC it is said to be instituted on the date on which the application is filed in the proper office of that court.**

- The court can suo motu also raise the objection of limitation.
- It is mandatory on the court to dismiss as the word shall has been used.
- A suit is said to be instituted when the 2 copies of the original plaint is presented to the Court. This has been provided under Order 4 and Section 26 of CPC. O4 R1 states: (1) Every suit shall be instituted by presenting a <sup>1</sup>[plaint in duplicate to the Court] or such officer as it appoints in this behalf. (2) Every plaint shall comply with the rules contained in Orders VI and VII, so far as they are applicable. (3) The plaint shall not be deemed to be duly instituted unless it complies with the requirements specified in sub-rules (1) and (2). Section 26 states: (1) Every suit shall be instituted by the **presentation of a Plaint** or in such other manner as may be prescribed. (2) In every plaint, facts shall be proved by affidavit.
- The office may have given the plaint back to the plaintiff for corrections and he may have also made such corrections in the plaint and then filed it. Still the date of institution would be the date on which the plaint was presented to the office first.
- However if the court return the plaint as the property was undervalued and the plaintiff reduces / strikes out the property in order to bring it to the amount specified in the plaint, then the doctrine of relating back will not apply as the subject matter has changed

- In case of pauper, he will not directly file the suit. He makes an application known as forma pauperis in person to the court as per O33 R3. If the court allows it and a new suit is filed, then the date of institution in this case will be the date on which the application is made. But if the application is rejected then under Section 13 the limitation period prescribed for any suit or appeal in any case where an application for leave to sue or appeal as a pauper is made and rejected, the time during which he was prosecuting in good faith shall be excluded and on payment of the court fee, it will be deemed that the court fee was paid at the first instance itself. The doctrine of relating back will apply.
- In case of claim against the company application to the liquidator has to be filed before the PP.
- Even after applying the doctrine of relating back, the limitation period of filing a set off has expired then in such a case relating back will not help and it will be barred.

Application by notice of motion to the HC means that sometimes before filing the application in the HC, the party may be required to give a notice of the application to the other party. In this case the date of institution will not be the date on which the notice is given rather it will be the date on which the application is filed after the period of notice has expired.

**Section 4: if the PP for any suit, appeal or application expires on the day when the court is closed then it may be filed on the date when the court next reopens. Expln: the court shall be deemed to be closed if during anytime of the normal working hours it remained closed.**

- In criminal matters there are duty magistrates even during holidays but this is not the case in civil cases.
- Here this is not an exclusion whereby the days when the court is closed will be added to the PP. rather it is an exception and it has to be filed when the court reopens next.
- In section 4 the limitation period is not shifted. Rather, it is an exception to Section 3.
- As per the explanation even if the court is closed for a limited period during the normal working hours it is deemed to be closed.
- This is based on 2 maxims- *lex non coget impossibilia*: Law cannot force you to do something that is impossible and *actus curiae neminem gravabit*- act of court shall not prejudice anyone.
- The applicant, appellant or the plaintiff has the right to file the suit even on the last day of the PP. the court cannot question the person on that.



- If the court is closed on the date on which the PP ends, and the plaintiff files the suit on the day when the court reopens next but he files it in wrong court and thereafter his plaint is rejected and he files it in the correct court, in such a case he will not get the benefit of Section 14 which provides that a person whose plaint is rejected due to lack of jurisdiction by the court, the time required by him to prosecute in good faith will be excluded. There are two main reasons because of which he will not get the benefit of S. 14-1) it is implicit in Section 4 that the suit is filed after the expiry of the PP. therefore when the plaintiff in the instant case filed the suit in the wrong court, he did so after the PP. But he was allowed to do so by way of exception. 2) it is implicit in Section 14 in order to get the benefit of Section 14, the original suit should have been instituted within the PP which in instant case it was not. Hence, in the instant case the suit will be barred and time required for prosecuting in wrong court will not be excluded. This was held in **Maqbool Ahmad v Pratap Narain Singh (1934-35) PC** and **Amarchand Inani v UOI (1973)**

**Section 5: Extension of PP in certain cases: Any appeal or application except the application under Order 21 instituted after the PP may be admitted even after the PP if it the applicant or the appellant can prove to the satisfaction of the court that there was sufficient cause for not filing it within the PP. Expln: if the applicant or the appellant were misled by the practice, judgement or the order of the HC, for ascertaining or computing the PP, then it is a sufficient cause.**

- Section 5 only applies to appeals and applications but not to suits and execution applications provided under O 21. The reason behind this is that generally the limitation period of the appeals and application is very less but that of suits and execution application is generally longer i.e 3-12 years.
- The marginal note of Section 5 states extension of PP but in actual it is not an extension of PP and is rather an exception to Section 3. Marginal note does not override the main wordings of the section which clearly states 'after the expiry of the PP'
- Under Section 5, the Court has double discretion-1) whether there was a sufficient cause for not making an application or appeal within a PP; 2) Even if sufficient cause shown, the court still has the discretion to admit the appeal or application or not. For eg: when if W obtains a decree of divorce in her favor from the District Judge then the PP for filing the appeal by the husband is 90 days. After the expiry of 90 days W has the right to get re-married. Now if W gets re-married, and H comes and files the appeal on 100<sup>th</sup> day and also seeks the condonation of delay stating that he had met with an accident due to which he could not file the appeal on the PP, the Court will still not admit the appeal even though sufficient cause had been shown.

- The burden of proof of showing the sufficient cause vests on the person who wants to file the appeal or the application.
- If the PP including the date of reckoning is 31 days, the Court cannot seek an explanation from you as to why you did not file the suit till 30 days. But it can seek explanation from you as to why didn't file the suit on the 31<sup>st</sup> day and every other day after such PP. the Court will be very liberal regarding the explanation and will not be very hyper technical.
- **Collector Land Acquisition v Mst Katiji (1987) SC: 1** the Court will take a liberal approach while dealing with applications under Section 5. 2) the court will make a presumption that generally a person will not deliberately cause the delay as he himself will suffer. 3) even if the Court condones the delay, the court still has to decide the case on merits and therefore not much harm is done to the other party; 4) Will not be hyper technical while seeking explanation for delay. The Court should understand that applicant may other important matters too. 5) the fact that it was the 'state' that was seeking the condonation will not be a consideration while deciding the application. However the court will take into consideration the impersonal machinery where no one is responsible and the inherited bureaucratic methodology imbued with file pushing, note making and passing the buck ethos.

- **Ramlal v Rewa Coal Fields (1962)**: the explanation will be sought only for the last day of the PP and for any period after that. No explanation can be expected from the party before the PP. the fact that the applicant was negligent before will not matter at all. Also talked about the double discretion and observed that due diligence during PP is to be seen while exercising the second discretion. Only Section 14 makes due diligence a requirement under the section. Section 5 does not require it and hence it cannot be made examined while deciding the application under 5.
- **N Balakrishnan v M Krishna Moorthy**- 1) if the lawyer was negligent and the client was not then condonation under section 5 can be done as the advocate's negligence should not be a cause of injustice to the party. Length of delay is no consideration. 2) The court held that law of limitation is based on the maxim "interest republicae up finis linium which means it is for general welfare that a period be put for litigation. The motive of limitation law is not to end the rights of the parties. It is to ensure that parties do not make use of dilatory tactics. But the primary function is to advance substantial justice. 3) Further, also observed that it would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for the loss caused.

- **Karam Kaur v Jalandhar Improvement Trust (2014)**: in this case the plea raised by the applicant that she was an illiterate lady and was informed by her husband that the matter would not be listed for next 20 years and if it is listed she will be intimidated by the advocate and that she did not have knowledge that the L.R's are to be brought on record after the death of her husband was not accepted by the SC and her delay was not condoned.
- if the parties were aware of the law but made a wrong interpretation of the law concerned will be a sufficient cause if it is shown that the party had acted bonafide.
- If the parties were not negligent and the delay was caused due to the wrong advice of the lawyer, then that is a sufficient cause.

The quantum of delay is immaterial as held in Balakrishnan case. The only point that will be considered is whether the applicant has sufficient cause and whether the condonation would result into an irreparable loss to the respondent.

**Section 6(1): where a person entitled to institute a suit or file an application for the execution is at the time from which the PP is to be reckoned a minor, idiot or insane, then he may institute the suit or make the application within the same period that he would have otherwise had as per the third Schedule after such disability ceases.**

- In case of a minor who is entitled to file a suit, he has two choices- 1) he can file through next friend under Order 32 2) he can file the suit after he becomes a major. If he decides to file a suit himself, then for him the PP will begin from next day of the date on which his disability ceases. If he becomes a major after the expiry of the PP, then he will get full PP after the disability ceases.
- This applies only to filing of suit and application for execution.
- Only 3 kinds of disability covered- insanity, idiocy and minority,
- Generally under 6(1) he will get POL+1 day from the date of reckoning under 12(1)+1 day when the disability ceases.

**Section 6(2): where such a person on the date when the PP is to reckoned is suffering from two disabilities or where before his disability ceases he is affected by another disability, he may institute the suit within such period as provided under 3<sup>rd</sup> Schedule after both the disability has ceased.**

- Contemplates two case- 1) suffering from two disability since the beginning; 2) affected by another disability before the first disability ceases.
- If the second disability starts after the first disability has ceased then the counting will not be affected as the when the counting has begun it cannot be stopped by subsequent disability under Section 9

**Section 6(3): when such person dies before the disability ceases, his L.R's may institute the suit during the same period which he would have been allowed to have after his death.**

- if the person was suffering from insanity and he dies after PP, then his LR after his death would get the full PP as he would have had after his disability as per (1)

**Section 6(4): if such LR also on the date of the death of such person is suffering from any disability, then he would also be given the benefit as under Section 6(1) & (2)**

**Section 6(5): when the person dies after the disability ceases, but within the time prescribed under this section, then his LR would have the same time to file the suit as would have been available to him had he not died.**

- If the person when the cause of action arose was a minor of 14 years and the PP is 12 years. In this case if he dies within 2 years of becoming a major. At this time the time left with him for filing the suit is 6 years. That same period is available to the L.Rs.

**Explanation: minor includes a child in the 'womb'.**



**Section 8: nothing in section 6 or 7 will apply to suits to enforce right of pre-emption or shall be deemed to extend the PP for more than 3 years after the cessation of the disability or the death.**

- Pre-emption right is provided under Section 22 of the HAS. It means if A and B are neighbours and B is going to sell the land to C then A can stop the sale to C by filing the suit to enforce right to pre-emption if he is able to pay the same amount to B.
- Law considers the right to pre-emption as weak form of right and therefore, benefit of Section 6 and 7 does not apply to pre-emption rights.
- A is a minor and B is going to sell his property to C. A and C are neighbours. In this case A, otherwise in other suits will have the right to file within a period as provided under 3<sup>rd</sup> Schedule after he becomes major as per section 6(1). Since this is a right of pre-emption, he will not be able to avail the benefits of Section 6.
- The general rule is that if the person is suffering from disability as provided under section 6 on the date when the PP is to be reckoned, then they can file the suit or application for execution during the period that would have been available to them as per 3<sup>rd</sup> Schedule after such disability has ceased. But equity requires that injustice is not caused to the other party. Hence the maximum extension that is allowed is 3 years.
- If the PP is 12 years and the person is a minor of 14 years on the date of COA, he becomes a major after 4 years. Till the time that he becomes a major the PP is 8 years. In such a scenario, he will not get any additional time by virtue of Section 6 and 8 and the PP will be 8 years.
- If PP is 3 years and the person is a minor of 14 years he will become a major after 4 years i.e. the PP of 3 years have ended. In such a case he will get a period of 3 years to file the suit as per Section 8.
- If PP is 1 year and the person is a minor of 14 years, he will become a major after 4 years i.e. after the expiry of PP. In such a case he will still only get 1 year to file the suit as the POL itself was 1 year.

**Section 9: when once the time has begun to run, it will not stop due to subsequent disability or inability.**

- Disability here denotes legal disability as provided in Section 6 whereas inability denoted physical impossibility

**Proviso to Section 9: when the letter of administration of the estate of creditor has been granted to the debtor, the running of the period of limitation for the recovery of the debt will be stopped till the administration continues.**

- If A owes a loan of 2 lakh to B and on the date of repayment, he does not pay. Here B has the right to file a suit to recover the loan and the POL is 3 years in such a case. In case after 2 years from the date of COA, B dies and A is made the administrator of the estate, then the 1 year remaining period will be stopped till he administers the estate.
- This is done as otherwise he would want to extend the administration of estate till the PP expires so that no suit can be filed against him by the L.R's. hence, to prevent this this proviso has been added.

**Section 7: when one of several persons jointly entitle to file a suit or make an application for execution is under any disability, and discharge can be given without the concurrence of such person, time would run against them all but if discharge cannot be given if time will not run against any of them until such disability ceases or one of them becomes capable of giving discharge without concurrence.**

Expln: this applies to discharge of every kind including liability in respect of any immovable property.

2. the manager of HUF governed by Mitakshara law is capable of giving discharge concurrence of the other members if he is in the management of the joint family property.

- Persons jointly entitled means that in their case O1 R1 of CPC will apply. It provides: All persons may be joined in one suit as plaintiffs where- (a) any right' to .relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and . (b) if such ,persons brought 'separate suits, any common question of law or fact would arise. They are called the necessary parties
- It applies to suit and application for execution.
- One or person is disabled on the date of reckoning.
- One of them holds such a character that they can discharge the opposite party not only with respect to him but also for the disabled persons. Eg partners, Karta etc
- In this case time will run against them all. The benefit of section 6 will not be available even to disabled persons.
- However if nobody had had the capacity to discharge then benefit of Section 6 will available to all.

## Exclusions

**Section 12 (1): for computing the period of limitation for any suit, appeal or application the day on which the POL is to reckoned shall be excluded.**

- The day on which the cause of action arises shall be excluded.

**Section 12(2): for computing the period of limitation for any appeal or application for leave to appeal or to file revision or review of a judgement, the day on which the judgement is pronounced and the time requisite for obtaining the copy of the decree or order shall be excluded.**

**Section 12(3): for computing the period of limitation for any appeal or application for leave to appeal or to file revision or review of a judgement, the time requisite for obtaining the copy of the judgement shall be excluded.**

- the difference between decree and judgement is that the former if a certificate given by the registrar regarding the decision of the case whereas latter is the full decision of the Court along with the reasons. For obtaining decree a fee has to be paid whereas in case of a judgement it is provided free of cost.

A person can file an appeal by attaching the copy of the judgement or that of the decree or order. In **JN Surthy v TS Chettiar (1928)PC**, the Court held that an appeal can be filed by the party either by attaching the copy of the judgement or by attaching the copy of decree for which he will have to make an application and pay a prescribed fee. The party has the right to insist upon the decree in order to file the appeal.

- In 12(2) and (3), the following shall be excluded- 1) the date on which the judgement is pronounced; 2) the time required for obtaining the copy of the judgement; 3) the time requisite for obtaining the copy of the decree.
- The time after the copy of the judgement has been prepared and before making the application for obtaining the copy of the decree shall not be excluded. Similarly after the copy of the decree has been prepared but the party has not collected the decree after it has been prepared, then that time after the decree has been prepared will not be excluded.

Expln: in computing the time requisite for obtaining the copy of the decree or an order, any time taken by the court to prepare the decree or order before the filing of the application for obtaining the copy of the decree shall not be excluded.

- it is essential that the application for obtaining the copy of the decree should be made within the PP.

- **State of UP v Maharaj Narain (1968)SC:** in this case, the question before the court was whether the number of copies of the decree has any relevance while computing limitation. It was held that the party has the right to obtain as many copies of the decree as he wants. But for every such copy he will need to make separate application and deposit a prescribed fee. He has the discretion to decide as to which copy of the decree will be used for the purpose of filing the appeal. He is not duty bound to use the decree which took the minimum time. He may use the decree which takes the longest time and the time that will be excluded will be the time requisite for obtaining that copy of decree. This is so because otherwise the court will be duty bound in each and every case to not only see whether the appeal or the application for leave to appeal or review or revision was filed within POL but also will have to see whether any copy of the decree was previously taken by the party and if so which of the copies took the least amount of time and this would be rather burdensome on the courts.
- **Udayan Chinubhai v RC Bali (1977):** only the period after the filing of the application will be excluded and the period before filing the application taken for preparation of decree will not be excluded. There were two questions before the Court- 1) will the time to prepare the decree before the application for copy was filed, be excluded? The Court considered various cases decided by the Courts before and observed that there was a dichotomy in various cases decided by the court previously regarding this. In order to remove this inconsistency, the Parliament enacted the explanation wherein it stated that the time taken by the court to prepare the copy of decree before the application for copy for decree shall not be excluded. But then the question before the Court arose as to whether the phrase “shall not be excluded” mean that it will be included in the exclusion period. The court held that this is not the correct interpretation.

- **P.O Ooman v Monan Mar Baselius Marthomma (1992) SC:** in case of multiple suits tried together and decided by a single judgement, the parties are free to obtain as many copies of the decree as they want. The court may dispense with the requirement of filing more than 1 copy of the decree if more than one party appeals. However the parties are free to file appeal by attaching their own copies. But the party will get the benefit of the time requisite only w.r.t. his copy of decree. Therefore if B gets the copy of decree after 50 days, then in his case he will get the benefit of exclusion 50 days only. He will not get the exclusion of 10 days taken by A to obtain the copy. However, if B files the appeals on the basis of A's copy of decree, then he will get the benefit of 10 days only.

**Section 14(1): for computing the period of limitation for suits, the time during which the plaintiff had prosecuted another civil proceeding with due diligence shall be excluded whether in a court of first instance or appeal or revision, against the defendant where the proceeding relate to same matter in issue and is prosecuted in good faith in a court which due to lack of jurisdiction or cause of like nature is unable to entertain it.**

- **Consolidated Engineering Enterprises v Irrigation Dept (2008) SC 3 judge Bench, K.G Balakrishnan gave the judgement.**  
The SC held the following:
  - a) The purpose of the section is to prevent any loss to the plaintiff due to any mistake that he committed in good faith. He needs to prove that he had committed the mistake in good faith and had exercised due diligence. Merely because he filed the suit in the wrong court does not mean that he was not acting in good faith. The BOP vests on the Plaintiff to prove good faith.
  - b) It is also essential that the earlier proceeding was also a civil proceeding filed in a civil court. It should not be a departmental proceeding or a criminal proceeding. There if the earlier proceeding was before a sales tax Dept or an Income Tax Dept, S 14 will not apply. However, if the earlier proceeding was in the Consumer Forum, then 14 will apply.
  - c) The parties should be the same in both the suit. However, in the subsequent suit if any necessary party is added under O1 R1 or there was a misjoinder of any party in the earlier suit and that party was not there in the subsequent suit, then also S 14 will apply. 14 will not apply if any 3<sup>rd</sup> party or a proper party was joined. Necessary party means that it is essential for a person to be a part of the suit for the matter in issue to be decided. Under O1 R1 these are the necessary parties:1. All persons may be joined in one suit as plaintiffs where- (a) any right' to .relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons, whether jointly, severally or in the alternative; and (b) if such ,persons brought separate suits, any common question of law or fact would arise.



The matter in issue should substantially be the same.

c) Bar of res judicata, O 22 R9 wherein it has been provided that where a suit abates or is dismissed under O22 no fresh suit can be filed, O23 R3A no suit shall be set aside on the ground that the compromise on which the decree is based was not lawful. This means that cause of like nature relates to technical defects in which fresh suit can be instituted.

d) Even if the subsequent suit is filed by or against the L.Rs Section 1 will still be applicable.

- In the section the words court of first instance, appeal or revision can be explained with the help of an example. A v B. B raised the ground of lack of jurisdiction but the court decides that it has jurisdiction. If B files an appeal, and the appellate court decides that the lower court did not have jurisdiction then in such a case the time taken for prosecuting in the lower court+ the time taken for prosecuting the appeal will be excluded.

**Section 14(2): for computing the period of limitation for application, the time during which the applicant had prosecuted another civil proceeding with due diligence shall be excluded whether in a court of first instance or appeal or revision, against the defendant where the proceeding relate to same matter in issue and is prosecuted in good faith in a court which due to lack of jurisdiction or cause of like nature is unable to entertain it.**

**Section 14(3): notwithstanding anything contained in O23 R2, the provisions of (1) shall apply in relation to fresh suit instituted on permission granted by the court on the ground that the first suit must fail by reason of defect in the jurisdiction of the court or cause of like nature.**

- O23 R1(3) provides that where the court is satisfied that a suit must fail due to some formal defect or any other sufficient cause, then it may grant permission to the plaintiff to withdraw the suit with the liberty to institute a fresh suit in respect of the subject matter of the suit or the claim.
- O23 R2 provides that in case of any fresh suit that is instituted, the plaintiff shall be bound by the period of limitation in the same manner as if the first suit had not been instituted.
- But 14(3) provides that if the first suit had not been entertained due to lack of juris or any other cause of like nature then the benefit of exclusion as provided under 14(1) will be applicable.

**Explanation 1: the day on which the proceeding was instituted + the day on which the plaint was returned will be excluded.**

**Explanation 2: A plaintiff or an applicant resisting the appeal shall be deemed to be prosecuting under this section.**

**Explanation 3: misjoinder of parties or cause of action will be a sufficient cause.**

**Section 21: where after the institution of suit, a new plaintiff or defendant is added, the suit shall as regards such person be deemed to have been instituted on the date on which he is so added.**

**Provided that where the court is satisfied that the omission of the include a new plaintiff or defendant was due to a mistake made in good faith then the court may direct that the suit was instituted as regards to such person on any earlier date.**

- In the proviso, the Court has double discretion
- The plaintiff shall be deemed to be a party since the time the suit was instituted.
- This is done so as to prevent the new party from raising the contention that the suit is barred w.r.t him.
- The BOP of showing the good faith is on the person who wants to add the party
- Under 21, the court may also add the party suo motu.
- 2 applications will be filed together- 1) Impleadment application under O1 R10; 2) Application under Proviso to S. 21
- Applies only to suit and not applicable in case of appeals.
- **Karuppaswamy v Ram Murthy (1993)**: in this case it was held that proviso to Section 21(1) will apply only if the applicant can prove that he did not implead the party because of a mistake made in good faith. The BOP will lie on him to prove that he did so in good faith. the court will take a liberal approach while examining it. Further the court will also have double discretion i.e., even if good faith shown the court has the discretion to refuse the adding or substitution of party.
- **Ramalingam Chettiar v PK Pattabiraman and others (2001) SC**: the court held that an application under O1 R10(2) would not automatically amount to an application under Section 21(1) proviso too. Two distinct application under the two sections have to be filed. The court will deal with them separately and pass distinct orders on the same. Further, it was held that Section 21 will not apply on appeals and for that purpose O41 R20 is exhaustive.

- **O 41 R 20:** where it appears to the court that a person who was party to the suit from which appeal has been filed but has not been made a party under the present appeal and who would be interested in the result of the case, then in such a case the Court may adjourn the hearing and may direct that the person be appointed as the respondent. The period limitation for appeals will apply in the case of adding the respondent unless the court for reasons to be recorded allows that to be done.

**Section 21(2): nothing in (1) applies to parties added or substituted during the pendency of suit by assignment, devolution or due to transposition.**

- **Devolution:** A filed a suit against B but during the pendency of suit A dies. In this case A would automatically become the party without an application under Section 21(1) proviso and he shall be deemed to be a party since the institution of suit. Under O22 if no LR come in place of the plaintiff or defendant who has died then in such a case the suit is said to be abated,
- **Assignment:** A files a case against B over the title of property. During the pendency of suit, B gifts the property to C. here it shall be deemed that he has assigned his interest to C. Assignment can be done with the permission of the Court.
- **Transposition:** A and B both are joint owners of the property and they have been displaced by C. here A and B should together file a suit against C but B is not interested in filing the suit. In such a case A would file a case against C and add B as a defendant. Here B is known as proforma defendant. So in the suit the court can order that proforma defendant to be transposed to the plaintiff's shoes. In such a case also he shall be deemed to be a party since the beginning of the suit. In case if at the filing of the suit A paid the entire court fee and later on Court transposed B as a plaintiff then in such a case (1) will not apply but in case if A had only paid a part of the court fee then in such a case (1) will apply.

- **Mukesh and Ors. v Col. Harbans Waraich and Others (1999) SC:** it was held that in case if at the time of transposition in which defendant is added as the plaintiff, court fee will have to be filed then in such a case (1) will apply i.e he shall be deemed to be the party on the date when he was so transposed.

**Section 18: Acknowledgement:** if before the expiry of PP for a suit or application w.r.t the right or property if any acknowledgement of liability is made in writing and signed by the person against whom such property or right is claimed or through whom such right or property is claimed, then a fresh POL will commence from the date of acknowledgement.

Provided that if such acknowledgement is undated then in such a case oral evidence may be given to prove the date on which the acknowledgement made but oral evidence cannot be given w.r.t the content of the acknowledgement. Explanation a) 1) an acknowledgement may be sufficient even though 1) it does not specify the exact nature of property or right; 2) it is addressed to a third person; 3) or states that time for performance or payment has not yet come; 4) or is accompanied by the refusal to perform or pay; 5) or is accompanied by a set off claim. B) signed means signed by the party or the agent duly authorized in this behalf. C) an application does not include an application for the execution of a decree or order.

- 1) Admission of liability; 2) written, signed and dated; 3) application or suit but not execution application; 4) acknowledgement should be made within the PP 5) made by the party, agent, or person through whom right or property claimed but such a person must make the acknowledgement while holding the property or right.
- Section 23's no prejudice clause will not apply to limitation.
- Section 91 also manifest from this section.
- **Tilak Ram v Nathu (1960):** 1) *for Section 18 to apply it is essential that it should be in a written form and that it should be signed. If it is written then it is not an acknowledgement within the meaning of this section.* 2) *It is not necessary that it should be in the form of a promise. It merely needs to be a statement that expressly or impliedly amounts to an admission of liability. It can be even a refusal to pay or that the time for payment has not yet come.* 3) *A statement in the balance sheet also may amount to an acknowledgement of monetary liability within the meaning of this section.*
- **Laxminathan Cotton Company Ltd v Aluminum Corporation of India Ltd (1971):** 1) *acknowledgement need not state the exact details of the liability;* 2) *the liability should be present and existing.* 3) *the court will be lenient towards the person in whose favour the liability is there;* 4) *acknowledgement does not create cause of action and rather only extends the PP of the original COA.*
- Oral evidence can be given for typographical errors.
- The new PP is to be reckoned from the next day of the acknowledgement. If acknowledgement done after PP then 18 will not be valid.



**Section 19: where payment on account of debt or interest of legacy is made the expiration of the PP by the person liable to pay or any agent authorized in this behalf, the fresh period of limitation will commence from the date of payment. Provided except the payment of interest made before 1<sup>st</sup> Jan 1928, an acknowledgement of payment appears in the handwriting of or in a writing signed by the person making the payment. Expln: For the purpose of this section, where the mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment. Debt does not include money payable under a decree or the order of the court.**

- Acknowledgement is of the money debt.
- There is part payment of principal amount or interest of debt;
- Payment should have been made before the PP.
- There should be payment along with a signed written declaration by the person making the payment by the person making the payment.

- **Santlal Mahto v Kamla Prasad (1951) SC;** *the payment is required to be made within the PP but the written acknowledgement can be made after the PP too but it should be made before the institution of the suit.*
- Payment can be made by cash or cheque. When cheque is issue it is also deemed to be a written declaration of liability.
- **Rajesh Kumari v Premchand Jain (1997) Delhi HC:** in this case the Court observed that the opposite party should not be allowed to defeat the right of the opposite party by withdrawing the fund or causing the cheque to be dishonoured for any technical ground. The equity that the person derives upon the cheque shall not be allowed to be defeated by fraudulent act of the person who was liable to pay. Therefore if the cheque was post dated but within the PP and it was dishonoured then also benefit of Section 19 will be available from the date specified in the cheque.
- Under Expln in case of mortgage, the mortgagee should be in the possession of the mortgaged land and he should receive monthly rents or produce of land, then in such a case it shall be deemed to be part payment and fresh period of limitation will begin after every monthly payment.

**Section 20: 1)the term agent duly authorized in this behalf appearing in Section 18 and 19 shall in case of person with disability include his lawful guardian, committee, manager or an agent appointed by such lawful guardian, committee, manager to sign the acknowledgement or make the payment. 2) nothing in this section renders one of the several joint contractors, partners, executors or mortgagees chargeable by reason only of a written acknowledgement signed by or payment made by any of them or by their agent. 3) for the purposes of this section a)acknowledgement by a limited owner of a property who is governed by Hindu law shall be valid against the reversioner succeeding to such liability. B) acknowledgement by the manager of the HUF or his agent shall be a valid acknowledgement.**

- Acknowledgement by the partner on behalf of the partnership firm will not come under this. This section (2) only talks about personal liability.
- If A while making a will grants his property to B for his lifetime, then B is said to be a limited owner. After the death of B the property will go to those people who would be his legal heirs if A had died on that day. These people would be called reversioners. If B undertakes any loan w.r.t the property given to him and acknowledgement or payment made by him will bind the reversioner succeeding him.

**Section 22: in case of continuing breach of contract or tort, a fresh POL shall begin at every moment of the time during which the breach or the tort continues.**

- Based on the maxim de die in diem which means day to day.

**Section 23: in case of computation for suit of compensation for act done which does give rise to the Cause of action unless some injury ensues, the POL shall be reckoned from the time when injury ensues.**

- Eg: if the poisonous tree from my property has a branch overhanging on the property of B, this does not give a cause of action per se but if the horse of B eats the poisonous apple then the cause of action arises. This is an example of tort mentioned in the section.

**Section 24: All the instruments in this Act shall be deemed to have been made with reference with Gregorian calendar.**

- This calendar has been named after Pope Gregor of 1582.

**Section 15: (1): in computing the period of limitation for suit or the execution of decree which has been stayed by order or injunction, the time of the continuance of the injunction or the order, the date on which such order was passed and the date on which it was withdrawn shall be excluded.**

- Under the provisions of SRA, if the Higher Court has taken up any matter which is pending in the lower court, then it may stay the proceedings in the lower court.
- Applies in case of suits and execution decree.

**(2): in case of computing the period of limitation for suits for which a notice has to be given or in which previous sanction or the consent of the Government is required to be taken, then the period of such notice or the time required to obtain the consent or sanction of the Government or authority shall be excluded.**

**Explan: the date on which the application was made for obtaining the sanction or the consent and the date on which such order was received from the government or authority shall also be excluded.**

- Under Section 80 of CPC, two months' notice period is required in case of suits against the Government or a public servant.
- Under 86, a) any Ruler of a foreign State; b) any ambassador or Envoy of a foreign State ;c) any High Commissioner of a Commonwealth country; and d) any such member of the staff <sup>9</sup>[of the foreign State or the staff or retinue of the Ambassador] or Envoy of a foreign State or of the High Commissioner of a Commonwealth country as the Central Government may, by general or special order, specify in this behalf cannot be sued without the consent of the Central Government.
- **So in the above two conditions Section 15(2) will apply**
- **Applies to suit**

**(3) in computing the period of limitation for a suit or application for the execution of the decree by a receiver or an interim receiver in case of insolvency proceedings or the liquidator in proceeding for the winding up of a company, the period beginning with the institution of such proceedings and ending on the within 3 months after the date of appointment of the liquidator or the receiver shall be excluded.**

- In this case the suit or the application has been filed by the receiver or the liquidator.
- The period beginning with the institution of proceedings means the insolvency proceedings or the winding up proceedings of the company as the case may be.

**(4) in computing the period of limitation for the suit of possession by the purchaser at a sale in execution of a decree, the time during which the proceeding for setting aside the sale is being prosecuted shall be excluded.**

- Eg: A v B in which the decree is passed in favour of A. Now A has the power to recover money from B by sale of his property. This sale is known as execution sale. Now B does not give possession to the purchaser and files an application for setting aside the sale. Here the purchaser has the right to file a case for the recovery of possession and the PP will be 12 years. Here the time during which such proceedings are being prosecuted in the court shall be excluded and this benefit can be claimed by the purchaser in a suit for the recovery of possession.
- Applies to only suit for recovery of a property acquired in an execution sale.

**(5): in computing the period of limitation for instituting any suit, the time during which the defendant has been absent from the country or any territory outside India but under the administration of the Central Government shall be excluded.**

- This benefit of this section will only apply if the defendant had been residing for some time after the COA arose.

**Section 16: (1) when the person who would, if he were living, have the right to file a suit or make an application but before such a right accrues he dies or the right to file the suit accrues on his death, the POL shall be computed from the time there is a LR of the deceased capable of instituting such suit or making the application.**

- Eg: if the poisonous tree from A's property has a branch overhanging on the property of B, this does not give a cause of action per se but if the horse of B eats the poisonous apple then the cause of action arises. If this cause of action arises only upon the death of B, then the POL will begin only from the time that there are some L.R's of B. example of 2<sup>nd</sup> part: A while driving rashly and negligently caused the death of B. here the cause of action is arising on the death B.

**(2): when the person against whom, if he were alive, the right to institute a suit or application accrues after his death or the cause of action accrues on the death of the person, then the POL shall not be computed unless there is a LR against whom the suit or application could have been filed.**

**(3) this section does not apply to the suit to enforce the right to pre-emption, suit for possession of immovable property or of a hereditary office.**

- It does not apply to pre-emption and hereditary office because the law generally do not favour such kinds of right. It does not apply in case of possession of immovable property because the POL for this is very long.

Effect of fraud or mistake.—(1) Where, in the case of any suit or application for which a period of limitation is prescribed by this Act,—

- (a) the suit or application is based upon the fraud of the defendant or respondent or his agent; or
- (b) the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of any such person as aforesaid; or
- (c) the suit or application is for relief from the consequences of a mistake; or

(d) where any document necessary to establish the right of the plaintiff or applicant has been fraudulently concealed from him, the period of limitation shall not begin to run until plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, have discovered it; or in the case of a concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production: Provided that nothing in this section shall enable any suit to be instituted or application to be made to recover or enforce any charge against, or set aside any transaction affecting, any property which—

(i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know, or have reason to believe, that any fraud had been committed, or

(ii) in the case of mistake, has been purchased for valuable consideration subsequently to the transaction in which the mistake was made, by a person who did not know, or have reason to believe, that the mistake had been made, or

(iii) in the case of a concealed document, has been purchased for valuable consideration by a person who was not a party to the concealment and, did not at the time of purchase know, or have reason to believe, that the document had been concealed.

(2) Where a judgment-debtor has, by fraud or force, prevented the execution of a decree or order within the period of limitation, the court may, on the application of the judgment-creditor made after the expiry of the said period extend the period for execution of the decree or order: Provided that such application is made within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

- In the second provision, whether there would be exclusion for the whole period is not provided. It does not talk about exclusion.



## LIST OF CASES

**Madhuri Goud v B Damodar Reddy** (2012): in this case the trial court had passed a decree ex parte in 2006. Later on respondent's application for setting aside the decree was dismissed in after about a year. After 4 years of passing the decree, the respondent filed the appeal in the HC with an application for condonation of delay on the ground that he had handed over the certified copies of the document to his advocate on 10<sup>th</sup> Jan 2009 for the appeal and after that it was misplaced by the advocate and the fact about the losing of the document was discovered by the advocate in March 2010. HC allowed his application. But the SC observed that in this case the respondent did not take any efforts to contact the lawyer and inquire about the case until March 2010. Further, no affidavit about the fact of losing by the advocate was also filed. Also observed that limitation has been enacted with the object of ensuring that the parties approached the courts for the vindication of their rights without unreasonable delay but if sufficient cause shown then can condone the delay. Liberal approach to be taken.

**Manoharan v Sivarajan and Others** (2014): in this case the appellant's case was dismissed by the trial court for non- payment of court fee. Here the appellant had not filed the court fee due to financial constraints. Later on there was a delay in the filing of the appeal by the appellant. The Court observed that the trial court was not justified in rejecting the case due to non-payment of court fee and was against the Article 39A. Further 149 also provided that the court have the discretion to allow the party to make up for deficiency in court fee which should have been exercised in this case as there was no concealment of material facts. Therefore the appellant was entitled for condonation of delay for non-payment of the court fee. Further also observed that the appellant was entitled for condonation of delay of the appeal as he had inquired about the case from the advocate and before that he was not aware of the decision of the case as he had not received the order which the advocate claims to have sent via post.

**Bhagmal and Ors v Kunwar Lal and others (2010)SC:** in this case the trial court passed the ex parte decree in 1985. Later on the application for setting aside the ex parte decree was filed in 1989 without filing the application for condonation of delay. The appellant claimed that they did not appear in the first suit on the ground that they believed in the assurance given by the respondents under a compromise to withdraw the suit and hence the application was allowed by the trial court. But the HC dismissed the order of the trial court on the ground that no application was filed for condoning the delay. But the SC held that the application for setting aside the decree had all the elements that is taken into consideration for condoning the limitation. It is only when the execution proceedings started for the first decree that the appellant came to know about the decree and they had filed the application within 30 days of having the knowledge of the decree. SC observed that the HC had taken a hyper technical view and that the procedure is merely a handmaid of justice and condoned the delay.

**Ramji Pandey v Swaran Kali (2010) SC:** in this case the appellant had filed a suit of declaration that she is a co-sharer of the property before Additional Civil Judge. Suit passed against the appellant ex- parte. the appellant filed the application for setting aside the decree before the Additional Civil Judge. Further, the appeal was filed before Additional District Judge. The suit property was worth RS 20,000 therefore, the appeal should have been filed in the HC as it had the pecuniary juris. This contention was made by the respondent in the beginning itself but the Court did not accept it. Then the respondents filed the writ petition before the HC. At that time the pecuniary jurisdiction of the DJ was raised and the HC ordered that condonation of delay application to be filed before the ADJ under section 5 read with 14. The ADJ observed that good faith and due diligence not established as the contention regarding the lack of juris was raised in the first instance itself but the appellant did not withdraw the application and file it in the proper court. Further the appellants did not appear before HC at the time of arguments and even in trial stage they had not appeared. This indicates a lackadaisical and negligent attitude of the appellants and hence were not given the benefit of Section 5 and 14.

**Oriental Aroma Chemical Industries v Gujarat Industrial Development Corporation and others (2010) SC:** in this case there was an inordinate delay of 4 years in filing the appeal by the Government Corporation. They made false statement too to explain the delay. The Law department of Respondent1 knew about the suits and yet failed to appear in the trial court. None of them had contacted the advocates about the status of the case and none had appeared. The court had held that liberal approach had to be taken while deciding the sufficient cause and no separate yardstick existed for determining the delay in case of Government but can take into consideration the file pushing and passing the buck ethos of the Government Company. But in this case the Court did not accept the sufficient cause and rejected the application.

**Darshan Singh and Ors v Gurdev Singh (1994) SC:** this case related to S. 6,7 and 8. Held 8 is a proviso of S. 6 and 7. Gave three examples of Section 6 and 7- 1) if at the time of COA, the person was a minor and as per S. 6, the PP was 12 years after the cessation of disability. But if he dies, the LR will have 3 years from the date of his death or of his having attained the majority whichever had occurred earlier 2) if the PP is 12, the person is 16 years at the time of COA, he would have the right to sue within 10 years. 3) if the PP is 12, the person was 4 years, his POL would lapse before he attains the age of majority and hence he would get 3 years to file the suit after attaining the majority as per 8.

**Bailochan Karan v Basant Kumari and Anr (1999):** in this case the suit was filed by the respondent against the appellant for trespass of the disputed property. in this case the respondents were in possession of the land since 1953 when the appellant was still a minor. He had a stake in that property. The respondents had obtained the title of the property by virtue of adverse possession under 27. The said twelve years had lapsed while the appellant was a minor. He claimed that the property belonged to him and he had 12 years for filing the suit after the disability ceases. But the court held that the suit should have been filed within 3 years from the date of the cessation of the disability. 8 is a proviso of Section 6 and 7.

**Sarda Prasad and Ors v Lala Juman Prasad and Ors (1963):** in this case, the court had to deal with execution application for possession of immovable property based on the decree of partition. The court had to deal with 2 issues- 1) whether discharge involves discharge only in cases of monetary liability and are not related to immovable property. The court held that discharge includes discharge from every kind liability including liability related to immovable property. Similarly if this section was only limited to monetary claim then the provision for exempting pre-emption from the operation of section 7 would not have been necessary. This case was before adoption of the 1963 Act. Before that the explanation was not there. 2) whether Order 32(6) and (7) debar the Karta from giving discharge w.r.t minor as application for execution was filed wherein some of the members of the family were minor and to avail the benefit of Section 7, the Karta should not have been able to give concurrence. Under order 32 R6, a next of friend or a guardian is not entitled to take money or movable property on behalf of minor under 1) a compromise before decree or order or 2) under a decree or order in favour of the minor; without the leave of the court. Under O32 R7, a guardian or the next of friend cannot enter into a compromise or an agreement on behalf of the minor without the leave of the court. On this the court held that these Orders apply in case of compromise and are related to movable and money claims which in Section 7 does not apply and hence Karta can give concurrence on behalf of minor in application for execution of decree.

**State of HP and Ors v Himachal Techno Engineers and Ors (2010):** in this case the application for setting aside the award was filed 1 day of the POL of 3 months as provided under section 34 of Arbitration Act. As per 34(3), Section 5 will not apply in Arbitration cases. There were 2 contentions- 1) in this case the award was first received by the watchman and the Engineer who knew about the case received it only after 2 days. So the question was should the date of reckoning be the date on which the award was delivered to watchman or should it be from the date when the Engineer received it. The court held that award either confers or takes away some rights of the parties and hence date of reckoning should have been applicable from the next day when the engineer received the award. Section 12(1) will be applicable in case of Arbitration Act as there is no provision in the Act which states that this section shall not apply to such proceedings. Hence the application was found to be within the PP. 2) whether in all months the maximum number of days should be taken as 30 days. The court held that 30 days is not the standard number. Depending on the days in the month in question there can be 30, 31, 28 or 29 days in a month.

**R. Indira Sarathchandra v State of Tamil Nadu and Ors (2011):** it was held that eventhough no period has been prescribed for filing the application for the copy of the judgement and delivery thereof, but once a application is made within PP, the time spent in preparation and supply of the copy will be excluded irrespective of the time taken for filing the application.

**State of Tripura and Ors v Arbinda Chakraborty and Ors (2014):** in this case the respondent was appointed as the librarian in 1964. He took leave for 1 year for pursuing masters in library studies without informing. The Appellant sent him a notice to come or else his service will be terminated but he did not come and hence he removed from the job. Later again the appellant appointed him but it was only done on temporary basis in 1967. Later, he claimed seniority and for that he claimed that his appointment should be considered to have been made in 1964. This claim was ejected by the appellant and repeatedly representations were made to the appellant for 13 years. It was only after 13 years that the case was filed. In this case the SC held that repeated representations will not extend the POL. It should have been filed when the COA first arose. Otherwise it would frustrate the purpose of Limitation Act.

# Periods in the Limitation Act, 1963

Part	Heading	Normal Period	Exceptions		
			Description	Period	Time runs from
1	Suits Relating to Accounts	Three years			
2	Suits Relating to Contracts	Three years			
3	Suits Relating to Declarations	Three years			
4	Suits Relating to decrees and instruments	Three years	To recover possession of immovable property mortgaged and afterwards transferred by the mortgagee for a valuable consideration.	Twelve years	When the transfer becomes known to plaintiff.

5	Suits Relating to Immovable Property	Twelve years	For foreclosure	Thirty years	When the money secured by the mortgage becomes due.
6	Suits Relating to movable Property	Three years			
7	Suits Relating to torts	One Year	By executors, administrations or representatives under the Indian Fatal Accidents Act, 1855	Two Years	The date of the person killed.
			Under the Legal Representative Suits Act, 1855 against an executor, administration or other representative.	Two Years	When the wrong complained of is done.



			Against one who, having a right to use property for specific purposes, perverts it to other purposes.	Two Years	When the perversion first becomes known to the person injured thereby.
			For compensation for obstructing a way or a water course.	Three years	The date of the obstruction.
			For compensation for diverting a water course.	Three years	The date of the diversion.
			For compensation for trespass upon immovable property.	Three years	The date of the trespass.
			For compensation for infringing copyright or any other exclusive privilege.	Three years	The date of the infringement.

			To restrain waste.	Three years	When the waste begins.
			For compensation for injury caused by an injunction wrongfully obtained.	Three years	When the injunction ceases.
			For compensation:		
			a) For wrongfully taking or detaining any specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion.	Three years	When the person having the right to the possession of the property first learns in whose possession it is.
			b) For wrongfully taking or injuring or wrongfully detaining any other specific movable property.	Three years	When the property is wrongfully taken or injured, or

			b) For wrongfully taking or injuring or wrongfully detaining any other specific movable property.	Three years	When the property is wrongfully taken or injured, or when the detainee's possession become unlawful.
8	Suits Relating to trust and trust property	Twelve years	To recover possession on immovable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration.	Three years	When the transfer becomes known to the plaintiff.
			To set aside a transfer of movable property	Three years	When the transfer,

			Comprised in a Hindu, Muslim or Buddhist religious of charitable endowment, made by a manager thereof for a valuable consideration.		Becomes known to the plaintiff.
9	Suits Relating to miscellaneous matters	One year	Upon a judgment including a foreign judgment, or a recognizance.	Three years	The date of the judgment of recognizance.
			For property which the plaintiff has conveyed while insane.	Three years	When the plaintiff is restored to sanity and has knowledge of the conveyance.
			To make good out of the general estate of a deceased trustee the loss	Three years	The date of the trustee's death or if the loss

			occasioned by a breach of trust.	Three years	has not then resulted, the date of the loss.
			To establish a periodically recurring right.	Three years	When the plaintiff is first refused the enjoyment for the right.
			By a Hindu for arrears of maintenances.	Three years	When the arrears are payable.
			For a legacy or for a share of a residue bequeathed by a testator or for a distributive share of the property of an intestate against an executor or an administrator or an	Twelve Years	When the legacy of share becomes payable or deliverable.

			administrator or an administrator or some other person legally charged with the duty of distributing the estate.	Twelve Years	When the legacy of share becomes payable or deliverable.
			For possession of a hereditary office. Explanation – A hereditary office is possessed when the properties thereof are usually received, or (if there are no properties) when the duties thereof are usually performed.	Twelve Years	When the defendant takes possession of the office adversely to the plaintiff.
			Suit during the life of a Hindu or Muslim female by a Hindu or Muslim who, if the female died at the date	Twelve Years	The date of the alienation.

			Of instituting the suit, would be entitled to the possession of land, to have a alienation of such land made by the female declared to be void except for her life or until her remarriage.		
			By Hindu governed by Mitakshara Law to set aside his father's alienation or ancestral property.	Twelve Years	When the Aileen takes possession of the property.
			By a person excluded from a joint-family Property to enforce a right to share therein.	Twelve Years	When the exclusion Becomes known to the plaintiff.

			By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed of which it has discontinued the possession.	Thirty years	The date of the dispossession of discontinuance.
10	Suits for which here is no prescribed period	Thirty days	Any suit for which no period of limitation is provided elsewhere in this Schedule.	Three years	When the right to sue accrues.
			Appeal from an order of acquittal,-		
			a) Under sub-section (1) or sub-section (2) of section 417 of the Code of Criminal Procedure, 1898;	Ninety days	The date of the order appealed from.



			b) Under sub-section (3) of Section 417 of the Code.	Thirty days	The date of the grant of Special leave.
			Under Code of Criminal Procedure, 1898:- From any other sentence or any order not being an order of acquittal to the High Court	Sixty days	The date of the sentence or order.
			Under the Code of Civil Procedure, 1908 To a High Court from any decree or order	Ninety days	The date of the decree or order.
			For leave to appear and defend a suit under summary procedure.	Ten days	When the summons is served.
			Under the Code of Civil Procedure, 1908 to have the legal representative	Ninety days	The date of the death of the plaintiff,

			of a deceased plaintiff or appellant or of a deceased defendant or respondent, made a party.	Ninety days	appellant, defendant or respondent, as the case may be.
			Under the same Code for an order to set aside an abatement.	Sixty days	The date of abatement.
			For leave to appeal as a pauper:-		
			a) To High Court	Sixty days	The date of decree appealed from.
			b) To any other Court	Thirty days	The date of decree appealed from.
			To any court for the exercise of its powers of revision under the Code of Civil Procedure, 1908	Ninety days	The date of the decree or order of sentence sought to be

			or the Code of Criminal Procedure, 1898		revised.
			To the High Court for a certificate of fitness to appeal to the Supreme Court under Clause (1) of Article 132, Article 133 or sub-clause © of clause (e) of Article 134 of the Constitution or under any other law for the time being in force.	Sixty days	The date of the order or sentence.
			To the Supreme Court for Special leave to appeal,		
			a) In a case involving death sentence;	Sixty days	The date of the judgment, final order or sentence

			b) In a case where leave to appeal was refused by the High Court:	Sixty days	The date of the order of refusal.
			c) In any other case	Ninety days	When the date of the judgment or order.
			For delivery of possession by a purchaser of immovable property at a sale in execution of a decree.	One year	When the sale becomes absolute.
			For the enforcement of a decree granting a mandatory injunction.	Three years	The date of the decree or where a date is fixed for performance, such date.

			For the enforcement of a decree granting a mandatory injunction.	Three years	The date of the decree or where a date is fixed for performance, such date.
			b) For execution of any decree (other than a decree granting a mandatory injunction) or order of any civil court.	Twelve years	Where the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any proper to be made at a certain date or

					at recurring period, when default in making the payment or delivery in respect of which execution is sought, takes place: Provided that an application for the enforcement or execution of a decree granting perpetual injunction shall not be subject of any period of limitation.
11	Other applications	Three years			

- Q1. What is the period of Limitation in a suit by a Principal against his agent for Movable property received by the latter and not accounted for?
- a) Three years from the date the agency terminates
- b) Three years from the date when the account is demanded and refused during the continuance of agency
- c) Either (a) or (b)
- d) None of the above

- Q2. What is the period of Limitation in a suit by a Partner against the Dissolved Partnership Firm for an account and a share of profits of dissolved partnership?
- a) Three years from the date of Dissolution
- b) Three years from the date when the account is demanded and refused
- c) Both (a) & (b)
- d) None of the above



- Q3. What is the period of Limitation in a suit by a Worker against the Employer in respect of wages earned?
- a) Three years from the date when the wages Accrued becomes payable
- b) Three years from the date when the account is demanded and refused
- c) Either (a) or (b)
- d) None of the above

- Q4. What is the period of Limitation in a suit by a Seaman Worker against the Employer in respect of wages earned on a voyage?
- a) Three years from the date when the wages Accrued becomes payable
- b) Three years from the date when the account is demanded and refused
- c) Three years from the end of the Voyage during which the wages are earned
- d) None of the above

- Q5. What is the period of Limitation in a suit by a Person against a Carrier for Compensation for non-delivery of or delay in delivering the goods?
- a) Three years from the date of Delivery of goods
- b) Three years from the date when the goods ought to be delivered
- c) Three years from the date of the Sale
- d) None of the above

- Q6. What is the period of Limitation in a suit by a Person against a Carrier for Compensation for Losing or Injuring the goods?
- a) Three years from the date when the Loss or Injury occurs
- b) Three years from the date when the goods ought to be delivered
- c) Three years from the date of the Sale
- d) None of the above

- Q7. What is the period of Limitation in a suit by a Person for the price of goods sold & Delivered when no fixed period of credit is agreed upon?
- a) Three years from the date when the Period of Credit expires
- b) Three years from the date of delivery of goods
- c) Three years from the date of the Sale
- d) None of the above

- Q8. What is the period of Limitation in a suit by a Person for the price of goods sold & Delivered to be paid for after the expiry of a fixed period of credit?
- a) Three years from the date when the Period of Credit expires
- b) Three years from the date of delivery of goods
- c) Three years from the date of the Sale
- d) None of the above

- Q9. What is the period of Limitation in a suit for the price of Trees or Growing Crops sold by the Plaintiff to the defendant where no fixed period of Credit is agreed upon?
- a) Three years from the date when the Period of Credit expires
- b) Three years from the date of delivery of goods
- c) Three years from the date of the Sale
- d) None of the above

- Q10. What is the period of Limitation in a suit for Money lent under an agreement that it shall be payable on demand?
- a) **Three years from the date when the Loan is made**
- b) Three years from the date when the demand is made
- c) **Three years from the date when the Cheque is paid**
- d) None of the above



- Q11. What is the period of Limitation in a suit for Money payable for interest upon money due from the Defendant to the Plaintiff?
- a) Three years from the date when the Loan is made
- b) Three years from the date when the Interest becomes due
- c) Three years from the date when the Interest Accrued
- d) None of the above

- Q12. What is the period of Limitation in a suit for compensation for breach of a promise to do anything at a specified time, or upon the happening of a specified contingency?
- a) Three years from the date when the Promise made
- b) Three years from the date when the time specified arrives or the contingency happens
- c) Three years from the date when the breach of a promise made occurred
- d) None of the above

- Q13. What is the period of Limitation in a suit by a Person on a single Bond issued subject to certain condition/conditions where a day is specified for payment?
- a) Three years from the date of executing the Bond
- b) Three years from the date when the Condition is broken
- c) Three years from the day so specified
- d) None of the above

- Q14. What is the period of Limitation in a suit by a Surety against the principal Debtor?
- a) Three years from the date when the Surety pays the Creditor
- b) Three years from the date of Breach of Principal Debtor to the Creditor
- c) Three years from the day of filing the suit by the creditor
- d) None of the above

- Q15. What is the period of Limitation in a suit by a Person (Legal Heir) on a Policy of Insurance when the sum insured is payable after proof of death has been given to or received by the insurers?
- a) Three years from the date of the death of the deceased
- b) Three years from the date on which claim on the policy is denied, either partly or wholly
- c) Either (a) or (b)
- d) None of the above

- Q16. What is the period of Limitation in a suit by a Person on a Policy of Insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers?
- a) Three years from the date of the occurrence causing the loss
- b) Three years from the date on which claim on the policy is denied, either partly or wholly
- c) Either (a) or (b)
- d) None of the above

- Q17. What is the period of Limitation in a suit by a Person for Arrears of Rent ?
- a) Three years from the date when the arrears become due
- b) Three years from the date of filing the suit against the Tenant
- c) Three years from the date on which the Property was given on Rent to the Tenant
- d) None of the above

- Q18. What is the period of Limitation in a suit by a vendor of immovable property for personal payment of un-paid purchase money ?
- a) Three years from the time fixed for completing the sale
- b) Three years from the date on which the title is accepted after the time fixed for completion of sale
- c) Either (a) or (b)
- d) None of the above



- Q19. What is the period of Limitation in a suit by a Person for specific performance of a Contract ?
- a) Three years from the date fixed for the performance
- b) Three years from the date on which the plaintiff has noticed that Performance is refused
- c) Either (a) or (b)
- d) None of the above

- Q20. What is the period of Limitation in a suit by a Person for compensation for the Breach of any contract, Express or Implied, not herein specially provided for?
- a) Three years from the date when the contract is broken
- b) Three years from the date when the breach in respect of which the suit is instituted occurs
- c) Three years from the date when the Contract ceases
- d) Either (a) or (b) or (c)
- e) None of the above

- Q21. What is the period of Limitation in a suit by a Person to declare the forgery of an instrument issued or registered or to obtain any other declaration?
- a) Three years from the date when the issue or registration becomes known to the Plaintiff
- b) Three years from the date when the right to sue first accrues
- c) Both (a) & (b)
- d) None of the above

- Q22. What is the period of Limitation in a suit by a Person to cancel or set aside an instrument or decree or for the rescission of a contract?
- a) Three years from the date when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him
- b) Twelve years from the date when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him
- c) Thirty years from the date when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first becomes known to him
- d) None of the above

- Answer Sheet:

- |         |        |        |
|---------|--------|--------|
| • Q1. c | Q11. b | Q21. c |
| • Q2. a | Q12. b | Q22. a |
| • Q3. a | Q13. c |        |
| • Q4. c | Q14. a |        |
| • Q5. b | Q15. c |        |
| • Q6. a | Q16. c |        |
| • Q7. b | Q17. a |        |
| • Q8. a | Q18. c |        |
| • Q9. c | Q19. c |        |
| • Q10.a | Q20. d |        |

# THE PREVENTION OF CORRUPTION ACT, 1988

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27. Appeal and revision.

28. Act to be in addition to any other law.

29. Amendment of the Ordinance 38 of 1944.

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30. Repeal and saving.

31. [Repealed.]

# THE PREVENTION OF CORRUPTION ACT, 1988

## ACT NO. 49 OF 1988

- An Act to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith.
- BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows:—

# CHAPTER I

## PRELIMINARY

### **1. Short title and extent.—**

- (1) This Act may be called the Prevention of Corruption Act, 1988.
- (2) It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India outside India.

### **2. Definitions.—**In this Act, unless the context otherwise requires,—

- (a) “election” means any election, by whatever means held under any law for the purpose of selecting members of Parliament or of any Legislature, local authority or other public authority;
- (aa) “prescribed” means prescribed by rules made under this Act and the expression “prescribe” shall be construed accordingly;]
- (b) “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest;



**Explanation.**—In this clause “State” includes a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(c) “public servant” means—

- (i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) any person in the service or pay of a local authority;
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
- (iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

(v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;

(vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;

(vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

(viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;

(xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;

(xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority.

(d) “undue advantage” means any gratification whatever, other than legal remuneration.

**Explanation.**—For the purposes of this clause,—

(a) the word “gratification” is not limited to pecuniary gratifications or to gratifications estimable in money;

(b) the expression “legal remuneration” is not restricted to remuneration paid to a public servant, but includes all remuneration which he is permitted by the Government or the organisation, which he serves, to receive.

Explanation 1.—Persons falling under any of the above sub-clauses are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

## CHAPTER II

# APPOINTMENT OF SPECIAL JUDGES

**3. Power to appoint special Judges.**—(1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:—

- (a) any offence punishable under this Act; and
- (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

(2) A person shall not be qualified for appointment as a special Judge under this Act unless he is or has been a Sessions Judge or an Additional Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1973 (2 of 1974).

**4. Cases triable by special Judges.**—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or in any other law for the time being in force, the offences specified in sub-section (1) of section 3 shall be tried by special Judges only.

(2) Every offence specified in sub-section (1) of section 3 shall be tried by the special Judge for the area within which it was committed, or, as the case may be, by the special Judge appointed for the case, or where there are more special Judges than one for such area, by such one of them as may be specified in this behalf by the Central Government.

(3) When trying any case, a special Judge may also try any offence, other than an offence specified in section 3, with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the trial of an offence shall be held, as far as practicable, on day-to-day basis and an endeavour shall be made to ensure that the said trial is concluded within a period of two years:

Provided that where the trial is not concluded within the said period, the special Judge shall record the reasons for not having done so:

Provided further that the said period may be extended by such further period, for reasons to be recorded in writing but not exceeding six months at a time; so, however, that the said period together with such extended period shall not exceed ordinarily four years in aggregate.

**5. Procedure and powers of special Judge.**—(1) A special Judge may take cognizance of offences without the accused being committed to him for trial and, in trying the accused persons, shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974), for the trial of warrant cases by Magistrates.

(2) A special Judge may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof and any pardon so tendered shall, for the purposes of sub-sections (1) to (5) of section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under section 307 of that Code.

(3) Save as provided in sub-section (1) or sub-section (2), the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as they are not inconsistent with this Act, apply to the proceedings before a special Judge; and for the purposes of the said provisions, the Court of the special Judge shall be deemed to be a Court of Session and the person conducting a prosecution before a special Judge shall be deemed to be a public prosecutor.

(4) In particular and without prejudice to the generality of the provisions contained in sub-section (3), the provisions of sections 326 and 475 of the Code of Criminal Procedure, 1973 (2 of 1974), shall, so far as may be, apply to the proceedings before a special Judge and for the purposes of the said provisions, a special Judge shall be deemed to be a Magistrate.

(5) A special Judge may pass upon any person convicted by him any sentence authorised by law for the punishment of the offence of which such person is convicted.

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge under the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944).



**6. Power to try summarily.**—(1) Where a special Judge tries any offence specified in sub-section (1) of section 3, alleged to have been committed by a public servant in relation to the contravention of any special order referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955 (10 of 1955) or of an order referred to in clause (a) of sub-section (2) of that section, then, notwithstanding anything contained in sub-section (1) of section 5 of this Act or section 260 of the Code of Criminal Procedure, 1973 (2 of 1974), the special Judge shall try the offence in a summary way, and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the special Judge to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily.

The special Judge shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates.

(2) Notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 (2 of 1974), there shall be no appeal by a convicted person in any case tried summarily under this section in which the special Judge passes a sentence of imprisonment not exceeding one month, and of fine not exceeding two thousand rupees whether or not any order under section 452 of the said Code is made in addition to such sentence, but an appeal shall lie where any sentence in excess of the aforesaid limits is passed by the special Judge.

## CHAPTER III

# OFFENCES AND PENALTIES

**7. Offence relating to public servant being bribed.**—Any public servant who,—

- (a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or
- (b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or
- (c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2.—For the purpose of this section,—

- (i) the expressions “obtains” or “accepts” or “attempts to obtain” shall cover cases where a person being a public servant, obtains or “accepts” or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;
- (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

**7A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.**—Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

**8. Offence relating to bribing of a public servant.**—(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention—

- (i) to induce a public servant to perform improperly a public duty; or
- (ii) to reward such public servant for the improper performance of public duty, shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisation shall be punishable with fine.

Illustration.—A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section.

Explanation.—It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the later.

**9. Offence relating to bribing a public servant by a commercial organisation.—(1)**

Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending—

- (a) to obtain or retain business for such commercial organisation; or
- (b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under section 8, whether or not such person has been prosecuted for such offence.

(3) For the purposes of section 8 and this section,—

(a) “commercial organisation” means—

- (i) a body which is incorporated in India and which carries on a business, whether in India or outside India;
  - (ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;
  - (iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or
  - (iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;
- (b) “business” includes a trade or profession or providing service;
- (c) a person is said to be associated with the commercial organisation, if such person performs services for or on behalf of the commercial organisation irrespective of any promise to give or giving of any undue advantage which constitutes an offence under sub-section (1).

Explanation 1.—The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.



Explanation 2.—Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

Explanation 3.—If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who has performed services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under sections 7A, 8 and this section shall be cognizable.

(5) The Central Government shall, in consultation with the concerned stakeholders including departments and with a view to preventing persons associated with commercial organisations from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary which can be put in place for compliance by such organisations.

**10. Person in charge of commercial organisation to be guilty of offence.**—Where an offence under section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer shall be of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation.—For the purposes of this section, “director”, in relation to a firm means a partner in the firm.]

**11. Public servant obtaining 1 [undue advantage], without consideration from person concerned in proceeding or business transacted by such public servant.**—Whoever, being a public servant, accepts or obtains 2 \*\*\* or attempts to obtain for himself, or for any other person, any 1 [undue advantage] without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by such public servant, or having any connection with the 3 [official functions or public duty] of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned

Shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

**12. Punishment for abetment of offences.**—Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine.

**13. Criminal misconduct by a public servant.**— (1) A public servant is said to commit the offence of criminal misconduct,—

- (a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or
- (b) if he intentionally enriches himself illicitly during the period of his office.

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2.—The expression “known sources of income” means income received from any lawful sources.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than 2 [four years] but which may extend to 3 [ten years] and shall also be liable to fine.

**14. Punishment for habitual offender.**—Whoever convicted of an offence under this Act subsequently commits an offence punishable under this Act, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and shall also be liable to fine.

**15. Punishment for attempt.**—Whoever attempts to commit an offence referred to in 5 [clause (a)] of sub-section (1) of section 13 shall be punishable with imprisonment for a term 6 [which shall not be less than two years but which may extend to five years] and with fine.

**16. Matters to be taken into consideration for fixing fine.**—Where a sentence of fine is imposed under 7 [section 7 or section 8 or section 9 or section 10 or section 11 or sub-section (2) of section 13 or section 14 or section 15], the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in 8 [clause (b)] of sub-section (1) of section 13, the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.

## CHAPTER IV

### INVESTIGATION INTO CASES UNDER THE ACT

**17. Persons authorised to investigate.**—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

Provided further that an offence referred to in 1 [clause (b) of sub-section (1)] of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

**17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—**

No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.

**18. Power to inspect bankers' books.**—If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section:

Provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation.—In this section, the expressions “bank” and “bankers' books” shall have the meanings respectively assigned to them in the Bankers' Books Evidence Act, 1891 (18 of 1891).



## CHAPTER IVA

# ATTACHMENT AND FORFEITURE OF PROPERTY

### **18A. Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment**

**under this Act.**—(1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002 (15 of 2003), the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.

(2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall have effect, subject to the modification that the references to “District Judge” shall be construed as references to “Special Judge”.]

## CHAPTER V

# SANCTION FOR PROSECUTION AND OTHER MISCELLANEOUS PROVISIONS

**19. Previous sanction necessary for prosecution.**—(1) No court shall take cognizance of an offence punishable under 1 [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction 2 [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

- (a) in the case of a person 3 [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
- (b) in the case of a person 3 [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office:

Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless—

- (i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and
- (ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding:

Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant:

Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt:

Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one month:

Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.—For the purposes of sub-section (1), the expression “public servant” includes such person—

- (a) who has ceased to hold the office during which the offence is alleged to have been committed; or
- (b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed.

(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

- (a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;
- (b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.—For the purposes of this section,—

- (a) error includes competency of the authority to grant sanction;
- (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

**20. Presumption where public servant accepts any undue advantage.**—Where, in any trial of an offence punishable under section 7 or under section 11, it is proved that a public servant accused of an offence has accepted or obtained or attempted to obtain for himself, or for any other person, any undue advantage from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or attempted to obtain that undue advantage, as a motive or reward under section 7 for performing or to cause performance of a public duty improperly or dishonestly either by himself or by another public servant or, as the case may be, any undue advantage without consideration or for a consideration which he knows to be inadequate under section 11.]

**21. Accused person to be a competent witness.**—Any person charged with an offence punishable under this Act, shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial:

Provided that—

(a) he shall not be called as a witness except at his own request;

(b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;

(c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless—

- (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or
- (ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or
- (iii) he has given evidence against any other person charged with the same offence.



**22. The Code of Criminal Procedure, 1973 to apply subject to certain modifications.—**

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if,—

- (a) in sub-section (1) of section 243, for the words “The accused shall then be called upon”, the words “The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon” had been substituted;
- (b) in sub-section (2) of section 309, after the third proviso, the following proviso had been inserted, namely:—
- (c) “Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 has been made by a party to the proceeding.”;
- (c) after sub-section (2) of section 317, the following sub-section had been inserted, namely:—

“(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination.”;

(d) in sub-section (1) of section 397, before the Explanation, the following proviso had been inserted, namely :—

“Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings, the Court shall not ordinarily call for the record of the proceedings:—

- (a) without giving the other party an opportunity of showing cause why the record should not be called for; or
- (b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copies.”.

**23. Particulars in a charge in relation to an offence under 1 [section 13(1)(a)].—**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), when an accused is charged with an offence under 2 [clause (a)] of sub-section (1) of section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 of the said Code:

Provided that the time included between the first and last of such dates shall not exceed one year.

**24. Statement by bribe giver not to subject him to prosecution.]** Omitted by the Prevention of Corruption (Amendment) Act, 2018 (16 of 2018), s. 17 (w.e.f. 26-7-2018).

**25. Military, Naval and Air Force or other law not to be affected.—**(1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under the Army Act, 1950 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), the Border Security Force Act, 1968 (47 of 1968), the Coast Guard Act, 1978 (30 of 1978) and the National Security Guard Act, 1986 (47 of 1986).

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), the court of a special Judge shall be deemed to be a court of ordinary criminal justice.

**26. Special Judges appointed under Act 46 of 1952 to be special Judges appointed under this Act.**—Every special Judge appointed under the Criminal Law Amendment Act, 1952, for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly, on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.

**27. Appeal and revision.**—Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a High Court as if the court of the special Judge were a court of Session trying cases within the local limits of the High Court.

**28. Act to be in addition to any other law.**—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

**29. Amendment of the Ordinance 38 of 1944.**—In the Criminal Law Amendment Ordinance, 1944,—

- (a) in sub-section (1) of section 3, sub-section (1) of section 9, clause (a) of section 10, subsection (1) of section 11 and sub-section (1) of section 13, for the words “State Government”, wherever they occur, the words “State Government or, as the case may be, the Central Government” shall be substituted;
- (b) in section 10, in clause (a), for the words “three months”, the words “one year” shall be substituted;
- (c) in the Schedule,—
  - (i) paragraph 1 shall be omitted;
  - (ii) in paragraphs 2 and 4,—

- (a) after the words “a local authority”, the words and figures “or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or a society aided by such corporation, authority, body or Government company” shall be inserted;
- (b) after the words “or authority”, the words “or corporation or body or Government company or society” shall be inserted;
- (iii) for paragraph 4A, the following paragraph shall be substituted, namely:—  
“4A. An offence punishable under the Prevention of Corruption Act, 1988.”;
- (iv) in paragraph 5, for the words and figures “items 2, 3 and 4”, the words, figures and letter “items 2, 3, 4 and 4A” shall be substituted.

**29A. Power to make rules.**—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) guidelines which can be put in place by commercial organisation under section 9;
- (b) guidelines for sanction of prosecution under sub-section (1) of section 19;
- (c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act, shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**30. Repeal and saving.**—(1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act.

**31. [Omission of certain sections of Act 45 of 1860.]**—Rep. by the Repealing and Amending Act, 2001(30 of 2001), s.2 and the First Schedule (w.e.f. 3-9-2001).



# FAQ On Prevention of Money Laundering Act, 2002

Acknowledgement: <https://taxguru.in/rbi/faq-prevention-money-laundering-act-2002.html#:~:text=As%20stated%20in%20the%20Preamble,involves%20in%2C%20money%2Dlaundering.>

<https://www.lexology.com/library/detail.aspx?g=9e915b4e-ff0d-4139-a0cc-18a7f4cf34f6#:~:text=Part%20B%20offences%20include%20offences,million%20rupees%20has%20been%20prescribed.>

## **Q1. What is PMLA?**

PMLA refers to the Prevention of Money Laundering Act, 2002.

## **Q2. When did the Prevention of Money Laundering Act come into force?**

The Prevention of Money Laundering Act, 2002 has come into force with effect from 1 July, 2005. The Act was amended by Prevention of Money Laundering (Amendment) Act 2009 w.e.f 01.06.2009.

## **Q3. Does the Act extend to the whole of India?**

Yes, it extends to the whole of India including the state of Jammu & Kashmir.

#### **Q4. What is the object of the enactment of Prevention of Money Laundering Act, 2002?**

As stated in the Preamble to the Act, it is an Act to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering.

#### **Q5 Which agency administers the Prevention of Money Laundering Act?**

The Directorate of Enforcement of the Department of Revenue, Ministry of Finance is responsible for administering the Prevention of Money Laundering Act.

#### **Q6. What is Money Laundering?**

The goal of a large number of criminal activities is to generate profit for an individual or a group. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. Illegal arms sales, smuggling, and other organized crime, including drug trafficking and prostitution rings, can generate huge amount of money. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create the incentive to “legitimize” the ill-gotten gains through money laundering. The money so generated is tainted and is in the nature of ‘dirty money’. Money Laundering is the process of conversion of such proceeds of crime, the ‘dirty money’, to make it appear Legitimate Money.

## **Q7. How does Money Laundering take place?**

Usually, the process of Money Laundering goes through the following three stages :

(a) Placement:- The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial system.

This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.

(b) Layering:- The second stage of Money Laundering is layering. In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co-operate in anti Money Laundering investigations.

(c) Integration:- Having successfully processed his criminal profits through the first two stages of Money Laundering, the Launderer then moves to this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launderer might then choose to invest the funds into real estate, business ventures & luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies. The above three steps may not always follow each other. At times, illegal money may be mixed with legitimate money, even prior to placement in the financial system. In certain cash rich businesses, like Casinos (Gambling) and Real Estate, the proceeds of crime may be invested without entering the mainstream financial system at all.

### **Q8. What has been the international response to tackle Money Laundering?**

In response to mounting concern over money laundering, the Financial Action Task Force on money laundering (FATF) was established by the G-7 Summit in Paris in 1989 to develop a co-ordinated international response. One of the first tasks of the FATF was to develop Recommendations which set out the measures national governments should take to implement effective anti-money laundering programmes.

### **Q9. What steps have been taken by the Government of India to tackle the menace of Money Laundering?**

Government of India is committed to tackle the menace of Money Laundering and has always been part of the global efforts in this direction. India is signatory to the following UN Conventions, which deal with Anti Money Laundering / Countering the Financing of Terrorism :

1. International Convention for the Suppression of the Financing of Terrorism (1999)
2. UN Convention against Transnational Organized Crime (2000)
3. UN Convention against Corruption (2003)

In pursuance to the political Declaration adopted by the special session of the United Nations General Assembly (UNGASS) held on 8 to 10 June 1998 (of which India is one of the signatories) calling upon member states to adopt Anti Money Laundering Legislation & Programme, the Parliament has enacted a special law called the 'Prevention of Money Laundering Act, 2002' (PMLA 2002). This Act has been substantially amended, by way of enlarging its scope, in 2009 (w.e.f. 1.6.2009), by enactment of Prevention of Money Laundering (Amendment) Act, 2009.

### **Q10. What is the offence of Money Laundering?**

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering.

( Section 3 of PMLA)

### **Q11. What are proceeds of crime?**

“Proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;(Section 2(1)(u) of PMLA)

### **Q12. What is a `scheduled offence' ?**

The offences listed in the Schedule to the Prevention of Money Laundering Act, 2002 are scheduled offences in terms of Section 2(1)(y) of the Act.

With the amendment of the Act in 2009, a large number of offences have been included in the Schedule of the Act. The scheduled offences are divided into three parts – Part A, Part B, & Part C.

In Part A, certain serious offences such as those connected with waging war against the Nation, circulation of Fake Indian Currency Notes, offences relating to Narcotic Drugs, etc. have been included, wherein no monetary limit for initiating action under PMLA has been prescribed.

In relation to offences under Part 'B' of the schedule, the value involved should be Rs 10 million **or More**.

Part 'C' of the Schedule deals with trans-border crimes, and is a vital step in tackling Money Laundering across international boundaries.

### **Q13. What is a Predicate Offence?**

Every Scheduled Offence is a Predicate Offence. The Scheduled Offence is called Predicate Offence as the offence is a prerequisite and integral part of Money Laundering Offence.



**Q14. What are the major Acts covered in the Schedule?**

- (a) Indian Penal Code (IPC)
- (b) NDPS Act
- (c) Unlawful Activities (Prevention ) Act
- (d) Prevention of Corruption Act
- (e) Customs Act
- (f) SEBI Act
- (g) Copyright Act
- (h) Trademark Act
- (i) Information Technology Act
- (j) Explosive Act
- (k) Wild Life (Protection) Act

The various Acts covered in the Schedule to PMLA are given in Annexure A.

**Q15. Who investigates Scheduled Offences?**

Scheduled Offences are investigated by agencies such as Police, Customs, SEBI, NCB, CBI under their respective Acts.

### **Q15. Who investigates Scheduled Offences?**

Scheduled Offences are investigated by agencies such as Police, Customs, SEBI, NCB, CBI under their respective Acts.

### **Q16. Who can investigate a case of Money Laundering ?**

As per Sections 48 & 49 of the PMLA, the officers of the Directorate of Enforcement have been given powers to investigate cases of Money Laundering. The officers have also been authorized to initiate proceedings for attachment of property and to launch prosecution in the designated Special Court.

### **Q17. What are the possible actions which can be taken against persons/properties involved in Money Laundering?**

Following actions can be taken against the persons involved in Money Laundering:-

(a) Attachment of property derived or obtained as a result of a scheduled offence. The attached properties may be confiscated and disposed off. ( Sections 5 & 8 of the Act).

(b) Persons found guilty of an offence of Money Laundering are punishable with imprisonment for a term which shall not be less than three years but may extend up to seven years and shall also be liable to a fine up to Rupees 5 Lakhs (Section 4 of the Act). When the scheduled offence is committed under the Narcotic and Psychotropic Substances Act, 1985, the punishment shall be imprisonment for a term which shall not be less than three years but may extend upto ten years and liable to a fine of upto Rs.5 lakhs.

**Q18. What are the powers available to the Investigating Officers under the Act ?**

The Investigating Officers have the powers :-

(a) To conduct survey of a place (Section 16)

(b) To conduct search of building, place, vessel, vehicle or aircraft & seize records & property (Section 17)

- (c) To conduct personal search (Section 18)
- (d) To summon and record the statements of persons concerned (Sec. 50);
- (e) To arrest persons accused of committing the offence of Money Laundering (Section 19).
- (f) To provisionally attach any property suspected to be derived from the proceeds of crime (Section 5)

**Q19. What are the powers of authority during survey?**

An authority during the survey may—

- (i) place marks of identification on the records inspected by him and make or cause to be made extracts or copies there from
- (ii) make an inventory of any property checked or verified by him, and
- (iii) record the statement of any person present in the place which may be useful for, or relevant to, any proceeding under this Act.(Section 16)

**Q20. What are the powers of officers / authority during search & seizure?**

Authorized officer may

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;
- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle where the keys thereof are not available;
- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or make or cause to be made extracts or copies there from;
- (e) make a note or an inventory of such record or property;
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act. (Section 17)

**Q21. What is the time limit for retention of records and property seized during search & seizure?**

Three months from the end of the month in which such records & property were seized.

On the expiry of the said three months period, the records & property shall be returned to the person from whom such records & property was seized unless the Adjudicating 6/17

Authority permits retention of such property beyond the said period. (Sections 20 & 21)

**Q22. What are the rights of persons being searched during search?**

(i) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the nearest Gazetted Officer, superior in rank to him, or a Magistrate.

(ii) If the requisition is made, the authority shall not detain the person for more than twenty-four hours prior to taking him before the Gazetted Officer, superior in rank to him, or the Magistrate referred to in that sub-section.

(iii) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search, forthwith discharge such person but otherwise shall direct that search be made.

(iv) Search shall be made in the presence of two or more persons.

(v) No female shall be searched by any one except a female. (Section 18)

**Q23. What are the rights of persons during arrest?**

(i) Person making arrest shall, as soon as may be, inform him of the grounds for such arrest to the arrestee.

(ii) Every person arrested shall, within twenty-four hours, be taken to a Judicial Magistrate or a Metro politan Magistrate, as the case may be, having jurisdiction (Section 19)

**Q24. What are the powers of authorities regarding issuing summons, enforcing production of documents and to give evidence etc.?**

(i) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director of the Directorate of Enforcement have the power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(ii) All the persons so summoned are bound to attend in person or through authorized agents, as such officer may direct, and are bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(iii) Such proceedings are deemed to be judicial proceedings within the meaning of section 193 and section 228 of the Indian Penal Code. (Section 50)



**Q25. What is the time limit for retention of record impounded during the proceedings conducted under the PMLA?**

Authority empowered to issue summons may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act :

Provided that an Assistant Director or a Deputy Director cannot

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director. (Section 50)

**Q26. What are the presumptions in interconnected transactions?**

Where money-laundering involves two or more inter-connected transactions and one or more such transactions is or are proved to be involved in money-laundering, then for the purposes of adjudication or confiscation under section 8, it shall, unless otherwise proved to the satisfaction of the Adjudicating Authority, be presumed that the remaining transactions form part of such inter-connected transactions. (Section 23)

**Q27. Whether the statement recorded before the Investigating Officer under PMLA is admissible evidence under the Law?**

Yes, the statement recorded before the Investigating Officer under PMLA is admissible evidence in the Court as such proceeding under Section 50(2) and 50(3) of the Act is a judicial proceeding within the meaning of Section 193 and 228 of IPC.

**Q28. Who has burden to prove the commission of offence under PMLA?**

When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused. (Section 24)

**Q29. What is meant by the term “Property” appearing in the Prevention of Money Laundering Act, 2002?**

“Property” means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located [Section 2(v)]

**Q30. What is “attachment”?**

“Attachment” means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III of the Act. [Section 2(d)]

**Q31. What are the circumstances under which properties involved in money laundering can be attached?**

- (i) Where the Director, or any other officer not below the rank of Deputy Director authorized by him for the purposes of this section, has reasons to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that
- (a) any person is in possession of any proceeds of crime;
  - (b) such person has been charged of having committed a scheduled offence; and
  - (c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by an order in writing, provisionally attach such property for a period not exceeding **150 days** from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961).

(ii) No such order of attachment shall be made unless in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorized to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be. (Section 5)

**Q32. How long will this order of provisional attachment of property remain valid?**

Every order of provisional attachment shall cease to have effect after **150 days** from the date of the order, if no order is passed by the Adjudicating Authority in this regard. However, within the said 150 days, if the Adjudicating Authority, by an order, records a finding that all or any of the properties are not involved in money laundering, then order of provisional attachment shall cease to have effect from the date of such order of the Adjudicating Authority. [Section 3(5)]

**Q33. Whether the persons claiming or entitled to claim any interest in the enjoyment of immovable property can enjoy the property during the period of provisional attachment?**

Yes. [Section 5 (4)]

**Q34. What is the remedy available to aggrieved person, where property is provisionally attached?**

It has been provided in the Act that before recording the finding that all or any of the properties are involved in money laundering, the Adjudicating Authority has to issue a show cause notice of not less than thirty days to the aggrieved person. The aggrieved person at this stage can submit his reply and attend the hearing, either by himself or through his authorized representative, before the Adjudicating Authority to present his standpoint. [Section 8(1)]

**Q35. What will happen if the Adjudicating Authority records the finding that all or any of the properties are involved in money laundering?**

(i) Where the Adjudicating Authority decides that any property is involved in money laundering, he shall, by an order in writing, confirm the attachment of the property. Such attachment shall

(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and

(b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final

(iii) After the confirmation of provisional order of attachment, the Director or any other officer authorized by him in this behalf shall forthwith take the possession of the attached property.

**Q36. What will happen if the Adjudicating Authority records the finding that all or any of the properties are not involved in money laundering?**

In such cases, the Adjudicating Authority shall direct the release of all properties other than the properties involved in money-laundering to the person from whom such properties were seized. [Section 20 (5) However, the Director or any other officer authorized by him in this behalf, may withhold the release of any property until filing of appeal under section 26 or forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such property is relevant for the proceedings before the Appellate Tribunal. [Section 20(6)]

**Q37. What will happen to the seized records after passing of the order by the adjudicating authority?**



The Adjudicating Authority shall direct the release of the records to the person from whom such records were seized. However, the Director or any officer authorized by him in this behalf may withhold the release of any records until filing of appeal under section 26 or after forty-five days from the date of order under sub-section (5), whichever is earlier, if he is of the opinion that such records are relevant for the proceedings before the Appellate Tribunal.[Section 21]]

**Q38. What will happen to the attached properties after conclusion of trial for the scheduled offence?**

- (i) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property and net income, if any, shall cease to have effect. [Section 8(5)]
- (ii) Where on conclusion of a trial for any scheduled offence, the guilt of the person is proved in the trial court and order of such trial court becomes final, the order of attachment of property will become final. [Section 8 (3)]

(iii) Where the attachment of any property becomes final, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating such property. [Section 8(6)]

(iv) After an order of confiscation, all the rights and title in such property shall vest absolutely in the Central Government free from all encumbrances. (Section 9)

**Q39. Which is the Appellate Authority against the order passed by Adjudicating Authority and what is the time limit to file appeal?**

The Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal. Appeal has to be filed within a period of forty-five days from the date of receipt of a copy of the order made by the Adjudicating Authority. Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period. (Section 26)

**Q40. Which is the Appellate Authority against the order passed by Appellate Tribunal and what is the time limit to file appeal?**

Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order. Thus appeal can be filed before High Court on any question of law or fact. High 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. (Section 42)

**Q41. How do you describe the expression, “person” appearing in the Prevention of Money Laundering Act, 2002?**

“Person” includes

1. an individual,
2. a Hindu undivided family,
3. a company,
4. a firm,
5. an association of persons or a body of individuals, whether incorporated or not,
6. every artificial juridical person not falling within any of the preceding sub-clauses, and
7. any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses.

Thus, besides the natural person, even legal entities are also covered under the expression “person” as per the Act.

**Q42. What are the offences specified under Part “A” of the schedule?**

Para 1: The Indian Penal Code (Section 121,121A,489A,489B)

Para 2: The Narcotics Drugs & Psychotropic Substances Act, 1985 (Section 15,16,17,18,19,20,21,22,23, 24, 25A,27A,29)

Para 3: The Explosives Substances Act, 1908 (Section 3,4,5)

Para 4: Unlawful Activities (Prevention) Act, 1967 (Section 10 read with 3, 11 read with 3&7, 13 read with 3,16 with 15, 16A, 17,18,18A, 18B,19,20,21,38,39 & 40)

Para 5: The Arms Act, 1959 (Section 25,26,27,28,29 &30)

Para 6 The Wildlife (Protection) Act, 1972 (Section 51 read with 9, 51 read with 17A, 51 read with 39, 51 read with 44, 51 read with 48, 51 read with 49B).

Para 7 : Immoral Traffic (Prevention) Act, 1956 (Section 5,6,8,9 )

Para 8 : The Prevention of Corruption Act, 1988 (Section 7,8,9,10 & 13)

Para 9 : The Explosives Act, 1884. (Section 9B, 9C)

Para 10 : The Antiquities and Arts Treasures Act, 1972 (Section 25 read with 3, 28 )

Para 11 : The Securities and Exchange Board of India Act, 1992 (Section 12A read with 24))

Para 12 : The Customs Act, 1962. (Section 135)

Para 13: The Bonded Labour System (Abolition) Act, 1976 (Section 16,18,20)

Para 14: The Child Labour (Prohibition and Regulation) Act, 1986 (Section 14)

Para 15: The Transplantation of Human Organs Act, 1994 (Section 18,19,20)

Para 16: The Juvenile Justice (Care and Protection of children) Act, 2000. (Section 23,24,25,26)

Para 17: The Emigration Act, 1983 (Section 24)

Para 18: The Passports Act. 1967 (Section 12)

Para 19: The Foreigners Act, 1946 (Section 14,14B,14C)

Para 20: The Copy Right Act, 1957 (Section 63,63A,63B,68A)

Para 21: The Trade Marks Act, 1999. (Section 103,104,105,107,120)

Para 22: The Information Technology Act, 2000. (Section 72,75)

Para 23: The Biological Diversity act, 2002. (Section 55 read with 6)

Para 24: The Protection of Plant varieties and farmers' Rights Act, 2001. (Section 70,71,72,73 all read with 68)

Para 25: The Environment Protection Act, 1986. (Section 15 read with 7 & 8 )

Para 26: The Water (Prevention and Control of Pollution) Act, 1974 [Section 41(2), 43]

Para 27: The Air (Prevention and Control of Pollution) Act, 1981. (Section 37)

Para 28: The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002. (Section 3)

**Q43. What are the offences specified under Part “B” of the schedule?**

Part B (containing para 1 to para 25) has been omitted by The Prevention of Money Laundering (Amendment ) Act,2012 ( 2 of 2013) and all the offences of Part B have now been placed in Part A of the Schedule.

**Q44. What are the offences specified under Part “C” of the schedule?**

An offence which is the offence of cross border implications and is specified in, –

1. Part A; or
2. Omitted by the PMLA(Amendment ) Act,2012 92 of 2013 ) with effect from 15.02.2013);  
or
3. The offences against property under Chapter XVII of the Indian Penal Code.



**Q45. What is “offence of cross border implication”?**

Any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B, or Part C of the Schedule, had it been committed in India and if such person remits the proceeds of such conduct or part thereof to India; or

Any offence specified in Part A, Part B, or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India. [Section 2 (ra)]

# OBLIGATIONS OF BANKING COMPANIES, FINANCIAL INSTITUTIONS AND INTERMEDIARIES

## **Q46. What are the obligations of Banking Companies, Financial Institutions and Intermediaries of securities market in terms of the provisions of PMLA,2002?**

Every banking company, financial institution and intermediary has to maintain a record of all transactions, the nature and value of which may be prescribed, whether such transactions comprise a single transaction or a series of transactions integrally connected to each other and furnish such information to the Director within such time as prescribed. They are also to verify and maintain the records of the identity of all its clients, in prescribed manner. These records are to be maintained for a period of ten years. (Section 12)

**Q47. What are the penalties that can be imposed on banking company, financial institution and intermediary for non maintenance of records or non submission of aforesaid information?**

Fine can be levied on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure. (Section 13)

**Q48. Who is the appellate authority against the order passed by Director?**

Any banking company, financial institution or intermediary aggrieved by any order of the Director made under section 13, may prefer an appeal to the Appellate Tribunal. (Section 26)

# SPECIAL COURTS

## **Q49. What are special Courts under PMLA?**

For the trial of an offence punishable under section 4 of PMLA, the Central Government, in consultation with the Chief Justice of the High Court, by notification, has designated one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as specified in the notifications. While trying an offence under PMLA, a Special Court has also to try an offence, other than an offence of money laundering, with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. (Section 43)

**Q50. What are offences triable by special Courts under PMLA?**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the scheduled offence and the offence punishable under section 4 of PMLA, shall be triable only by the Special Court constituted for the area in which the offence has been committed. (Section 44)

**Q51. Which is the Appellate Authority against the order passed by Special Court?**

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.(Section 47)

## RECIPROCAL ARRANGEMENT FOR ASSISTANCE IN CERTAIN MATTERS AND PROCEDURE FOR ATTACHMENT AND CONFISCATION OF PROPERTY

### **Q52. What is meant by term “Contracting State”?**

“Contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise. (Section 55)

**Q53. What is the mechanism to obtain evidence required in connection with investigation into an offence or proceedings under the Act if such evidence may be available in any place in a contracting State?**

An application is to be made to a Special Court by the Investigating Officer or any officer superior in rank to the Investigating Officer and the Special Court, on being satisfied, may issue a Letter of Request to a court or an authority in the contracting State competent to deal with such request to

- (i) examine facts and circumstances of the case,
- (ii) take such steps as the Special Court may specify in such letter of request, and
- (iii) forward all the evidence so taken or collected to the Special Court issuing such letter of request.

Every statement recorded or document or thing received from contracting state shall be deemed to be the evidence collected during the course of investigation.(Section 57).

**Q54. What is the mechanism to provide assistance to a contracting State?**

Where a Letter of Request is received by the Central Government from a court or authority in a contracting State requesting for investigation into an offence or proceedings under PMLA and forwarding to such court or authority any evidence connected therewith, the Central Government may forward such Letter of Request to the Special Court or to any authority under the Act for execution of such request. (Section 58)

**Q55. What are the Reciprocal arrangements for processes and assistance for transfer of accused persons?**

(1) A Special Court, in relation to an offence punishable under section 4 for the service or execution of a summons, a warrant or a search warrant in a contracting state shall send such summons or warrant in duplicate in prescribed form to the Court, Judge or Magistrate through specified authorities.



(2) Similarly summons, a warrant or a search warrant in relation to an offence punishable under section 4 received for service or execution from a contracting state shall be served or executed as if it were a summons or warrant received by it from another Court in the said territories for service or execution. After execution of summon or search warrant received from a contracting State, the documents or other things produced or things found in the search shall be forwarded to the Court issuing the summons or search-warrant through the specified authority. (Section 59)

**Q56. Whether the property involved in money laundering and located in the contracting State can also be attached?**

Yes. In such cases, after issue of an order for attachment of any property made under section 5 or an order confirming such attachment made by an Adjudicating Authority, the Special Court, on an application by the Director or the Administrator may issue a Letter of Request to a court or an authority in the contracting State for execution of such order. (Section 60)

**Q57. Whether the request received from contracting state requesting attachment or confiscation of the property in India (derived or obtained, directly or indirectly, by any person from the commission of an offence under section 3 committed in that contracting State) can be executed?**

Yes.

## **MISCELLANEOUS**

**Q58. What is the punishment for vexatious search?**

Imprisonment for a term which may extend to two years or fine which may extend to fifty thousand rupees or both.(Section 62)

**Q59. What is the punishment for false information or failure to give information, etc.?**

Any person willfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both. (Section 63)

**Q60. What is the punishment if a person being legally bound to state the truth of any matter refuses to answer any question put to him, refuses to sign any statement made by him, or omits to attend or produce books of account or documents at the place or time in compliance of summon issued under section 50?**

Penalty of a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure can be imposed. (Section 63)

**Q61. Whether a suit can be brought in civil court to set aside or modify any proceedings taken or made under PMLA?**

No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under PMLA and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under PMLA. (Section 67)

**Q62. What is the mechanism to recover the fine imposed on any person under Section 13 or Section 63?**

Where any fine imposed on any person under section 13 or section 63 is not paid within six months from the day of imposition of fine, the Director or any other officer authorised by him in this behalf may proceed to recover the amount from the said person in the same manner as prescribed in Schedule II of the Income-tax Act, 1961 for the recovery of arrears and he or any officer authorised by him in this behalf shall have all the powers of the Tax Recovery Officer mentioned in the said Schedule for the said purpose.(Section 69)

**Q63. What are the provisions when the offence of money laundering is committed by companies?**

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made there under is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made there under has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.(Section 70)

**Q64. What will happen if there is conflict between the provisions of PMLA, and other Acts / laws?**

The provisions of PMLA have over-riding effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force. (Section 71)

**Q65. What will happen to the proceedings initiated under PMLA in the event of death or insolvency of the person?**

In cases where any property of a person has been attached under section 8 and no appeal against the order attaching such property has been preferred, then, the legal representatives or the official assignee or the official receiver may prefer an appeal to the Appellate Tribunal / High Court or to continue the appeal before the Appellate Tribunal / High Court, in place of such person. (Section 72)

**The following officers and others are empowered and required to assist the authorities in the enforcement of the provisions of the PML Act**

- A.** Officer of the Customs and Central Excise Depts.
- B.** Officer appointed under section 5(1) of the Narcotic Drugs and Psychotropic substances Act,1985
- C.** Income –tax Authorities under sections 117(1) of the Income –tax Act,1961
- D.** Members of the recognised stock exchange referred to in section 2(f) and the officer of the stock exchanges recognised under section 4 of the Securities Contracts ( regulation) Act.1956
- E.** Officer of the Reserve Bank on India sections 3 of the Reserve Bank of India Act ,1934
- F.** Officers of the Police
- G.** Officers of enforcement appointed under sections 36(1) of the Foreign Exchange Management Act,1999
- H.** Officer of the Securities and Exchange Board of India established under sections 3 of the Securities and Exchange Board of India Act,1992
- I.** Officer of the Insurance Regulatory and Development Authority established under sections 3 of the Insurance Regulatory and Development Authority Act,1999
- J.** Officer and members of the Institute of Chartered Accountants of India constituted under section 3 of the Chartered Accountant Act,1949
- K.** Officer and members of the Institute of Cost and Works Accountants of India constituted under section 3 of the Cost and Works Accountants Act,1959
- L.** Officer and members Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act.1980

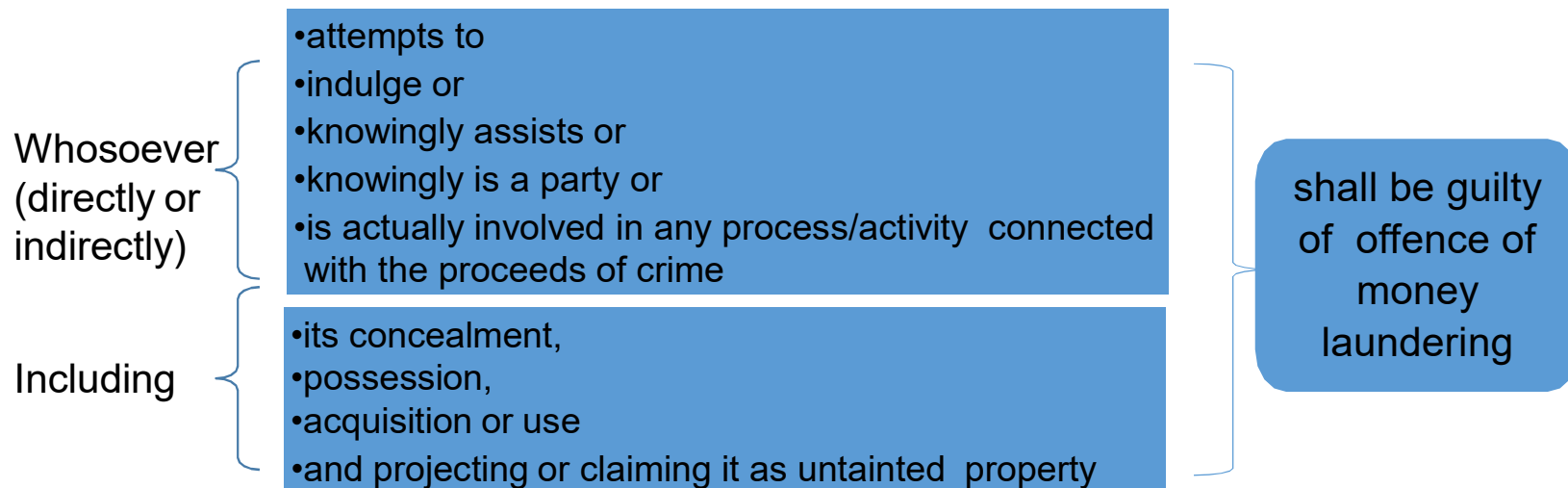


PREVENTION OF  
MONEY  
LAUNDERING  
ACT, 2002

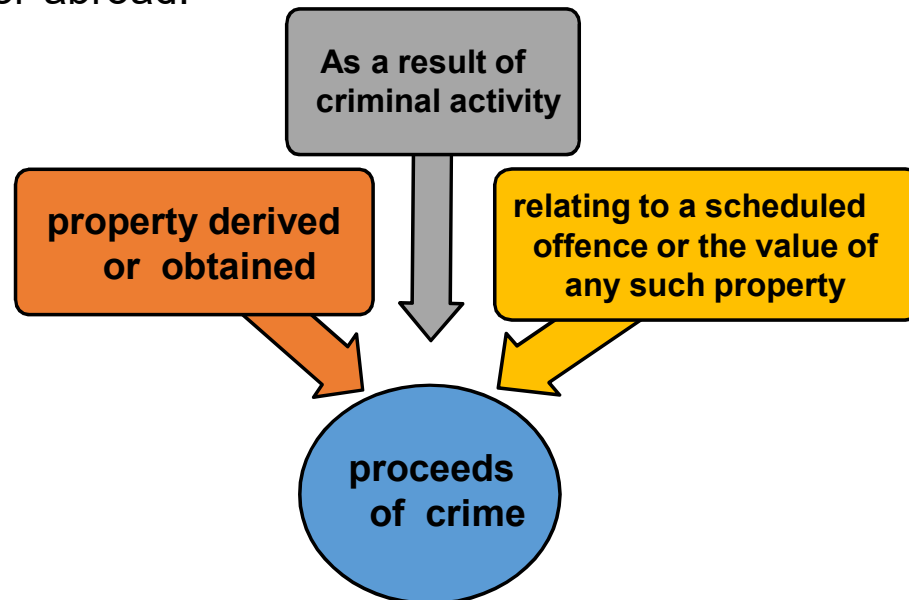
# SECTION:2 DEFINITIONS

To understand the meaning of money – laundering it is essential to define proceeds of crime, property and scheduled offence. In fact, all the above definitions have to be read together.

I. Clause (p) of sub section (1) of section 2 provides that "**money-laundering**" has the meaning assigned to it in section 3. Moving to section 3, it is observed that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering.



II. Section 2(1)(u) defines "**proceeds of crime**" as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken/held outside the country, then the property equivalent in value held within the country or abroad.



III. Now, let us understand what is this **Property** as talked above. In terms of clause (v) of sub – section (1) of section 2, "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

Further definition clarifies that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences.

IV. In terms of clause (rb) of sub – section (1) of section 2 "**payment system**" means a system that enables payment to be effected between a payer and a beneficiary, involving clearing, payment or settlement service or all of them.

It includes the systems enabling credit card operations, debit card operations, smart card operations, money transfer operations or similar operations;

V. The term "**scheduled offence**" has been defined in clause (y) of sub-section (1) of section 2. It means –

- a) the offences specified under Part A of the Schedule; or
- b) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or
- c) The offences specified under Part C of the Schedule.

The Schedule to the Act gives a list of all the above offences. The Schedule is divided into three parts- Part A, Part B and Part C, which are given in Annexure to the Chapter.

VI. "**Transfer**" includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien.

# OTHER DEFINITIONS

**"Authorised person"** means an authorised person as defined in clause (c) of section 2 of the Foreign Exchange Management Act, 1999. [Section 2(1)(da)]

**"Banking company"** means a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies and includes any bank or banking institution referred to in section 51 of that Act. [Section 2(1)(e)]

**"Beneficial owner"** means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person. [Section 2(1)(fa)]

**"Client"** means a person who is engaged in a financial transaction or activity with a reporting entity and includes a person on whose behalf the person who engaged in the transaction or activity, is acting. [Section 2(1)(ha)]

**“Financial institution”** means a financial institution as defined in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 and includes a chit fund company, a housing finance institution, an authorised person, a payment system operator, a non-banking financial company and the Department of Posts in the Government of India. [Section 2(1)(l)]

**“Intermediary”** means,

- (i) a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee to a trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser or any other intermediary associated with securities market and registered under section 12 of the Securities and Exchange Board of India Act, 1992; or
- (ii) an association recognised or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; or
- (iii) intermediary registered by the Pension Fund Regulatory and Development Authority; or
- (iv) a recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956. [Section 2(1)(n)]

**"Investigation"** includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence. [Section 2(1)(na)]

**"Non-banking financial company"** shall have the same meaning as assigned to it in clause (f) of section 45-I of the Reserve Bank of India Act, 1934. [Section 2(1)(q)]

**"Payment system operator"** means a person who operates a payment system and such person includes his overseas principal.

Explanation — For the purposes of this clause, "overseas principal" means,—

- (A) in the case of a person, being an individual, such individual residing outside India, who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;
- (B) in the case of a Hindu undivided family, Karta of such Hindu undivided family residing outside India who owns or controls or manages, directly or indirectly, the activities or functions of payment system in India;

(C) in the case of a company, a firm, an association of persons, a body of individuals, an artificial juridical person, whether incorporated or not, such company, firm, association of persons, body of individuals, artificial juridical person incorporated or registered outside India or existing as such and which owns or controls or manages, directly or indirectly, the activities or functions of payment system in India.  
[Sec: 2(1)(rc)]

**"Person"** includes—

- (i) an individual,
- (ii) a Hindu undivided family,
- (iii) a company,
- (iv) a firm,
- (v) an association of persons or a body of individuals, whether incorporated or not,
- (vi) every artificial juridical person not falling within any of the preceding sub-clauses, and
- (vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses; [Section 2(1)(s)]



**"Person carrying on designated business or profession"** means,—

- (i) a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino;
- (ii) a Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908, as may be notified by the Central Government;
- (iii) real estate agent, as may be notified by the Central Government;
- (iv) dealer in precious metals, precious stones and other high value goods, as may be notified by the Central Government;
- (v) person engaged in safekeeping and administration of cash and liquid securities on behalf of other persons, as may be notified by the Central Government; or
- (vi) person carrying on such other activities as the Central Government may, by notification, so designate, from time to time. [Section 2(1)(sa)]

**"Records"** include the records maintained in the form of books or stored in a computer or such other form as may be prescribed. [Section 2(1)(w)]

**“Reporting entity”** means a banking company, financial institution, intermediary or a person carrying on a designated business or profession. [Section 2(1)(wa)]

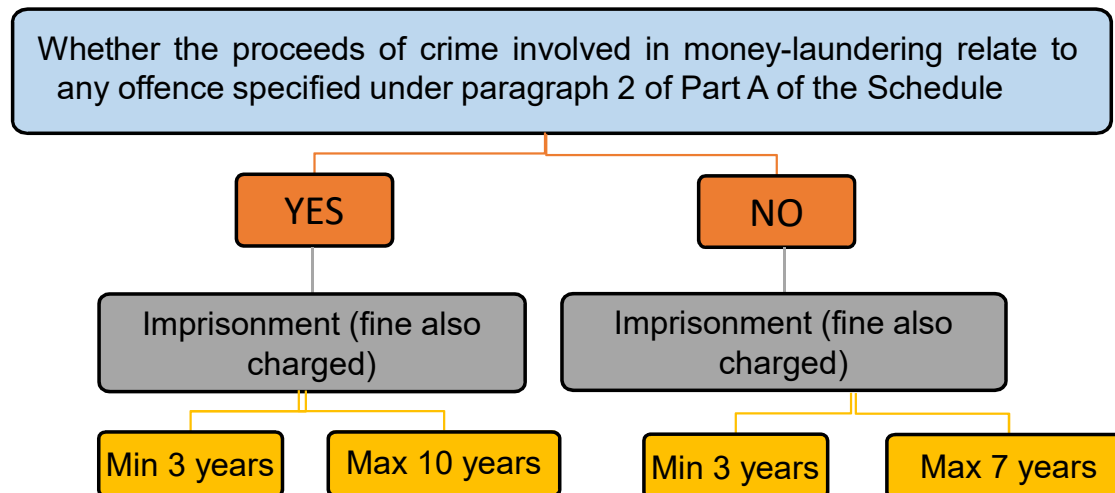
**"Value"** means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the date on which such property is possessed by such person. [Section 2(1)(zb)].

## Section:3 & 4 PUNISHMENT FOR THE OFFENCE OF MONEY LAUNDERING

Section 3 deals with the offence of money laundering which has been discussed in the definition part above.

**Section 4 provides for the Punishment for Money-Laundering** - Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule (i.e. Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985), the maximum punishment may extend to ten years instead of seven years.



# ATTACHMENT, ADJUDICATION AND CONFISCATION

“**Attachment**” means prohibition of transfer, conversion, disposition or movement of property by an order issued under Chapter III of the Act.

“**Adjudicating Authority**” means an Adjudicating Authority appointed under sub-section (1) of section 6.

The Prevention of Money Laundering Act gives extremely wide powers to the authorities to attach properties suspected to be involved in Money Laundering.

## **Attachment of property involved in money-laundering [Section 5]**

1. Where the Director or any other officer (not below the rank of Deputy Director authorised by the Director) for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—
  - (a) any person is in possession of any proceeds of crime; and
  - (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed.

**Condition for attachment:** Provided that no such order of attachment shall be made unless, in relation to the scheduled offence:

- a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or
- a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or
- a similar report or complaint has been made or filed under the corresponding law of any other country.

**Provided further that,** notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

**Provided also** that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

2. The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1) (i.e. point 1 above), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

3. Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (3) (i.e. point 2 above) of section 8, whichever is earlier.

4. Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

*Explanation-* For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

5. The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

## **Adjudicating Authorities, composition, powers, etc. [Section 6]**

1. **Appointment of Adjudicating Authority (AO):** The Central Government shall, by notification, appoint an Adjudicating Authority to exercise jurisdiction, powers and authority conferred by or under this Act.
2. **Composition of AO:** An Adjudicating Authority shall consist of a Chairperson and two other Members: However, one Member each shall be a person having experience in the field of law, administration, finance or accountancy.
3. **Eligibility:** A person shall, however, not be qualified for appointment as Member of an Adjudicating Authority:-
  - (a) in the field of law, unless he—
    - (i) is qualified for appointment as District Judge; or
    - (ii) has been a Member of the Indian Legal Service and has held a post in Grade I of that service;
  - (b) in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed.
4. **Appointment of Chairperson of the AO:** The Central Government shall appoint a Member to be the Chairperson of the Adjudicating Authority.

5. **Jurisdiction:** Subject to the provisions of this Act,—

(a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit;

(c) the Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction. [Sub-section (5)]

6. **Transfer of Member:** Notwithstanding anything contained in sub-section (5), the Chairperson may transfer a Member from one Bench to another Bench.

7. **Transfer of Case/matter:** If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.



8. **Term of Office:** The Chairperson and every Member shall hold office as such for a term of five years from the date on which he enters upon his office: However, no Chairperson or other Member shall hold office as such after he has attained the age of 65 years.

9. **Payment of Salary and Allowances:** The salary and allowances payable to and the other terms and conditions of service of the Member shall be such as may be prescribed:

However, neither the salary and allowances nor the other terms and conditions of service of the Members shall be varied to his disadvantage after appointment.

10. **Filling of Vacancies:** If, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Adjudicating Authority from the stage at which the vacancy is filled.

11. **Resign from Office:** The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

However, the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

12. **Removal:** The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government after giving necessary opportunity of hearing.

13. **Occurrence of Vacancy:** In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

14. **Discharge of function in absence of chairperson of AO:** When the Chairperson of the Adjudicating Authority is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson of the Adjudicating Authority until the date on which the Chairperson of the Adjudicating Authority resumes his duties.

15. **Powers of AO to regulate its own procedure:** The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure.

#### **Staff of Adjudicating Authorities [Section 7]**

1. The Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit.
2. The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.
3. The salaries and allowances and other conditions of service of the officers and employees of the Adjudicating Authority shall be such as may be prescribed.

## **Adjudication [Section 8]**

**(1) Serving of Notice by AO:** On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than 30 days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government.

Where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) **Order Passed:** The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering.

If the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) **Confirmation of Execution of Passed order:** Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—

(a) continue during investigation for a period not exceeding 365 days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court.

Explanation.—For the purposes of computing the period of 365 days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

(4) **In case of Provisional order:** Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) **Property involved be confiscated to the Central Government:** Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) **Order of release:** Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) **Passing of an appropriate order in case where trial cannot be concluded:** Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(8) **Direction to CG by the Special Court:** Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.



**Section 48** provides for the following classes of authorities for the purposes of this Act, namely:-

1. Director or Additional Director or Joint Director,
2. Deputy Director,
3. Assistant Director, and
4. such other class of officers as may be appointed for the purposes of this Act.

## **PUNISHMENT FOR FALSE INFORMATION OR FAILURE TO GIVE INFORMATION, ETC. [SECTION 63]**

1. Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall on conviction be liable for imprisonment for a term which may extend to two years or with fine which may extend to fifty thousand rupees or both.
2. If any person,-
  - (a) being legally bound to state the truth of any matter relating to an offence under section 3, refuses to answer any question put to him by an authority in the exercise of its powers under this Act; or

(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which an authority may legally require to sign; or

(c) to whom a summon is issued under section 50 either to attend to give evidence or produce books of account or other documents at a certain place and time, omits to attend or produce books of account or documents at the place or time,

he shall pay, by way of penalty, a sum which shall not be less than 500 rupees but which may extend to 10,000 rupees for each such default or failure.

3. No order under this section shall be passed by an authority referred to in sub-section (2) (i.e. point 2 above) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter by such authority.

4. Notwithstanding anything contained in clause (c) of sub-section (2), a person who intentionally disobeys any direction issued under section 50 shall also be liable to be proceeded against under section 174 of the Indian Penal Code.

### **Bar of suits in civil courts [Section 67]**

No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for anything done or intended to be done in good faith under this Act.

### **Act to have overriding effect [Section 71]**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

### **Continuation of proceedings in the event of death or insolvency [Section 72]**

1. Where-

- (a) any property of a person has been attached under section 8 and no appeal against the order attaching such property has been preferred; or
- (b) any appeal has been preferred to the Appellate Tribunal, and-

(i) in a case referred to in clause (a), such person dies or is adjudicated an insolvent before preferring an appeal to the Appellate Tribunal; or

in a case referred to in clause (b), such person dies or is adjudicated an insolvent during the pendency of the appeal,

then, it shall be lawful for the legal representatives of such person or the official assignee or the official receiver, as the case may be, to prefer an appeal to the Appellate Tribunal or as the case may be, to continue the appeal before the Appellate Tribunal, in place of such person and the provisions of section 26 shall, so far as may be, apply, or continue to apply, to such appeal.

2. Where-

(a) after passing of a decision or order by the Appellate Tribunal, no appeal has been preferred to the High court under section 42; or

(b) any such appeal has been preferred to the High Court,- then-

(i) in a case referred to in clause (a), the person entitled to file the appeal dies or is adjudicated an insolvent before preferring an appeal to the High Court, or

in a case referred to in clause (b), the person who had filed the appeal dies or is adjudicated an insolvent during the pendency of the appeal before the High Court,

then, it shall be lawful for the legal representatives of such person, or the official assignee or the official receiver, as the case may be, to prefer an appeal to the High Court or to continue the appeal before the High Court in place of such person and the provisions of section 42 shall, so far as may be, apply, or continue to apply, to such appeal.

3. The powers of the official assignee or the official receiver under sub-section (1) or sub-section (2) shall be exercised by him subject to the provisions of the Presidency-towns Insolvency Act, 1909 or the Provincial Insolvency Act, 1920, as the case may be.

# RDDDB Vs SARFAESI

Both these statutes throw an insight on the recovery of money due from defaulters to the banks and financial institutions	RDDDB	SARFAESI
scope and legislative utility	to establish Tribunals for expeditious adjudication and recovery of debts due to banks and financial institutions	an act to regulate securitisation and reconstruction of financial assets and enforcement of security interest;
Type of Creditors	RDDDB&FI is for all types of creditors whether or not they are secured or unsecured	only secured creditors can refer to SARFAESI
Intervention of the Court	expeditious adjudication at the hands of Tribunals	SARFAESI Act bypasses intervention of the courts for expeditious recovery of dues of banks and financial institutions, which is public money of which they are custodian.
Nature of the legislation	RDB is an adjudicating act	SARFAESI Act is executory in nature
Intervention by adjudicating authority	Legality of the action taken by secured creditor under Section 13(4) can be challenged by filing appeal under Section 17 of the SARFAESI Act.	no adjudication process at least, till action under Section 13(4) is taken

## Question?

whether during pendency of the suit, the defendant Bank can resort to Section 13(4) of the SARFAESI Act, 2002. Answer: when alternative method has been prescribed to recover the amount, which the petitioner is liable to pay, and the bank in order to enforce payment has taken recourse to the Act, which has the overriding effect over other laws, no fault can be found with defendant bank in proceeding under the Act".

Case Law: The Debt Recovery Tribunal, Ranchi dealt with this issue in Sushil Kumar Agarwal v Allahabad Bank

Debt Recovery Appellate Tribunal, Chennai in ARCIL v Kumar Metallurgical Corporation Limited :The Appellate Tribunal held that there is no question of applicability of doctrine of election as the RDDB&FI Act covers secured as well as unsecured dues, while the SARFAESI Act takes into account only secured assets and secures interest of secured creditors only.

Section 37(application of other laws not barred) makes it clear that the provisions of the SARFAESI Act are in addition to the provisions of the RDDB&FI Act, 1993.

Recovery of Debts due to Banks and Financial Institutions----Background of DRT----One of problems of banks in India is large amount of bad debts. Recovery through Courts is very slow and time consuming. Hence 'Recovery of Debts due to Banks and Financial Institutions Act, 1993' (RDDBFI Act) was passed. The Act came into effect on 24-6-1993. ----Applicability of Debt Recovery Act-Banking companies, SBI, subsidiaries of SBI, Regional Rural Banks and multi state cooperation banks can make application to Debt Recovery Tribunal (DRT) - section 2(d) of RDDBFI Act.-----Financial Institutions can also make application to DRT for recovery of debt.----**Financial Institutions mean** – Public Financial Institutions within the meaning of section 4A of Companies Act -----Asset Reconstruction Companies registered under SARFAESI Act-----*debenture trustees registered with SEBI and*-----Other institutions as may be notified by Central Government - section 2(h) of RDDBFI Act.



*Public Financial Institution* - "Public financial institution" means—

- (i) the Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956
- (ii) the Infrastructure Development Finance Company Limited, referred to in of section 4A(1)(vi) of the 1956 Act (which is repealed under section 461 of the Companies Act, 2013)
- (iii) specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002
- (iv) institutions notified by the Central Government imder section 4A(2) of the 1956 Act (which is now repealed under section 465 of the Companies Act, 2013)
- (v) such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India [section 2(72) of the Companies Act, 2013],

Public Financial Institution' [PFI] means IDBI, ICICI, IFCI, LIC, UTIIRBI, GICI, SCICI, SIDBI, State Financial Corporations, NABARD, NCDC etc.

**DRT Act does not extend to Cooperative Banks** - The Act applies to 'banking company'. A cooperative bank is not a 'company'. Dispute between cooperative society and its members are to be decided by Registrar of Societies. Hence, DRT Act does not apply to cooperative societies - *Greater Bombay Cooperative Bank v. United Yarn Tex (P) Ltd.* (2007) 78 SCL 42 (Mag) (SC) = 137 Comp Cas 63 (SC).

**Monetary limit for applicability of the Act** - *Save as otherwise provided*, the provisions are applicable where amount of debt due to bank or FI or consortium of banks/FIs is *Rs. 20 lakhs* or more. Central Government can reduce this ceiling to Rs one lakh by issuing a notification, [section 1(4) of RDDBFI Act as amended *vide* 2016 Amendment Act. The words in italics have been inserted *vide* 2016 Amendment Act, as the Act wiU deal with adjudications relating to bankruptcy also after those provisions are notified and made effective],

[The limit was Rs 10 lakhs, which has been increased to Rs 20 lakhs *vide* Notification No. SO 4312(E) F No. 3/4/2018-DRT dated 6-9-2018].

*RDB Act and SARFAESI Act are complimentary to each other, actions under both possible* - RDB Act and SARFAESI Act are complimentary to each other *Transcore V. [70/(2008) 1 SCC 125 = 73 SCL 11 = 135 Comp Cas 1 (SC) quoted with approval in Baleshwar Dayal Jaisv^al v. Bank of India (2016) 1 SCC 444 = 132 SCL 129 = 61 taxmann.com 104 (SC).*

**Limitation Act applicable** - Limitation Act is applicable for making application to Debt Recovery Tribunal, [section 24 of RDDBFI Act].

**Priority of secured creditors** - Secured Creditors will have priority as specified in Insolvency and Bankruptcy Code, 2016, after relevant provisions that Act is notified and made effective - *Explanation* to section 3 IB of RDDBFI Act.

Section 31B of the Act gives priority to realise secured debts due and payable to them by sale of assets. This is in priority over all Government dues including taxes.

Hence, in *AC (CT) v. Indian Overseas Bank* (2017) 99 VST 222 (Mad HC FB), it has been held that under section 31B of RDDBFI Act, banks and financial institutions have priority over all dues, including tax dues.

In *Axis Bank v. State of Maharashtra* (2017) 100 VST 48 (Bom HC DB), it has been held that bank's dues have priority over statutory dues under SARFAESI Act.

*DRT and DRAT to deal with bankruptcy cases also* - DRT and DRAT will deal with bankruptcy cases also as specified in Insolvency and Bankruptcy Code, 2016, after that Act is notified and made effective.

### **Overriding provisions of Act**

Provisions of the Act have overriding effect [section 34(1) of RDDBFI Act].

However, the provisions are in addition to and not in derogation of provisions of IFCI Act, State Financial Corporation Act, UTI Act, IRBI Act and SICA. In other matters, provisions of this Act will have effect notwithstanding anything inconsistent in any other law. [section 34(2) of RDDBFI Act].

'Any person' can make application under section 17(1) SARFAESI Act against action taken by Bank under section 13(4) of the SARFAESI Act to DRT.

### Meaning of 'debt'

"Debt" means any liability (inclusive of interest) which is claimed as due from any person by a bank or a financial institution or by a consortium of banks or financial institutions during the course of any business activity undertaken by the bank or the financial institution or the consortium under any law for the time being in force, in cash or otherwise, whether secured or unsecured, or assigned, or whether payable under a decree or order of any civil court or any arbitration award or otherwise or under a mortgage and subsisting on, and legally recoverable on, the date of the application *and includes any liability towards debt securities which remains unpaid in full or part after notice of ninety days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefit of holders of debt securities* - section 2(g) of RDDBFI Act. Words in italics inserted w.e.f. 1-9-2016.

**Debt securities** - "Debt securities" means debt securities listed in accordance with regulations made by SEBI under SEBI Act - section 2(ga) of RDDBFI Act inserted w.e.f. 1-9-2016.

**Security interest** - "Security interest" means mortgage, charge, hypothecation, assignment or any other right, title or interest of any kind whatsoever upon property, created in favour of any bank or financial institution and includes - (a) such right, title or interest upon tangible asset, retained by the bank or financial institution as owner of the property, given on hire or financial lease or conditional sale which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or any credit provided to enable the borrower to acquire the tangible asset; or (b) such right, title or interest in any intangible asset or licence of any intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit extended to enable the borrower to acquire the intangible asset or licence of intangible asset - section 2(ga) of RDDBFI Act inserted w.e.f. 1-9-2016.

*Financial lease* - "Financial lease" means a lease under a lease agreement of tangible asset, other than negotiable instrument or negotiable document, for transfer of lessor's right therein to the lessee for a certain time in consideration of payment of agreed amount periodically and where lessee becomes the owner of the such assets at the expiry of the term of lease or on payment of the agreed residual amount, as the case may be - section 2(ha) of RDDBFI Act inserted w.e.f. 1-9-2016.

**Secured creditor** - “Secured creditor” shall have the meaning as assigned to it in section 2(l)(zd) of SARFAESI Act - section 2(1a) of RDDBFI Act inserted w.e.f. 1-9-2016.

**Property** - “Property” means –

(a) immovable property

(b) movable property

© any debt or any right to receive payment of money, whether secured or unsecured

(d) receivables, whether existing or future

(e) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature, as may be prescribed by the Central Government in consultation with RBI - - section 2(jb) of RDDBFI Act inserted w.e.f. 1-9-2016.

**Wide definition of ‘debt’** - The debt may be any liability (inclusive of interest) due to bank or FT. It may be secured or unsecured or even assigned. The transaction might have been in cash or otherwise (e.g. bank guarantee. Letter of Credit etc.). It should be legally recoverable on date of application. It includes amount payable under a decree or order of any civil Court or any arbitration award or otherwise, [section 2(g) of RDDBFI Act].



### **Act is mainly a procedural Act**

The DRT Act does not make any substantive provision in respect of debt or its recovery. It is primarily a procedural Act where powers of ordinary Civil Court are transferred to a special tribunal, with many procedural simplifications. There is no framing of issues and evidence can be obtained through affidavits. Cross Examination may be permitted only if the Presiding Officer of DRT is of the view that cross examination is indeed necessary. Otherwise, he can refuse permission for cross examination. As per new Civil Procedure Code, cross examination can be conducted by appointing a Commission.

### **Debt Recovery Tribunal**

Central Government will establish 'Debt Recovery Tribunals' (DRT) to exercise jurisdiction under the Act - section 3(1) of RDDBFI Act.

Central Government will also establish DRT to exercise jurisdiction, powers and authority of Adjudicating Authority conferred on such Tribunal under Insolvency and Bankruptcy Code, 2016 - section 3(1 A) of RDDBFI Act inserted *vide* 2016 Amendment Act. This section will be made effective after the Insolvency and Bankruptcy Code, 2016 is notified and made effective.

DRT will also exercise jurisdiction, powers and authority to entertain and decide applications under Part III of Insolvency and Bankruptcy Code, 2016. DRT shall have circuit sittings in all district headquarters - section 17(1 A) of RDDBFI Act inserted *vide* 2016 Amendment Act. This section will be made effective after the Insolvency and Bankruptcy Code, 2016 is notified and made effective.

DRT is a one person tribunal who is designated as 'Presiding Officer' [section 4(1) of RDDBFI Act],

Qualification, appointment, terms of office, salaries and allowances, resignation, removal and other terms and conditions of service of Presiding Officer of Tribunal shall be governed by section 179 of Finance Act, 2017 - Section 6A of RDDBFI Act

inserted *vide* section 174 of Finance Act, 2017 w.e.f. date to be notified.

Central Government can authorize a Presiding Officer to discharge functions of another Presiding Officer, in addition to his present charge [section 4(2)(a) of RDDBFI Act]

Central Government can authorize Judicial Member of any other Tribunal established under the law to discharge functions of Presiding Officer of DRT, in addition to his present charge [section 4(2)(b) of RDDBFI Act as inserted w.e.i. 1-9-2016],

Presiding Officer of any other Tribunal can be authorized by Central Government to discharge functions of Presiding Officer - rule 2(f) of DRT (Procedure) Rules amended w.e.f. 4-11-2016.

The presiding officer should be qualified to be a District Judge. He will be appointed for five years or till he attains age of 65 years, whichever is earlier [the age limit has been increased from 62 to 65 years w.e.f. 1-9-2016.].

He can be reappointed but not beyond age of 65 years.

He will be assisted by Recovery Officers and other officers and staff, [section 7 <n RDDBFI Act].

DRT shall exercise jurisdiction, powers and authority to entertain and decide applications from Banks and Financial Institutions for recovery of debts due to them, [section 17(1) of RDDBFI Act].

DRT is not a civil Court - *Nahar Industrial Enterprises v. Hong Kong and Shanghai Banking Corpn* (2009) 8 SCC 646 = 95 SCL 21(MAG) (SC).

[Procedure for application before DRT](#) - Procedure to be followed for application before DRT is specified in DRT (Procedure) Rules, 1993.

[Application should be filed in form I](#) as per rule 4 of DRT (Procedure) Rules, 1993. Fees as specified in rule 7 are payable.

*DRT can review its interim and final orders* - DRT is empowered to review its decisions. Review is only for mistake apparent from records. Prescribed application fees are payable.

As per rule 5A of DRT (Procedure) Rules, 1993, the application for review should be made to DRT within 30 days, supported by affidavit verifying the application, to review mistakes apparent from records [The time limit was 60 days upto 4-11-2016].

*Publication of name of defaulter* - DRT can order publication of names of defaulters in newspaper or otherwise, after final order/recovery certificate has been passed. [Rule 15A of DRT Rules].

### **Appellate Tribunal**

Central Government will establish 'Debt Recovery Appellate Tribunal' (DRAT), [section 8 of RDDBFI Act],

More than one Appellate DRAT can be established by Central Government.

DRAT will hear appeal against orders of (a) Presiding Officer of DRT - section 17(2) of RDDBFI Act (b) Orders of Adjudicating Authority under Part HI of Insolvency and Bankruptcy Code, 2016 - sections 8(1 A) and 17(2A) of RDDBFI Act. These sections will be made effective after the Insolvency and Bankruptcy Code, 2016 is notified and made effective.

This will be one person tribunal, who is designated as Chairperson, (section 9 of RDDBFI Act).

Qualification, appointment, terms of office, salaries and allowances, resignation, removal and other terms and conditions of service of Presiding Officer of Tribunal shall be governed by section 179 of Finance Act, 2017 - Section 15A of RDDBFI Act inserted *vide* section 174 of Finance Act, 2017.

Central Government can authorize Chairperson of one DRAT to discharge functions of Chairperson of another DRAT, in addition to his present charge [section 8(3) of RDDBFI Act]

Appeal against order of DRT lies with Appellate Tribunal, [section 17(2) of RDDBFI Act].

*Chairperson of DRAT to supervise and control DRT* - DRT will be under superintendence and control of Chairperson of DRAT. The Chairperson of DRAT can call for information relating to pending cases and convene meeting of presiding officers of DRT periodically - section 17A(1A) of RDDBFI Act inserted w.e.f. 1-9-2016.

Chairperson of DRAT can recommend Central Government to take action against any DRAT for misbehavior or incapacity - section 17A(1B) of RDDBFI Act inserted w.e.f. 1-9-2016.

*Procedure for appeal before DRAT* - Procedure to be followed for appeal before DRAT is specified in DRAT (Procedure) Rules, 1994. Appeal should be filed in form annexed to DRAT (Procedure) Rules, 1994. Fees as specified in rule 8 are payable.

### **General provisions relating to DRT and DRAT**

Staff for DRT and DRAT will be provided by Central Government [sections 7 and 12 of RDDBFI Act].

Salary and allowances and Presiding Officer of DRT and Chairperson of DRAT shall be prescribed by rules - section 13 of RDDBFI Act.

Vacancies in posts of Presiding Officer of DRT and Chairperson of DRAT shall be filled by Central Government. Proceedings can continue from stage at which vacancy was filled. Thus, entire proceedings need not be conducted afresh - section 14 of RDDBFI Act.

Presiding Officer of DRT and Chairperson of DRAT can resign after giving three month notice. They can be removed for proved misbehaviour after conducting enquiry - section 15 of RDDBFI Act.

*Order valid despite defects in appointment* - Order of Presiding Officer of DRT and Chairperson of DRAT would be valid despite defects in appointment  
– section 16 of RDDBFI Act.

**Powers of civil court to DRT and DRAT** - DRT and DRAT have powers of Civil Court and proceedings before Tribunal and Appellate Tribunal shall be deemed to be judicial proceedings, [section 22 of RDDBFI Act].

**Representation before DRT/DRAT** - The case can be represented by bank/ defendant through any of its officers or by a legal practitioner. The defendant can himself represent his case, if he so desires [section 23 of RDDBFI Act].

*Presiding Officer, Chairperson and staff are public servants* - Presiding Officer of DRT, Chairperson of DRAT, recovery officer and staff of DRT/DRAT are public servants - section 32 of RDDBFI Act.

Their acts done in good faith are protected against suit, prosecution or other legal proceedings - section 33 of RDDBFI Act.

### **Procedure at Debt Recovery Tribunal**

Bank/FI has to file application in prescribed form along with necessary appeal fees for recovery of any debt from any person. Application should be accompanied with true copies of all documents relied upon in support of the claim - section 19(3) of RDDBFI Act.

Application shall be supported by affidavit sworn in verifying all the facts and pleadings - section 19(10A) of RDDBFI Act.

Part of fees will be refunded if claim is settled before final orders - section 19(3B) of RDDBFI Act.

'Document' includes statement of account or any entry in banker's book duly certified under Bankers' Books Evidence Act - *Explanation* to section 19(3) of RDDBFI Act.

Application should be accompanied by details as specified in section 19(3 A) of RDDBFI Act as inserted vide 2016 Amendment Act.

*Application to DRT under Insolvency and Bankruptcy Code, 2016* - In case of application to DRT to exercise powers of adjudicating authority under the Insolvency and Bankruptcy Code, 2016 shall be dealt with in manner prescribed under that Code - section 19A of RDDBFI Act inserted *vide* 2016 Amendment under Insolvency and Bankruptcy Act. This section will be made effective after the Insolvency and Bankruptcy Code, 2016 is notified and made effective.



[Note - Due to drafting mistake, same section No. 19A has been given to two provisions. Government will have to amend the mistake in due course. This has happened as amendments were made in two different Amendment Acts passed separately].

**Jurisdiction of DRT** - The jurisdiction of DRT is (a) where branch or office of Bank/FI is maintaining account of debt claimed as outstanding or (aa) defendant or each of defendant is actually residing or carrying on business or personally working (b) any defendant or each of defendant is actually residing or carrying on business or personally working (c) cause of action in whole or in part arises - section 19(1) of RDDBFI Act.

**Withdrawal of application** if Bank/FI intend to take action under SARFAESI Act - *Bank/FI can withdraw application if they intend to take action under SARFAESI Act - proviso to section 19(1) of RDDBFI Act.*

If such application for withdrawal is made, it should be decided within 30 days

– second *proviso* to section 19(1) of RDDBFI Act.

If permission for withdrawal is made, written order giving reasons should be passed by DRT - third *proviso* to section 19(1) of RDDBFI Act.

**Another Bank/FI can join** - If one Bank/FI has made application to DRT, another Bank/FI can also apply if they have claim against the same person. Such application can be made anytime before passing of final order by DRT - section 19(2) of RDDBFI Act.

**Summons to defendant** - On receipt of application from Bank/FI, summons shall be issued to defendant to (a) show cause within thirty days (b) direct defendant to disclose properties and assets (i) restrain defendant from dealing with assets pending hearing - section 19(4) of RDDBFI Act.

After receipt of summons, defendant cannot transfer, sale or lease property, except in ordinary course of business - section 19(4A) of RDDBFI Act.

Defendant shall be liable to account for sale proceeds of secured assets in ordinary course of business and deposit sale proceeds in the account of Bank/ FI - second *proviso* to section 19(4A) of RDDBFI Act.

*Defendant to reply within 30 days* - Defendant should reply within 30 days and can claim set off - section 19(5 A) of RDDBFI Act.

Period of filing reply can be extended by DRT by further 30 days.

Reply with claim of set off and counterclaim shall be supported by affidavit sworn in verifying all the facts and pleadings - section 19(10A) of RDDBFI Act.

The written statement is as if it is a cross suit so that DRT can pass final order in respect of original claim and of set off. - section 19(7) of RDDBFI Act.

If defendant admits some amount, DRT can order defendant to pay the amount within 30 days.

*Civil arrest if reply not given* - If no reply is given by defendant, DRT can direct that the person shall be detained in civil jail for term not exceeding three months, after giving opportunity of personal hearing - section 19(5)(iii) of RDDBFI Act.

*Defendant can claim set off and counter claim* - Defendant can claim set off. The DRT can consider claims to set off [section 19(6) of RDDBFI Act] and counter-claims of defendant borrower, [section 19(8) of RDDBFI Act].

*Reply by applicant to counter claim* - Applicant can submit reply to counter claim within prescribed period - section 19(10) of RDDBFI Act.

The reply shall be supported by affidavit sworn in verifying all the facts and pleadings - section 19(10A) of RDDBFI Act.

*Interim orders by DRT to provide security* - If defendant is likely to obstruct or delay or frustrate execution of order for recovery of debt, DRT can direct defendant to furnish security, after giving him show cause notice and opportunity of hearing - section 19(13) of RDDBFI Act.  
DRT can order attachment of property, after giving him hearing - DRT can *order attachment of property, after giving him hearing* - section 19(15) of RDDBFI Act.

*DRT can order civil imprisonment if orders are disobeyed* - DRT can order civil imprisonment upto three months if orders are disobeyed - section 19(17) of RDDBFI Act.

*DRT can appoint receiver* - DRT can appoint receiver to receive property of defendant and take in possession - section 19(18) of RDDBFI Act.

*Distribution of sale proceeds in case of winding up of company* - In case of winding up of company, DRT can direct that sale proceeds of secured assets be distributed in manner prescribed in section 326 of Companies Act, 2013 - section 19(19) of RDDBFI Act.

*Final order within 30 days from conclusion of hearing* - DRT should pass final order within 30 days from conclusion of hearing, deciding claims, counter claims and set off. The order should include payment of interest - section 19(20) of RDDBFI Act.

DRT can make orders and give directions to prevent abuse of process or to secure ends of justice - section 19(25) of RDDBFI Act.

Effort should be made to complete proceedings in two hearings and dispose of application within 180 days from date of receipt - section 19(24) of RDDBFI Act.

*Distribution of assets* - The order should direct recovery officer to distribute sale proceeds in following order - (i) costs incurred for preservation and protection of secured assets, cost of valuation, public notice for possession and auction and other expenses (ii) debts recovered to Bank/FI - section 19(20AB) of RDDBFI Act.

After commencement of Insolvency and Bankruptcy Code, 2016, the distribution of assets shall be as specified in that code - Explanation to section 19(20AB) of RDDBH Act.

Copy of final order and recovery certificate shall be send to applicant and defendant - section 19(21) of RDDBFI Act.

*Certificate of recovery* - DRT shall issue certificate of recovery to recovery officer, along with final order. It shall be deemed to be a decree or order of Court - section 19(22A) of RDDBFI Act.

The certificate can be sent to more than one DRT if property is in different jurisdictions.

### **Proceedings against guarantor before DRT**

Liability of guarantor (surety) is co-extensive with that of Principal debtor. Debt Recovery Tribunal (DRT) can proceed against guarantor. Creditor is not bound to exhaust his remedy against the principal debtor before suing the surety - *Industrial Investment Bank of India v. Biswanath Jhunjhunwala* (2009) 9 see 478.

### **Procedure to be followed**

Debt Recovery Tribunal (Procedure) Rules, 1993 have been notified for the procedural aspects of DRT (Debt Recovery Tribunal).

*Plural remedy permitted* - Rule 10 of DRT (Procedure) Rules provided that plural remedies will not be permitted in one single application. This rule has been omitted w.e.f. 21-1 -2003. Thus, now, an applicant can seek relief or reliefs based on more than single cause of action, in one single application.

*Evidence by Affidavit* - Rule 12(6) provides that DRT can order that any fact can be proved by affidavit or affidavit of any witness may be read at the hearing. Once affidavit for proving any fact is submitted, cross examination will be allowed by Tribunal only if in the opinion of Tribunal, it is necessary to do so and for sufficient reasons. Reasons should be recorded for allowing cross examination.

*Registrar of DRT* - Registrar of DRT is administrative head. He can receive, scrutinise and place the applications before Presiding Officer. Any of powers of Registrar can be assigned/delegated to Assistant Registrar by Presiding Officer.

### **Applications, documents and statements in electronic form**

Presently, all applications, documents and statements have to be filed in physical form.

However, Central Government can make rules to file these documents in electronic form - section 19A(1) of RDDBFI Act inserted w.e.f. 1-9-2016.

Publication of interim or final order by DRT or DRAT on its website shall be deemed to be public notice served on that party - section 19A(2) of RDDBFI Act inserted w.e.f. 1-9-2016.

[Note - Due to drafting mistake, same section No. 19A has been given to two provisions. Government will have to amend the mistake in due course. This has happened as amendments were made in two different Amendment Acts passed separately].

### **Appeal against order of DRT**

Appeal from order of 'Debt Recovery Tribunal' should be filed within 30 days to 'Appellate Tribunal', [section 20(3) of RDDBH Act, 2016 amended w.e.f. 1-9-2016.]. DRAT can grant further time of 30 days [Earlier, i.e. till 1-9-2016, the time limit for filing appeal was 45 days plus extension of 45 days].

Appeal cannot be filed against a consent order, [section 20(2) of RDDBFI Act],

Appeal can be filed only after paying 50% of amount of debt due as determined by Tribunal. However, the Appellate Tribunal can waive or reduce the amount of deposit, [section 21 of RDDBFI Act amended w.e.f. 1-9-2016]. [Earlier, the amount to be deposited was 7596]. DRAT can reduce the pre-deposit to 2596 for reasons to be recorded in writing - rule 9 of DRAT (Procedure) Rules.

*Appeal against order of Adjudicating Authority under Insolvency and Bankruptcy Code* - Appeal against order of Adjudicating Authority under section 20(1) under RDDBFI Act or under section 181(1) of Insolvency and Bankruptcy Code, 2016 shall be made to DRAT. DRAT shall have opportunity of personal hearing and pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against - section 20(4) of RDDBFI Act. Words in italics inserted *vide* 2016 Amendment Act. This amendment will be made effective after the Insolvency and Bankruptcy Code, 2016 is notified and made effective.

*Financial Powers of DRAT* - Financial powers of DRAT have been specified in DRAT (Financial and Administrative Power) Rules, 1997.

### **Further appeals after order of DRAT**

There is no provision for appeal against order of Appellate Tribunal. Of course, writ jurisdiction of High Court under Article 226 and supervisory jurisdiction of High Court under Article 227 is not and indeed cannot be ousted by any Parliamentary Act. SLP before Supreme Court is also maintainable.

### **Jurisdiction of civil courts barred**

These tribunals will have exclusive jurisdiction to entertain and decide applications from banks and FIs for recovery of debts. Only Supreme Court and High Courts will have jurisdiction under Articles 226 and 227 of Constitution, [section 18 of RDDBFI Act].

*Provision of Insolvency Code not applicable if sale under SARFAESI Act or RDB Act, even if company is under winding up* - The provisions of Regulation 36 in respect of sale of assets of company under winding up shall not apply if the secured creditor enforces his security interest under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 or the Recovery of Debts and Bankruptcy Act, 1993. Thus, in that case, Liquidator under Insolvency Code does not come into picture at all

- Regulation 37(7) of IBBI (Liquidation Process) Regulations, 2016.



### Recovery Powers after issue of certificate

After issue of certificate by Tribunal, Recovery officer can recover the debt by one or more of following modes - (a) Attachment and sale of movable or immovable property of defendant (aa) *taking possession of property over which security interest is created or any other property of the defendant and appointing receiver for such property and to sell the same* (b) Arrest of defendant and his detention in prison (c) Appointing a receiver for management of movable or immovable properties of defendant (d) *any other mode of recovery as may be prescribed by Central Government* [section 25 of RDDBFI Act. Words in italics inserted w.e.f. 1-9-2016].

Validity of recovery certificate cannot be challenged before Recovery Officer. However, presiding officer can withdraw certificate or correct clerical or arithmetical mistake - section 26 of RDDBFI Act.

Presiding Officer of DRT can grant time and stay proceedings - Presiding Officer of DRT can stay order of recovery and grant time if defendant makes 25% down payment and agrees to pay balance within reasonable period. Once he applies for time, he cannot file appeal before DRAT. If defendant does not pay as agreed, the stay is withdrawn - section 27(1A) to 27(1C) inserted w.e.f. 1-9-2016.

**Recovery by garnishee proceedings** - The Recovery Officer may require any person who is indebted to defendant to deduct the amount of debt due from defendant and pay the amount to Recovery officer. Receipt of Recovery Officer will be full discharge of his liability towards the defendant, [section 28(3) of RDDBFI Act].

**Recovery by distraint and sale of movable property** - Recovery Officer can recover any amount by distraint and sale of movable property of defendant in manner laid down in third schedule of Income Tax Act - section 28(5) of RDDBFI Act.

*Appeal against order of recovery officer* - Appeal against order of Recovery Officer can be made to DRT. [section 30 of RDDBFI Act].

Such appeal shall be entertained only if 50% of amount due as determined by DRT is deposited with DRT - section 30A of RDDBFI Act.

*Recovery procedures* - Provisions of Second and Third Schedules of Income- tax Act, 1961 and Income Tax (Certificate Proceedings) Rules, 1992 will, as far as possible, apply with necessary modifications for recovery of dues, [section 29 of RDDBFI Act]

**ARBITRATION AND  
CONCILIATION ACT, 1996**

Section	Short Brief
1	Short title, extent and commencement.
2	Definitions.
3	Receipt of written communications
4. Waiver of right to object.	A party who knows that-
5. Extent of judicial intervention	no judicial authority shall intervene except where so provided in this Part.
6. Administrative assistance	In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.
7. Arbitration agreement.	In this Part, “arbitration agreement” means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
8. Power to refer parties to arbitration where there is an arbitration agreement.	It provides that a judicial authority shall, on the basis of the <b>arbitration</b> agreement between the parties, direct the parties to go for <b>arbitration</b> .
9. Interim measures, etc., by Court	Section 9 of the Arbitration and Conciliation Act, permits interim measures and any party to an arbitration agreement can seek relief by way of an interim application from the court <sup>3</sup> under Section 9 of the Arbitration and Conciliation Act before the commencement of the arbitral proceedings or after the pronouncement of award but before its enforcement.
10. Number of arbitrators.	(1) The parties are free to determine the number of <b>arbitrators</b> , provided that such number shall not be an even number. (2) Failing the determination referred to in sub-section (1), the <b>arbitral</b> tribunal shall consist of a sole <b>arbitrator</b> .

Section	Short Brief
11. Appointment of arbitrators.	person of any nationality may be an arbitrator, unless otherwise agreed by the parties.
11A. Power of Central Government to amend Fourth Schedule	If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, amend the Fourth Schedule and thereupon the Fourth Schedule shall be deemed to have been amended accordingly.
12. Grounds for challenge.	(1) When a person is approached in connection with his possible appointment as an <b>arbitrator</b> , he shall disclose in writing any circumstances likely to give rise to justifiable doubts as to his independence or impartiality.
13. Challenge procedure.	(1) Subject to sub- <b>section</b> (4), the parties are free to agree on a procedure for challenging an <b>arbitrator</b> . ... (3) Unless the <b>arbitrator</b> challenged under sub- <b>section</b> (2) withdraws from his office or the other party agrees to the challenge, the <b>arbitral</b> tribunal shall decide on the challenge.
14. Failure or impossibility to act.	(1) The mandate of an <b>arbitrator</b> shall terminate and he shall be substituted by another <b>arbitrator</b> , if — (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay”.
<b>15. Termination of mandate and substitution of arbitrator</b>	Where the mandate of an <b>arbitrator</b> terminates, a substitute <b>arbitrator</b> shall be appointed according to the rules that were applicable to the appointment of the <b>arbitrator</b> being replaced.
16. Competence of arbitral tribunal to rule on its jurisdiction.	It confers power upon the <b>arbitral</b> tribunal to decide on matters relating to its jurisdiction.

Section	Short Brief
17. Interim measures ordered by arbitral tribunal.	1) Unless otherwise agreed by the parties, the <b>arbitral</b> tribunal may, at the request of a party, order a party to take any interim measure of protection as the <b>arbitral</b> tribunal may consider necessary in respect of the subject-matter of the dispute.
18. Equal treatment of parties.	the parties shall be, treated with equality and each party shall be given a full opportunity to present his case.
19. Determination of rules of procedure.	(1) The <b>arbitral</b> tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872). (2) Subject to this Part, the parties are free to agree on the procedure to be followed by the <b>arbitral</b> tribunal in conducting its proceedings.
20. Place of arbitration.	(1) The parties are free to agree on the place of <b>arbitration</b> . (2) Failing any agreement referred to in sub-section (1), the place of <b>arbitration</b> shall be determined by the <b>arbitral</b> tribunal having regard to the circumstances of the case, including the convenience of the parties.
21. Commencement of arbitral proceedings	provides that unless otherwise agreed by the parties, the <b>arbitral</b> proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to <b>arbitration</b> is received by the respondent.
22. Language	(1) The parties are free to agree upon the language or languages to be used in the <b>arbitral</b> proceedings. (3) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any <b>arbitral</b> award, decision or other communication by the <b>arbitral</b> tribunal.

Section	Short Brief
23. Statements of claim and defence.	Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.
24. Hearings and written proceedings	Unless otherwise agreed by the parties, the <b>arbitral</b> tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials
25. Default of a party	States that unless, otherwise agreed by the parties, where without showing sufficient cause, the claimants fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings.
26. Expert appointed by arbitral tribunal	(a)appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and (b)require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.
27. Court assistance in taking evidence	<b>Section 27</b> of the <b>Arbitration and Conciliation Act, 1996</b> (the Act) makes a provision for the <b>arbitral</b> tribunal to seek the assistance of the court in taking evidence. Such assistance can be sought by the tribunal on its own accord, or by a party to the dispute, with the approval of the tribunal.

Section	Short Brief
28. Rules applicable to substance of dispute.	<b>Section 28 states</b> that the <b>arbitral</b> tribunal shall decide the dispute according to the rules of law that the parties have designated as applicable to the substance of the dispute. They are also empowered with expressly authorising the <b>arbitral</b> tribunal to act as amiable compositeur.
29. Decision making by panel of arbitrators.	(1) Unless otherwise agreed by the parties, in <b>arbitral</b> proceedings with more than one <b>arbitrator</b> , any decision of the <b>arbitral</b> tribunal shall be made by a majority of all its members.
29A. Time limit for arbitral award.	<b>Section 29A</b> of the Act inserted by way of <b>amendment</b> in 2015 (“2015 <b>Amendment</b> ”) prescribes the time limit for passing an <b>arbitral</b> award.
29B. Fast track procedure	Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).
30. Settlement.	It is not incompatible with an <b>arbitration</b> agreement for an <b>arbitral</b> tribunal to encourage settlement of the dispute and, with the agreement of the parties, the <b>arbitral</b> tribunal may use <b>mediation, conciliation</b> or other procedures at any time during the <b>arbitral</b> proceedings to encourage settlement.
31. Form and contents of arbitral award	An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.
31A. Regime for costs.	<b>Section 31A(1)</b> provides that in relation to any <b>arbitration</b> proceeding, the <b>arbitral</b> tribunal has discretion to determine: whether costs are payable by one party to another; the amount of such costs; and. when such costs are to be paid.



Section	Short Brief
32. Termination of proceedings	The <b>arbitral</b> proceedings shall be terminated by the final <b>arbitral</b> award or by an order of the <b>arbitral</b> tribunal under sub- <b>section</b> (2).
33. Correction and interpretation of award; additional award.	Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
34. Application for setting aside arbitral awards	Interpretation of Public Policy under <b>section 34</b> . <b>Section 34</b> (2)(b)(ii) <b>states</b> that a Court may set aside an <b>arbitral</b> award if it finds that the award is in conflict with the public policy of India. The concept has witnessed a great change starting in the year 1996.
35. Finality of arbitral awards.	<b>Section 35</b> of the Act gives finality to an <b>arbitral</b> award and <b>states</b> that it shall be final and binding on the parties and persons claiming under them respectively
36. Enforcement	Power of Court, where <b>arbitration</b> agreement is ordered not to apply to a particular difference, to order that a provision making an award a condition precedent to an action shall not apply to such difference.
37. Appealable orders.	(a) granting or refusing to grant any measure under <b>section 9</b> ; (b) setting aside or refusing to set aside an <b>arbitral</b> award under <b>section 34</b> . (b) granting or refusing to grant an interim measure under <b>section 17</b> .
38. Deposits.	he arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (8) of section 31, which it expects will be incurred in respect of the claim submitted to it

Section	Short Brief
39. Lien on arbitral award and deposits as to costs.	(1) Subject to the provisions of sub- <b>section</b> (2) and to any provision to the contrary in the <b>arbitration</b> agreement, the <b>arbitral</b> tribunal shall have a lien on the <b>arbitral</b> award for any unpaid costs of the <b>arbitration</b> .
40. Arbitration agreement not to be discharged by death of party thereto.	(1) An <b>arbitration</b> agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.
41. Provisions in case of insolvency	Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising thereout or in connection therewith shall be submitted to <b>arbitration</b> , the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.
42. Jurisdiction.	Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.
43. Limitations.	It provides for the applicability of Limitation Act for arbitration proceedings. If an <b>arbitration</b> is not commenced, by issuing a notice for <b>arbitration</b> within the limitation period from the date of accrual of right to sue, then the claim will become a time barred claim.
44. Definition	(a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and (b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

Section	Short Brief
45. Power of judicial authority to refer parties to arbitration.	Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.
46. When foreign award binding.	Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.
47. Evidence.	The party applying for the enforcement of a foreign award shall present the evidence before the court, at the time of the application
48. Conditions for enforcement of foreign awards.	provides for conditions for enforcement of foreign awards and grounds under which enforcement of a foreign award may be refused, at the request of the party against whom it is invoked.
49. Enforcement of foreign awards.	Further, by a legal fiction, <b>Section 49</b> of the <b>Arbitration</b> Act provides that a foreign award, after it is granted recognition and enforcement under <b>Section 48</b> , would be deemed to be a decree of "that Court" for the limited purpose of enforcement.
50. Appealable orders.	(a) refer the parties to <b>arbitration</b> under <b>section 45</b> ; (b) enforce a foreign award under <b>section 48</b> , to the court authorised by law to hear appeals from such order.
51. Savings	Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

Section	Short Brief
52. Chapter II not to apply.	Chapter II of this Part shall not apply in relation to foreign awards to which this Chapter applies.
53. Interpretation	in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies, and for the purposes of this Chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.
54. Power of judicial authority to refer parties to arbitration	Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, on being seized of a dispute regarding a contract made between persons to whom section 53 applies and including an arbitration agreement, whether referring to present or future differences, which is valid under that section and capable of being carried into effect, shall refer the parties on the application of either of them or any person claiming through or under him to the decision of the arbitrators and such reference shall not prejudice the competence of the judicial authority in case the agreement or the arbitration cannot proceed or becomes inoperative.
55. Foreign awards when binding.	Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.
56. Evidence.	Where any document requiring to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Section	Short Brief
57. Conditions for enforcement of foreign awards.	In order that a foreign award may be enforceable under this Chapter, Conditions for enforcement of foreign awards are necessary.
58. Enforcement of foreign awards.	Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of the Court.
59. Appealable orders.	(a) to refer the parties to arbitration under section 54; and (b) to enforce a foreign award under section 57, to the court authorised by law to hear appeals from such order.
60. Savings.	Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.
61. Application and scope.	provides for the Application and Scope of <b>Conciliation</b> . <b>Section 61</b> points out that the process of <b>conciliation</b> extends, in the first place, to disputes, whether contractual or not. ... But the parties may by their agreement provide for two or three conciliators.
62. Commencement of conciliation proceedings.	The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute, If the other party rejects the invitation, there will be no conciliation proceedings.
63. Number of conciliators.	(1) There shall be one <b>conciliator</b> unless the parties agree that there shall be two or three conciliators. (2) Where there is more than one <b>conciliator</b> , they ought, as a general rule, to act jointly.
64. Appointment of conciliators.	in conciliation proceedings with one conciliator, the parties may agree on the name of a sole conciliator; in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

Section	Short Brief
65. Submission of statements to conciliator.	(1) The <b>conciliator</b> , upon his appointment, may request each party to submit to him a <b>brief</b> written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.
66. Conciliator not bound by certain enactments.	The <b>conciliator</b> is not bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).
67. Role of conciliator.	The <b>conciliator</b> shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute. He <b>conciliator</b> may, at any stage of the <b>conciliation</b> proceedings, make proposals for a settlement of the dispute.
68. Administrative assistance.	In order to facilitate the conduct of the <b>conciliation</b> proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.
69. Communication between conciliator and parties.	The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.
70. Disclosure of information.	Disclosure of information.—When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate: Provided that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.
71. Co-operation of parties with conciliator.	The parties shall in good faith co-operate with the <b>conciliator</b> and, in particular, shall endeavour to comply with requests by the <b>conciliator</b> to submit written materials, provide evidence and attend meetings.

Section	Short Brief
72. Suggestions by parties for settlement of dispute	Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.
73. Settlement agreement	When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations.
74. Status and effect of settlement agreement.	The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.
75. Confidentiality.	Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.
76. Termination of conciliation proceedings.	by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.
77. Resort to arbitral or judicial proceedings.	The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.
78. Costs.	Upon termination of the <b>conciliation</b> proceedings, the conciliator shall fix the costs of the <b>conciliation</b> and give written notice thereof to the parties.

Section	Short Brief
79. Deposits.	The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in sub- <b>section</b> (2) of <b>section</b> 78 which he expects will be incurred.
80. Role of conciliator in other proceedings.	Unless otherwise agreed by the parties,— (a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings; (b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.
81. Admissibility of evidence in other proceedings.	views expressed or suggestions made by the other party in respect of a possible settlement of the dispute; the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.
82. Power of High Court to make rules.	<b>Section 82</b> of the <b>Act</b> confers power on the High Courts to make <b>rules</b> consistent with the <b>Act</b> as to all proceedings before the Court, under the <b>Act</b> .
83. Removal of difficulties	If any difficulty arises in giving effect to the provisions of this <b>Act</b> , the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this <b>Act</b> as appear to it to be necessary or expedient for removing the difficulty.
84. Power to make rules	<b>Section 84</b> of the <b>Arbitration and Conciliation Act, 1996</b> , empowers the Central Government to make <b>rules</b> to carry out the provisions of this <b>Act</b> .
85. Repeal and savings	this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force; all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.



Section	Short Brief
86. Repeal and saving.	Notwithstanding such repeal, any order, rule, notification or scheme made or anything done or any action taken in pursuance of any provision of the said Ordinance shall be deemed to have been made, done or taken under the corresponding provisions of this Act.
87. <b>Effect of arbitral and related court proceedings commenced prior to 23rd October, 2015.</b>	<p>Unless the parties otherwise agree, the amendments made to this Act by the Arbitration and Conciliation (Amendment) Act, 2015 shall—</p> <p>(a) not apply to—</p> <ul style="list-style-type: none"> <li>(i) arbitral proceedings commenced before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (23rd October, 2015);</li> <li>(ii) court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015;</li> </ul> <p>(b) apply only to arbitral proceedings commenced on or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 and to court proceedings arising out of or in relation to such arbitral proceedings.</p>

<b>Schedule</b>	<b>Particulars</b>	<b>Brief</b>
The First Schedule	CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS	
The Second Schedule	PROTOCOL ON ARBITRATION CLAUSES	
The Third Schedule	CONVENTION ON THE EXECUTION OF FOREIGN ARBITRAL AWARDS	
The Fourth Schedule	[See section 11(14)]	
The Fifth Schedule	The independence or impartiality of arbitrators	
The Sixth Schedule	[See section 12(1) (b)]	
The Seventh Schedule	Arbitrator's relationship with the parties or counsel	

## **Section 1. Short title, extent and commencement.**

- (1) This Act may be called the Arbitration and Conciliation Act, 1996.
- (2) It extends to the whole of India: .....
- (3) It shall come into force on such date<sup>2</sup> as the Central Government may, by notification in the Official Gazette, appoint.

## **Section 2. Definition.**

- (1) In this Part, unless the context otherwise requires,—
  - (a) "arbitration" means any arbitration whether or not administered by permanent arbitral institution;
  - (b) "arbitration agreement" means an agreement referred to in section 7;
  - (c) "arbitral award" includes an interim award;
  - (d) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
  - (e) "Court" means—
    - (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;

- (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;
- (f) "international commercial arbitration" means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is—
- (i) an individual who is a national of, or habitually resident in, any country other than India; or
  - (ii) a body corporate which is incorporated in any country other than India; or
  - (iii) An association or a body of individuals whose central management and control is exercised in any country other than India; or
  - (iv) the Government of a foreign country;
- (g) "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased, and, where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting;
- (h) "party" means a party to an arbitration agreement.

(2) This Part shall apply where the place of arbitration is in India:

Provided that subject to an agreement to the contrary, the provisions of sections 9, 27 and clause (a) of sub-section (1) and sub-section (3) of section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act.

(3) This Part shall not affect any other law for the time being in force by virtue of which certain disputes may not be submitted to arbitration.

(4) This Part except sub-section (1) of section 40, sections 41 and 43 shall apply to every arbitration under any other enactment for the time being in force, as if the arbitration were pursuant to an arbitration agreement and as if that other enactment were an arbitration agreement, except in so far as the provisions of this Part are inconsistent with that other enactment or with any rules made thereunder.

(5) Subject to the provisions of sub-section (4), and save in so far as is otherwise provided by any law for the time being in force or in any agreement in force between India and any other country or countries, this Part shall apply to all arbitrations and to all proceedings relating thereto.

(6) Where this Part, except section 28, leaves the parties free to determine a certain issue, that freedom shall include the right of the parties to authorise any person including an institution, to determine that issue.

(7) An arbitral award made under this Part shall be considered as a domestic award.

(8) Where this Part—

(a) refers to the fact that the parties have agreed or that they may agree, or

(b) in any other way refers to an agreement of the parties, that agreement shall include any arbitration rules referred to in that agreement.

(9) Where this Part, other than clause (a) of section 25 or clause (a) of sub-section (2) of section 32, refers to a claim, it shall also apply to a counterclaim, and where it refers to a defence, it shall also apply to a defence to that counterclaim.

### **Section 3. Receipt of written communications.**

(1) Unless otherwise agreed by the parties,—

- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or at his place of business, habitual residence or mailing address, and
- (b) if none of the places referred to in clause (a) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or by any other means which provides a record of the attempt to deliver it.

(2) The communication is deemed to have been received on the day it is so delivered.

(3) This section does not apply to written communications in respect of proceedings of any judicial authority.

#### **Section 4. Waiver of right to object.**

A party who knows that—

(a) any provision of this Part from which the parties may derogate, or

(b) any requirement under the arbitration agreement,

has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

#### **Section 5. Extent of judicial intervention.**

Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.

#### **Section 6. Administrative assistance.**

In order to facilitate the conduct of the arbitral proceedings, the parties, or the arbitral tribunal with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

#### **Section 7. Arbitration agreement.**

(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

- (2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (3) An arbitration agreement shall be in writing.
- (4) An arbitration agreement is in writing if it is contained in
- (a) a document signed by the parties;
  - (b) an exchange of letters, telex, telegrams or other means of telecommunication [including communication through electronic means] which provide a record of the agreement; or
  - (c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
- (5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

## **Section 8. Power to refer parties to arbitration where there is an arbitration agreement.**

- (1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that *prima facie* no valid arbitration agreement exists.



(2) The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof:

Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made.

## **STATE AMENDMENTS**

### **Jammu and Kashmir and Ladakh (UTs).--**

**Insertion of section 8A and section 8B.--**After section 8, insert the following sections, namely:--

**"8A. Power of the court, seized of petitions under sections 9 or 11 of the Act, to refer the dispute to Mediation or Conciliation.--**(1) If during the pendency of petitions under sections 9 or 11 of the Act, it appears to the court, that there exists elements of a settlement which may be acceptable to the parties, the court may, with the consent of parties, refer the parties, for resolution of their disputes, to,--

- (a) mediation; or
- (b) conciliation.

- (2) The procedure for reference of a dispute to mediation is as under—
- (a) where a dispute has been referred for resolution by recourse to mediation, the procedure framed under that Act shall apply;
  - (b) in case of a successful resolution of the dispute, the Mediator shall immediately forward the mediated settlement to the referral court;
  - (c) on receipt of the mediated settlement, the referral court shall independently apply its judicial mind and record a satisfaction that the mediated settlement is genuine, lawful, voluntary, entered into without coercion, undue influence, fraud or misrepresentation and that there is no other legal impediment in accepting the same;
  - (d) the court shall record a statement on oath of the parties, or their authorised representatives, affirming the mediated settlement as well as a clear undertaking of the parties to abide by the terms of the settlement;
  - (e) if satisfied, the court shall pass an order in terms of the settlement;
  - (f) if the main petition, in which the reference was made is pending, it shall be disposed of by the referral court in terms thereof;
  - (g) if the main petition, in which the reference was made stands disposed of, the mediated settlement and the matter shall be listed before the referral court, which shall pass orders in accordance with clauses (iii), (iv) and (v);
  - (h) such a mediated settlement, shall have the same status and effect as an arbitral award and may be enforced in the manner specified under section 36 of the Act.

(3) With respect to reference of a dispute to conciliation, the provisions of Part II of this Act shall apply as if the conciliation proceedings were initiated by the parties under the relevant provision of this Act.

**8B. Power of the court, seized of matters under sections 34 or 37 of the Act, to refer the dispute to Mediation or Conciliation.--**(1) If during the pendency of a petition under section 34 or an appeal under section 37 of the Act, it appears to the court, that there exists elements of a settlement which may be acceptable to the parties, the court may, with the consent of parties, refer the parties, for resolution of their disputes, to:-

- (a) mediation; or
- (b) conciliation.

(2) The procedure for reference of a dispute to mediation is as under:--

- (a) where a dispute has been referred for resolution by recourse to mediation, the procedure framed under the Act shall apply;
- (b) in case of a successful resolution of the dispute, the Mediator shall immediately forward the mediated settlement to the referral court;
- (c) on receipt of the mediated settlement, the referral court shall independently apply its judicial mind and record a satisfaction that the mediated settlement is genuine, lawful, voluntary, entered into without coercion, undue influence, fraud or misrepresentation and that there is no other legal impediment in accepting the same;
- (d) the court shall record a statement on oath of the parties, or their authorized representatives, affirming the mediated settlement, a clear undertaking of the parties to abide by the terms of the settlement as well as statement to the above effect;
- (e) if satisfied, the court shall pass an order in terms of the settlement;

(f) if the main petition, in which the reference was made is pending, it shall be disposed of by the referral court in terms thereof;

(g) if the main petition, in which the reference was made stands disposed of, the mediated settlement and the matter shall be listed before the referral court, which shall pass orders in accordance with clauses (iii), (iv) and (v);

(h) such a mediated settlement, shall have the status of a modified arbitral award and may be enforced in the manner specified under section 36 of the Act.

(3) With respect to reference of a dispute to conciliation, the provisions of Part III of the Act, shall apply as if the conciliation proceedings were initiated by the parties under the relevant provision of this Act.“

[Vide the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and Vide Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).]

## **Section 9. Interim measures, etc., by Court.**

(1)] A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (ii) for an interim measure of protection in respect of any of the following matters, namely:—
  - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

- (b) securing the amount in dispute in the arbitration;
- (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
- (d) interim injunction or the appointment of a receiver;
- (e) such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.

## **Section 10. Number of arbitrators.**

- (1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.
- (2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator.

## **Section 11. Appointment of arbitrators.**

- (1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.
- (2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.
- (3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator.
- (4) If the appointment procedure in sub-section (3) applies and—
  - (a) a party fails to appoint an arbitrator within thirty days from the receipt of a request to do so from the other party; or
  - (b) the two appointed arbitrators fail to agree on the third arbitrator within thirty days from the date of their appointment,the appointment shall be made, upon request of a party, by <sup>1</sup>[the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court];

(5) Failing any agreement referred to in sub-section (2), in an arbitration with a sole arbitrator, if the parties fail to agree on the arbitrator within thirty days from receipt of a request by one party from the other party to so agree the appointment shall be made, upon request of a party, by the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court.

(6) Where, under an appointment procedure agreed upon by the parties,—

(a) a party fails to act as required under that procedure; or

(b) the parties, or the two appointed arbitrators, fail to reach an agreement expected of them under that procedure; or

(c) a person, including an institution, fails to perform any function entrusted to him or it under that procedure,

a party may request <sup>1</sup>[the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court] to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.

(7) A decision on a matter entrusted by sub-section (4) or sub-section (5) or sub-section (6) to the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision.

(8) The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court, before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to—

(a) any qualifications required for the arbitrator by the agreement of the parties; and

(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

(9) In the case of appointment of sole or third arbitrator in an international commercial arbitration, the Supreme Court or the person or institution designated by that Court may appoint an arbitrator of a nationality other than the nationalities of the parties where the parties belong to different nationalities.

(10) The Supreme Court or, as the case may be, the High Court, may make such scheme as the said Court may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6), to it.

(11) Where more than one request has been made under sub-section (4) or sub-section (5) or sub-section (6) to the Chief Justices of different High Courts or their designates, <sup>7</sup>[different High Courts or their designates, the High Court or its designate to whom the request has been first made] under the relevant sub-section shall alone be competent to decide on the request.



(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the "Supreme Court or, as the case may be, the High Court" in those sub-sections shall be construed as a reference to the "Supreme Court"; and

(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to the Supreme Court or, as the case may be, the High Court in those sub-sections shall be construed as a reference to the "High Court" within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate, and where the High Court itself is the Court referred to in that clause, to that High Court.

(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case may be, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

(14) For the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, the High Court may frame such rules as may be necessary, after taking into consideration the rates specified in the Fourth Schedule.

*Explanation.*— For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) in case where parties have agreed for determination of fees as per the rules of an arbitral institution.

## **Section 11A. Power of Central Government to amend Fourth Schedule.**

**11A. Power of Central Government to amend Fourth Schedule.**—(1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, amend the Fourth Schedule and thereupon the Fourth Schedule shall be deemed to have been amended accordingly.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the both Houses of Parliament.

## **Section 12. Grounds for challenge.**

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—

- (a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and
- (b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

*Explanation 1.*—The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

*Explanation 2.*—The disclosure shall be made by such person in the form specified in the Sixth Schedule.

(3) An arbitrator may be challenged only if—

- (a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or
- (b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

### **Section 13. Challenge procedure.**

- (1) Subject to sub-section (4), the parties are free to agree on a procedure for challenging an arbitrator.
- (2) Failing any agreement referred to in sub-section (1), a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in sub-section (3) of section 12, send a written statement of the reasons for the challenge to the arbitral tribunal.
- (3) Unless the arbitrator challenged under sub-section (2) withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.
- (4) If a challenge under any procedure agreed upon by the parties or under the procedure under sub-section (2) is not successful, the arbitral tribunal shall continue the arbitral proceedings and make an arbitral award.
- (5) Where an arbitral award is made under sub-section (4), the party challenging the arbitrator may make an application for setting aside such an arbitral award in accordance with section 34.
- (6) Where an arbitral award is set aside on an application made under sub-section (5), the Court may decide as to whether the arbitrator who is challenged is entitled to any fees.

## **Section 14. Failure or impossibility to act.**

- (1) The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if—
- (a) he becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay; and
  - (b) he withdraws from his office or the parties agree to the termination of his mandate.
- (2) If a controversy remains concerning any of the grounds referred to in clause (a) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.
- (3) If, under this section or sub-section (3) of section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of section 12.

## **Section 15. Termination of mandate and substitution of arbitrator.**

- (1) In addition to the circumstances referred to in section 13 or section 14, the mandate of an arbitrator shall terminate—
- (a) where he withdraws from office for any reason; or
  - (b) by or pursuant to agreement of the parties.
- (2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

### **Section 16. Competence of arbitral tribunal to rule on its jurisdiction.**

(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,—

(a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and

(b) a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence; however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

(3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

(4) The arbitral tribunal may, in either of the cases referred to in sub-section (2) or sub-section (3), admit a later plea if it considers the delay justified.

(5) The arbitral tribunal shall decide on a plea referred to in sub-section (2) or sub-section (3) and, where the arbitral tribunal takes a decision rejecting the plea, continue with the arbitral proceedings and make an arbitral award.

(6) A party aggrieved by such an arbitral award may make an application for setting aside such an arbitral award in accordance with section 34.

## **Section 17. Interim measures ordered by arbitral tribunal.**

**17. Interim measures ordered by arbitral tribunal.--** (1) A party may, during the arbitral proceedings, apply to the arbitral tribunal—

- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (ii) for an interim measure of protection in respect of any of the following matters, namely:--
  - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
  - (b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.

### **Section 18. Equal treatment of parties.**

The parties shall be treated with equality and each party shall be given a full opportunity to present his case.



## **Section 19. Determination of rules of procedure.**

- (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).
- (2) Subject to this Part, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting its proceedings.
- (3) Failing any agreement referred to in sub-section (2), the arbitral tribunal may, subject to this Part, conduct the proceedings in the manner it considers appropriate.
- (4) The power of the arbitral tribunal under sub-section (3) includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

## **Section 20. Place of arbitration.**

- (1) The parties are free to agree on the place of arbitration.
- (2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.

## **Section 21. Commencement of arbitral proceedings.**

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

## **Section 22. Language.**

- (1) The parties are free to agree upon the language or languages to be used in the arbitral proceedings.
- (2) Failing any agreement referred to in sub-section (1), the arbitral tribunal shall determine the language or languages to be used in the arbitral proceedings.
- (3) The agreement or determination, unless otherwise specified, shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.
- (4) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

## **Section 23. Statements of claim and defence.**

- (1) Within the period of time agreed upon by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of those statements.
- (2) The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
  - (2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.
- (3) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.
- (4) The statement of claim and defence under this section shall be completed within a period of six months from the date the arbitrator or all the arbitrators, as the case may be, received notice, in writing of their appointment.

## **Section 24. Hearings and written proceedings.**

(1) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials:

Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on a request by a party, unless the parties have agreed that no oral hearing shall be held:

Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of documents, goods or other property.

(3) All statements, documents or other information supplied to, or applications made to the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

## **Section 25. Default of a party.**

Unless otherwise agreed by the parties, where, without showing sufficient cause,—

- (a) the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
- (b) the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the proceedings without treating that failure in itself as an admission of the allegations by the claimant <sup>1</sup>[and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited.
- (c) a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

## **Section 26. Expert appointed by arbitral tribunal.**

(1) Unless otherwise agreed by the parties, the arbitral tribunal may—

- (a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal, and
- (b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

(3) Unless otherwise agreed by the parties, the expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the possession of the expert with which he was provided in order to prepare his report.

## **Section 27. Court assistance in taking evidence.**

(1) The arbitral tribunal, or a party with the approval of the arbitral tribunal, may apply to the Court for assistance in taking evidence.

(2) The application shall specify—

(a) the names and addresses of the parties and the arbitrators;

(b) the general nature of the claim and the relief sought;

(c) the evidence to be obtained, in particular,—

(i) the name and address of any person to be heard as witness or expert witness and a statement of the subject-matter of the testimony required;

(ii) the description of any document to be produced or property to be inspected.

(3) The Court may, within its competence and according to its rules on taking evidence, execute the request by ordering that the evidence be provided directly to the arbitral tribunal.

(4) The Court may, while making an order under sub-section (3), issue the same processes to witnesses as it may issue in suits tried before it.

(5) Persons failing to attend in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitral tribunal during the conduct of arbitral proceedings, shall be subject to the like disadvantages, penalties and punishments by order of the Court on the representation of the arbitral tribunal as they would incur for the like offences in suits tried before the Court.

(6) In this section the expression "Processes" includes summonses and commissions for the examination of witnesses and summonses to produce documents.

## **Section 28. Rules applicable to substance of dispute.**

(1) Where the place of arbitration is situate in India,—

(a) in an arbitration other than an international commercial arbitration, the arbitral tribunal shall decide the dispute submitted to arbitration in accordance with the substantive law for the time being in force in India;

(b) in international commercial arbitration,—

(i) the arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute;

(ii) any designation by the parties of the law or legal system of a given country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country and not to its conflict of laws rules;

(iii) failing any designation of the law under clause (a) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.

(2) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorised it to do so.

(3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.

## **Section 29. Decision making by panel of arbitrators.**

(1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.

(2) Notwithstanding sub-section (1), if authorised by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the presiding arbitrator.



## **Section 29A. Time limit for arbitral award.**

**29A. Time limit for arbitral award.**--<sup>2</sup>[(1) The award in matters other than international commercial arbitration shall be made by the arbitral tribunal within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23:

Provided that the award in the matter of international commercial arbitration may be made as expeditiously as possible and endeavour may be made to dispose of the matter within a period of twelve months from the date of completion of pleadings under sub-section (4) of section 23.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

Provided further that where an application under sub-section (5) is pending, the mandate of the arbitrator shall continue till the disposal of the said application:

Provided also that the arbitrator shall be given an opportunity of being heard before the fees is reduced.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

## **STATE AMENDMENTS**

### **Jammu and Kashmir and Ladakh (UTs).--**

**Amendment of sections 29A.--** (a) for sub-section (1), the following sub-section shall be substituted, namely:--

"(1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

*Explanation.*--For the purposes of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.";

(b) in sub-section (4), omit second and third provisos.

*Vide* the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and *Vide* Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).

### **Section 29B. Fast track procedure.**

**29B. Fast track procedure.--** (1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).

(2) The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.

(3) The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1):--

(a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;

(b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;

(c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;

(d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

(4) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.

(5) If the award is not made within the period specified in sub-section (4), the provisions of sub-sections (3) to (9) of section 29A shall apply to the proceedings.

(6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.

### **Section 30. Settlement.**

- (1) It is not incompatible with an arbitration agreement for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.
- (2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.
- (4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute.

### **Section 31. Form and contents of arbitral award.**

- (1) An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.
- (2) For the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

- (3) The arbitral award shall state the reasons upon which it is based, unless—
- (a) the parties have agreed that no reasons are to be given, or
  - (b) the award is an arbitral award on agreed terms under section 30.
- (4) The arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.
- (5) After the arbitral award is made, a signed copy shall be delivered to each party.
- (6) The arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.
- (7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
- (b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.
- Explanation.*—The expression "current rate of interest" shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978 (14 of 1978).

(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.

*Explanation.*—For the purpose of clause (a), "costs" means reasonable costs relating to—

- (i) the fees and expenses of the arbitrators and witnesses,
- (ii) legal fees and expenses,
- (iii) any administration fees of the institution supervising the arbitration, and
- (iv) any other expenses incurred in connection with the arbitral proceedings and the arbitral award.

### **Section 31A. Regime for costs.**

**31A. Regime for costs.**-- (1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), shall have the discretion to determine—

- (a) whether costs are payable by one party to another;
- (b) the amount of such costs; and
- (c) when such costs are to be paid.

*Explanation.*--For the purpose of this sub-section, "costs" means reasonable costs relating to—

- (i) the fees and expenses of the arbitrators, Courts and witnesses;
- (ii) legal fees and expenses;
- (iii) any administration fees of the institution supervising the arbitration; and
- (iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

- (2) If the Court or arbitral tribunal decides to make an order as to payment of costs,
  - (a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or
  - (b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.
  
- (3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including-
  - (a) the conduct of all the parties;
  - (b) whether a party has succeeded partly in the case;
  - (c) whether the party had made a frivolous counterclaim leading to delay in the disposal of the arbitral proceedings; and
  - (d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.
  
- (4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay—
  - (a) a proportion of another party's costs;
  - (b) a stated amount in respect of another party's costs;
  - (c) costs from or until a certain date only;
  - (d) costs incurred before proceedings have begun;
  - (e) costs relating to particular steps taken in the proceedings;
  - (f) costs relating only to a distinct part of the proceedings; and
  - (g) interest on costs from or until a certain date.
  
- (5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen.



## **Section 32. Termination of proceedings.**

- (1) The arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where—
  - (a) the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute,
  - (b) the parties agree on the termination of the proceedings, or
  - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) Subject to section 33 and sub-section (4) of section 34, the mandate of the arbitral tribunal shall terminate with the termination of the arbitral proceedings.

## **Section 33. Correction and interpretation of award; additional award.**

- (1) Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties—
  - (a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;
  - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

(4) Unless otherwise agreed by the parties, a party with notice to the other party, may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

(5) If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

(6) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

(7) Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.

## **Section 34. Application for setting aside arbitral awards.**

(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application <sup>1</sup>[establishes on the basis of the record of the arbitral tribunal that]—

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or
- (ii) the arbitral award is in conflict with the public policy of India.

*Explanation 1.*--For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,--

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
  - (ii) it is in contravention with the fundamental policy of Indian law;
- Or,
- (iii) it is in conflict with the most basic notions of morality or justice.

*Explanation 2.*--For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.

## **STATE AMENDMENTS**

### **Jammu and Kashmir and Ladakh (UTs).--**

#### **Amendment of section 34.—**

(i) after sub-section (2), insert the following sub-section, namely:--

"(2A) An arbitral award may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by re-appreciation of evidence.";

(ii) in sub-section (3),--

(i) for "three months" substitute, "six months";

(ii) in proviso thereto, for, "three months" and "thirty days" substitute respectively "six months" and "sixty days".

[*Vide* the Jammu and Kashmir Reorganization (Adaptation of Central Laws) Order, 2020, notification No. S.O. 1123(E) dated (18-3-2020) and *Vide* Union Territory of Ladakh Reorganisation (Adaptation of Central Laws) Order, 2020, notification No. S.O. 3774(E), dated (23-10-2020).]

### **Section 35. Finality of arbitral awards.**

Subject to this Part an arbitral award shall be final and binding on the parties and persons claiming under them respectively.

### **Section 36. Enforcement.**

**Enforcement.**—(1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were a decree of the court.

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

### **Section 37. Appealable orders.**

(1) Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:--

- (a) refusing to refer the parties to arbitration under section 8;
- (b) granting or refusing to grant any measure under section 9;
- (c) setting aside or refusing to set aside an arbitral award under section 34.

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

- (a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or
- (b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

## **Section 38. Deposits.**

(1) The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as the case may be, as an advance for the costs referred to in sub-section (8) of section 31, which it expects will be incurred in respect of the claim submitted to it:

Provided that where, apart from the claim, a counter-claim has been submitted to the arbitral tribunal, it may fix separate amount of deposit for the claim and counter-claim.

(2) The deposit referred to in sub-section (1) shall be payable in equal shares by the parties: Provided that where one party fails to pay his share of the deposit, the other party may pay that share:

Provided further that where the other party also does not pay the aforesaid share in respect of the claim or the counter-claim, the arbitral tribunal may suspend or terminate the arbitral proceedings in respect of such claim or counter-claim, as the case may be.

(3) Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case may be.

## **Section 39. Lien on arbitral award and deposits as to costs.**

(1) Subject to the provisions of sub-section (2) and to any provision to the contrary in the arbitration agreement, the arbitral tribunal shall have a lien on the arbitral award for any unpaid costs of the arbitration.



(2) If in any case an arbitral tribunal refuses to deliver its award except on payment of the costs demanded by it, the Court may, on an application in this behalf, order that the arbitral tribunal shall deliver the arbitral award to the applicant on payment into Court by the applicant of the costs demanded, and shall, after such inquiry, if any, as it thinks fit, further order that out of the money so paid into Court there shall be paid to the arbitral tribunal by way of costs such sum as the Court may consider reasonable and that the balance of the money, if any, shall be refunded to the applicant.

(3) An application under sub-section (2) may be made by any party unless the fees demanded have been fixed by written agreement between him and the arbitral tribunal, and the arbitral tribunal shall be entitled to appear and be heard on any such application.

(4) The Court may make such orders as it thinks fit respecting the costs of the arbitration where any question arises respecting such costs and the arbitral award contains no sufficient provision concerning them.

#### **Section 40. Arbitration agreement not to be discharged by death of party thereto.**

(1) An arbitration agreement shall not be discharged by the death of any party thereto either as respects the deceased or as respects any other party, but shall in such event be enforceable by or against the legal representative of the deceased.

(2) The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed.

(3) Nothing in this section shall affect the operation of any law by virtue of which any right of action is extinguished by the death of a person.

## **Section 41. Provisions in case of insolvency.**

- (1) Where it is provided by a term in a contract to which an insolvent is a party that any dispute arising thereout or in connection therewith shall be submitted to arbitration, the said term shall, if the receiver adopts the contract, be enforceable by or against him so far as it relates to any such dispute.
- (2) Where a person who has been adjudged an insolvent had, before the commencement of the insolvency proceedings, become a party to an arbitration agreement, and any matter to which the agreement applies is required to be determined in connection with, or for the purposes of, the insolvency proceedings, then, if the case is one to which sub-section (1) does not apply, any other party or the receiver may apply to the judicial authority having jurisdiction in the insolvency proceedings for an order directing that the matter in question shall be submitted to arbitration in accordance with the arbitration agreement, and the judicial authority may, if it is of opinion that, having regard to all the circumstances of the case, the matter ought to be determined by arbitration, make an order accordingly.
- (3) In this section the expression "receiver" includes an Official Assignee.

## **Section 42. Jurisdiction.**

Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to an arbitration agreement any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all sequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

### **Section 42A. Confidentiality of information.**

Notwithstanding anything contained by any other law for the time being in force, the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentially of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award.

### **Section 42B. Protection of action taken in good faith.**

No suit or other legal proceedings shall lie against the arbitrator for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

### **Section 43. Limitations.**

- (1) The Limitation Act, 1963 (36 of 1963), shall apply to arbitrations as it applies to proceedings in court.
- (2) For the purposes of this section and the Limitation Act, 1963 (36 of 1963), an arbitration shall be deemed to have commenced on the date referred to in section 21.
- (3) Where an arbitration agreement to submit future disputes to arbitration provides that any claim to which the agreement applies shall be barred unless some step to commence arbitral proceedings is taken within a time fixed by the agreement, and a dispute arises to which the agreement applies, the Court, if it is of opinion that in the circumstances of the case undue hardship would otherwise be caused, and notwithstanding that the time so fixed has expired, may on such terms, if any, as the justice of the case may require, extend the time for such period as it thinks proper.

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963 (36 of 1963), for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.

#### **Section 44. Definition.**

In this Chapter, unless the context otherwise requires, "foreign award" means an arbitral award on differences between persons arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India, made on or after the 11th day of October, 1960—

- (a) in pursuance of an agreement in writing for arbitration to which the Convention set forth in the First Schedule applies, and
- (b) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made may, by notification in the Official Gazette, declare to be territories to which the said Convention applies.

#### **Section 45. Power of judicial authority to refer parties to arbitration.**

Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, when seized of an action in a matter in respect of which the parties have made an agreement referred to in section 44, shall, at the request of one of the parties or any person claiming through or under him, refer the parties to arbitration, <sup>1</sup>[unless it prima facie finds] that the said agreement is null and void, inoperative or incapable of being performed.

## **Section 46. When foreign award binding.**

Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.

## **Section 47. Evidence.**

(1) The party applying for the enforcement of a foreign award shall, at the time of the application, produce before the court—

- (a) the original award or a copy thereof, duly authenticated in the manner required by the law of the country in which it was made;
- (b) the original agreement for arbitration or a duly certified copy thereof; and
- (c) such evidence as may be necessary to prove that the award is a foreign award.

(2) If the award or agreement to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

*Explanation.*—In this section and in the sections following in this Chapter, "Court" means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.

## **Section 48. Conditions for enforcement of foreign awards.**

- (1) Enforcement of a foreign award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the court proof that—
- (a) the parties to the agreement referred to in section 44 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
  - (b) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
  - (c) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:  
Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be enforced; or
  - (d) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place ; or
  - (e) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

(2) Enforcement of an arbitral award may also be refused if the Court finds that—

(a) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or

(b) the enforcement of the award would be contrary to the public policy of India.

Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(3) If an application for the setting aside or suspension of the award has been made to a competent authority referred to in clause (e) of sub-section (1) the Court may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

**Section 49. Enforcement of foreign awards:** Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that Court.

## **Section 50. Appealable orders.**

(1) Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the order refusing to—

- (a) refer the parties to arbitration under section 45;
- (b) enforce a foreign award under section 48,  
to the court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

## **Section 51. Saving.**

Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

## **Section 53. Interpretation.**

In this Chapter "foreign award" means an arbitral award on differences relating to matters considered as commercial under the law in force in India made after the 28th day of July, 1924,—

- (a) in pursuance of an agreement for arbitration to which the Protocol set forth in the Second Schedule applies, and
- (b) between persons of whom one is subject to the jurisdiction of some one of such Powers as the Central Government, being satisfied that reciprocal provisions have been made, may, by notification in the Official Gazette, declare to be parties to the Convention set forth in the Third Schedule, and of whom the other is subject to the jurisdiction of some other of the Powers aforesaid, and



(c) in one of such territories as the Central Government, being satisfied that reciprocal provisions have been made, may, by like notification, declare to be territories to which the said Convention applies, and for the purposes of this Chapter an award shall not be deemed to be final if any proceedings for the purpose of contesting the validity of the award are pending in the country in which it was made.

**Section 54. Power of judicial authority to refer parties to arbitration.**

Notwithstanding anything contained in Part I or in the Code of Civil Procedure, 1908 (5 of 1908), a judicial authority, on being seized of a dispute regarding a contract made between persons to whom section 53 applies and including an arbitration agreement, whether referring to present or future differences, which is valid under that section and capable of being carried into effect, shall refer the parties on the application of either of them or any person claiming through or under him to the decision of the arbitrators and such reference shall not prejudice the competence of the judicial authority in case the agreement or the arbitration cannot proceed or becomes inoperative.

**Section 55. Foreign awards when binding.**

Any foreign award which would be enforceable under this Chapter shall be treated as binding for all purposes on the persons as between whom it was made, and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India and any references in this Chapter to enforcing a foreign award shall be construed as including references to relying on an award.

## **Section 56. Evidence.**

- (1) The party applying for the enforcement of a foreign award shall, at the time of application produce before the Court—
- (a) the original award or a copy thereof duly authenticated in the manner required by the law of the country in which it was made;
  - (b) evidence proving that the award has become final; and
  - (c) such evidence as may be necessary to prove that the conditions mentioned in clauses (a) and (c) of sub-section (1) of section 57 are satisfied.

(2) Where any document requiring to be produced under sub-section (1) is in a foreign language, the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India.

Explanation.—In this section and in the sections following in this Chapter, "Court" means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject-matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.

## **Section 57. Conditions for enforcement of foreign awards.**

- (1) In order that a foreign award may be enforceable under this Chapter, it shall be necessary that—
- (a) the award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto;
  - (b) the subject-matter of the award is capable of settlement by arbitration under the law of India;
  - (c) the award has been made by the arbitral tribunal provided for in the submission to arbitration or constituted in the manner agreed upon by the parties and in conformity with the law governing the arbitration procedure;
  - (d) the award has become final in the country in which it has been made, in the sense that it will not be considered as such if it is open to opposition or appeal or if it is proved that any proceedings for the purpose of contesting the validity of the award are pending;
  - (e) the enforcement of the award is not contrary to the public policy or the law of India.

*Explanation 1.*—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

*Explanation 2.*—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.

(2) Even if the conditions laid down in sub-section (1) are fulfilled, enforcement of the award shall be refused if the Court is satisfied that—

- (a) the award has been annulled in the country in which it was made;
- (b) the party against whom it is sought to use the award was not given notice of the arbitration proceedings in sufficient time to enable him to present his case; or that, being under a legal incapacity, he was not properly represented;
- (c) the award does not deal with the differences contemplated by or falling within the terms of the submission to arbitration or that it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that if the award has not covered all the differences submitted to the arbitral tribunal, the Court may, if it thinks fit, postpone such enforcement or grant it subject to such guarantee as the Court may decide.

(3) If the party against whom the award has been made proves that under the law governing the arbitration procedure there is a ground, other than the grounds referred to in clauses (a) and (c) of sub-section (1) and clauses (b) and (c) of sub-section (2) entitling him to contest the validity of the award, the Court may, if it thinks fit, either refuse enforcement of the award or adjourn the consideration thereof, giving such party a reasonable time within which to have the award annulled by the competent tribunal.

**Section 58. Enforcement of foreign awards:** Where the Court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of the Court.

**Section 59. Appealable orders.**

(1) An appeal shall lie from the order refusing—  
    (a) to refer the parties to arbitration under section 54; and  
    (b) to enforce a foreign award under section 57,  
to the court authorised by law to hear appeals from such order.

(2) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.

**Section 60. Savings**

Nothing in this Chapter shall prejudice any rights which any person would have had of enforcing in India of any award or of availing himself in India of any award if this Chapter had not been enacted.

**Section 61. Application and scope.**

(1) Save as otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

(2) This Part shall not apply where by virtue of any law for the time being in force certain disputes may not be submitted to conciliation.

**Section 62. Commencement of conciliation proceedings.**

- (1) The party initiating conciliation shall send to the other party a written invitation to conciliate under this Part, briefly identifying the subject of the dispute.
- (2) Conciliation proceedings, shall commence when the other party accepts in writing the invitation to conciliate.
- (3) If the other party rejects the invitation, there will be no conciliation proceedings.
- (4) If the party initiating conciliation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and if he so elects, he shall inform in writing the other party accordingly.

**Section 63. Number of conciliators.**

- (1) There shall be one conciliator unless the parties agree that there shall be two or three conciliators.
- (2) Where there is more than one conciliator, they ought, as a general rule, to act jointly.

## **Section 64. Appointment of conciliators.**

(1) Subject to sub-section (2)—

- (a) in conciliation proceedings, with one conciliator, the parties may agree on the name of a sole conciliator;
- (b) in conciliation proceedings with two conciliators, each party may appoint one conciliator;
- (c) in conciliation proceedings with three conciliators, each party may appoint one conciliator and the parties may agree on the name of the third conciliator who shall act as the presiding conciliator.

(2) Parties may enlist the assistance of a suitable institution or person in connection with the appointment of conciliators, and in particular,—

- (a) a party may request such an institution or person to recommend the names of suitable individuals to act as conciliator; or
- (b) the parties may agree that the appointment of one or more conciliators be made directly by such an institution or person:

Provided that in recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

**Section 65. Submission of statements to conciliator.**

- (1) The conciliator, upon his appointment, may request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.
- (2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.
- (3) At any stage of the conciliation proceedings, the conciliator may request a party to submit to him such additional information as he deems appropriate.

*Explanation.—In this section and all the following sections of this Part, the term "conciliator" applies to a sole conciliator, two or three conciliators, as the case may be.*

**Section 66. Conciliator not bound by certain enactments:** The conciliator is not bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872).



## **Section 67. Role of conciliator.**

- (1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- (2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
- (3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
- (4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

**Section 68. Administrative assistance:** In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

**Section 69. Communication between conciliator and parties.**

- (1) The conciliator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.
- (2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place shall be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

**Section 70. Disclosure of information.**

When the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate:

Provided that when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator shall not disclose that information to the other party.

**Section 71. Co-operation of parties with conciliator**

The parties shall in good faith co-operate with the conciliator and, in particular, shall endeavour to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

**Section 72. Suggestions by parties for settlement of dispute.**

Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

**Section 73. Settlement agreement.**

- (1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
- (2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.
- (3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.
- (4) The conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties.

**Section 74. Status and effect of settlement agreement.**

The settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

**Section 75. Confidentiality.**

Notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

**Section 76. Termination of conciliation proceedings.**

The conciliation proceedings shall be terminated—

- (a) by the signing of the settlement agreement by the parties, on the date of the agreement; or
- (b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
- (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- (d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

### **Section 77. Resort to arbitral or judicial proceedings.**

The parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

### **Section 78. Costs.**

- (1) Upon termination of the conciliation proceedings, the conciliator shall fix the costs of the conciliation and give written notice thereof to the parties.
- (2) For the purpose of sub-section (1), "costs" means reasonable costs relating to—
  - (a) the fee and expenses of the conciliator and witnesses requested by the conciliator with the consent of the parties;
  - (b) any expert advice requested by the conciliator with the consent of the parties;
  - (c) any assistance provided pursuant to clause (b) of sub-section (2) of section 64 and section 68.
  - (d) any other expenses incurred in connection with the conciliation proceedings and the settlement agreement.
- (3) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

### **Section 79. Deposits.**

- (1) The conciliator may direct each party to deposit an equal amount as an advance for the costs referred to in sub-section (2) of section 78 which he expects will be incurred.
- (2) During the course of the conciliation proceedings, the conciliator may direct supplementary deposits in an equal amount from each party.
- (3) If the required deposits under sub-sections (1) and (2) are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.
- (4) Upon termination of the conciliation proceedings, the conciliator shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties.

### **Section 80. Role of conciliator in other proceedings.**

Unless otherwise agreed by the parties,—

- (a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject of the conciliation proceedings;
- (b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

### **Section 81. Admissibility of evidence in other proceedings.**

The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings,—

- (a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- (b) admissions made by the other party in the course of the conciliation proceedings;
- (c) proposals made by the conciliator;
- (d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

### **Section 82. Power of High Court to make rules.**

The High Court may make rules consistent with this Act as to all proceedings before the Court under this Act.

### **Section 83. Removal of difficulties.**

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

- (2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

#### **Section 84. Power to make rules.**

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) Every rule made by the Central Government under this Act shall be laid, as soon as may be, after it is made before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

#### **Section 85. Removal of difficulties.**

- (1) The Arbitration (Protocol and Convention) Act, 1937 (6 of 1937), the Arbitration Act, 1940 (10 of 1940) and the Foreign Awards (Recognition and Enforcement) Act, 1961 (45 of 1961) are hereby repealed.
- (2) Notwithstanding such repeal,—
  - (a) the provisions of the said enactments shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after this Act comes into force;
  - (b) all rules made and notifications published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act.



**Section 86. Repeal and saving.**

- (1) The Arbitration and Conciliation (Third) Ordinance, 1996 (Ord. 27 of 1996) is hereby repealed.
- (2) Notwithstanding such repeal, any order, rule, notification or scheme made or anything done or any action taken in pursuance of any provision of the said Ordinance shall be deemed to have been made, done or taken under the corresponding provisions of this Act.

**Section 87. Effect of arbitral and related court proceedings commenced prior to 23rd October, 2015.**

Unless the parties otherwise agree, the amendments made to this Act by the Arbitration and Conciliation (Amendment) Act, 2015 shall—

- (a) not apply to—
  - (i) arbitral proceedings commenced before the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 (23rd October, 2015);
  - (ii) court proceedings arising out of or in relation to such arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015;
- (b) apply only to arbitral proceedings commenced on or after the commencement of the Arbitration and Conciliation (Amendment) Act, 2015 and to court proceedings arising out of or in relation to such arbitral proceedings.

# THE ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2015

## Section 1. Short title, extent and commencement.

1. (1) This Act may be called the Arbitration and Conciliation (Amendment) Act, 2015
- (2) It shall be deemed to have come into force on the 23rd October, 2015.

## Section 2.

In the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the principal Act), in section 2,—

(I) in sub-section (1),—

(A) for clause (e), the following clause shall be substituted, namely:—

‘(e) “Court” means—

- (i) in the case of an arbitration other than international commercial arbitration, the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes;
- (ii) in the case of international commercial arbitration, the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, and in other cases, a High Court having jurisdiction to hear appeals from decrees of courts subordinate to that High Court;’

(B) in clause (f ), in sub-clause (iii), the words “a company or” shall be omitted;

(II) in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that subject to an agreement to the contrary, the provisions of sections 9, 27 and clause (a) of sub-section (1) and sub-section (3) of section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act.”

**Amendment of section 7:** In section 7 of the principal Act, in sub-section (4), in clause (b), after the words “or other means of telecommunication”, the words “including communication through electronic means” shall be inserted.

**Amendment of section 8:** In section 8 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then, notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.”;

(ii) in sub-section (2), the following proviso shall be inserted, namely :--

“Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court.”

**Amendment of section 9:** Section 9 of the principal Act shall be renumbered as sub-section (1) thereof, and after sub-section (1) as so renumbered, the following sub-sections shall be inserted, namely:—

“(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.”

**Amendment of section 11:** In section 11 of the principal Act,—

(i) in sub-sections (4), (5) and (6), for the words “the Chief Justice or any person or institution designated by him” wherever they occur, the words “the Supreme Court or, as the case may be, the High Court or any person or institution designated by such Court” shall be substituted;

(ii) after sub-section (6), the following sub-sections shall be inserted, namely:—

“(6A) The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any Court, confine to the examination of the existence of an arbitration agreement.

(6B) The designation of any person or institution by the Supreme Court or, as the case may be, the High Court, for the purposes of this section shall not be regarded as a delegation of judicial power by the Supreme Court or the High Court.”

(iii) in sub-section (7), for the words “the Chief Justice or the person or institution designated by him is final”, the words “the Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court is final and no appeal including Letters Patent Appeal shall lie against such decision” shall be substituted;

(iv) for sub-section (8), the following sub-section shall be substituted, namely:—

“(8) The Supreme Court or, as the case may be, the High Court or the person or institution designated by such Court, before appointing an arbitrator, shall seek a disclosure in writing from the prospective arbitrator in terms of sub-section (1) of section 12, and have due regard to—

(a) any qualifications required for the arbitrator by the agreement of the parties; and

(b) the contents of the disclosure and other considerations as are likely to secure the appointment of an independent and impartial arbitrator.”

(v) in sub-section (9), for the words “the Chief Justice of India or the person or institution designated by him”, the words “the Supreme Court or the person or institution designated by that Court” shall be substituted;

(vi) for sub-section (10), the following sub-section shall be substituted, namely:—

“(10) The Supreme Court or, as the case may be, the High Court, may make such scheme as the said Court may deem appropriate for dealing with matters entrusted by sub-section (4) or sub-section (5) or sub-section (6), to it.”;

(vii) in sub-section (11), for the words “the Chief Justices of different High Courts or their designates, the Chief Justice or his designate to whom the request has been first made”, the words “different High Courts or their designates, the High Court or its designate to whom the request has been first made” shall be substituted;

(viii) for sub-section (12), the following sub-section shall be substituted, namely:—

‘(12) (a) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in an international commercial arbitration, the reference to the “Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “Supreme Court”; and

(b) where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to “the Supreme Court or, as the case may be, the High Court” in those sub-sections shall be construed as a reference to the “High Court” within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate, and where the High Court itself is the Court referred to in that clause, to that High Court.’;

(ix) after sub-section (12), the following sub-sections shall be inserted, namely:—

“(13) An application made under this section for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as the case may be, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

(14) For the purpose of determination of the fees of the arbitral tribunal and the manner of its payment to the arbitral tribunal, the High Court may frame such rules as may be necessary, after taking into consideration the rates specified in the Fourth Schedule.

Explanation.—For the removal of doubts, it is hereby clarified that this sub-section shall not apply to international commercial arbitration and in arbitrations (other than international commercial arbitration) in case where parties have agreed for determination of fees as per the rules of an arbitral institution.”.

### **Insertion of new section 11A. Power of Central Government to amend Fourth Schedule;**

7. After section 11 of the principal Act, the following new section shall be inserted, namely:—

“11A. (1) If the Central Government is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, amend the Fourth Schedule and thereupon the Fourth Schedule shall be deemed to have been amended accordingly.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the both Houses of Parliament.”.

## **Amendment of section 12.**

8. In section 12 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation 1.—The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2.—The disclosure shall be made by such person in the form specified in the Sixth Schedule.”;

(ii) after sub-section (4), the following sub-section shall be inserted, namely:—

“(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.



### **Amendment of section 14.**

9. In section 14 of the principal Act, in sub-section (1), in the opening portion, for the words “The mandate of an arbitrator shall terminate if ”, the words “The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if ” shall be substituted.

### **Substitution of new section for section 17.**

10. For section 17 of the principal Act, the following section shall be substituted, namely:—

“17. (1) A party may, during the arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to the arbitral tribunal—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908, in the same manner as if it were an order of the Court.”.

### **Amendment of section 23.**

11. In section 23 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—  
“(2A) The respondent, in support of his case, may also submit a counterclaim or plead a set-off, which shall be adjudicated upon by the arbitral tribunal, if such counterclaim or set-off falls within the scope of the arbitration agreement.”.

### **Amendment of section 24.**

12. In section 24 of the principal Act, after the proviso to sub-section (1), the following proviso shall be inserted, namely:—

“Provided further that the arbitral tribunal shall, as far as possible, hold oral hearings for the presentation of evidence or for oral argument on day-to-day basis, and not grant any adjournments unless sufficient cause is made out, and may impose costs including exemplary costs on the party seeking adjournment without any sufficient cause.”.

### **Amendment of section 25.**

13. In section 25 of the principal Act, in clause (b), at the end, after the words “allegations by the claimant”, the words “and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited” shall be inserted.

### **Amendment of section 28.**

14. In section 28 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:—

“(3) While deciding and making an award, the arbitral tribunal shall, in all cases, take into account the terms of the contract and trade usages applicable to the transaction.”.

### **Insertion of new sections 29A and 29B.**

15. After section 29 of the principal Act, the following new sections shall be inserted, namely:—

“29A. (1) The award shall be made within a period of twelve months from the date the arbitral tribunal enters upon the reference.

Explanation.—For the purpose of this sub-section, an arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator or all the arbitrators, as the case may be, have received notice, in writing, of their appointment.

(2) If the award is made within a period of six months from the date the arbitral tribunal enters upon the reference, the arbitral tribunal shall be entitled to receive such amount of additional fees as the parties may agree.

(3) The parties may, by consent, extend the period specified in sub-section (1) for making award for a further period not exceeding six months.

(4) If the award is not made within the period specified in sub-section (1) or the extended period specified under sub-section (3), the mandate of the arbitrator(s) shall terminate unless the Court has, either prior to or after the expiry of the period so specified, extended the period:

Provided that while extending the period under this sub-section, if the Court finds that the proceedings have been delayed for the reasons attributable to the arbitral tribunal, then, it may order reduction of fees of arbitrator(s) by not exceeding five per cent. for each month of such delay.

(5) The extension of period referred to in sub-section (4) may be on the application of any of the parties and may be granted only for sufficient cause and on such terms and conditions as may be imposed by the Court.

(6) While extending the period referred to in sub-section (4), it shall be open to the Court to substitute one or all of the arbitrators and if one or all of the arbitrators are substituted, the arbitral proceedings shall continue from the stage already reached and on the basis of the evidence and material already on record, and the arbitrator(s) appointed under this section shall be deemed to have received the said evidence and material.

(7) In the event of arbitrator(s) being appointed under this section, the arbitral tribunal thus reconstituted shall be deemed to be in continuation of the previously appointed arbitral tribunal.

(8) It shall be open to the Court to impose actual or exemplary costs upon any of the parties under this section.

(9) An application filed under sub-section (5) shall be disposed of by the Court as expeditiously as possible and endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

29B. (1) Notwithstanding anything contained in this Act, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the arbitral tribunal, agree in writing to have their dispute resolved by fast track procedure specified in sub-section (3).

(2) The parties to the arbitration agreement, while agreeing for resolution of dispute by fast track procedure, may agree that the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties.

(3) The arbitral tribunal shall follow the following procedure while conducting arbitration proceedings under sub-section (1):

(a) The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing;

(b) The arbitral tribunal shall have power to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;

(c) An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have oral hearing for clarifying certain issues;

(d) The arbitral tribunal may dispense with any technical formalities, if an oral hearing is held, and adopt such procedure as deemed appropriate for expeditious disposal of the case.

(4) The award under this section shall be made within a period of six months from the date the arbitral tribunal enters upon the reference.

(5) If the award is not made within the period specified in sub-section (4), the provisions of sub-sections (3) to (9) of section 29A shall apply to the proceedings.

(6) The fees payable to the arbitrator and the manner of payment of the fees shall be such as may be agreed between the arbitrator and the parties.”.

**Amendment of section 31.**

(i) in sub-section (7), for clause (b), the following clause shall be substituted, namely:—

‘(b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of two per cent. higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment.

Explanation.—The expression “current rate of interest” shall have the same meaning as assigned to it under clause (b) of section 2 of the Interest Act, 1978.’;

(ii) for sub-section (8), the following sub-section shall be substituted, namely:—

“(8) The costs of an arbitration shall be fixed by the arbitral tribunal in accordance with section 31A.”.

17. After section 31 of the principal Act, the following new section shall be inserted, namely:—

‘31A. (1) In relation to any arbitration proceeding or a proceeding under any of the provisions of this Act pertaining to the arbitration, the Court or arbitral tribunal, notwithstanding anything contained in the Code of Civil Procedure, 1908, shall have the discretion to determine—

- (a) whether costs are payable by one party to another;
- (b) the amount of such costs; and
- (c) when such costs are to be paid.

Explanation.—For the purpose of this sub-section, “costs” means reasonable costs relating to—

- (i) the fees and expenses of the arbitrators, Courts and witnesses;
- (ii) legal fees and expenses;
- (iii) any administration fees of the institution supervising the arbitration; and
- (iv) any other expenses incurred in connection with the arbitral or Court proceedings and the arbitral award.

(2) If the Court or arbitral tribunal decides to make an order as to payment of costs,—

- (a) the general rule is that the unsuccessful party shall be ordered to pay the costs of the successful party; or
- (b) the Court or arbitral tribunal may make a different order for reasons to be recorded in writing.

(3) In determining the costs, the Court or arbitral tribunal shall have regard to all the circumstances, including—

- (a) the conduct of all the parties;
- (b) whether a party has succeeded partly in the case;
- (c) whether the party had made a frivolous counter claim leading to delay in the disposal of the arbitral proceedings; and
- (d) whether any reasonable offer to settle the dispute is made by a party and refused by the other party.

- (4) The Court or arbitral tribunal may make any order under this section including the order that a party shall pay—
- (a) a proportion of another party's costs;
  - (b) a stated amount in respect of another party's costs;
  - (c) costs from or until a certain date only;
  - (d) costs incurred before proceedings have begun;
  - (e) costs relating to particular steps taken in the proceedings;
  - (f) costs relating only to a distinct part of the proceedings; and
  - (g) interest on costs from or until a certain date.

(5) An agreement which has the effect that a party is to pay the whole or part of the costs of the arbitration in any event shall be only valid if such agreement is made after the dispute in question has arisen.’.

**18. In section 34 of the principal Act,—**

(1) in sub-section (2), in clause (b), for the Explanation, the following Explanations shall be substituted, namely:—

“Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”;



(II) after sub-section (2), the following sub-section shall be inserted, namely:—

“(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.”;

(III) after sub-section (4), the following sub-sections shall be inserted, namely:—

“(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.”.

19. For section 36 of the principal Act, the following section shall be substituted, namely:—

“36. (1) Where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a decree of the court

(2) Where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay of the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose.

(3) Upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing:

Provided that the Court shall, while considering the application for grant of stay in the case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.”.

**Amendment of section 37:**

20. In section 37 of the principal Act, in sub-section (1), for clauses (a) and (b), the following clauses shall be substituted, namely:—

- “(a) refusing to refer the parties to arbitration under section 8;
- (b) granting or refusing to grant any measure under section 9;
- (c) setting aside or refusing to set aside an arbitral award under section 34.”.

**Amendment of section 47:**

21. In section 47 of the principal Act, for the Explanation, the following Explanation shall be substituted, namely:—

‘Explanation.—In this section and in the sections following in this Chapter, “Court” means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.’.

**Amendment of section 48:**

22. In section 48 of the principal Act, for the Explanation to sub-section (2), the following Explanations shall be substituted, namely:—

“Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”.

**Amendment of section 56:**

23. In section 56 of the principal Act, for the Explanation, the following Explanation shall be substituted, namely:—

‘Explanation.—In this section and in the sections following in this Chapter, “Court” means the High Court having original jurisdiction to decide the questions forming the subject-matter of the arbitral award if the same had been the subject matter of a suit on its original civil jurisdiction and in other cases, in the High Court having jurisdiction to hear appeals from decrees of courts subordinate to such High Court.’.

**Amendment of section 57:**

24. In section 57 of the principal Act, in sub-section (1), for the Explanation, the following Explanations shall be substituted, namely:—

“Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

- (i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or
- (ii) it is in contravention with the fundamental policy of Indian law; or
- (iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.”.

25. After the Third Schedule to the principal Act, the following new Schedules shall be inserted, namely:—

**The Fourth Schedule**  
[See section 11 (14)]

Sum in dispute	Model fee
Up to Rs. 5,00,000	Rs. 45,000
Above Rs. 5,00,000 and up to Rs. 20,00,000	Rs. 45,000 plus 3.5 per cent. of the claim amount over and above Rs. 5,00,000
Above Rs. 20,00,000 and up to Rs. 1,00,00,000	Rs. 97,500 plus 3 per cent. of the claim amount over and above Rs. 20,00,000
Above Rs. 1,00,00,000 and up to Rs. 10,00,00,000	Rs. 3,37,500 plus 1 per cent. of the claim amount over and above Rs. 1,00,00,000
Above Rs. 10,00,00,000 and up to Rs. 20,00,00,000	Rs. 12,37,500 plus 0.75 per cent. of the claim amount over and above Rs. 1,00,00,000
Above Rs. 20,00,00,000	Rs. 19,87,500 plus 0.5 per cent. of the claim amount over and above Rs. 20,00,00,000 with a ceiling of Rs. 30,00,000

Note:— In the event, the arbitral tribunal is a sole arbitrator, he shall be entitled to an additional amount of twenty-five per cent. on the fee payable as per the table set out above.

## THE FIFTH SCHEDULE

### [See section 12 (1)(b)]

The following grounds give rise to justifiable doubts as to the independence or impartiality of arbitrators:

#### **Arbitrator's relationship with the parties or counsel**

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.
5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.
7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.
9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.
10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.

11. The arbitrator is a legal representative of an entity that is a party in the arbitration.
12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.
13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.
14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

**Relationship of the arbitrator to the dispute;**

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
16. The arbitrator has previous involvement in the case.

**Arbitrator's direct or indirect interest in the dispute;**

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.
18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.
19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

**Previous services for one of the parties or other involvement in the case;**

20. The arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or the affiliate of the party have no ongoing relationship.

21. The arbitrator has within the past three years served as counsel against one of the parties or an affiliate of one of the parties in an unrelated matter.

22. The arbitrator has within the past three years been appointed as arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties.

23. The arbitrator's law firm has within the past three years acted for one of the parties or an affiliate of one of the parties in an unrelated matter without the involvement of the arbitrator.

24. The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties or an affiliate of one of the parties.

**Relationship between an arbitrator and another arbitrator or counsel;**

25. The arbitrator and another arbitrator are lawyers in the same law firm.

26. The arbitrator was within the past three years a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the same arbitration.

27. A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties or an affiliate of one of the parties.

28. A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.

29. The arbitrator has within the past three years received more than three appointments by the same counsel or the same law firm.



**Relationship between arbitrator and party and others involved in the arbitration;**

30. The arbitrator's law firm is currently acting adverse to one of the parties or an affiliate of one of the parties.

31. The arbitrator had been associated within the past three years with a party or an affiliate of one of the parties in a professional capacity, such as a former employee or partner.

**Other circumstances;**

32. The arbitrator holds shares, either directly or indirectly, which by reason of number or denomination constitute a material holding in one of the parties or an affiliate of one of the parties that is publicly listed.

33. The arbitrator holds a position in an arbitration institution with appointing authority over the dispute.

34. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.

Explanation 1.—The term “close family member” refers to a spouse, sibling, child, parent or life partner.

Explanation 2.—The term “affiliate” encompasses all companies in one group of companies including the parent company.

Explanation 3.—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.

# THE SIXTH SCHEDULE

[See section 12 (1)(b)]

NAME:

CONTACT DETAILS:

PRIOR EXPERIENCE (INCLUDING EXPERIENCE WITH ARBITRATIONS):

NUMBER OF ONGOING ARBITRATIONS:

CIRCUMSTANCES DISCLOSING ANY PAST OR PRESENT RELATIONSHIP WITH OR INTEREST IN ANY OF THE PARTIES OR IN RELATION TO THE SUBJECT-MATTER IN DISPUTE, WHETHER FINANCIAL, BUSINESS, PROFESSIONAL OR OTHER KIND, WHICH IS LIKELY TO GIVE RISE TO JUSTIFIABLE DOUBTS AS TO YOUR INDEPENDENCE OR IMPARTIALITY (LIST OUT):

CIRCUMSTANCES WHICH ARE LIKELY TO AFFECT YOUR ABILITY TO DEVOTE SUFFICIENT TIME TO THE ARBITRATION AND IN PARTICULAR YOUR ABILITY TO FINISH THE ENTIRE ARBITRATION WITHIN TWELVE MONTHS (LIST OUT):

## THE SEVENTH SCHEDULE [See section 12 (5)]

### **Arbitrator's relationship with the parties or counsel**

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.
2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.
4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.
5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.
6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.
7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.
8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.
9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.
10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.
11. The arbitrator is a legal representative of an entity that is a party in the arbitration.

12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.
13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.
14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom.

**Relationship of the arbitrator to the dispute;**

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties.
16. The arbitrator has previous involvement in the case.

**Arbitrator's direct or indirect interest in the dispute;**

17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.
18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.
19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.

Explanation 1.—The term “close family member” refers to a spouse, sibling, child, parent or life partner.

Explanation 2.—The term “affiliate” encompasses all companies in one group of companies including the parent company.

Explanation 3.—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialised pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above.’.

26. Nothing contained in this Act shall apply to the arbitral proceedings commenced, in accordance with the provisions of section 21 of the principal Act, before the commencement of this Act unless the parties otherwise agree but this Act shall apply in relation to arbitral proceedings commenced on or after the date of commencement of this Act.

27. (1) The Arbitration and Conciliation (Amendment) Ordinance, 2015, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

*THE SECURITIZATION AND  
RECONSTRUCTION OF  
FINANCIAL ASSETS AND  
ENFORCEMENT OF SECURITY  
INTEREST ACT, 2002*

## *The securitisation and reconstruction of financial assets and enforcement of security interest act, 2002*

- The act which regulates securitisation and reconstruction of financial assets and enforcement of security interest and provide for a central database of security interest created on property rights, is called as the SARFAESI act, 2002
- Extends to the whole of India
- Came into force on 21<sup>st</sup> day of june, 2002
- Asset reconstruction company shall have a minimum net owned fund of:
  - Not less than two crore rupees or such other higher amount as the Reserve Bank, may, by notification, specify. Rs.100 crores by March 2019  
<https://economictimes.indiatimes.com/news/economy/finance/arcs-must-have-minimum-net-corpus-of-rs-100-crore-by-2019-rbi/articleshow/58419458.cms>
- An asset reconstruction company aggrieved by the order of cancellation of certificate of registration may prefer an appeal, within a period of 30 days from the date on which such order of cancellation is communicated to it, to the central government
- An asset reconstruction company may acquire financial assets of any bank or financial institutions:

- By issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institutions, incorporating therein such terms and conditions as may be agreed upon between them
- By entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them
- An asset reconstruction company may, for the purposes of asset reconstruction, provide for:
  - The proper management of the business of the borrower, by change in, or takeover of, the management of the business of the borrower
  - The sale or lease of a part or whole of the business of the borrower
  - Rescheduling of payment of debts payable by the borrower
- Any asset reconstruction company registered under section 3, may:
  - Act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fee or charges as may be mutually agreed upon between the parties
  - Act as a manager referred to in section 13(4)(c) on such fee as may be mutually agreed upon between the parties
  - Act as receiver if appointed by any court or tribunal



- Where on audit on inspection or otherwise, the Reserve Bank is satisfied that business of an asset reconstruction company is being conducted in a manner detrimental to public interest or to the interest or to the interest of investors in security receipts issued by such asset reconstruction company, the Reserve Bank may, for securing proper management of an asset reconstruction company, by an order:
  - Remove the chairman or any director
  - Appoint additional directors on the board of directors
  - Appoint any of its officers as an observer to observe the working of the board of directors of such asset reconstruction company
- Notwithstanding anything contained in section 69 or section 69A of the transfer of property act, 1882 any security interest created in favour of any secured creditor, may be enforced without the intervention of the court or tribunal
- Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as Non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditors within 60 days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under section 13 (4)

- Classification of advance as non-performing advance is not necessary in the following case:
  - Borrower who has raised funds through issue of debt securities
- If, on receipt of the notice under section 13(2), the borrower makes any representations or raise any objection, the secured creditor shall consider such representations or objection and if the secured creditor comes to the conclusion that such representations or objection is not acceptable or tenable, he shall communicate Within 15 days of receipt of such representations or objection the reason for non-acceptance of the representations or objection to the borrower
- In case the borrower fails to discharge his liability in full within the period specified in section 13(2), the secured creditor may take resource to one or more of the following measures to recover his secured debt:
  - Take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset
  - Take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset
  - Appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor

- Where the management of the business of a borrower being a company as defined in the companies act, 2013 is taken over by the secured creditor, then, notwithstanding anything contained in the said act or in the memorandum or articles of association of such borrower:
  - It shall not be lawful for the shareholders of such company or any other persons to nominate or appoint any person to be a director of the company
  - No resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor
  - No proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor
- Any person(including borrower), aggrieved by any of the measures referred to in section 13 (4) taken by the secured creditor or his authorised officer under is chapter, may make an application to the debts recovery tribunal having jurisdiction in the matter within 45 days from the date on which such measure had been taken
- An application against measures to recover secured debt under section 17(1) shall be filed before the debts recovery tribunal within the local limits of whose jurisdiction:
  - The cause of action, wholly or in part, arises
  - Where the secured asset is located

- The branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is o/s for the time being
- Any person aggrieved, by any order made by the debts recovery tribunal under section 17, may prefer an appeal to the appellate tribunal within 30 days from the date of receipt of the order of debts recovery tribunal
- For making an appeal before the DRAT 50% of the amount of debt due from the borrower, as claimed by the secured creditors or determined by the debts recovery tribunal, whichever is less is required to be deposited by the borrower
- Any borrower residing in the state of Jammu and Kashmir and aggrieved by any order made by the court of district judge under section 17A may prefer an appeal, to the High Court having jurisdiction over such court, within 30 days from the date of the order of the court of district judge
- The central government may set-up a registry to be known as the central registry for the purpose of:
  - Registration of transaction of securitisation and reconstruction of financial asset and creation of security interest under this act
- The central government may delegate its powers and functions under chapter IV in relation to establishment, operations and regulations of the central registry to the RBI subject to such terms and conditions as may be prescribed

- The central register of the central registry shall have the transactions relating to Securitisation of financial assets, Reconstruction of financial assets & Creation of security interest
- If any person contravenes or attempts to contravene or abets the contravention of the provisions of SARFAESI act or of any rules made there under, he shall be punishable with:
  - Imprisonment for a term which may extend to 1 year, or with fine, or with both
- Where any asset reconstruction company or any person fails to comply with any directions issued by the Reserve Bank under the SARFAESI act the adjudicating authority may, by an order, impose on such company or person in default:
  - A penalty not exceeding 1 crore rupee or twice the amount involved in such failure where such amount is quantifiable, whichever is more and where such failure is a continuing one, a further penalty which may extend to one lakh rupee for every day, after the first, during which such failure continues
- The provisions of the SARFAESI shall not apply to:
  - A lien on any goods, money or security given by or under the Indian Contract Act, 1872, The Sale of Goods Act, 1930 or any other law for the time being in force
  - Any security interest created in agricultural land
  - Any case in which the amount due is less than 20% of the principal amount and interest thereon

- No suit, prosecution or other legal proceedings shall lie, for anything done or omitted to be done in good faith under the SARFAESI act, against:
  - The Reserve Bank
  - The central registry
  - Any secured creditor or any of its officers
- No civil court shall have jurisdiction to entertain any suit or proceedings in respect of any matter which a debts recovery tribunal or the appellate tribunal is empowered by or under the SARFAESI act to determine
- Secured creditor shall be entitled to take all or any of the measures under section 13(4), provided his claim in respect of the financial asset is made:
  - Within the period of limitations prescribed under the limitations act
- The provisions of the SARFAESI act or the rules made there under shall be in addition to, and not in derogation of:
  - The Securities Contracts (Regulation) Act, 1956
  - The SEBI Act, 1992
  - The RDB Act, 1993
- “Authorised officer” means an officer not less than a chief manager of a public sector bank or equivalent, as specified by the board of directors

- How the services of demand notice as referred to in section 13(2) of the SARFAESI act shall be made:
  - By delivering including hand delivery
  - By registered post with acknowledgement due
  - By speed post or by courier or by any other means of transmission of documents like fax message or electronic mail service
- Where the borrower is a body corporate, the demand notice shall be served:
  - On the registered office or any of the branches of such body corporate as specified under rule 3(1)
- Where the possession by the secured assets to be taken by the secured creditor are movable property in possession of the borrower, the authorised officer shall take possession of such movable property:
  - In the presence of two witnesses after a panchnama drawn and signed by the witnesses
- After taking possession of movable secured asset and in any case before sale, the authorised officer shall obtain the estimated value of the movable secured asset and thereafter, if considered necessary, fix in consultation with the secured creditor, the Reserve price of the assets to be sold in realisation of the dues of the secured creditor

- The authorised officer may sell the movable secured assets taken possession under rule 4(1) in one or more lots to secure maximum sale price for the assets, to be sold, by adopting any of the following means:
  - Obtaining quotations from parties dealing in the secured assets or otherwise interested in buying such assets
  - Inviting tenders from the public
  - Holding public auction including through e-auction mode or by private treaty
- The certificate of sale issued by the authorised officer shall contain:
  - The specification of the movable secured assets sold
  - Price paid
  - The name of the purchaser
- The possession notice of secured immovable assets shall be published by the authorised officer as soon as possible but in any case not later than the seven days from the date of taking possession, in two leading newspaper, one in vernacular language having sufficient circulation in that locality
- Fixation of reserve price for sale of secured immovable property :
  - By obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets
  - By inviting tenders from the public



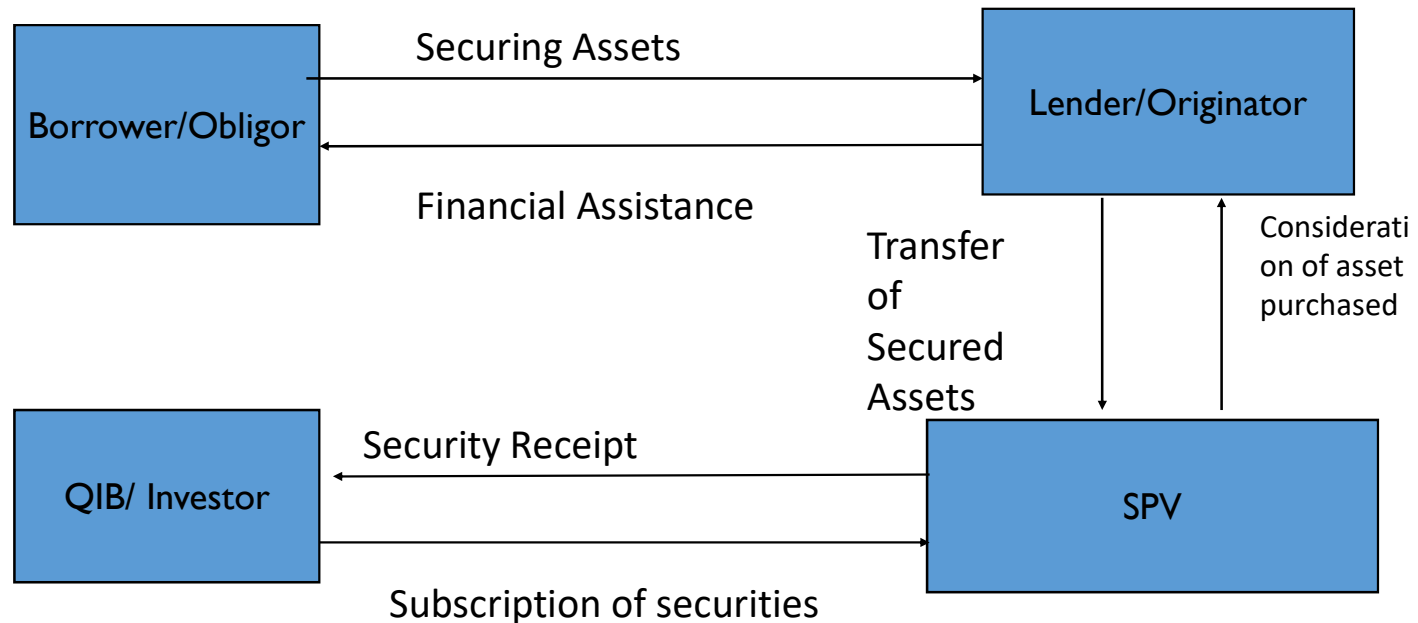
- By holding public auction including through e-auction mode or by private treaty
- The sale of immovable property under the SARFAESI rules, in first instance shall take place before the expiry of 30 days from the date on which the public notice of sale is published in newspapers
- On every sale of immovable property, the purchaser shall immediately, i.e. on the same day or not later than next working day, as the case may be, pay a deposit of 25% of the amount of the sale price, which is inclusive of earnest money deposited, if any to the authorised officer conducting the sale and in default of such deposit, the property shall be sold again
- The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the 15<sup>th</sup> day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the purchaser and the secured creditor, in any case not exceeding three months

# SARFAESI ACT, 2002

## ENFORCEMENT OF SECURITY INTERESTS

### SECURITIZATION

- Securitisation means acquisition of financial assets by any securitization company or reconstruction company. from any originator, whether by raising funds by securitization co. through QIB's by issue of security receipts representing, undivided interest in such financial asset or otherwise.



# SARFAESI ACT, 2002

## **□ Introduction:-**

It is an act to regulate securitization and reconstruction of financial assets and enforcement of security interest and for matters connected therewith or incidental thereto.

## **□ The Act Deals with the Following:-**

- a. Registration and regulation of Asset Reconstruction Companies (ARCs) by the Reserve Bank of India;
- b. Facilitating securitization of financial assets of banks and financial institutions with or without the benefit of underlying securities.

- c. Facilitating easy transferability of financial assets by the ARC to acquire financial assets of banks and financial institutions by issue of debentures or bonds or any other security in the nature of a debenture;
- d. Empowering ARCs to raise funds by issue of security receipts to qualified buyers
- e. Facilitating reconstruction of financial assets acquired by exercising powers of enforcement of securities or change of management or other powers which are proposed to be conferred on the banks and financial institutions
- f. Declaration of any securitization company or reconstruction company registered with the Reserve Bank of India as a public financial institution for the purpose of section 4A of the Companies Act,1956
- g. Defining 'security interest' as any type of security including mortgage and charge on immovable properties given for due repayment of any financial assistance given by any bank or financial institution;

- h. Empowering banks and financial institutions to take possession of securities given for financial assistance and sell or lease the same or take over management in the event of default, i.e. classification of the borrower's account as non-performing asset in accordance with the directions given or under guidelines issued by the Reserve Bank of India from time to time
- i. The rights of a secured creditor to be exercised by one or more of its officers authorized in this behalf in accordance with the rules made by the Central Government;
- j. An appeal against the action of any bank or financial institution to the concerned Debts Recovery Tribunal and a second appeal to the Appellate Debts Recovery Tribunal;
- k. Setting up or causing to be set up a Central Registry by the Central Government for the purpose of registration of transactions relating to securitization, asset reconstruction and creation of security interest.

- l. Application of the proposed legislation initially to banks and financial institutions and empowerment of the Central Government to extend the application of the proposed legislation to non-banking financial companies and other entities
- m. Non-application of the proposed legislation to security interests in agricultural lands, loans not exceeding rupees one lakh and cases where eighty per cent, of the loans have been repaid by the borrower.

How to remember this:

अरे राम चंदर security अफसर की ट्रांसफर हो गयी. Power , facility, बैंक की नौकरी तो गयी ही जो finance लिया था वो भी बैंक ने interest समेत वसूल लिया। अफसर ने possession ले लिया। बात क्या थी register में application नहीं enter की थी

**□ The Act is divided into six chapters having 42 sections:**

The Act introduced multiple new concepts and infrastructures to support ease of recovery actions such as:

- Formation of Securitization or Reconstruction companies
- Recovery without interference of courts
- Framework for revival or reconstruction of the borrowers' business
- Central registry
- Qualified buyers
- Security receipts

## □ Some of the Key Definitions:-

- **“Asset reconstruction”** means acquisition by any securitisation company (SC) or reconstruction company (RC) of any right or interest of any bank or financial institution in any financial assistance for the purpose of realization of such financial assistance [Section 2(b)]
- The term **“financial assistance”** means any loan or advance granted or any debentures or bonds subscribed or any guarantees given or letters of credit established or any other credit facility extended by any bank or financial institution; **[Section 2(k)]**



- The purpose of acquisition by securitization company (SC) or reconstruction company (RC) is to realize such assets and not to stay invested by becoming the shareholders of the company. However it has the right to take over the management of the business, subject to RBI's guidelines from time to time. Such realized amount should be held and applied towards redemption of investments and payment of returns assured to the QIBs
- **“Asset reconstruction company (ARC)”** means a company registered with Reserve Bank under section 3 for the purposes of carrying on the business of asset reconstruction or securitization, or both. **[Section 2(ba)]**
- An ARC is not a banking company although it is regulated by RBI. Such company cannot carry out any other business other than securitization or reconstruction.

- **“Borrower”** means any person who has been granted financial assistance by any bank or financial institution or who has given any guarantee or created any mortgage or pledge as security for the financial assistance granted by any bank or financial institution and includes a person who becomes borrower of a securitization company or reconstruction company consequent upon acquisition by it of any rights or interest of any bank or financial institution in relation to such financial assistance or who has raised funds through issue of debt securities . [Section 2(f)]
- **“default”** means:
  - i. Non-payment of any debt or any other amount payable by the borrower to any secured creditor consequent upon which the account of such borrower is classified as non- performing asset in the books of account of the secured creditor; or
  - ii. Non-payment of any debt or any other amount payable by the borrower with respect to debt securities after notice of ninety days demanding payment of dues served upon such borrower by the debenture trustee or any other authority in whose favor security interest is created for the benefit of holders of such debt securities. [Section 2(j)]

**□ Conditions for calling default under this act is:**

- Debt or any other amount- The amount due should be in the nature of debt.
- Secured creditor- An unsecured creditor doesn't have recourse to this act
- Classification of NPA- A stressed asset which is yet to be classified as NPA cannot be resolved through this act.
- For non-payment of debenture or bonds to be called default, a notice of 90 days is a pre-requisite by the debenture trustee or beneficiary of the security

**□ "Debt"** shall have the meaning assigned to it in clause (g) of section 2 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and includes—

- a) Unpaid portion of the purchase price of any tangible asset given on hire or financial lease or conditional sale or under any other contract;

b) Any right, title or interest on any intangible asset or license or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable any borrower to acquire the intangible asset or obtain license of such asset; [Section 2(ha)]

☐ **“financial asset”** means debt or receivables and includes-

Significance: An asset which is not a financial asset cannot be securitized, acquired or transferred under this Act.

- a. A claim to any debt or receivables or part thereof, whether secured or unsecured; or
- b. Any debtor receivables secured by, mortgage of, or charge on immovable property; or
- c. Mortgage, charge, hypothecation or pledge of movable property; or
- d. Any right or interest in the security, whether full or part underlying such debt or receivables; or
- e. Any beneficial interest in property, whether movable or immovable, or in such debt, receivables, whether such interest is existing, future, accruing, conditional or contingent; or

- f. Any beneficial right, title or interest in any tangible asset given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire such tangible asset; or
  - g. Any right, title or interest on any intangible asset or license or assignment of such intangible asset, which secures the obligation to pay any unpaid portion of the purchase price of such intangible asset or an obligation incurred or credit otherwise extended to enable the borrower to acquire such intangible asset or obtain license of the intangible asset;
  - h. Any financial assistance; [Section 2(l)]
- "Non-performing asset (NPA)" means an asset or account of a borrower, which has been classified by a bank or financial institution as sub-standard, doubtful or loss asset,  
Note:(Please refer to RBI Norms as to classification)

- a) In case such bank or financial institution is administered or regulated by an authority or body established, constituted or appointed by any law for the time being in force, in accordance with the directions or guidelines relating to assets classifications issued by such authority or body;
- b) In any other case, in accordance with the directions or guidelines relating to assets classifications issued by the Reserve Bank. [Section 2(o)]

☐ "Qualified buyer" means a financial institution, insurance company, bank, state financial corporation, state industrial development corporation, trustee or asset reconstruction company which has been granted a certificate of registration under sub-section (4) of section 3 or any asset management company making investment on behalf of mutual fund or pension fund or a foreign institutional investor registered under the Securities and Exchange Board of India Act, 1992 (15 of 1992) or regulations made thereunder, any category of non-institutional investors as may be specified by the Reserve Bank under sub-section (1) of section 7 or any other body corporate as maybe specified by the Board;[Section 2(u)]

Note:In the event of non realization of financial assets,QB holding not less than 75% security receipts shall be entitled to call a meeting of all the qualified buyers and every resolution passed in such meeting shall be binding on the company.

An ARC cannot raise funds from investors which is not a qualified buyer (QB) as defined above.

☐ "Securitization" means acquisition of financial assets by any asset reconstruction company from any originator, whether by raising of funds by such asset reconstruction company from qualified buyers by issue of security receipts representing undivided interest in such financial assets or otherwise [Section 2(z)];

The process of securitization helps the ARC to acquire financial assets like Loans from banks due to which the ARC shall be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to such financial assets.

☐ "Secured creditor" means-

- Any bank or financial institution or any consortium or group of banks or financial institutions holding any right, title or interest upon any tangible asset or intangible asset as specified in clause (l);
- Debenture trustee appointed by any bank or financial institution; or

- An asset reconstruction company whether acting as such or managing a trust set up by such asset reconstruction company for the securitization or reconstruction, as the case may be; or
- Debenture trustee registered with the Board appointed by any company for secured debt securities; or
- Any other trustee holding securities on behalf of a bank or financial institution,

In whose favour security interest is created by any borrower for due repayment of any financial assistance [section 2(zd)]

□ "Security interest" means right, title and interest of any kind, other than those specified in section 31, upon property created in favor of any secured creditor and includes—

- a) Any mortgage, charge, hypothecation, assignment or any right, title or interest of any kind, on tangible asset, retained by the secured creditor as an owner of the property, given on hire or financial lease or conditional sale or under any other contract which secures the obligation to pay any unpaid portion of the purchase price of the asset or an obligation incurred or credit provided to enable the borrower to acquire the tangible asset; or



- b) Such right, title or interest in any intangible asset or assignment or license of such intangible asset which secures the obligation to pay any unpaid portion of the purchase price of the intangible asset or the obligation incurred or any credit provided to enable the borrower to acquire the intangible asset or license of intangible asset [Section 2(zf)];
- A creditor shall not be called as secured creditor unless its interest over the assets of the debtor or borrower is covered under the above definition. Refer section 31 (Provisions of this Act not to apply in certain cases) for specific exclusions of rights that shall not be treated as security interest.
  - Financial Institution includes:
    - PFI as per section 4A of Companies Act
    - Any Institution specified by Central Govt u/s 2(h)(ii) of RDB Act, 1993
    - Intl Fin. Corporation

# REGULATION OF SECURITIZATION AND RECONSTRUCTION OF FINANCIAL ASSETS OF BANKS AND FINANCIAL INSTITUTIONS

- This part of the Act is covered in chapter II of the Act, comprising of Sections 3 – 12. This chapter provides for regulation of securitization and reconstruction of financial assets of banks and financial institutions.

## **Registration of ARCs (Section 3)**

- Commencement of business of securitization or asset reconstruction: Such a company can commence or carry on the business of securitization or asset reconstruction only after obtaining a certificate of registration granted under this section and having the net owned fund of not less than one hundred crore rupees or such other higher amount as the Reserve Bank, may, by notification, specify.

However, the term "net owned fund" is not defined in the Act and hence we have to refer to the definition of "net owned fund" as mentioned in the explanation to Section 45I of the Reserve Bank of India Act.

- **Conditions:** Power of RBI to inspect Books and Records of ARC

The Reserve Bank may, for the purpose of considering to grant its approval for the application for registration of an ARC to commence or carry on the business of securitization or asset reconstruction, as the case may be, require to be satisfied, by an inspection of records or books of such ARC, or otherwise, that the following conditions are fulfilled, namely:-

- i. That the ARC has not incurred losses in any of the three preceding financial years;
- ii. That such ARC has made adequate arrangements for realization of the financial assets acquired for the purpose of securitization or asset reconstruction and shall be able to pay periodical returns and redeem on respective due dates on the investments made in the company by the qualified buyers or other persons;
- iii. That the directors of ARC have adequate professional experience in matters related to finance, securitization and reconstruction;

- iv. That any of its directors has not been convicted of any offence involving moral turpitude;
- v. That a **sponsor of an ARC** is a fit and proper person in accordance with the criteria as may be specified in the guidelines issued by the Reserve Bank for such persons;

**Note: Sponsor is a person holding not less than 10% of capital of the Company.**

- v. That ARC has complied with or is in a position to comply with prudential norms specified by the Reserve Bank.
  - i. That ARC has complied with one or more conditions specified in the guidelines issued by the Reserve Bank for the said purpose.
- **Issue of certificate of registration to ARC:** A certificate of registration is thereafter granted to the ARC to commence or carry on business of securitization or asset reconstruction, and it must be noted that the Reserve Bank may also prescribe any other conditions, which it may consider, fit to impose. In case the Reserve Bank is of the opinion that the above conditions are not satisfied then it may reject the application, after the applicant is given a reasonable opportunity of being heard.

- **Requirement of prior approval of RBI in case of change:** Once a company is registered as an ARC, it must obtain prior approval of the Reserve Bank for the following purposes:-
  - a. Any substantial change in its management, including appointment of any director managing
  - b. Director or chief executive officer
  - c. Change of location of its registered office
  - d. Change in its name
- **Decision of RBI shall be final & binding:** The decision of the Reserve Bank, whether the change in management of an ARC is a substantial change in its management or not, shall be final and binding. The expression "substantial change in management" means the change in the management by way of transfer of shares or change affecting the sponsorship in the company by way of transfer of shares or amalgamation or transfer of the business of the company.

## **❑ Cancellation of certificate of registration (Section 4)**

- The Reserve Bank may cancel a certificate of registration granted to an ARC, if such company-
  - i. Ceases to carry on the business of securitization or asset reconstruction; or
  - ii. Ceases to receive or hold any investment from a qualified buyer; or
  - iii. Has failed to comply with any conditions subject to which the certificate of registration has been granted to it; or
  - iv. At any time fails to fulfil any of the conditions referred to in clauses (a) to (g) of sub-section (3) of section 3; or
  - v. Fails to-
    - a. Comply with any direction issued by the Reserve Bank under the provisions of this Act; or
    - b. Maintain accounts in accordance with the requirements of any law or any direction or order issued by the Reserve Bank under the provisions of this Act; or

- c) Submit or offer for inspection its books of account or other relevant documents when so demanded by the Reserve Bank; or
- d) Obtain prior approval of the Reserve Bank required under sub-section (6) of section 3:
  - Before cancelling a certificate of registration on the ground that the ARC has failed to comply with the provisions of clause (c) or has failed to fulfil any of the conditions referred to in clause (d) or sub-clause (iv) of clause (e), the Reserve Bank, unless it is of the opinion that the delay in cancelling the certificate of registration granted under sub-section (4) of section 3 shall be prejudicial to the public interest or the interests of the investors or the ARC, shall give an opportunity to such company on such terms as the Reserve Bank may specify for taking necessary steps to comply with such provisions or fulfillment of such conditions. Indirectly it implies that cancellation may be immediate as well.
  - Appeal to an order of cancellation: In case the ARC is aggrieved by the order of cancellation of certificate of registration by the Reserve Bank, then it may prefer an **appeal, within** a period of **thirty days** from the date on which such order of cancellation is **communicated** to it, to the Central Government (**Secretary, Ministry of Finance, and Government of India**). The Central Government must also give such company a reasonable opportunity of being heard before rejecting the appeal.

- It must be noted that an ARC, which is holding investments of qualified buyers and whose application for grant of certificate of registration has been rejected or certificate of registration has been cancelled shall, notwithstanding such rejection or cancellation be deemed to be an ARC until it repays the entire investments held by it (together with interest, if any) within such period as specified by the Reserve Bank.

#### **❑ Acquisition of rights or interest in financial assets (Section 5)**

- Acquiring of financial assets of any bank or financial institution: Notwithstanding anything contained in any agreement or any other law for the time being in force, any ARC may acquire financial assets of any bank or financial institution-
  - i. By issuing a debenture or bond or any other security in the nature of debenture, for consideration agreed upon between such company and the bank or financial institution, incorporating therein such terms and conditions as may be agreed upon between them; or
  - ii. By entering into an agreement with such bank or financial institution for the transfer of such financial assets to such company on such terms and conditions as may be agreed upon between them



- Any document executed by any bank or financial institution as mentioned above, in favour of the ARC acquiring financial assets for the purposes of asset reconstruction or securitization shall be exempted from stamp duty in accordance with the provisions of section 8F of the Indian Stamp Act, 1899

Provided that the provisions of this sub-section shall not apply where the acquisition of the financial assets by the asset reconstruction company is for the purposes other than asset reconstruction or securitization.

Such exemption is provided in order to encourage banks or FIs to resolve non-performing assets (NPA) issues by offloading it to ARCs.

- Debenture in common parlance is an acknowledgement of debt. Bond also refers to the same nature of instrument as a debenture. Both of them acknowledge a debt and hence an obligation to pay.
  - **Stepping into the shoes of the Bank-Both rights and liabilities including suits and appeals**
- In case where bank or financial institution is a lender in relation to any financial assets acquired by the ARC: Then such ARC shall, on such acquisition, be deemed to be the lender and all the rights of such bank or financial institution shall vest in such company in relation to the subject financial assets.

- If the bank or financial institution is holding any right, title or interest upon any tangible asset or intangible asset to secure payment of any unpaid portion of the purchase price of such asset or an obligation incurred or credit otherwise provided to enable the borrower to acquire the tangible asset or assignment or license of intangible asset, such right, title or interest shall vest in the asset reconstruction company on acquisition of such assets.
- All contracts, deeds, bonds, agreements, powers-of-attorney, grants of legal representation, permissions, approvals, consents or no-objections under any law or otherwise and other instruments of whatever nature which relate to the said financial asset and which are subsisting or having effect immediately before the acquisition of financial asset and to which the concerned bank or financial institution is a party or which are in favour of such bank or financial institution shall, after the acquisition of the financial assets, be of as full force and effect against or in favour of the ARC, as the case may be, and may be enforced or acted upon as fully and effectually as if, in the place of the said bank or financial institution, securitisation company or reconstruction company, as the case may be, had been a party thereto or as if they had been issued in favour of ARC, as the case may be.

- If, on the date of acquisition of financial asset, any suit, appeal or other proceeding of whatever nature relating to the said financial asset is pending by or against the bank or financial institution, save as provided in the third proviso to sub-section (1) of section 15 of the Sick Industrial Companies (Special Provisions) Act, 1985 the same shall not abate, or be discontinued or be, in any way, prejudicially affected by reason of the acquisition of financial asset by the ARC, as the case may be, but the suit, appeal or other proceeding may be continued, prosecuted and enforced by or against the ARC, as the case may be.
- On acquisition of financial assets, the ARC, may with the consent of the originator, file an application before the Debts Recovery Tribunal or the Appellate Tribunal or any court or other Authority for the purpose of substitution of its name in any pending suit, appeal or other proceedings and on receipt of such application, such Debts Recovery Tribunal or the Appellate Tribunal or court or Authority shall pass orders for the substitution of the ARC in such pending suit, appeal or other proceedings

## **☐ Transfer of pending applications to any one of debts Recovery Tribunals in certain cases (Section 5A)-Clubbing of applications filed**

- If any financial asset, of a borrower acquired by an ARC, comprise of secured debts or more than one bank or financial institution for recovery of which such banks or financial institutions has filed applications before two or more Debts Recovery Tribunals, the ARC may file an application to the Appellate Tribunal having jurisdiction over any of such Tribunals in which such applications are pending for transfer of all pending applications to any one of the Debts Recovery Tribunals as it deems fit.
- On receipt of such application for transfer of all pending applications under sub-section (1), the Appellate Tribunal may, after giving the parties to the application an opportunity of being heard, pass an order for transfer of the pending applications to any one of the Debts Recovery Tribunals.
- Notwithstanding anything contained in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, any order passed by the Appellate Tribunal under sub-section (2) shall be binding on all the Debts Recovery Tribunals referred to in sub-section (1) as if such order had been passed by the Appellate Tribunal having jurisdiction on each such Debts Recovery Tribunal.

- Any recovery certificate, issued by the Debts Recovery Tribunal to which all the pending applications are transferred under sub-section (2), shall be executed in accordance with the provisions contained in sub-section (23) of section 19 and other provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 shall, accordingly, apply to such execution.

#### **☐ Notice to obligor and discharge of obligation of such obligor (Section 6)**

- The bank or financial institution may give a notice of acquisition of financial assets by any ARC to the concerned obligor and any other concerned person and to the concerned registering authority.
- The obligor shall make payment to the concerned ARC in discharge of any of the obligations in relation to the financial asset specified in the notice.

### **❑ Issue of security by raising of receipts or funds by ARC (Section 7)**

- Any ARC, may, after acquisition of any financial asset under Section 5(1), offer security receipts to qualified buyers (or such other category of investors including non-institutional investors as may be specified by the Reserve Bank in consultation with the Board, from time to time) for subscription in accordance with the provisions of those Acts.
- An ARC may raise funds from the qualified buyers by formulating schemes for acquiring financial assets and shall keep and maintain separate and distinct accounts in respect of each such scheme for every financial asset acquired out of investments made by a qualified buyer and ensure that realizations of such financial asset is held and applied towards redemption of investments and payment of returns assured on such investments under the relevant scheme.

### **❑ Exemption from registration of security receipt (Section 8)**

- Any security receipt issued by the ARC and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except in so far as it entitles the holder of the security receipt to an undivided interest afforded by a registered instrument, or any transfer of security receipts, shall not require compulsory registration under section 17 of the Registration Act, 1908.

## **☐ Measures for assets reconstruction (Section 9)**

- AN ARC may, provide for any one or more of the following measures, for the purposes of asset reconstruction-
- The proper management of the business of the borrower, by change in, or takeover of the management of the business of the borrower;
- The sale or lease of a part or whole of the business of the borrower;
- Rescheduling of payment of debts payable by the borrower;
- Enforcement of security interest in accordance with the provisions of this Act;
- Settlement of dues payable by the borrower;
- Taking possession of secured assets in accordance with the provisions of this Act;
- Conversion of any portion of debt into shares of a borrower company;

- Provided that conversion of any part of debt into shares of a borrower company shall be deemed always to have been valid, as if the provisions of this clause were in force at all material times.
- The Reserve Bank shall, for the purposes as given above, determine the policy and issue necessary directions including the direction for regulation of management of the business of the borrower and fees to be charged.
- The asset reconstruction company shall take measures in accordance with policies and directions of the Reserve Bank determined under Section 9 (2).

#### **❑ Other functions of ARC (Section 10)**

- Any ARC may-
  - i. Act as an agent for any bank or financial institution for the purpose of recovering their dues from the borrower on payment of such fees or charges as may be mutually agreed upon between the parties;
  - ii. Act as a manager referred to section 13(4)(c) on such fee as may be mutually agreed upon between the parties;
  - iii. Act as receiver if appointed by any court or tribunal



Provided that no ARC shall act as a manager if acting as such gives rise to any pecuniary liability.

- No ARC which has been granted a certificate of registration section 3(4) shall commence or carry on, without prior approval of the Reserve Bank, any business other than that of securitization or asset reconstruction.

Provided that an ARC which is carrying on, on or before the commencement of this Act, any business other than the business of securitization or asset reconstruction or business referred to in sub-section (1), shall cease to carry on any such business within one year from the date of commencement of this Act.

- For the purposes of this section, ARC does not include its subsidiary.

**Resolution of disputes (Section 11)** between Bank, FI, ARC, QIB through Arbitration and Conciliation

Where any dispute relating to securitisation or reconstruction or non-payment of any amount due including interest arises amongst any of the parties, namely,

- The bank, or
- Financial institution, or
- ARC or
- Qualified buyer,

Such dispute shall be settled by conciliation or arbitration as provided in the Arbitration and Conciliation Act, 1996, as if the parties to the dispute have consented in writing for determination of such dispute by conciliation or arbitration and the provisions of that Act shall apply accordingly.

#### **❑ Power of Reserve Bank to determine policy and issue directions (Section 12)-RBI is MIL of ARC**

- In the public interest, Reserve bank may determine the policy and give directions to any ARC in matters relating to income recognition, accounting standards, making provisions for bad and doubtful debts, capital adequacy based on risk weights for assets and also relating to deployment of funds by the ARC.
- Without prejudice to the generality as above, the Reserve bank may give directions to any ARC in particular as to:

- The type of financial asset of a bank or Financial institution which can be acquired and procedure for acquisition of such assets and valuation thereof;
- The aggregate value of financial assets which may be acquired by any securitisation company or reconstruction company.
- The fee and other charges which may be charged or incurred for management of financial assets acquired by any asset reconstruction company;
- Transfer of security receipts issued to qualified buyers

#### **❑ Power of Reserve Bank to Call for Statements and information (Section 12A)**

- The Reserve Bank may direct ARC to furnish it within such time as may be specified by the Reserve Bank, with such statements and information relating to the business or affairs of such securitisation company or reconstruction company (including any business or affairs with which such company is concerned) as the Reserve Bank may consider necessary or expedient to obtain for the purpose of this Act.

## **□ Power of Reserve Bank to carry out audit and inspection (Section 12B)**

- The Reserve Bank may, for the purposes of this Act, carry out or cause to be carried out audit and inspection of an asset reconstruction company from time to time.
- It shall be the duty of an asset reconstruction company and its officers to provide assistance and cooperation to the Reserve Bank to carry out audit or inspection.
- Where on audit or inspection or otherwise, the Reserve Bank is satisfied that business of an asset reconstruction company is being conducted in a manner detrimental to public interest or to the interests of investors in security receipts issued by such asset reconstruction company, the Reserve Bank may, for securing proper management of an asset reconstruction company, by an order—
  - i. remove the Chairman or any director or appoint additional directors on the board of directors of the asset reconstruction company; or
  - ii. appoint any of its officers as an observer to observe the working of the board of directors of such asset reconstruction company:

- Provided that no order for removal of Chairman or director under clause (a) shall be made except after giving him an opportunity of being heard.
- It shall be the duty of every director or other officer or employee of the asset reconstruction company to produce before the person, conducting an audit or inspection under sub-section (1), all such books, accounts and other documents in his custody or control and to provide him such statements and information relating to the affairs of the asset reconstruction company as may be required by such person within the stipulated time specified by him.

# ENFORCEMENT OF SECURITIZATION

- Provisions dealing with enforcement of security interest are contained in Chapter III of the Act, comprising of Sections 13 – 19.

## Enforcement of security interest (Section 13)

- Notwithstanding anything contained in section 69 or section 69A of the Transfer of Property Act, 1882, any security interest created in favour of any secured creditor may be enforced, without the intervention of the court or tribunal, by such creditor in accordance with the provisions of this Act.
- **Where borrower makes a default payment of debt:** Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non- performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within

Sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4) of Section 13.

Provided that –

- i. The requirement of classification of secured debt as non-performing asset under this sub-section
  - ii. Shall not apply to a borrower who has raised funds through issue of debt securities; and in the event of default, the debenture trustee shall be entitled to enforce security interest in the same manner as provided under this section with such modifications as may be necessary and in accordance with the terms and conditions of security documents executed in favour of the debenture trustee;
- **Notice prescribing the details of the debts:** This notice shall give details of the amount payable by the borrower and the secured assets intended to be enforced by the secured creditor in the event of non-payment of secured debts by the borrower. The procedure for the service of the notice is prescribed in the Security Interests (Enforcement) Rules.

- **Objection or rejection to the borrower on the notice:** If, on receipt of the notice, the borrower makes any representation or raises any objection, the secured creditor shall consider such representation or objection and if the secured creditor comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate **within 15 days** (????) of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower:
- **No right to borrower to prefer an application:** Provided that the reasons so communicated or the likely action of the secured creditor at the stage of communication of reasons shall not confer any right upon the borrower to prefer an application to the Debts recovery Tribunal under section 17 or the Court of District Judge under section 17A.
- **Borrower fails to discharge his liability:** If the borrower fails to discharge his liability in full within the above specified period, the secured creditor may take recourse to one or more of the following measures to recover his secured debt:-



- a. Take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset;
- b. Take over the management of the business of the borrower including the right to transfer by way of lease, assignment or sale for realizing the secured asset:

Provided that the right to transfer by way of lease, assignment or sale shall be exercised only where the substantial part of the business of the borrower is held as security for the debt:

Provided further that where the management of whole of the business or part of the business is severable, the secured creditor shall take over the management of such business of the borrower which is relatable to the security for the debt;

- c. Appoint any person (hereafter referred to as the manager), to manage the secured assets the possession of which has been taken over by the secured creditor;
- d. Require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of the money as is sufficient to pay the secured debt.

- **Modes of enforcement of security:**

- i. Take possession of the secured asset
- ii. Take over the management (which is relatable to secured debt)
- iii. Appoint any person as the manager, to manage the secured assets
- iv. Demand notice to the person who has acquired the secured assets from the borrower

- **Discharge from payment:** Any payment made by any person referred to in section 5(4)(d) to the secured creditor shall give such person a valid discharge as if he has made payment to the borrower.

- **Right with respect to the immovable property :** Where the sale of an immovable property, for which a reserve price has been specified, has been postponed for want of a bid of an amount not less than such reserve price, it shall be lawful for any officer of the secured creditor, if so authorised by the secured creditor in this behalf, to bid for the immovable property on behalf of the secured creditor at any subsequent sale [sub-section(5A)]

Where the secured creditor, referred to in sub-section (5A), is declared to be the purchaser of the immovable property at any subsequent sale, the amount of the purchase price shall be adjusted towards the amount of the claim of the secured creditor for which the auction of enforcement of security interest is taken by the secured creditor, under sub-section (4) of section 13. **[Sub-section (5B)]**

The provisions of section 9 of the Banking Regulation Act, 1949 shall, as far as may be, apply to the immovable property acquired by secured creditor under sub-section (5A). **[Sub-section (5C)]**

- **Right related to transfer of secured assets by the secured creditor:** Any transfer of secured asset after taking possession thereof or takeover of management under sub-section (4), by the secured creditor or by the manager on behalf of the secured creditor shall vest in the transferee all rights in, or in relation to, the secured asset transferred as if the transfer had been made by the owner of such secured asset.

- **Recovery of expenses from the borrower:** Where any action has been taken against a borrower, all costs, charges and expenses which, in the opinion of the secured creditor, have been properly incurred by him or any expenses incidental thereto, shall be recoverable from the borrower and the money which is received by the secured creditor shall, in the absence of any contract to the contrary, be held by him in trust, to be applied –
  - a) Firstly, in payment of such costs, charges and expenses and
  - b) Secondly, in discharge of the dues of the secured creditor and the residue of the money so received shall be paid to the person entitled thereto in accordance with his rights and interests.
- **Payment of dues of the secured creditors:** Auction ruk bhi sakti hai  
Where the amount of dues of the secured creditor together with all costs, charges and expenses incurred by him is tendered to the secured creditor at any time before the date of publication of notice for public auction or inviting quotations or tender from public or private treaty for transfer by way of lease, assignment or sale of the secured assets,—

- a. The secured assets shall not be transferred by way of lease assignment or sale by the secured creditor; and
  - b. In case, any step has been taken by the secured creditor for transfer by way of lease or assignment or sale of the assets before tendering of such amount under this subsection, no further step shall be taken by such secured creditor for transfer by way of lease or assignment or sale of such secured assets.
- **Joint financing:** 60% or more should agree for action . In case of liquidation.. distribution as per Section 326 of the Companies Act,2013  
Subject to the provisions of the Insolvency and Bankruptcy Code, 2016, in the case of financing of a financial asset by more than one secured creditors or joint financing of a financial asset by secured creditors, no secured creditor shall be entitled to exercise any or all of the rights conferred on him under or pursuant to sub-section (4) unless exercise of such right is agreed upon by the secured creditors representing not less than sixty per cent in value of the amount outstanding as on a record date and such action shall be binding on all the secured creditors. [Section 13(9)]. But in case of a company in liquidation, the amount realized from the sale of secured assets shall be distributed in accordance with the provisions of section 326 of the Companies Act, 2013.

- **No transfer of secured assets by borrower:** Consent of Secured creditor necessary for transfer in case of receipt of notice
- No borrower shall, after receipt of notice, transfer by way of sale, lease or otherwise (other than in the ordinary course of his business) any of his secured assets referred to in the notice, without prior written consent of the secured creditor.
- **Chief metropolitan magistrate or district magistrate to assist secured creditor in taking possession of secured asset (Section14)-Aunty police Bula legi**
- The secured creditor may, for the purpose of taking possession or control of secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him-
  - i. Take possession of such asset and documents relating thereto; and
  - ii. Forward such asset and documents to the secured creditor within a period of thirty days from the date of application.

Provided further that if no order is passed by the Chief Metropolitan Magistrate or District Magistrate within the said period of thirty days for reasons beyond his control, he may, after recording reasons in writing for the same, pass the order within such further period but not exceeding in aggregate sixty days.

**☐ Manner and effect of takeover of management (Section 15)-** by ARC or Bank by appointing director or an administrator

- **Appointment of persons by secured creditors:** When the management of business of a borrower is taken over by an ARC under section 9(a) or, by a secured creditor under section 13(4) (b) as the case may be, the secured creditor may, by publishing a notice in a newspaper published in English language and in a newspaper published in an Indian language in circulation in the place where the principal office of the borrower is situated, appoint as many persons as it thinks fit-
  - a) In a case in which the borrower is a company under the Companies Act, 2013, to be the directors of that borrower in accordance with the provisions of that Act; or
  - b) In any other case, to be the administrator of the business of the borrower

- **On publication notice:** सिंहासन खाली करो

All persons holding office as directors of the company (if the borrower is a company) and in any other case, all persons holding any office having power of superintendence, direction and control of the business of the borrower immediately before the publication of the above notice, shall be deemed to have vacated their offices.

- **When any contract of management shall be deemed to be terminated:** कस्टडी में ले लो

Any contract of management between the borrower and any director or manager thereof holding office as such immediately before publication of the above notice, shall be deemed to be terminated. The directors or the administrators appointed under this section shall take such steps as may be necessary to take into their custody or under their control all the property, effects and actionable claims to which the business of the borrower is, or appears to be, entitled and all the property and effects of the business of the borrower shall be deemed to be in the custody of the directors or administrators, as the case may be, as from the date of the publication of the above notice.



- **Exercise of the powers of the person so appointed for the borrowers:** Deeming fiction for directors or administrators  
All directors appointed in accordance with the above notice shall, for all purposes, be the directors of the company of the borrower and such directors or the administrators (if the borrower is other than a company) appointed under section 15, shall only be entitled to exercise all the powers of the directors or as the case may be, of the persons exercising powers of superintendence, direction and control, of the business of the borrower whether such powers are derived from the memorandum or articles of association of the company of the borrower or from any other source.
- **Management of borrower taken by the secured creditor:** शेयर होल्डर्स की पावर कम हो गयी  
Where the management of the business of a borrower, being a company as defined in Companies Act, 2013, is taken over by the secured creditor, then, notwithstanding anything contained, such borrower- in the said Act or in the memorandum or articles of association of such company-
  - a) It shall not be lawful for the shareholders of such company or any other person to nominate or appoint any person to be a director of the company.

- b) No resolution passed at any meeting of the shareholders of such company shall be given effect to unless approved by the secured creditor;
- c) No proceeding for the winding up of such company or for the appointment of a receiver in respect thereof shall lie in any court, except with the consent of the secured creditor.
- **Obligation of secured creditor:** कर्जदार ने पेमेंट कर दिया उसके डायरेक्टर को बैठने दो लेकिन अगर शेयर ले लिए तो फिर कण्ट्रोल वापिस नहीं करेंगे  
The secured creditor is under an obligation to restore the management of the business of the borrower, on realization of his debt in full, in case of takeover of the management of the business of a borrower by such secured creditor.
  - Provided that if any secured creditor jointly with other secured creditors or any asset reconstruction company or financial institution or any other assignee has converted part of its debt into shares of a borrower company and thereby acquired controlling interest in the borrower company, such secured creditors shall not be liable to restore the management of the business to such borrower.

## **No compensation to directors for loss of office** (Section 16)-compensation for loss of office भूल जाओ हाँ कोई dues बाकी हैं तो ले लो

- Irrespective of anything contained in any contract or in any other law for the time being in force, no managing director or any other director or a manager or any person in charge of management of the business of the borrower shall be entitled to any compensation for the loss of office or for the premature termination under this Act. However any such managing director or any other director or manager or any such person in charge of management has the right to recover from the business of the borrower, moneys recoverable otherwise than by way of such compensation.

## **Application against measures to recover secured debts** (Section 17)-To DRT within 45 days of the date of taking such measure

- Filing of an application: Any person (including borrower), aggrieved by any of the measures given in section 13(4) taken by the secured creditor or his authorised officer under this Chapter, may make an application along with such fee, as may be prescribed to the Debts Recovery Tribunal having jurisdiction in the matter within forty-five days from the date on which such measure had been taken.

- Provided that different fees may be prescribed for making the application by the borrower and the person other than the borrower.
- **Explanation:** For the removal of doubts, it is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons to the borrower shall not entitle the person (including borrower) to make an application to the Debts Recovery Tribunal under this sub-section.
- **Jurisdiction :** An application under sub-section (1) shall be filed before the Debts Recovery Tribunal
  - Within the local limits of whose jurisdiction—
  - The cause of action, wholly or in part, arises;
  - Where the secured asset is located; or
  - The branch or any other office of a bank or financial institution is maintaining an account in which debt claimed is outstanding for the time being.

- **Measures taken shall be in compliance:** DRT to ensure this . Otherwise invalidation and restoration.  
The Debts Recovery Tribunal shall consider whether any of the measures referred to in section 13(4) taken by the secured creditor for enforcement of security are in accordance with the provisions of this Act and the rules made thereunder.
- If, the Debts Recovery Tribunal, after examining the facts and circumstances of the case and evidence produced by the parties, comes to the conclusion that any of the measures referred to in section 13(4), taken by the secured creditor are not in accordance with the provisions of this Act and the rules made thereunder, and require restoration of the management or restoration of possession, of the secured assets to the borrower or other aggrieved person, it may, by order,—
  - i. Declare the recourse to any one or more measures referred to in section 13(4) taken by the secured creditor as invalid; and
  - ii. Restore the possession of secured assets or management of secured assets to the borrower or such other aggrieved person, who has made an application under sub- section (1), as the case may be; and

c) Pass such other direction as it may consider appropriate and necessary in relation to any of the recourse taken by the secured creditor under sub-section (4) of Section 13.

- Remedies opted by the securities creditor: किरायेदार बैठा दिया कर्जदार ने तो उसको खाली करना पड़ेगा
- If, the Debts Recovery Tribunal declares the recourse taken by a secured creditor under sub-section (4) of section 13, is in accordance with the provisions of this Act and the rules made thereunder, then, notwithstanding anything contained in any other law for the time being in force, the secured creditor shall be entitled to take recourse to one or more of the measures specified under sub-section (4) of section 13 to recover his secured debt.

### **Where-**

- i. Any person, in an application under sub-section (1), claims any tenancy or leasehold rights upon the secured asset, the Debt Recovery Tribunal, after examining the facts of the case and evidence produced by the parties in relation to such claims shall, for the purposes of enforcement of security interest, have the jurisdiction to examine whether lease or tenancy,—

- a. Has expired or stood determined; or
  - b. Is contrary to section 65A of the Transfer of Property Act, 1882; or
  - c. Is contrary to terms of mortgage; or
  - d. Is created after the issuance of notice of default and demand by the Bank under sub-section (2) of section 13 of the Act; and
- The Debt Recovery Tribunal is satisfied that tenancy right or leasehold rights claimed in secured asset falls under the sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) of clause (i), then notwithstanding anything to the contrary contained in any other law for the time being in force, the Debt Recovery Tribunal may pass such order as it deems fit in accordance with the provisions of this Act.
  - **Time limit for disposal of an application:** ASAP within 60 days. Total period not to exceed 4 months. Any application made under sub-section (1) shall be dealt with by the Debts Recovery Tribunal as expeditiously as possible and disposed of within sixty days from the date of such application:

Provided that the Debts Recovery Tribunal may, from time to time, extend the said period for reasons to be recorded in writing, so, however, that the total period of pendency of the application with the Debts Recovery Tribunal, shall not exceed four months from the date of making of such application made under sub-section (1).

- **Order by the appellate tribunal for expeditious disposal of the pending application** 4 महीने के बाद DRAT जाओ

If the application is not disposed of by the Debts Recovery Tribunal within the period of four months as specified in sub-section (5), any party to the application may make an application, in such form as may be prescribed, to the Appellate Tribunal for directing the Debts Recovery Tribunal for expeditious disposal of the application pending before the Debts Recovery Tribunal and the Appellate Tribunal may, on such application, make an order for expeditious disposal of the pending application by the Debts Recovery Tribunal.

Save as otherwise provided in this Act, the Debts Recovery Tribunal shall, as far as may be, dispose of the application in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 and the rules made thereunder.



## ❑ Making of application to Court of district Judge in certain cases (Section17A)-J&K

In the case of a borrower residing in the State of Jammu and Kashmir, the application under section 17 shall be made to the Court of District Judge in that State having jurisdiction over the borrower which shall pass an order on such application.

- **Explanation:** It is hereby declared that the communication of the reasons to the borrower by the secured creditor for not having accepted his representation or objection or the likely action of the secured creditor at the stage of communication of reasons shall not entitle the person (including borrower) to make an application to the Court of District Judge under this section.

## ❑ Appeal to Appellate Tribunal (Section18)-Appeal to DRAT within 30 days

- Appeal to an order of DRT: Any person aggrieved, by any order made by the Debts Recovery Tribunal under section 17, may prefer an appeal along with such fee, as may be prescribed to the Appellate Tribunal within thirty days from the date of receipt of the order of Debts Recovery Tribunal.
- Provided that different fees may be prescribed for filing an appeal by the borrower or by the person other than the borrower;

- **Condition for the appeal:** अपील से पहले 50 % जमा करवाओ. चलो 25 % करवा दो

Provided further that no appeal shall be entertained unless the borrower has deposited with the Appellate Tribunal fifty per cent of the amount of debt due from him, as claimed by the secured creditors or determined by the Debts Recovery Tribunal, whichever is less. Provided also that the Appellate Tribunal may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent of debt referred above.

- **Dispose of appeal as per the RDDBFI Act, 1993:** Save as otherwise provided in this Act, the Debts Recovery Tribunal under section 17 or the Appellate Tribunal under section 18 shall, as far as may be, dispose of the appeal in accordance with the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act (RDDBFI), 1993 and rules made thereunder.

- **Validation of fees levied (Section 18A)-**2004 से पहले वाली फीस एडजस्ट कर लो

Any fee levied and collected for preferring an appeal to the Debts Recovery Tribunal or the Appellate Tribunal under this Act, before the commencement of the Enforcement of Security Interest and Recovery of Debts Laws (Amendment) Act, 2004, shall be deemed always to have been levied and collected in accordance with law as if the amendments made to sections 17 and 18 of this Act by sections 10 and 12 of the said Act were in force at all material times.

## ❑ Appeal to High Court in certain cases (Section 18B)-J&K

- Any borrower residing in the State of Jammu and Kashmir and aggrieved by any order made by the Court of District Judge under section 17A-may prefer an appeal, to the High Court having jurisdiction over such Court, within thirty days from the date of receipt of the order of the Court of District Judge.
- Requirement for preferring an appeal: अपील से पहले 50 % जमा करवाओ. चलो 25 % करवा दो

No appeal shall be preferred unless the borrower has deposited, with the Jammu and Kashmir High Court, fifty per cent of the amount of the debt due from him as claimed by the secured creditor or determined by the Court of District Judge, whichever is less. Provided further that the High Court may, for the reasons to be recorded in writing, reduce the amount to not less than twenty-five per cent. Of the debt referred here.

## ❑ Right to lodge a caveat (Section 18C)-पेचे में लंगर डालना जज साहब अपील की सुनवाई में मुझे भी मौका देना

- Filing of a caveat: Where an application or an appeal is expected to be made or has been made under section 17(1) or section 17A or section 18(1) or section 18B.

- a) The secured creditor, or
  - b) Any person claiming a right to appear before the Tribunal or the Court of District Judge or the Appellate Tribunal or the High Court, as the case may be, on the hearing of such application or appeal, may lodge a caveat in respect thereof.
- Notice of caveat: Where a caveat has been lodged –लंगर डाल दिया तो रजिस्टर्ड AD नोटिस दो दूसरी पार्टी को
    - a) The secured creditor by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made.
    - b) Any person by whom the caveat has been lodged (hereafter in this section referred to as the caveator) shall serve notice of the caveat by registered post, acknowledgement due, on the person by whom the application has been or is expected to be made.

- **Notice on the caveat or by adjudicating authority:** जज साहेब भी बुलाएँगे लंगर डालने वाले को

Where after a caveat has been lodged, any application or appeal is filed before the Tribunal or the court of District Judge or the Appellate Tribunal or the High Court, as the case may be, the Tribunal or the District Judge or the Appellate Tribunal or the High Court, as the case may be, shall serve a notice of application or appeal filed by the applicant or the appellant on the caveator.

- **Furnishing of copy of application and documents:** एप्लिकेंट से लंगर डालने वाले को भी करेगा

Where a notice of any caveat has been served on the applicant or the Appellant, he shall periodically furnish the caveator with a copy of the application or the appeal made by him and also with copies of any paper or document which has been or may be filed by him in support of the application or the appeal.

- **Validity of period of caveat:** लंगर 90 दिन तक Where a caveat has been lodged, such caveat shall not remain in force after the expiry of the period of ninety days from the date on which it was lodged unless the application or appeal has been made before the expiry of the period.

## ❑ Right of borrower to receive compensation and costs in certain cases (Section 19)

गलत possession में कर्जदार को भरपाई का अधिकार

- If the Debts Recovery Tribunal or the Court of District Judge, on an application made under section 17 or section 17A or the Appellate Tribunal or the High Court on an appeal preferred under section 18 or section 18A, holds that the possession of secured assets by the secured creditor is not in accordance with the provisions of this Act and rules made thereunder, and
- Directs the secured creditors to return such secured assets to concerned borrowers or any other aggrieved person, who has filed the application under section 17 or section 17A or appeal under section 18 or section 18A, as the case may be,
- The borrower or such other person shall be entitled to the payment of such compensation and costs as may be determined by such Tribunal or Court of District Judge or Appellate Tribunal or the High Court referred to in section 18B.

# CENTRAL REGISTRY

- The provisions related to Central Registry is contained in chapter IV of the Act. It covers Sections 20 to 26 of the Act.

## □ Central Registry (Section 20)

- **Setup of Central Registry:** The Central Government may, by notification, set up or cause to be set up from such date as it may specify in such notification, a registry to be known as the Central Registry with its own seal for the purposes of registration of transaction of securitization and reconstruction of financial assets and creation of security interest under this Act.
- The head office of the Central Registry shall be at such place as the Central Government may specify and for the purpose of facilitating registration of transactions referred above, there may be established at such other places as the Central Government may think fit, branch offices of the Central Registry.

- **Central Government notifies territorial jurisdiction of the Central Registry:** The Central Government may, by notification, define the territorial limits within which an office of the Central Registry may exercise its functions. The provisions of this Act pertaining to the Central Registry shall be in addition to and not in derogation of any of the provisions contained in the Registration Act, 1908, the Companies Act, 2013, the Merchant Shipping Act, 1958, the Patents Act, 1970, the Motor Vehicles Act, 1988 and the Designs Act, 2000 or any other law requiring registration of charges and shall not affect the priority of charges or validity thereof under those Acts or laws.

Central Registry of Securitization Asset Reconstruction and Security Interest of India is a Government of India Company licensed under section 8 of the Companies Act, 2013 with Govt. of India having a shareholding of 51% by the Central Government and select Public Sector Banks and the National Housing Bank also being shareholders of the Company.

- The object of the company is to maintain and operate a Registration System for the purpose of registration of transactions of securitisation, asset reconstruction of financial assets and creation of security interest over property, as envisaged in the SARFAESI Act.



## **□ Integration of registration systems with Central Registry (Section 20A)**

- The Central Government may, for the purpose of providing a Central database, in consultation with State Governments or other authorities operating registration system for recording rights over any property or creation, modification or satisfaction of any security interest on such property, integrate the registration records of such registration systems with the records of Central Registry established under section 20, in such manner as may be prescribed.
- The Central Government shall after integration of records of various registration systems referred with the Central Registry, by notification, declare the date of integration of registration systems and the date from which such integrated records shall be available; and with effect from such date, security interests over properties which are registered under any registration system referred shall be deemed to be registered with the Central Registry for the purposes of this Act.

## **□ Delegation of powers (Section 20B)**

- The Central Government may, by notification, delegate its powers and functions under this Chapter, in relation to establishment, operations and regulation of the Central Registry to the Reserve Bank, subject to such terms and conditions as may be prescribed.

## **□ Central Registrar (Section 21)**

- The Central Government may, by notification, appoint a person for the purpose of registration of transactions relating to securitisation, reconstruction of financial assets and security interest created over properties, who shall be known as the Central Registrar.
- The Central Government may appoint such other officers with such designations as it thinks fit for the purpose of discharging, under the superintendence and direction of the Central Registrar, such functions of the Central Registrar under this Act as he may, from time to time, authorize them to discharge.

## **□ Register of securitization, reconstruction and security interest transactions (Section 22)**

- A record called the Central Register shall be kept at the head office of the Central Registry for entering the particulars of the transactions relating to-
  - a. Securitisation of financial assets;

b) Rreconstruction of financial assets;

c) Creation of security interest

- The Central Registrar can keep the records wholly or partly in computer, floppies, diskettes or in any other electronic form subject to the prescribed safeguards. Records kept in these form shall also form a part of the Central Register. The register shall be kept under the control and management of the Central Registrar.

#### **❑ Filing of transactions of securitization, reconstruction and creation of security interest**

- The particulars of every transaction of securitization, asset reconstruction or creation of security interest shall be filed, with the Central Registrar in the prescribed manner and on payment of the prescribed fees, [Section23(1)]
- Provided that the Central Government may, by notification, require registration of all transactions of securitization, or asset reconstruction or creation of security interest which are subsisting on or before the date of establishment of the Central Registry under section 20(1) within such period and on payment of such fees as may be prescribed.

- The Central Government may, by notification, require the registration of transaction relating to different types of security interest created on different kinds of property with the Central Registry [Section23(2)]
- The Central Government may, by rules, prescribe forms for registration for different types of security interest under this section and fee to be charged for such registration.

#### **❑ Modification of security interest registered under this Act (Section24)**

- Whenever the terms or conditions, or the extent or operation, of any security interest registered under this Chapter, are, or is, modified it shall be the duty of the ARC to send to the Central Registrar, the particulars of such modification.

#### **❑ ARC or secured creditor to report satisfaction of security interest (Section25)**

- The ARC or the secured creditor as the case may be, shall give intimation to the Central Registrar of the payment or satisfaction in full, of any security interest relating to the ARC or the secured creditor and requiring registration under this Chapter, **within thirty days** from the date of such payment or satisfaction.

- On receipt on intimation, the Central Government shall order that a memorandum of satisfaction shall be entered in the Central Registry.

**☐ Right to inspect particulars of securitisation, reconstruction and security interest transactions (Section 26)**

- The particulars of securitization or reconstruction or security interest entered in the Central Register of such transactions kept under section 22 shall be open during the business hours for inspection by any person on payment of such fee as may be prescribed.

## RECTIFICATION BY CENTRAL GOVERNMENT IN MATTER OF REGISTRATION , MODIFICATION AND SATISFACTION (SECTION 26A)

- The Central Government, on being satisfied-
  - d) That the omission to file with the Registrar the particulars of any transaction of securitization, asset reconstruction or security interest or modification or satisfaction of such transaction or; the omission or mis-statement of any particular with respect to any such transaction or modification or with respect to any satisfaction or other entry made in pursuance of section23 or section24 or section25 of the principal Act was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors; or
  - e) That on other grounds, it is just and equitable to grant relief,

May, on the application of a secured creditor or securitization company or reconstruction company or any other person interested on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for filing of the particulars of the transaction for registration or modification or satisfaction shall be extended or, as the case may require, the omission or mis-statement shall be rectified.

- Where the Central Government extends the time for the registration of transaction of security interest or securitization or asset reconstruction or modification or satisfaction thereof, the order shall not prejudice any rights acquired in respect of the property concerned or financial asset before the transaction is actually registered."

# REGISTRATION BY SECURED CREDITORS AND OTHER CREDITORS

- The government has introduced new provisions in the form of Chapter IVA in order to encourage registration of security interest by the secured creditors, which shall facilitate uniformity, completeness and transparency in the status of security interest of the creditors over the borrower's assets.
- ❑ **Registration by secured creditors and other creditors (Section 26B)**
- The Central Government may by notification, extend the provisions of Chapter IV relating to Central Registry to all creditors other than secured creditors as defined in clause (zd) of section 2(1), for creation, modification or satisfaction of any security interest over any property of the borrower for the purpose of securing due repayment of any financial assistance granted by such creditor to the borrower.



- From the date of notification, any creditor including the secured creditor may file particulars of transactions of creation, modification or satisfaction of any security interest with the Central Registry in such form and manner as may be prescribed.
- **unsecured creditor भी रजिस्टर कर सकता है लेकिन उसको इस एक्ट का बेनिफिट नहीं मिलेगा**
- However A creditor other than the secured creditor filing particulars of transactions of creation, modification and satisfaction of security interest over properties created in its favour shall not be entitled to exercise any right of enforcement of securities under this Act.
- **अटैचमेंट आर्डर के भी particulars रजिस्टर करवाओ**
- Every authority or officer of the Central Government or any State Government or local authority, entrusted with the function of recovery of tax or other Government dues and for issuing any order for attachment of any property of any person liable to pay the tax or Government dues, shall file with the Central Registry such attachment order with particulars of the assessee and details of tax or other Government dues from such date as may be notified by the Central Government, in such form and manner as may be prescribed.
- **अटैचमेंट आर्डर में क्लेम मिला? आर्डर की कॉपी फीस के साथ जमा करवाओ** Also if any person, having any claim against any borrower, obtains orders for attachment of property from any court or other authority empowered to issue attachment order, such person may file particulars of such attachment orders with Central Registry in such form and manner on payment of such fee as may be prescribed.

## ❑ Effect of the registration of transactions, etc. (Section 26C)

- Any registration of transactions of creation, modification or satisfaction of security interest by a secured creditor or other creditor or filing of attachment orders under this Chapter shall be **deemed to constitute a public notice** from the date and time of filing of particulars of such transaction with the Central Registry.
- रजिस्टर की हुयी ट्रांसक्शन्स को बेनिफिट मिलेगा किसी भी subsequent ट्रांसफर के मुक़ाबले Where security interest or attachment order upon any property in favour of the secured creditor or any other creditor are filed for the purpose of registration, the claim of such secured creditor or other creditor holding attachment order shall have priority over any subsequent security interest created upon such property and any transfer by way of sale, lease or assignment or license of such property or attachment order subsequent to such registration, shall be subject to such claim:

Provided that nothing contained in this sub-section shall apply to transactions carried on by the borrower in the ordinary course of business.

**❑ Right of enforcement of securities (Section 26d) -No Registration , no enforcement**

- No secured creditor shall be entitled to exercise the rights of enforcement of securities under Chapter III unless the security interest created in its favour by the borrower has been registered with the Central Registry.

**❑ Priority to secured creditors (Section 26e)-Priority over Govt Dues except under IBC**

- After the registration of security interest, the debts due to any secured creditor shall be paid in priority over all other debts and all revenues, taxes, cesses and other rates payable to the Central Government or State Government or local authority.
- However such priority shall be subject to the provisions of the Insolvency and Bankruptcy Code, 2016, where insolvency or bankruptcy proceedings are pending in respect of secured assets of the borrower.

# OFFENCES AND PENALTIES

- This chapter V of the Act provides for the offences and penalties for the commission of default in filing of particulars of every transaction of securitization, asset reconstruction or creation of security interest with Central registry. This chapter covers section 27 to 30 of the Act.

## Penalties (Section 27)

If a default is made-

- a) In filing under section 23, the particulars of every transaction of any securitization or asset reconstruction or security interest created by an ARC or secured creditors; or
- b) In sending under section 24, the particulars of the modification referred to in that section; or

c) In giving intimation under Section 25, then, every company and every officer of the company or the secured creditors and every officer of the secured creditor who is in default shall be punishable with fine which may extend to five thousand rupees for everyday during which the default continues.-5000 every day

Provided that provisions of this section shall be deemed to have been omitted from the date of coming into force of the provisions of this Chapter and section 23 as amended by the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016

### **☐ Offences (Section 29)**

• If any Person:-

- i. Contravenes or
- ii. Attempts to contravene or
- iii. Abets the contravention of the provisions of this Act or of any rules made thereunder, he shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

❑ **Cognizance of offence (Section 30)**-Only on Receipt of Complaint from officer of RBI or Central Registry

- No court shall take cognizance of any offence punishable under section 27 in relation to non-compliance with the provisions of section 23, section 24 or section 25 or under section 28 or section 29 or any other provisions of the Act, except upon a complaint in writing made by an officer of the Central Registry or an officer of the Reserve Bank, generally or specially authorized in writing in this behalf by the Central Registrar or, as the case may be, the Reserve Bank.
- No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

❑ **Power of adjudicating authority to impose penalty (Section 30A)**

- Where any asset reconstruction company or any person fails to comply with any direction issued by the Reserve Bank under this Act the adjudicating authority may, by an order, impose on such company or person in default, a penalty not exceeding one crore rupees or twice the amount involved in such failure where such amount is quantifiable, whichever is more, and where such failure is a continuing one, a further penalty which may extend to one lakh rupees for everyday, after the first, during which such failure continues.

- The adjudicating authority shall serve a notice on the asset reconstruction company or the person in default requiring such company or person to **show cause** why the amount specified in the notice should not be imposed as a penalty and a **reasonable opportunity** of being heard shall be given to such person.
- Any **penalty** imposed under this section shall be **payable within a period of thirty days** from the date of issue of notice, **failure** of which adjudicating authority shall **cancel its registration**.
- No complaint shall be filed against any person in default in any court pertaining to any failure under sub-section (1) in respect of which any penalty has been imposed and recovered by the Reserve Bank under this section.
- Where any complaint has been filed against a person in default in the court having jurisdiction
- No proceeding for imposition of penalty against that person shall be taken under this section.
- "Adjudicating authority" means such officer or a committee of officers of the Reserve Bank, designated as such from time to time, by notification, by the Central Board of Reserve Bank.
- "Person in default" means the asset reconstruction company or any person which has committed any failure, contravention or default under this Act and any person in charge of such company or such other person, as the case may be, shall be liable to be proceeded against and punished under section 33 for such failure or contravention or default committed by such company or person.

## ❑ Appeal against penalties (Section 30B)

- A person in default, aggrieved by an order passed in section 30A(4), may, within a period of **thirty days** from the date on which such order is passed, prefer an appeal to the Appellate Authority.
- Appellate Authority **may entertain** an appeal after the expiry of the said period of thirty days, if it is satisfied that there was **sufficient cause** for not filing it within such period.

## ❑ Appellate Authority (Section 30C)

- **The Central Board of Reserve Bank may designate such officer or committee of officers** as it deems fit to **exercise the power of Appellate Authority**.
- The Appellate Authority shall have power to pass such order as it deems fit after providing a reasonable opportunity of being heard to the person in default.
- The Appellate Authority may, by an order stay the enforcement of the order passed by the adjudicating authority under section 30A, subject to such terms and conditions, as it deems fit.



- Where the person in default fails to comply with the terms and conditions imposed by order without reasonable cause, the Appellate Authority may dismiss the appeal.

#### **Recovery of penalties (Section 30d)**

- Any penalty imposed under section 30A shall be recovered as a “recoverable sum” and shall be payable **within a period of thirty days** from the date on which notice demanding payment of the recoverable sum is served upon the person in default and, in the case of failure of payment by such person within such period, the Reserve Bank may recover the sum as per the section.

# MISCELLANEOUS

- Chapter VI of the Act comprises of Miscellaneous provisions dealt under sections 31-42 of the Act.
- ❑ **Provisions of this Act not to apply uncertain cases (Section 31)**
- The situations in which the provisions of this Act do not apply are as follows :
  - a) A lien on any goods, money or security given by or under the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 or any other law for the time being in force;
  - b) A pledge of movables within the meaning of section 172 of the Indian Contract Act, 1872;
  - c) Creation of any security in any aircraft as defined in clause (1) of section 2 of the Aircraft Act, 1934;
  - d) Creation of security interest in any vessel as defined in clause (55) of section 3 of the Merchant Shipping Act, 1958;

- e) Any rights of unpaid seller under section 47 of the Sale of Goods Act, 1930;
- f) Any properties not liable to attachment (excluding the properties specifically charged with the debt recoverable under this Act) or sale under the first proviso to sub-section (1) of section 60 of the Code of Civil Procedure, 1908;
- g) Any security interest for securing repayment of any financial asset not exceeding one lakh rupees; <https://ibclaw.in/application-of-sarfaesi-act-security-interest-enforcement-rules-2002-in-the-process-of-recovery-of-the-loans-in-case-of-default-non-payment-non-performing-assets-by-ansul-j-bhuta/>
- h) Any security interest created in agricultural land;
- i) Any case in which the amount due is less than twenty per cent of the principal amount and interest thereon

### **Provisions of the Act not to apply in some cases (Section 31A)**

- The Central Government may, by notification in the public interest, direct that any of the provisions of this Act,-

- a) Shall not apply to such class or classes of banks or financial institutions; or
  - b) Shall apply to the class or classes of banks or financial institutions with such exceptions, modifications and adaptations, as may be specified in the notification.
- A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days, and if, both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.
  - In reckoning any such period of thirty days as is referred to in sub-section (2), no account shall be taken of any period during which the House referred to in sub-section (2) is prolonged or adjourned for more than four consecutive days.
  - The copies of every notification issued under this section shall, as soon as may be after it has been issued, be laid before each House of Parliament

## **❑ Protection of action taken in good faith (Section 32)**

- No suit, prosecution or other legal proceedings shall lie against the Reserve Bank or the Central Registry or any secured creditor or any of its officers for anything done or omitted to be done in good faith under this Act.

## **❑ Offences by companies (Section 33)**

- Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished in accordance with the provisions of the Act.
- But if such person is able to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, then section 33 does not apply to such person.

- It must also be noted that, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished in accordance with the provisions of the Act.

- **For the purposes of section 33:-**

“Company” means any body corporate and includes a firm or other association of individuals; and “director”, in relation to a firm, means a partner in the firm.

- **Civil Court not to have jurisdiction (Section 34)**

- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Debts Recovery Tribunal or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993.

### **❑ The provisions of this Act to override other laws (Section 35)**

- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

### **❑ Limitation (Section 36)**

- No secured creditor shall be entitled to take all or any of the measures under sub-section (4) of section 13, unless his claim in respect of the financial asset is made within the period of limitation prescribed under the Limitation Act, 1963.

### **❑ Application of other laws not barred (Section 37)**

- The provisions of this Act or the rules made thereunder shall be in addition to, and not in derogation of, the Companies Act, 2013, the Securities Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 or any other law for the time being in force.

## **❑ Power of Central government to make rules (Section 38)**

- 1) The Central Government may, by notification and in the Electronic Gazette as defined in clause (s) of section 2 of the Information Technology Act, 2000, make rules for carrying out the provisions of this Act.
- 2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--
  - a. The form and manner in which an application may be filed under sub-section (10) of section 13;
  - b. The manner in which the rights of a secured creditor may be exercised by one or more of his officers under sub-section (12) of section 13;
  - c. The fee: fee making an application to the Debts Recovery Tribunal under sub-section (1) of section 17;
  - d. The form of making an application to the Appellate Tribunal under sub-section (6) of section 17;
  - e. The fee for preferring an appeal to the Appellate Tribunal under sub-section (1) of section 18;"
  - f. The safeguards subject to which the records may be kept under sub-section (2) of section 22;
  - g. The manner in which the particulars of every transaction of securitisation shall be filed under section 23 and fee for filing such transaction;



- i) The fee for inspecting the particulars of transactions kept under section 22 and entered in the Central Register under sub-section(1) of section 26;
- j) The fee for inspecting the Central Register maintained in electronic form under sub-section (2) of section 26;
- k) Any other matter which is required to be, or may be,prescribed, in respect of which provision is to be, or may be, made by rules.

# THE SECURITY INTEREST (ENFORCEMENT) RULES , 2002

In exercise of the powers conferred by sub-section (1) and clause (b) of sub-section (2) of Section 38 read with subsections (4), (10) and (12) of section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Act) the Central Government hereby makes the following rules, namely:-

- **Important definitions are given below:**

- Some of the key Definitions.

In these rules, unless the context otherwise requires,-

- a) **“Authorised officer”** means an officer not less than a chief manager of a public sector bank or equivalent, as specified by the Board of Directors or Board of Trustees of the secured creditor or any other person or authority exercising powers of superintendence, direction and control of the business or affairs of the secured creditor, as the case may be, to exercise the rights of a secured creditor under the Act;

b) Demand notice means the notice in writing issued by a secured creditor or authorised officer, as the case may be, to any borrower pursuant to sub-section (2) of section 13 of the Act;

**□ Procedure for issue of demand notice.-**

The service of demand notice as referred to in sub-section (2) of section 13 of the Act shall be made by:

- Delivering or
- Transmitting

At the place where the borrower or his agent, empowered to accept the notice or documents on behalf of the borrower, actually and voluntarily resides or carries on business or personally works for gain, by registered post with acknowledgement due, addressed to the borrower or his agent empowered to accept the service or by Speed Post or by courier or by any other means of transmission of documents like fax message or electronic mail service:

- Where authorised officer has reason to believe that the borrower or his agent is avoiding the service of the notice or that for any other reason, the service cannot be made as aforesaid, the service shall be effected by **affixing a copy** of the demand notice on the **outer door or some other conspicuous part** of the house or building in which the borrower or his agent ordinarily resides or carries on business or personally works for gain **and also by publishing** the contents of the demand notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality.
  - Where the borrower is a body corporate, the demand notice shall be served **on the registered office or any of the branches** of such body corporate as specified under sub-rule (1).
  - Any other notice in writing to be served on the borrower or his agent by authorised officer, shall be served in the same manner as provided in this rule.
- 4) Where there are **more than one borrower**, the demand notice shall be **served on each borrower**.

## □ Reply to Representation of the borrower:

- a) After issue of demand notice under sub-section (2) of section 13, if the borrower makes any representation or raises any objection to the notice, the Authorised Officer shall consider such representation or objection and examine whether the same is acceptable or tenable.
- b) If on examining the representation made or objection raised by the borrower, the **secured creditor** is satisfied that there is a **need to make any changes or modifications** in the demand notice, he shall modify the notice accordingly and serve a revised notice or pass such other suitable orders as deemed necessary, **within seven days** from the date of receipt of the representation or objection.
- c) If on examining the representation made or objection raised, the **Authorized Officer** comes to the conclusion that such representation or objection is not acceptable or tenable, he shall communicate **within one week of receipt** of such representation or objection, the reasons for non-acceptance of the representation or objection, to the borrower.

## ❑ Procedure after issue of notice:

- If the amount mentioned in the demand notice is not paid within the time specified therein, the authorised officer shall proceed to realise the amount by adopting any one or more of the measures specified in sub-section (4) of section 13 of the Ac for taking possession of movable property, namely:-
- Where the possession of the secured assets to be taken by the secured creditor are **movable property** in possession of the borrower, the authorised officer shall take possession of such movable property in the **presence of two witnesses after Panchnama** drawn and signed by the witnesses as nearly as possible in Appendix I to these rules.
- After taking possession under sub-rule (1) above, the authorised officer shall make or cause to be **made an inventory of the property** as nearly as possible in the form given in Appendix II to these rules and deliver or cause to be **delivered, a copy of such inventory to the borrower** or to any person entitled to receive on behalf of borrower.

- The authorised officer shall keep the property taken possession under sub-rule (1) either in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as owner of ordinary prudence would, under the similar circumstances, take of such property:
- If such property is subject to speedy or natural decay, or the expense of keeping such property in custody is likely to exceed its value, the authorised officer may sell it at once.
- The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed of.

**In case any secured asset is:-**

- a) A debt not secured by negotiable instrument; or
- b) A share, in a body corporate;
- c) Other movable property not in the possession of the borrower except the property deposited in or in the custody of any Court or any like authority, the authorised officer shall obtain possession or recover the debt by service of notice as under:-

- In the case of a debt, prohibiting the borrower from recovering the debt or any interest thereon and the debtor from making payment thereof and directing the debtor to make such payment to the authorised officer, or in the case of the shares in a body corporate, directing the borrower to transfer the same to the secured
- Creditor and also the body corporate from not transferring such shares in favour of any person other than the secured creditor. A copy of the notice so sent may be endorsed to the concerned body corporate's Registrar to the issue or share transfer agents, if any;
- In the case of other movable property (except as aforesaid), calling upon the borrowers and the person in possession to hand over the same to the authorised officer and the authorised officer shall take custody of such movable property in the same manner as provided in sub-rules (1) to (3) above;
- Movable secured assets other than those covered in this rule shall be taken possession of by the authorised officer by taking possession of the documents evidencing title to such secured assets.



### **❑ Valuation of movable secured assets.**

- After taking possession under sub-rule (1) of rule 4 and in any case before sale, the authorised officer shall obtain the estimated value of the movable secured assets and thereafter, if considered necessary, fix in consultation with the secured creditor, the reserve price of the assets to be sold in realization of the dues of the secured creditor.

### **❑ Sale of movable secured assets.-**

The authorised officer may sell the moveable secured assets taken possession under sub-rule (1) of rule 4 in one or more lots by adopting any of the following methods to secure maximum sale price for the assets, to be so sold-

- obtaining quotations from parties dealing in the secured assets or otherwise interested in buying such assets; or
- inviting tenders from the public; or
- holding public auction; or
- by private treaty.

The authorised officer shall **serve to the borrower a notice of thirty days for sale** of the movable secured assets,; If the sale of such secured assets is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers, one in vernacular language, having sufficient circulation in that locality by setting out the terms of sale, which may include,-

- Details about the borrower and the secured creditor;
- Description of movable secured assets to be sold with identification marks or numbers, if any, on them;
- Reserve price, if any, and the time and manner of payment;
- Time and place of public auction or the time after which sale by any other mode shall be completed;
- Depositing earnest money as may be stipulated by the secured creditor;
- Any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of movable secured assets.

Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

**□ Issue of certificate of sale.**

- Where movable secured assets is sold, sale price of each lot shall be paid as per the terms of the public notice or on the terms as may be settled between the parties, as the case may be, and in the event of default of payment, the movable secured assets shall be liable to be offered for sale again.
- On payment of sale price, the authorised officer shall issue a certificate of sale in the prescribed form Appendix III to these rules specifying the movable secured assets sold, price paid and the name of the purchaser and thereafter the sale shall become absolute. The certificate of sale so issued shall be prima facie evidence of title of the purchaser.
- Where the movable secured assets are those referred in sub-clauses (iii) to (v) of clause (1) of sub-section (1) of section 2 of the Act, the provisions contained in these rules and rule 7 dealing with the sale of movable secured assets shall, mutatis mutandis, apply to such assets.

## **❑ Sale of immovable secured assets.**

- Where the secured asset is an immovable property, the authorised officer shall take or cause to be taken possession, by delivering a possession notice prepared as nearly as possible in Appendix IV to these rules, to the borrower and by affixing the possession notice on the outer door or at such conspicuous place of the property.
- The possession notice as referred to in sub-rule (1) shall also be published, as soon as possible but in any case not later than seven days from the date of taking possession, in two leading newspaper one in vernacular language having sufficient circulation in that locality, by the authorised officer.
- In the event of possession of immovable property actually taken by the authorised officer, such property shall be kept in his own custody or in the custody of any person authorised or appointed by him, who shall take as much care of the property in his custody as an owner of ordinary prudence would, under the similar circumstances, take of such property.

- The authorised officer shall take steps for preservation and protection of secured assets and insure them, if necessary, till they are sold or otherwise disposed off.
- Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorised officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:-
  - i. By obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or
  - ii. By inviting tenders from the public;
  - iii. By holding public auction; or
  - iv. By private treaty.

- The authorised officer shall serve to the borrower a **notice of thirty days** for sale of the immovable secured assets, under sub-rule (5)
- If the sale of such secured asset is being effected by either inviting tenders from the public or by holding public auction, the secured creditor shall cause a public notice in two leading newspapers one in vernacular language having sufficient circulation in the locality by setting out the terms of sale, which shall include, -
- The description of the immovable property to be sold, including the details of the encumbrances known to the secured creditor;
- The secured debt for recovery of which the property is to be sold;
- Reserve price, below which the property may not be sold;
- Time and place of public auction or the time after which sale by any other mode shall be completed;
- Depositing earnest money as may stipulated by the secured creditor;
- Any other thing which the authorised officer considers it material for a purchaser to know in order to judge the nature and value of the property.

- Every notice of sale shall be affixed on a conspicuous part of the immovable property and may, if the authorised officer deems it fit, put on the website of the secured creditor on the Internet.
- Sale by any methods other than public auction or public tender, shall be on such terms as may be settled between the parties in writing.

#### **☐ Time of sale, Issue of sale certificate and delivery of possession**

- Sale of immovable property under these rules shall not take place before the expiry of thirty days from the date on which the public notice of sale is published in newspapers as referred to in the proviso to sub-rule (6) or notice of sale has been served to the borrower.
- The sale shall be confirmed in favour of the purchaser who has offered the highest sale price in his bid or tender or quotation or offer to the authorised officer and shall be subject to confirmation by the secured creditor provided that no sale under this rule shall be confirmed, if the amount offered by sale price is less than the reserve price, specified under sub-rule (5) of rule 9 :

- If the authorised officer fails to obtain a price higher than the reserve price, he may, with the consent of the borrower and the secured creditor effect the sale at such price.
- **25% immediately** :On every sale of immovable property, the purchaser shall immediately pay a deposit of twenty-five per cent of the amount of the sale price, to the authorised officer conducting the sale and in default of such deposit, the property shall forthwith be sold again.
- **Balance on or before the 15<sup>th</sup> day**: The balance amount of purchase price payable shall be paid by the purchaser to the authorised officer on or before the fifteenth day of confirmation of sale of the immovable property or such extended period as may be agreed upon in writing between the parties.
- In default of payment within the period mentioned in sub-rule (4), the deposit shall be forfeited and the property shall be resold and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may be subsequently sold.
- On confirmation of sale by the secured creditor and if the terms of payment have been complied with, the authorised officer exercising the power of sale shall issue a certificate of sale of the immovable property in favour of the purchaser in the Form given in Appendix V to these rules.



- Where the **immovable property sold is subject to any encumbrances**, the authorised officer may, if he thinks fit, allow the purchaser to deposit with him the money required to discharge the encumbrances and any interest due thereon together with such additional amount that may be sufficient to meet the contingencies or further cost, expenses and interest as may be determined by him.
- And if after meeting the cost of removing encumbrances and contingencies there is any surplus available out of money deposited by the purchaser such **surplus shall be paid to the purchaser within fifteen days** from date of finalisation of the sale.
- On such deposit of money for discharge of the encumbrances, the authorised officer shall issue or cause the purchaser to issue notices to the persons interested in or entitled to the money deposited with him and take steps to make the payment accordingly.
- The authorised officer shall deliver the property to the purchaser free from encumbrances known to the secured creditor on deposit of money as specified in sub-rule (7).
- The certificate of sale issued under sub-rule (6) shall specifically mention that whether the purchaser has purchased the immovable secured asset free from any encumbrances known to the secured creditor or not.

## ❑ Steps for Appointment of manager

- The Board of Directors or Board of Trustees, as the case may be, may appoint in consultation with the borrower any person (hereinafter referred to as the Manager) to manage the secured assets the possession of which has been taken over by the secured creditor.
- The manager so appointed shall not be a person who is, or has been, adjudicated insolvent, or has suspended payment or has compounded with his creditors, or who is, or has been, convicted by a criminal court of an offence involving moral turpitude
- **The Manager appointed by the Board of Directors or Board of Trustees, as the case may be, shall be deemed to be an agent of the borrower** and the borrower shall be solely responsible for the commission or omission of acts of the Manager unless such commission or omission are due to improper intervention of the secured creditor or the authorised officer.
- The Manager shall have power by notice in writing to recover any money from any person who has acquired any of the secured assets from the borrower, which is due or may become due to the borrower.

- The Manager shall give such person who has made payment under sub-rule (3) a valid discharge as if he has made payments to the borrower.
- The Manager shall apply all the monies received by him in accordance with the provisions contained in subsection (7) of section 13 of the Act.

**□ Procedure for Recovery of shortfall of secured debt-Application to DRT either personally or through registered post**

- An application for recovery of balance amount by any secured creditor pursuant to sub-section (10) of section 13 of the Act shall be presented to the Debts Recovery Tribunal in the form annexed as Appendix VI to these rules by the authorised officer or his agent or by a duly authorised legal practitioner, to the Registrar of the Bench within whose jurisdiction his case falls or shall be sent by registered post addressed to the Registrar of Debts Recovery Tribunal.
- Please note that the provisions of the Debts Recovery Tribunal (Procedure) Rules, 1993 made under Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993), shall mutatis mutandis apply to any application filed by under sub-rule (1).

- An application under sub-rule (1) shall be accompanied with fee as provided in rule 7 of the Debts Recovery

### **□ Application to the Tribunal / Appellate Tribunal**

- Any application to the Debt Recovery Tribunal under sub-section (1) of section 17 shall be, as nearly as possible, in the form given in Appendix VII to the rules.
- Any application to the Appellate Tribunal under sub-section (6) of section 17 of the Act shall be, as nearly as possible, in the form given in Appendix VIII to the said rules. Any appeal to the Appellate Tribunal under section 18 of the Act shall be, as nearly as possible, in the form given in Appendix IX to the said rules.

### **□ Fees for applications and appeals under section 17 and 18 of the Act**

- Every application under sub section (1) of section 17 or an appeal to the Appellate Tribunal under sub-section (1) of section 18 shall be accompanied by a fee provided in the sub-rule (2) and such **fee may be remitted through a crossed demand draft drawn on a bank or Indian Postal Order** in favour of the Registrar of the Tribunal or the Court as the case may be, payable at the place where the Tribunal or the Court is situated.

(2) The amount of fee payable has been prescribed in rule 18.

- There are nine annexures under THE SECURITY INTEREST (ENFORCEMENT) RULES, 2002 Appendix-i [See rule-4(1)] Panchnama
- Appendix-ii [See rule-4(2)] inventory
- Appendix-iii [See rule-7(2)] Certificate of Sale (for movable property)
- Appendix-iv [See rule-8(1)] Possession notice (for Immovable property)
- Appendix-V [See rule-9(6)] Sale Certificate (for Immovable property)
- Appendix Vi FORM [See rule 11(1)] Application under sub-section (10) of Section 13 of the Securitisation and Reconstruction of Financial
- [Appendix-Vii [See rule 12(1)] Application under sub-section (1) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- Appendix-Viii [See rule 12(2)] Application under sub-section (6) of Section 17 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
- Appendix-ix [See Rule 12(2)] Appeal under Section 18 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

## **Introduction**

The Insolvency and Bankruptcy Code, 2016 was introduced primarily to protect the interests of all the creditors and stakeholders of the corporate debtor. The intention behind this act was to consolidate the laws having insolvency and reorganization resolution issues as their subject-matter. On the other hand, The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) focuses on securitization and reconstruction of financial assets and enforcement of security interest without any intervention from the court or tribunals. The entire process is regulated by the Reserve Bank of India and in case of a default in repayment, it allows the secured creditors to take possession over the collateral against which the loan had been provided.

Under the IBC, once the corporate insolvency resolution process (CIRP) is initiated, the Moratorium is applicable to “any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002”. Therefore, any asset reconstruction company or financial institution seeking to enforce its security under the SARFAESI has to be circumspect of any impending proceeding under the IBC. An overview of the interplay between the IBC and the SARFAESI Act, seeks to trace the IBC in operation and analyse as to how it affects various stakeholders involved.

## **The conflict between “IBC” and “SARFAESI”**

The Insolvency and Bankruptcy Code, 2016 and the SARFAESI Act, both the legislations have a similar objective i.e. to recover bad debts by identifying and directing the assets of a debtor to repay the bad debt. Therefore, it was quite clear that both these legislations would cross paths at one point of time. Applicability of some overlapping provisions was clarified by the NCLAT in *Encore Asset Reconstruction Company Pvt. Ltd. v. Ms. Char Sandeep Desai*.

Section 18 of the IBC has provisions regarding ‘duties of interim professional’ and clause (f) and (f)(i) allows the interim resolution professional to take “control” and “custody” of assets of corporate debtor. On the other hand, under section 13(4) of the SARFAESI Act once a corporate debtor defaults in repaying the loan amount taken from the bank, the bank can file an application to take over the physical possession of the property belonging to the corporate debtor. The inconsistency here was that under the IBC, the resolution professional could have taken over the physical possession of the property of the corporate debtor whereas under SARFAESI Act bank is legally entitled to take over the physical possession of the property of the defaulting corporate debtor.

In *Encore Asset Reconstruction Company Pvt. Ltd. v. Ms. Charu Sandeep Desai*[2], NCLAT held that a secured creditor who has taken physical possession of the mortgaged property before the admission of insolvency proceedings must hand over custody of that property to the Interim Resolution Professional (IRP), as section 18 of the Insolvency and Bankruptcy Code, 2016 will prevail over Section 13(4) of the SARFAESI Act. Therefore, NCLAT through this judgment clarified that when any inconsistency arises between the two laws the provision of IBC will prevail over the SARFAESI Act, 2002.

Even after the pronouncement of this judgment, the issue regarding simultaneous proceedings under the IBC and the SARFAESI was not clear. In *Punjab National Bank Vs. M/s Vindhya Cereals Pvt. Ltd.*[3], NCLAT has dealt with this particular issue. The question before the appellate tribunal was whether a financial creditor can initiate parallel proceedings under SARFAESI Act, 2002 as well as under the IBC. In this particular case, the Financial creditor filed an application against the corporate debtor under section 7 of the IBC. However, before filing the application under the IBC, the financial creditor had served the notice to the corporate debtor under Section 13 (2) of SARFAESI Act, 2002. NCLAT held that the Financial Creditors can proceed simultaneously under SARFAESI Act as well as under IBC. Section 238 of IBC states that “the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by the virtue of any such law”. Thus, the non-obstante clause of the Code will prevail over any other law for the time being in force.



## **Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act 2016 (“SARFAESI Amendment Act”): into effect from January 24, 2020.**

The Ministry of Law and Justice through the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016 (“Amendment Act”)[4] brought in certain amendments in the SARFAESI Act. The Ministry of Finance through a notification dated 26.12.2019[5], notified Sections 17, 18 and 19 of the Amendment Act, 2016 which has come into force from 24th January 2020. Before this notification, “priority” in terms of the distribution of assets was one of the major issues which the lenders faced under the SARFAESI Act as statutory dues had the same priority in payment of debt. The changes in the SARFAESI Act has given primacy to the secured creditors. The debts due to any secured creditor would be paid on a priority basis in comparison to all other debts, taxes, revenues and cesses payable to the state government, central government or any local authority.

The intention of this particular amendment is to harmonize the provisions of the SARFAESI Act with Section 53 of the IBC which deals with the liquidation process and the distribution of assets. However, the amended section 26E under the SARFAESI Act has an explanation to the priority rule. It states that in situations where the proceedings under the IBC are pending, the priority given to secured creditors regarding payment of debt shall be subject to the provisions of IBC. Under the IBC, there is much more clarity with regards to the distribution of assets. Section 53 of the Insolvency and Bankruptcy Code, 2016 creates a waterfall mechanism under which the proceeds from the sale of the liquidation assets of the corporate debtor are distributed in a certain order of priority. Even after the recent changes in the SARFAESI Act, lenders based on their past experience are more inclined towards the IBC for recovery of dues and they are sticking to that process.

## **Lenders preferring “IBC” over the “SARFAESI Act” for recovery of dues.**

Even after amendments in the SARFAESI Act, a lot of issues are still unaddressed due to which lenders tend to choose the IBC over the SARFAESI Act. Over 248,000 cases were referred for recovery through the SARFAESI Act in 2018-19, involving an amount of Rs.2.89 lakh crore. Banks recovered Rs. 41,876 crores, or 14.5% of the amount involved, which was lower than the recovery rate of 32.3% in 2017-18. Under the IBC, the amount recovered in 2018-19 was Rs. 70,819 crores, or 42.4% of the amount of Rs. 1.66 lakh crore involved. Further, pending cases have been an issue with SARFAESI. As on June 30, 2017, there were 109,598 cases pending across Debt Recovery Tribunal (DRT) with recovery dues of Rs 6,35,000 crore. Under the IBC, as of November 2019, the resolved cases were 160. The number of cases admitted till September 2019 was 2,542[6]. Therefore, considering the recovery rate and the issue of pending cases over the last few years lenders tend to stick to the process under the IBC in comparison to the SARFAESI Act.

Apart from these shortcomings, the SARFAESI Act provides protection to secured financial creditors by allowing them to enforce their security interests without any intervention from the court or tribunal. On the other hand, under the IBC, the interests and rights of all types of creditors have been taken into consideration which includes the secured creditors and the entire process is driven by the National Company Law Tribunal (NCLT) and the lenders prefer IBC over SARFAESI as there is a definite timeline involved.

Further, the legal and economic impact of COVID-19 could see many profitable businesses undergoing financial distress. To prevent companies from being forced into insolvency proceedings due to default caused by the Covid-19 crisis government has decided to suspend the IBC for a year. This would be a major relief for corporate borrowers but suspension of these provisions would mean that fresh insolvency proceedings would not be triggered under the Code during the given time period. This could attract more lenders to go under the SARFAESI Act for recovery of dues.

## **Conclusion**

Therefore, the overriding provision under the IBC coupled with the imposition of the moratorium on any action undertaken under other statute has provided the creditors with a greater chance to achieve the target of maximisation of assets of the corporate debtor during the resolution process and time-bound resolution of insolvency. In smaller cases such as housing loans, SARFAESI still could be a better bet and it could be beneficial in cases where only one lender is involved. However, it is likely that some of the high-priced cases may move from DRTs to the NCLT for resolution as even the banks are facing difficulties as delays in DRT resolution are adding to their non-performing assets (NPAs). Therefore, even after the amendment which was brought in to streamline the process under the SARFAESI Act, lenders still feel that IBC is a safer tool for recovery where the lenders involved are more than one or it's a big account. IBC still attracts more lenders especially since it has now been established that secured financial creditors have supremacy and the issue of attachment of assets has been resolved.

## THE SARFAESI ACT, 2002

Valuation of and sale of immovable secured assets are referred under Rule 8 of Security Interest (Enforcement) Rules, 2002 as under:

Before effecting sale of the immovable property referred to in sub-rule (1) of rule 9, the authorized officer shall obtain valuation of the property from an approved valuer and in consultation with the secured creditor, fix the reserve price of the property and may sell the whole or any part of such immovable secured asset by any of the following methods:

- i. By obtaining quotations from the persons dealing with similar secured assets or otherwise interested in buying such assets; or
- ii. By inviting tenders from the public; or
- iii. By holding public auction; or
- iv. By private treaty.

Rule 2(d) of Security Interest (Enforcement) Rules, 2002 defines "Approved Valuer" which means a valuer approved by the Board of Directors or Board of Trustees of the secured creditor, as the case may be.

In case of immovable property valuation by an approved valuer and fixing of reserve price is mandatory.

**THE MICRO, SMALL AND  
MEDIUM ENTERPRISES  
DEVELOPMENT ACT, 2006**

**ARRANGEMENT OF SECTIONS**

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2. Definitions.



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4. Removal of member from Board.
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22. Requirement to specify unpaid amount with interest in the annual statement of accounts.
23. Interest not to be allowed as deduction from income.
24. Overriding effect.
25. Scheme for closure of business of micro, small and medium enterprises.

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# CHAPTER VI

## MISCELLANEOUS

26. Appointment of Officers and other employees.

27. Penalty for contravention of section 8 or section 22 or section 26.

28. Jurisdiction of courts.

29. Power to make rules.

30. Power to make rules by State Government.

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32. Repeal of Act 32 of 1993.

THE MICRO, SMALL AND MEDIUM ENTERPRISES DEVELOPMENT ACT,  
2006 ACT NO. 27 OF 2006

An Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto.

WHEREAS a declaration as to expediency of control of certain industries by the Union was made under section 2 of the Industries (Development and Regulation) Act, 1951;

AND WHEREAS it is expedient to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises and for matters connected therewith or incidental thereto;

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

## CHAPTER I PRELIMINARY

### **1. Short title and commencement.—**

- (1) This Act may be called the Micro, Small and Medium Enterprises Development Act, 2006.
- (2) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification, appoint; and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

### **2. Definitions.—**In this Act, unless the context otherwise requires,—

- (a) “Advisory Committee” means the committee constituted by the Central Government under sub-section (2) of section 7;



## Regarding Advisory Committee

The Central Government shall, by notification, constitute an Advisory Committee consisting of the following members, namely:—

- (a) the Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the small and medium enterprises who shall be the Chairperson, ex officio;
- (b) not more than five officers of the Central Government possessing necessary expertise in matters relating to micro, small and medium enterprises, members, ex officio;
- (c) not more than three representatives of the State Governments, members, ex officio; and
- (d) one representative each of the associations of micro, small and medium enterprises, members, ex officio.

The Member-Secretary of the Board shall also be the ex officio Member-Secretary of the Advisory Committee.

The Central Government shall, prior to classifying any class or classes of enterprises under sub-section (1), obtain the recommendations of the Advisory Committee.

The Advisory Committee shall examine the matters referred to it by the Board in connection with any subject referred to in section 5 and furnish its recommendations to the Board.

The Central Government may seek the advice of the Advisory Committee on any of the matters specified in section 9, 10, 11, 12 or 14 of Chapter IV.

The State Government may seek advice of the Advisory Committee on any of the matters specified in the rules made under section 30.

The Advisory Committee shall, after considering the following matters, communicate its recommendations or advice to the Central Government or, as the case may be, State Government or the Board, namely:—

- (a)** the level of employment in a class or classes of enterprises;
- (b)** the level of investments in plant and machinery or equipment in a class or classes of enterprises;
- (c)** the need of higher investment in plant and machinery or equipment for technological upgradation, employment generation and enhanced competitiveness of the class or classes of enterprises;
- (d)** the possibility of promoting and diffusing entrepreneurship in micro, small or medium enterprises; and
- (e)** the international standards for classification of small and medium enterprises

(b) “appointed day” means the day following immediately after the expiry of the period of fifteen days from the day of acceptance or the day of deemed acceptance of any goods or any services by a buyer from a supplier.

**Explanation.**—For the purposes of this clause,—

(i) “the day of acceptance” means,—

(a) the day of the actual delivery of goods or the rendering of services; or

(b) where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier;

(ii) “the day of deemed acceptance” means, where no objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day of the actual delivery of goods or the rendering of services;

(c) “Board” means the National Board for Micro, Small and Medium Enterprises established under section 3;

(d) “buyer” means whoever buys any goods or receives any services from a supplier for consideration;

# WHAT IS “ENTERPRISE”

Sec 2(e) of MSMED, Act 2006

“Enterprise” means an industrial undertaking or a business concern or any other establishment, by whatever name called,

➤ Engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries Private and confidential @Team ATA 9555 929 111 (Development and Regulation) Act, 1951 (55 of 1951)

or

Engaged in providing or rendering of any service or services

- (e) “enterprise” means an industrial undertaking or a business concern or any other establishment, by whatever name called, engaged in the manufacture or production of goods, in any manner, pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (55 of 1951) or engaged in providing or rendering of any service or services;
- (f) “goods” means every kind of movable property other than actionable claims and money;
- (g) “medium enterprise” means an enterprise classified as such under sub-clause (iii) of clause (a) or sub-clause (iii) of clause (b) of sub-section (1) of section 7;
- (h) “micro enterprise” means an enterprise classified as such under sub-clause (i) of clause (a) or sub-clause (i) of clause (b) of sub-section (1) of section 7;
- (i) “National Bank” means the National Bank for Agriculture and Rural Development established under section 3 of the National Bank for Agriculture and Rural Development Act, 1981 (51 of 1981);
- (j) “notification” means a notification published in the Official Gazette;
- (k) “prescribed” means prescribed by rules made under this Act;
- (l) “Reserve Bank” means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

(m) “small enterprise” means an enterprise classified as such under sub-clause (ii) of clause (a) or sub-clause (ii) of clause (b) of sub-section (1) of section 7;

(n) “supplier” means a micro or small enterprise, which has filed a memorandum with the authority referred to in sub-section (1) of section 8, and includes,—

(i) the National Small Industries Corporation, being a company, registered under the Companies Act, 1956 (1 of 1956);

(ii) the Small Industries Development Corporation of a State or a Union territory, by whatever name called, being a company registered under the Companies Act, 1956 (1 of 1956);

(iii) any company, co-operative society, trust or a body, by whatever name called, registered or constituted under any law for the time being in force and engaged in selling goods produced by micro or small enterprises and rendering services which are provided by such enterprises;

(o) “Small Industries Bank” means the Small Industries Development Bank of India established under sub-section (1) of section 3 of the Small Industries Development Bank of India Act, 1989 (39 of 1989);

(p) “State Government”, in relation to a Union territory, means the Administrator thereof appointed under article 239 of the Constitution.

## CHAPTER II

# NATIONAL BOARD FOR MICRO, SMALL AND MEDIUM ENTERPRISES

**3. Establishment of Board.**—(1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board to be known as the National Board for Micro, Small and Medium Enterprises.

(2) The head office of the Board shall be at Delhi.

(3) The Board shall consist of the following members, namely:—

(a) the Minister in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be the ex officio Chairperson of the Board;

(b) the Minister of State or a Deputy Minister, if any, in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises who shall be ex officio Vice-Chairperson of the Board, and where there is no such Minister of State or Deputy

Minister, such person as may be appointed by the Central Government to be the Vice-Chairperson of the Board;

(c) six Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, micro, small and medium enterprises, to be appointed by the Central Government to represent such regions of the country as may be notified by the Central Government in this behalf, ex officio;

(d) three Members of Parliament of whom two shall be elected by the House of the People and one by the Council of States;

(e) the Administrator of a Union territory to be appointed by the Central Government, ex officio;

(f) the Secretary to the Government of India in charge of the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises, ex officio;

(g) four Secretaries to the Government of India, to represent the Ministries of the Central Government dealing with commerce and industry, finance, food processing industries, labour and planning to be appointed by the Central Government, ex officio;



- (h) the Chairman of the Board of Directors of the National Bank, ex officio;
- (i) the chairman and managing director of the Board of Directors of the Small Industries Bank, ex officio;
- (j) the chairman, Indian Banks Association, ex officio;
- (k) one officer of the Reserve Bank, not below the rank of an Executive Director, to be appointed by the Central Government to represent the Reserve Bank;
- (l) twenty persons to represent the associations of micro, small and medium enterprises, including not less than three persons representing associations of women's enterprises and not less than three persons representing associations of micro enterprises, to be appointed by the Central Government;
- (m) three persons of eminence, one each from the fields of economics, industry and science and technology, not less than one of whom shall be a woman, to be appointed by the Central Government;
- (n) two representatives of Central Trade Union Organisations, to be appointed by the Central Government; and

(o) one officer not below the rank of Joint Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the micro, small and medium enterprises to be appointed by the Central Government, who shall be the Member-Secretary of the Board, ex officio.

(4) The term of office of the members of the Board, other than ex officio members of the Board, the manner of filling vacancies, and the procedure to be followed in the discharge of their functions by the members of the Board, shall be such as may be prescribed:

Provided that the term of office of an ex officio member of the Board shall continue so long as he holds the office by virtue of which he is such a member.

(5) No act or proceedings of the Board shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Board; or

(b) any defect in the appointment of a person acting as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

(6) The Board shall meet at least once in every three months in a year.

(7) The Board may associate with itself, in such manner and for such purposes as it may deem necessary, any person or persons whose assistance or advice it may desire in complying with any of the provisions of this Act and a person so associated shall have the right to take part in the discussions of the Board relevant to the purposes for which he has been associated but shall not have the right to vote.

(8) Without prejudice to sub-section (7) the Chairperson of the Board shall, for not less than two of the meetings of the Board in a year, invite such Ministers of the State Governments having administrative control of the departments of small scale industries or, as the case may be, the micro, small and medium enterprises, or the Administrators of Union territories and representatives of such other associations of micro, small and medium enterprises, as he may deem necessary for carrying out the purposes of this Act.

(9) It is hereby declared that the office of member of the Board shall not disqualify its holder for being chosen as, or for being, a member of either House of Parliament.

#### **4. Removal of member from Board.—**

(1) The Central Government may remove a member of the Board from it, if he—

- (a) is, or at any time has been, adjudged as insolvent; or
- (b) is, or becomes, of unsound mind and stands so declared by a competent court; or
- (c) refuses to act or becomes incapable of acting as a member of the Board; or
- (d) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (e) has so abused, in the opinion of the Central Government, his position as a member of the Board as to render his continuance in the Board detrimental to the interests of the general public.

(2) Notwithstanding anything contained in sub-section (1), no member shall be removed from his office on the grounds specified in clauses (c) to (e) of that sub-section unless he has been given a reasonable opportunity of being heard in the matter.

**5. Functions of Board.**—The Board shall, subject to the general directions of the Central Government, perform all or any of the following functions, namely:—

- (a) examine the factors affecting the promotion and development of micro, small and medium enterprises and review the policies and programmes of the Central Government in regard to facilitating the promotion and development and enhancing the competitiveness of such enterprises and the impact thereof on such enterprises;
- (b) make recommendations on matters referred to in clause (a) or on any other matter referred to it by the Central Government which, in the opinion of that Government, is necessary or expedient for facilitating the promotion and development and enhancing the competitiveness of the micro, small and medium enterprises; and
- (c) advise the Central Government on the use of the Fund or Funds constituted under section 12.

**6. Powers and functions of Member-Secretary of Board.**—Subject to other provisions of this Act, the Member-Secretary of the Board shall exercise such powers and perform such functions as may be prescribed.

CHAPTER III  
CLASSIFICATION OF ENTERPRISES, ADVISORY COMMITTEE AND  
MEMORANDUM OF  
MICRO, SMALL AND MEDIUM ENTERPRISES

**7. Classification of enterprises.—**

(1) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951), the Central Government may, for the purposes of this Act, by notification and having regard to the provisions of sub-sections (4) and (5), classify any class or classes of enterprises, whether proprietorship, Hindu undivided family, association of persons, co-operative society, partnership firm, company or undertaking, by whatever name called,—

(a) in the case of the enterprises engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), as—

- (i) a micro enterprise, where the investment in plant and machinery does not exceed twenty five lakh rupees;
  - (ii) a small enterprise, where the investment in plant and machinery is more than twenty-five lakh rupees but does not exceed five crore rupees; or
  - (iii) a medium enterprise, where the investment in plant and machinery is more than five crore rupees but does not exceed ten crore rupees;
- (b) in the case of the enterprises engaged in providing or rendering of services, as—
- (i) a micro enterprise, where the investment in equipment does not exceed ten lakh rupees;
  - (ii) a small enterprise, where the investment in equipment is more than ten lakh rupees but does not exceed two crore rupees; or
  - (iii) a medium enterprise, where the investment in equipment is more than two crore rupees but does not exceed five crore rupees.

Explanation 1.—For the removal of doubts, it is hereby clarified that in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, by notification, shall be excluded.

# CLASSIFICATION OF AN ENTERPRISE

An Enterprise has been classified in to the 3 categories (Sec 7):

- Micro
- Small
- Medium

Micro, Small & Medium Enterprises, In accordance with the provision of (MSMED) Act, 2006 were classified in two Classes based on the investment:

Manufacturing Enterprises:-

Service Enterprises:-

<b>Existing MSME Classification</b>			
<b>Criteria : Investment in Plant Machinery or Equipment</b>			
<b>Classification</b>	<b>Micro</b>	<b>Small</b>	<b>Medium</b>
<b>Mfg. Enterprises</b>	Investment< Rs. 25 Lacs	Investment< Rs. 5 Cr.	Investment< Rs. 10 Cr.
<b>Services Enterprises</b>	Investment< Rs. 10 Lacs	Investment< Rs. 2 Cr.	Investment< Rs. 5 Cr.



Ministry of MSMEs has amended the classification criteria and threshold limit.

Revised definition provides twin criteria and no such distinction between manufacturing and service enterprises (13th May 2020):

Investment in Plant & Machinery or Equipment

Turnover

<b>Existing MSME Classification</b>			
<b>Criteria : Investment in Plant Machinery or Equipment</b>			
<b>Classification</b>	<b>Micro</b>	<b>Small</b>	<b>Medium</b>
<b>Mfg. Enterprises</b>	Investment < Rs. 25 Lacs	Investment < Rs. 5 Cr.	Investment < Rs. 10 Cr.
<b>Services Enterprises</b>	Investment < Rs. 10 Lacs	Investment < Rs. 2 Cr.	Investment < Rs. 5 Cr.

Further the limit of investment and turnover for Medium category has been enhanced vide notification date 26th Jun 2020.

Classification	Micro	Small	Medium
Manufacturing & Services	Investment ≤ Rs. 1 Cr. And Turnover ≤ 5 Cr.	Investment ≤ Rs. 10 Cr. And Turnover ≤ 50 Cr.	Investment ≤ Rs. 50 Cr. And Turnover ≤ 250 Cr.

- In case of Upward change, enterprise will maintain its prevailing status till expiry of one year from the close of the Financial year of registration.
- In case of Reverse-Graduation, Enterprise will continue in its present category till the closure of the financial year.
- Benefit of the changed status only w.e.f 1st April of the F.Y. following the year in which such change took place.

# COMPOSITE CRITERIA OF INVESTMENT & TURNOVER FOR CLASSIFICATION

- 1) A composite criterion of investment and turnover shall apply for classification of an enterprise as micro, small or medium.
- 2) If an enterprise crosses the ceiling limits specified for its present category in either of the two criteria of investment or turnover, it will cease to exist in that category and be placed in the next higher category but no enterprise shall be placed in the lower category unless it goes below the ceiling limits specified for its present category in both the criteria of investment as well as turnover.
- 3) All units with Goods and Services Tax Identification Number (GSTIN) listed against the same Permanent Account Number (PAN) shall be collectively treated as one enterprise and the turnover and investment figures for all of such entities shall be seen together and only the aggregate values will be considered for deciding the category as micro, small or medium enterprise.

# CALCULATION OF INVESTMENT IN PLANT AND MACHINERY OR EQUIPMENT

- 1) The calculation of investment in plant and machinery or equipment will be linked to the Income Tax Return (ITR) of the previous years filed under the Income Tax Act.
- 2) In case of a new enterprise, where no prior ITR is available, the investment will be based on self-declaration of the promoter of the enterprise and such relaxation shall end after the 31st March of the financial year in which it files its first ITR. The expression “plant and machinery or equipment” of the enterprise, shall have the same meaning as assigned to the plant and machinery in the Income Tax Rules, 1962 and shall include all tangible assets (other than land and building, furniture and fittings).
- 3) The purchase (invoice) value of a plant and machinery or equipment, whether purchased first hand or second hand, shall be taken into account excluding Goods and Services Tax (GST), on self-disclosure basis, if the enterprise is a new one without any ITR.

# CALCULATION OF INVESTMENT IN PLANT AND MACHINERY OR EQUIPMENT

- 5) The Depreciated value (WDV) of a plant and machinery or equipment, Will be considered for the existing /Running units having ITR and Balance sheet.
- 6) The cost of certain items specified in the Explanation I to sub-section (1) of section 7 of the Act shall be excluded from the calculation of the amount of investment in plant and machinery

Explanation I to sub-section (1) of section 7:

Explanation 1.—For the removal of doubts, it is hereby clarified that in calculating the investment in plant and machinery,

- Cost of pollution control,
- Research and development,
- Industrial safety devices and
- Such other items as may be specified, by notification, shall be excluded.

# CALCULATION OF TURNOVER

- 1) Exports of goods or services or both, shall be excluded while calculating the turnover of any enterprise whether micro, small or medium, for the purposes of classification.
- 2) Information as regards turnover and exports turnover for an enterprise shall be linked to the Income Tax Act or the Central Goods and Services Act (CGST Act) and the GSTIN. The turnover related figures of such enterprise which do not have PAN will be considered on self-declaration basis for a period up to 31st March, 2021 and thereafter, PAN and GSTIN shall be mandatory.

(2) The Central Government shall, by notification, constitute an Advisory Committee consisting of the following members, namely:—

- (a) the Secretary to the Government of India in the Ministry or Department of the Central Government having administrative control of the small and medium enterprises who shall be the Chairperson, ex officio;
- (b) not more than five officers of the Central Government possessing necessary expertise in matters relating to micro, small and medium enterprises, members, ex officio;
- (c) not more than three representatives of the State Governments, members, ex officio; and
- (d) one representative each of the associations of micro, small and medium enterprises, members, ex officio.

(3) The Member-Secretary of the Board shall also be the ex officio Member-Secretary of the Advisory Committee.

(4) The Central Government shall, prior to classifying any class or classes of enterprises under sub-section (1), obtain the recommendations of the Advisory Committee. .

(5) The Advisory Committee shall examine the matters referred to it by the Board in connection with any subject referred to in section 5 and furnish its recommendations to the Board.

(6) The Central Government may seek the advice of the Advisory Committee on any of the matters specified in section 9, 10, 11, 12 or 14 of Chapter IV.

(7) The State Government may seek advice of the Advisory Committee on any of the matters specified in the rules made under section 30.

(8) The Advisory Committee shall, after considering the following matters, communicate its recommendations or advice to the Central Government or, as the case may be, State Government or the Board, namely:—

(a) the level of employment in a class or classes of enterprises;

(b) the level of investments in plant and machinery or equipment in a class or classes of enterprises;

(c) the need of higher investment in plant and machinery or equipment for technological upgradation, employment generation and enhanced competitiveness of the class or classes of enterprises;



(d) the possibility of promoting and diffusing entrepreneurship in micro, small or medium enterprises; and

(e) the international standards for classification of small and medium enterprises.

(9) Notwithstanding anything contained in section 11B of the Industries (Development and Regulation) Act, 1951 (65 of 1951) and clause (h) of section 2 of the Khadi and Village Industries Commission Act, 1956 (61 of 1956), the Central Government may, while classifying any class or classes of enterprises under sub-section (1), vary, from time to time, the criterion of investment and also consider criteria or standards in respect of employment or turnover of the enterprises and include in such classification the micro or tiny enterprises or the village enterprises, as part of small enterprises.

**8. Memorandum of micro, small and medium enterprises.—(1) Any person who intends to establish,—**

(a) a micro or small enterprise, may, at his discretion; or

(b) a medium enterprise engaged in providing or rendering of services may, at his discretion; or

(c) a medium enterprise engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), shall file the memorandum of micro, small or, as the case may be, of medium enterprise with such authority as may be specified by the State Government under sub-section (4) or the Central Government under sub-section (3):

Provided that any person who, before the commencement of this Act, established—

- (a) a small scale industry and obtained a registration certificate, may, at his discretion; and
- (b) an industry engaged in the manufacture or production of goods pertaining to any industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951 (65 of 1951), having investment in plant and machinery of more than one crore rupees but not exceeding ten crore rupees and, in pursuance of the notification of the Government of India in the erstwhile Ministry of Industry (Department of Industrial Development) number S.O. 477(E), dated the 25th July, 1991 filed an Industrial Entrepreneur's Memorandum, shall within one hundred and eighty days from the commencement of this Act, file the memorandum, in accordance with the provisions of this Act.

(2) The form of the memorandum, the procedure of its filing and other matters incidental thereto shall be such as may be notified by the Central Government after obtaining the recommendations of the Advisory Committee in this behalf.

(3) The authority with which the memorandum shall be filed by a medium enterprise shall be such as may be specified, by notification, by the Central Government.

(4) The State Government shall, by notification, specify the authority with which a micro or small enterprise may file the memorandum.

(5) The authorities specified under sub-sections (3) and (4) shall follow, for the purposes of this section, the procedure notified by the Central Government under sub-section (2).

# CHAPTER IV

## MEASURES FOR PROMOTION, DEVELOPMENT AND ENHANCEMENT OF COMPETITIVENESS OF MICRO, SMALL AND MEDIUM ENTERPRISES

**9.Measures for promotion and development.**—The Central Government may, from time to time, for the purposes of facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises, particularly of the micro and small enterprises, by way of development of skill in the employees, management and entrepreneurs, provisioning for technological upgradation, marketing assistance or infrastructure facilities and cluster development of such enterprises with a view to strengthening backward and forward linkages, specify, by notification, such programmes, guidelines or instructions, as it may deem fit.

**10. Credit facilities.**—The policies and practices in respect of credit to the micro, small and medium enterprises shall be progressive and such as may be specified in the guidelines or instructions issued by the Reserve Bank, from time to time, to ensure timely and smooth flow of credit to such enterprises, minimise the incidence of sickness among and enhance the competitiveness of such enterprises.

**11. Procurement preference policy.**—For facilitating promotion and development of micro and small enterprises, the Central Government or the State Government may, by order notify from time to time, preference policies in respect of procurement of goods and services, produced and provided by micro and small enterprises, by its Ministries or departments, as the case may be, or its aided institutions and public sector enterprises.

**12. Funds.**—There shall be constituted, by notification, one or more Funds to be called by such name as may be specified in the notification and there shall be credited thereto any grants made by the Central Government under section 13.

**13. Grants by Central Government.**—The Central Government may, after due appropriation made by Parliament by law in this behalf, credit to the Fund or Funds by way of grants for the purposes of this Act, such sums of money as that Government may consider necessary to provide.

#### **14. Administration and utilisation of Fund or Funds.—**

- (1) The Central Government shall have the power to administer the Fund or Funds in such manner as may be prescribed.
- (2) The Fund or Funds shall be utilised exclusively for the measures specified in subsection (1) of section 9.
- (3) The Central Government shall be responsible for the coordination and ensuring timely utilisation and release of sums in accordance with such criteria as may be prescribed.

## CHAPTER V

# DELAYED PAYMENTS TO MICRO AND SMALL ENTERPRISES

**15. Liability of buyer to make payment.**—Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day: Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

**16. Date from which and rate at which interest is payable.**—Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.

## **Delayed payments to micro and small enterprises**

**Liability of buyer to make payment (SECTION 15):** Where any supplier supplies any goods or renders any services to any buyer, the buyer shall make payment therefor on or before the date agreed upon between him and the supplier in writing or, where there is no agreement in this behalf, before the appointed day:

Provided that in no case the period agreed upon between the supplier and the buyer in writing shall exceed forty-five days from the day of acceptance or the day of deemed acceptance.

**Date from which and rate at which interest is payable (SECTION 16):** Where any buyer fails to make payment of the amount to the supplier, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or in any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed day or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank.



**17. Recovery of amount due.**—For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

**18. Reference to Micro and Small Enterprises Facilitation Council.**—(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

(2) On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

**Recovery of amount due (SECTION 17):** For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

**Reference to Micro and Small Enterprises Facilitation Council (SECTION 18):**

**(1)** Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

**(2)** On receipt of a reference under sub-section (1), the Council shall either itself conduct conciliation in the matter or seek the assistance of any institution or centre providing alternate dispute resolution services by making a reference to such an institution or centre, for conducting conciliation and the provisions of sections 65 to 81 of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to such a dispute as if the conciliation was initiated under Part III of that Act.

(3) Where the conciliation initiated under sub-section (2) is not successful and stands terminated without any settlement between the parties, the Council shall either itself take up the dispute for arbitration or refer it to any institution or centre providing alternate dispute resolution services for such arbitration and the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall then apply to the dispute as if the arbitration was in pursuance of an arbitration agreement referred to in sub-section (1) of section 7 of that Act.

(4) Notwithstanding anything contained in any other law for the time being in force, the Micro and Small Enterprises Facilitation Council or the centre providing alternate dispute resolution services shall have jurisdiction to act as an Arbitrator or Conciliator under this section in a dispute between the supplier located within its jurisdiction and a buyer located anywhere in India.

(5) Every reference made under this section shall be decided within a period of ninety days from the date of making such a reference.

**19.Application for setting aside decree, award or order.**—No application for setting aside any decree, award or other order made either by the Council itself or by any institution or centre providing alternate dispute resolution services to which a reference is made by the Council, shall be entertained by any court unless the appellant (not being a supplier) has deposited with it seventy-five per cent. of the amount in terms of the decree, award or, as the case may be, the other order in the manner directed by such court:

Provided that pending disposal of the application to set aside the decree, award or order, the court shall order that such percentage of the amount deposited shall be paid to the supplier, as it considers reasonable under the circumstances of the case, subject to such conditions as it deems necessary to impose.

**20.Establishment of Micro and Small Enterprises Facilitation Council.**—The State Government shall, by notification, establish one or more Micro and Small Enterprises Facilitation Councils, at such places, exercising such jurisdiction and for such areas, as may be specified in the notification.

**21. Composition of Micro and Small Enterprises Facilitation Council.**—(1) The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from amongst the following categories, namely:—

- (i) Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and
  - (ii) one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and
  - (iii) one or more representatives of banks and financial institutions lending to micro or small enterprises; or
  - (iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.
- (2) The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Micro and Small Enterprises Facilitation Council.

**21. Composition of Micro and Small Enterprises Facilitation Council.**—(1) The Micro and Small Enterprise Facilitation Council shall consist of not less than three but not more than five members to be appointed from amongst the following categories, namely:—

- (i) Director of Industries, by whatever name called, or any other officer not below the rank of such Director, in the Department of the State Government having administrative control of the small scale industries or, as the case may be, micro, small and medium enterprises; and
  - (ii) one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and
  - (iii) one or more representatives of banks and financial institutions lending to micro or small enterprises; or
  - (iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.
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  - (ii) one or more office-bearers or representatives of associations of micro or small industry or enterprises in the State; and
  - (iii) one or more representatives of banks and financial institutions lending to micro or small enterprises; or
  - (iv) one or more persons having special knowledge in the field of industry, finance, law, trade or commerce.
- (2) The person appointed under clause (i) of sub-section (1) shall be the Chairperson of the Micro and Small Enterprises Facilitation Council.

(3) The composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of its members and the procedure to be followed in the discharge of their functions by the members shall be such as may be prescribed by the State Government.

**22.Requirement to specify unpaid amount with interest in the annual statement of accounts.**— Where any buyer is required to get his annual accounts audited under any law for the time being in force, such buyer shall furnish the following additional information in his annual statement of accounts, namely:—

- (i) the principal amount and the interest due thereon (to be shown separately) remaining unpaid to any supplier as at the end of each accounting year;
- (ii) the amount of interest paid by the buyer in terms of section 16, along with the amount of the payment made to the supplier beyond the appointed day during each accounting year;
- (iii) the amount of interest due and payable for the period of delay in making payment (which have been paid but beyond the appointed day during the year) but without adding the interest specified under this Act;
- (iv) the amount of interest accrued and remaining unpaid at the end of each accounting year; and



(v) the amount of further interest remaining due and payable even in the succeeding years, until such date when the interest dues as above are actually paid to the small enterprise, for the purpose of disallowance as a deductible expenditure under section 23.

**23. Interest not to be allowed as deduction from income.**—Notwithstanding anything contained in the Income-tax Act, 1961 (43 of 1961), the amount of interest payable or paid by any buyer, under or in accordance with the provisions of this Act, shall not, for the purposes of computation of income under the Income-tax Act, 1961, be allowed as deduction.

**24. Overriding effect.**—The provisions of sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

**25. Scheme for closure of business of micro, small and medium enterprises.**—Notwithstanding anything contained in any law for the time being in force, the Central Government may, with a view to facilitating closure of business by a micro, small or medium enterprise, not being a company registered under the Companies Act, 1956 (1 of 1956), notify a Scheme within one year from the date of commencement of this Act.

## CHAPTER VI MISCELLANEOUS

### **26. Appointment of officers and other employees.—**

- (1) The Central Government or the State Government may appoint such officers with such designations and such other employees as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.
- (2) The Officers appointed under sub-section (1) may, for the purposes of this Act, by order require any person to furnish such information, in such form, as may be prescribed.

**27. Penalty for contravention of section 8 or section 22 or section 26.—**(1) Whoever intentionally contravenes or attempts to contravene or abets the contravention of any of the provisions contained in sub-section (1) of section 8 or sub-section (2) of section 26 shall be punishable—

- (a) in the case of the first conviction, with fine which may extend to rupees one thousand; and
  - (b) in the case of second or subsequent conviction, with fine which shall not be less than rupees one thousand but may extend to rupees ten thousand.
- (2) Where a buyer contravenes the provisions of section 22, he shall be punishable with fine which shall not be less than rupees ten thousand.

**28. Jurisdiction of courts.**—No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence punishable under this Act.

**29. Power to make rules.**—

- (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the term of office of the members of the Board, the manner of filling vacancies, and the procedure to be followed in the discharge of functions by the members of the Board under sub-section (4) of section 3;
- (b) the powers and functions of the Member-Secretary under section 6;
- (c) the manner in which the Fund may be administered under sub-section (1) of section 14;
- (d) the criteria based on which sums may be released under sub-section (3) of section 14;
- (e) the information to be furnished and the form in which it is to be furnished under sub-section (2) of section 26; and
- (f) any other matter which is to be or may be prescribed under this Act.

(3) Every notification issued under section 9 and every rule made by the Central Government under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session

or the successive sessions aforesaid, both Houses agree in making any modification in the notification or rule or both Houses agree that the notification or rule should not be made, the notification or rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification or rule.

### **30. Power to make rules by State Government.—**

- (1) The State Government may, by notification, make rules to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
  - (a) the composition of the Micro and Small Enterprises Facilitation Council, the manner of filling vacancies of the members and the procedure to be followed in the discharge of their functions by the members of the Micro and Small Enterprises Facilitation Council under sub-section (3) of section 21;
  - (b) any other matter which is to be, or may be, prescribed under this Act.

(3) The rule made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.

**31. Power to remove difficulties.**—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of two years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

**32.Repeal of Act 32 of 1993.**—(1) The Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed under sub-section (1), shall be deemed to have been done or taken under the corresponding provisions of this Act.

# THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

## ARRANGEMENT OF SECTIONS

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81. Delegation.

82. Power of appropriate Government to supersede Authority.

83. Powers of appropriate Government to issue directions to Authority and obtain reports and returns.

84. Power of appropriate Government to make rules.

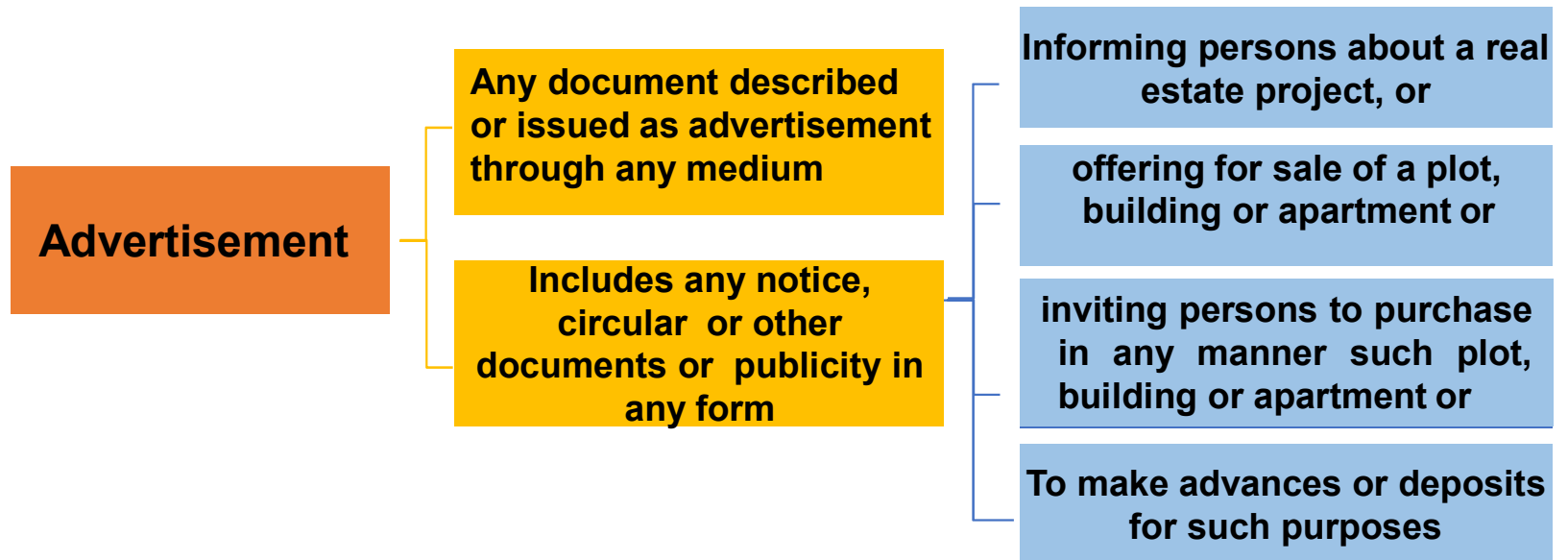
85. Power to make regulations.

86. Laying of rules.
87. Members, etc., to be public servants.
88. Application of other laws not barred.
89. Act to have overriding effect.
90. Protection of action taken in good faith.
91. Power to remove difficulties.
92. Repeal.

# SECTION:2 DEFINITIONS

Relevant Definitions are covered under section 2 of the Act which are as follows:

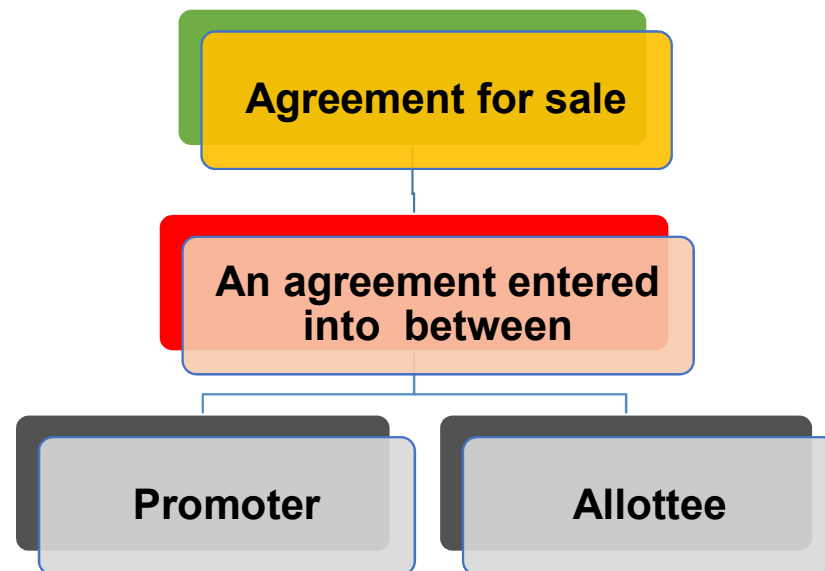
- (a) "**Adjudicating officer**" means the adjudicating officer appointed under sub-section (1) of section 71;
- (b) "advertisement" means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot ,building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;



**Example:** Does advertisement include solicitation by emails, WhatsApp, social media and SMS? Is issuance of prospectus considered to be a case of 'advertisement'?

**Answer:** Any medium adopted in soliciting for sale would be covered under the said definition of Advertisement, including SMS, WhatsApp, social media and emails.

(c) "**agreement for sale**" means an agreement entered into between the promoter and the allottee;





(d) **"allottee"** in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

**Allottee**  
**(in relation to real estate project)**

**the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter,**

**includes the person who subsequently acquires the said allotment through sale, transfer or otherwise**

**does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;**

Example: Does the term 'allottee' include persons who have acquired the property through secondary sales?

Answer: Yes, As per section 2(d), an allottee includes a person who acquires the said 'apartment / plot' through transfer or sale, but does not include a person to whom such plot, apartment is given on rent.

(e) "**apartment**" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;

(f) "**Appellate Tribunal**" means the Real Estate Appellate Tribunal established under section 43;

(g) "**Appropriate Government**" means in respect of matters relating to,—

- 
- the Union territory without Legislature, the Central Government;
  - the Union territory of Puducherry, the Union territory Government;
  - the Union territory of Delhi, the Central Ministry of Urban Development;
  - the State, the State Government.

- (h) "**architect**" means a person registered as an architect under the provisions of the Architects Act, 1972;
- (i) "**Authority**" means the Real Estate Regulatory Authority established under sub-section (1) of section 20;
- (j) "**Building**" includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;
- (k) "**carpet area**" means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation.— For the purpose of this clause, the expression "exclusive balcony or verandah area" means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and "exclusive open terrace area" means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;

- (l) "**Chairperson**" means the Chairperson of the Real Estate Regulatory Authority appointed under section 21;

(m) "**commencement certificate**" means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan;

(n) "**common areas**" mean—

(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

(ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;

(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

(v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;

(vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;

(p) "**competent authority**" means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(q) "**completion certificate**" means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

(r) "**day**" means the working day, in the concerned State or Union territory, as the case may be, notified by the appropriate Government from time to time;

(s) "**development**" with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any immovable property or land and includes re-development;

(t) "**development works**" means the external development works and internal development works on immovable property;

(u) **"engineer"** means a person who possesses a bachelor's degree or equivalent from an institution recognised by the All India Council of Technical Education or any University or any institution recognised under a law or is registered as an engineer under any law for the time being in force;

(v) **"estimated cost of real estate project"** means the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges;

(w) **"external development works"** includes roads and road systems landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;

(x) **"family"** includes husband, wife, minor son and unmarried daughter wholly dependent on a person;

(y) **"garage"** means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas;

(z) **"immovable property"** includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass;

## Immovable Property

includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth

But not standing timber, standing crops or grass

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.—For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

(zb) **"internal development works"** means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as education health and other public amenities or any other work in a project for its benefit, as per sanctioned plans;

(zc) **"local authority"** means the Municipal Corporation or Municipality or Panchayats or any other Local Body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

(zd) **"Member"** means the member of the Real Estate Regulatory Authority appointed under section 21 and includes the Chairperson;

(ze) **"notification"** means a notification published in the Official Gazette and the expression "notify" shall be construed accordingly;

(zf) **"Occupancy certificate"** means the occupancy certificate, or such other certificate by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic Infrastructure such as water, sanitation and electricity;



**Example:** What is the difference between the term 'completion certificate' and 'occupancy certificate'?

**Answer:** Section 2(zf) and section 2(q) respectively, define 'occupancy certificate' and 'completion certificate'. Occupancy certificate relates to permitting the occupation of the apartment/building, which has provision for civic infrastructure such as water, sanitation and electricity and is habitable. Completion certificate relates to the completion of the entire project certifying that the project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority.

(zg) **"Person"** includes,—

An Individual;

A Hindu Undivided Family;

A Company;

A firm under the Indian Partnership Act, 1932 or the limited liability partnership Act, 2008 as the case may be;

A Competent Authority

an association of persons or a body of individuals whether incorporated or not;

a co-operative society registered under any law relating to co- operative societies;

any such other entity as the appropriate Government may, by notification, specify in this behalf;

(zh) **"planning area"** means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force and as revised from time to time;

(zi) **"prescribed"** means prescribed by rules made under this Act;

(zj) **"project"** means the real estate project as defined in clause (zn);

(zk) **"promoter"** means,—

- (i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- (ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government;

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; Or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the persons who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified, under this Act or the rules and regulations made thereunder;

**Example:** Does the definition of ‘promoter’ include public bodies such as Development Authorities and Housing Boards?

**Answer:** The Act covers all bodies (private and public) which develop real estate projects for sale to the general public. Section 2(zk) defines the term ‘promoter’ which includes both private and public real estate promoters. Thus, both Development Authorities and the Housing Boards, when involved in sale are covered under the Act.

(zl) "**prospectus**" means any document described or issued as a prospectus or any notice, circular, or other document offering for sale of any real estate project or inviting any person to make advances or deposits for such purposes;

(zm) **"real estate agent"** means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as a commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;

(zn) **"real estate project"** means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

(zo) **"regulations"** means the regulations made by the Authority under this Act;

(zp) **"rule"** means the rules made under this Act by the appropriate Government;

(zq) "**sanctioned plan**" means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project;

(zr) words and expressions used herein but not defined in this Act and defined in any law for the time being in force or in the municipal laws or such other relevant laws of the appropriate Government shall have the same meanings respectively assigned to them in those laws.

#### **Application for registration of real estate projects (Section 4)**

This section provides for the application for registration of real estate project by the promoter.

(1) This section provides that every promoter shall make an application to the Authority for registration of the project in such form, manner, within such time and accompanied by such fee as may be prescribed

(2) The promoter shall enclose the following documents along with the application referred to in subsection (1), namely:—

- (a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies competent authority), and the particulars of registration, and the names and photographs of the promoter;
- (b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;
- (c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;
- (d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;
- (e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;



- (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
- (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;
- (h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas apartment with the appurtenant, if any;
- (i) the number and area of garage for sale in the project;
- (j) the names and addresses of his real estate agents, if any, for the proposed project;
- (h) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;
- (i) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:—

- (A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;
- (B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;
- (C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;
- (D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

The promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project.

The amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project.

The promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

**Explanation.**— For the purpose of this clause, the term "scheduled bank" means a bank included in the Second Schedule to the Reserve Bank of India Act, 1934.

(E) that he shall take all the pending approvals on time, from the competent authorities;

(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

(m) such other information and documents as may be prescribed.

(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

## **GRANT OF REGISTRATION (SECTION 5)**

This section provides for the grant of registration.

(1) This section provides that the Authority shall within a period of thirty days,

(a) grant registration subject to the provision of the Act and the rules and regulations made thereunder and provide a registration number including a Login Id and password to the applicant for accessing the website of the authority and to create his webpage and to fill therein the details of the proposed project, or

(b) reject that application for reasons to be recorded in writing, if such application does not conform to the provisions of the Act or the rules and regulations made thereunder.

However, no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(2) This section also provides that if the Authority fails to grant the registration or reject the application, as provided within thirty days, the project shall be deemed to have been registered and the Authority shall within seven days of the expiry of the said thirty days, provide a registration number and a Login ID and password to the promoter.

The registration granted under this section shall be valid for a period declared by the promoter under sub-clause (c) of Clause (I) of sub-section (2) of section 4 for completion of the project or phase thereof, as the case may be.

**Authority shall within 30 days, grant registration and**

- **Provide Registration number including a Login ID and password to the applicant for accessing the website of the authority and to create his webpage and to fill therein the details of the proposed project,**

**Authority shall within 30 days reject the application and**

- **Provide reasons to be recorded in writing .**
- **Opportunity of being heard to the applicant before passing such order.**

**If the Authority fails to grant the registration or reject the application within 30 days**

- **Project shall be deemed to have been registered**
- **Authority shall within 7 days of the expiry of said 30 days, provide Registration number and Login Id and Password to the applicant for accessing the website of the authority and create his webpage.**

## **FUNCTIONS AND DUTIES OF PROMOTER (SECTION 11)**

(1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section

**(a) Details of the registration granted by the authority**

**(b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;**

**(c) quarterly up-to-date the list of number of garages booked;**

**(d) Quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate**

**(e) Quarterly up-to-date status of the project; and**

**(f) Such other information and documents as may be specified by the regulations made by the authority.**

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

(3) The promoter at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:—

(a) sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;

(b) the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

(4) The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;



(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

(5) The promoter may cancel the allotment only in terms of the agreement for sale.

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

(6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

## **TRANSFER OF TITLE (SECTION 17)**

(1) This section provides for the transfer of Title. (1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment or building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws.

In the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within **three months** from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws.

In the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the completion certificate.

### **RETURN OF AMOUNT AND COMPENSATION (SECTION 18)**

This section provides for the return of amount and compensation.

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

However, where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.

## **THE REAL ESTATE REGULATORY AUTHORITY ESTABLISHMENT AND INCORPORATION OF REAL ESTATE REGULATORY AUTHORITY (SECTION 20)**

This section provides for the establishment and incorporation of Real Estate Regulatory Authority.

(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act.

The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority.

The appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be.

Until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act.

After the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

## **TERM OF OFFICE OF CHAIRPERSON AND MEMBERS (SECTION 23)**

This section provides for the term of office of Chairperson and Members

- (1) The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty five years, whichever is earlier and **shall not be eligible for re-appointment.**
- (2) Before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

## **FILING OF COMPLAINTS WITH THE AUTHORITY OR ADJUDICATION OFFICER (SECTION 31)**

This section provides for the filing of complaints with the Authority or adjudication officer

- (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be.

**Explanation.—For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.**

**(2)** The form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed.

**Functions of Authority (Section 34) This section provides that the functions of the Authority shall include—**

- (a) to register and regulate real estate projects and real estate agents registered under this Act;
- (b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;
- (c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;
- (d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;
- (e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;



(f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

(g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;

(h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act.

### **POWER TO ISSUE INTERIM ORDERS (SECTION 36)**

This section provides for the power to issue interim orders.

Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed or that such act is about to be committed, the Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where the Authority deems it necessary.

## **POWERS OF AUTHORITY TO ISSUE DIRECTIONS (SECTION 37)**

This section provides that the Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

## **POWERS OF AUTHORITY (SECTION 38)**

This section provides for the powers of Authority.

**(1)** The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

**(2)** The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.

**(3)** Where an issue is raised relating to agreement, action, omission, practice or procedure that—

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may suo motu, make reference in respect of such issue to the Competition Commission of India.

## **RECOVERY OF INTEREST OR PENALTY OR COMPENSATION AND ENFORCEMENT OF ORDER, ETC. (SECTION 40)**

This section provides for the recovery of Interest or penalty or compensation and enforcement of order, etc.

**(1)** If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.

**(2)** If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.

## **CENTRAL ADVISORY COUNCIL: ESTABLISHMENT OF CENTRAL ADVISORY COUNCIL (SECTION 41)**

This section provides for the establishment of Central Advisory Council

**(1)** The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council.

**(2)** The Minister to the Government of India in charge of the Ministry of the Central Government dealing with Housing shall be the ex officio Chairperson of the Central Advisory Council.

**(3)** The Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, Niti Aayog, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified.

**(4)** The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector.

## **FUNCTIONS OF CENTRAL ADVISORY COUNCIL (SECTION 42)**

This section provides for the functions of Central Advisory Council

**(1)** The functions of the Central Advisory Council shall be to advise and recommend the Central Government,—

- (a) on all matters concerning the implementation of this Act;
- (b) on major questions of policy;
- (c) towards protection of consumer interest;
- (d) to foster the growth and development of the real estate sector;
- (e) on any other matter as may be assigned to it by the Central Government.

**(2)** The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1).

## **APPEAL TO HIGH COURT (SECTION 58)**

This section provides for the appeal to High Court.

**(1)** Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908. The High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

**(2)** No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

## **OFFENCES, PENALTIES AND ADJUDICATION: PUNISHMENT FOR NON-REGISTRATION UNDER SECTION**

**3 (SECTION 59):** This section provides for the punishment for non-registration under section 3

(1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend **up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.**

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which **may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.**

**OFFENCES BY COMPANIES (SECTION 69):** This section provides for the Offences by Companies.

**(1)** Where an Offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Nothing contained in this sub-section, shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

**(2)** Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

- (a) "Company" means any body corporate and includes a firm, or other association of individuals; and
- (b) "Director" in relation to a firm, means a partner in the firm.

### **COMPOUNDING OF OFFENCES (SECTION 70)**

This section provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, if any person is punished with imprisonment under this Act, the punishment may, either before or after the institution of the prosecution, be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed. However, the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.



## **POWER TO ADJUDICATE (SECTION 71)**

This section provides for the power to adjudicate.

**(1)** For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint in consultation with the appropriate Government one or more **judicial officer** as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard.

Any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986, on or before the commencement of this Act, **he may, with the permission of such Forum or Commission,** as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

**(2)** The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application.

Where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

**(3)** While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

## **MISCELLANEOUS:**

### **BAR OF JURISDICTION (SECTION 79)**

This section provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

### **COGNIZANCE OF OFFENCES (SECTION 80)**

This section provides for the cognizance of offences.

**(1)** No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose.

**(2)** No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

## **POWER TO MAKE REGULATIONS (SECTION 85)**

This section provides for the power to make regulations.

**(1)** The Authority shall, within a period of three months of its establishment, by notification, make regulations, consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

**(2)** In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) Omitted

(b) Omitted

(c) such other information and documents required under clause (f) of sub-section (1) of section 11;

(d) display of sanctioned plans, layout plans along with specifications, approved by the competent authority, for display under clause (a) of sub-section (3) of section 11;

(e) preparation and maintenance of other details under sub-section (6) of section 11;

(f) time, places and the procedure in regard to transaction of business at the meetings of the Authority under sub-section (1) of section 29;

(g) omitted

(h) standard fees to be levied on the promoter, the allottees or the real estate agent under clause (e) of section 34; (i) any other matter which is required to be, or may be, specified by regulation or in respect of which provision is to be made by regulations.

## **LAYING OF RULES (SECTION 86)**

This section provides for the laying of Rules.

**(1)** Every rule made by the Central Government, every regulation made by the Authority under the Union territory of Delhi and the Union territories without Legislature and every notification issued by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

(2) Every rule made by a State Government or the Union territory Government, as the case may be, every regulation made by the Authority under the State Government or the Union territory Government of Puducherry, as the case may be, and every notification issued by the State Government or the Union territory Government of Puducherry, as the case may be, under this Act, shall be laid as soon as may be, after it is made, before the State Legislature, or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.

### **APPLICATION OF OTHER LAWS NOT BARRED (SECTION 88)**

This section provides that the provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

### **ACT TO HAVE OVERRIDING EFFECT (SECTION 89)**

This section provides that the provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

## **PROTECTION OF ACTION TAKEN IN GOOD FAITH (SECTION 90)**

This section provides that no suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Authority or any officer of the appropriate Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

# THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

## ACT NO. 16 OF 2016

An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto. BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—



# CHAPTER I

## PRELIMINARY

### **1. Short title, extent and commencement.—**

- (1) This Act may be called the Real Estate (Regulation and Development) Act, 2016.
- (2) It extends to the whole of India except the State of Jammu and Kashmir\*.
- (3) It shall come into force on such date<sup>1</sup> as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

### **2. Definitions.—**In this Act, unless the context otherwise requires,—

- (a) “adjudicating officer” means the adjudicating officer appointed under sub-section (1) of section 71;

(b) “advertisement” means any document described or issued as advertisement through any medium and includes any notice, circular or other documents or publicity in any form, informing persons about a real estate project, or offering for sale of a plot, building or apartment or inviting persons to purchase in any manner such plot, building or apartment or to make advances or deposits for such purposes;

(c) “agreement for sale” means an agreement entered into between the promoter and the allottee;

(d) “allottee” in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

(e) “apartment” whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof

In a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;

(f) “Appellate Tribunal” means the Real Estate Appellate Tribunal established under section 43;

(g) “appropriate Government” means in respect of matters relating to,—

(i) the Union territory without Legislature, the Central Government;

(ii) the Union territory of 1 [Puducherry and Union territory of Jammu and Kashmir], the Union territory Government;

(iii) the Union territory of Delhi, the Central Ministry of Urban Development;

(iv) the State, the State Government;

(h) “architect” means a person registered as an architect under the provisions of the Architects Act, 1972 (20 of 1972);

(i) “Authority” means the Real Estate Regulatory Authority established under sub-section (1) of section 20;

(j) “building” includes any structure or erection or part of a structure or erection which is intended to be used for residential, commercial or for the purpose of any business, occupation, profession or trade, or for any other related purposes;

(k) “carpet area” means the net usable floor area of an apartment, excluding the area covered by the external walls, areas under services shafts, exclusive balcony or verandah area and exclusive open terrace area, but includes the area covered by the internal partition walls of the apartment.

Explanation.— For the purpose of this clause, the expression “exclusive balcony or verandah area” means the area of the balcony or verandah, as the case may be, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee; and “exclusive open terrace area” means the area of open terrace which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee;

(l) “Chairperson” means the Chairperson of the Real Estate Regulatory Authority appointed under section 21;

(m) “commencement certificate” means the commencement certificate or the building permit or the construction permit, by whatever name called issued by the competent authority to allow or permit the promoter to begin development works on an immovable property, as per the sanctioned plan;

(n) “common areas” mean—

(i) the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

(ii) the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;

(iii) the common basements, terraces, parks, play areas, open parking areas and common storage spaces;

(iv) the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

- (v) installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;
- (vi) the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;
- (vii) all community and commercial facilities as provided in the real estate project;
- (viii) all other portion of the project necessary or convenient for its maintenance, safety, etc., and in common use;
- (o) “company” means a company incorporated and registered under the Companies Act, 2013 (18 of 2013) and includes,—
  - (i) a corporation established by or under any Central Act or State Act;
  - (ii) a development authority or any public authority established by the Government in this behalf under any law for the time being in force;

(p) “competent authority” means the local authority or any authority created or established under any law for the time being in force by the appropriate Government which exercises authority over land under its jurisdiction, and has powers to give permission for development of such immovable property;

(q) “completion certificate” means the completion certificate, or such other certificate, by whatever name called, issued by the competent authority certifying that the real estate project has been developed according to the sanctioned plan, layout plan and specifications, as approved by the competent authority under the local laws;

(r) “day” means the working day, in the concerned State or Union territory, as the case may be, notified by the appropriate Government from time to time;

(s) “development” with its grammatical variations and cognate expressions, means carrying out the development of immovable property, engineering or other operations in, on, over or under the land or the making of any material change in any immovable property or land and includes redevelopment;

(t) “development works” means the external development works and internal development works on immovable property;

(u) “engineer” means a person who possesses a bachelor’s degree or equivalent from an institution recognised by the All India Council of Technical Education or any University or any institution recognised under a law or is registered as an engineer under any law for the time being in force;

(v) “estimated cost of real estate project” means the total cost involved in developing the real estate project and includes the land cost, taxes, cess, development and other charges;

(w) “external development works” includes roads and road systems landscaping, water supply, sewerage and drainage systems, electricity supply transformer, sub-station, solid waste management and disposal or any other work which may have to be executed in the periphery of, or outside, a project for its benefit, as may be provided under the local laws;

(x) “family” includes husband, wife, minor son and unmarried daughter wholly dependent on a person;

(y) “garage” means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas;



(z) “immovable property” includes land, buildings, rights of ways, lights or any other benefit arising out of land and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, standing crops or grass;

(za) “interest” means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.—For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

(zb) “internal development works” means roads, footpaths, water supply, sewers, drains, parks, tree planting, street lighting, provision for community buildings and for treatment and disposal of sewage and sullage water, solid waste management and disposal, water conservation, energy management, fire protection and fire safety requirements, social infrastructure such as education health and other public amenities or any other work in a project for its benefit, as per sanctioned plans;

(zc) “local authority” means the Municipal Corporation or Municipality or Panchayats or any other Local Body constituted under any law for the time being in force for providing municipal services or basic services, as the case may be, in respect of areas under its jurisdiction;

(zd) “Member” means the member of the Real Estate Regulatory Authority appointed under section 21 and includes the Chairperson;

(ze) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(zf) “occupancy certificate” means the occupancy certificate, or such other certificate, by whatever name called, issued by the competent authority permitting occupation of any building, as provided under local laws, which has provision for civic infrastructure such as water, sanitation and electricity;

(zg) “Person” includes,—

(i) an individual;

(ii) a Hindu undivided family;

(iii) a company;

(iv) a firm under the Indian Partnership Act, 1932 (9 of 1932) or the Limited Liability Partnership Act, 2008 (6 of 2009), as the case may be;

(v) a competent authority;

(vi) an association of persons or a body of individuals whether incorporated or not;

(vii) a co-operative society registered under any law relating to co-operative societies;

(viii) any such other entity as the appropriate Government may, by notification, specify in this behalf;

(zh) “planning area” means a planning area or a development area or a local planning area or a regional development plan area, by whatever name called, or any other area specified as such by the appropriate Government or any competent authority and includes any area designated by the appropriate Government or the competent authority to be a planning area for future planned development, under the law relating to Town and Country Planning for the time being in force and as revised from time to time;

(zi) “prescribed” means prescribed by rules made under this Act;

(zj) “project” means the real estate project as defined in clause (zn);

(zk) “promoter” means,—

- (i) A person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or
- (ii) A person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

- (iii) any development authority or any other public body in respect of allottees of—
  - (a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or
  - (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or
- (iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or
- (v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or
- (vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder;

(zl) “prospectus” means any document described or issued as a prospectus or any notice, circular, or other document offering for sale of any real estate project or inviting any person to make advances or deposits for such purposes;

(zm) “real estate agent” means any person, who negotiates or acts on behalf of one person in a transaction of transfer of his plot, apartment or building, as the case may be, in a real estate project, by way of sale, with another person or transfer of plot, apartment or building, as the case may be, of any other person to him and receives remuneration or fees or any other charges for his services whether as a commission or otherwise and includes a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of plot, apartment or building, as the case may be, and includes property dealers, brokers, middlemen by whatever name called;

(zn) “real estate project” means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or apartments, as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;

(zo) “regulations” means the regulations made by the Authority under this Act;

(zp) “rule” means the rules made under this Act by the appropriate Government;

(zq) “sanctioned plan” means the site plan, building plan, service plan, parking and circulation plan, landscape plan, layout plan, zoning plan and such other plan and includes structural designs, if applicable, permissions such as environment permission and such other permissions, which are approved by the competent authority prior to start of a real estate project;

(zr) words and expressions used herein but not defined in this Act and defined in any law for the time being in force or in the municipal laws or such other relevant laws of the appropriate Government shall have the same meanings respectively assigned to them in those laws.

## CHAPTER II

# REGISTRATION OF REAL ESTATE PROJECT AND REGISTRATION OF REAL ESTATE AGENTS

### **3. Prior registration of real estate project with Real Estate Regulatory Authority.—**

(1) No promoter shall advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building, as the case may be, in any real estate project or part of it, in any planning area, without registering the real estate project with the Real Estate Regulatory Authority established under this Act:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:



Provided further that if the Authority thinks necessary, in the interest of allottees, for projects which are developed beyond the planning area but with the requisite permission of the local authority, it may, by order, direct the promoter of such project to register with the Authority, and the provisions of this Act or the rules and regulations made thereunder, shall apply to such projects from that stage of registration.

(2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required—

(a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases:

Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act;

(b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act;

(c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project.

Explanation.—For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a stand alone real estate project, and the promoter shall obtain registration under this Act for each phase separately.

#### **4. Application for registration of real estate projects.—**

- (1) Every promoter shall make an application to the Authority for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be [prescribed].
- (2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:—
  - (a) a brief details of his enterprise including its name, registered address, type of enterprise (proprietorship, societies, partnership, companies, competent authority), and the particulars of registration, and the names and photographs of the promoter;
  - (b) a brief detail of the projects launched by him, in the past five years, whether already completed or being developed, as the case may be, including the current status of the said projects, any delay in its completion, details of cases pending, details of type of land and payments pending;

- (c) an authenticated copy of the approvals and commencement certificate from the competent authority obtained in accordance with the laws as may be applicable for the real estate project mentioned in the application, and where the project is proposed to be developed in phases, an authenticated copy of the approvals and commencement certificate from the competent authority for each of such phases;
- (d) the sanctioned plan, layout plan and specifications of the proposed project or the phase thereof, and the whole project as sanctioned by the competent authority;
- (e) the plan of development works to be executed in the proposed project and the proposed facilities to be provided thereof including fire fighting facilities, drinking water facilities, emergency evacuation services, use of renewable energy;
- (f) the location details of the project, with clear demarcation of land dedicated for the project along with its boundaries including the latitude and longitude of the end points of the project;
- (g) proforma of the allotment letter, agreement for sale, and the conveyance deed proposed to be signed with the allottees;

(h) the number, type and the carpet area of apartments for sale in the project along with the area of the exclusive balcony or verandah areas and the exclusive open terrace areas appurtenant with the apartment, if any;

(i) the number and area of garage for sale in the project;

(j) the names and addresses of his real estate agents, if any, for the proposed project;

(k) the names and addresses of the contractors, architect, structural engineer, if any and other persons concerned with the development of the proposed project;

(l) a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:—

(A) that he has a legal title to the land on which the development is proposed along with legally valid documents with authentication of such title, if such land is owned by another person;

(B) that the land is free from all encumbrances, or as the case may be details of the encumbrances on such land including any rights, title, interest or name of any party in or over such land along with details;

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be;

(D) that seventy per cent. of the amounts realised for the real estate project from the allottees, from time to time, shall be deposited in a separate account to be maintained in a scheduled bank to cover the cost of construction and the land cost and shall be used only for that purpose:

Provided that the promoter shall withdraw the amounts from the separate account, to cover the cost of the project, in proportion to the percentage of completion of the project:

Provided further that the amounts from the separate account shall be withdrawn by the promoter after it is certified by an engineer, an architect and a chartered accountant in practice that the withdrawal is in proportion to the percentage of completion of the project:

Provided also that the promoter shall get his accounts audited within six months after the end of every financial year by a chartered accountant in practice, and shall produce a statement of accounts duly certified and signed by such chartered accountant and it shall be verified during the audit that the amounts collected for a particular project have been utilised for that project and the withdrawal has been in compliance with the proportion to the percentage of completion of the project.

Explanation.—For the purpose of this clause, the term “scheduled bank” means a bank included in the Second Scheduled to the Reserve Bank of India Act, 1934 (2 of 1934);

(E) that he shall take all the pending approvals on time, from the competent authorities;

(F) that he has furnished such other documents as may be prescribed by the rules or regulations made under this Act; and

(m) such other information and documents as may be prescribed.

(3) The Authority shall operationalise a web based online system for submitting applications for registration of projects within a period of one year from the date of its establishment.

#### **5. Grant of registration.—**

(1) On receipt of the application under sub-section (1) of section 4, the Authority shall within a period of thirty days.

(a) grant registration subject to the provisions of this Act and the rules and regulations made thereunder, and provide a registration number, including a Login Id and password to the applicant for accessing the website of the Authority and to create his web page and to fill therein the details of the proposed project; or

Provided that the Authority may in reasonable circumstances, without default on the part of the promoter, based on the facts of each case, and for reasons to be recorded in writing, extend the registration granted to a project for such time as it considers necessary, which shall, in aggregate, not exceed a period of one year:

Provided further that no application for extension of registration shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

Explanation.— For the purpose of this section, the expression “force majeure” shall mean a case of war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.

## **7. Revocation of registration.—**

(1) The Authority may, on receipt of a complaint or suo motu in this behalf or on the recommendation of the competent authority, revoke the registration granted under section 5, after being satisfied that—

(a) the promoter makes default in doing anything required by or under this Act or the rules or the regulations made thereunder;

(b) the promoter violates any of the terms or conditions of the approval given by the competent authority;

(c) the promoter is involved in any kind of unfair practice or irregularities.

Explanation.—For the purposes of this clause, the term “unfair practice means” a practice which, for the purpose of promoting the sale or development of any real estate project adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

(A) the practice of making any statement, whether in writing or by visible representation which,—

(i) falsely represents that the services are of a particular standard or grade;

(ii) represents that the promoter has approval or affiliation which such promoter does not have;

(iii) makes a false or misleading representation concerning the services;

(B) the promoter permits the publication of any advertisement or prospectus whether in any newspaper or otherwise of services that are not intended to be offered;



(d) the promoter indulges in any fraudulent practices.

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

(4) The Authority, upon the revocation of the registration,—

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;

(b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;

(d) the promoter indulges in any fraudulent practices.

(2) The registration granted to the promoter under section 5 shall not be revoked unless the Authority has given to the promoter not less than thirty days notice, in writing, stating the grounds on which it is proposed to revoke the registration, and has considered any cause shown by the promoter within the period of that notice against the proposed revocation.

(3) The Authority may, instead of revoking the registration under sub-section (1), permit it to remain in force subject to such further terms and conditions as it thinks fit to impose in the interest of the allottees, and any such terms and conditions so imposed shall be binding upon the promoter.

(4) The Authority, upon the revocation of the registration,—

(a) shall debar the promoter from accessing its website in relation to that project and specify his name in the list of defaulters and display his photograph on its website and also inform the other Real Estate Regulatory Authority in other States and Union territories about such revocation or registration;

(b) shall facilitate the remaining development works to be carried out in accordance with the provisions of section 8;

(c) shall direct the bank holding the project bank account, specified under sub-clause(D) of clause (l) of sub-section (2) of section 4, to freeze the account, and thereafter take such further necessary actions, including consequent de-freezing of the said account, towards facilitating the remaining development works in accordance with the provisions of section 8;

(d) may, to protect the interest of allottees or in the public interest, issue such directions as it may deem necessary.

**8. Obligation of Authority consequent upon lapse of or on revocation of registration.—**

Upon lapse of the registration or on revocation of the registration under this Act, the Authority, may consult the appropriate Government to take such action as it may deem fit including the carrying out of the remaining development works by competent authority or by the association of allottees or in any other manner, as may be determined by the Authority:

Provided that no direction, decision or order of the Authority under this section shall take effect until the expiry of the period of appeal provided under the provisions of this Act:

Provided further that in case of revocation of registration of a project under this Act, the association of allottees shall have the first right of refusal for carrying out of the remaining development works.

### **9. Registration of real estate agents.—**

- (1) No real estate agent shall facilitate the sale or purchase of or act on behalf of any person to facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being the part of the real estate project registered under section 3, being sold by the promoter in any planning area, without obtaining registration under this section.
- (2) Every real estate agent shall make an application to the Authority for registration in such form, manner, within such time and accompanied by such fee and documents as may be prescribed.
- (3) The Authority shall, within such period, in such manner and upon satisfying itself of the fulfilment of such conditions, as may be prescribed—
  - (a) grant a single registration to the real estate agent for the entire State or Union territory, as the case may be;

(b) reject the application for reasons to be recorded in writing, if such application does not conform to the provisions of the Act or this rules or regulations made thereunder:

Provided that no application shall be rejected unless the applicant has been given an opportunity of being heard in the matter.

(4) Whereon the completion of the period specified under sub-section (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered.

(5) Every real estate agent who is registered as per the provisions of this Act or the rules and regulations made thereunder, shall be granted a registration number by the Authority, which shall be quoted by the real estate agent in every sale facilitated by him under this Act.

(6) Every registration shall be valid for such period as may be prescribed, and shall be renewable for a period in such manner and on payment of such fee as may be prescribed.

(7) Where any real estate agent who has been granted registration under this Act commits breach of any of the conditions thereof or any other terms and conditions specified under this Act or any rules or regulations made thereunder, or where the Authority is satisfied that such registration has been secured by the real estate agent through misrepresentation or fraud, the Authority may, without prejudice to any other provisions under this Act, revoke the registration or suspend the same for such period as it thinks fit:

Provided that no such revocation or suspension shall be made by the Authority unless an opportunity of being heard has been given to the real estate agent.

**10. Functions of real estate agents.—Every real estate agent registered under section 9 shall—**

- (a) not facilitate the sale or purchase of any plot, apartment or building, as the case may be, in a real estate project or part of it, being sold by the promoter in any planning area, which is not registered with the Authority;
- (b) maintain and preserve such books of account, records and documents as may be prescribed;
- (c) not involve himself in any unfair trade practices, namely:—

(i) the practice of making any statement, whether orally or in writing or by visible representation which—

(A) falsely represents that the services are of a particular standard or grade;

(B) represents that the promoter or himself has approval or affiliation which such promoter or himself does not have;

(C) makes a false or misleading representation concerning the services;

(ii) permitting the publication of any advertisement whether in any newspaper or otherwise of services that are not intended to be offered.

(d) facilitate the possession of all the information and documents, as the allottee, is entitled to, at the time of booking of any plot, apartment or building, as the case may be;

(e) discharge such other functions as may be prescribed.

## CHAPTER III

# FUNCTIONS AND DUTIES OF PROMOTER

### **11. Functions and duties of promoter.—**

(1) The promoter shall, upon receiving his Login Id and password under clause (a) of sub-section (1) or under sub-section (2) of section 5, as the case may be, create his web page on the website of the Authority and enter all details of the proposed project as provided under sub-section (2) of section 4, in all the fields as provided, for public viewing, including—

- (a) details of the registration granted by the Authority;
- (b) quarterly up-to-date the list of number and types of apartments or plots, as the case may be, booked;
- (c) quarterly up-to-date the list of number of garages booked;
- (d) quarterly up-to-date the list of approvals taken and the approvals which are pending subsequent to commencement certificate



(e) quarterly up-to-date status of the project; and

(f) such other information and documents as may be specified by the regulations made by the Authority.

(2) The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority, wherein all details of the registered project have been entered and include the registration number obtained from the Authority and such other matters incidental thereto.

(3) The promoter, at the time of the booking and issue of allotment letter shall be responsible to make available to the allottee, the following information, namely:—

(a) Sanctioned plans, layout plans, along with specifications, approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;

(b) The stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

(4) The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;

(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;

(d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;

(5) The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

(6) The promoter shall prepare and maintain all such other details as may be specified, from time to time, by regulations made by the Authority.

**12. Obligations of promoter regarding veracity of the advertisement or prospectus.—**

Where any person makes an advance or a deposit on the basis of the information contained in the notice, advertisement or prospectus, or on the basis of any model apartment, plot or building, as the case may be, and sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act:

Provided that if the person affected by such incorrect, false statement contained in the notice, advertisement or prospectus, or the model apartment, plot or building as the case may be, intends to withdraw from the proposed project, he shall be returned his entire investment along with interest at such rate as may be prescribed and the compensation in the manner provided under this Act.

**13. No deposit or advance to be taken by promoter without first entering into agreement for sale.—**

- (1) A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.
- (2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works

The dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.

**14. Adherence to sanctioned plans and project specifications by the promoter.—**

- (1) The proposed project shall be developed and completed by the promoter in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authorities.
- (2) Notwithstanding anything contained in any law, contract or agreement, after the sanctioned plans, layout plans and specifications and the nature of the fixtures, fittings, amenities and common areas, of the apartment, plot or building, as the case may be, as approved by the competent authority, are disclosed or furnished to the person who agree to take one or more of the said apartment, plot or building, as the case may be, the promoter shall not make—

(i) any additions and alterations in the sanctioned plans, layout plans and specifications and the nature of fixtures, fittings and amenities described therein in respect of the apartment, plot or building, as the case may be, which are agreed to be taken, without the previous consent of that person:

Provided that the promoter may make such minor additions or alterations as may be required by the allottee, or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorised Architect or Engineer after proper declaration and intimation to the allottee.

Explanation.—

For the purpose of this clause, “minor additions or alterations” excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc.



(ii) any other alterations or additions in the sanctioned plans, layout plans and specifications of the buildings or the common areas within the project without the previous written consent of at least two-thirds of the allottees, other than the promoter, who have agreed to take apartments in such building.

Explanation.—For the purpose of this clause, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, etc., by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.

**15. Obligations of promoter in case of transfer of a real estate project to a third party.—**

(1) The promoter shall not transfer or assign his majority rights and liabilities in respect of a real estate project to a third party without obtaining prior written consent from two-third allottees, except the promoter, and without the prior written approval of the Authority:

Provided that such transfer or assignment shall not affect the allotment or sale of the apartments, plots or buildings as the case may be, in the real estate project made by the erstwhile promoter.

Explanation.—For the purpose of this sub-section, the allottee, irrespective of the number of apartments or plots, as the case may be, booked by him or booked in the name of his family, or in the case of other persons such as companies or firms or any association of individuals, by whatever name called, booked in its name or booked in the name of its associated entities or related enterprises, shall be considered as one allottee only.

(2) On the transfer or assignment being permitted by the allottees and the Authority under sub-section (1), the intending promoter shall be required to independently comply with all the pending obligations under the provisions of this Act or the rules and regulations made thereunder, and the pending obligations as per the agreement for sale entered into by the erstwhile promoter with the allottees:

Provided that any transfer or assignment permitted under provisions of this section shall not result in extension of time to the intending promoter to complete the real estate project and he shall be required to comply with all the pending obligations of the erstwhile promoter, and in case of default, such intending promoter shall be liable to the consequences of breach or delay, as the case may be, as provided under this Act or the rules and regulations made thereunder.

**16. Obligations of promoter regarding insurance of real estate project.—**

(1) The promoter shall obtain all such insurances as may be notified by the appropriate Government, including but not limited to insurance in respect of —

- (i) title of the land and building as a part of the real estate project; and
- (ii) construction of the real estate project.

(2) The promoter shall be liable to pay the premium and charges in respect of the insurance specified in sub-section (1) and shall pay the same before transferring the insurance to the association of the allottees.

(3) The insurance as specified under sub-section (1) shall stand transferred to the benefit of the allottee or the association of allottees, as the case may be, at the time of promoter entering into an agreement for sale with the allottee.

(4) On formation of the association of the allottees, all documents relating to the insurance specified under sub-section (1) shall be handed over to the association of the allottees.

**17. Transfer of title.**—(1) The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

(2) After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:

Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the [completion] certificate.

**18. Return of amount and compensation.—**

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,—

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act

## CHAPTER IV

# RIGHTS AND DUTIES OF ALLOTTEES

**19. Rights and duties of allottees.**—(1) The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

(2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale.

(3) The allottee shall be entitled to claim the possession of apartment, plot or building, as the case may be, and the association of allottees shall be entitled to claim the possession of the common areas, as per the declaration given by the promoter under sub-clause (C) of clause (l) of sub-section (2) of section 4.



(4) The allottee shall be entitled to claim the refund of amount paid along with interest at such rate as may be prescribed and compensation in the manner as provided under this Act, from the promoter, if the promoter fails to comply or is unable to give possession of the apartment, plot or building, as the case may be, in accordance with the terms of agreement for sale or due to discontinuance of his business as a developer on account of suspension or revocation of his registration under the provisions of this Act or the rules or regulations made thereunder.

(5) The allottee shall be entitled to have the necessary documents and plans, including that of common areas, after handing over the physical possession of the apartment or plot or building as the case may be, by the promoter.

(6) Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

(8) The obligations of the allottee under sub-section (6) and the liability towards interest under sub-section (7) may be reduced when mutually agreed to between the promoter and such allottee.

(9) Every allottee of the apartment, plot or building as the case may be, shall participate towards the formation of an association or society or cooperative society of the allottees, or a federation of the same.

(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

(11) Every allottee shall participate towards registration of the conveyance deed of the apartment, plot or building, as the case may be, as provided under sub-section (1) of section 17 of this Act.

# CHAPTER V

## THE REAL ESTATE REGULATORY AUTHORITY

### **20. Establishment and incorporation of Real Estate Regulatory Authority.—**

(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Authority to be known as the Real Estate Regulatory Authority to exercise the powers conferred on it and to perform the functions assigned to it under this Act:

Provided that the appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Authority:

Provided further that the appropriate Government may, if it deems fit, establish more than one Authority in a State or Union territory, as the case may be:

Provided also that until the establishment of a Regulatory Authority under this section, the appropriate Government shall, by order, designate any Regulatory Authority or any officer preferably the Secretary of the department dealing with Housing, as the Regulatory Authority for the purposes under this Act:

Provided also that after the establishment of the Regulatory Authority, all applications, complaints or cases pending with the Regulatory Authority designated, shall stand transferred to the Regulatory Authority so established and shall be heard from the stage such applications, complaints or cases are transferred.

(2) The Authority shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with the power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

### **21. Composition of Authority.—**

The Authority shall consist of a Chairperson and not less than two whole time Members to be appointed by the appropriate Government.

**22. Qualifications of Chairperson and Members of Authority.**—The Chairperson and other Members of the Authority shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, in such manner as may be prescribed, from amongst persons having adequate knowledge of and professional experience of at-least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration:

Provided that a person who is, or has been, in the service of the State Government shall not be appointed as a Chairperson unless such person has held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government:

Provided further that a person who is, or has been, in the service of the State Government shall not be appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.

**23. Term of office of Chairperson and Members.—**

- (1) The Chairperson and Members shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and shall not be eligible for re-appointment.
- (2) Before appointing any person as a Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

**24. Salary and allowances payable to Chairperson and Members.—**

- (1) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.
- (2) Notwithstanding anything contained in sub-sections (1) and (2) of section 23, the Chairperson or a Member, as the case may be, may,—
  - (a) relinquish his office by giving in writing, to the appropriate Government, notice of not less than three months; or

(b) be removed from his office in accordance with the provisions of section 26 of this Act.

(3) Any vacancy caused to the office of the Chairperson or any other Member shall be filled-up within a period of three months from the date on which such vacancy occurs.

25. Administrative powers of Chairperson.—The Chairperson shall have powers of general superintendence and directions in the conduct of the affairs of Authority and he shall, in addition to presiding over the meetings of the Authority, exercise and discharge such administrative powers and functions of the Authority as may be prescribed.

**26. Removal of Chairperson and Members from office in certain circumstances.—**

(1) The appropriate Government may, in accordance with the procedure notified, remove from office the Chairperson or other Members, if the Chairperson or such other Member, as the case may be,—

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence, involving moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Member shall not be removed from his office on the ground specified under clause (d) or clause (e) of sub-section (1) except by an order made by the appropriate Government after an inquiry made by a Judge of the High Court in which such Chairperson or Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

## **27. Restrictions on Chairperson or Members on employment after cessation of office.—**

(1) The Chairperson or a Member, ceasing to hold office as such, shall not—

(a) accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under this Act, from the date on which he ceases to hold office:



Provided that nothing contained in this clause shall apply to any employment under the appropriate Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or provincial Act or a Government Company, as defined under clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), which is not a promoter as per the provisions of this Act;

(b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or such Member had, before cessation of office, acted for or provided advice to the Authority;

(c) give advice to any person using information which was obtained in his capacity as the Chairperson or a Member and being unavailable to or not being able to be made available to the public;

(d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such.

(2) The Chairperson and Members shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

### **28. Officers and other employees of Authority.—**

(1) The appropriate Government may, in consultation with the Authority appoint such officers and employees as it considers necessary for the efficient discharge of their functions under this Act who would discharge their functions under the general superintendence of the Chairperson.

(2) The salary and allowances payable to, and the other terms and conditions of service of, the officers and of the employees of the Authority appointed under sub-section (1) shall be such as may be prescribed.

### **29. Meetings of Authority.—**

(1) The Authority shall meet at such places and times, and shall follow such rules of procedure in regard to the transaction of business at its meetings, (including quorum at such meetings), as may be specified by the regulations made by the Authority.

(2) If the Chairperson for any reason, is unable to attend a meeting of the Authority, any other Member chosen by the Members present amongst themselves at the meeting, shall preside at the meeting.

(3) All questions which come up before any meeting of the Authority shall be decided by a majority of votes by the Members present and voting, and in the event of an equality of votes, the Chairperson or in his absence, the person presiding shall have a second or casting vote.

(4) The questions which come up before the Authority shall be dealt with as expeditiously as possible and the Authority shall dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the Authority shall record its reasons in writing for not disposing of the application within that period.

### **30. Vacancies, etc., not to invalidate proceeding of Authority.—**

No act or proceeding of the Authority shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Authority; or
- (b) any defect in the appointment of a person acting as a Member of the Authority; or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

**31. Filing of complaints with the Authority or the adjudicating officer.—**

(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.

Explanation.—For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed].

**32. Functions of Authority for promotion of real estate sector.—**The Authority shall in order to facilitate the growth and promotion of a healthy, transparent, efficient and competitive real estate sector make recommendations to the appropriate Government or the competent authority, as the case may be, on,—

- (a) protection of interest of the allottees, promoter and real estate agent;
- (b) creation of a single window system for ensuring time bound project approvals and clearances for timely completion of the project;
- (c) creation of a transparent and robust grievance redressal mechanism against acts of omission and commission of competent authorities and their officials;
- (d) measures to encourage investment in the real estate sector including measures to increase financial assistance to affordable housing segment;
- (e) measures to encourage construction of environmentally sustainable and affordable housing, promoting standardisation and use of appropriate construction materials, fixtures, fittings and construction techniques;
- (f) measures to encourage grading of projects on various parameters of development including grading of promoters;
- (g) measures to facilitate amicable conciliation of disputes between the promoters and the allottees through dispute settlement forums set up by the consumer or promoter associations;

(h) measures to facilitate digitization of land records and system towards conclusive property titles with title guarantee;

(i) to render advice to the appropriate Government in matters relating to the development of real estate sector;

(j) any other issue that the Authority may think necessary for the promotion of the real estate sector.

### **33. Advocacy and awareness measures.—**

(1) The appropriate Government may, while formulating a policy on real estate sector (including review of laws related to real estate sector) or any other matter, make a reference to the Authority for its opinion on possible effect of such policy or law on real estate sector and on the receipt of such a reference, the Authority shall within a period of sixty days of making such reference, give its opinion to the appropriate Government, which may thereafter take further action as it deems fit.

(2) The opinion given by the Authority under sub-section (1) shall not be binding upon the appropriate Government in formulating such policy or laws.

(3) The Authority shall take suitable measures for the promotion of advocacy, creating awareness and imparting training about laws relating to real estate sector and policies.

**34. Functions of Authority.**—The functions of the Authority shall include—

(a) to register and regulate real estate projects and real estate agents registered under this Act;

(b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, with such details as may be prescribed, including information provided in the application for which registration has been granted;

(c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised under this Act, with reasons therefor, for access to the general public;

(d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, with such details as may be prescribed, including those whose registration has been rejected or revoked;

- (e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent, as the case may be;
- (f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;
- (g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;
- (h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act.

**35. Powers of Authority to call for information, conduct investigations.—**

(1) Where the Authority considers it expedient to do so, on a complaint or suo motu, relating to this Act or the rules or regulations made thereunder, it may, by order in writing and recording reasons therefor call upon any promoter or allottee or real estate agent, as the case may be, at any time to furnish in writing such information or explanation relating to its affairs as the Authority may require and appoint one or more persons to make an inquiry in relation to the affairs of any promoter or allottee or the real estate agent, as the case may be.



(2) Notwithstanding anything contained in any other law for the time being in force, while exercising the powers under sub-section (1), the Authority shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

- (i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;
- (ii) summoning and enforcing the attendance of persons and examining them on oath;
- (iii) issuing commissions for the examination of witnesses or documents;
- (iv) any other matter which may be prescribed.

### **36. Power to issue interim orders.—**

Where during an inquiry, the Authority is satisfied that an act in contravention of this Act, or the rules and regulations made thereunder, has been committed and continues to be committed or that such act is about to be committed, the Authority may, by order, restrain any promoter, allottee or real estate agent from carrying on such act until the conclusion of such inquiry or until further orders, without giving notice to such party, where the Authority deems it necessary.

**37. Powers of Authority to issue directions.**—The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

**38. Powers of Authority.**—

- (1) The Authority shall have powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.
- (2) The Authority shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Authority shall have powers to regulate its own procedure.
- (3) Where an issue is raised relating to agreement, action, omission, practice or procedure that—
  - (a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely, then the Authority, may, suo motu, make reference in respect of such issue to the Competition Commission of India.

### **39. Rectification of orders.—**

The Authority may, at any time within a period of two years from the date of the order made under this Act, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:

Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act:

Provided further that the Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order passed under the provisions of this Act.

#### **40. Recovery of interest or penalty or compensation and enforcement of order, etc.—**

- (1) If a promoter or an allottee or a real estate agent, as the case may be, fails to pay any interest or penalty or compensation imposed on him, by the adjudicating officer or the Regulatory Authority or the Appellate Authority, as the case may be, under this Act or the rules and regulations made thereunder, it shall be recoverable from such promoter or allottee or real estate agent, in such manner as may be prescribed as an arrears of land revenue.
- (2) If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, as the case may be, issues any order or directs any person to do any act, or refrain from doing any act, which it is empowered to do under this Act or the rules or regulations made thereunder, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.

## CHAPTER VI

# CENTRAL ADVISORY COUNCIL

### **41. Establishment of Central Advisory Council.—**

- (1) The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as the Central Advisory Council.
- (2) The Minister to the Government of India in charge of the Ministry of the Central Government dealing with Housing shall be the ex officio Chairperson of the Central Advisory Council.
- (3) The Central Advisory Council shall consist of representatives of the Ministry of Finance, Ministry of Industry and Commerce, Ministry of Urban Development, Ministry of Consumer Affairs, Ministry of Corporate Affairs, Ministry of Law and Justice, Niti Aayog, National Housing Bank, Housing and Urban Development Corporation, five representatives of State Governments to be selected by rotation, five representatives of the Real Estate Regulatory Authorities to be selected by rotation, and any other Central Government department as notified.

(4) The Central Advisory Council shall also consist of not more than ten members to represent the interests of real estate industry, consumers, real estate agents, construction labourers, non-governmental organisations and academic and research bodies in the real estate sector.

#### **42. Functions of Central Advisory Council.—**

(1) The functions of the Central Advisory Council shall be to advise and recommend the Central Government,—

- (a) on all matters concerning the implementation of this Act;
- (b) on major questions of policy;
- (c) towards protection of consumer interest;
- (d) to foster the growth and development of the real estate sector;
- (e) on any other matter as may be assigned to it by the Central Government.

(2) The Central Government may specify the rules to give effect to the recommendations of the Central Advisory Council on matters as provided under sub-section (1).

## CHAPTER VII

# THE REAL ESTATE APPELLATE TRIBUNAL

### **43. Establishment of Real Estate Appellate Tribunal.—**

(1) The appropriate Government shall, within a period of one year from the date of coming into force of this Act, by notification, establish an Appellate Tribunal to be known as the —(name of the State/Union territory) Real Estate Appellate Tribunal.

(2) The appropriate Government may, if it deems necessary, establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory, as the case may be.

(3) Every bench of the Appellate Tribunal shall consist of at least one Judicial Member and one Administrative or Technical Member.

(4) The appropriate Government of two or more States or Union territories may, if it deems fit, establish one single Appellate Tribunal:

Provided that, until the establishment of an Appellate Tribunal under this section, the appropriate Government shall designate, by order, any Appellate Tribunal functioning under any law for the time being in force, to be the Appellate Tribunal to hear appeals under the Act:

Provided further that after the Appellate Tribunal under this section is established, all matters pending with the Appellate Tribunal designated to hear appeals, shall stand transferred to the Appellate Tribunal so established and shall be heard from the stage such appeal is transferred.

(5) Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter:

Provided that where a promoter files an appeal with the Appellate Tribunal, it shall not be entertained, without the promoter first having deposited with the Appellate Tribunal at least thirty per cent. of the penalty, or such higher percentage as may be determined by the Appellate Tribunal, or the total amount to be paid to the allottee including interest and compensation imposed on him, if any, or with both, as the case may be, before the said appeal is heard.



Explanation.—For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.

**44. Application for settlement of disputes and appeals to Appellate Tribunal.—**(1) The appropriate Government or the competent authority or any person aggrieved by any direction or order or decision of the Authority or the adjudicating officer may prefer an appeal to the Appellate Tribunal.

(2) Every appeal made under sub-section (1) shall be preferred within a period of sixty days from the date on which a copy of the direction or order or decision made by the Authority or the adjudicating officer is received by the appropriate Government or the competent authority or the aggrieved person and it shall be in such form and accompanied by such fee, as may be prescribed:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of sixty days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may after giving the parties an opportunity of being heard, pass such orders, including interim orders, as it thinks fit.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties and to the Authority or the adjudicating officer, as the case may be.

(5) The appeal preferred under sub-section (1), shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal within a period of sixty days from the date of receipt of appeal: Provided that where any such appeal could not be disposed of within the said period of sixty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within that period.

(6) The Appellate Tribunal may, for the purpose of examining the legality or propriety or correctness of any order or decision of the Authority or the adjudicating officer, on its own motion or otherwise, call for the records relevant to deposing of such appeal and make such orders as it thinks fit.

#### **45. Composition of Appellate Tribunal.—**

The Appellate Tribunal shall consist of a Chairperson and not less than two whole time Members of which one shall be a Judicial member and other shall be a Technical or Administrative Member, to be appointed by the appropriate Government.

Explanation.—For the purposes of this Chapter,—

- (i) “Judicial Member” means a Member of the Appellate Tribunal appointed as such under clause (b) of sub-section (1) of section 46;
- (ii) “Technical or Administrative Member” means a Member of the Appellate Tribunal appointed as such under clause (c) of sub-section (1) of section 46.

#### **46. Qualifications for appointment of Chairperson and Members.—**

(1) A person shall not be qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he,—

- (a) in the case of Chairperson, is or has been a Judge of a High Court; and
- (b) in the case of a Judicial Member he has held a judicial office in the territory of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters; and

(c) in the case of a Technical or Administrative Member, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or who has held the post in the Central Government or a State Government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.

(2) The Chairperson of the Appellate Tribunal shall be appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee.

(3) The Judicial Members and Technical or Administrative Members of the Appellate Tribunal shall be appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary and in such manner as may be prescribed.

#### **47. Term of office of Chairperson and Members.—**

(1) The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal shall hold office, as such for a term not exceeding five years from the date on which he enters upon his office, but shall not be eligible for re-appointment:

Provided that in case a person, who is or has been a Judge of a High Court, has been appointed as Chairperson of the Tribunal, he shall not hold office after he has attained the age of sixty-seven years:

Provided further that no Judicial Member or Technical or Administrative Member shall hold office after he has attained the age of sixty-five years.

(2) Before appointing any person as Chairperson or Member, the appropriate Government shall satisfy itself that the person does not have any such financial or other interest, as is likely to affect prejudicially his functions as such member.

**48. Salary and allowances payable to Chairperson and Members.—**(1) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed and shall not be varied to their disadvantage during their tenure.

(2) Notwithstanding anything contained in sub-sections (1) and (2) of section 47, the Chairperson or a Member, as the case may be, may:—

(a) relinquish his office by giving in writing to the appropriate Government a notice of not less than three months;

(b) be removed from his office in accordance with the provisions of section 49.

(3) A vacancy caused to the office of the Chairperson or any other Member, as the case may be, shall be filled-up within a period of three months from the date on which such vacancy occurs.

#### **49. Removal of Chairperson and Member from office in certain circumstances.—**

(1) The appropriate Government may, in consultation with the Chief Justice of the High Court, remove from office of the Chairperson or any Judicial Member or Technical or Administrative Member of the Appellate Tribunal, who—

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence which, in the opinion of the appropriate Government involves moral turpitude; or

(c) has become physically or mentally incapable; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) The Chairperson or Judicial Member or Technical or Administrative Member shall not be removed from his office except by an order made by the appropriate Government after an inquiry made by the Judge of the High Court in which such Chairperson or Judicial Member or Technical or Administrative Member has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

(3) The appropriate Government may suspend from the office of the Chairperson or Judicial Member or Technical or Administrative Member in respect of whom a reference of conducting an inquiry has been made to the Judge of the High Court under sub-section (2), until the appropriate Government passes an order on receipt of the report of inquiry made by the Judge of the High Court on such reference.

(4) The appropriate Government may, by rules, regulate the procedure for inquiry referred to in sub-section (2).

**50. Restrictions on Chairperson or Judicial Member or Technical or Administrative Member on employment after cessation of office.—**

(1) The Chairperson or Judicial Member or Technical or Administrative Member, ceasing to hold office as such shall not:—

(a) accept any employment in, or connected with, the management or administration of, any person or organisation which has been associated with any work under this Act, from the date on which he ceases to hold office:

Provided that nothing contained in this clause shall apply to any employment under the appropriate Government or a local authority or in any statutory authority or any corporation established by or under any Central, State or Provincial Act or a Government Company as defined under clause (45) of section 2 of the Companies Act, 2013 (18 of 2013), which is not a promoter as per the provisions of this Act;

(b) act, for or on behalf of any person or organisation in connection with any specific proceeding or transaction or negotiation or a case to which the Authority is a party and with respect to which the Chairperson or Judicial Member or Technical or Administrative Member had, before cessation of office, acted for or provided advice to, the Authority;



(c) give advice to any person using information which was obtained in his capacity as the Chairperson or Judicial Member or Technical or Administrative Member and being unavailable to or not being able to be made available to the public;

(d) enter into a contract of service with, or accept an appointment to a board of directors of, or accept an offer of employment with, an entity with which he had direct and significant official dealings during his term of office as such.

(2) The Chairperson or Judicial Member or Technical or Administrative Member shall not communicate or reveal to any person any matter which has been brought under his consideration or known to him while acting as such.

### **51. Officers and other employees of Appellate Tribunal.—**

(1) The appropriate Government shall provide the Appellate Tribunal with such officers and employees as it may deem fit.

(2) The officers and employees of the Appellate Tribunal shall discharge their functions under the general superintendence of its Chairperson.

(3) The salary and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal shall be such as may be prescribed.

## **52. Vacancies.—**

If, for reason other than temporary absence, any vacancy occurs in the office of the Chairperson or a Member of the Appellate Tribunal, the appropriate Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the Appellate Tribunal from the stage at which the vacancy is filled.

## **53. Powers of Tribunal.—**

(1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice.

(2) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure.

(3) The Appellate Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872).

(4) The Appellate Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examinations of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or directing it ex parte; and
- (g) any other matter which may be prescribed.

(5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

#### **54. Administrative powers of Chairperson of Appellate Tribunal.—**

The Chairperson shall have powers of general superintendence and direction in the conduct of the affairs of Appellate Tribunal and he shall, in addition to presiding over the meetings of the Appellate Tribunal, exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed.

**55. Vacancies, etc., not to invalidate proceeding of Appellate Tribunal.—**

No act or proceeding of the Appellate Tribunal shall be invalid merely by reason of—

(a) any vacancy in, or any defect in the constitution of, the Appellate Tribunal; or

(b) any defect in the appointment of a person acting as a Member of the Appellate Tribunal; or

(c) any irregularity in the procedure of the Appellate Tribunal not affecting the merits of the case.

**56. Right to legal representation.—**

The applicant or appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal or the Regulatory Authority or the adjudicating officer, as the case may be.

Explanation.—For the purposes of this section,—

(a) “chartered accountant” means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 (38 of 1949) or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(b) “company secretary” means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 (56 of 1980) or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(c) “cost accountant” means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) or any other law for the time being in force and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) “legal practitioner” means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

**57. Orders passed by Appellate Tribunal to be executable as a decree.**—(1) Every order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court, and for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

(2) Notwithstanding anything contained in sub-section (1), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by the court.

## **58. Appeal to High Court.—**

(1) Any person aggrieved by any decision or order of the Appellate Tribunal, may, file an appeal to the High Court, within a period of sixty days from the date of communication of the decision or order of the Appellate Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the High Court may entertain the appeal after the expiry of the said period of sixty days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

Explanation.—

The expression “High Court” means the High Court of a State or Union territory where the real estate project is situated. (2) No appeal shall lie against any decision or order made by the Appellate Tribunal with the consent of the parties.

## CHAPTER VIII OFFENCES, PENALTIES AND ADJUDICATION

**59. Punishment for nonregistration under section 3.**—(1) If any promoter contravenes the provisions of section 3, he shall be liable to a penalty which may extend up to ten per cent. of the estimated cost of the real estate project as determined by the Authority.

(2) If any promoter does not comply with the orders, decisions or directions issued under sub-section (1) or continues to violate the provisions of section 3, he shall be punishable with imprisonment for a term which may extend up to three years or with fine which may extend up to a further ten per cent. of the estimated cost of the real estate project, or with both.

**60. Penalty for contravention of section 4.**—If any promoter provides false information or contravenes the provisions of section 4, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project, as determined by the Authority.

### **61. Penalty for contravention of other provisions of this Act.—**

If any promoter contravenes any other provisions of this Act, other than that provided under section 3 or section 4, or the rules or regulations made thereunder, he shall be liable to a penalty which may extend up to five per cent. of the estimated cost of the real estate project as determined by the Authority.

### **62. Penalty for nonregistration and contravention under sections 9 and 10.—**

If any real estate agent fails to comply with or contravenes the provisions of section 9 or section 10, he shall be liable to a penalty of ten thousand rupees for every day during which such default continues, which may cumulatively extend up to five per cent. of the cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated as determined by the Authority.

### **63. Penalty for failure to comply with orders of Authority by promoter.—**

If any promoter, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of the real estate project as determined by the Authority.



**64. Penalty for failure to comply with orders of Appellate Tribunal by promoter.—**

If any promoter, who fails to comply with, or contravenes any of the orders, decisions or directions of the 30 Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to three years or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of the real estate project, or with both.

**65. Penalty for failure to comply with orders of Authority by real estate agent.—**

If any real estate agent, who fails to comply with, or contravenes any of the orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent., of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated and as determined by the Authority.

**66. Penalty for failure to comply with orders of Appellate Tribunal by real estate agent.**—If any real estate agent, who fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the estimated cost of plot, apartment or building, as the case may be, of the real estate project, for which the sale or purchase has been facilitated, or with both.

**67. Penalty for failure to comply with orders of Authority by allottee.**—If any allottee, who fails to comply with, or contravenes any of the orders, decisions or directions of the Authority he shall be liable to a penalty for the period during which such default continues, which may cumulatively extend up to five per cent. of the plot, apartment or building cost, as the case may be, as determined by the Authority.

**68. Penalty for failure to comply with orders of Appellate Tribunal by allottee.**—If any allottee, who fails to comply with, or contravenes any of the orders or directions of the Appellate Tribunal, as the case may be, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent. of the plot, apartment or building cost, as the case may be, or with both.

## **69. Offences by companies.—**

- (1) Where an Offence under this Act has been committed by a company, every person who, at the time, the offence was committed was in charge of, or was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section, shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.— For the purpose of this section,—

(a) “company” means any body corporate and includes a firm, or other association of individuals; and

(b) “director” in relation to a firm, means a partner in the firm. 70. Compounding of offences.—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), if any person is punished with imprisonment under this Act, the punishment may, either before or after the institution of the prosecution, be compounded by the court on such terms and conditions and on payment of such sums as may be prescribed:

Provided that the sum prescribed shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

### **71. Power to adjudicate.—**

(1) For the purpose of adjudging compensation under sections 12, 14, 18 and section 19, the Authority shall appoint, in consultation with the appropriate Government, one or more judicial officer as deemed necessary, who is or has been a District Judge to be an adjudicating officer for holding an inquiry in the prescribed manner, after giving any person concerned a reasonable opportunity of being heard:

Provided that any person whose complaint in respect of matters covered under sections 12, 14, 18 and section 19 is pending before the Consumer Disputes Redressal Forum or the Consumer Disputes Redressal Commission or the National Consumer Redressal Commission, established under section 9 of the Consumer Protection Act, 1986 (68 of 1986), on or before the commencement of this Act, he may, with the permission of such Forum or Commission, as the case may be, withdraw the complaint pending before it and file an application before the adjudicating officer under this Act.

(2) The application for adjudging compensation under sub-section (1), shall be dealt with by the adjudicating officer as expeditiously as possible and dispose of the same within a period of sixty days from the date of receipt of the application:

Provided that where any such application could not be disposed of within the said period of sixty days, the adjudicating officer shall record his reasons in writing for not disposing of the application within that period.

(3) While holding an inquiry the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may direct to pay such compensation or interest, as the case may be, as he thinks fit in accordance with the provisions of any of those sections.

**72. Factors to be taken into account by the adjudicating officer.**— While adjudging the quantum of compensation or interest, as the case may be, under section 71, the adjudicating officer shall have due regard to the following factors, namely:—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused as a result of the default;
- (c) the repetitive nature of the default;
- (d) such other factors which the adjudicating officer considers necessary to the case in furtherance of justice.

## CHAPTER IX FINANCE, ACCOUNTS, AUDITS AND REPORTS

### **73. Grants and loans by Central Government.—**

The Central Government may, after due appropriation made by Parliament in this behalf, make to the Authority grants and loans of such sums of money as that Government may consider necessary.

### **74. Grants and loans by State Government.—**

The State Government may, after due appropriation made by State Legislature by law in this behalf, make to the Authority, grants and loans of such sums of money as the State Government may think fit for being utilised for the purposes of this Act.

### **75. Constitution of Fund.—**

(1) The appropriate Government shall constitute a fund to be called the 'Real Estate Regulatory Fund' and there shall be credited thereto,—

(a) all Government grants received by the Authority;

(b) the fees received under this Act;

(c) the interest accrued on the amounts referred to in clauses (a) to (b).

(2) The Fund shall be applied for meeting—

(a) the salaries and allowances payable to the Chairperson and other Members, the adjudicating officer and the administrative expenses including the salaries and allowances payable to the officers and other employees of the Authority and the Appellate Tribunal;

(b) the other expenses of the Authority in connection with the discharge of its functions and for the purposes of this Act.

(3) The Fund shall be administered by a committee of such Members of the Authority as may be determined by the Chairperson.

(4) The committee appointed under sub-section (3) shall spend monies out of the Fund for carrying out the objects for which the Fund has been constituted.



**76. Crediting sums realised by way of penalties to Consolidated Fund of India or State account.—**

- (1) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in the Union territories, shall be credited to the Consolidated Fund of India.
- (2) All sums realised, by way of penalties, imposed by the Appellate Tribunal or the Authority, in a State, shall be credited to such account as the State Government may specify.

**77. Budget, accounts and audit.—**

- (1) The Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the appropriate Government in consultation with the Comptroller and Auditor General of India.
- (2) The accounts of the Authority shall be audited by the Comptroller and Auditor General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Authority to the Comptroller and Auditor General of India.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Authority under this Act shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor General generally has in connection with the audit of Government accounts and, in particular shall have the right to demand and production of books, accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Authority.

(4) The accounts of the Authority, as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf, together with the audit report thereon shall be forwarded annually to the appropriate Government by the Authority and the appropriate Government shall cause the audit report to be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.

## **78. Annual report.—**

(1) The Authority shall prepare once in every year, in such form and at such time as may be prescribed by the appropriate Government,—

(a) a description of all the activities of the Authority for the previous year;

(b) the annual accounts for the previous year; and

(c) the programmes of work for the coming year.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament or, as the case may be, before the State Legislature or the Union Territory Legislature, where it consists of two Houses, or where such legislature consists of one House, before that House.

## CHAPTER X MISCELLANEOUS

### **79. Bar of jurisdiction.—**

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

### **80. Cognizance of offences.—**

- (1) No court shall take cognizance of any offence punishable under this Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for this purpose.
- (2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act

## **81. Delegation.—**

The Authority may, by general or special order in writing, delegate to any member, officer of the Authority or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the power to make regulations under section 85), as it may deem necessary.

## **82. Power of appropriate Government to supersede Authority.—**

(1) If, at any time, the appropriate Government is of the opinion,—

(a) that, on account of circumstances beyond the control of the Authority, it is unable to discharge the functions or perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Authority has persistently defaulted in complying with any direction given by the appropriate Government under this Act or in the discharge of the functions or performance of the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Authority or the administration of the Authority has suffered; or

(c) that circumstances exist which render it necessary in the public interest so to do, the appropriate Government may, by notification, supersede the Authority for such period, not exceeding six months, as may be specified in the notification and appoint a person or persons as the President or the Governor, as the case may be, may direct to exercise powers and discharge functions under this Act:

Provided that before issuing any such notification, the appropriate Government shall give a reasonable opportunity to the Authority to make representations against the proposed supersession and shall consider the representations, if any, of the Authority.

(2) Upon the publication of a notification under sub-section (1) superseding the Authority,—

(a) the Chairperson and other Members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Authority shall, until the Authority is reconstituted under sub-section (3), be exercised and discharged by the person or persons referred to in sub-section (1); and

(c) all properties owned or controlled by the Authority shall, until the Authority is reconstituted under sub-section (3), vest in the appropriate Government.

(3) On or before the expiration of the period of supersession specified in the notification issued under sub-section (1), the appropriate Government shall reconstitute the Authority by a fresh appointment of its Chairperson and other members and in such case any person who had vacated his office under clause (a) of sub-section (2) shall not be deemed to be disqualified for re-appointment.

(4) The appropriate Government shall cause a copy of the notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament or, as the case may be, before the State Legislature, or the Union Territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.

**83. Powers of appropriate Government to issue directions to Authority and obtain reports and returns.**—(1) Without prejudice to the foregoing provisions of this Act, the Authority shall, in exercise of its powers and in performance of its functions under this Act, be bound by such directions on questions of policy, as the appropriate Government may give in writing to it from time to time:

- (a) the form, time and manner of making application and fees payable therewith under sub-section (1) of section 4;
- (ab) information and documents for application to the Authority for registration under clause (m) of sub-section (2) of section 4;
- (ac) the form of application and the fees for extension of registration under section 6;
- (b) the form and manner of making application and fee and documents to be accompanied with such application as under sub-section (2) of section 9;
- (c) the period, manner and conditions under which the registration is to be granted under sub-section (3) of section 9;
- (d) the validity of the period of registration and the manner and fee for renewal under sub-section (6) of section 9;
- (e) the maintenance and preservation of books of account, records and documents under clause (b) of section 10;
- (f) the discharge of other functions by the real estate agent under clause (e) of section 10;
- (g) the rate of interest payable under section 12;



- (h) the form and particulars of agreement for sale under sub-section (2) of section 13;
- (i) the rate of interest payable under clause (b) of sub-section (1) of section 18;
- (j) the rate of interest payable under sub-section (4) of section 19;
- (k) the rate of interest payable under sub-section (7) of section 19;
- (l) the manner of selection of Chairperson and Members of Authority under section 22;
- (m) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Authority under sub-section (1) of section 24;
- (n) the administrative powers of the Chairpersons under section 25;
- (o) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees of the Authority under sub-section (2) of section 28;
- (oa) the form, manner and fees for filing of a complaint under sub-section (2) of section 31;
- (p) the details to be published on the website as under clause (b) and under clause (d) of section 34;

- (q) the additional functions which may be performed by the Authority under clause (iv) of sub-section (2) of section 35;
- (r) the manner of recovery of interest, penalty and compensation under sub-section (1) of section 40;
- (s) the manner of implementation of the order, direction or decisions of the adjudicating officer, the Authority or the Appellate Tribunal under sub-section (2) of section 40;
- (t) recommendations received from the Central Advisory Council under sub-section (2) of section 42;
- (u) The form and manner and fee for filing of appeal under sub-section (2) of section 44;
- (v) the manner of selection of Members of the Tribunal under sub-section (3) of section 46;
- (w) the salaries and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members of the Appellate Tribunal under sub-section (1) of section 48;
- (x) the procedure for inquiry of the charges against the Chairperson or Judicial Member of the Tribunal under sub-section (4) of section 49;

(y) the salaries and allowances payable to, and the other terms and conditions of service of, the officers and employees of the Appellate Tribunal under sub-section (3) of section 51;

(z) any other powers of the Tribunal under clause (g) of sub-section (4) of section 53;

(za) the powers of the Chairperson of the Appellate Tribunal under section 54;

(zb) the terms and conditions and the payment of such sum for compounding of the offences under section 70;

(zc) the manner of inquiry under sub-section (1) of section 71;

(zd) the form to be specified in which the Authority shall prepare a budget, maintain proper accounts and other relevant records and prepare an annual statement of accounts under sub-section (1) of section 77;

(ze) the form in which and time at which the Authority shall prepare an annual report under sub-section (1) of section 78;

(zf) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

## **85. Power to make regulations.—**

- (1) The Authority shall, within a period of three months of its establishment, by notification, make regulations, consistent with this Act and the rules made thereunder to carry out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—
  - (c) such other information and documents required under clause (f) of sub-section (1) of section 11;
  - (d) display of sanctioned plans, layout plans along with specifications, approved by the competent authority, for display under clause (a) of sub-section (3) of section 11;
  - (e) preparation and maintenance of other details under sub-section (6) of section 11;
  - (f) time, places and the procedure in regard to transaction of business at the meetings of the Authority under sub-section (1) of section 29;
  - (h) standard fees to be levied on the promoter, the allottees or the real estate agent under clause (e) of section 34;
  - (i) any other matter which is required to be, or may be, specified by regulation or in respect of which provision is to be made by regulations

## **86. Laying of rules.—**

(1) Every rule made by the Central Government, every regulation made by the Authority under the Union territory of Delhi and the Union territories without Legislature and every notification issued by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

(2) Every rule made by a State Government or the Union territory Government, as the case may be, every regulation made by the Authority under the State Government or 2 [the Union territory Government of Puducherry or the Union territory Government of Jammu and Kashmir], as the case may be, and every notification issued by the State Government or 2 [the Union territory Government of Puducherry or the Union territory Government of Jammu and Kashmir], as the case may be, under this Act, shall be laid as soon as may be, after it is made, before the State Legislature, or the Union territory Legislature, as the case may be, where it consists of two Houses, or where such legislature consists of one House, before that House.

**87. Members, etc., to be public servants.—**

The Chairperson, Members and other officers and employees of the Authority, and the Appellate Tribunal and the adjudicating officer shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

**88. Application of other laws not barred.—**

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

**89. Act to have overriding effect.**— The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

**90. Protection of action taken in good faith.**— No suit, prosecution or other legal proceedings shall lie against the appropriate Government or the Authority or any officer of the appropriate Government or any member, officer or other employees of the Authority for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

**91. Power to remove difficulties.**—

- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty: Provided that no order shall be made under this section after the expiry of two years from the date of the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

**92. Repeal.**—The Maharashtra Housing (Regulation and Development) Act, 2012 (Maharashtra Act No. II of 2014) is hereby repealed.

- Contracts, Voidable Contracts, void Agreements, Contingent Contracts, Performance of Contracts, Novation, Rescission and Alteration of Contracts (Sections 10 to 67 of Indian Contract Act, 1872)
- Consequences of Breach of Contracts (Sections 73 to 75 of Indian Contract Act, 1872)
- Contracts of Indemnity and Guarantee and Surety's Rights (Sections 124-127 of Indian Contract Act, 1872)
- Bailment and Pledge and Agency (Sections 148 to 238 of Indian Contract Act, 1872)
- Negotiable Instrument Act, 1881
- The Transfer of Property Act, 1882
- The Sale of Goods Act, 1930
- The Code of Civil Procedure, 1908 (Section 9, 10, 11 26 to 32, 38 to 45, 62 to 64, 73, 75 to 78, 89 and Order 21)



# INDIAN CONTRACT ACT, 1872



# *The Indian Contract Act ,1872*

- contracts, voidable contracts and void agreement;
- Contingent contracts;
- Performance of contract;
- Novation, rescission and alteration of contracts;
- Consequences of breach of contract;
- Indemnity and guarantee and Surety's rights;
- Bailment and pledge and Agency

# PRILIMINARY

## Section 1

**Short Title:** This Act may be called the Indian Contract Act, 1872.

**Extent, Commencement:** It extends to the whole of India, and it shall come into force on the first day of September, 1872.

**Saving:** Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.

## Section 2

In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:

2(a). When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;

2(b). When a person to whom proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a promise.

2(c). The person making the proposal is called the "promisor", and the person

accepting the proposal is called the "promisee";

2(d). When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

2(e). Agreement' as 'every promise or every set of promises forming consideration for each other.

i.e. Promise in return of Promise Reciprocal Promise

An Agreement is a promise or a commitment or set of reciprocal promises or commitments. An agreement involves an offer or proposal by one person and acceptance of such offer or proposal by another person.

## Section 2

2(f). Promises which form the consideration or part of the consideration for each other are called reciprocal promises;

2(g). An agreement not enforceable by law is said to be void;

2(h). “Contract is an agreement enforceable by law”.

Contract = Agreement + Enforceable by law

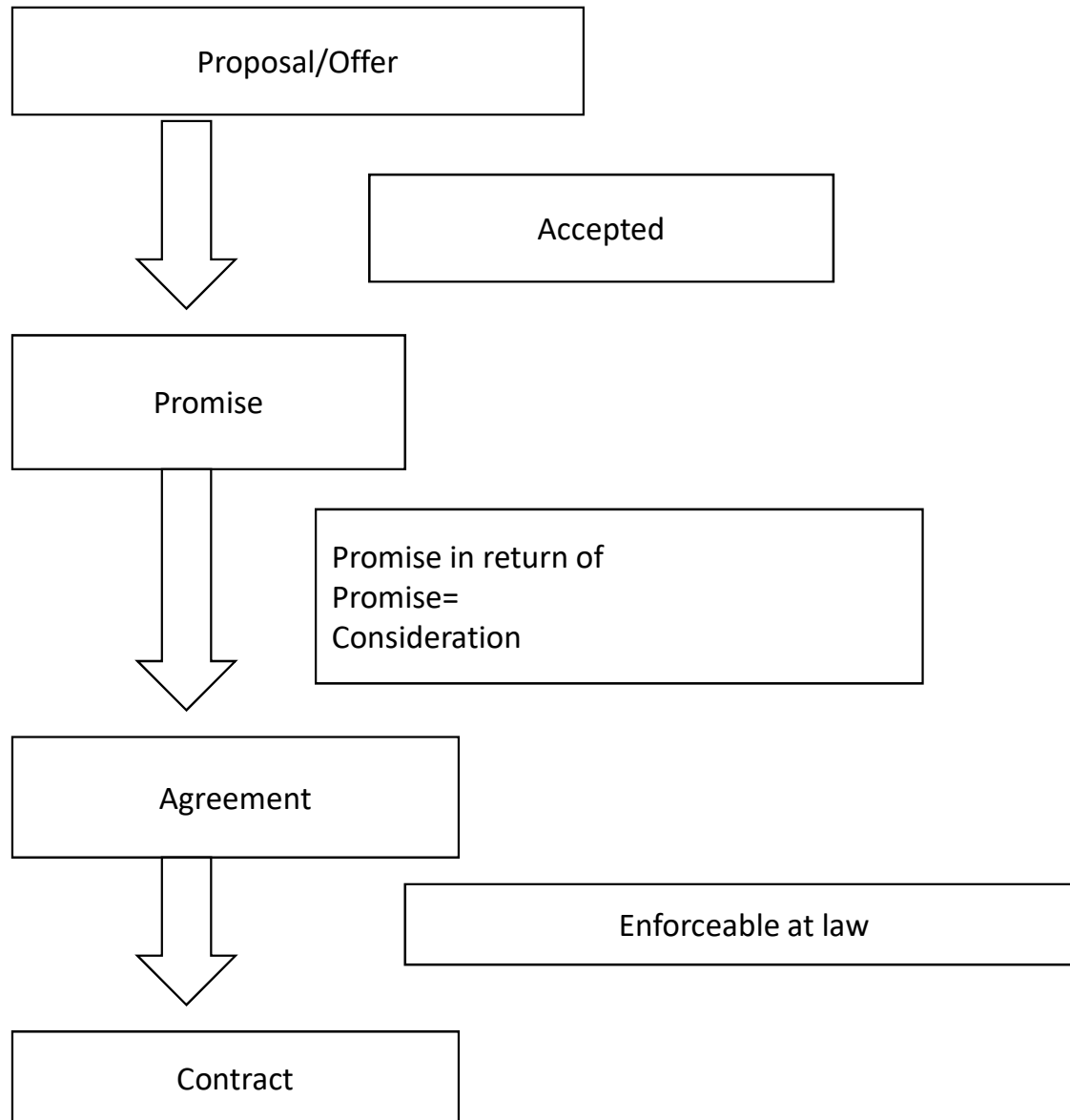
Salmond defines, “An agreement creating and defining obligations between the parties is a Contract.”

Contract = Agreement + Obligations (legal duty to fulfill one’s promise)

2(i). An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

2(j). A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.





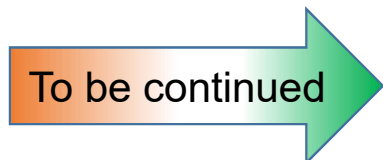
# Section 10

## **Essential Elements of Contract:**

- Agreement: “Agreement which is legally enforceable alone is a contract”. An agreement which is not enforceable can be either Void Agreement or Voidable contract. In order to constitute a contract, there must be an agreement in first place. An agreement in turn is composed of two elements- offer and acceptance.

The two important element of agreement are:

- Plurality of persons
- Consensus ad-idem



a. Plurality of persons: There must be at-least two parties-one making the offer and another accepting it. A person cannot enter into agreement with himself or with an inanimate object.

consensus ad-idem: The promisor and promisee of the agreement should have agreed in same sense & on same thing. There should be meeting of minds.

- Legal intention: The parties must intend to create a legal relationship.

Agreements of social or domestic nature do not contemplate legal relationship, so they are not contracts.

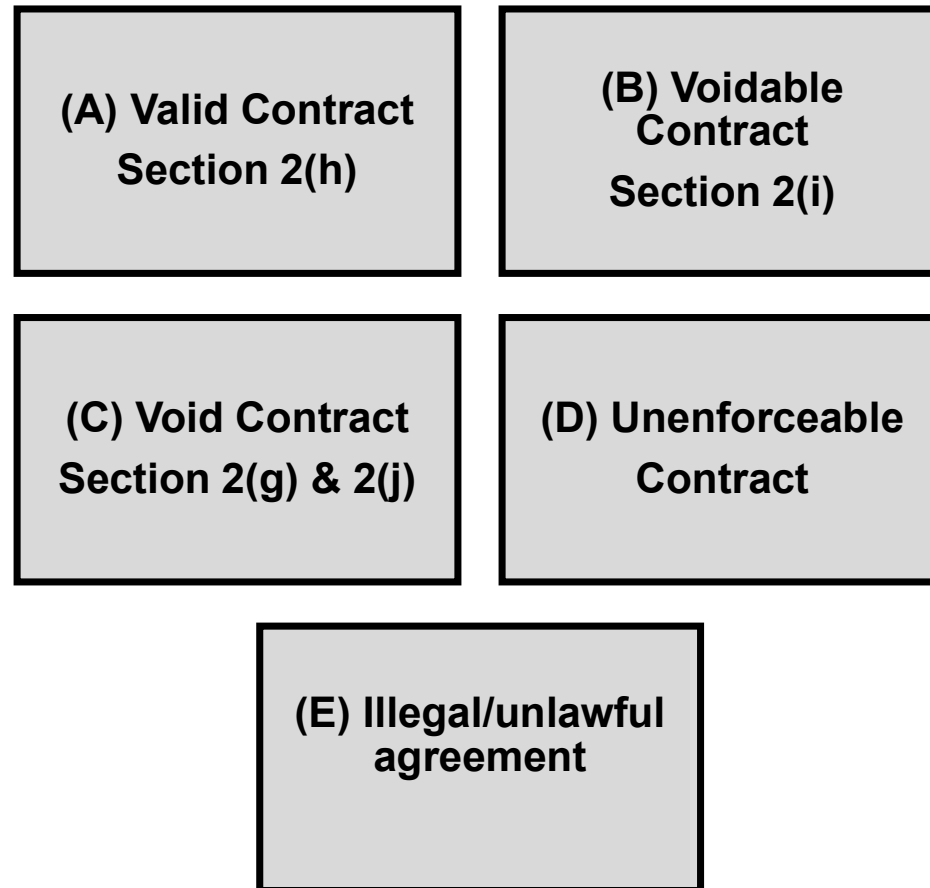
- Lawful Consideration: The agreement must be supported by a lawful consideration. Consideration means 'something in return'. It is not important whether consideration is adequate or in-adequate. 'Something in return' may be an act or abstinence. But consideration must be real and lawful.
- Capacity: The parties to an agreement must be capable of entering into a contract i.e.
  - a. He shall not be minor (less than eighteen years of age);
  - b. shall be of sound mind
  - c. Shall not be disqualified from contracting by any law to which he is subject.

- Lawful object: The object of agreement must be lawful.
- free Consent: The consent of the parties must be free and genuine i.e. not induced by coercion, undue influence, fraud or misrepresentation.
- Void Agreement: The agreement not expressly declared void or illegal by law.
- Certainty and Possibility of Performance: The terms of agreement must be certain and capable of performance.
- Legal formalities: Where nature of agreement is such that it requires compliance of certain formalities, such requirements should be fulfilled. A contract may require registration in addition to being in writing. However as regards to legal effects, an oral contract has same weight-age as a contract in writing.

# Agreements Which Are Not Contract

1. Agreements relating to social matters: Intention to create legal obligation is absent.
2. domestic Arrangement between Husband and Wife: It is presumed that there is no intention to create legal relations. (Balfour v Balfour).
3. Agreement to do illegal/unlawful/immoral act e.g. Smuggling.
4. Agreement declared specifically void (unenforceable by law): Agreement to do impossible act (putting life in a dead person), wagering agreement (betting agreement).

# 1. Types of Contract on the basis of its enforcement



# 1. Types of Contract on the basis of its enforcement

## (A) Valid Contract:

An agreement enforceable by the law is a contract (**Section 2(h)**). To be enforceable it has to satisfy the requirements under **Section 10** of the Indian Contract, 1872. They are:

- There is some consideration for it.
- The parties are competent to contract
- Their consent is free.
- Their object is lawful



# Types of Contract on the basis of its enforcement

(B) Voidable Contract: Section 2(i):

An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other, is a voidable contract.

As mentioned above, free consent which is defined in Section 14 of the Act is an essential element of a valid contract. Consent is free when it is not obtained by coercion, undue influence, fraud, misrepresentation or mistake .

- Where consent to an agreement is caused by coercion, undue influence,

fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A voidable contract remains valid until rescinded. A voidable contract can be made valid by the party who has a right to rescind it by giving up his right of rescinding it.

# Types of Contract on the basis of its enforcement

## Void Contract:

Section 2(g): A void agreement is not enforceable at the option of either party. Section 2(g) of the Act explains the meaning of a void agreement.

Section 2(j) of the Act speaks about a valid contract which subsequently becomes void. “A contract which ceases to be enforceable by the law becomes void when it ceases to be enforceable”.

No obligation or right arises from a void contract. They are not covered by the law.

Such contracts cannot be made valid by the parties to the contract by giving their consent.

- If consent to a contract is caused by mistake, the agreement is void as provided in Section 20 of the Act. If the parties to a contract are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

# Types of Contract on the basis of its enforcement

**Sections 24-30** of the Act deals with void agreements. The following types of Agreements are declared to be void:

- Agreements unlawful in part(S. 24)
- Agreements without consideration(S. 25)
- Agreements in restraint of marriage(S. 26)
- Agreements in restraint of trade(S.27)
- Agreements in restraint of legal proceedings(S. 28)
- Unmeaning agreements(S. 29)
- Wagering agreements(S. 30)

# Types of Contract on the basis of its enforcement

Section 24: Section 24 comes into play when a part of the consideration for an object or more than one objects of an agreement is unlawful. The whole of the agreement would be void unless the unlawful portion can be severed without damaging the lawful portion.

Every agreement in restraint of marriage of any person, other than minor is void. It is immaterial whether the restraint is general or partial.

Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. There is no distinction between total restraint and partial restraint of trade.

# Types of Contract on the basis of its enforcement

Section 28: Section 28 of the Act renders two kinds of agreement void. They are:

- ❑ An agreement by which a party is restrained absolutely from enforcing his rights arising under a contract by the usual legal proceedings in the ordinary tribunals.
- ❑ An agreement which limits the time within which the contract rights may be enforced.

(D) Unenforceable Contract: It is one which is good in substance, but because of some technical defect, one or both parties cannot be sued on it. These defect may be the absence of writing, registration, time-barred by the law of limitation, etc.

# Types of Contract on the basis of its enforcement

## (E) Illegal/unlawful Contract

Section 23 of the Act describes certain conditions when an agreement may be unlawful or illegal. A distinction has to be made between void contracts and illegal contacts. Agreements whose object or consideration is forbidden by law are called illegal contracts. In the case of void agreements, the law may merely say that if it is made, the courts will not enforce it.



Thus all illegal agreements or contracts are void, but all void agreements are not illegal. In the case of both illegal and void contracts, the similarity is that in either case, the primary agreement is unenforceable. Nothing can be recovered under either kind of agreement and if something has been paid, it cannot be recovered back. Thus a guilty party has no right of action on an illegal contract.

# Types of Contract on the basis of Mode of Creation

**(A) Express Contracts**

**(B) Implied Contracts**

**(C) Quasi-Contract**

# Types of Contract on the basis of Mode of Creation

(A) Express Contracts: The first part of Section 9 of the Indian Contract deals with promises which are expressly made. Contracts arising from expressly made promises are called express contracts.

According to Section 9 “insofar as the proposal or acceptance of any promise is made in words, the promise is said to be express”. Thus contracts entered into between the parties by words, spoken or written, are known as express contracts.

- (B) Implied Contracts: The second part of Section 9 of the Act deals with implied contracts. It says “insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.” Thus contracts entered into between parties by virtue of their conduct are called implied contracts.
- The terms of the agreement are not expressed in written or oral form but are inferred from their conduct.

## 2. Types of Contract on the basis of Mode of Creation

(C) Quasi-Contract: A contract which does not arise by virtue of any agreement between the parties, but due to certain special circumstances, the law recognizes it as a Quasi contract. Such contracts come into existence because of interference from courts in the interest of justice.

There are many several situations in which law, as well as justice, require that a certain person is required to conform to an obligation, although he has neither broken any contract nor committed any tort.

The principle is that there should not be “unjust enrichment” i.e., enrichment of one at the cost of another.

The Indian Contract Act does not define the term Quasi-Contract. It does not mean that the principle behind the same hasn't been recognized. Chapter V of the Act deals with such situations under the heading of “Of Certain Relations Resembling Those Created by Contract.”

# Types of Contract on the basis of Extent of Execution

**(A) Executed Contract**

**(B) Executory Contract**

**(C) Partly Executed or  
Partly Executory  
Contract**

**(D) Unilateral Contract**

**(E) Bilateral Contract**

# Types of Contract on the basis of Extent of Execution

**(A)Executed Contract:** When both the parties have completely performed their respective obligations under the contract, it is said to be executed contract. It means that whatever was the object of the contract has been carried out. In most executed contracts the promises are made and then immediately completed.

The buying of goods and/or services usually falls under this category. There is no confusion about the date of execution of the contract since in most cases it is instantaneous.



**(B) Executory Contract:** An executory contract is one which is one in which one or both parties are still to perform their obligations. Such contracts are future contracts. In such contracts, the consideration is the promise of performance or obligation. In executory contracts, the consideration for the promise made is carried out sometime in the future.

**For example** – Delivery and payment are to be made after 15 days. The contract is executory. Another good example of an executory contract is that of a lease.

# Types of Contract on the basis of Extent of Execution

**(C) Unilateral Contract:** They are one-sided contracts. A unilateral promise is a promise from one side only and intended to induce some action by the other party. The promisee is not bound to act, for he gives no promise from his side. But if he carries out the act desired by the promisor, he can hold the promisor to his promise. His act is simultaneously acceptance of and consideration for the promise. “An act done at the request of the offeror in response to his promise is a consideration, and consideration in its essence is nothing else but the response to such a request.”

**(D) Bilateral Contract:** A bilateral contract is a legally binding contract formed by the exchange of reciprocal promises. Here both parties are outstanding at the time of formation of the contract. In such a case, each party is a promisor and promisee. They are also known as reciprocal contracts because mutuality of obligation is essential for their enforceability. In the case of bilateral contracts, an offer made is accepted in the form of a counter-promise. They are very common in everyday life.

# Contingent Contract

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

## **Essentials features of a contingent contract**

- a. It is a contract to do or not to do something.
- b. This contract is dependent on happening or non-happening of an event.
- c. Such an event is a collateral event, i.e., it is collateral to the contract, i.e., the event must not depend upon the mere will of a party.
- d. The event is uncertain.

## Rules regarding Contingent Contracts (Sec 32-36)

Contract contingent upon	When can it be enforced?	When does it become void?
Happening of an event	When such event has happened.	When the happening of such event becomes impossible.
<b>A makes a contract to buy B's house if A survives C.</b>		
	This contract cannot be enforced by law unless and until C dies in A's lifetime.	A dies before
<b>A contracts to pay B a sum of money when B marries C</b>		
	When B and C marries.	C dies without being married to B. The contract becomes void.
Non- happening of a future event	When the happening of such event becomes impossible.	When such event has happened.
	A contracts to pay B a certain sum of money if a certain ship does not return	

**A contracts to pay B a sum of money when B marries C**

	<b>The ship is sunk. The contract can be enforced when the ship sinks.</b>	<b>When the ship returns.</b>
<b>Happening of an event within a specified time</b>	<b>When such event has happened within the specified time.</b>	<b>When the happening of such event becomes impossible before the expiry of specified time. When such event has not happened</b>

**A promises to pay B a sum of money if a certain ship returns with in a year**

	<b>The contract may be enforced if the ship returns within the year.</b>	<b>The contract becomes void if the ship is burnt within the year.</b>
<b>Non-happening of an event within a fixed time.</b>	<b>When the happening of such event becomes impossible before the expiry of specified time. When such event has not happened within the specified time.</b>	<b>When such event has happened within the specified time.</b>

**A promises to pay B a sum of money if a certain ship does not return within the year.**

	<b>The contract may be enforced if the ship does not return within the year or is burnt within the year.</b>	<b>If ship returns within a year</b>
<b>Future conduct of a living person.</b>	<b>When such person acts in the manner as desired in the contract.</b>	<b>When such person does anything which makes the desired future conduct of such person –</b> a. Impossible; or b. Dependent upon certain contingency.

**A agrees to pay B ` 1,000 if B marries C.**

	<b>B and C married.</b>	<b>C marries D. The marriage of B to C must now be considered impossible although it is possible that D may die and C may afterwards marry B.</b>
<b>impossible events</b>	<b>Such an agreement cannot be enforced since it is void. Whether the impossibility of the event was known to the parties or not is immaterial.</b>	
	<b>A agrees to pay Rs. 1,000 to B if two straight lines should enclose a space. The agreement is void.</b>	

# Performance of Contract

Section 37 to 67 of the Indian Contract Act, 1872 deals with the provisions relating to Performance of Contracts. These provisions are covered below:

## **Obligations of parties to contract:**

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provision of this Act, or of any other law.

This obligation continues even after death of the promisors and before the performance, unless a contrary intention appears from the contract or where it involves the personal skill of the Promisor.

Note: Merger of Rights-Discharge due to merger of rights-Tenant buying a house.



# Types of Contract on the basis of Extent of Execution

**(A) Executed Contract**

**(B) Executory Contract**

**(C) Partly Executed or  
Partly Executory  
Contract**

**(D) Unilateral Contract**

**(E) Bilateral Contract**

# Effect of refusal to accept offer of performance

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:

1. it must be unconditional;
2. it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is been made is able and willing there and then to do the whole of what he is bound by his promise to do;

## Effect of refusal to accept offer of performance..contd

3. if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

Here it should be noted that an offer to one of several joint promises has the same legal consequences as an offer to all of them.

### **Effect of refusal of party to perform promise wholly:**

When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his consent to the continuance of the contract.

## Person by whom promises is to be performed

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor.

In other cases, the promisor or his representative may employ a competent person to perform it.

### **Effect of accepting performance from this person:**

Only the Promisor or his representative or his duly authorized agent can perform the promise.

However, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

## Devolution of joint liabilities

When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, the following persons shall fulfil the promise;

- a. all such persons, during their joint lives, and,
- b. after the death of any of them, his representative jointly with the survivor or survivors, and,
- c. after the death of the last survivor the representatives of all jointly

Any one of joint promisors may be compelled to perform.

When two or more persons make a joint promise, the promisee may, in the absence of express agreements to the contrary, compel any one or more of such joint promisors to perform the whole promise.

## Devolution of joint liabilities.. contd

Each promisor may compel contribution: Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution: If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

*Explanation:* Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

## Effect of release of one joint promisor

Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor, neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

**Devolution of joint rights:** When a person has made a promise to two or more persons jointly, then unless contrary intention appears from the contract, the right to claim performance rests;

- a. as between him and them, with them during their joint lives, and,
- b. after the death of any one of them, with the representative of such deceased person jointly with the survivor or survivors, and,
- c. after the death of the last survivor, with the representatives of all jointly.

## Time for performance of promise, where no application is to be made and no time is specified

Where, by the contract, a promisor is to perform his promise without application by the promisee, and where no time for performance is specified, the engagement must be performed within a reasonable time. *Explanation:* The question “what is a reasonable time” is, in each particular case, a question of fact. Time and place for performance of promise, where time is specified and no application to be made

When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without the application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.



# Application for performance on certain day to be at proper time and place

When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for the performance at a proper place within the usual hours of business. *Explanation:* The question “what is proper time and place” is, in each particular case, a question of fact.

**Place for the performance of promise, where no application to be made and no place fixed for performance** When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such a place.

# Performance in manner or at time prescribed or sanctioned by promise

The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

**Promisor not bound to perform, unless reciprocal promisee ready and willing to perform**

When a contract consists of reciprocal promises to be simultaneously performed, the promisor need not perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

# Order of performance of reciprocal promises

- Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order, and where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of transaction requires.

## Liability of party preventing event on which contract is to take effect

When a contract contains reciprocal promises and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

- **Effect of default as to the promise which should be performed, in contract consisting of reciprocal Promises:**
- When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

## Effect of failure to perform at fixed time, in contract in which time is essential

When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before a specified time and fails to do such thing at or before a specified time, and fails to do such thing at or before a specified time, the contract or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract.

**1. Effect of such failure when time is not essential :** If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

# Effect of failure to perform at fixed time, in contract in which time is essential

## **2. Effect of acceptance of performance at time other than agreed**

**upon:** If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agree, the promisee cannot claim compensation of any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he give notice to the promisor of his intention to do so.



# Agreement to do an impossible Act

An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful. Where one person has promised to do something which he knew or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

# Reciprocal promise to do things legal, and also other things illegal

Where persons reciprocally promise, firstly to do certain things which are legal, and, secondly under specified circumstances, to do certain other things which are illegal, the first set of promise is a contract, but the second is a void agreement.

## Alternative promise, one branch being illegal

In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

## Application of payment where debt to be discharged is indicated

Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment if accepted, must be applied accordingly.

## Application of payment where debt to be discharged is not indicated

Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits.

## Application of payment where neither party appropriates

Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionally.

## Effect of novation, rescission, and alteration of contract

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Exception: Surrender

## Promise may dispense with or remit performance of promise

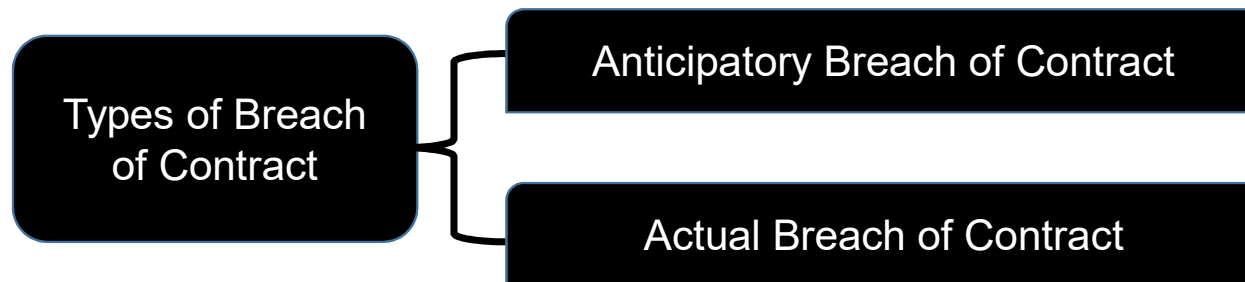
Every promise may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

## Consequence of rescission of voidable contract

When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract restore such benefit, so far as may be, to the person from whom it was received.

# Breach of Contract

**Section 64:** If one of the parties to a contract refuses or fails to carry out agreed obligation, the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.



Anticipatory Breach of contract:

1. When a party refuses to perform the contract before the time fixed for its performance
2. When a party by his own act disables himself from performing the contract in its entirety e.g. A contracts to sell car to B. Before the agreed date, A sells car to C.

# Anticipatory Breach of Contract

There may exist two situations for promise:

1. Promisee may put an end to the contract and treat anticipatory breach as actual breach of contract.
2. Promisee may wait till due date.

Consequences:

1. Promisee is excused from his performance.
2. He need not wait till due date of performance before suing the promisor for breach of contract.
3. Amount of damages= Price on date of refusal to perform (–) Contract price
4. Promisee may elect to keep the contract alive till the date of performance.

# Anticipatory Breach of Contract

## Consequences:

1. If promisor elects to perform on due date, promisee is bound to accept the performance.
2. If during the time the contract remains open and some event happens which discharges the contract by supervening impossibility or illegality, the contract will become void. Promisor will be discharged from his liability. Promisee will have no right of action against the promisor.
3. Amount of damage = Price prevailing on the date of performance (–) Contract Price



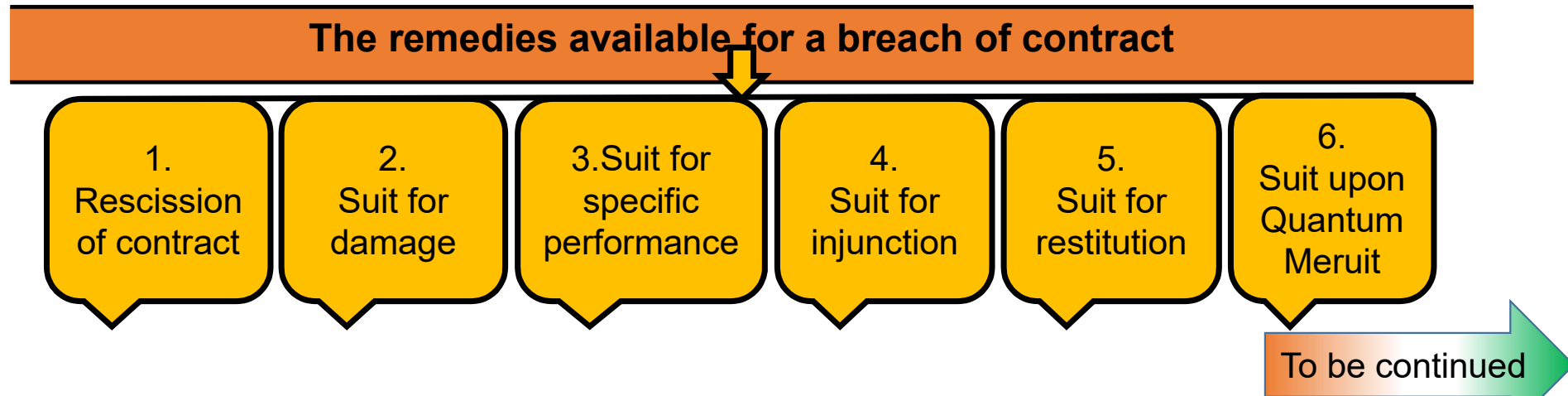
# Actual Breach of Contract

1. It is a case of refusal to perform the promise on the scheduled date or during the performance.
2. The parties to a lawful contract are bound to perform their respective promises.
3. But when one of the parties breaks the contract by refusing to perform his promise, he is said to have committed a breach.
4. In that case, the other party to the contract obtains a right of action against the one who has refused to perform his promise.

E.g.: On May 1, a seller S contracts to deliver chairs to railway company in instalment. After few instalments, the delivery was stopped. This is actual breach of contract during performance by S and B can claim damages for breach.

# Effect of Actual Breach

- I. When one party commits breach of contract, the aggrieved party can rescind the contract and can sue for damages.
- II. When time is the essence of contract, the aggrieved party can rescind the contract and can claim damages.
- III. When time is not the essence of contract, the aggrieved party cannot rescind the contract, but he can claim damages caused by delayed performance.



# Rescission of contract

- i. It means a right not to perform the contract.
- ii. When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance.
- iii. In such a case, he is absolved or discharged from all his obligations under the contract and is entitled to compensation for any damages that he might have suffered. E.g.: A promises B to deliver 50 bags of cement on a certain day. B agrees to pay the amount on receipt of the goods. A failed to deliver the cement on the appointed day. B is discharged from his liability to pay the price.

# Damages may be awarded in case of Breach of Contract under the Law of Contract

- i. Damages may be defined as monetary compensation in respect of loss suffered as a result of breach.
- ii. Breach of contract entitles the injured party to file a suit for damages, which are the monetary compensation awarded to a person by the court.

Section 73: Purpose of the law to award damages is:

- i. To put the aggrieved party in the same financial position he would have, had the contract been performed.
- ii. not to punish a defaulting party but by his wrongful act, as the other party has suffered loss, the Court will compel the party in breach to compensate the loss by paying damages to the other party.

# Types of Damages

- 1. Compensatory damages:** These damages are compensatory in nature. These damages are not allotted to punish the party who has breached the contract.
- 2. General damages / Liability for ordinary damages:**
  - i. These damages arise in the ordinary course of events from the breach of contract.
  - ii. These damages constitute the direct loss suffered by the injured party.
  - iii. These damages are the natural outcome of breach of contract.
  - iv. The measure of ordinary damages is the difference between the contract price and the market price on the date of the breach.

# Types of Damages

## **General damages / Liability for ordinary damages:**

E.g.: If the subject matter of the contract is the sale of a car and the contract is breached by the buyer, the seller has incurred damages by not collecting the purchase price. If seller breaches, buyer has sustained damages by not getting the car.

Thus general damages are related to the direct consequences and not to the indirect losses or consequences of the breach of contract.

## **3. Special damages / Liability for special damages:**

- i. Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach, but also for special damages.

## Types of Damages

- ii. Such damages are awarded by the court only when, at the time of making the contract, these special circumstances were communicated to the defaulted party.
- iii. A compensation can also be claimed for any loss or damage which the party knew when they entered into the contract, as likely to result from the breach. That is to say, special damage can be claimed only on a previous notice

Example: A contracted with B to buy 1000 tons of Iron @ Rs.80 per ton, and told him that he needs it by June 5 to deliver it to Z to make a profit out of it. B fails to deliver the same by June 5 and A claims loss of profits from B amounting to Rs.20,000 (which he would have earned by selling 1000 tons of Iron @ Rs.100 per ton to Z).

Here B is liable to pay these damages to A3

# Types of Damages

## 4. Nominal damages

- i. Sometimes, a person brings a legal action for breach of contract and proves that breach has actually occurred but he has not in fact suffered any real damage and fails to prove that any actual damages have been suffered. In such a situation, injured party is awarded nominal damages.
- ii. Such damages are awarded simply to recognize the right of the injured party to claim damages, and are of very small amount. It is awarded just to establish the right to decree for the breach of contract. The amount may be a rupee or even 10 paisa. Example: A contracted to purchase 'LML Scooter' from B, a dealer, for Rs.25,000. But A failed to purchase the Scooter. However, B could sell the Scooter to Z for Rs.25,000 i.e. without any loss or profit. Here if B makes a claim upon A for breach of contract, he will be entitled to nominal damages only.



# Types of Damages

## **5. Liquidated damages and penalty:**

- i. Sometimes the contracting parties may agree to pay certain sum of money in case of breach of contract by either party.
- ii. The sum so specified is the maximum amount aggrieved party can claim as compensation subject to discretion of Court.
- iii. It is not necessary to prove that actual damages have been caused or not.
- iv. It may be termed as either 'liquidated damages' or 'penalty' depending upon the purpose to fix the sum.
- v. At the time contract is entered into, it appears that if contract is breached, damage will occur. But amount of damage is uncertain. Parties agree upon the amount that will be paid by defaulting party to other.

# Types of Damages

## 5. Liquidated damages and penalty:

- vi. If sum so specified is reasonable and fair pre-estimate of damage likely to result due to breach, it is called “**Liquidated** damages.”
- vii. If sum so specified is extravagant and unconscionable as compared to the greatest possible loss conceivable then it is “penalty.
- viii. The purpose of fixing a sum as ‘liquidated damages’ is to compensate the injured party for the loss to be incurred by the breach of the other party. Thus it is an estimate of the loss to be caused by non-performance of the contract.
- ix. The purpose of providing a ‘penalty’ in a contract is to discourage a party from breaching it and to provide a special punishment if the contract is breached any way. Thus it is a sum which has no relation to the probable loss.

## Types of Damages

**5. Liquidated damages and penalty:** But the sum named in the contract is not awarded as damages. It is left to the court to ascertain the actual loss. However it does not exceed the sum named in the contract.

The courts in India allow only reasonable compensation not exceeding the specified sum (Sec. 74). Penalty is also allowed in appropriate circumstances.

Under English law, liquidated damages are enforceable but not penalty.

Example: A agreed to sell his house to B for Rs.1,05,000. It is further provided that on the breach of contract, the defaulting party will pay Rs.10,000 as damages to the other. B has broken the contract and A resold the house for Rs.1,04,000. A sued B and claimed Rs.10,000. It was held that A cannot recover Rs.10,000 as liquidated damages or penalty. He could only get the actual loss suffered by him i.e. Rs.1000.

# Types of Damages

## 5. Liquidated damages and penalty:

**Exception:** The whole amount mentioned in bond is payable if bond is executed for bail bonds.

<b>Stipulation for interest: (Sec74)</b>		
<b>Interest rate</b>	<b>Period for which it is to be paid</b>	<b>Liquidated damages/ penalty</b>
<b>Reasonable</b>	<b>Default period</b>	<b>Liquidated Damages</b>
<b>Abnormally high</b>	<b>Rate increased from the date of default</b>	<b>Penalty</b>
<b>High</b>	<b>From the date of bond and not from date of default</b>	<b>Penalty</b>
<b>Reasonable</b>	<b>Reduced if paid interest regularly</b>	<b>Penalty</b>
<b>High</b>	<b>From the date of default</b>	<b>Penalty</b>
<b>Compound Interest (Interest on interest)</b>		

To be continued

# Types of Damages

## 5. Liquidated damages and penalty:

<b>Stipulation for interest: (Sec74)</b>		
<b>At the same rate as simple interest</b>	<ul style="list-style-type: none"><li>• A stipulation in a bond for payment of compound interest on failure to pay simple interest at the same rate as payable upon the principal is not a penalty.</li></ul>	
<b>At the rate higher than simple interest</b>	<ul style="list-style-type: none"><li>• A stipulation in a bond for payment of compound interest at a rate higher than that of simple interest is a penalty and relief will be granted against it.</li></ul>	
<b>Payment of interest at a lower rate if interest is paid on due date:</b>	<ul style="list-style-type: none"><li>• Where a bond provides for payment of interest say, at 24% p.a., with a provision that if the debtor pays interest punctually at the end of every year, the creditor would accept interest at a lower rate say 18% p.a. Such a clause is not in the nature of penalty.</li></ul>	

To be continued

# Types of Damages

## **6. Vindictive or exemplary damages:**

- i. Sometimes breach of contract by one party not only results in monetary loss to the injured party but also cause him to suffer mental agony/emotional trauma or hurt his respect.
- ii. In such cases monetary compensation alone cannot provide an appropriate remedy to the sufferings of the injured party.
- iii. Thus the need for vindictive damages arises.
- iv. Vindictive damages are awarded as a punishment to the wrong doer. Such damages are unusual and quite heavy in amount. The concept is borrowed from the English Law. Generally speaking, these damages are not awarded in the ordinary course of breach of contract.

# Types of Damages

However, in the following two kinds of contracts Indian courts award vindictive damages /

These damages may be awarded only in two cases, viz

- i. for breach of promise to marry; and
- ii. wrongful dishonor by a banker of his customer's cheque:
  - a. Breach of promise to marry: In this case the amount of damages will depend upon the extent of injury to the party's feelings
  - b. Wrongful dishonor by a banker of his customer's cheque: Where a banker refuses to honor the cheque of a customer while having sufficient funds in the account and the customer thereby suffers loss of reputation. The amount of damages recoverable by the drawer of cheque from his banker in case of wrongful dishonor of his cheque may be quite heavy, depending upon the loss of credit and reputation suffered on that account in case of trader, lower the amount higher will be the damage.

# Types of Damages

## **7. Damages for deterioration caused by delay:**

- i. In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice.
- ii. The word 'deterioration' not only implies physical damages to the goods but it may also mean loss of special opportunity for sale.

Wilson's case: "A" bought velvet to make caps to be sold in spring season. But delivery was delayed in transit. It arrived after season.

Damage for deterioration = fall in value of velvet + loss of opportunity to sale.



# Types of Damages

## 8. Remote or indirect damages:

- i. The remote or indirect damages are not due to natural and probable consequences of the breach of the contract, i.e., these are the damages which arise indirectly from the breach.
- ii. These damages are not in contemplation of the parties at the time of making the contract, and are not recoverable. No compensation is payable for any remote or indirect loss.
- iii. Sometimes, damages are awarded for inconvenience and discomfort e.g. in flights— for delay or inconvenience to passenger.

# How to Calculate the Damages

- i. Under a contract for the sale of goods, the measure of damages, when the buyer breaks the contract, is the difference between the contract price and the market price at the date of breach.
- ii. If the contract is broken by the seller, the buyer is entitled to recover from the seller the difference between the market price and the contract price at the date of breach.
- iii. duty to mitigate the loss: The party who suffers in consequence of the breach of contract must take all reasonable steps to mitigate the loss/minimize the loss from such a breach. He cannot claim as damages any loss which he has suffered due to his own negligence.

# How to Calculate the Damages

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# Suit for Specific Performance

**No substitute in the  
market**

**Money not an  
adequate  
compensation**

**????**

# Quantum meruit and Restitution

## Quantum Meruit:

- i. The phrase 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done".
- ii. When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract.
- iii. He may also recover the value of the work done where the further performance of the contract becomes impossible.
- iv. The claim on quantum meruit must be brought by a party who is not at default. However, in certain cases, the party in default may also sue for the work done if the contract is divisible.

# Quantum meruit and Restitution

Following are the cases in which a claim or quantum meruit may arise:

- a. Where an agreement is discovered to be void: Where the work has been done and accepted under a contract which is subsequently discovered to be void, in such a case, the person who has performed the part of the contract is entitled to recover the amount for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party.
- b. Where something is done or delivered without intention to do gratuitously: Where a person does some act or delivers something to another person with the intention of receiving payments for the same (i.e. non-gratuitous act), in such a case, the other person is bound to make payment if he accepts such services or goods, or enjoys their benefit.

# Quantum meruit and Restitution

C. Where the contract is divisible: The compensation for the work done may be recovered on the basis of quantum meruit, where the contract is divisible and a party performs part of the contract and refuses to perform the remaining part. In such a case, the party in default may sue the other party who has enjoyed the benefits of the part performance.

Examples:

1. X wrongfully revoked Y's (his agent) authority before Y could complete his duties. Held, Y could recover, as a quantum meruit, for the work he had done and the expenses he had incurred in the course of his duties as an agent.
2. A agrees to deliver 100 bales of cottons to B at a price of Rs. 100 per bale. The cotton bales were to be delivered in two installments of 50 each. A delivered the first instalment but failed to supply the second. B must pay for 50 bags.

# Restitution

The term 'restitution' may be defined as an act of restoring back to the rightful owner, that which has been taken away or lost.

## **Generalizations based upon the doctrine of 'Quantum meruit' & 'Restitution':**

Considering the doctrine of 'Quantum Meruit' and 'Restitution' under different circumstances, following generalizations can be made:

**Breach of contract:** When there is a breach of contract, not only the injured party, but the defaulting party is also entitled to claim reasonable compensation for what he has done under the contract.



# Restitution

**Suit by a party who has not breached:** When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract.

Example: P was engaged by C to write a book to be published by installments in a weekly magazine owned by C. After a few installments were published, the magazine was abandoned. The court held that P could recover for the installments already published on the basis of Quantum Meruit.

**Void contract:** ‘When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, to the person from whom he received it.’”

# Restitution

**No contract: Sec. 70** of the Contract Act says that when services are rendered or goods are supplied to a person without any intention to do so gratuitously, and benefit of the same is enjoyed by the other person, the latter must compensate the former. This compensation may be by way of 'Quantum Meruit' or 'Restitution' or both.

Example : A doctor provides emergency medical attention to someone who is unconscious. There is no express contract at all. But doctor would be able to recover in quasi-contract, a reasonable value of his services. The essence of a legal action based on quasi contract and the remedy of 'Quantum Meruit' and 'Restitution' is to prevent the enrichment of one party at the cost of the other.

## Stipulation for interest: (Sec74)

Basis of distinction	ordinary damages	Liquidated damages
meaning	Ordinary damages means the damages which are fairly and reasonably considered as arising naturally from breach of a contract.	Liquidated damages are the amount of fair and genuine pre-estimate of probable damages which are likely to result from breach of a contract
nature of loss	Ordinary damages arise only on actual breach of contract.	Liquidated damages are the amount of probable loss in the opinion of the parties that may result from the breach of contract.
Time of calculation	These are calculated only when actual damages are suffered	It is calculated before actual damages are suffered
Amount	These are actual amount of damages which injured party is entitled to claim.	These are estimated maximum amount of damages with in which actual damages may be claimed.

**Obligation of person who has received advantage under void agreement, or contract that becomes void:**

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore, it, or to make compensation for it, to the person from whom he received it.

**Mode of communicating or revoking rescission of voidable contract:**

The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to some rules, as apply to the communication or revocation of the proposal.

**Effect of neglect or promise to afford promisor reasonable facilities for performance:**

If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to non-performance caused thereby.

## Section (124 to 127)

- ❖ A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person is called as **Contract of indemnity**
- ❖ The person who promises to make good the loss is called the **Indemnifier**
- ❖ The person whose loss is to be made good is called the **Indemnified**
- ❖ The liability of the indemnifier to the indemnified is **Primary and independent**
- ❖ A contract of indemnity may be called as **Contingent contracts**
- ❖ In the contract of indemnity there is **One contract**
- ❖ A contract to perform the promise, or to discharge the liability of a third person in case of his default is called as **Contract of guarantee**
- ❖ In a contract of guarantee there are **Three parties**
- ❖ In a contract of indemnity there are **Two parties**
- ❖ The persons who given the guarantee is called **Surety**

Contract of Indemnity

Promise to save the loss

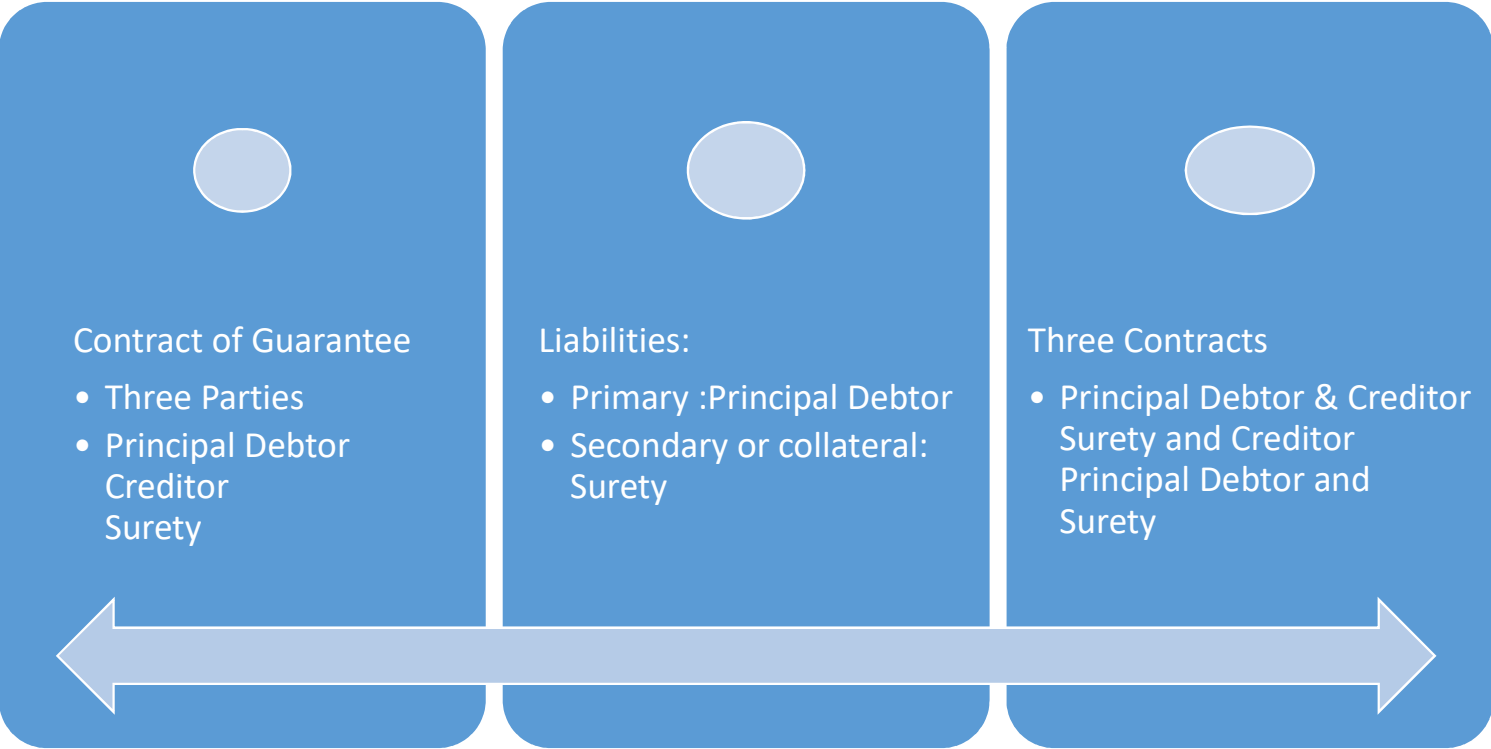
Loss may be  
caused by

Conduct of  
Promisor

Conduct of any other  
person

Indemnifier :  
promises to make  
good the loss

Indemnified :  
His loss is to be  
made good



- ❖ In a contract of guarantee, the liability of the surety to the creditor is **Secondary or Collateral**
- ❖ In the contract of guarantee there are **Three contracts**
- ❖ The person in respect of whose default the guarantee is given is called **The principal debtor**
- ❖ The person to whom the guarantee is given is called **The creditor**
- ❖ **At the request of the debtor** the surety should give the guarantee
- ❖ A surety on discharging the debt due by the principal debtor steps into the shoes of the **Creditor**
- ❖ Anything done or any promise made for the benefit of the principal may be **Sufficient consideration** to the surety for giving guarantee
- ❖ The liability of the surety is co-extensive with that of **The principal debtor** unless it is otherwise provided by the contract
- ❖ A guarantee which extends to a series of transactions is called **Continuing guarantee**
- ❖ When can a continuing guarantee be revoked by the surety:
  - It can be revoked by the surety at any time as to future transactions by notice to the creditor
- ❖ A surety has the rights against the **creditor, principal debtor, co-sureties**
- ❖ A continuing guaranteed can be revoked **By notice to the creditors, death of the**



Discharge of Surety

Variation in terms  
without his  
knowledge

Release of Principal  
Debtor

Release by Contract

Release by act or  
omission of the  
creditor

No discharge if surety  
assents or release of  
one surety in case of  
co-sureties

## Surety & notation

- ❖ Where the terms of the contract between the principal debtor and the creditor are changed /varied without the consent of the surety It will discharge the surety as to transactions subsequent to the variance
- ❖ The surety stands discharged in the following cases:
  - There is a contract between the creditor and the principal debtor to release the principal debtor
  - By any act or omission of the creditor, the legal consequences of which is the discharge of the principal debtor
  - If by virtue of a contract between the creditor and the principal debtor, the creditor makes a composition with or promises to give time to or not sue the principal debtor. However It will not discharge the surety, in case the surety has assented to such transactions
- ❖ Y owes to Z debt guaranteed by X. The debt becomes payable. Z does not sue Y for a year after the debt has become payable. Whether the surety X is discharged
  - No he is not discharged
- ❖ Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other co-sureties

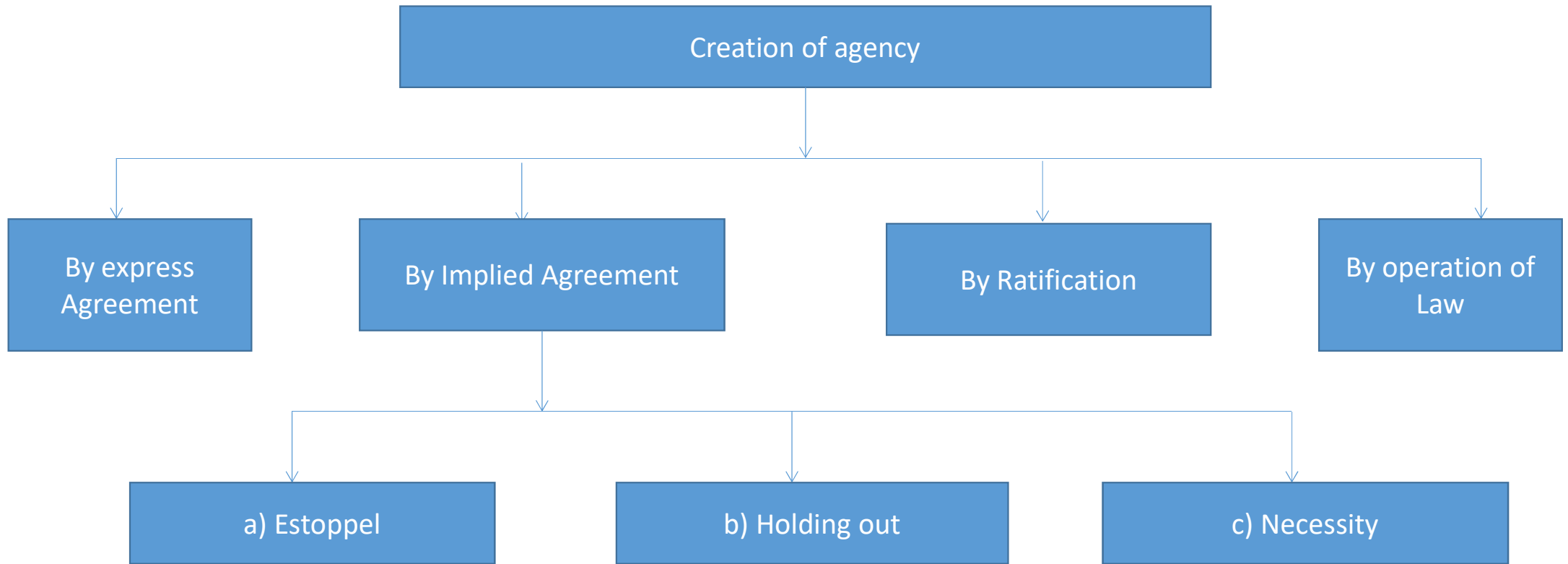
❖ If the creditor does any act which is inconsistent with the rights of the surety or omits to do any act which his duty to the surety requires him to do and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged

# Sections Bailment and Pledge (148 to 181)

- ❖ A delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them, is called as **bailment**.
- ❖ The person delivering the goods is called **Bailor**
- ❖ Bailee means the person to whom they are delivered
- ❖ A bailment necessarily involves delivery of possession of goods by bailor to Bailee. However the delivery of possession may be **Actual, constructive, symbolic**
- ❖ If the goods have some faults, the bailor is bound to disclose the faults, if he is aware about it
- ❖ A contract of bailment is voidable at the options of the bailor if the Bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment

A right to retain any property belonging to other party in respect of any payment lawfully due, provided the property is in the possession of the person exercising the right is General Lien

- ❖ A right to retain a particular goods until the payment for services rendered is received is called **Particular lien**
- ❖ In the absence of the contract to the contrary, the bankers have the **General lien**
- ❖ The bailment of goods as security for payment of a debt or performance of a promise is called **Pledge**
- ❖ The pawnee may retain the goods pledged for **Payment of the debt, Performance of the promise and interest of the debt**
- ❖ If the pawnor (Say A) has obtained possession of the goods pledged by him under a contract voidable (Between A and B) under section 19 or section 19A, but the



# Contract of Agency (Section 182)

Agent: An **agent** is a person employed

- i. to do any act for other or
- ii. to represent another in the dealings with the third persons.

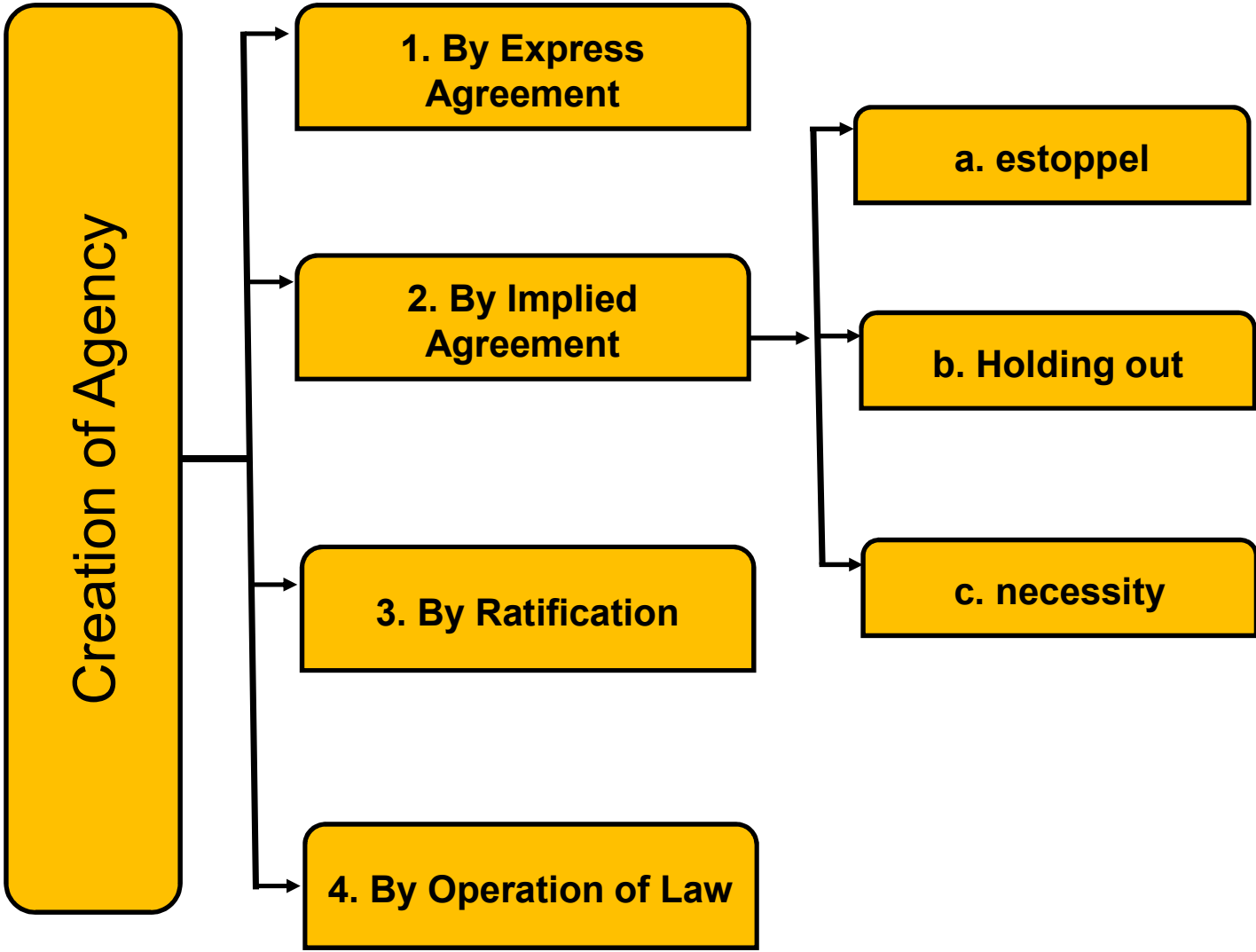
The person for whom such act is done, or who is so represented, is called “**principal**”.

The function of an agent is essentially to bring about contractual relationship between the principal and third parties.

Test of Agency:

Where a person has the capacity to –

- i. Create contractual relations between the principal and a third party;
- ii. Bind the principal by his own acts,





# Essentials of relationship of Agency

## **Agreement**

- i. Agency depends on agreement but not necessarily on contract.
- ii. It may arise out of an agreement which does not amount to a contract because one of the parties may lack contractual capacity, or there may be no consideration.

## **1. Principal is liable for the acts of agent**

- i. The principal is liable for all the acts of an agent which are lawful and within the scope of agent's authority.
- ii. The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself.

Who may be an Agent?

Any person may employ an agent if:

- i. He is of the age of majority; and He is of sound mind.

# Essentials of relationship of Agency

Who can be an agent?

- i. As between the principal and the third persons, any person may become an agent. (Sec. 184)
- ii. This leads to conclude that an agent may be a person who is not competent to the contract.
- iii. The principal is liable for the acts of such an agent;
- iv. Capacity to contract is not essential to enable a person to act as an agent.

Liability of Agent:

- i. Generally an agent is liable to the principal
- ii. An agent is not liable to the principal if he is a minor or is of unsound mind.

Requirement of consideration

- i. No consideration is necessary to create an agency (Sec. 185).
- ii. The fact that the principal has agreed to be represented by the agent is a sufficient 'detriment' to the principal to support the contract of agency.

# Essentials of relationship of Agency

## **Kinds of Agents**

### **1. Mercantile Agents**

- i. One who is authorized to sell goods or consign goods for the purpose of sale or to buy goods or to raise money on the security of goods.
- ii. Includes Banker, Factor, Auctioneer, Broker, Commission Agent, & Del Credere Agent

### **2. non – mercantile Agents**

Not engaged in business of selling or buying goods, but act in their respective professional capacities. i.e. render professional services for their Principal and Includes Solicitors, Attorneys, C & F Agents, Insurance Agents, etc.

# Rights and Liabilities of the agent, the Principal and third parties

## 1. Position of Principal

The principal is bound by all the acts of the agent done within the scope of his actual authority (Sec. 238).

## 2. Position of an agent

- i. When an act is done by the agent, in the course of his employment as an agent and within the scope of his authority, the agent is liable neither to the principal nor to the third parties.
- ii. He has a right to claim remuneration from the principal in respects of such acts.
  - a. Where the agent acts for unnamed principal:
    - i. Where the agent discloses that he is acting for an unnamed principal, In such a case, the agent is not personally liable on the contracts entered into by him with the third parties, unless there is trade custom to the contrary.

# Rights and Liabilities of the agent, the Principal and third parties

ii. It is however essential that the unnamed principal exists when the agent enters into a contract with third party.

b. When the agent acts for an undisclosed principal:

i. Sometimes, an agent enters into a contract with third person without disclosing at all the fact of agency.

ii. He not only conceals the name of the principal but also the fact that he is an agent.

iii. This gives rise to the doctrine of undisclosed principal.

iv. The agent in such a case gives impression to the third party as if he is contracting in an independent capacity.

# Rights and Liabilities of the agent, the Principal and third parties

3. Position of third parties :As regards third parties, they can enforce the rights arising out of the contract entered into by the agent on the behalf of the principal only against the principal provided the agent:
- i. Acted within the scope of his authority
  - ii. Did not incur any personal liability
  - iii. Disclosed the facts of agency to the third parties.

**Sub-Agent:** “A sub-agent is a person employed by, and acting under the control of the original agent in the business of the agency” (Sec. 191)

Section 190: General Rule: “An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally unless by the ordinary custom of trade a sub agent may, or from the nature of the agency, a sub-agent must, be employed.”

# Rights and Liabilities of the agent, the Principal and third parties

**Exceptions: There are exceptions to the general rule as laid down in Sec. 190:**

- i. The custom of the trade may permit the appointment of a sub-agent.
- ii. The nature of the agency may be such that a sub agent may be necessary.
- iii. Where the principal is aware of the intention of the agent to delegate his authority but does not object to it.
- iv. Where the unforeseen emergencies arise rendering the appointment of the sub-agent necessary.
- v. Where the act to be done is purely ministerial not involving the confidence or discretion.
- vi. Where the power of the agent to delegate can be inferred from the conduct of both the principal and the agent.
- vii. Where the principal permits appointment of a sub-agent.

# Relationship between the Principal and Sub-Agent

The legal relation between the principal and the sub-agent depends upon this critical question, i.e. whether the appointment of the sub-agent is proper or improper.

## **1. Where the appointment of sub-agent is proper**

- i. Where a sub-agent is properly appointed, the principal is bound by the acts of the sub-agent as if he was an agent originally appointed by the principal.
- ii. The agent is responsible to the principal for the acts of the sub-agent.
- iii. The sub-agent is responsible for his acts to the agent, but not to the principal except in the case of fraud or willful neglect. (Sec. 192.)

## **2. Where the appointment is improper.**

- i. Where an agent, without having authority to do so, has appointed a sub agent, the agent is responsible for the acts of the sub-agent to the principal and the third parties.
- ii. The principal in such case, is not represented by or responsible for the acts of the sub-agent, nor is the sub-agent responsible to the principal. (Sec. 193)



## 2. Where the appointment is improper.

- i. Where an agent, without having authority to do so, has appointed a sub agent, the agent is responsible for the acts of the sub-agent to the principal and the third parties.
- ii. The principal in such case, is not represented by or responsible for the acts of the sub-agent, nor is the sub-agent responsible to the principal. (Sec. 193)

**Substituted Agent:** A substituted agent is a person who is named by the agent holding an express or implied authority from the principal, to act for the principal. in other words, he is the agent of the principal though he is named, at the request of the principal, by the agent. (Sec. 194)

**example:** A directs B, his solicitor, to sell his estate by auction and employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub agent, but is A's agent for the conduct of sale.

# Personal Liability of an Agent

The general rule is that only the principal can enforce and can be held liable on a contract entered into by the agent except where there is a contract to the contrary. (Sec. 230)

An agent is personally liable in the following cases:

1. When the contract expressly provides. A person while entering into a contract with the agent may expressly stipulate that he would hold the agent personally liable in the case of the breach of the contract.
2. When the agent acts for foreign principal. When the contract is made by an agent for the sale or the purchase the goods for a merchant residing abroad, the agent will be personally liable. (Sec. 230)
3. When the agent acts for a concealed principal. Where an agent acts for a concealed principal, he would be personally liable, though the principal, on being discovered by the third person, will also be liable.

# Personal Liability of an Agent

4. Where the agent acts for the principal who cannot be sued. Where the principal is incompetent to enter into a valid contract, e.g. where a principal is minor, the agent will be personally liable as the credit shall be presumed to have been given to the agent and not to the principal.
5. Where an agent acts for a principal not in existence. The promoters of a company (yet to be incorporated) sometimes enter contracts on the behalf of the company, though in such a case the alleged principal (the company) has no legal existence till the time of incorporation. In such case the agent is held to have contracted on his own account.
6. Where an agent is liable for the breach of the warranty. Where an agent professes to act as an agent but has no authority from the alleged principal or exceeds his authority, he is personally liable for the breach of the warranty.
7. Where the agent signs a contract in his own name in that case he is personally liable for the contract.

# Personal Liability of an Agent

8. Where the agent receives or pays money by mistake or fraud. Where an agent receives from, or pays money to, a third party by mistake or fraud, he will be personally liable to the third party.
9. Where the authority of the agent coupled with interest. Where an agent has an interest in the subject matter of the contract entered into by him with a third party, his authority is coupled with the interest. He has, in such case, the right to sue or be sued, but only to the extent of his interest.
10. Where the trade usage or custom makes agent personally liable. Where there is a trade usage or custom making the agent personally liable, he will be so liable unless there is a contract to the contrary.
11. Where an agent signs the negotiable instrument in his own name without mentioning that he is signing as an agent.
12. Where the agent acts for the pretended principal and that principal refuses to ratify the agents' act.

# Agency Coupled with interest

- i. When an agency is created for securing certain benefits to the agent over and above his remuneration as an agent, it is called as agency coupled with interest.
- ii. The interest should exist at the time of creation of the agency.
- iii. The agency coupled with the interest can't be terminated even on the death or the insanity of the principal. Thus such agency is irrevocable up to the extent of such interest.

**Example.** A owes Rs.500 to B and appoints him as his agent to sell his goods and pay him (B) the debt out of the sale proceeds. The authority of B is coupled with interest.

# Irrevocable Agency

When an agency cannot be terminated or put an end to, it is said to be an irrevocable agency in following cases:

## **1. Where the agency is coupled with interest.**

Where an agent has an interest in the subject matter of the contract entered into by him with a third party, his authority is coupled with the interest. He has, in such case, the right to sue or be sued, but only to the extent of his interest. (sec 202)

## **2. Where the agent has incurred a personal liability.**

When an agent incurs personal liability, the agency becomes irrevocable. The principal cannot, in such case, withdraw leaving the agent exposed to the risk or liability he has already incurred.

## **3. Where the agent has partly exercised the authority**

The principal cannot revoke the authority given to his agent after the authority has been partly exercised; so far as regards such acts and obligations as arise from the acts already done in agency.

(Sec. 204)

# Termination

## 1. Termination by act of the parties Agreement:

- i. The relation of the principal and the agent is generally founded on the mutual consent. It may be brought to an end by the same process with the originated it. i.e. by agreement.
- ii. The agency can be terminated at any time and at any stage by the mutual agreement between the principal and the agent.

## Revocation by the principal:

- i. An agency may be terminated by the principal at any time by giving a notice to the agent. (Sec. 203).
- ii. If the agent is appointed to do a single act, the authority may be terminated at any time before the act actually begun, the agency can only be terminated subject to any claim which the agent may have for the breach of the contract. (Sec. 204).

# Termination

- iii. The revocation may be expressed or implied.
- iv. However when the agency is coupled with the interest the principal can't revoke the agency to the extent of such interest.
- v. Moreover if the agent has already partly exercised his authority then also the agency can't be terminated.

## Revocation by agent:

- i. An agency may be terminated by an express renunciation on the part of the agent after giving a reasonable notice to the principal. (Sec. 203).
- ii. Where the agency is for a fixed period, and the agent renounce it without a sufficient cause, he shall have to compensate the principal for any loss.
- iii. Renunciation may be expressed or implied.



# Termination

## 2. Termination by operation of law

**Performance of the contract:** The most obvious mode of putting an end to the agency is to do what agent has undertaken to do (Sec. 201). Where, therefore, the agency is for particular object, it is terminated when the object is accomplished or when the accomplishment of the object becomes impossible.

**expiry of time:** Where the agent is appointed for a fixed period of time, it comes to an end after the expiry of that time even if the work is not completed.

**death:** When the death of the agent or principal takes place, the agency is terminated. When such termination takes place by the death of the principal, the agent must take all responsible steps for the protection of the interests of the principal entrusted to him.

**Insanity:** An agency comes to an end when the principal or agent becomes of unsound mind.  
(Sec. 209)]

**Insolvency:** The insolvency of the principal puts an end to the agency though nothing is mentioned in Sec. 201 as regards insolvency of the agent. The insolvency of the agent, if accepted, also terminates the agency.

**Destruction of the subject matter:** An agency which is created to deal with a certain subject matter will come to an end by the destruction of the subject matter.

**Principal becoming alien enemy:** Where the agent and the principal are aliens the contract of agency is valid so long as the two countries are at peace. If war breaks out between the two countries, the contract of agency is terminated.

**Termination by sub-agent's authority:** The termination of an agent's authority puts an end to the sub-agent's authority also. (Sec. 210)

# Irrevocable Agency

When an agency cannot be terminated or put an end to, it is said to be an irrevocable agency in following cases:

## **Where the agency is coupled with interest:**

Where an agent has an interest in the subject matter of the contract entered into by him with a third party, his authority is coupled with the interest. He has, in such case, the right to sue or be sued, but only to the extent of his interest. (sec 202)

## **Where the agent has incurred a personal liability:**

When an agent incurs personal liability, the agency becomes irrevocable. The principal cannot, in such case, withdraw leaving the agent exposed to the risk or liability he has already incurred.

## **Where the agent has partly exercised the authority:**

The principal cannot revoke the authority given to his agent after the authority has been partly exercised; so far as regards such acts and obligations as arise from the acts already done in agency.(Sec. 204)

# SUMMARY

- ❑ Agreement such as relating to Social matters, domestic arrangements between husband and wife, to do illegal/unlawful/immoral act i.e. smuggling and declared specifically void one not contracts.
- ❑ Pricing of securities offered on preferential basis need not be determined by Registered Valuer in case of listed company.
- ❑ Pricing of securities offered on preferential basis is finally determined by the company on the basis of report of Registered Valuer
- ❑ An Agreement is a promise or a commitment or set of reciprocal promises or commitments. An agreement involves an offer or proposal by one person and acceptance of such offer or proposal by another person.

# SUMMARY

- ❑ All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.
- ❑ When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.
- ❑ A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.
- ❑ The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provision of this Act, or of any other law.

# SUMMARY

- ❑ This obligation continues even after death of the promisors and before the performance, unless a contrary intention appears from the contract or where it involves the personal skill of the Promisor.
- ❑ Section 64: If one of the parties to a contract refuses or fails to carry out agreed obligation, the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.
- ❑ The phrase 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done".

- ❖ A person employed to do any act for another, or to represent another in dealings with third person is called Agent
- ❖ Major may employ agent
- Any person may become an agent between the principal and third person
- Whatever a person can do personally, he can do through an agent
- No consideration is required in contract of agency
- An agent having an authority to do an act has authority to do Lawful thing which is necessary in order to do such act
- In an emergency, an agent has authority to do:
- All such acts for the purpose of protecting his principal from loss
- All such acts which a person of ordinary prudence, in his own case do under similar circumstances
- An agent cannot lawfully employ another to perform act which he has expressly or impliedly undertaken to perform Personally

- ❖ A sub-agent is a person employed by and acting under the control of The original agent
- ❖ When an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is called An agent of the principal for such part of the business of the agency as is entrusted to him
- ❖ Where acts are done by one person on behalf of another, but without his knowledge or authority:
  - He may elect to ratify
  - He may disown such acts
  - After ratification, he will be liable for all the acts done by such person(agent)
  - Ratification of unauthorised act of a person can be ratified by the principal In full
  - An agency may be terminated:
    - By the principal revoking the authority of the agent
    - By the agent renouncing the business of agency

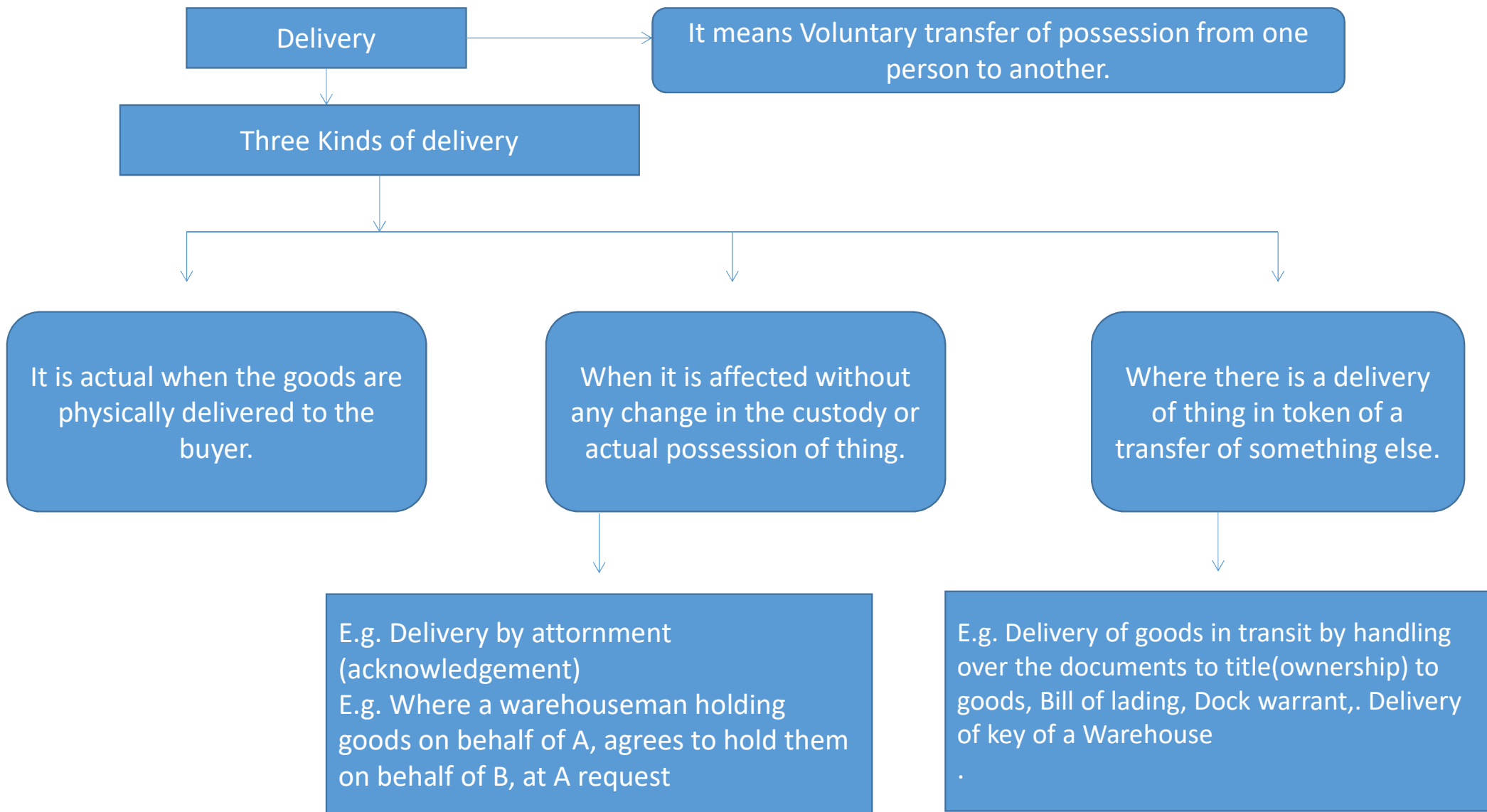


- By the business of the agency being completed
- ❖ What would be the position where the agent becomes a person of unsound mind:
  - The agency will be terminated
- ❖ The principal may revoke the authority given to his agent:
  - At any time before the authority has been exercised so as to bind the principal
- ❖ Partly exercised authority by the agency cannot be revoked
- ❖ The termination of the authority of an agent does not, so far as regards the agent, take effect:
  - Before it becomes known to him
- ❖ Test of determining whether a person is agent of another person or not:
  - If the person has
    - the capacity to bind the principal
    - If the person can make the principal answerable to third person
- ❖ How the agency can be created:

- By express or implied agreement
- By ratification
- By operation of law
- ❖ Duties of an agent:
  - To render proper accounts to his principal on demand
  - To use all reasonable diligence in communicating with his principal and in seeking to obtain his transactions
  - To pay the sums received on behalf of the principal
- ❖ Position where one person employs another to do an act which is criminal:
  - The employer is not liable to indemnify him against the consequences of such criminal act. Say Act of Supari killing.
- ❖ Factor:
  - A factor is a mercantile agent entrusted with the possession of goods for the purpose of selling them

- A factor has a general lien on the goods of his principal for a general balance of account between him and the principal
- A factor has the authority to receive the price and give a good discharge to the purchaser
- An agent who in consideration of an extra commission, guarantees his principal that the persons with whom he enters into contract on behalf of the principal, shall perform their obligations is called as Del cruder agent. Basically he guarantees against realization of amount.

***THE SALE OF GOODS ACT,  
1930***



**Formation. The contract of sale may provide for any of the following methods**

<b>S.No.</b>	<b>Delivery</b>	<b>Payment of price</b>
1	Immediate	Immediate
2	At future date	Immediate
3	Immediate	Future date
4	Future	Future
5.	Installment	Installment

Delivery or payment or both will be made a future date

## Types of Goods

Existing (i) Specific (ii) Ascertained (iii) Unascertained	Future	Contingent Goods
<p><b>Existing Goods</b> Goods which are in existence at the time of contract of sale i.e. those owned &amp; possessed by the seller.</p>	<ul style="list-style-type: none"> <li>• Future goods are those goods, which do not exist at the time of the contract of sale.</li> <li>• Those goods are to be manufactured or acquired by the seller after making of the contract of sale. Say Making an Almirah as per specifications.</li> <li>• Future goods cannot be sold but there can only be an agreement to sell.</li> </ul>	<ul style="list-style-type: none"> <li>• It is a kind of future goods.</li> <li>• It is goods, the acquisition of which is contingent upon the happening or non-happening of an uncertain event.</li> </ul>

<p>Specific goods:</p> <ul style="list-style-type: none"> <li>• Means goods identified &amp; agreed upon at the time when a contract of sale has been made.</li> <li>• The goods must be both identified and agreed upon.</li> </ul>	<p>Future Goods Contd..</p> <p>Example:</p> <p>A, a manufacture agrees to sell 5 tables and 50 chairs to B at Rs. 10,000. B agrees to purchase it. However, tables and chairs are yet to be manufactured by A.</p>	<p>Contingent Goods Contd..</p> <p>Examples:</p> <p>A agrees to sell the goods loaded on the ship “Titanic”, which is coming from London to Bombay. The ship may or may not arrive. So, these goods will be called as contingent goods.</p>
<p><b>Ascertained Goods</b></p> <p>Means goods identified in accordance with the agreement after the contract of sale has been made</p> <ul style="list-style-type: none"> <li>• Identified but not agreed upon</li> </ul> <p><b>“Unascertained” or “Generic” goods:</b></p> <ul style="list-style-type: none"> <li>• Means goods defined only by description.</li> <li>• Neither identified nor agreed upon.</li> </ul>		



Price Means the money consideration for sale of goods 2(10)

The following are the modes of determining price: {Sec 9}

1. Price is specified under the contract

- It is the most common method of determining the price.
- Generally, parties decide the price in advance.

2. Price is not determined under the contract

(i) Method of determining price is specified in the contract.

Example:  
Delivery of rice on 1<sup>st</sup> December 2020 at the rate prevailing on that day.

(ii) Price may be determined in accordance to custom and usage of trade.

This method is applicable if parties regularly trade

(iii) Where the price is not fixed as above, the buyer shall pay the seller a reasonable price

What is a reasonable price is a question of fact and circumstances.

### 3. Fixation of price by third party Section 10

If it is so, contract shall specify name of third party

- If third party fails to specify, contract is void but if goods are delivered to buyer and used by him, he is required to pay reasonable price.
- If the third party is prevented from fixing price, defaulting party is liable for the damages.

## **Distinction Between Condition and Warranty**

<b>CONDITION</b>	<b>WARRANTY</b>
Essential to the main purpose of contract.	Collateral to the main purpose of contract
Aggrieved party can repudiate the contract or claim damages or both in case of breach of condition.	Aggrieved party can claim only damages in case of breach of warranty.
A breach of condition may be treated as breach of warranty	A breach of warranty cannot be treated as breach of condition.

# The Sale Of Goods Act, 1930

- The object :To Define and amend the law relating to the sale of goods
- Before the separate enactment of The Sale Of Goods Act, 1930, it was contained in The Indian Contract Act, 1872
- Came into force on 1<sup>st</sup> day of July, 1930
- **Extends to The whole of India.**
- Distribution of assets on dissolution of the partnership firm among the partners in the ratio as mentioned in the partnership deed does not amount to sale.
- Buyer means a person who buys or agrees to buy goods
- Delivery means Voluntary transfer of possession from one person to another
- The goods are said to be in a deliverable state When they are in such state that the buyer would under the contract be bound to take delivery of them

- The “Documents of title to goods” includes:
  - Bill of lading dock-warrant
  - Warehouse keeper’s certificate
  - Wharfinger’s certificate
- Future goods means goods to be manufactured or produced or acquired by the seller after making of the contract of sale
- Goods may be Existing, Future, Contingent
- Goods mean every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale
- Transfer of immovable property is regulated by The Transfer Of Property Act, 1882

- “Mercantile agent” means an agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods
- “Specific goods” means: Goods identified and agreed upon at the time a contract of sale is made
- Sections (4 to 17)
- A contract of sale of goods is a contract whereby the seller:
  - Transfers or agrees to transfer the property in goods to the buyer at a price . There may be a contract of sale between one part owner and another
  - A contract of sale may be Absolute or Conditional
  - Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called An agreement to sell

- ❖ An agreement to sell becomes a sale:
  - When the time elapses or the conditions are fulfilled subject to be which the property in the goods is to be transferred
- ❖ The contract of sale may provide for:
  - The immediate delivery of the goods
  - The immediate payment of the price
  - The delivery or payment by installments, or that the delivery or payment or both shall be postponed
- ❖ A contract of sale may be made:
  - In writing or by word of mouth
  - Partly in writing and partly by word of mouth
  - It may be implied from the conduct of the parties
- ❖ The goods which form the subject of a contract of sale may be :

- Existing goods
- Owned or possessed by the seller
- Future goods
- ❖ Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as:
  - An agreement to sell the goods
- ❖ Where there is a contract for the sale of specific goods, The contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract
- ❖ Where there is an agreement to sell specific goods, and subsequently the goods perish without any fault on the part of the seller or buyer or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer:
  - The agreement is thereby avoided



- Fixed by the contract itself
- Left to be fixed in an agreed manner
- Determined by the course of dealing between the parties
- ❖ Where the price is not determined by the parties to the contract of sale of goods, the buyer shall pay the seller a reasonable price.
- ❖ Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided
- ❖ Whether the stipulation of time in a contract of sale of goods is essential:
  - Usually time is not of essence in the contract of sale of goods, unless a different intention appears from the contract
- ❖ A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or warranty

- A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated
- A warranty is a stipulation Collateral to the main purpose to the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated
- A breach of condition may be treated as a breach of a warranty. However a breach of warranty may not be treated as breach of condition.
- When the stipulation of condition may be treated as warranty:
- The buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty
- Where a contract of sale is not severable and the buyer has accepted the goods or part thereof

- ❖ The conditions and warranties in a sale of goods may be Express or implied
- ❖ An implied condition on the part of the seller is that, in the case of a sale He has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass
- ❖ There is an implied undertaking in a contract of sale of goods that:
  - The buyer shall have and enjoy quiet possession of the goods
  - The goods shall be free from any charge or encumbrance
- ❖ Where there is a contract for the sale of goods by description, there is an implied condition that:
  - The goods shall correspond with the description
  - If the sale is by sample as well as by description, the goods must correspond both with the sample and with the description

- ❖ **Assumptions in Cases where the buyer wants the goods for a specific purpose :**
- ❖ There is **no implied warranty or condition** as to the quality or fitness for any particular purpose of goods supplied under a contract of sale
- ❖ Where the **buyer makes known to the seller** the particular purpose for which the goods are required, so as to show that the buyer relies on the skill or judgement of the seller, and the goods are of a description which it is in the course of the seller business to supply, there is an implied warranty that the goods shall be reasonably fit for such purpose
- ❖ In the case of a contract for the sale of a specified article under its **patent or other trade name**, there is no implied condition as to its fitness for any particular purpose
- ❖ Where goods are bought by description from a **seller who deals in goods of that description**, there is an implied condition that the goods shall be of merchantable quality

- An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade
- An Express warranty or condition does not negative a warranty or condition implied by this act unless inconsistent there with
- In a case of a contract for sale by sample there is an implied condition:
- That the bulk shall correspond with the sample in quality
- That the buyer shall have a reasonable opportunity of comparing the bulk with the sample
- That the goods shall be free from any defect, rendering them merchantable, which would not be apparent on reasonable examination of the sample

## Sections (18 to 30)

- ❖ Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer in the goods unless and until the goods are ascertained
- ❖ Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer:
  - At such time as the parties to the contract intend it to be transferred
- ❖ Where there is an unconditional contract for the sale of specific goods in deliverable state, the property in the goods passes to the buyer:
  - When the contract is made
- ❖ Where there is a contract for the sale of Specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof
- ❖ Where there is a contract for the sale of specific goods in a Deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof

- ❖ Where there is a contract for the sale of Unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation
- ❖ Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have Unconditionally appropriated the goods to the contract
- ❖ When goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer:
  - When he signifies his approval or acceptance to the seller or does any other act adopting the transactions
  - If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time
  - If no time has been fixed, on the expiration of a reasonable time
- ❖ In a contract of sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. This doctrine is called as Caveat emptor which means Let the buyer beware.

- ❖ Unless otherwise agreed, the goods remain at The seller risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer risk whether delivery has been made or not
- ❖ Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller authority to sell
- ❖ When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of The Indian Contract Act, 1872, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title

## **PERFORMANCE OF THE CONTRACT**

- ❖ It is the duty of the seller to deliver the goods and of the buyer **To accept and**



- A delivery of part of the goods, with an intention of severing it from the whole:
- Does not operate as a delivery of the remainder
- Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery
- Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them Within a reasonable time.
- Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf
- Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller
- Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them

❖ Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may:

- Accept the goods
- Reject the extra goods,
- Reject the whole goods

❖ Where the seller delivers to the buyer the goods he contracted to sell, mixed with goods of a different description not included in the contract, the buyer may:

- Accept the goods which are in accordance with the contract
- Reject the rest of the goods
- Reject the whole of the goods
- Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments
- Where, in pursuance of a contract of sale, the seller is authorised to send the goods to the buyer through a carrier:

- It shall be deemed to be a delivery of the goods to the buyer
- ❖ Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do:
  - He is not bound to return them to the seller
  - He has to intimate to the seller that he refuses to accept them
- ❖ When the seller is ready to deliver the goods and request the buyer to take delivery, and the buyer does not within a reasonable time take delivery of the goods:
  - The buyer is liable to the seller of any loss occasioned by his neglect or refusal to take delivery
  - The buyer is liable for a reasonable charge for the care and custody of the goods

### **Sections (45 to 61)**

- ❖ A seller of goods shall be deemed to be an **“unpaid seller”**
  - When the whole of the price has not been paid or tendered
  - When a bill of exchange or other negotiable instrument has been received as

## ❖ Rights of the unpaid seller

- A **lien** on the goods for the price while he is in possession of them
- In case of the insolvency of the buyer a **right of stopping the goods in transit** after he has parted with the possession of them
- A **right of re-sale** as limited by this act

## ❖ Circumstances when an unpaid seller, who has possession of the goods may exercise lien over the goods:

- Where the goods have been sold without any stipulation as to credit
- Where the goods have been sold on credit, but the term of credit has expired
- Where the buyer becomes insolvent

## ❖ A lien can be exercised by the unpaid seller only:

- When the goods are still in possession of the unpaid seller

## ❖ When the lien exercised by the unpaid seller comes to an end:

- When he delivers the goods to a carrier or other Bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods
- When the buyer or his agent lawfully obtains possession of the goods
- By waiver thereof
- The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods:
  - When a seller can stop the goods in transit:
  - When the buyer of goods becomes insolvent and goods are in transit
  - How stoppage in transit is affected by the unpaid seller:
    - By taking actual possession of the goods
    - By giving notice of his claim to the carrier in whose possession the goods are there.
    - By giving notice of his claim to the other Bailee in whose possession the goods are there.

❖ When a seller can sue the buyer:

- He may sue for the price and interest
- He may ask for the damages for non-acceptance of the goods
- Suit for damages for repudiation of the contract

❖ When a buyer can sue the seller:

- He may initiate suit for delivery of the goods, if not delivered
- He may ask for the specific performance, if this being the part of the contract
- He may initiate for the breach of the warranty

# *The Transfer Of Property Act, 1882*

(Sections 1 to 137)

# The Transfer Of Property Act, 1882 (Sections 1

- The act relating to the transfer of immovable property is called as The Transfer Of Property Act, 1882
- Came into force with effect from First day of July, 1882
- Extends to:-
  - first instance to the whole of India except the territories which, immediately before the 1<sup>st</sup> November, 1956, were comprised in part B states or in the states of Bombay, Punjab and delhi
  - This act or any part thereof may by notification in the official gazette be extended to the whole or any part of the said territories by the state government concerned
  - Any state government may from time to time, by notification in the official gazette, exempt, either retrospectively or prospectively, any part of the territories administered by such state government from all or any of the following provisions, namely section 54, paragraph 2 and sections 3, 59, 107 and 123
- “Immovable property” does not include Standing timber, Growing crops, Growing grass



○ “Attached to the earth” means:

- Rooted in the earth, as in the case of trees and shrubs
- Imbedded in the earth, as in the case of walls or buildings
- Attached to wall is so imbedded for the permanent beneficial enjoyment of that to which it is attached

○ “Actionable claim” means:

- A claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property
- Any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent

## **Section (5 to 53A)**

- “Transfer of property” means: An act by which a living person conveys property in present or in future to one or more other living persons or to

- The property of any kind may be transferred except as otherwise provided by this act or by any other law for the time being in force
- A transfer of property may be made without writing in every case in which writing is not expressly required by law. Where the value of property is less than Rs 100 (Section 54)
- Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is Void
- A property may be transferred to or for the benefit of a women(not being a Hindu, muhammadan or buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein
- A transfers his property of which he is the owner to B in trust for A and his intended wife successively for their lives, and, after the death of the survivor, for the eldest son of the intended marriage for life, and after his death for A's second son. It does not take effect of the interest so created for the benefit of the eldest son

- An estate is given to a living person A for life, then to a living person, B for life and then to the unborn sons of B. Whether the son of B can have interest in the property:
  - The son of B must be in exercise on or before the date of expiry of the life estate in favour of B
- Where the terms of the transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than the life of the transferor, or a period of eighteen years from the date of the transfer, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the
- aforesaid periods, and at the end of such last mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to made had elapsed
- The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind

- Where, on a transfer of property, an interest therein is created in favour of a person to take effect only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property
- An interest created on a transfer of property and dependent upon a condition fails:
  - If the fulfillment of the condition is impossible, or is forbidden by law
  - If it is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injuries to the person or property of another
  - If the court regards it as immoral or opposed to public policy
- Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled:
  - If it has been substantially complied with
- Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor:

- Shall be voidable at the option of any creditor so defeated or delayed

## Section (54 to 57)

- In the matter of immovable property the seller is bound :

- To disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover
- To produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power
- To answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto

- In the matter of immovable property the buyer is bound :

- To disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest

- Where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller

Sections (58 to 104)

- A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability
- Types of Mortgages:
  - Simple Mortgage
  - Mortgage by Conditional Sale
  - Usufructuary Mortgage
  - English Mortgage
  - Mortgage by deposit of Title Deeds
  - Anomalous Mortgage

- Where without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a **simple mortgage**
- Where, the mortgagor ostensibly sells the mortgaged property on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or on condition that on such payment being made the buyer shall transfer the property to the seller, the transaction is called a **mortgage by conditional sale**

- Where the mortgagor delivers possession or expressly or by implication binds himself to deliver possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage money and to receive the rents and profits and to appropriate the same in lieu of interest or in payment of the mortgage money, the transaction is called a **usufructuary mortgage**
- Where the mortgagor binds himself to repay the mortgage money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a provision that he will retransfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called as **English mortgage**
- Where a person in any of the following towns, namely, the towns of Calcutta, Madras and Bombay, and in any other town which the State Government concerned may, by notification in the Official Gazette, specify in this behalf, delivers to a creditor or his agent documents of title to immovable property, with intent to create a security thereon, the transaction is called **mortgage by deposit of title deeds**
- A mortgage which is not a simple mortgage, a mortgage by conditional sale, a usufructuary mortgage, an English mortgage or a mortgage by deposit of title deeds within the meaning of this section is called an **anomalous mortgage**



- Where the principal money secured is **one hundred rupees or upwards**, a mortgage other than a mortgage by deposit of title deeds can be effected only by a **registered instruments** signed by the mortgagor and attested by at least two witnesses
- **Rights of Mortgagor:**
  - To receive Back documents, deeds on repayment
  - To get back possession of property
  - To get back the property on retransfer to him or to any other person at his direction and cost
  - Extinguishment of any right in derogation of his interest td to the mortgagee
- At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee
- To deliver to the mortgagor the mortgage deed and all documents relating t the mortgaged property which are in the possession or power of the mortgagee

- At the cost of the mortgagor either to retransfer the mortgaged property to him or to such third person as he may direct, or to execute and to have registered an acknowledgement in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished

- **Rights of Mortgagee:**

- A suit for foreclosure

- Right to sue

- Two or more mortgages-Bound to sue on all which have become due

- Right to ask for replenishment in case of depletion in value of mortgaged property

- Right to any construction etc. on a plot of land mortgaged

- Right to new lease in case of Leasehold Property

- Interest @ 9% over Principal amount

- Subsequent Mortgagee entitled to enforce his right immediately after satisfaction of

- right of first mortgagee, of which he has knowledge.

- A suit to obtain a decree that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called A suit for foreclosure
- A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary:
  - Be bound to sue on all the mortgages in respect of which the mortgage-money has become due
  - The mortgagee has a right to sue for the mortgage-money:
  - Where the mortgagor binds himself to repay the same
  - Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient and the mortgagor has failed to do so
  - Where the mortgagee is deprived of the whole or part of his security by or in

- Right of Sale by the mortgagee:
  - In case of English Mortgage
  - In case Govt. is mortgagee and power of sale conferred on Govt. without Court's intervention
  - Mortgaged property situated in specified area
- When the power of sale by the mortgagee is said to be valid:
  - Where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindu, Mohammedan or Buddhist or a member of any other race, section, tribe or class from time to time specified in this behalf by the state government, in the official gazette
  - Where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage deed and the mortgagee is the government

- Where a power of sale without the intervention of the court is expressly conferred on the mortgagee by the mortgage deed and the mortgaged property or any part thereof was, on the date of the execution of the mortgage deed situate within the towns of Kolkata, Chennai, Mumbai, or in any other town or area which the state government may, by notification in the official gazette, specify in this behalf
- Mr. A mortgages the properties named as X and Y to Mr. B and then mortgages Y alone to Mr. C. If Mr. B seeks to realize his mortgage out of property Y, Mr. C can compel Mr. B to proceed first against X and realize the debt from it. In case Mr. B is unable to realize the whole amount due to him from X, he is entitled to recover the balance of Y. this situation is called **Marshalling of securities**

The limitation of rule enunciated in marshalling of securities is the claim to marshal must not be allowed to prejudice the rights of the first mortgagee or

- Rateable Contribution in case the mortgaged property is jointly owned:

Value for this purpose is the value on the date of the mortgage

Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage

- Who are the persons besides the mortgagor to redeem the property:

Besides the mortgagor, following may redeem, or institute a suit for redemption of, the mortgaged property:

- Any persons (other than the mortgagee of the interest sought to be redeemed) **who has any interest in, or charge upon, the property** mortgaged or in or upon the right to redeem the same
- **Any surety** for the payment of the mortgage debt or any part thereof
- **Any creditor of the mortgagor** who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property
- **Puisne mortgagee** means subsequent mortgagee has right to redeem a prior mortgage

- **Subrogation:** Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights in the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.
- Kinds of Subrogation : Legal, Conventional
  - Legal subrogation arises by operation of law
  - Conventional subrogation : Where a person paying off the mortgage debt is a stranger and has no interest of his own to protect, but he advances money under an agreement, express or implied, that he would be subrogated and the rights and remedies of the mortgagee whose mortgage is paid off by his money.
  - A charge is confined to immoveable property
  - A charge may be created by the act of parties or by operation of law
  - The High Court is the authority to make rules relating to The Transfer Of Property Act

<p><b>A lease of immovable property (other than for agricultural or manufacturing purposes</b></p>	<p><b>lease from month to month, terminable, on the part of either lessor or lessee, by 15 days notice</b></p>
<p>A lease of immovable property for agricultural or manufacturing purposes</p>	<p>lease from year to year, terminable, on the part of either lessor or lessee, by 6 months notice</p>
<p>lease of immovable property from year to year, or for any term exceeding one year or reserving a yearly rent,</p>	<p>can be made only by a registered instruments</p>
<p>All other (other than from year to year, or for any term exceeding one year or reserving a yearly rent) leases of immovable property may be made</p>	<p>Either by a registered agreement or by oral agreement accompanied by delivery of possession.</p>



### ○ **Rights and liabilities of the lessor:**

- The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter is not with ordinary care discover
- The lessor is bound on the lessee's request to put him in possession of the property
- The lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption

### **Sections (118 to 121)**

- When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an exchange
- Difference between sale and exchange:
  - In case of sale, the price is paid in money while in exchange one specific property is transferred for another

## Sections (122 to 129)-Gift

- Gift is the transfer of certain **existing movable or immovable property** (A gift of future property is Void) made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. **If the donee dies before acceptance , the gift is void.**
- For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses
- For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery
- A gift of a thing to two or more donees, of whom one does not accept it, is

- Conditional Gift Test-Whether depends upon the will of the donor or not: The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is Void wholly or in part, as the case may be
- Complete Bundle with Obligations: Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.
- Universal Donee: Where a gift consists of the donor's whole property, the donee is personally Liable for all the debts due by and liabilities of the donor at the time of the gift to the extent of the property comprised therein.

#### Sections (130 to 137)-Actionable Claim

- The transfer of an actionable claim may be either with or without consideration
- The essential requirements of a valid notice of transfer of an actionable claim are:
  - It shall be in writing
  - It shall state the name and address of the transferee

- It shall be signed by the transferor or this agent and on his refusal to sign, by the transferee or his agent
- The transferee of an actionable claim shall take it subject to all the liabilities and equalities and to which the transferor was subject in respect thereof at the date of the transfer:
- Where the transferor of a debt warrants solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is consideration, to the amount or value of such consideration
- Mortgaged debt :Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable first, in payment of the cost of such recovery; secondly in or towards satisfaction of the amount for the time being secured by the transfer, and the residue, if any, belongs to the transferor or other person entitled to receive the same.
- Rights of assignee by endorsement or other writing, of a policy of insurance

*The Negotiable Instruments Act,  
1881*

# *The Negotiable Instruments Act, 1881*

- ❑ Is an act to define and amend the law relating to Promissory notes, Bills of exchange, Cheques
- ❑ Extends to the whole of India
- ❑ Does not affect The Indian paper currency act, 1871
- ❑ Came into force with effect from first day of march, 1882
- ❑ “Banker” includes any persons acting as a banker and any post office saving bank
- ❑ A “promissory note” is an instrument in writing (not being a bank-note or a currency note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only to, or to the order of, a certain person, or to the bearer of the instruments
- ❑ An IOU is not an example of “promissory note”. “Mr. B, I.O.U Rs . 1,000.” is not a promissory note. As against this, “I acknowledge myself to be indebted to B in Rs 1,000, to be paid on demand, for value received” is an example of a promissory note.

- ❑ A promissory note does not contain a conditional undertaking
- ❑ A “promissory note” is an instrument to pay a certain sum of money to the order of, a certain person, or to the bearer of the instrument
- ❑ In a promissory note, two parties are involved
- ❑ A “promissory note” contains an unconditional promise by maker to pay the payee
- ❑ The definition of “promissory note” has been defined in the NI act in section 4
- ❑ A “bill of exchange” is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instruments
- ❑ Section 5 of the NI act deals with Bills of exchange
- ❑ In case of “bills of exchange”, the acceptance is necessary if the bill is payable after sight

- A “cheque” is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form
- A cheque is a BOE and has been defined under The Negotiable Instrument Act, 1881
- A cheque is a BOE drawn upon a specified banker and payable on demand
- The cheque cannot contain a conditional order
- The maker of a bill of exchange or cheque is called The drawer
- Drawee in case of need:
  - When the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to in case of need, such person is called a “drawee in case of need”



- ❑ The person who is directed by the maker of a BOE or cheque to pay is called the Drawee
- ❑ The person named in the instruments, to whom or to whose order the money is by the instrument directed to be paid, is called a Payee
- ❑ The “holder” of a promissory note, BOE or cheque means:
  - Any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto
- ❑ Holder is entitled at the time of loss or destruction of a note, bill or cheque
- ❑ “Holder in due course” means any person who for consideration became the possessor of a promissory note, BOE or cheque if payable to bearer, or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the

title of the person from whom he derived his title

A holder in due course is a person who becomes the possessor of the instruments:

○ For consideration

○ Before maturity

○ Without any notice as to the defect in title of the transferor

A “holder in due course” of a negotiable instruments:

○ Can sue on the instruments in his own name

“Payment in due course” means the payment in accordance with the apparent tenor of the instruments in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned

Inland instruments means a promissory note, BOE or cheque drawn or

- A promissory note, BOE or cheque drawn or made out of India and made payable in, or drawn upon any person resident in India shall be deemed to be Foreign instrument
- A “negotiable instrument” means a promissory note, bill of exchange and cheque payable either to order or to bearer
- A promissory note, BOE or cheque is payable to bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank
- A negotiable instruments may be made payable:
  - To two or more payees jointly
  - In the alternative to one or two

- To one or some of several payees

- The following are negotiable instruments:

- A promissory note, BOE or cheque is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable

- Section 13 of the NI act defines the words , “negotiable instruments”

- Banker demand draft are the negotiable instruments

- A promissory note, BOE or cheque is transferred to any person, so as to constitute the person the holder thereof, The maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of negotiation, on the back or face thereof or on a slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as a negotiable instrument, he is said to indorse the same. This activity is called as Endorsement

- Blank Endorsement: The endorser signs his name on the back of the instrument only.
- An instrument which may be constructed either as a promissory note or BOE is called as ambiguous instrument
- If the amount mentioned on the cheque differs in words and figures the amount stated in words should be considered.
- A promissory note or BOE are payable on demand in which no of time for payment is specified .
- Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force in India, and either wholly blank or having written thereon an incomplete negotiable instruments, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. This is called Inchoate stamped instrument
- The days of grace of maturity of promissory note or BOE is the third day after the day on which it is expressed to be payable
- Instruments entitled to 'period of grace' is a bill or note payable 'after sight'
- A negotiable instrument dated 29<sup>th</sup> January, 2018, is made payable at one month after date. The instrument is at maturity on the third day after the 28<sup>th</sup> February, 2018

- A negotiable instrument, dated 30<sup>th</sup> august, 2017, is made payable three months after date. The instrument is at maturity on the 3<sup>rd</sup> december, 2017
- A promissory note or bill of exchange, dated 31<sup>st</sup> august, 2017 is made payable three months after date. The instruments is at maturity on the 3<sup>rd</sup> december, 2017
- When the day on which a promissory note or BOE is at maturity is a public holiday, the instrument shall be deemed to be due on the next preceding business day
- A minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself
- The drawee of a cheque having sufficient funds of the drawer in his hands properly applicable to the payment of such cheque must pay the cheque when duly required so to do, and, in default of such payment, must compensate the drawer for any loss or damage caused by such default. This is governed by section 31 of the NI act .
- A negotiable instrument made, drawn, accepted, indorsed or transferred without consideration:
  - Creates no obligation of payment between the parties to the transactions
- A promissory note, BOE or cheque payable to bearer is negotiable by delivery thereof

- ❑ A promissory note, bill of exchange or cheque payable to order, is negotiable by endorsement and delivery thereof
- ❑ Where an endorsement by express words, restrict or exclude the right of further negotiability of the instrument, it is called Restrictive endorsement
- ❑ Where the holder of an instrument endorses it in a manner that does not incur any liability as an endorser, such endorsement is called as Sans recourse endorsement
- ❑ Part amount on the instrument cannot be endorsed
- ❑ A holder of an instrument cannot sue in his own name in relation to the instrument
- ❑ Sole maker, drawer, payee, indorse , all of several joint makers, drawers ,payee or indorsees can make negotiation of a negotiable instrument
- ❑ The liabilities of a collecting banker:
  - To present cheque within a reasonable time else liable for damages
  - To handover the proceeds after the realisation without delay

- ❑ When no rate of interest is specified in the instrument, interest on the amount due thereon shall, notwithstanding any agreement relating to interest between any parties to the instrument, be calculated at the rate of 18% pa
- ❑ Under section 85 a paying banker is protected where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee bank is discharged by payment in due course
- ❑ The liability of a banker when a cheque has been materially altered but does not appear to have been so altered, and payment thereof has been made according to the apparent tenor thereof at the time of payment and otherwise in due course:
  - The banker shall discharge from all liability thereon, and such payment shall not be questioned by reason of the instrument having been altered
- ❑ A bill is said to be dishonoured:
  - By non-acceptance by the drawee
  - One of several drawee makes default in acceptance upon being duly required to accept the bill
  - Where presentment is excused and the bill is not accepted



- ❑ The protection to paying bank for crossed cheque is covered under section 128
- ❑ Conditions for availing statutory protections available to a banker under section 131:
  - Banker has in good faith and without negligence received payment
  - The payment is received for a customer of the bank
  - Cheque is crossed generally or specially before it is presented to the paying bank
- ❑ The liability of the drawer of a foreign bills of exchange is regulated in all essential matters by the law of the place where the instrument is made
- ❑ Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provisions of this act, be punished with:
  - Imprisonment for a term which may be extended to 2 years, or with fine which may extend to twice the amount of the cheque, or with both

- ❑ For invoking section 138 of NI act, the payee or the holder in due course of the cheque, as the case may be, shall have to make a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, Within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid
- ❑ For invoking the provisions of section 138 whether a legally enforceable debt or other liability should exist.
- ❑ Courts eligible to entertain any offence punishable under section 138:
  - Court not inferior to that of a metropolitan magistrate
  - Court not inferior to that of a judicial magistrate of the first class
- ❑ Notwithstanding anything contained in the code of criminal procedure, 1973 no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque and such complaint is made Within one month of the date on which the cause of action arises under clause © of the provision to section 138
- ❑ With respect to multicurrency cheque dishonour the offence under section 138 shall be inquired into and tried only by a court within local jurisdiction of the payee or the holder or the drawer .

- ❑ In the case of any conviction in a summary trial under section 143, it shall be lawful for the magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding 5000 rupees
- ❑ The court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant, which shall not exceed 20% of the amount of the cheque
- ❑ The interim compensation shall be paid within 60 days from the date of the order or within such further period not exceeding 30 days as may be directed by the court on sufficient cause being shown by the drawer of the cheque
- ❑ The interim compensation payable under section 143A may be recovered as if it were a fine as per the provisions of the code of criminal procedure, 1973
- ❑ Notwithstanding anything contained in the code of criminal procedure, 1973 (2 of 1974), every offence punishable under the NI act shall be Compoundable
- ❑ In an appeal by the drawer against conviction under section 138, the appellate court may order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial court

THE CODE OF  
CIVIL  
PROCEDURE,  
1908

## **Courts to try all civil suits unless barred (SECTION 9)**

The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I— A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II — For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.

## COMMENTS

### Jurisdiction of court

- The jurisdiction of the court and the right of a party emerging from section 9 of the code is not an absolute right, but contains inbuilt restrictions. Jurisdiction of the court can be executed by law or by clear intendment arising from such law; Chloro Controls (I) Pvt. Ltd. V. Seven Trent Water Purification Inc. JT 2010 (10) SC 187: (2012) 9 SCALE 595: 2012 (6) R.A.J. 1.
- i. The appropriate forum for resolution of an industrial dispute in the forum constituted under Industrial Disputes Act, 1947. Jurisdiction of Civil Court is impliedly barred in such cases: C.T. Nikam v. Municipal Corporation of Ahmedabad, AIR 2002 SC 997.
- ii. Telephone bill – Jurisdiction of Civil Court – The civil court has jurisdiction to enforce the right of a subscriber under section 7B of the Telegraph Act; Union of India v. Sasi S., AIR 1999 Ker 36

- iii. The application for grant of interim relief would not be disposed of till decision on question of jurisdiction although ad-interim relief can be granted in view of provisions under section 9A(2)
- iv. Under section 9 of the CVC, the jurisdiction of Civil Court with regard to a particular matter can be said to be excluded if there is an express provision or by implication it can be inferred that the jurisdiction is taken away; Union of India v. Sasi S., AIR 1999 Ker 36.

## **Stay of suit (SECTION 10)**

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in India have jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court.

Explanation — The pendency of a suit in a foreign court does not preclude the courts in India from trying suit founded on the same course of action.



## COMMENTS

- (i) The Language of section 10 suggests that it is referable to a suit instituted in the civil court and it cannot apply to proceedings of other nature instituted under any other statute; National Institute of Mental Health and Neuro Sciences v. C. Parmeshwara, AIR 2005 SC 242.
- (ii) Two suits – Between same parties- Involving same subject- matter and same questions- Held, subsequent suit should be stayed; Radhika Konel Parekh v. Konel Parekh AIR 1993 Mad 90: (1993) LW 159: (1993) 1 Mad LJ 163

## **Res judicata (SECTION 11)**

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I. — The expression “former suit” shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II. — For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III. — The matter above referred to must in the former suit have been alleged by

one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV. — Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V. — Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI. — Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

- Explanation VII. — The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.
- Explanation VIII. — An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

## COMMENTS

- i. In order to operate as res judicata, the finding must be such, that it disposes of a matter that is directly and substantially in the issue of the former suit, and that the said issue must have been heard and finally decided by the court trying such suit. A matter which is collaterally or incidentally in issue for the purpose of deciding a matter which is directly issue in the case, cannot be made the basis for a plea of res judicata; Rami Gupta v. Gobi Krishna Agrawal, AIR 2013 SC 3099
- ii. The principal of res judicata is a procedural provision. A jurisdictional question if wrongly decided would not attract the principles of res judicata. When an order is passed without jurisdiction, the same becomes a nullity. When an order is a nullity, it cannot be supported by invoking procedural principle; Management of Sonapat Co-op. Sugar Mills Ltd. V. Amit Singh, AIR 2005 SC 1050
- iii. First writ petition filed on the ground of apprehended bias and subsequent second petition was filed on allegations of actual bias, is not barred by res judicata; G.N. Kayak v. Goa University, AIR 2002 SC 790

- iv. There is a distinction between issue estoppel and res judicata debars a court from exercising its jurisdiction to determine the lies if it has attained finality whereas the doctrine of issue estopped is invoked against the party. If such issue is decided against him, he would be estopped from raising the same in the latter proceedings. The doctrine of res judicata creates a different kind of estoppel viz. estoppel by Accord; Bhang Kumar Jain v. Archana Kumar, AIR 2005 SC 626
- v. Section 11 of the CVC has no doubt some technical aspects for instance the rule of constructive res judicata may be said to be technical but the basis of which the said rule rests is founded on the consideration of Public Policy; Sumer Mal v. State of Rajasthan, AIR 2000 Raj 1
- vi. Where the Sangh has been duly represented in the previous court proceedings and were litigating bona fide which resulted in failure cannot be allowed to lay any objection in execution or to plead nullity of decree hence doctrine of res judicata applies. The decree of ejectment will bind every member of Sangh; Songhai Lal Chand Jain v. Rasthriya Swayam Sewak Sangh, Panna, JT 1996 (3) SC 64

## **Institution of suits (SECTION 26)**

**(1)** Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

**(2)** In every plaint, facts shall be proved by affidavit:

Provided that such an affidavit shall be in the form and manner as prescribed under Order VI of rule 15A.

## **Summons to defendants (SECTION 27)**

Where a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in manner prescribed on such day not beyond thirty days from date of the institution of the suit.

## **Service of summons where defendant resides in another State (SECTION 28)**

**(1)** A summons may be sent for service in another State to such Court and in such manner as may be prescribed by rules in force in that State.

**(2)** The Court to which such summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court and shall then return the summons to the Court of issue together with the record (if any) of its proceedings with regard thereto.

**(3)** Where the language of the summons sent for service in another State is different from the language of the record referred to in sub-section (2), a translation of the record,—



(a) in Hindi, where the language of the Court issuing the summons is Hindi, or

(b) in Hindi or English where the language of such record is other than Hindi or English, shall also be sent together with the record sent under that sub-section.

**Service of foreign summonses (SECTION 29):** Summonses and other processes issued by

(a) any Civil or Revenue Court established in any part of India to which the provisions of this Code do not extend, or

(b) any Civil or Revenue Court established or continued by the authority of the Central Government outside India, or

(c) any other Civil or Revenue Court outside India to which the Central Government has, by notification in the Official Gazette, declared the provisions of this section to apply, may be sent to the Courts in the territories to which this Code extends, and served as if they were summonses issued by such Courts.

**Power to order discovery and the like (SECTION 30):** Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

**Summons to witness (SECTION 31):** The provisions in sections 27, 28 and 29 shall apply to summonses to give evidence or to produce documents or other material objects.

**Penalty for default (SECTION 32):** The Court may compel the attendance of any person to whom a summons has been issued under section 30 and for that purpose may—

(a) issue a warrant for his arrest;

(b) attach and sell his property;

(c) impose a fine upon him not exceeding five thousand rupees;

(d) order him to furnish security for his appearance and in default commit him to the civil prison.

**Court by which decree may be executed (SECTION 38):** A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

### **COMMENTS**

- (i) Retransfer of execution proceedings at the instance of the judgement debtor do not preclude the decree-holders from initiating fresh execution proceedings against other judgement debtors at original court; Om Prakash v. M/s. Hargovind raj kumar, AIR 1993 Raj 68
- (ii) Injunction decree is not enforceable. However, it can be enforced by seeking police aid on necessary directions from the court; Matha Gavarayya v. District Collector, E.G Distt., AIR 1993 AP 103

## **Transfer of decree (SECTION 39):**

(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction-

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.



**Transfer of decree to Court in another State (SECTION 40):** Where a decree is sent for execution in another State, it shall be sent to such Court and executed in such manner as may be prescribed by rules in force in that State.

**Result of execution proceedings to be certified (SECTION 41):** The Court to which a decree is sent for execution shall certify to the Court which passed it the fact of such execution, or where the former Court fails to execute the same the circumstances attending such failure.

## **Powers of Court in executing transferred decree (SECTION 42):**

**(1)** The Court executing a decree sent to it shall have the same powers in executing such decree as if it had been passed by itself. All persons is disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its order in executing such decree shall be subject to the same rules in respect of appeal as if the decree had passed by itself.

**(2)** Without prejudice to the generality of the provisions of sub-section (1), the powers of the Court under that sub-section shall include the following powers of the Court which passed the decree, namely:—

(a) power to send the decree for execution to another Court under section 39;

(b)(b) power to execute the decree against the legal representative of the deceased judgment-debtor under section 50;

(c) power to order attachment of a decree.

(3) A Court passing an order in exercise of the powers specified in sub-section (2) shall send a copy thereof to the Court which passed the decree.

(4) Nothing in this section shall be deemed to confer on the Court to which a decree is sent for execution any of the following powers, namely:—

(a) power to order execution at the instance of the transferee of the decree;

(b) in the case of a decree passed against a firm, power to grant leave to

execute such decree against any person, other than such a person as is referred to in clause (b), or clause (c), of sub-rule (1) of rule 50 of Order XXI.

**Execution of decrees passed by Civil Courts in places to which this Code does not extend (SECTION 43):**

Any decree passed by any Civil Court established in any part of India to which the provisions of this Code do not extend, or by any Court established or continued by the authority of the Central Government outside India, may, if it cannot be executed within the jurisdiction of the Court by which it was passed, be executed in the manner herein provided within the jurisdiction of any Court in the territories to which this Code extends.

**Execution of decrees passed by Revenue Courts in places to which this Code does not extend (SECTION 44):** The State Government may, by notification in the Official Gazette, declare that the decrees of any Revenue Court in any part of India to which the provisions of this Code do not extend, or any class of such decrees, may be executed in the State as if they had been passed by Courts in that State.

**Execution of decrees passed by Courts in reciprocating territory (SECTION 44A):**

**(1)** Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court.

**(2)** Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

**(3)** The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation 1.— “Reciprocating territory” means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section; and “superior Courts”, with reference to any such territory, means such Courts as may be specified in the said notification.

Explanation 2.— “Decree” with reference to a superior Court means any decree or judgment of such Court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.

**Execution of decrees outside India (SECTION 45):** So much of the foregoing sections of this Part as empowers a Court to send a decree for execution to another Court shall be construed as empowering a Court in any State to send a decree for execution to any Court established by the authority of the Central Government outside India to which the State Government has by notification in the Official Gazette declared this section to apply.



## **Property liable to attachment and sale in execution of decree (SECTION 60):**

(1)The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely:—

**(a)** the necessary wearing-apparel, cooking vessels, beds and bedding of the judgment-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

**(b)** tools of artisans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle and seed-grain as may, in the opinion of the Court, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or of any class of agricultural produce as may have been declared to be free from liability under the provisions of the next following section;

**(c)** houses and other buildings (with the materials and the sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to 1 [an agriculturist or a labourer of a domestic servant] and occupied by him;

**(d)** books of account;

**(e)** a mere right to sue for damages;

**(f)** any right of personal service;

**(g)** stipends and gratuities allowed to pensioners of the Government or of a local authority or of any other employer, or payable out of any service family pension fund notified in the Official Gazette by the Central Government or the State Government in this behalf, and political pensions;

- (h) the wages of labourers and domestic servants, whether payable in money or in kind;
- (i) salary to the extent of the first one thousand rupees and two third of the remainder in execution of any decree other than a decree for maintenance;

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.

**(l)** one-third of the salary in execution of any decree for maintenance;

**(j)** the pay and allowances of persons to whom the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957), applies;

**(k)** all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1925, (19 of 1925), for the time being applies in so far as they are declared by the said Act not to be liable to attachment;

**(kea)** all deposits and other sums in or derived from any fund to which the Public Provident Fund Act, 1968 (23 of 1968), for the time being applies, in so far as they are declared by the said Act as not to be liable to attachment;

**(kb)** all moneys payable under a policy of insurance on the life of the judgment debtor;

**(kc)** the interest of a lessee of a residential building to which the provisions of law for the time being in force relating to control of rents and accommodation apply;

**(l)** any allowance forming part of the emoluments of any servant of the Government or of any servant of a railway company or local authority which the appropriate Government may by notification in the Official Gazette declare to be exempt from attachment, and any subsistence grant or allowance made to any such servant while under suspension;

**(m)** an expectancy of succession by survivorship or other merely contingent or possible right or interest;

**(n)** a right to future maintenance;

**(o)** any allowance declared by any Indian law to be exempt from liability to attachment or sale in execution of a decree, and

**(p)** where the judgment-debtor is a person liable for the payment of land-revenue, any movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue.

Explanation 1. —The moneys payable in relation to the matters mentioned in clauses (g), (h), (i), (ia), (j), (l) and (o) are exempt from attachment or sale, whether before or after they are actually payable, and, in the case of salary, the attachable portion thereof is liable to attachment whether before or after it is actually payable.

Explanation II. —In clauses (I) and (IA), “salary” means the total monthly emoluments, excluding any allowance declared exempt from attachment under the provisions of clause (1), derived by a person from his employment whether on duty or on leave.

Explanation III.—In clause (1) “appropriate Government” means—

**(i)** as respects any person in the service of the Central Government, or any servant of a Railway Administration or of a cantonment authority or of the port authority of a major port, the Central Government;

**(iii)** as respects any other servant of the Government or a servant of any other local authority, the State Government.



Explanation IV—For the purposes of this proviso, “wages” includes bonus, and “labourer” includes a skilled unskilled or semi-skilled labourer.

Explanation V—For the purposes of this proviso, the expression “agriculturist” means a person who cultivates land personally and who depends for his livelihood mainly on the income from agricultural land, whether as owner, tenant, partner or agricultural labourer.

Explanation VI—For the purposes of Explanation V an agriculturist shall be deemed to cultivate land personally, if he cultivates land—

**(a)** by his own labour, or

**(b)** by the labour of any member of his family, or

**(c)** by servants or labourers on wages payable in cash or in kind (not being as a share of the produce), or both.

**(IA)** Notwithstanding anything contained in any other law for the time being in force, an agreement by which a person agrees to waive the benefit of any exemption under this section shall be void.

**(2)** Nothing in this section shall be deemed to exempt houses and other buildings (with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment) from attachment or sale in execution of decrees for rent of any such house, building, site or land.

**Partial exemption of agricultural produce (SECTION 61):** The State Government may, by general or special order published in the Official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce, as may appear to the State Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the judgment debtor and his family, shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a decree.

- **Seizure of property in dwelling-house (SECTION 62):**

- **(1)** No person executing any process under this Code directing or authorizing seizure of movable property shall enter any dwelling-house after sunset and before sunrise.

**(2)** No outer door of a dwelling-house shall be broken open unless such dwelling-house is in the occupancy of the judgment-debtor and he refuses or in any way prevents access thereto, but when the person executing any such process has duly gained access to any dwelling-house, he may break open the door of any room in which he has reason to believe any such property to be.

**(3)** Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to such woman that she is at liberty to withdraw; and, after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

## **Property attached in execution of decrees of several Courts (SECTION 63):**

**(1)** Where property not in the custody of any Court is under attachment in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

**(2)** Nothing in this section shall be deemed to invalidate any proceeding taken by a Court executing one of such decrees.

Explanation.—For the purposes of sub-section (2), “proceeding taken by a Court” does not include an order allowing, to a decree-holder who has purchased property at a sale held in execution of a decree, set off to the extent of the purchase price payable by him.

### **Private alienation of property after attachment to be void (SECTION 64):**

**(1)** Where an attachment has been made, any private transfer or delivery of the property attached or of any interest therein and any payment to the judgment-debtor of any debt, dividend or other moines contrary to such attachment, shall be void as against all claims enforceable under the attachment.

**(2)** Nothing in this section shall apply to any private transfer or delivery of the property attached or of any interest therein, made in pursuance of any contract for such transfer or delivery entered into and registered before the attachment.

## **COMMENTS**

Sale of attached property before dismissal of execution application is void; Nancy John Lyndon v. Prabhati Lal Chodhary, AIR 1987 SC 2061

Explanation. — For the purpose of this section, claims enforceable under an attachment include claims for the rateable distribution of assets.

## **DISTRIBUTION OF ASSETS**

### **Proceeds of execution-sale to be rateably distributed among decree-holders (SECTION 73):**

**(1)** Where assets are held by a Court and more persons than one have, before the receipt of such assets, made application to the Court for the execution of decrees for the payment of money passed against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realization, shall be rateably distributed among all such persons:



Provided as follows :—

(a) where any property is sold subject to a mortgage or charge, the mortgage or incumbrancer shall not be entitled to share in any surplus arising from such sale;

**(b)** where any property liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the consent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same interest in the proceeds of the sale as he had in the property sold;

**(c)** where any immovable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

First, in defraying the expenses of the sale; Secondly, in discharging the amount due under the decree;

thirdly, in discharging the interest and principal monies due on subsequent incumbrances (if any); and fourthly, rateably among the holders of decrees for the payment of money against the judgement-debtor, who have, prior to the sale of the property, applied to the Court which passed the decree ordering such sale for execution of such decrees, and have not obtained satisfaction thereof.

**(2)** Where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

**(3)** Nothing in this section affects any right of the Government.

**Power of Court to issue commissions (SECTION 75):** Subject to such conditions and limitations as may be prescribed, the Court may issue a commission—

**(a)** to examine any person;

**(b)** to make a local investigation;

**(c)** to examine or adjust accounts; or

**(d)** to make a partition;

**(e)** to hold a scientific, technical, or expert investigation;

**(f)** to conduct sale of property which is subject to speedy and natural decay and which is in the custody of the Court pending the determination of the suit;

**(g)** to perform any ministerial act.

**Commission to another Court (SECTION 76): (1)** A commission for the examination of any person may be issued to any Court (not being a High Court) situate in a State other than the State in which the Court of issue is situate and having jurisdiction in the place in which the person to be examined resides.

**(2)** Every Court receiving a commission for the examination of any person under sub-section (1) shall examine him or cause him to be examined pursuant thereto, and the commission, when it has been duly executed, shall be returned together with the evidence taken under it to the Court from which it was issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order.

**Letter of request (SECTION 77):** In lieu of issuing a commission the Court may issue a letter of request to examine a witness residing at any place not within India.

**Commissions issued by foreign Courts (SECTION 78):** Subject to such conditions and limitations as may be prescribed the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of—

**(a)** Courts situate in any part of India to which the provisions of this Code do not extend; or

**(b)** Courts established or continued by the authority of the Central Government outside India; or

**(c)** Courts of any State or country outside India.

## **Order 21:**

Order 21 of the Code of Civil Procedure deals with the solemn act of execution of the decrees passed by the Courts from grassroots to the top. Ultimately, after the judgment attains finality or where there is no stay in the execution by any Appellate or Revisional Court, it is the Court of original jurisdiction which performs this sacred act of implementation of the execution. It has been often seen that in view of less number of units prescribed for execution of the decree, the executions are not give that much time and importance as required and desired.

It is only the execution, which reveals and signifies the importance of the decrees to be passed and the pedestal of the Court and sanctity of the document. As such, the decrees are required to be executed with force, so that the Decree Holder having a document containing declaration of his rights may not feel cheated or helpless having earned no fruits of the lis got settled by him from the Court even after spending decades altogether.

This Order can be divided into six parts. If the Courts deal the executions while considering the applications/objections topic wise, it would be easy for them to adjudicate the matter easily.

The main classification is as under:-

(1) Applications for execution and the process to be applied.

(2) Stay of executions.

(3) Mode of executions.

(4) Sale of immovable property and movable property.

(5) Adjudication of the claims and objections.

(6) Resistance and delivery of possession.



# ORDER 21

Rule No	Title	Comment/Remarks
Rule 1	Method of adjustment in money decree	
Rule 42	Attachment before judgment in execution	
Rule 29	Whether the decree of other Court could be stayed	
Rule 35 (3) and Rule 97	These two Rule provides a right to the Decree Holder to complain against a person, who creates resistance in the execution of the decree.	

Rule No	Main Head	Comment/Remarks
Rule 41	Arrest and detention	
Rule 16	The assignment and transfer of the decree made, when assignment is complete. It was observed by the Hon'ble Supreme Court in Jugalkishore's case (supra), as under	
Rule 99	Dispossession by decree holder or purchaser	
Rule 105	Hearing of application	

Rule No	Main Head	Comment/Remarks
Rule 106	Setting aside orders passed ex parte	
Rule 92(2)	The conditions when the sale could be set aside after auction	
Rule 89	The Hon'ble Supreme Court in case Tribhovandas Purshottamdas Thakkar Vs. Ratilal Motilal Patel and others, 1968 AIR (SC) 372	
Rule 90	Deals with the situations when the sale could be set aside	

Rule No	Main Head	Comment/Remarks
Rule 58	Attachment of mortgaged property	
Rule 35(2)	Attachment of share of coparcenary property and limitation to take possession of such property:-	
Rule 35(3)	Extent of force to be used to take possession	
Rule 17, 34, 4, 15, 14	Recovery of maintenance by sale of the property over which charge was created-	

## **Order 21 Rule 1 CPC:** Method of adjustment in money decree –

Order 21 Rule 1 of the CPC provides for the modes of paying the money decree. First of all, the Court should appropriate the amount towards interest, then towards the costs and thereafter, towards the principal, unless, of course, the deposit is indicated to be towards specified heads by the judgment debtor while making the deposit and intimating the decree holder of his intention. This Order also provides mode for executing the decrees and implementation of even decrees of specific performance, permanent injunction, restitution of conjugal rights and possession etc.

**The Hon'ble Supreme Court in case Gurpreet Singh Vs. Union of India, 2008 (2) RCR (Civil) 207, has observed as under:-**

**26.** Thus, in cases of execution of money decrees or award decrees, or rather, decrees other than mortgage decrees, interest ceases to run on the amount deposited, to the extent of the deposit. It is true that if the amount falls short, the decree holder may be entitled to apply the rule of appropriation by appropriating the amount first towards the interest, then towards the costs and then towards the principal amount due under the decree.

But the fact remains that to the extent of the deposit, no further interest is payable thereon to the decree holder and there is no question of the decree holder claiming a re-appropriation when it is found that more amounts are due to him and the same is also deposited by the judgment debtor.

In other words, the scheme does not contemplate a reopening of the satisfaction to the extent it has occurred by the deposit. No further interest would run on the sum appropriated towards the principal.

**27.** As an illustration, we can take the following situation. Suppose, a decree is passed for a sum of Rs.5,000/- by the trial court along with interest and costs and the judgment debtor deposits the same and gives notice to the decree holder either by approaching the executing court under Order XXI Rule 2 of the Code or by making the deposit in the execution taken out by the decree-holder under Order XXI Rule 1 of the Code. The decree holder is not satisfied with the decree of the trial court.

He goes up in appeal and the appellate court enhances the decree amount to Rs.10,000/- with interest and costs. The rule in terms of Order XXI Rule 1, as it now stands, in the background of Order XXIV would clearly be, that the further obligation of the judgment debtor is only to deposit the additional amount of Rs. 5,000/- decreed by the appellate court with interest thereon from the date the interest is held due and the costs of the appeal.

The decree holder would not be entitled to say that he can get further interest even on the sum of Rs.5,000/- decreed by the trial court and deposited by the judgment debtor even before the enhancement of the amount by the appellate court or that he can re-open the transaction and make a reappropriation of interest first on Rs.10,000/-, costs and then the principal and claim interest on the whole of the balance sum again.



Certainly, at both stages, if there is short-fall in deposit, the decree holder may be entitled to apply the deposit first towards interest, then towards costs and the balance towards the principal. But that is different from saying that in spite of his deposit of the amounts decreed by the trial court, the judgment debtor would still be liable for interest on the whole of the principal amount in case the appellate court enhances the same and awards interest on the enhanced amount. This position regarding execution of money decrees has now become clear in the light of the amendments to Order XXI Rule 1 by Act 104 of 1976.

The argument that what is awarded by the appellate court is the amount that should have been awarded by the trial court and so looked at, until the entire principal is paid, the decree holder would be entitled to interest on the amount awarded by the appellate court and therefore he can seek to make a re-appropriation by first crediting the amount deposited by the judgment debtor pursuant to the decree of the trial court towards the cost in both the courts, towards the interest due on the entire amount and only thereafter towards the principal, is not justified on the scheme of Order XXI Rule 1 understood in the context of Order XXIV Rules 1 to 4 of the Code.

The principle appears to be that if a part of the principal has been paid along with interest due thereon, as on the date of issuance of notice of deposit, interest on that part of the principal sum will cease to run thereafter. In other words, there is no obligation on the judgment debtor to pay interest on that part of the principal which he has already paid or deposited.”

**Order 21 Rule 42 CPC:** Attachment before judgment in execution:-

Order 21 Rule 42 CPC deals with the attachment before the Court holds an inquiry as to rent or mesne profits or any other matter, the property of the judgment debtor could be attached, before the amount due is ascertained in the terms of Order 38 Rule 5 CPC.

**Order 21 Rule 29 CPC:** whether the decree of other Court could be stayed-

**The scope of applicability of Order 21 Rule 29 CPC;-** Rule 29 refers to cases where the execution of the decree held by the Decree Holder could be stayed. For the applicability of Order 21 Rule 29 CPC, two conditions are to be fulfilled; (1) a proceeding in execution of the decree of that Court started at the instance of the decree holder against the judgment debtor and (2) a suit at the instance of the same judgment-debtor against the holder of the decree of that Court.

Transferee Court has no power to stay the execution of the decree pending in its Court because the decree is not passed by that Court. Subsequent sale in spite of stay order held valid.

While elaborating Order 21 Rule 29 of the Civil Procedure code, the Hon'ble Supreme Court in Shaukat Hussain @ Ali Akram and others Vs. Smt. Bhuneshwari Devi (dead) by L.Rs. & others, 1973 AIR (SC) 528, has observed as under:-

4. Mr. Chagla appearing on behalf of the appellants prefaced his arguments by stating that the property attached in execution was a very valuable property worth more than Rs. 20,000/- and had been sold for a paltry sum due under the decree and this circumstance itself was sufficient to show that the sale was liable to be set aside. That contention is clearly not open on the materials on record. A judgment-debtor can ask for setting aside a sale in execution of a decree under section 47 C.P.C.

In special circumstances which attract the provisions of Order XXI rule 90 he may also apply to the court to set aside the sale on the ground of material irregularity or fraud in publishing or conducting the sale provided he further proves to the satisfaction of the court that he has sustained substantial injury by reason of the irregularity or fraud. The application made to the executing court in the present case by the judgment-debtors was not one under Order XXI rule 90 C.P.C.

That is conceded by Mr. 16- L172Sup.CI/72 1026 Chagla. Had it been the case that on account of fraud or material irregularity in conducting the sale, the sale required to be set aside, evidence would have been led on the point and there would have been a clear finding as to the substantial injury.

The judgments of all the three courts proceed entirely on the basis that the application was one under section 47 C.P.C. and not under Order XXI Rule 90 C.P.C. They do not deal with the question of- material irregularity or fraud in the conduct of the sale, nor do they deal with the injury caused to the judgment debtors. The only question which was agitated before the courts was whether the sale was illegal in view of the fact that the execution proceedings had taken place during the existence of a stay issued by a competent court. It was also common ground that the stay issued by the Munsif was an Order passed under Order XXI Rule 29 C.P.C. The first two courts held that the stay was in existence when the execution proceedings ended in the sale while the High Court held that factually it was so because the sale took place on 6-8-1963, the stay, if any, having ceased to operate after 5-8-1963.

The High Court further pointed out that the stay under Order XXI Rule 29 issued by the court of the Munsif Gaya was null and void as it was passed by a court without competence and, therefore, in law there was no legal stay of execution and the sale which took place in due course after attachment and proclamation of sale, was a valid one.

### **The scope of Rules 26 to 29 of Order 21 CPC:-**

**“6.** Order 21, Civil Procedure Code deals generally with the execution of decree and orders. That order is divided into several topics, each topic containing a number of rules. The first four topics cover rules 1 to 25 and the fifth topic, namely, stay of execution comprises 4 rules, namely, Rules 26 to 29.



A perusal of these rules will show that the first three rules i.e. Rules 26 to 28 deal with the powers and duties of a Court to which a decree has been sent for execution. Under Rule 26, that Court can stay the execution of the decree transferred to it for execution for a reasonable time to enable the judgment-debtor to apply to the Court by which the decree was passed or to any Court having appellate jurisdiction over the former for an order to stay execution or for any other order relating to the decree or execution which might have been made by the Court of first instance or the appellate Court. It will be seen, therefore, that under Rule 26 the transferee Court has a limited power to stay execution before it. Moreover, under sub rule (2) if any property is seized by it in the course of execution, it may even order the restitution of the property pending the result of the application made by the judgment-debtor to the Court of the first instance or to the appellate Court.

Rule 27 says that any such restitution made under sub-rule (2) of Rule 26 will not prevent the property of the judgment-debtor from being retaken in execution of the decree sent for execution

Rule 28 provides that any order of the Court by which the decree was passed, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution. And then we have Rule 29 which deals with a different situation. The rule is as follows:

“Where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed the Court may, on such terms as to security or otherwise, as it thinks fit stay execution of the decree until the pending suit has been decided.”

It is obvious from a mere perusal of the rule that there should be simultaneously two proceedings in one Court. One is the proceeding in execution at the instance of the decree-holder against the judgment-debtor and the other a suit at the instance of the judgment debtor against the decree holder. That is a condition under which the Court in which the suit is pending may stay the execution before it, if that was the only condition, Mr. Chagla would be right in his contention, because admittedly there was a proceeding in execution by the decree-holder against the judgment-debtor in the Court of Munsif 1st Gaya and there was also a suit at the instance of the judgment-debtor against the decree-holder in that Court

But there is a snag in that rule. It is not enough that there is a suit pending by the judgment-debtor, it is further necessary that the suit must be against the holder of a decree of such Court. The words “such Court” are important “Such Court” means in the context of that rule the Court in which the suit is pending. In other words, the suit must be one not only pending in that Court but also one against the holder of a decree of that Court. That appears to be the plain meaning of the rule.”

**Order 21 Rule 35 (3) and Rule 97 CPC:** These two Rule provides a right to the Decree Holder to complain against a person, who creates resistance in the execution of the decree.

Order 21 Rule 41 CPC- Arrest and detention:- In case of money decree, as per Order 21 Rule 41 CPC, where the decree cannot be executed otherwise by way of attachment or sale of the property, the Court could make an order for the attendance and examination of such Judgment Debtor, or officer or any other person and for the production of any books or documents. If the decree remained unsatisfied for 30 days or otherwise the Judgment Debtor disobeys the decree, the Court may direct the person disobeying the order to be detained in the civil prison for a term not exceeding three months.

**Order 21 Rule 16 CPC:-** The assignment and transfer of the decree made, when assignment is complete. It was observed by the Hon'ble Supreme Court in Jugalkishore's case (supra), as under:-

**“54.** Is there any warrant for importing this equitable principle while construing the statutory 'Provision enacted in Order 21, rule 16 of the Code of Civil Procedure? The Code of Civil Procedure does not prescribe any mode in which an assignment in writing has got to be executed in order to effectuate a transfer of a decree. The only other statutory provision in regard to assignments in writing is to be found in Chapter VIII of the Transfer of Property Act which relates to transfers of actionable claims and an actionable claim has been defined in section 3 of the Act as

"a claim to any debt..... or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognize as affording grounds for relief.....”

A judgment debt or decree is not an actionable claim for no action is necessary to realise it. It has already been the subject of an action and is secured by the decree.

A decree to be passed in future also does not come as such within the definition of an actionable claim and an assignment or transfer thereof need not be effected in the manner prescribed by section 130 of the Transfer of Property Act.

If therefore the assignment or transfer of a decree to be passed in the future does not require to be effectuated in the manner prescribed in the statute there would be no objection to the 1415 operation of the equitable principle above enunciated and the contract to assign evidenced by the assignment in writing becoming a complete equitable assignment of the decree when passed. The assignment in writing of the decree to be passed would thus result in a contract to assign which contract to assign would become a complete equitable assignment on the decree being Passed and would fulfil the requirements of Order XXI, rule 16 in so far as the assignment or the transfer of -the decree would in that event be effectuated by an assignment in writing which became a complete equitable assignment of the decree when passed.



There is nothing in the provisions of the Civil Procedure Code or any other law which prevents the operation of this equitable principle and in working out the rights and liabilities of the transferee of a decree on the one hand and the decree-holder and the judgment debtor on the other, there is no warrant for reading the words "where a decree..... is transferred by assignment in writing" in the strict and narrow sense,, in which they have been read by the High Court of Madras in 17 Mad LJ 391 and the High Court of Calcutta in AIR 1924 Cal 661 and AIR 1932 Cal 439.

It is significant to observe that the High Court of Calcutta in AIR 1939 Cal 715 applied this equitable principle and held that the plaintiff in whose favour the defendant had executed a mortgage bond assigning by way of security the decree that would be passed in a suit instituted by him against a third party for recovery of money due on unpaid bills for work done was entitled to a declaration that he was the assignee of the decree passed in favour of the defendants and was as such entitled to realise the decretal debt either amicably or by execution. If the plaintiff was thus declared to be the assignee of the decree subsequently passed in favour of the defendant and entitled to realise the decretal amount by execution could apply for execution of the decree and avail himself of the provisions of Order 21, Rule 16 as the assignee of the decree-which was passed subsequent to the date of the assignment in writing in his favour.”

**Order 21 Rule 99 CPC:** Rule 99 of Order 21 provides an objector, other than the Judgment Debtor, to raise objection claiming any right in the property from which he is directed to be dispossessed. Rule 99 of Order 21 reads as under:-

“99. Dispossession by decree holder or purchaser

**(1)** Where any person other than the judgment debtor is dispossessed of immovable property by the holder of a decree for the possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the court complaining of such dispossession.

**(2)** Where any such application is made, the court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

The other question to be noticed is that normally the Courts frame the issues while deciding the lis between the parties, but the law does not provide that in each case, the issues are required to be framed. Where the objections raised by the third party are superfluous, then the Court can refuse to entertain the same and such objections could summarily be tried.

Where objections have some merits, then the Court could decide those objections after seeking reply and evidence of the parties.

Rules 105 and 106 of Order 21 CPC, govern the procedure for adjudication of the objection:- These Rules read as under:-

## **“105. Hearing of application**

**(1)** The court, before which an application under any of the foregoing rules of this Order is pending, may fix a day for the hearing of the application.

**(2)** Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the court may make an Order that the application be dismissed.

**(2)** Where on the day fixed or on any other day to which the hearing may be adjourned the applicant does not appear when the case is called on for hearing, the court may make an Order that the application be dismissed.

**(3)** Where the applicant appears and the opposite party to whom the notice has been issued by the court does not appear, the court may hear the application ex parte and pass such Order as it thinks fit.

Explanation : An application referred to in sub-rule (1) includes a claim or objection made under rule 58.

### **106. Setting aside orders passed ex parte, etc**

**(1)** The applicant, against whom an Order is made under subrule (2) of rule 105 or the opposite party against whom an Order is passed ex parte under sub-rule (3) of that rule or under sub-rule (1) of rule 23, may apply to the court to set aside the order, and if he satisfies the court that there was sufficient cause for his non-appearance when the application was called on for hearing,

the court shall set aside the order on such terms as to costs or otherwise as it thinks fit, and shall appoint a day for the further hearing of the application.

**(2)** No Order shall be made on an application under sub-rule (1) unless notice of the application has been served on the other party.

**(3)** An application under sub-rule (1) shall be made within thirty days from the date of the order, or where, in the case of an ex parte order, the notice was not duly served, within thirty days from the date when the applicant had knowledge of the order.”

**Restoration of the objections:-**

Rule 106 of this Order indicates that if the objector fails to appear, then the application could be dismissed and on showing the sufficient cause, the Court could restore the said objection petition and decide the same on merits.

**Order 21 Rule 92 (2):- The conditions when the sale could be set aside after auction:**

Order 21 Rule 92 (2) provides that if the deposit is made within 30 days from the date of sale and an application is filed, then the Court would have no discretion but to set aside the sale and if the amount is not deposited within 30 days, but within 60 days, then it will be within the discretion of the Court, whether or not to grant the application. However, the application could be filed within 60 days. Rule 92 (2) of Order 21 CPC reads as under:-



**(2)** Where such application is made and allowed, and where, in the case of an application under rule 89, the deposit required by that rule is made within sixty days from the date of sale, or in cases where the amount deposited under rule 89 is found to be deficient owing to any clerical or arithmetical mistake on the part of the depositor and such deficiency has been made good within such time as may be fixed by the court, the court shall make an Order setting aside the sale:

PROVIDED that no Order shall be made unless notice of the application has been given to all persons affected thereby.”

## **Order 21 Rule 89 CPC:**

Primary condition precedent to set aside the sale of a mortgaged property is to pay the mortgage money in addition to depositing of 5 percent of the purchase money in the Court.

While elaborating Rule 89 of Order 21 CPC, the Hon'ble Supreme Court in case Tribhovandas Purshottamdas Thakkar Vs. Ratilal Motilal Patel and others, 1968 AIR (SC) 372, has held as under:-

**5.** It was urged, however, that the mortgagee having agreed to, abandon the execution proceeding and to wait for six months for receiving payment of the mortgage dues from the trustees, abandonment of the execution proceeding was in law equivalent to, payment to the decree holder of the amount specified in the proclamation of sale for the recovery of which the sale was ordered. This in our Judgment is a futile argument. By abandoning the execution proceeding the claim of the creditor is not extinguished: he is entitled to commence fresh proceedings for sale of the property. Rule 89 of Order 21 is intended to confer a right upon the judgment- debtor, even after the property is sold, to satisfy the claim of the decree-holder and to compensate the auction purchaser by paying him 5% of the purchase-money.

The provision, is not intended to defeat the claim of the auction purchaser, unless the decree is simultaneously satisfied. When the judgment creditor agrees to extend the time for payment of the amount for a specified period and in the meanwhile agrees to receive interest accruing due on the amount of the decree, the condition requiring the judgment debtor to deposit in Court for payment to the decree holder the amount specified in the proclamation of sale for the recovery of which the sale was ordered. cannot be deemed to be complied with.

**6.** Our attention was invited to several decisions in which it was held, that if the judgment-debtor instead of depositing in Court the amount specified in the proclamation of sale for recovery of which the property is sold, satisfies the claim of the decree-holder under the decree, the requirements of Order 21 Rule 89 are complied with: Subbayya v. Venkata Subba Reddi, AIR 1935 Mad 1050; Muthuvenkatapathy Reddy v. Kuppu Reddi, AIR 1940 Mad 427; ILR (1940) Mad 699 (FB); Laxmansing Baliramsing v. Laxminarayan Deosthan Kapshi, ILR (1947) Nag 802; Rabindra Nath V. Harendra Kumar, AIR 1956 Cal 462; M.H.Shivaji Rao V. Niranjanaiah, AIR 1962 Mys 36. These cases proceed upon interpretation of the expression "less any amount which may since the date of such proclamation of sale, have been received" occurring in clause (b) of Rule 89.

It is unnecessary to venture an opinion whether these cases were correctly decided. It is sufficient to observe that an order setting aside a court sale, in execution of a mortgage decree cannot be obtained, under Order 21 Rule 89 of the Code of Civil Procedure by merely depositing 5 % of the purchase-money for payment to the auction purchaser and persuading the decree-holder to abandon the execution proceedings.”

The essentials for setting aside the sale have also been elaborately discussed by the Honourable Apex Court in case Dadi Jagannadham Vs. Jammulu Ramulu, 2001(4) RCR (Civil) 267, wherein it has been held as under:-

**“18.** Having given our careful consideration to the question, we are of the opinion that there is no anomaly and that there are no different periods of limitation for making deposits and/or filing an application for setting aside the sale. It is by virtue of Order 21 Rule 89 CPC that an application for setting aside a sale and a deposit can be made. Order 21 Rule 89 CPC does not prescribe any period within which the application is to be made or deposit is to be made. All that Order 21 Rule 92 (2) provides is that if the deposit is made within 30 days from the date of sale and an application is filed then the Court would have no discretion but to set aside the sale. That doesn't mean that if the deposit is made after 30 days the Court could not entertain the application.

If the deposit is made beyond the period of 30 days, but within the period 60 days, then it will be within the discretion of the Court whether or not to grant the application. Thus an application can be made within the period prescribed under Article 127, Limitation Act. As an application can be made within 60 days and, as stated above, no period for making a deposit is prescribed under Order 21 Rule 91 (2) the deposit can also be made within 60 days. In our view, therefore, the view expressed in P.K. Unni's case that Order 21 Rule 92(2) CPC prescribes a period of limitation for making a deposit is not correct.”



Other conditions where sale could be set aside

**Order 21 Rule 90 CPC:** deals with the situations when the sale could be set aside:-

Mere to establish irregularity or fraud is not sufficient to set aside the sale. The applicant must establish that material irregularity or fraud has resulted in substantial injury to the applicant. There is no specific provision under Order 21 Rule 67 CPC that sale must be advertised in the local newspaper. Therefore, irregularity cannot be given weight in the absence of any such order made by the Court.

**The Hon'ble Apex Court in case Saheb Khan Vs. Mohd. Yusufuddin and others, 2006 AIC (SC) 1871, has further observed as under:-**

**“13.** Therefore, before the sale can be set aside merely establishing a material irregularity or fraud will not do. The applicant must go further and establish to the satisfaction of the Court that the material irregularity or fraud has resulted in substantial injury to the applicant. Conversely even if the applicant has suffered substantial injury by reason of the sale, this would not be sufficient to set the sale aside unless substantial injury has been occasioned by a material irregularity or fraud in publishing or conducting the sale.

“14. A charge of fraud or material irregularity under Order 21 Rule 90 must be specifically made with sufficient particulars. Bald allegations would not do. The facts must be established which could reasonably sustain such a charge. In the case before us, no such particulars have been given by the respondent of the alleged collusion between the other respondents and the auction purchaser. There is also no material irregularity in publishing or conducting the sale. There was sufficient compliance with the orders of Order 21 Rule 67(1) read with Order 21 Rule 54(2). No doubt, the Trial Court has said that the sale should be given wide publicity but that does not necessarily mean by publication in the newspapers. The provisions of Order 21 Rule 67 clearly provide if the sale is to be advertised in the local newspaper, there must be specific direction of Court to that effect.

In the absence of such direction, the proclamation of sale has to be made under Order 21 Rule 67(1) “as nearly as may be in the manner prescribed by Rule 54, Sub-rule (2).” Rule 54 sub-rule (2) provides for the method of publication of notice and reads as follows:

“(2). The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also where the property is land paying revenue to the Government, in the office of the Collector of the district in which the land is situated (and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village).”

**Order 21 Rule 58 CPC- Attachment of mortgaged property:-** Attachment before judgment- Suit under Order 21 Rule 58 CPC to release the property from attachment. If the property is under attachment in another money suit and the mortgagee is not in actual or constructive possession of the property on that date, then the objection by such objector under Order 21 Rule 58 CPC to such attachment is not maintainable.

While further elaborating Order 21 Rule 58 CPC, the Hon'ble Supreme Court in case Kabidi Venku Sah Vs. Sayed Abdul Hai and another, 1984 AIR (SC) 117, has observed as under:-

“7. The matter is quite simple but has unfortunately dragged on for nearly 15 years on account of a wrong and ill advised step taken by the appellant.

- The learned Principal Civil Judge erred in observing that what was attached before judgment on 24.09.1964 is not the equity of redemption alone but the entire property. He has rightly held that in the claim petition the question of the mortgage of 1948, the mortgage decree, the Court auction sale and delivery of possession of the property to the appellant pursuant to that sale cannot be contended to be collusive and observed that the first respondent could, if at all, challenge them only in a separate suit. That being so, undoubtedly the mortgage of 1948 in favour of the appellant was there and what remained with the mortgagor was only the equity of redemption until it was brought to an end by the sale in execution of the mortgage decree confirmed by the court on 28.08.1968.

Therefore, there could be no doubt whatsoever that on 24.09.1964 when the property was attached before judgment long after the mortgage dated 31.07.1948 and two years, before the suit and the mortgage was filed in 1966, the mortgagor had the equity of redemption and that what could have been attached in law on 24.09.1964 was the equity of redemption alone and not the entire interest in the property. There should have been no difficulty for the learned Judge of the High Court holding that the appellant could not have been in possession of the property, actual or constructive, for he was only a simple mortgagee who had nothing to do with possession and he got delivery of the property through the court as a decree holder – court auction purchaser on 28.04.1968 as noticed by the learned Judge in his judgment.

The appellant had no doubt an interest in the property as mortgagee, but he could not have been in possession of the property as he was only a simple mortgagee. The appellant was a secured creditor as he had a mortgage in his favour, and any attachment effected after the date of the mortgage and during its subsistence can be only subject to that mortgage. He had no interest in the equity of redemption on the date of the attachment and could not therefore have had any objection to that right of the mortgagor being attached by the first respondent. Therefore, he was not a person who could in law file any claim petition under Order 21 Rule 58 objecting to the attachment of the equity of redemption. We may notice here what Order 21 Rule 58(1) says and it is this:



“Where any claims preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained.”

8. The attaching creditor can bring the property to sale only subject to the mortgage so long as it is subsisting. That is to say he could bring only the mortgagor's equity of redemption to sale if it had not already been extinguished by its sale in execution of any decree obtained on that mortgage. But, if the equity of redemption has already been sold after the date of the attachment the attaching, decree holder could proceed only against the balance, if any, of the sale price left after satisfying the mortgagee decree-holder's claim under the decree.

The mortgagee's right is thus not affected, at all. Therefore, it is we had observed earlier that the appellant had taken a wrong and ill advised step in coming forward with the claim petition which has resulted in the matter dragging on for over 14 years from 15.01.1969. The appellant could not object to the attachment of the equity of redemption. The appeal fails and is dismissed, but under the circumstances of the case without costs.”

**Order 21 Rule 35 (2) CPC- Attachment of share of coparcenary property and limitation to take possession of such property:-**

**Decree against father and four sons. Execution against Joint Family property- Auction purchaser purchased at the auction sale was the share of four sons' with joint family property. Sons' original share was  $\frac{4}{5}$ th reduced to  $\frac{2}{3}$ rd on the date of auction sale, after the birth of another son-  $\frac{1}{6}$ th share also allotted in partition suit to auction purchaser, but he was entitled only to four sons' share that is  $\frac{2}{3}$ rd share in the property.**

**Alienation by coparceners of undivided interest – Alienee is not entitled to possession of interest purchased by him till a partition has made that being so, it is arguable that the coparceners can never be in adverse possession of the properties as against him as possession can be adverse against a person only when he is entitled to possession.**

**In case M.V.S. Manikayala Rao Vs. M. Narasimhaswami and others, 1966 AIR (SC) 470, the Hon'ble Supreme Court has held as under:-**

“5. As earlier stated the High Court held that Article 144 applied. The application of this article seems to us to present great difficulties to some of which we like to refer. That article deals with a suit for possession of immovable property or any interest therein not otherwise specially provided for and prescribes a period of twelve years commencing from the date when the possession of the defendant becomes adverse to the plaintiff. This article obviously contemplates a suit for possession of property where the defendant might be in adverse possession of it as against the plaintiff.

Now, it is well settled that the purchaser of a coparcener's undivided interest in joint family property is not entitled to possession of what he has purchased. His only right is to sue for partition of the property and ask for allotment to him of that which on partition might be found to fall to the share of the coparcener whose share he had purchased. His right to possession “would date from the period when a specific allotment was made in his favour”: **Sidheshwar Mukherjee v. Bhubneshwar Prasad Narain Singh, 1954 SCR 177 at P.188.**

It would, therefore, appear that Sivayya was not entitled to possession till a partition had been made. That being so, it is arguable that the defendants in the suit could never have been in adverse possession of the properties as against him as possession could be adverse against a person only when he was entitled to possession. Support for this view may be found in some of the observations in the Madras Full Bench case of **Vyapuri v. Sonamma Boi Ammani, ILR 39 Mad 811.**

6. In the case in hand the learned Judges of the High Court thought that the applicability of Article 144 to a suit like the present one was supported by the decision of the Judicial Committee in **Sudarsan Das v. Ram Kirpal Das, 77 Ind App 42.** We feel considerable doubt that the case furnishes any assistance.

It held that Article 144 extends the conception of adverse possession to include an interest in immovable property as well as the property itself. In that case, a purchaser of an undivided share in a property which was not coparcenary property, had obtained possession of that share and he was held to have acquired title to it by adverse possession. That was not a case of a person who was not entitled to possession. We are not now concerned with adverse possession of an interest in property.



## **Order 21 Rule 35 (3) CPC :- Extent of force to be used to take possession-**

This Rule provides that even if the possession of some premises is not delivered, then the Court, after giving reasonable warning and facility to any woman not appearing in public according to the customs of the country to withdraw, remove or open any lock or bolt or break any door or do any other act necessary for putting the Decree-Holder in possession.

## **Order 21 Rule 17, Order 34 Rule 4, Rules 14 and 15:- Recovery of maintenance by sale of the property over which charge was created-**

Execution for maintenance after the charge has been created by the Court on many lots of the properties. Even if the purchase of one lot is found to be made by the decree-holder prior to the execution,

then the recovery of maintenance could be effected from the other properties over which, the charge has been created.

In case Janapareddy Latchan Naidu Vs. Janapareddy Sanyasamma, 1963 AIR (SC) 1556, the Hon'ble Apex Court has observed as under:- “

“6. The argument involves a fallacy because it assumes that a charge created by a decree on a number of properties disappears when the chargeholder in execution of the charge decree purchases one lot of properties.

An executory charge-decree for maintenance becomes executable again and again as future sums become due. The executability of the decree keeps the charge alive on the remaining properties originally charged till the future amount ceases. In other words the charge subsists as long as the decree subsists. By the execution the charge is not transferred in its entirety to the properties purchased by the charge-holder. Nor is the charge divided between those properties and those which still remain with the judgment debtor. The whole of the charge continues over all the properties jointly and severally. Nor is any priority established between the properties purchased by the charge-holder and those that remain. It is not permissible to seek an analogy from the case of a mortgage. A charge is different from a mortgage.

A mortgage is a transfer of an interest in property while a charge is merely a right to receive payment out of some specified property. The former is described as a jus in rem and the latter as only a jus ad rem. In the case of a simple mortgage there is a personal liability express or implied but in the case of charge there is not such personal liability and the decree, if it seeks to charge the judgment debtor personally, has to do so in addition to the charge. This being the distinction it appears to us that the appellant's contention that the consequences of a mortgagee acquiring a share of the mortgagor in a portion of the mortgaged property obtain in the case of a charge is ill founded. The charge can be enforced against all the properties or severally.”

# CPC ORDERS & RULES ALONG WITH REMEDIES

S. NO	NATURE OF PROCEEDINGS	PROVISIONS	REMEDY
1.	Stay of Unit	Section 10 & Section 151 of CPC 1908	Revision
2.	Objection relating to title of interest of claimant in attached property in execution process	Order 21, Rule 62, 103	Appeal
3.	Application for setting aside sale in execution proceeding	Order 21, Rule 72, 92	Appeal
4.	Application for setting aside decree/order on ground of fraud etc.	Section 12(2)	Revision

# SEBI REGULATIONS

# Coverage as per Syllabus

Securities Contracts (Regulation) Act, 1956 (Contracts and options in securities, listing of securities, Offences, penalties, and adjudication) and the following SEBI Regulations: -

1. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
2. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
3. Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018
4. Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021

# SECURITIES CONTRACTS (REGULATION) ACT, 1956

CONTRACTS AND OPTIONS IN SECURITIES LISTING OF  
SECURITIES, OFFENCES, PENALTIES AND ADJUDICATION HAS  
BEEN INCLUDED FOR EXAMINATION APPLICABLE FROM 01<sup>ST</sup>  
JANUARY 2021



# A. PRELIMINARIES

## A.2 OBJECTIVES AND COVERAGE

1. Primary Objective: The main objective of the act is to prevent undesirable transaction in securities by regulating the business of dealing therein, by providing for certain other matters connected therewith.
2. Other Objectives: The other objectives are-
  - (a) To promote a healthy stock market
  - (b) To provide for the regulation of the stock exchanges
  - (c) To provide for the regulation of transaction in securities
  - (d) To prevent undesirable speculation/ transaction in securities
  - (e) To regulate the buying and selling of securities outside the limits of stock exchanges and
  - (f) To provide for ancillary matters
3. Coverage: The act is applicable to whole of India. It came into force with effect from 20<sup>th</sup> February 1957

## A.2 EXEMPTION FROM SCRA [SEC. 28]

The provision of SCRA shall not apply to the following-

1. The government
2. The RBI
3. Any local authority
4. Any corporation set up by a special law
5. Any person who has effected any transaction with or through the agency of any authority referred from (1) to (4) above
6. Any convertible bond or share warrant or any option or right in relation thereto, in so far as it entitles the person in whose favour any of the foregoing has been issued to obtain at his option from the company or other body corporate, issuing the same or from any of its shareholders or duly appointed agents' shares of the company or other body corporate, whether by conversion of the bond or warrant or otherwise, on the basis of the price agreed upon when the same was issued.

## A.2 EXEMPTION FROM SCRA [SEC. 28]

7. Any class of contracts in respect of which an exemption notification has been issued u/s 28(2)
  - Central govt. can issue notification if it is satisfied that it is necessary in the interest of trade and commerce or the economic development of the country. Such exemptions may relate to the entire act or only to certain provisions thereof, and may also specify the conditions limitations or restrictions subject to which the act shall not so apply.

## A.3 DEFINITION OF TERMS

SEC.	TERM	DEFINITION
2(A)	CONTRACT	IT MEANS A CONTRACT FOR OR RELATING TO THE PURCHASE OR SALE OF SECURITIES
2(aa)	CORPORATISATION	REFER PARAGRAPH 18.2.2
2(ab)	DEMUTUALISATION	REFER PARAGRAPH 18.2.2
2(ac)	Derivate	<p>It Includes</p> <ol style="list-style-type: none"> <li>1. Security derived from a Debt Instrument, share, loan, whether secured or unsecured Risk Instrument or Contract for differences, or any other form of security</li> <li>2. Contract which derives its value from the prices, or index of prices of underlying securities</li> <li>3. Commodity Derivatives and</li> <li>4. Other Instruments as declared by Central Government, to be derivatives</li> </ol>
2(b)	Government Security	<ul style="list-style-type: none"> <li>• It means a security created and issued, whether before or after commencement of this Act, by the central Government for the purpose of raising a public loan and having one of the forms specified u/s 2(2) of the Public Debt Act, 1944</li> </ul>

SEC.	TERM	DEFINITION
2(bb)	Goods	Every kind of movable property, other than Actionable Claims , Money and Securities
2(bc)	Commodity Derivative	It means a contract- <ol style="list-style-type: none"> <li>1. For the delivery of such goods, as notified by central government, and which is not a Ready delivery contract, or</li> <li>2. For differences, which derives its value from prices or indices of prices of such underlying goods or activities, services, rights, interests and events, as notified by the central government, in consultation with SEBI, but does not include Securities as referred in points 1&amp;2 above u/s 2(ac)</li> </ol>
2(c)	Member	It means a Member of a recognized stock exchange
2(ca)	NTSDC	<ul style="list-style-type: none"> <li>• Non transferable specific delivery contract – Refer Paragraph 18.4.9</li> </ul>
2(d)	Option in Securities RTP	<ul style="list-style-type: none"> <li>• It means a contract for the purchase or sale of a right to buy or sell, or a right to buy and sell, securities in future, and includes – (a) a teji, (b) a mandi, (c) a teji mandi, (d) a galli, (e) a put, (f) a call, (g) a put and call in securities.</li> </ul>

SEC.	TERM	DEFINITION
2(e)	Prescribed	It means prescribed by rules made under this act
2(ea)	Ready Delivery contract	<p>It is a contract which provides for the delivery of goods and the payment of a price thereof, either immediately, or within 11 days after the date of the contract, and subject to conditions notified by the central government in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise</p> <p>Such contract shall not be deemed to be a Ready Delivery contract where any such contract is performed either wholly or in part-</p> <ol style="list-style-type: none"> <li>1. By realization of any sum of money being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract , or</li> <li>2. By any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or payment of the full price there for is dispensed with</li> </ol>
2(f)	Recognized stock exchange	It means a stock exchange which is for the time being recognized by the central Government u/s 4.

SEC.	TERM	DEFINITION
2(g)	Rules	With reference to the rules relating in general to the constitution and management of a stock exchange, the term "Rules" includes, in the case of stock exchange which is an incorporated association, its memorandum and articles of Association
2(ga)	Scheme	Refer Paragraph 18.2.3
2(gb)	Securities Appellate Tribunal	It means the Securities Appellate Tribunal established u/s 15K(2) of the SEBI Act, 1992
2(h)	Securities (RTP)	Securities Include- <ol style="list-style-type: none"> <li>1. Shares, Scrips, Stocks. Bonds, Debentures, debenture stock or other marketable securities of a like nature in or any incorporated company or other body corporate</li> <li>2. Derivative</li> <li>3. Units or any other instruments issued by any collective Investment Scheme, to the investors in such schemes</li> <li>4. Security Receipt as defined in the SARFAESI Act, 2002</li> <li>5. Units or any other such investment issued to Investors under any Mutual Fund Scheme</li> </ol>

SEC.	TERM	DEFINITION
		<p>6. Any certificate or Instrument (by whatever name called), issued to an Investor by any issuer being a special purpose Distinct entity, which possesses any debt or receivables including mortgage debt, assigned to such entity, and acknowledge beneficial interest of such Investor in such debt or receivable.</p> <p>7. Government Securities</p> <p>8. Instruments notified by central government to be securities and</p> <p>9. Rights or Interest in securities</p>
2(ha)	SDC	Specific Delivery Contract – Refer Paragraph 18.4.9
2(i)	Spot delivery Contract (RTP)	<p>It means a contract which provides for –</p> <ol style="list-style-type: none"> <li>1. Actual delivery of securities and the payment of a price there for, either on the same day as the date of the contract or on the next day. [The actual period taken for the dispatch of the securities or the remittance of money there for through post will be excluded from the computation of the above period, if the parties to the contract do not reside in the same town or locality</li> <li>2. Transfer of securities by the depository from the account of a beneficial owner, to the account of another beneficial owner when such securities are dealt with by a depository</li> </ol>



SEC.	TERM	DEFINITION
2(j)	Stock Exchange	<p>It means-</p> <ol style="list-style-type: none"> <li>1. Any body of Individuals, whether incorporated or not, constituted before corporatization and demutualization u/s 4A and 4B, or</li> <li>2. A body corporate incorporated under the companies act, whether under a scheme of corporatization and demutualization or otherwise</li> </ol> <p>For the purpose of assisting, regulating or controlling the business of buying selling or dealing in securities</p>
2(k)	TSDC	Transferable Specific Delivery Contract – Refer paragraph 18.4.9

## B. STOCK EXCHANGE RECOGNITION

### B.1 RECOGNITION OF STOCK EXCHANGE [SEC. 3&4]

- The power to recognize a stock exchange vests with the central government. However, it has delegated these powers to SEBI
  1. Application for recognition: Any stock exchange desirous of being recognized, should make an application to SEBI, u/s 3 of SCRA
  2. Form of Application: The Application shall be made in form A with a fee of Rs. 500. The application shall be accompanied by 4 copies of Articles/bye-laws, and rules and regulations
  3. Contents of Articles, bye-laws rules and regulations: The articles Bye-laws, Rules and Regulations must contain specific details on-

- a) Governing body of such stock exchange, its constitution and powers of management and the manner in which its business is to be transacted;
  - b) Powers and duties of the office bearers of the stock exchange
  - c) Admission into the stock exchange of various classes of members, the qualifications for membership, and the exclusion, suspension, expulsion and re-admission of members there from or there into;
  - d) Procedure for the registration of partnerships as members of the stock exchange in cases where the rules provide for such membership; and the nomination and appointment of authorized representatives and clerks.
- Generally rules governing listing, trading and settlement, penalties and prohibition, disciplinary provisions and defaults are contained in the Bye laws of the stock exchange  
PARTICULARS as to composition of the board, powers of governing board and membership provisions, etc. are contained in the articles of the stock exchange

4. Recognition by SEBI (Sec. 4): SEBI may grant recognition to the stock exchange if it is satisfied that-
  - (a) The rules/Bye-laws of the applicant stock exchange are in conformity with the prescribed conditions
  - (b) The stock exchange is willing to comply with any condition that SEBI may impose for carrying out the object of this act
  - (c) The recognition would be in the interest of trade and also in public interest
5. Conditions while granting recognition: While granting recognition: While granting recognition, SEBI may impose such conditions as it may deem fit e.g.
  - (a) Qualification for Membership of stock exchange
  - (b) Manner in which contracts shall be entered into and enforced as between members

- (c) Representation of the Central Government on the stock exchange
  - (d) Maintenance of accounts of members and their audit by chartered accountants
6. Publication in Gazette: The grant of recognition shall be published in the Gazette of India and also in the official Gazette of the state in which the stock exchange is located. The recognition becomes effective from the date of its publication in the Gazette of India
  7. Refusal: SEBI may refuse to grant recognition to the applicant, after giving an opportunity of being heard to the Stock Exchange. The reasons for refusal should be communicated in writing
  8. Restriction on Alteration of Rules: The rules of a Recognized stock exchange related to matters specified in point 5 above shall be amended only with the approval of SEBI

## B.2 CORPORATISATION AND DEMUTUALISATION OF STOCK EXCHANGE [SEC. 4A]

1. Corporatization [Sec. 2(aa)]: It means the succession of a recognized stock exchange, being a body of individuals of a society registered under the societies registration Act, 1860, by another stock exchange, being a company incorporated for the purpose of assisting regulating or controlling the business of buying, selling or dealing in securities carried on by such individuals or society.
2. Demutualization [Sec. 2(ab)]: It means the segregation of ownership and management from the trading rights of the members of a recognized stock exchange in accordance with a scheme approved SEBI

3. Different Organizational Forms: Different stock exchange operate in different organizational forms and structure e.g. –
  - (a) Association of Persons
  - (b) Body of Individuals
  - (c) Societies
  - (d) Company limited by shares
  - (e) Company limited by guarantee
4. Need for Corporatization and Demutualization: To promote investor protection and to regulate transactions in stock exchanges and to avoid undesirable speculation and scam, the central government decided –
  - (a) To make every stock exchange as a corporate entity limited by shares (Corporatization)
  - (b) To separate ownership, trading and management in a stock exchange (Demutualization)

5. Appointed Date:

- (a) All recognized stock exchange shall be corporatized and demutualized as per the provisions contained in Sec. 4B on and from the “Appointed date”
- (b) “Appointed Date” means the date which SEBI may, by notification in the official gazette, appoint
- (c) Different “Appointed dates” may be appointed for different recognized stock exchanges
- (d) If SEBI is satisfied that any recognized stock exchange was prevented by sufficient cause from being corporatized and demutualized on or after the appointed date, it may specify another appointed date for that stock exchange. Such stock exchange may continue as such, before such appointed date



## B.3 PROCEDURE FOR CORPORATIZATION AND DEMUTUALIZATION [SEC. 4B]

1. Submission of Scheme:
  - (a) All recognized stock exchanges referred to in section 4A shall, within such time as may be specified by the Securities and Exchange Board of India, submit a scheme for corporatization and demutualization for its approval
  - (b) A recognized stock exchange whose name has already been corporatized and demutualized by SEBI by notification in the official Gazette, need not submit any scheme fresh

2. Scheme [Sec. 2(ga)]: It means a scheme for corporatization or demutualization of a recognized stock exchange which may provide for-
  - (a) Issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognized stock exchange
  - (b) Restriction on voting rights
  - (c) Transfer of property, business, assets, rights, liabilities, recognitions, contracts of the recognized stock exchange, legal proceedings by, or against, the recognized stock exchange, whether in the name of the recognized stock exchange or any trustee or otherwise and any permission given to, or by, the recognized stock exchange.
  - (d) Transfer of employees of a recognized stock exchange to another recognized stock exchange;

- (e) Any other matter required for the purpose of, or in connection with, the corporatization or demutualization, as the case may be, of the recognized stock exchange
- 3. Approval: On receipt of the scheme, SEBI may approve the scheme with or without modification, after making such enquiry and obtaining further information if any as it may require and it is satisfied that it would be in the interest of trade and also in public interest
- 4. Ineligible Conditions: SEBI shall not approve a scheme if –
  - (a) The issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognized stock exchange or
  - (b) Payment of dividends to members have been proposed out of any reserves or assets of that stock exchange.

5. Publication in Gazette: When the scheme is approved, it shall be immediately published by-

(a) SEBI – In the Official Gazette and

(b) The recognized stock exchange in two daily newspaper circulating in India , as specified by SEBI

Once published the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognized stock exchange and on all persons having any contract, right, power, obligation or liability with against over, to or in connection with the stock exchange or its members.

6. Rejection of Scheme:

(a) Where SEBI is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme, it may, by an order, reject the scheme.

- (b) Such rejection shall be published in the Official Gazette
  - (c) The persons concerned and concerned recognized stock exchange shall be given a reasonable opportunity of being heard, before passing the rejection order
7. Restrictions/Conditions for approval: While approving the scheme SEBI may, by an order in writing, restrict-
- (a) Voting rights of shareholders who are also stock brokers of the recognized stock exchange
  - (b) Rights of shareholders or a stock broker of the recognized stock exchange to appoint the representatives on the governing board of the stock exchange
  - (c) Maximum number of representatives of stock brokers of the recognized stock exchange to be appointed on the governing board of the recognized stock exchange, which shall not exceed  $\frac{1}{4}$  of the total strength of the governing board

The above restrictions shall be published in the official gazette and on publication thereof, the order shall have full effect, notwithstanding any contrary provisions in the companies act or any other law

8. 51% Shareholding by Public:

- (a) Every recognized stock exchange in respect of which the scheme for corporatization or demutualization has been approved shall – (a) either by fresh issue of equity shares to the public, or (b) in any other manner as specified by SEBI regulations, ensure that at least 51% of its equity capital is held by the public other than shareholders having trading rights
- (b) Such compliance shall be made within 12 months from date of publication of the order
- (c) SEBI can extend the above period by another 12 months on sufficient cause being shown to it and if it is satisfied as being in the public interest

9. Manner of Increasing Public Shareholding: The guidelines in this respect are provided in “Securities Contracts(Regulation) (Manner of Increasing and Maintaining Public shareholding in Recognized stock exchanges) Regulations, 2006”. RSE shall ensure that at least 51% of its equity share capital is held by the public, either by fresh issue of Equity Shares to the public through issue of prospectus or in the following manner-
- (a) Offer for sale, by issue of prospectus, of shares held by shareholders having trading rights therein
  - (b) Placement of shares held by shareholders having trading rights to such person or institutions as may be shortlisted by the RSE with the approval of the Board
  - (c) Issue of equity shares on private placement basis by the RSE to any person or group of persons not being shareholder having trading rights on their associates subject to the approval of the board

(d) Any combination of the above

## 10. Shareholding and Transferability Restrictions on Equity Shares Capital:

PARTICULARSS	RESTRICTIONS
Person Resident in India (Individually or Together, Directly or Indirectly)	Max – 5% paid up capital
Stock exchange, a depository, clearing corporation, banking company, insurance company and public financial institution (Individually or Together, Directly or Indirectly)	Max – 15% paid up capital
Persons resident outside India (combined holding of all persons)	Max – 49% (FDI – 26%, FII – 23%)
Foreign Investor (single)	Max – 5%



## B.4 WITHDRAWAL OF RECOGNITION [SEC. 5]

1. Situations: Withdrawal of recognition granted to a stock exchange can arise in the following situations-

PUBLIC/TRADE INTEREST [SEC. 5(1)]	FAILURE TO CORPORATISE OR DEMUTUALISE [SEC. 5(2)]
SEBI may serve a written notice on the governing body of a stock exchange, stating that SEBI is considering withdrawal of recognition, considering the interest of the trade or in the public interest.	The recognition granted to a stock exchange shall stand withdrawn if- <ol style="list-style-type: none"><li>1. The stock exchange has not been corporatized or demutualized within the specified time or</li><li>2. The stock exchange fails to submit the scheme within the specified time</li><li>3. The scheme has been rejected by SEBI u/s 48(5)</li></ol>
An opportunity of being heard shall be given to the governing body of the stock exchange	

2. Validity of prior contracts: Withdrawal of recognition shall not affect the validity of the contracts entered into or made before the date of notification. To provide for this, after consultation with the concerned stock exchange, SEBI shall make such provisions as it deems fit in the order withdrawing recognition or order rejecting the scheme under section 4B(5)
3. Publication in Gazette: Withdrawal of recognition shall be published in the official Gazette

## B.5 CLEARING CORPORATION [SEC. 8A]

1. Clearing Corporation: With the prior approval of SEBI, a recognized stock exchange may, transfer the duties and functions of a clearing house to a Clearing Corporation, being a Company incorporated under the companies act, for the purpose of-
  - (a) Periodical settlement of contracts and differences thereunder
  - (b) Delivery of, and payment for, securities and
  - (c) Any other matter incidental to, or connected with, such transfer
2. Bye laws: For transfer of the duties and functions of a clearing house to a clearing corporation, every such clearing corporation shall make Bye-laws and submit them to SEBI for its approval.

3. Approval by SEBI: On being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, SEBI may grant approval to the bye-laws submitted to it and approve transfer of the duties and functions of a clearing house to a clearing corporation
4. Other Provisions: The provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 shall, as far as may be, apply to a clearing corporation as they apply in relation to a recognized stock exchange

## C. POWERS OF GOVERNMENT / SEBI

### C.1 POWERS OF CENTRAL GOVERNMENT / SEBI

Sec.	Power
4	To grant recognition to stock exchange
5	To withdraw recognition of stock exchange
6	To call for information and explanation from stock exchange, to make enquiry into affairs of the stock exchange.
7	To call for annual report/returns from the stock exchange
7A	To approve rules of stock exchange, and make modification therein
8	To direct rules to be made or to make rules of stock exchange
11	To supersede the governing body of a recognized stock exchange
12	To suspend business of recognized stock exchange
13	To declare contracts in notified area as illegal, in certain circumstances
16	To prohibit contracts in certain cases of undesirable speculation
28	To exempt any class of contracts from the application of SCRA or any provision thereof

## C.2 POWERS OF CG/ SEBI TO CALL FOR INFORMATION FROM STOCK EXCHANGE [SEC. 6&7]

1. Periodical Returns [Sec. 6]: Every recognized stock exchange shall furnish to SEBI, the prescribed periodical returns relating to its affairs
2. Maintenance of Books of Accounts [Sec. 6]:
  - (a) Every recognized stock exchange and every member thereof shall maintain the books of account and other documents, as prescribed by the central government in consultation with the concerned stock exchange
  - (b) These books of account and other documents shall be-
    - Preserved for such periods not exceeding 5 years as prescribed by the central government

- Subject to inspection by SEBI, at all reasonable times
- 3. Calling for information and Inquiry into affairs of Exchanges/Members [Sec. 6]: In the interest of the trade or public interest, SEBI may-
  - (a) Call upon a stock exchange or any member thereof, to furnish in writing such information or explanation relating to the affairs of the stock exchange or of the member in relation to the stock exchange, as SEBI may require
  - (b) Appoint one or more persons to make an inquiry in relation to the affairs of the governing body of a stock exchange or the affairs of any of the members of the stock exchange in relation to the stock exchange and submit a report of the result of such inquiry to SEBI within the specified time or, in the case of an inquiry in relation to the affairs of any of the members of a stock exchange, direct the governing body to make inquiry and submit its report to SEBI

4. Duties vis-à-vis Inquiry [Sec. 6]: Where an inquiry u/s 6(3) in relation to the affairs of a recognized stock exchange or the affairs of any of its members in relation to the stock exchange has been undertaken-
  - (a) Every Director, Manager, Secretary or other officer of such stock exchange
  - (b) Every member of such stock exchange
  - (c) If the member of the stock exchange is a firm,, every partner, manager, secretary or other officer of the firm
  - (d) Every other person or body of persons who has had dealings in the course of business with any of the persons mentioned above, whether directly r indirectly

Shall be bound to produce before the authority making the inquiry, all such books of account, and other documents in his custody or power relating to or having a bearing on the subject matter of such inquiry and also to furnish the authorities with any such statement or information relating to as may be required of him, within the specified time



5. Furnishing of Annual Reports [Sec. 7]: Every, recognized stock exchange shall furnish to the central government with a copy of the Annual report containing the prescribed PARTICULARSs.
6. To instruct the stock exchange to punish the erring member [Sec. 9]: The contravention of any of the Bye-laws shall render the Member concerned liable to one or more of the following punishments namely – (a) Fine, (b) Expulsion from Membership, (c) Suspension from Membership for a specified period or (d) Any other penalty of a like nature not involving the payment of money

## C.3 POWERS OF CG/ SEBI TO DIRECT RULES TO BE MADE [SEC. 8]

1. Nature of order: SEBI can direct recognized stock exchange(s) to make any rules or to amend any rules already made, in respect of all or any of the matters specified u/s 3(2)
2. Requisites of making order: SEBI should-
  - (a) Consult the governing body of the stock exchanges generally or the concerned stock exchange in PARTICULARS
  - (b) Form an opinion that it is necessary or expedient to make such order
  - (c) Specify the reasons for making such order

3. Compliance of order: The recognized stock exchange shall make or amend the rules within 2 months from the date of SEBI order. If it fails or neglects to comply with the order within 2 months, SEBI may make or amend rules of the stock exchange
4. Publication of Rules: The rules made or amended shall be published in the Gazette of India and also in official Gazette of the states in which the principal office of the recognized stock exchange is situated. The rules made or amended shall have effect

## C.4 POWERS OF CG/ SEBI TO SUPERSEDE GOVERNING BODY OF A RSE [ SEC.11]

- 1. Order of Supersession:** If SEBI is of the opinion that the Governing Body of Stock Exchange should be superseded, it shall issue a notification in the Official Gazette to that effect.
- 2. Opportunity of being heard:** Before such notification, SEBI shall give a written notice to the Governing Body, that it is considering the supersession of the Governing Body, specifying the reasons for such supersession. It shall also give the Governing Body, an opportunity *of* being heard.

- 3. Appointment of Nominees:** SEBI may appoint a person or persons to exercise all powers and perform all duties the Governing Body which has been superseded. Where more than one person has been appointed, it may appoint one of such persons to be the Chairman and another to be the Vice Chairman.
- 4. Tenure of Office:** The person(s) appointed by SEBI shall hold their office for the period as specified in the Notification. Such period may be varied by SEBI by issuing a fresh Notification.
- 5. Effect of Supersession:** On the publication of the Notification in the Official Gazette —
  - a) The members of the Governing body shall cease to hold their office from the date of such Notification.
  - b) The person(s) appointed by SEBI may exercise and perform all the functions and duties of the Governing Body which has been superseded.

- c) All properties specified by such appointed person(s) in writing, to enable them to carry on the business of Stock Exchange, shall vest in him / them as from the date of order made by such person(s) in this behalf.
6. Reconstitution of Governing Body:
- a) Before the end of tenure of office of the persons appointed, SEBI may call upon the concerned Stock Exchange to re-constitute its Governing Body in accordance with its Rules.
  - b) On such re-constitution, all the property of the Stock Exchange shall re—vest in the re-constituted Governing Body.
  - c) Till the re-constitution, the persons appointed shall continue to exercise and perform their powers and duties.

## C.5 POWERS OF CG / SEBI TO SUSPEND BUSINESS OF A RSE [ SEC.12]

- 1. Emergency:** SEBI must form an opinion that some emergency has arisen and for the purpose of meeting the emergency, it is expedient to suspend the business of the Stock Exchange.
- 2. Notification:** SEBI shall issue a notification in the Official Gazette that the business of the recognised Stock Exchange has been suspended, specifying the reasons therefor.
- 3. Maximum 7 days suspension:** The suspension of such business shall be subject to such conditions, and for sum period not exceeding 7 days as may be specified in the notification.

4. **Extension:** SEBI may extend the period of suspension by issuing a fresh notification in the Official Gazette. The extension may be ordered if such extension is in the interest of trade or public interest. For extension of suspension period, an opportunity of being heard should be given to the Governing Body of the Stock Exchange.



## C.6 POWERS OF THE CENTRAL GOVERNMENT UNDER SCRA

The Central Government can exercise the following powers (in addition to the powers stated in Para 18.3.1)

SEC	POWER
17	To notify areas for Sec. 17 purposes. (licensing of Dealers)
29A	To delegate powers to SEBI / RBI, by issuing a notification in the Official Gazette. [Except Sec. 30 Powers]
30	To make Rules under SCRA.
23--0	To grant immunity from prosecution of offence in certain cases.

## C.7 POWERS OF CENTRAL GOVERNMENT TO MAKE RULES (SEC.30)

- A. Rule making Powers:** The Central Government may, by notification in the Official Gazette, make Rules for the purpose of carrying out the objects of this Act. The Rules may provide for —
1. Manner in which applications may be made, the PARTICULARSs which they should contain and the levy of a fee in respect of such application.
  2. Manner in which any inquiry may be made for the purpose of recognizing any Stock Exchange, the conditions which may be imposed for the grant of such recognition, including conditions

as to the admission of members if the Stock Exchange concerned is to be the only recognised Stock Exchange in the area, and the form in which such recognition shall be granted.

3. PARTICULARS which should be contained in the periodical returns and annual reports to be furnished to the Central Government.
4. Documents which should be maintained and preserved u/s 6 and the periods for which they should be preserved.
5. Manner in which any inquiry by the Governing Body of a Stock Exchange shall be made u/s 6.
6. Manner in which the Bye—Laws to be made or amended under this Act shall before being so made or amended be published for criticism.
7. Manner in which applications may be made by dealers in securities for licenses u/s 17, the fee payable in respect thereof and the period of such licenses, the conditions subject to which licenses may be granted, including conditions relating to the forms which may be used in making contract, the documents

to be maintained by licensed dealers and the furnishing of periodical information to such authority as may be specified and the revocation of licenses for breach of conditions.

8. Requirements which shall be complied with —
  - a) By Public Companies for the purpose of getting their securities listed on any Stock Exchange,
  - b) By Collective Investments Scheme for the purpose of getting their units listed on any Stock Exchange.
9. Grounds on which the securities of a Company may be delisted from any recognised Stock Exchange u/s 21A (1).
10. Form in which an appeal may be filed before SAT u/s 21A(2) / 22A/ 23L and the fees payable in respect of such appeal.
11. Manner of inquiry u/s 23 — I(1).
12. Any other matter which is or may be prescribed.

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- A. Rule making Powers:** The Central Government may, by notification in the Official Gazette, make Rules for the purpose of carrying out the objects of this Act. The Rules may provide for —
- B. Parliamentary Consent:**
1. Every Rule made u/s 30 shall be laid, as soon as it is made, before each House of Parliament, while it is in session, for a total period of 30 days which may be comprised in one session or in two or more successive sessions.
  2. If, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be.
  3. Any such modification or annulment shall be without prejudice to the validity of anything previously done under that Rule.

## C.8 POWERS EXERCISABLE BY SEBI UNDER SCRA

SEBI can exercise the following powers under SCRA in addition to those delegated by Central Govt. (Refer Para 18.3.1)

SEC.	POWER
8A	To grant approval to Clearing Corporation.
9	Power to approve Bye – Laws of Stock Exchange
10	To make or amend Bye – Laws of recognised Stock Exchanged.
12A	To issue directions to recognised Stock Exchange.
17	Licensing of Dealers in Securities in certain areas.
21	Power to compel listing of Securities by Public Companies.
23-I	To appoint Adjudicating Officer for adjudicating penalties.
31	To make Regulations.

## C.9 POWERS OF SEBI TO MAKE OR AMEND BYE-LAWS OF STOCK EXCHANGES [SEC.10]

**Power to make or amend Bye—Laws of Recognised Stock Exchange [Sec. 10]:** Sec. 10 empowers SEBI direct any Stock Exchange to amend its Bye-Laws. These provisions are as follows-

- 1. Power:** SEBI may make Bye-Laws for all or any of the matters specified u/s 9, (or) amend any Bye-Laws made by a Stock Exchange u/s 9.
- 2. Situations:** SEBI's power to make or amend Bye—Laws can be exercised — (a) on its own motion, or (b) if the Stock Exchange makes a written request to SEBI in this regard.

- 3. Order:** SEBI shall consult the Governing Body of the Stock Exchange before making or amending the Bye – Laws. The reasons for making / amending the Bye - Laws should be recorded in writing.
- 4. Publication:** The Bye—Laws so made or amended shall be published in the Gazette of India and also in the official Gazette of the State in which the Principal Office of the Stock Exchange is situated. The Bye-Laws shall have effect only from the date of its publication in the Gazette of India.
- 5. Effect of SEBI's Order:** On the publication of Bye—Laws in the Gazette of India, the Bye—Laws so made or amended by SEBI, shall have effect as if they had been made or amended by the recognised Stock Exchange concerned.



- 6. Objection to amendment:** Where SEBI makes or amends the Bye-Laws of a Stock Exchange on its own motion, the Governing Body of the Stock Exchange may apply to SEBI for revision thereof, within 2 months of the publication in the Gazette of India. After giving an opportunity of being heard to the Governing Body, SEBI may revise the bye-laws so made or amended. The revision shall have effect only from the date of its publication in the Gazette of India.
- 7. Previous publication condition:** The making or amendment or revision of Bye-Laws u/s 10 shall be subject to the condition of previous publication. However, if SEBI is satisfied that in the interest of the trade or in the public interest any Bye-Laws should be made, amended or revised immediately, it may, by order in writing specifying the reason therefor, dispense with the condition of previous publication.

## C.10 POWERS OF SEBI TO ISSUE DIRECTIONS TO A RSE(SEC. 12A)

1. **Need for Directions:** SEBI may issue directions —
  - (a) in the interest of investors, or orderly development of securities market, or
  - (b) to prevent the affairs of any recognised Stock Exchange, or, Clearing Corporation, or such other agency or person providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market, or
  - (c) to secure the proper management of any Stock Exchange or Clearing Corporation or agency or person, referred to in clause (b).

2. **Inquiry:** SEBI may issue directions after making, or causing to be made, an inquiry, for Sec.12A purposes.
3. **Directions:** SEBI can issue appropriate directions, in the interests of investors in securities and the securities markets —
  - (a) To any Stock Exchange or Clearing Corporation or agency or person referred to in Point 1(b) above, or any person or class of persons associated with the securities market, or
  - (b) To any Company whose securities are listed or proposed to be listed in a recognised Stock Exchange, as may be appropriate in the interests of investors in securities and the securities market.
4. **Scope of Power u/s 12A:** Sec.12A Powers include the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of SCRA/ Regulations, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.

5. Penalty: Without prejudice to the provisions sec.12A(1) and sec. 23-1, the SEBI may, by an order, for reasons to be recorded in writing, levy penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G, 23GA and 23H after holding an inquiry in the prescribed manner.

## C.11 POWERS OF SEBI TO MAKE REGULATIONS UNDER SCRA (SEC. 31)


1. SEBI's Powers: SEBI may make Regulations consistent with the provisions of the Act / Rules, to carry out the purpose of this Act, by notification in the Official Gazette.
2. Regulations: The Regulations may provide for all or any one of the following matters
  - (a) Manner in which at least 51% of Equity Share Capital of a recognised Stock Exchange is held within 12 months from the date of publication of the order u/s 4B(7), by the public other than Shareholders having trading rights u/s 4B(8)
  - (b) The eligibility criteria and other requirements u/s 17A, (for securities issued under Debt securitization process).
3. Parliamentary Consent: [Same as for Rules made by Central Govt. See Para 18.3.7 above]

## D. REGULATING SECURITIES TRANSACTION

### D.1 REGULATING TRANSACTION IN SECURITIES [SEC. 13-19]

1. Only Recognised Stock Exchanges can transact [Sec.19]: Except with the permission of the Central Government, no person shall — (a) organize, or (b) assist in organizing, or (c) be a Member of any Stock Exchange (other than a Recognised Stock Exchange) for the purpose of — (i) assisting in, (ii) entering into, (iii) or performing any contracts in securities.
2. Transactions not entered through Members of RSEs are illegal [Sec. 13]: Every contract in securities in the notified State(s) or area shall be illegal..
3. Transactions in contravention of bye laws will be void [Sec. 14]: Any contract entered into in any State or area specified in the notification u/s 13 which is in contravention of any of the Bye—Laws specified in that behalf shall be void. The exceptions to this rule are provided in Sec. 14.

4. Members not to act as Principals [Sec. 15]: Generally, Members of a Stock Exchange carry out transactions and dealings on behalf of investors. Hence, the investor is the Principal, and the Member / Stock—Broker is his agent. Therefore, the Members cannot enter into contracts as Principals, except in specific circumstances.
5. Undesirable Speculation Contracts prohibited [Sec. 16]: If the Central Government / RBI / SEBI is of the opinion that it is necessary to prevent undesirable speculation in securities in any State(s) or area, it may declare, by way of a notification in the Official Gazette, that no person in such State(s) / area shall enter into any contract for the sale or purchase of such securities, except with the permission of the Central Government RBI / SEBI. All contracts entered into after the date of the notification, for sale or purchase of the specified securities in these specified States/Areas shall be illegal.

6. Derivative Contracts [Sec. 18A]: Contracts in derivative, shall be legal and valid, only if such contracts are —
- (a) Traded on a recognised Stock Exchange, In accordance with Rules and
  - (b) Settled on the Clearing House of the recognised Stock Exchange, or
  - (c) Between such parties on such terms, as notified by Central Govt.
- 
- Rules and  
Bye-Laws of the  
Exchange.



## D.2 TRANSACTIONS NOT ENTERED THROUGH MEMBERS OF RSE = ILLEGAL [SEC.13]

1. **Illegal Transactions:** Every contract in securities in the notified State(s) or area shall be **illegal** unless it is entered into —
  - a) Between the Members of a Recognised Stock Exchange(s), or
  - b) Through or with a member of a Recognised Stock Exchange.
2. **Notification:** SEBI can notify any State(s) or area for the purpose of Sec. 13 having due regard to the nature and volume of transactions in securities in such State(s) or area.
3. **Non—Applicability:** Sec. 13 shall not apply to Spot Delivery Contracts as defined u/s 2(i), unless such exemption is withdrawn by SEBI by issuing a notification in this behalf. [**Sec. 18**]

- 4. Transactions between two members of Stock Exchange**  
**[Proviso to Sec. 13]:** Any contract entered into between members of two or more recognised Stock Exchange in such State(s) or area shall —
- a) be subject to such terms and conditions as stipulated by the respective Stock Exchanges, with the prior approval of SEBI,
  - b) require prior permission from the respective Stock Exchanges if so stipulated by the Stock Exchanges, with the prior approval of SEBI.

## D.3 TRANSACTIONS THAT CONTRAVENE BYE-LAWS = VOID [SEC.14]

1. **Void Contracts:** Any contract entered into in any State or area specified in the notification u/s 13 which is in contravention of any of the Bye—Laws specified in that behalf shall be void —
  - a) as respects the rights of any member *of* the recognised Stock Exchange who has entered into such contract in contravention of any such Bye—Law, and
  - b) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.
2. **Contracts with utmost good faith protected:** The above shall not be construed to affect the right of any person other than a member of the recognised Stock Exchange to enforce any such contract, or to recover any sum under or in respect of such contract, if such person had no knowledge that the transaction was in contravention of any of IE Laws specified u/s 9(3)(a).

3. **Other exclusion:** Sec. 14 shall not apply to Spot Delivery Contracts as defined u/s 2(i), unless such exemption is withdrawn by SEBI by issuing a notification in this behalf.  
**[Sec.18]**

## D.4 RESTRICTION ON MEMBER OF RSE TO ACT AS A PRINCIPAL [SEC.15]

1. **Principle of Agency:** Generally, members of a Stock Exchange carry out transactions and dealings on behalf of investors. Hence, the investor is the Principal, and the member / stock—broker is his agent. Therefore, the Members cannot enter into contracts as Principals, except in specific circumstances.
2. **Exceptions:** No Member of a recognised Stock Exchange shall enter into any contract as a Principal with any person other than a Member of a recognised Stock Exchange, except in the following cases —
  - a) Where the contract is a Spot Delivery Contract as defined u/s 2(i), unless such exemption is withdrawn by SEBI by issuing a notification in this behalf. [Sec. 18]

- b) Where the Member of the recognised Stock Exchange — (i) secures the consent of such other person in writing within 3 days from the date of the Contract, or (ii) discloses in the note, memorandum or agreement of sale or purchase that he is acting as a Principal.

## D.5 PROHIBITION OF UNDERSIRABLE SPECULATIVE CONTRACTS

### **1. Permissible Contracts:**

No person in the territory to which SCRA extends, shall, except with SEBI's permission, enter into any contract for sale or purchase of Securities other than a contract falling under any one or more of the following, namely —

- a) Spot Delivery Contract,
- b) Contracts for Sale or Purchase of Securities or Contracts in Derivatives as permissible,
- c) Contracts for pre-emption including right of first refusal, or tag-along or drag-along rights contained in Shareholders Agreements or Articles of Association of Companies or other Body Corporate,

d) Contracts in Shareholders Agreements or Articles of Association of Companies or other Body Corporate, for purchase or sale of securities pursuant to exercise of an option contained therein to buy or sell the securities

2. Conditions:

(a) The Title and Ownership of the underlying securities is held continuously by the selling party to such contract for a **minimum period of one year** from the date of entering into the contract,

(b) The price or consideration payable for the sale or purchase of the underlying securities pursuant to exercise of any option contained therein, is in **compliance with all the laws** for the time being in force as applicable, and

(c) The contract is settled by way of actual delivery of the **underlying securities.**

(d) The Contracts shall also be in accordance with the provisions of the Foreign Exchange Management Act, 1999.



## D.6 LICENSING OF DEALERS [SEC.17]

1. **License:** Sec. 17 requires a person dealing in securities to obtain a license from SEBI. Unless such license is obtained, no person shall whether on his own behalf or on behalf of any other person, carry on the business of dealing in securities in any State or area which —
  - a) Has not been notified under Sec. 13, and
  - b) Has been notified by the Central Government for Sec. 17 purposes.
2. **Notification u/s 17:** Notification shall be issued with respect to any State or area, if the Central Government is satisfied, having regard to the manner in which securities are being dealt with in such State or Area, that it is desirable or expedient in the interest of the trade or in the public interest that such dealings should be regulated by a system of licensing.

- 3. Exclusions:** Sec. 17 shall not apply to —
- a. Anything done by or on behalf of a Member of any recognised Stock Exchange, and,
  - b. Spot Delivery Contracts, unless such exemption is withdrawn by SEBI by issuing a notification in this behalf. [Sec. 18]

## D.7 SECURITIES ISSUED UNDER “DEBT SECURITIZATION” PROCESS [SEC.17A]

1. **Applicability:** Sec. 17A applies to securities issued under “Debt Securitization” process. **[Sec.2(h) in Para 18.1.3]**
2. **Duties of Issuer:** The Issuing Company (Special Purpose Distinct Entity) shall -
  - (a) fulfill the eligibility criteria and other requirements as per SEBI Regulations,
  - (b) apply for listing in one or more recognised Stock Exchange(s), **before** issuing the Offer Document to the public,
  - (c) repay all moneys collected under the Offer Document, **within 8 days**, if the listing permission is refused / not granted.

**Note:**

- If moneys are not repaid within 8 days after the Issuer is liable to repay it, the Issuer, and every Director / Trustee thereof, shall be jointly and severally liable to repay that money along with interest at 15% p.a.
  - In reckoning the eighth day, intervening “public holidays” under Negotiable Instrument Act shall be disregarded. If the eighth day itself is a public holiday, the next day shall be considered.
- 3. Other Provisions:** All other provisions of SCRA relating to listing of securities of a Public Company on a recognised Stock Exchange, shall apply to securities issued under “Debt Securitization” process.

## D.8 RIGHTS OF TRANSFEROR / TRANSFEREE TO RECEIVE DIVIDENDS, ETC.

[S.27,27A,27B]

1. Transferor's Right: The holder of —
  - a) any security issued by any Company, or
  - b) any securities being units or other instruments issued by a Collective Investment Scheme, or
  - c) any securities being units or other instruments issued by a Mutual Fund,

whose name appears in the books of the Company / Collective Investment Scheme / Mutual Fund, shall be entitled to receive and retain any dividend declared by the Company / Collective Investment Scheme / Mutual Fund. The holder shall have such right notwithstanding that the said security has already been transferred by him for consideration.

2. Transferee's Right: However, if the Transferee who claims the dividend / income from the Transferor, has lodged the security and all other documents required for making the transfer of security within 15 days of the date on which the dividend / income became due, the Holder (Transferor) shall have no right to retain such dividend / income.
3. Extension of Period: The period of 15 days shall be extended in the following manner —

Situation	Extension By
Death of the Transferee.	Actual period taken by his Legal Representative to establish his claim to the dividend / income from CIS / MF.
Loss of Transfer Deed by theft or any other cause beyond the control of the Transferee.	Actual period taken for replacement thereof
Delay in lodging of any security and other documents relating to the transfer due to causes connected with post.	Actual period of the delay.

4. Exclusions: Nothing contained in the aforesaid provisions shall affect –
  - (a) The right of a Company / Collective Investment Scheme / Mutual Fund, to pay any dividend / income to the Holder of the security, or
  - (b) The right of the Transferee of any security to enforce against the Transferor or any other person his rights' if any' in relation to the transfer in any case where the company has refused to register the transfer of the security in the name of the Transferee

## D.9 APPLICABILITY OF SCRA TO CERTAIN DELIVERY CONTRACTS [SEC. 30A]

### 1. Definition of Terms

Sec.	Term	Meaning
2(ha)	Specific Delivery Contract	<p>Commodity Derivative</p> <ul style="list-style-type: none"><li>• Which provides for the actual delivery of specifying qualities or types of goods</li><li>• During a specified future Period,</li><li>• At a price fixed specify or to be fixed in the manner thereby agreed</li><li>• In which the names of both the Buyer and the seller are mentioned</li></ul>



2(ca)	Non-Transferable Specific Delivery Contract (NTSDC)	It is a Specific Delivery contract, the rights or liabilities under which or under any delivery order, Railway Receipt, Bill of lading warehouse Receipt, or any other Documents of Title relating thereto, are NOT TMNSFEMBLE'
2(k)	Transferable Specific Delivery Contract (TSDC)	It is a specific Delivery contract which is not a Non-Transferable specific delivery Contract, and which is subject to such conditions relating to its transferability as notified by the Central Government.

2. Restriction: No person shall organize or assist in organizing or be a Member of any Association in any area to which the provisions of sec.13 have been made applicable (other than a Stock Exchange) which provides facilities for the performance or any NTSDC by any party thereto without having to make or receive actual delivery to or from the other party the contract or to or from any other party named in the contract'

### 3. Applicability of SCRA [Sec. 30A]

<b>NTSDC'S</b>	<ul style="list-style-type: none"><li>a) <b>General Rule: SCRA shall not apply to Non-Transferable specific delivery contracts</b></li><li>b) <b>Exception: central government can notify that SCRA applies to NTSDC's if that government is of the opinion that in the interest of the trade or in the public interest, such application can be for (i) notified classes of NTSDC's (ii) specified areas, (ii) specified goods or class of goods, (iv) in specified manner</b></li></ul>
TSDCs	Where in respect of any area, the provisions of Sec. 13 have been made applicable in relation to commodity derivatives for the sale or purchase of any goods or class of goods, the central government may notify that in the said area or any part thereof, all or any of the of the provision of SCRA shall not apply to TSDCs for the sale or purchase of the said goods or class of goods either generally, or to any class of such contracts in PARTICULARS

# E. POWERS OF STOCK EXCHANGES

## E.1 POWERS EXERCISABLE BY STOCK EXCHANGES UNDER SCRA

SEC.	
7A	To make rules restricting voting rights etc. subject to central govt/ SEBI approval
9	To make Bye-law subject to SEBI approval
13A	To establish additional trading floor subject to SEBI approval
17A	To specify eligibility criteria to be fulfilled by issuer of
21	
21A	

S.No	Particular	Reference
1.	"Global Depository Receipts" is defined under The Companies Act, 2013.	Regulation 2(1)(j)
2.	'Indian Depository Receipts' is defined under The Companies Act, 2013.	Regulation 2(1)(n)
3.	"Public shareholding" is defined under The Securities Contracts (Regulation) Rules, 1957.	Regulation 2(1)(y)
4.	"Listing agreement" shall mean an agreement that is entered into between a recognised stock exchange and an entity.	Regulation 2(1)(q)
5.	Any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a Related Party.	Proviso to Regulation 2(1)(zb)
6.	The Related Party Transaction definition shall not be applicable for the units issued by the mutual funds which are listed on a recognized stock exchange(s).	Proviso to Regulation 2(1)(zc)

S.No	Particular	Reference
7.	SEBI (LODR) Regulations are NOT applicable on American depositary receipts.	Regulation 3
8.	The SEBI (LODR) Regulations shall apply to the listed entity who has listed the following security on recognised stock exchange Non-convertible redeemable preference shares, Perpetual non-cumulative preference shares and Perpetual debt instruments.	Regulation 3
9.	The listed entity shall make disclosures and follow the principle of Implementation of Accounting Standards in letter and spirit in preparation financial statement, refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading and provide adequate and timely information to the recognised stock exchange(s) and investor.	Regulation 4(1)

S.No.	Particular	Reference
10.	The listed entity shall ensure that key managerial personnel, directors and promoters and any other person dealing with the listed entity complies with responsibilities or obligations, if any, assigned to them under these regulations.	Regulation 5
11.	A listed entity shall appoint a qualified company secretary as the compliance officer.	Regulation 6(1)
12.	The units issued by mutual funds which are listed on recognised stock exchange(s) shall be governed by the provisions of SEBI (Mutual Funds) Regulations, 1996.	Proviso to Regulation 6(2)
13.	In the case of in-house share transfer facility, as and when the total number of holders of securities of the listed entity exceed one lakh the listed entity shall either register with the Board as a Category II share transfer agent or appoint Registrar to an issue and share transfer agent registered with the Board.	Proviso to Regulation 7(1)

S.No.	Particular	Reference
14.	The listed entity shall submit a compliance certificate to the exchange 30 days certifying compliance that all activities in relation to share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with the Board within 30 days from the end of the financial year.	Regulation 7(2)&(3)
15.	In the case of any change or appointment of a new share transfer agent, the listed entity shall enter into a tripartite agreement between the existing share transfer agent, the new share transfer agent and the listed entity.	Regulation 7(4)
16.	In case of any change or appointment of a new share transfer agent the listed entity shall intimate. such appointment, to the stock exchange(s) within seven days of entering into the agreement.	Regulation 7(5)
17.	The listed entity shall have a policy for preservation of documents, approved by its board of directors	Regulation 9(a)&(b)

S.No	Particular	Reference
	documents whose preservation shall be permanent in nature and Documents with preservation period of not less than eight years after completion of the relevant transactions.	
18.	The listed entity shall file the reports, statements, documents, filings and any other information with the recognised stock exchange(s) on the electronic platform as specified by the Board or the recognised stock exchange(s).	Regulation 10(1)
19.	The listed entity shall use electronic mode of payment facility approved by the RBI for the payment of-the dividends.	Regulation 12
20.	The amount payable as dividend which exceeds Rs.1500 the 'payable-at-par' warrants or Cheque shall be sent by speed post.	Second Proviso to Regulation 12
21.	SCORES stands for SEBI Complaints Redress System.	Regulation 13(2)



S.No.	Particular	Reference
23.	The listed entity shall file with the recognised stock exchange(s) on a quarterly basis, Within twenty one days from the end of each quarter , a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.	Regulation 13(3)
24.	The listed entity shall file with the recognised stock exchange(s) on a quarterly basis statement giving the number of investor complaints pending received and disposed and remaining unresolved at end of the period.	Regulation 13(3)
25.	The statement relating to the complaints shall be placed, on a quarterly basis before the board of directors of the listed entity on quarterly basis.	Regulation 13(4)
26.	The provision of Chapter IV of the SEBI (LORD) Regulations shall apply to a listed entity which has	Regulation 15(1)

S.No.	Particular	Reference
	listed its specified securities on any recognised stock exchange(s) which may be on the main board, SME Exchange and Institutional Trading Platform.	
27.	The compliance with the corporate governance provisions shall not apply, in respect of a listed entity having paid up equity share capital not exceeding Rs 10 crores and Net worth not exceeding Rs.25 crore as on the previous financial year.	Regulation 15(2)(a)
28.	In case of a company under going under the CIRP, who will take care of compliance part resolution professional / Interim Resolution Professional.	Regulation 15(2A)
29.	The provisions as specified in regulation 18 pertaining to the Audit Committee shall not be applicable during the insolvency resolution process period in respect of a listed entity or a high value debt listed entity which is undergoing CIRP under the IBC.	Regulation 15(2B)

S.No.	Particular	Reference
30.	The roles and responsibilities of the committees specified in the respective regulations in case where the CIRP under the Insolvency Code is in process, shall be fulfilled by the Interim Resolution Professional or Resolution Professional.	Proviso to Regulation 15(2B)
31.	"Independent director" means a non-executive director, other than a nominee director of the listed entity.	Regulation 16(1)(b)
32.	"Independent Director" means and who, neither himself, nor whose relative holds together with his relatives two per cent or more of the total voting power of the listed entity.	Regulation 16(1)(b)(vi)(C)
33.	"Independent director" means who, neither himself, nor whose relative(s) is a Chief Executive or Director of any non-profit organisation that receives twenty-five per cent or more of its receipts or corpus from the listed entity, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the listed entity.	Regulation 16(1)(b)(vi)(D)

S.No.	Particular	Reference
34.	"Independent Director" means a non-executive director, other than a nominee director of the listed entity who is not a Non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director.	Regulation 16(1)(b)(viii)
35.	"Material subsidiary,' shall mean a subsidiary, whose income or net worth exceeds ten percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.	Regulation 16(1)(c)
36.	The board of directors of a company shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty percent of the board of directors shall comprise of non-executive directors.	Regulation 17(1)(a)
37.	The Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1.2019.	Proviso to Regulation 17(1)(a)

S.No.	Particular	Reference
38.	The Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1,2020.	Proviso to Regulation 17(1)(a)
39.	The top 500 and 1000 entities shall be determined on the basis of market capitalization, as at the end of the immediate previous financial year.	Explanation to Proviso to Regulation 17(1)(a)
40.	Were the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors.	Regulation 17(1)(b)
41.	The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors	Regulation 17(1)(c)
42.	No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years.	Regulation 17(1A)

S.No.	Particular	Reference
43.	With effect from April 1,2022, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall be a non-executive director.	Regulation 17(1B)(a)
44.	The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.	Regulation 17(2)
45.	The board of directors shall meet at least four times a year. with a maximum gap of one hundred and twenty days between any two meetings.	Regulation 17(2)
46.	The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1,2019 and of the top 2000 listed entities with effect from April 1,2020 shall be one-third of its total strength or three directors ,whichever is higher, including at least one independent director.	Regulation 17(2A)

S.No.	Particular	Reference
47.	The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty percent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.	Regulation 17(6)(ca)
48.	Independent directors shall not be entitled to any stock option.	Regulation 17(6)(d)
49.	The Chief Executive Officer and the Chief Financial Officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.	Regulation 17(8)
50.	The Board of Directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity.	Regulation 17(9)(b)
51.	The evaluation of independent directors shall be done by the entire board of directors excluding the directors who are subject to evaluation shall not participate.	Regulation 17(10)

S.No.	Particular	Reference
52.	A person shall not be a director in more than seven listed entities with effect from April 1.2020.	Regulation 17A
53.	The audit committee shall have minimum three directors as members.	Regulation 18(1)(a)
54.	At least two-thirds of the members of audit committee shall be independent directors.	Regulation 18(1)(b)
55.	All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.	Regulation 18(1)(c)
56.	The chairperson of the audit committee shall be an independent director and he shall be present at Annual general meeting to answer shareholder queries.	Regulation 18(1)(d)
57.	The Company Secretary shall act as the secretary to the audit committee.	Regulation 18(1)(e)
58.	The audit committee at its discretion shall invite the Head of the finance function, the head of internal audit and the statutory auditor.	Regulation 18(1)(f)



S.No.	Particular	Reference
59.	The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.	Regulation 18(2)(a)
60.	The quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater with at least two independent directors.	Regulation 18(1)(b)
61.	The nomination committee shall comprise of at least three directors.	Regulation 19(1)(a)
62.	The remuneration committee shall comprise of at least three directors.	Regulation 19(1)(a)
63.	All directors of the nomination committee/ remuneration shall be non-executive directors	Regulation 19(1)(b)
64.	In the nomination /remuneration committee at least two-thirds of the directors shall be independent directors .	Regulation 19(1)(c)
65.	The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the	Regulation 19(2A)

S.No.	Particular	Reference
	committee, whichever is greater, including at least one independent director in attendance.	
66.	The nomination/ remuneration committee shall meet at least once in a year.	Regulation 19(3A)
67.	The chairperson of Stakeholders Relationship committee shall be a non-executive director.	Regulation 20(2)
68.	In Stakeholders Relationship committee, at least three directors with at least one being an independent director, shall be members of the Committee.	Regulation 20(2A)
69.	The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.	Regulation 20(3)
70.	The stakeholders relationship committee shall meet at least once in a year.	Regulation 20(3A)
71.	The Board of Directors shall constitute a Risk Management Committee.	Regulation 21(1)

S.No.	Particular	Reference
72.	The majority of members of Risk Management Committee shall consist of Members of the Board of directors.	Regulation 21(2)
73.	The risk management committee shall meet at least twice in a year.	Regulation 21(3A)
74.	The functions of the Risk Management Committee shall be Monitoring the Risk Management Plan, Reviewing of the Risk Management Plan and Monitoring and reviewing of Cyber Security.	Regulation 21(4)
75.	The provisions of SEBI(LODR) Regulations relating to the Risk Management Committee shall be applicable to Top 1000 listed entities, determined on the basis of market capitalisation as at the end of the immediate preceding financial year and a High Value Debt Listed Entity.	Regulation 21(5)
76.	The listed entity shall formulate a vigil mechanism for directors only to report genuine concerns and for employees only to report genuine concerns.	Regulation 22(1)

S.No.	Particular	Reference
77.	The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism and also provide for direct access to the Chairperson of the audit committee in appropriate or exceptional cases.	Regulation 22(2)
78.	A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.	Explanation to Regulation 23(1)
79.	All related party transactions shall require prior approval of the Audit Committee.	Regulation 23(2)
80.	The audit committee shall review, at least on a quarter basis the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given	Regulation 23(3)(d)

S.No.	Particular	Reference
81.	The omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year.	Regulation 23(3)(e)
82.	All material related party transactions shall require prior approval of the shareholders through resolution.	Regulation 23(4)
83.	No prior approval of the audit committee is required where the Related Party transactions are transaction entered into between two government companies and transactions entered into between a holding company and its wholly owned subsidiary.	Regulation 23(5)(a)&(b)
84.	At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.	Regulation 24(1)
85.	The audit committee of the listed entity shall review the financial statements of its unlisted subsidiary and review the investments made by the unlisted subsidiary.	Regulation 24(2)

S.No.	Particular	Reference
86.	The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.	Regulation 24(3)
87.	Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.	Regulation 24A
88.	No person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018.	Regulation 25(1)
89.	The independent directors of the listed entity shall hold at least one meeting in a year without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.	Regulation 25(3)

S.No.	Particular	Reference
90.	The agenda in the Independent Director's Meeting is to review the performance of non independent directors and the board of directors as a whole, the performance of the chairperson of the listed entity and to assess the quality, quantity and timelines of flow of information between the management of the listed entity and the board of directors.	Regulation 25(4)
91.	A director shall not be a member in more than ten committees across all listed entities in which he is a director.	Regulation 26(1)
92.	A director shall not act as chairperson of more than five committees across all listed entities in which he is a director which shall be determined as follows.	Regulation 26(1)
93.	The listed entity shall submit a quarterly compliance report on corporate governance to the recognised stock exchange(s) within 21days from the end of each quarter.	Regulation 27(2)(a)

S.No.	Particular	Reference
94.	The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which the proposals financial results, proposal for buyback of securities and proposal for voluntary delisting by the listed entity.	Regulation 29(1)
95.	The intimation required to be given to the stock exchanges for conducting of the board meeting for considering of financial results shall be given at least two working days in advance excluding the date of the intimation and date of the meeting.	Regulation 29(2)
96.	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, on a quarterly basis, within twenty one days from the end of each quarter.	Regulation 31(1)(b)
97.	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, Within ten days of any capital	Regulation 31(1)(c)



S.No.	Particular	Reference
	restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital.	
98.	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, within ten days of any capital restructuring of the listed entity resulting in a change exceeding two percent of the total paid-up share capital.	Regulation 31(1)(c)
99.	The financial results shall be prepared on the basis of accrual accounting policy.	Regulation 33(1)(a)
100.	The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 31 (AS 25/Ind AS 34 - Interim Financial Reporting) as applicable, specified in section 133 of the Companies Act, 2013.	Regulation 33(1)(b)

S.No.	Particular	Reference
102.	The quarterly financial results submitted to the stock exchange(s) shall be approved by the Board of Directors.	Regulation 31(2)(a)
103.	The financial results submitted to the stock exchange shall NOT be signed by the Company Secretary.	Regulation 31(2)(b)
104.	The listed entity shall submit annual audited standalone financial results to the stock exchange(s) for the financial year, within 60 days from the end of the financial year.	Regulation 33(3)(d)
105.	The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/companies whose accounts are to be consolidated with the listed entity as per AS 21 in accordance with guidelines issued by the SEBI on this matter.	Regulation 33(8)
106.	The annual report shall NOT contain Funds Flow Statement.	Regulation 34(2)(a)

S.No.	Particular	Reference
107.	The listed entity shall send annual report to the holders of securities, not less than 21 days before the annual general meeting.	Regulation 36(2)
108.	The listed entity shall comply with the minimum public shareholding requirements as specified in the Securities Contracts (Regulation) Rules, 1957.	Regulation 38/ Rule 19(2) and Rule 19A of the Securities Contracts (Regulation) Rules, 1957
109.	The listed entity shall submit information regarding loss of share certificates and issue of the duplicate certificates, to the stock exchange within two days of its getting information.	Regulation 39(3)
110.	For transmission or transposition of securities, requests for effecting transfer of securities shall be processed only if the securities are held in the dematerialized form with a depository.	Proviso to Regulation 40(1)

S.No.	Particular	Reference
111.	The listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, subdivision, consolidation, renewal, exchange or endorsement of calls/allotment monies:	Regulation 40(9)
112.	The listed entity shall not exercise lien on its partly paid shares except in respect of moneys called or payable at a fixed time in respect of such shares.	Regulation 41 (1)
113.	The listed entity shall, in case of any amount to be paid in advance of calls on any shares stipulate that such amount may carry interest, it shall not in respect thereof confer a right to dividend and it shall not entitled the shareholder to participate in profits.	Regulation 41(2)

S.No.	Particular	Reference
114.	The listed entity is not required to intimate the record date to all stock exchanges(s) where it is listed conversion of debt instrument into equity for already issued convertible debentures.	Regulation 42(1)
115.	The listed entity shall give notice in advance of at least seven working days (excluding the date of intimation and the record date) to stock exchange(s) of record date specifying the purpose of the record date.	Regulation 42 (2)
116.	The listed entity shall recommend or declare all dividend and/ or cash bonuses at least five working days (excluding the date of intimation and the record date) before the record date fixed for the purpose.	Regulation 42(3)
117.	The time gap between two record dates shall be at least thirty days.	Regulation 42(4)
118.	The top one thousand listed entities based on market capitalization (calculated as on March 31 of every Financial Year) shall formulate a dividend distribution	Regulation 43A(1)

S.No.	Particular	Reference
	policy which shall be disclosed in their annual reports and on their websites.	
119.	The listed entities other than top five hundred listed entities based on market capitalization may disclose their dividend distribution policies on a voluntary basis in their annual reports and on their websites.	Regulation 43A (3)
120.	The top 100 listed entities by market capitalization, determined as on March 31st of every financial year, shall hold their annual general meetings within a period of five months from the date of closing of the financial year.	Regulation 44(5)
121.	The listed entity shall be allowed to change its name subject to compliance of a time period of at least one year has elapsed from the last name change, at least fifty percent of total revenue in the preceding one year period has been accounted for by the new activity suggested by the new name and the amount invested in the new activity/ project is at least fifty percent of the assets of the listed entity.	Regulation 45(1)

S.No.	Particular	Reference
122.	The listed entity shall maintain a functional website containing the basic information about the listed entity.	Regulation 46 (1)
123.	The listed entity shall update any change in the content of its website within two working days from the date of such change in content.	Regulation 46(3)(b)
124.	The listed entity shall give prior intimation to the stock exchange of at least two working days in advance, excluding the date of the intimation and the date of the meeting of the board of directors, about the Board meeting in which financial results are to be considered.	Regulation 50(1)
125.	The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board within 45 days from the end of the half year to the recognised stock exchange(s):	Regulation 52(1)

S.No.	Particular	Reference
126.	Each rating obtained by the listed entity with respect to non-convertible debt securities shall be reviewed at least once a year by a credit rating agency registered by the Board.	Regulation 55
127.	The listed entity shall submit a certificate to the stock exchange within one working days of the interest or dividend or principal becoming due regarding status of payment in case of non-convertible securities.	Regulation 57(1)
128.	The listed entity shall file with the stock exchange the Indian Depository Receipt holding pattern on a quarterly basis within 15 days of end of the quarter in the format specified by the Board.	Regulation 69(1)
129.	Every rating obtained by the listed entity with respect to securitised debt instruments shall be periodically reviewed, preferably once a year by a credit rating agency registered by the Board.	Regulation 84(1)
130.	The compliance certificate shall be furnished to the SEBI by the Chief Executive Officer and Chief Financial Officer.	Part B of Schedule II



S.No.	Particular
1.	If salary is in excess of Rs 21000/-, in that case whether bonus is restricted to salary up to 21000 or 8.33% of actual salary.
2.	A minimum bonus of 8.33% and the maximum is 20% of wages is payable.
3.	Statutory Bonus is payable within 8 months from the close of the accounting year.
4.	Payable to all employees whose wages do not exceed Rs. 21,000 per month.
5.	If employee's wages equal to or more than Rs. 7,000 or the minimum wages fixed by the Government then the bonus is paid as per employee's wages.
6.	In that case bonus payment is optional but 21k to be calculated on basic wages not on gross wages. And for the payment of bonus 7k or minimum wages rate whichever is higher to be considered for calculation of bonus

SEBI (SUBSTANTIAL  
ACQUISITION OF  
SHARES AND  
TAKEOVERS)  
REGULATIONS 2011

# SEBI (Substantial Acquisition of Shares and Takeover) Regulations 2011

## 1. Evolution of New Code

- Committee formed under chairmanship of Shri Achutan
- Suggested a new set of regulations
- Open for public comments from July 19 to August 31.
- Most of the proposals accepted in SEBI Board meeting on July 28, 2011.
- Regulations Notified on September 23, 2011.

## 2. Applicability

- To direct and indirect acquisitions.
- To listed companies.
- With effect from October 23, 2011.

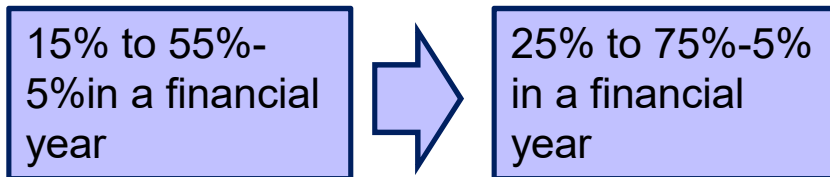
### **3. New and Important Definitions**

- Frequently traded Shares.
- Enterprise Value.
- Identified date.
- Immediate Relative
- Promoters and Promoter Group brought in line with SEBI (ICDR) Regulations.
- Shares

### **4. Initial Acquisition**

- Threshold limit increased to 25%.
- Acquires shares which taken together with shares already held is 25% or more-To make a public announcement for an open offer.

## 5. Existing Vs Proposed Creeping Acquisition



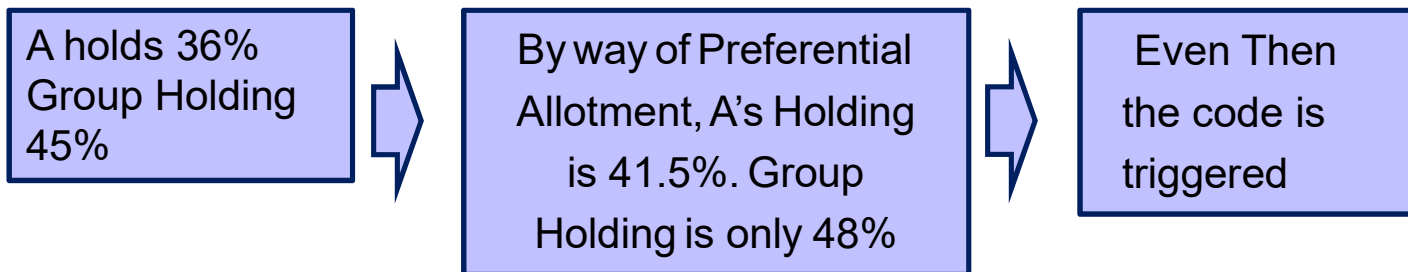
## 6. Creeping Acquisitions

- From 25% to 75%-Creep by 5% every financial year.
- Only purchase will be considered- No netting off.
- If no change in share capital-How to calculate.
- If change in share capital due to fresh issue difference between pre - issue holding and post issue holding- treated as additional Acquisition.

## 7. Additional and Creeping

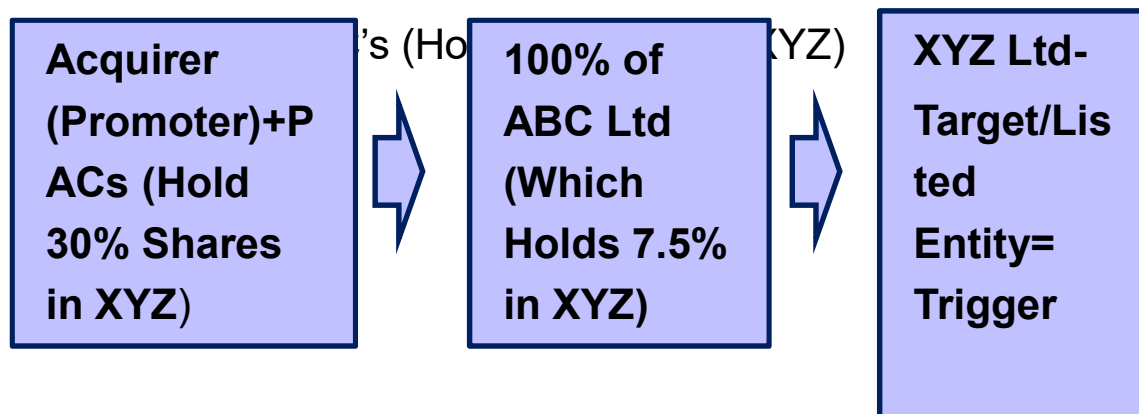
- ❑ Individual acquisitions also will be considered for purpose of trigger, irrespective of aggregate holding of group.
- ❑ Illustration : Promoter Group of 6 persons. Total Holding 38%. An individual holding 22% acquires shares. Holding crosses 25%- will Trigger

## 8. Illustration

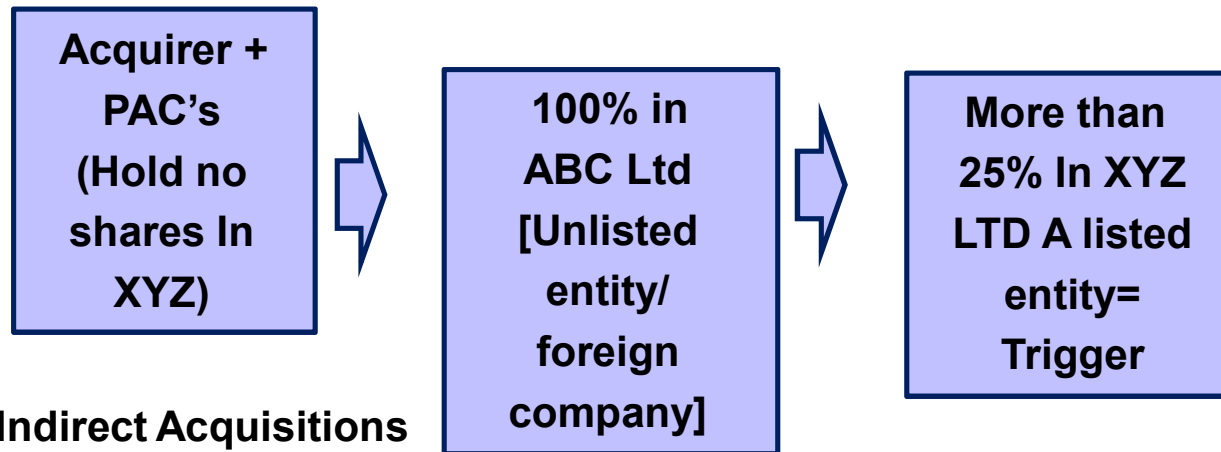


## 9. Control

- Acquisition of control with or without acquisition of shares will require open offer.
- Acquire shares in a company which would help the acquirer and PAC's to exercise or direct the exercise of such percentage of shares as per regulation 3 would require a public announcement –Indirect Acquisition
- Current exemption of change in control under regulation 12 done away with.



## 10. Illustration



## 11. Indirect Acquisitions

- May be indirect but deemed direct acquisition if
  - Target constitutes more than 80% of NAV of the business being acquired.
  - Target constitutes more than 80% of turnover of the business being acquired.
  - Market capitalization of target is more than 80% of the enterprise value of the business being acquired.



## **12. Voluntary Offers**

- Voluntary offer if holding 25%.
- Cannot make if any acquisition has been made in the last 52 weeks without triggering the code.
- Must acquire shares only in the open offer.
- Cannot acquire any shares for another 6 months after completion of open offer, except through another voluntary open offer.

## **ADDITIONAL PROVISIONS**

- ❖ Voluntary Offer can be made for a minimum of 10% and maximum not to exceed the maximum permissible non-public holding.
- ❖ If a competitive BID is received, then HIKE to such number as the Acquirer deems fit.

## **OFFER SIZE**

- ❖ For a minimum of 26% of the outstanding capital as on 10 days after the closure of the tendering period, shall take into account all pending conversions during this period.
- ❖ Post offer– If the holding of acquirer exceeds the limits specified in SCRR, then reduce within the time specified in SCRR.
- ❖ Cannot make a delisting offer for a period of 12 months after closure of offer.

## **OFFER PRICE**

- ❖ Instead of merely taking the closing price volume, weighted market price will be taken
- ❖ Parameters laid down for frequently traded & infrequently traded shares
- ❖ Parameters laid down for direct control & indirect control

## **Mode of Payment**

- ❖ By Cash
- ❖ By Issue, Exchange OR Transfer of Listed Equity Shares
- ❖ By Issue, Exchange OR Transfer of Listed Debt Securities
- ❖ By Issue, Exchange OR Transfer of Convertible Securities,  
entitling the holder to acquire Listed Equity Shares
- ❖ Combination of the above

## **SEBI (Substantial Acquisition of Shares and Takeover) Regulations 2011**

### **Exemptions**

#### **Inter-Se Transfer**

- ❖ Only Amongst immediate relatives
- ❖ Amongst Promoters – Shown as such in the Shareholding Pattern Filed with Stock Exchanges in the last 3 years
- ❖ Amongst Company & its Holding Company
- ❖ Amongst Company & Its Subsidiaries
- ❖ Amongst Holding Company & Subsidiaries of Holding Companies
- ❖ Amongst the Company & Its Shareholders holding not less 50% of the Share Capital
- ❖ Amongst the Company & Other Companies where the Same Persons hold not less than 50% of the Share Capital
- ❖ Amongst Persons acting in Concert

## **Other Conditions**

- ❖ Acquisitions by Stock Broker, Merchant Banker, Underwriter Etc.
- ❖ Acquisition of Shares by a Commercial Bank & Financial Institution Invocation of Pledge
- ❖ Acquisitions pursuant to;
  - A BIFR Scheme
  - Arrangement, Merger, Amalgamation OR Reconstruction Approved by Court in India & Abroad
- ❖ Acquisition pursuant to Delisting
- ❖ Acquisition pursuant to transmission, succession or inheritance.
- ❖ Acquisition by Operation of Sec.87(2) of the Companies Act, 1956
- ❖ Acquisition under CDR, Provided APPROVED by Shareholders under the Postal Ballot

- ❖ Pursuant to BUY BACK – in Excess of 25% & - in Excess of Creeping Acquisition Limit
- ❖ Pursuant to RIGHT ISSUES – Entitlement – Beyond Entitlement (Not Renounced & subject to Pricing
- ❖ Acquisition from State Level Financial Institution (SLFI)
- ❖ Acquisition by Promoters of target Company from VCF

## **EXEMPTIONS – PROCEDURE**

- ❖ For INTER-SE Transfer, From State Level Financial Institution & VCF – Intimate Stock Exchange 4 working days before
- ❖ For all Exemptions – File a Report with Stock Exchange within 4 working days of Transaction
- ❖ For Certain Transactions – File Report with SEBI within 21 days, mainly INTER-SE, Buy Back, Rights, Acquisition U/s 87(2), CDR with fee of Rs.25,000/-

## **OPEN OFFER PROCESS**

### **Issue Public Announcement**

- ❖ When?
- ❖ On the date of Purchase
- ❖ Fixed Date of Conversion – 2 working days prior
- ❖ No Fixed Date of Conversion – on the same date
- ❖ Indirect Acquisition – 4 working days from Primary Contract

## **Open ESCROW ACCOUNT – within 2 working days of PA**

### ❖ Other Requirements;

- Issue Detailed Public Statement within 5 working days & file on the same day with SEBI
- File Letter of Offer with SEBI within 5 working days DPS
- SEBI gives Observations within 15 working days
- Dispatch Letter of Offer within 7 working days of receipt of Observations
- Issue Advertisement -1 day before Offer Opens
- Open the Offer – within 12 days of receipt of Observations
- Tendering Period – 10 working days
- Revision of Price – not later than 3 working days before closure
- Shareholders cannot withdraw once Tendered
- Payment within 10 working days of Closure



## **ESCROW ACCOUNT**

- ❖ Up to Rs.100 Crores – 25% (Balance – 10%)
- ❖ Up to Rs.500 Crores – 25% (Balance – 10%)
- ❖ Cash
- ❖ Bank Guarantee
- ❖ Securities – Defined the type of Securities

## **DISCLOSURES**

- ❖ Disclosure shall be for the Aggregate Holding of the Promoter & Persons Acting in Concert with him
- ❖ Shall be given for Shares & All Securities Convertible into Equity
- ❖ To Disclose when Acquirer acquires 5%
- ❖ Disclose every Acquisition and Sale exceeding 2%
- ❖ Disclosure within 2 working days
- ❖ Shares acquired by Encumbrance shall be an acquisition and given on release of encumbrance shall be a disposal

- ❖ Disclosure by Persons Holding more than 25% to Stock Exchange & target Company within 7 working days of March 31<sup>st</sup>
- ❖ All Disclosure to Company & Stock Exchange
- ❖ Details of Pledge to be disclosed – within 7 working days of Creation, Invocation & Revocation to Company
- ❖ Details of Pledge to be disclosed – within 7 working days of Creation, Invocation & Revocation to Company
- ❖ Requirement of Company to File Information – Done Away With

## **COMPANY SECRETARY OF AN ACQUIRER COMPANY**

- ❖ To be Aware of the Open Offer Process
  - Release Public Announcement (PA) on the date of acquisition
  - A detailed Public Statement – within 5 working days of PA
  - File Letter of Offer with SEBI – within 5 working days of Public Notice through Merchant Banker
  - Ensure Firm Arrangement are made for the Consideration Payable

- Provide for Escrow
- Open Offer is made for 26% of the Outstanding Capital of the Company take into account convertibles.
- Not to Alienate any Assets of the Company, unless Statement of that effect made in the Letter of Offer. If required to Alienate – Get Shareholders Resolution (Postal Ballot)
- To ensure that the Acquirer does not sell any Shares during the Offer Period
- Appointment of Directors

### **Completion of Acquisition of Shares**

- ❖ After the Closure of Offering Period
- ❖ If 100% in Escrow, 21 working days after Detailed Public Statement
- ❖ To be Completed not later than 26 weeks after the closure of offering period
- ❖ Preference Allotment – as per ICDR

## **Company Secretary of Target Company**

- ❖ Conduct the Business in the Ordinary Course
- ❖ Not to issue any Fresh Shares
- ❖ Not to make any Buy Back
- ❖ Not to Alienate any Assets
- ❖ No Fresh Borrowings
- ❖ Participate in the Meetings of Subsidiaries in the Normal Course of Business
- ❖ Not to Fix Record Date for any Corporate Action 3 days of Tendering Period & till the end of Tendering period
- ❖ Appointment of Director of Acquirer
- ❖ Form Committee of Independent Directors – To Form Opinion on the Open Offer
- ❖ Provide List of Shareholders
- ❖ Co-operate with Acquirer
- ❖ After Completion of Offer, Register the Shares in the names of the Acquirer

### **Company Secretary of Competitive Bidder**

- ❖ Competitive Offer – within 15 days of Public Announcement
- ❖ Original Bidder has No Option but to keep Quiet OR Raise Price
- ❖ Escrow Account will be increased
- ❖ All other Provisions shall apply as in Normal Offer

### **WITHDRAWAL**

#### **CANNOT WITHDRAW EXCEPT ON;**

- ❖ Non receipt of Statutory Approvals
- ❖ Being a Natural Person, Dies
- ❖ Condition for Open Offer not being met And This is Beyond the Control of the Acquirer
- ❖ Such Other Conditions as approved by SEBI

SATC MCQs

S.No.	PARTICULARS	Reference
1.	The SEBI (SAST) Regulations, 2011 shall apply to direct or Indirect acquisition of shares, acquisition of voting rights and Control over target company.	Regulation 1(3)
2.	The SEBI(SAST) Regulations, 2011 shall not apply to direct and indirect acquisition of shares or voting rights in, or control over a company listed without making a public issue on the institutional trading platform of a recognised stock exchange.	Proviso to Regulation (1)(3)
3.	"Acquirer" means any person who acquires shares, voting rights and control over a target company.	Regulation 2(1)(a)
4.	Acquirer can be a natural person, a corporate entity and any other legal entity.	Regulation 2(1)(a)
5.	"Control" means right to appoint majority of the directors, control the management and policy decisions exercisable by a person or persons acting individually or in concert.	Regulation 2(1)(e)

S.No.	PARTICULARS	Reference
6.	"Disinvestment" means the direct or indirect sale by the Central Government, State Government and Government Company as the case may be, of shares or voting rights in, or control over, a target company, which is a public sector undertaking.	Regulation 2(1)(g)
7.	"Enterprise value" means C. The value calculated as market capitalization of a company plus debt, minority interest and preferred shares, minus total cash and cash equivalents.	Regulation 2(1)(h)
8.	"Frequently traded shares" means shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is made, is at least ten percent of the total number of shares of such class of the target company.	Regulation 2(1)(j)
9.	Where the share capital of a PARTICULARS class of shares of the target company is not identical	Regulation 2(1)(j)



S.No.	PARTICULARS	Reference
	throughout such period, the weighted average number of total shares of such class of the target company shall represent the total number of shares.	
10.	Maximum number of shares which can be held by promoters in a listed company is 75% of share capital.	Regulation 2(1)(o) / Rule 19A of Securities Contracts (Regulations) Rules 1957
11.	"Fugitive Economic Offender" shall mean an individual who is declared a fugitive economic offender under section 12 of the Fugitive Economic Offenders Act, 2018.	Regulation 2(1)(ja)
12.	"Identified date" means the date falling on the 10 <sup>th</sup> working day prior to the commencement of the tendering period, for the purposes of determining the shareholders to whom the letter of offer shall be sent.	Regulation 2(1)(k)

S.No.	Particular	Reference
13.	"Immediate relative" means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse.	Regulation 2(1)(1)
14.	"Persons acting in concert" means persons who, with a common objective acquires shares or voting rights in the company and persons who with a common objective exercises control over a target company.	Regulation 2(1)(q)(1)
15.	Which among the following shall be deemed as "Person acting in concert" a company under the same management, promoters and members of the promoter group and a Collective Investment Scheme and its Collective Investment Management Company, Trustees and Trustee Company.	Regulation 2(1)(q)(2)
16.	"Public Sector Undertaking" means a target company in which, directly or indirectly, majority of shares or voting rights or control is held by the Central Government, the any State Government or	Regulation 2(1)(u)

S.No.	Particular	Reference
	Governments and Partly by the Central Government and partly by one or more State Governments.	
17.	"State-level Financial Institution" means, a Financial Corporation established under Section 3, Section 3a and Section 46 of the State Financial Corporation Act, 1951.	Regulation 2(1)(x)
18.	"Volume weighted average market price" means (No. of equity shares traded on a stock exchange * Price of each equity share)/Total No. of equity shares traded on the stock exchange.	Regulation 2(1)(zb)
19.	"wilful defaulter" means any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes any person whose director, promoter or partner is categorized as such.	Regulation 3(1)

S.No.	Particular	Reference
20.	No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise 25% or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.	Regulation 3(1)
21.	No acquirer, has acquired and holds in shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a	Regulation 2(1)(x)

S.No.	Particular	Reference
	public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.	
22.	Substantial acquisition of shares or voting rights as contained in Regulation 3 of SEBI(SAST) Regulations shall not apply to acquisition of shares of a company by the promoters in terms of the provisions of Chapter 'VI-A of SEBI (ICDR) Regulations, 2009.	Regulation 3(4)
23.	For acquisition or holding of shares or voting rights in a target company, the acquirer have to make a public announcement of an open offer.	Regulation 4
24.	The obligation to make a public announcement of an open offer for acquiring shares shall be considered as an indirect acquisition of shares of the target company.	Regulation 5(1)

S.No.	Particular	Reference
25.	The acquisition shall be regarded as a direct acquisition of the target company, where the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired, the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired and the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired.	Regulation 5(2)
26.	The market capitalisation of the target company shall be taken into account on the basis of the volume-weighted average market price of such shares on the stock exchange for a period of sixty trading days preceding the earlier of, the date on which the primary acquisition is contracted, and	Explanation to Regulation 5(2)(c)

S.No	Particular	Reference
	the date on which the intention or the decision to make the primary acquisition is announced in the public domain.	
27.	In the event the acquirer makes a public announcement of an open offer for acquiring shares of a target company in terms of regulations 3, 4 or 5, he may delist the company in accordance with provisions of the SEBI (SAST) Regulations, 2011.	Regulation 5A
28.	Where a delisting offer made under Regulation 5A(1) is not successful on account of the non-receipt of the prior approval of shareholders in terms of Regulation 11 of Delisting Regulations the acquirer shall within 2 working days in respect of such failure, make an announcement in all the newspapers in which the detailed public statement was made.	Regulation 6(1)

S.No.	Particular	Reference
29.	An acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise 25% or more but less than the maximum permissible non-public shareholding, shall be entitled to voluntarily make a public announcement of an open offer for acquiring shares.	Regulation 6(1)
30.	Where an acquirer has acquired shares of the target company in the preceding fifty-two weeks without attracting the obligation to make a public announcement of an open offer, he shall not be eligible to voluntarily make a public announcement of an open offer for acquiring share.	First Proviso to Regulation 6(1)
31.	An acquirer, who have made a public announcement to acquire shares of a target company shall not be entitled to acquire any shares of the target company for a period of six months after completion of the open offer.	Regulation 6(2)



S.No.	Particular	Reference
32.	No person who is a wilful defaulter shall make a public announcement of an open offer for acquiring shares.	Regulation 6A
33.	Who cannot make a public announcement of an open offer or make a competing offer for acquiring shares or enter into any transaction, either directly or indirectly, for acquiring any shares or voting rights or control of a target company a Fugitive Economic Offender.	Regulation 6B
34.	The open offer for acquiring shares to be made by the acquirer shall be for at least twenty six per cent of total shares of the target company, as of tenth working day from the closure of the tendering period.	Regulation 7(1)
35.	Partly paid up shares can be tendered in the open offer and offer price for partly paid up shares shall be computed as the difference between the offer price and the amount due towards calls-in-arrears	Regulation 8(13)

S.No	Particular	Reference
	including calls remaining unpaid with interest, if any, thereon.	
36.	Who are exempted from the obligation to make an open offer Immediate Relatives, persons named as promoters and persons holding not less than 50% of the equity shares of such company.	Regulation 10(1)(a)
37.	Prior to making a public announcement, the acquirer shall appoint a merchant banker registered with the Board, who is not an associate of the acquirer, as the manager to the open offer:	Regulation 12(1)
38.	The public announcement pursuant to an increase in voting rights consequential to a buy-back not qualifying for exemption under Regulation 10, shall be made not later than the 90 <sup>th</sup> day from the date of closure of the buy-back offer by the target company.	Regulation 13(2)(h)

S.No	Particular	Reference
39.	A copy of the public announcement shall be sent to the SEBI and to the target company at its registered office within one working day of the date of the public announcement.	Regulation 14(2)
40.	The public announcement shall contain the name and Identity of the Acquirer , Sellers and Persons acting in Concert.	Regulation 15(1)
41.	Not later than two working days prior to the date of the detailed public statement of the open offer for acquiring shares, the acquirer shall create an escrow account towards security for performance of his obligations.	Regulation 17(1)
42.	The amount is to be deposited in Escrow Account under the open offer, on the first five hundred crore rupees an amount equal to 25% of the consideration.	Table of Escrow Amount of Regulation 17(1)
43.	An open offer is required to be kept open for ten working days.	Regulation 18(8)

S.No.	Particular	Reference
44.	Whether a shareholder once tendered his shares in the open offer made by the acquirer cannot withdraw his request.	Regulation 18(9)
45.	Conditional offer is an offer in which the acquirer has stipulated a minimum level of acceptance.	Regulation 19(1)
46.	The obligations are on the part of the manager to the open offer prior to the public announcement being made to ensure that the acquirer is able to implement the open offer and to ensure that the acquirer have made firm arrangements for funds through verifiable means to meet the payment obligations under the open offer.	Regulation 27(1)
47.	The disclosures under Chapter-V shall be of the aggregated shareholding and voting rights of the acquirer of the target company, the aggregated shareholding and voting rights of the promoter of the target company and every person acting in concert with him.	Regulation 28(1)

S.No.	Particular	Reference
48.	Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the 31 <sup>st</sup> day of March in such target company in such form as may be specified.	Regulation 30(1)
49.	The promoter of every target company shall disclose details of shares in such target company encumbered by him within seven working days from the creation or invocation or release of encumbrance.	Regulation 31(3)

## **SEBI (LODR )Regulations ,2021**

# SEBI (Listing obligations and disclosure requirements ) Regulations ,2015

- ❖ Are not applicable on America depository receipts
- ❖ A listed entity shall appoint a qualified company secretary as the compliance officer
- ❖ In the case of in-house share transfer facility, as and when the total number of holders of securities of the listed entity exceeds 1 lakh the listed entity shall either register with the board
- ❖ The listed entity submit a compliance certificate to the exchange, within one month of end of each half of the financial year, certifying compliance that all activities in relations to share transfer facility are maintained either in house or by registrar to an issue and share transfer agent registered with the board
- ❖ In case of any change or appointment of a new share transfer agent the listed entity shall intimate such appointment, to the stock exchange within 7 days of entering into the agreement
- ❖ The listed entity shall file the reports, statements, documents, filings and any other information with the recognized stock exchange on the electronic platform as specified by the board or the recognized stock exchange

- ❑ The board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020
- ❑ The top 500 and 1000 entities shall be determined on the basis of market capitalization as at the end of the immediate previous financial year
- ❑ Where the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors
- ❑ The board of directors of the top 1000 listed entities and the top 2000 listed entities shall comprise of not less than 6 directors
- ❑ No listed entity shall appoint a person or continue the directorship of any person as a non executive director who has attained the age of 75 years
- ❑ With effect from April 1, 2020, the top 500 listed entities shall ensure that the chairperson of the board of such listed entity shall be a non-executive director
- ❑ The board of directors shall meet at least 4 times of years, with a maximum time gap of one hundred and 20 days between any two meetings
- ❑ The board of directors shall meet at least four times a year, with a maximum time gap of 120 days between any two meetings
- ❑ The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1, 2019 and of the top 2000 listed entities with effect from April 1, 2020 shall be one-third of its total strength or 3 directors whichever is higher, including at least one independent director



- The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds 50% of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof
- A person shall not be a director in more than 8 listed entities with effect from April 1, 2019
- The audit committee shall have minimum 3 directors as members
- 2/3 of the members of audit committee shall be independent directors
- All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise
- The chairperson of the audit committee shall be an independent director and he shall be present at annual general meeting to answer shareholder queries
- The company secretary shall act as the secretary to the audit committee
- The audit committee at its discretion shall invite
  - The head of the finance function
  - The head of internal audit
  - The statutory auditor
- The audit committee shall meet at least 4 times in a year and not more than one hundred and 20 days shall elapse between two meetings

- The omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry for one year
- No prior approval of the audit committee is required where the related party transaction are:
  - Transaction entered into between two government companies
  - Transaction entered into between a holding company and its wholly owned subsidiary
- Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in part time practice, in such form as may be specified with effect from the year ended March 31, 2019
- No person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018
- The independent directors of the listed entity shall hold at least one meeting in a year, without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting
- The agenda in the independent director meeting:
  - To review the performance of non-independent directors and the board of directors as a whole

- The listed entity shall submit to the stock exchange a statement showing holding of securities and shareholding pattern separately for each class of securities, within 10 days of any capital restructuring of the listed entity resulting in a change exceeding 2% of the total paid up share capital
- The listed entity shall submit to the stock exchange a statement showing holding of securities and shareholding pattern separately for each class of securities, within 10 days of any capital restructuring of the listed entity resulting in a change exceeding 2% of the total paid up share capital
- The financial results shall be prepared on the basis of Accrual accounting policy
- The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in accounting standard 25 or Indian accounting standard 31 (AS 25/India AS 34 –Interim financial reporting ) as applicable, specified in section 133 of the companies act, 2013
- The limited review or audit reports submitted to the stock exchange on a quarterly or annual basis are to be given only by an auditor:
  - Who has subjected himself to the peer review process of institute of CA of India
- The quarterly financial results submitted to the stock exchange shall be approved by The board of directors
- The financial results submitted to the stock exchange shall not be signed by The company secretary

- The listed entity shall submit annual audited standalone financial results to the stock exchange for the financial year, within 60 days from the end of the f.y
- The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities whose accounts are to be consolidated with the listed entity as per AS 21 in accordance with guidelines issued by the SEBI on his matter
- The annual report shall not contain Fund flow statement
- The listed entity shall comply with the minimum public shareholding requirements as specified in The securities contracts rules, 1957
- For transmission or transportation of securities, requests for effecting transfer of securities shall be processed only if the securities are held in the dematerialized form with a depository
- The listed entity is not required to intimate the record date to all stock exchange where it is listed:
  - Conversion of debt instrument into equity for already issued convertible debentures
- The listed entity shall give notice in advance of at least 7 working days (excluding the date of intimation and the record date) to stock exchange of record date specifying the purpose of the record date

- The listed entity shall maintain a functional website containing the basic information about the listed entity
- The listed entity shall update any change in the content of its website within two working days from the date of such change in content
- The listed entity shall give prior intimation to the stock exchange at least eleven working days before the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds shall be payable
- The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the board within 45 days from the end of the half year to the recognized stock exchange
- Each rating obtained by the listed entity with respect to non-convertible debt securities shall be reviewed at least once in a year by a credit rating agency registered by the board
- The listed entity shall submit a certificate to the stock exchange within 2 days of the interest or principal or both becoming due that it has made timely payment of interest or principal obligations or both in respect of the non-convertible debt securities
- The listed entity shall file with the stock exchange the Indian depository receipt holding pattern on a quarterly basis within ten days of end of the quarter in the format specified by the board
- The compliance certificate shall be furnished to the SEBI by The chief executive officer and chief financial officer

# 1) IIR REGULATIONS & CORPORATE GOVERNANCE

## HISTORY

- EMRON SCAM
- WorldCom SCAM
- Satyam SCAM

## MEANING

- Transparency
- Legal Compliance
- Responsiveness

17(1)

Boarding of 'BOD'

Chairman Div

7-50% of BOD

comprise of executive Director (ED)

Chairman of BOD

Regular Non Executive Chairman

INED

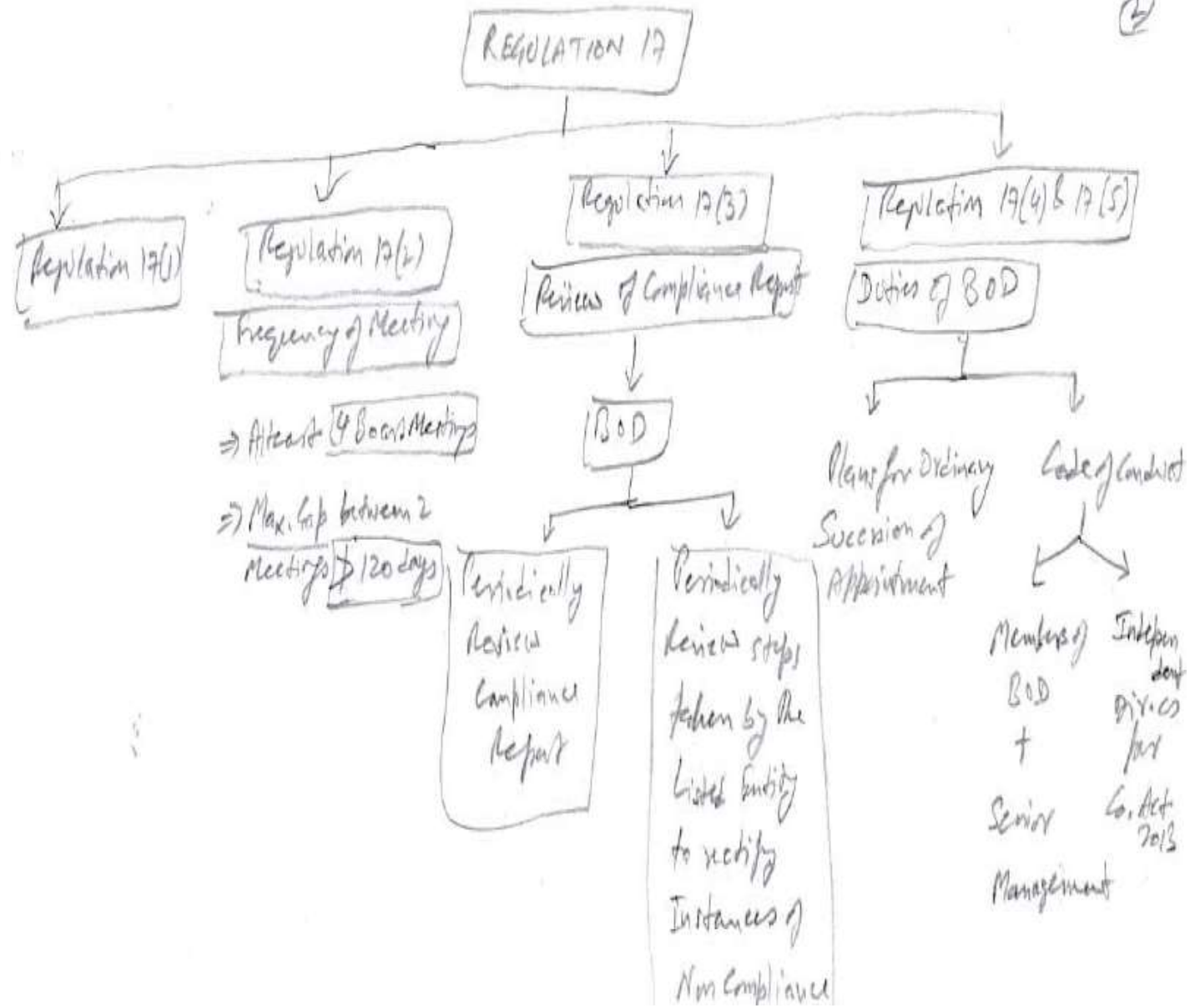
INED

At least  $\frac{2}{3}$  as Independent Director

At least  $\frac{1}{2}$  as BOD as Independent Director

BUT

PROMOTER  
 → Related to any Person whom atleast  $\frac{1}{2}$  of BOD as Independent Director



# REGULATION 17

Regulation 17(1)

Regulation 17(2)

Frequency of Meeting

⇒ At least 4 BODs Meetings

⇒ Max. Gap between 2 meetings < 120 days

Regulation 17(3)

Review of Compliance Report

BOD

Periodically Review Compliance Report

Periodically Review steps taken by the listed entity to rectify instances of Non Compliance

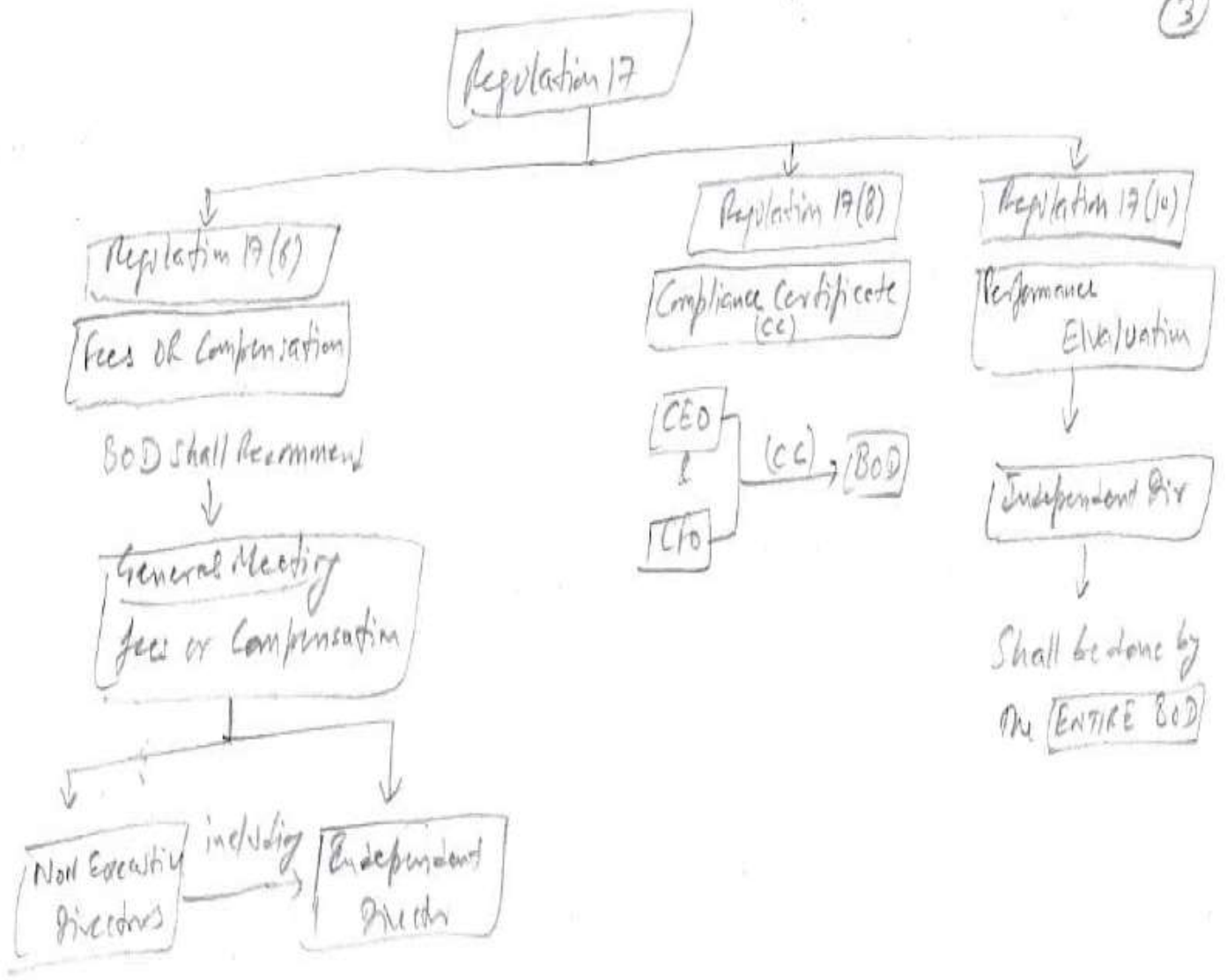
Regulation 17(4) & 17(5)

Duties of BOD

Plans for Ordinary Succession of Appointment

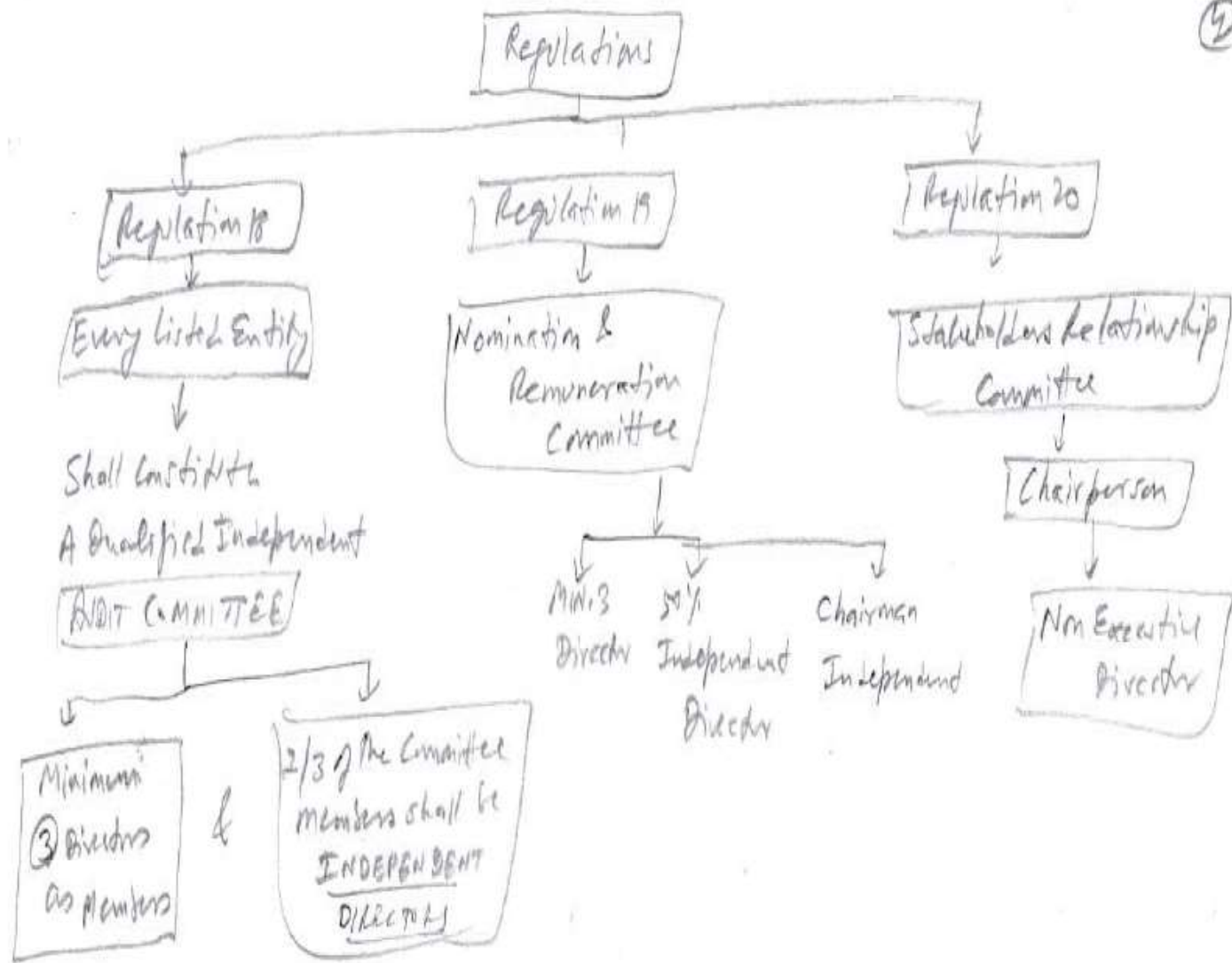
Code of Conduct

Members of BOD + Senior Management  
Independent Directors per Co. Act 2013



to include Employees Stock Option





MCQ LODR

S.No.	PARTICULARS	Reference
1.	"Global Depository Receipts" is defined under The Companies Act, 2013.	Regulation 2(1)(j)
2.	'Indian Depository Receipts' is defined under The Companies Act, 2013.	Regulation 2(1)(n)
3.	"Public shareholding" is defined under The Securities Contracts (Regulation) Rules, 1957.	Regulation 2(1)(y)
4.	"Listing agreement" shall mean an agreement that is entered into between a recognised stock exchange and an entity.	Regulation 2(1)(q)
5.	Any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a Related Party.	Proviso to Regulation 2(1)(zb)
6.	The Related Party Transaction definition shall not be applicable for the units issued by the mutual funds which are listed on a recognized stock exchange(s).	Proviso to Regulation 2(1)(zc)

S.No.	PARTICULARS	Reference
7.	SEBI (LODR) Regulations are NOT applicable on American depositary receipts.	Regulation 3
8.	The SEBI (LODR) Regulations shall apply to the listed entity who has listed the following security on recognised stock exchange Non-convertible redeemable preference shares, Perpetual non-cumulative preference shares and Perpetual debt instruments.	Regulation 3
9.	The listed entity shall make disclosures and follow the principle of Implementation of Accounting Standards in letter and spirit in preparation financial statement, refrain from misrepresentation and ensure that the information provided to recognised stock exchange(s) and investors is not misleading and provide adequate and timely information to the recognised stock exchange(s) and investor.	Regulation 4(1)

S.No.	PARTICULARS	Reference
10.	The listed entity shall ensure that key managerial personnel, directors and promoters and any other person dealing with the listed entity complies with responsibilities or obligations, if any, assigned to them under these regulations.	Regulation 5
11.	A listed entity shall appoint a qualified company secretary as the compliance officer.	Regulation 6(1)
12.	The units issued by mutual funds which are listed on recognised stock exchange(s) shall be governed by the provisions of SEBI (Mutual Funds) Regulations, 1996.	Proviso to Regulation 6(2)
13.	In the case of in-house share transfer facility, as and when the total number of holders of securities of the listed entity exceed one lakh the listed entity shall either register with the Board as a Category II share transfer agent or appoint Registrar to an issue and share transfer agent registered with the Board.	Proviso to Regulation 7(1)

S.No.	PARTICULARS	Reference
14.	The listed entity shall submit a compliance certificate to the exchange 30 days certifying compliance that all activities in relation to share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with the Board within 30 days from the end of the financial year.	Regulation 7(2)&(3)
15.	In the case of any change or appointment of a new share transfer agent, the listed entity shall enter into a tripartite agreement between the existing share transfer agent, the new share transfer agent and the listed entity.	Regulation 7(4)
16.	In case of any change or appointment of a new share transfer agent the listed entity shall intimate. such appointment, to the stock exchange(s) within seven days of entering into the agreement.	Regulation 7(5)
17.	The listed entity shall have a policy for preservation of documents, approved by its board of directors	Regulation 9(a)&(b)

S.No.	PARTICULARS	Reference
	documents whose preservation shall be permanent in nature and Documents with preservation period of not less than eight years after completion of the relevant transactions.	
18.	The listed entity shall file the reports, statements, documents, filings and any other information with the recognised stock exchange(s) on the electronic platform as specified by the Board or the recognised stock exchange(s).	Regulation 10(1)
19.	The listed entity shall use electronic mode of payment facility approved by the RBI for the payment of-the dividends.	Regulation 12
20.	The amount payable as dividend which exceeds Rs.1500 the 'payable-at-par' warrants or cheques shall be sent by speed post.	Second Proviso to Regulation 12
21.	SCORES stands for SEBI Complaints Redress System.	Regulation 13(2)

S.No.	PARTICULARS	Reference
23.	The listed entity shall file with the recognised stock exchange(s) on a quarterly basis, Within twenty one days from the end of each quarter , a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.	Regulation 13(3)
24.	The listed entity shall file with the recognised stock exchange(s) on a quarterly basis statement giving the number of investor complaints pending received and disposed and remaining unresolved at end of the period.	Regulation 13(3)
25.	The statement relating to the complaints shall be placed, on a quarterly basis before the board of directors of the listed entity on quarterly basis.	Regulation 13(4)
26.	The provision of Chapter IV of the SEBI (LORD) Regulations shall apply to a listed entity which has	Regulation 15(1)



S.No.	PARTICULARS	Reference
	listed its specified securities on any recognised stock exchange(s) which may be on the main board, SME Exchange and Institutional Trading Platform.	
27.	The compliance with the corporate governance provisions shall not apply, in respect of a listed entity having paid up equity share capital not exceeding Rs 10 crores and Net worth not exceeding Rs.25 crore as on the previous financial year.	Regulation 15(2)(a)
28.	In case of a company under going under the CIRP, who will take care of compliance part resolution professional / Interim Resolution Professional.	Regulation 15(2A)
29.	The provisions as specified in regulation 18 pertaining to the Audit Committee shall not be applicable during the insolvency resolution process period in respect of a listed entity or a high value debt listed entity which is undergoing CIRP under the IBC.	Regulation 15(2B)

S.No.	PARTICULARS	Reference
30.	The roles and responsibilities of the committees specified in the respective regulations in case where the CIRP under the Insolvency Code is in process, shall be fulfilled by the Interim Resolution Professional or Resolution Professional.	Proviso to Regulation 15(2B)
31.	"Independent director" means a non-executive director, other than a nominee director of the listed entity.	Regulation 16(1)(b)
32.	"Independent Director" means who, neither himself, nor whose relative holds together with his relatives two per cent or more of the total voting power of the listed entity.	Regulation 16(1)(b)(vi)(C)
33.	"Independent director" means who, neither himself, nor whose relative(s) is a Chief Executive or Director of any non-profit organisation that receives twenty-five per cent or more of its receipts or corpus from the listed entity, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the listed entity.	Regulation 16(1)(b)(vi)(D)

S.No.	PARTICULARS	Reference
34.	"Independent Director" means a non-executive director, other than a nominee director of the listed entity who is not a Non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director.	Regulation 16(1)(b)(viii)
35.	"Material subsidiary,' shall mean a subsidiary, whose income or net worth exceeds ten percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.	Regulation 16(1)(c)
36.	The board of directors of a company shall have an optimum combination of executive and non-executive directors with at least one woman director and not less than fifty percent of the board of directors shall comprise of non- executive directors.	Regulation 17(1)(a)
37.	The Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1.2019.	Proviso to Regulation 17(1)(a)

S.No.	PARTICULARS	Reference
38.	The Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1,2020.	Proviso to Regulation 17(1)(a)
39.	The top 500 and 1000 entities shall be determined on the basis of market capitalization, as at the end of the immediate previous financial year.	Explanation to Proviso to Regulation 17(1)(a)
40.	Were the chairperson of the board of directors is a non-executive director, at least one-third of the board of directors shall comprise of independent directors.	Regulation 17(1)(b)
41.	The board of directors of the top 1000 listed entities (with effect from April 1, 2019) and the top 2000 listed entities (with effect from April 1, 2020) shall comprise of not less than six directors	Regulation 17(1)(c)
42.	No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of seventy five years.	Regulation 17(1A)

S.No.	PARTICULARS	Reference
43.	With effect from April 1,2022, the top 500 listed entities shall ensure that the Chairperson of the board of such listed entity shall be a non-executive director.	Regulation 17(1B)(a)
44.	The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.	Regulation 17(2)
45.	The board of directors shall meet at least four times a year. with a maximum gap of one hundred and twenty days between any two meetings.	Regulation 17(2)
46.	The quorum for every meeting of the board of directors of the top 1000 listed entities with effect from April 1,2019 and of the top 2000 listed entities with effect from April 1,2020 shall be one-third of its total strength or three directors ,whichever is higher, including at least one independent director.	Regulation 17(2A)

S.No.	PARTICULARS	Reference
47.	The approval of shareholders by special resolution shall be obtained every year, in which the annual remuneration payable to a single non-executive director exceeds fifty percent of the total annual remuneration payable to all non-executive directors, giving details of the remuneration thereof.	Regulation 17(6)(ca)
48.	Independent directors shall not be entitled to any stock option.	Regulation 17(6)(d)
49.	The Chief Executive Officer and the Chief Financial Officer shall provide the compliance certificate to the board of directors as specified in Part B of Schedule II.	Regulation 17(8)
50.	The Board of Directors shall be responsible for framing, implementing and monitoring the risk management plan for the listed entity.	Regulation 17(9)(b)
51.	The evaluation of independent directors shall be done by the entire board of directors excluding the directors who are subject to evaluation shall not participate.	Regulation 17(10)

S.No.	PARTICULARS	Reference
52.	A person shall not be a director in more than seven listed entities with effect from April 1.2020.	Regulation 17A
53.	The audit committee shall have minimum three directors as members.	Regulation 18(1)(a)
54.	At least two-thirds of the members of audit committee shall be independent directors.	Regulation 18(1)(b)
55.	All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.	Regulation 18(1)(c)
56.	The chairperson of the audit committee shall be an independent director and he shall be present at Annual general meeting to answer shareholder queries.	Regulation 18(1)(d)
57.	The Company Secretary shall act as the secretary to the audit committee.	Regulation 18(1)(e)
58.	The audit committee at its discretion shall invite the Head of the finance function, the head of internal audit and the statutory auditor.	Regulation 18(1)(f)

S.No.	PARTICULARS	Reference
59.	The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings.	Regulation 18(2)(a)
60.	The quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is greater with at least two independent directors.	Regulation 18(1)(b)
61.	The nomination committee shall comprise of at least three directors.	Regulation 19(1)(a)
62.	The remuneration committee shall comprise of at least three directors.	Regulation 19(1)(a)
63.	All directors of the nomination committee/ remuneration shall be non-executive directors	Regulation 19(1)(b)
64.	In the nomination /remuneration committee at least two-thirds of the directors shall be independent directors .	Regulation 19(1)(c)
65.	The quorum for a meeting of the nomination and remuneration committee shall be either two members or one third of the members of the	Regulation 19(2A)



S.No.	PARTICULARS	Reference
	committee, whichever is greater, including at least one independent director in attendance.	
66.	The nomination/ remuneration committee shall meet at least once in a year.	Regulation 19(3A)
67.	The chairperson of Stakeholders Relationship committee shall be a non-executive director.	Regulation 20(2)
68.	In Stakeholders Relationship committee, at least three directors with at least one being an independent director, shall be members of the Committee.	Regulation 20(2A)
69.	The Chairperson of the Stakeholders Relationship Committee shall be present at the annual general meetings to answer queries of the security holders.	Regulation 20(3)
70.	The stakeholders relationship committee shall meet at least once in a year.	Regulation 20(3A)
71.	The Board of Directors shall constitute a Risk Management Committee.	Regulation 21(1)

S.No.	PARTICULARS	Reference
72.	The majority of members of Risk Management Committee shall consist of Members of the Board of directors.	Regulation 21(2)
73.	The risk management committee shall meet at least twice in a year.	Regulation 21(3A)
74.	The functions of the Risk Management Committee shall be Monitoring the Risk Management Plan, Reviewing of the Risk Management Plan and Monitoring and reviewing of Cyber Security.	Regulation 21(4)
75.	The provisions of SEBI(LODR) Regulations relating to the Risk Management Committee shall be applicable to Top 1000 listed entities, determined on the basis of market capitalisation as at the end of the immediate preceding financial year and a High Value Debt Listed Entity.	Regulation 21(5)
76.	The listed entity shall formulate a vigil mechanism for directors only to report genuine concerns and for employees only to report genuine concerns.	Regulation 22(1)

S.No.	PARTICULARS	Reference
77.	The vigil mechanism shall provide for adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism and also provide for direct access to the Chairperson of the audit committee in appropriate or exceptional cases.	Regulation 22(2)
78.	A transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.	Explanation to Regulation 23(1)
79.	All related party transactions shall require prior approval of the Audit Committee.	Regulation 23(2)
80.	The audit committee shall review, at least on a quarter basis the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given	Regulation 23(3)(d)

S.No.	PARTICULARS	Reference
81.	The omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year.	Regulation 23(3)(e)
82.	All material related party transactions shall require prior approval of the shareholders through resolution.	Regulation 23(4)
83.	No prior approval of the audit committee is required where the Related Party transactions are transaction entered into between two government companies and transactions entered into between a holding company and its wholly owned subsidiary.	Regulation 23(5)(a)&(b)
84.	At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not.	Regulation 24(1)
85.	The audit committee of the listed entity shall review the financial statements of its unlisted subsidiary and review the investments made by the unlisted subsidiary.	Regulation 24(2)

S.No.	PARTICULARS	Reference
86.	The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.	Regulation 24(3)
87.	Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex with its annual report, a secretarial audit report, given by a company secretary in practice, in such form as may be specified with effect from the year ended March 31, 2019.	Regulation 24A
88.	No person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018.	Regulation 25(1)
89.	The independent directors of the listed entity shall hold at least one meeting in a year without the presence of non-independent directors and members of the management and all the independent directors shall strive to be present at such meeting.	Regulation 25(3)

S.No.	PARTICULARS	Reference
90.	The agenda in the Independent Director's Meeting is to review the performance of non independent directors and the board of directors as a whole, the performance of the chairperson of the listed entity and to assess the quality, quantity and timelines of flow of information between the management of the listed entity and the board of directors.	Regulation 25(4)
91.	A director shall not be a member in more than ten committees across all listed entities in which he is a director.	Regulation 26(1)
92.	A director shall not act as chairperson of more than five committees across all listed entities in which he is a director which shall be determined as follows.	Regulation 26(1)
93.	The listed entity shall submit a quarterly compliance report on corporate governance to the recognised stock exchange(s) within 21days from the end of each quarter.	Regulation 27(2)(a)

S.No.	PARTICULARS	Reference
94.	The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which the proposals financial results, proposal for buyback of securities and proposal for voluntary delisting by the listed entity.	Regulation 29(1)
95.	The intimation required to be given to the stock exchanges for conducting of the board meeting for considering of financial results shall be given at least two working days in advance excluding the date of the intimation and date of the meeting.	Regulation 29(2)
96.	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, on a quarterly basis, within twenty one days from the end of each quarter.	Regulation 31(1)(b)
97.	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, Within ten days of any capital	Regulation 31(1)(c)

S.No.	PARTICULARS	Reference
	restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital.	
98.	The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, within ten days of any capital restructuring of the listed entity resulting in a change exceeding two percent of the total paid-up share capital.	Regulation 31(1)(c)
99.	The financial results shall be prepared on the basis of accrual accounting policy.	Regulation 33(1)(a)
100.	The quarterly and year to date results shall be prepared in accordance with the recognition and measurement principles laid down in Accounting Standard 25 or Indian Accounting Standard 31 (AS 25/Ind AS 34 - Interim Financial Reporting) as applicable, specified in section 133 of the Companies Act, 2013.	Regulation 33(1)(b)



S.No.	PARTICULARS	Reference
102.	The quarterly financial results submitted to the stock exchange(s) shall be approved by the Board of Directors.	Regulation 31(2)(a)
103.	The financial results submitted to the stock exchange shall NOT be signed by the Company Secretary.	Regulation 31(2)(b)
104.	The listed entity shall submit annual audited standalone financial results to the stock exchange(s) for the financial year, within 60 days from the end of the financial year.	Regulation 33(3)(d)
105.	The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/companies whose accounts are to be consolidated with the listed entity as per AS 21 in accordance with guidelines issued by the SEBI on this matter.	Regulation 33(8)
106.	The annual report shall NOT contain Funds Flow Statement.	Regulation 34(2)(a)

# ICDR Regulations 2018

- “listed issuer” means an issuer whose equity shares are listed on a recognised stock exchange having nationwide trading terminals;
- “issue size” includes offer through offer document and promoters’ contribution brought in as part of the issue; (aa)
- “issuer” means a company or a body corporate authorized to issue specified securities under the relevant laws and whose specified securities are being issued and/or offered for sale in accordance with these regulations;
- “initial public offer” means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such specified securities in an unlisted issuer  
“unlisted issuer” means an issuer which is not a listed issuer;
- **(1) “An issuer making an initial public offer shall ensure that:**
- **a)it has made an application to one or more stock exchanges to seek an in-principle approval for listing of its specified securities on such stock exchanges and has chosen one of them as the designated stock exchange, in terms of Schedule XIX”**
- **Note: From the condition as specified above it is now clear that only listed companies i.e. the company whose shares are listed on a stock exchange having nationwide trade terminals alone can make an initial public offer**
- The listed companies which are eligible to raise funds in domestic market by placing securities with QIBs are those whose equity shares are listed on a stock exchange nationwide and which are complying with the prescribed regulations of minimum public shareholding of the listed agreements
- ;

- **Applicability of the regulations**
- **3. Unless otherwise provided, these regulations shall apply to the following:**
- **(a) an initial public offer by an unlisted issuer;**
- **(b) a rights issue by a listed issuer; where the aggregate value of the issue is ten crore rupees or more;**
- **(c) a further public offer by a listed issuer**
- **(d) a preferential issue by a listed issuer;**
- **(e) a qualified institutions placement by a listed issuer;**
- **(f) an initial public offer of Indian depository receipts;**
- **(g) a rights issue of Indian depository receipts;**
- **(h) an initial public offer by a small and medium enterprise;**
- **(i) a listing on the institutional trading platform through an issue or without an issue; and**
- **(j) a bonus issue by a listed issuer**

- **ENTITIES NOT ELIGIBLE TO MAKE AN IPO:**
- **ISSUER PROMOTERS PROMOTER GROUP DIRECTORS SELLING SHAREHOLDERS**
- **=> DEBARRED FROM ACCESSING THE CAPITAL MARKET**
- **=> WILFUL DEFAULTER**
- **=> FUGITIVE ECONOMIC DEFAULTER**
- **=> PROMOTERS/ DIRECTORS IS A PROMOTER/DEFAULTER OF ANOTHER COMPANY WHICH IS DEBARRED FROM ACCESSING THE CAPITAL MARKET**
- **The cond'ns regarding debarment would not be applicable if debarment period is already over**
- **An issuer shall not be eligible to make an initial public offer if there are any outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares of the issuer**
- **Exceptions:**
- **Outstanding Options granted to employees**
- **fully paid up outstanding convertible securities which are required to be converted on or before the date of filing of the red herring prospectus (in case of book built issues) or the prospectus (in case of fixed price issues), as the case may be.**

- **ELIGIBILITY REQUIREMENTS FOR AN INITIAL PUBLIC OFFER:**
- **1) NTA GREATER THAN OR EQUAL TO 3 CR RUPEES**
- **=>EACH OF THE PRECEDING 3 FULL YEARS**
- **=> 50% OF NTA SHOULD BE MONETARY ASSETS**
- **Conditions: if Monetary Assets > 50% of NTA          Excess should be utilised in Business/ Project**
- **The aforesaid condition i.e. (50% OF NTA SHOULD BE MONETARY ASSETS) N/A if IPO made through an Offer For sale**
- **=> NTA = Total assets – Intangible assets – Total liabilities**
- **An offer for sale is an issue of existing securities held by the existing shareholders of the company to the public.** Compared to a public issue or an IPO where the proceeds of the issue flow to the company, in case of an offer for sale, the proceeds flow to the shareholders who are offering the shares.
- **2) Average Net Profit of 3 preceding FY > or equal to 15 CR Rupees**
- **=> Cond'n: There should be Operating Profit in each of those 3 preceding FY.**
- **3) Net Worth > or equal to 1 CR Rupees in each of the preceding 3 FY**
- **4) Change of name of Company during preceding 1 yr Occurred 50% of Revenue generated should be from the activity indicated by its New Name**
- **If all the aforesaid Cond's are not satisfied in that case an IPO may be made only if the following cond's are satisfied:**

- **The IPO is made through Book Building Process**
- **At least 75% of the Net Offer is allotted to Qualified Institutional Buyers (QIB)**
- **Refund of Full subscription money if At least 75% of the Net Offer is not allotted to Qualified Institutional Buyers (QIB)**
- **(Qualified Institutional Buyers are those institutional investors who are generally perceived to possess expertise and the financial muscle to evaluate and invest in the capital markets. In terms of clause 2.2.2B (v) of DIP Guidelines, a 'Qualified Institutional Buyer' shall mean:**
  - **=> Scheduled commercial banks;**
  - **=> Mutual funds;**
  - **=> Foreign institutional investor registered with SEBI;**
  - **=> Multilateral and bilateral development financial institutions;**
  - **=> Venture capital funds registered with SEBI.**
  - **=> Foreign Venture capital investors registered with SEBI.**
  - **=> State Industrial Development Corporations.**
  - **=> Insurance Companies registered with the Insurance Regulatory and Development Authority (IRDA).**
  - **=> Provident Funds with minimum corpus of Rs.25 Crores**
  - **=> Pension Funds with minimum corpus of Rs. 25 Crores**
  - **=> Public financial institution as defined in Companies Act, 2013;)**

- **General Conditions :**
- **(1) An issuer making an “initial public offer” shall ensure that:**
  - **a) it has made an application to one or more stock exchanges to seek an in principle approval for listing of its specified securities on such stock exchanges and has chosen one of them as the designated stock exchange, in terms of Schedule XIX**
  - **b) it has entered into an agreement with a depository for dematerialisation of the specified securities already issued and proposed to be issued;**
  - **c) all its specified securities held by the promoters are in dematerialized form prior to filing of the offer document;**
  - **d) all its existing partly paid up equity shares have either been fully paid up or have been forfeited;**
  - **e) it has made firm arrangements of finance through verifiable means towards seventy five per cent. of the stated means of finance for a specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.**
- **(2) The amount for general corporate purposes, as mentioned in objects of the issue in the draft offer document and the offer document shall not exceed twenty five per cent. of the amount being raised by the issuer.**



- **NET TANGIBLE ASSETS:**
- **What is Net Tangible Assets? How it is calculated?**
- **The term net tangible assets refers to the total physical assets of a company minus all intangible assets and liabilities. In other words, net tangible assets focus on physical assets such as property, plant, and equipment (PP&E), as well as inventories and cash instruments.**
- **Tangible assets are physical; they include cash, inventory, vehicles, equipment, buildings and investments. Intangible assets do not exist in physical form and include things like accounts receivable, pre-paid expenses, and patents and goodwill.**
- **A company's shareholder equity indicates the value that a company is financed through investors purchasing common and preferred shares. Meanwhile, net tangible assets are the theoretical value of a company's physical assets.**
- **Net Tangible Assets per share**
- **Net Tangible Assets per share (NTA) is the value of the total portfolio divided by the number of shares on issue. Using a simple example, if the value of the total portfolio is \$100 and the number of shares on issue is 10, then the NTA is \$10 per share. NTA per share.**
- **NTA = Total assets – Intangible assets – Total liabilities.**

- **NET WORTH :**
- Net worth is the value of all the non-financial and financial assets owned by an individual or institution minus the value of all its outstanding liabilities.
- Your net worth is the amount by which your assets exceed your liabilities. In simple terms, net worth is the difference between what you own and what you owe. If your assets exceed your liabilities, you have a positive net worth.
- In business, net worth is also known as book value or shareholders' equity. The balance sheet is also known as a net worth statement. The value of a company's equity equals the difference between the value of total assets and total liabilities.
- What does net worth tell you about a company?
- Net worth is a performance indicator that shows the value of your business's property after liabilities are paid. Once you settle all business debts, the net worth includes what is left over. You can use net worth to determine your financial health, secure funding, or sell the business.
- **Calculating net worth (net worth formula)**
- To determine the net worth, subtract the total liabilities from the total assets. Use the following net worth formula:
- **Assets – Liabilities = Net Worth**
- If the assets are greater than the liabilities, the net worth is a positive number (which is good). But if net worth is a negative number, the business is not doing well. With a negative net worth, you have more liabilities (or debt) than assets.
- **Assets can be tangible or intangible. Tangible assets are physical items, like a company vehicle. Intangible assets are items of value that are not physical, such as a trademark.**

- Analysis of Eligibility Requirements regarding financial Status of the Company:
- One of the requirements as stated by these regulations is that
- Average Net Profit of 3 preceding FY > or equal to 15 CR Rupees
- => Cond'n: There should be Operating Profit in each of those 3 preceding FY.
- => **Loss making companies are not covered by these regulations.**
- Now, Let us try to understand it with the help of a CASE STUDY.
- Suppose the company earned the following net profit in the preceding 3 FY:

COMPANY A		COMPANY B	
OPERATING PROFIT/LOSS	(CRORES)	OPERATING PROFIT/LOSS	(CRORES)
2017	17	2017	32
2018	13	2018	(20)
2019	22	2019	45

- **Average operating Profit of Company A works out to be :**
- **$(16+13+22)/3=17$  Cr**
- **Whereas, Average operating Profit of Company B works out to be :**
- **$(32-20+45)/3=19$  Cr**
- **The regulations will be applicable only on the company A because it has average operating profit of 3 preceding financial years greater than 15 Cr. Although it's Operating Profit in the year 2018 is less than 15 Cr but that is not the criteria as per the Eligibility Requirements of these regulations. The regulation says that Average Operating Profit of 3 preceding financial years should be greater than or equal to 15 Cr with Operating Profit in each of those Financial Years. It means That there should be Operating Profit in each of the 3 preceding Financial Years under consideration. The fact that Operating profit is less than 15 Cr in any of the financial years does not matter.**
- **In case of Company B although the Company has earned an Average Operating Profit of Re.19 Cr but it has incurred a loss of Re.20 Cr in the year 2018. Therefore it does not fulfill the condition that there should be Operating Profit in each of the 3 Preceding Financial Years. Hence SEBI (ICDR) Regulations will not be applicable on it.**
- **CONCLUSION: Loss making Companies/ a Company which has incurred a loss in any of the 3 preceding financial years under consideration are not covered by these Regulations**
- **Operating Profit in any of the 3 Preceding Financial Years under consideration may be less than Re. 15 Cr But if the Average Operating Profit in respect of those years is greater than or equal to Re. 15 Cr, in that case SEBI (ICDR) Regulations will be applicable on it.**

- **QUERIES:**
- **1) Difference between the Net tangible assets & Net worth?**
- **2) 50% of revenue should be from new activity in the case of change of name of company whether practicable or not?**
- **3) Whether these Regulations will be applicable only in the case of Listed Companies i.e. Companies whose shares are listed on a recognized stock exchange?**
- “issuer” means a company or a body corporate authorized to issue specified securities under the relevant laws and whose specified securities are being issued and/or offered for sale in accordance with these regulations”.
- “initial public offer” means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such specified securities in an unlisted issuer.
- **IS THIS STATEMENT CORRECT?**
- **4) Promoter’s equity share capital how calculated? definition: Promoter Group**
- B) any body corporate in which the promoter holds twenty per cent. or more of
- the equity share capital; and/or any body corporate which holds twenty per
- cent. or more of the equity share capital of the promoter;
- **5) Check the Formula for Offer for Sale by Promoters.**
-

- **6) Lock in period of promoter's contribution**
- **\_ Is there any lock-in period on promoter's contribution?**
- **NEW DELHI: “Markets regulator SEBI has reduced the minimum lock-in period for promoters' investment post an initial public offering (IPO) to 18 months from three years, under certain conditions”.**
- **The move comes at a time when many companies are looking to list on the stock exchanges.17-Aug-2021**
- **7) Can unlisted company issue IPO?**
- **1 No unlisted company shall make a public issue of equity share or any security convertible at later date into equity share, if there are any outstanding financial instruments or any other right which would entitle the existing promoters or shareholders any option to receive equity share capital after the initial ...**
- **8) What is the minimum subscription for IPO?**
- **According to SEBI (Securities and Exchange Board of India), every company needs a minimum subscription of 90% of the issued amount on the date of closure.**
- **9) What happens if IPO is oversubscribed?**
- **For the retail investor category, SEBI says that if this portion of an IPO is oversubscribed, then the share allotment must be done in such a way that each investor gets a minimum of one lot. Thereafter, the remaining shares are allotted proportionately. This holds true for issues with a small oversubscription.**
-

- **CONVERTIBLE DEBT INSTRUMENT WHETHER CONSTITUTING A CHARGE ON THE ASSETS OF THE ISSUER**
- **CONVERTIBLE SECURITY= CONVERTIBLE DEBT INSTRUMENT+ CONVERTIBLE PREFERENCE SHARES**
- **“institutional investor” means**
- **(i) qualified institutional buyer or**
- **(ii) family trust or intermediaries registered with the Board, with net worth of more than five hundred crore rupees, as per the last audited financial statements, for the purposes of listing and/or trading on institutional trading platform in terms of Chapter X;**
- **“issuer” means a company or a body corporate authorized to issue specified securities under the relevant laws and whose specified securities are being issued and/or offered for sale in accordance with these regulations**

- **TYPES OF ISSUES:**
- **INITIAL PUBLIC OFFER (IPO)**
- **FURTHER PUBLIC OFFER(FPO)**
- **RIGHT ISSUE (ISSUE OF SHARES TO EXISTING SHAREHOLDERS PREFERENTIALLY)**
- **BONUS ISSUE (WHETHER IT IS AN ISSUE OR NOT AS PER ICDR REGULATIONS)**
- **QUALIFIED INSTITUTIONAL PLACEMENT**
- **PREFERENTIAL ALLOTMENT**
- **PRIVATE PLACEMENT**
- **COMPOSITE ISSUES (WHETHER IT IS AN ISSUE OR NOT AS PER ICDR REGULATIONS)**
- **FAST TRACK ISSUES (WHETHER IT IS AN ISSUE OR NOT AS PER ICDR REGULATIONS)**
- **OFFER FOR SALE (WHETHER IT IS AN ISSUE OR NOT AS PER ICDR REGULATIONS)**



- 1) Initial Public Offer:
- “initial public offer” means an offer of specified securities by **an unlisted issuer** to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such specified securities in an **unlisted issuer**.
- Successful IPO issued by the following companies
- De-Mart
- AU Finance
- Indigo Airlines
- Note: As per my humble understanding of the text only listed companies are authorized to make an Initial Public Offer. **Please Check**
- 2) Further Public Offer: A public issue made after the Initial Public Offer is called a Further Public Offer (FPO) Only listed companies i.e. the Companies which are listed on a recognized stock exchange can make a further public offer.
- => Share purchased from Company (Primary Market)
- => Share Purchased from the Shareholders (Secondary Market)
- The aforementioned offers are considered as Primary Market.

- **3) Rights Issue of Securities: Securities issued to existing shareholders in preference to general public is called a Right issue of Securities.**
- **4) Bonus Issue**
- **5) Qualified Institutional Placement (QIP): Private placement of securities to Qualified Institutional Buyers is called Qualified Institutional Placement.**
  
- **“qualified institutions placement” means issue of eligible securities by a listed issuer to qualified institutional buyers on a private placement basis and includes an offer for sale of specified securities by the promoters and/or promoter group on a private placement basis, in terms of these regulations;**
  
- **“qualified institutional buyer” means:**
  - **(i) a mutual fund, venture capital fund, alternative investment fund and foreign venture capital investor registered with the Board;**
  - **(ii) a foreign portfolio investor other than Category III foreign portfolio investor, registered with the Board;**
  - **(iii) a public financial institution;**
  - **(iv) a scheduled commercial bank;**
  - **(v) a multilateral and bilateral development financial institution;**
  - **(vi) a state industrial development corporation;**
  - **(vii) an insurance company registered with the Insurance Regulatory and Development Authority of India;**

- **(viii) a provident fund with minimum corpus of twenty five crore rupees;**
- **(ix) a pension fund with minimum corpus of twenty five crore rupees;**
- **(x) National Investment Fund set up by resolution no. F. No. 2/3/2005-DDII dated November 23, 2005 of the Government of India published in the Gazette of India;**
- **(xi) insurance funds set up and managed by army, navy or air force of the Union of**
- **India; and**
- **(xii) insurance funds set up and managed by the Department of Posts, India; and**
- **(xiii) systemically important non-banking financial companies.**
- **6) Preferential Allotment of Securities: Securities are issued to some specified persons on preference basis to others(Section 62 (3)). Only fully paid up Share Capital is issued under this kind of allotment. No Partly Paid-up shares are issued.**
- **7) Private placement :Securities are issued to some specified persons/Institutions privately. Only 50 persons may be selected for private placement of Securities in a single issue. The limit is 200 Persons in a Financial Year.**

- **8) Offer for Sale:**
- **=> “Only such fully paid-up equity shares may be offered for sale to the public, which have been held by the sellers for a period of at least one year prior to the filing of the draft offer document”**
- **=> As per the norms & Regulations of SEBI regarding shareholding share, 25% of Company’s fully paid up shares should be with the Public.**
- **=> Only Listed Companies (Whether private Or Public) can make an Offer for Sale**
- **=> Only Promoters/Shareholders holding more than 10% of Share Capital in a Company can come up with such an issue. The Mechanism available to 200 Top Companies in terms of Market Capitalization.**
- **=> Minimum 25% of total shares offered are reserved for Mutual Fund and Insurance Company (Qualified Institutional Buyers).**
- **=> Minimum 10% reserved for Retail Investor.**
- **=> A seller can offer a discount to retail investors either on the bid price or on the final Allotment Price, but a seller cannot offer a discount to QIB’s.**
- **=> IRCTC currently holds 87.40% should reduce it to 75%.**

- **ILLUSTRATION: Promoter-**

holds 5000 shares

Max limit 2500 shares

- (If shareholding of promoter is more
- Than 20% of pre-issue shareholding of
- The issuer)

Max limit 500 shares in this case. Hence

- (If shareholding of promoter is less
- Than 20% of pre-issue shareholding of
- The issuer)

if the promoter desire to issue 20% or

less than 20% of his shareholding in the company He will be able to make an issue as offer for sale only up to 10% of his shareholding in the company before making such an issue

- **The procedure for issue of shares:**
- **According to Section 62 (1) of the Companies Act 2013, the procedure for issue of shares is as follows:**
- **Issue of notice of Board meeting: ...**
- **Convene the First Board Meeting: ...**
- **Issue Letter of Offer: ...**
- **File MGT – 14: ...**
- **Receive application money: ...**
- **Convene the Second Board Meeting: ...**
- **File the forms with ROC:**

- **RED HERRING PROSPECTUS:**

- When a company plans to raise money (for example: float an IPO) from the public by selling its shares to investors, it files and submits a Draft Red Herring Prospectus (DRHP), also known as 'offer document' or 'preliminary registration document', with the market regulator SEBI (Securities and Exchange Board of India).
- The Securities and Exchange Board of India, or SEBI, has made it mandatory for companies to file a DRHP before going to the Registrar of Companies (ROCs).
- Red herring prospectus is the prospectus which lacks the complete PARTICULARS about the quantum of the price of the securities. A company may issue a red herring prospectus prior to the issue of prospectus when it is proposing to make an offer of securities.

- **SHELF PROSPECTUS:**

- Shelf Prospectus is a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. In simple terms Shelf Prospectus is a single prospectus for multiple public.
- Shelf prospectus can be defined as a prospectus that has been issued by any public financial institution, company or bank for one or more issues of securities or class of securities as mentioned in the prospectus. When a shelf prospectus is issued then the issuer does not need to issue a separate prospectus for each offering he can offer or sell securities without issuing any further prospectus.

- **Validity Period of the Prospectus:**

- The prospectus shall prescribe the validity period of the prospectus and it should be not be exceeding one year. This period commences from the opening date of the first offer of the securities. For any second or further offer, no separate prospectus is required.

- **Information Memorandum:**

- The company which is filing a shelf prospectus is required to file the information memorandum. It should contain all the facts regarding the new charges created, what changes have undergone in the financial position of the company since the first offer of the security or between the two offers.
- It should be filed with the registrar within three months before the issue of the second or subsequent offer made under the shelf prospectus as given under *Rule 4CCA of [section 60A\(3\)](#) under the Companies (Central Government's) General Rules and Forms, 1956.*
- After the information memorandum has been filed, if any offer or securities is made, the memorandum along with the shelf prospectus is considered as a prospectus.



- **Abridged Prospectus:**

- The abridged prospectus is a summary of a prospectus filed before the registrar. It contains all the features of a prospectus. An abridged prospectus contains all the information of the prospectus in brief so that it should be convenient and quick for an investor to know all the useful information in short.
- [Section 33\(1\)](#) of the Companies Act, 2013 also states that when any form for the purchase of securities of a company is issued, it must be accompanied by an abridged prospectus.
- It contains all the useful and materialistic information so that the investor can take a rational decision and it also reduces the cost of public issue of the capital as it is a short form of a prospectus.

- **Deemed Prospectus:**

- A deemed prospectus has been stated under [section 25\(1\) of the Companies Act, 2013](#).
- When any company to offer securities for sale to the public, allots or agrees to allot securities, the document will be considered as a deemed prospectus through which the offer is made to the public for sale. The document is deemed to be a prospectus of a company for all purposes and all the provision of content and liabilities of a prospectus will be applied upon it.
- In the case of [SEBI v. Kunnankulam Paper Mills Ltd.](#), it was held by the court that where a rights issue is made to the existing members with a right to renounce in the favour of others, it becomes a deemed prospectus if the number of such others exceeds fifty.

- **Price Band:**

- A price band is a value-setting method in which a seller indicates an upper and lower limit of where buyers are able to bid. This pricing technique is often used with initial public offerings (IPOs). Determining the price band is critical to understanding how much investors are willing to pay.
- A price band is a way of determining the value of a share, where the seller specifies an upper and lower cost range within which bidders must place bids. In other words, it's the price range for IPO shares that investors can bid on.
- The NSE and BSE have set price bands for all securities. The price bands serve as boundaries for the stock's trading; the exchange will not accept orders that are set outside the minimum and the maximum of the price range.
- Book Building Issues. A 20 % price band is offered by the issuer within which investors are allowed to bid and the final price is determined by the issuer only after closure of the bidding.

- **Face Value of Security (IPO):**

- => The face value, also known as par value, is the fixed price of the PARTICULARS share decided by the company to come out with an Initial Public Offering (IPO). The face value can be any value like INR 2, INR 10, or INR 1000. The issue price, also called price band, is the stock's face value plus the premium that a company demands to charge from its investors. In simpler words,
- => The issue price of the share = Face Value of the share + Premium asked by the company on the share.

- **Differential Pricing:**

- a pricing strategy in which a company sets different prices for the same product on the basis of differing customer type, time of purchase, etc.; also called Discriminatory Pricing, Flexible Pricing, Multiple Pricing, Variable Pricing.
- Is Differential Pricing Illegal?
- Charging different prices to different customers is generally legal. The practice could be illegal, however, if the reason for the difference were reliance on a "suspect category" - race, religion, national origin, gender, or the like.20-Jun-2005
- Can a company sell the same product at different prices?
- Firms practice price discrimination when firms sell the same product at different prices. Price discrimination involves charging higher prices to less price sensitive consumer and lower prices to more price sensitive customers. Price discrimination can only occur in market where the firms has a degree of market power.
- Price discrimination is when companies offer different prices to different groups of consumers, in order to maximize their revenue. For example, a company might charge a high price for a certain product, but offer the same product at a discount to students or lower-income customers.
- What is dual pricing system?
- Dual pricing is the practice of setting different prices in different markets for the same product or service. This tactic may be used by a business for a variety of reasons, but it is most often an aggressive move to take market share away from competitors. Dual pricing is similar to price discrimination.

- **Promoter's Contribution:**
- In case of composite issues of a listed company, the promoters contribution shall at the option of the promoter(s) be either 20% of the proposed public issue or 20% of the post-issue capital.
- Can promoters sell shares in IPO?
- When promoters of companies or rather startups that are not doing well financially sell their entire stake in the company, it is bound to shake investor confidence in the IPO.
- => **"From now, shareholders with over 20% stake can sell only half of its shares through the IPO". 29-Dec-2021**
- What is minimum promoter contribution?
- "The lock-in of promoters' shareholding to the extent of minimum promoters' contribution (i.e. 20% of post-issue capital) shall be for a period of 18 months from the date of allotment in the initial public offering (IPO)/further public offering (FPO) instead of the existing three years," SEBI said.07-Aug-2021
- Is there any lock-in period on promoter's contribution?
- **NEW DELHI: "Markets regulator SEBI has reduced the minimum lock-in period for promoters' investment post an initial public offering (IPO) to 18 months from three years, under certain conditions".**
- The move comes at a time when many companies are looking to list on the stock exchanges.17-Aug-2021

# ICDR Regulations MCQs

S.No.	PARTICULARS	Reference
1.	Section 30 of the Securities and Exchange Board of India Act, 1992 have conferred powers to the SEBI to makes the SEBI (ICDR) Regulations, 2009.	Section 30 read with section 11(2)(H) of SEBI ACT
2.	“Anchor investor” means a qualified institutional buyers who makes an application for a value of at least ten crore rupees in a public issue on the main board made through the book building process.	Regulation 2(1)(c)
3.	“Application supported by blocked amount (ASBA)” means an application for subscribing to a public issue or rights issue, along with an authorisation to self – certified syndicate bank to block the application money in a bank account.	Regulation 2(1) (d)
4.	“Book building” means a process undertaken to elicit demand and to assess the price for determination of the quantum or value or coupon of specified securities.	Regulation 2(1) (g)

S.No.	PARTICULARS	Reference
5.	“Composite issue” means an issue of specified securities by a listed issuer on public-cum-rights basis simultaneously	Regulation 2(1) (h)
6.	“Green shoe option” means an option of allotting equity shares in excess of the equity shares offered in the public issue as a post-listing price stabilizing mechanism.	Regulation 2 (1) (s)

S.No.	PARTICULARS	Reference
7.	An issuer making an initial public offer of specified securities shall satisfy the conditions of Chapter II of ICDR Regulations as on the date of filing of the draft offer document with the Board and as on the date of filing the offer document with the Registrar of Companies.	Regulation 4
8.	In which circumstance, an issuer shall be eligible to make an initial public offer if any of its promoters or directors is not a fugitive economic offender.	Regulation 5 (1)
9.	An issuer shall be eligible to make an initial public offer only if it has net tangible assets of at least three crore rupees	Regulation 6(1) (a)
10.	An issuer shall be eligible to make an initial public offer only if it has a net worth of at least one crore rupees in each of the preceding three full years.	Regulation 6(1) (c)



S.No.	PARTICULARS	Reference
11.	Only such fully paid-up equity shares may be offered for sale to the public, which have been held by the sellers for a period of at least one year prior to the filing of the draft offer document.	Regulation 8
12.	An issuer can make an initial public offer of convertible debt instruments even without making a prior public issue of its equity shares and listing thereof provided it is not in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public. If any, for a period of more than six months	Regulation 9
13.	An issuer making an initial public offer of convertible debt instruments shall comply obtain credit rating from at least one credit rating agency , appoint at least one debenture trustee and create a debenture redemption reserve.	Regulation 10(1)

S.No.	PARTICULARS	Reference
14.	An issuer shall be eligible to issue warrants in an initial public offer subject to condition that the tenure of such warrants shall not exceed 18 months from the date of their allotment in the initial public offer.	Regulation 13 (a)
15.	The promoters of the issuer shall hold at least twenty percent of the post-issue capital.	Regulation 14 (1)
16.	Promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of six months from the date of allotment in the initial public offer.	Regulation 16 (b)
17.	The entire pre-issue capital held by persons other than the promoters shall be locked-in for a period of six months from the date of allotment in the initial public offer.	Regulation 17
18.	The issuer shall appoint one or more merchant bankers which are registered with the Board, as lead manager(s) to the issue.	Regulation 23(1)

S.No.	PARTICULARS	Reference
19.	The draft offer document filed with the Board shall be made public for comments, if any, for a period of at least 21 days from the date of filing.	Regulation 26 (1)
20.	The cap on the price band, and the coupon rate in case of convertible debt instruments, shall be less than or equal to one hundred and twenty percent of the floor price	Regulation 29(2)
21.	The floor price or the final price shall not be less than the face value of the specified securities	Regulation 29(3)
22.	In case of a book built issue, the price of the specified securities offered to the anchor investors shall not be lower than the price offered to other applicants.	Regulation 30 (1)(b)
23.	The issuer shall accept bids by using only the ASBA facility.	Regulation 35

S.No.	PARTICULARS	Reference
24.	The issuer shall, before the opening of the subscription list, deposit with the designated stock exchange, an amount calculated at the rate of one percent of the issue size available for subscription to the public.	Regulation 38(1)
25.	The issuer may obtain grading for its initial public offer from one or more credit rating agencies registered with board.	Regulation 39
26.	If the issuer makes a public issue through the book building process, the issue shall be under written by lead manager(s) and syndicate member(s)	Regulation 40(2) (a)
27.	If the issue size, excluding the size of offer for sale by selling shareholders, exceeds one hundred crore rupees the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a public financial institution or by a scheduled commercial bank named in the offer document as bankers of the issuer.	Regulation 41(1)

S.No.	PARTICULARS	Reference
28.	A public issue may be opened within 12 months from the date of issuance of the observations by the Board.	Regulation 44(1)
29.	The minimum subscription to be received in the issue shall be at least ninety per cent of the offer through document, except in case of an offer for sale specified securities.	Regulation 45(1)
30.	An initial public offer shall be kept open for at least three working days and not more than ten working days.	Regulation 46(1)
31.	An initial public offer shall be kept open for at least three working days and not more than ten working days.	Regulation 46(1)
32.	In case of a revision in the price band, the issuer shall extend the bidding (issue) period disclosed in the red herring prospectus for a minimum period of three working days.	Regulation 46(2)

S.No.	PARTICULARS	Reference
33.	The issuer shall stipulate in the offer document the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of ten thousand rupees to fifteen thousand rupees.	Regulation 47(2)
34.	The minimum sum payable on application per specified security shall be at least 25% of the issue price.	Regulation 47(4)
35.	If the issuer proposes to receive subscription monies in calls, it shall ensure that the outstanding subscription money called within twelve months from the date of allotment.	Regulation 48
36.	The issuer shall not make an allotment pursuant to public issue if the number of prospective allottees is less than one thousand.	Regulation 49(1)
37.	The value of specified securities allotted to any person, except in case of employees, shall not exceed two lakhs rupees for retail investors.	Proviso Regulation 49(3)

S.No.	PARTICULARS	Reference
38.	Where the securities are not allotted and/or application monies are not refunded or unblocked within the prescribed period the issuer shall undertake to pay interest at the rate of 15%p.a. to the investors.	Regulation 50(3)
39.	The responsibility of the lead manager(s) shall continue until completion of the issue process and for any issue related matter thereafter	Regulation 52(1)
40.	In case the issuer fails to obtain listing or trading permission from the stock exchanges where the specified securities were to be listed, it shall refund through verifiable means the entire monies received within 4 working days of receipt of intimation from stock exchanges rejecting the application for listing of specified securities.	Regulation 53(2)
41.	The issuer shall ensure that all transactions in securities by the promoter and promoter group between the date of filing of the draft offer	Regulation 54

S.No.	PARTICULARS	Reference
	document or offer document, as the case may be, and the date of closure of the issue shall be reported to the stock exchange(S), within 24hours	
42.	The lead manager(s) shall submit a final post-issue report as specified in Part A of Schedule XVII, along with a due diligence certificate as per the format specified in Form F of Schedule V, Within seven days of the date of finalization of basis of allotment or within seven days of refund of money in case of failure of issue.	Regulation 52(1)



S.No.	PARTICULARS	Reference
43.	When an issuer shall be eligible to make a rights issue of specified securities if the issuer who were debarred in the past by the board and the period of debarment is already over as on the date of filing of the draft letter of offer with the Board.	Regulation 61
44.	The issuer making a rights issue of specified securities shall ensure that it has made an application to one or more stock exchanges to seek an in- principle approval for listing, all its existing partly paid-up equity shares have either been fully paid- up or have been forfeited and it has made firm arrangements of finance through verifiable means towards seventy five per cent. of the stated means of finance for the specific project proposed to be funded from issue proceeds, excluding the amount to be raised through the proposed rights issue or through existing identifiable internal accruals.	Regulation 62 (1)(c)

S.No.	PARTICULARS	Reference
45.	The amount for general corporate purposes, as mentioned in objects of the issue in the draft letter of offer and the letter of offer Shall not exceed twenty five per cent. of the amount raised by the issuer	Regulation 62 (2)
46.	An issuer making a rights issue of convertible debt instruments shall ensure that it has obtained credit rating from at least one credit rating agency.	Regulation 63 (1)(a)
47.	An issuer shall be eligible to issue warrants which shall not exceed 18 months from their date of allotment in the rights issue.	Regulation 67 (a)
48.	The issue price shall not be less than the face value of the specified securities	Regulation 73 (2)
49.	For making a rights issue through the fast track route the equity shares of the issuer have been listed on any stock exchange for a period of at least three years immediately preceding the reference date.	Regulation 99 (a)

S.No.	PARTICULARS	Reference
50.	For making a rights issue through the fast track route the average market capitalisation of public shareholding of the issuer is at least two hundred and fifty crore rupees.	Regulation 99 (c)
51.	For making a rights issue through the fast track route the annualized delivery based trading turnover of the equity shares during six calendar months immediately preceding the month of the reference date has been at least ten percent of the annualized trading turnover of equity shares during such six months' period.	Regulation 99 (e)

S.No.	PARTICULARS	Reference
52.	An issuer shall be eligible to make a further public offer of convertible debt instruments if its equity shares are already listed and it has not defaulted in payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months.	Regulation 106
53.	The requirements of minimum promoters' contribution shall not apply in case of an issuer which does not have any identifiable promoter.	Regulation 112 (a)
54.	The promoters shall contribute in the public issue as either to the extent of 20% of the proposed issue size	Regulation 113(1)(a)
55.	The promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of six months.	Regulation 115 (b)
56.	The cap on the price band, and the coupon rate in case of convertible debt instruments, shall be less than or equal to 120% of the floor price.	Regulation 127(2)

S.No.	PARTICULARS	Reference
57.	A listed issuer making a preferential issue of specified securities shall ensure that all equity shares allotted by way of preferential issue shall be made fully paid up at the time of the allotment, a special resolution has been passed by its shareholder and all equity shares held by the proposed allottees in the issuer are in dematerialised form.	Regulation 160
58.	"relevant date" in case of preferential issue of equity shares, means the date 30days prior to the date on which the meeting of shareholders is held to consider the proposed preferential issue.	Regulation 161 (a)
59.	The tenure of the convertible securities of the issuer shall not exceed eighteen months from the date of their allotment.	Regulation 162
60.	The equity shares issued on a preferential basis pursuant to any resolution of stressed assets under a framework specified by the Reserve Bank	Regulation 167 (4)

S.No.	PARTICULARS	Reference
	of India or a resolution plan approved by the National Company Law Tribunal under the Insolvency and Bankruptcy Code 2016, shall be locked in for a period of one year from the trading approval.	
61.	Allotment pursuant to the special resolution shall be completed within a period of 15 days from the date of passing of such resolution.	Regulation 170 (1)

S.No.	PARTICULARS	Reference
62	The tenure of the convertible or exchangeable eligible securities issued through qualified institutions placement shall not exceed 60 months from the date of allotment.	Regulation 170(1)
63.	The eligible securities allotted under the qualified institutions placement shall not be sold by the allottee for a period of one year from the date of allotment, except on a recognised stock exchange.	Regulation 178

S.No.	PARTICULARS	Reference
64.	The floor price or the final price of IDR Shall not be less than the face value of the IDRs.	Regulation 189(3)
65.	The minimum application amount of an IDR shall be twenty thousand rupees.	Regulation 191(2)
66.	The issuer shall accept bids using through ASBA facility.	Regulation 194
67.	In connection with the issue of securities, what is NOT permissible incentive.	Regulation 196
68.	The issuer shall, before the opening of subscription list, deposit with the designated stock exchange, an amount calculated at the rate of 1.00% of the issue size available for subscription to the public.	Regulation 197(1)
69.	If the issuer makes a public issue through the book building process the issue shall be underwritten by lead manager(s) and syndicate member(s), the lead manager(s) and the syndicate	Regulation 198(2)



S.No.	PARTICULARS	Reference
	member(s) shall not subscribe to the issue in any manner except for fulfilling their underwriting obligations and where the issue is required to be underwritten, the underwriting obligations should at least to the extent of minimum subscription.	Regulation 198(2)
70.	All public communication, publicity materials, advertisements and research reports shall comply with the provisions of schedule IX.	Regulation 199
71.	The issuer may release advertisements for issue opening and issue closing, which shall be in the formats specified in schedule X.	Regulation 200 (1)
72.	During the period the issue is open for subscription, no advertisement shall be released giving an impression that the issue has been fully subscribed or oversubscribed or indicating investors' response to the issue.	Regulation 200 (2)
73.	An announcement regarding closure of the issue shall be made only after the lead manager(s) is	Regulation 200 (3)

S.No.	PARTICULARS	Reference
	satisfied that at least 90% of the issue has been subscribed and a certificate has been obtained to that effect from the registrar to the issue.	
74.	Subject to the compliance with the provisions of the Companies Act, 2013, a public issue may be opened within 12 months from the date of issuance of the observations by the Board under regulation 6.	Regulation 201(1)(a)
75.	An issue shall be opened after at least three working days from the date of registering the prospectus with the Registrar of Companies.	Regulation 201 (2)
76.	For non-underwritten issues, if the issuer fails to refund the entire subscription amount within fifteen days from the date of the closure of the issue, it is liable to pay the amount with interest to the subscribers at the rate of 15% p.a. for the period of delay.	Regulation 202(2)(b)

S.No.	PARTICULARS	Reference
77.	An initial public offer of IDRs shall be kept open for at least three working days and not more than ten working days.	Regulation 203(1)
78.	In case of oversubscription, an allotment of not more than one per cent of the net offer to public may be made for the purpose of making allotment in minimum lots.	Proviso to Regulation 204 (1)
79.	The value of specified securities allotted to retail individual investors shall not exceed two lakhs rupees.	Proviso to Regulation 204 (2)
80.	The responsibility of the lead manager(s) shall continue until completion of the issue process and it shall continue for any issue related matter thereafter.	Regulation 207(1)
81.	The issuer shall ensure that transactions in securities by the promoters and promoter group during the period between the date of filing of the	Regulation 209

S.No.	PARTICULARS	Reference
	draft offer document or offer document, as the case may be, and the date of closure of the issue shall be reported to the stock exchange(s) within 24 hours of such transactions.	
82.	The lead manager(s) shall submit a final post-issue report along with a due diligence certificate within 7 days of the date of finalisation of basis of Allotment	Regulation 210

S.No.	PARTICULARS	Reference
83	A rights issue of IDR shall be open for subscription in India for a period as applicable under the laws of its home country but in no case less than 10 days.	Regulation 224 (1)

S.No.	PARTICULARS	Reference
84.	In case of SME Enterprise, an issuer shall be eligible to make an initial public offer only if its post-issue paid-up capital is less than or equal to ten crore rupees.	Regulation 229 (1)
85.	An issuer shall be eligible to issue fully convertible debt instruments for financing or for providing loans to or for acquiring shares of any person who is part of the promoter group or group companies if the period of conversion of such debt instruments is less than 18 months from the date of issue of such debt instruments.	Regulation 234
86.	An issuer shall be eligible to issue warrants in an IPO subject to the condition that the tenure of such warrants shall not exceed 18 months from their date of allotment in the initial public offer.	Regulation 235 (a)
87.	The promoters of the issuer shall hold at least 20% of the post-issue capital.	Regulation 236 (1)

S.No.	PARTICULARS	Reference
88.	The entire pre-issue capital held by persons other than the promoters shall be locked-in for a period of one year from the date of allotment in the initial public offer.	Regulation 239
89.	The minimum offer to the public shall be as per the provisions of Securities Contracts(Regulations) Rules, 1957.	Regulation 252
90.	The allocation in the net offer category to retail individual investors shall be not less than 35%.	Regulation 253(1)(a)
91.	The allocation in the net offer category to non-institutional investors shall be not less than 15%.	Regulation 253(1)(b)
92.	The allocation in the net offer category to qualified institutional buyers shall be not more than 50%.	Regulation 253(1)(c)
93.	The issue shall be opened after at least three working days from the date of registering the offer document with the Registrar of Companies.	Regulation 265

S.No.	PARTICULARS	Reference
94.	A public issue shall be kept open for at least 3 working days and not more than 10 working days.	Regulation 266 (1)
95.	The issuer shall not make an allotment pursuant to a public issue if the number of allottees in an initial public offer is less than fifty.	Regulation 268(1)
96.	The lead manager(s) shall submit a final post-issue report along with a due diligence certificate within 7 days of the date of finalization of basis of allotment.	Regulation 273
97.	A listed issuer whose post-issue face value capital is less than twenty five crore rupees may migrate its specified securities to SME exchange if its shareholders approve such migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the SME exchange	Regulation 276



S.No.	PARTICULARS	Reference
98.	An issuer, whose specified securities are listed on a SME Exchange and whose post-issue face value capital is , more than ten crore rupees and up to twenty five crore rupees may migrate its specified securities to the main board of the stock exchanges if its shareholders approve such a migration by passing a special resolution through postal ballot to this effect and if such issuer fulfils the eligibility criteria for listing laid down by the Main Board	Regulation 277

S.No.	PARTICULARS	Reference
99.	An issuer seeking listing of its specified securities without making a public offer, shall file a draft information document along with the necessary documents with the Board in accordance with these regulations along with the fee as specified in Schedule III of these regulations.	Regulation 284
100.	The minimum offer size shall be ten crore rupees.	Regulation 285(A)(2)
101.	The minimum application size shall be two lakh rupees and in multiples thereof.	Regulation 286
102.	The number of allottees in the initial public offer shall at least be 50.	Regulation 287 (1)
103.	The entire pre-issue capital of the shareholders shall be locked-in for a period of 6 months from the date of allotment in case of listing pursuant to a public issue or date of listing in case of listing without a public issue.	Regulation 288 (1)
104	The minimum trading lot on the stock exchange shall be two lakh rupees.	Regulation 289

S.No.	PARTICULARS	Reference
105	A listed issuer shall be eligible to issue bonus shares to its members if it is authorised by its articles of association, it has not defaulted in payment of interest or principal in respect of fixed deposit and it has not defaulted in respect of the payment of statutory dues of the employees.	Regulation 293
106.	A bonus issue shall be NOT made out of reserves created by revaluation of fixed assets.	Regulation 294 (3)
107.	A bonus issue, once announced shall not be withdrawn.	Regulation 295 (2)

# SECURITIES AND EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY SHARES) REGULATIONS, 2021

THE GAZETTE OF INDIA EXTRAORDINARY PART III – SECTION 4 PUBLISHED BY  
AUTHORITY SECURITIES AND EXCHANGE BOARD OF INDIA NOTIFICATION Mumbai, the  
10th June, 2021

SECURITIES AND EXCHANGE BOARD OF INDIA (DELISTING OF EQUITY SHARES)  
REGULATIONS, 2021 No. SEBI/LAD-NRO/GN/2021-25 –

In exercise of the powers conferred by section 31 read with section 21A of the  
Securities Contracts (Regulation) Act, 1956 (42 of 1956) and section 30, sub-section (1)  
of section 11 and sub-section (2) of section 11A of the Securities and Exchange Board  
of India Act, 1992 (15 of 1992), the Board hereby makes the following regulations,  
namely: -

CHAPTER I

PRELIMINARY

Short title and commencement

1. (1) These regulations shall be called the Securities and Exchange Board of India  
(Delisting of Equity Shares) Regulations, 2021.
2. (2) They shall come into force on the date of their publication in the Official  
Gazette.

## Definitions 2.

(1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meaning assigned to them below and their cognate expressions and variations shall be construed accordingly,-

(2) a) “Act” means the Securities and Exchange Board of India Act, 1992 (15 of 1992);

b) “acquirer” includes a person - (i) who decides to make an offer for delisting of equity shares of the company along with the persons acting in concert in accordance with regulation 5A of the Takeover Regulations as amended from time to time ; or (ii) who is the promoter or part of the promoter group along with the persons acting in concert.

c) “Board” means the Securities and Exchange Board of India established under section 3 of the Act;

d) “bidding period” means the period within which shareholders may tender their shares in acceptance of the offer for delisting of equity shares of the company made under these regulations;

- e) “control” shall have the same meaning as assigned to it under the Takeover Regulations as amended from time to time;
- f) “company” means a company within the meaning of sub-section (20) of section 2 of the Companies Act, 2013 (18 of 2013) and includes a body corporate or corporation established under any enactment for the time being in force, whose equity shares are listed on a recognised stock exchange;
- g) “compulsory delisting” means delisting of equity shares of a company by a recognised stock exchange under Chapter V of these regulations;
- h) "Company Secretary in practice" means a Company Secretary as defined in section 2(c) of the Company Secretaries Act, 1980 (56 of 1980) who is deemed to be in practice under sub-section (2) of section 2 of the said Act;
- i) “detailed public announcement” means the announcement made by the acquirer in terms of regulation 15 read with Schedule I of these regulations;
- j) “delisting” means permanent removal of equity shares of the company from the trading platform of a recognised stock exchange, either by way of voluntary or compulsory method;
- k) “delisting period” means the period between the date of initial public announcement and the date of payment of consideration to the shareholders, whose shares have been accepted in the reverse book building process or the date on which shares have been returned upon failure of the delisting offer, as the case may be;

- l) "discovered price" means the price discovered through reverse book building process in terms of Schedule II of these Regulations;
- m) "floor price" means the minimum price offered by the acquirer, computed in accordance with regulation 8 of the Takeover Regulations as amended from time to time, while making the proposal for voluntarily delisting of the equity shares of the company;
- n) "frequently traded shares" shall have the same meaning as assigned to it under the Takeover Regulations as amended from time to time;
- o) "indicative price" means the price offered by the acquirer, which is higher than the floor price, while making the proposal to voluntarily delist the equity shares of the company;
- p) "innovators growth platform" shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 as amended from time to time;
- q) "initial public announcement" means the first announcement, including subsequent modifications thereto, if any, made by the acquirer to express its intention to voluntarily delist the equity shares of the company from all the recognised stock exchanges.
- r) "Insolvency Code" means the Insolvency and Bankruptcy Code, 2016 (31 of 2016);
- s) "Peer Review Company Secretary" means a Company Secretary in practice, who is either practicing individually or as a sole proprietor or as a partner of a Peer Reviewed Practice Unit, holding a valid certificate of peer review issued by the Institute of Company Secretaries of India;



- t) “public shareholding” shall have the same meaning as assigned to it under rule 2(e) of the Securities Contracts (Regulation) Rules, 1957 as amended from time to time and “public shareholders” shall be construed accordingly;
- u) “persons acting in concert” shall have the same meaning as assigned to it under the Takeover Regulations as amended from time to time;
- v) “promoter” shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 as amended from time to time;
- w) “promoter group” shall have the same meaning as assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 as amended from time to time;
- x) “recognised stock exchange” means any stock exchange that has been granted recognition under section 4 of Securities Contracts (Regulation) Act, 1956 (42 of 1956) as amended from time to time;
- y) “Schedule” means a Schedule appended to these regulations;
- z) "securities laws" mean the Act, the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Depositories Act, 1996 (22 of 1996), the relevant provisions of any other law to the extent it is administered by the Board and the relevant rules and regulations made thereunder;

- aa) “Takeover Regulations” mean the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011;
- bb) “voluntary delisting” means the delisting of equity shares of a company voluntarily on an application made by it under Chapter III of these regulations;
- cc) “valuer” shall have the same meaning as assigned to it under section 247 of the Companies Act, 2013 (18 of 2013) as amended from time to time;
- dd) “volume weighted average price” shall have the same meaning as assigned to it under the Takeover Regulations as amended from time to time;
- ee) “working days” means the working days of the Board.

(2) All other words and expressions used but not defined in these regulations, but defined in the Act or the Companies Act, 2013 (18 of 2013), the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Depositories Act, 1996 (22 of 1996) and/or the rules and regulations made thereunder, shall have the same meaning as respectively assigned to them in such Acts or rules or regulations or any statutory modification or re-enactment thereto, as the case may be.

## CHAPTER II

### DELISTING OF EQUITY SHARES

#### Scope and applicability

3. (1) These regulations shall apply to delisting of equity shares of a company including equity shares having superior voting rights from all or any of the recognised stock exchanges where such shares are listed.

(2) Nothing contained in these regulations shall apply to the delisting of equity shares of a listed company—

- (a) that have been listed and traded on the innovators growth platform of a recognised stock exchange without making a public issue;
- (b) made pursuant to a resolution plan approved under section 31 of the Insolvency Code, if such plan provides for:
  - (i) delisting of such shares; or
  - (ii) an exit opportunity to the existing public shareholders at a specified price: Provided that the existing public shareholders shall be provided the exit opportunity at a price which shall not be less than the price, by whatever name called, at which a promoter or any entity belonging to the promoter group or any other shareholder, directly or indirectly, is provided an exit opportunity:
  - (iii) Provided further that the details of delisting of such shares along with the justification for the exit price in respect of the proposed delisting shall be disclosed to the recognized stock exchange(s) where the shares are listed within one day of approval of the resolution plan under section 31 of the Insolvency Code.

#### Conditions for delisting

4. (1) Neither any company shall apply for nor any recognised stock exchange shall permit delisting of equity shares of a company:-
- (a) unless a period of three years has elapsed since the listing of that class of equity shares on any recognised stock exchange;
  - (b) if any instrument issued by the company, which is convertible into the same class of equity share(s) that is sought to be delisted, is outstanding;
  - (c) pursuant to a buyback of equity shares by the company, including a buyback pursuant to consolidation or division of all or part of the equity share capital of the company, unless a period of six months has elapsed from the date of completion of such buyback;
  - (d) pursuant to a preferential allotment made by the company unless a period of six months has elapsed from the date of such allotment:

Provided that nothing contained under clause (d) of sub-regulation (1) shall be applicable to the delisting of equity shares made by a new acquirer(s) who has made an offer under regulation 5A of the Takeover Regulations or a new promoter(s) pursuant to re-classification in terms of the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosures Requirements) Regulations, 2015.

(2) No acquirer shall propose delisting of equity shares of a company, if the acquirer had sold the equity shares of the company during the period of six months prior to the date of the initial public announcement made in terms of sub-regulation (1) of regulation 8 of these regulations.

(3) Nothing contained in clauses (a) and (b) of sub-regulation (1) shall apply to a delisting of equity shares falling under regulation 5 of these regulations.

(4) No acquirer shall, directly or indirectly, employ the funds of the company to finance an exit opportunity provided under Chapter IV of these regulations or an acquisition of shares made pursuant to sub-regulation (4) of regulation 33 of these regulations.

(5) No acquirer shall, directly or indirectly,– (a) employ any device, scheme or artifice to defraud any shareholder or other person; or (b) engage in any transaction or practice that operates as a fraud or deceit upon any shareholder or other person; or (c) engage in any act or practice that is fraudulent, deceptive or manipulative – in connection with any delisting of equity shares sought or permitted or exit opportunity given or other acquisition of equity shares made under these regulations.

CHAPTER III  
VOLUNTARY DELISTING  
PART – A

Conditions and procedure for delisting where exit opportunity is not required Delisting from some of the recognised stock exchanges

5. A company may delist its equity shares from one or more of the recognised stock exchanges on which it is listed without providing an exit opportunity to the public shareholders, if after the proposed delisting, the equity shares remain listed on any recognised stock exchange that has nationwide trading terminals.

Procedure for delisting where no exit opportunity is required

6. (1) Any company desirous of delisting its equity shares under the provisions of regulation 5 of these regulations shall –

- (a) obtain the prior approval of its Board of Directors;
- (b) make an application to the relevant recognised stock exchange(s) for delisting its equity shares;
- (c) issue a public notice of the proposed delisting from the relevant stock exchange(s) in at least one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant stock exchange(s) is located;
- (d) disclose the fact of delisting in its first annual report post delisting.

(2) The public notice issued under clause (c) of sub-regulation (1) shall mention the name(s) of the recognised stock exchange(s) from which the equity shares of the company are intended to be delisted, the reasons for such delisting and the fact of continuation of listing of equity shares on the recognised stock exchange(s) having nationwide trading terminals.

(3) An application for delisting made under clause (b) of sub-regulation (1) shall be disposed of by the recognised stock exchange(s) within a period not exceeding thirty working days from the date of receipt of such application that is complete in all respects.

#### PART – B

Conditions and procedure for delisting where exit opportunity is required

Delisting from all the recognised stock exchanges

7. The equity shares of a company may be delisted from all the recognised stock exchanges having nationwide trading terminals on which they are listed, after an exit opportunity has been provided by the acquirer to all the public shareholders holding the equity shares sought to be delisted, in accordance with Chapter IV of these regulations and after following the procedure as mentioned in Part-B of this Chapter. Initial public announcement

8. (1) On the date when the acquirer(s) decides to voluntarily delist the equity shares of the company, it shall make an initial public announcement to all the stock exchanges on which the shares of the company are listed and the stock exchanges shall forthwith disseminate the same to the public.

(2) A copy of the initial public announcement shall also be sent to the company at its registered office not later than one working day from the date of the initial public announcement.

(3) The initial public announcement shall contain such information as may be specified, including:—

(a) the reasons for delisting;

(b) an undertaking with respect to compliance with sub-regulations (2) and (5) of regulation 4 of these regulations.

(4) The initial public announcement shall not omit any relevant information or contain any misleading information

Appointment of the Manager to the offer

9. (1) Prior to making an initial public announcement, the acquirer shall appoint a merchant banker registered with the Board as the Manager to the offer.

(2) The Manager to the offer appointed under sub-regulation (1) shall not be an associate of the acquirer.

(3) The initial public announcement and the subsequent activities as required under these regulations shall be undertaken by the acquirer through the Manager to the offer.

Approval by the Board of Directors

10. (1) The company shall obtain the approval of its Board of Directors in respect of the proposal of the acquirer to delist the equity shares of the company, not later than twenty one days from the date of the initial public announcement.



(2) The Board of Directors of the company, before considering the proposal of delisting, shall appoint a Peer Review Company Secretary and provide the following information to such Company Secretary for carrying out due-diligence: -

- (a) the details of buying, selling and dealing in the equity shares of the company by the acquirer or its related entities during the period of two years prior to the date of board meeting held to consider the proposal for delisting, including the details of the top twenty five shareholders, for the said period;
- (b) the details of off-market transactions of all the shareholders mentioned in clause (a) for a period of two years;
- (c) any additional information, including the information mentioned in clauses (a) and (b) for a longer period of time, sought by the Company Secretary if the Company Secretary is of the opinion that the information provided under clauses (a) and (b) is not sufficient for providing the certification in terms of sub-regulation (3)
- (d) After obtaining the information from the Board of Directors of the company under sub-regulation 2, the Company Secretary shall carry out the due-diligence and submit a report to the Board of Directors of the company certifying that the buying, selling and dealing in the equity shares of the company carried out by the acquirer or its related entities and the top twenty five shareholders is in compliance with the applicable provisions of securities laws including compliance with sub-regulation (5) of regulation 4 of these regulations.

(4) The Board of Directors of the company, while considering the proposal for delisting, shall certify that—

- (a) the company is in compliance with the applicable provisions of securities laws;
- (b) the acquirer and its related entities are in compliance with the applicable provisions of securities laws in terms of the report of the Company Secretary including compliance with sub-regulation (5) of regulation 4 of these regulations;
- (c) the delisting, in their opinion, is in the interest of the shareholders of the company.

(5) While communicating the decision of the Board of Directors on the proposal for delisting of equity shares, the company shall also submit to the recognized stock exchanges on which the equity shares of the company are listed, the due - diligence report of the Company Secretary in terms of sub-regulation (3) and the audit report in terms of sub-regulation (2) of regulation 12 of these regulations.

(6) Upon receipt of the communication from the company under sub-regulation (5), the stock exchanges shall forthwith disseminate the same to the public.

#### Approval by shareholders

11. (1) The company shall obtain the approval of the shareholders through a special resolution, not later than forty five days from the date of obtaining the approval of Board of Directors.

(2) The special resolution shall be passed through postal ballot and / or e-voting as per the applicable provisions of the Companies Act, 2013 (18 of 2013) and the rules made thereunder.

(3) The company shall disclose all material facts in the explanatory statement sent to the shareholders in relation to such a resolution.

(4) The special resolution shall be acted upon only if the votes cast by the public shareholders in favour of the proposal are at least two times the number of votes cast by the public shareholders against it.

### In-principle approval of the stock exchange

12. (1) The company shall make an application to the relevant recognised stock exchange for in-principle approval of the proposed delisting of its equity shares in the Form specified by the recognised stock exchange from time to time, not later than fifteen working days from the date of passing of the special resolution or receipt of any other statutory or regulatory approval, whichever is later.

(2) The application seeking in-principle approval for the delisting of equity shares shall be accompanied by an audit report as required under regulation 76 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018 in respect of the equity shares sought to be delisted, covering a period of six months prior to the date of the application.

(3) Such application seeking in-principle approval for the delisting of the equity shares shall be disposed of by the recognised stock exchange within a period not exceeding, fifteen working days from the date of receipt of such application that is complete in all respects.

(4) The recognised stock exchange shall not unfairly withhold such an application, but may require the company to satisfy or inform it as regards –

- (a) compliance with regulations 10 and 11 of these regulations;
- (b) resolution of investor grievances by the company;
- (c) payment of listing fees due to the recognised stock exchange;
- (d) compliance with any provision of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 as amended from time to time, that has a material bearing on the interests of its equity shareholders;
- (e) any litigation or action pending against the company pertaining to its activities in the securities market or any other matter having a material bearing on the interests of its equity shareholders;
- (f) any other relevant matter as it may deem fit.

## DELISTING OF SECURITIES – SEBI ( DELISTING OF EQUITY SHARES ) REGULATIONS, 2009



Applicability, Kinds & Voluntary Delisting	
Applicability	<ul style="list-style-type: none"> <li>■ The SEBI ( Delisting of Equity shares ) Regulations, 2009 are applicable to delisting of equity shares of a company from all or any of the stock exchanges where such shares are listed.</li> </ul>
Kinds	<ul style="list-style-type: none"> <li>■ Voluntary Delisting : Delisting of equity shares of the company voluntarily on the application of the company.</li> <li>■ Compulsory Delisting: Delisting of equity shares of the company by the stock exchange of the company.</li> </ul>

Voluntary Delisting	<p><b><u>FROM ALL STOCK EXCHANGES</u></b></p> <ul style="list-style-type: none"> <li>■ A company may delist its equity shares from all the stock exchanges, provided an exit opportunity is given to the public shareholders.</li> </ul> <p><b><u>FROM ONE OR MORE STOCK EXCHANGES</u></b></p> <p>A company may delist its equity shares from one or more Recognized stock exchange and continue listing in other RSE.</p> <ul style="list-style-type: none"> <li>■ If the shares are delisted from one or more RSE but continues to stay listed in a RSE having nation wide trading terminal, EXIT OPPORTUNITY need NOT be given.</li> <li>■ If the shares are delisted from one or more RSE but continues to stay listed in a RSE not having nation wide trading terminal, EXIT OPPORTUNITY NEEDS to be given.</li> </ul>
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## DELISTING OF SECURITIES – SEBI ( DELISTING OF EQUITY SHARES ) REGULATIONS, 2009



Conditions and Procedure – Voluntary Delisting	
No Exit Opportunity to be given	<ul style="list-style-type: none"> <li>■ A board resolution needs to be passed.</li> <li>■ A public notice shall be published in two news papers. ( mentioning the SE from where the shares are delisted, reason for delisting &amp; fact of continuation of listing on other RSE)</li> <li>■ An application to be given to the concerned recognized stock exchange. ( The application shall be disposed off by the SE within 30 working days ).</li> <li>■ The fact of delisting to be disclosed in the first annual report after delisting.</li> </ul>
Exit opportunity to be given	<ul style="list-style-type: none"> <li>■ Obtain prior approval of the board.</li> <li>■ Obtain prior approval of the share holders by a special resolution passed through postal ballot.</li> <li>■ The number of votes cast by public shareholders in favour of the resolution should be at least two times the votes cast against.</li> <li>■ Application to the concerned recognized stock exchange for in-principle approval. (Audit report as required under regulation 55 A of SEBI (Depositories and participants ) regulations, 1996 covering a period of 6 months prior to delisting )</li> <li>■ Make a final application to the concerned RSE within one year of passing of special resolution. ( A proof that an exit opportunity had been given needs to be given )</li> <li>■ Application to be disposed off by the RSE within 30 working days.</li> </ul>

## DELISTING OF SECURITIES – SEBI ( DELISTING OF EQUITY SHARES ) REGULATIONS, 2009



Compulsory Delisting, Rights of Public shareholders & consequences.	
Compulsory Delisting	<ul style="list-style-type: none"> <li>■ The stock exchange, by order, may delist the equity shares of a company.</li> <li>■ The decision of delisting shall be taken by a panel to be constituted by the RSE.</li> <li>■ Before Passing an order, the RSE shall give a notice in at least two news papers, giving a time of 15 working days within which representations may be made by any person aggrieved by the proposed delisting.</li> <li>■ Before passing of order, The company shall be given a reasonable opportunity of being heard.</li> <li>■ The RSE shall consider the representations made before passing the order.</li> <li>■ Provisions relating to EXIT OPPORTUNITY are not applicable.</li> <li>■ After passing an order, the RSE shall give a notice in two newspapers stating the fact of delisting, name and address of the company, fair value of the equity delisted etc.</li> </ul>
Rights of Public shareholders	<ul style="list-style-type: none"> <li>■ The RSE shall appoint an independent fair valuer (s) to determine the value of the equity delisted.</li> <li>■ The promoters shall acquire the shares from the public at the fair value determined by the valuer.</li> </ul>
Consequences	<ul style="list-style-type: none"> <li>■ The whole time directors, promoters and the companies promoted by them shall not directly or indirectly access the securities market or seek listing for a period of 10 years.</li> </ul>

# LISTING / STOCK EXCHANGE



DEFINITIONS	
<b>LISTING</b>	Listing means admission of securities of an issuer to trading privileges (dealings) on a stock exchange through a formal agreement. The prime objective of admission to dealings on the exchange is to provide liquidity and marketability to securities, as also to provide a mechanism for effective control and supervision of trading.
<b>STOCK EXCHANGE</b>	Stock exchanges represent the market place for buying and selling of securities and ensuring liquidity to them in the interest of the investors. The stock exchanges are virtually the nerve centre of the capital market and reflect the health of the country's economy as a whole.

## LISTING AGREEMENT – Important Clauses



Clause 16, 19, 20, 22 & 28.	
<p><b>CLAUSE 16: Book Closure/ Record Date</b></p>	<ul style="list-style-type: none"> <li>■ Books to be closed at least once in year.</li> <li>■ At least 30 days gap between two book closures.</li> <li>■ Intimate SE atleast 15 days ( 7 days for demat) before book closure / RD.</li> <li>■ Intimate to SE atleast 30 days before corporate actions.</li> </ul>
<p><b>CLAUSE 19: Convening of board meeting for declaration / decision regarding: Dividend, issue of Rights shares, convertible debentures, buy back etc.</b></p>	<ul style="list-style-type: none"> <li>■ Intimate atleast 7 days in advance about convening of the board meeting.</li> <li>■ Undertake to recommend to declare all dividend and / or cash bonuses at least 5 days before the commencement of the closure of its transfer books or the record date fixed for that purpose.</li> </ul>
<p><b>CLAUSE 20 &amp; 22: Decision regarding declaration of dividend, bonus, interest payment, buyback of securities, reissue of forfeited shares, etc.</b></p>	<ul style="list-style-type: none"> <li>■ Furnish information to the stock exchanges within 15 minutes of the closure of the board meeting.</li> </ul>
<p><b>CLAUSE 28: Change in form or the nature of the listed securities or change in the rights / privileges thereof.</b></p>	<ul style="list-style-type: none"> <li>■ 21 days prior notice to be given to the stock exchange.</li> <li>■ Apply to the stock exchange for listing of the securities as changed, if exchange requires so.</li> </ul>



## LISTING AGREEMENT – Important Clauses



Clause 29, 30, 31, 23, 32 and 35	
<u>CLAUSE 29 &amp; 30:</u> <u>Important Changes</u>	<ul style="list-style-type: none"> <li>■ Change in general character or nature of the company's business;</li> <li>■ Change in the company's directors;</li> <li>■ Change of MD;</li> <li>■ Change of Auditors;</li> </ul> <p>to be promptly notified to the stock exchange.</p>
CLAUSE 31 & 23: Further issue of securities and other documents to be forwarded.	<ul style="list-style-type: none"> <li>■ To forward six copies of the annual reports, notices, resolutions and circulars relating to new issue of capital, three copies of all the notices, call letters, etc., including notices of meetings convened under section 391 or 394 R/w. section 391 of Companies Act.</li> </ul>
CLAUSE 32: CFS in the annual report, consolidate Financial statement and related party disclosures	<ul style="list-style-type: none"> <li>■ Cash flow statement to be prepared in accordance with AS 3 of ICAI and present it under the indirect method.</li> <li>■ Unabridged annual report to be sent to the member of the listed exchange on his request.</li> <li>■ Consolidated financial statement duly audited by the statutory auditors and file the same with the SE.</li> <li>■ Company will also make related party disclosures in its annual reports.</li> </ul>
CLAUSE 35: Shareholding pattern containing details of the promoters holding and non-promoters holding	<ul style="list-style-type: none"> <li>■ File with the exchange the shareholding pattern in the prescribed form within 21 days from the end of the quarter on a quarterly basis. (Amendment to Clause 35 has taken palce)</li> </ul>

## LISTING AGREEMENT – Important Clauses



Clause 40 A, 40 B and 41	
<p><b>CLAUSE 40 A AND 40 B: Conditions for continuous listing and takeover offer</b></p>	<ul style="list-style-type: none"> <li>■ To maintain on a continuous basis the public shareholding of atleast 25% of the total number of issued shares.</li> <li>■ The holding of the promoters should be reduced to less than 75% in a transparent manner acceptable to SEBI either through FPO or selling of the shares in secondary market or through a preferential allotment or through amalgamation or merger.</li> </ul>
<p><b>CLAUSE 41: Preparation and submission of financial results ( unaudited financial results )</b></p>	<ul style="list-style-type: none"> <li>■ The BOD of every listed company must submit to the stock exchange where the company's shares are listed the unaudited financial or audited financial results once in every quarter before the expiry of 45 days, i.e., 30 April, 31 July, 31 October and 31 January.</li> <li>■ For the last quarter of the financial year the company can submit either unaudited results before 15 May or give an undertaking to the stock exchange that the audited results will be submitted before 30 May.</li> <li>■ These financial results must be approved by the audit committee in their meeting and recommend the same to the BOD.</li> <li>■ Within 15 mins of the approval by the BOD these results are to be submitted to the stock exchange.</li> <li>■ Within 48 hours a publication has to be given in two newspapers.</li> <li>■ Results are to be reviewed by the statutory auditors before approval by the audit committee and BOD.</li> <li>■ Limited review report given by the Statutory auditors on the unaudited financial results must be submitted to the SE within 45 days of the Board meeting.</li> </ul>

## LISTING AGREEMENT – Important Clauses



Clause 43 A, 47, 49 50 and 52	
CLAUSE 43 A: Filing of deviations in the use of public issue proceeds	<ul style="list-style-type: none"> <li>■ Filing of deviations in the use of public issue proceeds and to appoint monitoring agency to monitor utilization of proceeds etc.</li> </ul>
CLAUSE 47: Appointment of Company Secretary as Compliance Officer	<ul style="list-style-type: none"> <li>■ A CS to be appointed to act as compliance officer responsible for monitoring the share transfer process and report to the company's board in each board meeting.</li> </ul>
CLAUSE 49 : Corporate governance	<ul style="list-style-type: none"> <li>■ Board of directors and composition of board</li> <li>■ Code of conduct of the directors to be published on the website.</li> <li>■ Audit committee and its composition and frequency of its meeting.</li> <li>■ Disclosures</li> <li>■ CEO/CFO Certification</li> <li>■ Report on CG, quarterly compliance report.</li> <li>■ Compliance certificate from PCS or Company's auditor.</li> </ul>
CLAUSE 50: Accounting Standard	<ul style="list-style-type: none"> <li>■ Company should comply with all the accounting standards issued by ICAI.</li> </ul>
CLAUSE 52: CFDS	<ul style="list-style-type: none"> <li>■ All the listed companies are required to file information with SE only through CFDS which is put in place jointly by BSE and NSE at <a href="http://www.corpfiling.co.in">www.corpfiling.co.in</a></li> </ul>

# REPORT ON CORPORATE GOVERNANCE



General Overview & General contents	
General Overview	<ul style="list-style-type: none"><li>■ The companies shall submit a quarterly compliance report to the SE within 15 days from the close of quarter as per the format prescribed in the clause. The report is required to be signed either by the Compliance officer or the CEO of the company</li></ul>
Contents	<ul style="list-style-type: none"><li>■ Philosophy on Corporate Governance</li><li>■ Composition of Board of Directors</li><li>■ Board Meetings</li><li>■ Audit Committee</li><li>■ Remuneration Committee</li><li>■ Investor Grievance Committee</li><li>■ General Body Meetings</li><li>■ Disclosures</li><li>■ Means of Communication</li><li>■ General Shareholder information</li><li>■ Code of Business conduct</li><li>■ Ethics for Directors and Management personnel, etc.</li></ul>

## TYPES OF LISTING



Initial, public issue, rights issue, bonus & merger / amalgamation	
Initial Listing	■ If the shares or securities are to be listed for the first time by a company on a stock exchange it is called initial listing.
Listing for public issue	■ When a company whose shares are listed on a stock exchange comes out with a public issue of securities, it has to list such issue with the stock exchange.
Listing for Rights issue	■ When companies whose securities are listed on the stock exchange issue securities to existing shareholders on rights basis, it has to list such rights issue on the concerned stock exchange.
Listing of Bonus Shares	■ Shares issued as a result of capitalisation of profit through bonus issue shall list such issues also on the concerned stock exchange.
Listing for merger or amalgamation	■ When new shares are issued by an amalgamated company to the shareholders of the amalgamating company, such shares are also required to be listed on the concerned stock exchange.

## Benefits of Listing



Benefits	Description
High Liquidity and Depth	<ul style="list-style-type: none"> <li>■ Indian Stock Exchanges have a high number of listed companies and provide significant liquidity</li> <li>■ Additional recognition in case of presence in Sensex/ Nifty/ A group</li> </ul>
Flexibility for future capital raising opportunities	<ul style="list-style-type: none"> <li>■ Multiple choice: QIP, Rights, Follow-on public issue, GDR, ADR, FCCB</li> </ul>
Establishes profile	<ul style="list-style-type: none"> <li>■ Sharing history, business operations, strategy and growth plans helps develop franchise value</li> <li>■ Enables branding and customer awareness; provides access to retail investors; lenders have higher comfort with listed entities</li> </ul>
Positive impact on valuation	<ul style="list-style-type: none"> <li>■ Greater awareness amongst research analysts, fund managers, investment advisors</li> <li>■ Creates greater liquidity and market if part of the derivatives segment</li> </ul>
Wealth creation	<ul style="list-style-type: none"> <li>■ Ability to create wealth for promoters and shareholders</li> <li>■ Provides a benchmark for Company valuation</li> </ul>
Creation of currency	<ul style="list-style-type: none"> <li>■ Ability to create currency for strategic initiatives</li> <li>■ Leverage as currency for M&amp;A, alliance etc.</li> </ul>
Employee incentivization	<ul style="list-style-type: none"> <li>■ Ability to serve HR initiatives; serves as an incentive mechanism for management and employees e.g.: ESOS/ ESPS</li> </ul>

#### CHAPTER IV EXIT OPPORTUNITY Applicability of Chapter IV

13. The provisions of this Chapter shall apply to the proposal for delisting of equity shares of a company from all the recognised stock exchanges. Escrow account

14. (1) The acquirer shall open an interest bearing escrow account with a Scheduled Commercial Bank, not later than seven working days from the date of obtaining the shareholders' approval, and deposit therein an amount equivalent to twenty five percent of the total consideration, calculated on the basis of the number of equity shares outstanding with the public shareholders multiplied with the floor price or the indicative price, if any given by the acquirer in terms of sub-regulation (4) of regulation 20 of these regulations, whichever is higher.

(2) The acquirer shall enter into a tripartite agreement with the Manager to the offer and the Bank for the purpose of opening the escrow account and shall authorize the Manager to the offer to operate such account as per the provisions of these regulations. (3) Before making the detailed public announcement under regulation 15 of these regulations, the acquirer shall deposit in the escrow account, the remaining consideration amount being seventy five percent calculated on the basis of the number of equity shares outstanding with the public shareholders multiplied with the floor price or the indicative price, if any given by the acquirer in terms of sub-regulation (4) of regulation 20 of these regulations, whichever is higher.

(4) On determination of the discovered price and making of the public announcement under sub-regulation (4) of regulation 17 of these regulations accepting the discovered price, the acquirer shall forthwith deposit in the escrow account such additional sum as may be sufficient to make up the entire sum due and payable as consideration in respect of equity shares outstanding with the public shareholders.

(5) The escrow account shall consist of either the cash deposited with a Scheduled Commercial Bank or a bank guarantee in favour of the Manager to the offer or a combination of both.

(6) Where the escrow account consists of a deposit with a Scheduled Commercial Bank, the acquirer shall, while opening the account, authorize the Manager to the offer to make fund transfers through electronic mode or such other mode permitted by the Reserve Bank of India, and to instruct the bank to issue banker's cheques or demand drafts for the amount lying to the credit of the escrow account, for the purpose(s) mentioned in these regulations, and the amount in such account, if any, remaining after full payment of consideration for the equity shares tendered in the delisting offer and those tendered under sub-regulation (1) of regulation 26 of these regulations shall be released to the acquirer.

(7) Where the escrow account consists of a bank guarantee, such bank guarantee shall be valid till payments are made in respect of all shares tendered under sub-regulation (1) of regulation 26 of these regulations.

(8) In case of failure of the delisting offer, ninety nine percent of the amount lying in the escrow account shall be released to the acquirer within one working day from the date of public announcement of such failure.

(9) The remaining one percent amount lying in the escrow account shall be released post return of the shares to the public shareholders or confirmation of revocation of lien marked on their shares by the Manager to the offer as per the timelines provided in these regulations



### Detailed public announcement

15. (1) The acquirer shall, within one working day from the date of receipt of in-principle approval for delisting of equity shares from the recognised stock exchange, make a detailed public announcement in at least one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant recognised stock exchange is located.

(2) The detailed public announcement shall contain all material information including the information specified in Schedule I of these regulations and shall not contain any false or misleading statement.

(3) The detailed public announcement shall also specify a date, being a day not later than one working day from the date of the detailed public announcement, which shall be the 'specified date' for determining the names of the shareholders to whom the letter of offer shall be sent.

(4) The detailed public announcement shall be dated and signed by the acquirer.

Explanation,— If the acquirer is a company, the detailed public announcement shall be dated and signed on behalf of the Board of Directors of the company by its Manager or Secretary, if any, and by not less than two directors of the company, one of whom shall be the managing director where there is one.

## Letter of offer

16. (1) The acquirer shall dispatch the letter of offer to the public shareholders not later than two working days from the date of the detailed public announcement made under regulation 15 of these regulations.

(2) The letter of offer shall be sent to all public shareholders, holding equity shares of the class sought to be delisted, whose names appear on the register of the company or depository as on the date specified in the detailed public announcement.

(3) A copy of the letter of offer shall also be made available on the websites of the company and the Manager to the offer for the benefit of the public shareholders.

(4) The letter of offer shall contain all the disclosures made in the detailed public announcement and such other disclosures as may be necessary for the shareholders to take an informed decision.

(5) The public shareholders shall have the right to inspect all the documents as referred in the letter of offer and the Manager to the offer shall facilitate the inspection.

(6) The letter of offer shall be accompanied with a Form for the use of public shareholders for the purpose of either creating a lien or tendering the physical shares, as the case may be.

(7) An eligible public shareholder may participate in the offer for the delisting of equity shares and make bids even without receiving the Form or letter of offer and such shareholder may tender shares in the manner specified by the Board in this regard.

#### Bidding mechanism

17. (1) The bidding period shall start not later than seven working days from the date of the detailed public announcement and shall remain open for five working days.

(2) The acquirer shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board.

(3) The Manager to the offer shall ensure that the outcome of the reverse book building process is announced within two hours of the closure of the bidding period.

(4) Within two working days from the closure of the bidding period, the acquirer shall, through the Manager to the offer, make a public announcement in the same newspapers in which the detailed public announcement under sub-regulation (1) of regulation 15 of these regulations was made, disclosing the success or failure of the reverse book building process, along with the discovered price accepted by the acquirer in the event of success of the said process.

### Manner of tendering shares

18. The equity shares shall be tendered/offered by the public shareholders, including by way of marking a lien through the stock exchange mechanism, in the manner specified by the Board.

### Right of shareholders to participate in the reverse book building process

19. (1) Public shareholders holding the equity shares of the company, which are sought to be delisted, shall be entitled to participate in the reverse book building process in the manner specified in Schedule II of these regulations.

(2) The Manager to the issue shall take necessary steps to ensure compliance with sub-regulation (1).

(3) Any holder of depository receipts issued on the basis of underlying equity shares and a custodian keeping custody of such equity shares shall not be entitled to participate in the reverse book building process: Provided that any holder of depository receipts may participate in the reverse book building process under sub-regulation (1) after converting such depository receipts into equity shares of the company that are proposed to be delisted.

### Discovered price

20. (1) After fixation of the floor price under sub-regulation (2), the discovered price shall be determined through the reverse book building process in the manner specified in Schedule II of these regulations, and the Manager to the offer shall disclose the same in the detailed public announcement and the letter of offer.

(2) The floor price shall be determined in terms of regulation 8 of Takeover Regulations as may be applicable.

(3) The reference date for computing the floor price would be the date on which the recognized stock exchange(s) was required to be notified of the board meeting in which the delisting proposal was considered and approved.

(4) The acquirer shall have the option to provide an indicative price in respect of the delisting offer, which shall be higher than the floor price calculated in terms of sub-regulation (2).

(5) The acquirer shall also have the option to revise the indicative price upwards before the start of the bidding period and the same shall be duly disclosed to the shareholders.

(6) The acquirer may, if it deems fit, pay a price higher than the discovered price determined in terms of sub-regulation (1).

Minimum number of equity shares to be acquired

21. An offer made under Chapter III of these regulations or a counter offer made by the acquirer in terms of sub-regulation(4) of regulation 22 of these regulations, as the case may be, shall be deemed to be successful if,-

- (a) the post offer shareholding of the acquirer, along with the shares tendered / offered by public shareholders accepted as eligible bids at the discovered price or the counter offer price, as the case may be, reaches ninety percent of the total issued shares of that class excluding the following:
  - (i) shares held by custodian(s) against which depository receipts have been issued overseas;
  - (ii) shares held by a Trust set up for implementing an Employee Benefit scheme under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014;
  - (iii) shares held by inactive shareholders such as vanishing companies and struck off companies, shares transferred to the Investor Education and Protection Fund's account and shares held in terms of sub-regulation (4) of regulation 39 read with Schedule VI of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015:

Provided that such shareholders shall be certified by the Peer Review Company Secretary appointed by the Board of Directors of the company for due-diligence.

Explanation,— The cut-off date for determination of inactive shareholders shall be the date on which the in-principle approval of the Stock Exchange is received, which shall be adequately disclosed in the public announcement.

Option to accept or reject the discovered price or counter offer

22. (1) The acquirer shall be bound to accept the equity shares tendered or offered in the delisting offer, if the discovered price determined through the reverse book building process is equal to the floor price or the indicative price, if any, offered by the acquirer.

(2) The acquirer shall be bound to accept the equity shares, at the indicative price, if any offered by the acquirer, even if the price determined through the reverse book building process is higher than the floor price but less than the indicative price.

(3) Nothing contained in sub-regulation (1) and (2) shall apply, if the discovered price is higher than the indicative price.

(4) In case the discovered price is not acceptable to the acquirer, a counter offer may be made by the acquirer to the public shareholders within two working days of the closure of bidding period and thereafter, the acquirer shall ensure compliance with the provisions of these regulations in accordance with the timelines provided in Schedule IV of these regulations.

(5) The counter offer price shall not be less than the book value of the company as certified by the Manager to the offer.

Explanation, — For the purpose of sub-regulation (5), the book value shall be computed on the basis of both consolidated and standalone financial statements of the company as per the latest quarterly financial results filed by the company on the recognized stock exchange(s) as on the date of public announcement for counter offer, and the higher of the values so computed shall be treated as the book value.

Failure of the offer

23. (1) The delisting offer shall be considered to have failed under the following circumstances:-

- (a) the minimum number of shares are not tendered / offered as provided under clause (a) of regulation 21 of these regulations.
- (b) Explanation,— If a counter offer has been made by the acquirer in terms of sub-regulation (4) of regulation 22 of these regulations, the failure of the said counter offer shall be considered in accordance with clause (a); or (b) the price discovered through the reverse book building process is rejected by the acquirer.



- (2) In case of failure of the delisting offer,
- (a) the equity shares tendered / offered in terms of Schedule II or Schedule IV of these regulations as the case may be, shall be released-
    - (i) on the date of disclosure of the outcome of the reverse book building process under sub-regulation (3) of regulation 17 of these regulations if the minimum number of shares as provided under clause (a) of regulation 21 of these regulations are not tendered / offered;
    - (ii) on the date of making public announcement for the failure of the delisting offer under sub-regulation (4) of regulation 17 of these regulations if the price discovered through the reverse book building process is rejected by the acquirer;
    - (iii) in accordance with Schedule IV of these regulations if a counter offer has been made by the acquirer: Provided that the acquirer shall not be required to return the shares if the offer is made pursuant to regulation 5A of Takeover Regulations.

(b) the expenses relating to the offer for delisting shall be borne by the acquirer. (c) the acquirer, whose delisting offer has failed, shall not make another delisting offer until the expiry of six months-

- (i) from the date of disclosure of the outcome of the reverse book building process under sub-regulation (3) of regulation 17 of these regulations if the minimum number of shares as provided under clause (a) of regulation 21 of these regulations are not tendered / offered;
- (ii) from the date of making public announcement for the failure of the delisting offer under sub-regulation (4) of regulation 17 of these regulations if the price discovered through the reverse book building process is rejected by the acquirer;

(3) Nothing contained in clause (c) of sub-regulation (2) shall be applicable to the delisting of equity shares made by a new promoter(s) pursuant to the re-classification in terms of the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosures Requirements) Regulations, 2015 or a new acquirer(s) who has made an offer under regulation 5A of Takeover Regulations.

Payment upon success of the offer

24. (1) All the public shareholders, whose bids are accepted, shall be paid the discovered price or a higher price, if any, offered by the acquirer in terms of sub-regulation (6) of regulation 20 of these regulations, as stated in the public announcement in the following manner –

- (i) In case the discovered price is equal to the floor price or the indicative price as provided under regulation 20, or in case the acquirer is bound to accept the equity shares in the delisting offer in terms of sub-regulation (2) of regulation 22 of these regulations, the payment shall be made through the secondary market settlement mechanism;
- (ii) In case the discovered price or the price, if any, offered by the acquirer in terms of sub-regulation (6) of regulation 20 of these regulations, is higher than the floor price or the indicative price, as the case may be, the payment shall be made within five working days from the date of the public announcement under sub-regulation (4) of regulation 17 of these regulations.

(2) The acquirer shall be liable to pay interest at the rate of ten percent per annum to all the shareholders, whose bids have been accepted in the delisting offer, if the price payable in terms of sub-regulation (1) is not paid to all the shareholders within the time specified thereunder: Provided that in case the delay was not attributable to any act or omission of the acquirer or was caused due to the circumstances beyond the control of the acquirer, the Board may grant waiver from the payment of such interest.

Final application to the stock exchange after successful delisting

25. (1) Within five working days from the date of making the payment to the public shareholders in terms of regulation 24 of these regulations, the acquirer shall make the final application for delisting to the relevant recognised stock exchange(s) in the Form specified by such stock exchange(s) from time to time.

(2) The final application for delisting shall be accompanied with necessary details / information, as the recognised stock exchange(s) may require, of having provided the exit opportunity in accordance with the provisions of this Chapter.

(3) The final application for delisting shall be disposed of by the recognised stock exchange(s) within fifteen working days from the date of receipt of such application that is complete in all respects.

(4) Upon disposal of the final application for delisting by the stock exchange(s) in terms of sub-regulation (3), the equity shares of the company shall be permanently delisted from the stock exchange(s).

Right of the remaining public shareholders to tender equity shares 26. (1) The remaining public shareholders, whose shares were either not accepted or were not tendered at all during the bidding period, shall have a right to tender their equity shares for a minimum period of one year from the date of delisting.

(2) The acquirer shall be under an obligation during such period to accept the shares of the remaining public shareholders under sub-regulation (1), at the same price at which the equity shares had been delisted.

(3) The payment of consideration for equity shares accepted under sub-regulation (2) shall be made out of the balance amount lying in the escrow account.

(4) The Manager to the offer shall ensure that the amount lying in the escrow account or the bank guarantee shall not be released to the acquirer for a minimum period of one year or till the time payment has been made to the remaining public shareholders, whichever is earlier.

## Measures to protect the rights of remaining public shareholders

27. (1) The Manager to the offer, in coordination with the acquirer shall ensure that the rights of the remaining public shareholders are protected and in furtherance of the same shall:

- (a) publish, on a quarterly basis, an advertisement in the same newspapers in which the detailed public announcement of the offer for delisting of equity shares was published, inviting the remaining public shareholders to avail the exit opportunity during the one year exit window after delisting of shares;
  - (b) send follow up communications to the remaining public shareholders on a quarterly basis; and
  - (c) file a quarterly progress report to the stock exchange(s), which shall be disseminated to the public thereafter by the stock exchange(s), disclosing the following:
    - (i) number of remaining public shareholders at the beginning and end of the quarter; and
    - (ii) details of public shareholders who availed the exit opportunity during the quarter. (2)
- The stock exchange(s) shall monitor the compliance of sub-regulation (1).

28. (1) Upon receipt of the detailed public announcement, the Board of Directors of the company shall constitute a Committee of independent directors to provide reasoned recommendations on the delisting offer.

(2) The Committee of independent directors shall provide its written reasoned recommendations on the proposal for delisting of equity shares to the Board of Directors of the company and in relation thereto, the Committee may also seek external professional advice at the expense of the company.

(3) The Committee of independent directors, while providing reasoned recommendations on the delisting proposal, shall disclose the voting pattern of the meeting in which the said proposal was discussed.

(4) The company shall publish such recommendations of the Committee of independent directors, along with the details of the voting pattern, at least two working days before the commencement of the bidding period, in the same newspapers in which the detailed public announcement of the offer for delisting of equity shares was published, and simultaneously, a copy of the same shall be sent to the stock exchange(s) and the Manager to the offer.

### Obligations of the Manager to the offer

29. (1) Before making the detailed public announcement, the Manager to the offer for delisting of equity shares shall ensure that, —

(a) the acquirer is able to implement the delisting offer; and

(b) firm arrangements for funds through verifiable means have been made by the acquirer to meet the payment obligations under the delisting offer.

(2) The Manager to the offer shall ensure that the contents of the initial public announcement, the detailed public announcement, the letter of offer and the post-bidding advertisement(s) are complete, true, fair and adequate in all material aspects, based on reliable sources and are in compliance with the requirements under these regulations and other applicable securities laws.

(3) The Manager to the offer shall ensure that market intermediaries engaged for the purpose of the delisting of equity shares are registered with the Board.

(4) The Manager to the offer shall exercise due diligence, care and professional judgment to ensure compliance with these regulations.

(5) The Manager to the offer shall not, either directly or indirectly through its associates, deal in its own account in the shares of the company after its appointment as Manager to the offer till the conclusion of the delisting offer.

(6) It shall be the responsibility of the Manager to the offer to ensure that the acquirer complies with the provisions of these regulations.

### Obligations of the acquirer

30. (1) Prior to making the initial public announcement of the offer for the delisting of equity shares under these regulations, the acquirer shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the delisting offer and that the acquirer is able to implement the delisting offer, subject to any statutory approvals for the delisting offer that may be necessary.

(2) The acquirer shall ensure that the contents of the initial public announcement, the detailed public announcement, the letter of offer and announcement about success or failure of the offer for delisting are true, fair and adequate in all material aspects, not misleading and based on reliable sources that shall be mentioned wherever necessary.

(3) The acquirer and the persons acting in concert with it shall be jointly and severally responsible for the fulfilment of the applicable obligations under these regulations.

(4) The acquirer shall ensure to acquire the shares offered by the remaining public shareholders at the same price at which the equity shares had been delisted for a minimum period of one year.

(5) No acquirer or persons acting in concert with it shall sell shares of the company during the delisting period.



### Cancellation of outstanding depository receipts

31. After delisting of equity shares from all the recognized stock exchanges having nationwide trading terminals, the company shall be required to compulsorily cancel all the outstanding depository receipts issued overseas and change them into the underlying equity shares in the home jurisdiction after termination of the depository receipts program(s), within one year of such delisting.

### CHAPTER V COMPULSORY DELISTING

#### Compulsory delisting by a stock exchange

32. (1) A recognised stock exchange may, by a reasoned order, delist equity shares of a company on any ground prescribed in the rules made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956): Provided that no order shall be issued under this sub-regulation unless the company has been given a reasonable opportunity of being heard.

(2) The decision regarding the compulsory delisting shall be taken by a panel to be constituted by the recognised stock exchange consisting of –

- (a) two directors of the recognised stock exchange one of whom shall be a public representative;
- (b) one representative of an investor association recognised by the Board;
- (c) one representative of the Ministry of Corporate Affairs or Registrar of Companies; and
- (d) the Executive Director or Secretary of the recognised stock exchange.

(3) Before passing an order under sub-regulation (1), the recognised stock exchange shall give a notice in at least one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant recognised stock exchange is located, of the proposed delisting, giving a time period of not less than fifteen working days from the date of such notice, within which representations, if any, may be made to the recognised stock exchange by any person aggrieved by the proposed delisting and shall also display such notice on its trading systems and website.

(4) The recognised stock exchange shall, while passing any order under sub-regulation (1), consider the representation, if any, made by the company and also any representation received in response to the notice given under sub-regulation (3), and shall comply with the guidelines provided in Schedule III of these regulations.

(5) Where the recognised stock exchange passes an order under sub-regulation (1), it shall, - (a) forthwith publish a notice in one English national newspaper with wide circulation, one Hindi national newspaper with wide circulation in their all India editions and one vernacular newspaper of the region where the relevant recognised stock exchange is located, of the fact of such delisting, disclosing therein the name and address of the company, the fair value of the delisted equity shares determined under sub-regulation (1) of regulation 33 of these regulations and the names and addresses of the promoters of the company who would be liable under sub-regulation (4) of regulation 33 of these regulations;

(b) inform all other stock exchanges where the equity shares of the company are listed, about such delisting; and (c) upload a copy of the said order on its website.

(6) The provisions of Chapter IV of these regulations shall not be applicable to a compulsory delisting made by a recognised stock exchange under this Chapter.

#### Rights of public shareholders in case of compulsory delisting

33. (1) Where the equity shares of a company are delisted by a recognised stock exchange under this Chapter, the recognised stock exchange shall appoint an independent valuer(s) who shall determine the fair value of the delisted equity shares.

(2) The recognised stock exchange shall form a Panel of expert valuers and from the said Panel, the valuer(s) for the purposes of sub-regulation (1) shall be appointed.

(3) The value of the delisted equity shares shall be determined by the valuer(s) having regard to the factors mentioned in sub-regulation (2) of regulation 20 of these regulations.

(4) The promoter(s) of the company shall acquire the delisted equity shares from the public shareholders by paying them the value determined by the valuer, within three months of the date of delisting from the recognised stock exchange, subject to the option of the public shareholders to retain their shares.

(5) The promoter shall be liable to pay interest at the rate of ten percent per annum to all the shareholders, who offer their shares under the compulsory delisting offer, if the price payable in terms of sub-regulation (3) is not paid to all the shareholders within the time specified under sub-regulation (4):

Provided that in case the delay was not attributable to any act or omission of the acquirer or was caused due to the circumstances beyond the control of the acquirer, the Board may grant waiver from the payment of such interest.

### Consequences of compulsory delisting

34. (1) Where a company has been compulsorily delisted under this Chapter, the company, its whole-time directors, person(s) responsible for ensuring compliance with the securities laws, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing of any equity shares or act as an intermediary in the securities market for a period of ten years from the date of such delisting.

(2) In case of a company whose fair value is positive –

(a) such a company and the depositories shall not effect transfer, by way of sale, pledge, etc., of any of the equity shares held by the promoters / promoter group and the corporate benefits like dividend, rights, bonus shares, split, etc. shall be frozen for all the equity shares held by the promoters/ promoter group, till the promoters of such company provide an exit option to the public shareholders in compliance with subregulation (4) of regulation 33 of these regulations, as certified by the relevant recognized stock exchange; (b) the promoters, whole-time directors and person(s) responsible for ensuring compliance with the securities laws, of the compulsorily delisted company shall also not be eligible to become directors of any listed company till the exit option as mentioned in clause (a) is provided.

(3) The stock exchange(s) shall monitor the compliance of the provisions of this Chapter and take appropriate action for non-compliance thereof in accordance with the provisions of these regulations.

## CHAPTER VI

### Part - A SPECIAL PROVISIONS FOR SMALL COMPANIES

#### Delisting of equity shares of small companies

35. (1) Equity shares of a company may be delisted from all the recognised stock exchanges where they are listed, without following the procedure in Chapter IV of these regulations, if,-

- (a) the company has a paid up capital not exceeding ten crore rupees and net worth not exceeding twenty five crore rupees as on the last date of preceding financial year;
- (b) the number of equity shares of the company traded on each such recognised stock exchange during the twelve calendar months immediately preceding the date of board meeting held for consideration of the proposal referred to in sub-regulation (4) of regulation 10 of these regulations is less than ten per cent of the total number of shares of the company: Provided that where the share capital of a PARTICULARS class of shares of the company is not constant throughout such period, the weighted average of the shares of such class shall represent the total number of shares of such class of the company;
- (c) the company has not been suspended by any of the recognised stock exchanges having nationwide trading terminals for any non-compliance in the preceding one year.

(2) Delisting of equity shares may be made under sub-regulation (1) only if, in addition to fulfilment of the requirements of regulations 10 and 11 of these regulations, the following conditions are fulfilled:-

- (a) acquirer(s) appoints a Manager to the offer and decides an exit price after consultation;
- (b) the exit price offered to the public shareholders shall not be less than the floor price determined in terms of clause (e) of sub-regulation (2) of regulation 8 of the Takeover Regulations;
- (c) the acquirer writes individually to all the public shareholders of the company informing them of its intention to get the equity shares delisted, the exit price together with the justification therefor and seeking their consent for the proposal for delisting;
- (d) the public shareholders, irrespective of their numbers, holding ninety percent or more of the public shareholding give their consent in writing to the proposal for delisting, and consent either to sell their equity shares at the price offered by the acquirer or to continue to hold the equity shares even if they are delisted;
- (e) the acquirer completes the process of inviting the positive consent and finalisation of the proposal for delisting of equity shares within seventy five working days of the first communication made under clause (c);
- (f) the acquirer makes payment of consideration in cash within fifteen working days from the date of expiry of seventy five working days mentioned in clause (e).

- (3) The communication made to the public shareholders under clause (c) of sub-regulation (2) shall contain justification for the offer price with PARTICULARS reference to the applicable parameters mentioned in sub-regulation (2) of regulation 20 of these regulations and specifically mention that consent for the proposal would include consent for dispensing with the exit price discovery through reverse book building method.
- (4) The acquirer shall be liable to pay interest at the rate of ten percent per annum to all the shareholders, whose bids have been accepted in the delisting offer, if the price payable in terms of sub-regulation (2) is not paid to all the shareholders within the time specified thereunder: Provided that in case the delay was not attributable to any act or omission of the acquirer or was caused due to the circumstances beyond the control of the acquirer, the Board may grant waiver from the payment of such interest.
- (5) The relevant recognised stock exchange may delist such equity shares upon satisfying itself of compliance with this regulation.

Part - B SPECIAL PROVISIONS FOR COMPANIES LISTED ON INNOVATORS GROWTH PLATFORM  
Delisting of equity shares of companies listed on innovators growth platform after making an initial public offer

36. (1) The provisions of these regulations, shall mutatis mutandis apply to delisting of equity shares of a company listed on innovators growth platform after making a public issue, subject to the provisions of sub-regulation (2).

(2) A company whose equity shares are listed and traded on the innovators growth platform pursuant to an initial public offer may be delisted from the innovators growth platform, if –

- (a) such delisting is approved by the Board of Directors of the company;
- (b) such delisting is approved by the shareholders of the company by a special resolution passed through postal ballot or e-voting, after disclosure of all material facts in the explanatory statement sent to the shareholders in relation to such resolution: Provided that the special resolution shall be acted upon only if the votes cast by the majority of public shareholders are in favour of such exit proposal;



(c) delisting price is based on a floor price determined in terms of regulation 8 of Takeover Regulations, as may be applicable, and an additional delisting premium justified by the acquirer;

(d) the post offer shareholding of the acquirer along with the persons acting in concert with it, taken together with the shares tendered reaches seventy five per cent of the total issued shares of that class and at least fifty per cent shares of the public shareholders as on date of the board meeting referred to in clause (a) of sub-regulation (2) are tendered and accepted; and

(e) the recognised stock exchange(s), on which its shares are listed, approves of such delisting.

**Part - C SPECIAL PROVISIONS FOR A SUBSIDIARY COMPANY GETTING DELISTED THROUGH A SCHEME OF ARRANGEMENT WHEREIN THE LISTED HOLDING COMPANY AND THE SUBSIDIARY COMPANY ARE IN THE SAME LINE OF BUSINESS**

Delisting of equity shares of a subsidiary company pursuant to a scheme of arrangement  
37. (1) Nothing contained in these regulations shall apply to the delisting of equity shares of a subsidiary company, pursuant to a scheme of arrangement by an order of a Court or Tribunal with its listed holding company, whose equity shares are frequently traded, and where the listed holding company and the subsidiary company are in the same line of business.

- (2) The delisting of the equity shares of a subsidiary company in terms of sub-regulation (1) shall be permitted subject to the following:-
- a) the listed holding company shall provide for the issue of its equity shares in lieu of cancellation of any equity shares in the delisting subsidiary company;
  - b) upon such delisting becoming effective, the subsidiary company shall become a wholly owned subsidiary of the listed holding company;
  - c) compliance with regulations 11, 37 and 94 of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the Circulars issued thereunder;
  - d) e-voting from shareholders of both listed companies wherein votes cast by public shareholders of the listed subsidiary in favour of the proposal are at least two times the number of votes cast against it and the votes cast by the public shareholders of the listed holding company in favour of the proposal are more than the number of votes cast by the public shareholders against it;
  - e) the shares of the listed holding company and the subsidiary company are listed for at least 3 years and shall not be suspended at the time of taking this route;
  - f) the subsidiary company has been a listed subsidiary of the listed holding company for the past three years;
  - g) no adverse orders have been passed by the Board in the past 3 years against the listed holding company and the listed subsidiary company;
  - h) no further restructuring shall be undertaken by the listed holding company for a period of 3 years from the date of the Order of the Court or Tribunal approving the scheme of arrangement;

i) the equity shares of the listed subsidiary so delisted, shall not be allowed to seek relisting for a period of three years from the date of delisting and such relisting shall be in terms of sub-regulation (3) and (4) of regulation 40 of these regulations; and,  
j) the valuation of shares of the listed subsidiary per share shall not be less than sixty days volume weighted average price.

Explanation,— The reference date for computing the volume weighted average price would be the date on which the recognized stock exchange(s) was required to be notified of the board meeting in which the delisting proposal of the subsidiary was considered and approved

#### Part – D SPECIAL PROVISIONS FOR DELISTING BY OPERATION OF LAW

Delisting in case of winding up of a company and de-recognition of a stock exchange

38. (1) In case of winding up proceedings of a company whose equity shares are listed on a recognised stock exchange, the rights, if any, of the shareholders of such company shall be in accordance with the laws applicable to those proceedings.

(2) Where the Board withdraws recognition granted to a stock exchange or refuses renewal of recognition to it, the Board may, in the interest of investors pass appropriate order(s) in respect of the status of equity shares of the companies listed on that stock exchange.

## CHAPTER VII

### MISCELLANEOUS

#### Recognised stock exchanges to monitor compliance

39. The respective recognised stock exchange(s) shall adhere to the provisions of these regulations, monitor compliance with the provisions of these regulations and shall report to the Board any non-compliance which comes to their notice.

#### Listing of delisted equity shares

40. (1) No application for listing shall be made in respect of equity shares of a company,-

- (a) which have been delisted under Chapter III or under Chapter VI of these regulations, for a period of three years from the delisting;
- (b) which have been delisted under Chapter V of these regulations, for a period of ten years from the delisting.

(2) Notwithstanding anything contained in sub-regulation (1), an application for listing of delisted equity shares may be made in respect of a company:

- (a) whose equity shares have been delisted pursuant to a resolution plan under section 31 of the Insolvency Code;
- (b) whose equity shares are listed and traded on the innovators growth platform pursuant to an initial public offer and which is delisted from the said platform;
- (c) whose equity shares have been delisted in terms of regulation 35 of these regulations.

(3) While considering an application for listing of equity shares of a company which had been delisted earlier, the recognised stock exchange shall give due regard to the facts and circumstances under which such equity shares were delisted.

(4) An application for listing made in respect of delisted equity shares shall be deemed to be an application for fresh listing of such equity shares and shall be subject to provisions of law relating to listing of equity shares of unlisted companies: Provided that the company shall make appropriate disclosures in the offer document about the reasons for seeking listing after delisting.

## CHAPTER VIII

### Power of the Board to issue clarifications

41. In order to remove any difficulties in the application or interpretation of these regulations, the Board may issue clarifications and guidelines from time to time.

Power to relax strict enforcement of the regulations.

42. (1) The Board may, in the interest of investors or for the development of the securities market, relax the strict enforcement of any requirement of these regulations, if the Board is satisfied that

a) the requirement is procedural in nature; or

b) any disclosure requirement is not relevant for a PARTICULARS class of industry or company; or

c) the non-compliance was caused due to factors beyond the control of the acquirer. (2) For seeking relaxation under sub-regulation (1), the acquirer or the company shall file an application with the Board, supported by a duly sworn affidavit, providing details of such relaxation of the regulations and the grounds on which the relaxation has been sought.

(3) The acquirer or the company, as the case may be, shall along with the application referred to under sub-regulation (2) pay a non-refundable fee of rupees one lakh, by way of direct credit in the bank account through electronic modes including payment gateways or such other mode allowed by the Reserve Bank of India.

(4) The Board may also exempt any person or class of persons from the operation of all or any of the provisions of these regulations for a period as may be specified but not exceeding twelve months, for furthering innovation <sup>1</sup> [\*\*\*] relating to testing new products, processes, services, business models, etc. in live environment of regulatory sandbox in the securities markets. (5) Any exemption granted by the Board under sub-regulation

(5) shall be subject to the applicant satisfying such conditions as may be specified by the Board including conditions to be complied with on a continuous basis.

Explanation,— For the purposes of these regulations, "regulatory sandbox" means a live testing environment where new products, processes, services, business models, etc. may be deployed on a limited set of eligible customers for a specified period of time, for furthering innovation in the securities market, subject to such conditions as may be specified by the Board.

## Directions by the Board

43. Without prejudice to provisions of the Act and those of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Board may in case of any violation of these regulations and in the interests of the investors and the securities market issue such directions as it deems fit. Repeal and Savings

44. (1) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, stand repealed from the date on which these regulations come into force.

(2) Notwithstanding such repeal,—

- (a) anything done or any action taken or purported to have been done or taken including in-principle approval given by the recognised stock exchanges, relaxation or exemption granted by the Board, fee collected, any adjudication, enquiry or investigation commenced or show cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;
- (b) (b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any contravention or offence committed against the repealed regulations, or any investigation, proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed;

(c) nothing contained in clause (a) shall apply to any delisting offer in respect of which a public announcement has been made under the repealed regulations, and such delisting offer shall be required to be continued and completed under the repealed regulations.

(3) subsequent to the repeal of Securities and Exchange Board of India (Delisting of equity shares) Regulations, 2009, any reference thereto in any other regulations, guidelines or circulars issued by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.



- What is locking period in IPO?
- A lock-in period is **a time frame during which investors who have invested in the public issues cannot sell their allotted shares**. However, once the lock in period ends, investors are free to sell their investments.28-Dec-2021

# Delisting MCQs

S.No.	PARTICULARS	Reference
1.	SEBI (Delisting of Equity Shares) Regulations, 2021 shall apply to delisting of equity shares of a company.	Regulation 3(1) & 3(2)
2.	A company may apply for delisting of equity shares if a period of three years has elapsed since the listing of that class of equity shares.	Regulation 4 (1)(a)
3.	Neither any company shall apply for nor any recognised stock exchange shall permit delisting of equity shares of a company pursuant to a preferential allotment made by the company unless a period of six months has elapsed from the date of such allotment.	Regulation 4(1)(d)
4.	No acquirer shall propose delisting of equity shares of a company, if the acquirer had sold the equity shares of the company during the period of six months prior to the date of the initial public announcement made in terms of regulation 8(1) of these regulations.	Regulation 4(2)

S.No.	PARTICULARS	Reference
5.	Any company desirous of delisting of its equity shall obtain the prior approval of its Board of Directors.	Regulation 6(1)
6.	An application for delisting made under regulation 6(1)(b) shall be disposed of by the recognised stock exchange(s) within a period not exceeding 30 working days from the date of receipt of such application that is complete in all respects.	Regulation 6(3)
7.	The company shall obtain the approval of its Board of Directors in respect of the proposal of the acquirer to delist the equity shares of the company, not later than 21 days from the date of the initial public announcement.	Regulation 10(1)
8.	The Board of Directors of the company, before considering the proposal of delisting, shall appoint a Peer Review Company Secretary and provide the information for carrying out due-diligence.	Regulation 10(2)

S.No.	PARTICULARS	Reference
9.	In the matter of delisting of equity shares the company shall obtain the approval of the shareholders through a special resolution, not later than 45 days from the date of obtaining the approval of Board of Directors.	Regulation 11(1)
10.	The special resolution for delisting of equity shares shall be acted upon only if the votes cast by the public shareholders in favour of the proposal are at least two times the number of votes cast by the public shareholders against it:	Regulation 11(4)
11.	The company shall make an application to the relevant recognised stock exchange for in-principle approval of the proposed delisting of its equity shares in the Form specified by the recognised stock exchange from time to time, not later than 15 working days from the date of passing of the special resolution or receipt of any other statutory or regulatory approval, whichever is later.	Regulation 12(1)

S.No.	PARTICULARS	Reference
12.	In case of failure of the delisting offer, 99% of the amount lying in the escrow account shall be released to the acquirer within one working day from the date of public announcement of such failure.	Regulation 14(8)
13.	The acquirer shall dispatch the letter of offer to the public shareholders not later than two working days from the date of the detailed public announcement made under regulation 15 of these regulations.	Regulation 16(1)
14.	The bidding period shall start not later than seven working days from the date of the detailed public announcement and shall remain open for five working days.	Regulation 17(1)
15.	When the delisting offer shall be considered to have failed when the minimum number of shares are not tendered or where the price discovered through the reverse book building process is rejected by the acquirer..	Regulation 23(1)

S.No.	PARTICULARS	Reference
16.	In case of failure of the delisting offer, the expenses relating to the offer for delisting shall be borne by the Acquirer.	Regulation 23(2)(b)
17.	The acquirer, whose delisting offer has failed, shall not make another delisting offer until the expiry of six months from the date of public announcement for the failure of the delisting offer.	Regulation 23(2)(c)(ii)
18.	The remaining public shareholders, whose shares were either not accepted or were not tendered at all during the bidding period, shall have a right to tender their equity shares for a minimum period of one year from the date of delisting.	Regulation 26(1)
19.	Where the equity shares of a company are delisted by a recognised stock exchange the Recognised Stock Exchange shall appoint an independent valuer(s) who shall determine the fair value of the delisted equity' shares.	Regulation 33(1)

S.No.	PARTICULARS	Reference
20.	Equity shares of a company may be delisted from all the recognised stock exchanges where they are listed, without following the procedure in Chapter IV of Delisting Regulations, if, the company has a paid up capital not exceeding 05 crore rupees and net worth not exceeding 10 crore rupees as on the last date of preceding financial year.	Regulation 35(1)
21.	Equity shares of a company may be delisted from all the recognised stock exchanges where they are listed, without following the procedure in Chapter IV of Delisting Regulations, if, the number of equity shares of the company traded on each such recognised stock exchange during the twelve calendar months immediately preceding the date of board meeting held for consideration of the proposal is less than 10% of the total number of shares of the Company.	Regulation 35(1)(b)



S.No.	PARTICULARS	Reference
13.	"Immediate relative" means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse.	Regulation 2(1)(1)
14.	"Persons acting in concert" means persons who, with a common objective acquires shares or voting rights in the company and persons who with a common objective exercises control over a target company.	Regulation 2(1)(q)(1)
15.	Which among the following shall be deemed as "Person acting in concert" a company under the same management, promoters and members of the promoter group and a Collective Investment Scheme and its Collective Investment Management Company, Trustees and Trustee Company.	Regulation 2(1)(q)(2)
16.	"Public Sector Undertaking" means a target company in which, directly or indirectly, majority of shares or voting rights or control is held by the Central Government, the any State Government or	Regulation 2(1)(u)

S.No.	PARTICULARS	Reference
	Governments and Partly by the Central Government and partly by one or more State Governments.	
17.	"State-level Financial Institution" means, a Financial Corporation established under Section 3, Section 3a and Section 46 of the State Financial Corporation Act, 1951.	Regulation 2(1)(x)
18.	"Volume weighted average market price" means (No. of equity shares traded on a stock exchange * Price of each equity share)/Total No. of equity shares traded on the stock exchange.	Regulation 2(1)(zb)
19.	"wilful defaulter" means any person who is categorized as a wilful defaulter by any bank or financial institution or consortium thereof, in accordance with the guidelines on wilful defaulters issued by the Reserve Bank of India and includes any person whose director, promoter or partner is categorized as such.	Regulation 3(1)

S.No.	PARTICULARS	Reference
20.	No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise 25% or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.	Regulation 3(1)
21.	No acquirer, has acquired and holds in shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a	Regulation 2(1)(x)

S.No.	PARTICULARS	Reference
	public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.	
22.	Substantial acquisition of shares or voting rights as contained in Regulation 3 of SEBI(SAST) Regulations shall not apply to acquisition of shares of a company by the promoters in terms of the provisions of Chapter 'VI-A of SEBI (ICDR) Regulations, 2009.	Regulation 3(4)
23.	For acquisition or holding of shares or voting rights in a target company, the acquirer have to make a public announcement of an open offer.	Regulation 4
24.	The obligation to make a public announcement of an open offer for acquiring shares shall be considered as an indirect acquisition of shares of the target company.	Regulation 5(1)

S.No.	PARTICULARS	Reference
25.	The acquisition shall be regarded as a direct acquisition of the target company, where the proportionate net asset value of the target company as a percentage of the consolidated net asset value of the entity or business being acquired, the proportionate sales turnover of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired and the proportionate market capitalisation of the target company as a percentage of the enterprise value for the entity or business being acquired.	Regulation 5(2)
26.	The market capitalisation of the target company shall be taken into account on the basis of the volume-weighted average market price of such shares on the stock exchange for a period of sixty trading days preceding the earlier of, the date on which the primary acquisition is contracted, and	Explanation to Regulation 5(2)(c)

S.No.	PARTICULARS	Reference
	the date on which the intention or the decision to make the primary acquisition is announced in the public domain.	
27.	In the event the acquirer makes a public announcement of an open offer for acquiring shares of a target company in terms of regulations 3, 4 or 5, he may delist the company in accordance with provisions of the SEBI (SAST) Regulations, 2011.	Regulation 5A
28.	Where a delisting offer made under Regulation 5A(1) is not successful on account of the non-receipt of the prior approval of shareholders in terms of Regulation 11 of Delisting Regulations the acquirer shall within 2 working days in respect of such failure, make an announcement in all the newspapers in which the detailed public statement was made.	Regulation 6(1)

S.No.	PARTICULARS	Reference
29.	An acquirer, who together with persons acting in concert with him, holds shares or voting rights in a target company entitling them to exercise 25% or more but less than the maximum permissible non-public shareholding, shall be entitled to voluntarily make a public announcement of an open offer for acquiring shares.	Regulation 6(1)
30.	Where an acquirer has acquired shares of the target company in the preceding fifty-two weeks without attracting the obligation to make a public announcement of an open offer, he shall not be eligible to voluntarily make a public announcement of an open offer for acquiring share.	First Proviso to Regulation 6(1)
31.	An acquirer, who have made a public announcement to acquire shares of a target company shall not be entitled to acquire any shares of the target company for a period of six months after completion of the open offer.	Regulation 6(2)

S.No.	PARTICULARS	Reference
32.	No person who is a wilful defaulter shall make a public announcement of an open offer for acquiring shares.	Regulation 6A
33.	Who cannot make a public announcement of an open offer or make a competing offer for acquiring shares or enter into any transaction, either directly or indirectly, for acquiring any shares or voting rights or control of a target company a Fugitive Economic Offender.	Regulation 6B
34.	The open offer for acquiring shares to be made by the acquirer shall be for at least twenty six per cent of total shares of the target company, as of tenth working day from the closure of the tendering period.	Regulation 7(1)
35.	Partly paid up shares can be tendered in the open offer and offer price for partly paid up shares shall be computed as the difference between the offer price and the amount due towards calls-in-arrears	Regulation 8(13)



S.No.	PARTICULARS	Reference
	including calls remaining unpaid with interest, if any, thereon.	
36.	Who are exempted from the obligation to make an open offer Immediate Relatives, persons named as promoters and persons holding not less than 50% of the equity shares of such company.	Regulation 10(1)(a)
37.	Prior to making a public announcement, the acquirer shall appoint a merchant banker registered with the Board, who is not an associate of the acquirer, as the manager to the open offer:	Regulation 12(1)
38.	The public announcement pursuant to an increase in voting rights consequential to a buy-back not qualifying for exemption under Regulation 10, shall be made not later than the 90 <sup>th</sup> day from the date of closure of the buy-back offer by the target company.	Regulation 13(2)(h)

S.No.	PARTICULARS	Reference
39.	A copy of the public announcement shall be sent to the SEBI and to the target company at its registered office within one working day of the date of the public announcement.	Regulation 14(2)
40.	The public announcement shall contain the name and Identity of the Acquirer , Sellers and Persons acting in Concert.	Regulation 15(1)
41.	Not later than two working days prior to the date of the detailed public statement of the open offer for acquiring shares, the acquirer shall create an escrow account towards security for performance of his obligations.	Regulation 17(1)
42.	The amount is to be deposited in Escrow Account under the open offer, on the first five hundred crore rupees an amount equal to 25% of the consideration.	Table of Escrow Amount of Regulation 17(1)
43.	An open offer is required to be kept open for ten working days.	Regulation 18(8)

S.No.	PARTICULARS	Reference
44.	Whether a shareholder once tendered his shares in the open offer made by the acquirer cannot withdraw his request.	Regulation 18(9)
45.	Conditional offer is an offer in which the acquirer has stipulated a minimum level of acceptance.	Regulation 19(1)
46.	The obligations are on the part of the manager to the open offer prior to the public announcement being made to ensure that the acquirer is able to implement the open offer and to ensure that the acquirer have made firm arrangements for funds through verifiable means to meet the payment obligations under the open offer.	Regulation 27(1)
47.	The disclosures under Chapter-V shall be of the aggregated shareholding and voting rights of the acquirer of the target company, the aggregated shareholding and voting rights of the promoter of the target company and every person acting in concert with him.	Regulation 28(1)

S.No.	PARTICULARS	Reference
48.	Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the 31 <sup>st</sup> day of March in such target company in such form as may be specified.	Regulation 30(1)
49.	The promoter of every target company shall disclose details of shares in such target company encumbered by him within seven working days from the creation or invocation or release of encumbrance.	Regulation 31(3)

## Coverage of Companies Act, Partnership Act and LLP Act

- Companies Act,
- LLP and Partnership Act,
- Indian Contract Act and
- Sale of Goods Act

# *The Companies Act ,Partnership and LLP Act*

- The companies Act, 2013
- Chapter III Prospectus and allotment of securities-Sections 23 to 42
- Chapter IV share capital and debentures-Sections 43 to 72
- Chapter V Acceptance of deposits by companies-Sections 73 to 76A
- Chapter VI Registration of charges-Sections 77 to 87
- Chapter VII Management and administration –Sections 88 to 122
- Chapter IX Accounts of companies-Sections 128 to 138
- Chapter XV Compromises, arrangements and amalgamations-Sections 230 to 240
- Chapter XVII Registered valuer-Section 247
- Chapter XVIII Removal of names of the companies from the register of companies-Sections 248 to 252
- Chapter XX Winding up of the companies-Sections 270 to 365
- Chapter XXVII NCLT and NCLAT-Sections 407 to 434
- Chapter XXVIII Special courts-Sections 435 to 446B
- Chapter XXIX Punishments-Sections 447 to 454A
- Indian Partnership Act,1932
- The LLP Act, 2008 (Nature of LLP, Partners and their relations; Limitations of liability; and financial disclosures

## Types of Forms used in Company Law

<https://cleartax.in/s/forms-companies-act-2013>

<https://assets1.cleartax-cdn.com/s/img/2020/06/29182343/Complete-List-of-forms-under-Companies-Act-2013.pdf>

Type of Form	Purpose
AOC	Accounts
CA	Compromises, Arrangements and Amalgamations
A-B-C-D	Registered Valuers and Valuation Rules
STK	Removal of Names
NCLT	For use in NCLT
NCLAT DIR PAS SH	For use in NCLAT Information about Directors Prospectus, Allotment of Securities Shares

**❑ Essentials conditions for a document to be called as a prospectus:-**

1. The document should invite the public for subscription of shares/ debentures/deposits/such other instruments.
2. The invitation should be made by the company or on behalf of the company.

**❑ Private Placement-New Concept in place of Statement in lieu of prospectus Section 42:-**

- A private placement shall be made only to a select group of persons who have been identified by the Board ( "identified persons"), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers as per SEBI(ICDR) and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.
- Private placement offer and application to identified persons, whose names and addresses are recorded by the company



- Private placement offer and application shall not carry any right of renunciation.
- Offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

- Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person along-with subscription money paid either by cheque or demand draft or other banking channel and not by cash:
- No fresh offer or invitation shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:
- Subject to the maximum number of identified persons , a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.
- Allotment within sixty days from the date of receipt of the application money for such securities
- If the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and

- If the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:
- \* Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—
  - (a) for adjustment against allotment of securities; or
  - (b) for the repayment of monies where the company is unable to allot securities.
- No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

## ❑ Information Memorandum [Section 31(2)]

It should contain all the facts regarding the new charges created, what changes have undergone in the financial position of the company since the first offer of the security or between the two offers.

It should be filed with the registrar within one month before the issue of the second or subsequent offer made under the shelf prospectus as given under Rule 10 of the Companies (Prospectus and allotment of Securities) Rules, 2014.

When any company or a person has received an application for the allotment of securities with advance payment of subscription before any changes have been made, then he must be informed about the changes. If he desires to withdraw the application within 15 days then the money must be refunded to them.

After the information memorandum has been filed, if any offer of securities is made, the memorandum along with the shelf prospectus is considered as a prospectus.

## ❑ Red herring prospectus:-Section 32

Red herring prospectus is the prospectus which lacks the complete particulars about the quantum or the price of the securities. A company may issue a red herring prospectus **prior to the issue of prospectus** when it is proposing to make an offer of securities.

Complete prospectus **needs to be filed with the registrar at least three days prior to the opening of the subscription list or the offer.**

The obligations carried by a red herring prospectus are same as a prospectus. If there is any variation between a red herring prospectus and a prospectus then it should be highlighted in the prospectus as variations.

When the offer of securities closes then the prospectus has to state the total capital raised either by way of debt or share capital. It also has to state the closing price of the securities.

5. Consent of the directors, auditors, bankers to the issue, expert opinions.
6. Authority for the issue and details of the resolution passed for it.
7. Procedure and time scheduled for the allotment and issue of securities.
8. The capital structure of the company in the manner which may be prescribed.
9. The objective of a public offer.
10. The objective of the business and its location.
11. Particulars related to risk factors of the specific project, gestation period of the project, any pending legal action and other important details related to the project.
12. Minimum subscription and what amount is payable on the premium.
13. Details of directors, their remuneration and extent of their interest in the company.
14. Reports for the purpose of financial information such as auditor's report, report of profit and loss of the five financial years, business and transaction reports, statement of compliance with the provisions of the Act and any other report.

### **Filing of copy with the registrar:-**

As stated under sub-section 4 of Section 26 of the Companies Act, 2013, the prospectus is not to be issued by a company or on its behalf unless on or before the date of publication, a copy of the prospectus is delivered to the registrar for registration.

The copy should be signed by every person whose name has been mentioned in the prospectus as a director or proposed director or the assigned attorney on his behalf.

### **□ Delivery of copy of the prospectus to the registrar:-**

As per Section 26(6) of the Companies Act 2013, the prospectus should mention that its copy has been delivered to the registrar on its face. The statement should also mention the document submitted to the registrar along with the copy of the prospectus.

❑ **Registration of prospectus** Section 26(7):-

**Registrar can register a prospectus when:**

1. It fulfils the requirements of this section, i.e., section 26 of the Companies Act, 2013; and
2. It contains the consent of all the persons named in the prospectus in writing.

❑ **Issue of prospectus after registration:-**

If a prospectus is not issued before 90 days from the date from which a copy was delivered before the registrar, then it is considered to be invalid.

❑ **Contravention of section**

If a prospectus is issued in contravention of the provision under section 26 of the Companies Act 2013, then the company and every person who is knowingly a party can be punished under Section 26(9). The punishment for the contravention is:

Fine of not less than Rs. 50,000 extending up to 3,00,000.



If any person becomes aware of such prospectus after knowing the fact that such prospectus is being issued in contravention of section 26 then he is punishable with the following penal provisions.

- Imprisonment up to a term of 3 years, or
- Fine of more than Rs. 50,000 not exceeding Rs. 3,00,000.

### **□ Conclusion**

A prospectus is basically a formal and legal document issued by a body corporate which acts for inviting offers from the public for subscription or purchase of any securities. Every public company is entitled to issue the prospectus for its shares or debentures. But, the same is not required for a private company.

# The Companies Act, 2013

## Chapter III- Prospectus and Allotment of Securities Sections 23 to 42

### ■ Manner of Issue of Securities-Section 23

Manner of Issue	Public Company Section 23(1)	Private Company Section 23(2)
To public through prospectus incl. IPO,FPO,OFS	Yes	No
Private Placement	Yes	Yes
Rights Issue	Yes	Yes
Bonus Issue	Yes	Yes

■

# Administrative Powers-Section 24

Authority	Relevant Section
SEBI	24(1)(a)
The Central Government	24(1)(b)
The Tribunal	24(1)(b)
The Registrar	24(1)(b)

# Different Types of Prospectus-General

Type	Remarks	Relevant Section	Penalty	
Prospectus	To be issued within 90 days of delivery of its copy to the Registrar	26(8)	For Company	For Person who is a party to it
			Rs.50000 to Rs.300000	Rs.50000 to Rs.300000 Or imprisonment upto 3 years or both
Variation in terms or objects of issue of prospectus	Form PAS-1	Rule 7	Special resolution in General Meeting. Details in two newspapers citing reasons for variation. Exit offer to dissenting shareholders. Bar on buying shares of any other listed company	
In Dematerialised Form-Compulsory for Public company making public Offer. Optional for Pvt.Companies	Whether listed or unlisted. Rule does not apply to Nidhi, Govt.Co. or wholly owned	29(1)(a)		

# Mandatory Contents of Memorandum for advertisement for prospectus- Section 30

The Objects and the liability of members

The amount of share capital of the company

The names of the signatories to the memorandum and the number of shares  
subscribed for by them

# Shelf Prospectus/Red Herring Prospectus

Shelf Prospectus		Red Herring Prospectus	
Validity	One Year	Meaning and date of issue	A prospectus which does not include complete particulars of the quantum or price of the securities included therein. It may be issued prior to the issue of a prospectus and should be filed at least three days prior to the opening of the subscription list and offer.
Form for Information Memorandum	Form PAS -2	Obligations and Variations	Same as applicable to a prospectus and any variations should be highlighted in the prospectus.

# Allotment of securities-Preconditions

Event/Action	Minimum Stipulations/Penalties	Section/Rule
Amount subscribed	Minimum amount stated in the prospectus	39(1)
Amount paid to and received by the company	Sum payable on application	
Minimum amount payable on application	5% of the nominal amount	39(2)
Maximum time period for receiving the amount subscribed /amount payable on application	30 days	39(3)
Period for returning money in case of under subscription	15 days from the closure of the issue	Rule 11
Interest on late refund	15% per annum	Rule 11
Penalty for default u/s 39(3) or 39(4)	Rs.1000 each day till the date default continues or Rs.100000 whichever is less	39(5)
Form for return of allotment	PAS-3 within 30 days	Rule 12
Rate of commission payable to any person concerned with subscription	5% in case of securities and 2-1/2% in case of debentures or as per articles whichever is less	Rule 13

# Section-40-Information reg Stock Exchange in case of Public Offer

Application to Stock Exchange Mentioning the name(s) of Stock Exchange(s) To maintain Separate Bank Account		
Penalty for the company	Rs.5 lakhs to Rs.50 lakhs	40(5)
Penalty on officer	Fine-Rs.50000 to Rs.3 lakhs Imprisonment-upto 1 year or both	



# GDRs-Global Depository Receipts

## Types of DR-ADR,GDR and IDR

Conditions for issue-Rule 4	Proceeds of GDR-Rule 7
In terms of scheme and provisions of FEMA,1999	Bank account in India
Board Resolution	Indian Bank operating abroad
Special resolution in general meeting	Foreign Bank (A scheduled Bank under RBI Act,1934) having operations in India taking responsibility for furnishing required information and ensuring deposit of sale proceeds of GDRs to the respective bank account of the shareholders in case of a sponsored issue
To be issued by an overseas depository Bank	Overseas depository Bank will give acknowledgement to the foreign investor. Such an acknowledgement is known as GDR.GDRs are tradeable at International Stock Exchanges.
Underlying shares shall be kept in custody of a domestic custodian Bank	
Offer document for issue of GDRs not to be treated as a prospectus or an offer	

#### Section 44

Shares or Debentures are movable property.

#### Section 45

Distinctive numbers of Shares.

#### Section 46

Certificate under common seal signed by two directors or a Director and the CS wherever appointed.

#### Section 47

Voting Rights:- Right to vote, in proportion to paid up capital  
Preference shareholders entitled to vote on resolutions directly affecting their interest.

#### Section 48

Variation in shareholders rights with three fourth consent or by special resolution.

### Section 49

Calls for further share capital to be made on uniform basis.

### Section 50

Company may accept in advance any uncalled amount without any voting rights.

### Section 51

Dividend on basis of paid up capital.

### Section 52

Premium received to be transferred to securities premium account and can be applied towards bonus issue, writing off preliminary expense, providing for premium payable on redemption of any redeemable preference shares or debentures etc.

### Section 53

Prohibition on issue of shares at a discount except to creditors in accordance with statutory resolution plan or debt restructuring Plan.

Punishment:- Penalty equal to amount raised or Rs 5 Lakhs whichever is less besides liability to refund the amount received along with interest @ 12%p.a.

### Section 54

Issue of Sweat-Equity shares if authorized by special resolution specifying the no. of shares, current market price ,consideration if any and class (es) of Directors/Employees. Besides this to conform to SEBI regulations in case of listed shares and prescribed rules in case of unlisted shares

### Section 55

Only redeemable preference shares can be issued maximum period not to exceed 20 years except in case of infrastructure projects.

Redemption to be made out of:-

- Profits of the company available for dividend
- Proceeds of a fresh issue made for such redemption

- Should be fully paid before redemption
- Nominal amount to be transferred to Capital Redemption Reserve A/c
- Premium payable out of profits or securities premium account.

### Section 56

Transfer or transmission within 60 days based on certificate, instrument of transfer duly executed.

Period:-

2 months from DOI in case of subscribers to the memorandum.

2 months in case of allotment

1 months in case of transfer

6 months from date of allotment in case of allotment of debenture

Immediately in case of securities held with Depository

### Section 57

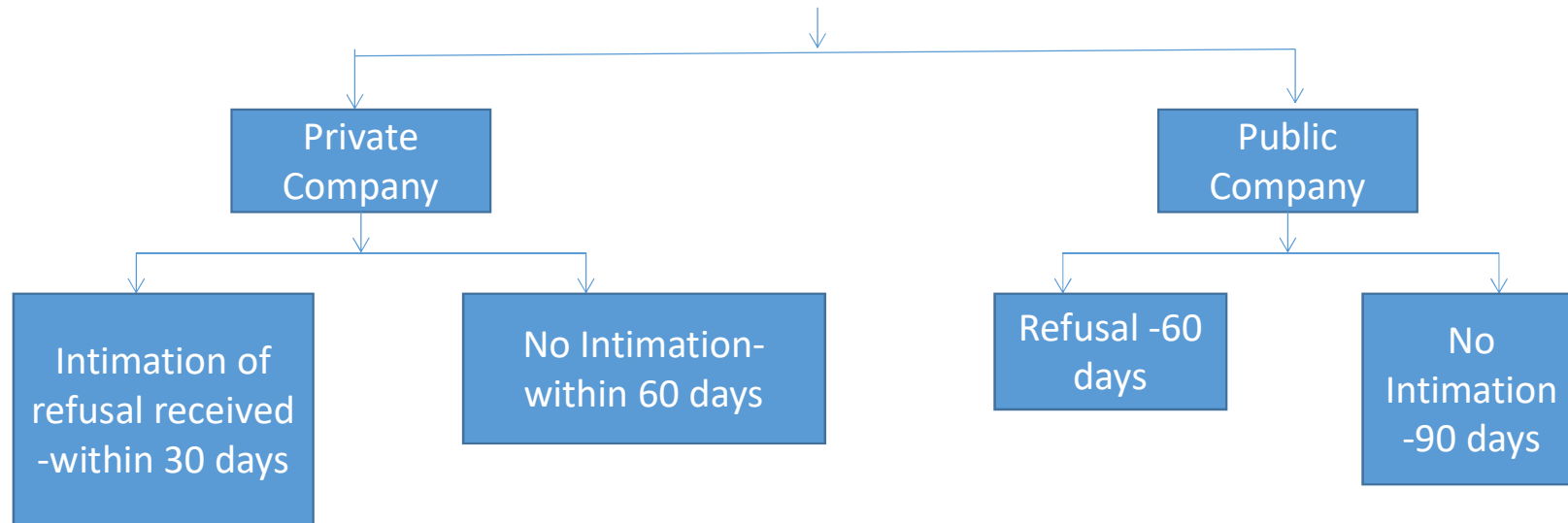
Penalties for impersonation:

Fine: Rs 1 Lakh to 5 Lakh

Imprisonment: 1 year to 3 years

## Section 58

### Refusal to Register and time period for appeal



In appeal Tribunal may direct to transfer within 10 days of the receipt of the order.

Penalty:

Imprisonment:- One year to Three years.

Fine:- One lakh to Five Lakhs.

## Section 59

Rectification of Register of members to be done within 10 days of the receipt of the order.

Penalty on Company: 1 lakh to 5 lakh.

Penalty on Officer:-

Imprisonment: Upto One year

Fine: One lakh to Three lakh or both.

## Section 60

Publication of authorized , subscribed and paid up

Penalty: Rs 10,000/-

Officer: Rs 5,000/- for each default.

## Section 61

A limited company may increase its authorized capital ,may consolidate/subdivide, reduce its unissued/share capital without change in voting power.

## Section 62

Further issue:-

- To existing shareholders in proportion to paid up capital
- Rights of renunciation of such offer in favour of another person not disadvantageous to the shareholders
- To employees as stock option
- To any other person based on valuation report for cash or consideration other than cash.

## Section 63

Bonus issue out of free reserves, securities premium, Capital Redemption Reserve A/c .Not out of reserves created by revaluation. otherwise compliant in payment of FD , statutory dues etc.

## Section 64

Notice to Registrar of alteration of share capital within 30 days of such alteration along with altered memorandum.



Penalty on company and officer: Rs 1,000/- each day or Rs 5 lakhs whichever is less

### Section 65

Unlimited company to provide for reserve share capital on conversion into limited Company: No increased part to be called except in case of winding up.

### Section 66

Reduction of share capital .Tribunal may approve reduction after giving notice to central Gov., SEBI, Registrar, Creditors etc. No reduction if company defaulted in repayment of deposits or interest.

### Section 67

Restrictions on purchase by company or giving of loans by it for purchase of its shares.

Exceptions: -

Banking Company ,NBFC,loans to employees not exceeding 6 months salary or wages. Penalty: Fine Rs. 1 lakh to Rs. 25 lakh

Officer: Imprisonment upto 3 years

Fine: Rs. 1 lakh to Rs. 25 lakh

### Section 68

Power of company to purchase its own securities out of free reserves, securities premium account, proceeds of the issue.

No buy back unless

- Authorized by articles
- Special resolution passed
- Ratio of 2:1 of debt equity to be maintained
- Further 10%-25% criterion

### Section 69

Transfers of certain sums to Capital Redemption Reserve A/c equivalent to nominal value of own share purchased.

## Section 70

Prohibition for buy back in certain circumstances

- Through subsidiary, through investment company- in case of default in repayment of deposits unless defect removed and 3 years have elapsed.

## Section 71

Debentures:-

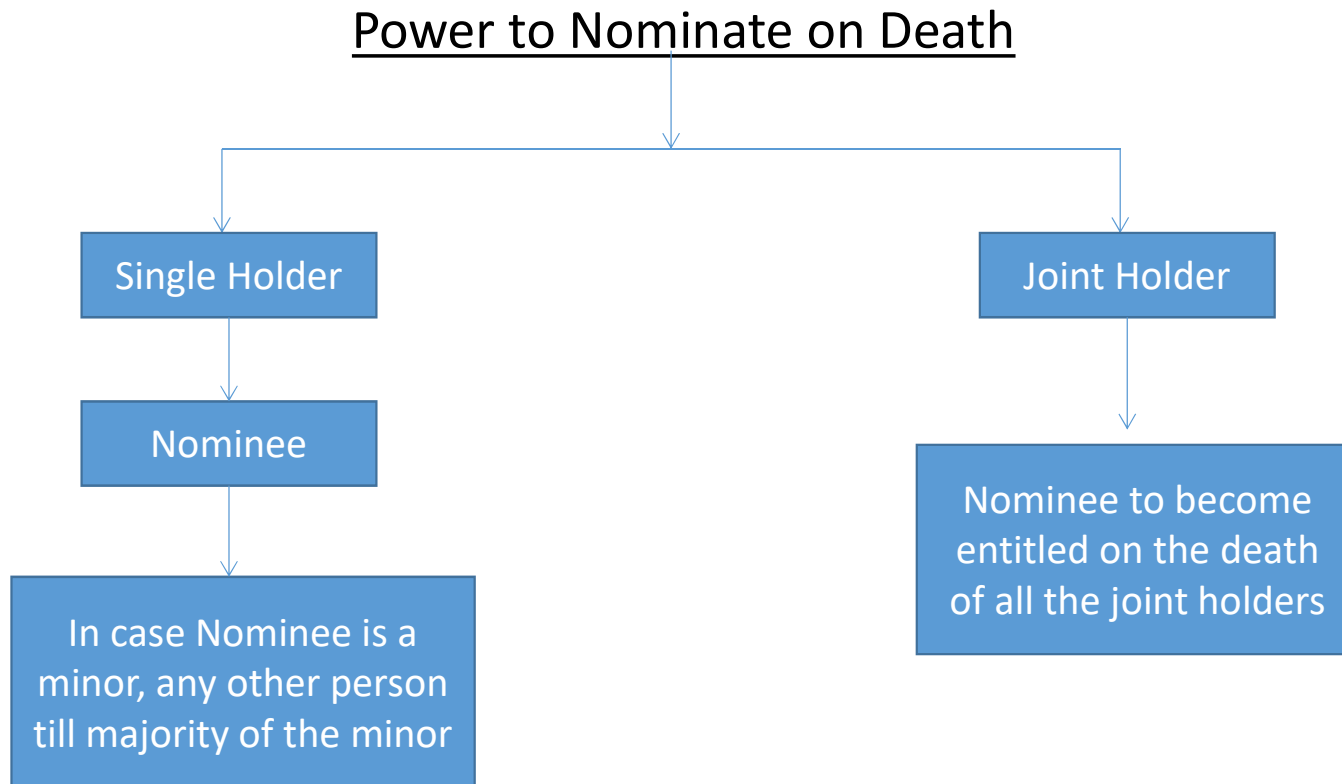
- Convertible debentures issue to be approved by special resolution at general meeting
- No voting rights to debenture holders
- Debenture Redemption Reserve A/c
- Appointment of debenture trustee in case invitation is to more than 500
- Debenture trustee to file petition before tribunal if he feels that the company assets are insufficient to pay

➤ Default of order of Tribunal punishable

Officer: Imprisonment- upto 3 years

Fine: Rs. 2 lakh to Rs. 5 lakh or both

Section 72



# ***Chapter V- Acceptance of Deposits by Companies***

## **SECTION 73 TO 76A**

### Section 73

Prohibition on acceptance of deposits from public except by banking company or NBFC

Acceptance of deposits from Members: Circular to members indicating total amount, credit rating, amount due in respect of previous deposits etc.

- Filing circular with registrar within 30 days before issue of circular
- Depositing on a before 30<sup>th</sup> day of April minimum 20% of the amount of deposits maturing during the following financial year.

# DPT-1

- [https://www.mca.gov.in/MCA21/dca/downloadforms/eformTemplates/NCA/Form\\_DPT-1.pdf](https://www.mca.gov.in/MCA21/dca/downloadforms/eformTemplates/NCA/Form_DPT-1.pdf)

## Section 74-No longer in Use

Repayment of deposits accepted before commencement of the Act

- File a statement within 3 months from such commencement or from the date on which such payments are due with the registrar a statement showing repayment plan.
- Repay within 3 years or earlier except when extension granted by the tribunal.

Penalty: Rs. 1Cr to Rs. 10Cr

Officer: Imprisonment upto 7 years

Fine: Rs. 25 Lakhs to Rs. 2Cr or both

## Section 75-No longer in Use

Damages for fraud

- Every officer personally liable without any limitation of liability

## Section 76

Acceptance of Deposits by certain companies from public.

Net worth: Rs. 100Cr or more

Turnover: Rs 500Cr

➤ Special resolution, Credit rating of adequate safety for every year during tenure of deposits, company to create charge on assets within 30 days of such acceptance.

## Section 76A

Punishment for Contravention of Section 73 or Section 76

Fine: Rs. 1Cr or double the deposits accepted maximum Rs. 10Cr

Officer: Imprisonment upto 7 years

Fine: Rs. 25Lakhs to 2 Cr



# ***Chapter VI- Registration of Charges***

- Definition of Charge-Section 2(16)

"charge" means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage;

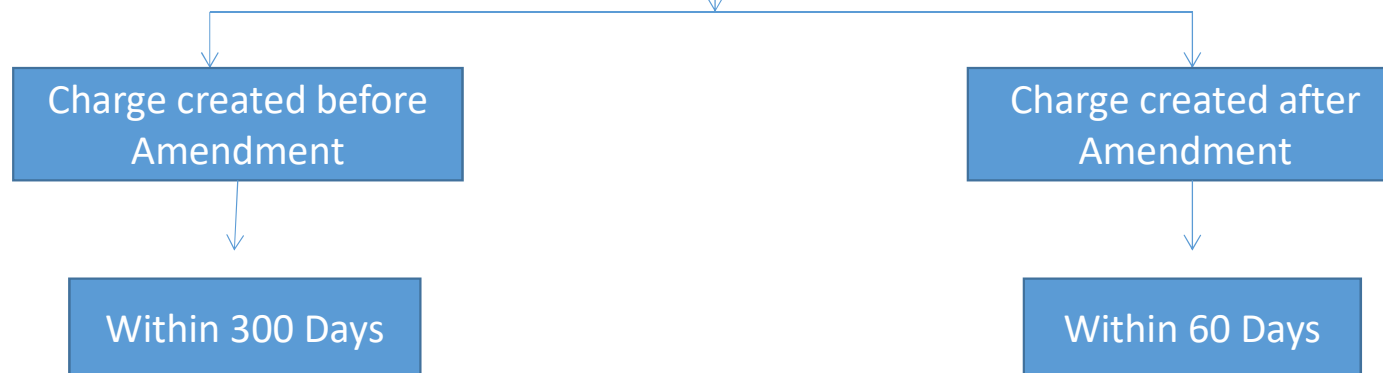
## SECTION 77 TO 87

### Section 77

Duty to register charge within 30 days

### Condonation of Delay by Registrar

Companies (Amendment) Ordinance, 2019



### Section 78

Where a company fails to register a charge, the person in whose favour the charge has been created may apply and recover the fees from the company.

### Section 80

Deemed Notice (Knowledge) of charge from the date of registration to any person acquiring such property .

### Section 81

Register of charges to be kept by the registrar open for inspection on payment of fees.

### Section 82

Company to report satisfaction of charge within 30 days (max. 300 days on payment of additional fees).

Registrar may ask the holder of the charge to raise objection if any within maximum 14 days.

### Section 83

Power of registrar to make entries of satisfaction and release in absence of intimation from company. Registrar shall inform the affected parties within 30 days of making entry.

## Section 84

Intimation of appointment of receiver or manager by the person receiving such appointment or by the person appointing such receiver within 30 days along with a copy of such appointment/order.

The person appointed shall notify the company and registrar on ceasing to hold such appointment.

## Section 85

Register of charges along with copy of instrument to be kept at registered office and open for inspection to members and creditors without any payment of fees and to other persons on payment of fees.

## Section 86

Punishment for contravention of provision of this chapter

Company: One lakh to Ten lakh

Office in default: Imprisonment upto 6 months

Fine: Rs. 25000 to Rs. 1 Lakh or both

## Section 87

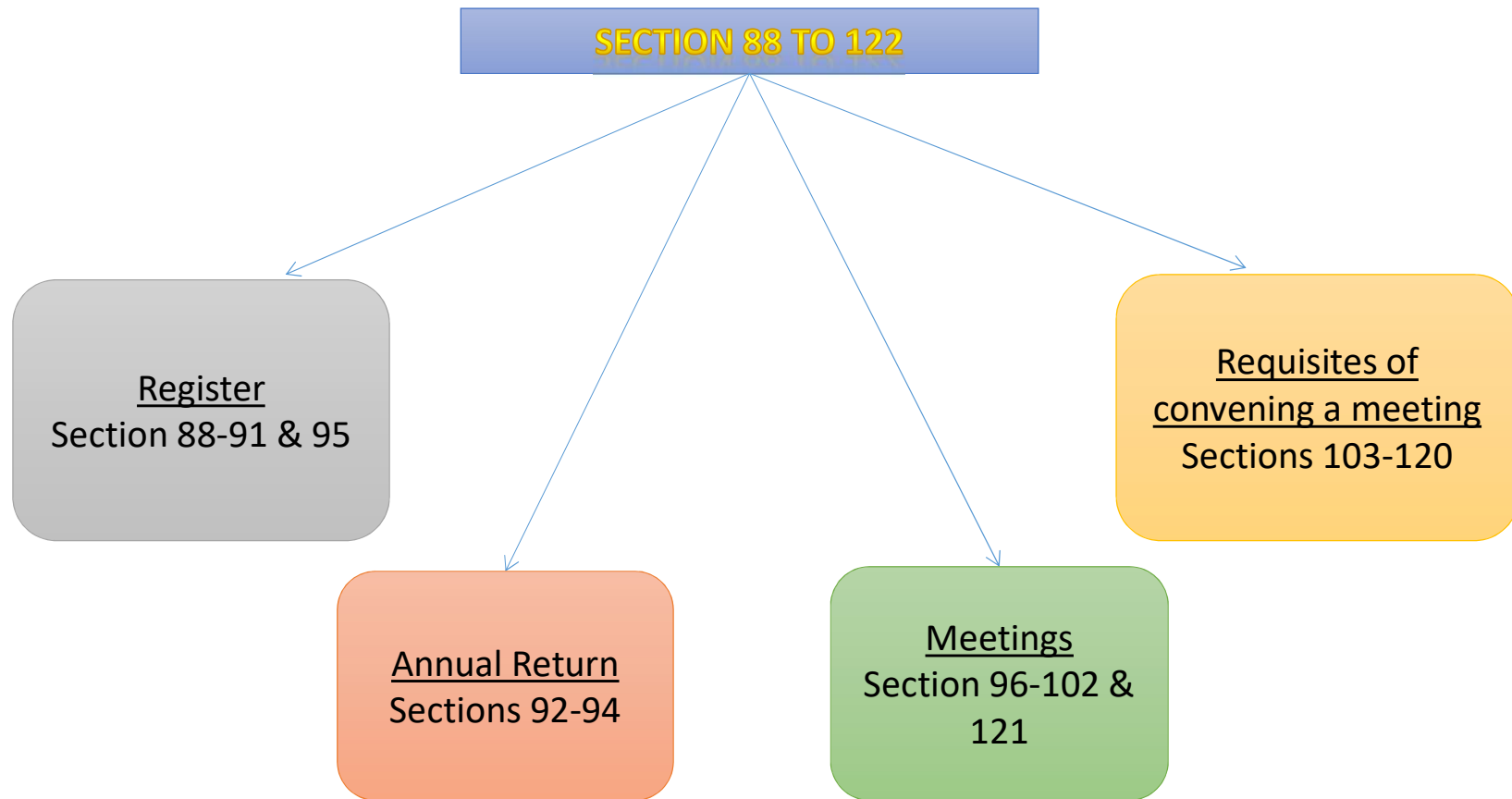
Rectification by Central Government in register of charges.

In case of any omission or misstatement or inadvertence, Central Gov., may extend the time or allow rectification.

### **Forms applicable**

Form CHG-1	Creating or modifying Charge (Other than Debenture)
Form CHG -9	Creating or modifying Charge for Debenture
Form CHG-2	Certificate of Registration

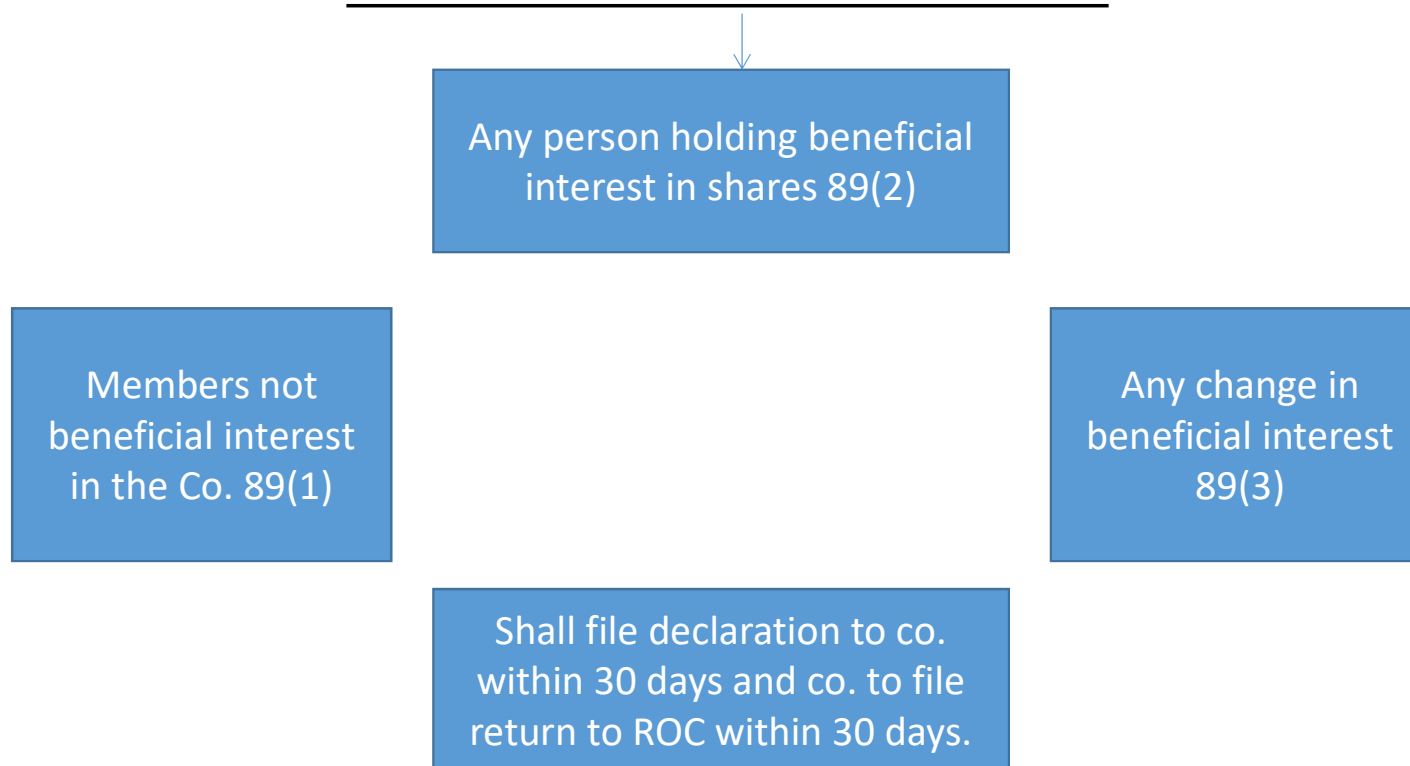
# Chapter VII- Management & Administration



## Registers

- Register of members- MGT-1
- Register of Debenture holders- MGT-2
- Foreign Register file within 30 days from the date of opening the register- MGT-3

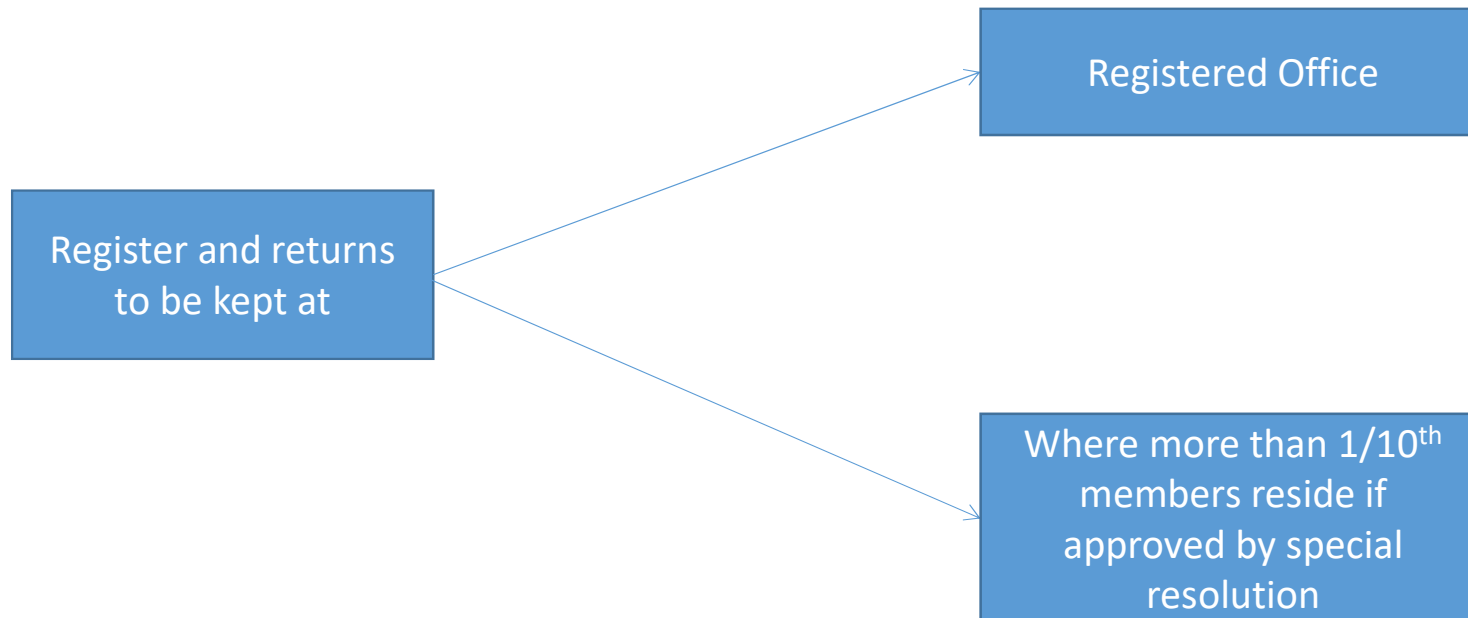
### Declaration of Beneficial Interest



## Annual Return (Sections 92-94)

Information about company regarding registered office, business activities, shares, debentures, indebtedness, change since previous year, meetings, remuneration of Directors and KMP, penalty or punishment, shares held on behalf of FIIs.

### Section 94





## Meetings- Pre- Requisites of a Meeting

Before Meeting	During Meeting	Post Meeting
<p data-bbox="344 560 712 791">Notice: 21 clear days explanatory statement notice to be sent to</p> <ul data-bbox="344 804 712 1110" style="list-style-type: none"><li>• Members</li><li>• Directors</li><li>• Auditors</li><li>• Legal Rep. of deceased member</li><li>• assignee of insolvent member</li></ul>	<ul data-bbox="943 560 1314 855" style="list-style-type: none"><li>• Quorum</li><li>• Chairman</li><li>• Proxies</li><li>• Voting</li><li>• Resolutions</li></ul>	<ul data-bbox="1516 560 1888 855" style="list-style-type: none"><li>• Minutes of meeting</li><li>• Maintenance &amp;</li><li>• Inspection of documents</li></ul>

## Types of Meetings:-

- General Meeting
- Board Meeting
- Class Meeting

### **Meetings with shorter Notice**

AGM: 95% of members entitled to vote

other meetings: 95% of voting power.

Ordinary business and Special business

#### ➤ **Ordinary Business**

1. Consideration of FS ,BOD Report , Auditor's Report
2. Declaration of Dividend
3. Appointment of directors in place of those retiring
4. Appointment of auditors and fixing their remuneration

Any business apart from the 4 cited above is special business.

## Quorum for meetings

### **Public Company**

No of Members upto 1000- 5

1001-5000 = 15

Above 5000 – 30

### **Private Company**

2

If quorum not present within half an hour the meeting shall stand adjourned to the same day in the next week at the same time and place or such other date, time and place as the board decides.

Company to give at least three days notice to members individually or by advertisement.

Chairman of Meetings: By show of hands or by poll

### **Proxy:-**

Form MGT-11

can vote on a poll. No right to speak .can act as proxy for upto 50 members or upto 10% of the total share capital of the company carrying voting rights.

If a single member holds more than 10% his proxy cannot be a proxy for other members.

Proxy received 48 hours before the before the meeting is valid.

### **Voting:**

Voting by show of hands (107)

Voting by Electronic Means. Listed company having more than 1000 members (Section 108)

Voting by poll (109)

Voting by Postal Ballot (110)

Demand for poll (Section 109)

1/10<sup>th</sup> of voting power or Rs. 5,00,000 paid up capital or such higher amount as may be prescribed .

Annual General Meeting-Section 96

Applicable to both public & private company.

Not applicable to OPC

AGM to be held by every company every year.

First AGM:- Within 9 months from the end of the financial year

Time gap between 2 AGM- Not to exceed 15 months.

Registrar may grant extension of 3 months for special reasons except in case of first AGM.

EGM-Section 100

- [(1) The Board may, whenever it deems fit, call an extraordinary general meeting [of the company.](#)]
- 2[Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.]
- \*(2) The Board shall, at the requisition made by-
- (a) in the case of a company having a share capital, such number of members who hold, on the date of the receipt of the requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting;
- (b) in the case of a company not having a share capital, such number of members who have, on the date of receipt of the requisition, not less than one-tenth of the total voting power of all the members having on the said date a right to vote,
- call an extraordinary general meeting of the company within the period specified in sub-section (4).

- (3) The requisition made under sub-section (2) shall set out the matters for the consideration of which the meeting is to be called and shall be signed by the requisitionists and sent to the registered office of the company.

- (4) If the Board does not, within twenty-one days from the date of receipt of a valid requisition in regard to any matter, proceed to call a meeting for the consideration of that matter on a day not later than forty-five days from the date of receipt of such requisition, the meeting may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.
- (5) A meeting under sub-section (4) by the requisitionists shall be called and held in the same manner in which the meeting is called and held by the Board.
- \*(6) Any reasonable expenses incurred by the requisitionists in calling a meeting under sub-section (4) shall be reimbursed to the requisitionists by the company and the sums so paid shall be deducted from any fee or other remuneration under [section 197](#) payable to such of the directors who were in default in calling the meeting.

# Company (Accounts) Rules, 2014

<b>AOC-1</b>	Statement containing salient features of the financial statement of subsidiaries or associate companies or Joint ventures
AOC-2	Form of disclosure of particulars of contracts/arrangements
AOC-3	Statement containing salient features of balance sheet and P and L Account
AOC-3A	Form of abridged financial statements
AOC-4	Form for filing financial statement and other documents with the registrar
AOC-4 CFS	Form for filing consolidated financial statement and other documents with the registrar
Aoc-5	Notice of address at which books of account are to be maintained



# National Financial Reporting Authority

Provide matters relating to accounting and auditing standards under the companies act, 2013	National financial reporting authority
Functions	<ul style="list-style-type: none"> <li>• Monitor and enforce the compliance with accounting standards</li> <li>• Oversee the quality of service</li> <li>• Make recommendation to the Central Government on the formulation</li> </ul>
Authority to appoint Chairman	The Central Government
Number of Part time or full time members	Not exceeding 15
Powers as are vested in a civil court	The Code of Civil Procedure, 1908
Penalty <ul style="list-style-type: none"> <li>• In case of individual</li> <li>• In case of firms</li> </ul>	<ul style="list-style-type: none"> <li>• Not less than 1 lakh but may extend to five times of the fee received</li> <li>• Not less than 10 lakh but may extend to ten times of the fee received</li> </ul>
Authority to Prescribe the standards of accounting or addendum	The Central Government

# Corporate Social Responsibility-

## Section 135

Companies covered	<ul style="list-style-type: none"><li>•Net worth of Rs 500 crore or more</li><li>•Turnover of Rs 1000 crore or more</li><li>•Net profit of Rs 5 crore or more during immediately preceding financial year</li></ul>
CSR Committee of the Board shall consist of	Three or more directors . At least one director shall be independent director.
Spending required	At least 2% of the average net profits made during the 3 immediately preceding financial years
Where to spend CSR	Projects or programs relating to activities specified in schedule VII

Section 128	Books of accounts to be prepared on accrual basis, Double Entry System . Option to maintain accounts in electronic mode. Accounts to be kept for 8 years unless a lengthier period is directed by Central Govt.
Section 129 Section 130	Accounts to be prepared as per Sch III Reopening of accounts on the order of the court or tribunal.
Time period by which to be sent to every member	Not less than 21 days before the date of meeting
Time period for filing with the Registrar	Within 30 days of the date of annual general meeting
Not adopted at annual general meeting	Within 30 days of the date of annual general meeting

Standard of accounting specified in	The companies act, 1956
OPC shall file a copy	Within 180 days from the closure of the financial year
Qualification of Internal Auditor to conduct internal audit	A Chartered Accountant or a cost accountant or such other professional as may be decided by the Board

# Chapter-XXV-

*Compromises, Arrangements & Amalgamations*

## **Background:**

- CAA was going as per provisions of Companies Act, 1956 till 14.12.2016.
- On 7<sup>th</sup> November, 2016 Central Government issued a notification for enforcement of section 230-233, 235-240, 270-288 etc. w.e.f. 15<sup>th</sup> December, 2016. But still rules were not available till date for CAA.
- MCA vide notification dated 14<sup>th</sup> Dec, 2016 has issued rules i.e. The Companies (Compromises, Arrangements & Amalgamation) Rules, 2016. These rules will be effective from 15<sup>th</sup> December, 2016. Consequently, w.e.f. 15.12.2016 all the matters relating to Compromises, Arrangements, and Amalgamations (hereafter read as “CAA”) will be dealt as per provisions of Companies Act, 2013 and The Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

# One Page Summary Sections 230-240

Section	What it contains
230	NCLT to order meeting on application by Company , creditors , members , Liquidator. Objection-10% shareholding or 5 % of outstanding debt . No meeting if confirmed by 90%
231	NCLT powers to supervise or give directions
232	Merger and Amalgamation. Fees for Authorised capital adjustable.Absorption,Formation,division
233	Merger of small companies or wholly owned subsidiary companies
234	Merger with foreign company as per RBI Guidelines
235	Power to acquire shares of dissenting from the scheme in case 9/10 th in value approve of the scheme
236	Purchase of minority shareholding at valuation
237	Power of Central Govt. to provide for amalgamation in public interest
238	Registration of offer of schemes involving transfer of shares
239	Preservation of Books and papers of amalgamated company . Not to be destroyed without prior permission.
240	Liability of officers for offences prior to amalgamation to continue even after amalgamation

## ❖ Process of Compromise and arrangement:-

### **1. Between whom the Compromise & Arrangement can propose :-**

- Between a company and its creditors or any class of them
- Between a company and its members or any class of them

### **2. Who can file the application for Compromise & Arrangement can propose :-**

An application for Compromise & Arrangement can be file with Tribunal (NCLT) by followings:

- The Company
- Creditor
- Member of the Company,
- In the case of a company which is being wound up, by the Liquidator.



### ❖ **Joint Application**

Where more than one company is involved in a scheme, such application may, at the discretion of such companies, be filed as a joint-application.

### ❖ **Conditions for serving of application, in situation where application is not served by the Company**

Where the application is not filed by the Company then, At least 14 days before the date fixed for the hearing of the notice by the tribunal-

- A copy of notice of admission and of the affidavit shall be served on the Company, or,
- Where the company is being wound up, on its liquidator.

The applicant shall also disclose to the Tribunal in the application under sub-rule (1), the basis on which each class of members or creditors has been identified for the purposes of approval of the scheme.

### **3. Format of Application:-**

Application to the tribunal for Compromise & Arrangement will be submitted in form no. NCLT-1 along with following documents

- a) A notice of admission in Form No. NCLT-2
- b) An affidavit in form no. NCLT-6
- c) A copy of Scheme of C&A
- d) A disclosure in form of affidavit including following points
  - All material facts relating to the company, such as:
    - i. The latest financial position of the company,
    - ii. The latest auditor's report on the accounts of the company and
    - iii. The pendency of any investigation or proceedings against the company
  - Reduction of share capital of the company, if any, included in the compromise or arrangement

e) Any scheme of Corporate Debt Restructuring consented to by not less than seventy five per cent. of the secured creditors in value, including.

- i. A Creditor's Responsibility statement in the form No. CAA-1.
- ii. Safeguards for the protection of other secured and unsecured creditors.
- iii. Report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board.
- iv. Where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect.
- v. A valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

f) The applicant shall also disclose to the Tribunal in the application, the basis of identification of each class of members or creditors for the purposes of approval of the scheme.

#### **4. Calling of Meeting by Tribunal:**

Upon hearing of the application, Tribunal shall, unless it thinks fit for any reason to dismiss the application, give such directions / order as it may think necessary in respect meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as prescribed in as follow:

- i. Fixing the time and place of the meeting or meetings.
- ii. Appointing a Chairperson and scrutinizer for the meeting or meetings to be held, as the case may be and fixing the terms of his appointment including remuneration.
- iii. Notice to be given of the meeting or meetings and the advertisement of such notice.

- iv. Determining the values of the creditors or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held.
- v. Determining the values of the creditors or the members, or the creditors or members of any class, as the case may be, whose meetings have to be held.
- vi. Notice to be given to sectorial regulators or authorities as required under sub-section (5) of section 230.
- vii. The time within which the chairperson of the meeting is required to report the result of the meeting to the Tribunal.
- viii. Such other matters as the Tribunal may deem necessary.

**5. Notice of Meeting:**

The Notice of the meeting pursuant to the order of tribunal to be given in Form No. CAA-2

a. **Details of the order of the Tribunal directing the calling, convening and conducting of the meeting:-**

- Date of the Order.
- Date, time and venue of the meeting.

b. **Details of the company including:**

- Corporate Identification Number (CIN) or Global Location Number (GLN) of the company.
- Permanent Account Number (PAN).
- Name of the company.
- Date of incorporation.
- Type of the company (whether public or private or one person company).
- Registered office address and e-mail address.
- Summary of main object as per the memorandum of association; and main business carried on by the company.

**d. Disclosure about effect of C&A on material interests of directors, Key Managerial Personnel (KMP) and debenture trustee**

**e. Details of Board Meeting:**

- The name of the directors who did not vote or participate on such resolution
- The name of the directors who voted against the resolution and
- The name of the directors who voted in favour of the resolution,
- The date of the board meeting at which the scheme was approved by the board of directors

**f. Explanatory Statement disclosing details of the scheme of compromise or arrangement including:**

- Parties involved in such compromise or arrangement;
- In case of amalgamation merger, appointed date, effective date, share exchange ratio (if applicable) and other considerations, if any.

- Summary of valuation report (if applicable) including basis of valuation and fairness opinion of the registered valuer , if any, and the declaration that the valuation report is available for inspection at the registered office of the company;
- Details of capital or debt restructuring, if any;
- Rationale for the compromise or arrangement;
- Benefits of the compromise or arrangement as perceived by the Board of directors to the company, members, creditors and others (as applicable);
- Amount due to unsecured creditors.

**h. Disclosure about the effect of the compromise or arrangement on:**

- Key Managerial Personnel;
- Directors;
- Promoters;



- Non-Promoter Members;
- Depositors;
- Creditors;
- Debenture holders;
- Deposit trustee and debenture trustee;
- Employees of the company:

h. **Below Mentioned Details: Following below mentioned details:**

- Investigation or proceedings, if any, pending against the company under the Act.
- Details of approvals, sanctions or no-objection(s), if any, from regulatory or any other governmental authorities required, received or pending for the proposed scheme of compromise or arrangement
- A statement to the effect that the persons to whom the notice is sent may vote in the meeting either in person or by proxies, or where applicable, by voting through electronic means

- Such other information or documents as the Board or Management believes necessary and relevant for making decision for or against the scheme

#### 6. Advertisement of Notice of Meeting:-

The Notice of the meeting shall be advertised in **form No. CAA-2** at least in one English Newspaper and in at least one vernacular language newspaper. it shall indicate the time within which copies of the compromise or arrangement shall be made available to the concerned persons free of charge from the registered office of the company

- Such Newspaper shall be published on the website of the company at least 30 days before the date fixed for meeting, as directed by tribunal.
- In case of Listed Company, such notice and other documents shall also be published on the website of SEBI and stock exchange, where securities of the Company are listed.

## **7. Notice to Statutory:- Authorities**

A notice in **Form No CAA-3** along with Copy of Scheme of C&A, the explanatory statement and Disclosures mentioned in point No.5 above, shall also be sent to followings:

- The Central Government, The Registrar of Companies and The income-tax authorities, in all cases
- The Reserve Bank of India, the Securities and Exchange Board of India, the Competition Commission of India, and the stock exchanges, as may be applicable.
- Other Sectorial Regulators or authorities, as required by Tribunal.
- Notice shall be sent to the office of the authority after sending of notice to members or creditors of the Company by Registered post, or by Speed post, or by courier, or by hand delivery.

➤ **Representation by authority:**

- The authority desire to make any representation then shall sent to the tribunal within a period of 30 days from the date of receipt of such notice.
- Copy of such representation shall simultaneously be sent to the concerned companies
- In case of no representation within the 30 days then presumed that authority doesn't have any representation

**8. Voting:**

The persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot to the adoption of the compromise or arrangement within one month from the date of receipt of such notice.

**Right of Objections:**

Any objection to the compromise or arrangement shall be made only by:

- Persons holding not less than 10% (Ten Per cent). of the *shareholding* or
- Having *outstanding debt* amounting to not less than five per cent. of the total outstanding debt as per the latest audited financial statement

➤ **Other Conditions for C&A:**

**I. Copy of Compromise or arrangement to be furnished by the company:**

The Company on the requisition of the creditors or members entitled to attend meeting shall furnish a copy of scheme of C&A and copy of statement required to furnish in section 230(2)(c) with in one day of requisition.

The report of the result of the meeting shall be in **Form No. CAA.4** and shall state accurately

- The number of creditors or class of creditors or
- The number of members or class of members, as the case may be,
- who were present and
- who voted at the meeting either in person or by proxy, and
- Where applicable, who voted through electronic means, their individual values and the way they voted.

**IV. Report of the result of the meeting by Chairperson: –**

The Chairperson of the meeting shall, within the time fixed by the Tribunal, or where no time has been fixed, within 3 (Three) days after the conclusion of the meeting, submit a report to the Tribunal on the result of the meeting in **Form No. CAA.4**.

## **V. Binding of approval:**

- Where, at a meeting majority of persons representing three-fourths in value of the creditors, or class of creditors or members or class of members, as the case may be, voting in person or by proxy or by postal ballot, agree to any compromise or arrangement *AND* if such compromise or arrangement is sanctioned by the Tribunal by an order.
- The same shall be binding on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator and the contributories of the company.

## **THIRD STEP- Order of Tribunal**

After completion of the Voting and report of result of the meeting by the chairman to the tribunal next step will be confirmation of C&A form the Tribunal (NCLT).

## **VI. Petition for confirming compromise or arrangement :-**

- The Company shall, within 7 (seven) days of the filing of the report by the Chairperson, present a petition to the Tribunal in **Form No. CAA.5** for sanction of the scheme of compromise or arrangement. The petitioner will pray for the appropriate orders and directions from the Tribunal.
- **Right of Creditor to file the petition:** Where the company fails to present the petition for confirmation of the compromise or arrangement as aforesaid, it shall be open to any creditor or member as the case may be, with the leave of the Tribunal, to present the petition and the company shall be liable for the cost thereof.

## **VII. Notice of Hearing by Tribunal**

The Tribunal shall fix a date for the hearing of the petition.

- **Legal Responsibility of the Tribunal:** The notice of the hearing of the petition shall also be served by the Tribunal .



- To the Objectors or
- To Their Representatives under sub-section (4) of section 230 of the Act and
- To the Central Government and
- Other Authorities who have made representation under rule 8 and have desired to be heard in their representation.

➤ **Publication of the Notice:**

The notice of the hearing shall be advertised in the same newspaper in which the notice of the meeting was advertised or in such other newspaper as the Tribunal may direct, at least ten days before the date fixed for the hearing.

VIII. **Order by Tribunal :-**

Where the Tribunal sanctions the compromise or arrangement, the order shall be in **Form No. CAA. 6.**

The order shall include such directions in regard to any matter or such modifications in the compromise or arrangement as the Tribunal may think fit to make for the proper working of the compromise or arrangement.

➤ **Filing of Order of Tribunal:-**

- The order of the Tribunal shall be filed with the Registrar by the company within a period of thirty days of the receipt of the copy of order, or such other time as may be fixed by the Tribunal.

**Power of Tribunal**

- If the Tribunal is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273

<b>SCHEDULE OF FEES</b>				
<b>S. No.</b>	<b>Sections of the Companies Act, 2013</b>	<b>Rule Number</b>	<b>Nature of application or petition</b>	<b>Fees</b>
<b>1.</b>	Sub-section (1) of Section 230	3 (1)	Application for compromise arrangement and amalgamation.	Rs. 5,000/-
<b>2.</b>	Sub-section (2) of Section 235		Application by dissenting shareholders	Rs. 1,000/-
<b>3.</b>	Sub-section (2) of Section 238	29	Appeal against order of Registrar refusing to register any circular.	Rs. 2,000/-

The Companies  
(Compromises,  
Arrangements and  
Amalgamations) Rules,  
2016

CAA-1	Creditor Responsibility Statement	Rule 2(1)(c) & 4
CAA-2	Notice and Advertisement of notice of the meeting of creditors or members	Rule 6 & 7
CAA-3	Notice to Central Government, Regulatory Authorities	Rule 8
CAA-4	Report of result of meeting by chairperson	Rule 14
CAA-5	Petition to sanction compromise or arrangements	Rule 15(1)
CAA-6	Order on petition	Rule 17(3)
CAA-7	Order under Section 32	Rule 20
CAA-8	Statement to be filed with registrar of companies within 210 days from the end of each financial year	Rule 21
CAA-9	Notice of the scheme inviting objections or suggestions	Rule 25(1)
CAA-10	Declaration of solvency	Rule 25(2)
CAA-11	Notice of approval of the scheme of merger	Rule 25(4)
CAA-12	Confirmation order of scheme of merger or amalgamation between Ms .. And Ms...	Rule 25(5)
CAA-13	Application by the Central Government to the tribunal	Rule 25(6)
CAA-14	Notice to dissenting shareholders	Rule 26
CAA-15	Information to be furnished along with circular in relation to any scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company	Rule 28

Meaning of Arrangements	A reorganization of the company share capital by -consolidation of shares of different classes - division of shares into shares of different classes
Who can raise objection	Persons holding not less than 10% of the shareholding Persons having o/s debt amounting not less than 5%
Meaning of Majority of persons in a meeting held in pursuance of section 230(1)	Three fourths in value
How to ensure compliance of Accounting standards prescribed under section 133	A certificate by the company auditor
Time period for Order to be filed with the registrar	Within a period of 30 days
Circumstances for calling of a meeting of creditors or class of creditors	At least 90% value, agree and confirm, by way of affidavit to the scheme
In case of listed companies, takeover offer shall be as per the regulations framed by	The SEBI
Provisions apply to	The companies registered under this act The companies incorporated in the jurisdiction of such countries as may be notified from time to time by the Central Government
Whether the Central Government can amalgamate two or more companies	Yes, where it is essential in the public interest that two or more companies should amalgamate
Form for making an application under section 230(1)	NCLT-1
Whether Minor can be appointed as a proxy	No

# Companies (Registered valuers and Valuation) Rules, 2017

FORM A	Application for registration as a valuer by an individual	Rule 6(1)
FORM B	Application for registration as a valuer by a partnership entity	Rule 6(2)
FORM C	Certificate of registration	Rule 6(6)
FORM D	Application for recognition	Rule 13(1)
FORM E	Certificate of recognition valuers organization	Rule 13(5)

## The Companies (Removal of names of companies from the register of companies) Rules, 2016

STK-1	Notice by Registrar for removal of name of a company from the register of companies	Rule 3
STK-2	Application by company to ROC for removing its name of a company from the register of companies	Rule 3
STK-2	Application by company to ROC for removing the name from register of companies The application shall be signed by a director duly authorised by the board Certify the CA, Cs and CA in whole time practice	Rule 4(1)
STK-3	Indemnity Bond	Rule 4(3)
STK-4	Affidavit	Rule 4(3)
STK-5	Public Notice	Rule 7
STK-5A	Public Notice	Rule 7(1)
STK-6	Public Notice	Rule 7
STK-7	Notice of striking off and dissolution	Rule 9
STK-8	Statement of account	Rule 4(3)(ii)



<p><b>Circumstances when The registrar shall send a notice to the company and all directors of the company</b></p>	<p><b>A company has failed to commence its business within one year of its corporation</b>  <b>A company is not carrying on any business or operation</b>  <b>The subscribers to the memorandum have not paid the subscription</b></p>
<p>How Can a company suo moto file an application to the registrar for removing its name</p>	<p>By passing a special resolution after extinguishing all its liabilities  By obtaining consent of 75% members in terms of paid up share capital</p>
<p>Order of the registrar, notifying a company as dissolved under section 248 may be filed</p>	<p>Within a period of 3 years from the date of the order of the registrar</p>
<p>Maximum time available to file an application before the tribunal by a company</p>	<p>Before the expiry of 20 years from the publication in the official gazette of the notice under section 248(5)</p>
<p>The registrar of companies may remove the name of a company from the register of companies in terms of section 248</p>	<p>Listed companies  Companies that have been delisted due to non-compliance  Companies where inspection or investigation is ordered and being carried out or actions</p>
<p>Fee paid while making an application for removal of name of the company</p>	<p>Rs 5000</p>
<p>If the persons is a foreign national or non resident indian, the indemnity bond,&amp; declaration shall be</p>	<p>Notarised, Appostilised &amp; Consularised</p>
<p>Manner of publication of notice under section 248(1) or (2)</p>	<p>Be published in english language in a leading english newspaper and at least once in vernacular language</p>

**Punishment  
(Section 447 to  
453)**

Offence	Punishment
<p>Section 447 Amount of Fraud Rs.10 lakhs or more or 1% of turnover whichever is less</p> <p>In case Public Interest is involved</p>	<p>Fine: Min Fine:Amount of Fraud Max Fine:3 times the amount of fraud and Imprisonment: 6 months to 10 years.</p> <p>Fine: Min Fine: Amount of Fraud Max Fine:3 times the amount of fraud and Imprisonment:3 years to 10 years</p>
<p>Amount of Fraud less than Rs.10 lakhs or 1% of turnover whichever is less and does not involve public interest</p>	<p>Fine:Upto Rs.50 Lakhs or Imprisonment upto 5 years</p>

Offence	Punishment
Section 449 Punishment for false evidence	Shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and fine which may extend to ten lakh rupees
Section 451 Punishment in case of repeated default within a period of three years	Shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence
Section 450 Punishment where no specific penalty or punishment is provided	Shall be punishable with fine which may extend to ten thousand rupees. In case of a continuing contravention, Rs.1000 for every day after the first day.
Section 452 Punishment for wrongful withholding of property	Shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees. To return the property or to undergo imprisonment which may extend to two years
Section 453 Punishment for improper use of limited or Private	Shall be punishable with fine which shall not less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used

# NCLT AND NCLAT (SECTIONS 407 434)

## NCLAT

NCLAT-9	REGISTER SHALL BE MAINTAINED IN REGARD TO SPECIAL LEAVE PETITIONS OR APPEALS AGAINST THE ORDERS OF THE APPELLATE TRIBUNAL TO THE SUPREME COURT
NCLAT-8	WITNESS DISCHARGED BY THE APPELLATE TRIBUNAL MAY BE GRANTED A CERTIFICATE IN
NCLAT-7	THE DEPOSITION OF A WITNESS SHALL BE RECORDED IN WHICH FORM
NCLAT-6	THE APPELLATE TRIBUNAL MAY, SUO MOTU, ISSUE SUMMONS FOR PRODUCTIONS OF PEOPLE DOCUMENT OR OTHER DOCUMENTS IN THE CUSTODY OF A PUBLIC OFFICER
NCLAT-3	APPLICATION FOR INSPECTION OF RECORD
NCLAT-2	EVERY INTERLOCUTORY APPLICATION FOR STAY, DIRECTION, CONDONATION OF DELAY, EXEMPTION FROM PRODUCTION OF COPY OF ORDER APPEALED AGAINST OR EXTENSION
NCLAT-1	APPEAL SHALL BE PRESENTED BEFORE THE NCLAT

# NCLT

Form	Particulars
NCLT-16	Recording The deposition of a witness
NCLT-10	An authorised representative desirous of registering his intern shall make a petition or an application to the registrar
NCLT-12	The authorised representative shall make an appearance through the filing of Vakalatnama or memorandum of appearance
NCLT-8	For Execution of order passed by the tribunal, the holder of an order shall make an application to the tribunal
NCLT-9	Any member has requested the company for inspection of minute book of general meeting on payment of requisite fee and the company refuse to give such inspection
NCLT-7	Every affidavit to be filed before the tribunal
NCLT-3A	Form for Any application, petition or reference required to be advertised, unless the tribunal otherwise orders, or these rules otherwise provide
NCLT-6	Affidavit to Every petition or application including interlocutory application
NCLT-5	Notice to be issued by the tribunal to the opposite party

# NCLT

Forms	Particulars
NCLT-3	Attachments of interlocutory application
NCLT-1	Every petition or application or reference including interlocutory application
NCLT-2	Attachments to petition or application or reference
NCLT-4	The general heading in all proceedings before the tribunal, in all advertisement and notices
NCLT-3C	The lodging of caveat

## NCLT

President Qualification	<p>It means the president of the tribunal</p> <p>He shall be a person who is or has been a judge of a high court for five years</p> <p>Hold office as such for a term of 5 years</p> <p>Shall hold office as such until the attains the age of 67 years and other member attain age of 65 years</p>
The Central Government	Shall constitute the National company law tribunal
Judicial Member	<ol style="list-style-type: none"> <li>1. A judge of a high court</li> <li>2. A district judge for at least five years</li> <li>3. At least 10 years been an advocate of a court</li> </ol>
Technical member	<ol style="list-style-type: none"> <li>1. Proven ability, integrity and standing having special knowledge and experience of not less than 15 years</li> <li>2. In law, industrial finance, industrial reconstruction, industrial management or administration</li> <li>3. Investment, accountancy, labour matters or such other disciplines related to management, conduct of affairs, revival</li> </ol>
No of members	Not exceeding 11
Eligible criteria of age	50 years and above



# NCLT

Principal bench of tribunal	At New Delhi
Decision	If the members of a bench differ in opinion on any point, it shall be decided according to the majority
Amendment	Within 2 years from the date of the order
Appeal	The appellate tribunal
Days	Within a period of 45 days
Not file appeal before the AT	Within a further period not exceeding 45 days
Time for disposal of such application or petition or appeal	Within three months from the date of its presentation
In case Petition or appeal is not disposed of within the period of three months extension can be granted for a period of	Not exceeding 90 days

# NCLT

Place of service of order in case of an order against a company	The registered office of the company is situated
Place of service of an order In case of an order against a person	Where the persons concerned voluntarily resides, carries on business and personally works for gain
The President/Chairperson ,Members officers and the Employees of the Tribunal/Appellate Tribunal are deemed to be	Public servants within the meaning of section 21 of the indian penal code
A party to any proceeding or appeal before the tribunal	As the case may be, may either appear in person or authorize one or more CA, CS and Cost accountants
Provision of Limitation act, 1963	Apply to proceedings or appeals
Sitting hours	From 10:30 am to 1:00 pm and 2:00pm to 4:30 pm subject to any order made by the president
Office shall remain open	On the day of main indian festivals like Holi, Diwali, Eid, Christmas.
Working hours	It shall remain open on all working days from 9:30 am to 6:00 pm
Filing counter of the registry open time	From 10:30 am to 5:00 pm

# NCLT

Authority to decide the calendar of days of working of the Tribunal	President of the tribunal
Language and date on the appeal or petition or application or caveat petition or objection	English or a translated copy in case in Hindi or other regional language Gregorian calendar or corresponding date as per Gregorian Calendar in case Saka or other dates are used
Number of copies the appellant or petitioner	3 copies and shall Deliver one copy to each of the opposite party
Preservation of All necessary documents and records	For a period of a 5 years
The record of the petitions or applications and decisions passed	Shall be maintained by registry for a period of 15 years after the passing of the final order
The documents shall be marked	By the appellant or petitioner side as A series, by the respondent side as B series and the tribunal exhibits as C series
Witness called by the applicant numbered as	PWs
Witness called by the respondent numbered as	RWs
The certified copy of the order passed	Form INC-28

# NCLAT

<b>Headed by a Chairperson</b>	<b>Shall hold office for a term 5 years and till completion of age of 70 years Eligible for re-appointment for another term of 5 years and age of 67 years</b>
Appeal against any order Days In case appeal Not filed before the supreme court	To the supreme court Within a period 60 days Within a further period not exceeding 60 days
NCLAT Shall not while disposing of any proceeding before it	As the case may be, an appeal before it, be bound by the procedure laid down in The code of civil procedure, 1908
In case of an order against a company	At The registered office of the company is situated
In case of an order against a person	Where The persons concerned voluntarily resides, carries on business and personally works for gain

# NCLAT

<b>Headed by a Chairperson</b>	<b>Shall hold office for a term 5 years and till completion of age of 70 years Eligible for re-appointment for another term of 5 years and age of 67 years</b>
Appeal against any order Days In case appeal Not filed before the supreme court	To the supreme court Within a period 60 days Within a further period not exceeding 60 days
NCLAT Shall not while disposing of any proceeding before it	As the case may be, an appeal before it, be bound by the procedure laid down in The code of civil procedure, 1908
In case of an order against a company	At The registered office of the company is situated
In case of an order against a person	Where The persons concerned voluntarily resides, carries on business and personally works for gain

# NCLAT

<b>A party to any proceeding or appeal before the appellate tribunal</b>	<b>As the case may be, may either appear in person or authorize one or more CA, CS and Cost accountants</b>
Provision of Limitation act, 1963	Apply to proceedings or appeals
Custody of records	The registrar
Holds its sitting	New Delhi
Sitting hours	Ordinarily from 09:30am to 01:00 pm and from 02:15 pm to 05:00 pm
Office shall remain open	09:30 am to 6:00 pm
Filing counter of registry	10:30 am to 05:00 pm
Decision regarding calendar of days	The chairperson of the appellate tribunal
All urgent matters filed before 12 noon shall be listed	On the following working days

# NCLAT

Language of the appeal	English or its English Translation in case it is in some other indian language
Number of copies	One authenticated copy
Registers shall be maintained and posted on a day to day basis	Register of appeals, Register of unnumbered appeals and & Register of interlocutory applications
Records shall be ordered to be destroyed by the registrar or deputy registrar after	Six years from the final conclusion of the proceedings after obtaining prior order of the chairperson
Process fee shall be deposited	By way of demand draft or Postal order favouring the Pay and accounts office, Ministry of office corporate affairs , payable at new delhi
Proof of engagement by the professionals like CAs or CS or CWA shall be submitted in NCLAT in the form of	Memorandum of appearance

# Special courts (Sections 435 to 446)

Powers to establish special courts	The Central Government
Person conducting a prosecution before a special court shall be deemed to be	A public prosecutor
Every offence under the companies act, 2013 except the offence referred to in section 212(6) shall be deemed to be	Non-cognizable. Note: Cognizable Offences are covered in Section 447 covering a fraud of Rs. 10 Lakhs or 1% turnover .
Punishment for Any officer failing to comply with any order	Six months, or with fine not exceeding one lakh rupees, or with both Shall not be compoundable
The Central Govt. may appoint one or more persons for Conduct of prosecutions arising out of this Act	Company prosecutors
Provisions of section 250 of code of criminal procedure,1973 shall apply mutatis mutandis to	The special court and The court of session



<p>The panel of mediator or conciliator prepared by Shall be placed on the website of Application for empanelment in form</p> <p>Updation of panel</p>	<p>Regional director The ministry of corporate affairs MDC-1.Applications to be invited in February. 1<sup>st</sup> April of every year</p>
<p>Qualifications to be empanelled as mediator or conciliator if he</p>	<p>Judge of the Supreme Court,High Court or District and Sessions Judge</p>
<p>Shall not be disqualified from being empanelled as mediator or conciliator if he</p>	<p>Is a discharged insolvent or has applied to be adjudicated as an insolvent and his application in pending</p>
<p>Duty of Disclosure about any circumstances which might impact his impartiality or independence</p>	<p>The Central Government, The tribunal and The appellate tribunal</p>
<p>The mediator or conciliator</p>	<p>Shall not be bound by the Indian evidence act, 1872 or code of civil procedure, 1908</p>

# Chapter-XX Winding up of the Companies

Section 271:Grounds for winding up of a Company	<ol style="list-style-type: none"><li>1) Company has passed special resolution</li><li>2) Company has acted against the interest of the sovereignty and integrity of India , decency ,morality etc</li><li>3) If on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or there was a fraud in formation/management of the company</li></ol>
Section 272:Petition for Winding up of a company	<ol style="list-style-type: none"><li>1) The Company</li><li>2)The contributory</li><li>3)The Registrar</li><li>4)Any person authorized by Central Govt.</li></ol>
Section 274:Penal provision against the director/officer in case of failure to complete accounts and audit	Punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than Rs. 25000 but which may extend to Rs. 5 lakh or with both
Section 275:Who may be Appointed as the	The Insolvency professionals

<p><b>Section 277: Intimation of Passing of winding up order or appointment of provisional liquidator</b></p>	<p><b>Within a Period not exceeding 7 days</b></p>
<p>Section 277: Within three weeks from the date of passing of winding up order, Company liquidator shall make an application to the tribunal for</p>	<p>Constitution of a Winding up committee and monitor the progress of liquidation</p>
<p>Section 277: Composition of Persons in Winding up Committee</p>	<ol style="list-style-type: none"> <li>1) Official liquidator attached to the Tribunal</li> <li>2) Nominee of secured creditors</li> <li>3) A professional nominated by the Tribunal</li> </ol>
<p>Section 278: Order for the winding up of a company shall operate in Favour of</p>	<p>All the creditors and All contributories as if made on their joint petition</p>
<p>Section 279: Effect of passing of order of winding up or appointment of a provisional liquidator</p>	<ol style="list-style-type: none"> <li>1) No suit or Other legal proceeding shall be commenced</li> <li>2) If Other legal proceedings are pending at the date of the winding up order, it can be proceeded with, by or against the company only with the leave of the tribunal.</li> <li>3) No effect on the proceeding pending in Appeal before the Supreme court or a High court</li> </ol>

<b>Pari Passu chart of creditor and security</b> <b>Security    Workmen dues    Secured Creditors</b> <b>Rs. 100000    Rs. 100000    Rs. 300000</b> <b>Aggregate amount Rs. 400000</b>	<b>Workmen portion is One Fourth the value of the security</b>
<b>Order of payment of dues under section 327(1)</b>	<ol style="list-style-type: none"> <li>1) Revenue and taxes due from Central Government/state Government and payable within the 12 months</li> <li>2) All wages and salary payable within a period not exceeding 4 months within the 12 months</li> <li>3) All accrued holiday remuneration becoming payable</li> <li>4) Amount due on death or disablement of any employee</li> <li>5) Provident fund and Pension fund due</li> <li>6) Expenses of investigation</li> </ol>
<b>Section 329:Transfer of property, movable or immovable or any other delivery not made in the ordinary course of its business or in favour of purchaser not to have affect</b>	<b>Void against the company Liquidator</b>

Section 334:In case of Winding up by the Tribunal, any disposition of the property including actionable claims after the commencement of winding up shall be	Void
Section 335:Where any company is being wound up by the Tribunal, any attachment, distress or execution put in force shall be	Void
Section 337:Every officer of a company who is found guilty of transfer of documents or alienation of property shall be	Imprisonment one year to 3 years and fine 1 lakh to 3 lakh
Section 344:Where a company is wounding up, every invoice, order, business letter etc shall contain a statement that	The company is wounding up
Penal provision, if a company contravenes of section 344(1)-To company, officer and liquidator	He shall be punishable with fine which shall not be less than Rs. 50000 rupees but which may extend to Rs. 3 lakh rupees
Winding up of a company by the Tribunal under the Companies Act, 2013 shall be deemed to commence	At the time of the presentation of the petition for the winding up

Section 359:Appointment of Official liquidator made by	The Central Government
Section 361:The Central Government may order for winding up of company by summary procedure in case	The company has assets of book value not exceeding Rs. 1 crore
Section 362:The official Liquidator shall expeditiously dispose of all assets	Within 60 days of his appointment
Section 362:The official liquidator shall serve a notice to the debtors/contributories to deposit the amount due	Within 30 days
Section 363:Time available with a creditor aggrieved by the decision of the official liquidator under section 363 to file an appeal before the Central Government	Within 30 days of such decision

Winding Up/ Liquidation process under the Companies Act, 2013 vis-à-vis  
Insolvency And Bankruptcy Code, 2016

A firm (for convenience sake called “**CD**”) regularly supplies certain raw materials to a partnership firm (for convenience sake called “**QR**”) carrying out its business of manufacturing geysers. After 6 months of regular supply of goods, **QR** fails to clear the outstanding dues of “**CD**” amounting to principal amount of Rs.1,25,00/- with interest accrued thereon.

An individual (for convenience sake called “**XY**”) lends his fleet of trucks to a Company (for convenience sake called “**AB**”) used for transporting goods to and fro from the factory of **AB**; despite repeated demands **AB** fails to pay to **XY** the accumulating dues of Rs.3,50,000/- payable for the fleet of trucks lent to **AB** with interest accrued thereon.

In both the cases, **CD** and **XY** are advised to initiate winding up process of **QR** and **AB**. What does it mean? What does it entail? What are the implications? Will **CD** and **XY** get their dues back? Keeping the amended provisions of the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016 in mind, let’s examine and understand the current scenario relating to dues of **CD** and **XY**.

First, let us understand what winding up means. Earlier, neither the Companies Act, 1956 nor the Companies Act (Second Amendment) Act 2002 defined the term “winding up”. Under the Halsburys Laws of England, winding-up is defined as a proceeding by means of which the dissolution of a company is brought about and in the course of which its assets are collected and realized: and applied in payment of its debts; and when these are satisfied, the remaining amount is applied for returning to its members the sums which they have contributed to the company in accordance with Articles of the Company. In the Indian context, definition of “winding up” was introduced by the Indian Companies Act, 2013 whereby Section 2(94A) was inserted which stated that it means “winding up under this Act or liquidation under the Insolvency And Bankruptcy Code, 2016, as applicable”.



In simple terms, winding up is a legal process by which the life of a company is brought to an end by taking over the reins of management of the Company from the Board of Directors of the Company, selling off its assets and the money realized from such sale is then used for clearing off its debts and the surplus amount, if any, is then distributed amongst the members of the Company.

It is also important to understand that winding up of the Company does not result in ending “the legal existence” of the Company i.e. despite winding up process initiated against the company, it continues to exist as a “legal corporate entity” – in as much as its name continues to remain on the Register of Companies. This legal existence comes to an end only when the Court orders dissolution of the Company – which is initiated post completion of winding up process. The effect of such an order of dissolution is that the affairs of the Company come to a halt and no business can be conducted in its name and its name is struck off the Register of Companies – thus bringing an end to the “legal corporate entity”.

In the year 2016, the Insolvency And Bankruptcy Code, 2016 (referred to as “**the Code**”) came into effect by which the Parliament sought to consolidate a single law for insolvency and bankruptcy in India. The Code basically provides for a mechanism, within a time-bound manner, to deal with and resolve the non-payment of debt to various debtors in a time bound manner by utilizing the value earned from the sale of its assets, at the same time balancing the interest of all the stakeholders.

With the coming into effect of the Code, it brought about certain changes in the laws relating to winding up of Companies:-

(i) Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) was repealed – this Act applied only to Industrial Companies whereas the amendments introduced by the Code brought all kinds of Companies, partnership firms, proprietorship firms within its fold.

(ii) It completely over-hauled the winding-up provisions under the Indian Companies Act, 2013 such as:

(1) Section 270 which dealt with modes of winding up was deleted;

(2) Section 271 of the Act was amended to exclude the term “unable to pay its debts” as a ground available and specified following 5 grounds available, for persons authorized by Section 272, to invoke the winding up jurisdiction of the National Company Law Tribunal (“NCLT” for short) under the Companies Act:

- Company by special resolution resolves that it be wound up by the Tribunal – Petition by the Company;
- If the Company has acted against the interest of the sovereignty and integrity of the Country, security of the state, friendly relations with foreign states, public order, decency or morality – Petition by the Registrar, Central Government or State Government;
- an application whereupon the Tribunal comes to a conclusion that the affairs of the Company are being conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purposes or that the concerned in the formation or management of its affairs have been guilty of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that its proper that the Company be wound up – Petition by Registrar or any person authorised by the Central Government;
- If the Company has defaulted in filing its financial statements or annual returns with the Registrar for immediately preceding 5 consecutive financial years – the Registrar
- If the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

(3) Section 304 and related sections (304-323) which dealt with voluntary winding-up were deleted.

Thus post the amendments, no creditor of a Company is entitled to invoke the winding up power of the NCLT provided under the Companies Act, 2013. Hence **CD** and **XY**, who are creditors, are out of the purview of the Companies Act, but have the option to invoke provisions under the Code to initiate **Corporate Insolvency Resolution Process** (“**CIRP**” for short) – a recovery mechanism created for the Creditors whereby defaulting debtor is assessed whether it is capable or not of repaying its debt, failing which the debtor is either restructured or else liquidated and finally dissolved.

Part II of the Code brings all kinds of Companies, partnership firms, proprietorship firms, or any other person incorporated with limited liability under any law, who have defaulted to pay their debt, within its fold – minimum amount of debt payable being Rs.1 Lakh. A combined reading of definition of the words “Corporate debtor”, “Corporate person” and “person” under Sections 3(8), Section 3(7) and 3(23) of the Code makes it clear that apart from a Company registered under the Companies Act, the Code also applies to an individual, a Hindu Undivided Family, a trust, a partnership, a limited liability partnership and any other entity established under a statute.

A creditor, i.e. a person to whom a debt is owed, can invoke provisions contained in Part II Chapter II of the Code. Such a creditor is broadly classified into 2 categories:

- (a) a “Financial Creditor” – a person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to [Section 5(7)] – banks and financial institutions come within its ambit;
- Recently a 3 judge bench of Supreme Court in the matter of *Pioneer Urban Land and Infrastructure Limited & Ors. Vs Union Of India & Ors*[\[1\]](#) upheld the constitutional validity of amendments made to the Code whereby the allottees of real estate projects were deemed to be “financial creditors” so that they can invoke the provisions of Section 7 of the Code against any real estate developer.

(b) an “Operational Creditor” – a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred [Section 5(20)]; Section 5(21) further clarifies that any debt arising out of operation of the Company/ Corporate Debtor – such as goods and services provided to the Company, dues of employees or any amount due and payable to the government – come within the purview of an “operational debt”.

Under Section 6 of the Code, a financial creditor and an operational creditor can file an application before the NCLT seeking initiation of CIRP. The process to be followed in respect of a financial creditor and an operational creditor are different and are specified under Section 7 and 8-9 respectively.

Before we proceed further, it is relevant to state that the constitutional validity of various provisions of the Code, including that of Section 7, 21 and 24 of the Code, were challenged before the Supreme Court in the matter of **Swiss Ribbons Pvt. Ltd. & Ors. Vs Union of India & Ors.**<sup>[2]</sup> The Supreme Court while upholding the validity of distinction drawn by the Code between financial creditors and operational creditors, relied upon the distinction between the 2 classes of creditors and held that “*most financial creditors, particularly banks and financial institutions, were secured creditors whereas most operational creditors were unsecured, payments for goods and services as well as payments to workers not being secured by mortgaged documents and like... Financial creditors generally lend finance on a term loan or for working capital that enabled corporate debtor to either set up and/or operate its business. On other hand, contracts with operational creditors were relatable to supply of goods and services in operation of business. Financial contracts generally involve large sums of money. By way of contrast, operational contracts had dues whose quantum was generally less. In running of a business, operational creditors can be many as opposed to financial creditors, who lend finance for the set up or working of business. Also, financial creditors had specified repayment schedules, and defaults entitled financial creditors to recall a loan in totality. Contracts with operational creditors did not have any such stipulations.*”

In the present case, our very own **CD** and **XY** fall in the category of Operational Creditors and thus steps to be followed, as prescribed under the Code are as under:

**A. Issuance of Demand Notice:** Operational Creditor to issue and deliver a demand Notice [Form 3 – Rule 5 of the Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 – “**Rules**” for short][\[3\]](#) to the debtor demanding payment of the unpaid debt

- Accompanied by a copy of the invoice;
- Demand notice to be delivered at the registered office
- by hand, or
- registered post or
- speed post AD or
- by electronic mail addressed to whole time director or designated partner or key managerial personnel of the debtor

B. Within 10 days of receipt of demand notice, the debtor is required to bring to the notice of the Operational Creditor of the debt being disputed or of the amount paid with proof of same;

**C. Filing of Application before NCLT:** After expiry of 10 days from the date of delivery of demand notice, if payment is not received, Operational Creditor to file application under Section 9 of the Code (prescribed Form 5 – Rule No.6) before NCLT for initiating CIRP alongwith a proposal for appointment of Interim Resolution Professional, if required, accompanied by following documents and keeping following points in mind

- Annex. I – Copy of the invoice / demand notice as in Form 3 served on the corporate debtor;
- Annex. II – Copies of all documents referred to in this application.
- Annex. III – Copy of the relevant accounts from the banks/financial institutions maintaining accounts of the operational creditor confirming that there is no payment of the relevant unpaid operational debt by the operational debtor, if available.
- Annex. IV – Affidavit in support of the application
- Annex. V – Written consent from the proposed insolvency professional in prescribed Form 2 (Rule No.9) (Wherever applicable) [may or may not be suggested by the Operational Creditor];
- Annex. V – Proof that the specified application fee has been paid.
- Application to be filed alongwith a Certificate confirming eligibility of the proposed insolvency professional for appointment as a resolution professional (Rule No.9);
- Application and accompanying documents to be filed in electronic form (Rule No.10);
- An advance copy of the application filed before NCLT is required to be sent by registered post or speed post to the debtor at its registered office (Rule 6).

**D. NCLT Order On Application:** Within 14 days of receipt of the application, NCLT is required to pass an order admitting or rejecting the application.

- If admitted, a moratorium is declared prohibiting various acts by or against the debtor (Sections 13-14 of the Code). It shall also appoint an interim resolution professional [Section 16 R/w Section 16(3) of the Code – in office till the Committee of Creditors appoint a resolution professional under Section 22(2) of the Code], who replaces the Board of Directors and takes over the administrative reins of the corporate debtor (Section 17 of the Code) and also perform, amongst others, following duties:
- Make a public announcement about the CIRP in respect of the debtor concerned alongwith inviting submission of claims against the said Corporate Debtor, and thereafter collate all claims submitted by various creditors (under Section 15 of the Code); [It is here that CD and XY will step in and submit their claims against QR and AB alongwith supporting documents]
  - Constitute a Committee of Creditors (Section 18(1)(c) and 21 of the Code) consisting of all the financial creditors of the Corporate Debtor.
  - Monitor, manage, take control and custody of the assets of the Corporate Debtor and manage its operations as a going concern till the Committee of Creditors appoints a Resolution Professional.



**E. Appointment of Resolution Professional:** Within 7 days of constitution, the Committee of Creditors by majority vote (not less than 66% of voting share) are required to either confirm the interim resolution professional as a “Resolution Professional” or appoint a fresh “Resolution Professional” who then takes over the reins of the Corporate debtor from the interim resolution professional and conduct the entire CIRP as well as manage the operations of the debtor during such period;

**F. Preparation of Resolution Plan:** The resolution applicant, appointed by the Resolution Professional, prepares a resolution plan (Section 25(2)(h) of the Code) – which covers the management of affairs of the Corporate Debtor post approval of the resolution plan alongwith provision for payment of insolvency resolution process costs in priority to other debts of the corporate debtor as well as payment of debts of operational debtors (Section 30(2)(b) of the Code);

- National Company Law Appellate Tribunal in the matter of *Binani Industries Ltd. & Ors. Vs Bank of Baroda & Ors.*,<sup>[4]</sup> held that a resolution plan is not a sale of the debtor, nor a plan for recovery of dues of the creditor or a plan for liquidation of the debtor (which brings the life of the Corporate to an end) but infact is a plan to rescue a failing but a viable business as a going concern and should aim to maximize the value of assets of the ‘Corporate Debtor’, and should promote entrepreneurship, availability of credit, and balance the interests of all the stakeholders. With regard to the dues of the Operational Creditors, the Appellate Tribunal was of the opinion that the liabilities of all creditors who are not part of committee of creditors must also be met in the resolution plan – although the financial creditors can modify the terms of existing liabilities and take their dues in future, the Operational creditors cannot take the risk of postponing payment for better future prospects and need to be paid immediately – as the Operational Creditors need to provide goods and services. If they are not treated well or discriminated, they will not provide goods and services on credit and thus the objective of promoting availability of credit will be defeated [<sup>@</sup>para 17(3)(e)].

**G. Approval of Resolution Plan by COC** – to be accepted by atleast 66% of voting share of the financial creditors, the Committee of Creditors;

**H. Approval of Resolution Plan by NCLT** – After approval by the Committee of Creditors, NCLT may either approve or reject the Resolution plan, which shall be binding on the corporate debtor and its employees, members, creditors, as well.

**I. Liquidation Process:** In the event

- no resolution plan is presented for approval within the time period prescribed for completion of CIRP, or
- if the resolution plan is rejected by NCLT, or
- if the COC recommends liquidation of debtor, or
- if the Corporation debtor contravenes the resolution plan, or

its mandatory for NCLT to order liquidation of the debtor (Under Chapter III of the Code – Section 33).

**J. Appointment of Liquidator:** Thereafter NCLT appoints a liquidator (Section 34 of the Code) who is required to verify and consolidate claims of all creditors (Section 38 of the Code), to take into its custody all assets of the debtor and settle claims of all the creditors and distribute the proceeds in the order of preference specified under Section 53 of the Code (Section 35 of the Code).

Post initiation of Liquidation process, **CD** and **XY** will be required to submit their claims to the Liquidator alongwith all proof in support of the same.

**K. Distribution of Assets** – Secured Creditor can realize its dues either in full or in part from the security in its favour (Section 52 of the Code). Rest of the creditors will receive their dues in the order of preference as stated in Section 53 of the Code.

(a) the insolvency resolution process costs and the liquidation costs to be paid in full;

(b) the following debts shall rank equally between and among the following:—

- workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and
- debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) following dues shall rank equally between and among the following:—

- any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;
- debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be

Thus in the case of **CD** and **XY**, who fall in the category of Operational Creditors – unsecured creditors – their dues will be ranked 4<sup>th</sup> in line and will be paid from the sale proceeds of assets of the debtor, after the dues of workmen, secured creditors, and wages and unpaid dues of employees are paid off.

**L. Dissolution of Corporate Debtor:** Once the assets have been completely liquidated, NCLT, upon application by the Liquidator, shall order dissolution of the debtor from the date of the said order. Within 7 days, copy of said order shall be sent to the authority with which the debtor is registered for appropriate action (Section 54 of the Code).

Thus bringing an end to the entire process and resolution of a debt ridden corporate debtor.

**Author:** Meenakshi Ogra Mukherjee a Principal Associate in Litigation, at [Khurana & Khurana, Advocates and IP Attorneys](#). In case of any queries please contact/write back to us at [litigation@khuranaandkhurana.com](mailto:litigation@khuranaandkhurana.com).

# Chapter-XX Winding up of the Companies

<b>Section 271:Grounds for winding up of a Company</b>	<ol style="list-style-type: none"><li>1) Company has passed special resolution</li><li>2) Company has acted against the interest of the sovereignty and integrity of India , decency ,morality etc</li><li>3) If on an application made by the Registrar or any other person authorised by the Central Government by notification under this Act, the tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or there was a fraud in formation/management of the company</li><li>4) Default in filing financial statements for 5 consecutive FY.</li><li>5) Just and Equitable</li></ol>
<b>Section 272:Petition for Winding up of a company</b>	<ol style="list-style-type: none"><li>1) The Company</li><li>2)The contributory</li><li>3)The Registrar</li><li>4)Any person authorized by Central Govt.</li><li>5)Central Govt. or state Govt. when company acting against national interest.</li></ol>
<b>Section 274:Penal provision against the director/officer in case of failure to complete accounts and audit</b>	Punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than Rs. 25000 but which may extend to Rs. 5 lakh or with both
<b>Section 275:Who may be Appointed as the provisional Liquidator</b>	The Insolvency professionals

<p><b>Section 277: Intimation of Passing of winding up order or appointment of provisional liquidator by the Tribunal</b></p>	<p><b>Within a Period not exceeding 7 days to the company Liquidator or Provisional Liquidator and the Registrar</b></p>
<p>Section 277: Within three weeks from the date of passing of winding up order, Company liquidator shall make an application to the tribunal for</p>	<p>Constitution of a Winding up committee and monitor the progress of liquidation</p>
<p>Section 277: Composition of Persons in Winding up Committee</p>	<ol style="list-style-type: none"> <li>1) Official liquidator attached to the Tribunal</li> <li>2) Nominee of secured creditors</li> <li>3) A professional nominated by the Tribunal</li> </ol>
<p>Section 278: Order for the winding up of a company shall operate in Favour of</p>	<p>All the creditors and All contributories as if made on their joint petition</p>
<p>Section 279: Effect of passing of order of winding up or appointment of a provisional liquidator</p>	<ol style="list-style-type: none"> <li>1) No suit or Other legal proceeding shall be commenced</li> <li>2) If Other legal proceedings are pending at the date of the winding up order, it can be proceeded with, by or against the company only with the leave of the tribunal.</li> <li>3) No effect on the proceeding pending in Appeal before the Supreme court or a High court</li> </ol>

**Pari Passu chart of creditor and security**  
**Security    Workmen dues    Secured Creditors**  
**Rs. 100000    Rs. 100000    Rs. 300000**  
**Aggregate amount Rs. 400000**

**Workmen portion is One Fourth the value of the security**

Order of payment of dues under section 327(1)

- 1) Revenue and taxes due from Central Government/state Government and payable within the 12 months
- 2) All wages and salary payable within a period not exceeding 4 months within the 12 months
- 3) All accrued holiday remuneration becoming payable
- 4) Amount due on death or disablement of any employee
- 5) Provident fund and Pension fund due
- 6) Expenses of investigation

Section 329: Transfer of property, movable or immovable or any other delivery not made in the ordinary course of its business or in favour of purchaser not to have affect

Void against the company Liquidator

Section 334:In case of Winding up by the Tribunal, any disposition of the property including actionable claims after the commencement of winding up shall be	Void
Section 335:Where any company is being wound up by the Tribunal, any attachment, distress or execution put in force shall be	Void
Section 337:Every officer of a company who is found guilty of transfer of documents or alienation of property shall be	Imprisonment one year to 3 years and fine 1 lakh to 3 lakh
Section 344:Where a company is wounding up, every invoice, order, business letter etc shall contain a statement that	The company is wounding up
Penal provision, if a company contravenes of section 344(1)-To company, officer and liquidator	He shall be punishable with fine which shall not be less than Rs. 50000 rupees but which may extend to Rs. 3 lakh rupees
Winding up of a company by the Tribunal under the Companies Act, 2013 shall be deemed to commence	At the time of the presentation of the petition for the winding up



Section 359:Appointment of Official liquidator made by	The Central Government
Section 361:The Central Government may order for winding up of company by summary procedure in case	The company has assets of book value not exceeding Rs. 1 crore
Section 362:The official Liquidator shall expeditiously dispose of all assets	Within 60 days of his appointment
Section 362:The official liquidator shall serve a notice to the debtors/contributories to deposit the amount due	Within 30 days
Section 363:Time available with a creditor aggrieved by the decision of the official liquidator under section 363 to file an appeal before the Central Government	Within 30 days of such decision

# INDEX

S.NO	PARTICULARS	Personal Notes
1	Right of a secured creditor to file a winding up petition after such secured creditor has obtained a decree from the Debts Recovery Tribunal [DRT] and a recovery certificate based thereon	Yes
2	The person who may be the head of some other organizations cannot be roped and his/her Assets cannot be attached in exercising the powers under Sections 337 & 339 of the Companies Act, 2013.	Chapter XX

In a case dealing with companies defaulting a loan of Rs. 48 Crores including interest from Kotak Mahindra Bank, the question relating to the right of a secured creditor to file a winding up petition after such secured creditor has obtained a decree from the Debts Recovery Tribunal [DRT] and a recovery certificate based thereon arose before the bench of RF Nariman and Navin Sinha, JJ. On the issue, the bench said:

**“cases like the present one have to be decided by balancing the interest of creditors to whom money is owing, with a debtor company which will now go in the red since a winding up petition is admitted against it. It is not open for persons like the appellant to resist a winding up petition which is otherwise maintainable without there being any bona fide defence to the same.”**

The Court said that when it comes to a winding up proceeding under the Companies Act, 1956, since such a proceeding is not “for recovery of debts” due to banks, the bar to jurisdiction contained in Section 18 read with Section 34 of the Recovery of Debts Act would not apply to winding up proceedings under the Companies Act, 1956. It further added:

***“As a matter of fact, sub-paragraphs (i) and (iv) of paragraph 18 would show that proceedings before the DRT, and winding up proceedings under the Companies Act, 1956, can carry on in parallel streams. That is why paragraph 18(i) states that a Debts Recovery Tribunal, acting under the Recovery of Debts Act, would be entitled to order sale, and sell the properties of the debtor, even of a company in liquidation, but only after giving notice to the Official Liquidator, or to the Liquidator appointed by the Company Court, and after hearing him.”***

Citing Lord Atkin’s judgment in *Lissenden v. C.A.V. Bosch, Ltd.*, [1940] 1 All E.R. 425 at 436-437, where he said that *one has not lost one’s right to a second helping because one has taken the first*, the Court said that the Bank cannot be said to be blowing hot and cold in pursuing a remedy under the Recovery of Debts Act and a winding up proceeding under the Companies Act, 1956 simultaneously, in fact: **“When secured creditors like the respondent are driven from pillar to post to recover what is legitimately due to them, in attempting to avail of more than one remedy at the same time, they do not “blow hot and cold”, but they blow hot and hotter.”**

[Swaraj Infrastructure Pvt. Ltd. v. Kotak Mahindra Bank Ltd., [2019 SCC OnLine SC 92](#), decided on 29.01.2019]

## ***CASE STUDY***

**The person who may be the head of some other organizations cannot be roped and his/her Assets cannot be attached in exercising the powers under Sections 337 & 339 of the Companies Act, 2013.**

### **Fact of the case**

The Appellant K.V. Brahmaji Rao has preferred this Appeal under Section 421 of the Companies Act, 2013 against the order dated 31.01.2019 passed by National Company Law Tribunal, Mumbai Bench, at Mumbai in M.A. No. 406 of 2019 and M.A. No. 407 of 2019 in CP No. 277 of 2018. Whereby impleaded the Appellant in CP No. 277 of 2018 as Respondent No. 83 and passed the order of attachment of Appellant's Assets.

The Respondent herein had initiated petition against the persons who had been named as accused in the FIR dated 31.01.2018 and further on 15.02.2018 filed by Punjab National Bank (In Short 'PNB'). FIRs were registered against some known and unknown accused who had been alleged to be perpetration of the huge Financial Scam against the PNB. The Respondent ordered investigation into the affairs of 107 Companies and 7 LLPs under the provisions of the Companies Act, 2013 and LLP Act, 2008 and also sought to supplement the investigation by seeking indulgence of the Tribunal as per the provisions of Sections 221, 222, 241, 242 and 246 r/w Section 339 of the Companies Act, 2013.

- viii. Companies, which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- ix. Companies having charges which are pending for satisfaction; and
- x. Companies registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013.

# Removal of Name of Company

Section	What it contains
248	Power of Registrar-failed to commence business within one year, Co not carrying on any business for 2years and did not apply for dormant status , Subscribers do not pay subscription within 180 days, not found carrying business on physical verification. Company except section 8 company can also apply on any of the above grounds after extinguishing all its liabilities and passing a special resolution
249	Restrictions on making applications under Section 248-Change of name or shifting of Regd Office from one state to another,applied under Section 230 for CAA,disposal of assets held before cesser of trade etc.
250	Effect of company notified as dissolved-COI deemed to have cancelled except for realising the dues and payment of liab.
251	Fraudulent application for removal of name-Joint and several liab. Prosecution for fraud
252	Appeal to Tribunal-Within three years from the date of the order of the Registrar notifying a company as dissolved

## The Companies (Removal of names of companies from the register of companies) Rules, 2016

STK-1	Notice by Registrar for removal of name of a company from the register of companies	Rule 3
STK-2	Application by company to ROC for removing its name of a company from the register of companies	Rule 3
STK-2	Application by company to ROC for removing the name from register of companies The application shall be signed by a director duly authorised by the board Certify the CA, Cs and CA in whole time practice	Rule 4(1)
STK-3	Indemnity Bond	Rule 4(3)
STK-4	Affidavit	Rule 4(3)
STK-5	Public Notice	Rule 7
STK-5A	Public Notice	Rule 7(1)
STK-6	Public Notice	Rule 7
STK-7	Notice of striking off and dissolution	Rule 9
STK-8	Statement of account	Rule 4(3)(ii)

<p><b>Circumstances when The registrar shall send a notice to the company and all directors of the company</b></p>	<p>A company has failed to commence its business within one year of its corporation  A company is not carrying on any business or operation  The subscribers to the memorandum have not paid the subscription</p>
<p>How Can a company suo moto file an application to the registrar for removing its name</p>	<p>By passing a special resolution after extinguishing all its liabilities  By obtaining consent of 75% members in terms of paid up share capital</p>
<p>Appeal against Order of the registrar, notifying a company as dissolved under section 248 may be filed</p>	<p>Within a period of 3 years from the date of the order of the registrar</p>
<p>Maximum time available to file an application before the tribunal by a company</p>	<p>Before the expiry of 20 years from the publication in the official gazette of the notice under section 248(5)</p>
<p>The registrar of companies may remove the name of a company from the register of companies in terms of section 248</p>	<p>Listed companies  Companies that have been delisted due to non-compliance  Companies where inspection or investigation is ordered and being carried out or actions</p>
<p>Fee paid while making an application for removal of name of the company</p>	<p>Rs 5000</p>
<p>If the persons is a foreign national or non resident indian, the indemnity bond,&amp; declaration shall be</p>	<p>Notarised, Appostilised &amp; Consularised</p>
<p>Manner of publication of notice under section 248(1) or (2)</p>	<p>Be published in english language in a leading english newspaper and at least once in vernacular language</p>



# INDEX

S. N O	PARTICULARS		Personal Notes
	The Tribunal must give a reasonable opportunity of making representations and of being heard before passing an order, to the Registrar, the Company and all the persons concerned under Section 252 (1) of the Companies Act, 2013.		Chapter XVIII
	Section 248 of the Companies Act, 2013 in no manner will affect the powers of the Tribunal to wind up a company the name of which has been struck off from the register of companies. The question for consideration is that during the pendency of winding up petition the name of the company has been struck off under Section 248 of the Companies Act 2013. In such circumstances whether the NCLT can proceed with winding up petition or not?	Held yes	Chapter XVIII
	The documents placed by the Appellant company failed to prove that it was carrying on business or was in operation when its name was struck off.	See the accounts	Chapter XVIII
	A person other than member or creditor can also challenge the 'Striking' off the Company Name	Chapter XVIII	

# INDEX

CASE STUDY NO	ISSUES INVOLVED	RELATED SECTION	Personal Notes
	<ul style="list-style-type: none"><li>➤ Procedure regarding filing of appeal before National Company Law Tribunal (NCLT)?</li><li>➤ Grounds on which Registrar of Companies can remove the name of a company from Register of Companies.</li><li>➤ Categories of Companies which shall not be removed from the Register of Companies under the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.</li></ul>	248(1), 252	Chapter XVIII

## ***CASE STUDY - 1***

**The Tribunal must give a reasonable opportunity of making representations and of being heard before passing an order, to the Registrar, the Company and all the persons concerned under Section 252 (1) of the Companies Act, 2013.**

### **Fact of the case**

The name of the Company (Viking Ship Mangers Pvt. Ltd.) was struck off by ROC Mumbai from the Register of Companies. The Principal Commissioner of Income Tax-15, Mumbai (Respondent No. 2 herein) challenged the order of ROC before the NCLT, Mumbai bench (Tribunal) under Section 252 of the Companies Act, 2013. It is stated before the Tribunal that the Company has certain Financial transactions that have been entered into by the Company for the Assessment year 2011-12 and information regarding this were received from the office of ITO Income Tax Officer 15 (3) (2) Mumbai. However, no return of income has been filed. Therefore, notice under Section 148 of the IT Act, 1961 has been issued for Assessment year 2011-12 proposing to assess/ reassess the income. The Company has been struck off from the Register of Companies. Therefore, it is difficult to assess the defunct Company and it will cause huge loss of revenue to the Government of India. Hence, it was prayed that the name of the Company be restore in the Register of Companies.

The Authorized representative for the Registrar of Companies submitted before the Tribunal that they do not have any objection to restore the name of the Company in the Register of Companies. The NCLT, Mumbai Bench by the impugned order allowed the Appeal and directed to restore the name of the Company in the Register of Companies. However, before passing of impugned order no notice has been served on the Company, but the Company was arrayed as the Respondent.

Being aggrieved with this order, the Appellant Ex-Director and Majority Shareholder and Power of Attorney Holder of the Company has filed this Appeal. Appellant submitted that Section 252 (1) of the Companies Act, 2013, provides that before passing any order under this Section, the Tribunal must give a reasonable opportunity of making representations and of being heard to the Registrar, the Company and all the persons concerned. Rule 37 of the NCLT Rules, 2016 also provides that the Tribunal shall issue notice to the Respondent to show cause against the Application or Petition on date of hearing to be specified in the notice.

## **Issue**

The main contention of Appellant was: Whether the order given by the Tribunal of restoring the name of the company in Register of Companies is sustainable in Law, as it has been passed without giving any reasonable opportunity of making representations or of being heard to the Appellant?

## **Judgement**

The NCLAT held that without giving any opportunity of being heard, the order has been passed by the NCLT. Hence, the order is not sustainable in law. Therefore, it is set aside, and the matter is remitted back to the NCLT, Mumbai bench with the direction that after hearing the parties decide the said appeal under Section 252 of the Companies Act, 2013, as per law without influence by its earlier Order.

## ***CASE STUDY - 6***

**Section 248 of the Companies Act, 2013 in no manner will affect the powers of the Tribunal to wind up a company the name of which has been struck off from the register of companies. The question for consideration is that during the pendency of winding up petition the name of the company has been struck off under Section 248 of the Companies Act 2013. In such circumstances whether the NCLT can proceed with winding up petition or not?**

This appeal was filed by Late Smt. Mona Aggarwal (since deceased) through her legal heirs Mr. Vijay Kumar Aggarwal and other shareholders of the Respondent No. 1 company against the order dated 7.8.2019 passed by NCLT, New Delhi in Company Petition No. 1176/2016 thereby dismissing the petition with liberty to file fresh one as and when the company's name is revived.

### **Fact of the case**

Brief facts of this appeal are that on 22.11.2016, Appellants as shareholder of Respondent No.1 filed a petition before Hon'ble High Court of Delhi seeking winding up under the provisions of Section 433(c), (f) and (g) of the Companies Act, 1956

On 12.4.2017 the Hon'ble High Court as per notification Regd. No.D.L.-33004/99 dated 7.12.2016 issued by Ministry of Corporate Affairs transferred the said petition to NCLT Principal Bench, New Delhi. NCLT vide order dated 28.7.2017 directed the petition to be amended to refer to the relevant sections of the Companies Act, 2013. In compliance of the directions the petition was amended i.e. the petition treated as filed under Section 271 of the Companies Act, 2013. On 19.9.2017, NCLT issued notice on the petition for winding up of the Respondent No. 1 to the Respondents herein. During the pendency of the petition, ROC vide order dated 30.6.2017 exercising powers under subsection (5) of Section 248 of the Companies Act 2013 struck off the name of the Company from register of companies with effect from 7.6.2017. The Respondent No.2 filed an appeal before NCLT Delhi under Section 252 of the Companies Act, 2013 for revival of the Company which is pending for adjudication before the NCLT.

However, on 7.8.2019 NCLT rejected the petition for winding up with liberty to the petitioner (Appellants) to file a fresh one as and when the Respondent company is revived. Being aggrieved with this order the Appellants have filed this appeal. Appellant submitted that during the pendency of the petition before NCLT, the name of the company was struck off by the ROC under Section 248 of the Companies Act, 2013 for which an appeal under Section 252 of the Companies Act, 2013 for revival of the company is pending. However, the NCLT has rejected the company petition on the ground that the company's name has been struck off by the ROC and after revival the appellants herein are at liberty to file the petition.

## ***CASE STUDY - 14***

**The documents placed by the Appellant company failed to prove that it was carrying on business or was in operation when its name was struck off.**

### **Fact of the case**

The name of the appellant company was struck off by the Registrar of Companies, as the company had not been carrying on business or nor in operations for two immediately preceding years and the company had not obtained the status of dormant company under Section 455 of the Companies Act, 2013.

The Appellant filed the appeal before NCLT claiming that it had not been served with Notice under Section 248(1) of the Companies Act, 2013 and the Registrar of Companies (ROC) had proceeded to issue notice under Section 248(5) of the Companies Act, 2013 and the name of the appellant company was then struck off. The Appellant claimed that the company had been doing business and was in operation and audited financial statements for the year financial year 2012-13 to FY 2016-17 were filed.



The NCLT considered the case put up before it as well as the documents and came to the conclusion that the appellant company failed to prove that it was carrying on business or was in operation when its name was struck off and dismissed the appeal which was filed before it. Against the dismissal the present appeal has been filed and the same claim is put up by the Appellant referring to the documents which were filed before NCLT. The ROC filed reply before the NCLAT and affidavit of ROC claims that the Appellant company had not filed financial statements from the financial year ending 31.3.2004 till 31.3.2011. The balance sheet and annual return was filed for the year ending 31.3.2012 and thereafter again there was no filing and according to ROC, STK-1 notice was duly issued to company on 21.3. 2017 and the copy of the same has been filed. According to the ROC the Appellant did not respond to the notice and further steps to strike off the company were taken. Hence, later on public notice as per Section 248(5) was issued.

### **Issue**

- Whether the ROC had served Notice under Section 248(5) of the Companies Act, 2013 before proceeding towards striking off the name of the Appellant Company?
- Whether Appellant company was in business or operation when it was struck off?

## Judgement

The NCLAT held that there is no doubt, that the affidavit filed by the ROC attaching copy of the Notice dated 21.3.2017 as per STK 1 and the affidavit which claims that such notice was issued to the Appellant company as per the official records of the ROC. Apart from this the appeal filed before NCLT itself admitted that notice under Section 248 was published in the official gazette, copy of notice STK 5 also gave opportunity to the appellant to move the ROC if it was aggrieved by the proposed removal of the company name. After such notice the Appellant made no effort to move the ROC and put up its case that the Appellant was in business or in operation when the name was struck off. Thus, the contention that opportunity to the Appellant was not given is not accepted.

Regarding the merits of the claim that the Appellant was in business or in operation the documents filed before NCLAT include two income tax returns for the assessment years 2016-17 and 2017-18. The return for 2016-17 claims that the gross total income of the year was Rs.504 and the income tax return for 2017-18 claims that the gross total income was Rs.1473/-. If the invoices are seen, the seller is shown as Kanodia Hosiery Mills and buyer is Kanodia Knit (P) Ltd. If the address of the seller is perused in these invoices it is 35, North Basti Harphool Singh, Sadar Thana Road, Delhi. This is the same address of the Appellant, Kanodia Knits Pvt Ltd, also.

How much weight such documents should be given is a foregone consequence. Thus, claim of Appellant regarding such documents does not prove that the company was in business or in operation.

Having heard the Appellant, and seeing the documents findings and observations of the NCLT, NCLAT found no reason to differ from NCLT. Hence, there is no substance in this appeal. The appeal is rejected.

## ***CASE STUDY - 18***

A person other than member or creditor can also challenge the 'Striking' off the Company Name

### **Fact of the case**

The petitioner assails a decision of the Registrar of Companies, West Bengal striking off the name of Rama Inn (International) Private Limited from the Register maintained in respect of companies. The petitioner is neither a member nor a creditor or the company itself to apply under Section 560(6) of the erstwhile Companies Act, 1956 for recall of the order of the Registrar. He submits that, the impugned decision of the Registrar of Companies is dated September 10, 2015 when the provisions of the Companies Act, 2013 had not been notified. He further submits that, on the date of filing of the writ petition being 08.09.2016, the same position with regard to the notification of the provisions of the Companies Act, 2013 had continued. He submits that, the provisions of Section 248 of the Companies Act, 2013 have been notified subsequent to the filing of the writ petition. Therefore, the petitioner did not approach the National Company Law Tribunal under the Act of 2013.

Referring to the impugned decision of the Registrar of Companies, Petitioner submits that, no reasons have been ascribed by the Registrar why the name of the company was struck off. He submits that, the petitioner, the company and another legal entity had entered into an agreement with regard to a hotel business. Such agreement contains an arbitration clause. Disputes and differences had arisen between the parties to such agreement. The petitioner had referred such disputes to arbitration in terms of the arbitration clause. Such arbitration proceedings are pending. The company was a party respondent in such arbitration proceedings. In order to non-suit the petitioner in the arbitration proceedings, the respondent nos. 2 and 3 who were the persons in control and management of such company have made an application under Section 560 of the Act of 1956 before the Registrar of Companies, West Bengal. The decision of the Registrar of Companies to strike off the name of the Company in this regard is, therefore, perverse.

The Respondent nos. 2 and 3 submits that, the Petitioner has no locus standi to file the writ petition. He submits that, the Petitioner is neither the company itself nor is a member or creditor of the company. The petitioner, therefore, cannot be allowed to achieve something indirectly which is not permitted to it directly. The petitioner is not entitled to apply under Section 560(6) of the Act of 1956. The petitioner is, therefore, not entitled to challenge a decision of the Registrar of companies taken under Section 560 of the Act of 1956.

## **Issue:**

The pleadings and the contentions of the rival parties give rise to the following issues:-

- Is a person, not being a member or a creditor or the company itself, entitled to challenge the striking off of the name of the company under Section 560 of the erstwhile Companies Act, 1956?
- Does the petitioner have the locus standi to file and maintain the present writ petition? ❓
- If the answers to the first two issues are in the affirmative, is the impugned order of the Registrar vitiated as being perverse and without reason?

## **Judgement:**

The Calcutta High Court held that though the petitioner is not the company nor its member or creditor & it is not the person named in Section 560(6) of the erstwhile Companies Act, 1956. He does not have the statutory right to apply under Section 560(6) of the erstwhile Companies Act, 1956 but there is a remedy for every violation of a right. The petitioner claims violation of its rights by the impugned decision of the Registrar of Companies. It cannot be said that, the Petitioner does not have any forum before which it can ventilate its grievances or seek redressal with regard to the impugned decision of the Registrar of companies.

## **Issue:**

The pleadings and the contentions of the rival parties give rise to the following issues:-

- Is a person, not being a member or a creditor or the company itself, entitled to challenge the striking off of the name of the company under Section 560 of the erstwhile Companies Act, 1956?
- Does the petitioner have the locus standi to file and maintain the present writ petition? ❓
- If the answers to the first two issues are in the affirmative, is the impugned order of the Registrar vitiated as being perverse and without reason?

## **Judgement:**

The Calcutta High Court held that though the petitioner is not the company nor its member or creditor & it is not the person named in Section 560(6) of the erstwhile Companies Act, 1956. He does not have the statutory right to apply under Section 560(6) of the erstwhile Companies Act, 1956 but there is a remedy for every violation of a right. The petitioner claims violation of its rights by the impugned decision of the Registrar of Companies. It cannot be said that, the Petitioner does not have any forum before which it can ventilate its grievances or seek redressal with regard to the impugned decision of the Registrar of companies.

The constitutional right to approach a Court Article 226 of the Constitution of India, cannot be taken away by statute. Such a person can approach a regular Civil Court or apply under Article 226 of the Constitution of India for redressal of his grievances in respect of a decision of the Registrar of Companies striking off the name of a company.

The respondent nos. 2 and 3 had activated the Registrar of Companies by way of an application under Section 560 of the Companies Act, 1956. Apparently, the respondent nos. 2 and 3 were acting under an Exit Scheme under Section 560 of the Act of 1956.

Section 560 of the Act of 1956 allows the Registrar to strike a defunct company from the Register. Sub-section (1) of Section 560 allows the Registrar when it has reasonable cause to believe that, the company is not carrying on business or its operation, to issue a notice calling upon the company to explain whether the company is carrying on business.

In the present case, the respondent nos. 2 and 3 apparently had applied under such exit policy. Even under the exit policy, the respondent nos. 2 and 3 has to demonstrate and the Registrar has to come to a finding that, the company had not carried on business or its operation for the name of the company to be struck off under Section 560 of the Act of 1956. The claim of the Respondent nos. 2 and 3 before the Registrar of Companies is that, the company was inoperative.



The NCLAT observed that a company having a paid up capital of Rs.50,00,000/-, inventories of Rs.50,51,500/-, holding shares worth Rs.13,84,61,540/- and entering into tripartite agreement to carry on hotel business cannot be said to be without business or being inoperative since incorporation. The decision of the Registrar of Companies impugned herein dated September 10, 2015 is, perverse. Therefore, the Registrar of Companies, West Bengal shall forthwith restore the name of Rama Inn (International) Private Limited in the Register of Companies and shall take all consequential follow up steps to give effect to such restoration.

## Case Study-19

Narmada Limited (The Company) is incorporated as a Private Limited Company under the provision of Companies Act, 1956 with the Registrar of Companies, Gwalior, Madhya Pradesh. The company is having its registered office at Plot No.1, First Floor, West Chamber, Gwalior, Madhya Pradesh. Authorized share capital of the Company is Rs. 5,00,000/-. The Issued, subscribed and paid up share capital of the Company is Rs. 5,00,000/-. The main objects of the company are construction of building and housing and also educational.

A notice of struck off has been received from Registrar of Companies, Gwalior, Madhya Pradesh by the Narmada Limited. Registrar of Companies, Gwalior, Madhya Pradesh issued a notice on company for non-compliance of provisions of the Companies Act, 2013 in respect of filing of Annual Returns and Financial Statements for years 2014-15 to 2017-18 and subsequently the name of the company was struck off in terms of provision of Section 248(1) of the Companies Act, 2013 read with Rule 7 and Rule 9 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. Aggrieved by the order of Registrar of Companies, Gwalior, Madhya Pradesh, Narmada Limited filed an appeal before National Company Law Tribunal(NCLT), Gwalior under Section 252 of the Companies Act, 2013 and submitted that the company was in operation and the business activities were carried out by the company during the period of striking off but the reporting of such activities through Annual Returns and Financial Statement had not been filed with Registrar of Companies due to inadvertence on part of the management.

You are a Practicing Company Secretary and the Company has hired you as a Consultant to advise Narmada Limited on the following, considering the above facts:

- (a) What would be the procedure regarding filing of appeal before National Company Law Tribunal (NCLT)?

- b) State the grounds on which Registrar of Companies can remove the name of a company from Register of Companies.
- c) Enumerate the categories of Companies which shall not be removed from the Register of Companies under the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

## Suggested solution- Case Study-19

### a) Procedure regarding appeal before National Company Law Tribunal

- According to Rule 87A of the National Company Law Tribunal Rules, 2016, an appeal under Section 252(1) or an application under Section 252(3) may be filed before the National Company Law Tribunal (NCLT) in Form No. NCLT. 9, with such modifications as may be necessary.
- Following Documents shall be attached with Form No. NCLT.9: Copy of Memorandum and Articles of Association Copy of list of struck off companies issued by ROC. Evidence regarding payment of fee .Affidavit Verifying the Petition Memorandum of Appearance Copy of Board Resolution & Vakalatnam Sufficient evidence to prove that it has been in operation during striking off and therefore could not be termed as defunct company
- A copy of the appeal or application, shall be served on the Registrar of Companies and on such other persons as the National Company Law Tribunal may direct, not less than fourteen days before the date fixed for hearing of the appeal or application, as the case may be.

- A copy of the appeal or application, shall be served on the Registrar of Companies and on such other persons as the National Company Law Tribunal may direct, not less than fourteen days before the date fixed for hearing of the appeal or application, as the case may be.
- Where the National Company Law Tribunal makes an order restoring the name of a company in the register of companies, the order shall direct that-
  - The appellant or applicant shall deliver a certified copy to the Registrar of Companies within thirty days from the date of the order;
  - On such delivery, the Registrar of Companies do, in his official name and seal, publish the order in the Official Gazette;
  - The appellant or applicant do pay to the Registrar of Companies his costs of, and occasioned by, the appeal or application, unless the Tribunal directs otherwise; and
  - The company shall file pending financial statements and annual returns with the Registrar and comply with the requirements of the Companies Act, 2013 and rules made thereunder within such time as may be directed by the Tribunal.
- b) Grounds on which Registrar of Companies can remove the name of a company from Register of Companies:
  - As per Section 248 of the Companies Act, 2013, where the Registrar has reasonable cause to believe that—
  - Company has failed to commence its business within one year of its incorporation
  - Company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 of the Companies Act, 2013

- viii. Companies, which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- ix. Companies having charges which are pending for satisfaction; and
- x. Companies registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013.

# **The Indian Partnership Act, 1932**

## THE INDIAN PARTNERSHIP ACT, 1932

### 1. Short title, extent and commencement.—

- 1) This Act may be called the Indian Partnership Act, 1932.
- 2) It extends to the whole of India [except the State of Jammu and Kashmir.
- 3) It shall come into force on the 1st day of October, 1932, except section 69, which shall come into force on the 1st day of October, 1933. State Amendments Dadra and Nagar Haveli.—In section 1, for sub-section (3), substitute the following:—“(3) It shall come into force at once except section 69 which shall come into force on the 1st day of July, 1966”. [Vide Reg. 6 of 1963, as amended by Reg. 2 of 1965.

Goa, Daman and Diu.—Same as in Dadra and Nagar Haveli except for the date of enforcement of section 69 which is 1st day of January, 1965. [Vide Reg. 11 of 1963].

Laccadive, Minicoy and Amindivi Islands.—In its application to Lakshadweep, in section 1, for sub-section (3), substitute the following:—“(3) It shall come into force at once except section 69, which shall come into force on the expiry of a period of one year from the date of commencement of the rest of this Act”.

[[\(Reg\)](#) 8 of 1965, sec. 3 and Sch. 1].

[\(Pondicherry\)](#) —Same as in Dadra and Nagar Haveli, except for the date of enforcement of section 69 which is 1st day of July, 1964.

[[\(Reg\)](#) 7 of 1963, sec. 3 and Sch. 1].



2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—

- a) an “act of a firm” means any act or omission by all the partners, or by any partner or agent of the firm which gives rise to a right enforceable by or against the firm;
- b) “business” includes every trade, occupation and profession;
- c) “prescribed” means prescribed by rules made under this Act;
- d) “third party” used in relation to a firm or to a partner therein means any person who is not a partner in the firm; and
- e) expressions used but not defined in this Act and defined in the Indian Contract Act, 1872 (9 of 1872), shall have the meanings assigned to them in that Act. State Amendment

(Maharashtra) —In section 2, after clause (c), insert the following clause, namely:— “(c-1) “Registrar” means the Registrar of Firms appointed under sub-section (1) of section 57 and includes the Deputy Registrar of Firms and Assistant Registrar of Firms appointed under sub-section (2) of that section;” [Vide Maharashtra Act 29 of 1984, sec. 2 (w.e.f. 1-1-1985)].

3. Application of provisions of Act 9 of 1872.—The unrepealed provisions of the Indian Contract Act, 1872, save in so far as they are inconsistent with the express provisions of this Act, shall continue to apply to firms.
4. Definition of “partnership”, “partner”, “firm” and “firm name”.—”Partnership” is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually “partners” and collectively a “firm”, and the name under which their business is carried on is called the “firm name”.
5. Partnership not created by status.—The relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying business as such, are not partners in such business. State Amendment Goa, Daman and Diu.—In section 5, for the words “Burmese Buddhist husband and wife carrying on business as such”, substitute the words “a husband and wife under the regime of communion of property carrying on business as such”. [Vide Goa, Daman and Diu Act 6 of 1966, sec. 2 (w.e.f. 22-8-1966)].

**6. Mode of determining existence of partnership.**—In determining whether a group of persons is or is not a firm, or whether a person is or is not a partner in a firm, regard shall be had to the real relation between the parties, as shown by all relevant facts taken together.

**Explanation 1.**—**The sharing of profits or of gross returns arising from property by persons holding a joint or common interest in that property does not of itself make such persons partners.**

**Explanation 2.**—**The receipt by a person of a share of the profits of a business, or of a payment contingent upon the earning of profits or varying with the profits earned by a business, does not of itself make him a partner with the persons carrying on the business; and in particular, the receipt of such share or payment—**

**a) by a lender of money to persons engaged or about to engage in any business,**

**(b) by a servant or agent as remuneration,**

**(c) by the widow or child of a deceased partner, as annuity, or**

**d) by a previous owner or part owner of the business, as consideration for the sale of the goodwill or share thereof, does not of itself make the receiver a partner with the persons carrying on the business.**

7. Partnership at will.—Where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is ‘partnership at will’.
  8. Particular partnership.—A person may become a partner with another person in particular adventures or undertakings.
  9. General duties of partners.—Partners are bound to carry on the business of the firm to the greatest common advantage, to be just and faithful to each other, and to render true accounts and full information of all things affecting the firm to any partner or his legal representative.
- State Amendment

(Maharashtra)—In section 9, for the words “or his legal representative”, substitute the words “his heir or legal representative”. [Vide Maharashtra Act 29 of 1984, sec. 3 (w.e.f. 1-1-1985)].

10. Duty to indemnify for loss caused by fraud.—Every partner shall indemnify the firm for any loss caused to it by his fraud in the conduct of the business of the firm.

11. Determination of rights and duties of partners by contract between the partners.—

- 1) **Subject to the provisions of this Act**, the mutual rights and duties of the partners of a firm may be determined by contract between the partners, and such contract may be expressed or may be implied by a course of dealing. Such contract may be varied by consent of all the partners, and such consent may be expressed or may be implied by a course of dealing.
- 2) Agreements in restraints of trade.—(2) Notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such contracts may provide that a partner shall not carry on any business other than that of the firm while he is a partner.

12. The conduct of the business.—Subject to contract between the partners,—

- a) every partner has a right to take part in the conduct of the business;
- b) every partner is bound to attend diligently to his duties in the conduct of the business;
- c) any difference arising as to ordinary matters connected with the business may be decided by a majority of the partners, and every partner shall have the right to express his opinion, before the matter is decided, but no change may be made in the nature of the business without the consent of all the partners; and
- d) every partner has a right to have access to and to inspect and copy any of the books of the firm. State Amendment

(Maharashtra) —In section 12,—

- a) in clause (c), at the end, omit the word “and”;
- b) in clause (d), for the words “books of the firm”, substitute the words “books of the firm; and”;
- c) after clause (d), insert the following clause, namely:— “(e) in the event of the death of a partner, his heirs or legal representatives or their duly authorised agents shall have a right of accesses to and to inspect and copy any of the books of the firm”. [Vide Maharashtra Act 29 of 1984, sec. 4 (w.e.f. 1-1-1985)].

13. Mutual rights and liabilities.—**Subject to contract between the partners,—**

- a) a partner is not entitled to receive remuneration for taking part in the conduct of the business;
- b) the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm;

- c) where a partner is entitled to interest on the capital subscribed by him such interest shall be payable only out of profits;
- d) a partner making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at the rate of six per cent. per annum;
- e) the firm shall indemnify a partner in respect of payments made and liabilities incurred by him—
  - i. in the ordinary and proper conduct of the business, and
  - ii. in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and
- f) a partner shall indemnify the firm for any loss caused to it by his wilful neglect in the conduct of the business of the firm.



14. The property of the firm.—Subject to contract between the partners, the property of the firm includes all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of business of the firm, and includes also the goodwill of the business. Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.
15. Application of the property of the firm.—Subject to contract between the partners, the property of the firm shall be held and used by the partners exclusively for the purposes of the business.
16. Personal profits earned by partners.—Subject to contract between the partners,—
  - (a) if a partner derives any profit for himself from any transaction of the firm, or from the use of the property or business connection of the firm or the firm name, he shall account for that profit and pay it to the firm;
  - (b) if a partner carries on any business of the same nature as and competing with that of the firm, he shall account for and pay to the firm all profits made by him in that business.

17. Rights and duties of partners.—Subject to contract between the partners—

- (a) after a change in the firm.—where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be;
- (b) after the expiry of the term of the firm, and.—where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry, so far as they may be consistent with the incidents of partnership at will; and
- (c) where additional undertakings are carried out.—where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings.

18. Partner to be agent of the firm.—Subject to the provisions of this Act, a partner is the agent of the firm for the purpose of the business of the firm.

19. Implied authority of partner as agent of the firm.—

(1) Subject to the provisions of section 22, the act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his “implied authority”.

(2) In the absence of any usage or custom of trade to the contrary, the implied authority of a partner does not empower him to—

- (a) submit a dispute relating to the business of the firm to arbitration,
- (b) open a banking account on behalf of the firm in his own name,
- (c) compromise or relinquish any claim or portion of a claim by the firm,
- (d) withdraw a suit or proceeding filed on behalf of the firm,
- (e) admit any liability in a suit or proceeding against the firm,
- (f) acquire immovable property on behalf of the firm,
- (g) transfer immovable property belonging to the firm, or (h) enter into partnership on behalf of the firm.

20. Extension and restriction of partner's implied authority.—The partners in a firm may, by contract between the partners, extend or restrict the implied authority of any partner. Notwithstanding any such restriction, any act done by a partner on behalf of the firm which falls within his implied authority binds the firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that partner to be a partner.
21. Partner's authority in an emergency.—A partner has authority, in an emergency, to do all such acts for the purpose of protecting the firm from loss as would be done by a person of ordinary prudence, in his own case, acting under similar circumstances, and such acts bind the firm.
22. Mode of doing act to bind firm.—In order to bind a firm, an act or instrument done or executed by a partner or other person on behalf of the firm shall be done or executed in the firm name, or in any other manner expressing or implying an intention to bind the firm.
23. Effect of admissions by a partner.—An admission on representation made by a partner concerning the affairs of the firm is evidence against the firm, if it is made in the ordinary course of business.

24. Effect of notice to acting partner.—Notice to a partner, who habitually acts in the business of the firm of any matter relating to the affairs of the firm operates as notice to the firm, except in the case of a fraud on the firm committed by or with the consent of that partner.
25. Liability of a partner for acts of the firm.—Every partner is liable, jointly with all the other partners and also severally, for all acts of the firm done while he is a partner.
26. Liability of the firm for wrongful acts of a partner.—Where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefor to the same extent as the partner.
27. Liability of firm for misapplication by partners.—Where—
  - (a) a partner acting within his apparent authority receives money or property from a third party and misapplies it, or
  - (b) a firm in the course of its business receives money or property from a third party, and the money or property is misapplied by any of the partners while

it is in the custody of the firm the firm is liable to make good the loss.

28. Holding out.—

- (1) Any one who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to any one who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.
- (2) Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

29. Rights of transferee or a partner's interest.—

- (1) A transfer by a partner of his interest in the firm, either absolute or by mortgage, or by the creation by him of a charge on such interest, does not entitle the transferee, during the continuance of the firm, to interfere in the conduct of the business, or to require accounts, or to inspect the books of

the firm, but entitles the transferee only to receive the share of profits of the transferring partner, and the transferee shall accept the account of profits agreed to by the partners.

- (2) If the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled as against the remaining partners to receive the share of the assets of the firm to which the transferring partner is entitled, and, for the purpose of ascertaining that share, to an account as from the date of the dissolution.

30. Minors admitted to the benefits of partnership.—

- 1) A person who is a minor according to the law to which he is subject may not be a partner in a firm, but, with the consent of all the partners for the time being, he may be admitted to the benefits of partnership.
- 2) Such minor has a right to such share of the property and of the profits of the firm as may be agreed upon, and he may have access to and inspect and copy any of the accounts of the firm.

- 3) Such minor's share is liable for the acts of the firm, but the minor is not personally liable for any such act.
- 4) Such minor may not sue the partners for an account or payment of his share of the property or profits of the firm, save when severing his connection with the firm, and in such case the amount of his share shall be determined by a valuation made as far as possible in accordance with the rules contained in section 48: Provided that all the partners acting together or any partner entitled to dissolve the firm upon notice to other partners may elect in such suit to dissolve the firm, and thereupon the court shall proceed with the suit as one for dissolution and for settling accounts between the partners, and the amount of the share of the minor shall be determined along with the shares of the partners.
- 5) At any time within six months of his attaining majority, or of his obtaining knowledge that he had been admitted to the benefits of partnership, whichever date is later, such person may give public notice that he has elected to become or that he has elected not to become a partner in the firm, and such notice shall determine his position as regards the firm: Provided



that, if he fails to give such notice, he shall become a partner in the firm on the expiry of the said six months.

- 6) Where any person has been admitted as a minor to the benefits of partnership in a firm, the burden of proving the fact that such person had no knowledge of such admission until a particular date after the expiry of six months of his attaining majority shall lie on the persons asserting that fact.
- 7) where such person becomes a partner,—
  - a) his rights and liabilities as a minor continue up to the date on which he becomes a partner, but he also becomes personally liable to third parties for all acts of the firm done **since he was admitted to the benefits of partnership, and**
  - b) his share in the property and profits of the firm shall be the share to which he was entitled as a minor.

- 8) Where such person elects not to become a partner,—
  - (a) his rights and liabilities shall continue to be those of a minor under this section up to the date on which he gives public notice,
  - (b) his share shall not be liable for any acts of the firm done after the date of the notice, and
  - (c) he shall be entitled to sue the partners for his share of the property and profits in accordance with sub-section (4).
- 9) Nothing in sub-sections (7) and (8) shall affect the provisions of section 28.

31. Introduction of a partner.—

- (1) Subject to contract between the partners and to the provisions of section 30, no person shall be introduced as a partner into a firm without the consent of all the existing partners.
- (2) Subject to the provisions of section 30, a person who is introduced as a partner into a firm does not thereby become liable for any act of the firm done before he became a partner.

32. Retirement of a partner.—

- 1) A partner may retire,—
  - (a) with the consent of all the other partners,
  - (b) in accordance with an express agreement by the partners, or
  - (c) where the partnership is at will, by giving notice in writing to all the other partners of his intention to retire.
- 2) A retiring partner may be discharged from any liability to any third party for acts of the firm done before his retirement by an agreement made by him with such third party and the partners of the reconstituted firm, and such agreement may be implied by a course of dealing between such third party and the reconstituted firm after he had knowledge of the retirement.
- 3) Notwithstanding the retirement of a partner from a firm, he and the partners continue to be liable as partners to third parties for any act done by any of them which would have been an act of the firm if done before the retirement, until public notice is given of the retirement: Provided that a retired partner is not liable to any third party who deals with the firm without knowing that he was a partner.
- 4) Notices under sub-section (3) may be given by the retired partner or by any partner of the reconstituted firm.

33. Expulsion of a partner.—

- (1) A partner may not be expelled from a firm by any majority of the partners, save in the exercise in good faith of powers conferred by contract between the partners.
- (2) The provisions of sub-sections (2), (3) and (4) of section 32 shall apply to an expelled partner as if he were a retired partner.

34. Insolvency of a partner.—

- (1) Where a partner in a firm is adjudicated an insolvent he ceases to be a partner on the date on which the order of adjudication is made, whether or not the firm is hereby dissolved.
- (2) Where under a contract between the partners the firm is not dissolved by the adjudication of a partner as an insolvent, the estate of a partner so adjudicated is not liable for any act of the firm and the firm is not liable for any act of the insolvent, done after the date on which the order of adjudication is made.

35. Liability of estate of deceased partner.—Where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death.
36. Right of outgoing partner to carry on competing business.—
- 1) An outgoing partner may carry on a business competing with that of the firm and he may advertise such business, but, subject to contract to the contrary, he may not,—
    - a) use the firm name,
    - b) represent himself as carrying on the business of the firm, or
    - c) solicit the custom of persons who were dealing with the firm before he ceased to be a partner. Agreements in restraint of trade.—(2) A partner may make an agreement with his partners that on ceasing to be a partner he will not carry on any business similar to that of the firm within a specified period or within a specified local limits; and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.

37. Right of outgoing partner in certain cases to share subsequent profits.—Where any member of a firm has died or otherwise ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, then, in the absence of a contract to the contrary, the outgoing partner or his estate is entitled at the option of himself or his representatives to such share of the profits made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest at the rate of six per cent. per annum on the amount of his share in the property of the firm: Provided that whereby contract between the partners an option is given to surviving or continuing partners to purchase the interest of a deceased or outgoing partner, and that option is duly exercised, the estate of the deceased partner, or the outgoing partner or his estate, as the case may be, is not entitled to any further or other share of profits; but if any partner assuming to act in exercise of the option does not in all material respects comply with the terms thereof, he is liable to account under the foregoing provisions of this section.

38. Revocation of continuing guarantee by change in firm.—A continuing guarantee given to a firm, or to a third party in respect of the transactions of a firm, is, in the absence of agreement to the contrary, revoked as to future transactions from the date of any change in the constitution of the firm.
39. Dissolution of a firm.—The dissolution of partnership between all the partners of a firm is called the ‘dissolution of the firm’.
40. Dissolution by agreement.—A firm may be dissolved with the consent of all the partners or in accordance with a contract between the partners.
41. Compulsory dissolution.—A firm is dissolved,—
- (a) by the adjudication of all the partners or of all the partners but one as insolvent, or
  - (b) by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership: Provided that, where more than one separate adventure or undertaking is carried on by the firm the illegality of one or more shall not of itself cause the dissolution of the firm in respect of its lawful adventures and undertakings.

42. Dissolution on the happening of certain contingencies.—Subject to contract between the partners a firm is dissolved,—
- (a) if constituted for a fixed term, by the expiry of that term;
  - (b) if constituted to carry out one or more adventures or undertakings, by the completion thereof;
  - (c) by the death of a partner; and
  - (d) by the adjudication of a partner as an insolvent.
43. Dissolution by notice of partnership at will.—
- 1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.
  - 2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.



44. Dissolution by the Court.—At the suit of a partner, the Court may dissolve a firm on any of the following grounds, namely:—
- a) that a partner has become of unsound mind, in which case the suit may be brought as well by the next friend of the partner who has become of unsound mind as by any other partner;
  - b) that a partner, other than the partner suing, has become in any way permanently incapable of performing his duties as partner;
  - c) that a partner, other than the partner suing, is guilty of conduct which is likely to affect prejudicially the carrying on of the business, regard being had to the nature of the business;
  - d) that a partner, other than the partner suing, wilfully or persistently commits breach of agreements relating to the management of the affairs of the firm or the conduct of its business, or otherwise so conducts himself in matters relating to the business that it is not reasonably practicable for the other partners to carry on the business in partnership with him;
  - e) that a partner, other than the partner suing, has in any way transferred the

whole of his interest in the firm to a third party, or has allowed his share to be charged under the provisions of rule 49 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) or has allowed it to be sold in the recovery of arrears of land revenue or of any dues recoverable as arrears of land revenue due by the partner;

- f) that the business of the firm cannot be carried on save at a loss; or
- g) on any other ground which renders it just and equitable that the firm should be dissolved.

#### 45. Liability for acts of partners done after dissolution.—

- 1) Notwithstanding the dissolution of a firm, the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before the dissolution, until public notice is given of the dissolution: Provided that the estate of a partner who dies, or who is adjudicated an insolvent, or of a partner who, not having been known to the person dealing with the firm to be a partner, retires from the firm, is not liable under this section for acts done after the date on which he ceases to be a partner.

(2) Notices under sub-section (1) may be given by any partner.

46. Right of partners to have business wound up after dissolution.—On the dissolution of a firm every partner or his representative is entitled, as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm, and to have the surplus distributed among the partners or their representatives according to their rights.

47. Continuing authority of partners for purposes of winding up.—After the dissolution of a firm the authority of each partner to bind the firm, and the other mutual rights and obligations of the partners continue notwithstanding the dissolution, so far as may be necessary to wind up the affair of the firm and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise: Provided that the firm is in no case bound by the acts of a partner who has been adjudicated insolvent; but this proviso does not affect the liability of any person who has after the adjudication represented himself or knowingly permitted himself to be represented as a partner of the insolvent.

48. 48. Mode of settlement of accounts between partners.—In settling the accounts of a firm after dissolution, the following rules shall, subject to agreement by the partners, be observed:—

- a) losses, including deficiencies of capital, shall be paid first out of profits, next out of capital, and, lastly, if necessary, by the partners individually in the proportions in which they were entitled to share profits;
- b) the assets of the firm, including any sums contributed by the partners to make up deficiencies of capital, shall be applied in the following manner and order:—
  - (i) in paying the debts of the firm to third parties;
  - (ii) in paying to each partner rateably what is due to him from the firm for advances as distinguished from capital;
  - (iii) in paying to each partner rateably what is due to him on account of capital; and
  - (iv) the residue, if any, shall be divided among the partners in the proportions in which they were entitled to share profits.

49. Payment of firm debts and of separate debts.—Where there are joint debts due from the firm, and also separate debts due from any partner, the property of the firm shall be applied in the first instance in payment of the debts of the firm, and, if there is any surplus, then the share of each partner shall be applied in payment of his separate debts or paid to him. The separate property of any partner shall be applied first in the payment of his separate debts, and the surplus (if any) in the payment of the debts of the firm.
50. Personal profits earned after dissolution.—Subject to contract between the partners, the provisions of clause
- a) of section 16 shall apply to transactions by any surviving partner or by the representatives of a deceased partner, undertaken after the firm is dissolved on account of the death of a partner and before its affairs have been completely wound up: Provided that where any partner or his representative has brought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

51. Return of premium on premature dissolution.—Where a partner has paid a premium on entering into partnership of a fixed term, and the firm is dissolved before the expiration of that term otherwise than by the death of a partner, he shall be entitled to repayment of the premium or of such part thereof as may be reasonable, regard being had to the terms upon which he became a partner and to the length of time during which he was partner, unless,—
- (a) the dissolution is mainly due to his own misconduct, or
  - (b) the dissolution is in pursuance of an agreement containing no provision for the return of the premium or any part of it.
52. Rights where partnership contract is rescinded for fraud or misrepresentation.—Where a contract creating partnership is rescinded on the ground of the fraud or misrepresentation of any of the parties thereto the party entitled to rescind is, without prejudice to any other right, entitled,—
- a) to a lien on, or a right of retention of, the surplus or the assets of the firm remaining after the debts of the firm have been paid, for any sum paid by him for the purchase of a share in the firm and for any capital contributed by him;

- b) to rank as a creditor of the firm in respect of any payment made by him towards the debts of the firm; and
- c) to be indemnified by the partner or partners guilty of the fraud or misrepresentation against all the debts of the firm.

53. Right to restrain from use of firm name or firm property.—After a firm is dissolved, every partner or his representative may, in the absence of a contract between the partners to the contrary, restrain any other partner or his representative from carrying on a similar business in the firm name or from using any of the property of the firm for his own benefit, until the affairs of the firm have been completely wound up: Provided that where any partner or his representative has bought the goodwill of the firm, nothing in this section shall affect his right to use the firm name.

54. Agreements of restraint of trade.—Partners may, upon or in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits; and notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.

55. Sale of goodwill after dissolution.—

- 1) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.
- 2) Rights of buyer and seller of goodwill.—(2) Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not,—
  - a) use the firm name,
  - b) represent himself as carrying on the business of the firm, or
  - c) solicit the custom of persons who were dealing with the firm before its dissolution. Agreements in restraint of trade.—(3) Any partner may, upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 (9 of 1872), such agreement shall be valid if the restrictions imposed are reasonable.



56. 56. Power to exempt from application of this Chapter.—The [State Government of any State] may, by notification in the Official Gazette, direct that the provisions of this Chapter shall not apply to [that State] or to any part thereof specified in the notification.

57. 57. Appointment of Registrars.—

- 1) The State Government may appoint Registrars of Firms for the purposes of this Act, and may define the areas within which they shall exercise their powers and perform their duties.
- 2) Every Registrar shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860). State Amendments (Maharashtra) —For section 57, substitute the following section, namely,—  
“57. Appointment of Registrar of Firms and Deputy Assistant Registrars of Firms.—
  - 1) he State Government may, by notification in the Official Gazette, appoint a Registrar of Firms who shall exercise, perform and discharge the powers, functions and duties of the Registrar under this Act throughout the State of Maharashtra.

- 2) The State Government may likewise appoint one or more Deputy Registrars of Firms and Assistant Registrars of Firms who shall exercise, perform and discharge all or such of the powers, functions and duties of the Registrar and in such areas as the State Government may, by notification in the Official Gazette, specify.
- 3) The officers appointed under sub-section (1) and sub-section (2) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code”. [Vide Maharashtra Act 29 of 1984, sec. 5 (w.e.f. 1-5-1985)].  
Uttar Pradesh.—For section 57, substitute the following section, namely,—

57. Appointment of Registrar, Deputy Registrars and Assistant Registrars.—

- 1) The State Government may, by notification, appoint a Registrar of Firms who shall exercise, perform and discharge the powers, functions and duties of the Registrar under this Act throughout the State of Uttar Pradesh.
- 2) The State Government may likewise appoint one or more Deputy Registrars of Firms and Assistant Registrars of Firms who shall exercise, perform and discharge all or such of the powers, functions and duties of the Registrar and in such areas as are notified in the notification.

- 3) The officers appointed under sub-section (1) or sub-section (2) shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).” [Vide Uttar Pradesh Act 34 of 1979, sec. 2 (w.e.f. 22-10-1979)].

58. Application for registration.—

- 1) The registration of a firm may be effected at any time by sending by post or delivering to the Registrar of the area in which any place of business of the firm is situated or proposed to be situated, a statement in the prescribed form and accompanied by the prescribed fee, stating,—
  - (a) the firm name,
  - (b) the place or principal place of business of the firm,
  - (c) the names of any other places where the firm carries on business,
  - (d) the date when each partner joined the firm,
  - (e) the names in full and permanent addresses of the partners, and
  - (f) the duration of the firm. The statement shall be signed by all the partners, or by their agents specially authorised in this behalf.
- 2) Each person signing the statement shall also verify it in the manner prescribed.

- 3) A firm name shall not contain any of the following words, namely:— “Crown”, “Emperor”, “Empress”, “Empire”, “Imperial”, “King”, “Queen”, “Royal”, or words expressing or implying the sanction, approval or patronage of 1[Government], except 2[when the State Government] signifies 3[its] consent to the use of such words as part of the firm name by order in writing 4[\*\*\*].
- STATE AMENDMENTS Goa, Daman and Diu.—In section 58,—
- (i) for sub-section (3), substitute the following sub-section, namely:— “(3) No firm shall be registered by a name which in the opinion of the Registrar is undesirable”.
  - (ii) after sub-section (3), insert the following sub-sections:—
- 4) Any person aggrieved by an order of the Registrar under sub-section (3) may, within 30 days from the date of communication of such order, appeal to the State Government whose decision shall be final.
- 5) A firm’s name shall not contain any of the following words, namely, Union, State, President, Republic, Governor or words expressing or implying sanction, approval or patronage of Government unless the Government of Goa, Daman and Diu signifies, by order in writing, its consent to the use of such words as part of the firm’s name: Provided that nothing in this sub-section shall apply to any firm carrying on business under any such name, before the date of the

commencement of the Indian Partnership (Goa, Daman and Diu Amendment) Act, 1966.

- 6) Any person who contravenes the provisions of sub-section (5) shall be punishable with fine which may extend to five hundred rupees”. [Vide Goa, Daman and Diu Act 6 of 1966, sec. 3 (w.e.f. 22-8-1966)]. (Maharashtra) —In section 58,—
  - a) in sub-section (1),
    - (i) for the words “The registration of a firm”, substitute the words, brackets, figure and letter “Subject to the provisions of sub-section (1A), the registration of a firm”;
    - (ii) Omit the words “at any time”;
    - (iii) after the words “prescribed fee”, insert the words “and a true copy of the deed of partnership”;
    - (iv) after clause (a), insert the following clause, namely:— “(aa) the nature of business of the firm;”;
  - b) after sub-section (1), insert the following sub-section, namely:— “(1A) The statement under sub-section (1) shall be sent or delivered to the Registrar within a period of one year from the date of constitution of the firm:

Provided that in the case of any firm carrying on business on or before the date of commencement of the Indian Partnership (Maharashtra Amendment) Act, 1984 (Maharashtra Act 29 of 1984), such statement shall be sent or delivered to the Registrar within a period of one year from such date.”;

- c) for sub-section (3), substitute the following sub-sections, namely:— “(3) A firm shall not have any of the names or emblems specified in the Schedule to the Emblems and Names (Prevention of Improper Use) Act, 1950 (12 of 1950), or any colourable imitation thereof, unless permitted so to do under that Act, or any name which is likely to be associated by the public with the name of any other firm on account of similarity, or any name which, in the opinion of the Registrar for reasons to be recorded in writing, is undesirable: Provided that nothing in this sub-section shall apply to any firm registered under any such name before the date of the commencement of the Indian Partnership (Maharashtra Amendment) Act, 1984 (Maharashtra Act 29 of 1984).
- (4) Any person aggrieved by an order of the Registrar under sub-section (3) may, within 30 days from the date of communication of such order, appeal to the officer not below the rank of Deputy Secretary to Government authorised by the State Government in this behalf, in such manner, and on payment of such fee, as may be

prescribed. On receipt of any such appeal, the authorised officer shall, after giving an opportunity of being heard to the appellant decide the appeal, and his decision shall be final”.— [Vide Maharashtra Act 29 of 1984, sec. 6 (w.e.f. 1-1-1985)].

(Pondicherry) —In section 58, for sub-section (3), substitute the following sub-sections, namely:— “(3) The Registrar shall refuse to register—

- a) a firm under sub-section (1) or
- b) an alteration of the firm name, if the proposed name or alteration of the firm name is identical with the name of which any other existing firm has been registered or in the opinion of the Registrar so nearly resembles such other name as to be likely to deceive or mislead the public or the members of either firm.

(4) Any person who is aggrieved by an order of Registrar under sub-section (3) may file an appeal before such person or authority, in such manner, within such time and on payment of such fees as may be prescribed. The appeal shall be heard and decided in such manner as may be prescribed.” [Vide Pondicherry Act 8 of 1969, sec. 2 (w.e.f. 1-1-1970)].

(Rajasthan) —In section 58, for sub-section (3), substitute the following sub-sections, namely:— “(3) No firm shall be registered by a name which, in the opinion of the State Government, is undesirable.

(4) Except with the previous sanction, in writing, of the State Government, no firm shall be registered by a name which contains any of the following words, namely:—

(a) ‘Union’, ‘State’, ‘President’, ‘Republic’ or any word expressing or implying the sanction, approval or patronage of the Central or any State Government; and

(b) ‘Municipal’, ‘Chartered’ or any word which suggests or is calculated to suggest connection with any municipality or local authority: Provided that nothing in this sub-section shall apply to any firm registered before the date of commencement of the Indian Partnership (Rajasthan Amendment) Act, 1971.” [Vide Rajasthan Act 10 of 1971, sec. 2 (w.e.f. 15-9-1971)]. Tamil Nadu.—Same as in Rajasthan, except that in the proviso to sub-section (4), for the words “Indian Partnership (Rajasthan Amendment) Act, 1971” substitute the words “Indian Partnership (Madras Amendment) Act, 1965”. [Vide Tamil Nadu Act 35 of 1965, sec. 2 (w.e.f. 1-4-1966)].



59. Registration.—When the Registrar is satisfied that the provisions of section 58 have been duly complied with, he shall record an entry of the statement in a register called the Register of Firms, and shall file the statement<sup>1</sup>. STATE AMENDMENTS

(Maharashtra) —Renumber section 59 as sub-section (1) of that section, and,—

- (a) in sub-section (1) as so renumbered, after the words “file the statement”, insert the words “on the date such entry is recorded and such statement is filed, the firm shall be deemed to be registered,”;
  - (b) after sub-section (1) as so renumbered, insert the following sub-section, namely:— “(2) The firm, which is registered, shall use the brackets and word “(Registered)” immediately after its name”. [Vide Maharashtra Act 29 of 1984, sec. 7 (w.e.f. 1-1-1985)].
- Section 59A Andhra Pradesh.—After section 59, insert the following section, namely:— “59A. Amendment of the Register of Firms.—
- 1) Notwithstanding anything in this Chapter, the Registrar of Firms, Andhra Pradesh, may, by order in writing, amend the register by deleting therefrom the entries relating to any firm, whose place of business has, by virtue of the provisions contained in the States Reorganisation Act, 1956 and the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959, ceased to be in the Andhra Pradesh; the Registrar may likewise amend the register by adding

thereto the entries relating to any firm included in the register of another State but, whose place of business has, by reason of the said provisions, become included in the State of Andhra Pradesh: Provided that the Registrar shall, before passing an order under this sub-section, give to the firm concerned an opportunity of making its representation, if any.

- 2) The Registrar shall cease to perform the functions of a Registrar under the Act in respect of any firm the entries relating to which are deleted as aforesaid and shall perform the functions of a Registrar under the Act in respect of any firm the entries relating to which are added as aforesaid.
  - 3) Any person aggrieved by an order under sub-section (1) may appeal to such authority and within such time as may be specified in this behalf by an order made by the Government of the Andhra Pradesh, and such Authority shall pass such order on the appeal as it thinks fit.
  - 4) An order of the Registrar under sub-section (1), or where an appeal has been preferred against it under sub-section (3), the order of the appellate authority, shall be final.” [Vide Andhra Pradesh Act 7 of 1965, sec. 2 (w.e.f. 10-3-1965)].
- (Kerala) —After section 59, insert the following section, namely:— “59A.

Amendment of Register.—

- (1) Notwithstanding anything contained in this Chapter, the Registrar of Firms appointed by the State of Kerala may, by order in writing, amend the register by deleting therefrom the entries relating to any firm whose place of business has, by reason of the reorganisation of States, ceased to be situated in the State of Kerala. The Registrar may likewise amend the register by adding thereto the entries relating to any firm included in the register of the State of Madras but whose place of business has, by reason of the said reorganisation of States, become part of the State of Kerala: Provided that the Registrar shall, before passing an order, make such inquiry as he deems necessary.
- (2) After such amendment the Registrar shall cease to perform the functions of a Registrar in respect of any firm the entries relating to which have been deleted as aforesaid and shall perform all the functions of a Registrar in respect of all firms the entries relating to which are added as aforesaid.
- (3) Any person aggrieved by an order under sub-section (1) may appeal to such authority and within such time as may be specified in this behalf by the State Government of Kerala, and such authority shall pass such order on the appeal as it thinks fit.

- (4) An order of the Registrar under sub-section (1), or where an appeal has been preferred against it under sub-section (3), the order of the appellate authority, shall be final.
  - (5) The provisions of this section shall cease to be in force from such date as the State Government of Kerala may, by notification in the Gazette, appoint.” [Vide Kerala Adaptation of Laws (No. 2) Order, 1957 (w.e.f. 30-10-1957)].
- Madhya Pradesh.—After section 59, insert the following section, namely:— “59A.

- (1) Notwithstanding anything contained in this Chapter, the Registrar of Firms appointed by the State of Madhya Pradesh may, by order in writing, amend the register by deleting therefrom the entries relating to any firm, whose place of business has, by reason of the reorganisation of States, ceased to be situated in the State of Madhya Pradesh. The Registrar may likewise amend the register by adding thereto the entries relating to any firm included in the register of another State but whose place of business has, by reason of the said reorganisation of States, become part of the State of Madhya Pradesh: Provided that the Registrar shall, before passing an order, make such inquiry as he deems necessary.
- (2) After such amendment the Registrar shall cease to perform the functions of a Registrar in respect of any firm the entries relating to which have been deleted

as aforesaid and shall perform all the functions of a Registrar in respect of all firms the entries relating to which are added as aforesaid.

- (3) Any person aggrieved by an order under sub-section (1) may appeal to such authority and within such time as may be specified in this behalf by the State Government of Madhya Pradesh, and such authority shall pass such order on the appeal as it thinks fit.
- (4) An order of the Registrar under sub-section (1), or where an appeal has been preferred against it under sub-section (3), the order of the appellate authority shall be final.
- (5) The provisions of this section shall cease to be in force from such date as the State Government of Madhya Pradesh may, by notification in the State Gazette, appoint.” [Vide Madhya Pradesh Adaptation of Laws (State and Concurrent Subjects) (Third Amendment) Order, 1957 (w.r.e.f. 1-11-1956)].

(Maharashtra) —

- i. After section 59, insert the following section, namely:— “59A. Deletion and addition of entries relating to certain firms, by reason of reorganisation of States.—
- (1) Notwithstanding anything contained in this Chapter, a Registrar of Firms appointed for any area by the Government of Bombay may, by order in writing, amend the Register of Firms maintained by him by deleting therefrom the

entries relating to any firm, whose place of business has, by reason of the reorganisation of States under the States Reorganisation Act, 1956, ceased to be situated in the State of Bombay. The Registrar may likewise and without any charge or fee therefor amend the Register by adding thereto the entries relating to any firm included in the Register of another State but whose place of business has, by reason for such reorganisation, become part of the area within his jurisdiction in the State of Bombay: Provided that the Registrar shall, before passing any order under this sub-section, make such inquiry as he deems necessary and give notice to the firm and the Registrar of the State concerned.

- (2) After such amendment, the Registrar shall cease to perform the functions of a Registrar in respect of any firm the entries relating to which have been deleted as aforesaid and shall perform the functions of a Registrar in respect of any firm the entries relating to which are added as aforesaid.
- (3) Any person aggrieved by an order under sub-section (1) may appeal to such authority, and within such time, as may be specified in this behalf by the Government of Bombay by notification in the Official Gazette; and such authority shall pass such order on the appeal as it thinks fit.

- (4) An order of a Registrar under sub-section (1), or when an appeal has been preferred against it under sub-section (3), the order of the appellate authority shall be final.
- (5) The provisions of this section shall cease to be in force from such date as the Government of Bombay may, by notification in the Official Gazette, appoint.” [Vide Central Acts on State and Concurrent Subjects (Bombay Adaptation) (Amendment) Order, 1957 (w.e.f. 17-10-1957)]. Section 59A1.
- ii. After section 59, insert the following section, namely:— “59A1. Late registration on payment of penalty.—If the statement in respect of any firm is not sent or delivered to the Registrar within the time specified in sub-section (1A) of section 58, then the firm may be registered on payment, to the Registrar, of a penalty of one hundred rupees per year of delay or a part thereof.” [Vide Maharashtra Act 29 of 1984, sec. 8 (w.e.f. 1-1-1985)]. Mysore (Karnataka).—In section 59A, in sub-section (1), for the words “by reason of the reorganisation of States”, the words, brackets, etc., “by reason of the addition of the Bellary district to the State of Mysore under the Andhra Pradesh State Act, 1953 (Central Act 30 of 1953), or of the reorganisation of States under the States Reorganisation Act, 1956 (Central Act 37 of 1956)” shall be

substituted. [Vide Mysore Act 19 of 1961, sec. 2 (w.e.f. 14-9-1961)]. Note.— This amendment relates to section 59A as introduced by Madras Adaptation of Laws (Central Acts) Order, 1957. Tamil Nadu.—After section 59, insert the following section, namely:— “59A. Special provision for amending the register.—(

- 1) Notwithstanding anything contained in this Chapter, the Registrar of Firms appointed by the State Government of Madras may, by order in writing, amend the register by deleting therefrom the entries relating to any firm, the place of business of which has, by reason of the formation of the State of Andhra or of the addition of the Bellary district to the State of Mysore under the Andhra State Act, 1953 or of the reorganisation of States under the States Reorganisation Act, 1956, or of the alteration of boundaries under the Andhra Pradesh and Madras (Alteration of Boundaries) Act, 1959, ceased to be located in the State of Madras. The Registrar may likewise amend the register by adding thereto the entries relating to any firm included in the register of another State but the place of business of which has, by reason of the said reorganisation of States or of the said alteration of boundaries, become part of the State of Madras: Provided that the Registrar may, before passing an order, make such inquiry as he deems necessary.



- 2) After such amendment the Registrar shall cease to perform the functions of the Registrar in respect of any firm the entries relating to which have been deleted as aforesaid and shall perform all the functions of a Registrar in respect of all firms the entries relating to which are added as aforesaid.
- 3) Any person aggrieved by an order under sub-section (1) may appeal to such authority and within such time as may be specified in this behalf by the State Government of Madras, and such authority shall pass such order on the appeal as it thinks fit.
- 4) An order of the Registrar under sub-section (1), or where an appeal has been preferred against it under sub-section (3), the order of the appellate authority shall be final.
- 5) The provisions of this section shall cease to be in force from such date as the State Government of Madras may, by notification in the Official Gazette, appoint.” [Vide Tamil Nadu (Added Territories) Adaptation of Laws Order, 1961 (w.r.e.f. 1-4-1960)]. Section 59B

(Gujarat) —After section 59A, insert the following section, namely:— “59B. Deletion of entries relating to certain firms by reason of reorganisation of Bombay State.—

- 1) Notwithstanding anything contained in this Chapter, a Registrar of Firms appointed for any area by the Government of Gujarat may, by order in writing, amend the Register of Firms maintained by him by deleting therefrom the entries relating to any firm whose place of business has, by reason of the reorganisation of the State of Bombay, by the Bombay Reorganisation Act, 1960, ceased to be situated in the State of Gujarat: Provided that the Registrar shall, before passing any order under this sub-section, make such inquiry as he deems necessary and give notice to the firm and the Registrar of the State of Maharashtra.
- 2) After such amendment the Registrar shall cease to perform the functions of a Registrar in respect of any firm the entries relating to which have been deleted as aforesaid.
- 3) Any person aggrieved by an order under sub-section (1) may appeal to such authority and within such time as may be specified in this behalf by the Government of Gujarat, by notification in the Official Gazette; and such

authority shall pass such order on the appeal as it thinks fit.

- 4) An order of a Registrar under sub-section (1), or where an appeal has been preferred against it under sub-section (3), the order of the appellate authority shall be final.” [Vide Gujarat Adaptation of Laws (State and Concurrent Subjects) (Eighth Amendment) Order, 1961 (w.r.e.f. 1-5-1960)].

(Maharashtra) —After section 59A, insert the following section, namely:— “59B.— Same as in Gujarat, except that—

- (i) in the marginal note, for the words “re-organisation of Bombay State”, substitute the words ‘formation of State of Gujarat’;
- (ii) in sub-sections (1) and (3), for the word “Gujarat”, substitute the word “Maharashtra”, and in the proviso, for the word “Maharashtra”, substitute the word “Gujarat”;
- (iii) in sub-section (1), for the words “by reason of re-organisation of the State of Bombay”, substitute the words “by reason of the formation of the State of Gujarat”. [Vide Central Acts on State and Concurrent Subjects (Maharashtra Adaptation) (Amendment) Order, 1961 (w.r.e.f. 1-5-1960)].

60. Recording of alterations in firm name and principal place of business.—

- (1) When an alteration is made in the firm name or in the location of the principal place of business of a registered firm, a statement may be sent to the Registrar accompanied by the prescribed fee, specifying the alteration and signed and verified in the manner required under section 58.
- (2) When the Registrar is satisfied that the provisions of sub-section (1) have been duly complied with, he shall amend the entry relating to the firm in the Register of Firms in accordance with the statement, and shall file it along with the statement relating to the firm filed under section 59. State Amendment

(Maharashtra) —In section 60,—

- (a) for sub-section (1), substitute the following sub-section, namely:— “(1) When an alteration is made in the firm name or in the nature of business of a firm or in the location of the principal place of business of a registered firm, a statement shall be sent to the Registrar, within a period of 90 days from the date of making such alteration, accompanied by the prescribed fee, specifying the alteration and signed and verified in the manner required under section 58.”
- (b) in the marginal note, for the words “firm name and”, substitute the words “firm

name, nature of business and”. [Vide Maharashtra Act 29 of 1984, sec. 9 (w.e.f. 1-1-1985)].

61. 61. Noting of closing and opening of branches.—When a registered firm discontinued business at any place or begins to carry on business at any place, such place not being its principal place of business, any partner or agent of the firm may send intimation thereof to the Registrar, who shall make a note of such intimation in the entry relating to the firm in the Register of Firms, and shall file the intimation along with the statement relating to the firm filed under section 59. State Amendment

(Maharashtra) —In section 61, for the words “may send intimation thereof to the Registrar, who shall”, substitute the following words, namely:— “shall send intimation thereof to the Registrar, within a period of 90 days from the date of such discontinuance or, as the case may be, from the date on which the firm begins to carry on business at such place. The Registrar shall then.” [Vide Maharashtra Act 29 of 1984, sec. 10 (w.e.f. 1-1-1985)].

62. Noting of changes in names and addresses of partners.—When any partner in a registered firm alters his name or permanent address, an intimation of the alteration may be sent by any partner or agent of the firm to the Registrar, who shall deal with it in the manner provided in section 61.

63. Recording of changes in and dissolution of a firm.—

(1) When a change occurs in the constitution of a registered firm any incoming, continuing or outgoing partner, and when a registered firm is dissolved any person who was a partner immediately before the dissolution, or the agent of any such partner or person specially authorised in this behalf, may give notice to the Registrar of such change or dissolution, specifying the date thereof; and the Registrar shall make a record of the notice in the entry relating to the firm in the Register of Firms, and shall file the notice along with the statement relating to the firm filed under section 59.

(2) Recording of withdrawal of a minor.—(2) When a minor who has been admitted to the benefits of partnership in a firm attains majority and elects to become or not to become a partner, and the firm is then a registered firm, he, or his agent specially authorised in this behalf, may give notice to the

Registrar that he has or has not become a partner, and the Registrar shall deal with the notice in the manner provided in sub-section (1). State Amendment

(Maharashtra) —In section 63,—

a) in sub-section (1),—

(i) for the word “any”, wherever it occurs, substitute the word “every”;

(ii) for the words “may give notice to the Registrar of such change or dissolution, specifying the date thereof”, substitute the following words, namely:— “shall, within a period of 90 days from the date of such change or dissolution, give notice to the Registrar of such change or dissolution, specifying the date thereof”;

b) after sub-section (1), insert the following sub-section, namely:— “(1A) Where a change occurs in the constitution of a registered firm, all persons, who after such change are partners of the firm, shall jointly send an intimation of such change duly signed by them, to the Registrar, within a period of 90 days from the date of occurrence of such change and the Registrar shall deal with it in the manner provided by section 61”;

- c) in sub-section (2), for the words “may give notice to the Registrar”, substitute the words “shall, within a period of 90 days from the date of his election, give notice to the Registrar”. [Vide Maharashtra Act 29 of 1984, sec. 12 (w.e.f. 1-1-1985)].

64. Rectification of mistakes.—

- (1) The Registrar shall have power at all times to rectify any mistake in order to bring the entry in the Register of Firms relating to any firm into conformity with the documents relating to that firm filed under this Chapter.
- (2) On application made by all the parties who have signed any document relating to a firm filed under this Chapter, the Registrar may rectify any mistake in such document or in the record or note thereof made in the Register of Firms.

65. Amendment of Register by order of Court.—A Court deciding any matter relating to a registered firm may direct that the Registrar shall make any amendment in the entry in the Register of Firms relating to such firm which is consequential upon its decision; and the Registrar shall amend the entry accordingly.



66. Inspection of Register and filed documents.—

- (1) The Register of Firms shall be open to inspection by any person on payment of such fee as may be prescribed.
- (2) All statements, notices and intimations filed under this Chapter shall be open to inspection, subject to such conditions and on payment of such fee as may be prescribed.

67. Grant of copies.—The Registrar shall on application furnish to any person, on payment of such fee as may be prescribed, a copy, certified under his hand, of any entry or portion thereof in the Register of Firms.

68. Rules of evidence.—

- (1) Any statement, intimation or notice recorded or noted in the Register of Firms shall, as against any person by whom or on whose behalf such statement, intimation or notice was signed, be conclusive proof of any fact therein stated.
- (2) A certified copy of an entry relating to a firm in the Register of Firms may be produced in proof of the fact of the registration of such firm, and of the contents of any statement, intimation or notice recorded or noted therein.

69. Effect of non-registration.—

- (1) No suit to enforce a right arising from a contract or conferred by this Act shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm.
- (2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm.
- (3) The provisions of sub-sections (1) and (2) shall apply also to a claim of set-off or other proceeding to enforce a right arising from a contract, but shall not affect,—
  - (a) the enforcement of any right to sue for the dissolution of a firm or for accounts of a dissolved firm, or any right or power to realise the property of a dissolved firm, or
  - (b) the powers of an official assignee, receiver or Court under the Presidency-towns Insolvency Act, 1909 (3 of 1909) or the Provincial Insolvency Act, 1920 (5 of

1920) to realise the property of an insolvent partner.

(4) This section shall not apply,—

- (a) to firms or to partners in firms which have no place of business in [the territories to which this Act extends], or whose places of business in [the said territories], are situated in areas to which, by notification under [section 56], this Chapter does not apply, or
- (b) to any suit or claim of set-off not exceeding one hundred rupees in value which, in the Presidency-towns, is not of a kind specified in section 19 of the Presidency Small Cause Courts Act, 1882 (5 of 1882), or, outside the Presidency-towns, is not of a kind specified in the Second Schedule to the Provincial Small Cause Courts Act, 1887 (9 of 1887), or to any proceeding in execution or other proceeding incidental to or arising from any such suit or claim. State Amendments

(Maharashtra) —(1) In section 69,—

- a) in sub-section (1), insert the following proviso, namely:— “Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the

deceased partner of a firm for accounts of the firm or to realise the property of the firm.”;

- b) after sub-section (2), insert the following sub-section, namely:— “(2A) No suit to enforce any right for the dissolution of a firm or for accounts of a dissolved firm or any right or power to realise the property of a dissolved firm shall be instituted in any court by or on behalf of any person suing as a partner in a firm against the firm or any person alleged to be or to have been a partner in the firm, unless the firm is registered and the person suing is or has been shown in the Register of Firms as a partner in the firm: Provided that the requirement of registration of firm under this sub-section shall not apply to the suits or proceedings instituted by the heirs or legal representatives of the deceased partner of a firm for accounts of a dissolved firm or to realise the property of a dissolved firm.”;
- c) in sub-section (3),— (i) for the words, brackets and figures “sub-sections (1) and (2)”, substitute the words, brackets, figures and letter “sub-sections (1), (2) and (2A)”; (ii) for clause (a), substitute the following clause, namely:— “(a) the firms constituted for a duration up to six months or with a capital up to two thousand rupees; or.” [Vide Maharashtra Act 29 of 1984, sec. 13 (w.e.f. 1-1-1985)].

(2) After section 69, insert the following section, namely:— “69A. Penalty for contravention of section 60, 61, 62 or 63.—If any statement, intimation or notice under section 60, 61, 62 or 63 in respect of any registered firm is not sent or given to the Registrar, within the period specified in that section, the Registrar may, after giving notice to the partners of the firm and after giving them a reasonable opportunity of being heard, refuse to make the suitable amendments in the records relating to the firm, until the partners of the firm pay such penalty, not exceeding ten rupees per day, as the Registrar may determine in respect of the period between the date of expiry of the period specified in sections 60, 61, 62 or as the case may be 63 and the date of making the amendments in the entries relating to the firm.” [Vide Maharashtra Act 29 of 1984, sec. 14 (w.e.f. 1-1-1985)].

70. Penalty for furnishing false particulars.—Any person who signs any statement, amending statement, notice or intimation under this Chapter containing any particular which he knows to be false or does not believe to be true, or containing particulars which he knows to be incomplete or does not believe to be complete, shall be punishable with imprisonment which may extend to three months, or with fine, or with both. State Amendment

(Maharashtra) —

- 1) In section 70, for the words “shall be punishable with imprisonment which may extend to three months, or with fine, or with both”, substitute the following words, namely:— “shall, on conviction, be punished with imprisonment for a term which may extend to one year, or with fine, or with both: Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the fine shall not be less than one thousand rupees.” [Vide Maharashtra Act 29 of 1984, sec. 15 (w.e.f. 1-1-1985)].
- 2) After section 70, insert the following section, namely:— “70A. Maximum fees and power to amend Schedule I.—
  - i. The fees payable under this Act and the rules made thereunder shall not exceed the maximum fees as specified in Schedule I.
  - ii. Subject to the provisions of this section, the State Government may, having regard to the expenditure incurred or to be incurred for carrying out the purposes of this Act, from time to time, by notification in the Official Gazette, vary any of the amounts of maximum fees and other particulars specified in Schedule I, and, thereupon, the said Schedule shall be deemed to be amended accordingly.

- 3) Every notification issued under sub-section (2) shall take effect from the date of its publication in the Official Gazette, unless some other date is specified therein for this purpose.
- 4) Every notification issued by the State Government under sub-section (2) shall be laid, as soon as may be after it is issued, before each House of the State Legislature, while it is in session, for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, and notify such decision in the Official Gazette, the notification shall, from the date of publication of such decision, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done in pursuance of that notification.” [Vide Maharashtra Act 29 of 1984, sec. 16 (w.e.f. 1-1-1985)].

71. Power to make rules.—

- 1) The [State Government] [may by notification in the Official Gazette make rules] describing the fees which shall accompany documents sent to the Registrar of Firms, or which shall be payable for the inspection of documents in the custody of the Registrar of Firms, or for copies from the Register of Firms: Provided that such fees shall not exceed the maximum fees specified in Schedule I.
- 2) The State Government may [also] make rules,—
  - a) prescribing the form of statement submitted under section 58, and of the verification thereof;
  - b) requiring statements, intimations and notices under sections 60, 61, 62 and 63 to be in prescribed form, and prescribing the form thereof;
  - c) prescribing the form of the Register of Firms, and the mode in which entries relating to firms are to be made therein, and the mode in which such entries are to be amended or notes made therein;
  - d) regulating the procedure of the Registrar when disputes arise;



- e) regulating the filing of documents received by the Registrar;
  - f) prescribing conditions for the inspection of original documents;
  - g) regulating the grant of copies;
  - h) regulating the elimination of registers and documents;
  - i) providing for the maintenance and form of an index to the Register of Firms; and
  - j) generally, to carry out the purposes of this Chapter.
- 3) All rules made under this section shall be subject to the condition of previous publication.
- 4) Every rule made by the State Government under this section shall be laid, as soon as it is made, before the State Legislature.] State Amendments Andhra Pradesh.—In section 71, in sub-section (1), after the proviso, insert the following proviso, namely:— “Provided further that the fees payable under this Act, shall be collected in the form of Court-fee stamps which shall be affixed to the documents sent to the Registrar of Firms.” [Vide Andhra Pradesh Act 27 of 1994, sec. 2 (w.e.f. 22-12-1994)].

- e) regulating the filing of documents received by the Registrar;
  - f) prescribing conditions for the inspection of original documents;
  - g) regulating the grant of copies;
  - h) regulating the elimination of registers and documents;
  - i) providing for the maintenance and form of an index to the Register of Firms; and
  - j) generally, to carry out the purposes of this Chapter.
- 3) All rules made under this section shall be subject to the condition of previous publication.
- 4) Every rule made by the State Government under this section shall be laid, as soon as it is made, before the State Legislature.] State Amendments Andhra Pradesh.—In section 71, in sub-section (1), after the proviso, insert the following proviso, namely:— “Provided further that the fees payable under this Act, shall be collected in the form of Court-fee stamps which shall be affixed to the documents sent to the Registrar of Firms.” [Vide Andhra Pradesh Act 27 of 1994, sec. 2 (w.e.f. 22-12-1994)].

- e) regulating the filing of documents received by the Registrar;
  - f) prescribing conditions for the inspection of original documents;
  - g) regulating the grant of copies;
  - h) regulating the elimination of registers and documents;
  - i) providing for the maintenance and form of an index to the Register of Firms; and
  - j) generally, to carry out the purposes of this Chapter.
- 3) All rules made under this section shall be subject to the condition of previous publication.
- 4) Every rule made by the State Government under this section shall be laid, as soon as it is made, before the State Legislature.] State Amendments Andhra Pradesh.—In section 71, in sub-section (1), after the proviso, insert the following proviso, namely:— “Provided further that the fees payable under this Act, shall be collected in the form of Court-fee stamps which shall be affixed to the documents sent to the Registrar of Firms.” [Vide Andhra Pradesh Act 27 of

1994, sec. 2 (w.e.f. 22-12-1994)].

(Maharashtra) —In section 71,—

- a) for sub-section (1), substitute the following sub-section, namely:— “(1) Subject to the provisions of section 70A, the State Government may, by notification in the Official Gazette, make rules prescribing the fees which shall accompany documents sent to the Registrar or which shall be paid in respect of any intimation, notice or application given to the Registrar or which shall be payable for the inspection of documents in the custody of the Registrar or for copies from the Register of Firms or which shall be paid for supply of any prescribed forms.”;
- b) (b) in sub-section (2),—
  - i) in clause (a), for the words and figures “under section 58”, substitute the words, brackets and figures “under sub-section (1) of section 58”;
  - ii) after clause (a), insert the following clause, namely:— “(aa) prescribing the manner of filing an appeal under sub-section (4) of section 58;”

- c) for sub-section (4), substitute the following sub-section, namely:— “(4) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature, while it is in session, for a total period of thirty days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, and notify such decision in the Official Gazette, the rule shall, from the date of publication of such decision, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done in pursuance of that rule.” [Vide Maharashtra Act 29 of 1984, sec. 17 (w.e.f. 1-1-1985)]. 4. Ins. by Act 20 of 1983, sec. 2 and Sch. (w.e.f. 15-3-1984).

72. Mode of giving public notice.—A public notice under this Act is given—

- a) where it relates to the retirement or expulsion of a partner from a registered firm, or to the dissolution of a registered firm, or to the election to become or not to become a partner in a registered firm by a person attaining majority who was admitted as a minor to the benefits of partnership, by notice to Registrar of

Firms under section 63, and by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relate has its place or principal place of business, and

- b) in any other case, by publication in the Official Gazette and in at least one vernacular newspaper circulating in the district where the firm to which it relates has its place or principal place of business.

73. Repeals.—[Rep. by the Repealing Act, 1938 (1 of 1938), sec. 2 and Sch.].

74. Savings.—Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect,—

- a) any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of this Act, or
- b) any legal proceeding or remedy in respect of any such right, title, interest, obligation or liability, or anything done or suffered before the commencement of this Act, or

- c) anything done or suffered before the commencement of this Act, or
- d) any enactment relating to partnership not expressly repealed by this Act, or
- e) any rule of insolvency relating to partnership, or
- f) any rule of law not inconsistent with this Act. State Amendment Goa, Daman and Diu.—Renumber section 74 as sub-section (1) thereof and after sub-section (1) as so renumbered, insert the following sub-section, namely:— “(2) Notwithstanding anything contained in sub-section (1) and in any other law in force in the Union territory of Goa, Daman and Diu, the provisions of sub-sections (1) and (2) of section 69 shall apply to all suits instituted in the Union territory of Goa, Daman and Diu after the 1st January, 1965, even if the cause of action with respect to the said suits had arisen before that date.” [Vide Goa, Daman and Diu Act 6 of 1966, sec. 4 (w.e.f. 22-8-1966)].

# Foreign LLP

Acknowledgements:

[https://www.taxmanagementindia.com/visitor/detail\\_article.asp?ArticleID=407#:~:text=Sec.,establishment%20of%20foreign%20LLP%2C%20Sec.](https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=407#:~:text=Sec.,establishment%20of%20foreign%20LLP%2C%20Sec.)

By: [Mr. M. GOVINDARAJAN](#) - July 3, 2009



# Introduction

- **Sec.2(m) of Limited Liability Partnership Act, 2008** defines the term 'foreign limited liability partnership' ("foreign LLP' for short) as a limited liability partnership formed, incorporated or registered outside India which establishes a place of business within India.

For the establishment of foreign LLP, Sec. 59 of the Limited Liability Partnership Act gives power to the Central Government to make rules for provisions in relation to establishment of place of business by foreign LLP within India and carrying on their business therein by applying or incorporating with such modifications as appear appropriate, the provisions of the Companies Act, 1956 or such regulatory mechanism with such composition as may be prescribed.

## Reservation Of Existing Name for 3 years

**Rule 16(3)** provides that a foreign LLP or a foreign company may on payment of Rs. 200/- apply in Form 25 to the Registrar for reserving its existing name by which it is registered in the country of its regulation or incorporation. Such reservation shall be valid for three years but may be renewed on a fresh application along with the payment of fee.

# Filing Documents With Registrar

**Chapter XI of the Limited Liability Partnership Rules, 2009 deals with the foreign LLP. A foreign LLP shall, within thirty days of establishment of a place of business in India, file with the Registrar an application in Form 27 along with the following documents :**

- A copy of the certificate of incorporation or registration and other instrument(s) constituting or defining the constitution of the LLP.**
- The full address of the registered or principal office of the LLP in the country of its incorporation .**
- The full address of the office of the LLP in India which is to be deemed as its principal place of business in India; and**
- List of partners and designated partners, if any and the names and addresses of two or more persons resident in India, authorized to accept on behalf of the LLP, service of process and any notices or other documents required to be served on the LLP.**

# Certification Of Documents

**The Foreign LLP for the purpose of registration is divided in three categories as:**

- **LLP incorporated in any country**
  - which is part of Commonwealth;
  - that falls outside the Commonwealth but is a party to the Hague Apostile Convention, 1961;
  - outside the Commonwealth and is not a party to the Hague Convention.

**If the LLP is incorporated in any country which is a part of Commonwealth the copies of documents discussed above shall be certified as true copies by-**

- **An official of the Government to whose custody the original is committed ; or**
- **A Notary (Public) in that part of the Commonwealth; or**
- **An officer of the LLP, on oath before a person having authority to administer an oath in that part of the Commonwealth.**

**If the Limited Liability Partnership is incorporated in a country that falls outside the Commonwealth but is a party to the Hague Apostile Convention, 1961**

- **The copies of the documents referred to in sub-rule (1) shall be certified by an official of the Government to whose custody the original is committed and be duly apostilled in accordance with Hague Convention;**
- **A list of the partners and designated partners of the LLP, if any, the name and address of persons resident in India, authorized to accept notice on behalf of the Limited Liability Partnership shall be duly notarized and be apostilled in the country of their origin in accordance with Hague Convention.**

**If the limited liability partnership is incorporated in a country outside the Commonwealth and is not a party to the Hague Convention, the copy of the incorporation documents referred in sub-rule (1) shall be certified by**

- **An official of the Government to whose custody the original is committed; or**
- **A Notary (Public) of such country; or**
- **An officer of the limited liability partnership.**

**The signature or seal of the official of the Government to whose custody the original is committed or the certificate of the Notary (Public) shall be authenticated by**

- a Diplomatic or Consular Officer empowered in this behalf under section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 (XL of 1948),**
- or where there is no such officer, by any of the officials mentioned in section 6 of the Commissioners of Oaths Act, 1889,**
- or in any Act amending the same.**

**The certificate of the officer of the limited liability partnership shall be signed before a person having authority to administer an oath as provided under sec 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948 , or as the case may be, by section 3 of the Commissioners of Oaths Act, 1889 the status of the person administering the oath in the latter case being authenticated by any official specified in section 6 of the Commissioners of Oaths Act, 1889 or in any Act amending the same.**

# Registration

- **The Registrar shall, on registration of Form 27, issue a certificate for establishment of place of business in India by the foreign limited liability partnership in Form 30**

# Alteration In Any Document

If any alteration is made or occurs in-

- The instrument constituting or defining the constitution of a LLP incorporated or registered outside India;
- The registered or principal office of a LLP incorporate or registered ; or
- The partner or designated partner , if any , of a LLP incorporated or registered outside India, the foreign LLP shall file in Form 28 such alterations with the Register within sixty days of the close of the financial year.



**If any alteration is made or occurs in-**

- **The certificate of incorporation or registration of LLP incorporated or registered outside India;**
- **The name and address of any of the persons authorized to accept service on behalf of a foreign LLP in India; or**
- **The principal place of business of foreign LLP in India, the foreign LLP shall file in Form 29 such alterations with the registrar within thirty days from the date of which the alteration was made or occurred.**

# Filing Of Accounts & Solvency

Every foreign LLP shall file with the Registrar the statement of Accounts and Solvency in Form 8 in accordance with the provisions of Rule 24 duly signed by the authorized representatives within a period of 30 days from the end of six months of the financial year. If any of such documents is not in the English language there shall be annexed to it certified translation thereof. If any translation is made outside India, it shall be authenticated by-

- An Advocate, Chartered Accountant, Company Secretary or Cost Accountant; or
- An affidavit of a person who, in the opinion of the registrar has adequate knowledge of the language of the original and of English.

## **Other Matters :**

- 1. Every foreign LLP shall cause the name of the foreign LLP and the country in which the LLP is incorporated, to be stated in legible English characters in all invoices, official correspondence and publication of the LLP;**
- 2. (a) Where any such LLP makes default in delivering to the registrar the names and addresses of person resident in India who are authorized to accept on behalf of LLP service of process, notices or other documents;  
or  
(b) If at any time all the persons whose name and addresses have been so delivered are dead or ceased to reside, or refuse to accept service on behalf of LLP or for any reason, cannot be served**

**A document may be served on the LLP by leaving it, or sending it by posts to, any place of business established by LLP in India;**

- 3. If any foreign LLP ceases to have a place of business in India, it shall give notice to the registrar in Form 29 within thirty days of its intention to close the place of business and as from the date on which notice is so given, the obligation of the LLP to file any document to the registrar shall cease, provided it has no other place of business in India and it has filed all the documents due for filing as on the date of notice;**
- 4. Every document which is required to be filed by any foreign LLP shall be filed in the electronic form to the registrar having jurisdiction over New Delhi, through the portal maintained by the Ministry of Corporate Affairs on its website [www.mca.gov.in](http://www.mca.gov.in)**

# Indian Institute of Insolvency Professionals of ICAI LIE (New Syllabus) Preparatory Training Program

- Contracts, Voidable Contracts, void Agreements, Contingent Contracts, Performance of Contracts, Novation, Rescission and Alteration of Contracts (Sections 10 to 67 of Indian Contract Act, 1872)
- Consequences of Breach of Contracts (Sections 73 to 75 of Indian Contract Act, 1872)
- Contracts of Indemnity and Guarantee and Surety's Rights (Sections 124-127 of Indian Contract Act, 1872)
- Bailment and Pledge and Agency (Sections 148 to 238 of Indian Contract Act, 1872)
- The Sale of Goods Act, 1930

# INDIAN CONTRACT ACT, 1872



# *The Indian Contract Act ,1872*

- contracts, voidable contracts and void agreement;
- Contingent contracts;
- Performance of contract;
- Novation, rescission and alteration of contracts;
- Consequences of breach of contract;
- Indemnity and guarantee and Surety's rights;
- Bailment and pledge and Agency

# PRILIMINARY

## Section 1

**Short Title:** This Act may be called the Indian Contract Act, 1872.

**Extent, Commencement:** It extends to the whole of India, and it shall come into force on the first day of September, 1872.

**Saving:** Nothing herein contained shall affect the provisions of any Statute, Act or Regulation not hereby expressly repealed, nor any usage or custom of trade, nor any incident of any contract, not inconsistent with the provisions of this Act.



## Section 2

In this Act the following words and expressions are used in the following senses, unless a contrary intention appears from the context:

2(a). When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal;

2(b). When a person to whom proposal is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a promise.

2(c). The person making the proposal is called the "promisor", and the person

accepting the proposal is called the "promisee";

2(d). When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise;

2(e). Agreement' as 'every promise or every set of promises forming consideration for each other.

i.e. Promise in return of Promise Reciprocal Promise

An Agreement is a promise or a commitment or set of reciprocal promises or commitments. An agreement involves an offer or proposal by one person and acceptance of such offer or proposal by another person.

## Section 2

2(f). Promises which form the consideration or part of the consideration for each other are called reciprocal promises;

2(g). An agreement not enforceable by law is said to be void;

2(h). “Contract is an agreement enforceable by law”.

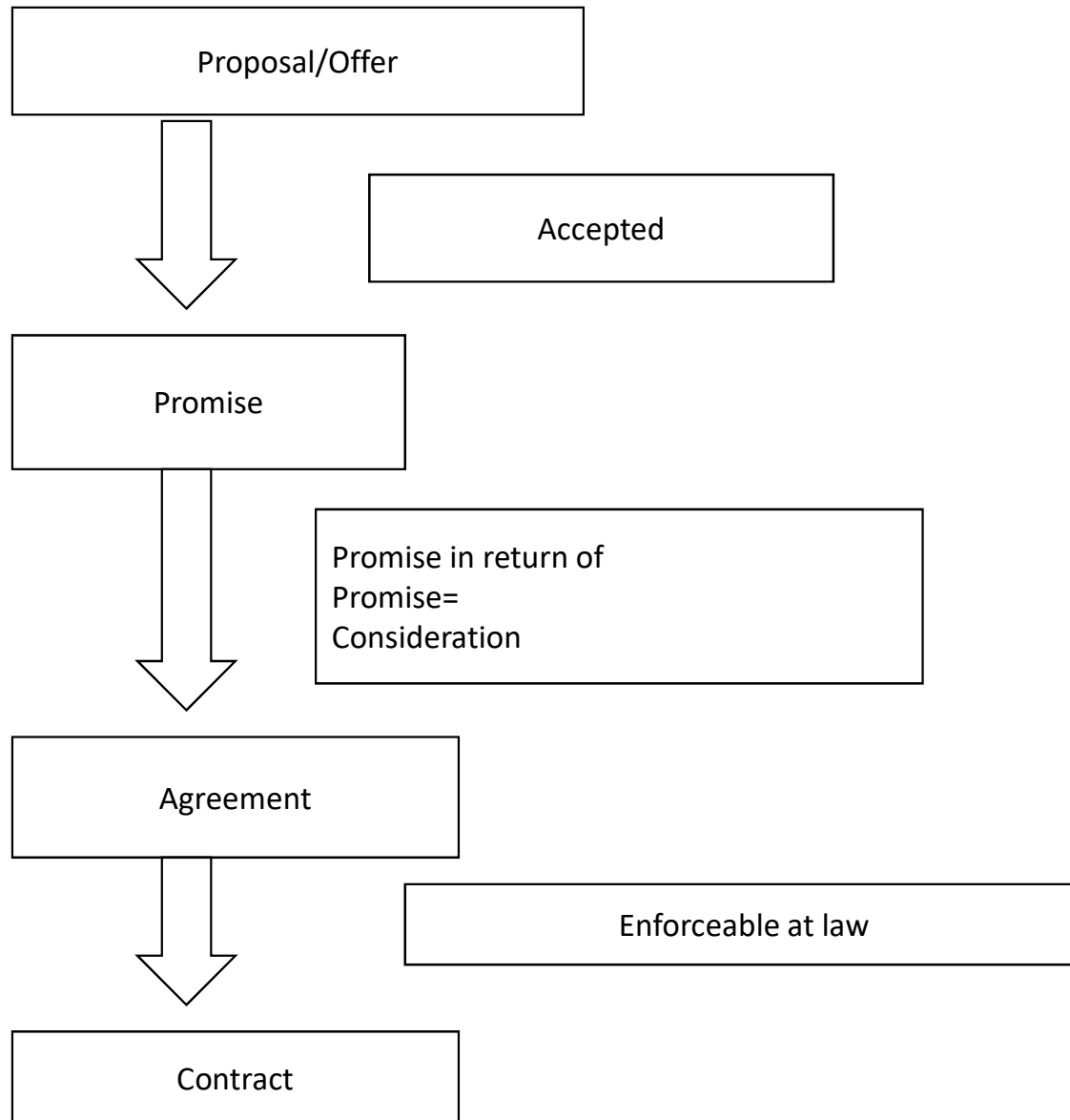
Contract = Agreement + Enforceable by law

Salmond defines, “An agreement creating and defining obligations between the parties is a Contract.”

Contract = Agreement + Obligations (legal duty to fulfill one’s promise)

2(i). An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract;

2(j). A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.



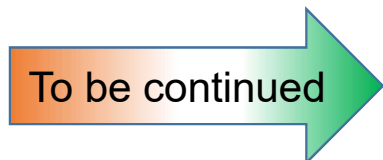
# Section 10

## **Essential Elements of Contract:**

- Agreement: “Agreement which is legally enforceable alone is a contract”. An agreement which is not enforceable can be either Void Agreement or Voidable contract. In order to constitute a contract, there must be an agreement in first place. An agreement in turn is composed of two elements- offer and acceptance.

The two important element of agreement are:

- Plurality of persons
- Consensus ad-idem



a. Plurality of persons: There must be at-least two parties-one making the offer and another accepting it. A person cannot enter into agreement with himself or with an inanimate object.

consensus ad-idem: The promisor and promisee of the agreement should have agreed in same sense & on same thing. There should be meeting of minds.



- Legal intention: The parties must intend to create a legal relationship.

Agreements of social or domestic nature do not contemplate legal relationship, so they are not contracts.

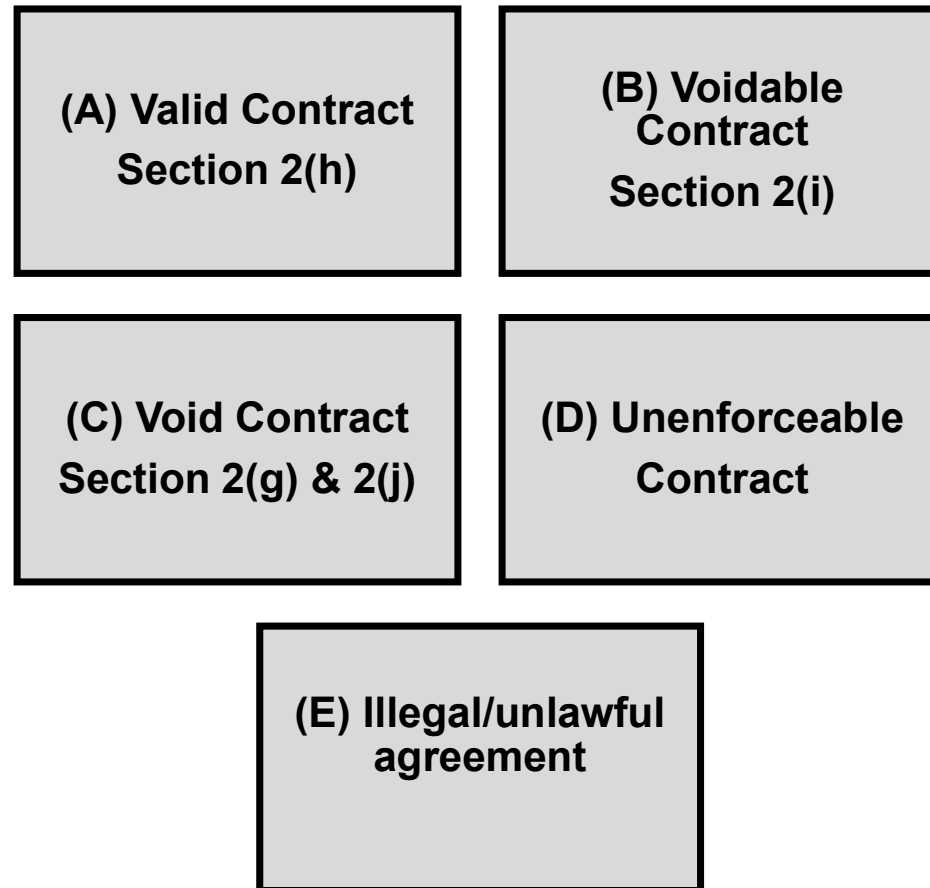
- Lawful Consideration: The agreement must be supported by a lawful consideration. Consideration means 'something in return'. It is not important whether consideration is adequate or in-adequate. 'Something in return' may be an act or abstinence. But consideration must be real and lawful.
- Capacity: The parties to an agreement must be capable of entering into a contract i.e.
  - a. He shall not be minor (less than eighteen years of age);
  - b. shall be of sound mind
  - c. Shall not be disqualified from contracting by any law to which he is subject.

- Lawful object: The object of agreement must be lawful.
- free Consent: The consent of the parties must be free and genuine i.e. not induced by coercion, undue influence, fraud or misrepresentation.
- Void Agreement: The agreement not expressly declared void or illegal by law.
- Certainty and Possibility of Performance: The terms of agreement must be certain and capable of performance.
- Legal formalities: Where nature of agreement is such that it requires compliance of certain formalities, such requirements should be fulfilled. A contract may require registration in addition to being in writing. However as regards to legal effects, an oral contract has same weight-age as a contract in writing.

# Agreements Which Are Not Contract

1. Agreements relating to social matters: Intention to create legal obligation is absent.
2. domestic Arrangement between Husband and Wife: It is presumed that there is no intention to create legal relations. (Balfour v Balfour).
3. Agreement to do illegal/unlawful/immoral act e.g. Smuggling.
4. Agreement declared specifically void (unenforceable by law): Agreement to do impossible act (putting life in a dead person), wagering agreement (betting agreement).

# 1. Types of Contract on the basis of its enforcement



# 1. Types of Contract on the basis of its enforcement

## (A) Valid Contract:

An agreement enforceable by the law is a contract (**Section 2(h)**). To be enforceable it has to satisfy the requirements under **Section 10** of the Indian Contract, 1872. They are:

- There is some consideration for it.
- The parties are competent to contract
- Their consent is free.
- Their object is lawful

# Types of Contract on the basis of its enforcement

(B) Voidable Contract: Section 2(i):

An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other, is a voidable contract.

As mentioned above, free consent which is defined in Section 14 of the Act is an essential element of a valid contract. Consent is free when it is not obtained by coercion, undue influence, fraud, misrepresentation or mistake .

- Where consent to an agreement is caused by coercion, undue influence,

fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A voidable contract remains valid until rescinded. A voidable contract can be made valid by the party who has a right to rescind it by giving up his right of rescinding it.

# Types of Contract on the basis of its enforcement

## Void Contract:

Section 2(g): A void agreement is not enforceable at the option of either party. Section 2(g) of the Act explains the meaning of a void agreement.

Section 2(j) of the Act speaks about a valid contract which subsequently becomes void. “A contract which ceases to be enforceable by the law becomes void when it ceases to be enforceable”.

No obligation or right arises from a void contract. They are not covered by the law.

Such contracts cannot be made valid by the parties to the contract by giving their consent.



- If consent to a contract is caused by mistake, the agreement is void as provided in Section 20 of the Act. If the parties to a contract are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

# Types of Contract on the basis of its enforcement

**Sections 24-30** of the Act deals with void agreements. The following types of Agreements are declared to be void:

- Agreements unlawful in part(S. 24)
- Agreements without consideration(S. 25)
- Agreements in restraint of marriage(S. 26)
- Agreements in restraint of trade(S.27)
- Agreements in restraint of legal proceedings(S. 28)
- Unmeaning agreements(S. 29)
- Wagering agreements(S. 30)

# Types of Contract on the basis of its enforcement

Section 24: Section 24 comes into play when a part of the consideration for an object or more than one objects of an agreement is unlawful. The whole of the agreement would be void unless the unlawful portion can be severed without damaging the lawful portion.

Every agreement in restraint of marriage of any person, other than minor is void. It is immaterial whether the restraint is general or partial.

Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. There is no distinction between total restraint and partial restraint of trade.

# Types of Contract on the basis of its enforcement

Section 28: Section 28 of the Act renders two kinds of agreement void. They are:

- ❑ An agreement by which a party is restrained absolutely from enforcing his rights arising under a contract by the usual legal proceedings in the ordinary tribunals.
- ❑ An agreement which limits the time within which the contract rights may be enforced.

(D) Unenforceable Contract: It is one which is good in substance, but because of some technical defect, one or both parties cannot be sued on it. These defect may be the absence of writing, registration, time-barred by the law of limitation, etc.

# Types of Contract on the basis of its enforcement

## (E) Illegal/unlawful Contract

Section 23 of the Act describes certain conditions when an agreement may be unlawful or illegal. A distinction has to be made between void contracts and illegal contracts. Agreements whose object or consideration is forbidden by law are called illegal contracts. In the case of void agreements, the law may merely say that if it is made, the courts will not enforce it.

Thus all illegal agreements or contracts are void, but all void agreements are not illegal. In the case of both illegal and void contracts, the similarity is that in either case, the primary agreement is unenforceable. Nothing can be recovered under either kind of agreement and if something has been paid, it cannot be recovered back. Thus a guilty party has no right of action on an illegal contract.

# Types of Contract on the basis of Mode of Creation

**(A) Express Contracts**

**(B) Implied Contracts**

**(C) Quasi-Contract**

# Types of Contract on the basis of Mode of Creation

(A) Express Contracts: The first part of Section 9 of the Indian Contract deals with promises which are expressly made. Contracts arising from expressly made promises are called express contracts.

According to Section 9 “insofar as the proposal or acceptance of any promise is made in words, the promise is said to be express”. Thus contracts entered into between the parties by words, spoken or written, are known as express contracts.



- (B) Implied Contracts: The second part of Section 9 of the Act deals with implied contracts. It says “insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.” Thus contracts entered into between parties by virtue of their conduct are called implied contracts.
- The terms of the agreement are not expressed in written or oral form but are inferred from their conduct.

## 2. Types of Contract on the basis of Mode of Creation

(C) Quasi-Contract: A contract which does not arise by virtue of any agreement between the parties, but due to certain special circumstances, the law recognizes it as a Quasi contract. Such contracts come into existence because of interference from courts in the interest of justice.

There are many several situations in which law, as well as justice, require that a certain person is required to conform to an obligation, although he has neither broken any contract nor committed any tort.

The principle is that there should not be “unjust enrichment” i.e., enrichment of one at the cost of another.

The Indian Contract Act does not define the term Quasi-Contract. It does not mean that the principle behind the same hasn't been recognized. Chapter V of the Act deals with such situations under the heading of “Of Certain Relations Resembling Those Created by Contract.”

# Types of Contract on the basis of Extent of Execution

**(A) Executed Contract**

**(B) Executory Contract**

**(C) Partly Executed or  
Partly Executory  
Contract**

**(D) Unilateral Contract**

**(E) Bilateral Contract**

# Types of Contract on the basis of Extent of Execution

**(A)Executed Contract:** When both the parties have completely performed their respective obligations under the contract, it is said to be executed contract. It means that whatever was the object of the contract has been carried out. In most executed contracts the promises are made and then immediately completed.

The buying of goods and/or services usually falls under this category. There is no confusion about the date of execution of the contract since in most cases it is instantaneous.

**(B) Executory Contract:** An executory contract is one which is one in which one or both parties are still to perform their obligations. Such contracts are future contracts. In such contracts, the consideration is the promise of performance or obligation. In executory contracts, the consideration for the promise made is carried out sometime in the future.

**For example** – Delivery and payment are to be made after 15 days. The contract is executory. Another good example of an executory contract is that of a lease.

# Types of Contract on the basis of Extent of Execution

**(C) Unilateral Contract:** They are one-sided contracts. A unilateral promise is a promise from one side only and intended to induce some action by the other party. The promisee is not bound to act, for he gives no promise from his side. But if he carries out the act desired by the promisor, he can hold the promisor to his promise. His act is simultaneously acceptance of and consideration for the promise. “An act done at the request of the offeror in response to his promise is a consideration, and consideration in its essence is nothing else but the response to such a request.”

**(D) Bilateral Contract:** A bilateral contract is a legally binding contract formed by the exchange of reciprocal promises. Here both parties are outstanding at the time of formation of the contract. In such a case, each party is a promisor and promisee. They are also known as reciprocal contracts because mutuality of obligation is essential for their enforceability. In the case of bilateral contracts, an offer made is accepted in the form of a counter-promise. They are very common in everyday life.



# Contingent Contract

A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.

## **Essentials features of a contingent contract**

- a. It is a contract to do or not to do something.
- b. This contract is dependent on happening or non-happening of an event.
- c. Such an event is a collateral event, i.e., it is collateral to the contract, i.e., the event must not depend upon the mere will of a party.
- d. The event is uncertain.

## Rules regarding Contingent Contracts (Sec 32-36)

Contract contingent upon	When can it be enforced?	When does it become void?
Happening of an event	When such event has happened.	When the happening of such event becomes impossible.
<b>A makes a contract to buy B's house if A survives C.</b>		
	This contract cannot be enforced by law unless and until C dies in A's lifetime.	A dies before
<b>A contracts to pay B a sum of money when B marries C</b>		
	When B and C marries.	C dies without being married to B. The contract becomes void.
Non- happening of a future event	When the happening of such event becomes impossible.	When such event has happened.
	A contracts to pay B a certain sum of money if a certain ship does not return	

**A contracts to pay B a sum of money when B marries C**

	<b>The ship is sunk. The contract can be enforced when the ship sinks.</b>	<b>When the ship returns.</b>
<b>Happening of an event within a specified time</b>	<b>When such event has happened within the specified time.</b>	<b>When the happening of such event becomes impossible before the expiry of specified time. When such event has not happened</b>

**A promises to pay B a sum of money if a certain ship returns with in a year**

	<b>The contract may be enforced if the ship returns within the year.</b>	<b>The contract becomes void if the ship is burnt within the year.</b>
<b>Non-happening of an event within a fixed time.</b>	<b>When the happening of such event becomes impossible before the expiry of specified time. When such event has not happened within the specified time.</b>	<b>When such event has happened within the specified time.</b>

**A promises to pay B a sum of money if a certain ship does not return within the year.**

	<b>The contract may be enforced if the ship does not return within the year or is burnt within the year.</b>	<b>If ship returns within a year</b>
<b>Future conduct of a living person.</b>	<b>When such person acts in the manner as desired in the contract.</b>	<b>When such person does anything which makes the desired future conduct of such person –</b> a. Impossible; or b. Dependent upon certain contingency.

**A agrees to pay B ` 1,000 if B marries C.**

	<b>B and C married.</b>	<b>C marries D. The marriage of B to C must now be considered impossible although it is possible that D may die and C may afterwards marry B.</b>
<b>impossible events</b>	<b>Such an agreement cannot be enforced since it is void. Whether the impossibility of the event was known to the parties or not is immaterial.</b>	
	<b>A agrees to pay Rs. 1,000 to B if two straight lines should enclose a space. The agreement is void.</b>	

# Performance of Contract

Section 37 to 67 of the Indian Contract Act, 1872 deals with the provisions relating to Performance of Contracts. These provisions are covered below:

## **Obligations of parties to contract:**

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provision of this Act, or of any other law.

This obligation continues even after death of the promisors and before the performance, unless a contrary intention appears from the contract or where it involves the personal skill of the Promisor.

Note: Merger of Rights-Discharge due to merger of rights-Tenant buying a house.

# Types of Contract on the basis of Extent of Execution

**(A) Executed Contract**

**(B) Executory Contract**

**(C) Partly Executed or  
Partly Executory  
Contract**

**(D) Unilateral Contract**

**(E) Bilateral Contract**

# Effect of refusal to accept offer of performance

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Every such offer must fulfil the following conditions:

1. it must be unconditional;
2. it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is been made is able and willing there and then to do the whole of what he is bound by his promise to do;

## Effect of refusal to accept offer of performance..contd

3. if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

Here it should be noted that an offer to one of several joint promises has the same legal consequences as an offer to all of them.

### **Effect of refusal of party to perform promise wholly:**

When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his consent to the continuance of the contract.



## Person by whom promises is to be performed

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor.

In other cases, the promisor or his representative may employ a competent person to perform it.

### **Effect of accepting performance from this person:**

Only the Promisor or his representative or his duly authorized agent can perform the promise.

However, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

## Devolution of joint liabilities

When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, the following persons shall fulfil the promise;

- a. all such persons, during their joint lives, and,
- b. after the death of any of them, his representative jointly with the survivor or survivors, and,
- c. after the death of the last survivor the representatives of all jointly

Any one of joint promisors may be compelled to perform.

When two or more persons make a joint promise, the promisee may, in the absence of express agreements to the contrary, compel any one or more of such joint promisors to perform the whole promise.

## Devolution of joint liabilities.. contd

Each promisor may compel contribution: Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution: If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

*Explanation:* Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

## Effect of release of one joint promisor

Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor, neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

**Devolution of joint rights:** When a person has made a promise to two or more persons jointly, then unless contrary intention appears from the contract, the right to claim performance rests;

- a. as between him and them, with them during their joint lives, and,
- b. after the death of any one of them, with the representative of such deceased person jointly with the survivor or survivors, and,
- c. after the death of the last survivor, with the representatives of all jointly.

## Time for performance of promise, where no application is to be made and no time is specified

Where, by the contract, a promisor is to perform his promise without application by the promisee, and where no time for performance is specified, the engagement must be performed within a reasonable time. *Explanation:* The question “what is a reasonable time” is, in each particular case, a question of fact. Time and place for performance of promise, where time is specified and no application to be made

When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without the application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

# Application for performance on certain day to be at proper time and place

When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for the performance at a proper place within the usual hours of business. *Explanation:* The question “what is proper time and place” is, in each particular case, a question of fact.

**Place for the performance of promise, where no application to be made and no place fixed for performance** When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such a place.

# Performance in manner or at time prescribed or sanctioned by promise

The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

**Promisor not bound to perform, unless reciprocal promisee ready and willing to perform**

When a contract consists of reciprocal promises to be simultaneously performed, the promisor need not perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

# Order of performance of reciprocal promises

- Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order, and where the orders is not expressly fixed by the contract, they shall be performed in that order which the nature of transaction requires.



## Liability of party preventing event on which contract is to take effect

When a contract contains reciprocal promises and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

- **Effect of default as to the promise which should be performed, in contract consisting of reciprocal Promises:**
- When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

## Effect of failure to perform at fixed time, in contract in which time is essential

When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before a specified time and fails to do such thing at or before a specified time, and fails to do such thing at or before a specified time, the contract or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract.

**1. Effect of such failure when time is not essential :** If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.

# Effect of failure to perform at fixed time, in contract in which time is essential

## **2. Effect of acceptance of performance at time other than agreed**

**upon:** If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agree, the promisee cannot claim compensation of any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he give notice to the promisor of his intention to do so.

# Agreement to do an impossible Act

An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful. Where one person has promised to do something which he knew or, with reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

# Reciprocal promise to do things legal, and also other things illegal

Where persons reciprocally promise, firstly to do certain things which are legal, and, secondly under specified circumstances, to do certain other things which are illegal, the first set of promise is a contract, but the second is a void agreement.

## Alternative promise, one branch being illegal

In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

## Application of payment where debt to be discharged is indicated

Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment if accepted, must be applied accordingly.

## Application of payment where debt to be discharged is not indicated

Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits.



## Application of payment where neither party appropriates

Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionally.

## Effect of novation, rescission, and alteration of contract

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Exception: Surrender

## Promise may dispense with or remit performance of promise

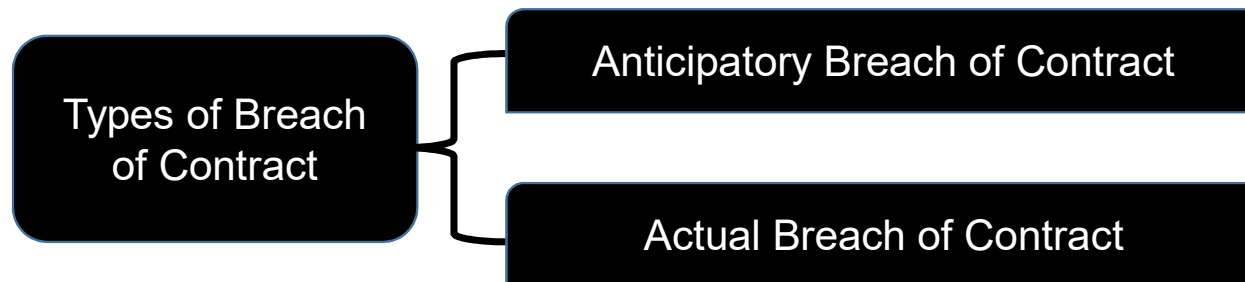
Every promise may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

## Consequence of rescission of voidable contract

When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract restore such benefit, so far as may be, to the person from whom it was received.

# Breach of Contract

**Section 64:** If one of the parties to a contract refuses or fails to carry out agreed obligation, the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.



Anticipatory Breach of contract:

1. When a party refuses to perform the contract before the time fixed for its performance
2. When a party by his own act disables himself from performing the contract in its entirety e.g. A contracts to sell car to B. Before the agreed date, A sells car to C.

# Anticipatory Breach of Contract

There may exist two situations for promise:

1. Promisee may put an end to the contract and treat anticipatory breach as actual breach of contract.
2. Promisee may wait till due date.

Consequences:

1. Promisee is excused from his performance.
2. He need not wait till due date of performance before suing the promisor for breach of contract.
3. Amount of damages= Price on date of refusal to perform (–) Contract price
4. Promisee may elect to keep the contract alive till the date of performance.

# Anticipatory Breach of Contract

## Consequences:

1. If promisor elects to perform on due date, promisee is bound to accept the performance.
2. If during the time the contract remains open and some event happens which discharges the contract by supervening impossibility or illegality, the contract will become void. Promisor will be discharged from his liability. Promisee will have no right of action against the promisor.
3. Amount of damage = Price prevailing on the date of performance (–) Contract Price

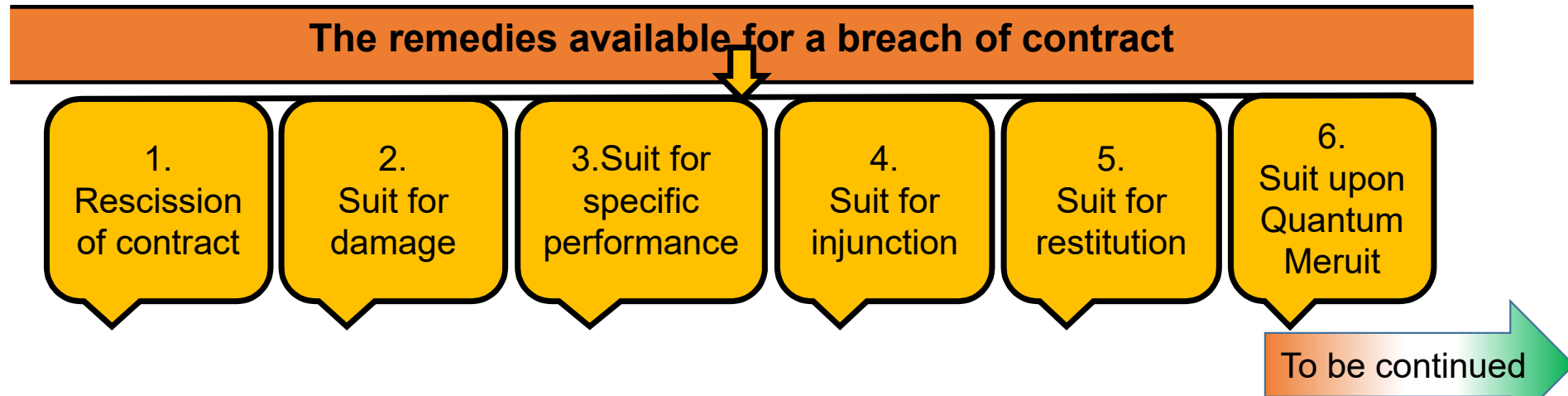
# Actual Breach of Contract

1. It is a case of refusal to perform the promise on the scheduled date or during the performance.
2. The parties to a lawful contract are bound to perform their respective promises.
3. But when one of the parties breaks the contract by refusing to perform his promise, he is said to have committed a breach.
4. In that case, the other party to the contract obtains a right of action against the one who has refused to perform his promise.

E.g.: On May 1, a seller S contracts to deliver chairs to railway company in instalment. After few instalments, the delivery was stopped. This is actual breach of contract during performance by S and B can claim damages for breach.

# Effect of Actual Breach

- I. When one party commits breach of contract, the aggrieved party can rescind the contract and can sue for damages.
- II. When time is the essence of contract, the aggrieved party can rescind the contract and can claim damages.
- III. When time is not the essence of contract, the aggrieved party cannot rescind the contract, but he can claim damages caused by delayed performance.



# Rescission of contract

- i. It means a right not to perform the contract.
- ii. When a contract is broken by one party, the other party may sue to treat the contract as rescinded and refuse further performance.
- iii. In such a case, he is absolved or discharged from all his obligations under the contract and is entitled to compensation for any damages that he might have suffered. E.g.: A promises B to deliver 50 bags of cement on a certain day. B agrees to pay the amount on receipt of the goods. A failed to deliver the cement on the appointed day. B is discharged from his liability to pay the price.



# Damages may be awarded in case of Breach of Contract under the Law of Contract

- i. Damages may be defined as monetary compensation in respect of loss suffered as a result of breach.
- ii. Breach of contract entitles the injured party to file a suit for damages, which are the monetary compensation awarded to a person by the court.

Section 73: Purpose of the law to award damages is:

- i. To put the aggrieved party in the same financial position he would have, had the contract been performed.
- ii. not to punish a defaulting party but by his wrongful act, as the other party has suffered loss, the Court will compel the party in breach to compensate the loss by paying damages to the other party.

# Types of Damages

- 1. Compensatory damages:** These damages are compensatory in nature. These damages are not allotted to punish the party who has breached the contract.
- 2. General damages / Liability for ordinary damages:**
  - i. These damages arise in the ordinary course of events from the breach of contract.
  - ii. These damages constitute the direct loss suffered by the injured party.
  - iii. These damages are the natural outcome of breach of contract.
  - iv. The measure of ordinary damages is the difference between the contract price and the market price on the date of the breach.

# Types of Damages

## **General damages / Liability for ordinary damages:**

E.g.: If the subject matter of the contract is the sale of a car and the contract is breached by the buyer, the seller has incurred damages by not collecting the purchase price. If seller breaches, buyer has sustained damages by not getting the car.

Thus general damages are related to the direct consequences and not to the indirect losses or consequences of the breach of contract.

## **3. Special damages / Liability for special damages:**

- i. Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach, but also for special damages.

## Types of Damages

- ii. Such damages are awarded by the court only when, at the time of making the contract, these special circumstances were communicated to the defaulted party.
- iii. A compensation can also be claimed for any loss or damage which the party knew when they entered into the contract, as likely to result from the breach. That is to say, special damage can be claimed only on a previous notice

Example: A contracted with B to buy 1000 tons of Iron @ Rs.80 per ton, and told him that he needs it by June 5 to deliver it to Z to make a profit out of it. B fails to deliver the same by June 5 and A claims loss of profits from B amounting to Rs.20,000 (which he would have earned by selling 1000 tons of Iron @ Rs.100 per ton to Z).

Here B is liable to pay these damages to A3

# Types of Damages

## 4. Nominal damages

- i. Sometimes, a person brings a legal action for breach of contract and proves that breach has actually occurred but he has not in fact suffered any real damage and fails to prove that any actual damages have been suffered. In such a situation, injured party is awarded nominal damages.
- ii. Such damages are awarded simply to recognize the right of the injured party to claim damages, and are of very small amount. It is awarded just to establish the right to decree for the breach of contract. The amount may be a rupee or even 10 paisa. Example: A contracted to purchase 'LML Scooter' from B, a dealer, for Rs.25,000. But A failed to purchase the Scooter. However, B could sell the Scooter to Z for Rs.25,000 i.e. without any loss or profit. Here if B makes a claim upon A for breach of contract, he will be entitled to nominal damages only.

# Types of Damages

## **5. Liquidated damages and penalty:**

- i. Sometimes the contracting parties may agree to pay certain sum of money in case of breach of contract by either party.
- ii. The sum so specified is the maximum amount aggrieved party can claim as compensation subject to discretion of Court.
- iii. It is not necessary to prove that actual damages have been caused or not.
- iv. It may be termed as either 'liquidated damages' or 'penalty' depending upon the purpose to fix the sum.
- v. At the time contract is entered into, it appears that if contract is breached, damage will occur. But amount of damage is uncertain. Parties agree upon the amount that will be paid by defaulting party to other.

# Types of Damages

## 5. Liquidated damages and penalty:

- vi. If sum so specified is reasonable and fair pre-estimate of damage likely to result due to breach, it is called “**Liquidated** damages.”
- vii. If sum so specified is extravagant and unconscionable as compared to the greatest possible loss conceivable then it is “penalty.
- viii. The purpose of fixing a sum as ‘liquidated damages’ is to compensate the injured party for the loss to be incurred by the breach of the other party. Thus it is an estimate of the loss to be caused by non-performance of the contract.
- ix. The purpose of providing a ‘penalty’ in a contract is to discourage a party from breaching it and to provide a special punishment if the contract is breached any way. Thus it is a sum which has no relation to the probable loss.

# Types of Damages

**5. Liquidated damages and penalty:** But the sum named in the contract is not awarded as damages. It is left to the court to ascertain the actual loss. However it does not exceed the sum named in the contract.

The courts in India allow only reasonable compensation not exceeding the specified sum (Sec. 74). Penalty is also allowed in appropriate circumstances.

Under English law, liquidated damages are enforceable but not penalty.

Example: A agreed to sell his house to B for Rs.1,05,000. It is further provided that on the breach of contract, the defaulting party will pay Rs.10,000 as damages to the other. B has broken the contract and A resold the house for Rs.1,04,000. A sued B and claimed Rs.10,000. It was held that A cannot recover Rs.10,000 as liquidated damages or penalty. He could only get the actual loss suffered by him i.e. Rs.1000.



# Types of Damages

## 5. Liquidated damages and penalty:

**Exception:** The whole amount mentioned in bond is payable if bond is executed for bail bonds.

<b>Stipulation for interest: (Sec74)</b>		
<b>Interest rate</b>	<b>Period for which it is to be paid</b>	<b>Liquidated damages/ penalty</b>
Reasonable	Default period	Liquidated Damages
Abnormally high	Rate increased from the date of default	Penalty
High	From the date of bond and not from date of default	Penalty
Reasonable	Reduced if paid interest regularly	Penalty
High	From the date of default	Penalty
Compound Interest (Interest on interest)		

To be continued

# Types of Damages

## 5. Liquidated damages and penalty:

<b>Stipulation for interest: (Sec74)</b>		
<b>At the same rate as simple interest</b>	<ul style="list-style-type: none"> <li>• A stipulation in a bond for payment of compound interest on failure to pay simple interest at the same rate as payable upon the principal is not a penalty.</li> </ul>	
<b>At the rate higher than simple interest</b>	<ul style="list-style-type: none"> <li>• A stipulation in a bond for payment of compound interest at a rate higher than that of simple interest is a penalty and relief will be granted against it.</li> </ul>	
<b>Payment of interest at a lower rate if interest is paid on due date:</b>	<ul style="list-style-type: none"> <li>• Where a bond provides for payment of interest say, at 24% p.a., with a provision that if the debtor pays interest punctually at the end of every year, the creditor would accept interest at a lower rate say 18% p.a. Such a clause is not in the nature of penalty.</li> </ul>	

To be continued



# Types of Damages

## **6. Vindictive or exemplary damages:**

- i. Sometimes breach of contract by one party not only results in monetary loss to the injured party but also cause him to suffer mental agony/emotional trauma or hurt his respect.
- ii. In such cases monetary compensation alone cannot provide an appropriate remedy to the sufferings of the injured party.
- iii. Thus the need for vindictive damages arises.
- iv. Vindictive damages are awarded as a punishment to the wrong doer. Such damages are unusual and quite heavy in amount. The concept is borrowed from the English Law. Generally speaking, these damages are not awarded in the ordinary course of breach of contract.

# Types of Damages

However, in the following two kinds of contracts Indian courts award vindictive damages /

These damages may be awarded only in two cases, viz

- i. for breach of promise to marry; and
- ii. wrongful dishonor by a banker of his customer's cheque:
  - a. Breach of promise to marry: In this case the amount of damages will depend upon the extent of injury to the party's feelings
  - b. Wrongful dishonor by a banker of his customer's cheque: Where a banker refuses to honor the cheque of a customer while having sufficient funds in the account and the customer thereby suffers loss of reputation. The amount of damages recoverable by the drawer of cheque from his banker in case of wrongful dishonor of his cheque may be quite heavy, depending upon the loss of credit and reputation suffered on that account in case of trader, lower the amount higher will be the damage.

# Types of Damages

## **7. Damages for deterioration caused by delay:**

- i. In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice.
- ii. The word 'deterioration' not only implies physical damages to the goods but it may also mean loss of special opportunity for sale.

Wilson's case: "A" bought velvet to make caps to be sold in spring season. But delivery was delayed in transit. It arrived after season.

Damage for deterioration = fall in value of velvet + loss of opportunity to sale.

# Types of Damages

## 8. Remote or indirect damages:

- i. The remote or indirect damages are not due to natural and probable consequences of the breach of the contract, i.e., these are the damages which arise indirectly from the breach.
- ii. These damages are not in contemplation of the parties at the time of making the contract, and are not recoverable. No compensation is payable for any remote or indirect loss.
- iii. Sometimes, damages are awarded for inconvenience and discomfort e.g. in flights— for delay or inconvenience to passenger.

# How to Calculate the Damages

- i. Under a contract for the sale of goods, the measure of damages, when the buyer breaks the contract, is the difference between the contract price and the market price at the date of breach.
- ii. If the contract is broken by the seller, the buyer is entitled to recover from the seller the difference between the market price and the contract price at the date of breach.
- iii. duty to mitigate the loss: The party who suffers in consequence of the breach of contract must take all reasonable steps to mitigate the loss/minimize the loss from such a breach. He cannot claim as damages any loss which he has suffered due to his own negligence.

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# Suit for Specific Performance

**No substitute in the  
market**

**Money not an  
adequate  
compensation**

**????**

# Quantum meruit and Restitution

## Quantum Meruit:

- i. The phrase 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done".
- ii. When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract.
- iii. He may also recover the value of the work done where the further performance of the contract becomes impossible.
- iv. The claim on quantum meruit must be brought by a party who is not at default. However, in certain cases, the party in default may also sue for the work done if the contract is divisible.

# Quantum meruit and Restitution

Following are the cases in which a claim or quantum meruit may arise:

- a. Where an agreement is discovered to be void: Where the work has been done and accepted under a contract which is subsequently discovered to be void, in such a case, the person who has performed the part of the contract is entitled to recover the amount for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party.
- b. Where something is done or delivered without intention to do gratuitously: Where a person does some act or delivers something to another person with the intention of receiving payments for the same (i.e. non-gratuitous act), in such a case, the other person is bound to make payment if he accepts such services or goods, or enjoys their benefit.

# Quantum meruit and Restitution

C. Where the contract is divisible: The compensation for the work done may be recovered on the basis of quantum meruit, where the contract is divisible and a party performs part of the contract and refuses to perform the remaining part. In such a case, the party in default may sue the other party who has enjoyed the benefits of the part performance.

Examples:

1. X wrongfully revoked Y's (his agent) authority before Y could complete his duties. Held, Y could recover, as a quantum meruit, for the work he had done and the expenses he had incurred in the course of his duties as an agent.
2. A agrees to deliver 100 bales of cottons to B at a price of Rs. 100 per bale. The cotton bales were to be delivered in two installments of 50 each. A delivered the first instalment but failed to supply the second. B must pay for 50 bags.

# Restitution

The term 'restitution' may be defined as an act of restoring back to the rightful owner, that which has been taken away or lost.

## **Generalizations based upon the doctrine of 'Quantum meruit' & 'Restitution':**

Considering the doctrine of 'Quantum Meruit' and 'Restitution' under different circumstances, following generalizations can be made:

**Breach of contract:** When there is a breach of contract, not only the injured party, but the defaulting party is also entitled to claim reasonable compensation for what he has done under the contract.

# Restitution

**Suit by a party who has not breached:** When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract.

Example: P was engaged by C to write a book to be published by installments in a weekly magazine owned by C. After a few installments were published, the magazine was abandoned. The court held that P could recover for the installments already published on the basis of Quantum Meruit.

**Void contract:** ‘When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, to the person from whom he received it.’”

# Restitution

**No contract: Sec. 70** of the Contract Act says that when services are rendered or goods are supplied to a person without any intention to do so gratuitously, and benefit of the same is enjoyed by the other person, the latter must compensate the former. This compensation may be by way of 'Quantum Meruit' or 'Restitution' or both.

Example : A doctor provides emergency medical attention to someone who is unconscious. There is no express contract at all. But doctor would be able to recover in quasi-contract, a reasonable value of his services. The essence of a legal action based on quasi contract and the remedy of 'Quantum Meruit' and 'Restitution' is to prevent the enrichment of one party at the cost of the other.

## Stipulation for interest: (Sec74)

Basis of distinction	ordinary damages	Liquidated damages
meaning	Ordinary damages means the damages which are fairly and reasonably considered as arising naturally from breach of a contract.	Liquidated damages are the amount of fair and genuine pre-estimate of probable damages which are likely to result from breach of a contract
nature of loss	Ordinary damages arise only on actual breach of contract.	Liquidated damages are the amount of probable loss in the opinion of the parties that may result from the breach of contract.
Time of calculation	These are calculated only when actual damages are suffered	It is calculated before actual damages are suffered
Amount	These are actual amount of damages which injured party is entitled to claim.	These are estimated maximum amount of damages with in which actual damages may be claimed.



**Obligation of person who has received advantage under void agreement, or contract that becomes void:**

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore, it, or to make compensation for it, to the person from whom he received it.

**Mode of communicating or revoking rescission of voidable contract:**

The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to some rules, as apply to the communication or revocation of the proposal.

**Effect of neglect or promise to afford promisor reasonable facilities for performance:**

If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to non-performance caused thereby.

## Section (124 to 127)

- ❖ A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person is called as **Contract of indemnity**
- ❖ The person who promises to make good the loss is called the **Indemnifier**
- ❖ The person whose loss is to be made good is called the **Indemnified**
- ❖ The liability of the indemnifier to the indemnified is **Primary and independent**
- ❖ A contract of indemnity may be called as **Contingent contracts**
- ❖ In the contract of indemnity there is **One contract**
- ❖ A contract to perform the promise, or to discharge the liability of a third person in case of his default is called as **Contract of guarantee**
- ❖ In a contract of guarantee there are **Three parties**
- ❖ In a contract of indemnity there are **Two parties**
- ❖ The persons who given the guarantee is called **Surety**

Contract of Indemnity

Promise to save the loss

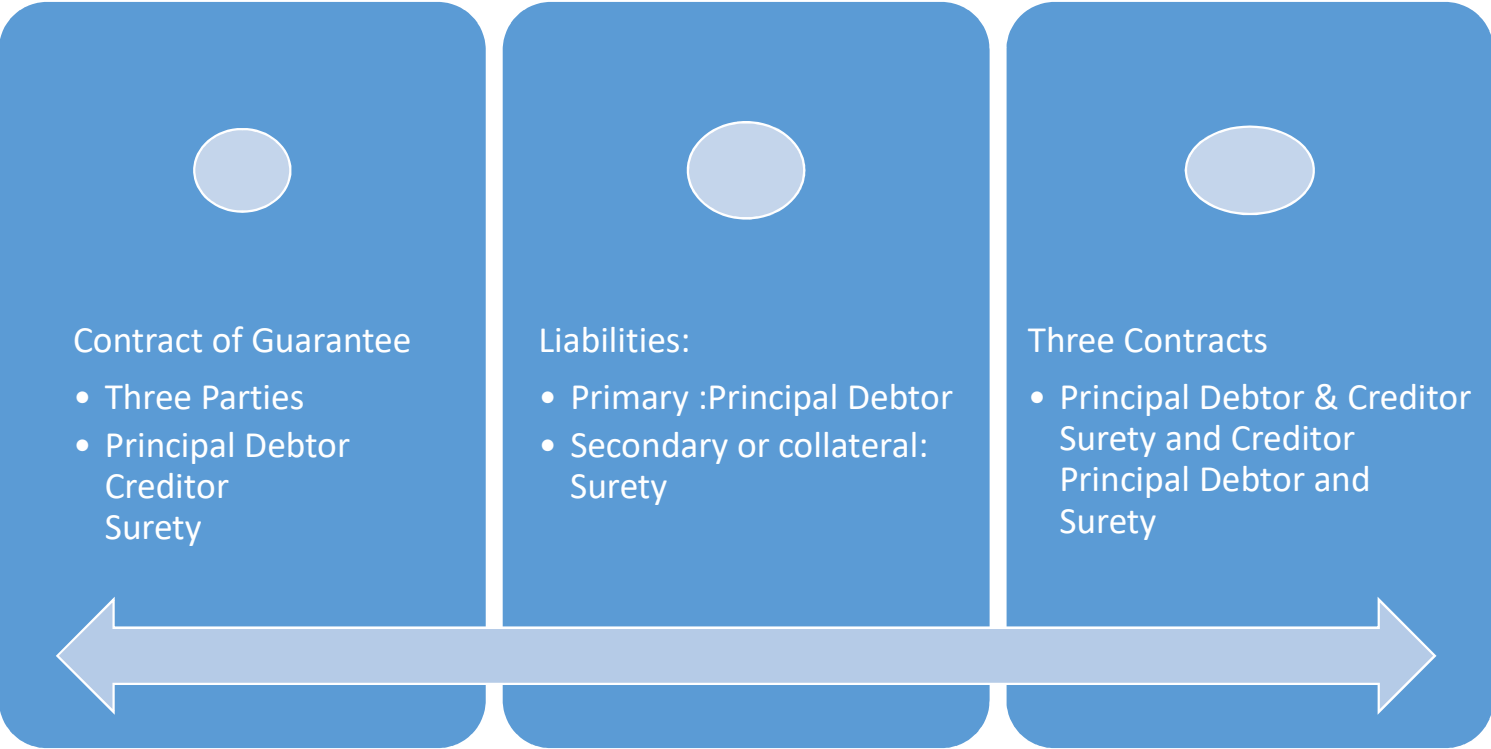
Loss may be  
caused by

Conduct of  
Promisor

Conduct of any other  
person

Indemnifier :  
promises to make  
good the loss

Indemnified :  
His loss is to be  
made good



- ❖ In a contract of guarantee, the liability of the surety to the creditor is **Secondary or Collateral**
- ❖ In the contract of guarantee there are **Three contracts**
- ❖ The person in respect of whose default the guarantee is given is called **The principal debtor**
- ❖ The person to whom the guarantee is given is called **The creditor**
- ❖ **At the request of the debtor** the surety should give the guarantee
- ❖ A surety on discharging the debt due by the principal debtor steps into the shoes of the **Creditor**
- ❖ Anything done or any promise made for the benefit of the principal may be **Sufficient consideration** to the surety for giving guarantee
- ❖ The liability of the surety is co-extensive with that of **The principal debtor** unless it is otherwise provided by the contract
- ❖ A guarantee which extends to a series of transactions is called **Continuing guarantee**
- ❖ When can a continuing guarantee be revoked by the surety:
  - It can be revoked by the surety at any time as to future transactions by notice to the creditor
- ❖ A surety has the rights against the **creditor, principal debtor, co-sureties**
- ❖ A continuing guaranteed can be revoked **By notice to the creditors, death of the**

Discharge of Surety

Variation in terms  
without his  
knowledge

Release of Principal  
Debtor

Release by Contract

Release by act or  
omission of the  
creditor

No discharge if surety  
assents or release of  
one surety in case of  
co-sureties

## Surety & notation

- ❖ Where the terms of the contract between the principal debtor and the creditor are changed /varied without the consent of the surety It will discharge the surety as to transactions subsequent to the variance
- ❖ The surety stands discharged in the following cases:
  - There is a contract between the creditor and the principal debtor to release the principal debtor
  - By any act or omission of the creditor, the legal consequences of which is the discharge of the principal debtor
  - If by virtue of a contract between the creditor and the principal debtor, the creditor makes a composition with or promises to give time to or not sue the principal debtor. However It will not discharge the surety, in case the surety has assented to such transactions
- ❖ Y owes to Z debt guaranteed by X. The debt becomes payable. Z does not sue Y for a year after the debt has become payable. Whether the surety X is discharged
  - No he is not discharged
- ❖ Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other co-sureties

❖ If the creditor does any act which is inconsistent with the rights of the surety or omits to do any act which his duty to the surety requires him to do and the eventual remedy of the surety himself against the principal debtor is thereby impaired, the surety is discharged

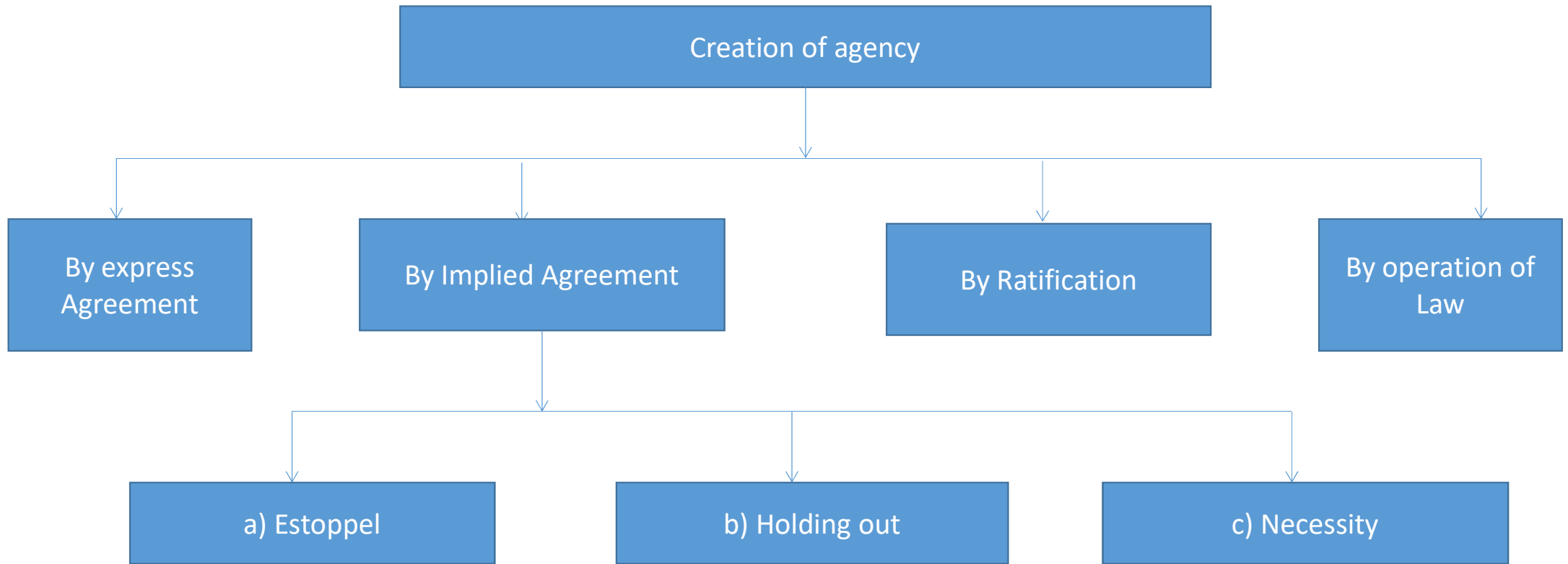


# Sections Bailment and Pledge (148 to 181)

- ❖ A delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them, is called as **bailment**.
- ❖ The person delivering the goods is called **Bailor**
- ❖ Bailee means the person to whom they are delivered
- ❖ A bailment necessarily involves delivery of possession of goods by bailor to Bailee. However the delivery of possession may be **Actual, constructive, symbolic**
- ❖ If the goods have some faults, the bailor is bound to disclose the faults, if he is aware about it
- ❖ A contract of bailment is voidable at the options of the bailor if the Bailee does any act with regard to the goods bailed, inconsistent with the conditions of the bailment

A right to retain any property belonging to other party in respect of any payment lawfully due, provided the property is in the possession of the person exercising the right is General Lien

- ❖ A right to retain a particular goods until the payment for services rendered is received is called **Particular lien**
- ❖ In the absence of the contract to the contrary, the bankers have the **General lien**
- ❖ The bailment of goods as security for payment of a debt or performance of a promise is called **Pledge**
- ❖ The pawnee may retain the goods pledged for **Payment of the debt, Performance of the promise and interest of the debt**
- ❖ If the pawnor (Say A) has obtained possession of the goods pledged by him under a contract voidable (Between A and B) under section 19 or section 19A, but the



# Contract of Agency (Section 182)

Agent: An **agent** is a person employed

- i. to do any act for other or
- ii. to represent another in the dealings with the third persons.

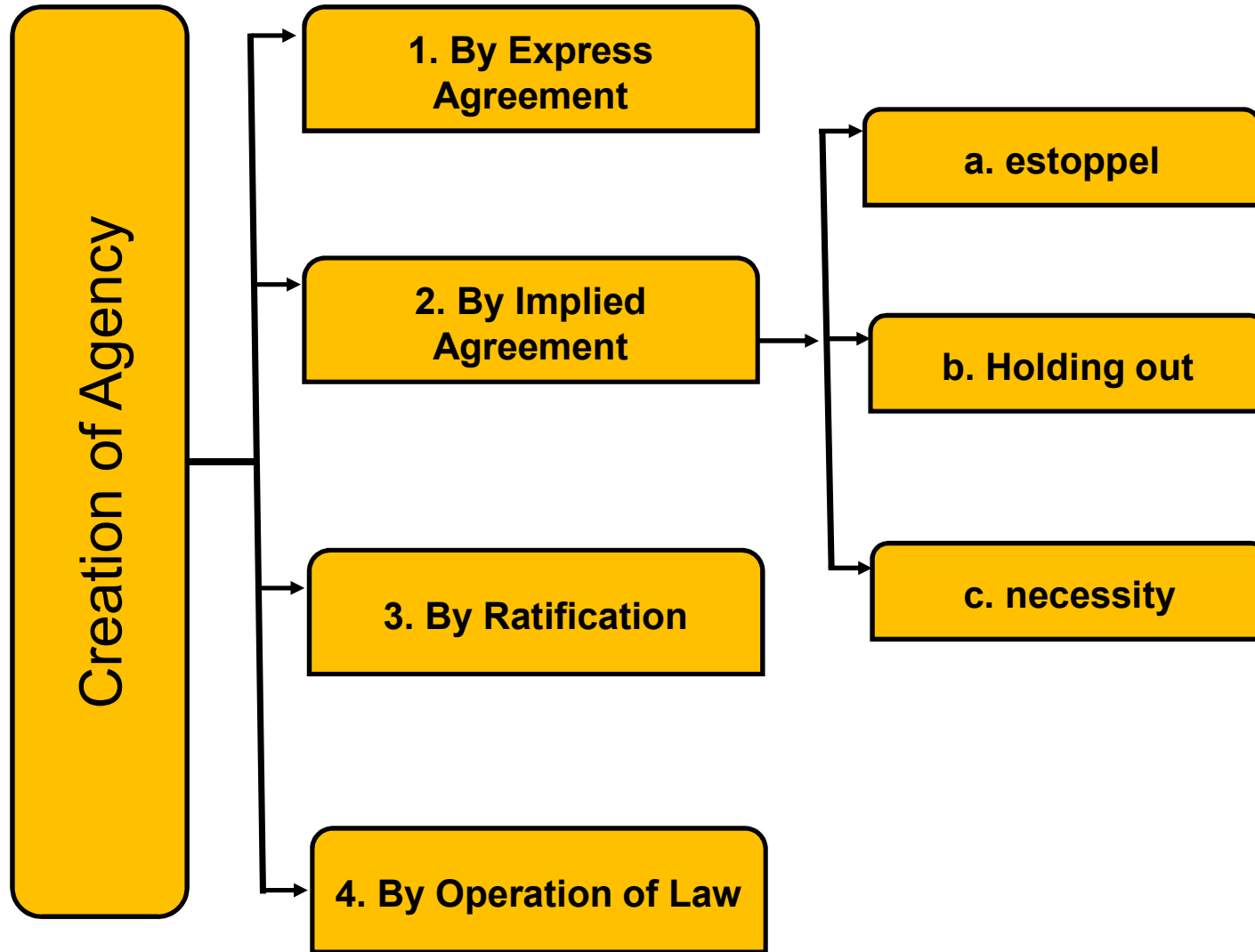
The person for whom such act is done, or who is so represented, is called “**principal**”.

The function of an agent is essentially to bring about contractual relationship between the principal and third parties.

Test of Agency:

Where a person has the capacity to –

- i. Create contractual relations between the principal and a third party;
- ii. Bind the principal by his own acts,



# Essentials of relationship of Agency

## **Agreement**

- i. Agency depends on agreement but not necessarily on contract.
- ii. It may arise out of an agreement which does not amount to a contract because one of the parties may lack contractual capacity, or there may be no consideration.

## **1. Principal is liable for the acts of agent**

- i. The principal is liable for all the acts of an agent which are lawful and within the scope of agent's authority.
- ii. The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself.

Who may be an Agent?

Any person may employ an agent if:

- i. He is of the age of majority; and He is of sound mind.

# Essentials of relationship of Agency

Who can be an agent?

- i. As between the principal and the third persons, any person may become an agent. (Sec. 184)
- ii. This leads to conclude that an agent may be a person who is not competent to the contract.
- iii. The principal is liable for the acts of such an agent;
- iv. Capacity to contract is not essential to enable a person to act as an agent.

Liability of Agent:

- i. Generally an agent is liable to the principal
- ii. An agent is not liable to the principal if he is a minor or is of unsound mind.

Requirement of consideration

- i. No consideration is necessary to create an agency (Sec. 185).
- ii. The fact that the principal has agreed to be represented by the agent is a sufficient 'detriment' to the principal to support the contract of agency.

# Essentials of relationship of Agency

## **Kinds of Agents**

### **1. Mercantile Agents**

- i. One who is authorized to sell goods or consign goods for the purpose of sale or to buy goods or to raise money on the security of goods.
- ii. Includes Banker, Factor, Auctioneer, Broker, Commission Agent, & Del Credere Agent

### **2. non – mercantile Agents**

Not engaged in business of selling or buying goods, but act in their respective professional capacities. i.e. render professional services for their Principal and Includes Solicitors, Attorneys, C & F Agents, Insurance Agents, etc.



# Rights and Liabilities of the agent, the Principal and third parties

## 1. Position of Principal

The principal is bound by all the acts of the agent done within the scope of his actual authority (Sec. 238).

## 2. Position of an agent

- i. When an act is done by the agent, in the course of his employment as an agent and within the scope of his authority, the agent is liable neither to the principal nor to the third parties.
- ii. He has a right to claim remuneration from the principal in respects of such acts.
  - a. Where the agent acts for unnamed principal:
    - i. Where the agent discloses that he is acting for an unnamed principal, In such a case, the agent is not personally liable on the contracts entered into by him with the third parties, unless there is trade custom to the contrary.

# Rights and Liabilities of the agent, the Principal and third parties

ii. It is however essential that the unnamed principal exists when the agent enters into a contract with third party.

b. When the agent acts for an undisclosed principal:

i. Sometimes, an agent enters into a contract with third person without disclosing at all the fact of agency.

ii. He not only conceals the name of the principal but also the fact that he is an agent.

iii. This gives rise to the doctrine of undisclosed principal.

iv. The agent in such a case gives impression to the third party as if he is contracting in an independent capacity.

# Rights and Liabilities of the agent, the Principal and third parties

3. Position of third parties :As regards third parties, they can enforce the rights arising out of the contract entered into by the agent on the behalf of the principal only against the principal provided the agent:
- i. Acted within the scope of his authority
  - ii. Did not incur any personal liability
  - iii. Disclosed the facts of agency to the third parties.

**Sub-Agent:** “A sub-agent is a person employed by, and acting under the control of the original agent in the business of the agency” (Sec. 191)

Section 190: General Rule: “An agent cannot lawfully employ another to perform acts which he has expressly or impliedly undertaken to perform personally unless by the ordinary custom of trade a sub agent may, or from the nature of the agency, a sub-agent must, be employed.”

# Rights and Liabilities of the agent, the Principal and third parties

**Exceptions: There are exceptions to the general rule as laid down in Sec. 190:**

- i. The custom of the trade may permit the appointment of a sub-agent.
- ii. The nature of the agency may be such that a sub agent may be necessary.
- iii. Where the principal is aware of the intention of the agent to delegate his authority but does not object to it.
- iv. Where the unforeseen emergencies arise rendering the appointment of the sub-agent necessary.
- v. Where the act to be done is purely ministerial not involving the confidence or discretion.
- vi. Where the power of the agent to delegate can be inferred from the conduct of both the principal and the agent.
- vii. Where the principal permits appointment of a sub-agent.

# Relationship between the Principal and Sub-Agent

The legal relation between the principal and the sub-agent depends upon this critical question, i.e. whether the appointment of the sub-agent is proper or improper.

## **1. Where the appointment of sub-agent is proper**

- i. Where a sub-agent is properly appointed, the principal is bound by the acts of the sub-agent as if he was an agent originally appointed by the principal.
- ii. The agent is responsible to the principal for the acts of the sub-agent.
- iii. The sub-agent is responsible for his acts to the agent, but not to the principal except in the case of fraud or willful neglect. (Sec. 192.)

## **2. Where the appointment is improper.**

- i. Where an agent, without having authority to do so, has appointed a sub agent, the agent is responsible for the acts of the sub-agent to the principal and the third parties.
- ii. The principal in such case, is not represented by or responsible for the acts of the sub-agent, nor is the sub-agent responsible to the principal. (Sec. 193)

## 2. Where the appointment is improper.

- i. Where an agent, without having authority to do so, has appointed a sub agent, the agent is responsible for the acts of the sub-agent to the principal and the third parties.
- ii. The principal in such case, is not represented by or responsible for the acts of the sub-agent, nor is the sub-agent responsible to the principal. (Sec. 193)

**Substituted Agent:** A substituted agent is a person who is named by the agent holding an express or implied authority from the principal, to act for the principal. in other words, he is the agent of the principal though he is named, at the request of the principal, by the agent. (Sec. 194)

**example:** A directs B, his solicitor, to sell his estate by auction and employ an auctioneer for the purpose. B names C, an auctioneer, to conduct the sale. C is not a sub agent, but is A's agent for the conduct of sale.

# Personal Liability of an Agent

The general rule is that only the principal can enforce and can be held liable on a contract entered into by the agent except where there is a contract to the contrary. (Sec. 230)

An agent is personally liable in the following cases:

1. When the contract expressly provides. A person while entering into a contract with the agent may expressly stipulate that he would hold the agent personally liable in the case of the breach of the contract.
2. When the agent acts for foreign principal. When the contract is made by an agent for the sale or the purchase the goods for a merchant residing abroad, the agent will be personally liable. (Sec. 230)
3. When the agent acts for a concealed principal. Where an agent acts for a concealed principal, he would be personally liable, though the principal, on being discovered by the third person, will also be liable.

# Personal Liability of an Agent

4. Where the agent acts for the principal who cannot be sued. Where the principal is incompetent to enter into a valid contract, e.g. where a principal is minor, the agent will be personally liable as the credit shall be presumed to have been given to the agent and not to the principal.
5. Where an agent acts for a principal not in existence. The promoters of a company (yet to be incorporated) sometimes enter contracts on the behalf of the company, though in such a case the alleged principal (the company) has no legal existence till the time of incorporation. In such case the agent is held to have contracted on his own account.
6. Where an agent is liable for the breach of the warranty. Where an agent professes to act as an agent but has no authority from the alleged principal or exceeds his authority, he is personally liable for the breach of the warranty.
7. Where the agent signs a contract in his own name in that case he is personally liable for the contract.



# Personal Liability of an Agent

8. Where the agent receives or pays money by mistake or fraud. Where an agent receives from, or pays money to, a third party by mistake or fraud, he will be personally liable to the third party.
9. Where the authority of the agent coupled with interest. Where an agent has an interest in the subject matter of the contract entered into by him with a third party, his authority is coupled with the interest. He has, in such case, the right to sue or be sued, but only to the extent of his interest.
10. Where the trade usage or custom makes agent personally liable. Where there is a trade usage or custom making the agent personally liable, he will be so liable unless there is a contract to the contrary.
11. Where an agent signs the negotiable instrument in his own name without mentioning that he is signing as an agent.
12. Where the agent acts for the pretended principal and that principal refuses to ratify the agents' act.

# Agency Coupled with interest

- i. When an agency is created for securing certain benefits to the agent over and above his remuneration as an agent, it is called as agency coupled with interest.
- ii. The interest should exist at the time of creation of the agency.
- iii. The agency coupled with the interest can't be terminated even on the death or the insanity of the principal. Thus such agency is irrevocable up to the extent of such interest.

**Example.** A owes Rs.500 to B and appoints him as his agent to sell his goods and pay him (B) the debt out of the sale proceeds. The authority of B is coupled with interest.

# Irrevocable Agency

When an agency cannot be terminated or put an end to, it is said to be an irrevocable agency in following cases:

## **1. Where the agency is coupled with interest.**

Where an agent has an interest in the subject matter of the contract entered into by him with a third party, his authority is coupled with the interest. He has, in such case, the right to sue or be sued, but only to the extent of his interest. (sec 202)

## **2. Where the agent has incurred a personal liability.**

When an agent incurs personal liability, the agency becomes irrevocable. The principal cannot, in such case, withdraw leaving the agent exposed to the risk or liability he has already incurred.

## **3. Where the agent has partly exercised the authority**

The principal cannot revoke the authority given to his agent after the authority has been partly exercised; so far as regards such acts and obligations as arise from the acts already done in agency.

(Sec. 204)

# Termination

## 1. Termination by act of the parties Agreement:

- i. The relation of the principal and the agent is generally founded on the mutual consent. It may be brought to an end by the same process with the originated it. i.e. by agreement.
- ii. The agency can be terminated at any time and at any stage by the mutual agreement between the principal and the agent.

## Revocation by the principal:

- i. An agency may be terminated by the principal at any time by giving a notice to the agent. (Sec. 203).
- ii. If the agent is appointed to do a single act, the authority may be terminated at any time before the act actually begun, the agency can only be terminated subject to any claim which the agent may have for the breach of the contract. (Sec. 204).

# Termination

- iii. The revocation may be expressed or implied.
- iv. However when the agency is coupled with the interest the principal can't revoke the agency to the extent of such interest.
- v. Moreover if the agent has already partly exercised his authority then also the agency can't be terminated.

## Revocation by agent:

- i. An agency may be terminated by an express renunciation on the part of the agent after giving a reasonable notice to the principal. (Sec. 203).
- ii. Where the agency is for a fixed period, and the agent renounce it without a sufficient cause, he shall have to compensate the principal for any loss.
- iii. Renunciation may be expressed or implied.

# Termination

## 2. Termination by operation of law

**Performance of the contract:** The most obvious mode of putting an end to the agency is to do what agent has undertaken to do (Sec. 201). Where, therefore, the agency is for particular object, it is terminated when the object is accomplished or when the accomplishment of the object becomes impossible.

**expiry of time:** Where the agent is appointed for a fixed period of time, it comes to an end after the expiry of that time even if the work is not completed.

**death:** When the death of the agent or principal takes place, the agency is terminated. When such termination takes place by the death of the principal, the agent must take all responsible steps for the protection of the interests of the principal entrusted to him.

**Insanity:** An agency comes to an end when the principal or agent becomes of unsound mind. (Sec. 209)]

**Insolvency:** The insolvency of the principal puts an end to the agency though nothing is mentioned in Sec. 201 as regards insolvency of the agent. The insolvency of the agent, if accepted, also terminates the agency.

**Destruction of the subject matter:** An agency which is created to deal with a certain subject matter will come to an end by the destruction of the subject matter.

**Principal becoming alien enemy:** Where the agent and the principal are aliens the contract of agency is valid so long as the two countries are at peace. If war breaks out between the two countries, the contract of agency is terminated.

**Termination by sub-agent's authority:** The termination of an agent's authority puts an end to the sub-agent's authority also. (Sec. 210)

# Irrevocable Agency

When an agency cannot be terminated or put an end to, it is said to be an irrevocable agency in following cases:

## **Where the agency is coupled with interest:**

Where an agent has an interest in the subject matter of the contract entered into by him with a third party, his authority is coupled with the interest. He has, in such case, the right to sue or be sued, but only to the extent of his interest. (sec 202)

## **Where the agent has incurred a personal liability:**

When an agent incurs personal liability, the agency becomes irrevocable. The principal cannot, in such case, withdraw leaving the agent exposed to the risk or liability he has already incurred.

## **Where the agent has partly exercised the authority:**

The principal cannot revoke the authority given to his agent after the authority has been partly exercised; so far as regards such acts and obligations as arise from the acts already done in agency.(Sec. 204)



# SUMMARY

- ❑ Agreement such as relating to Social matters, domestic arrangements between husband and wife, to do illegal/unlawful/immoral act i.e. smuggling and declared specifically void one not contracts.
- ❑ Pricing of securities offered on preferential basis need not be determined by Registered Valuer in case of listed company.
- ❑ Pricing of securities offered on preferential basis is finally determined by the company on the basis of report of Registered Valuer
- ❑ An Agreement is a promise or a commitment or set of reciprocal promises or commitments. An agreement involves an offer or proposal by one person and acceptance of such offer or proposal by another person.

# SUMMARY

- ❑ All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.
- ❑ When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.
- ❑ A contingent contract is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.
- ❑ The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provision of this Act, or of any other law.

# SUMMARY

- ❑ This obligation continues even after death of the promisors and before the performance, unless a contrary intention appears from the contract or where it involves the personal skill of the Promisor.
- ❑ Section 64: If one of the parties to a contract refuses or fails to carry out agreed obligation, the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.
- ❑ The phrase 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done".

- ❖ A person employed to do any act for another, or to represent another in dealings with third person is called Agent
- ❖ Major may employ agent
- Any person may become an agent between the principal and third person
- Whatever a person can do personally, he can do through an agent
- No consideration is required in contract of agency
- An agent having an authority to do an act has authority to do Lawful thing which is necessary in order to do such act
- In an emergency, an agent has authority to do:
- All such acts for the purpose of protecting his principal from loss
- All such acts which a person of ordinary prudence, in his own case do under similar circumstances
- An agent cannot lawfully employ another to perform act which he has expressly or impliedly undertaken to perform Personally

- ❖ A sub-agent is a person employed by and acting under the control of The original agent
- ❖ When an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is called An agent of the principal for such part of the business of the agency as is entrusted to him
- ❖ Where acts are done by one person on behalf of another, but without his knowledge or authority:
  - He may elect to ratify
  - He may disown such acts
  - After ratification, he will be liable for all the acts done by such person(agent)
  - Ratification of unauthorised act of a person can be ratified by the principal In full
  - An agency may be terminated:
    - By the principal revoking the authority of the agent
    - By the agent renouncing the business of agency

- By the business of the agency being completed
- ❖ What would be the position where the agent becomes a person of unsound mind:
  - The agency will be terminated
- ❖ The principal may revoke the authority given to his agent:
  - At any time before the authority has been exercised so as to bind the principal
- ❖ Partly exercised authority by the agency cannot be revoked
- ❖ The termination of the authority of an agent does not, so far as regards the agent, take effect:
  - Before it becomes known to him
- ❖ Test of determining whether a person is agent of another person or not:
  - If the person has
    - the capacity to bind the principal
    - If the person can make the principal answerable to third person
- ❖ How the agency can be created:

- By express or implied agreement
- By ratification
- Be operation of law
- ❖ Duties of an agent:
  - To render proper accounts to his principal on demand
  - To use all reasonable diligence in communicating with his principal and in seeking to obtain his transactions
  - To pay the sums received on behalf of the principal
- ❖ Position where one person employs another to do an act which is criminal:
  - The employer is not liable to indemnify him against the consequences of such criminal act. Say Act of Supari killing.
- ❖ Factor:
  - A factor is a mercantile agent entrusted with the possession of goods for the purpose of selling them

- A factor has a general lien on the goods of his principal for a general balance of account between him and the principal
- A factor has the authority to receive the price and give a good discharge to the purchaser
- An agent who in consideration of an extra commission, guarantees his principal that the persons with whom he enters into contract on behalf of the principal, shall perform their obligations is called as Del cruder agent. Basically he guarantees against realization of amount.



***THE SALE OF GOODS ACT,  
1930***

Delivery

It means Voluntary transfer of possession from one person to another.

Three Kinds of delivery

It is actual when the goods are physically delivered to the buyer.

When it is affected without any change in the custody or actual possession of thing.

Where there is a delivery of thing in token of a transfer of something else.

E.g. Delivery by attornment (acknowledgement)  
E.g. Where a warehouseman holding goods on behalf of A, agrees to hold them on behalf of B, at A request

E.g. Delivery of goods in transit by handing over the documents to title(ownership) to goods, Bill of lading, Dock warrant,. Delivery of key of a Warehouse

**Formation. The contract of sale may provide for any of the following methods**

<b>S.No.</b>	<b>Delivery</b>	<b>Payment of price</b>
1	Immediate	Immediate
2	At future date	Immediate
3	Immediate	Future date
4	Future	Future
5.	Installment	Installment

Delivery or payment or both will be made a future date

## Types of Goods

Existing (i) Specific (ii) Ascertained (iii) Unascertained	Future	Contingent Goods
<p><b>Existing Goods</b> Goods which are in existence at the time of contract of sale i.e. those owned &amp; possessed by the seller.</p>	<ul style="list-style-type: none"> <li>• Future goods are those goods, which do not exist at the time of the contract of sale.</li> <li>• Those goods are to be manufactured or acquired by the seller after making of the contract of sale. Say Making an Almirah as per specifications.</li> <li>• Future goods cannot be sold but there can only be an agreement to sell.</li> </ul>	<ul style="list-style-type: none"> <li>• It is a kind of future goods.</li> <li>• It is goods, the acquisition of which is contingent upon the happening or non-happening of an uncertain event.</li> </ul>

<p>Specific goods:</p> <ul style="list-style-type: none"> <li>• Means goods identified &amp; agreed upon at the time when a contract of sale has been made.</li> <li>• The goods must be both identified and agreed upon.</li> </ul>	<p>Future Goods Contd..</p> <p>Example:</p> <p>A, a manufacture agrees to sell 5 tables and 50 chairs to B at Rs. 10,000. B agrees to purchase it. However, tables and chairs are yet to be manufactured by A.</p>	<p>Contingent Goods Contd..</p> <p>Examples:</p> <p>A agrees to sell the goods loaded on the ship “Titanic”, which is coming from London to Bombay. The ship may or may not arrive. So, these goods will be called as contingent goods.</p>
<p><b>Ascertained Goods</b></p> <p>Means goods identified in accordance with the agreement after the contract of sale has been made</p> <ul style="list-style-type: none"> <li>• Identified but not agreed upon</li> </ul> <p><b>“Unascertained” or “Generic” goods:</b></p> <ul style="list-style-type: none"> <li>• Means goods defined only by description.</li> <li>• Neither identified nor agreed upon.</li> </ul>		

Price Means the money consideration for sale of goods 2(10)

The following are the modes of determining price: {Sec 9}

1. Price is specified under the contract

- It is the most common method of determining the price.
- Generally, parties decide the price in advance.

2. Price is not determined under the contract

(i) Method of determining price is specified in the contract.

Example:  
Delivery of rice on 1<sup>st</sup> December 2020 at the rate prevailing on that day.

(ii) Price may be determined in accordance to custom and usage of trade.

This method is applicable if parties regularly trade

(iii) Where the price is not fixed as above, the buyer shall pay the seller a reasonable price

What is a reasonable price is a question of fact and circumstances.

### 3. Fixation of price by third party Section 10

If it is so, contract shall specify name of third party

- If third party fails to specify, contract is void but if goods are delivered to buyer and used by him, he is required to pay reasonable price.
- If the third party is prevented from fixing price, defaulting party is liable for the damages.

## **Distinction Between Condition and Warranty**

<b>CONDITION</b>	<b>WARRANTY</b>
Essential to the main purpose of contract.	Collateral to the main purpose of contract
Aggrieved party can repudiate the contract or claim damages or both in case of breach of condition.	Aggrieved party can claim only damages in case of breach of warranty.
A breach of condition may be treated as breach of warranty	A breach of warranty cannot be treated as breach of condition.



# The Sale Of Goods Act, 1930

- The object :To Define and amend the law relating to the sale of goods
- Before the separate enactment of The Sale Of Goods Act, 1930, it was contained in The Indian Contract Act, 1872
- Came into force on 1<sup>st</sup> day of July, 1930
- **Extends to The whole of India.**
- Distribution of assets on dissolution of the partnership firm among the partners in the ratio as mentioned in the partnership deed does not amount to sale.
- Buyer means a person who buys or agrees to buy goods
- Delivery means Voluntary transfer of possession from one person to another
- The goods are said to be in a deliverable state When they are in such state that the buyer would under the contract be bound to take delivery of them

- The “Documents of title to goods” includes:
  - Bill of lading dock-warrant
  - Warehouse keeper’s certificate
  - Wharfinger’s certificate
- Future goods means goods to be manufactured or produced or acquired by the seller after making of the contract of sale
- Goods may be Existing, Future, Contingent
- Goods mean every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale
- Transfer of immovable property is regulated by The Transfer Of Property Act, 1882

- “Mercantile agent” means an agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods
- “Specific goods” means: Goods identified and agreed upon at the time a contract of sale is made
- Sections (4 to 17)
- A contract of sale of goods is a contract whereby the seller:
  - Transfers or agrees to transfer the property in goods to the buyer at a price . There may be a contract of sale between one part owner and another
  - A contract of sale may be Absolute or Conditional
  - Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called An agreement to sell

- ❖ An agreement to sell becomes a sale:
  - When the time elapses or the conditions are fulfilled subject to be which the property in the goods is to be transferred
- ❖ The contract of sale may provide for:
  - The immediate delivery of the goods
  - The immediate payment of the price
  - The delivery or payment by installments, or that the delivery or payment or both shall be postponed
- ❖ A contract of sale may be made:
  - In writing or by word of mouth
  - Partly in writing and partly by word of mouth
  - It may be implied from the conduct of the parties
- ❖ The goods which form the subject of a contract of sale may be :

- Existing goods
- Owned or possessed by the seller
- Future goods
- ❖ Where by a contract of sale the seller purports to effect a present sale of future goods, the contract operates as:
  - An agreement to sell the goods
- ❖ Where there is a contract for the sale of specific goods, The contract is void if the goods without the knowledge of the seller have, at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract
- ❖ Where there is an agreement to sell specific goods, and subsequently the goods perish without any fault on the part of the seller or buyer or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer:
  - The agreement is thereby avoided

- Fixed by the contract itself
- Left to be fixed in an agreed manner
- Determined by the course of dealing between the parties
- ❖ Where the price is not determined by the parties to the contract of sale of goods, the buyer shall pay the seller a reasonable price.
- ❖ Where there is an agreement to sell goods on the terms that the price is to be fixed by the valuation of a third party and such third party cannot or does not make such valuation, the agreement is thereby avoided
- ❖ Whether the stipulation of time in a contract of sale of goods is essential:
  - Usually time is not of essence in the contract of sale of goods, unless a different intention appears from the contract
- ❖ A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or warranty

- A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated
- A warranty is a stipulation collateral to the main purpose to the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated
- A breach of condition may be treated as a breach of a warranty. However a breach of warranty may not be treated as breach of condition.
- When the stipulation of condition may be treated as warranty:
- The buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty
- Where a contract of sale is not severable and the buyer has accepted the goods or part thereof

- ❖ The conditions and warranties in a sale of goods may be Express or implied
- ❖ An implied condition on the part of the seller is that, in the case of a sale He has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass
- ❖ There is an implied undertaking in a contract of sale of goods that:
  - The buyer shall have and enjoy quiet possession of the goods
  - The goods shall be free from any charge or encumbrance
- ❖ Where there is a contract for the sale of goods by description, there is an implied condition that:
  - The goods shall correspond with the description
  - If the sale is by sample as well as by description, the goods must correspond both with the sample and with the description



- ❖ **Assumptions in Cases where the buyer wants the goods for a specific purpose :**
- ❖ There is **no implied warranty or condition** as to the quality or fitness for any particular purpose of goods supplied under a contract of sale
- ❖ Where the **buyer makes known to the seller** the particular purpose for which the goods are required, so as to show that the buyer relies on the skill or judgement of the seller, and the goods are of a description which it is in the course of the seller business to supply, there is an implied warranty that the goods shall be reasonably fit for such purpose
- ❖ In the case of a contract for the sale of a specified article under its **patent or other trade name**, there is no implied condition as to its fitness for any particular purpose
- ❖ Where goods are bought by description from a **seller who deals in goods of that description**, there is an implied condition that the goods shall be of merchantable quality

- An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade
- An Express warranty or condition does not negative a warranty or condition implied by this act unless inconsistent there with
- In a case of a contract for sale by sample there is an implied condition:
- That the bulk shall correspond with the sample in quality
- That the buyer shall have a reasonable opportunity of comparing the bulk with the sample
- That the goods shall be free from any defect, rendering them merchantable, which would not be apparent on reasonable examination of the sample

## Sections (18 to 30)

- ❖ Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer in the goods unless and until the goods are ascertained
- ❖ Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer:
  - At such time as the parties to the contract intend it to be transferred
- ❖ Where there is an unconditional contract for the sale of specific goods in deliverable state, the property in the goods passes to the buyer:
  - When the contract is made
- ❖ Where there is a contract for the sale of Specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property does not pass until such thing is done and the buyer has notice thereof
- ❖ Where there is a contract for the sale of specific goods in a Deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof

- ❖ Where there is a contract for the sale of Unascertained or future goods by description and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be express or implied, and may be given either before or after the appropriation
- ❖ Where, in pursuance of the contract, the seller delivers the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer, and does not reserve the right of disposal, he is deemed to have Unconditionally appropriated the goods to the contract
- ❖ When goods are delivered to the buyer on approval or “on sale or return” or other similar terms, the property therein passes to the buyer:
  - When he signifies his approval or acceptance to the seller or does any other act adopting the transactions
  - If he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time
  - If no time has been fixed, on the expiration of a reasonable time
- ❖ In a contract of sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. This doctrine is called as Caveat emptor which means Let the buyer beware.

- ❖ Unless otherwise agreed, the goods remain at The seller risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer risk whether delivery has been made or not
- ❖ Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller authority to sell
- ❖ When the seller of goods has obtained possession thereof under a contract voidable under section 19 or section 19A of The Indian Contract Act, 1872, but the contract has not been rescinded at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title

## **PERFORMANCE OF THE CONTRACT**

- ❖ It is the duty of the seller to deliver the goods and of the buyer **To accept and**

- A delivery of part of the goods, with an intention of severing it from the whole:
- Does not operate as a delivery of the remainder
- Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery
- Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them Within a reasonable time.
- Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf
- Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller
- Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them

❖ Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may:

- Accept the goods
- Reject the extra goods,
- Reject the whole goods

❖ Where the seller delivers to the buyer the goods he contracted to sell, mixed with goods of a different description not included in the contract, the buyer may:

- Accept the goods which are in accordance with the contract
- Reject the rest of the goods
- Reject the whole of the goods
- Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by instalments
- Where, in pursuance of a contract of sale, the seller is authorised to send the goods to the buyer through a carrier:

- It shall be deemed to be a delivery of the goods to the buyer
- ❖ Unless otherwise agreed, where goods are delivered to the buyer and he refuses to accept them, having the right so to do:
  - He is not bound to return them to the seller
  - He has to intimate to the seller that he refuses to accept them
- ❖ When the seller is ready to deliver the goods and request the buyer to take delivery, and the buyer does not within a reasonable time take delivery of the goods:
  - The buyer is liable to the seller of any loss occasioned by his neglect or refusal to take delivery
  - The buyer is liable for a reasonable charge for the care and custody of the goods

### **Sections (45 to 61)**

- ❖ A seller of goods shall be deemed to be an **“unpaid seller”**
  - When the whole of the price has not been paid or tendered
  - When a bill of exchange or other negotiable instrument has been received as



## ❖ Rights of the unpaid seller

- A **lien** on the goods for the price while he is in possession of them
- In case of the insolvency of the buyer a **right of stopping the goods in transit** after he has parted with the possession of them
- A **right of re-sale** as limited by this act

## ❖ Circumstances when an unpaid seller, who has possession of the goods may exercise lien over the goods:

- Where the goods have been sold without any stipulation as to credit
- Where the goods have been sold on credit, but the term of credit has expired
- Where the buyer becomes insolvent

## ❖ A lien can be exercised by the unpaid seller only:

- When the goods are still in possession of the unpaid seller

## ❖ When the lien exercised by the unpaid seller comes to an end:

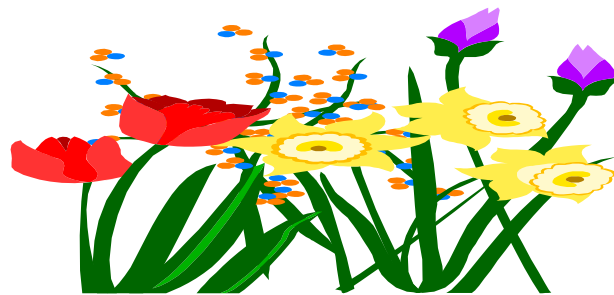
- When he delivers the goods to a carrier or other Bailee for the purpose of transmission to the buyer without reserving the right of disposal of the goods
- When the buyer or his agent lawfully obtains possession of the goods
- By waiver thereof
- The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained a decree for the price of the goods:
  - When a seller can stop the goods in transit:
  - When the buyer of goods becomes insolvent and goods are in transit
  - How stoppage in transit is affected by the unpaid seller:
    - By taking actual possession of the goods
    - By giving notice of his claim to the carrier in whose possession the goods are there.
    - By giving notice of his claim to the other Bailee in whose possession the goods are there.

❖ When a seller can sue the buyer:

- He may sue for the price and interest
- He may ask for the damages for non-acceptance of the goods
- Suit for damages for repudiation of the contract

❖ When a buyer can sue the seller:

- He may initiate suit for delivery of the goods, if not delivered
- He may ask for the specific performance, if this being the part of the contract
- He may initiate for the breach of the warranty



# Thank You

**CA. R K GUPTA**

**F.C.A, LLB**

**Mobile No.9811117243**

**Email:- [rkg4247@gmail.com](mailto:rkg4247@gmail.com)**

**[www.carkgupta.com](http://www.carkgupta.com)**