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Corporate and Economic Laws

CA-Final **Revision Notes** for NOV., 2019

Company Law

- ✓ *Covers entire Company Law Syllabus in less than 125 pages*
- ✓ *Ideal for exam time revision*
- ✓ *No lengthy explanations or examples*
- ✓ *Updated with all relevant amendments*
- ✓ *No need to do MCQs separately*
- ✓ *Print Friendly*

Note: These notes can be used by OLD Course Students as well for Common Chapters

Important Instructions:

1. Sseveral topics have recently been excluded by BOS, ICAI from the scope of syllabus of CA-Final (New course) in Paper: 4 Corporate and Economic Laws w.e.f. Nov., 2019 Examination. The official notification for the same with can be seen at https://resource.cdn.icai.org/55778bos45147fnew.pdf. The excluded topics have already been removed from these notes and hence **EVERYTHING IN THESE NOTES ARE PART OF SYLLABUS FOR NOV., 2019** and nothing is to be further excluded.

2. These notes are meant for REVISION only and therefore suggested to be referred by only those who have either understood the provisions of company law in detail earlier by using any explained book(s) by self study or have taken classes of Paper 4 from any faculty and is finding it difficult to cover the entire syllabus for company law from those book(s)/faculty notes in 1 day time before exams.

3. These notes are prepared with intention to help students on the paper day for complete revision of Company law syllabus in around 1 day. **NO NEED TO DO MCQs SEPERATELY** as they are also made from same syllabus content**.**
At least two reading of these notes is **suggested**, **one before beginning of exams** (in which student may put markings in these notes as per his/her convenience) **and second** in days just before the Paper.

4. Interpretation (i.e. simplified version) of provision has not been included in these notes as the same would have defeated the purpose of these notes making them lengthy and difficult to cover in entirety**. However, necessary effects such as underlining or making the font Bold have been made at appropriate places for easy interpretation and highlighting importance.** **(Light coloured text may be skipped in last day revision, if there is time constrain.)**

5. AMENDMENTS
these notes are fully updated as per the amended provisions of Company Law effective on 30/04/2019 which is cut-off date for Nov., 2019 Exams. ***Font of recent amendments has been made in Italics at relevant places***. However, since these notes are released before release of RTP for Nov., 2019, going through RTP is recommended for any further updates from ICAI. RTP may be accessed at https://www.icai.org/post.html?post_id=14473 .

6. Whether all "Company Rules" covered?
All **relevant** Company Rules **including Schedule V** have been covered in these notes and most of them are given/ incorporated with relevant section(s). Further Case Law(s) covered by ICAI Study Material have been given at relevant place(s). YOU NEED NOT REFER ANY THING OTHER THAN THESE NOTES FOR COMPANY LAW in Paper 4 except that mentioned in point 5 above.

NOTE: RULES ARE SUB-ORDINATE TO SECTIONS, i.e. IN CASE OF CONFLICT BETWEEN THE TWO, SECTION WILL PREVAIL.

7. What if there is any mistake/ discrepancy in any part of these notes?
Although due care has been taken while preparing these notes, still if, in case, any mistake/discrepancy is noticed by you, then you may bring the same into my notice at https://forms.gle/xTY4exeVoHLAAzmdA, so that the online copy of these notes could be rectified/ updated.

The Updated notes can be accessed at the link provided on Very First Page of these Notes.
Note: These Notes (Above Link) are free to share with anyone.

Further any suggestion/feedback is invited at https://forms.gle/LWAheiNqYZ7juPHP6.

Companies Act, 2013 CA- FINAL (New) for Nov., 2019

CHAPTER XI of Companies Act, 2013 (Appointment and Qualification of Directors)

Section 149 Company to have BOD (Board of Directors)

149. (1) Every company shall have a BOD consisting of individuals as directors and shall have—
(a) a **minimum** number of
3 directors in the case of a **public** company,
2 directors in the case of a **private** company, and
1 director in the case of a **OPC (One Person Company)**; and
(b) a **maximum of 15** directors:
Provided that a company **may appoint more than 15 directors** after passing a **SR (Special Resolution)**.
Provided further that such class or classes of **companies** as may be **prescribed {See Rule 3 on page 16]**, **shall have at least one woman director**.

(2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).

(3)**Every** company shall have **at least one director who stays** in India **for** a total period of **not less than 182 days during the *financial* year(FY):**
*Provided that in case of a **newly incorporated company** the **requirement** under this sub-section **shall apply proportionately** at the end of the FY in which it is incorporated.*

(4) Every **listed public company** shall have at least **1/3rd of the total number of directors** as independent directors **and** the **CG may prescribe** the minimum number of independent directors in case of any class or classes of public companies {**See Rule 4 on Page 17**}.
Explanation.—For the purposes of this sub-section, any fraction contained in such 1/3rd number shall be rounded off as one.

(5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).

(6) An **independent director** in relation to a company, **means** a director **other than a MD or a whole-time director or a nominee director**,—
(a) **who**, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;
(b) (i) **who** is or was not a promoter of the company or its holding, subsidiary or associate company;
(ii)**who** is not related to promoters or directors in the company, its holding, subsidiary or associate company;
(c) *who* *has or had no pecuniary relationship, other than remuneration as such director or having transaction not exceeding 10 percent. of his total income or such amount as may be prescribed, with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;*
d) none of whose relatives—
(i) is holding any security of or interest in the company, its holding, subsidiary or associate company during the two immediately preceding financial years or during the current financial year:
Provided that the **relative may hold security** or **interest** in the company of face value **not exceeding fifty lakh rupees or two per cent. of the paid-up capital** of the company, its holding, subsidiary or associate company or such higher sum as may be prescribed {No higher amount prescribed yet} ;
(ii) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors, in excess of such amount as may be prescribed {Rs. 50 Lakh prescribed} during the **two** immediately **preceding** financial years **or during** the current financial year;
(iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to

the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company, for such amount as may be prescribed {Rs. 50 Lakh prescribed} during the two immediately preceding financial years or during the current financial year; or
(iv) has any other pecuniary transaction or relationship with the company, or its subsidiary, or its holding or associate company amounting to two per cent. or more of its gross turnover or total income singly or in combination with the transactions referred to in sub-clause (i), (ii) or (iii);

(e) who, neither himself nor any of his relatives—
(i) holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
Provided that in case of a relative who is an employee, the restriction under this clause shall not apply for his employment during preceding three financial years.
(ii) is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—
(A) a firm of auditors or CS in practice or cost auditors of the company or its holding, subsidiary or associate company; or
(B) any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm;
(iii) holds together with his relatives two per cent. or more of the total voting power of the company; or
(iv) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives **twenty-five per cent** or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company **or** that holds **two** per cent. or more of the total voting power of the company; or
(f) who possesses such other qualifications as may be prescribed{See Rule 5}.

(7) **Every independent director shall at the first meeting** of the Board in which he participates as a director and **thereafter at the first meeting of the Board in every financial year or whenever there is any change** in the circumstances which may affect his status as an independent director, **give a declaration that he meets the criteria of** independence as provided in **sub-section (6**).
Explanation.—For the purposes of this section, "nominee director" means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

(8) The company and independent directors shall abide by the provisions specified in Schedule IV.

(9) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an **independent director shall not be entitled to any stock option** and **may receive** remuneration by way of **fee** provided under sub-section (5) of section 197, **reimbursement** of expenses for participation in the Board and other meetings **and profit related commission** as may be **approved** by the members.

(10) Subject to the provisions of section 152, an **independent director shall hold office for a term up to five consecutive years** on the Board of a company, **but shall be eligible for reappointment** on passing of a **SR** by the company **and disclosure** of such appointment **in the Board's report**.

(11) Notwithstanding anything contained in sub-section (10), **no independent director shall hold office for more than two consecutive terms**, **but** such independent director **shall be eligible for appointment after** the expiration of **three years** of ceasing to become an independent director:
Provided that an independent director **shall not**, **during the said period of three years**, **be appointed in or be associated** with the company in **any other capacity**, either directly or indirectly.
Explanation.—For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

(12) Notwithstanding anything contained in this Act,— (i) an independent director;& (ii) a non-executive director not being promoter or key managerial personnel, **shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.**
(13) The provisions of sub-sections (6) and (7) of section 152 in respect of **retirement of directors by rotation shall not be applicable to appointment of independent directors**.

Exceptions/ Modifications/ Adaptations Summary for Section 149
Sec 8 Companies (Important.) Followings shall not apply: Sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12)(i), (13) of Section 149 First proviso to Sec 149(1) **<u>Major Interpretation</u>: Sec 8 Co. neither need Independent Director (ID) nor maximum limit of Directors applicable on such companies.**
Govt. Companies Followings shall **not apply**: Section 149(1)(b), 149(6)(c) First proviso to Sec 149(1) **Substitution** In Sec 149(6)(a), for the word "Board", the words "Ministry or Department of the CG which is administratively in charge of the company, or, as the case may be, the SG" shall be substituted
Specified IFSC Public Companies Following shall not apply Sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12)(i), (13) of Section 149 Clause (b) and First proviso to Sec 149(1) **Insertion** In Sec 149(3), the following proviso shall be inserted, namely:- "Provided that this sub-section shall apply to a Specified IFSC public company in respect of financial years other than the first financial year from the date of its incorporation."
Specified IFSC Private Companies **Insertion** In Sec 149(3), the following proviso shall be inserted, namely:- "Provided that this sub-section shall apply to a Specified IFSC private company in respect of financial years other than the first financial year from the date of its incorporation."

Section 150 Manner of Selection of Independent Directors and Maintenance of Databank of Independent Directors (Not applicable on Sec 8 Companies as no ID required in such companies)
150. (1) Subject to the provisions contained in sub-section (5) of section 149, an independent director may be selected from a data bank containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may by notified by the CG, having expertise in creation and maintenance of such data bank and put on their website for the use by the company making the appointment of such directors: Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the company making such appointment.
(2) The **appointment of independent director shall be approved by the company in general meeting** as provided in sub-section (2) of section 152 and the explanatory statement annexed to the notice of the general meeting called to consider the said appointment shall indicate the justification for choosing the appointee for appointment as independent director.

(3) The data bank referred to in sub-section (1), shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed **{See Rule 6 on Page 18}.**
(4) The CG may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149.

Sec 151 Appointment of Director Elected by Small Shareholder (Important)

151. A **listed company <u>may</u>** have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed **(See Rule 7 on Page 19**}. Explanation.—For the purposes of this section "**small shareholders" means** a **shareholder holding** shares of **<u>nominal</u> value** of **not more than twenty thousand rupees** or such other sum as may be prescribed{sum not prescribed yet}.

Sec 152 Appointment of Directors(Important)

152. (1) **Where no provision is made in the articles** of a company for the appointment of the first director, **the subscribers to the memorandum who are <u>individuals</u> shall be deemed to be the first directors** of the company **until** the directors are duly appointed **and in case of a One Person Company** an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.
(2) **Save as otherwise expressly provided** in this Act, **every director shall be appointed by the company in general meeting**.
(3) **No person shall be appointed as a director of a company unless he has been allotted the DIN under section 154 or any other number as may be prescribed under section 153.**
(4) **Every person proposed** to be appointed as a director by the company in general meeting or otherwise, **shall furnish his DIN or such other number** as may be prescribed under section 153 **and a declaration that he is not disqualified** to become a director under this Act.
(5) A person appointed as a director **shall** not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within 30 days(60 days for IFSC Public Co) of his appointment in such manner as may be prescribed. **{See Rule 8}** Provided that in the case of appointment of an independent director in the general meeting, an explanatory statement for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.
(6) (a) Unless the articles provide for the retirement of all directors at every AGM, not less than two-thirds of the total number of directors of a **public** company shall— (i) be persons whose period of office is liable to determination by retirement of directors by rotation; and (ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting. (b) The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting. (c) At the first AGM of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent AGM, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office. (d) The directors to retire by rotation at every AGM shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot. (e) At the AGM at which a director retires as aforesaid, the company may fill up the vacancy by appointing the

retiring director or some other person thereto. Explanation.—For the purposes of this sub-section, "total number of directors" shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.
(7) (a) If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place. (b) If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless— (i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost; (ii) the retiring director has, by a notice in writing addressed to the company or its BOD, expressed his unwillingness to be so re-appointed; (iii) he is not qualified or is disqualified for appointment; (iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or (v) section 162 is applicable to the case. Explanation.—For the purposes of this section and section 160, the expression "retiring director" means a director retiring by rotation.
Exceptions/ Modifications/ Adaptations • In case of section 8 company - proviso to Section 152 (5) shall not apply. • In case of Government company - Section 152 (5) shall not apply , where appointment of such director is done by the CG or SG. • Sub-section (6) and (7) of Section 152 shall not apply to (a) a Government company, which is not a listed company, in which not less than 51 per cent. of paid up share capital is held by the CG, or by any SG or Governments or by the CG and one or more SGs; (b) a subsidiary of a Government company, referred to in (a) above (c) Specified IFSC Public Company

DIN (Director Identification Number)

Sec 153 Application for Allotment of DIN **153.** Every individual intending to be appointed as director of a company shall make an application for allotment of DIN to the CG in such form and manner and along with such fees as may be prescribed. Provided that the CG may prescribe any identification number which shall be treated as DIN for the purposes of this Act and in case any individual holds or acquires such identification number, the requirement of this section shall not apply or apply in such manner as may be prescribed.
Sec 154 Allotment of DIN 154. The CG shall, within one month from the receipt of the application under section 153, allot a DIN to an applicant in such manner as may be prescribed.
Sec 155 Prohibition to Obtain More than One DIN 155. No individual, who has already been allotted a DIN u/s 154, shall apply for, obtain or possess another DIN
Sec 156 Director to Intimate DIN 156. Every existing director shall, within one month of the receipt of DIN from the CG, intimate his DIN to the company or all companies wherein he is a director.
Sec 157 Company to Inform DIN to Registrar 157. (1) Every company shall, within fifteen days of the receipt of intimation u/s 156, furnish the DIN of all its directors to the Registrar or any other officer or authority as may be specified by the CG with such fees as may be prescribed or with such additional fees as may be prescribed and every such intimation shall be furnished in such form and manner as may be prescribed. (2) *If any company fails to furnish the DIN under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees,* ***and*** *every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.*
Section 158 Obligation to Indicate DIN 158. Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the DIN in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.
Secton 159 Penalty for Default of Certain Provisions 159. *If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues*.

Note: See **Rule 9 to 12A** of Companies (Appointment and Qualification of Directors) Rules, 2014 on coming pages for DIN related procedural aspects.

Sec 160 Right of Persons Other than Retiring Directors to Stand for Directorship

160. (1) A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of **one lakh rupees** or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent of total valid votes cast either on show of hands or on poll on such resolution. *Provided that **requirements** of deposit of amount **shall not apply** in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the BOD of the Company, in the case of a company not required to constitute Nomination and Remuneration Committee.*
(2) The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed.
Exceptions/ Modifications/ Adaptations for Sec 160 • Sec 160 shall **not apply to private** company • Section 160 shall not apply to Sec 8 companies whose articles provide for election of directors by ballot. • Section 160 shall not apply to :- a Government Company in which the entire paid up share capital is held by the CG, or by any SG or Governments or by the CG and one or more SGs; a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company. • Section 160 shall apply as per the articles framed by the company in case of Specified IFSC Company. • In case of **nidhi company**, in sub-section (1) of Section 160, for the words "**one lakh rupees**", the words "ten thousand rupees" shall be substituted.

Sec 161 Appointment of Additional Director, Alternate Director and Nominee Director

161. (1) The articles of a company may confer on its BOD the power to appoint any person, other than a person who fails to get appointed as a director in a general meeting, as an **additional director** at any time who shall hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever is earlier.
(2) The BOD of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, 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 **not less than three months** from India: Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act: **Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.** Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.
(3) Subject to the articles of a company, the Board may appoint any person as a director **nominated** by any institution in pursuance of the provisions of any law for the time being in force or of any agreement or by the CG or the SG by virtue of its shareholding in a Government company.

(4) if the office of any director appointed by the company in general meeting 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 the articles of the company, **be filled by the BOD at a meeting** of the Board *which shall be subsequently approved by members in the immediate next general meeting*. Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.
Exceptions/ Modifications/ Adaptations In Case of Specified **IFSC** (Public/Private) Companies: In Section 161(3), the following proviso shall be inserted, namely:- "Provided that in case of a Specified IFSC public/private company, the Board may appoint, any person nominated by any institution or company or body corporate as a director in pursuance of the provisions of any law for the time being in force or of any agreement or by the CG or the SG by virtue of its shareholding in a Government company."

Sec 162 Appointment of Directors to be Voted Individually

162. (1) At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.
(2) A resolution moved in contravention of sub-section (1) **shall be void**, whether or not any objection was taken when it was moved.
(3) A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.
Exceptions/ Modifications/ Adaptations Section 162 shall **not apply to Private Companies,** **IFSC Public Companies** **and following Government Companies**: (a) a Government Company in which the **entire paid up share capital** is held by the CG, or by any SG or Governments or by the CG and one or more SGs; (b) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.

Sec163 Option to Adopt Principle of Proportional Representation for Appointment of Directors

163. Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.
Exception/ Modification/ Adaptation Section 163 shall **not apply** to :- (a) a **Government** Company in which the entire paid up share capital is held by the CG, or by any SG or Governments or by the CG and one or more SGs; (b) a subsidiary of a Government company, referred to in (a) above, in which the entire paid up share capital is held by that Government company.

Sec 164 Disqualifications for Appointment of Director (Section 164(2) shall not apply to Govt Co.)

164. (1) A person shall not be eligible for appointment as a director of a company, if — (a) he is of unsound mind and stands so declared by a competent court; (b) he is an undischarged insolvent; (c) he has applied to be adjudicated as an insolvent and his application is pending; (d) he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence: Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company; (e) an order disqualifying him for appointment as a director has been passed by a court or Tribunal and the order is in force; (f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call; (g) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or (h) he has not complied with sub-section (3) of section 152; (i) ***he has not complied with the provisions of sub-section (1) of section 165.***
(2) No person who is or has been a director of a company which— (a) has not filed financial statements or annual returns for any continuous period of three financial years; or (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more, shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so. *Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.*
(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to those specified in sub-sections (1) and (2): *Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.*

Sec 165 Number of Directorships (Sec 165(1) shall not apply on Sec 8 Co.)

165 (1) No person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time: Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed ten. Explanation I — For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included. Explanation II.—For reckoning the limit of directorships of twenty companies, the directorship in a dormant company shall not be included.
(2) Subject to the provisions of sub-section (1), the members of a company may, by **SR**, specify any lesser number of companies in which a director of the company may act as directors.
(3) Any person holding office as director in companies more than the limits as specified in sub-section (1), immediately before the commencement of this Act shall, within a period of one year from such commencement,— (a) choose not more than the specified limit of those companies, as companies in which he wishes to continue to

hold the office of director; (b) resign his office as director in the other remaining companies; and (c) intimate the choice made by him under clause (a), to each of the companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company.
(4) Any resignation made in pursuance of clause (b) of sub-section (3) shall become effective immediately on the despatch thereof to the company concerned.
(5) No such person shall act as director in more than the specified number of companies,— (a) after despatching the resignation of his office as director or non-executive director thereof, in pursuance of clause (b) of sub-section (3); or (b) after the expiry of one year from the commencement of this Act, whichever is earlier.
(6) If a person accepts an appointment as a director in contravention of sub-section (1), he shall liable to a penalty of five thousand rupees for each day after the first during which such contravention continues.

Sec 166 Duties of Directors

166. (1) Subject to the provisions of this Act, a director of a company **shall act in accordance with** the **articles** of the company.
(2) A director of a company shall act in **good faith** in order to **promote** the **objects** of the company for the benefit of its members as a whole, and in the **best interests of the company**, its employees, the shareholders, the community and for the protection of environment.
(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall **exercise independent judgment**.
(4) A director of a company **shall not involve in a situation in which** he may have a direct or indirect **interest** that **conflicts**, or possibly may conflict, **with the interest of the company**.
(5) A director of a company **shall not achieve or attempt to achieve any undue gain or advantage** either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
(6) A director of a company **shall not assign his office** and any assignment so made shall be void.
(7) If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Section 167 Vacation of Office of Director

167. (1) The office of a director **shall** become **vacant** in case—
(a) he incurs any of the disqualifications specified in section 164;
Provided that where he incurs disqualification under section 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.
(b) he absents himself from all the meetings of the BOD held during a period of twelve months with or without seeking leave of absence of the Board;
(c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
(d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
(e) he becomes disqualified by an order of a court or the Tribunal;
(f) he is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than six months:
Provided that the office shall not be vacated by the director in case of orders referred to in clauses (e) and (f)-
(i) for thirty days from the date of conviction or order of disqualification;
(ii) where an appeal or petition is preferred within thirty days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of; or
(iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of.
(g) he is removed in pursuance of the provisions of this Act;
(h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

(2) If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

(3) Where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the CG shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

(4) A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).

Sec 168 Resignation of Director

168. (1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company **shall** intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:
*Provided that a director **may** also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within 30 days of resignation in such manner as may be prescribed.*

(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later:
Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

(3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the CG shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

Sec 169 Removal of Directors

169. (1) A company may**, by OR, remove a director, not being a director appointed by the Tribunal u/s 242, before the expiry of the period** of his office after giving him a reasonable opportunity of being heard: *Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a SR and after giving him a reasonable opportunity of being heard.* Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.
(2) A **special notice** shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.
(3) On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.
(4) Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,— (a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and (b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting: Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.
(5) A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).
(6) A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed.
(7) If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act: Provided that the director who was removed from office shall not be re-appointed as a director by the BOD.
(8) Nothing in this section shall be taken— (a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or (b) as derogating from any power to remove a director under other provisions of this Act.

Sec 170 Register of Directors and key Managerial Personnel and their Shareholding

170. (1) Every company shall keep at its registered office a register containing such particulars of its directors and key managerial personnel as may be prescribed, which shall include the details of securities held by each of them in the company or its holding, subsidiary, subsidiary of company's holding company or associate companies.

(2) A return containing such particulars and documents as may be prescribed, of the directors and the key managerial personnel shall be filed with the Registrar within 30 days from the appointment of every director and key managerial personnel, as the case may be, and within 30 days of any change taking place.
Exceptions/ Modifications/ Adaptations • Section 170 shall not apply to Government Company in which the **entire** share capital is held by the CG, or by any SG or Governments or by the CG or by one or more SGs. • In case of Specified IFSC Public Company and IFSC Private Company, In Section 170(2), for the words "thirty days" at both places read as "sixty days".

Sec 171 Members' Right to Inspect

171. (1) The register kept under sub-section (1) of section 170,— (a) shall be open for inspection during business hours and the members shall have a right to take extracts therefrom and copies thereof, on a request by the members, be provided to them free of cost within thirty days; and (b) shall also be kept open for inspection at every AGM of the company and shall be made accessible to any person attending the meeting.
(2) If any inspection as provided in clause (a) of sub-section (1) is refused, or if any copy required under that clause is not sent within thirty days from the date of receipt of such request, the Registrar shall on an application made to him order immediate inspection and supply of copies required thereunder.
Exception/ Modification/ Adaptation Section 171 shall not apply to Government Company in which the **entire** share capital is held by the CG, or by any SG or Governments or by the CG or by one or more SGs

Sec 172 Punishment 172. If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Companies (Appointment and Qualification of Directors) Rules, 2014

Rule 2(1)(k) For the purposes of clause (d) of sub-section (1) of section 164 and clause (f) of sub-section (1) of section 167 of the Act, "or otherwise" **means** any offence in respect of which he has been convicted by a Court under the Act or under the Companies Act, 1956.

Rule 3 Woman Director on the Board.

The following class of companies shall appoint at least one woman director-
(**i**) every listed company;

(**ii**) every other public company having -

(a) paid–up share capital of 100 crore rupees or more; or

(b) turnover of 300 crore rupees or more:

Provided that a company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation:

Provided further that any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is **later**.

Explanation.- For the purposes of this rule, it is hereby clarified that the paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

Rule 4 Number of Independent Directors (V. Important)

(1)The following class or classes of companies shall have at least two directors as independent directors -
(i) the **Public** Companies having paid up share capital of **10 crore** rupees or more; or
(ii) the **Public** Companies having turnover of **100 crore** rupees or more; or
(iii) the **Public** Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding **50 crore** rupees:
Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it:
Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later:
Provided also that where a company ceases to fulfil any of three conditions laid down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions;

Explanation. - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account:
Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

(2) The following classes of unlisted public company shall not be covered under sub-rule (1), namely:-.
(a) a joint venture;
(b) a wholly owned subsidiary; and
(c) a dormant company as defined under section 455 of the Act.

[**MCA Circular: "joint venture"** would mean a joint arrangement, entered into in writing, whereby the parties that have joint control of the arrangement, have rights to the net assets of the arrangement. The usage of the term is similar to that under the Accounting Standards.]

Rule 5 Qualifications of Independent Director

(1) An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.
(2) *None of the relatives of an independent director, for the purposes of sub-clauses (ii) and (iii) of clause (d) of sub-section (6) of section 149,-*
(i) is indebted to the company, its holding, subsidiary or associate company or their promoters, or directors; or
(ii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company or their promoters, or directors of such holding company,
for an amount of ***50 lakhs*** *rupees, at any time during the two immediately preceding FYs or during the current FY.*

Rule 6 Creation and Maintenance of Databank of Persons Offering to Become Independent Directors

(1) Any body, institute or association (hereinafter to be referred as "the agency"), which has been authorised in this behalf by the CG shall create and maintain a data bank of persons willing and eligible to be appointed as independent director and such data bank shall be placed on the website of the Ministry of Corporate Affairs or on any other website as may be approved or notified by the CG.

(2) The data bank referred to in sub-rule (1) shall contain the following details in respect of each person included in the data bank to be eligible and willing to be appointed as independent director-

(a) DIN (Director Identification Number);
(b) the name and surname in full;
(c) [Omitted]
(d) the father's name
(e) the date of Birth;
(f) gender;
(g) the nationality;
(h) the occupation;
(i) full Address with PIN Code (present and permanent);
(j) phone number;
(k) e-mail id;
(l) the educational and professional qualifications;
(m) experience or expertise, if any;
(n) any legal proceedings initiated or pending against such person;
(o) the list of limited liability partnerships in which he is or was a designated partner along with –
  (i) the name of the limited liability partnership;
  (ii) the nature of industry; and
  (iii) the duration- with dates;
(p) the list of companies in which he is or was director along with -
  (i) the name of the company;
  (ii) the nature of industry;
  (iii) the nature of directorship – Executive or Non-executive or MD or Independent Director or Nominee Director; and
  (iv) duration – with dates.

(3) A disclaimer shall be conspicuously displayed on the website hosting the databank that a company must carry out its own due diligence before appointment of any person as an independent director and "the agency" maintaining the databank or the CG shall not be held responsible for the accuracy of information or lack of suitability of the person whose particulars form part of the databank.

(4) Any person who desires to get his name included in the data bank of IDs shall make an application to "the agency"

(5) The agency may charge a reasonable fee from the applicant for inclusion of his name in the data bank of independent directors.

(6) Any person who has applied for inclusion of his name in the data bank of independent directors or any person whose name appears in the data bank , shall intimate to the agency about any changes in his particulars within fifteen days of such change.

(7) The databank posted on the website shall –
(a) be accessible at the specified website;
(b) be substantially identical to the physical version of the data bank;
(c) be searchable on the parameters specified in sub-rule (2);
(d) be presented in a format or formats convenient for both printing and viewing online; and
(e) contain a link to obtain the software required to view or print the particulars free of charge.

Rule 7 Small Shareholders' Director [Important] –read with Section 151

(1) A **listed company**, **may** upon notice of **not less than one thousand small shareholders** or **1/10th of the total number of such shareholders**, whichever is **lower**, have a small shareholders' director elected by the small shareholders:

Provided that nothing in this sub-rule shall prevent a listed company to opt to have a director representing small shareholders suo motu and in such a case the provisions of sub-rule (2) shall not apply for appointment of such director.

(2) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director:

Provided that if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice:

(3) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating -
(a) his DIN;
(b) that he is not disqualified to become a director under the Act; and
(c) his consent to act as a director of the company

(4) Such director shall be considered as an independent director subject to , his being eligible under sub-section (6) of section 149 and his giving a declaration of his independence in accordance with section 149(7) of the Act.

(5) The appointment of small shareholders' director shall be subject to the provisions of section 152 except that-
(a) such director shall not be liable to retire by rotation;
(b) such director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and
(c) on the expiry of the tenure, such director shall not be eligible for re-appointment.

(6) A person shall not be appointed as small shareholders' director of a company, if the person is not eligible for appointment in terms of section 164.

(7) **A person appointed as small shareholders' director shall vacate the office if** -
(a) the director incurs any of the disqualifications specified in section 164;
(b) the office of the director becomes vacant in pursuance of section 167;
(c) the director ceases to meet the criteria of independence as provided in sub-section (6) of section 149.

(8) No person shall hold the position of small shareholders' director in more than two companies at the same time:

Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.

(9) A small shareholders' director shall not, for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

Rule 8 Consent to Act as Director.

Every person who has been appointed to hold the office of a director **shall** on or before the appointment furnish to the company a consent in writing to act as such in **Form DIR-2:**

Provided that the company **shall**, within thirty days of the appointment of a director, file such consent with the Registrar in Form **DIR-12** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Rule 9 Application for allotment of DIN before Appointment in an existing company

(1) Every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the CG for allotment of a DIN along with such fees as provided under the companies (Registration offices and Fees) Rules, 2014. Provided that in case of proposed directors not having approved DIN, the particulars of maximum three directors shall be mentioned in Form No.INC-32 (spice) and DIN may be allotted to maximum three proposed directors through Form INC-32 (splce).

(2) The CG shall provide an electronic system to facilitate submission of application for the allotment of DIN through the portal on the website of the Ministry of Corporate Affairs.

(3) (a) The applicant shall download Form DIR-3 from the portal, fill in the required particulars sought therein, verify and sign the form and after attaching copies of the following documents, scan and file the entire set of documents ***electronically****-*
(i) photograph;
(ii) proof of identity;
(iii) proof of residence;
(iiia) board resolution proposing his appointment as director in an existing company
(iv) [Omitted]
(v) Specimen signature duly verified.

(b) Form DIR-3 shall be signed and submitted electronically by the applicant using his or her own Digital signature certificate and shall be verified digitally by a CS in full time employment of the company or by the managing director or director or CEO or CFO of the company in which the applicant is intended to be appointed as director in an existing company. **[CA is <u>not</u> now entitled to verify here]**

(4) In case the name of a person does not have a last name, then his or her father's or grandfather's surname shall be mentioned in the last name along with the declaration in Form No. DIR-3A.

Rule 10 Allotment of DIN. (IMPORTANT)

(1) On the submission of the Form DIR-3 on the portal and payment of the requisite amount of fees through online mode an application number shall be generated by the system automatically.

(2) After generation of application number, the CG shall process the applications received for allotment of DIN under sub-rule (2) of rule 9, decide on the approval or rejection thereof and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode, within a period of one month from the receipt of such application.

(3) If the CG, on examination, finds such application to be defective or incomplete in any respect, it shall give intimation of such defect or incompleteness, by placing it on the website and by email to the applicant who has filed such application, directing the applicant to rectify such defects or incompleteness by resubmitting the application within a period of fifteen days of such placing on the website and email:

Provided that the CG shall -
(a) reject the application and direct the applicant to file fresh application with complete and correct information, where the defect has been rectified partially or the information given is still found to be defective;
(b) treat and label such application as invalid in the electronic record in case the defects are not removed within the given time; and
(c) inform the applicant either by way of letter by post or electronically or in any other mode.

(4) In case of rejection or invalidation of application, the fee so paid with the application shall neither be refunded nor adjusted with any other application.

(5) All Director Identification Numbers allotted to individual(s) by the CG before the commencement of these rules shall be deemed to have been allotted to them under these rules.

(6) The DIN so allotted under these rules is valid for the life-time of the applicant and shall not be allotted to any other person.

Rule 10A Intimation of DIN to Company.-

(1) Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within one month of the receipt of DIN from the CG, intimate his DIN to the company or all companies wherein he is a director as per Form DIR-3B.

(2) The intimation by the company of DIN of its directors under section 157 of the Act shall be furnished in Form DIR-3C within fifteen days of receipt of intimation under section 156.

Rule 11 Cancellation or Surrender or Deactivation of DIN

(1) The CG or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received alongwith fee as specified in Companies (Registration Offices and Fees) Rules, 2014] from any person, cancel or deactivate the DIN in case -

(a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;

(b) the DIN was obtained in a wrongful manner or by fraudulent means;

(c) of the death of the concerned individual;

(d) the concerned individual has been declared as a person of unsound mind by a competent Court;

(e) if the concerned individual has been adjudicated an insolvent:

Provided that before cancellation or deactivation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;

(f) on an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the CG may deactivate such DIN:

Provided that before deactivation of any DIN in such case, the CG shall verify e-records.

Explanation.- For the purposes of clause (b) -

(i) the term "wrongful manner" means if the DIN is obtained on the strength of documents which are not legally valid or incomplete documents are furnished or on suppression of material information or on the basis of wrong certification or by making misleading or false information or by misrepresentation;

(ii) the term "fraudulent means" means if the DIN is obtained with an intent to deceive any other person or any authority including the CG.

***(2)** The CG or Regional Director (Northern Region), or any officer authorized by the CG or Regional Director (Northern Region) shall, deactivate the Director Identification Number (DIN), of an individual who does not intimate his particulars in e-form DIR-3-KYC within stipulated time in accordance with rule 12A:*

***(3)** The de-activated DIN shall be re-activated only after e-form DIR-3-KYC is filed along with fee as prescribed under Companies (Registration Offices and Fees) Rules, 2014.*

12 Intimation of Changes in Particulars Specified in DIN Application

(1) Every individual who has been allotted a Director Identification Number under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the CG within a period of thirty days of such change(s) in Form DIR-6 in the following manner, namely;-

(i) The applicant shall download Form DIR-6 from the portal, fill in the relevant changes, verify the Form and attach duly scanned copy of the proof of the changed particulars and submit electronically;
(ii) the form shall be digitally signed by a CA in practice or a CS in practice or a cost accountant in practice;
(iii) the applicant shall submit the Form DIR-6;

(2) The CG, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.

(3) The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.

(4) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within fifteen days of such change.

***Rule 12A* Directors KYC**

Every individual who has been allotted a DIN as on 31st March of a FY as per these rules shall, submit e-form DIR-3-KYC to the CG on or before 30th June of immediate next FY.

Provided that every individual who has already been allotted a DIN as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before **5**th October,2018.

[***Rule 12B** has been inserted by Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2019 dated 16/05/2019, since **not applicable** for Nov., 2019 Exams hence not covered]

Rule 13 Notice of Candidature of a Person for Directorship

The company shall, at least seven days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office-

(1) by serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members; and

(2) by placing notice of such candidature or intention on the website of the company, if any:

Provided that it shall not be necessary for the company to serve individual notices upon the members as aforesaid, if the company advertises such candidature or intention, not less than seven days before the meeting at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and circulating in that district, and at least once in English language in an English newspaper circulating in that district.

Rule 14 Disqualification of Directors Sub-section (2) of Section 164

(1) Every director **shall inform to the company** concerned about his disqualification under sub-section (2) of section 164, if any, in Form DIR-8 before he is appointed or re-appointed.

(2) Whenever a company fails to file the financial statements or annual returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, as specified in sub-section (2) of section 164, the company shall immediately file Form DIR-9, to the Registrar furnishing therein the names and addresses of all the directors of the company during the relevant financial years.

(3) When a company fails to file the Form DIR-9 within a period of thirty days of the failure that would attract the disqualification under sub-section (2) of section 164, officers of the company specified in clause (60) of section 2 of the Act shall be the officers in default.

(4) Upon receipt of the Form DIR-9 under sub-rule (2), the Registrar shall immediately register the document and place it in the document file for public inspection.

(5) Any application for removal of disqualification of directors shall be made in Form DIR-10.

Rule 15 Notice of Resignation of Director

The **company shall** within **30 days** from the date of receipt of notice of resignation from a director, intimate the Registrar in Form **DIR-12** and posts the information on its website, if any.

Rule 16 Copy of Resignation of Director to be Forwarded by him

Where a **director** resigns from his office, he [2]**may** within a period of **30 days** from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form **DIR-11** along with the fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Provided that in case a company has already filed Form **DIR-12** with the Registrar under rule 15, a foreign director of such company resigning from his office may authorise in writing a practising CA or cost accountant in practice or CS in practice or any other resident director of the company to sign Form **DIR-11** and file the same on his behalf intimating the reasons for the resignation.

Rule 17 Register of Directors and Key Managerial Personnel

(1) **Every company <u>shall</u> keep at its registered office a register of its <u>directors and key managerial personnel</u>** containing the following particulars, namely:-
(a) **DIN** (**optional** for key managerial personnel);
(b) present name and surname in full;
(c) any former name or surname in full;
(d) father's name, mother's name and spouse's name(if married) and surnames in full;(e) date of birth;
(f) residential address (present as well as permanent);
(g) nationality (including the nationality of origin, if different);
(h) occupation;
(i) date of the board resolution in which the appointment was made;
(j) date of appointment and reappointment in the company;
(k) date of cessation of office and reasons therefor;
(l) office of director or key managerial personnel held or relinquished in any other body corporate;
(m) membership number of the ICSI in case of CS, if applicable; and
(n) **PAN** (**mandatory** for key managerial personnel if not having DIN);

(2) **In addition** to the details of the directors or key managerial personnel, the **company shall also include in the aforesaid Register the details of securities held by them in the company, its holding company, subsidiaries, subsidiaries of the company's holding company and associate companies** relating to-
(a) the number, description and nominal value of securities;
(b) the date of acquisition and the price or other consideration paid;
(c) date of disposal and price and other consideration received;
(d) cumulative balance and number of securities held after each transaction;
(e) mode of acquisition of securities ;
(f) mode of holding – physical or in dematerialized form; and
(g) whether securities have been pledged or any encumbrance has been created on the securities.

Rule 18 Return Containing the Particulars of Directors and the Key Managerial Personnel

A return containing the particulars of appointment of director or key managerial personnel and changes therein, shall be filed with the Registrar in Form **DIR-12** along with such fee as may be provided in the Companies (Registration Offices and Fees) Rules, 2014 within **30 days** of such appointment or change, as the case may be.

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CHAPTER XII of Companies Act, 2013
(MEETINGS OF BOARD AND ITS POWERS)

Sec 173 Meetings of Board

173. (1) Every company shall hold **the first meeting of the BOD within 30 days of the date of its incorporation** and thereafter hold a **minimum number of four meetings** of its BOD **every year** in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board: Provided that the CG may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.
(2) The **participation** of directors in a meeting of the Board **may be either in person or through video conferencing or other audio visual means**, as may be prescribed, which are **capable of recording and recognising the participation** of the directors and of recording and storing the proceedings of such meetings **along with date and time**: Provided that the **CG may, by notification, specify such matters which shall not be dealt with in a meeting through video conferencing or other audio visual means.** *Provided further that* ***where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso****.*
(3) A meeting of the Board shall be **called by giving not less than seven days' notice in writing to every director at his address** registered with the company and such notice **shall be sent by hand delivery or by post or by electronic means**: Provided that a meeting of the Board **may be called at shorter notice to transact urgent business subject to the condition that at least one independent director**, if any, shall be **present** at the meeting: Provided further that in **case of absence of independent directors from such a meeting** of the Board, **decisions taken** at such a meeting **shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director**, if any.
(4) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of Rs. 25000.
(5) A **One Person Company, small company, dormant company and a private company (if such private company is a start-up)** shall be deemed to have complied with the provisions of this section if **at least one meeting of the BOD has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days**: Provided that nothing contained in this sub-section and in section 174 shall apply to One Person Company in which there is only one director on its BOD.
Exceptions/ Modifications/ Adaptations • In case of **Nidhi companies**, Section 173(1) shall apply only to the extent that the BOD, of such Companies shall hold at least one meeting within every six calendar months. • In sub-section (1) of Section 173, after the proviso, the following proviso shall be inserted, namely:- "Provided further that a **Specified IFSC public company and Specified IFSC Private Company** shall hold the first meeting of the BOD within **60 days** of its incorporation and thereafter hold atleast one meeting of the BOD in each half of a calendar year."

Sec 174 Quorum for Meetings of Board

174.(1) The quorum for a meeting of the BOD of a company shall be **1/3rd** of its total strength or **two directors**, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.
(2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.
(3) **Where** at any time the **number of interested directors exceeds or is equal to 2/3rd of the total strength** of the BOD, the **number of directors who are not interested directors and present** at the meeting, **being not less than two, shall be the quorum** during such time. Explanation.—For the purposes of this sub-section, "interested director" means a director within the meaning of sub-section (2) of section 184.
(4) Where a **meeting of the Board could not be held for want of quorum**, then, **unless the articles** of the company **otherwise provide**, the **meeting shall automatically stand adjourned** to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place. Explanation.—For the purposes of this section,— (i) any fraction of a number shall be rounded off as one; (ii) "total strength" shall not include directors whose places are vacant.
Exceptions/ Modifications/ Adaptations • In case of **Private Company** - Sub-Section (3) of Section 174 shall apply with the **exception** that the interested **director may also be counted towards quoram** in such meeting **after disclosure** of his interest pursuant to section 184. • In case of **Specified IFSC public as well as private Company**, Sub-section (3) of section 174 shall apply with the **exception** that interested director may participate in such meeting provided the disclosure of his interest is made by the concerned director either prior or at the meeting. • In case of **section 8 company**, Section 174(1) shall be read as: The quorum for a meeting of the BOD of a company **shall either 8 members or 25 percent, of its total strength whichever is less**, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section: **provided that the quorum shall not be less than two members.**

Sec 175 Passing of Resolution by Circulation

175. (1) **No resolution shall be deemed to have been duly passed** by the Board or by a committee thereof **by circulation, unless the resolution has been circulated in draft, together with the necessary papers**, if any, **to all the directors, or members of the committee**, as the case may be, **at their addresses registered** with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed **and has been approved by a majority of the directors or members, who are entitled to vote on the resolution**: Provided that, where **not less than 1/3rd of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting**, the chairperson shall put the **resolution to be decided at a meeting** of the Board.
(2) A **resolution under sub-section (1) shall be noted at a subsequent meeting** of the Board or the committee thereof, as the case may be, **and made part of the minutes of such meeting**.

Sec 176 Defects in Appointment of Directors not to Invalidate Actions Taken

176. No act done by a person as a director shall be deemed to be invalid, **notwithstanding that it was subsequently noticed that his appointment was invalid** by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles of the company: Provided that **nothing in this section shall be deemed to give validity to any act done by the director after his appointment has been noticed by the company to be invalid or to have terminated.**

Sec 177 Audit Committee

177. (1) The BOD of **every listed public company** and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.
(2) The Audit Committee shall consist of a **minimum of three directors with independent directors forming a majority**: Provided that **majority of members** of Audit Committee including its Chairperson shall be persons **with ability to read and understand, the financial statement**.
(3) Every Audit Committee of a company existing immediately before the commencement of this Act shall, within one year of such commencement, be reconstituted in accordance with sub-section (2).
(4) Every Audit Committee **shall act in accordance with the terms of reference specified in writing by the Board** which shall, inter alia, **include**,— (i) the recommendation for appointment, remuneration and **terms of appointment of auditors** of the company; (ii) review and monitor the **auditor's independence and performance**, and effectiveness of audit process; (iii) **examination** of the **financial statement and the auditors' report** thereon; (iv) **approval** or any subsequent modification of **transactions** of the company **with related parties**; Provided that the Audit Committee **may make omnibus approval for related party transactions** proposed to be entered into by the company subject to such conditions as may be prescribed; *Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:* Provided also that in case any **transaction involving any amount not exceeding 1 crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within 3 months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorised by any other director, the director concerned shall indemnify the company against any loss** incurred by it: Provided also that the **provisions of this clause shall not apply to a transaction**, **other than** a transaction **referred to in section 188**, **between a holding company and its wholly owned subsidiary company**. (v) **scrutiny** of **inter-corporate loans and investments**; (vi) **valuation** of undertakings or **assets** of the company, **wherever** it is **necessary**; (vii) **evaluation** of **internal financial controls** and **risk management systems**; (viii) **monitoring** the **end use of funds raised** through public offers and related matters.
(5) The Audit Committee **may call for the comments of the auditors** about internal control systems, the scope of audit, including the observations of the auditors and review of financial statement before their submission to the Board and **may also discuss any related issues with the internal and statutory auditors and the management** of the company.
(6) The Audit Committee **shall have authority to investigate into any matter in relation to the items specified** in sub-section (4) or referred to it **by the Board** and for this purpose **shall have power to obtain professional advice from external sources and have full access to information** contained in the records of the company.
(7) The **auditors** of a company and the **KMP shall have a right to be heard** in the meetings of the Audit Committee

when it considers the auditor's report **but shall not have the right to vote**.
(8) The **Board's report** under sub-section (3) of section 134 **shall disclose the composition of an Audit Committee** and **where the Board had not accepted any recommendation of the Audit Committee, the same shall be disclosed in such report** along **with** the **reasons** therefor.
(9) Every **listed company** or such class or classes of companies, as may be prescribed, shall establish a **vigil mechanism for directors and employees** to report genuine concerns in such manner as may be prescribed.
(10) The **vigil mechanism** under sub-section (9) **shall provide** for **adequate safeguards against victimisation** of persons who use such mechanism **and make provision for direct access to the chairperson of the Audit Committee** in appropriate or exceptional cases: Provided that the **details of establishment of such mechanism shall be disclosed** by the company on its **website**, if any, **and** in the **Board's report**.
Exceptions/ Modifications/ Adaptations • In case of **section 8 company**, in Section 177(2) the words "with independent directors forming a majority"shall be **omitted**. • In case of **Government Company** - in Section 177(4)(i) for the words "recommendation for appointment, remuneration and terms of appointment'" the words "recommendation for remuneration" shall be **substituted.** • In case of **Specified IFSC Public Company** - Section **177 shall not apply**

Sec 178 Nomination and Remuneration Committee and Stakeholders Relationship Committee

178. (1) The BOD of every **listed public company** and such other class or classes of companies, as may be prescribed **shall constitute the Nomination and Remuneration** Committee consisting of **three or more non-executive directors** out of which **not less than one-half shall be independent** directors: Provided that the **chairperson of the company** (whether executive or non-executive) **may be appointed as a member of the Nomination and Remuneration Committee but shall not chair** such Committee.
(2) The Nomination and Remuneration Committee **shall identify persons who are qualified to become directors** and who may be appointed in senior management **in accordance with the criteria** laid down, **recommend to the Board** their appointment and removal and shall ***specify the manner for effective evaluation of performance*** *of Board, its committees and individual directors* ***to be carried out either by the Board, by the Nomination and Remuneration Committee or by an independent external agency*** *and review its implementation and compliance.*
(3) The Nomination and Remuneration Committee sh**all formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy**, relating to the remuneration for the directors, key managerial personnel and other employees.
(4) The Nomination and Remuneration Committee shall, **while formulating the policy** under sub-section (3) **ensure** that— (a) the **level and composition of remuneration is reasonable and sufficient** to **attract**, **retain** and **motivate** directors of the **quality required** to **run** the **company** successfully; (b) **relationship** of **remuneration** to **performance** is **clear** and meets appropriate performance benchmarks; and (c) **remuneration** to directors, key managerial personnel and senior management **involves** a balance **between fixed and incentive pay reflecting short and long-term performance objectives** appropriate to the working of the company and its goals: *Provided that such policy shall be placed on the website of the company, if any, and the salient features of the policy and changes therein, if any, along with the web address of the policy, if any, shall be disclosed in the Board's report.*
(5) The BOD of a **company which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders** at any time during a financial year shall **constitute a Stakeholders Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided** by the Board.
(6) The Stakeholders Relationship Committee **shall consider and resolve the grievances of security holders of the company.**

(7) The chairperson of each of the committees constituted under this section or, in his absence, any other member of the committee authorised by him in this behalf shall attend the general meetings of the company.

(8) In case of any contravention of the provisions of section 177 and this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both:
Provided that inability to resolve or consider any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.
Explanation.—The expression ''senior management'' means personnel of the company who are members of its core management team excluding BOD comprising all members of management one level below the executive directors, including the functional heads.

Sec 179 Powers of Board

179. (1) The BOD of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do:
Provided that in exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made thereunder, including regulations made by the company in general meeting:
Provided further that the Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting.

(2) No regulation made by the company in general meeting shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.

(3) The BOD of a company **shall exercise the following powers on behalf of the company by means of resolutions passed at meetings** of the Board, namely:—
(a) to make calls on shareholders in respect of money unpaid on their shares;
(b) to authorise buy-back of securities under section 68;
(c) to issue securities, including debentures, whether in or outside India;
(d) to borrow monies;
(e) to invest the funds of the company;
(f) to grant loans or give guarantee or provide security in respect of loans;]
(g) to approve financial statement and the Board's report;
(h) to diversify the business of the company;
(i) to approve amalgamation, merger or reconstruction;
(j) to take over a company or acquire a controlling or substantial stake in another company;
(k) any other matter which may be prescribed:
Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify:
Provided further that the acceptance by a banking company in the ordinary course of its business of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise, or the placing of monies on deposit by a banking company with another banking company on such conditions as the Board may prescribe, shall not be deemed to be a borrowing of monies or, as the case may be, a making of loans by a banking company within the meaning of this section.

Explanation I.—Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.
Explanation II.—In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.

(4) **Nothing** in this section **shall be deemed to affect the right of the company in general meeting to impose restrictions and conditions on the exercise by the Board** of any of the powers specified in this section.

Exception/ Modification/ Adaptation for section 179

- In case of **section 8 company**, matters referred to in **clauses (d), (e) and (f)** of Sub-section (3) of Section 179 may **be decided by the Board by circulation** instead of at a meeting.
- In case of Specified IFSC Private as well as public Company - In sub-section (3) of Section 179, after the second proviso, the following proviso shall be **inserted**, namely:-
  "Provided also that in case of a Specified IFSC private/public company, the Board can exercise powers by means of resolutions passed at the meetings of the Board or through resolutions passed by circulation**.**"

Sec 180 Restrictions on Powers of Board.

Section 180 shall not apply to Private companies and **IFSC Public Co.** unless its article provide otherwise.	180. (1) The **BOD** of a company **shall exercise the following powers only with the consent of the company** by a **SR**, namely:— (a) to **sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking** of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings. Explanation.—For the purposes of this clause,— (i) "undertaking" shall mean an undertaking in which the **investment** of the company **exceeds 20 per cent**. of its **net worth** as per the **audited balance sheet of the preceding financial year** or an undertaking which **generates 20 percent**. **of** the **total income** of the company during the **previous financial year**; (ii) the expression "substantially the whole of the undertaking" in any financial year **shall mean twenty per cent**. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year; (b) **to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation**; (c) **to borrow money**, **where** the **money** to be **borrowed**, toget**her with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans** obtained from the company's bankers in the ordinary course of business: Provided that the acceptance by a banking company, in the ordinary course of its business, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise, shall not be deemed to be a borrowing of monies by the banking company within the meaning of this clause. Explanation.—For the purposes of this clause, the expression "temporary loans" means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature; (d) **to remit, or give time for the repayment of, any debt due from a director**.
	(2) Every **SR** passed by the company in general meeting in relation to the exercise of the powers referred to in clause (c) of sub-section (1) shall **specify the total amount up to which monies may be borrowed by the BOD**.
	(3) Nothing contained in clause (a) of sub-section (1) shall affect— (a) the title of a buyer or other person who buys or takes on lease any property, investment or undertaking as is referred to in that clause, in good faith; or (b) the sale or lease of any property of the company where the ordinary business of the company consists of, or comprises, such selling or leasing.
	(4) Any **SR** passed by the company consenting to the transaction as is referred to in clause (a) of sub-section (1) **may stipulate such conditions** as may be specified in such resolution, including conditions regarding the use, disposal or investment of the sale proceeds which may result from the transactions: Provided that this sub-section shall not be deemed to authorise the company to effect any reduction in its capital except in accordance with the provisions contained in this Act.
	(5) **No debt incurred by the company in excess of the limit imposed by clause (c) of sub-section (1) shall be valid or effectual, unless the lender proves that he advanced the loan in good faith and without knowledge that the limit imposed** by that clause had been **exceeded**.

Sec 181 Company to Contribute to Bona Fide and Charitable Funds etc.

181. The BOD of a company may contribute to bona fide charitable and other funds:
Provided that **prior permission** of the company in general meeting shall be required for such contribution in case any amount the aggregate of which, in any financial year, **exceed five per cent. of its average net profits for the three immediately preceding financial years**.

Sec 182 Prohibitions and Restrictions Regarding Political Contributions

182. (1) Notwithstanding anything contained in any other provision of this Act, a company, **other than a Government company and a company which has been in existence for less than three financial years**, may contribute any amount directly or indirectly to any political party:

Provided that no such contribution shall be made by a company **unless a resolution authorising the making of such contribution is passed at a meeting of the BOD** and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making of the contribution authorised by it.

(2) Without prejudice to the generality of the provisions of sub-section (1),—

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to affect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on an advertisement in any publication, being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like, shall also be deemed,—
(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and
(ii) where such publication is not by or on behalf of, but for the advantage of a political party, to be a contribution for a political purpose.

(3) Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the financial year to which the account relates.

(3A) Notwithstanding anything contained in sub-section (1), the contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account:
Provided that a company may make contribution through any instrument, issued pursuant to any scheme notified under any law for the time being in force, for contribution to the political parties.

(4) If a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Explanation.—For the purposes of this section, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951.

Sec 183 Power of Board and Other Persons to Make Contributions to National Defence Fund, etc.

183. (1) The **BOD of any company or any person or authority exercising the powers of the BOD of a company**, or of the company in general meeting, may, notwithstanding anything contained in sections 180, 181 and section 182 or any other provision of this Act or in the memorandum, articles or any other instrument relating to the company, **contribute such amount as it thinks fit to the National Defence Fund or any other Fund approved by the CG for the purpose of national defence**.

(2) Every **company shall disclose in its profits and loss account the total amount or amounts contributed** by it to the Fund referred to in sub-section (1) during the FY to which the amount relates.

Sec 184 Disclosure of Interest by Director

184. (1) **Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year** or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, **disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding**, in such manner as may be prescribed.

(2) **Every director** of a company who is in any way, **whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement** entered into or to be entered into—

(a) **with a body corporate** in which **such director or such director in association with any other director, holds more than two per cent**. shareholding of that body corporate, **or is a promoter, manager, Chief Executive Officer of that body corporate;** or
(b) **with a firm or other entity** in which, **such director is a partner, owner or member**, as the case may be,
shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

Provided that **where any director** who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he **becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested**.

(3) A **contract or arrangement entered into by the company without disclosure** under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, **shall be voidable at the option of the company.**

(4) If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be punishable with imprisonment for a term which may extend to one year or with fine which] may extend to one lakh rupees, or with both.

(5) Nothing in this section—
(a) shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company;
(b) shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold **not more than two per cent**. of the paid-up share capital in the other company or the body corporate.

Exceptions/ Modifications

- In case of **private company** - Section 184(2) shall apply with an **exception** that the interested director may participate in such meeting after disclosure of his interest.
- In case of **Section 8 company** - Section 184 (2) shall apply, **only if** the transaction with reference to **section 188** on the basis of terms and conditions of the contract or arrangement **exceeds one lakh rupees.**
- In case of **Specified IFSC Public Company** - Section 184(2) shall apply with the **exception** that interested director may participate in such meeting provided the disclosure of his interest is made by the concerned director either prior or at the meeting.

Sec 185 Loan to Directors, etc.

185 (1) **No company** shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by,—
(a) **any director** of company, or of a company which is its holding company **or any partner or relative of any such director**; or
(b) **any firm** in which any such director or relative is a partner.

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(2) A **company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan** taken by **any person in whom any of the director of the company is interested**, subject to the condition that—

(a) a **SR is passed** by the company in general meeting:
Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and

(b) **the loans are utilised by the borrowing <u>company</u> for its principal business activities**.

Explanation.—For the purposes of this sub-section, the expression "**any person in whom any of the director of the company is interested**" means—
(a) any **private company** of which any such director is a director or member;
(b) any **body corporate** at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or
(c) any **body corporate**, the BOD, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.

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(3) **Nothing** contained in sub-sections (1) and (2) **shall apply** to—

(a) **the giving of any loan** to a managing or whole-time director—

- (i) **as a part of** the conditions of **service extended by the company to all its employees**; or
- (ii) **pursuant** to any **scheme approved** by the members by a **SR**; or

(b) a company which in the **ordinary course** of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an **interest is charged at a rate not less than the rate of prevailing yield** of one year, three years, five years or ten years Government security closest to the tenor of the loan; or

(c) any **loan** made by a holding company to its **wholly owned subsidiary company** or any **guarantee** given or **security** provided by a holding company in respect of any loan made to its **wholly owned subsidiary company**; or

(d) any **guarantee** given or **security** provided by a holding company in respect of **loan** made **by** any **bank** or **financial institution to** its **subsidiary** company:

Provided that the **loans** made under clauses (c) and (d) are **utilised by** the **subsidiary** company **for** its **principal business activities**.

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(4) If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,—
(i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees;
(ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and
(iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

Sec 186 Loan and Investment by Company

186. (1) Without prejudice to the provisions contained in this Act, a company shall unless otherwise prescribed, make investment through not more than two layers of **investment companies**:

Provided that the provisions of this sub-section shall not affect,—
(i) a company from acquiring any other company incorporated in a country outside India if such other company has investment subsidiaries beyond two layers as per the laws of such country;
(ii) a subsidiary company from having any investment subsidiary for the purposes of meeting the requirements under any law or under any rule or regulation framed under any law for the time being in force.

Rule 2 Companies (Restriction on number of layers) Rules, 2017
Restriction on number of layers for certain classes of holding companies.-

(1) On and from the date of commencement of these rules, **no company**, other than a company belonging to a class specified in sub rule (2), **shall have more than two layers** of **subsidiaries**:
Provided that the provisions of this sub-rule shall not affect a company from acquiring a company incorporated outside India with subsidiaries beyond two layers as per the laws of such country:
Provided further that for computing the number of layers under this rule, one layer which consists of one or more wholly owned subsidiary or subsidiaries shall not be taken into account.

(2) The **provisions of this rule shall not apply to the following classes of companies**, namely: -

(a) A banking company
(b) A non-banking financial registered with the RBI and considered as systematically important NBFC
(c) An insurance company
(d) A Government company

(3) The provisions of this rule shall not be in derogation of the proviso to sub-section (1) of section 186 of the Act.

(4) **Every company other than a company referred to in sub-rule (2) existing on or before the commencement of these rules, which has number of layers of subsidiaries in excess** of the **layers** specifred in sub-rule (1) -
(i) **Shall file**, with the Registrar a return in Form CRL- 1 disclosing the details specified therein, within a period of 150 days from the date of publication of these rules in the official Gazette;
(ii) **Shall not**, after the date of commencement of these rules, have any additional layer of subsidiaries over and above the layers existing on such date; and
(iii) **Shall not**, in case one or more layers are reduced by it subsequent to the commencement of these rules, have the number of layers beyond the number of layers it has after such reduction or maximum layers allowed in sub-rule (1), whichever is more.

(5) Punishment of violation (Not Covered)

186(2) No company shall directly or indirectly —

(a) give any loan to any person or other body corporate;
(b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
(c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate,

exceeding sixty per cent. of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more.

Explanation.—For the purposes of this sub-section, the word "person" does not include any individual who is in the employment of the company

186(3) Where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under sub-section (2), no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a SR passed in a general meeting: Provided that where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of this sub-section shall not apply: Provided further that the company shall disclose the details of such loans or guarantee or security or acquisition in the financial statement as provided under sub-section (4)]
186(4) The company shall disclose to the members in the financial statement the full particulars of the loans given, investment made or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security.
186(5) No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of **ALL** the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting, is obtained: Provided that prior approval of a public financial institution shall not be required where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans, guarantee or security proposed to be made or given does not exceed the limit as specified in sub-section (2), and there is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.
186(6) No company, which is registered under section 12 of the Securities and Exchange Board of India Act, 1992 and covered under such class or classes of companies as may be prescribed, shall take inter-corporate loan or deposits exceeding the prescribed limit and such company shall furnish in its financial statement the details of the loan or deposits.
186(7) No loan shall be given under this section at a rate of interest lower than the prevailing yield of one year, three year, five year or ten year Government Security closest to the tenor of the loan.]
186(8) No company which is in default in the repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall give any loan or give any guarantee or provide any security or make an acquisition till such default is subsisting.
186(9) Every company giving loan or giving a guarantee or providing security or making an acquisition under this section shall keep a register which shall contain such particulars and shall be maintained in such manner as may be prescribed.
186(10) The register referred to in sub-section (9) shall be kept at the registered office of the company and — (a) shall be open to inspection at such office; and (b) extracts may be taken there from by any member, and copies thereof may be furnished to any member of the company on payment of such fees as may be prescribed.

186(11) Nothing contained in this section, except sub-section (1), shall apply—

(a) to a loan made, guarantee given or security provided by a banking company or an insurance company or a housing finance company in the ordinary course of its business or a company engaged in the business of financing of companies or of providing infrastructural facilities;

(b) to any acquisition—
(i) made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:

Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;

(ii) made by a company whose principal business is the acquisition of securities;

(iii) of shares allotted in pursuance of clause (a) of sub-section (1) of section 62.

(iv) made by a banking company or an insurance company or a housing finance company, making acquisition of securities in the ordinary course of its business.

Substituted by the Companies (Amendment) Act,2017- Not yet notified by CG but was covered in RTP May ,2019 hence assumed to be applicable for Nov., 2019 Exams too.(however check RTP Nov.,2019 also)

(11) Nothing contained in this section, except sub-section (1), shall apply—

(a) to any loan made, any guarantee given or any security provided or any investment made by a banking company, or an insurance company, or a housing finance company in the ordinary course of its business, or a company established with the object of and engaged in the business of financing industrial enterprises, or of providing infrastructural facilities;

(b) to any investment—

(i) made by an investment company;

(ii) made in shares allotted in pursuance of clause (a) of sub-section (1) of section 62 or in shares allotted in pursuance of rights issues made by a body corporate;

(iii) made, in respect of investment or lending activities, by a non-banking financial company registered under Chapter III-B of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities.

(12) The CG may make rules for the purposes of this section.

(13) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Explanation.—For the purposes of this section,—

(a) the expression “investment company” means a company whose principal business is the acquisition of shares, debentures or other securities 13 and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent. of its total assets, or if its income derived from investment business constitutes not less than fifty per cent. as a proportion of its gross income.

(b) the expression “infrastructure facilities” means the facilities specified in Schedule VI.

Sec 187 Investments of Company to be Held in its Own Name

187. (1) All investments made or held by a company in any property, security or other asset shall be made and held by it in its own name:

Provided that the company may hold any shares in its subsidiary company in the name of any nominee or nominees of the company, if it is necessary to do so, to ensure that the number of members of the subsidiary company is not reduced below the statutory limit.

(2) Nothing in this section shall be deemed to prevent a company—
(a) from depositing with a bank, being the bankers of the company, any shares or securities for the collection of any dividend or interest payable thereon; or

(b) from depositing with, or transferring to, or holding in the name of, the State Bank of India or a scheduled bank, being the bankers of the company, shares or securities, in order to facilitate the transfer thereof:

Provided that if within a period of six months from the date on which the shares or securities are transferred by the company to, or are first held by the company in the name of, the State Bank of India or a scheduled bank as aforesaid, no transfer of such shares or securities takes place, the company shall, as soon as practicable after the expiry of that period, have the shares or securities re-transferred to it from the State Bank of India or the scheduled bank or, as the case may be, again hold the shares or securities in its own name; or

(c) from depositing with, or transferring to, any person any shares or securities, by way of security for the repayment of any loan advanced to the company or the performance of any obligation undertaken by it;
(d) from holding investments in the name of a depository when such investments are in the form of securities held by the company as a beneficial owner.

(3) Where in pursuance of clause (d) of sub-section (2), any shares or securities in which investments have been made by a company are not held by it in its own name, the company **shall maintain a register** which shall contain such particulars as may be prescribed and such register shall be open to inspection by any member or debenture-holder of the company without any charge during business hours subject to such reasonable restrictions as the company may by its articles or in general meeting impose.

(4) If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Related Company Rule Extract:
The register shall be:
- maintained at the registered office
- preserved permanently and shall be kept in the custody of the CS of the company
- if there is no CS, shall be kept in the custody of any director or any other officer authorised by the Board for the purpose.
- entries in the register shall be authenticated by the CS of the company or by any other person authorised by the Board

Sec 188 Related Party Transactions

<table>
<tr>
<td rowspan="4">*<u>Exception:</u> Second proviso to Section 188(1) shall not apply to Private co, Specified IFSC Public Co.</td>
<td>188. (1) Except with the consent of the BOD given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—
(a) sale, purchase or supply of any goods or materials;
(b) selling or otherwise disposing of, or buying, property of any kind;
(c) leasing of property of any kind;
(d) availing or rendering of any services;
(e) appointment of any agent for purchase or sale of goods, materials, services or property;
(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
(g) underwriting the subscription of any securities or derivatives thereof, of the company:

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a resolution:

Provided further 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:

Provided also that nothing contained in the second proviso shall apply to a company in which ninety per cent. or more members, in number, are relatives of promoters or are related parties:

Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm’s length basis.

Provided also that the requirement of passing the resolution under first proviso shall not be applicable for transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval:

Explanation.— In this sub-section,—
(a) the expression “office or place of profit” means any office or place—
(i) where such office or place is held by a director, if the director holding it receives from the company anything by way of remuneration over and above the remuneration to which he is entitled as director, by way of salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
(ii) where such office or place is held by an individual other than a director or by any firm, private company or other body corporate, if the individual, firm,
private company or body corporate holding it receives from the company anything by way of remuneration, salary, fee, commission, perquisites, any rent-free accommodation, or otherwise;
(b) the expression “arm’s length transaction” means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.</td>
</tr>
<tr>
<td>(2) Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board’s report to the shareholders along with the justification for entering into such contract or arrangement.</td>
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<tr>
<td>(3) Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a resolution in the GM under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders 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 Board or, as the case may be, of the shareholders and 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.</td>
</tr>
<tr>
<td>(4) Without prejudice to anything contained in sub-section (3), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.</td>
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</table>

	(5) Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section shall,— (i) in case of listed company, be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 25000 but which may extend Rs. 500000, or with both; and (ii) In case of any other company, be punishable with fine which of Rs. 25000 which may extend to Rs. 500000.
	***Exception** In case of **Government company** - First and second proviso to Section 188(1) shall not apply to :- (a) a Government company in respect of contracts or arrangements entered into by it with any other Government company; (b) a Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the CG which is administratively in charge of the company, or, as the case may be, the SG before entering into such contract or arrangement.

Sec 189 Register of Contracts or Arrangements in Which Directors are Interested

189. (1) Every company shall keep one or more registers giving separately the particulars of all contracts or arrangements to which sub-section (2) of section 184 or section 188 applies, in such manner and containing such particulars as may be prescribed and after entering the particulars, such register or registers shall be placed before the next meeting of the Board and signed by all the directors present at the meeting.
(2) Every director or key managerial personnel shall, within a period of 30 days of his appointment, or relinquishment of his office, as the case may be, disclose to the company the particulars specified in sub-section (1) of section 184 relating to his concern or interest in the other associations which are required to be included in the register under that sub-section or such other information relating to himself as may be prescribed.
(3) The register referred to in sub-section (1) shall be kept at the registered office of the company and it shall be open for inspection at such office during business hours and extracts may be taken therefrom, and copies thereof as may be required by any member of the company shall be furnished by the company to such extent, in such manner, and on payment of such fees as may be prescribed.
(4) The register to be kept under this section shall also be produced at the commencement of every AGM of the company and shall remain open and accessible during the continuance of the meeting to any person having the right to attend the meeting.
(5) Nothing contained in sub-section (1) shall apply to any contract or arrangement— (a) for the sale, purchase or supply of any goods, materials or services if the value of such goods and materials or the cost of such services does not exceed Rs. 500000 in the aggregate in any year; or (b) by a banking company for the collection of bills in the ordinary course of its business.
(6) Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of Rs. 25000.
Exception: In case of **Section 8 company** - Section 189 shall apply only if the **transaction** with reference to section 188 on the basis of terms and conditions of the contract or arrangement **exceeds one lakh rupees**.

Sec 190 Contract of Employment with Managing or Whole-Time Directors

190. (1) Every company shall keep at its registered office,— (a) where a contract of service with a managing or whole-time director is in writing, a copy of the contract; or (b) where such a contract is not in writing, a written memorandum setting out its terms.
(2) The copies of the contract or the memorandum kept under sub-section (1) shall be open to inspection by any member of the company without payment of fee.
(3) If any default is made in complying with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of Rs. 25000 and every officer of the company who is in default shall be liable to a penalty of Rs. 5000 for each default.
(4) The provisions of this section **shall not apply to a private company.**

Sec 191 Payment to Director for Loss of Office, etc., in Connection with Transfer of Undertaking, Property or Shares

191. (1) **No director** of a company **shall**, in connection with— (a) the transfer of the whole or any part of any undertaking or property of the company; or (b) the transfer to any person of all or any of the shares in a company being a transfer resulting from— (i) an offer made to the general body of shareholders; (ii) an offer made by or on behalf of some other body corporate with a view to a company becoming a subsidiary company of such body corporate or a subsidiary company of its holding company; (iii) an offer made by or on behalf of an individual with a view to his obtaining the right to exercise, or control the exercise of, not less than one-third of the total voting power at any general meeting of the company; or (iv) any other offer which is conditional on acceptance to a given extent, **receive** any payment by way of compensation for loss of office or as consideration for retirement from office, or in connection with such loss or retirement from such company or from the transferee of such undertaking or property, or from the transferees of shares or from any other person, not being such company, **unless** particulars as may be prescribed with respect to the payment proposed to be made by such transferee or person, including the amount thereof, have been disclosed to the members of the company and the proposal has been approved by the company in general meeting.
(2) Nothing in sub-section (1) shall affect any payment made by a company to a managing director or whole-time director or manager of the company by way of compensation for loss of office or as consideration for retirement from office or in connection with such loss or retirement subject to limits or priorities, as may be prescribed.
(3) If the payment under sub-section (1) or sub-section (2) is not approved for want of quorum either in a meeting or an adjourned meeting, the proposal shall not be deemed to have been approved.
(4) Where a director of a company receives payment of any amount in contravention of sub-section (1) or the proposed payment is made before it is approved in the meeting, the amount so received by the director shall be deemed to have been received by him in trust for the company.
(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.[Amendment]
(6) Nothing in this section shall be taken to prejudice the operation of any law requiring disclosure to be made with respect to any payment received under this section or such other like payments made to a director.

Sec 192 Restriction on Non-cash Transactions Involving Directors.

192. (1) No company shall enter into an arrangement by which— (a) a director of the company or its holding, subsidiary or associate company or a person connected with him acquires or is to acquire assets for consideration other than cash, from the company; or (b) the company acquires or is to acquire assets for consideration other than cash, from such director or person so connected, unless prior approval for such arrangement is accorded by a resolution of the company in general meeting and if the director or connected person is a director of its holding company, approval under this sub-section shall also be required to be obtained by passing a resolution in general meeting of the holding company.
(2) The notice for approval of the resolution by the company or holding company in general meeting under sub-section (1) shall include the particulars of the arrangement along with the value of the assets involved in such arrangement duly calculated by a registered valuer.
(3) Any arrangement entered into by a company or its holding company in contravention of the provisions of this section shall be voidable at the instance of the company unless— (a) the restitution of any money or other consideration which is the subjectmatter of the arrangement is no longer possible and the company has been indemnified by any other person for any loss or damage caused to it; or (b) any rights are acquired bona fide for value and without notice of the contravention of the provisions of this section by any other person.

Sec 193 Contract by One Person Company

193. (1) Where One Person Company limited by shares or by guarantee enters into a contract with the sole member of the company who is also the director of the company, the company shall, unless the contract is in writing, ensure that the terms of the contract or offer are contained in a memorandum or are recorded in the minutes of the first meeting of the BOD of the company held next after entering into contract: Provided that nothing in this sub-section shall apply to contracts entered into by the company in the ordinary course of its business.
(2) The company shall inform the Registrar about every contract entered into by the company and recorded in the minutes of the meeting of its BOD under sub-section (1) within a period of 15 days of the date of approval by the BOD.

Sec 194 and Sec 195 Omitted.

Companies (Meetings of Board and its Powers) Rules, 2014

Rule 3 Meetings of Board Through Video Conferencing or Other Audio Visual Means

A company shall comply with the following procedure, for convening and conducting the Board meetings through video conferencing or other audio visual means.

(1) Every Company shall make necessary arrangements to avoid failure of video or audio visual connection.

(2) The Chairperson of the meeting and the CS, if any, shall take due and reasonable care -
(a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures;
(b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
(c) to record proceedings and prepare the minutes of the meeting;
(d) to store for safekeeping and marking the tape recording(s) or other electronic recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year.
(e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
(f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting:

Provided that the persons, who are differently abled, may make request to the Board to allow a person to accompany him.

(3) (a) The notice of the meeting shall be sent to all the directors in accordance with the provisions of sub-section (3) of section 173 of the Act.
(b) The notice of the meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio visual means.
(c) A director intending to participate through video conferencing or audio visual means shall communicate his intention to the Chairperson or the CS of the company.
(d) If the director intends to participate through video conferencing or other audio visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.

(e) Any director who intends to participate in the meeting through electronic mode may intimate about such participation at the beginning of the calendar year and such declaration shall be valid for one year :

Provided that such declaration shall not debar him from participation in the meeting in person in which case he shall intimate the company sufficiently in advance of his intention to participate in person.

(f) In the absence of any intimation under clause (c), it shall be assumed that the director shall attend the meeting in person.

(4) At the commencement of the meeting, a roll call shall be taken by the Chairperson when every director participating through video conferencing or other audio visual means shall state, for the record, the following namely:-
(a) name;
(b) the location from where he is participating;
(c) that he has received the agenda and all the relevant material for the meeting; and
(d) that no one other than the concerned director is attending or having access to the proceedings of the meeting at the location mentioned in clause (b);

(5) (a) After the roll call, the Chairperson or the CS shall inform the Board about the names of persons other than the directors who are present for the said meeting at the request or with the permission of the Chairperson and confirm that the required quorum is complete.

Explanation.- A director participating in a meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under any provisions of the Act or the rules.

(b) The Chairperson shall ensure that the required quorum is present throughout the meeting.

(6) With respect to every meeting conducted through video conferencing or other audio visual means authorised under these rules, the scheduled venue of the meeting as set forth in the notice convening the meeting shall be deemed to be the place of the said meeting and all recordings of the proceedings at the meeting shall be deemed to be made at such place.

(7) The statutory registers which are required to be placed in the Board meeting as per the provisions of the Act shall be placed at the scheduled venue of the meeting and where such registers are required to be signed by the directors, the same shall be deemed to have been signed by the directors participating through electronic mode, if they have given their consent to this effect and it is so recorded in the minutes of the meeting.

(8) (a) Every participant shall identify himself for the record before speaking on any item of business on the agenda.

(b) If a statement of a director in the meeting through video conferencing or other audio visual means is interrupted or garbled, the Chairperson or CS shall request for a repeat or reiteration by the Director.

(9) If a motion is objected to and there is a need to put it to vote, the Chairperson shall call the roll and note the vote of each director who shall identify himself while casting his vote.

(10) From the commencement of the meeting and until the conclusion of such meeting, no person other than the Chairperson, Directors, CS and any other person whose presence is required by the Board shall be allowed access to the place where any director is attending the meeting either physically or through video conferencing without the permission of the Board.

(11) (a) At the end of discussion on each agenda item, the Chairperson of the meeting shall announce the summary of the decision taken on such item along with names of the directors, if any, who dissented from the decision taken by majority and the draft minutes so recorded shall be preserved by the company till the confirmation of the draft minutes in accordance with sub-rule (12).

(b) The minutes shall disclose the particulars of the directors who attended the meeting through video conferencing or other audio visual means.

(12) (a) The draft minutes of the meeting shall be circulated among all the directors within fifteen days of the meeting either in writing or in electronic mode as may be decided by the Board.

(b) Every director who attended the meeting, whether personally or through video conferencing or other audio visual means, shall confirm or give his comments in writing, about the accuracy of recording of the proceedings of that particular meeting in the draft minutes, within seven days or some reasonable time as decided by the Board, after receipt of the draft minutes failing which his approval shall be presumed.

(c) After completion of the meeting, the minutes shall be entered in the minute book as specified under section 118 of the Act and signed by the Chairperson.

Explanation.- For the purposes of this rule, "video conferencing or other audio visual means" means audio- visual electronic communication facility employed which enables all the persons participating in a meeting to communicate concurrently with each other without an intermediary and to participate effectively in the meeting.

Rule 4 Matters Not to be Dealt With in a Meeting Through Video Conferencing or Other Audio Visual Means [important]

The following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-

(i) the approval of the annual financial statements;
(ii) the approval of the Board's report;
(iii) the approval of the prospectus;
(iv) the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under section 134(1) of the Act; and
(v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

<u>Provided that where there is quorum presence in a meeting through physical presence of directors, any other director may participate conferencing through video or other audio visual means.</u>

6. Committees of the Board [important] -

The BOD of every **listed** public company and a company covered under **<u>Rule 4</u>** **of the Companies (Appointment and Qualification of Directors) Rules, 2014 (refer page 17 of notes) shall** constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board.

6A Omnibus Approval for Related Party Transactions on Annual Basis [important]

All related party transactions shall require approval of the Audit Committee and the Audit Committee **may** make omnibus approval for related party transactions proposed to be entered into by the company subject to the following conditions, namely

(1) The Audit Committee shall, after obtaining approval of the BOD, specify the criteria for making the omnibus approval which shall include the following, namely:-
(a) maximum value of the transactions, in aggregate, which can be allowed under the omnibus route in a year;
(b) the maximum value per transaction which can be allowed;
(c) extent and manner of disclosures to be made to the Audit Committee at the time of seeking omnibus approval;
(d) review, at such intervals as the Audit Committee may deem fit, related party transaction entered into by the company pursuant to each of the omnibus approval made;
(e) transactions which cannot be subject to the omnibus approval by the Audit Committee.

(2) The Audit Committee shall consider the following factors while specifying the criteria for making omnibus approval, namely: -
(a) repetitiveness of the transactions (in past or in future);
(b) justification for the need of omnibus approval.

(3) The Audit Committee shall satisfy itself on the need for omnibus approval for transactions of repetitive nature and that such approval is in the interest of the company.

(4) The omnibus approval shall contain or indicate the following: -
(a) name of the related parties;
(b) nature and duration of the transaction;
(c) maximum amount of transaction that can be entered into;
(d) the indicative base price or current contracted price and the formula for variation in the price, if any; and
(e) any other information relevant or important for the Audit Committee to take a decision on the proposed transaction:

Provided that where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may make omnibus approval for such transactions subject to their **value not exceeding rupees one crore per transaction**.

(5) Omnibus approval shall be **valid for a period not exceeding one financial year** and shall require fresh approval after the expiry of such financial year.

(6) Omnibus approval **shall not be made for transactions in respect of selling or disposing of the undertaking of the company.**

(7) Any other conditions as the Audit Committee may deem fit.

Rule 7 Establishment of Vigil Mechanism [important and read it with SEBI(LODR) also]

(1) Every **listed** company **and the companies belonging to the following** class or classes **shall establish a vigil mechanism for their directors and employees** to report their genuine concerns or grievances-

(a) the Companies which accept deposits from the public;

(b) the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

(2) The companies which are required to constitute an audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.

(3) In case of other companies, the BOD shall nominate a director to play the role of audit committee for the purpose of vigil mechanism to whom other directors and employees may report their concerns.

(4) The vigil mechanism shall provide for adequate safeguards against victimisation of employees and directors who avail of the vigil mechanism and also provide for direct access to the Chairperson of the Audit Committee or the director nominated to play the role of Audit Committee, as the case may be, in exceptional cases.

(5) In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.

Rule 8 Powers of Board.

In addition to the powers specified under sub-section (3) of section 179 of the Act, the following powers shall also be exercised by the BOD **only by means of resolutions passed at meetings** of the Board.-
(1) to make political contributions;
(2) to appoint or remove key managerial personnel (KMP);
(4) to appoint internal auditors and secretarial auditor. **[Sub-rule (3), (5) to (9) Omitted]**

Rule 11 Loan and investment by a company under section 186 of the Act.

(1) Where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription,

purchase or otherwise of, the securities of its wholly owned subsidiary company, the requirement of sub-section (3) of section 186 shall not apply:

Provided that the company shall disclose, the details of such loan(s) or guarantee or security or acquisition, in the financial statement as provided under sub-section (4) of section 186.

(2) For the purposes of clause (a) of sub-section (11) of section 186, the expression "business of financing of companies" shall include, with regard to a NBFC registered with RBI, "business of giving of any loan to a person or providing any guaranty or security for due repayment of any loan availed by any person in the ordinary course of its business".

(3) No company registered under section 12 of the SEBI Act, 1992 and also covered under such class or classes of companies which may be notified by the CG in consultation with the Securities and Exchange Board, shall take any inter-corporate loan or deposits, in excess of the limits specified under the regulations applicable to such company, pursuant to which it has obtained certificate of registration from the SEBI.

Rule 12 Register.

(1) Every company giving loan or giving guarantee or providing security or making an acquisition of securities shall, from the date of its incorporation, maintain a register in Form MBP 2 and enter therein separately, the particulars of loans and guarantees given, securities provided and acquisitions made as aforesaid.

(2) The entries in the register shall be made chronologically in respect of each such transaction within seven days of making such loan or giving guarantee or providing security or making acquisition.

(3) The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the CS of the company or any other person authorised by the Board for the purpose.

(4) The entries in the register (either manual or electronic) shall be authenticated by the CS of the company or by any other person authorised by the Board for the purpose.

(5) For the purpose of sub-rule (4), the register can be maintained either manually or in electronic mode.

(6) The extracts from the register maintained under sub-section (9) of section 186 may be furnished to any member of the company on payment of such fee as may be prescribed in the Articles of the company which shall not exceed ten rupees for each page.

Rule 13 SR (*Amended)

A resolution passed at a general meeting in terms of sub section (3) of section 186 to give any loan or guarantee or investment or providing any security or the acquistion under sub section (2) of section 186 shall specify the total amount up to which the BOD are authorised to give such loan or guarantee to provide such security or make such acquisition ;

Provided that the company shall disclose to the members in the financial statement the full particulars in accordance with the provisions of section 186(4).

Rule 15 Contract or Arrangement With a Related Party

A company shall enter into any contract or arrangement with a related party subject to the following conditions, namely:-

(1) The **agenda** of the Board meeting at which the resolution is proposed to be moved **shall disclose**-

(a) the name of the related party and nature of relationship;
(b) the nature, duration of the contract and particulars of the contract or arrangement;
(c) the material terms of the contract or arrangement including the value, if any;
(d) any advance paid or received for the contract or arrangement, if any;
(e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
(f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
(g) any other information relevant or important for the Board to take a decision on the proposed transaction.

(2) **Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement-**

(3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a resolution, a company shall not enter into a transaction or transactions, where the transaction or transactions to be entred into,-

(a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188, with criteria as mention below-
(i) sale, purchase or supply of any goods or material, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
(ii) selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten percent or more of net worth of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;
(iii) leasing of property any kind [4][amounting to ten percent or more] of the net worth of company or [3][ten per cent or more of turnover] of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of section 188;
(iv) availing or rendering of any services, directly or through appointment of agent, [3][amounting to ten percent or more] of the turnover of the company or rupees fifity crore, whichever is lower as mentioned in clause (d) and clause (e) respectively of sub-section (1) of section 188:

Explanation.- It is hereby clarified that the limits specified in sub-clause (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transactions during a financial year.

(b) is for appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and a half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188.

(c) is for remuneration for underwriting the subscription of any securities or derivatives thereof, of the company exceeding one percent of the net worth as as mentioned in clause (g) of sub-section (1) of section 188.

Explanation.-
(1) The turnover or net worth referred in the above sub-rules shall be computed on the basis of the audited financial statement of the preceding financial year.

<u>(2) In case of wholly owned subsidiary, the resolution is passed by the holding company shall be sufficient for the purpose of entering into the transaction between the wholly owned subsidiary and the holding company.</u>

(3) The explanatory statement to be annexed to the notice of a general meeting convened pursuant to section 101 shall contain the following particulars, namely:-
(a) name of the related party;
(b) name of the director or key managerial personnel who is related, if any;
(c) nature of relationship;
(d) nature, material terms, monetary value and particulars of the contract or arrangements;
(e) any other information relevant or important for the members to take a decision on the proposed resolution.

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CHAPTER XIII of Companies Act, 2013
(APPOINTMENT AND REMUNERATION OF MANAGERIAL PERSONNEL)
(Relevent Rules incorporated with sections)

Sec 196 Appointment of Managing Director (MD), Whole-time Director (WTD) or Manager

196. (1) No company shall appoint or employ at the same time a MD and a manager.

(2) No company shall appoint or re-appoint any person as its MD, WTD or manager for a **term exceeding five years at a time**:
Provided that no **re-appointment shall be made earlier than one year before the expiry of his term.**

(3) **No company shall appoint** or continue the employment of any person as MD, WTD or manager **who**
(a) is **below** the age of **21** years **or** has **attained** the age of **70** years:

Provided that **appointment of** a **person who** has attained the age of **70** years **may** be made by passing a **SR** in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person;

Provided further *that where no such SR is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion* ***and the CG is satisfied****, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of 70 years may be made.*

(b) is an **undischarged insolvent** or has at any time been adjudged as an insolvent;
(c) has at any time **suspended payment to his creditors** or makes, or has at any time made, a composition with them; or
(d) has at any time been **convicted by a court** of an offence **and sentenced** for a period of **more than six months**.

196(4) Subject to the provisions of section **197** and **Schedule V**, a MD, WTD or manager shall be appointed and the terms and conditions of such appointment and remuneration payable be **approved by the BOD** at a meeting **which shall be subject to approval by a resolution at the next general meeting** of the company and by the **CG** in case such appointment is at variance to the conditions specified in **Part I** of that Schedule

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, of a director or directors in such appointments, if any:

Provided further that a **return in the prescribed form** shall be filed within sixty days of such appointment with the Registrar.
Relevant Rule Extract: Prescribed form of return is **Form No. MR.1** to be submitted along with such specified fee.

Schedule V Part I
No person shall be eligible for appointment as a MD or WTD or a manager (hereinafter referred to as managerial person) of a company unless he satisfies the following conditions, namely:—
(a) he had not been sentenced to imprisonment for any period, or to a fine exceeding Rs 1000, for the conviction of an offence under any of the following Acts, namely:—
(i) the Indian Stamp Act,
(ii) the Central Excise Act,
(iii) the Industries (Development and Regulation) Act, 1951
(iv) the Prevention of Food Adulteration Act, 1954
(v) the Essential Commodities Act, 1955
(vi**) the Companies Act,2013 or any previous company law**
(vii) the Securities Contracts (Regulation) Act, 1956
(viii) the Wealth-tax Act, 1957
(ix) the **Income-tax Act**, 1961
(x) the Customs Act, 1962
(xi) the **Competition Act**, 2002
(xii) the **FEMA**, 1999
(xiii) the Sick Industrial Companies (Special Provisions) Act, 1985

(xiv) the Securities and Exchange Board of India Act, 1992
(xv) the Foreign Trade (Development and Regulation) Act, 1922
(xvi) the Prevention of Money-Laundering Act, 2002

(xvii) the Insolvency and Bankruptcy Code, 2016
(xviii) the Goods and Services Tax Act,2017
(xix) the Fugitive Economic Offenders Act, 2018

(b) he had not been detained for **any period** under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974

Provided that where the CG has given its approval to the appointment of a person convicted or detained under sub-paragraph (a) or sub-paragraph (b), as the case may be, no further approval of the CG shall be necessary for the subsequent appointment of that person if he had not been so convicted or detained subsequent to such approval.
(c) he has completed the age of twenty-one years and has not attained the age of seventy years:

Provided that where he has attained the age of seventy years; and where his appointment is approved by a SR passed by the company in general meeting, no further approval of the CG shall be necessary for such appointment;

(d) [Omitted]
(e) he is resident of India.
Explanation I.—For the purpose of this Schedule, resident in India includes a person who has been staying in India for a continuous period of not less than twelve months immediately preceding the date of his appointment as a managerial person and who has come to stay in India,—
(i) for taking up employment in India; or
(ii) for carrying on a business or vacation in India.
Explanation II.—This condition shall not apply to the companies in Special Economic Zones as notified by Department of Commerce from time to time:

Provided that a person, being a non-resident in India shall enter India only after obtaining a proper Employment Visa from the concerned Indian mission abroad. For this purpose, such person shall be required to furnish, along with the visa application form, profile of the company, the principal employer and terms and conditions of such person's appointment.

196(5) Subject to the provisions of this Act, **where** an **appointment** of a MD, WTD or manager is **not approved by** the **company at a general meeting**, any **act done by him before such approval shall not be deemed to be invalid**.

Exceptions:

- Sub-section (4) of Section 196 shall not apply to followings:
  (a) Private company
  (b) Govt. Co.
  (c) Specified IFSC Public Co.
- Sub-section (5) of Section 196 shall not apply to followings:
  (a) Private company
  (b) Govt. Co.
- Sub-section (2) of Section 196 shall not apply to Govt. Co.

Sec 197 Overall Maximum Managerial Remuneration and Managerial Remuneration in Case of Absence or Inadequacy of Profits

197 (1) The total managerial remuneration payable by a **public company**, to its directors, including MD and WTD, and its manager in respect of any financial year shall not exceed **11** per cent of the **net profits** of that company for that financial year computed in the manner laid down in section 198 except that the remuneration of the directors shall not be deducted from the gross profits:

Provided that the company in general meeting may, authorise the payment of remuneration exceeding 11 percent of the net profits of the company, subject to the provisions of Schedule V:

Provided further that, except with the approval of the company in general meeting by a SR,—

(i) the remuneration payable to **any one MD**; or **WTD** or manager shall not exceed **5 percent**. of the net profits of the company **and if there is more than one such director remuneration shall not exceed 10 per cent** of the net profits to all such directors and manager taken together;

(ii) the remuneration payable to directors who are neither managing directors nor whole-time directors shall not exceed,—

(A) **1 per cent** of the net profits of the company, if there is a MD or WTD or manager;

(B) **3 per cent** of the net profits in any other case.

Provided also that, where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.

(2) The **percentages** aforesaid **shall be exclusive of any fees payable** to directors under sub-section (5).

(3) **Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V**, if, in any financial year, a **company has no profits or its profits are inadequate**, the **company shall not pay** to its directors, including any MD or WTD or manager, **by way of remuneration any sum exclusive of any fees** payable to directors under sub-section (5) hereunder **except in accordance with the provisions of Schedule V**.

(4) The **remuneration payable** to the directors of a company, including any MD or WTD or manager, **shall be determined, in accordance** with and subject **to** the **provisions** of **this section**, **either by the articles** of the company, or **by a resolution or**, **if the articles so require, by a SR**, passed by the company in general meeting and the **remuneration payable** to a director determined aforesaid **shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity**:

Provided that any remuneration for services rendered by any such director in other capacity shall not be so included if—

(a) the services rendered are of a professional nature; **and**

(b) in the opinion of the Nomination and Remuneration Committee, if the company is covered under sub-section (1) of section 178, or the BOD in other cases, the director possesses the requisite qualification for the practice of the profession.

(5) A **director** may **receive remuneration by way of fee for attending meetings** of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board:

Provided that the amount of such **fees shall not exceed the amount as may be prescribed:**

Provided further that different fees for different classes of companies and fees in respect of independent director may be such as may be prescribed.

<u>Rule 4 Sitting Fees {of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014}:</u>

A company may pay a **sitting fee** to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the BOD thereof which **shall not exceed one lakh rupees per meeting** of the Board or committee thereof:

Provided that for Independent Directors and Women Directors, the sitting fee shall **not be less than the sitting fee payable to other directors**.

(6) A director or manager **may** be **paid** remuneration **either by way of a monthly payment or at a specified percentage of the net profits** of the company **or partly by one way and partly by the other.**

(7) *Omitted*

(8) The net profits for the purposes of this section shall be computed in the manner referred to in section 198.

(9) **If** any director **draws** or receives, directly or indirectly, **by way of remuneration any such sums in excess** of the limit prescribed by this section or without approval required under this section, **he shall refund** such sums to the company, **within two years or such lesser period as may be allowed by the company**, and until such sum is

refunded, hold it in trust for the company.
(10) The **company shall not waive the recovery of any sum refundable** to it under sub-section (9) **unless approved by the company by SR within two years** from the date the sum becomes refundable. **Provided** that **where** the **company** has **defaulted** in **payment** of **dues** to any **bank** or public financial institution or non-convertible debenture holders or any other secured creditor, the **prior approval** of the **bank** or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, **shall be obtained** by the company **before obtaining approval** of such waiver.
(11) In cases **where Schedule V is applicable on grounds of no profits or inadequate profits**, **any provision** relating to the remuneration of any director wh**ich purports to increase or has the effect of increasing the amount thereof**, whether the provision be contained in the company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, **shall not have any effect unless such increase is in accordance with the conditions specified in that Schedule**.
(12) Every **listed company** shall **disclose** in the **Board's report**, the **ratio** of the remuneration of **each director to the median employee's remuneration** and such other details as may be prescribed.
(13) Where any **insurance is taken by a company on behalf of its MD, WTD, manager, CEO, CFO or CS for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel**: **Provided** that **if such person is proved to be guilty**, the **premium** paid on such insurance **shall be treated as part of the remuneration**.
(14) Subject to the provisions of this section, any director who is in receipt of any commission from the company and who is a managing or whole-time director of the company shall not be disqualified from receiving any remuneration or commission from any holding company or subsidiary company of such company subject to its disclosure by the company in the Board's report.
(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.
(16) The auditor of the company shall, in his report under section 143, make a statement as to whether the remuneration paid by the company to its directors is in accordance with the provisions of this section, whether remuneration paid to any director is in excess of the limit laid down under this section and give such other details as may be prescribed
(17) On and from the commencement of the Companies (Amendment) Act, 2017, any application made to the CG under the provisions of this section as it stood before such commencement, which is pending with that Government shall abate, and the company shall, within one year of such commencement, obtain the approval in accordance with the provisions of this section, as so amended.
Exceptions: • Section 197 shall **not apply** to: **a) Govt. Co.** **b) Specified IFSC Public Company** • Some exceptions for nidhi co., not covered here.

Sec 198 Calculation of Profits (Summarised): In computing the net profits of a company in any financial year for the purpose of section 197: • **credit** shall be **given** for the bounties and subsidies received from any Government • **credit** shall **not be given** for the following sums: a) profits, by way of premium on shares or debentures of the company, unless the company is an investment company b) profits on sales by the company of forfeited shares c) profits of a capital nature d) profits from the sale of any immovable property or fixed assets of a capital nature, unless the business of the company consists, whether wholly or partly, of buying and selling any such property or assets Provided credit shall be given for so much of the excess as is not higher than the difference between the original cost of that fixed asset and its WDV. e) any change in carrying amount of an asset or of a liability recognized *f) any amount representing unrealised gains, notional gains or revaluation of assets*

Sec 199 Recovery of Remuneration in Certain Cases

199. Without prejudice to any liability incurred under the provisions of this Act or any other law for the time being in force, where a company is required to re-state its financial statements due to fraud or non-compliance with any requirement under this Act and the rules made thereunder, the company shall recover from any past or present MD or WTD or manager or CEO (by whatever name called) who, during the period for which the financial statements are required to be re-stated, received the remuneration (including stock option) in excess of what would have been payable to him as per restatement of financial statements.

Sec 200 ~~CG or~~ Company to Fix Limit with Regard to Remuneration

200. Notwithstanding anything contained in this Chapter, *a company may*, while according its approval under section 196, to any appointment or to any remuneration under section 197 in respect of cases where the company has inadequate or no profits, fix the remuneration within the limits specified in this Act, at such amount or percentage of profits of the company, as it may deem fit and while fixing the remuneration, **the company shall have regard to**—
(a) the financial position of the company;
(b) the remuneration or commission drawn by the individual concerned in any other capacity;
(c) the remuneration or commission drawn by him from any other company;
(d) professional qualifications and experience of the individual concerned;
(e) such other matters as may be **prescribed**.

Rule 6 Parameters for consideration of remuneration

The company **shall have regard to the following matters**, namely:-
(1) the Financial and operating performance of the company during the three preceding FYs.
(2) the relationship between remuneration and performance.
(3) the principle of proportionality of remuneration within the company, ideally by a rating methodology which compares the remuneration of directors to that of other directors on the board who receives remuneration and employees or executives of the company.
(4) whether remuneration policy for directors differs from remuneration policy for other employees and if so, an explanation for the difference.
(5) the securities held by the director, including options and details of the shares pledged as at the end of the preceding FY.

Sec 201 Forms of, and Procedure in Relation to, Certain Applications

201. (1) Every application made to the CG under Section 196 shall be in such form as may be prescribed.

Rule 7 Fees

(1) Every application made to the CG under the provisions of Chapter XIII shall be made in Form No. **MR.2** and shall be accompanied by fee as may be specified for the purpose.
(2) Omitted
(3) Every such **application seeking approval shall be made** to the CG within a period of **90 days** from the date of such appointment

(2) (a) Before any application is made by a company to the CG under Section 196, there shall be issued by or on behalf of the company a general notice to the members thereof, indicating the nature of the application proposed to be made.
(b) Such notice shall be published at least once in a newspaper in the principal language of the district in which the registered office of the company is situate and circulating in that district, and at least once in English in an English newspaper circulating in that district.
(c) The copies of the notices, together with a certificate by the company as to the due publication thereof, shall be attached to the application

Sec 202 Compensation for Loss of Office of Managing or Whole-time Director or Manager

202. (1) A company may make payment to a MD or WTD or manager, but **not to any other director**, by way of compensation for loss of office, or as consideration for retirement from office or in connection with such loss or retirement.
(2) **No payment shall be made under sub-section (1) in the following cases**, namely:— (a) where the director resigns from his office as a result of the reconstruction of the company, or of its amalgamation with any other body corporate or bodies corporate, and is appointed as the managing or whole-time director, manager or other officer of the reconstructed company or of the body corporate resulting from the amalgamation; (b) where the director resigns from his office otherwise than on the reconstruction of the company or its amalgamation as aforesaid; (c) where the office of the director is vacated under sub-section (1) of section 167; (d) where the company is being wound up, whether by an order of the Tribunal or voluntarily, provided the winding up was due to the negligence or default of the director; (e) where the director has been guilty of fraud or breach of trust in relation to, or of gross negligence in or gross mismanagement of, the conduct of the affairs of the company or any subsidiary company or holding company thereof; and (f) where the director has instigated, or has taken part directly or indirectly in bringing about, the termination of his office.
(3) Any payment made to a MD or WTD or manager in pursuance of sub-section (1) **shall not exceed the remuneration which he would have earned if he had been in office for the remainder of his term or for three years**, whichever is shorter, calculated on the basis of the average remuneration actually earned by him during a period of three years immediately preceding the date on which he ceased to hold office, or where he held the office for a lesser period than three years, during such period: Provided that no such payment shall be made to the director in the event of the commencement of the winding up of the company, whether before or at any time within twelve months after, the date on which he ceased to hold office, if the assets of the company on the winding up, after deducting the expenses thereof, are not sufficient to repay to the shareholders the share capital, including the premiums, if any, contributed by them.
(4) **Nothing** in this section **shall be deemed to prohibit** the payment to a MD or WTD, or manager, of **any remuneration for services rendered by him to the company in any other capacity.**

.Sec 203 Appointment of Key Managerial Personnel(KMP)

203. (1) Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel,— (i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) CS; and (iii) Chief Financial Officer : Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless,— (a) the articles of such a company provide otherwise; or (b) the company does not carry multiple businesses: Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the CG. **<u>Rule 8 Appointment of Key Managerial Personnel.-</u>** Every **listed company and every other public** company having **a paid-up share capital of ten crore rupees** or more shall have whole-time key managerial personnel. **<u>Rule 8A Appointment of CS in Companies Not Covered Under Rule 8</u>** A company (including Private Co.) other than a company covered under rule 8 which has a **paid up share capital of five crore rupees or more** shall have a whole-time CS.

203(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.
203(3) A **whole-time key managerial personnel shall not hold office in more than one company** except in its subsidiary company at the same time: **Provided** that **nothing** contained in this sub-section **shall disentitle a key managerial personnel from being a director of any company with the permission of the Board**: Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel: Provided also that a **company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting**, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.
203(4) If the office of any whole-time key managerial personnel is vacated, the resulting **vacancy** shall be **filled-up by** the **Board** at a **meeting** of the Board **within** a period of **six months** from the date of such vacancy.
203(4A) The provisions of sub-sections (1), (2), (3) and (4) of this section shall not apply to a managing director or CEO or manager and in their absence, a WTD of the **Government Company**.
203(5) *If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and KMP of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.*

Sec 204 Secretarial Audit for Bigger Companies **204.** (1) Every listed company and a company belonging to **other class of companies as may be prescribed** shall annex with its Board's report made in terms of sub-section (3) of section 134, **a secretarial audit report**, given by a **CS in practice**, in such form as may be prescribed (**Form MR3** prescribed). **Rule 9 Secretarial Audit Report.** (1) For the purposes of section 204(1), the **other class of companies shall be** as under- (a) Every **public** company having a **paid-up** share capital of **50 crore** rupees or more; or (b) Every **public** company having a **turnover** of **250** crore rupees or more.
204(2) It shall be the duty of the company to give all assistance and facilities to the CS in practice, for auditing the secretarial and related records of the company.
204(3) The BOD, in their report made in terms of sub-section (3) of section 134, shall explain in full any qualification or observation or other remarks made by the CS in practice in his report under sub-section (1).
204(4) If a company or any officer of the company or the CS in practice, contravenes the provisions of this section, the company, every officer of the company or the CS in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

Sec 205 Functions of CS

205. (1) The **functions** of the CS shall include,—
(a) to report to the Board about compliance with the provisions of this Act, the rules made thereunder and other laws applicable to the company;
(b) to ensure that the company complies with the applicable secretarial standards;
(c) **to discharge such other duties** as may be prescribed.
Explanation.—For the purpose of this section, the expression "secretarial standards" means secretarial standards issued by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 and approved by the CG.

Rule 10 Duties of CS.-

The duties of CS shall also discharge, the following duties, namely:-
(1) to provide to the directors of the company, collectively and individually, such guidance as they may require, with regard to their duties, responsibilities and powers;
(2) to facilitate the convening of meetings and attend Board, committee and general meetings and maintain the minutes of these meetings;
(3) to obtain approvals from the Board, general meeting, the government and such other authorities as required under the provisions of the Act;
(4) to represent before various regulators, and other authorities under the Act in connection with discharge of various duties under the Act;
(5) to assist the Board in the conduct of the affairs of the company;
(6) to assist and advise the Board in ensuring good corporate governance and in complying with the corporate governance requirements and best practices; and
(7) to discharge such other duties as have been specified under the Act or rules; and
(8) such other duties as may be assigned by the Board from time to time.

Sec 205(2) The provisions contained in section 204 and section 205 shall not affect the duties and functions of the BOD, chairperson of the company, managing director or whole-time director under this Act, or any other law for the time being in force

Schedule V Part II Remuneration (to be read with Sec 196 and Sec 197)
Section I.— Remuneration payable by companies having profits: Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons not exceeding the limits specified in such section.
Section II Where in any financial year during the currency of tenure of a managerial person, a company has no profits or its profits are inadequate, it may pay remuneration to the managerial person not exceeding, the limits under (A) and (B) given below:
(A)

(1)	(2)
Where the **effective capital** is	Limit of yearly **remuneration** payable shall not exceed (Rupees)
(i) Negative or less than 5 crores	60 Lakhs
(ii) 5 crores and above but less than 100 crores	84 Lakhs
(iii) 100 crores and above but less than 250 crores	120 Lakhs
(iv) 250 crores and above	120 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crores:

Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a SR.
Explanation.- It is hereby clarified that for a period less than one year, the limits shall be **pro-rated.**

Schedule V Part II Section II Continues
(B) In case of a managerial person who is functioning in a professional capacity, remuneration as per item (A) may be paid, if such managerial person is not having any interest in the capital of the company or its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures and not having any, direct or indirect interest or related to the directors or promoters of the company or its holding company or any of its subsidiaries at any time during the last two years before or on or after the date of appointment and possesses graduate level qualification with expertise and specialised knowledge in the field in which the company operates:

Provided that any employee of a company holding shares of the company not exceeding 0.5% of its paid up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan or by way of qualification shall be deemed to be a person not having any interest in the capital of the company;

Provided further that the limits specified under items (A) and (B) of this section shall apply, if-
(i) payment of remuneration is approved by a resolution passed by the Board and, in the case of a company covered under sub-section (1) of suction 178 also by the Nomination and Remuneration Committee;
(ii) the company has not committed any default in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, and in case of default, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.
(iii) an OR or a SR, as the case may be, has been passed for payment of remuneration as per item (A) or a SR has been passed for payment of remuneration as per item (B), at the general meeting of the company for a period not exceeding three years.
(iv) Disclosure Requirement (Not Covered here)

Section III- <u>Remuneration payable by companies having no profit or inadequate profit in **certain special circumstances**:</u>
In the following circumstances a company may, pay remuneration to a managerial person in excess of the amounts provided in Section II above:—
(a) where the remuneration in excess of the limits specified in Section I or II is paid by any other company and that other company is either **a foreign company or has got the approval of its shareholders in general meeting** to make such payment, and treats this amount as managerial remuneration for the purpose of section 197 and the total managerial remuneration payable by such other company to its managerial persons including such amount or amounts is within permissible limits under section 197.

(*b*) where the company—
(*i*) is a **newly incorporated company**, for a period of **seven years** from the date of its incorporation, or
(*ii*) is a **sick company**, for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction for a period **of five years** from the date of sanction of scheme of revival, or
(*iii*) is a **company** in **relation** to **which a resolution plan has been approved** by the NCLT under IBC, 2016 for a period of **five years** from the date of such approval, it may pay any remuneration to its managerial persons.

(c) where remuneration of a managerial person exceeds the limits in Section II but the remuneration has been fixed by the Board for Industrial and Financial Reconstruction or the NCLT:
Provided that the limits under this Section shall be applicable subject to meeting all the conditions specified under Section II and the following additional conditions:—
(i) except as provided in para (a) of this Section, the managerial person is not receiving remuneration from any other company;
(ii) the auditor or CS of the company or where the company has not appointed a Secretary, a Secretary in whole-time practice, certifies that all secured creditors and term lenders have stated in writing that they have no objection for the appointment of the managerial person as well as the quantum of remuneration and such certificate is filed along with the return as prescribed under sub-section (4) of section 196.
(iii) the auditor or CS or where the company has not appointed a secretary, a secretary in whole-time practice certifies that there is no default on payments to any creditors, and all dues to deposit holders are being settled on time.

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CHAPTER XIV of Companies Act, 2013
(INSPECTION, INQUIRY AND INVESTIGATION)

Sec 206 Power to Call for Information, Inspect Books and Conduct Inquiries

206. (1) Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company— (a) to furnish in writing such information or explanation; or (b) to produce such documents, within such reasonable time, as may be specified in the notice.
(2) On the receipt of a notice under sub-section (1), it shall be the duty of the company and of its officers concerned to furnish such information or explanation to the best of their knowledge and power and to produce the documents to the Registrar within the time specified or extended by the Registrar: Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the company for such period, if so called upon by the Registrar through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.
(3) If no information or explanation is furnished to the Registrar within the time specified under sub-section (1) or if the Registrar on an examination of the documents furnished is of the opinion that the information or explanation furnished is inadequate or if the Registrar is satisfied on a scrutiny of the documents furnished that an unsatisfactory state of affairs exists in the company and does not disclose a full and fair statement of the information required, **he may**, by another written notice, call on the company to produce for his **inspection** such further books of account, books, papers and explanations as he may require at such place and at such time as he may specify in the notice: Provided that before any notice is served under this sub-section, the Registrar shall record his reasons in writing for issuing such notice.
(4) If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such **inquiry** as he deems fit after providing the company a reasonable opportunity of being heard: Provided that the CG may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section: Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.
(5) Without prejudice to the foregoing provisions of this section, the CG may, if it is satisfied that the circumstances so warrant, direct **inspection** of books and papers of a company by an inspector appointed by it for the purpose. - (Power of CG delegated to Regional Directors)
(6) The CG may, having regard to the circumstances by general or special order, authorise any statutory authority to carry out the **inspection** of books of account of a company or class of companies.
(7) If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.

Sec 207 Conduct of Inspection and Inquiry
207. (1) Where a Registrar or inspector calls for the books of account and other books and papers under section 206, it shall be the duty of every director, officer or other employee of the company to produce all such documents to the Registrar or inspector and furnish him with such statements, information or explanations in such form as the Registrar or inspector may require and shall render all assistance to the Registrar or inspector in connection with such inspection.
(2) The Registrar or inspector, making an inspection or inquiry under section 206 may, during the course of such inspection or inquiry, as the case may be,— (a) make or cause to be made copies of books of account and other books and papers; or (b) place or cause to be placed any marks of identification in such books in token of the inspection having been made.
(3) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:— (a) the discovery and production of books of account and other documents, at such place and time as may be specified by such Registrar or inspector making the inspection or inquiry; (b) summoning and enforcing the attendance of persons and examining them on oath; and (c) inspection of any books, registers and other documents of the company at any place.
(4) (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. (ii) If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

Sec 208 Report on Inspection Made
208. The Registrar or inspector shall, after the inspection of the books of account or an inquiry under section 206 and other books and papers of the company under section 207, submit a report in writing to the CG along with such documents, if any, and such report may, if necessary, include a recommendation that further investigation into the affairs of the company is necessary giving his reasons in support.

Sec 209 Search and Seizure
209. (1) Where, upon information in his possession or otherwise, the Registrar or inspector has reasonable ground to believe that the books and papers of a company, or relating to the key managerial personnel or any director or auditor or CS in practice if the company has not appointed a CS, are likely to be destroyed, mutilated, altered, falsified or secreted, he may, after obtaining an order from the Special Court for the seizure of such books and papers,— (a) enter, with such assistance as may be required, and search, the place or places where such books or papers are kept; and (b) seize such books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books or papers at its cost.
(2) The Registrar or inspector shall return the books and papers seized under subsection (1), as soon as may be, and in any case not later than one hundred and eightieth day after such seizure, to the company from whose custody or power such books or papers were seized: Provided that the books and papers may be called for by the Registrar or inspector for a further period of one hundred and eighty days by an order in writing if they are needed again: Provided further that the Registrar or inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such other manner as he considers necessary.
(3) The provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures shall apply, mutatis mutandis, to every search and seizure made under this section.

Sec 210 Investigation into Affairs of Company

210. (1) Where the CG is of the opinion, that it is necessary to investigate into the affairs of a company,—
(a) on the receipt of a report of the Registrar or inspector under section 208;
(b) on intimation of a SR passed by a company that the affairs of the company ought to be investigated; or
(c) in public interest, it may order an investigation into the affairs of the company.

(2) Where an order is passed by a court or the Tribunal in any proceedings before it that the affairs of a company ought to be investigated, the CG shall order an investigation into the affairs of that company.

(3) For the purposes of this section, the CG may appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the CG may direct.

Rule 5 Security [Read with section 214 also]

(1) The CG may before appointing an inspector under sub-section (3) of section 210, require the applicant to give a security **not exceeding twenty-five thousand rupees** for payment of the costs and expenses of investigation as per the criteria given below-

Sr No.	Turnover as per previous year balance sheet (Rs.)	Amount of security (Rs.)
1	Turnover upto Rs. 50 crore	Rs. 10000
2	Turnover more than Rs. 50 crore and upto 200 crore	Rs. 15000
3	Turnover more than Rs. 200 crore	Rs. 25000

(2) The security shall be refunded to the applicant if the investigation results in prosecution.

Sec 211 Establishment of Serious Fraud Investigation Office (SFIO)

211. (1) The CG shall, by notification, establish an office to be called the SFIO to investigate frauds relating to a company.

(2) The SFIO shall be headed by a Director and consist of such number of experts from the following fields to be appointed by the CG from amongst persons of ability, integrity and experience in,—
(i) banking;
(ii) corporate affairs;
(iii) taxation;
(iv) forensic audit;
(v) capital market;
(vi) information technology;
(vii) law; or
(viii) such other fields as may be prescribed.

(3) The CG shall, by notification, appoint a Director in the SFIO, who shall be an officer not below the rank of a Joint Secretary to the Government of India having knowledge and experience in dealing with matters relating to corporate affairs.

(4) The CG may appoint such experts and other officers and employees in the SFIO as it considers necessary for the efficient discharge of its functions under this Act.

(5) The terms and conditions of service of Director, experts, and other officers and employees of the SFIO shall be such as may be prescribed.

Sec 212 Investigation into Affairs of Company by SFIO
212. (1) Without prejudice to the provisions of section 210, where the CG is of the opinion, that it is necessary to investigate into the affairs of a company by the SFIO— (a) on receipt of a report of the Registrar or inspector under section 208; (b) on intimation of a SR passed by a company that its affairs are required to be investigated; (c) in the public interest; or (d) on request from any Department of the CG or a SG, the CG may, by order, assign the investigation into the affairs of the said company to the SFIO and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.
(2) Where any case has been assigned by the CG to the SFIO for investigation under this Act, no other investigating agency of CG or any SG shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to SFIO.
(3) Where the investigation into the affairs of a company has been assigned by the CG to SFIO, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the CG within such period as may be specified in the order.
212(4) The Director, SFIO shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section 217.
212(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.
212(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, offence covered under section 447 of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless— (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs: Provided further that the Special Court shall not take cognizance of any offence referred to this sub-section except upon a complaint in writing made by— (i)the Director, SFIO; or (ii) any officer of the CG authorised, by a general or special order in writing in this behalf by that Government.
(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 or any other law for the time being in force on granting of bail.
(8) If the Director, Additional Director or Assistant Director of SFIO authorised in this behalf by the CG by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.
(9)The Director, Additional Director or Assistant Director of SFIO shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the SFIO in a sealed envelope, in such manner as may be prescribed and the SFIO shall keep such order and material for such period as may be prescribed [Prescribed period is 5 Yrs]. *[**Rules Extract**: **1**. If Arrest by Add. Director/ Ass. Director then prior permission of Director Required.* ***2.** In the case **arrest in connection with Govt. Co. and Foreign Co**.,prior permission of CG is required, also inform MD/Person in charge(PIC), or Secretary of Concerned Admn. Authority if person arrested is MD/PIC]*
(10) Every person arrested under sub-section (8) shall within 24 hours, be taken to a Judical Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of 24 hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.

(11) The CG if so directs, the SFIO shall submit an interim report to the CG.
(12) On completion of the investigation, the SFIO shall submit the investigation report to the CG.
(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.
(14) On receipt of the investigation report, the CG may, after examination of the report (and after taking such legal advice, as it may think fit), direct the SFIO to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.
(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973.
(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by SFIO under the Companies Act, 1956 shall continue to be proceeded with under that Act as if this Act had not been passed.
(17) (a) In case SFIO has been investigating any offence under this Act, any other investigating agency, SG, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the SFIO; (b) The SFIO shall share any information or documents available with it, with any investigating agency, SG, police authority or income tax authorities, which may be relevant or useful for such investigating agency, SG, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.
<u>Note</u>: Companies (Arrests in connection with Investigation by SFIO) Rules, 2017, incorporated with section.

Sec 213 Investigation into Company's Affairs in Other Cases

213. The Tribunal **may**,—

(a) on an application made by—

(i) not less than **100 members** or members holding not less than **1/10th** of the total voting power, in the case of a company having a share capital; or

(ii) not less than **one-fifth** of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose;

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company,

order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the CG and where such an order is passed, the CG shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the CG may direct:

Provided that if after investigation it is proved that—

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

Sec 214 Security for Payment of Costs and Expenses of Investigation

214. Where an investigation is ordered by the CG in pursuance of clause (b) of sub-section (1) of section 210, or in pursuance of an order made by the Tribunal under section 213, the CG may before appointing an inspector under subsection (3) of section 210 or clause (b) of section 213, require the applicant to give such **security not exceeding twenty-five thousand rupees** as may be prescribed ~~[see rule 5 given with sec 210]~~, as it may think fit, for payment of the costs and expenses of the investigation and such security shall be refunded to the applicant if the investigation results in prosecution.

Sec 215 Firm, Body Corporate or Association Not to be Appointed as Inspector

215. No firm, body corporate or other association shall be appointed as an inspector.

Sec 216 Investigation of Ownership of Company

216. (1) Where it appears to the CG that there is a reason so to do, it may appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons—
(a) who are or have been financially interested in the success or failure, whether real or apparent, of the company; or
(b) who are or have been able to control or to materially influence the policy of the company; or
(c) <u>*who have or had beneficial interest in shares of a company or who are or have been beneficial owners or significant beneficial owner of a company.*</u>

(2) Without prejudice to its powers under sub-section (1), the CG shall appoint one or more inspectors under that sub-section, if the Tribunal, in the course of any proceeding before it, directs by an order that the affairs of the company ought to be investigated as regards the membership of the company and other matters relating to the company, for the purposes specified in sub-section (1).

(3) While appointing an inspector under sub-section (1), the CG may define the scope of the investigation, whether as respects the matters or the period to which it is to extend or otherwise, and in particular, may limit the investigation to matters connected with particular shares or debentures.

(4) Subject to the terms of appointment of an inspector, his powers shall extend to the investigation of any circumstances suggesting the existence of any arrangement or understanding which, though not legally binding, is or was observed or is likely to be observed in practice and which is relevant for the purposes of his investigation.

Sec 217 Procedure, Powers, etc., of Inspectors

217. (1) It shall be the duty of all officers and other employees and agents including the former officers, employees and agents of a company which is under investigation in accordance with the provisions contained in this Chapter, and where the affairs of any other body corporate or a person are investigated u/s 219, of all officers and other employees and agents including former officers, employees and agents of such body corporate or a person—
(a) to preserve and to produce to an inspector or any person authorised by him in this behalf all books and papers of, or relating to, the company or, as the case may be, relating to the other body corporate or the person, which are in their custody or power; and
(b) otherwise to give to the inspector all assistance in connection with the investigation which they are reasonably able to give.

217(2)The inspector may require any body corporate, other than a body corporate referred to in sub-section (1), to furnish such information to, or produce such books and papers before him or any person authorised by him in this behalf as he may consider necessary, if the furnishing of such information or the production of such books and papers is relevant or necessary for the purposes of his investigation.

217(3) The inspector shall not keep in his custody any books and papers produced under sub-section (1) or sub-section (2)for more than one hundred and eighty days and return the same to the company, body corporate, firm or individual by whom or on whose behalf the books and papers were produced:

Provided that the books and papers may be called for by the inspector if they are needed again for a further period of one hundred and eighty days by an order in writing.

217(4) An inspector may examine on oath—

(a) any of the persons referred to in sub-section (1); and

(b) with the prior approval of the CG, any other person,

in relation to the affairs of the company, or other body corporate or person, as the case may be, and for that purpose may require any of those persons to appear before him personally:

Provided that in case of an investigation under section 212, the prior approval of Director, Serious Fraud Investigation Office shall be sufficient under clause (b).

217(5) Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the inspector, being an officer of the CG, making an investigation under this Chapter shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters, namely:—

(a) the discovery and production of books of account and other documents, at such place and time as may be specified by such person;

(b)summoning and enforcing the attendance of persons and examining them on oath; and

(c) inspection of any books, registers and other documents of the company at any place.

217(6) (i) If any director or officer of the company disobeys the direction issued by the Registrar or the inspector under this section, the director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

(ii)If a director or an officer of the company has been convicted of an offence under this section, the director or the officer shall, on and from the date on which he is so convicted, be deemed to have vacated his office as such and on such vacation of office, shall be disqualified from holding an office in any company.

217(7)The notes of any examination under sub-section (4)shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

217(8) If any person fails without reasonable cause or refuses—

(a) to produce to an inspector or any person authorised by him in this behalf any book or paper which is his duty under sub-section (1) or sub-section (2) to produce;

(b) to furnish any information which is his duty under sub-section (2)to furnish;

(c) to appear before the inspector personally when required to do so under subsection (4) or to answer any question which is put to him by the inspector in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to six months and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.

217(9) The officers of the CG, SG, police or statutory authority shall provide assistance to the inspector for the purpose of inspection, inquiry or investigation, which the inspector may, with the prior approval of the CG, require.

217(10) The CG may enter into an agreement with the Government of a foreign State for reciprocal arrangements to assist in any inspection, inquiry or investigation under this Act or under the corresponding law in force in that State and may, by notification, render the application of this Chapter in relation to a foreign State with which reciprocal arrangements have been made subject to such modifications, exceptions, conditions and qualifications as may be deemed expedient for implementing the agreement with that State.

217(11) Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973 if, in the course of an investigation into the affairs of the company, an application is made to the competent court in India by the inspector stating that evidence is, or may be, available in a country or place outside India, such court may issue a letter of request to a court or an authority in such country or place, competent to deal with such request, to examine orally, or otherwise, any person, supposed to be acquainted with the facts and circumstances of the case, to record his statement made in the course of such examination and also to require such person or any other person to produce any document or thing, which may be in his possession pertaining to the case, and to forward all the evidence so taken or collected or the authenticated copies thereof or the things so collected to the court in India which had issued such letter of request: Provided that the letter of request shall be transmitted in such manner as the CG may specify in this behalf: Provided further that every statement recorded or document or thing received under this sub-section shall be deemed to be the evidence collected during the course of investigation.
217(12) Upon receipt of a letter of request from a court or an authority in a country or place outside India, competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to affairs of a company under investigation in that country or place, the CG may, if it thinks fit, forward such letter of request to the court concerned, which shall thereupon summon the person before it and record his statement or cause any document or thing to be produced, or send the letter to any inspector for investigation, who shall thereupon investigate into the affairs of company in the same manner as the affairs of a company are investigated under this Act and the inspector shall submit the report to such court within thirty days or such extended time as the court may allow for further action: Provided that the evidence taken or collected under this sub-section or authenticated copies thereof or the things so collected shall be forwarded by the court, to the CG for transmission, in such manner as the CG may deem fit, to the court or the authority in country or place outside India which had issued the letter of request.

Sec 218 Protection of Employees During Investigation [Important] 218. (1) Notwithstanding anything contained in any other law for the time being in force, if— (a) during the course of any investigation of the affairs and other matters of or relating to a company, other body corporate or person u/s 210, 212, 213, 219 or of the membership and other matters of or relating to a company, or the ownership of shares in or debentures of a company or body corporate, or the affairs and other matters of or relating to a company, other body corporate or person, u/s 216; or (b) during the pendency of any proceeding against any person concerned in the conduct and management of the affairs of a company under Chapter XVI, such company, other body corporate or person proposes— (i) to discharge or suspend any employee; or (ii)to punish him, whether by dismissal, removal, reduction in rank or otherwise; or (iii) to change the terms of employment to his disadvantage, the company, other body corporate or person, as the case may be, shall obtain approval of the Tribunal of the action proposed against the employee and if the Tribunal has any objection to the action proposed, it shall send by post notice thereof in writing to the company, other body corporate or person concerned.
(2)If the company, other body corporate or person concerned does not receive within thirty days of making of application under sub-section (1), the approval of the Tribunal, then and only then, the company, other body corporate or person concerned may proceed to take against the employee, the action proposed.
(3) If the company, other body corporate or person concerned is dissatisfied with the objection raised by the Tribunal, it may, within a period of thirty days of the receipt of the notice of the objection, prefer an appeal to the Appellate Tribunal in such manner and on payment of such fees as may be prescribed.
(4) The decision of the Appellate Tribunal on such appeal shall be final and binding on the Tribunal and on the company, other body corporate or person concerned.
(5) For the removal of doubts, it is hereby declared that the provisions of this section shall have effect without prejudice to the provisions of any other law for the time being in force.

Sec 219 Power of Inspector to Conduct Investigation into Affairs of Related Companies, etc.

219. If an inspector appointed under section 210 or section 212 or section 213 to investigate into the affairs of a company considers it necessary for the purposes of the investigation, to investigate also the affairs of—
(a) any other body corporate which is, or has at any relevant time been the company's subsidiary company or holding company, or a subsidiary company of its holding company;
(b) any other body corporate which is, or has at any relevant time been managed by any person as managing director or as manager, who is, or was, at the relevant time, the managing director or the manager of the company;
(c) any other body corporate whose BOD comprises nominees of the company or is accustomed to act in accordance with the directions or instructions of the company or any of its directors; or
(d) any person who is or has at any relevant time been the company's managing director or manager or employee,

he shall, subject to the prior approval of the CG, investigate into and report on the affairs of the other body corporate or of the managing director or manager, in so far as he considers that the results of his investigation are relevant to the investigation of the affairs of the company for which he is appointed.

Sec 220 Seizure of Documents by Inspector

220. (1) Where in the course of an investigation under this Chapter, the inspector has reasonable grounds to believe that the books and papers of, or relating to, any company or other body corporate or managing director or manager of such company are likely to be destroyed, mutilated, altered, falsified or secreted, the inspector may—
(a) enter, with such assistance as may be required, the place or places where such books and papers are kept in such manner as may be required; and
(b)seize books and papers as he considers necessary after allowing the company to take copies of, or extracts from, such books and papers at its cost for the purposes of his investigation.

(2) The inspector shall keep in his custody the books and papers seized under this section for such a period not later than the conclusion of the investigation as he considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized:
Provided that the inspector may, before returning such books and papers as aforesaid, take copies of, or extracts from them or place identification marks on them or any part thereof or deal with the same in such manner as he considers necessary.

(3) The provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures shall apply mutatis mutandis to every search or seizure made under this section.

Sec 221 Freezing of Assets of Company on Inquiry and Investigation

221. (1) Where it appears to the Tribunal, on a reference made to it by the CG or in connection with any inquiry or investigation into the affairs of a company under this Chapter or on any complaint made by such number of members as specified under sub-section (1) of section 244 or a creditor having one lakh amount outstanding against the company or any other person having a reasonable ground to believe that the removal, transfer or disposal of funds, assets, properties of the company is likely to take place in a manner that is prejudicial to the interests of the company or its shareholders or creditors or in public interest, it may by order direct that such transfer, removal or disposal shall not take place during such period not exceeding three years as may be specified in the order or may take place subject to such conditions and restrictions as the Tribunal may deem fit.

(2) In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

Sec 222 Imposition of Restrictions Upon Securities [important]
222. (1) Where it appears to the **Tribunal**, in connection with any investigation under section 216 or on a complaint made by any person in this behalf, that there is good reason to find out the relevant facts about any securities issued or to be issued by a company and the Tribunal is of the opinion that such facts cannot be found out unless certain restrictions, as it may deem fit, are imposed, the Tribunal may, by order, direct that the securities shall be subject to such restrictions as it may deem fit for such period **not exceeding three years** as may be specified in the order.
(2) Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

Sec 223 Inspector's Report
223. (1) An inspector appointed under this Chapter may, and if so directed by the CG shall, submit interim reports to that Government, and on the conclusion of the investigation, shall submit a final report to the CG.
(2) Every report made under sub-section (1) shall be in writing or printed as the CG may direct.
(3) *A copy of the report made under sub-section (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 the CG.*
(4) The report of any inspector appointed under this Chapter shall be authenticated either— (a) by the seal, if any, of the company whose affairs have been investigated; or (b) by a certificate of a public officer having the custody of the report, as provided under section 76 of the Indian Evidence Act, 1872, and such report shall be admissible in any legal proceeding as evidence in relation to any matter contained in the report.
(5) Nothing in this section shall apply to the report referred to in section 212.

Sec 224 Actions to be Taken in Pursuance of Inspector's Report. 224(1) If, from an inspector's report, made under section 223, it appears to the CG that any person has, in relation to the company or in relation to any other body corporate or other person whose affairs have been investigated under this Chapter been guilty of any offence for which he is criminally liable, the CG may prosecute such person for the offence and it shall be the duty of all officers and other employees of the company or body corporate to give the CG the necessary assistance in connection with the prosecution.
(2) If any company or other body corporate is liable to be wound up under this Act or under the Insolvency and Bankruptcy Code, 2016 and it appears to the CG from any such report made under section 223 that it is expedient so to do by reason of any such circumstances as are referred to in section 213, the CG may, unless the company or body corporate is already being wound up by the Tribunal, cause to be presented to the Tribunal by any person authorised by the CG in this behalf— (a) a petition for the winding up of the company or body corporate on the ground that it is just and equitable that it should be wound up; (b) an application under section 241; or (c) both.
(3) If from any such report as aforesaid, it appears to the CG that proceedings ought, in the public interest, to be brought by the company or any body corporate whose affairs have been investigated under this Chapter— (a) for the recovery of damages in respect of any fraud, misfeasance or other misconduct in connection with the promotion or formation, or the management of the affairs, of such company or body corporate; or (b)for the recovery of any property of such company or body corporate which has been misapplied or wrongfully retained, the CG may itself bring proceedings for winding up in the name of such company or body corporate.
(4)The CG, shall be indemnified by such company or body corporate against any costs or expenses incurred by it in, or in connection with, any proceedings brought by virtue of sub-section (3).

224(5)Where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the CG may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property, or cash, as the case may be, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.

Sec 225 Expenses of Investigation [important]

225. (1)The expenses of, and incidental to, an investigation by an inspector appointed by the CG under this Chapter other than expenses of inspection under section 214 shall be defrayed in the first instance by the CG, but shall be reimbursed by the following persons to the extent mentioned below, namely:—

(a) any person who is convicted on a prosecution instituted, or who is ordered to pay damages or restore any property in proceedings brought, under section 224, to the extent that he may in the same proceedings be ordered to pay the said expenses as may be specified by the court convicting such person, or ordering him to pay such damages or restore such property, as the case may be;

(b) any company or body corporate in whose name proceedings are brought as aforesaid, to the extent of the amount or value of any sums or property recovered by it as a result of such proceedings;

(c) unless, as a result of the investigation, a prosecution is instituted under section 224,—

(i) any company, body corporate, managing director or manager dealt with by the report of the inspector; and

(ii) the applicants for the investigation, where the inspector was appointed under section 213,

to such extent as the CG may direct.

(2) Any amount for which a company or body corporate is liable under clause (b) of sub-section (1)shall be a first charge on the sums or property mentioned in that clause.

Sec 226 Voluntary Winding up of Company, etc., Not to Stop Investigation Proceedings.

226. An investigation under this Chapter may be initiated notwithstanding, and no such investigation shall be stopped or suspended by reason only of, the fact that—

(a) an application has been made under section 241;

(b) the company has passed a SR for voluntary winding up; or

(c) any other proceeding for the winding up of the company is pending before the Tribunal:

Provided that where a winding up order is passed by the Tribunal in a proceeding referred to in clause (c), the inspector shall inform the Tribunal about the pendency of the investigation proceedings before him and the Tribunal shall pass such order as it may deem fit:

Provided further that nothing in the winding up order shall absolve any director or other employee of the company from participating in the proceedings before the inspector or any liability as a result of the finding by the inspector.

227. **Nothing** in this Chapter shall **require the disclosure to** the Tribunal or **to** the CG or **to** the Registrar or to an inspector appointed by the CG—

(a) **by a legal adviser**, of any privileged communication made to him in that capacity, except as respects the name and address of his client; or

(b) **by the bankers** of any company, body corporate, or other person, of any information as to the affairs of any of their customers, other than such company, body corporate, or person.

228. The **provisions** of this Chapter **shall apply mutatis mutandis** to inspection, inquiry or investigation in relation **to foreign companies.**

229. Penalty for Furnishing False Statement, Mutilation, Destruction of Documents [Briefed]

The person who is required to provide an explanation or make a statement during the course of inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation, if deliberately destroys, mutilates or falsifies, or conceals or tampers relevant documents or make false entry in relevant document or provide false explanation knowingly, shall be punishable for fraud in the manner as provided in section 447.

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CHAPTER XV of Companies Act, 2013
(COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS)

Sec 230 Power to Compromise or Make Arrangements with Creditors and Members

230. (1) Where a compromise or arrangement is proposed—
(a) between a **company and its creditors** or any class of them; or
(b) between a **company and its members** or any class of them,

the **Tribunal** may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under this Act or under the IBC, 2016, as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal directs.

Explanation.—For the purposes of this sub-section, arrangement **includes** a reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods.

[**Rule Extract: 1.** Where more than one company is involved in a scheme in relation to which an application u/s 230(1) is being filed, such application may, at the discretion of such companies, be filed as joint-application.
2. Where the company is not the applicant, a copy of the notice of admission and of the affidavit shall be served on the company, or, where the company is being wound up, on its liquidator, not less than fourteen days before the date fixed for the hearing of the notice of admission.]

230(2) The company or any other person, by whom an application is made under subsection (1), **shall disclose** to the Tribunal by affidavit—

(a) **all material facts** relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

(b)**reduction of share capital** of the company, **if any, included** in the compromise or arrangement;

(c) any **scheme of corporate debt restructuring consented to by not less than 75 per cent** of the secured creditors **in value**, including—
(i) a **creditor's responsibility statement** in the prescribed form (prescribed form is Form No. CAA.1);
(ii) **safeguards for** the protection of **other** secured and unsecured creditors;
(iii) **report by the auditor that the fund requirements** of the company after the corporate debt restructuring as approved shall **conform to the liquidity test** based upon the estimates provided to them by the Board;
(iv)**where** the company **proposes to adopt the corporate debt restructuring** guidelines specified **by the RBI**, a **statement to** that **effect**; and
(v) a **valuation report** in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company **by a registered valuer**.

[**Rule Extract:** "**corporate debt restructuring**" in section 230(2)(c) shall **mean** a scheme that restructures or varies the debt obligations of a company towards its creditors]

230(3) Where a meeting is proposed to be called in pursuance of an order of the Tribunal under sub-section (1), a **notice {in Form No. CAA.2} of such meeting shall be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually** at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, KMP, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the directors of the company or the debenture trustees, and such other matters as may be prescribed: Provided that such **notice and other documents shall also be placed on the website of the company, if any**, and in case of a **listed company**, these documents **shall be sent to the SEBI and stock exchange** where the securities of the companies are listed, for placing on their website **and shall also be published in newspapers** in such manner as may be prescribed: **Provided** further that where the **notice {in Form No. CAA.2} for the meeting is also issued by way of an advertisement**, it **shall indicate the time within which copies** of the compromise or arrangement **shall be made available** to the concerned persons **free** of charge from the registered office of the company.
230(4) A **notice** under sub-section (3) **shall provide that the persons to whom the notice is sent may vote in the meeting either themselves or through proxies or by postal ballot** to the adoption of the compromise or arrangement **within one month from the date of receipt** of such notice: Provided that any objection to the compromise or arrangement shall be made only by persons holding **not less than ten per cent. of the shareholding or having outstanding debt amounting to not less than five per cent. of the total outstanding debt** as per the latest audited financial statement.
(5) A **notice** under sub-section (3) along with all the documents in such form as may be prescribed **shall also be sent** to the **CG**, the **income-tax authorities**, the **RBI**, the **SEBI**, the **Registrar**, the respective **stock exchanges**, the **Official Liquidator**, the **Competition Commission of India** established under section 7(1) of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement **and shall require that representations**, if any, **to be made by them shall be made within a period of thirty days from the date of receipt** of such notice, failing which, it shall be presumed that they have no representations to make on the proposals.
(6) Where, at a meeting held in pursuance of sub-section (1), **majority** of persons representing **3/4th in value** of the **creditors**, or class of creditors **or members** or class of members, as the case may be, voting in person or by proxy or by postal ballot, **agree to any compromise or arrangement and if such compromise or arrangement is sanctioned by the Tribunal by an order, the same shall be binding** on the company, all the creditors, or class of creditors or members or class of members, as the case may be, or, in case of a company being wound up, on the liquidator, appointed under this Act or under the IBC, 2016, as the case may be, and the contributories of the company.
(7) An **order** made by the Tribunal under sub-section (6) **shall provide** for **all or any of** the **following matters**, namely:— (a) **where** the compromise or arrangement provides for **conversion of preference shares into equity shares**, such **preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable**; (b) the **protection** of any class of **creditors**; (c) **if** the compromise or arrangement **results in the variation of the shareholders' rights**, it shall be **given effect** to under the provisions of section 48; (d) if the compromise or arrangement is agreed to by the creditors under sub-section (6), **any proceedings** pending **before the Board for Industrial and Financial Reconstruction** (BIFR) established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 **shall abate**; (e) **such other matters including exit offer to dissenting shareholders**, if any, as are in the opinion of the Tribunal necessary to effectively implement the terms of the compromise or arrangement: **Provided** that **no compromise or arrangement shall be sanctioned** by the Tribunal **unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatment**, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133.
230(8)The **order** of the Tribunal **shall be filed with the Registrar by the company within a period of thirty days** of

the receipt of the order.

230(9) The Tribunal **may dispense** with calling of a meeting of creditor or class of creditors where such creditors or class of creditors, **having at least 90 per cent value, agree and confirm**, by way of affidavit, to the scheme of compromise or arrangement.

230(10) No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.
Explanation.—For the removal of doubts, it is hereby declared that the provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.
Note: Sub-section (11), (12) are not yet notified.

Sec 231 Power of Tribunal to Enforce Compromise or Arrangement

231. (1) Where the **Tribunal** makes an order u/s 230 sanctioning a compromise or an arrangement in respect of a company, it—
(a) **shall have power to supervise** the implementation of the compromise or arrangement; and
(b) **may**, at the time of making such order or at any time thereafter, g**ive such directions in regard to any matter or make such modifications** in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

(2) **If the Tribunal is satisfied that** the compromise or **arrangement sanctioned** under section 230 **cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts** as per the scheme, **it may make an order for winding up the company** and such an order shall be deemed to be an order made under section 273.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act sanctioning a compromise or an arrangement.

Note: In case of Government Company, for the word "Tribunal" the words "CG" shall be substituted.

Sec 232 Mergers and Amalgamation of Companies

232. (1) Where an application is made to the Tribunal u/s 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—
(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies **involving merger or the amalgamation** of any two or more companies; **and**
(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies,

the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the Tribunal may direct and the provisions of sub-sections (3) to (6) of section 230 shall apply mutatis mutandis.

(2) Where an order has been made by the Tribunal under sub-section (1), merging companies or the companies in respect of which a division is proposed, shall also be required to circulate the following for the meeting so ordered by the Tribunal, namely:—
(a) the **draft of the proposed terms** of the scheme drawn up and adopted by the directors of the merging company;
(b) confirmation that a copy of the draft scheme has been filed with the Registrar;
(c) a **report adopted by the directors of the merging companies explaining effect** of compromise **on** each class of shareholders, KMP, promotors and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties;

(d) the **report of the expert** with regard to **valuation**, if any;
(e) **a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting** of the company summoned for the purposes of approving the scheme.

232(3) The Tribunal, after satisfying itself that the procedure specified in sub-sections (1) and (2) has been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—
(a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;
(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;
(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;
(d) dissolution, without winding-up, of any transferor company;
(e)the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;
(f) where share capital is held by any non-resident shareholder under the FDI norms or guidelines specified by the CG or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;
(g) the transfer of the employees of the transferor company to the transferee company;
(h) where the transferor company is a listed company and the transferee company is an unlisted company,—
(A) the transferee company shall remain an unlisted company until it becomes a listed company;
(B) if shareholders of the transferor company decide to opt out of the transferee company,
provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal:

Provided that the amount of payment or valuation under this clause for any share shall not be less than what has been specified by the SEBI under any regulations framed by it;
(i) where the transferor company is dissolved, the fee, if any, paid by the transferor company on its authorised capital shall be **set-off against any fees** payable by the transferee company on its authorised capital subsequent to the amalgamation; and
(j) such incidental, consequential and supplemental matters as are deemed necessary to secure that the merger or amalgamation is fully and effectively carried out:

Provided that no compromise or arrangement shall be sanctioned by the Tribunal **unless a certificate by the company's auditor has been filed with the Tribunal to the effect that the accounting treatmen**t, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed u/s 133.

(4) Where an order under this section provides for the transfer of any property or liabilities, then, by virtue of the order, that property shall be transferred to the transferee company and the liabilities shall be transferred to and become the liabilities of the transferee company and any property may, if the order so directs, be freed from any charge which shall by virtue of the compromise or arrangement, cease to have effect.

(5)Every company in relation to which the order is made shall cause a certified copy of the order to be filed with the Registrar for registration within thirty days of the receipt of certified copy of the order.

(6) The scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.

(7) Every company in relation to which the order is made shall, until the completion of the scheme, file a statement in such form and within such time as may be prescribed with the Registrar every year duly certified by a chartered accountant or a cost accountant or a company secretary in practice indicating whether the scheme is being complied

with in accordance with the orders of the Tribunal or not.

(8) If a transferor company or a transferee company contravenes the provisions of this section, the transferor company or the transferee company, as the case may be, shall be punishable with fine which shall not be less than Rs. 1 Lakh but which may extend to Rs 25 lakh and every officer of such transferor or transferee company who is in default, shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to Rs. 3 Lakh, or with both.
Explanation.—For the purposes of this section,—
(i) in a scheme involving a merger, where under the scheme the undertaking, property and liabilities of one or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to another existing company, it is a merger by absorption, or where the undertaking, property and liabilities of two or more companies, including the company in respect of which the compromise or arrangement is proposed, are to be transferred to a new company, whether or not a public company, it is a merger by formation of a new company;
(ii)references to merging companies are in relation to a merger by absorption, to the transferor and transferee companies, and, in relation to a merger by formation of a new company, to the transferor companies;
(iii) a scheme involves a division, where under the scheme the undertaking, property and liabilities of the company in respect of which the compromise or arrangement is proposed are to be divided among and transferred to two or more companies each of which is either an existing company or a new company; and
(iv) property includes assets, rights and interests of every description and liabilities include debts and obligations of every description.

Note: In case of Government Company, for the word "Tribunal" the words "CG" shall be substituted.

Sec 233 Merger or Amalgamation of Certain Companies

233. (1) Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:—

(a) a notice **{in Form No. CAA.9}** of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated or persons affected by the scheme within thirty days is issued by the transferor company or companies and the transferee company;
(b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;

(c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form **{in Form No. CAA.10}**, with the Registrar of the place where the registered office of the company is situated; and
(d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

(2) The transferee company shall file a copy of the scheme so approved in the manner as may be prescribed, with the CG, Registrar and the Official Liquidator where the registered office of the company is situated.

(3) On the receipt of the scheme, if the Registrar or the Official Liquidator has no objections or suggestions to the scheme, the CG shall register the same and issue a confirmation thereof to the companies.

(4)If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the CG within a period of thirty days:

Provided that if no such communication is made, it shall be presumed that he has no objection to the scheme.

(5) If the CG after receiving the objections or suggestions or for any reason is of the opinion that such a scheme is not in public interest or in the interest of the creditors, it may file an application before the Tribunal within a period of sixty days of the receipt of the scheme under sub-section (2) stating its objections and requesting that the Tribunal may consider the scheme under section 232.

(6) On receipt of an application from the CG or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit: Provided that if the CG does not have any objection to the scheme or it does not file any application under this section before the Tribunal, it shall be deemed that it has no objection to the scheme.
(7) A copy of the order under sub-section (6) confirming the scheme shall be communicated to the Registrar having jurisdiction over the transferee company and the persons concerned and the Registrar shall register the scheme and issue a confirmation thereof to the companies and such confirmation shall be communicated to the Registrars where transferor company or companies were situated.
(8) The registration of the scheme under sub-section (3) or sub-section (7) shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.
(9) The registration of the scheme shall have the following effects, namely:— (a)transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company; (b) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company; (c)legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and (d) where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.
(10) A transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation.
(11) The transferee company shall file an application with the Registrar along with the scheme registered, indicating the revised authorised capital and pay the prescribed fees due on revised capital:
Provided that the fee, if any, paid by the transferor company on its authorised capital prior to its merger or amalgamation with the transferee company shall be set-off against the fees payable by the transferee company on its authorised capital enhanced by the merger or amalgamation.
(12) The provisions of this section shall mutatis mutandis apply to a company or companies specified in sub-section (1) in respect of a scheme of compromise or arrangement referred to in section 230 or division or transfer of a company referred to clause (b) of subsection (1) of section 232.
(13) The CG may provide for the merger or amalgamation of companies in such manner as may be prescribed.
(14) A company covered under this section may use the provisions of section 232 for the approval of any scheme for merger or amalgamation.

Sec 234 Merger or Amalgamation of Company with Foreign Company

234. (1) The provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply mutatis mutandis to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the CG:

Provided that the CG may make rules, in consultation with the RBI, in connection with mergers and amalgamations provided under this section.

{Rule 25B Extract (Recent Amendment) Merger or amalgamation of a foreign company with a Company and vice versa
A foreign company incorporated outside India may merge with an Indian company or vice versa after obtaining prior approval of RBI and after complying with sections 230 to 232 of the Act and these rules.
The transferee company shall ensure that valuation is conducted by valuers who are members of a recognised professional body in the jurisdiction of the transferee company and further that such valuation is in accordance with internationally accepted principles on accounting and valuation. A declaration to this effect shall be attached with the application made to RBI.}

(2) Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

Explanation.—For the purposes of sub-section (2), the expression "foreign company" means any company or body corporate incorporated outside India whether having a place of business in India or not.

Sec 235 Power to Acquire Shares of Shareholders Dissenting from Scheme or Contract Approved by Majority

235. (1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, **been approved by the holders of not less than nine-tenths in value** of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

(2) Where a notice under sub-section (1) is given, the transferee company shall, unless on an application made by the dissenting shareholder to the Tribunal, within one month from the date on which the notice was given and the Tribunal thinks fit to order otherwise, be entitled to and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company.

(3) Where a notice has been given by the transferee company under sub-section (1) and the Tribunal has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of 1 month from the date on which the notice has been given, or, if an application to the Tribunal by the dissenting shareholder is then pending, after that application has been disposed of, send a copy of the notice to the transferor company together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferor company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire, and the transferor company shall—
(a) thereupon register the transferee company as the holder of those shares; and
(b) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.

(4) Any sum received by the transferor company under this section shall be paid into a separate bank account, and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.

(5) In relation to an offer made by a transferee company to shareholders of a transferor company before the commencement of this Act, this section shall have effect with the following modifications, namely:—
(a) in sub-section (1), for the words "the shares whose transfer is involved other than shares already held at the date of the offer by, or by a nominee of, the transferee company or its subsidiaries,", the words "the shares affected" shall be substituted; and
(b)in sub-section (3), the words "together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferor company" shall be omitted.

Explanation.—For the purposes of this section, "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

Sec 236 Purchase of Minority Shareholding [important]

236. (1) In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent. or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming 90 per cent. majority or holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.

(2) The acquirer, person or group of persons under sub-section (1) shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.

(3) Without prejudice to the provisions of sub-sections (1) and (2), the minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding of the company at the price determined in accordance with such rules as may be prescribed under sub-section (2).

(4)The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them under sub-section (2) or sub-section (3), as the case may be, in a separate bank account to be operated by *company whose shares are being transferred* for at least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within sixty days:

Provided that such disbursement shall continue to be made to the entitled shareholders for a period of one year, who for any reason had not been made disbursement within the said period of sixty days or if the disbursement have been made within the aforesaid period of sixty days, fail to receive or claim payment arising out of such disbursement.

(5) In the event of a purchase under this section, company *whose shares are being transferred* shall act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.

(6) In the absence of a physical delivery of shares by the shareholders within the time specified by the company, the share certificates shall be deemed to be cancelled, and company *whose shares are being transferred* shall be authorised to issue shares in lieu of the cancelled shares and complete the transfer in accordance with law and make payment of the price out of deposit made under sub-section (4) by the majority in advance to the minority by despatch of such payment.

(7) In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for any shareholder or shareholders who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission, the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be available for a period of three years from the date of majority acquisition or majority shareholding.

(8) Where the shares of minority shareholders have been acquired in pursuance of this section and as on or prior to the date of transfer following such acquisition, the shareholders holding seventy-five per cent. or more minority equity shareholding negotiate or reach an understanding on a higher price for any transfer, proposed or agreed upon, of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement, the majority shareholders shall share the additional compensation so received by them with such minority shareholders on a pro rata basis.

Explanation.—For the purposes of this section, the expressions “acquirer” and “person acting in concert” shall have the meanings respectively assigned to them in clause (b) and clause (e) of sub-regulation (1) of regulation 2 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

(9) When a shareholder or the majority equity shareholder fails to acquire full purchase of the shares of the minority equity shareholders, then, the provisions of this section shall continue to apply to the residual minority equity shareholders, even though,—

(a) the shares of the company of the residual minority equity shareholder had been delisted; and

(b) the period of one year or the period specified in the regulations made by the Securities and Exchange Board under the SEBI, 1992, had elapsed.

Sec 237 Power of CG to Provide for Amalgamation of Companies in Public Interest

237. (1) **Where the CG is satisfied that it is essential in the public interest** that two or more companies should amalgamate, the CG **may**, **by order notified in the Official Gazette**, **provide for the amalgamation** of those companies into a single company with such constitution, with such property, powers, rights, interests, authorities and privileges, and with such liabilities, duties and obligations, as may be specified in the order.

(2) The **order** under sub-section (1) **may also provide for the continuation by or against the transferee company of any legal proceedings pending** by or against any transferor company and such consequential, incidental and supplemental provisions as may, in the opinion of the CG, be necessary to give effect to the amalgamation.

(3) **Every member or creditor, including a debenture holder, of each of the transferor companies before the amalgamation shall have, as nearly as may be, the same interest in or rights against the transferee company as he had in the company of which he was originally a member or creditor**, and **in case** the interest or rights of such member or creditor in or against the transferee company **are less than his interest in or rights against** the **original** company, he shall be **entitled to compensation** to that extent, which shall be assessed by such authority as may be prescribed and every such assessment shall be published in the Official Gazette, and the compensation so assessed shall be paid to the member or creditor concerned by the transferee company.

(4) Any **person aggrieved by any assessment of compensation** made by the **prescribed authority** under sub-section (3) may, within a period of **thirty days** from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Tribunal and thereupon the assessment of the compensation shall be made by the Tribunal.

(5) No order shall be made under this section unless—
(a) a copy of the proposed order has been sent in draft to each of the companies concerned;
(b) the time for preferring an appeal under sub-section (4) has expired, or where any such appeal has been preferred, the appeal has been finally disposed off; and
(c) the CG has considered, and made such modifications, if any, in the draft order as it may deem fit in the light of suggestions and objections which may be received by it from any such company within such period as the CG may fix in that behalf, not being less than two months from the date on which the copy aforesaid is received by that company, or from any class of shareholders therein, or from any creditors or any class of creditors thereof.

(6) The copies of every order made under this section shall, as soon as may be after it has been made, be laid before each House of Parliament.

Sec 238 Registration of Offer of Schemes Involving Transfer of Shares

238. (1) In relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company under section 235,—
(a) every circular containing such offer and recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information and in such manner as may be prescribed;
(b) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available; and
(c) every such circular shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered:

Provided that the Registrar may refuse, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within thirty days of the application.

(2) An appeal shall lie to the Tribunal against an order of the Registrar refusing to register any circular under sub-section (1).

(3) *The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be liable to a penalty of one lakh rupees.*

Sec 239 Preservation of Books and Papers of Amalgamated Companies

239. The **books and papers of a company which has been amalgamated** with, or whose shares have been acquired by, another company under this Chapter **shall not be disposed of without the prior permission of the CG** and before granting such permission, that Government **may** appoint a person to examine the books and papers or any of them for the purpose of ascertaining whether they contain any evidence of the commission of an offence in connection with the promotion or formation, or the management of the affairs, of the transferor company or its amalgamation or the acquisition of its shares.

Sec 240 Liability of Officers in Respect of Offences Committed Prior to Merger, Amalgamation, etc.

240. Notwithstanding anything in any other law for the time being in force, the liability in respect of offences committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

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CHAPTER XVI of Companies Act, 2013
(PREVENTION OF OPPRESSION AND MISMANAGEMENT)

Sec 241 Application to Tribunal for Relief in Cases of Oppression, etc

241. (1) **Any member of a company who complains** that—
(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or
(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the BOD, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2)The CG, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to **public interest**, it may itself apply to the Tribunal for an order under this Chapter.

Relevant Case Law(s) and Conclusions
1. In deciding a application u/s 241 or 242, the Tribunal has to bear in mind that the act of Oppression must be a Continuing one. **A single act of Renting out the premises of the company. without knowledge of members cannot be termed as oppression or mismanagement.**
2. Mere lack of confidence among members themselves resulting in certain acts of irregularities or illegalities can not be held as oppressive per se.
3. The matter of selection and appointment of dealer of the company's product is out of ambit of Application u/s 241. The right to manage the affairs of the company is vested in the majority of the shareholders and not in the person who might have procured the project for the company.
4. Directorial complaints cannot be entertained u/s 241 unless it is a composite complaint and is in the case of a company in nature of quasi-partnership.
5. The decision of BOD to write-off bad debts is a commercial decision and does not require any judicial interference.
6. The decision relating to the operation of the company's bank accounts are a part of the managerial powers of the directors. The mere fact that a director is not being associated with the operation of company's bank accounts does not constitute Oppression or mismanagement. **[Sudha M.Singh v. Eagle Cones (P) Ltd.]**
7. The right to inspection of documents and books of account of Co. is not limited to BOD. In order to prove allegations made in petition u/s 241, the shareholders are entitled to be allowed inspection of books of accounts and relevant documents of Co. **However mere denial of inspection by co., whether during pendency of petition or before it by co. does not amount to an act of oppression. [Lalita Rajya Lakshmi Vs Indian Motor Co (Hazaribad) Ltd.]** **If the petitioner cannot make out a case of mismanagement and oppression, because he was unable to collect material for the purpose, is was NOT the court to direct the directors of the company to offer inspection of company's books and accounts so as to enable a petitioner to collect materials for the petition under the Act.**

Sec 242 Powers of Tribunal

242. (1)**If**, **on any application** made under section 241, the Tribunal is of the opinion—
(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and
(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up,

the **Tribunal may**, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

242(2)Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—
(a) the regulation of conduct of affairs of the company in future;
(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;
(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
(d) restrictions on the transfer or allotment of the shares of the company;
(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;
(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):
Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;
(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;
(j)the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);
(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;
(l)imposition of costs as may be deemed fit by the Tribunal;
(m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both

Sec 243 Consequence of Termination or Modification of Certain Agreements

243. (1)Where an order made under section 242 terminates, sets aside or modifies an agreement such as is referred to in sub-section (2) of that section,—

(a)such order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;

(b) no managing director or other director or manager whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director or manager of the company:

Provided that the Tribunal shall not grant leave under this clause unless notice of the intention to apply for leave has been served on the CG and that Government has been given a reasonable opportunity of being heard in the matter.

(2) Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1), and every other director of the company who is knowingly a party to such contravention, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both.

Sec 244 Right to Apply Under Section 241

244. (1) The following members of a company shall have the right to apply under section 241, namely:—

(a) in the case of a **company having a share capital**,

not less than **100 members** of the company **or**

not less than **1/10th of the total number of its members**, whichever is less, or

any member or members holding not less than **1/10th** of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company **not having a share capital**, not less than **1/5th** of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

Relevant Case Law(s) and Conclusions relevant to Application u/s 241 read with section 244

1. RAJAMUNDHRY ELECTRIC CORPORATION Us. NAGESHWAR RAO (SC).

It was held that the consent of shareholders is reckoned at the beginning of proceedings. The withdrawal of consent of any shareholder after the application is accepted by Tribunal i.e. during the proceedings shall not affect the maintainability of the petition.

2. In case, where the shareholding of petitioner member gets reduced to below 10% because of fresh issue/allotment of shares, which is challenged as oppressive, the maintainability of the petition would be reduced after determining the validity of the issue of allotment. The petition shall be maintainable and the petitioner shall be entitled to relief.

3. Shareholding is reckoned on basis of **ISSUED SHARE CAPITAL**.

4. The power to issue shares should be exercised bona-fide in the interest of the company and not for benefiting the directors or any other group. The **directors are in fiduciary position** with the company and must exercise their power to issue shares for benefit of the company. If the said is exercised solely for their personal benefit, the Tribunal may interfere and prevent the directors from doing so. **The act of issue of further shares by directors of a company for the purpose of converting a majority into minority is a grave act of Oppression.**

Sec 245 Class Action

245. (1) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:—

(a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
(b) to restrain the company from committing breach of any provision of the company's memorandum or articles;
(c)to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
(d) to restrain the company and its directors from acting on such resolution;
(e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
(f) to restrain the company from taking action contrary to any resolution passed by the members;

(g) to claim damages or compensation or demand any other suitable action from or against—
(i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
(ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
(iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;
(h) to seek any other remedy as the Tribunal may deem fit.

(2) Where the members or depositors seek any damages or compensation or demand any other suitable action from or against an audit firm, the liability shall be of the firm as well as of each partner who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

(3)(i)The requisite number of members provided in sub-section (1)shall be as under:—
(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than such percentage of the total number of its members as may be prescribed, whichever is less, or any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.
(ii) The requisite number of depositors provided in sub-section (1) shall not be less than one hundred depositors or not less than such percentage of the total number of depositors as may be prescribed, whichever is less, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

(4) In considering an application under sub-section (1), the Tribunal shall take into account, in particular—
(a) whether the member or depositor is acting in good faith in making the application for seeking an order;
(b) any evidence before it as to the involvement of any person other than directors or officers of the company on any of the matters provided in clauses (a)to (f) of subsection (1);
(c) whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;
(d) any evidence before it as to the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded under this section;
(e) where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be—
(i) authorised by the company before it occurs; or
(ii) ratified by the company after it occurs;
(f) where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.

(5) If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the following, namely:— (a) public notice shall be served on admission of the application to all the members or depositors of the class in such manner as may be prescribed; (b) all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side; (c) two class action applications for the same cause of action shall not be allowed; (d) the cost or expenses connected with the application for class action shall be defrayed by the company or any other person responsible for any oppressive act.
(6) Any order passed by the Tribunal shall be binding on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.
(7) Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
(8) Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.
(9) **Nothing contained in this section shall apply to a banking company.**
(10) Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in sub-section (1).

Sec 246 Application of Certain Provisions to Proceedings Under Section 241 or Section 245 The provisions of sections 337, 338, 339, 340 and 341 (both inclusive) shall apply mutatis mutandis, in relation to an application made to the Tribunal under section 241 or section 245.
Note: **Section 337 :** Penalty for Frauds by Officers **Section 338 :** Liability where Proper Accounts not kept **Section 339 :** Liability for Fraudulent Conduct of Business **Section 340 :** Power of Tribunal to Assess Damages against Delinquent Directors, etc. **Section 340 :** Liability u/s 339 and 340 to extend to Partners or Directors in Firms or Companies

Other IMPORTANT Case Laws **1. Ashok Berelnut Co, P. Ltd. Vs. M.K Chandrakanth** As regards obtaining relief from Tribunal, continuous losses cannot, itself, be regarded as Oppression
2. Thomas Veddon V. J. (v) Kuttanad Robber Co. Ltd Failure to declare dividend or payment of low dividends does not amount to Oppression.

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CHAPTER XVII of Companies Act, 2013 (Registered Valuers)

(with Company Rules)

Sec 247 Valuation by Registered Valuers
(1) 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 net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person **having such qualifications and experience and registered as a valuer** in such manner, on such terms and conditions as may be prescribed and **appointed by the audit committee or in its absence by the BOD** of that company.

(2) The valuer appointed under sub-section (1) shall,—
(a) **make an impartial, true and fair valuation** of any assets which may be required to be valued;
(b) **exercise due diligence** while performing the functions as valuer;
(c) **make the valuation in accordance with such rules** as may be prescribed; and
(d) **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 three years prior** to his appointment as valuer **or three years after** the valuation of assets was conducted by him.

(3) If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees:

Provided that if the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(4) **Where** a **valuer** has been **convicted** under sub-section (3), he shall be liable to—
(i) **refund the remuneration** received by him to the company; and
(ii) **pay for damages** to the company or to any other person for loss arising out of incorrect or misleading statements of particulars made in his report.

Companies (Registered Valuers and Valuation) Rules, 2017 (Relevant Extract):
Point 1) These rules shall apply for valuation in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities under the provision of the Act or these rules.
Explanation.- **It is also clarified that conduct of valuation under any other law other than the Act or these rules by any person shall not be affected by virtue of coming into effect of these rules**.

Point 2) Eligibility for registered valuers:
A person shall be eligible to be a registered valuer if he-
(a) Is a **valuer member** of a registered valuers organisation;

Explanation.- For the purposes of this clause, "a valuer member" is a member of a registered valuers organisation who possesses the requisite educational qualifications and experience for being registered as a valuer;

(b) Is **recommended by the registered valuers organisation** of which he is a valuer member for registration as a valuer;
(c) **Has passed the valuation examination** under rule 5 within three years preceding the date of making an application for registration [Note: An individual may appear for the valuation examination any number of times];
(d) **Possesses the qualifications and experience** as specified in rule 4;
(e) Is **not a minor**;
(f) Has **not been declared to be of unsound mind**;
(g)Is **not** an **undischarged bankrupt**, or has not applied to be adjudicated as a bankrupt;
(h) Is a person **resident** in India;

Explanation.- For the purposes of these rules 'person resident in India' shall have the same meaning as defined in clause (v) of section 2 of the FEMA Act as far as it is applicable to an individual;

(i) **Has not been convicted** by any competent court for an **offence** punishable with imprisonment for a term exceeding six months or for an offence **involving moral turpitude**, and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of seven years or more, he shall not be eligible to be registered;

(j) **Has not been levied a penalty** under section **271J of Income-tax Act**, 1961 and time limit for filing appeal before CIT(A) or ITAT, as the case may be has expired, or such penalty has been confirmed by ITAT, and five years have not elapsed after levy of such penalty; and
(k) Is **a fit and proper** person.

Point 3) No partnership entity or company shall be eligible to be a registered valuer **if**-

(a) It has been set up for objects other than for rendering professional or financial services, including valuation services and that in the case of a company, it is a subsidiary, joint venture or associate of another company or body corporate;
(b) It is **undergoing** an **insolvency resolution** or is an **undischarged bankrupt**;
(c) All the partners or directors, as the case may be, are not ineligible under clauses (c), (d), (e), (f), (g), (h), (i), (j) and (k) of point 2 above.
(d) **Three or all the partners or directors, whichever is lower**, of the partnership entity or company, as the case may be, **are not registered valuers**; or
(e) None of its partners or directors, as the case may be, is a registered valuer for the asset class, for the valuation of which it seeks to be a registered valuer.

Point 4) (Rule 4) Qualifications and experience
An individual shall have the following qualifications and experience to be eligible for registration, namely:-
(a) **post-graduate** degree or post-graduate diploma, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India **and at least three years of experience** in the specified discipline thereafter; or
(b) a **Bachelor's degree** or equivalent, in the specified discipline, from a University or Institute established, recognised or incorporated by law in India and at **least five years of experience** in the specified discipline thereafter; or
(c) **membership of a professional institute established by an Act of Parliament** enacted for the purpose of regulation of a profession with **at least three years' experience** after such membership
Explanation-I- For the purposes of this clause the **'specified discipline'** shall **mean** the specific **discipline** which is **relevant for valuation of an asset class** for which the registration as a valuer or recognition as a registered valuers organisation is sought under these rules.

Point 5) Eligibility for registered valuers organisations
An organisation that meets requirements as specified in these rules may be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes if:
a) it has been **registered u/s 8** of the Companies Act, 2013 (or Sec 25 of Co. Act, 1956) with the sole object of dealing with matters relating to regulation of valuers of an asset class or asset classes and has in its bye laws the requirements specified in Annexure-III
b) it is **professional institute** established by an Act for the purpose of regulation of a profession,
c) A registered valuers organisation, being **an organisation registered as a society and an organisation set up as a trust,** be recognised as a registered valuers organisation for valuation of a specific asset class or asset classes, if they convert into or register itself as a company under section 8 of the Co. Act, 2013, and include in its bye laws the requirements specified in Annexure- III**, within one year** from the date of commencement of these rules.

Point 6) Complaint against a registered valuer or registered valuers organization
A complaint may be filed against a registered valuer or registered valuers organisation before the in person or by post or courier along with a non-refundable fees Rs. 1000 in favour of the authority and the authority shall examine the complaint and take such necessary action as it deems fit:

Provided that in case of a complaint against a registered valuer, who is a partner of a partnership entity or director of a company, the authority may refer the complaint to the relevant registered valuers organisation and such organisation shall handle the complaint in accordance with its bye laws.

Point 7) Cancellation or suspension of certificate of registration or recognition
The authority may cancel or suspend the registration of a valuer or recognition of a registered valuers organisation **for violation of the provisions of the Act, any other law allowing him to perform valuation, these rules or any condition of registration or recognition**, as the case may be in the manner specified.
Note: "**authority**" **means** an authority specified by the CG under section 458 of the Companies Act, 2013 to perform the functions under these rules. (Power of CG delegated to Insolvency and Bankruptcy Board of India)
8) Without prejudice to any other liabilities where a person contravenes any of the provision of these rules he shall be punishable in accordance with sub-section (3) of section 469 of the Act.

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CHAPTER XVIII of Companies Act, 2013

(REMOVAL OF NAMES OF COMPANIES FROM THE REGISTER OF COMPANIES)

Sec 248 Power of Registrar to Remove Name of Company from Register of Companies

248. (1) Where the **Registrar** has reasonable cause to believe that—

(a) a company has failed to commence its business within one year of its incorporation or;

(b) Omitted

(c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company u/s 455 or

(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within 180 days of its incorporation u/s 10A(1); or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out u/s 12(9),

he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of 30 days from the date of the notice

(2) Without prejudice to the provisions of sub-section (1), a company may, after extinguishing all its liabilities, **by a SR or consent of 75 per cent members in terms of paid-up share capital**, file an application in the prescribed manner to the Registrar for removing the name of the company from the register of companies on all or any of the grounds specified in sub-section (1) and the Registrar shall, on receipt of such application, cause a public notice to be issued in the prescribed manner:

Provided that in the case of a company regulated under a special Act, approval of the regulatory body constituted or established under that Act shall also be obtained and enclosed with the application.

(3) Nothing in sub-section (2) shall apply to a company registered under section 8.

(4) A notice issued under sub-section (1) or sub-section (2) shall be published in the prescribed manner and also in the Official Gazette for the information of the general public.

(5) At the expiry of the time mentioned in the notice, the Registrar may, unless cause to the contrary is shown by the company, strike off its name from the register of companies, and shall publish notice thereof in the Official Gazette, and on the publication in the Official Gazette of this notice, the company shall stand dissolved.

(6) The Registrar, before passing an order under sub-section (5), shall satisfy himself that sufficient provision has been made for the realisation of all amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and, if necessary, obtain necessary undertakings from the managing director, director or other persons in charge of the management of the company:

Provided that notwithstanding the undertakings referred to in this sub-section, the assets of the company shall be made available for the payment or discharge of all its liabilities and obligations even after the date of the order removing the name of the company from the register of companies.

(7) The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved.

(8) Nothing in this section shall affect the power of the Tribunal to wind up a company the name of which has been struck off from the register of companies.

Sec 249 Restrictions on Making Application Under Section 248 in Certain Situations

249. (1) An application u/s 248(2) on behalf of a company shall not be made if, at any time in the **previous 3 months**, the company—

(a) has changed its name or shifted its registered office from one State to another;

(b) has made a disposal for value of property or rights held by it,

(c)has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;

(d) has made an application to the Tribunal for the sanctioning of a compromise or arrangement and the matter has not been finally concluded; or

(e) is being wound up under Chapter XX of this Act or under the IBC, 2016.

249(2) If a company files an application under sub-section (2) of section 248 in violation of sub-section (1), it shall be punishable with fine which may extend to one lakh rupees.

249(3) An application filed under sub-section (2) of section 248 shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.

Sec 250 Effect of Company Notified as Dissolved

250. Where a company stands dissolved under section 248, it shall on and from the date mentioned in the notice under sub-section (5) of that section cease to operate as a company and the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date except for the purpose of realising the amount due to the company and for the payment or discharge of the liabilities or obligations of the company.

Sec 251 Fraudulent Application for Removal of Name

251. (1) Where it is found that an application by a company under sub-section (2) of section 248 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved—

(a) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and

(b) be punishable for fraud in the manner as provided in section 447.

(2)Without prejudice to the provisions contained in sub-section (1), the Registrar may also recommend prosecution of the persons responsible for the filing of an application under sub-section (2) of section 248.

Sec 252 Appeal to Tribunal

252. (1) **Any person** aggrieved by an order of the Registrar, notifying a company as dissolved under section 248, may file an appeal to the Tribunal within a period of **three years from the date of the order** of the Registrar **and if the Tribunal** is of the **opinion** that the **removal** of the name of the company from the register of companies **is not justified** in view of the absence of any of the grounds on which the order was passed by the Registrar, it may order restoration of the name of the company in the register of companies:

Provided that before passing any order under this section, the Tribunal shall give a reasonable opportunity of making representations and of being heard to the Registrar, the company and all the persons concerned :

Provided further that if the Registrar is satisfied, that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors, which requires restoration in the register of companies, he may within a period of three years from the date of passing of the order dissolving the company under section 248, file an application before the Tribunal seeking restoration of name of such company.

(2) A copy of the order passed by the Tribunal shall be filed by the company with the Registrar within **30** days from the date of the order and on receipt of the order, the Registrar shall cause the name of the company to be restored in the register of companies and shall issue a **fresh certificate of incorporation**.

(3) If a company, or any **member** or **creditor** or **workman** thereof feels aggrieved by the company having its name struck off from the register of companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of **twenty years from the publication in the Official Gazette** of the notice under sub-section (5) of section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions **as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies**.

Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016

Rule 3 Removal of name of company from the Register on suo-motu basis.-

(1) The ROC may remove the name of a company from the register of companies in terms of section 248(1) of the Act:

Provided that following categories of companies shall not be removed from the register of companies under this rule, namely:-
(i) **listed** companies;
(ii) companies that have been **delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws**;
(iii) **vanishing companies**;
(iv) **companies where inspection or investigation is ordered and being carried out** or actions on such order are yet to be taken up or were completed but prosecutions arising out of such inspection or investigation are pending in the Court;
(v) **companies where notices** under section 234 of the Companies Act, 1956 or section 206 or section 207 of the Act **have been issued by the Registrar or Inspector and reply thereto is pending or report** under section 208 **has not yet been submitted or follow up of instructions on report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending** with the Court;
(vi) **companies against which any prosecution** for an offence is **pending** in any court;
(vii) companies whose application for compounding is pending before the competent authority for compounding the offences committed by the company or any of its officers in default;
(viii) **companies, which have accepted public deposits which are either outstanding or the company is in default** in repayment of the same;
(ix) **companies having charges which are pending for satisfaction**; and
(x) **companies registered under section 25** of the Companies Act, 1956 **or section 8** of the Companies Act,2013.

"**Vanishing company**" means a company,
-**registered** under the Act or previous company law or any other law for the time being in force and
-**listed** with Stock Exchange and
-which has **failed to file its returns with the ROC and Stock Exchange for a consecutive period of two years**, **and**
-is not maintaining its registered office at the address notified with the ROC or Stock Exchange **and**
-none of its directors are traceable.

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CHAPTER XX of Companies Act, 2013

Winding up

Sec 271 Circumstances in Which Company May be Wound Up by Tribunal **271.** A company may, on a petition u/s 272, be wound up by the Tribunal,— (a) if the company has, by **SR**, resolved that the company be wound up by the Tribunal; (b) if the company has acted **against** the interests of the **sovereignty** and **integrity** of India, the **security** of the State, friendly **relations** with foreign States, **public order**, **decency** or **morality**; (c) if on an **application made by the Registrar** or **any other person authorised by the CG** by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a **fraudulent manner** or the company was formed for fraudulent and unlawful purpose o**r the persons concerned in the formation** or management of its affairs **have been guilty of fraud, misfeasance or misconduct** in connection therewith **and that it is proper that the company be wound up**; (d) if the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding **5 consecutive FY**; or (e) if the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

Sec 272 Petition for Winding Up **272**(1) Subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by— (a) the company; (b) any contributory or contributories; (c) all or any of the persons specified in clauses (a) and (b); (d) the Registrar; (e) any person authorised by the CG in that behalf; or (f) in a case falling under clause (b) of section 271, by the CG or a SG.
(2) A contributory shall be entitled to present a petition for the winding up of a company, notwithstanding that he may be the holder of fully paid-up shares, or that the company may have no assets at all or may have no surplus assets left for distribution among the shareholders after the satisfaction of its liabilities, and shares in respect of which he is a contributory or some of them were either originally allotted to him or have been held by him, and registered in his name, for at least six months during the eighteen months immediately before the commencement of the winding up or have devolved on him through the death of a former holder.
(3) The Registrar shall be entitled to present a petition for winding up under section 271, except on the grounds specified in clause (a) or clause (e) of that sub-section: Provided that the Registrar shall obtain the previous sanction of the CG to the presentation of a petition: Provided further that the CG shall not accord its sanction unless the company has been given a reasonable opportunity of making representations.
(4) A petition presented by the company for winding up before the Tribunal shall be admitted only if accompanied by a statement of affairs in such form and in such manner as may be prescribed.
(5) A copy of the petition made under this section shall also be filed with the Registrar and the Registrar shall, without prejudice to any other provisions, submit his views to the Tribunal within sixty days of receipt of such petition.

Sec 273 Powers of Tribunal

273.(1) The Tribunal may, on receipt of a petition for winding up u/s 272 pass any of the following orders, namely:—
(a) **dismiss** it, with or without costs;
(b)make any **interim order** as it thinks fit;
(c) **appoint a provisional liquidator** of the company till the making of a winding up order;
(d) make an **order for the winding up** of the company with or without costs; or
(e) any **other order** as it thinks fit:

Provided that an order under this sub-section shall be made within 90 days from the date of presentation of the petition:

Provided further that before appointing a provisional liquidator under clause (c), the Tribunal shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Tribunal thinks fit to dispense with such notice:

Provided also that the Tribunal shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Tribunal may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy.

Sec 274 Directions for Filing Statement of Affairs

274. (1) Where a petition for winding up is filed before the Tribunal by any person other than the company, the Tribunal shall, if satisfied that a prima facie case for winding up of the company is made out, by an order direct the company to file its objections along with a statement of its affairs within thirty days of the order in such form and in such manner as may be prescribed:

Provided that the Tribunal may allow a further period of thirty days in a situation of contingency or special circumstances:

Provided further that the Tribunal may direct the petitioner to deposit such security for costs as it may consider reasonable as a precondition to issue directions to the company.

(2) A company, which fails to file the statement of affairs as referred to in sub-section (1), shall forfeit the right to oppose the petition and such directors and officers of the company as found responsible for such non-compliance, shall be liable for punishment under sub-section (4).

(3) The directors and other officers of the company, in respect of which an order for winding up is passed by the Tribunal under clause (d) of sub-section (1) of section 273, shall, within a period of thirty days of such order, submit, at the cost of the company, the books of account of the company completed and audited up to the date of the order, to such liquidator and in the manner specified by the Tribunal.

(4) If any director or officer of the company contravenes the provisions of this section, the director or the officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

(5) The complaint may be filed in this behalf before the Special Court by Registrar, provisional liquidator, Company Liquidator or any person authorised by the Tribunal.

Sec 275 Company Liquidators and Their Appointments {Simplified Extract}

Tribunal at **the time of the passing of the order** of winding up, shall appoint an **Official** Liquidator or a liquidator from the panel maintained **as** the **Company** Liquidator. The Liquidator so appointed **shall be from amongst the insolvency professionals** registered under the IBC, 2016. He/It shall have the same powers as a liquidator but **Tribunal may limit and restrict his powers** by ordering him/it. The terms and conditions of his/its appointment and the fee payable shall be specified by the Tribunal. He/It shall **within 7 days** of appointment file a **declaration** disclosing conflict of interest or lack of independence in respect of his appointment with the Tribunal and such obligation shall continue throughout the term of his appointment.
Exception: Tribunal may appoint a **provisional** liquidator, if any, appointed u/s 273(1)(c), **as** the Company Liquidator.

Sec 276 Removal and Replacement of Liquidator {Simplified Extract}

Tribunal may, on a reasonable cause being shown and for reasons recorded in writing, **remove** the **provisional** liquidator **or** the **Company** Liquidator appointed u/s 275 on any of the following **grounds**, namely:—

(a) **misconduct**;

(b)**fraud** or **misfeasance**;

(c) **professional incompetence** or **failure** to exercise **due care** and **diligence** in performance of the powers and functions;

(d) **inability to act as provisional liquidator or** as the case may be, **Company Liquidator**;

(e) **conflict of interest** or lack of independence during the term of his appointment that would justify removal.

In the **event of death**, **resignation** or **removal** of the provisional liquidator or Company Liquidator so appointed, the **Tribunal may transfer the work assigned to him or it to another Company Liquidator for reasons** recorded in writing.

If in opinion of Tribunal, any liquidator is responsible for causing any loss or damage to the company due to fraud or misfeasance or failure to exercise due care and diligence in the performance as liquidator, Tribunal may recover or cause to be recovered such loss or damage from the liquidator and pass necessary orders.

Tribunal **shall**, **before passing any order under this section**, provide a **reasonable opportunity** of being heard to the provisional liquidator or, as the case may be, Company Liquidator.

Sec 277 Intimation to Company Liquidator, Provisional Liquidator and Registrar **(1)**Where the Tribunal makes an order for appointment of provisional liquidator or for the winding up of a company, it shall, **within a period not exceeding seven days from the date of passing of the order, cause intimation** thereof to be sent to the Company Liquidator or provisional liquidator, as the case may be, and the Registrar.
(2)On receipt of the copy of order of appointment of provisional liquidator or winding up order, the Registrar shall make an endorsement to that effect in his records relating to the company and notify in the Official Gazette that such an order has been made and in the case of a listed company, the Registrar shall intimate about such appointment or order, as the case may be, to the stock exchange or exchanges where the securities of the company are listed.
(3) The winding up order shall be deemed to be a notice of discharge to the officers, employees and workmen of the company, except when the business of the company is continued.
(4) Within 3 weeks from the date of passing of winding up order, the Company Liquidator shall make an application to the Tribunal for constitution of a winding up committee to assist and monitor the progress of liquidation proceedings by the Company Liquidator in carrying out the function as provided in sub-section (5) and such winding up committee shall comprise of the following persons, namely:— (i) Official Liquidator attached to the Tribunal; (ii) nominee of secured creditors; and (iii) a professional nominated by the Tribunal.
(5) The Company Liquidator shall be the convener of the meetings of the winding up committee which shall assist and monitor the liquidation proceedings in following areas of liquidation functions, namely:— (i) taking over assets; (ii) examination of the statement of affairs; (iii) recovery of property, cash or any other assets of the company including benefits derived therefrom; (iv) review of audit reports and accounts of the company; (v)sale of assets; (vi) finalisation of list of creditors and contributories; (vii) compromise, abandonment and settlement of claims; (viii) payment of dividends, if any; and (ix) any other function, as the Tribunal may direct from time to time.
(6)The Company Liquidator shall place before the Tribunal a report along with minutes of the meetings of the committee on monthly basis duly signed by the members present in the meeting for consideration till the final report for dissolution of the company is submitted before the Tribunal.
(7) The Company Liquidator shall prepare the draft final report for consideration and approval of the winding up committee.
(8) The final report so approved by the winding up committee shall be submitted by the Company Liquidator before the Tribunal for passing of a dissolution order in respect of the company.

Sec 278 Effect of Winding Up Order
278. The order for the winding up of a company shall operate in favour of all the creditors and all contributories of the company as if it had been made out on the joint petition of creditors and contributories.

Sec 279 Stay of Suits, etc., on Winding up Order [Simplified Extract]
When a winding up order has been passed or a provisional liquidator has been appointed, no suit or other legal proceeding **other than those pending in HC/SC** shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company, without prior permission of Tribunal. The Tribunal shall dispose of any application received for seeking such permission with 60 days.

Sec 280 Jurisdiction of Tribunal

The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of,—
(**a**) any suit or proceeding by or against the company;
(**b**) any claim made by or against the company, including claims by or against any of its branches in India;
(**c**) any application made under section 233;
(**d**) any question of priorities or any other question whatsoever, whether of law or facts, including those relating to assets, business, actions, rights, entitlements, privileges, benefits, duties, responsibilities, obligations or in any matter arising out of, or in relation to winding up of the company, whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made or such scheme has been submitted, or is submitted, before or after the order for the winding up of the company is made

Sec 281 Submission of Report by Company Liquidator [Simplified Extract]

Where the Tribunal has made a winding up order or appointed a Company Liquidator, such liquidator shall, within 60 days from the order, submit to the Tribunal, a report containing the following particulars, namely:—
- **nature and details of the assets (**valuation shall be obtained from registered valuers)
- amount of **capital issued, subscribed and paid-up**;
- the existing and contingent **liabilities** ;
- the **debts due** to the company;
- **guarantees**, if any, extended by the company;
- **list of contributories and dues**, if any, payable by them **and details of any unpaid call**;
-**details of trade marks and intellectual properties, if any, owned**;
-details of subsisting contracts, **joint ventures** and collaborations, if any;
-details of **holding and subsidiary** companies, if any;
-details of **legal cases** filed **by or against** the company; and
- other information which the Tribunal may direct **or** the Company Liquidator may consider necessary to include.

Company Liquidator shall include in his report the manner in which the company was promoted or formed and whether in his opinion any fraud has been committed by any person in its promotion or formation or by any officer of the company in relation to the company since the formation including any other important matter in his opinion He shall also make a report on the viability of the business or the steps necessary for maximising the value of the assets.He may make any further report(s), is thins fit. A creditor or a contributory of the company shall be entitled by himself or by his agent at all reasonable times to inspect the report so submitted and take copies thereof on payment of the fees.

Sec 282 Directions of Tribunal on Report of Company Liquidator
282. (1)The Tribunal shall, on consideration of the report of the Company Liquidator, fix a time limit within which the entire proceedings shall be completed and the company be dissolved:

Provided that the Tribunal may, if it is of the opinion, at any stage of the proceedings, or on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, that it will not be advantageous or economical to continue the proceedings, revise the time limit within which the entire proceedings shall be completed and the company be dissolved.

(2) The Tribunal may, on examination of the reports submitted to it by the Company Liquidator and after hearing the Company Liquidator, creditors or contributories or any other interested person, order sale of the company as a going concern or its assets or part thereof:

Provided that the Tribunal may, where it considers fit, appoint a sale committee comprising such creditors, promoters and officers of the company as the Tribunal may decide to assist the Company Liquidator in sale under this sub-section.

(3)Where a report is received from the Company Liquidator or the Central Government or any person that a fraud has been committed in respect of the company, the Tribunal shall, without prejudice to the process of winding up, order for investigation under section 210, and on consideration of the report of such investigation it may pass order and give directions under sections 339 to 342 or direct the Company Liquidator to file a criminal complaint against persons who were involved in the commission of fraud.

(4) The Tribunal may order for taking such steps and measures, as may be necessary, to protect, preserve or enhance the value of the assets of the company.

(5)The Tribunal may pass such other order or give such other directions as it considers fit.

Sec 283 Custody of Company's Properties

283. (1) Where a winding up order has been made or where a provisional liquidator has been appointed, the Company Liquidator or the provisional liquidator, as the case may be, shall, on the order of the Tribunal, forthwith take into his or its custody or control all the property, effects and actionable claims to which the company is or appears to be entitled to and take such steps and measures, as may be necessary, to protect and preserve the properties of the company.

(2) Notwithstanding anything contained in sub-section (1), all the property and effects of the company shall be deemed to be in the custody of the Tribunal from the date of the order for the winding up of the company.

(3) On an application by the Company Liquidator or otherwise, the Tribunal may, at any time after the making of a winding up order, require any contributory for the time being on the list of contributories, and any trustee, receiver, banker, agent, officer or other employee of the company, to pay, deliver, surrender or transfer forthwith, or within such time as the Tribunal directs, to the Company Liquidator, any money, property or books and papers in his custody or under his control to which the company is or appears to be entitled.

Sec 284 Promoters, Directors, etc., to Cooperate with Company Liquidator

284. (1) The promoters, directors, officers and employees, who are or have been in employment of the company or acting or associated with the company shall extend full cooperation to the Company Liquidator in discharge of his functions and duties.

(2) Where any person, without reasonable cause, fails to discharge his obligations under sub-section (1), he shall be punishable with imprisonment which may extend to 6 months or with fine which may extend to Rs. 50000/-, or with both.

Sec 285 Settlement of List of Contributories and Application of Assets

285. (1)As soon as may be after the passing of a winding up order by the Tribunal, the Tribunal shall settle a list of contributories, cause rectification of register of members in all cases where rectification is required in pursuance of this Act and shall cause the assets of the company to be applied for the discharge of its liability:

Provided that where it appears to the Tribunal that it would not be necessary to make calls on or adjust the rights of contributories, the Tribunal may dispense with the settlement of a list of contributories.

(2) In settling the list of contributories, the Tribunal shall distinguish between those who are contributories in their own right and those who are contributories as being representatives of, or liable for the debts of, others.

(3) While settling the list of contributories, the Tribunal shall include every person, who is or has been a member, who shall be liable to contribute to the assets of the company an amount sufficient for payment of the debts and liabilities and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves, subject to the following conditions, namely:—

(a) a person who has been a member shall not be liable to contribute if he has ceased to be a member for the preceding one year or more before the commencement of the winding up;

(b) a person who has been a member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) no person who has been a member shall be liable to contribute unless it appears to the Tribunal that the present members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d)in the case of a company limited by shares, no contribution shall be required from any person, who is or has been a member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as such member;

(e) in the case of a company limited by guarantee, no contribution shall be required from any person, who is or has been a member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up but if the company has a share capital, such member shall be liable to contribute to the extent of any sum unpaid on any shares held by him as if the company were a company limited by shares.

Sec 286 Obligations of Directors and Managers [IMPORTANT]

286. In the case of a limited company, any person who is or has been a director or manager, whose liability is unlimited under the provisions of this Act, shall, in addition to his liability, if any, to contribute as an ordinary member, be liable to make a further contribution as if he were at the commencement of winding up, a member of an unlimited company:

Provided that —

(**a**) a person who has been a director or manager shall not be liable to make such further contribution, if he has ceased to hold office for a year or upwards before the commencement of the winding up;

(**b**) a person who has been a director or manager shall not be liable to make such further contribution in respect of any debt or liability of the company contracted after he ceased to hold office;

(**c**)subject to the articles of the company, a director or manager shall not be liable to make such further contribution unless the Tribunal deems it necessary to require the contribution in order to satisfy the debts and liabilities of the company, and the costs, charges and expenses of the winding up.

Sec 287 Advisory Committee [Simplified Extract]

Tribunal **may**, **while passing** an order of winding up of a company, direct **that there shall be, an advisory committee** to advise the Company Liquidator and to report to the Tribunal on such directed matters and the Committee so appointed shall consist **of up to 12 members**, being creditors and contributories of the Co. or such other persons as Tribunal may direct.

Company Liquidator shall convene a meeting of creditors and contributories as ascertained within 30 days from the date of winding up order for enabling the Tribunal to determine the persons who may be members of such committee. The committee shall have the right to inspect the books of account and other documents, assets and properties of the company under liquidation at a reasonable time. **Company Liquidator shall Chair** such Committee and its conduct shall be as such as may be prescribed

Sec 288 Submission of Periodical Reports to Tribunal

288. (1)The Company Liquidator shall make periodical reports to the Tribunal and in any case make a report at the end of each quarter with respect to the progress of the winding up of the company in such form and manner as may be prescribed.

(2)The Tribunal may, on an application by the Company Liquidator, review the orders made by it and make such modifications as it thinks fit.

Sec 290 Powers and Duties of Company Liquidator

(1) Subject to directions by the Tribunal, if any, in this regard, the Company Liquidator, in a winding up of a company by the Tribunal, shall have the power—

(a) to carry on the business of the company so far as may be necessary for the beneficial winding up of the company;

(b) to do all acts and to execute, in the name and on behalf of the company, all deeds, receipts and other documents, and for that purpose, to use, when necessary, the company's seal;

(c) to sell the immovable and movable property and actionable claims of the company by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels;

(d) to sell the whole of the undertaking of the company as a going concern;

(e) to raise any money required on the security of the assets of the company;

(f) to institute or defend any suit, prosecution or other legal proceeding, civil or criminal, in the name and on behalf of the company;

(g) to invite and settle claim of creditors, employees or any other claimant and distribute sale proceeds in accordance with priorities established under this Act;

(h) to inspect the records and returns of the company on the files of the Registrar or any other authority;

(i) to prove rank and claim in the insolvency of any contributory for any balance against his estate, and to receive dividends in the insolvency, in respect of that balance, as a separate debt due from the insolvent, and rateably with the other separate creditors;

(j) to draw, accept, make and endorse any negotiable instruments including cheque, bill of exchange, hundi or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if such instruments had been drawn, accepted, made or endorsed by or on behalf of the company in the course of its business;

(k) to take out, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act necessary for obtaining payment of any money due from a contributory or his estate which cannot be conveniently done in the name of the company, and in all such cases, the money due shall, for the purpose of enabling the Company Liquidator to take out the letters of administration or recover the money, be deemed to be due to the Company Liquidator himself;

(l) to obtain any professional assistance from any person or appoint any professional, in discharge of his duties, obligations and responsibilities and for protection of the assets of the company, appoint an agent to do any business which the Company Liquidator is unable to do himself;

(m) to take all such actions, steps, or to sign, execute and verify any paper, deed, document, application, petition, affidavit, bond or instrument as may be necessary,—

(i) for winding up of the company;
(ii) for distribution of assets;
(iii)in discharge of his duties and obligations and functions as Company Liquidator; and
(n) to apply to the Tribunal for such orders or directions as may be necessary for the winding up of the company.

(2) The exercise of powers by the Company Liquidator under sub-section (1)shall be subject to the overall control of the Tribunal.

(3) Notwithstanding the provisions of sub-section (1), the Company Liquidator shall perform such other duties as the Tribunal may specify in this behalf.

Sec 291 Provision for Professional Assistance to Company Liquidator [Simplified Extract]
Company Liquidator **may**, with the sanction of the Tribunal, appoint one or more CAs or CSs or cost accountants or legal practitioners or such other professionals on such terms and conditions, as may be necessary, to assist him in the performance of his duties and functions and the person(s) so appointed shall disclose to Tribunal of any conflict of interest or lack of independence in respect of his appointment

Sec 292 Exercise and Control of Company Liquidator's Powers
(1) Subject to the provisions of this Act, the Company Liquidator shall, in the administration of the assets of the company and the distribution thereof among its creditors, have regard to any directions which may be given by the resolution of the creditors or contributories at any general meeting or by the advisory committee.

(2) Any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the advisory committee.

(3) The Company Liquidator—
(a) may summon meetings of the creditors or contributories, whenever he thinks fit, for the purpose of ascertaining their wishes; and
(b) shall summon such meetings at such times, as the creditors or contributories, as the case may be, may, by resolution, direct, or whenever requested in writing to do so by not less than one-tenth in value of the creditors or contributories, as the case may be.

(4) Any person aggrieved by any act or decision of the Company Liquidator may apply to the Tribunal, and the Tribunal may confirm, reverse or modify the act or decision complained of and make such further order as it thinks just and proper in the circumstances.

Sec 293 Books to be Kept by Company Liquidator [Simplified Extract]
Company Liquidator **shall** keep <u>proper books</u>, in which he shall cause entries or minutes to be made of proceedings at meetings and of such other prescribed matters in such prescribed manner. **Any creditor or contributory may, subject to the control of the Tribunal, inspect any such books, personally or through his agent**.

Sec 294 Audit of Company Liquidator's Accounts [Simplified Extract]
Company Liquidator shall maintain proper and regular <u>books of account.</u> He shall, at such times as may be prescribed **but not less than twice** in each year during his tenure of office, **present** to the Tribunal an account of the receipts and payments in duplicate duly verified by a declaration. The Tribunal **shall, if deems fit** cause the accounts to be audited in such manner as it thinks fit and the Company Liquidator shall co-operate for the same. When the accounts have been audited, one copy thereof to be filed with the Tribunal, and the other copy to the Registrar which shall be open to inspection by any creditor, contributory or person interested. Further in case of Govt. Co., Company Liquidator shall forward a copy thereof to CG if CG is member; SG if SG is member or to CG and SG if both are members. He shall also cause the accounts when audited, or a summary thereof, to be printed, and shall send a printed copy thereof by post to every creditor and every contributory.

Sec 295 Payment of Debts by Contributory and Extent of Set-off [Simplified Extract]
Tribunal may, at any time after passing of a winding up order, pass an order requiring any contributory for the time being on the list of contributories to pay any money due to the company, from him or from the estate of the person whom he represents, exclusive of any money payable by him or the estate by virtue of any call under this Act. **Tribunal may** in case of an **unlimited** company, allow to the contributory, by way of setoff, any money due to him or to the estate which he represents, from the company, on any independent dealing or contract with the company, but not any money due to him as a member of the company in respect of any dividend or profit; **and** in the case of a **limited** company, allow to any director or manager whose liability is unlimited, or to his estate, such set-off. However in **both** cases, where all the creditors have been paid in full, any money due on any account whatever to a contributory from the company may be allowed to him by way of set-off against any subsequent call.

Sec 296 Power of Tribunal to Make Calls. **296** The Tribunal may, at any time after the passing of a winding up order, and either before or after it has ascertained the sufficiency of the assets of the company,— (a) make calls on all or any of the contributories for the time being on the list of the contributories, to the extent of their liability, for payment of any money which the Tribunal considers necessary to satisfy the debts and liabilities of the company, and the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves; and (b) make an order for payment of any calls so made.
Sec 297 Adjustment of Rights of Contributories **297.** The Tribunal shall adjust the rights of the contributories among themselves and distribute any surplus among the persons entitled thereto.
Sec 298 Power to Order Costs **298.** The Tribunal may, in the event of the assets of a company being insufficient to satisfy its liabilities, make an order for the payment out of the assets, of the costs, charges and expenses incurred in the winding up, in such order of priority inter se as the Tribunal thinks just and proper.
Sec 299 Power to Summon Persons Suspected of Having Property of Company, etc.{Relevant Extract Only} Tribunal may, at any time after the appointment of a provisional liquidator or the passing of a winding up order, summon before it any officer of the company or person known or suspected to have in his possession any property or books or papers, of the company, or known or suspected to be indebted to the company, or any person whom the Tribunal thinks to be capable of giving information concerning the promotion, formation, trade, dealings, property, books or papers, or affairs of the company. It may require any officer or person so summoned to produce any books and papers relating to the company in his custody or power, but, where he claims any lien on books or papers produced by him, the production shall be without prejudice to such lien, and the Tribunal shall have power to determine all questions relating to that lien**…**
Sec 300 Power to Order Examination of Promoters, Directors, etc[Relevant Extract Only] Where Company Liquidator has made a report to the Tribunal under this Act, stating that in his opinion a fraud has been committed by any person in the promotion, formation, business or conduct of affairs of the company since its formation, the Tribunal may, after considering the report, direct that such person or officer shall attend before the Tribunal on a day appointed by it for that purpose, and be examined as to the promotion or formation or the conduct of the business of the company or as to his conduct and dealings as an officer thereof. -Other **Procedural** aspects**…**
Sec 301 Arrest of Person Trying to Leave India or Abscond **301.** At any time either before or after passing a winding up order, if the Tribunal is satisfied that a contributory or a person having property, accounts or papers of the company in his possession is about to leave India or otherwise to abscond, or is about to remove or conceal any of his property, for the purpose of evading payment of calls or of avoiding examination respecting the affairs of the company, the Tribunal may cause— (a) the contributory to be detained until such time as the Tribunal may order; and (b) his books and papers and movable property to be seized and safely kept until such time as the Tribunal may order.
Sec 302 Dissolution of Company by Tribunal **302.** (1) When the affairs of a company have been completely wound up, the Company Liquidator shall make an application to the Tribunal for dissolution of such company.
(2) The Tribunal shall on an application filed by the Company Liquidator under sub-section (1) or when the Tribunal is of the opinion that it is just and reasonable in the circumstances of the case that an order for the dissolution of the company should be made, make an order that the company be dissolved from the date of the order, and the company shall be dissolved accordingly.
(3) A copy of the order shall, within thirty days from the date thereof, be forwarded by the Company Liquidator to the Registrar who shall record in the register relating to the company a minute of the dissolution of the company.
(4) If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in sub-section (3), the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.
Note: Section 303 is a Transitional Provision for Winding Up cases before this Act,-hence Not Covered

Provisions Applicable to Every Mode of Winding Up

Sec 324 Debts of all Descriptions to be Admitted to Proof

324. In every winding up (subject, in the case of insolvent companies, to the application in accordance with the provisions of this Act or of the law of insolvency), all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as possible, of the value of such debts or claims as may be subject to any contingency, or may sound only in damages, or for some other reason may not bear a certain value.

Sec 325 Omitted

Sec 326 Overriding Preferential Payments[IMPORTANT}

(1) In the winding up of a company under this Act, the **following debts shall be paid in priority to all other debts**:—

(a) **workmen's dues**; and

(b) where a **secured creditor has realised a secured asset**, **so much of the debts** due to such secured creditor as **could not be realised by him or the amount of the workmen's portion in his security** (if payable under the law), whichever is less, **pari passu** with the workmen's dues:

Provided that in case of the winding up of a company, the sums referred to in sub-clauses (i) and (ii) of clause (b) of the Explanation, which are payable for a period of two years preceding the winding up order or such other period as may be prescribed, shall be paid in priority to all other debts (including debts due to secured creditors), within a period of thirty days of sale of assets and shall be subject to such charge over the security of secured creditors as may be prescribed.

(2) The debts payable under the proviso to sub-section (1) shall be paid in full before any payment is made to secured creditors and thereafter debts payable under that subsection shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.

Explanation.—For the purposes of this section, and section 327—

(a) "workmen", in relation to a company, means the employees of the company, being workmen within the meaning of clause (s) of section 2 of the Industrial Disputes Act

(b) "workmen's dues", in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act,

(ii) all accrued holiday remuneration becoming payable to any workman or, in the case of his death, to any other person in his right on the termination of his employment before or by the effect of the winding up order or resolution;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or amalgamation with another company or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workmen, all amount due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

(iv) all sums due to any workman from the provident fund, the pension fund, the gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(c) "workmen's portion", in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of the amount of workmen's dues and the amount of the debts due to the secured creditors.

Illustration

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs.3,00,000. The aggregate of the amount of workmen's dues and the amount of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000.

Sec 327 Preferential Payments {Relevant Extract}
(1) In a winding up, subject to the provisions of section 326, there shall be paid in priority to all other debts,—
(a) all **revenues, taxes, cesses and rates due to the CG or a SG or a local authority** at the **relevant date**, and **having become due and payable within the 12 months immediately before that date**;
(b) **all wages or salary of any employee payable by company and due for a period not exceeding 4 months within the 12 months immediately before the relevant date**,
(c) **all accrued holiday remuneration** payable, on the termination of his employment before, or by the winding up order, or, as the case may be, the dissolution of the company;
(d) If company is being wound up **voluntarily merely for the purposes of reconstruction or amalgamation** with another company, all amount due in respect of **contributions** payable during the period of **twelve** months **immediately before the relevant date** as the employer of persons under the ESI Act,

(e) any **compensation** or **liability** for compensation **under Workmen's Compensation Act**
Provided that where any compensation under the said Act is a weekly payment, the amount payable under this clause shall be taken to be the amount of the lump sum for which such weekly payment could, if redeemable, be redeemed, if the employer has made an application under that Act;

(f) all sums due the provident **fund**, the pension fund, the gratuity fund or any other fund for the welfare of the employees, maintained by the company; and
(g) the **expenses of any investigation** held u/s 213 or 216, in so far as they are payable by the company.

(2) **Where any payment has been made to any employee** of a company on account of wages or salary or accrued holiday remuneration, himself **or, in the case of his death, to any other person claiming** through him, out **of money advanced by some person for that purpose, the person by whom the money was advanced shall, in a winding up, have a right of priority in respect of the money so advanced and paid-up to the amount** by which the sum in respect of which the employee or other person in his right would have been entitled to priority in the winding up has been reduced by reason of the payment having been made.

(3) The debts enumerated in this section shall—
(a) rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and
(b) so far as the assets of the company available for payment to general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge.

(4) Subject to the retention of such sums as may be necessary for the costs and expenses of the winding up, the debts under this section shall be discharged forthwith so far as the assets are sufficient to meet them, and in the case of the debts to which priority is given under clause (d) of sub-section (1), formal proof thereof shall not be required except in so far as may be otherwise prescribed.

(5) In the event of a landlord or other person distraining or having distrained on any goods or effects of the company within three months immediately before the date of a winding up order, the debts to which priority is given under this section shall be a first charge on the goods or effects so distrained on or the proceeds of the sale thereof:
Provided that, in respect of any money paid under any such charge, the landlord or other person shall have the same rights of priority as the person to whom the payment is made.

(6) Any remuneration in respect of a period of holiday or of absence from work on medical grounds through sickness or other good cause shall be deemed to be wages in respect of services rendered to the company during that period.

(7) **Sections 326 and 327 shall not be applicable in the event of liquidation under the IBC, 2016.**

"**relevant date"** means in the case of a company being wound up by the Tribunal, the date of appointment or first appointment of a provisional liquidator, or if no such appointment was made, the date of the winding up order, unless, in either case, the company had commenced to be wound up voluntarily before that date under IBC, 2016.

---NOTE: COMPANY CAN NOW BE VOLUNTARILY WOUND UP ONLY UNDER IBC, 2016, AND NOT UNDER CO. ACT, 2013---

Sec 328 Fraudulent Preference [Simplified Extract]
Where a **company has given preference to a person who is one of the creditors or a surety or guarantor for any of the debts or other liabilities** of the company, **and the company does anything or suffers anything** done **which has the effect of putting that person into a position which, in the event of the company going into liquidation, will be better than the position he would have been in if that thing had not been done prior to 6 months of making winding up application**, the **Tribunal**, if satisfied that, such transaction is a fraudulent preference **may order** as it may think fit **for restoring the position** to what it would have been if the company had not given that preference.

(2) If the Tribunal is satisfied that there is a preference transfer of property, movable or immovable, or any delivery of goods, payment, execution made, taken or done by or against a company within 6 months before making winding up application, the Tribunal may order as it may think fit and may declare such transaction **invalid and restore the position.**

Sec 329 Transfers Not in Good Faith to be Void

Any transfer of property, movable or immovable, or any delivery of goods, made by a company, not being a transfer or delivery made in the ordinary course of its business or in favour of a purchaser or encumbrancer **in good faith and for valuable consideration**, if made within a period of **one year** before the presentation of a petition for winding up by the Tribunal under this Act shall be void against the Company Liquidator.

Sec 330 Certain Transfers to be Void.

Any transfer or assignment by a company of all its properties or assets to trustees for the benefit of all its creditors shall be void.

Sec 331 Liabilities and Rights of Certain Persons Fraudulently Preferred

331. (1)**Where a company is being wound up and anything made, taken or done** after the commencement of this Act **is invalid** under section 328 as a fraudulent preference of a person interested in property mortgaged or charged to secure the company's debt, **then, without prejudice to any rights or liabilities arising, apart from this provision, the person preferred shall be subject to the same liabilities, and shall have the same rights, as if he had undertaken to be personally liable as a surety for the debt, to the extent of the mortgage or charge on the property or the value of his interest, whichever is less**.

(2) The value of the interest of the person preferred under sub-section (1) shall be determined as at the date of the transaction constituting the fraudulent preference, as if the interest were free of all encumbrances other than those to which the mortgage or charge for the debt of the company was then subject.

(3) On an application made to the Tribunal with respect to any payment on the ground that the payment was a fraudulent preference of a surety or guarantor, the Tribunal shall have jurisdiction to determine any questions with respect to the payment arising between the person to whom the payment was made and the surety or guarantor and to grant relief in respect thereof, notwithstanding that it is not necessary so to do for the purposes of the winding up, and for that purpose, may give leave to bring in the surety or guarantor as a third party as in the case of a suit for the recovery of the sum paid.

(4) The provisions of sub-section (3) shall apply mutatis mutandis in relation to transactions other than payment of money.

Sec 332 Effect of Floating Charge

332. Where a company is being wound up, **a floating charge** on the undertaking or property of the company created **within the 12 months immediately preceding the commencement of the winding up, shall**, unless it is proved that the company immediately after the creation of the charge was solvent, **be invalid**, **except** for the amount of any cash paid to the company at the time of, or subsequent to the creation of, and in consideration for, the charge, together with interest on that amount at the rate of 5 % p.a. or such other rate as may be notified by the CG in this behalf.

Sec 333 Disclaimer of Onerous Property-(Procedural Provision- Not Covered)

Sec 334 Transfers, etc., After Commencement of Winding Up to be Void

334. In the case of a winding up by the Tribunal, any disposition of the property including actionable claims, of the company and any transfer of shares in the company or alteration in the status of its members, made after the commencement of the winding up shall, unless the Tribunal otherwise orders, be void.

Sec 335 Certain Attachments, Executions, etc., in Winding Up by Tribunal to be Void

335. (1) Where any company is being wound up by the Tribunal,—

(a) any attachment, distress or execution put in force, without leave of the Tribunal against the estate or effects of the company, after the commencement of the winding up; or

(b) any sale held, without leave of the Tribunal of any of the properties or effects of the company, after such commencement, shall be void.

(2) Nothing in this section shall apply to any proceedings for the recovery of any tax or impost or any dues payable to the Government.

Sec 336 Offences by Officers of Companies in Liquidation

336. (1) If any person, who is or has been an officer of a company which, at the time of the commission of the alleged offence, is being wound up, by the Tribunal under this Act or which is subsequently ordered to be wound up by the Tribunal under this Act,—

(**a**) does not, to the best of his knowledge and belief, fully and truly disclose to the Company Liquidator all the property, movable and immovable, of the company, and how and to whom and for what consideration and when the company disposed of any part thereof, except such part as has been disposed of in the ordinary course of the business of the company;

(**b**) does not deliver up to the Company Liquidator, or as he directs, all such part of the movable and immovable property of the company as is in his custody or under his control and which he is required by law to deliver up;

(**c**) does not deliver up to the Company Liquidator, or as he directs, all such books and papers of the company as are in his custody or under his control and which he is required by law to deliver up;

(**d**) within the 12 months immediately before the commencement of the winding up or at any time thereafter,—

(i) conceals any part of the property of the company to the value of one thousand rupees or more, or conceals any debt due to or from the company;

(ii) fraudulently removes any part of the property of the company to the value of Rs. 1000/- or more;

(iii) conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to, the property or affairs of the company;

(iv) makes, or is privy to the making of, any false entry in any book or paper affecting or relating to, the property or affairs of the company;

(v) fraudulently parts with, alters or makes any omission in, or is privy to the fraudulent parting with, altering or making of any omission in, any book or paper affecting or relating to the property or affairs of the company;

(vi) by any false representation or other fraud, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for;

(vii) under the false pretence that the company is carrying on its business, obtains on credit, for or on behalf of the company, any property which the company does not subsequently pay for; or

(viii) pawns, pledges or disposes of any property of the company which has been obtained on credit and has not been paid for, unless such pawning, pledging or disposing of the property is in the ordinary course of business of the company;

(**e**) makes any material omission in any statement relating to the affairs of the company;

(**f**) knowing or believing that a false debt has been proved by any person under the winding up, fails for a period of one month to inform the Company Liquidator thereof;

(**g**) after the commencement of the winding up, prevents the production of any book or paper affecting or relating to the property or affairs of the company;

(**h**) after the commencement of the winding up or at any meeting of the creditors of the company within the twelve months next before the commencement of the windingup, attempts to account for any part of the property of the company by fictitious losses or expenses; or

(**i**) is guilty of any false representation or fraud for the purpose of obtaining the consent of the creditors of the company or any of them, to an agreement with reference to the affairs of the company or to the winding up,

he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees:

Provided that it shall be a good defence if the accused proves that he had no intent to defraud or to conceal the true state of affairs of the company or to defeat the law.

(2) Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under sub-clause (viii) of clause (d) of sub-section (1), every person who takes in pawn or pledge or otherwise receives the property, knowing it to be pawned, pledged, or disposed of in such circumstances as aforesaid, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than three lakh rupees but which may extend to five lakh rupees.

Explanation.—For the purposes of this section, the expression "officer" includes any person in accordance with whose directions or instructions the directors of the company have been accustomed to act.

Sec 344 Statement that Company is in Liquidation

344. (1) Where a company is being wound up, whether by the Tribunal or voluntarily, every invoice, order for goods or business letter issued by or on behalf of the company or a Company Liquidator of the company, or a receiver or manager of the property of the company, being a document on or in which the name of the company appears, shall contain a statement that the company is being wound up.

(2) If a company contravenes the provisions of sub-section (1), the company, and every officer of the company, the Company Liquidator and any receiver or manager, who wilfully authorises or permits the non-compliance, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.

Sec 345 Books and Papers of Company to be Evidence

345. Where a company is being wound up, all books and papers of the company and of the Company Liquidator shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be recorded therein.

Sec 346 Inspection of Books and Papers by Creditors and Contributories

346. (1) At any time after the making of an order for the winding up of a company by the Tribunal, any creditor or contributory of the company may inspect the books and papers of the company only in accordance with, and subject to such rules as may be prescribed.

(2) Nothing contained in sub-section (1) shall exclude or restrict any rights conferred by any law for the time being in force—
(a) on the CG or a SG;
(b) on any authority or officer thereof; or
(c) on any person acting under the authority of any such Government or of any such authority or officer.

Sec 347 Disposal of Books and Papers of Company (IMPORTANT)

1) When the affairs of a company have been completely wound up and it is about to be dissolved, the books and papers of such company and those of the Company Liquidator may be disposed of in **such manner as the Tribunal directs**.

(2) **After the expiry of 5 years** from the dissolution of the company, **no responsibility** shall devolve on the company, the Company Liquidator, or any person to whom the custody of the books and papers has been entrusted, by reason of any book or paper not being forthcoming to any person claiming to be interested therein.

(3)The CG may, by rules,—
(a) prevent for such period as it thinks proper the destruction of the books and papers of a company which has been wound up and of its Company Liquidator; and
(b) enable any creditor or contributory of the company to make representations to the Central Government in respect of the matters specified in clause (a) and to appeal to the Tribunal from any order which may be made by the Central Government in the matter.

(4) If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees, or with both

Sec 352 Company Liquidation Dividend and Undistributed Assets Account

(1) Where any company is being wound up and the liquidator has in his hands or under his control any money representing—
(a) dividends payable to any creditor but which had remained unpaid for six months after the date on which they were declared; or
(b) assets refundable to any contributory which have remained undistributed for six months after the date on which they become refundable, the liquidator shall forthwith deposit the said money into a separate special account to be known as the Company Liquidation Dividend and Undistributed Assets Account maintained in a scheduled bank.

(2) The liquidator shall, on the dissolution of the company, pay into the Company Liquidation Dividend and Undistributed Assets Account any money representing unpaid dividends or undistributed assets in his hands at the date of dissolution.

(3)The liquidator shall, when making any payment referred to in sub-sections (1) and (2), furnish to the Registrar, a statement in the prescribed form, setting forth, in respect of all sums included in such payment, the nature of the sums, the names and last known addresses of the persons entitled to participate therein, the amount to which each is entitled and the nature of his claim thereto, and such other particulars as may be prescribed.

(4) The liquidator shall be entitled to a receipt from the scheduled bank for any money paid to it under sub-sections (1) and (2), and such receipt shall be an effectual discharge of the Company Liquidator in respect thereof.

(5) Where a company is being wound up voluntarily, the Company Liquidator shall, when filing a statement in pursuance of sub-section (1) of section 348, indicate the sum of money which is payable under sub-sections (1) and (2) of this section during the six months preceding the date on which the said statement is prepared, and shall, within fourteen days of the date of filing the said statement, pay that sum into the Company Liquidation Dividend and Undistributed Assets Account.

(6) Any person claiming to be entitled to any money paid into the Company Liquidation Dividend and Undistributed Assets Account, whether paid in pursuance of this section or under the provisions of any previous company law may apply to the Registrar for payment thereof, and the Registrar, if satisfied that the person claiming is entitled, may make the payment to that person of the sum due:

Provided that the Registrar shall settle the claim of such person within a period of sixty days from the date of receipt of such claim, failing which the Registrar shall make a report to the Regional Director giving reasons of such failure.

(7) Any money paid into the Company Liquidation Dividend and Undistributed Assets Account in pursuance of this section, which remains unclaimed thereafter for a period of fifteen years, shall be transferred to the general revenue account of the Central Government, but a claim to any money so transferred may be preferred under sub-section (6) and shall be dealt with as if such transfer had not been made and the order, if any, for payment on the claim will be treated as an order for refund of revenue.

(8) Any liquidator retaining any money which should have been paid by him into the Company Liquidation Dividend and Undistributed Assets Account under this section shall—
(a) pay interest on the amount so retained at the rate of twelve per cent. per annum and also pay such penalty as may be determined by the Registrar:
Provided that the CG may in any proper case remit either in part or in whole the amount of interest which the liquidator is required to pay under this clause;
(b) be liable to pay any expenses occasioned by reason of his default; and
(c) where the winding up is by the Tribunal, also be liable to have all or such part of his remuneration, as the Tribunal may consider just and proper, to be disallowed, and to be removed from his office by the Tribunal.

Sec 353 Liquidator to Make Returns, etc.

353. (1) If any Company Liquidator who has made any default in filing, delivering or making any return, account or other document, or in giving any notice which he is by law required to file, deliver, make or give, fails to make good the default within fourteen days after the service on him of a notice requiring him to do so, the Tribunal may, on an application made to it by any contributory or creditor of the company or by the Registrar, make an order directing the Company Liquidator to make good the default within such time as may be specified in the order.

(2) Any order under sub-section (1) may provide that all costs of, and incidental to, the application shall be borne by the Company Liquidator.

(3) Nothing in this section shall prejudice the operation of any enactment imposing penalties on a Company Liquidator in respect of any such default as aforesaid.

Sec 354 Meetings to Ascertain Wishes of Creditors or Contributories

354. (1) In all matters relating to the winding up of a company, the Tribunal may—
(a) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence;
(b) if it thinks fit for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held and conducted in such manner as the Tribunal may direct; and
(c) appoint a person to act as chairman of any such meeting and to report the result thereof to the Tribunal.

(2) While ascertaining the wishes of creditors under sub-section (1), regard shall be had to the value of each debt of the creditor.

(3) While ascertaining the wishes of contributories under sub-section (1), regard shall be had to the number of votes which may be cast by each contributory.

Sec 355 Court, Tribunal or Person, etc., Before Whom Affidavit May be Sworn (Relevant Extract)

Any affidavit required to be sworn inder this Act may be sworn:

IN INDIA	before any court, tribunal, judge or person lawfully authorised to take and receive affidavits
IN ANY OTHER COUNTRY	before any court, judge or person lawfully authorised in that country **or** before an Indian diplomatic or consular officer.

Sec 356 Powers of Tribunal to Declare Dissolution of Company Void(Relevant Extract)

Tribunal may at any time **within 2 years** of the date of the dissolution, **on application by** the **Company Liquidator** of the company or by any **other person** who appears to the Tribunal **to be interested**, make an **order**, upon such terms as the Tribunal thinks fit, **declaring the dissolution to be void**, and thereupon such proceedings may be taken as if the company had not been dissolved. The Applicant within 30 days of order of Tribunal or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same.

Sec 357 Commencement of Winding Up by Tribunal {IMPORTANT}

--- shall be deemed to COMMENCE at the **time of the presentation of the petition** for the winding up.

Sec 358 Exclusion of Certain Time in Computing Period of Limitation {IMPORTANT}

358. Notwithstanding anything in the Limitation Act, 1963, or in any other law for the time being in force, **in computing the period of limitation** specified for any suit or application in the name and on behalf of a company which is being wound up by the Tribunal, **the period from the date of commencement of the winding up of the company to a period of one year immediately following the date of the winding up order shall be excluded**.

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CHAPTER XXII of Companies Act, 2013

(Co. Incorporated Outside India)

Section 2(42) "**foreign company**" means any **company or body corporate incorporated outside India** which,—
(*a*) has a **place of business in India** whether by itself or through an agent, physically **or through electronic mode**; and
(*b*) **conducts any business activity** in India in any other manner.

{**Rules Extract:** For the purposes of section 2(42), "**electronic mode" means** carrying out electronically based, whether main server is installed in India or not, including, but not limited to -
(i) business to business and business to consumer transactions, **data interchange** and other digital supply transactions;
(ii) **offering to accept deposits or inviting deposits or accepting deposits or subscriptions** in securities, in India or from citizens of India;
(iii) **financial settlements, web based marketing, advisory and transactional services, database services** and products, **supply chain management**;
(iv) online services such as **telemarketing**, telecommuting, telemedicine, education and information research; and
(v) all related **data communication** services,
whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise.}

Sec 379 Application of Act to Foreign Companies
379 (1) Sections 380 to 386 (both inclusive) and sections 392 and 393 shall apply to all foreign companies:

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

(2) Where **not less than 50 per cent. of the paid-up share capital**, **whether equity or preference or partly equity and partly preference**, of a foreign company i**s held by one or more citizens of India or by one or more companies or bodies corporate incorporated in India, or by one or more citizens of India and one or more companies or bodies corporate incorporated in India, whether singly or in the aggregate**, such company shall comply with the **provisions** of this Chapter and such other provisions of this Act as may be prescribed with **regard** to the **business carried** on **by it in India** as **if it** were a company incorporated in India.

Sec 380 read with Relevant Rule: Documents, etc., to be Delivered to ROC by Foreign Companies[Important]

380. (1) Every foreign company shall, within **thirty days** of the **establishment** of its place of business in India, deliver to the **Registrar** for registration in Form FC-1 with prescribed fee—
(a) a **certified copy of the charter, statutes or memorandum and articles**, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
(b) the **full address** of the **registered or principal office** of the company;
(c) a **list of the directors and secretary** of the company containing such particulars as may be prescribed;
(d) the **name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company**;
(e) **the full address of the office of the company in India** which is **deemed** to be its **principal place** of business in India;
(f) **particulars** of **opening** and **closing** of a place of business in India on earlier occasion or occasions;
(g) **declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred** from formation of companies and management **in India or abroad**; and
(h) any other information as may be prescribed.
{**Rule Extract:**The application shall also be supported with an **attested copy of approval from the RBI** under FEMA, and also from other regulators, if any, approval is required by such foreign company to establish a place of business in

India or a declaration from the authorised representative of such foreign company that no such approval is required.}

(2) Every foreign company existing at the commencement of this Act shall, if it has not delivered to the Registrar before such commencement, the documents and particulars specified in sub-section (1) of section 592 of the Companies Act, 1956, continue to be subject to the obligation to deliver those documents and particulars in accordance with that Act.

(3)Where any alteration is made or occurs in the documents delivered to the Registrar under this section, the foreign company shall, within **thirty days** of such alteration, deliver to the Registrar for registration, a return in Form FC-2 along with the fee containing the particulars of the alteration.

Sec 381 read with Relevant Rule: Accounts of Foreign Company

381. (1) Every foreign company shall, in every **calendar year**,—

a) prepare
-**Financial statements of its Indian business operations for every Financial year (FY) in accordance with Schedule III** or as near thereto as may be possible, containing such particulars and **including documents required to be annexed thereto** in accordance with the provisions of Chapter "Accounts of Companies" of the Act and
-documents relating to **copies of latest consolidated financial statements of the parent foreign company , as submitted by it to the prescribed authority in the country of its incorporation** under the provisions of the law for the time being in force in **that** country; and
- **Statement** of related party transaction, **Statement** of repatriation of profits, **Statement** of transfer of funds (including dividends if any);
and
b) deliver a copy of those documents to the Registrar:

Provided that the CG may, by notification, direct that, in the case of any foreign company or class of foreign companies, the requirements of clause (a) shall not apply, or shall apply subject to such exceptions and modifications as may be specified in that notification.

Time Limit:
The documents referred above shall be delivered to the Registrar within a period of 6 months of the close of the FY of the foreign company to which the documents relate however Registrar may, for any special reason, and on application made in writing by the foreign company concerned, extend the said period by a period not exceeding 3 months.

Audit Requirement:
Every foreign company shall get its accounts, pertaining to the Indian business operations prepared as aforesaid audited by a practicing CA in India or a firm or LLP of practicing CAs.

Special Note: The Underlined parts in above section are NOT conflicting with each other. It can be interpreted as Every Foreign Co. need to file the aforesaid docs prepared for every financial year in every calendar year and submit the same with 6 months or 9 months as the case may be to ROC. E.g.: In Calendar Year 2019, a foreign Co. makes aforesaid statement(s) for FY 2018-19 and submit the same by Sept, 2019 and this follows every year.

(2) If any such document as is mentioned in sub-section (1) is not in the English language, there shall be annexed to it a certified translation thereof in the English language.

(3) Every foreign company shall send to the Registrar along with the documents required to be delivered to him under sub-section (1), a copy of a list, in the Form FC.3 along with fees, of all places of business established by the company in India as at the date with reference to which the balance sheet referred to in sub-section (1) is made out.

Sec 382 Display of Name, etc., of Foreign Company

382. Every foreign company shall—
(a) conspicuously exhibit on the outside of every office or place where it carries on business in India, the name of the company and the country in which it is incorporated, in letters easily legible in English characters, and also in the characters of the language or one of the languages in general use in the locality in which the office or place is situate;

(b) cause the name of the company and of the country in which the company is incorporated, to be stated in legible English characters in all business letters, billheads and letter paper, and in all notices, and other official publications of the company; and
(c) if the liability of the members of the company is limited, cause notice of that fact—
(i) to be stated in every such prospectus issued and in all business letters, bill-heads, letter paper, notices, advertisements and other official publications of the company, in legible English characters; and
(ii) to be conspicuously exhibited on the outside of every office or place where it carries on business in India, in legible English characters and also in legible characters of the language or one of the languages in general use in the locality in which the office or place is situate.

Sec 383 Service on Foreign Company [Important]

383. Any process, notice, or other document required to be served on a foreign company shall be deemed to be sufficiently served, if addressed to any person whose name and address have been delivered to the Registrar under section 380 and left at, sent or by post to, the address which has been so delivered to the Registrar or by electronic mode.

Sec 384 read with rules: Debentures, Annual Return, Registration of Charges, Books of Account and Their Inspection

384. (1) The provisions of section 71 shall apply mutatis mutandis to a foreign company.

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

Annual Return:

Every foreign company shall prepare and file, within a period of **60 days** from the last day of its financial year, to the Registrar annual return in Form FC.4 along with fee containing the particulars as they stood on the close of FY.

(3) The provisions of section 128 shall apply to a foreign company to the extent of requiring it to keep at its principal place of business in India, the books of account referred to in that section, with respect to monies received and spent, sales and purchases made, and assets and liabilities, in the course of or in relation to its business in India.

(4) The provisions of Chapter VI shall apply mutatis mutandis to charges on properties which are created or acquired by any foreign company.

(5) The provisions of Chapter XIV shall apply mutatis mutandis to the Indian business of a foreign company as they apply to a company incorporated in India.

Sec 385 Fee for Registration of Documents – pay to registrar as may be prescribed

Sec 386 Interpretation (Important)

386. For the purposes of the foregoing provisions of this Chapter,—

(a) the expression "**certified**" means certified in the prescribed manner to be a true copy or a correct translation;

(b) the expression "**director**", in relation to a foreign company, includes any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; and

(c) the expression "**place of business**" includes a share transfer or registration office.

Sec 387 Dating of Prospectus and Particulars to be Contained Therein

387. (1) No person shall issue, circulate or distribute in India any prospectus offering to subscribe for securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, unless the prospectus is dated and signed, and—

(a) contains particulars with respect to the following matters, namely:—

(i) the instrument constituting or defining the constitution of the company;

(ii) the enactments or provisions by or under which the incorporation of the company was effected;

(iii) address in India where the said instrument, enactments or provisions, or copies thereof, and if the same are not in the English language, a certified translation thereof in the English language can be inspected;

(iv)the date on which and the country in which the company would be or was incorporated; and

(v) whether the company has established a place of business in India and, if so, the address of its principal office in India; and

(b)states the matters specified under section 26:

Provided that sub-clauses (i), (ii) and (iii) of clause (a) of this sub-section shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

(2) Any condition requiring or binding an applicant for securities to waive compliance with any requirement imposed by virtue of sub-section (1), or purporting to impute him with notice of any contract, documents or matter not specifically referred to in the prospectus, shall be void.
(3) No person shall issue to any person in India a form of application for securities of such a company or intended company as is mentioned in sub-section (1), unless the form is issued with a prospectus which complies with the provisions of this Chapter and such issue does not contravene the provisions of section 388: Provided that this sub-section shall not apply if it is shown that the form of application was issued in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to securities.
(4) This section — (a) shall not apply to the issue to existing members or debenture holders of a company of a prospectus or form of application relating to securities of the company, whether an applicant for securities will or will not have the right to renounce in favour of other persons; and (b) except in so far as it requires a prospectus to be dated, to the issue of a prospectus relating to securities which are or are to be in all respects uniform with securities previously issued and for the time being dealt in or quoted on a recognised stock exchange, but, subject as aforesaid, this section shall apply to a prospectus or form of application whether issued on or with reference to the formation of a company or subsequently.
(5) Nothing in this section shall limit or diminish any liability which any person may incur under any law for the time being in force in India or under this Act apart from this section.

Sec 388 Provisions as to Expert's Consent and Allotment

388. (1) No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not been established, or when formed will or will not establish, a place of business in India,— (a) if, where the prospectus includes a statement purporting to be made by an expert, he has not given, or has before delivery of the prospectus for registration withdrawn, hi**s written consent to the issue of the prospectus with the statement included in the form and context in which it is included, or there does not appear in the prospectus a statement that he has given and has not withdrawn his consent as aforesaid**; or (b) if the prospectus does not have the effect, where an application is made in pursuance thereof, of rendering all persons concerned bound by all the provisions of sections 33 and 40, so far as applicable.
(2) For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

Sec 389 Registration of Prospectus 389. No person shall issue, circulate or distribute in India any prospectus offering for subscription in securities of a company incorporated or to be incorporated outside India, whether the company has or has not established, or when formed will or will not establish, a place of business in India, **unless** before the issue, circulation or distribution of the prospectus in India, **a copy thereof certified by the chairperson of the company and two other directors** of the company as having been approved by resolution of the managing body has been **delivered for registration to the Registrar and the prospectus states on the face of it that a copy has been so delivered**, and there is endorsed on or **attached** to the copy, any **consent** to the issue of the prospectus required by section 388 **and such documents** as may be prescribed.

Sec 390 Offer of Indian Depository Receipts

390. Notwithstanding anything contained in any other law for the time being in force, the CG may make rules applicable for—

(a) the offer of Indian Depository Receipts;

(b) the requirement of disclosures in prospectus or letter of offer issued in connection with Indian Depository Receipts;

(c) the manner in which the Indian Depository Receipts shall be dealt with in a depository mode and by custodian and underwriters; and

(d) the manner of sale, transfer or transmission of Indian Depository Receipts,

by a company incorporated or to be incorporated outside India, whether the company has or has not established, or will or will not establish, any place of business in India.

Sec 391 Application of Sections 34 to 36 and Chapter XX

391.(1) The provisions of sections 34 to 36 (both inclusive) shall apply to—

(i) the issue of a prospectus by a company incorporated outside India under section 389 as they apply to prospectus issued by an Indian company;

(ii) the issue of Indian Depository Receipts by a foreign company.

(2) Subject to the provisions of section 376, the provisions of Chapter XX shall apply mutatis mutandis for closure of the place of business of a foreign company in India as if it were a company incorporated in India in case such foreign company has raised monies through offer or issue of securities under this Chapter which have not been repaid or redeemed.

Note:

Sec 34: Misleading Prospectus-Criminal Liability-Imprisonment/fine/both

Sec 35: Misleading Prospectus-Civil Liability-Damages

Sec 36: Broker Induce someone (falsely/ frequently)-Punishment.

Sec 392: Punishment for Contravention of Chapter XXII- Not Covered

Sec 393 Company's Failure to Comply with Provisions of This Chapter Not to Affect Validity of Contracts, etc.

393. Any failure by a company to comply with the provisions of this Chapter shall not affect the validity of any contract, dealing or transaction entered into by the company or its liability to be sued in respect thereof, but the company shall not be entitled to bring any suit, claim any set-off, make any counter-claim or institute any legal proceeding in respect of any such contract, dealing or transaction, until the company has complied with the provisions of this Act applicable to it.

Rules Extract (Important):

- Any document which any foreign company is required to deliver to the Registrar shall be delivered **to the Registrar having jurisdiction over New Delhi**.
- **If any foreign company ceases to have a place of business in India**, it shall forthwith give notice of the fact to the Registrar, and as from the date on which notice is so given, the obligation of the company to deliver any document to the Registrar shall cease, provided it has no other place of business in India.
- All the documents required to be filed with the Registrar by the foreign companies shall be in English language and where any such document is not in English language, **there shall be attached a translation thereof in English language duly certified to be correct** in the manner given below:

If translation is made **outside India**	it shall be **authenticated** by the **signature and the seal** of: (a) the official having custody of the original; or (b) A Notary (Public) of the country of Incorporation.
If translation is made **within India**	it shall be **authenticated** by- (a) an advocate, attorney or pleader entitled to appear before any High Court; or (b) an affidavit, of a competent person having, in the opinion of the Registrar, an adequate knowledge of the language of the original and of English.

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CHAPTER XXIII of Companies Act, 2013
(Government Companies)

Sec 2(45) "Government company" means any company in which **not less than 51 per cent of the paid-up** share capital is held by the CG, or by any SG or Governments, or partly by the CG and partly by one or more SGs, and **includes a company which is a subsidiary company of such a Government company**.

Sec 394 Annual Reports on Government Companies
394. (1) Where the CG is a member of a Government company, the CG shall cause an **ANNUAL REPORT** on the working and affairs of that company to be— (a) prepared within **three months** of its AGM before which the comments given by the CAG(Comptroller and Auditor-General) of India and the audit report is placed under the proviso to sub-section (6) of section 143; and (b) as soon as may be after such preparation, **laid before both Houses of Parliament** tog**ether with a copy of the audit report and comments upon or supplement** to the audit report, made by the CAG of India.
(2) Where in addition to the CG, any SG is also a member of a Government company, that SG shall cause a copy of the annual report prepared under sub-section (1) to be laid before the House or both Houses of the State Legislature together with a copy of the audit report and the comments upon or supplement to the audit report referred to in sub-section (1).

Sec 395 Annual Reports Where One or More SGs are Members of Companies
395. (1) Where **the CG is not a member** of a Government company, every SG which is a member of that company, or where only one SG is a member of the company, that SG shall cause an ANNUAL REPORT on the working and affairs of the company to be— (a) prepared within the time specified in sub-section (1) of section 394; and (b) as soon as may be after such preparation, laid before the House or both Houses of the State Legislature together with a copy of the audit report and comments upon or supplement to the audit report referred to in sub-section (1) of that section.
(2) The provisions of this section and section 394 shall, so far as may be, apply to a Government company in liquidation as they apply to any other Government company.

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CHAPTER XXVI of Companies Act, 2013
(Nidhi Company)

Section 406 Power to Modify Act in its Application to Nidhis

406. (1) In this section, **"Nidhi" means a company which has been incorporated as a Nidhi with the object of** **-cultivating the habit of thrift and savings amongst its members,** **-receiving deposits from, and lending to, its members only, for their mutual benefit, and** **-which complies with such rules as are prescribed by the CG for regulation of such class of companies.**
(2) Save as otherwise expressly provided, the Central Government may, by notification, direct that any of the provisions of this Act shall not apply, or shall apply with such exceptions, modifications and adaptations as may be specified in that notification, to any Nidhi or Nidhis of any class or description as may be specified in that notification.
(3) A copy of every notification proposed to be issued under sub-section (2), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

[Note: Section 406 has been amended already but the amendment will be effective from 15/08/2019, and since cut-off date for Nov., 2019 exams is 30/04/2019, hence the above given provision is based on pre-amendment position.]

Nidhi Rules, 2014 (Important):

Rule 2 Application

These rules shall apply to,-

(a) every company which had been declared as a Nidhi or Mutual Benefit Society u/s 620A(1) of the Companies Act, 1956;

(b) every company functioning on the lines of a Nidhi company or Mutual Benefit Society but has either not applied for or has applied for and is awaiting notification to be a Nidhi or Mutual Benefit Society u/s 620A(1) of the Companies Act, 1956; and

(c) every company incorporated as a Nidhi pursuant to the provisions of section 406 of the Act.

Rule 4 Incorporation and Incidental Matters

(1) A Nidhi shall be a public company and shall have a minimum **paid up equity share capital of five lakh** rupees.

(2) On and after the commencement of the Act, **no Nidhi shall issue preference shares**.

(3) **If preference shares had been issued by a Nidhi before the commencement of this Act**, such preference shares shall be redeemed in accordance with the terms of issue of such shares.

(4) **Except** as provided under the proviso to sub-rule (e) to rule 6, **no Nidhi shall have any object in its MOA other than the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit**.

(5) Every "Nidhi" shall have the last words '**Nidhi Limited'** as part of its name.

Rule 5 Requirements for Minimum Number of Members, Net Owned Fund etc

Sub rule (1) Every Nidhi shall, within a period of one year from the commencement of these rules, ensure that it has-

(a) not less than **200 members**;

(b) **Net Owned Funds** of **ten lakh rupees** or more;

(c) **unencumbered term deposits of not less than 10 per cent of the outstanding deposits** as specified and

(d) **ratio** of Net Owned Funds to deposits of **not more than 1:20**.

Sub-rule (2) Within **90 days from the close of the first FY after its incorporation and where applicable**, the second FY, Nidhi **shall file a return** of statutory compliances in Form NDH-1 along with such fee with the Registrar **duly certified** by a **CS** in practice or a **CA** in practice or a **cost accountant** in practice.

Sub-rule (3) If a Nidhi is not complying with clauses (a) or (d) of sub-rule (1) above, it shall within thirty days from the close of the first financial year, apply to the Regional Director in Form NDH-2 along with fee for extension of time and the Regional Director may consider the application and pass orders within thirty days of receipt of the application.

Explanation - For the purpose of this rule "Regional Director" means the person appointed by the Central Government in the MCA as a Regional Director;

Sub-rule (4) If the failure to comply with sub-rule (1) of this rule extends beyond the second financial year, Nidhi shall not accept any further deposits from the commencement of the second financial year till it complies with the provisions contained in sub-rule (1), besides being liable for penal consequences as provided in the Act.

Rule 6 General Restrictions or Prohibitions

No Nidhi shall-
(a) **carry on the business of** chit fund, hire purchase finance, leasing finance, insurance or acquisition of securities issued by any body corporate;
(b) issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever;
(c) **open any current account** with its members;
(d) **acquire another company by purchase of securities or control** the composition of the BOD of any other company in any manner whatsoever or enter into any arrangement for the change of its management, **unless** it has passed a SR in its general meeting and also obtained the previous approval of the Regional Director having jurisdiction over such Nidhi;
(e) carry on any business other than the business of borrowing or lending in its own name:

Provided that **Nidhis** which have adhered to all the provisions of these rules **may provide locker facilities on rent to its members subject to the rental income from such facilities not exceeding 20 per cent of the gross income** of the Nidhi at any point of time during a financial year.
(f) **accept deposits** from **or lend to** any person, **other than its members**;
(g) pledge any of the assets lodged by its members as security;
(h) **take** deposits **from or lend money to any body corporate**;
(i) **enter into any partnership** arrangement **in its borrowing or lending activities**;
(j) **issue or cause to be issued any advertisement** in any form **for soliciting deposit**:

Provided that private circulation of the details of fixed deposit schemes among the members of the Nidhi carrying the words "for private circulation to members only" shall not be considered to be an advertisement for soliciting deposits.

(k) **pay any brokerage or incentive** for mobilising deposits from members or for deployment of funds or for granting loans.

Rule 7 Share Capital and Allotment
(1) Every Nidhi shall issue equity shares of the **nominal value of not less than ten rupees** each:
Provided that this requirement shall not apply to a company referred to in sub-rules (a) and (b) of rule 2.
(2**) No service charge shall be levied for issue** of shares.
(3) Every Nidhi **shall allot to each deposit holder at least a minimum of 10 equity shares or shares equivalent to Rs. 100/-**:

Provided that a savings account holder and a recurring deposit account holder shall hold at least one equity share of Rs.10/-

Rule 8 Membership
(1) A Nidhi **shall not admit a body corporate or trust as a member**.
(2) Except as otherwise permitted under these rules, every **Nidhi shall ensure that its membership is not reduced to less than 200 members at any time**.
(3) A **minor shall not be admitted** as a member of Nidhi:
Provided that deposits may be accepted in the name of a minor, if they are made by the natural or legal guardian **who is a member of Nidhi**.

Rule 9 Net Owned Funds
Every *Nidhi* shall maintain **Net Owned Funds** (**excluding the proceeds of any preference share capital**) of **not less than Rs 10 Lakh rupees** or such higher amount as the Central Government may specify from time to time.

Rule 10 Branches
(1) A Nidhi may open branches, only if it has earned net profits after tax continuously during the preceding 3 FYs.
(2) Subject to the provisions contained in sub-rule (1), a Nidhi may open up to three branches within the district.
(3) If a Nidhi proposes to open more than three branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director and an intimation is to be given to the Registrar about opening of every branch within thirty days of such opening.
(4) No Nidhi shall open branches or collection centres or offices or deposit centres, or by whatever name called outside the State where its registered office is situated.
(5) No Nidhi shall open branches or collection centres or offices or deposit centres, or by whatever name called unless financial statement and annual return (up to date) are filed with the Registrar.
(6) A Nidhi shall not close any branch unless it-
(a) publishes an advertisement in a newspaper in vernacular language in the place where it carries on business at least thirty days prior to such closure, informing the public about such closure;
(b) fixes a copy of such advertisement or a notice informing such closure of the branch on the notice board of Nidhi for a period of at least thirty days from the date on which advertisement was published under clause (a) ; and
(c) gives an intimation to the Registrar within thirty days of such closure.

Rule 16 Rate of Interest
The rate of interest to be charged on any loan given by a Nidhi shall not exceed 7.5 per cent above the highest rate of interest offered on deposits by Nidhi and shall be calculated on reducing balance method:
Provided that Nidhi shall charge the same rate of interest on the borrowers in respect of the same class of loans and the rates of interest of all classes of loans shall be prominently displayed on the notice board at the registered office and each branch office of Nidhi.

Rule 17 Rules Relating to Directors (Important)
(1) The Director shall be a member of Nidhi.
(2) The **Director of a *Nidhi* shall hold office for a term up to ten consecutive years** on the Board of *Nidhi.*
(3) The Director shall be **eligible for re-appointment only after the expiration of two** years of ceasing to be a Director.
(4) Where the tenure of any Director in any case had already been extended by the CG, it shall terminate on expiry of such extended tenure.
(5) The person to be appointed as a Director shall comply with the requirements of section152(4) of the Act and shall **not have been disqualified** from appointment as provided in section 164 of the Act.

Rule 18 Dividend
A Nidhi shall <u>not declare dividend exceeding 25 per cent. or such higher amount as may be specifically approved by the Regional Director</u> for reasons to be recorded in writing **and further subject to the following conditions**, namely:-
(a) an equal amount is transferred to General Reserve;
(b) there has been no default in repayment of matured deposits and interest; and
(c) it has complied with all the rules as applicable to Nidhis.

Rule 19 Auditor [Same as normal provisions]

(1) No Nidhi shall appoint or re-appoint an individual as auditor for more than one term of five consecutive years.
(2) No Nidhi shall appoint or re-appoint an audit firm as auditor for more than two terms of five consecutive years;

Provided that an auditor (whether an individual or an audit firm) shall be eligible for subsequent appointment after the expiration of two years from the completion of his or its term.

Explanation: For the purposes of this proviso:

(i) in case of an auditor (whether an individual or audit firm), the period for which he or it has been holding office as auditor prior to the commencement of these rules shall be taken into account in calculating the period of five consecutive years or ten consecutive years, as the case may be;
(ii) appointment includes re-appointment.

Rule 20 Prudential Norms [Extract Only]

Every *Nidhi* shall adhere to the **prudential norms** for revenue recognition and classification of assets in respect of mortgage loans or jewel loans as contained hereunder:

Income including interest or any other charges on NPA	- **recognised only when it is actually realised**
Note: Any such income recognised before the asset became NPA and which remains unrealized in a year shall be reversed in the P&L A/c of the immediately succeeding year.	

In respect of mortgage loans, the classification of assets and the provisioning required shall be as under:

Nature of Asset	**Provision Required**
Standard Asset	No provision
Sub-Standard Asset	10% of the aggregate outstanding amount
Doubtful Asset	25% of the aggregate outstanding amount
Loss Asset	100% of the aggregate outstanding amount

Provided that a **Nidhi may make provision for exceeding the percentage specific herein**.

Rule 22 Auditor's Certificate
The Auditor of the company **shall furnish a certificate every year** to the effect that the company has complied with all the provisions contained in the rules and such certificate shall be annexed to the audit report and in case of non-compliance, he shall specifically state the rules which have not been complied with.

Rule 24 Penalty for Non-compliance
If a company falling on which Nidhi Rules apply contravenes any of the provisions of the rules prescribed herein, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees, and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

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Miscellaneous Provisions

Section 447 Punishment for Fraud (Recently Amended and very Important)

447. Without prejudice to any liability *including repayment of any debt under this Act or any other law for the time being in force,* ***any person*** *who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:*

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Provided further that where the fraud involves an amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to ***Rs. 50 Lakh*** *or with both.*

Explanation.—For the purposes of this section—
(i) ***"fraud" in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss****;*
(ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;
(iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled.

Summary of Section 447:

Case 1	Fraud of AT LEAST Rs. **10 Lakh or 1 % of the turnover** of the company, **whichever is lower** **And** **NO** public interest **involved** in fraud	***Punishable with imprisonment:*** ***-****min. 6 mon to max 10 years* ***And*** ***Fine*** *- min. equal to amount of fraud* ***to*** *max upto 3 times of amount of fraud.*
Case 2	Fraud of AT LEAST Rs. **10 Lakh or 1 % of the turnover** of the company, **whichever is lower** **And** Public interest **involved** in fraud	***Punishable with imprisonment:*** ***-****min. 3 years to max 10 years* ***And*** ***Fine*** *- min. equal to amount of fraud* ***to*** *max upto 3 times of amount of fraud.*
Case 3	Fraud of LESS THAN Rs. **10 Lakh or 1 % of the turnover** of the company, **whichever is lower** **And** **NO** Public interest **involved** in fraud	***Punishable with imprisonment:*** ***-*** *UPTO 5 years* ***OR*** ***Fine*** *– UPTO Rs.* ***50*** *Lakh* ***OR*** *BOTH.*

Section 450 Punishment Where No Specific Penalty or Punishment is Provided
450. If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, **and** for which no penalty or punishment is provided elsewhere in this Act, - the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to Rs. 10,000/-, and where the contravention is continuing one, with a further fine which may extend to Rs. 1000/- for every day after the first during which the contravention continues.

Section 455 DORMANT COMPANY (Important)
455. (1) Where a company is formed and registered under this Act **for a future project or to hold an asset or intellectual property and has no significant accounting transaction**, such a company or an inactive company **may** make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company. Explanation.—For the purposes of this section,— (i) **"INACTIVE COMPANY" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years**; (ii) "**significant accounting transaction**" means any transaction other than— (a) payment of fees by a company to the Registrar; (b) payments made by it to fulfil the requirements of this Act or any other law; (c) allotment of shares to fulfil the requirements of this Act; and (d) payments for maintenance of its office and records.
(2)The Registrar on consideration of the application shall allow the status of a dormant company to the applicant and issue a certificate in such form as may be prescribed to that effect.
(3) The Registrar shall maintain a register of dormant companies in such form as may be prescribed.
(4) In case of a company which has **not filed financial statements or annual returns for 2 FYs** consecutively, the Registrar **shall** issue a notice to that company and enter the name of such company in the register maintained for dormant companies.
(5) A dormant company **shall have such minimum number of directors, file such documents and pay such annual fee** as may be prescribed to the Registrar to retain its dormant status in the register and may become an active company on an application made in this behalf accompanied by such documents and fee as may be prescribed.
(6) The **Registrar shall strike off the name** of a dormant company from the register of dormant companies, **which has failed to comply with the requirements** of this section.

Companies (Miscellaneous) Rules, 2014 (Summarised) relevant to Dormant Companies:

Rule 3 Application for Obtaining Status of Dormant Company

A company may make an application in Form **MSC-1** along with specified fee to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455

-after passing a **SR** to this effect in the general meeting of the company **OR**

-after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value)

Provided that a company shall be eligible to apply under this rule only, if-

(i) no inspection, inquiry or investigation has been ordered or taken up or carried out against the company;

(ii) no prosecution has been initiated and pending against the company under any law;

(iii) the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or

interest thereon;
(iv) the company is not having any outstanding loan, whether secured or unsecured:
Provided that if there is any outstanding unsecured loan, the company may apply under this rule after obtaining concurrence of the lender and enclosing the same with Form MSC-1 ;

(v) there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1;
(vi) the company does not have any outstanding statutory taxes, dues, duties etc. payable to the CG or any SG or local authorities etc.;
(vii) the company has not defaulted in the payment of workmen's dues;
(viii) the securities of the company are **not listed on any stock exchange within or outside** India.

Rule 4 Certificate of Status of Dormant Company
The Registrar **shall**, after considering the application filed in Form MSC-1, **issue** a certificate in Form **MSC-2** allowing the status of a Dormant Company to the applicant.

Rule 5 Register of Dormant Companies
The Register maintained under the portal maintained by the MCA on its web-site www.mca.gov.in or any other website notified by the CG, shall be the register for dormant companies.

Rule 6 Minimum Number of DIRECTORS for Dormant Company [SAME AS IN SECTION 149(1)]

Public company	minimum 3 directors
Private company	minimum 2 directors
One Person Company	minimum 1 director

Note: Provisions in relation to the **rotation of AUDITORS shall not apply on dormant companies**.

Rule 7 Return of Dormant Companies
A dormant company shall file a "Return of Dormant Company" annually, inter-alia, indicating financial position duly audited by a CA in practice in Form **MSC-3** along with annual fee within a period of 30 days from the end of each FY.

Provided that the **company shall continue to file the return or returns of** allotment and change in directors in the manner and within the time specified in the Act, whenever the company allots any security to any person or there is any change in the directors of the company.

Rule 8 Application for Seeking Status of an Active Company

(1) An application, under u/s 455(5), for obtaining the status of an active company shall be made in Form **MSC-4** along with requisite fees and shall be accompanied by a return in Form **MSC-3** in respect of the FY in which the application for obtaining the status of an active company is being filed:

Provided that the Registrar shall initiate the process of striking off the name of the company if the company remains as a dormant company for a period of consecutive 5 years.

(2) The Registrar shall, after considering the application filed in MSC-4, issue a certificate in Form **MSC-5** allowing the status of an active company to the applicant.

(3) Where a dormant company does or omits to do any act mentioned in the Grounds of application in Form **MSC-1** submitted to Registrar for obtaining the status of dormant company, affecting its status of dormant company, the directors shall within seven days from such event, file an application, under sub-rule (1) of this rule, for obtaining the status of an active company.

(4) Where the Registrar has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly, he may initiate the proceedings for enquiry u/s 206 of the Act and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been functioning, the Registrar may remove the name of such company from register of dormant companies and treat it as an active company.

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Compounding of Offences, Adjudication, Special Courts

BASIC TERMS

A.	**Meaning of OFFENCE**: It is a commission of an act which is contrary to any law or forbidden by the law and is not confined to commission of crime only.
B.	**TYPES OF PENALTIES** (as per Companies Act, 2013): 1. Fine **Only** 2. Imprisonment **or** Fine 3. Imprisonment **or** Fine **or** Both 4. Imprisonment **and** Fine 5. Imprisonment **Only**
C.	**COMPOUNDABLE OFFENCES** **The offences** where the person who has filed the case enters into a compromise and agrees to have the charges dropped against the accused. These are offences **where punishment in form of Imprisonment is not necessary** but is at discretion of adjudicating authority [Normally is "**Compounding Fee**" is levied in nature of penalty on accused for compounding any offence.] **E.g**: Point 1,2 and 3 in "B" above
D.	**Non-COMPOUNDABLE OFFENCES** Offences which are not compoundable are non-compoundable offences. They are of **grievious nature.** These are offences **where punishment in form of Imprisonment is necessary** with or without fine. **E.g.** Point 4 and 5 in "B" above.

Section 2(29) "court" means—
(i) the **High Court (HC)** having jurisdiction in relation to the place at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii); (ii) the **district court**, in cases where the CG has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the HC, within the scope of its jurisdiction in respect of a company whose registered office is situate in the district; (iii) the **Court of Session** having jurisdiction to try any offence under this Act or under any previous company law; (iv) the **Special Court** established u/s 435 (v) **any Metropolitan Magistrate** or a **Judicial Magistrate of the First Class** having jurisdiction to try any offence under this Act or under any previous company law;

Sec 435 Establishment of Special Courts

435. (1) The CG may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.

(2) A **Special Court shall consist** of—

(a) **a single judge** holding office as Session Judge or Additional Session Judge, **in case of offences** punishable under this Act **with imprisonment of two years or more**; **and**
(b) a **Metropolitan Magistrate** or a **Judicial Magistrate** of the First Class, **in the case of other offences**,

who shall be **appointed by the CG with the concurrence of the Chief Justice of the HC** within whose jurisdiction the judge to be appointed is working.

Sec 436 Offences Triable by Special Courts

(1**) Notwithstanding anything contained in the Code of Criminal Procedure, 1973**,—

(a) all offences specified u/s 435(1) shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed **or where there are more Special Courts** than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;

(b) where a person accused of, or suspected of the commission of, an offence under this Act i**s forwarded to a Magistrate under** sub-section (2) or sub-section (2A) of section 167 of the **Code of Criminal Procedure**, 1973, such Magistrate **may authorise the detention** of such person in such custody **for a period not exceeding**

15 days in the whole	-where such Magistrate is a **Judicial Magistrate**
7 days in the whole	- where such Magistrate is an **Executive Magistrate**

Provided that **where such Magistrate considers that the detention** of such person upon or before the expiry of the period of detention is **unnecessary**, **he shall order such person to be forwarded to the Special Court having jurisdiction**;

(c) the **Special Court may exercise**, **in relation to the person forwarded** to it under clause (b), **the same power which a Magistrate having jurisdiction** to try a case may exercise u/s 167 of the Code of Criminal Procedure, 1973 **in relation to an accused person** who has been forwarded to him under that section; **and**

(d) a Special Court may, **upon perusal of** the **police report** of the facts constituting an offence under this Act **or** upon a **complaint** in that behalf, **take cognizance of that offence without the accused being committed to it for trial**.

(2) When trying an offence under this Act, **a Special Court may also try an offence other than an offence under this Act** with which the accused may, under the Code of Criminal Procedure, 1973 **be charged at the same trial**.

[IMPORTANT] SUMMARY TRIAL
(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, **the Special Court may**, if it thinks fit, **try in a SUMMARY WAY any offence under this Act which is punishable with imprisonment for a term not exceeding 3 YEARS**:

Provided that **in the case of any conviction in a summary trial, no sentence of imprisonment for a term exceeding 1 year shall be passed**:

Provided further that **when at the commencement of, or in the course of**, **A SUMMARY TRIAL**, **it appears** to the Special Court **that the nature of the case is such that** the sentence of impri**sonment for a term exceeding one year may have to be passed or** that it is, **for any other reason, undesirable to try the case summarily**,
the Special Court **shall**, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and **proceed to hear or rehear the case in accordance with the procedure for the REGULAR TRIAL.**

Sec 437 Appeal and Revision

437. The HC may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a HC, **as if a Special Court within the local limits of the jurisdiction of the HC were a Court of Session** trying cases within the local limits of the jurisdiction of the HC.

Sec 438 Application of Code to Proceedings Before Special Court

438. Save as otherwise provided in this Act, **the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court** and for the purposes of the said provisions, the **Special Court shall be deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class**, as the case may be and the **person conducting a prosecution** before a Special Court shall be deemed to be a **Public Prosecuto**r.

Sec 439 Offences to be Non-cognizable [IMPORTANT]

439. (1) Notwithstanding anything in the Code of Criminal Procedure, 1973, **every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.** [Sec 212(6) deals with Investigation into affairs of company by SFIO]

(2) **No court shall take cognizance** of any offence under this Act which is alleged to have been committed by any company or any officer thereof, **except on the complaint in writing of the Registrar, a shareholder or *a member* of the company, or of a person authorised by the CG in that behalf**:

Provided that the **court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the SEBI**

Provided further **that nothing in this sub-section shall apply to a prosecution by a company of any of its officers**.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, **where the complainant under sub-section (2) is the Registrar or a person authorised by the CG the presence of such officer before the Court trying the offences shall not be necessary unless the court requires** his personal attendance at the trial.

(4) **The provisions of sub-section (2) shall not apply to any action taken by the liquidator of a company** in respect of any offence alleged to have been committed **in respect of any of the matters of WINDING UP** of any company.

Explanation.—The **liquidator of a company shall not be deemed to be an officer of the company** within the meaning of sub-section (2).

NOTE: In case of government company, Court u/s 439(2) shall take **cognizance only on complaint in writing by person authorized by CG**. [Notification G.S.R. 463(E) dated 5th June,2015]

[Special Note: the words "or a member" in section 439(2) were inserted after the above mentioned notification and hence the said notification is not clear about whether cognizance on written complaint by a member in case of Govt. Co. can be taken or not by the court. Hence, as of now, in absence of clarification it is assumed that court cannot take cognizance on complaint by a member in case of Govt. Co. Other views may also be possible.]

Sec 440 Transitional Provisions

440. Any **offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by**
- a Court of Session **or**
-the Court of Metropolitan Magistrate **or** a Judicial Magistrate of the First Class,
as the case may be exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing **contained in this section shall affect the powers of the HC under Code of Criminal Procedure** to transfer any case or class of cases taken cognizance by a Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be under this section.

Sec 442 Mediation and Conciliation Panel [IMPORTANT

442. (1) The **CG shall maintain a panel of experts** to be called **as the Mediation and Conciliation Panel** consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the CG or the NCLT or the NCLAT under this Act.
(2) **Any of the parties** to the proceedings **may**, **at any time during the proceedings** before the CG or NCLT or the NCLAT, **apply to** the CG or the NCLT or NCLAT, as the case may be, in such form along with such fees as may be prescribed, **for referring the matter pertaining** to such **proceedings to the Mediation and Conciliation Panel** and the CG or NCLT or NCLAT, as the case may be, **shall appoint** one or more experts from the panel referred to in sub-section (1).
(3) The CG or the NCLT or the NCLAT **before which any proceeding is pending may, suo motu**, **refer any matter** pertaining to such proceeding **to** such number of **experts** from the Mediation and Conciliation Panel as the CG or the NCLT or NCLAT, as the case may be, deems fit.
(4) The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.
(5) The **Mediation and Conciliation Panel shall follow** such procedure as may be prescribed **and dispose of the matter** referred to it **within a period of 3 months** from the date of such reference **and forward its recommendations** to the CG or the NCLT or NCLAT, as the case may be.
(6) Any **party aggreived by the recommendation of the Mediation and Conciliation Panel may file objections** to the CG or NCLT or NCLAT, as the case may be.

Sec 443 Power of CG to Appoint Company Prosecutors

443. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, **the CG may appoint** generally, or for any case, or in any case, or for any specified class of cases in any local area, **one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code on Public Prosecutors** appointed under section 24 of the Code of Criminal Procedure.

Sec 444 Appeal Against Acquittal [IMPORTANT]

444. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the **CG may**, -**in any case** arising under this Act, -**direct** any company prosecutor or authorise any other person either <u>by name or by virtue of his office</u>, -**to present an appeal from an order of acquittal** passed by any court, **other than a High Court**, -and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.
Extra Note: 'Order of Acquittal" means order by which the accused is held NOT guilty of crime he is charged with by the court. **Special Note:** This section empowers CG to direct any company prosecutor or authorize any other person to appeal before any appellate court such as HC or SC against the order of acquittal of any accused passed by any (sub-ordinate) court other than HC.

Sec 445 Compensation for Accusation Without Reasonable Cause **445.** The provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply mutatis mutandis to compensation for accusation without reasonable cause before the Special Court or the Court of Session.
Sec 446 Application of Fines **446.** The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

Sec 446A Factors for determining level of Punishment [RECENT AMENDMENT] *The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:—* *(a) size of the company;* *b) nature of business carried on by the company;* *(c) injury to public interest;* *(d) nature of the default; and* *(e) repetition of the default*
446B. Lesser Penalties for OPC and Small Companies [RECENT AMENDMENT] *Notwithstanding anything contained in this Act, if a OPC or a small company fails to comply with the provisions of section 92(5), section 117(2) or section 137(3), such company and officer in default of such company shall be liable to a penalty which shall not be more than one half of the penalty specified in such sections*

Sec 454 Adjudication of Penalties [Amended by Companies (Amendment) Ordinance,2019]

454 (1) ***The CG may****, by an order published in the Official Gazette,* ***appoint*** *as many* ***officers*** *of the CG,* ***not below the rank of Registrar****,* ***as adjudicating officers for adjudging penalty*** *under the provisions of this Act in the MANNER as may be prescribed.* *[**See Rule 3 of Companies (Adjudication of Penalties) Rules, 2014 given on next page for MANNER]***
(2) The CG shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1).
(3) ***The adjudicating officer may****, by an order-* *(a)* ***impose the penalty on the company, the officer*** *who is in default,* ***or any other person****, as the case may be,* ***stating therein any non-compliance*** *or default under the relevant provisions of this Act; and* *(b)* ***direct*** *such company, or officer who is in default, or any other person, as the case may be,* ***to rectify the default****,* ***wherever he considers fit****.*
(4) The ***adjudicating officer shall****, before imposing any penalty,* ***give a reasonable opportunity of being heard*** *to such company, the officer who is in default or any other person.*
454(5) ***Any person aggrieved by an order made*** *by the adjudicating officer under sub-section (3)* ***<u>may prefer an appeal to the Regional Director [not NCLT/Court]</u>*** *having jurisdiction in the matter.*
454(6) Every appeal under sub-section (5) shall be ***filed*** *within* ***60 days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person*** *and shall be in such form, manner and be accompanied by such fees as may be prescribed.*
454(7)The ***Regional Director may****,* ***after*** *giving the parties to the appeal an* ***opportunity of being heard,***

***pass such order as he thinks fit**, confirming, modifying or setting aside the order appealed against.*
*454(8**)(i)** Where **company fails to comply with the order** made under sub-section (3) **or** sub-section (7), as the case may be, within a period of 90 days from the date of the receipt of the copy of the order,* *-the company shall be punishable with fine which shall not be less than Rs. 25000/- but which may extend to Rs. 500000/-.* ***(ii)** Where an **officer** of a company or any **other person** who is in default **fails to comply** with the order made under sub-section (3) or sub-section (7), as the case may be within a period of 90 days from the date of the receipt of the copy of the order, such officer shall be **punishable with imprisonment** which may extend to six months **or** with **fine** which shall not be less than Rs. 25000/- but which may extend to Rs. 100000/-, **or with both**.*

<u>Companies (Adjudication of Penalties) Rules, 2014</u>

Rule 3 Adjudication of Penalties [<u>Recently Amended in 2019</u>]

- ***SHOW CAUSE NOTICE***
  ***Before adjudging penalty, the adjudging officer shall issue a written notice** in the specified manner, to the company, the officer who is in default or any other person, as the case may be ("**the accused**"), **to show cause**, within such period as may be specified in the notice (**not being less than 15 days and more than 30 days from the date of service thereon**), why the penalty should not be imposed on it or him.*
- ***Every show cause notice issued** as aforesaid **shall clearly indicate the nature of non-compliance or default** under the Act **alleged** to have been committed or made by ACCUSED **and also draw attention to the relevant penal provisions** of the Act and **the maximum penalty** which can be imposed on ACCUSED.*
- *The **reply** to such notice **shall be** filed **in electronic mode only** within the period as specified in the notice (if **e-adjudication platform has been created)**:*
- *The **adjudicating officer may**, for reasons to be recorded in writing, **extend the period referred to above** by a further period **not exceeding 15 days**, **if** the ACCUSED, **satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice** within the stipulated period **or the adjudicating officer has reason to believe that accused has received a shorter notice and did not have reasonable time to give reply**.*
- ***If**, after considering the reply submitted by ACCUSED, the adjudicating officer is of the opinion that **physical appearance is required, he shall issue a notice, within a period of 10 working days from the date of receipt of reply** fixing a date for the appearance of ACCUSED personally or through its or his authorised representative:*
- ***If any person, to whom a show cause notice is issued** as aforesaid **desires to make an oral representation**, whether personally or through his authorised representative **and has indicated the same while submitting his reply in electronic mode**, the **adjudicating officer shall allow such person to make such representation after fixing a date of appearance**.*
- *On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any **order in writing** as he thinks fit **including** as order for adjournment:*
- ***Even after hearing**, adjudicating officer **may require** the concerned person to **submit his reply in writing on certain other issues related** to the show cause notice issued, relevant for determination of the default.*
- ***The adjudicating officer shall pass an order,-***
  (a) within 30 days** of the expiry of the period in Show Cause Notice,or of such extended period as allowed**, where physical apperance was not required OR
  (b) within 90 days** of the date of issue of notice, where any **person appeared** before the adjudicating officer **physically.

- *If an order is passed after the aforementioned duration, the **reasons of the delay shall be recorded** by the adjudicating officer and **no such order shall be invalid merely because of such delay in passing order.***
- *Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance.*
- ***The adjudicating officer shall send a copy of the order** passed by him **to** the concerned **company, officer** who is in default **or** any other **person <u>or all of them</u> and to the CG and a copy of the order shall also be uploaded on the website.***
- *For the purposes of this rule, the adjudicating officer shall exercise the following powers, namely:-*
  (a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;
  (b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.
- *If any person **fails to reply or neglects or refuses to appear** as required before the adjudicating officer, the adjudicating officer **may pass an order** imposing the penalty, **in the absence** of such person **after recording the reasons** for doing so.*
- *While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-*
  (a) size of the company;
  (b) nature of business carried on by the company;
  (c) injury to public interest;
  (d) nature of the default;
  (e) repetition of the default;
  (f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and
  (g) the amount of loss caused to an investor or group of investors or creditors as a result of the default:
- ***In no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act.***
- ***In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.***
- *Penalty shall be **PAID THROUGH MCA PORTAL** only.*
- *All sums realized by way of penalties under the Act shall be credited to the Consolidated Fund of India.*

Sec 454A Penalty for REPEATED DEFAULT {V. Important} **[Newly Inserted Companies (Amendment) Ordinance,2019]**
***WHERE A COMPANY OR AN OFFICER** of a company or any other person having already been subjected to penalty for default under any provisions of this Act, **AGAIN COMMITS such default within a period of <u>THREE YEARS</u>** from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, **it or he shall be liable for the second or subsequent defaults for an amount equal to <u>TWICE</u> THE AMOUNT OF PENALTY** provided for such default under the relevant provisions of this Act.*

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Chapter XXVII-National Company Law Tribunal and Appellate Tribunal (NCLT and NCLAT)

Sec 407 Definitions

407. In this Chapter, unless the context otherwise requires,— (a) "**Chairperson**" means the Chairperson of the Appellate Tribunal; (b) "**Judicial Member**" means a member of the Tribunal or the Appellate Tribunal appointed as such and includes the President or the Chairperson, as the case may be; (c)"**Member**" means a member, whether Judicial or Technical of the Tribunal or the Appellate Tribunal **and includes** the President or the Chairperson, as the case may be; (d) "**President**" means the President of the Tribunal; (e)"**Technical Member**" means a member of the Tribunal or the Appellate Tribunal appointed as such.

Under Companies Act, "TRIBUNAL" is "NCLT" AND **"APPELLATE TRIBUNAL" is "NCLAT".**

[Note: Sec 408-419 excluded from syllabus w.e.f. Nov. 2019 Exams.]

Sec 420 Orders of NCLT/Tribunal **420.** (1) The **NCLT** may, **after giving the parties** to any proceeding before it, a **reasonable opportunity of being heard, pass such orders** thereon **as it thinks fit**.
(2) The **NCLT** may, a**t any time within 2 years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed** by it, and shall make such amendment, if the mistake is brought to its notice by the parties: Provided that **no such amendment** shall be made **in** respect of any **order against which an appeal has been preferred** under this Act.
(3) The **NCLT shall send a copy of every order passed** under this section **to all the parties concerned**.

Sec 421 Appeal from Orders of Tribunal 421. (1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.
(2) **No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties**.
(3) Every appeal under sub-section (1) shall be filed within a period of **45 days** from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed: Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of 45 days from the date aforesaid, but within a further period not exceeding 45 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.
(4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
(5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

Sec 422 Expeditious Disposal by Tribunal and Appellate Tribunal

422. (1) Every application or petition presented before the Tribunal and every appeal filed before the Appellate Tribunal shall be dealt with and disposed of by it as expeditiously as possible and every endeavour shall be made by the Tribunal or the Appellate Tribunal, as the case may be, for the disposal of such application or petition or appeal **within 3 months** from the date of its presentation before the Tribunal or the filing of the appeal before the Appellate Tribunal.

(2) Where any application or petition or appeal is not disposed of within the period specified in sub-section (1), the Tribunal or, as the case may be, the Appellate Tribunal, shall record the reasons for not disposing of the application or petition or the appeal, as the case may be, within the period so specified; and the President or the Chairperson, as the case may be, may, after taking into account the reasons so recorded, extend the period referred to in sub-section (1) by such period **not exceeding 90 days** as he may consider necessary.

Sec 423 Appeal to Supreme Court

423. Any person aggrieved by any order of the **Appellate Tribunal may file an appeal to the Supreme Court** within **60 days** from the date of receipt of the order of the Appellate Tribunal to him **on any question of law** arising out of such order:

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a **further period not exceeding 60 days**.

Sec 424 Procedure Before Tribunal and Appellate Tribunal

424. (1) The **Tribunal and the Appellate Tribunal shall not**, while disposing of any proceeding before it or, as the case may be, an appeal before it, **be bound by the procedure laid down in the Code of Civil Procedure**, 1908, but **shall be guided by the principles of natural justice**, and, subject to the other provisions of this Act or of the IBC, 2016 and of any rules made thereunder, **the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure**.

(2) The **Tribunal and the Appellate Tribunal shall have**, for the purposes of discharging their functions under this Act or under the IBC, 2016, the **same powers as are vested in a civil court** under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—
(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents;
(c) receiving evidence on affidavits;
(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
(e)issuing commissions for the examination of witnesses or documents;
(f) dismissing a representation for default or deciding it ex parte;
(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
(h) any other matter which may be prescribed.

(3) **Any order made by the Tribunal or the Appellate Tribunal may be enforced** by that Tribunal in the same manner **as if it were a decree made by a court** in a suit pending therein, **and it shall be lawful** for the Tribunal or the Appellate Tribunal **to send for execution of its orders to the court within the local limits of whose jurisdiction**,—
(a)in the case of an order against a company, the registered office of the company is situate; or
(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) **All proceedings** before the Tribunal or the Appellate Tribunal shall be **deemed to be judicial proceedings** within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Tribunal and the Appellate Tribunal **shall be deemed to be civil court** for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Sec 425 Power to Punish for Contempt

425. The **Tribunal and the Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court** has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that—
(a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and
(b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.

Sec 426 Delegation of Powers

426. The Tribunal or the Appellate Tribunal may, **by general or special order**, **direct**, subject to such conditions, if any, as may be specified in the order, an**y of its officers or employees or any other person authorised by it to inquire into any matter connected with any proceeding or**, as the case may be, **appeal** before it **and to report to it** in such manner as may be specified in the order.

Sec 427 President, Members, Officers, etc., to be Public Servants

427. The **President, Members, officers and other employees** of the Tribunal and the **Chairperson**, Members, officers and other employees of the Appellate Tribunal **shall be deemed to be public servants** within the meaning of section 21 of the Indian Penal Code.

Sec 428 Protection of Action Taken in Good Faith

428. **No suit, prosecution or other legal proceeding shall lie against** the Tribunal, the President, Member, officer or other employee, or against the Appellate Tribunal, the Chairperson, Member, officer or other employees thereof or liquidator or any other person authorised by the Tribunal or the Appellate Tribunal **for the discharge of any function under this Act in respect of any loss or damage caused or likely to be caused by any act which is in good faith done or intended to be done** in pursuance of this Act.

Sec 429 Power to Seek Assistance of Chief Metropolitan Magistrate, etc

429. (1) The Tribunal may, in any proceedings for winding up of a company under this Act or in any proceedings under the IBC, 2016, **in order to take into custody or under its control all property, books of account or other documents, request, in writing, the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector within whose jurisdiction any such property, books of account or other documents of such company** under this Act or of corporate persons under the said Code, **are situated or found, to take possession thereof**, and the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector, as the case may be, shall, on such request being made to him,—
(a) take possession of such property, books of account or other documents; and
(b) cause the same to be entrusted to the Tribunal or other persons authorised by it.".

(2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate, Chief Judicial Magistrate or the District Collector done in pursuance of this section shall be called in question in any court or before any authority on any ground whatsoever.

Sec 430 Civil Court Not to Have Jurisdiction

430. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

Sec 431 Vacancy in Tribunal or Appellate Tribunal Not to Invalidate Acts or Proceedings

431. No act or proceeding of the Tribunal or the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Tribunal or the Appellate Tribunal, as the case may be

Sec 432 Right to Legal Representation

432. A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, **may either appear in person or authorise** one or more CAs or CSs or cost accountants or legal practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

Sec 433 Limitation

433. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be.

Sec 434 Transfer of Certain Pending Proceedings [Redundant Provision]

434. (1) On such date as may be notified by the CG in this behalf,—

(a) all matters, proceedings or cases pending before the Board of Company Law Administration (herein in this section referred to as the Company Law Board) constituted under Companies Act, 1956, immediately before such date shall stand transferred to the Tribunal and the Tribunal shall dispose of such matters, proceedings or cases in accordance with the provisions of this Act;

(b) any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within 60 days from the date of communication of the decision or order of the Company Law Board to him on any **question of law** arising out of such order:

Provided that the High Court may if it is satisfied that the appellant was prevented by sufficient cause from filing an appeal within the said period, allow it to be filed within a further period not exceeding 60 days; and

(c) all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer:

Provided that only such proceedings relating to the winding up of companies shall be transferred to the Tribunal that are at a stage as may be prescribed by the CG.

Provided also that only such proceedings relating to cases other than winding-up, for which orders for allowing or otherwise of the proceedings are not reserved by the High Courts shall be transferred to the Tribunal:

Provided further that –

(i) all proceedings under the Companies Act, 1956 other than the cases relating to winding up of companies that are reserved for orders for allowing or otherwise such proceedings; or

(ii) the proceedings relating to winding up of companies which have not been transferred from the High Courts; shall be dealt with in accordance with provisions of the Companies Act, 1956 and the Companies (Court) Rules, 1959.

Provided also that proceedings relating to cases of voluntary winding up of a company where notice of the resolution by advertisement has been given under sub-section (1) of section 485 of the Companies Act, 1956 but the company has not been dissolved before the 1st April, 2017 shall continue to be dealt with in accordance with provisions of the Companies Act. 1956 and the Companies (Court) Rules, 1959.

(2) The CG may make rules consistent with the provisions of this Act to ensure timely transfer of all matters, proceedings or cases pending before the Company Law Board or the courts, to the Tribunal under this section.

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Corporate Secretarial Practice –
Drafting of Notices, Resolutions, Minutes and Reports

This chapter deals with the drafting of various documents under various provisions of Companies Act, 2013 which includes Notices, Agenda and Minutes of Meetings, Reports and Resolutions in major.

The weight age of this chapter from Exam Point of view is generally very low, but is not Zero. Hence, it is suggested to go through the chapter which will help improve drafting skills as well.

The best way would be to go through the Chapter will be from ICAI Study Material which may be accessed at

https://resource.cdn.icai.org/47007bosfinal-p4-cp13.pdf.

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OTHER IMPORTANT LINKS

1. Revision Test Paper (RTP)	https://www.icai.org/post.html?post_id=14473.
2. Mock Test Papers (MTPs)	https://www.icai.org/post.html?post_id=14629.
3. Suggested Answers	https://www.icai.org/post.html?post_id=14910.
4. Admit Card	https://icaiexam.icai.org/
5. BOS Announcements	https://www.icai.org/new_category.html?c_id=438
6. TOLL FREE No. for Students' Query	18001211330
7. Facuty, BOS Contact Details	https://resource.cdn.icai.org/29574contact-bos-faculty-19221.pdf
8. Suggestion/Feedback For These Notes	https://forms.gle/LWAheiNqYZ7juPHP6

All the very Best for Exams

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