

SEBI

- The Recovery Of Debts due to Banks and financial Institutions Act, 1993
- The Securitisation and Reconstructions of Financial Assets and Enforcement of Security Interest Act, 2002
- Securities and Exchange Board Of India (Issue of capital and Disclosure Requirements) Regulations, 2009
- Securities and Exchange Board Of India (Delisting of Equity Shares) Regulations, 2009
- Securities and Exchange Board Of India (Substantial Acquisition of shares and Takeovers) Regulations, 2011
- Securities and Exchange Board Of India (Listing Obligations and Disclosure Requirements) Regulations, 2011
- The Arbitration and Conciliation Act, 1996
- The Limitation Act, 1963

The Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 (RDB Act)

- ❖ Provides for the establishment of tribunals for expeditious adjudication and recovery of debt due to banks and financial institutions, insolvency resolution and bankruptcy of individuals and partnership firms and for matters connected therewith or incidental thereto is called as The Recovery Of Debts To Banks And Financial Institutions Act, 1993-
- ❖ Extends to the whole of India except the state of jammu and kashmir
- ❖ Came into force with effect from 24th day of June, 1993
- ❖ Shall not apply where the amount of debt due to any bank or financial institution or to a consortium of banks or financial institution is less than 10 lakh rupees or such other amount, being not less one lakh rupees as the central government may, by notification, specify
- ❖ “Debt” means any liability inclusive of interest
- ❖ Debt should not be Legally unenforceable on the date of the application- Section 2g
- ❖ Debts includes any liability towards debts securities which remains unpaid in full or part after notice of 60 days served upon the borrower by the debenture trustee or any other authority in whose favour security interest is created for the benefits of holders of debt securities

❖ “The word ‘property’ means:

- Movable or immovable property
- Any debt or any right to receive payment of money, whether secured or unsecured: receivables, whether existing or future
- Intangible assets

DRT And DRAT

Particulars	DRT (Debt Recovery Tribunal)	DRAT (Debt Recovery Appellate Tribunal)
Headed by	Presiding Officer	Chairperson
Qualification	District Judge	Central Government
Maximum age of retirement	65 years	70 years
Officers Working under the head	Recovery officer, Other officer and Employees	Other officers
Removal from office		

Particulars	DRT	DRAT
Powers	<ul style="list-style-type: none"> •Circuit sittings in all district headquarters •Entertain and decide applications under part III of insolvency and bankruptcy code, 2016 •To entertain and decide applications from the banks and financial institutions 	<ul style="list-style-type: none"> •To entertain appeals against the order made by the adjudicating authority under part III of the insolvency and bankruptcy code, 2016 •To entertain appeals against any order made

- ❖ The chairpersons of an appellate tribunal shall exercise:
 - General power of superintendence
 - Control over the tribunals under his jurisdiction
 - The power of appraising the work and recording the annual confidential reports of presiding officers

- ❖ For the purpose of exercise of general powers of superintendence and control over tribunals, the chairpersons may direct the tribunals to furnish information relating to pending cases, number of cases disposed of, number of new cases filed and such other information as may be considered necessary by the chairpersons:
 - The Recovery Of Debts To Banks And Financial Institutions Act, 1993
 - The securitisation and reconstruction of financial assets and enforcement of security interest act, 2002 or any other law of the time being in force
 - Convene meetings of the presiding officers of tribunals periodically to review their performance
- ❖ Where on assessment of the performance of any presiding officer of the tribunal or otherwise, the chair persons is of the opinion that an inquiry is required to be initiated against such presiding officer for misbehaviour or incapacity, he shall submit a report to the central government recommending action against such presiding officer, if any, under section 15, and for reasons to be recorded in writing for the same
- ❖ Bar of jurisdiction on court or other authority:
 - On and from the appointed day, no court or other authority shall have, or be entitled to exercise, any jurisdiction powers or authority (except the Supreme Court, and a High Court exercising jurisdiction under articles 226 and 227 of the constitution) in relation to the matters specified in section 17.

- Any proceedings in relation to the recovery of debts due to any multistate co-operative bank pending before the date of commencement of the enforcement of security interest and recovery of debts laws (Amendment) act, 2012 under the multi-state co-operative societies act, 2002 (39 of 2002) shall be continued and nothing contained in section shall, after such commencement, apply to such proceedings
- ❖ Jurisdiction for filing cases: Bank/Branch/Defendant
Where a bank or a financial institution has to recover any debt from any person, it may make an application to the tribunal within the local limits of whose jurisdiction:
 - The branch or any other office of the bank or financial institutions is maintaining an account in which debt claimed is outstanding, for the time being
 - The defendant, or each of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business, or personally works for gain
 - Any of the defendants where there are more than one, at the time of making the application, actually and voluntarily resides, or carries on business or personally works for gain: or the cause of action, wholly or partly arises
- ❖ What recourse is available to the multi-state co-operative bank for recovery of debts:
 - The multi state co-op banks may initiate proceedings under SARFAESI Act or RDB Act,1993

- ❖ Refund of fees on settlement of debt before the final order is passed: If any applications filed before the tribunal for recovery of any debt is settled prior to the commencement of the hearing before that tribunal or at any stage of the proceedings before the final order is passed, the applicant may be granted refund of the fees paid by him
- ❖ Show Cause Notice : On receipt of application under section 19 (1) or (2), the tribunal shall issue summons directing the defendant to show cause within 30 days of the service of summons as to why relief prayed for should not be granted
- ❖ Written statement by defendant : The defendant shall present a written statement of his defence including claim for set off of a counter-claim if any within a period of 30 days from the date of service of summons
- ❖ Order of priority of distribution of sale proceeds of secured assets :
 - The costs incurred for preservation and protection of secured assets
 - The cost of valuation
 - The cost of public notice for possession and auction
 - Other expenses for sale of assets
 - Debt owed to the bank or financial institutions
- ❖ Any recovery certificate issued by the presiding officer under section 19(22) shall be deemed to be:
 - Decree or order of the court for the purposes of initiation of winding up proceedings against a company registered under the companies act, 2013

- Decree or order of the court for the purposes of initiation of winding up proceedings against a LLP registered under the LLP act, 2008
- Insolvency proceedings against any individual or partnership
- ❖ The application made to the tribunal under section 19(1) or (2) shall be dealt with by it as expeditiously as possible and every effort shall be made by it to complete the proceedings in two hearings; and to dispose of the application finally within 180 days from the date of receipt of the application
- ❖ DRT is the adjudicating authority for exercising the powers under the IBC, 2016
- ❖ Filing of recovery applications, documents and written statements before the tribunal and appellate tribunal, shall be in electronic form
- ❖ Manner of service of interim or final order passed by the tribunal or appellate tribunal :
 - Shall be displayed on the website of the such tribunal or appellate tribunal and shall be deemed to be a public notice
 - Shall be transmitted by electronic mail to the registered address of the parties to the proceedings shall be deemed to be served on such party

- ❖ Any persons aggrieved by an order made by a tribunal under the RDB Act, 1993 may prefer an appeal to an appellate tribunal having jurisdiction in a matter within a period of 30 days from the date of which a copy of the order made, or deemed to have been made, by the tribunal is received by him
- ❖ Where an appeal is preferred by any person from whom the amount of debt is due to bank/Consortium or a financial institution , such appeal shall not be entertained by the appellate tribunal unless such persons has deposited with the appellate tribunal 50% of the amount of debt so due from him as determined by the tribunal under section 19
- ❖ The appellate tribunal may, for reasons to be recorded in writing, reduce the amount to be deposited by such amount which shall not be less than 25% of the amount of such debt so due to the deposited under this section
- ❖ The tribunal and the appellate tribunal shall not be bound by the procedures laid down by the code of civil procedure, 1908
- ❖ Any proceeding before the tribunal or the appellate tribunal shall be deemed to be:
 - A judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian penal code
 - The tribunal or the appellate tribunal shall be deemed to be a civil court for all the purposes of section 195 and chapter XXVI of the code of criminal procedure

- ❖ The central government shall make rules to lay down uniform procedure consistent with the provisions of the RDB Act, 1993 for conducting the proceedings before the tribunals and appellate tribunals
- ❖ An application made to a tribunal shall be subject to the provisions of The limitations act, 1908
- ❖ The recovery officer shall proceed to recover the amount of debt specified in the certificate by way of attachment and sale of the movable or immovable property of the defendant
- ❖ Notwithstanding that a certificate has been issued to the recovery officer for the recovery of any amount, the presiding officer, may by an order, grant time for payment of the amount, provided the defendant makes a down payment of not less than 25% of the amount specified in the recovery certificate and gives an unconditional undertaking to pay the balance within a reasonable time, which is acceptable to the applicant bank or financial institution holding recovery certificate
- ❖ Any person aggrieved by an order of the recovery officers made under the RDB Act, 1993 may, within 30 days from the date on which a copy of the order of the order is issued to him, prefer an appeal to the tribunal
- ❖ The chairperson of an appellate tribunal, the presiding officer of a tribunal, the recovery officer and other officers and employees of an appellate tribunal and a tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian penal code, 1860
- ❖ The proceedings of the tribunal shall be conducted in english or in hindi

Forms	Description
Form I	The application under section 19 of the RDB Act, 1993 may be presented as nearly as possible
Form II	The application under section 31A of the RDB Act, 1993 may be presented as nearly as possible
Form III	The application under section 30 (1) of the RDB Act, 1993 may be presented as nearly as possible
Form IV	The tribunal shall issue summons to the defendants

Fee Chart for filing Application for recovery of debts

Amount Due	Fee Payable
Upto 10 Lakh	12000
Above 10 Lakh	12000 Plus 1000 for every 1 lakh rupees of debt due or part thereof in excess of 10 lakh, subject to maximum 150000

Fee Chart for filing Application for counter claim

Amount Due	Fee Payable
Upto 10 Lakh	12000
Above 10 Lakh	12000 Plus 1000 for every 1 lakh rupees of debt due or part thereof in excess of 10 lakh, subject to maximum 150000

Fee Chart for filing Application for review including review application

Against	Fee payable
In respect of the review of counter claim against an interim order	125
In respect of the review of counter claim against an Final order	50% of fee payable at rates as applicable on the applications, subject to maximum 15000

Fee Chart for filing Appeals against order of Recovery officer

Amount Due	Fee payable
Less than 10 lakh	12000
10 lakh or more but less than 30 lakh	20000
30 lakh or more	30000

- ❖ An application under section 19 or section 31A shall be accomplished by a paper book containing:
 - A statement showing details of debt due from a defendant and circumstances under which such debt has become due; and shall also disclose details of the case and decision in that case which is sought to be reviewed

- All documents relied upon by the applicant and those mentioned in the application
- Details of the crossed demand draft or crossed Indian postal order representing the application fee and index of documents
- ❖ Fee payable for obtaining a copy of the order passed by the tribunal:
 - Rs. 5 per page, subject to a minimum of Rs . 100
- ❖ Fee for inspection or records and obtaining copies thereof:
 - A fee of Rs. 20 for every hour or part thereof of inspection subject to a minimum of Rs. 100 shall be charged for inspecting the records of each pending application by a party there to
- ❖ Working hours of the tribunal:
 - Except on second Saturday of a month, sundays and other public holidays, the offices of the tribunal shall, subject to any order made by the presiding officer, remain open daily from 10:00 a.m. to 6:00 p.m. but no work, unless, of an urgent nature, shall be admitted after 4:30 p.m. on any working day
- ❖ The sitting hours of the tribunal (including a vacation bench) shall ordinarily be from 10:30 a.m. to 1:00 p.m. and 2:00 p.m. to 5:00 p.m. subject to any order made by the presiding officer
- ❖ Powers and functions of the registrar:

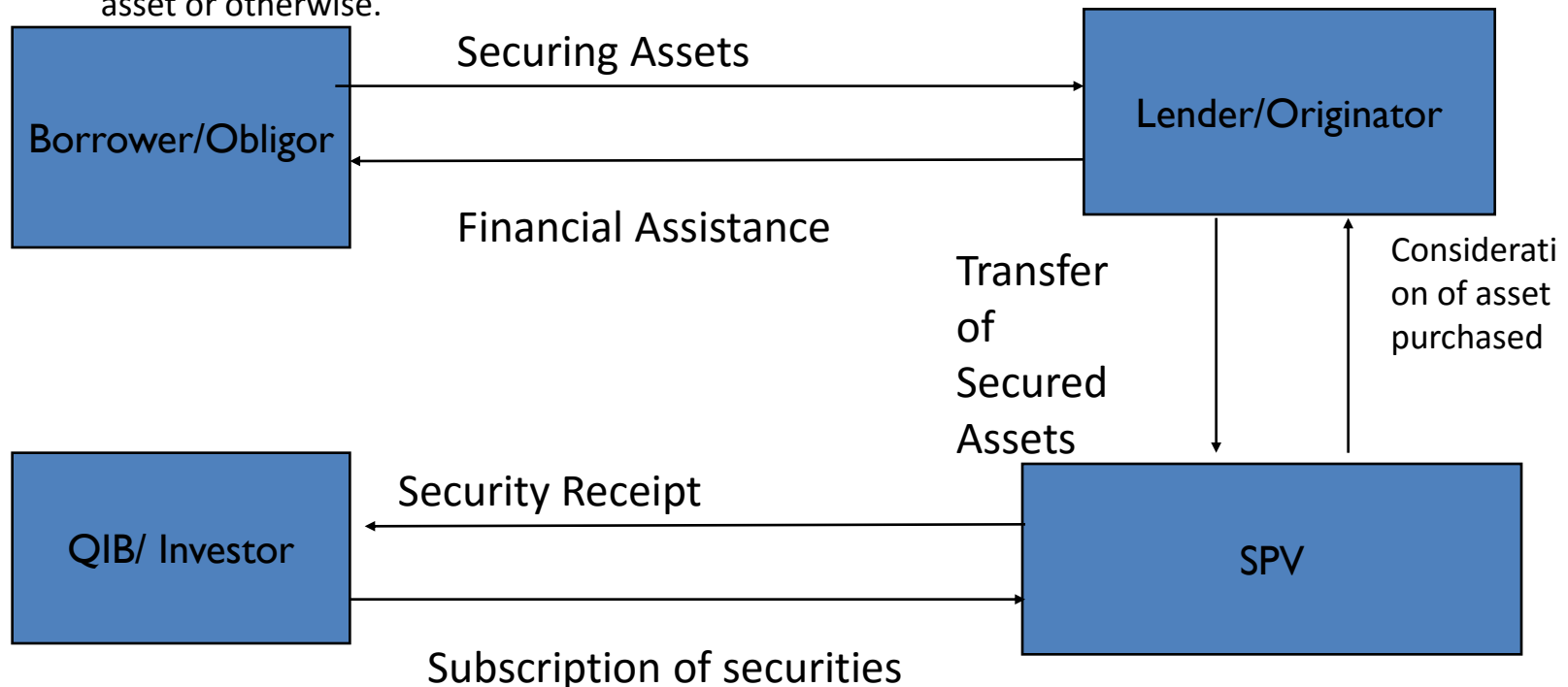
- The registrar shall have the custody of the records of the tribunal
- The official seal shall be kept in the custody of the registrar
- The seal of the tribunal shall not be affixed to any certified copy issued by the tribunal save under the authority in writing of the registrar
- ❖ The proceedings of the appellate tribunal (DRAT) shall be conducted in English or hindi
- ❖ Where the appellant is a bank or a financial institution, a memorandum of appeal may be preferred by:
 - One or more legal practitioners authorised by such bank or financial institutions
 - Any of the officers of such bank or financial institution to act as presenting officers
- ❖ Where the appellant is other than a bank or a financial institutions, he may prefer an appeal:
 - In person
 - By his agent
 - By a duly authorised legal practitioner
- ❖ An application for review of order may be made to the appellate tribunal, who passed the order, but no application for review shall be made after the expiry of a period of 30 days from the date of the order

PART I

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.



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 21st 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
- 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 of 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 15th 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

SEBI (Delisting of equity shares) Regulations, 2009

- “Compulsory delisting” means delisting of equity shares of a company by a recognized stock exchange
- “Public shareholders” means the holders of equity shares, other than the:
 - Promoters
 - Holders of depository receipts issued overseas against equity shares held with a custodian and such custodian
- “Voluntary delisting” means delisting of equity shares of a company voluntarily on application on the company itself
- The provisions of SEBI (Delisting of equity shares) regulations 2009 are not applicable on:
 - Securities listed without making a public issue, on the institutional trading platform of a recognized stock exchange
- Delisting is not permissible in the following case:
 - Buyback of equity shares by the company
 - Preferential allotment made by the company

- Unless a period of three years has elapsed since the listing of that class of equity shares
- ❑ No promoters or promoter group shall propose delisting of equity shares of a company, if any entity belonging to the promoter or promoter group has sold equity shares of the company during a period of 6 months prior to the date of the board meeting in which the delisting proposal was approved
- ❑ Whether delisting of convertible securities are permitted:
 - No, neither the company should apply and nor the stock exchange should permit
- ❑ A company may apply for delisting of its equity shares to the stock exchange(s) where it is listed, subject to the condition that the concerned equity shareholders should be given an exit opportunity
- ❑ A company shares are listed in jaipur stock exchange, delhi stock exchange and bombay stock exchange(BSE). Now the company wants to delist from jaipur and delhi stock exchange. Whether the shareholders should be given an exit opportunity:
 - There is no need to exit options since shares are listed on BSE which has nationwide trading terminals
- ❑ The procedure for delisting of shares includes the proposed delisting shall be approved by a resolution of the board of directors of the company in its meeting

- The company shall give a public notice of the proposed delisting in at least:
 - One english national daily with wide circulation
 - One hindi national daily with wide circulations
 - One regional language newspaper of the region where the concerned recognized stock exchange are located
- The company shall disclose the fact of delisting in the first annual report of the company prepared after the delisting
- An application seeking in-principle approval for delisting shall be disposed of by the recognized stock exchange within a period not exceeding five working days from the date of receipt of such application complete in all respects
- When the escrow account should be opening before making the public announcement
- How much amount should be deposited in the escrow account:
 - Total estimated amount of consideration calculated on the basis of floor price and number of equity shares outstanding with public shareholders
- The escrow account shall consist of:
 - Cash deposited with a scheduled commercial bank
 - Bank guarantee in favour of the merchant banker

- ❑ The acquirer or promoters shall despatch the letter of offer to the public shareholders of equity shares, (In case of exit option) not later than two working days from the date of the public announcement
- ❑ In case of exit option, the date of opening of the offer shall not be later than seven working days from the date of the public announcement
- ❑ In case of exit option, the offer shall remain open for a period of five working days, during which the public shareholders may tender their bids
- ❑ In exit option, whether the acquirer or promoter is not bound to accept the equity shares at the offer price determined by the book building process
- ❑ All the shareholders whose equity shares are verified to be genuine shall be paid the final price stated in the public announcement within ten working days from the closure of the offer
- ❑ Any public shareholder who could not exercise the exit option and still holding equity shares may tender his shares to the promoter up to a period of at least one year from the date of delisting
- ❑ Where a company has been compulsorily delisted, the company, its whole time directors, its promoters and the companies which are promoted by any of them shall not directly or indirectly access the securities market or seek listing for any equity shares for a period of ten years from the date of such delisting

- ❑ For delisting of shares by the small companies, one of the condition is:
 - Paid up capital not exceeding ten crore rupees and net worth not exceeding 25 crore rupees as on the last date of preceding financial year

SEBI(Substantial acquisition of shares and takeovers) Regulations, 2011

- ❖ “Acquirer” means any person who acquires shares, voting rights, control over a target company
- ❖ There can be acquirer:
 - It can be a natural person
 - It can be corporate entity
 - It can any other legal entity
- ❖ Controls means right to appoint majority of the directors, control the management, policy decisions exercisable by a person or persons acting individually or in concert
- ❖ “Enterprise value” means:
 - The value calculated as market capitalization of a company plus debt debt, minority interest and preferred shares, minus total cash and cash equivalents
- ❖ “Frequently traded shares” means shares of a target company, in which the traded turnover on any stock exchange during the 12 calendar months preceding the calendar month in which the public announcement is made, is at least 10% of the total number of shares of such class of the target company

- ❖ “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**
- ❖ “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 or wilful defaulters issued by the **Reserve Bank of India** and includes any person whose director, promoter or partner is categorized as such
- ❖ No acquire 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% more of the voting rights** in such target company unless the acquire makes a public announcement of an open offer for requiring shares of such target company in accordance with these Regulations
- ❖ No acquire, has required and holds in shares or voting rights in a target company entitling them to exercise **25%** of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any f.y additional shares or voting rights in such target company entitling them to exercise **5% more** of the voting rights in such target company unless the acquire makes a public announcement of an open offer for requiring shares of such target company in accordance with these Regulations

- ❖ 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
- ❖ Maximum number of shares which can be held by promoters in a listed company is **75% of share capital**
- ❖ For acquisition or holding of shares or voting rights in a target company, the acquire have to make **a public announcement of an open offer**
- ❖ 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**
- ❖ The acquisition shall be regarded as a direct acquisition of the target company, where:
 - The proportionate net assets 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
 - The proportionate market capitalization of the target company as a percentage of the consolidated sales turnover of the entity or business being acquired

- ❖ The market capitalization 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 60 trading days preceding the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decisions to make the primary acquisition is announced in the public domain
- ❖ In the event the acquire 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 (delisting of equity shares) Regulations, 2009**
- ❖ In the event of the failure of the delisting offer made by the acquire, through the manager to the open offer, shall **within five working days** from the date of the announcement under regulation 5A(2), file with the board, a draft of the letter of offer
- ❖ An acquire, who together with persons acting in concert with him, holds share 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
- ❖ When an acquired shares of the target company in the preceding **52 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 shares

- ❖ An acquire, 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 **6 months** after completion of the open offer
- ❖ No persons **who is a wilful defaulter** shall make a public announcement of an open offer for acquiring shares
- ❖ The open offer for acquiring shares to be made by the acquire shall be for at least **26% of total shares** of the target company, as of 10 working day from the closure of the tendering period
- ❖ Whether partly paid up shares be tendered in the open offer:
 - Yes, partly paid up shares can be tendered in the open offer
 - 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 including calls remaining unpaid with interest, if any, thereon
- ❖ **Conditional offer** an offer in which the acquire has stipulated a minimum level of acceptance
- ❖ An open offer is required to be kept open for **10 working days**
- ❖ Whether a share holder once tendered his shares in the open offer made by the acquire can withdraw his request:
 - No he cannot withdraw

- ❖ What are the obligations on the part of the manager to the open offer prior to the public announcement being made:
 - To ensure that the acquire is able to implement the open offer
 - To ensure that the acquire have made firm arrangements for funds through verifiable means to meet the payment obligations under the open offer

SEBI (Listening 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 amount payable as dividend which exceeds Rs 1500 the payable-at-par' warrants or cheques shall be sent by speed post
- ❑ The listed entity shall file with the recognized stock exchange on a quarterly basis, within 21 days from the end of each quarter, a statement giving the number of investors 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
- ❑ The compliance with the corporate governance provisions shall not apply, in respect of the listed entity having paid up equity share capital not exceeding Rs 10 crores and net worth not exceeding 25 crores as in the previous f.y
- ❑ In case of a company under going under the CIRP, who will take care of compliance part:
 - Resolution professional
- ❑ “Independent director” means a non-executive director, other than a nominee director of the listed entity
- ❑ 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 50% of the board of directors shall comprise of nonexecutive directors
- ❑ The board of directors of the top 500 listed entities shall have at least one independent woman director by april 1, 2019

- ❑ 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
- ❑ Were the chairpersons of the board of the 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 entitles 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 100 & 20 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 quorum for audit committee meeting shall either be two members or one third of the members of the audit committee, whichever is earlier, with at least two independent directors
- The nomination committee shall comprise of at least three directors
- All directors of the nomination committee/remuneration shall be non-executive directors
- In the nomination/remuneration committee at least 50% of the directors shall be independent directors
- The quorum for a meeting of the nomination and remuneration committee shall be either 2 members or one third of the members of the committee, whichever is greater, including at least one independent director in attendance
- The nomination/ remuneration committee shall meet at least once in a year
- The chairperson of stakeholders relationship committee shall be a non-executive director
- In stakeholders relationship committee, at least three directors, with at one being an independent director, shall be members of the committee
- The chairpersons of the stakeholders relationship committee shall be present at the annual general meetings to answer queries of the security holders
- The stakeholders relationship committee shall meet at least once in a year
- The majority of members of risk management committee shall consist of members of the board of directors

- ❑ The risk management committee shall meet at least once in a year
- ❑ The functions of the risk management committee shall be:
 - Monitoring the risk management plan
 - Reviewing of the risk management plan
 - Monitoring and reviewing of cyber security
- ❑ The provisions of SEBI(LODR) Regulations relating to the risk management committee shall be applicable to top 500 listed entities, determined on the basis of market capitalization
- ❑ The listed entity shall formulate a vigil mechanism:
 - For directors only to report genuine concerns
 - For employees only to report genuine concerns
- ❑ A transaction with a related party shall be considered material if the transaction to be entered into individually or taken together with previous transaction 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
- ❑ All related party transaction shall require prior approval of The audit committee
- ❑ The audit committee shall review, at least on a quarterly basis the details of related party transaction entered into by the listed entity pursuant to each of the omnibus approvals given

- ❑ 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

- To review the performance of the chairperson of the listed entity
- To assess the quality, quantity and timeliness of flow of information between the management of the listed entity and the board of directors
- A director shall not be a member in more than ten committees across all listed entities in which he is a director
- 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
- The listed entity shall submit a quarterly compliance report on corporate governance to the recognized stock exchange within 50 days from close of the quarter
- The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which the proposals:
 - Financial results
- 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
- The listed entity shall submit to the stock exchange a statement showing holding of securities and shareholding pattern separately for each class of securities, on a quarterly basis, within 21 days from the end of each quarter

- 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 recommend or declare all dividend and cash bonuses at least 5 working days (excluding the date of intimation and the record date) before the record date fixed for the purpose
- ❑ The time gap between two record dates shall be at least 30 days
- ❑ The top 500 listed entities based on market capitalization (calculated as on March 31 of every f.y) shall formulate a dividend distribution policy which shall be disclosed in their annual reports and on their websites
- ❑ The listed entities other than top 500 listed entities based on market capitalization may disclose their dividend distribution policies on a voluntary basis in their annual reports and on their websites
- ❑ The top 100 listed entities by market capitalization, determined as on March 31st of every f.y, shall hold their annual general meetings within a period of five months from the date of closing of the financial year
- ❑ 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 50% of total revenue in the preceding one year period has been accounted for by the new activity suggested by the new name
 - The amount invested in the new activity is at least 50% of the assets of the listed entity

- 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

Chapter-14 The Arbitration And Conciliation Act, 1996

- 'UNCITRAL' stands for United Nations Commission on International Trade Law
- The Arbitration and Conciliation Act, 1996 is based on UNCITRAL model law on International Commercial Arbitration
- The purpose of Arbitration Act is to provide quick redressal to commercial disputes by private arbitration
- The act is based on model law drafted by united nations commission on international trade laws (UNCITRAL), both on domestic arbitration as well as international commercial arbitrations, to provide uniformity and certainty to both categories of cases
- Extends to whole of India, but parts I, III and IV shall extend to the state of jammu and kashmir only in so far as they relate to international commercial arbitrations or, as the case may be, international commercial conciliation
- Deals with Domestic arbitration, International commercial arbitration, Enforcement of foreign arbitral awards

- “Arbitral Award” includes an interim award
- “Arbitral Tribunal” means a sole arbitrator or a panel of arbitrators
- “International commercial arbitration” means an arbitration relating to disputes arising out of legal relationships, considered as commercial under the law in force in India and where at least one of the parties is:
 - An individual who is a national of, or habitually resident in, any country other than India
 - A body corporate which is incorporated in any country other than India; or an association or a body of individuals whose central management and control is exercised in any country other than India
 - The government of a foreign country
- “Legal representative” means and includes
 - A person who in law represents the estate of a deceased person
 - Any person who intermeddles with the estate of deceased
 - Where a party acts in a representative character, the person on whom the estate devolves on the death of the party so acting

- A written communication sent over mail id of the addressee can be deemed to have been received, unless otherwise agreed by the parties
- 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
- An arbitration agreement is in writing if it is contained in:
 - A document signed by the parties
 - An exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement
 - 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

- Arbitration agreement must be in writing. An oral arbitration agreement is not recognized as an arbitration agreement
- Rules relating to the power to refer parties to arbitration where there is an arbitration agreement:
 - A judicial authority before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so applies not later than when submitting his first statement on the substances of the dispute, refer the parties to arbitration
 - The application shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof
 - 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
- The jurisdiction of civil court is barred after an application under section 8 of the act is made for arbitration
- The interim measures by the court can be ordered on an application by a party:
 - Before the arbitral proceedings
 - During the arbitral proceedings
 - At any time before the enforcement of an award

- Section 10 of the act states that, the parties are free to determine the number of arbitrators, provided that such number shall not be an even number. However if they fail to determine the number of arbitrators, The arbitral tribunal shall consist of a sole arbitrator
- A person of any nationality ,even a foreign national ,may be an arbitrator, unless otherwise agreed by the parties
- In a situation where in an arbitration three arbitrators are provided, each party shall appoint one arbitrator within 30 days . The two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator
- If 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 the chief justice
 - By any person designated by him
 - By any institution designated by him

- The central government can amend the fourth schedule as provided in The Arbitration And Conciliation Act , 1196
- An arbitrator may be challenged if Circumstances exist that give rise to justifiable doubts as to his independence or impartiality or he does not possess the qualifications agreed to by the parties
- A party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal send a written statement of the reasons for the challenge to the arbitral tribunal
- The mandate of an arbitrator shall terminate in the following cases:
 - He becomes de jure or de facto unable to perform his functions
 - He for other reasons fails to act without undue delay
 - He withdraws from his office or the parties agree to the termination of his mandate

- As regards the determination of rules of procedure the arbitral tribunal shall not be bound by:
 - The code of civil procedure, 1908 (5 of 1908)
 - The Indian evidence act, 1872 (1 of 1872)
- Place of arbitration:
 - The parties are free to agree on the place of arbitration
 - If no place has been agreed upon 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
 - 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
- The arbitral proceedings in respect of a particular dispute shall commence:
 - On the date on which a request for that dispute to be referred to arbitration is received by the respondent

- The parties are free to agree upon the language or languages to be used in the arbitral proceedings
- Where the place of arbitration is situated in India, in case of 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
- Where the place of arbitration is situated in India, in international commercial arbitration , 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
- 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
- Failing any designation of the law under clause (a) of sub-section (1) of section 28 by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute
- In arbitral proceedings where there more than one arbitrator the decisions of the arbitral tribunal , shall be made by a majority of all its members
- Time limit for arbitral award:

- Within a period of 12 months from the date the arbitral tribunal enters upon the reference
- An arbitral tribunal shall be deemed to have entered upon the reference on the date on which the arbitrator have received the notice, in writing, of their appointment
- If the award is made within a period of 6 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
- The parties may, by consent, extend the period specified in sub-section (1) of section 29A, which is 12 months for making award for a further period not exceeding six months
- If the award is not made within the prescribed period of 12 months or extended for a further period of not exceeding 6 months 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
- Under fast track procedure the arbitral tribunal shall consist of a sole arbitrator who shall be chosen by the parties
- The award under the fast track procedure shall be made within a period of six months from the date the arbitral tribunal enters upon the reference

- The making of an award is a rational process which is accentuated by recording the reasons. The award should contain reasons, An award can be made without reasons only when
 - The arbitration agreement expressly provides that no reason are to be given
 - The award has been made under section 30 of the act i.e. Where the parties settled the dispute and the arbitral tribunal has recorded the settlement in the form of an arbitral award on agreed terms
- An arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal
- A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of 2% higher than the current rate of interest prevalent on the date of award, from the date of award to the date of payment
- Arbitral proceedings shall be terminated on
 - Final arbitral award
 - The arbitral tribunal issue an order for the termination
- Correction and interpretation of award can be made within 30 days from the receipt of the arbitral award
- Unless otherwise agreed by the parties, a party with notice to the other party may request the arbitral tribunal, Within 30 days from the receipt of the arbitral award, to make an additional arbitral award as to claim presented in the arbitral proceedings but omitted from the arbitral award

- Grounds on which the award may be challenged before the court:
 - Incapacity of a party
 - Invalidity of the arbitration agreement
 - Party applying was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case
- An award would be in conflict with public policy if :
 - If it is induced or affected by fraud
 - If it is induced by corruption
 - If it violates section 75 or section 81 of the act relating to confidentiality and admissibility of evidence in other proceedings
- 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
- If the time for making an application to set aside the award has expired or the application has been refused, the award shall be enforced under the Code of civil procedure, 1908 in the same manner as if it were a decree of the court
- An appeal shall lie from the orders (and from no others) to the court authorised by law to hear appeals from original decrees of the court passing the order:
 - Granting any measures under section 9

- Refusing to grant any measures under section 9
- Setting aside or refusing to set aside an arbitral award under section 34
- Section 37(3) prohibits making of second appeal from an order passed in appeal under section 37(1) and (2) of the act:
 - But the right to appeal to the Supreme Court is always open to a party aggrieved
- The arbitral tribunal may fix the amount of the deposit or supplementary deposit, as an advance for the costs. Rules relating to such deposit are:
 - The deposit shall be payable in equal shares by the parties
 - Where one party fails to pay his share of the deposit, the other party may pay that share
 - In case 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
- The arbitral tribunal shall not have a lien on the arbitral award for any unpaid costs of the arbitration
- The mandate of an arbitrator shall not be terminated by the death of any party by whom he was appointed
- The Limitation Act, 1963, shall apply to arbitration as it applies to proceedings in court

- In case 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
- Foreign Award: 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 in pursuance of an agreement in writing for arbitration to which the convention set forth in the first schedule applies, and in one of such territories as the central government, being satisfied that reciprocal provisions have been made, by notification in the official gazette, declare to be territories to which the said convention applies.
- Chapters I of part II of The Arbitration And Conciliation Act, 1996 deal with the enforcement of certain foreign awards made under the New York Convention
- Chapter II of part II of The Arbitration And Conciliation Act, 1996 deal with the enforcement of certain foreign awards made under The Geneva Convention
- Conditions for enforcement of foreign awards:
 - The award has been made in pursuance of a submission to arbitration which is valid under the law applicable thereto

- The subject matter of the award is capable of settlement by arbitration under the law of India
- 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
- It is obligatory on the party applying for the enforcement of a foreign award to produce before the court the following:
 - The original award or a duly authenticated copy thereof
 - The original agreement for arbitration or a duly-certified copy thereof
 - Such evidence as may be necessary to prove that the award is a foreign award
- In arbitration, parties cannot appoint even number of arbitrators; while in conciliation, the number of conciliators does not matter, whether odd or even
- In conciliation the decisions is known as settlement
- Application and scope of the conciliation:
 - The disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto
- Conditions for commencement of conciliation proceedings:
 - The party initiating conciliation shall send to the other party a written invitation to conciliate briefly identifying the subject of the dispute

- Acceptance in writing of the invitation to conciliate by the other party . If the other party rejects the invitation, there will be no conciliation proceedings
- The party initiating conciliation should receive a reply within 30 days from the date on which he sends the invitation to other party
- The number of conciliators required in the conciliation:
 - There shall be one conciliator unless the parties agree that there shall be two or three conciliators. In case there are more than one conciliator, they ought, as a general rule, to act jointly
- Manner of appointment of conciliators :
 - If there is one conciliator, the parties, may agree on the name of a sole conciliator
 - If there are two conciliators each party may appoint one conciliator
 - If there are 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
- The conciliator is not bound by the:
 - Code of Civil Procedure, 1908
 - Indian Evidence Act, 1872

- The communication between conciliator and parties may:
 - Be orally or in writing
 - Meet or communicate with the parties together or with each of them separately
 - Meetings with the conciliator are to be held at such place as determined by the conciliator, after conciliation with the parties
- Duty of Conciliator to keep the opposite party informed : When the conciliator receives factual information concerning the dispute from a party:
 - He shall disclose the substance of that information to the other party
- Rules of settlement agreement:
 - Suggested Settlement on his own followed by improvement: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
 - Helping the parties in drawing up a settlement agreement: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

- Authentication after signing by both the parties : When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively and the conciliator shall authenticate the settlement agreement and furnish a copy thereof to each of the parties
- Circumstances when the conciliation proceedings can be terminated:
 - By the signing of the settlement agreement by the parties on the date of the agreement
 - By a written declaration of the conciliator that further efforts at conciliation are no longer justified, on the date of the declaration or 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
 - 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
- The High Court may make rules consistent with this act as to all proceedings before the court under this act
- The Arbitration And Conciliation Act, 1996 has not repealed the following act:
 - The sick industrial companies (special provisions) act, 1985
- The recognition and enforcement of an arbitral award may be refused if the competent authority in the country where recognition and enforcement is sought finds that:

- The subject-matter of the difference is not capable of settlement by arbitration under the law of that country
- The recognition or enforcement of the award would be contrary to the public policy of that country
- when the sum in dispute is upto Rs. 5 lakh ,the fees payable is Rs 45,000 as per the Fourth Schedule.
- Where the arbitral tribunal is a sole **arbitrator**, he shall be entitled to an additional amount of 25% on the fee payable as per the table set out in The Fourth schedule
- The terms “close family member” as mentioned in The Fifth schedule do not include in-Laws
- Instances giving rise to justifiable doubts as to the independence or impartiality of arbitrators:
 - The arbitrator is a lawyer in the same law firm which is representing one of the parties
 - The arbitrator law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself
 - The arbitrator law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties

- 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
- A close family member of the arbitrator has a significant financial interest in the outcome of the dispute
- 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

Section 11 (14)

Sum in Dispute

Model Fee

Upto Rs. 5,00,000

Rs. 45,000

Above Rs. 5,00,000 and upto Rs. 20,00,000

Rs. 45,000 plus 3.5% of the claim amount over and above Rs. 5,00,000

Above Rs. 20,00,000 and upto Rs. 1,00,00,000

Rs. 97,500 plus 3% of the claim amount over and above Rs. 20,00,000

Above Rs. 1,00,00,000 and upto Rs. 10,00,00,000

Rs. 3,37,500 plus 1% of the claim amount over and above Rs. 1,00,00,000

Above Rs. 10,00,00,000 and upto Rs. 20,00,00,000

Rs. 12,37,500 plus 0.75% of the claim amount over and above Rs. 10,00,00,000

Above Rs. 20,00,00,000

Rs. 19,87,500 plus 0.5% of the claim amount over and above Rs. 20,00,00,000 with a ceiling of Rs. 30,00,000.

The Limitation Act, 1963

- ❑ Is an act to consolidate and amend the law for the limitation of suits and other proceedings and for purpose connected therewith
- ❑ The law relating to limitation is incorporated in the Limitation Act of 1963, which prescribes different periods of limitation for suits, petitions, applications
- ❑ The law of limitations bars the remedy:
 - In a court of law only when the period of limitation has expired
 - It does not extinguish the right that it cannot be enforced by judicial process
 - A claim is satisfied outside the court of law after the expiry of period of limitation
- ❑ Extends to whole of India except the state of jammu and kashmir
- ❑ Is not applicable in Jammu and Kashmir
- ❑ The meaning of the word “applicant” has been defined under the Limitation Act, 1963, which is termed as Inclusive definition. An application includes a petition. The word “applicant” under the Limitation Act includes:
 - A petitioner

- Any person from or through whom an applicant derives his right to apply
- Any person whose estate is represented by the applicant as executor, administrator or other representative
- Bills of exchange” includes a hundi and a cheque
- “Bond” includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligations shall be Void if a specified act is performed, or is not performed , as the case may be.
- “Defendant” includes:
 - Any person from or through whom a defendant derives his liability to be sued
 - Any person whose estate is represented by the defendant as executor, administrator or other representative
- Easement : Easement is a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon, the land of another .
- Promissory Note: Any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand, or at sight.

- ❑ 'Suit' does not include an appeal or an application in the Limitation Act
- ❑ Civil wrong which is not exclusively the breach of a contract or the breach of a trust, is termed as Tort
- ❑ Section 3 of the Limitation Act which deals with the subject of 'bar of limitation' provides that after the prescribed period it shall be dismissed. This section is not applicable on Execution proceedings
- ❑ The provisions of section 3 are Non mandatory
- ❑ Section 3 deals with the bar of limitation and is subject to the provisions contained in section 4 to 24 (inclusive)
- ❑ A suit is said to be instituted, in an ordinary case: When the plaint is presented to the proper officer
- ❑ A suit is said to be instituted in the case of a pauper : When his application for leave to sue as a pauper is made
- ❑ A suit is said to be instituted in the case of a claim against a company which is being wound up by the court:When the claimant first sends in his claim to the official liquidator
- ❑ Any claim by way of a set off or a counter claim, shall be treated as a separate suit
- ❑ An application by notice of motion in a High Court is made:When the application is presented to the proper officer of that court

- ❑ In case the prescribed period for any suit, appeal or application expires on a day when the court is closed: The suit, appeal or application may be instituted, preferred or made on the day when the court reopens
- ❑ The doctrine of sufficient cause deals with condonation of delay which is embodied in section 5 of the Limitation Act, 1963
- ❑ The section 5 of the Limitation Act, 1963 is Not applicable to applications made under any of the provisions of order XXI of the code of civil procedure, 1908 and also to suits
- ❑ Any appeal or any application, other than an application under any of the provisions of order XXI of the code of civil procedure, 1908 may be admitted after the prescribed period, if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period
- ❑ Whether the court has power to admit a time barred suit even if there is a sufficient cause for the delay:
 - It applies only to appeals or applications as specified therein
- ❑ What is the genesis for non-applicability of the section 5 to suits:
 - The period of limitations allowed in most of the suits is in the range of 3 to 12 years which is sufficient long period

- In the case of appeals and application the period is very short and it does not exceed 6 months
- ❑ The provisions relating to extension of prescribed period in certain cases is contained in section 6 of the Limitation Act, 1963
- ❑ In case the appellant or the applicant was misled by any order, practice or judgement of the High Court in ascertaining or computing the prescribed period ,this may be treated as sufficient cause within the meaning of this section
- ❑ High Courts have the power to extend the period as per section 5
- ❑ Section 6 of Limitation Act which deals with the legal disability, applies to institution of a suit, making an application for execution of a decree
- ❑ What is meant by legal disability as mentioned by section 6 of Limitation Act:
 - Minor
 - Insane
 - Idiot
- ❑ A right to sue accrued to Mr X during his minority. He will attain majority after 2 years. Mr X may institute suit at any time within 3 years from the date of his attaining majority

- ❑ In case of Two dis-abilities: When a persons is, at the time from which the prescribed period is to be reckoned, affected by two such disabilities, or where, before his disability has ceased, he is affected by another disability
 - He may institute the suit or make the application within the same period after both disabilities have ceased, as would otherwise have been allowed from the time so specified
- ❑ The position, if the disability continues up to the death of that person
 - His legal representative may institute the suit
 - Make the application within the same period after this death, as would otherwise have been allowed from the time so specified
- ❑ Where a person under disability dies after the disability ceases but within the period allowed to him under this section, his legal representative may institute the suit or make the application within the same period after the death, as would otherwise have been available to that person had he not died
- ❑ “Minor” means a child in the mother’s womb
- ❑ Where one of several persons jointly entitled to institute a suit or make an application for the execution of a decree is under any such disability, and a discharge can be given without the concurrence of such persons, time will run against them all: but, where no such discharge can be given, time will not run as

against any of them until one of them becomes capable of giving such discharge without the concurrence of the others or until the disability has ceased

- ❑ Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it
- ❑ Where letters of administration to the estate of a creditor have been granted to his debtor, the running of the period of limitation for a suit to recover the debt shall be suspended while the administration continues
- ❑ Where the debtor promises in writing to pay a debt barred by limitation it is valid without consideration, even a time barred debt can be recovered by the creditor
- ❑ In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded
- ❑ In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgement, the day on which the judgement complained of was pronounced and the time requisite for obtaining a copy of a decree, sentences or order appealed from or sought to be revised or reviewed shall be excluded
- ❑ Where a decree or order is appealed from or sought to be revised or reviewed, or when an application is made for leave to appeal from a decree or order the time requisite for obtaining a copy of the judgement on which the decree or order is founded shall also be excluded

- ❑ In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded
- ❑ The period of limitation in case where the suit or applications is based upon the fraud of the defendant or respondent or his agent:
 - The period of limitations shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence, has discovered it, or in the case of concealed document, until the plaintiff or the applicant first had the means of producing the concealed document or compelling its production
- ❑ Effect of acknowledgement in writing before the expiration of the prescribed period for a suit or application in respect or any property or right: A fresh period of limitation shall be computed from the time when the acknowledgement was so signed
- ❑ Requirements for valid acknowledgement as required by section 18 of the Limitation Act, 1963:
 - There must be an admission or acknowledgement which must be in respect of any property or right
 - It must be made before the expiry of period of limitation
 - It must be in writing and signed by the party against whom such property or right is claimed

- ❑ An application for the execution of a decree or order:
 - Shall not be deemed to be an application in respect of any property or right
- ❑ Effect of the payment on account of debt or of interest on legacy made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorized in this behalf:
 - A fresh period of limitation shall be computed from the time when payment was made
- ❑ The word “debt” for the purpose of section 19 of the Limitation Act, 1963 does not include money payable under a decree or order of a court
- ❑ When after the institution of a suit, a new plaintiff or defendant is substituted or added, the suit shall, as regards him, be deemed to have been instituted When he was so made a party
- ❑ In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during the breach or the tort, as the case may be, continues
- ❑ Computation of the period of limitation in case of suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results there from:

- The period of limitation shall be computed from the time when the injury results
- ❑ Computation of time mentioned in instrument :All instrument shall for purposes of the Limitation Act, be deemed to be made with reference to the Gregorian calendar
- ❑ The period prescribed under section 25(1) of the Limitation Act, 1963 relating to the acquisition of easement by prescription is 20 years.
- ❑ If the property mentioned in section 25 of the Limitation Act, 1963 relating to the acquisition of easement by prescription belongs to the government, there period is 30 years.
- ❑ Section 5 (Acquisition of easement by prescription) and 26 (Exclusion in favour of reversioner of serivent tenement) and the definition of “easement” in section 2(f) of the Limitation Act, 1963 shall not apply to cases arising in the territories to which The Indian Easement act, 1882 does not apply.
- ❑ The provisions of the Limitation Act, 1963 shall not affect section 25 of the Indian Contract Act, 1872(Pertaining to agreements made without consideration void unless registered)
- ❑ Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the schedule, the provision of section 3 shall apply

Delisting Of Shares

Voluntary

without Exit Opportunity

In this case, the company is still listed with any designated stock exchange. Hence there is no requirement to pay shareholders for their share process:

1. Board meeting & approval of delisting by board resolution
2. public announcement of proposed delisting in English/ Hindi, and Regional/ Vernacular/ Local newspaper where concerned stock exchange exists
3. company to make application to stock exchange .
4. concerned stock exchange shall dispose of the application within 30 days

Permission

Denied -stop

Granted-Disclose such fact in first AGM

With exit Opportunity

- Board approval in Board meeting
- Decide the time/date of shareholders meeting
- Authorize the CS to draft and send the notice to shareholders
- Obtain the shareholders approval by special resolution through Postal ballot
- Make an application to concerned stock exchange for in principle approval of proposed delisting
- Public announcement- English, Hindi & Vernacular Regional/Local newspaper
- Dispatch the letter of offer to shareholders

Voluntary delisting with exit opportunity (Contd)



Opening of offer should be for minimum 5 days



Closing of offer should be minimum after 3 days & maximum after 5 days

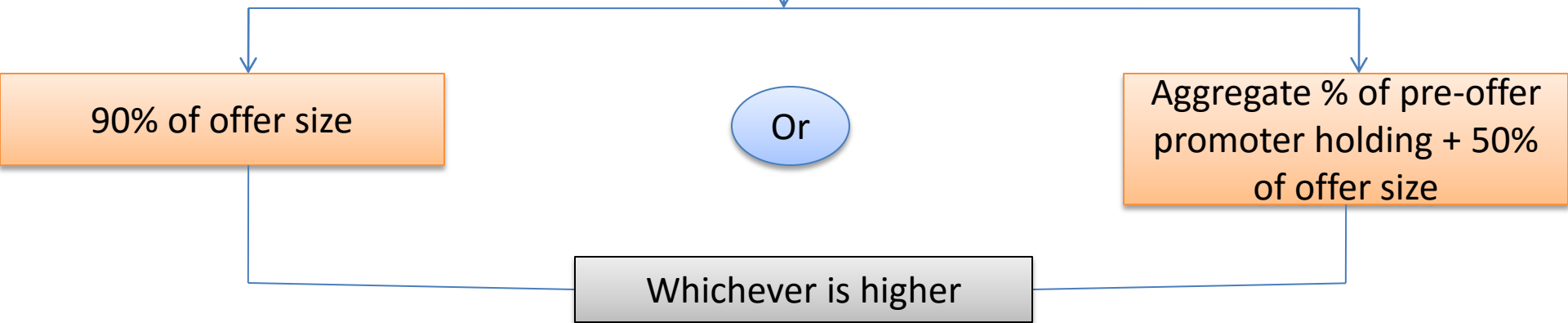


Verification of shares and payment for the same within 10 days (Max)



Application to concerned stock exchange for delisting to be made within one year of obtaining shareholders approval

Minimum number of equity shares to be acquired in the process of Voluntary delisting with exit opportunity



Example: ABC Ltd has issued 1 lakh equity shares @ Rs. 10/- each

	Promoter holding	Public holding	90% of offer size	Aggregate % of promoter holding + 50% of offer size	Higher
CASE I	20,000	80,000	72,000	20,000+40,000	72,000
CASE II	70,000	30,000	27,000	70,000+15,000	85,000

Compulsory Delisting

By Operation of law

By Stock Exchange

- Any Contravention made by the company
- Any market Abuse (Fraud)
- Fees has not been paid

By any other statute

- Due to contravention where punishment is delisting
 - Court Order

Due to thin trading

- Paid up capital one crore or less and Equity shares are not traded in last one year
- Paid up capital less than or equal to 1 cr and total no of shareholding less than or equal to 300

Listing of Securities after Delisting

