

CA FINAL LAW AMENDMENTS

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Dear Students,

Before you start studying from these notes, please read the following carefully :

- These Notes are applicable for Nov. 2018 exams & onwards.
- Relevant Content has been taken from Revised ICAI Module & Companies (Amendment) Act, 2017.
- Wherever in the notes, Page No. is given, it refers to Page Nos. of my Handwritten Book.
- Video on these notes, will be soon made available on my Youtube Channel - Arpita's Commerce Eduworld.
- For students who have purchased by Handwritten Book on 'Company Law & IBC', I am enclosing herewith few extra Sections, which are to be done at your end.
- For students who have purchased both Handwritten Book i.e. on 'Company Law & IBC' & 'Allied Laws/Economic Laws' are advised to study IBC from the 2nd Book i.e. Allied / Economic Laws Book.
- If any further amendments are notified in RTP, I shall provide you with the incremental notes & video on the same.

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* DECLARATION & PAYMENT OF DIVIDEND :

1. Section 123(1) : Declaration of Dividend :

Dividends can be declared and paid out of :

- (a) Current year profits ;
- (b) Previous financial year(s) profits ;
- (c) Out of (a) & (b) both ~~or~~ (deleted)
- (d) Money provided by CG/SG

New Proviso to the above sub-section :

In computing profits, any amount representing Unrealised gains, notional gains or revaluation of assets & any change in carrying amount of an asset or liability on measurement of asset/liability at fair value shall be excluded

Existing Proviso Amended :

Provided further that, where, owing to inadequacy or absence of profits in any FY, any company proposes to declare dividend out of accumulated profits earned by it in previous years and transferred by the company to free reserves, such declaration shall not be made except in accordance with such prescribed rules.

(Please make the amendment on Pg. no. 2.1 in Handwritten Book)

2. Section 123(3) : Declaration of Interim Dividend :

New Insertion :

The BOD of a company may declare interim dividend during any financial year or at any time during the period from closure of financial

year till holding of AGM out of surplus of P/L A/c or out of profits of FY for which such interim dividend is sought to be declared or out of profits generated in the FY till the quarter preceding the date of declaration of interim dividend.

(Please make the amendment on Pg. no. 2.3 in Handwritten Book)

* ACCOUNTS & AUDIT :

1. Section 129(6) : Exemption by CG :

New Insertion :

Provisions of AS 22 or Ind AS 12 relating to deferred tax asset/liability shall not apply w.e.f. 01/04/2017 to a Govt. company which is a PFI or NBFC and is engaged in the business of infrastructure finance leasing with not less than 75% of its total revenue being generated from such business with Govt. companies or other entities owned or controlled by Govt.

(Please make this amendment on Pg. no. 3.4 in Handwritten Book)

2. Section 130 : Re-opening of Accounts on Court's or Tribunal's order :

Section 130(1) amended :

Re-opening of Accounts can be done when application is done by CG, Income - Tax authorities, the S&BI or any other statutory regulatory body or authority concerned or any other person concerned and Court / Tribunal shall take into

consideration, the representations made by above mentioned persons before passing an order.

New Insertion:

No order shall be made under subsection (i) in respect of re-opening of books of accounts relating to a period earlier than 8 FY immediately preceding the current FY.

Provided that where a direction has been issued by the CG under proviso to Section 128(5) for keeping of BOA for a period longer than 8 years, the BOA may be ordered to be re-opened within such longer period.

(Please make these amendments on Pg. no. 3.5 in Handwritten Book)

3. Section 132 : Constitution of National Financial Reporting Authority (NFRA):

Please note that Section 132(3) & 132(11) are notified w.e.f. 21/03/2018

The other sub-sections are yet to be notified, however they are amended by Companies (Amendment) Act, 2017. Though not applicable for November 2018 exams.

New Insertion :

Section 132(3): Composition of NFRA :

NFRA shall consist of a Chairperson, who shall be a person of eminence & having expertise in accountancy, auditing, finance or law to be appointed by CG and such other members

not exceeding 15, consisting of part-time & full-time members as prescribed.

Provided that the terms & conditions and manner of appointment of Chairperson & members shall be such as may be prescribed.

Provided further that the Chairperson & members shall make a declaration to the CG in the prescribed form regarding no conflict of interest or lack of independence in respect of his or their appointment :

Provided also that the chairperson and members, who are in full-time employment with NFRA, shall not be associated with any audit firm (including related consultancy firms) during the course of their appointment & 2 years after ceasing to hold such appointment.

Section 132(11): Appointment of Secretary & other employees in NFRA :

The CG may appoint a Secretary & such other employees as it may consider necessary for efficient performance of functions by NFRA under this Act & the terms & conditions of service of the secretary and employees, shall be such as may be prescribed.

(This has to be noted on Pg.no. 3.5 in Handwritten Book)

4. Section 136(1) : Right of member to copies of Audited FS :

Following Proviso shall be added :

Provided that if the copies of the document are sent less than 21 days before the date of meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members -

- (a) holding majority in number entitled to vote & who represent $\geq 95\%$ of such part of PVSC of company as gives a right to vote at meeting (if company has share capital) or
- (b) having $\geq 95\%$ of total voting power exercisable at the meeting (if company has no share capital)

Provided also that every listed company having a subsidiary or subsidiaries shall place separate audited accounts in respect of each of subsidiary on its website, if any.

Provided also that a listed company which has a subsidiary incorporated outside India (known as foreign subsidiary) -

- (a) where such foreign subsidiary is statutorily required to prepare CFS under any law of the country of its incorporation, the requirement of this proviso shall be met if CFS of such foreign subsidiary is placed on website of listed company;
- (b) where such foreign subsidiary is not required to get its FS audited under any law of the country of its incorporation & which does not

get such FS audited, the holding Indian listed co. may place such unaudited FS on its website & where such FS is in a language other than English, a translated copy of FS in English shall also be placed on website.

(These amendments are to be added on Pg. No. 3.10 in Handwritten Book)

5. Section 136(2): Members, Debenture Trustees - Right to Inspect FS etc :

A company shall allow every member or trustee of holder of debentures to inspect documents stated under Section 136(1) at its registered office during business hours:

New Proviso inserted :

"Provided that every company having a subsidiary or subsidiaries shall provide a copy of separate audited or unaudited FS, as the case may be, as prepared in respect of each of its subsidiary to any member of the company who asks for it.

(Please do this amendment on Pg. No. 3.10 or 3.11 in Handwritten Book)

6. Section 140(3): Removal, Resignation of Auditor & giving of special notice - Penalty There to :

New Insertion :

If the auditor does not comply with Section 140(2) regarding filing of the reasons and other facts as may be relevant with regard to his resignation, he/it shall be punishable with fine which shall not be less than ₹ 50000 or the remuneration of

the auditor, whichever is less; but which may extend to ₹ 5,00,000.

(Please do this amendment on Pg. No. 3.21 in the Handwritten Book)

7. Section 141(3)(i) : Disqualification of Auditor :

Existing point (a) shall be substituted within point 4.

The following persons shall not be eligible for appointment as an Auditor of a Company, namely :-

" a person who, directly or indirectly, renders any service, referred to in Section 144, to the company or its holding or subsidiary company.

Explanation: For the purposes of this clause, the term "directly or indirectly" shall have the meaning assigned to it in Explanation of Sec. 144.

(This amendment has to be done on Pg. No. 3.23 in Handwritten Book; within Point no. 4, point (a) will be SUBSTITUTED)

8. Proviso to Section 143(1) : Rights of auditor of holding company :

The auditor of a company which is a holding company shall also have the right of access to the records of all its subsidiaries and associate companies in so far as it relates to the consolidation of its FS with that of subsidiary & associate companies.

(This amendment has to be done on Pg. No. 3.24 in the Handwritten Book)

9. Section 143(3)(i): Reporting on Internal Financial Controls :

The auditor's report shall also state - "whether the company has adequate internal financial controls ~~system~~ with reference to FS in place and the operating effectiveness of such controls.

(This amendment has to be done on Pg.No. 3.26 in the Handwritten Book)

10. Section 143(14): Applicability of Section 143 to Cost Accountant and Company Secretary :

The provisions of this section shall mutatis mutandis apply to -

(a) the cost accountant ~~in practice~~ conducting cost audit u/s 148; or

(b) the Company Secretary in practice conducting secretarial audit u/s 204.

(This amendment has to be done on Pg.No. 3.28 in the Handwritten Book)

11. Section 147: Punishment for Contravention: Insertion & Amendment :

(i) Penalty on Company (Section 147(1)):

If any of the provisions of Sec. 139-146 is contravened, the company shall be punishable with fine which shall not be less than ₹ 25000 but which may extend to ₹ 5 lacs & every defaulting officer of the company shall be punishable with imprisonment which may extend upto 1 year or with fine of ₹ 10000 - ₹ 100000 or both.

(ii) 147(2) :

If an auditor of a company contravenes any provisions of Sec. 139 / 143 / 144 / 145, then auditor shall be punishable with fine of ₹ 25000 - ₹ 500000 or 4 times the remuneration of the auditor, whichever is less.

Provided that, if an auditor has contravened, knowingly / willfully with an intention to deceive company / SHS / creditors / tax authorities, he shall be punishable with imprisonment for a term upto 1 year & with fine of ₹ 50,000 - ₹ 25,00,000 or 8 times the remuneration of the auditor, whichever is less.

(iii) 147(3) :

Where an auditor has been convicted u/s 147(2), he shall be liable to -

- refund the remuneration received by him to co. &
- pay for damages to company / statutory bodies or authorities or to members or creditors of the company for loss arising out of incorrect or misleading statement of particulars made in his audit report.

(iv) 147(4) :

The CG shall by notification specify any statutory body or authority or an officer for ensuring prompt payment of damages to the company or persons under clause (ii) of 147(3) & such appointed person, after payment of damages to company / persons

file a report to CG in respect of making such damages in such manner as may be specified in the said notification.

(v) 147(5):

Where audit of a company is conducted by an audit firm, it is proved that partner(s) of audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, shall be of the partner(s) of audit firm & of firm jointly and severally.

Provided that in case of criminal liability of an audit firm, in respect of liability other than fine, the concerned partner(s), who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud shall only be liable.

(Please insert this on Pg. No. 3.30)

12. Section 148(3): Cost Audit to be conducted by Cost Accountant:

For the words "Cost Accountant in practice", the words "Cost Accountant" shall be substituted.

Cost Auditing standards means such standards as are issued by Institute of Cost Accountants of India, constituted under Cost & Works Accountant Act, 1959 with approval of CG. (To be amended on Pg. 3.30)

* APPOINTMENT & QUALIFICATIONS OF DIRECTORS :

1. Section 152 : DIN for Appointment of Directors :

No person shall be appointed as a director of a company unless he has been allotted the DIN v/s 154 or any other number as may be prescribed v/s 153

Every person proposed to be appointed as a director by the company in GM or otherwise, shall furnish his DIN or such other number as may be prescribed v/s 153 & a declaration that he is not disqualified to become a director under this Act.

(Amendment to be done on Pg.no. 4.9 in Handwritten Book)

2. Proviso to Section 153 : Application for allotment of DIN :

The following proviso shall be inserted :

" Provided that the CG may prescribe any identification number which shall be treated as DIN for the purposes of this Act & in case, any individual holds or acquires such number the requirement of this section shall not apply or apply in such manner as may be prescribed".

(Amendment/Insertion to be done on Pg.No. 4.11 in Handwritten Book)

3. Proviso to Section 160(1) : Right of persons other than retiring directors to stand for directorship : New Insertion :

Following proviso be inserted to Section 160(1) :

"Provided that requirement of deposit of amount shall not apply in case of appointment of an INDEPENDENT director or a director recommended by the NOMINATION & REMUNERATION COMMITTEE, if any, or a director recommended by the BOD of the company, in case of company not required to constitute NOMINATION & REMUNERATION Committee.

(To be inserted on Pg.No. 4.14 in Handwritten Book)

4. Section 161(2): Appointment of Alternate Director :

The BOD of a company may, if so authorised by its AOA or by a resolution passed by a company in GM, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of ≥ 3 months from India.

(To be amended on Pg.No. 4.16 in Handwritten Book)

5. Section 161(4): Appointment of Director to fill Casual Vacancy :

~~In case of a public company~~, if the office of any director appointed by the company in GM is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in AOA, be filled by BOD at a meeting of the Board which shall be subsequently approved by members in the immediate next GM. (To be amended on Pg.4.16-4.17)

6. Explanation II to Section 165(1): No. of Directorships:
For reckoning the limit of directorships of 20 companies, the directorship in Dormant Co. shall not be included.
(To be amended on Pg. No. 4.19)

7. Section 169: Removal of Directors:

New Insertion:

Provided that, an independent director re-appointed for 2nd term u/s 149(10) shall be removed by the company only by passing SR & after giving ROBH.

(To be amended on Pg. No. 4.21)

* MEETINGS OF BOARD & ITS POWERS:

1. Section 180(1)(c): Borrowing Powers of the Company:
To borrow Money, when money borrowed + to be borrowed (apart from temporary loans in Ordinary course of business) > Aggregate of PUSC + Free Reserves + Securities Premium. (Refer Pg. No. 6.10)
2. Section 184(4): Disclosure of Interest by Director - Penalty on Director:
Imprisonment - Upto 1 year
Fine - Upto ₹ 100000 or with both.
(Refer Pg. No. 6.13)
3. Section 184(5): Disclosure of Interest by Director - Non-Applicability thereof:
New Insertion:
Nothing in this section:
(a) shall be taken to prejudice the operation of any rule of law restricting a director of co. (P.T.O.)

from having any concern or interest in any contract or arrangement with the company;
 (b) shall apply to any contract/arrangement entered into or to be entered into between 2 companies or between 1 or more companies & 1 or more bodies corporate where any of the directors of 1 company/body corporate/2 or more of them together holds or hold $\leq 2\%$ of the PVSC in the other company or the body corporate.

(To be inserted on Pg. No. 6.12 - 6.13)

4. 3rd proviso to Section 188(1): Related Party Transactions

2nd proviso to Section 188(1) provides that no member of the company shall vote on such resolution, to approve any contract or arrangement which may be entered into by the company, if such member is a related party;

New Insertion:

Now the 3rd proviso has been inserted by Companies (Amendment) Act, 2017 w.e.f. 9/02/2018 to provide that nothing contained in the 2nd proviso shall apply to a company in which 90% or more members, in number, are relatives of promoters or are related parties.

(To be inserted on Pg. No. 6.20)

5. Section 188(3): Consequences of Contravention of Section 188(1) :-

Where any contract/arrangement is entered into by a director or any other employee, without

obtaining the consent of the Board or approval by a resolution in GRI under Sub-section (1) & if it is not ratified by the BOD or, as the case may be, by the SHS at a meeting within 3 months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the BOD or, as the case may be, of the SHS & if the contract or arrangement is with a related party to any director, or is authorised by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

(To be amended on Pg. No. 6.20)

6. Section 194: Prohibition on forward dealing in securities of company by director or KMP:
Omitted by Companies (Amendment) Act, 2017
w.e.f. 9/2/2018 (To be amended on Pg. No. 6.23)

7. Section 195: Prohibition on Insider Trading of Securities:
Omitted by Companies (Amendment) Act, 2017
w.e.f. 9/2/2018 (To be amended on Pg. No. 6.24)

* INSPECTION, INQUIRY & INVESTIGATION:

1. Section 223(3): Inspector's Report:

A copy of the report made under 223(1) may be obtained by members, creditors or any other person whose interest is likely to be affected by making an application in this regard to CG. (To be amended on 7.11)

* COMPROMISES, ARRANGEMENTS & AMALGAMATIONS :

1. Section 236(4), (5) & (6) : Purchase of Minority Shareholding :

For the words, "transferor co." wherever they occur, the words "company whose shares are being transferred" shall be substituted. (Refer Pg. 89)

* PREVENTION OF OPPRESSION & MIS-MANAGEMENT :

1. Section 247 : Valuation by a Registered Valuer :

QUALIFICATIONS & EXPERIENCE (Section 247(1) & 247(2)(d)) :

Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the 'assets') or networth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications & experience, registered as a valuer & being a member of an organisation recognised in such manner, on such terms & conditions as may be prescribed and appointed by the Audit committee or in its absence by BOD of that company - Section 247(1)

The valuer appointed above shall -
not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of 3 years prior to his appointment as valuer or 3 years after the valuation of assets was conducted

by him - Section 247(2)(d).
(Refer this from the Extra Notes)

* COMPANIES INCORPORATED OUTSIDE INDIA :

1. Section 379 : Application of Act to foreign Companies :

New Insertion :

Provided that the CG may, by order published in Official Gazette, exempt any class of foreign companies, specified in the order, from any of the provisions of sections 380 to 386 & Sections 392 & 393, and copy of every such order shall, as soon as may be after it is made, be laid before Both Houses of Parliament.

(To be added on Pg. 14.1)

2. Section 384(2) : Applicability of CSR on foreign cos. :

The provisions of Section 92 & Section 135 (CSR) shall, subject to such exceptions, modifications & adaptations as may be made, therein, by rules made under this Act, apply to a foreign co. as they apply to a company incorporated in India.

(To be amended on Pg. 14.5)

3. Section 391(2) : Application of Section 34 - 36 & Chapter XX :

Subject to the provisions of Section 376, the provisions of Chapter XX shall apply mutatis - mutandis for closure of place of business of a foreign co. in India as if it was a company incorporated in India in case such foreign co. has raised monies through offer / issue of securities under this

Chapter which have not been repaid or redeemed.
(Refer Pg. 14.7)

* NCLT & NCLAT :

1. Qualification of Technical Members of Tribunal (Section 409(3)) :

A person shall not be qualified for appointment as a Technical Member unless he:

- (a) has, for atleast 15 years, been a member of Indian Corporate Law service or Indian Legal Service and has been holding the rank of Secretary or Additional Secretary to GOI or
- (b) is, or has been, in practice as a CA for ≥ 15 years or
- (c) is, or has been, in practice as a Cost Accountant for ≥ 15 years or
- (d) is, or has been, in practice as a Company Secretary for ≥ 15 years or
- (e) is a person of proven ability, integrity and standing having special knowledge and professional experience of ≥ 15 years in industrial finance, industrial management, industrial reconstruction, investment and accountancy; or
- (f) is, or has been, for ≥ 5 years, a presiding officer of a Labour Court, Tribunal or National Tribunal constituted under Industrial Disputes Act, 1947.

(To be amended on Pg. No. 17.1)

2. Section 411(3): Qualification of Technical Member of Appellate Tribunal :

Point for Technical Member to be substituted:

A technical member shall be person of proven

ability, integrity and standing having special knowledge and professional experience of ≥ 25 years in Industrial finance, Industrial Management, Industrial Reconstruction, Investment & Accountancy (Refer Pg. No. 17.2)

3. Section 412(2) & 412(2A) : Selection of Members of Tribunal & Appellate Tribunal :

In section 412 of Act, for subsection (2), the following subsections shall be substituted, namely :

412(2) : The members of Tribunal & Technical members of Appellate Tribunal shall be appointed on recommendation of a Selection Committee comprising of:

(a) Chief Justice of India or his nominee - Chairperson
(b) Senior Judge of Supreme Court or Chief Justice of High Court - Member

(c) Secretary in MCA - Member &

(d) Secretary in Ministry of Law & Justice - Member

412(2A) : Where in a meeting of Selection Committee, there is equality of votes on any matter, the Chairperson shall have a casting vote.

(Refer Pg. No. 17.2)

* MISCELLANEOUS PROVISIONS :

1. Section 441 : Compounding of Certain Offences :

In Section 441 (i), for the words "with fine only" the words "not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine" shall be substituted (Refer Extra notes)

2. Section 446A : Factors for determining level of punishment : Lesser Penalties for OPC or Small Companies.

New Insertion : (After Section 446)

The Court / Special Court, while deciding the amount of fine / imprisonment under this Act, shall have due regard to the following factors i.e.:

- (a) size of company;
- (b) nature of business carried on by company;
- (c) injury to public interest;
- (d) nature of default; and
- (e) repetition of default.

3. Section 446B : New Insertion :

If an OPC / Small company fails to comply with the provisions of Section 92(5), 117(2) or 137(3), such company & officer in default of such company shall be punishable with fine or jail or fine & jail, as the case may be, which shall not be more than $\frac{1}{2}$ of the fine or imprisonment or fine & imprisonment as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections.

* CHAPTER XXI :

1. Section 366 : Companies Capable of Being Registered :

Subject to provisions contained in this section, any company formed, whether before or after commencement of this Act, in pursuance of any Act of Parliament other than this Act or of any other law for the time being in force or being otherwise, duly

constituted according to law, and consisting of 2 or more members, may at any time register under this Act as an unlimited company or a company limited by shares, or as a guarantee co; in such manner as may be prescribed & the registration shall not be invalid by reason only that it has taken place with a view to the company's being wound up.

Addition in Notes :

The following clause shall be inserted:

"a company with < 7 members shall register as a Private company"

(Refer Pg. 12.1)

2. Section 374 : Obligations of Companies registering under this Part :

New Insertion :

Provided that upon registration as a company under this Part, a LLP incorporated under LLP Act '2008 shall be deemed to have been dissolved under that Act without any further act or deed.

(Refer Pg. 12.2)

* MISCELLANEOUS PROVISIONS

1. Section 447 : Punishment for Fraud :

(i) after the words "guilty of fraud", the words "involving an amount of atleast ₹ 10,00,000 or 1% of Turnover of Company, whichever is lower" shall be inserted.

(ii) New Addition :

"Provided further that where the fraud involves an amount $< ₹ 10,00,000$ or 1% of Turnover of company whichever is lower & does not involve public interest, any person guilty of such fraud, shall be punishable with imprisonment for a term which may extend to 5 years or with fine which may extend to ₹ 20,00,000 or with both."

(Refer Pg. 19.5)

2. Section 458: Delegation by CG of its Powers & Functions:

CG delegated the powers to SEBI for enforcing Sections 194 & 195.

However this proviso has been deleted.

* PREVENTION OF MONEY LAUNDERING ACT, 2002

1. Definition of 'Proceeds of Crime' - Section 2(1)(v) : (Pg. 3.2)

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 or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

2. Attachment of Property involved in Money Laundering (Section 5) : (Pg. 3.6)

Property can be provisionally attached for 180 days.
New Insertion :

180 days shall exclude the period stayed by High Court and a further 30 days (maximum) from the date of order of vacation of such stay order shall be counted.

3. Adjudication (Sec. 8(3)) : (Pg. 3.8)

Attachment or retention or freezing of seized or frozen property or record shall

(a) continue during investigation for a period not exceeding 90 days or the pendency of proceedings relating to any offences under this Act before a Court

(b) becomes final only after a confiscation order is passed by Special Court.

4. Power to Arrest : Section 19

Section 19(1) : If Director / Deputy Director etc has reason to believe (on the basis of material in possession,

that any person has been guilty of an offence punishable under this Act, he may arrest such person.

Section 19(2): Director/Officer shall, after arrest, forward copy of order + proof to Adjudicating Authority.

Section 19(3): Person arrested u/s 19(1) shall be taken to Special Court or Judicial Magistrate or Metropolitan Magistrate, having jurisdiction within 24 hours.

These 24 hours shall exclude time necessary for Journey from place of arrest to Court

5. Offences to be cognizable and non-bailable (Section 45):

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, no person accused of an offence under this Act punishable for a term of imprisonment of more than 3 years under Part A of Schedule, shall be released on bail or on his own bond unless —

(Refer Pg. 3.11)

In the same section:

Provided that a person, who is under the age of 16 years, or is a woman or is a sick or infirm or is accused either on his own or along with other co-accused of money laundering a sum of < ₹ 1 crore may be released on bail

6. Powers of Authorities regarding summons, production of documents and to give evidence etc.

(Section 50(5) - Proviso):

An assistant / deputy director shall not -

- (a) impound any records without recording his reasons for doing so; or
- (b) retain in his custody any such records for a period > 3 months, without obtaining previous approval of Joint Director.

7. Disclosure of Information (Section 66(2)):

If the director or other authority specified "Is 66(1) is of the opinion that the provisions of any other law for the time being in force are contravened (on the basis of information or material in his possession), then the director or such other authority shall share the information with the concerned authority / agency for necessary action. (Refer Pg. No. 3.13)

* INSOLVENCY & BANKRUPTCY CODE, 2016

(Amendments from Insolvency & Bankruptcy Code (Amendment) Ordinance 2018)

1. Application of IBC, 2016 (Section 2):

The provisions of code shall apply to: (new points added)

- personal guarantors to corporate debtors;
- partnership firms and proprietorship firms
- individuals other than personal guarantors (as specified above), in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy,

as the case may be. (Refer Pg. 6.6)

2. Resolution Plan (Section 5(26)):

It means a plan, proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II of the Code.

3. Duties of Resolution Professional (Section 25(2)(h)):

New Point added:

- The resolution professional shall invite prospective resolution applicants, who fulfils such criteria as may be laid down by him with the approval of CoC, having regard to complexity and scale of operations of the business of corporate debtor & such other conditions as may be specified by IBBI, to submit plan(s).

(Refer Pg. 6.14)

4. Resolution Applicant (Section 5(25)):

Means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under Section 25(2)(h)

(Refer Pg. 6.14)

5. Persons not eligible to be a Resolution Applicant (Section 29A) (Refer Pg. 6.28)

New Section Inserted:

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person:

- (a) is an undischarged insolvent
- (b) is a wilful defaulter in accordance with guidelines of RBI issued under Banking Regulation Act, 1949 ;
- (c) • has an account classified as NPA -
 - or an account of a corporate debtor under management or control of such person, which is classified as NPA -
 - or of whom such person is a promotor, whose account is classified as NPA

Common for all 3 sub-points :

Account is classified as NPA & at least a period of 1 year has lapsed from the date of classification till date of commencement of this process.

Exception : Such person can apply if he pays all the overdue amounts + interest + other charges etc; before submission of plan

- (d) has been convicted for any offence punishable with imprisonment for 2 years or more.
- (e) is disqualified to act as a Director under Companies Act, 2013
- (f) is prohibited by SEBI from trading or accessing the securities market.
- (g) has been a promoter or in management or control of a corporate debtor in which a preferential / undervalued / extortionate credit / fraudulent transaction has taken place & an order has been made by Adjudicating Authority in this respect.
- (h) has executed an enforceable guarantee in favour

of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code;

- (i) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
- (j) has a connected person not eligible under (a) to (i)

Explanation: "Connected Person" means

- (i) any person who is the promoter or in management or control of resolution applicant
- (ii) any person who shall be the promoter or in management or control of business of corporate debtor during implementation of plan or
- (iii) Holding, subsidiary, associate company or related party of person mentioned in (i) & (ii)

However above clause (iii) shall not apply to:

- (A) Scheduled Bank
- (B) An Asset Reconstruction Company (regd with RBI)
- (C) An Alternate Investment Fund (regd with SEBI)

6. Submission of Plan & Approval by CoC (Section 30(4)):

COC may approve a plan by vote of $\geq 75\%$ of FC. However, CoC shall not approve a plan submitted before commencement of this Insolvency and Bankruptcy Code (Amendment) Ordinance 2017, where applicant is ineligible u/s 29A & may require the professional to invite a fresh plan where no other plan is available with it.

(Refer Pg. 6-29)

Proviso to the above section:

If resolution applicant is ineligible under Section 29A(c), the applicant shall be allowed by CoC such period, not exceeding 30 days, to make payment of overdue amounts.

However there would be no extension in the time period to complete the resolution process.

7. Sale of Property to a person who is ineligible to be a Resolution Applicant (Proviso to Section 35(1)(f)) :

Liquidator shall not sell the immovable/movable property/actionable claims of corporate debtor in liquidation to any person who is not eligible to be a resolution applicant. (Refer Pg. 6.30)

8. Punishment where no specific penalty or punishment is provided (Section 235A) :

Fine = ₹ 100000 - ₹ 2,00,00,000 (Refer Pg. 6.30)

9. Circular No. IBC/01/2017 dated 25/10/2017 & PIB Press Release, Dated 13/03/2018.

Resolution Professional does not require nod of SHS/Members for Insolvency Resolution.

* SEBI (ICDR) Regulations, 2009 :

Conditions for QIP (Regulation 82) :

Clause (c) omitted w.e.f. 12/2/2018, which read as: it is in compliance with the requirement of minimum public shareholding specified in Securities Contracts (Regulation) Rules, 1957. (Refer Pg. 8.34)

* BANKING REGULATION ACT :

Mistake in ICAI Module - Sec. 20 (Refer Pg. 11.3) :

No Banking company shall:
enter into any commitment for granting any loan
to or on behalf of :

- any of its directors
- any firm in which directors are interested
- any company (not being a subsidiary of banking company or a company registered w/s 25 of Companies Act, 1956 or a Government Company)
 (companies mentioned in brackets are exceptions)
 of which (or subsidiary/holding co. of which) any of the directors of banking company is a director, managing agent, manager, employee or guarantor or in which he holds substantial interest or
- any other individual associated with director.

* FEMA, 1999 :

FEM (Acquisition & Transfer of Immovable Property in India) Regulations, 2018 was enforced w.e.f. 26/03/2018 through FEMA 21(R) dated 26/03/2018.

Acquisition & Transfer of Immovable Property in India :

By a Non-Resident Indian or an Overseas Citizen of India.

'NRI' means a PROI who is citizen of India

'OCI' means a PROI who is registered as an Overseas Citizen of India Cardholder w/s 7A of Citizenship Act.

'Repatriation outside India' means buying or drawing of forex from an authorised dealer in India &

remitting it outside India through banking channels or crediting it to an account denominated in foreign currency or to an account in Indian currency maintained with an authorised dealer from which it can be converted into foreign currency.

A NRI or an OCI may -

- (a) Acquire immovable property in India other than agricultural land/farm house/plantation property

Provided that, consideration, if any, for transfer, shall be made out of :

- (i) funds received in India through banking channels by way of inward remittance from any place outside India or
- (ii) funds held in any non-resident account maintained in accordance with the provisions of the Act, rules or regulations framed there-under.

Provided further that, no payment for transfer of immovable property shall be made either by traveller's cheque or by foreign currency notes or by any other mode (other than those specifically permitted)

- (b) Acquire any immovable property in India other than agricultural land/farm house/plantation property by way of gift from a person resident in India or from NRI or from OCI, who in any case is a RELATIVE (as per Cos. Act)

- (c) Acquire any immovable property in India by way of inheritance from PROI who had acquired such property
(a) in accordance with foreign exchange law or
(b) from PRI
- (d) Transfer any immovable property in India to PRI
- (e) Transfer any immovable property other than agricultural land / farm house / plantation property to a NRI / OCI.

Summary:

Mode of Acquisition of Immovable Property in India
by way of :

Purchase

Gift

Inheritance from

PROI

PRI

Transfer of Immovable Property in India by NRI/OCI

to a PRI

to NRI/OCI

Transfer is by
way of gift



Transferee should
be relative.

Acquisition of Immovable Property (IP) for carrying on a permitted activity :

A PROI who has established in India in accordance with FEM Regulations 2016, a branch, office or other place of business for 'carrying on' in India any activity, excluding a liaison office, may -

- (a) Acquire any IP in India, which is necessary for or incidental to carrying on such activity; Provided that
 - all rules, regulations etc has been complied with
 - person files with RBI a declaration within 90 days of such acquisition.
- (b) Transfer by way of mortgage to an authorised dealer as a security for any borrowing, the IP acquired in clause (a)
Provided, no person of Pakistan or Bangladesh or Sri Lanka or Afghanistan or China or Iran or Hong Kong or Macau or Nepal or Bhutan or Korea shall acquire IP, other than on lease not exceeding 5 years, without approval of RBI.

Joint Acquisition by Spouse of NRI / OCI :

A PROI, not being NRI or OCI, who is spouse of NRI or OCI may acquire 1 IP (other than agricultural land / farm house / plantation property) jointly with his/her NRI/OCI spouse.

Provided that :

- Consideration for Transfer, shall be made out of :
 - (i) funds received in India through banking channels by way of inward remittance from any place outside India or
 - (ii) funds held in any Non-resident account maintained in accordance with provisions of Act & regulations made by RBI.
- No payment should be made by traveler's cheque or by foreign currency notes or by any other mode other than those specifically permitted under this clause.
- Provided that marriage has been registered & subsisted for a continuous period of ≥ 2 years immediately preceding the acquisition of such property.
- Provided further that Non-Resident spouse is not otherwise prohibited from such acquisition.

Acquisition by a Long-term Visa Holder :

A person being a citizen of Afghanistan, Bangladesh or Pakistan belonging to minority communities in those countries, namely, Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who is residing in India and has been granted a Long Term Visa (LTV) by CG may purchase only 1 residential IP in India as dwelling unit for self-occupation & only 1 IP for carrying out self-employment restricted to conditions prescribed under FEM Regulations 2018.

Sale of IP so acquired is permissible only after such person has acquired Indian Citizenship. However, transfer of such IP before acquiring Indian Citizenship requires the prior approval of Deputy Commissioner of Police (DCP) or Foreigners Registration Office (FRO) or Foreigners Regional Registration Office (FRRO) concerned.

EXTRA NOTES

PLEASE REFER THE FOLLOWING EXTRA
NOTES,

ONLY IF YOU HAVE PURCHASED

HANDWRITTEN BOOK ON
COMPANY LAW & IBC

BY ARPITA MA'AM

Extra Sections to be studied for Company Law:

Section 435 - Establishment of Special Courts

i) CG may by notification:

- For the purpose of speedy trial,
- Punishable under this act,
- With imprisonment of > or equal to 2 years, establish or designate as many special courts as necessary.

(Therefore All other offences shall be tried by metropolitan magistrate or judicial magistrate of 1st class)

ii) Judge: Single judge appointed by CG with concurrence of chief justice of high court.

iii) Eligibility: Before appointment he should have hold office of session judge or additional session judge

Section 436 - Offences Triable By Special Court

i) As mention in Section 435

ii) If more than 1 Special court, then HC shall decide

iii) When a person is accused then such person is forwarded to magistrate under code of criminal procedure. Such magistrate may order detention of such person for 7 days or 15 days (executive magistrate / judicial magistrate respectively)

iv) If detention is un-necessary then forward the matter to special court

v) Special court shall have same power as contained in Code of Criminal Procedure, 1973

Cognizance of Offence - on Police Report or complaint

Special court may try offence other than offence in this act. Eg Income Tax

Summary Trial (Fastest Trial of Offences)

a) Special Court may try offence which is punishable with imprisonment for a term not exceeding 3 years

b) In case of conviction no sentence of imprisonment for a term exceeding 1 year shall be passed.

c) If it appears to special court that imprisonment of more than 1 year is to be given then it may proceed with regular trial.

Section 437 - Appeals & Revision

Same provisions as given in code of criminal procedure (Companies Act is Silent)

(For hierarchy purpose special court is deemed as session court)

Section 438 - Application of code of criminal procedure to proceeding before special court:

If any proceedings are pending before special court it shall be treated as judicial proceeding under the criminal code.

Section 440 - Transitional Provisions

Till special court is established, trial shall be done by session court

Section 441 - Compounding of Certain offences

i) Any offence punishable with Fine only can be compounded by:

- a) Tribunal
- b) Regional director (ROC)
- c) CG authorised officer

For (b) & (c) - Where maximum amount of fine which may be imposed is Rs. 5 lacks

Compounding benefit will be available only when the person is ready to pay the fine (immediately)

d) Limit of Fine - Such sum which shall not exceed the initial decided fine.

e) No offences can be compounded if:

-Any Investigation is pending against such person

or

- Any company or officer again commits an offence within 3 years of last compounding

f) Filing of application to ROC

i) Application for such compounding has to be filed by company to ROC & then it shall be forwarded to tribunal/ Regional Director/ CG authorised officer

ii) If compounded by above 3 authorities (any), then company shall inform to ROC & no further prosecution shall be initiated.

iii) If any proceeding was pending before any other court regarding the same matter then such proceeding shall abate

iv) Final order shall be passed by above 3 authorities. If order is not complied with, then penalty (List of offences which can be compounded is given in introduction section of offences & penalty chapter)

Section 454 - Adjudication of Penalties (Determination & Collection)

i) CG may appoint as many officers for the post of adjudicating officer for penalties.

ii) Appt of such officers shall be done by CG & they should not be below the rank of Registrar.

iii) Issue of show cause notice to Company / Officer

iv) Adjudicating officer can hold enquiry & then he shall pass the order

v) This order shall be forwarded to Company / Officer (+) CG

vi) Power of this Officer:

- Summon any person for enquiry

- Order for evidence & to Produce documents

vii) All sum received / released as penalty shall be credited to consolidation fund of India

viii) Before levy of penalty give reasonable opportunity of being heard.

ix) Appeal can be made before regional director & then such order shall be pending

Extra Points For Section 212 :

- The person arrested under this section must be taken to judicial magistrate or metropolitan magistrate within 24 hrs.

-Offences under this section shall be cognizable & no such person shall be released on bail or bond

a) Exception: Public prosecutor has been given an opportunity to oppose the application for such release & where prosecutor opposes but the court is satisfied that there is reasonable ground that he is not guilty & will not commit any offence while on bail.

b) However a person whose age is under 16 or a woman or is sick, may be released on bail if special court so directs.

Extra Provision

Section 247 - Valuation by Registered Valuer:

-Where a valuation is required to be made for property, shares, stocks, securities, goodwill, any other assets or net-worth of the company, then it shall be valued by a person having such qualification & experience, registered as a valuer & he shall be appointed by audit committee or BOD

- Such valuer shall -

a) Make impartial true & fair valuation

b) Exercise due diligence

c) Do valuation as per the rules

d) Not be interested in that company, 3 years before & 3 years after the valuation

- If Any provisions are contravened then fine of Rs. 25,000 - Rs.1,00,000

-If Provisions are contravened to defraud the company or its member then imprisonment upto 1 year & fine of Rs.1,00,000 - Rs.5,00,000

-If valuer is convicted then he shall refund back the remuneration & pay the damage if any

Transitional Provisions

- Rule states that any person who may be rendering valuation services, on the date of commencement of these rules may continue to render valuation services without certificate of registration upto 31/3/2018

- If company has appointed any valuer before such date & valuation has not been completed before 31/03/18, valuer shall complete such valuation within 3 months from 31/3/18 i.e. maximum upto 30/06/2018