



HEARTIEST CONGRATULATIONS TO ALL OF YOU

CA FINAL DEC 2021



SALONI GULECHHA
AIR 6



MUSKAAN GUPTA
AIR 14



SAURABH LAHOTI
AIR 27



YATHARTH BAPHNA
AIR 32



CA ABHISHEK BANSAL



BHAUTIK JAKHANIYA
AIR 48



KAMLESH GUPTA
AIR 33



MUKUND R
AIR 48

OUR RESULTS SPEAK THEMSELVES

WE ARE PROUD OF YOU!



CONGRATULATIONS!



CA ABHISHEK BANSAL

RESULTS : CA FINAL DEC 2021

NAME	FINAL AUDIT
YATHARTH BAPHNA [AIR 32]	72
MUSKAAN GUPTA	71
NITIN KUMAR	70
GAURAV JOSHI	69
HARSHADA GAONKAR	68
MOHIT SOJITRA	68
MUKUND R [AIR 48]	68
MANASHREE SHIRGURKAE	68
VAIBHAV PRATAP SINGH	66
NINAD THAKUR	66
NIKITHA CHANNA	64
URJA	63
RUCHA KALE	63
MANAV SHAH	63
MUDIT DAGA	62
HARI GUNDA	61
KUNAL JAIN	60
NIKITA KHATRI	60

NAME	ECO LAW
ABHILASH	78
KOMAL BHAGWAT	76
ROHIT GANGULA	72
ANISHA NIHALANI	72
VAIBHAV PRATAP SINGH	71
MUSKAAN GUPTA [AIR 14]	71
ACHINTO DAS	71
VISHAL RAMPAL	70
DIVYA GULATI	70
SAKSHI BANSAL	70
NABILA	68
NEHA GUPTA	67
DEEPAK GUPTA	66
CHINNAY REDDY	65
ADITI MANGHNANI	64
SHIVAM ARORA	60

NAME	FINAL LAW
MUSKAAN GUPTA [AIR 14]	69
GAYATRI KONDURI	68
VAIBHAV PRATAP SINGH	67
YATHARTH BAPHNA [AIR 32]	67
PRIYANKA SETIA	66
MANAV SHAH	66
RIDDHI SHAH	65
MUKUND R [AIR 48]	61
HARSH KANT CHATURVEDI	61
SAJANA KUMARI	60
PAYAL DHADHICH	60
SAURABH LAHOTI [AIR 27]	57

And Counting...

www.letslearnindia.in / 8448448919

Taj Party Due for 70 + Students

CA ABHISHEK BANSAL

Contact: 8448448919  www.letslearnindia.in



Nandini Agrawal
AIR 1



Sachin Agrawal
AIR 18



Akshit Agarwal
AIR 30



Ridhi Kogta
AIR 36

CA ABHISHEK BANSAL

CONGRATULATIONS!!!

To all my students scoring 60+ in Law/Audit/ Eco Law

CA FINAL RESULTS | JULY 2021



Prof. ABHISHEK BANSAL

Sr. no	Name	Audit	Law	Eco Law
1.	Paras Mamta Mahendru			80
2.	Akash Renu Pinjani			76
3.	Shashank Sangeetha Iyer		71	
4.	Rohit Bhagyashree Bora			70
5.	Sachin Dimple Agrawal	69		
6.	Akshit Asha Agarwal		69	
7.	Anand Bandana Singh		68	69
8.	Shreya Rashmi Gupta	66	69	
9.	Samiksha Chanda Dehankar			68
10.	Akshita Abha Jain		66	
11.	Nandini Dimple Agrawal	64		
12.	Yogesh Nirmala Jadhav		64	
13.	Yash Dipti Mashru			63
14.	Vaishnavi Lalita Shinde		62	
15.	Priya Rekha Dedhia		61	
16.	Nitirajsini Vilashben Goril		61	
17.	Gautam Veera Nigam		60	
18.	Zeeshan Rubina Surti		60	
19.	Drishiti Kavita Khara	60		

OUR TOPPERS

Nandini Dimple Agrawal AIR 1

Sachin Dimple Agrawal AIR 18

Akshit Asha Agarwal AIR 30

Ridhi Saroj Kogta AIR 36

www.letslearnindia.in / 8448448919

TAJ PARTY DUE FOR STUDENTS SCORING 70 OR ABOVE!!!

2(42) - Defⁿ of FC

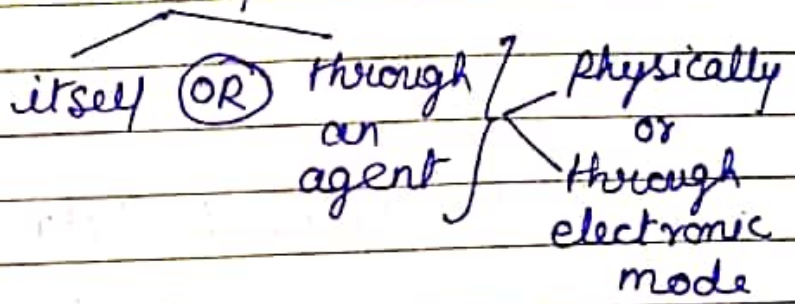
2(42)
380
386(c)
379
389
382
383
384
387
389
392
390

means Any Co. or BC :

→ incorporated O/S India

→ which has a place of Business in India.

→ whether by



AND

→ Conducts any Business activity in India in any other manner.

Electronic mode

Accⁿ to the Co's (Registration of FC's) Rules, 2014,

"Electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to -

i) B to B and B to C txn, data interchange and other digital supply txns;

ii) OFFERING TO ACCEPT deposits (OR)
→ INVITING deposits (OR)
→ ACCEPTING deposits (OR)
→ Subscriptions in securities, (OR) in India (OR) from citizen of India.

iii) Financial settlements,
web based marketing,
advisory and transactional services,
database services and products,
SCM ;

iv) Online services such as

- Telemarketing
- Telecommuting
- Telemedicine
- education & info. Research

v) all related data communication services.

WHETHER CONDUCTED BY

email	mobile devices	social media	cloud Computing	document mgt.
-------	----------------	--------------	-----------------	---------------

OR otherwise

Voice or data transmission

Date _____
Page _____

380: Documents, etc. to be delivered to Registrar by FC

Every FC → within 30 days → of the establishment of its place of business in India

↓
deliver to the Registrar for Registration:

S details of Secretary & Directors of the Co. containing the particulars such as

- Full name & surname, DOB,
- Residential address, e-mail ID
- Nationality, passport details
- IT PAN no (if applicable)
- Occupation (if any)
- details of Directorship in any other Co., (DIN)
- Membership No. (for Secretary only)

C a certified copy of Charter, Statute, MOA/AOA in English

If Not in English → certified translated copy (eng).

R Full address → Registered office of the Co. (OR) Principal

A Details of Authorised Person Resident in India.
Name & address of one or more person

P the full address of the office of the Co. in India which is deemed to be principal POB in India.

E. Eligibility: declaration that

- None of the director/Authorised Person
- has been ever convicted/debarred
- from formation of Co. and management
- whether in India or abroad.

→ Accⁿ to the Co's (Regisr Registration of F Co's) Rules, 2008
the above info shall be filed with ROC → New delhi
→ in form FC-1 with prescribed fees.

↓
within 30 days of establishment of business in India

→ In Case of ANY alteration in such above info,
it should be intimated to ROC in
form no. FC-2

↓
within 30 days of making alteration

386(c) → POB includes

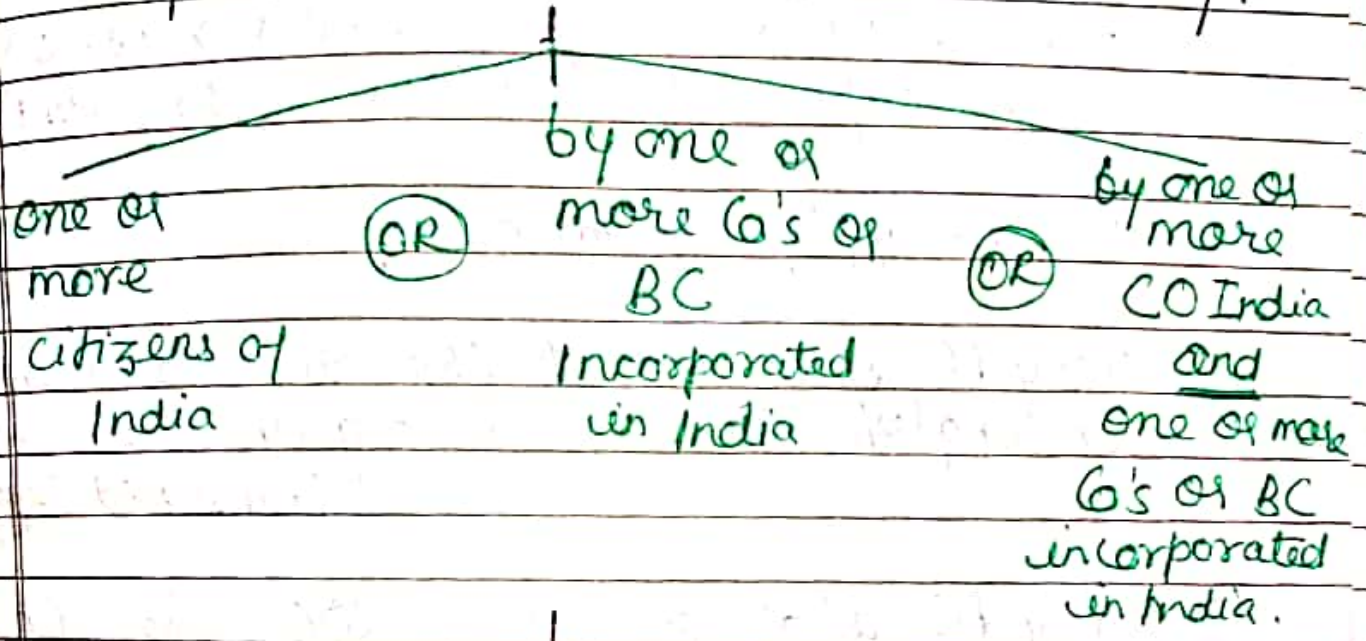
Share transfer office (OR) Share registration office.

379 - foreign to Indian

where NOT LESS THAN 50% of the P. SC,

whether Equity or Preference OR partly E+P

of a FOREIGN COMPANY is held by:



whether singly or in the aggregate

Such FC → shall also comply with the

provision of Chapter XXII **and** Such other provⁿ of this ACT as may be prescribed

→ With regard to the business carried on by it in India

as if it were a Co incorporated in India

381: Accounts of FC

① Every FC shall prepare FS of its ^{India} business operation as per S-III or as near thereto for each FY including

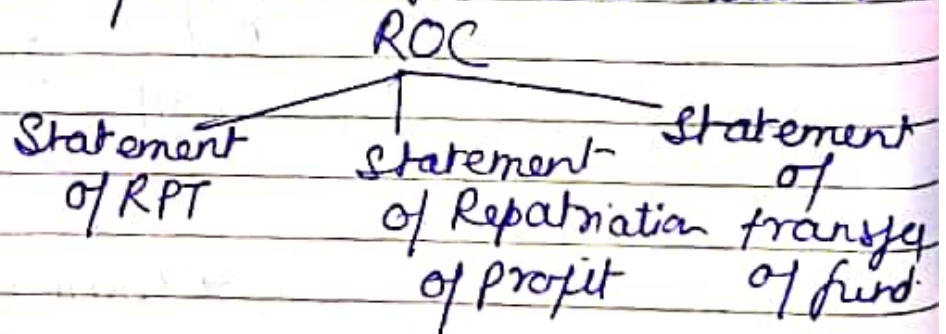
→ the document as per Chapter IX i.e. A/C of Co.
→ and copies of latest CFS of the parent Co.

FC to apply CG for exemption.

② Every FC shall submit the above document in English, if NOT in English, then certified translated copy

③ Every FC shall submit to ROC, the list of place of business in FC-3, along with above document.

④ Every FC along with its FS shall submit to



⑤ All the above document shall be submitted to ROC with a period of 6m from close of FY.

However ROC can grant extension for

maximum 3 months.

⑥ Every FC shall get account audited by practising CA.

FY = 1/4/ - 31/3

Co = Incorp.
on/before 31st Dec

Co = Incorp.
on/After 1st Jan

eg: 28/12/21

eg: 4/1/22

→ 31/3/22

→ 31/3/23

AA NE WALA 31st March

Agle Saal wala 31st March.

302 · Display of Name etc of FC

2 Disclosure

i) NAME OF Co.
& Country in which
it is incorporated

ii) fact that
Liab. of member
= limited

Every FC shall → conspicuously exhibit o/s every office

----- same

→ POB in India < Eng. character or one of language

----- same

in general use in the locality in which office or place is situated.

same + prospec

→ in all business letters bill heads and other official publication of the Co.

383- Service of document

Any Notice or document required to be served on FC.

→ shall be deemed to be served

→ if it is delivered to authorised person

↓
resident in India u/s 380

either by ← Post
electronic mode.

384.

- The provision of Sec 71 (Issue of Deb)

→ Sec 92 (Preparation & filing of AR)

→ Sec 135 (Corporate Social Res.)

Accⁿ to the Co's (Reg. of FC's) Rules, 2014, every FC shall prepare and file AR in form FC-4 with prescribed fees, within a period of 60 days from the last of its FY, to the Registrar containing the particulars as they stood on the close of the FY.

shall apply

MUTATIK
MUTANDS

=

Foreign Co

→ Sec 128 (BoA)

→ Chapter VI (Registration of Charges)

Every FC at the time of
creation/MODIFICATION/
Satisfaction of charge

→ intimate to ROC

→ Chapter XIV (Ing, Insp, Invest.)

387: Dating of Prospectus and particulars to be contained therein

Prospectus should be dated & signed before offering to public to subscribe for the securities of the Co.

and contains particulars with respect to the following matters, namely:-

- (1) the instrument constituting or defining the constitution of the company;
- (2) the enactments or provisions under which the co. was incorporated
- (3) the address in India where the above document can be inspected and if the same are not in the English lang, a certified translation thereof.
- (4) the date on which and the country in which the company would be or was incorporated; and
- (5) address of principal place of business in India.

(1), (2), (3) is not applicable when the prospectus is issued after 2 years of commencement of business.

Refer eg. 4 pg 9.12.

389- Annexure to Prospectus / Registration of Prospectus

Every Co. while issuing any prospectus offering for subscription in a securities of Co. shall make sure

it shall be certified by CHAIRPERSON & 2 OTHER DIRECTOR as having been approved by the resolution of the managing committee.

The prospectus states that on face of it that it has been delivered to ROC

Any expert consent and other document as may be prescribed shall be attached.

Accⁿ to the Co's (Reg. of FC) Rules 2014, the following documents shall be annexed to the prospectus namely:

a) any expert consent u/s 388

b) a copy of contract for appointment of MD/ manager.

In case, the contract is not in writing a memorandum giving full particulars thereof.

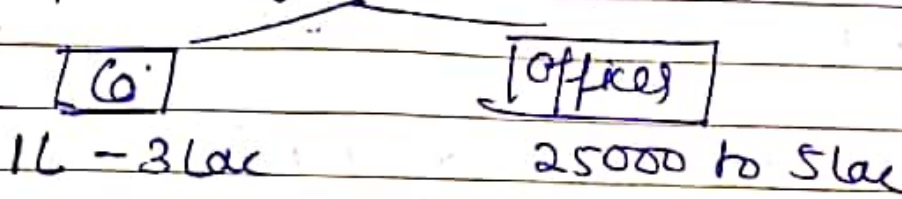
c) copy of material contract not entered in ordinary course of business but entered in last 2 years.

d) copy of underwriting agreement

e) a copy of power of attorney, if prospectus is signed by agents of director.

Sec. 392 (Punishment for contravention)

If a FC contravenes any provision of this chapter (Chapter XXII) then



+
continuing default
50000 per day

393

If a Co. has contravene provision of this chapter then any contract, dealing, or transaction shall not be affected.

The Co. shall not be entitled to file any suit, claim, setoff, make counter claim, or institute any legal proceedings until the Co. has complied with the provision applicable to it.

390: Offer of IDR
The CG shall make rules applicable for -

(a)	(b)	(c)	(d)
offer of IDR	requirement of disclosure in prospectus related to IDR	The manner in which IDR shall be dealt	The manner of sales, transfer, transmission of IDR

An IDR can be issued by a Co which is incorporated O/S India; whether or not it has established

OR
may or may not established any place of business in India.

ie WHEATHER OR NOT it is a foreign Co

• It shall comply with SEBI and RBI direction.

FC1 → Application for Registration of FC → within 30 days of establishing POB in India

FC2 → Alteration of details of FC → within 30 days of such alteration

FC3 → Filing of FS along with list of all place in India → within 6m of end of FY
(Note: can be extended for 3m by ROC max)

FC4 → Annual Return of FC →

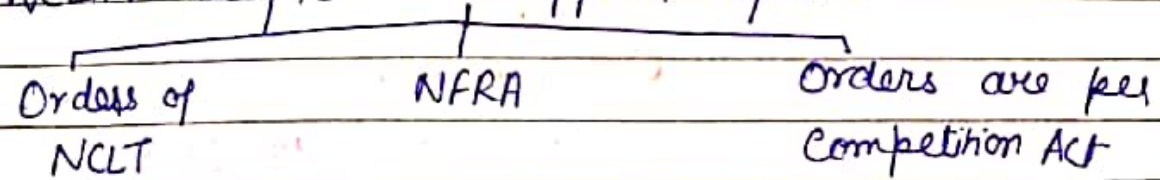
within 60 days from last day of its FY

407 - Definition

CG has constituted NCLT which is a Quasi-Judicial body to adjudicate the matters relating to companies in India.

Any person aggrieved by NCLT may prefer an appeal to NCLAT

NCLAT may hear the appeal against



- 1) President means President of Tribunal
- 2) Chairperson means chairperson of AT

- 3) Member includes
 - Judicial member
 - OR
 - Technical member
- } President / chairperson will be Judicial member.

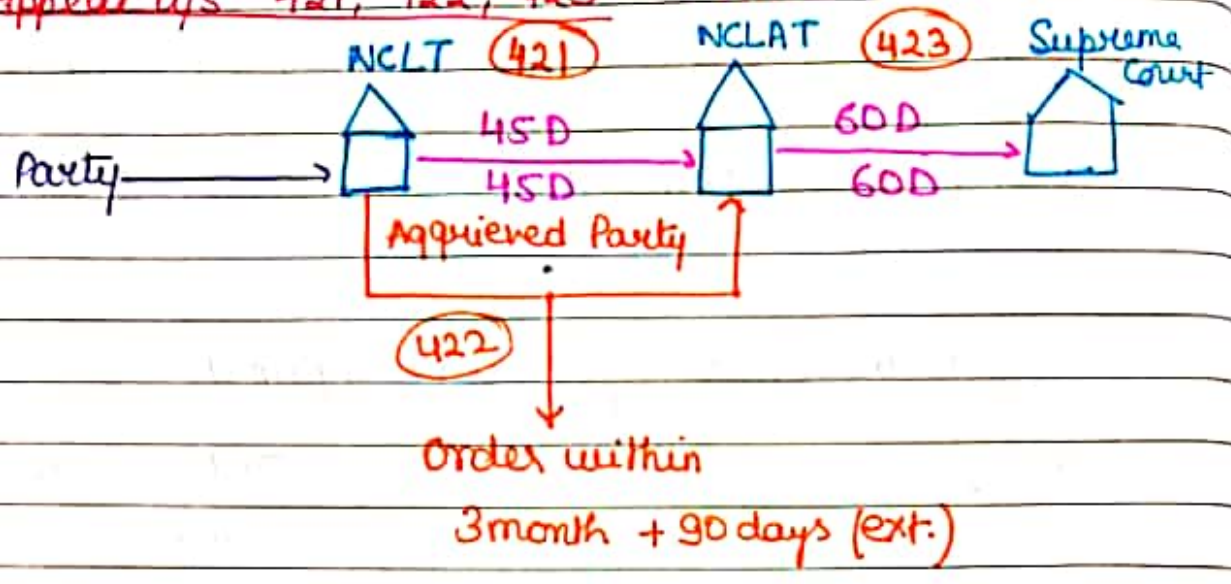
420 Order of Tribunal

- 1) The Tribunal after giving ROOBH may pass such order as it thinks fit.
- 2) The Tribunal, within 2 years from the date of the order, may rectify / amend any order passed by it, if the mistake is brought to its notice by the parties.

Provided No such amendment shall be made in respect of any order, if appeal has been preferred against the order.

3) The Tribunal will send copy of every order to all the parties concerned.

Appeal u/s 421, 422, 423



* No appeal can be made to AT against an order of T, if it was made with consent of parties

Procedure before T & AT (424)

Any decision given by T/AT shall be sent for execution to the court within local limit of whose jurisdiction.

In case of a Company
where Registered office is situated

In case of Person
where such person resides.
OR
carries on business
or
personally work for gain.

5) Sec. 431 : Vacancy or defects not to invalidate Acts or Proceedings

No Act or Proceeding of the T/AT shall be

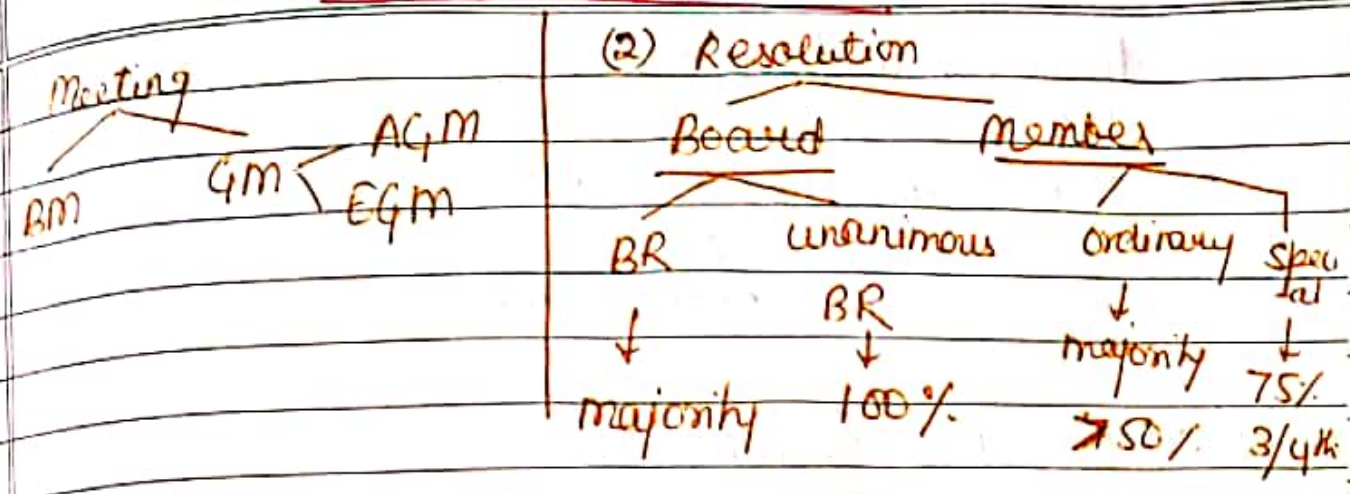
- Questioned or

- Shall be invalid

- merely on the ground of the existence of any vacancy or defect

- in the constitution of the Tribunal/AT, as the case may be.

CORPORATE SECRETARIAL PRACTICE



In exam drafting of Res., NOTICE, Agenda, Minutes can come for 4 marks.

Board Meeting - 7 clear days
GM - 21 clear days

NOTICE

AB Ltd

420/Z, MUNNI NAGAR
SHEELA RD, DHARAVI - W
MUMBAI - 2

CIN:

SR No:

DATE: 25/4/21

NOTICE

Notice is hereby given that the meeting of BOD of AB Ltd will be held on Monday 10th day of May 2021 at the Registered office of the Co. _____ at 9:30 am to transact the following business

AGENDA

- 1) To confirm the minutes of previous Board meeting.
- 2) 3) 4)
- 5) Any other matter with the permission of Chair.

FOR AND ON BEHALF OF BOD

If Person is found guilty of tampering with the minutes of meeting. He shall be punishable with imprisonment upto 2 years.

AND

FINE 25000 - 100000

CONTENTS OF MINUTES

Refer B.12 modules

RESOLVED unanimously THAT pursuant to Section _____ of Companies Act 2013 and the rules made thereunder as the Company be and is hereby decided that

RESOLVED FURTHER THAT Mr. X, the Secretary shall be responsible to comply with all legal formalities in this regard and file necessary returns with Registrar of Companies.

AGENDA - Pg 13.4

MINUTES - Pg 13.12

Imp POINTS

The Chairman has discretion in regard to inclusion or exclusion of any matter in the minutes on the following grounds:

(a) if it is
DEFAMING any
person

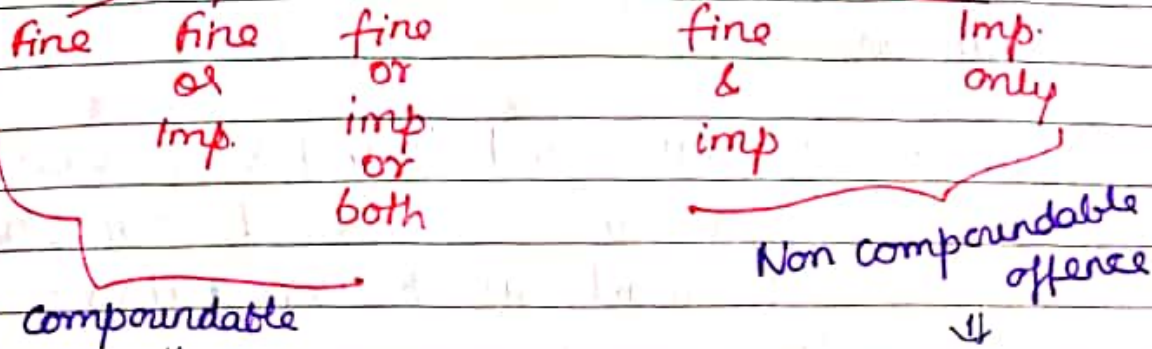
(b) if it is
immaterial
to the
proceeding

(c) if it is
detrimental
to the interest
of Co.

→ If Sec 118 i.e provisions of minutes of any meeting is contravened then Co. is liable for 25000 and every officer who is in default shall be liable to 5000 Rs.

435
436
437
438
439
441
442
443
444
454
454A
446
446A
446B

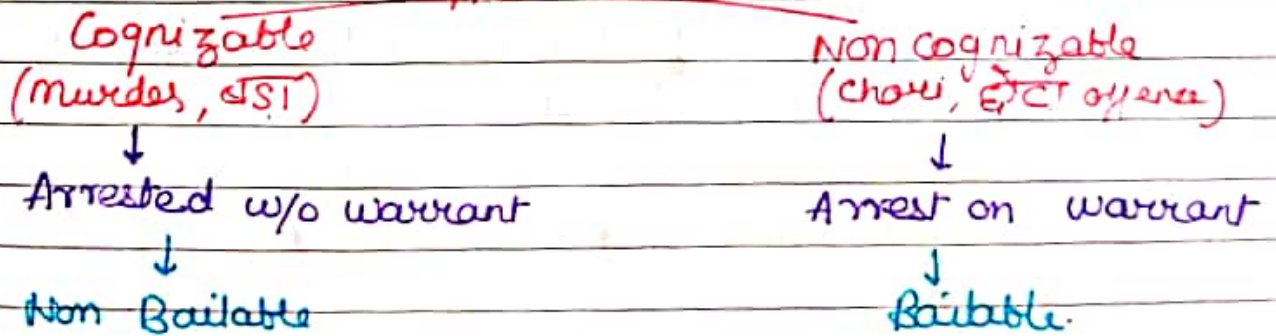
1) Types of Penalty.



are those offences where complainant (one who has filed the case) enters into a compromise **AND** agrees to have ^{the} charges dropped against the accused (निलंबन नही किया)

are those offences which are not compoundable bcoz of grievous nature of offence

2) offences



3) Non Cognizable offence

- Every offence under Cr Act 2013, shall be non cognizable offence except Sec 212(6) (cognizable)
- Court shall take cognizance of offence only on a written complaint of
 - ROC
 - SH/members

In case of Pvt Co. Court shall take cognizance ONLY on a complaint made by person authorised by CG.

③ In case of issue and transfer of securities and non payment of dividend, complaint has to be made by person authorised by SEBI

④ This section is not applicable to a prosecution by a company of any of its officers.

⑤ If the complainant is ROC or person authorised by CG, personal attendance is not required unless the court requires.

⑥ This section is not applicable to any action taken by liquidator while winding up/liquidating the Co.

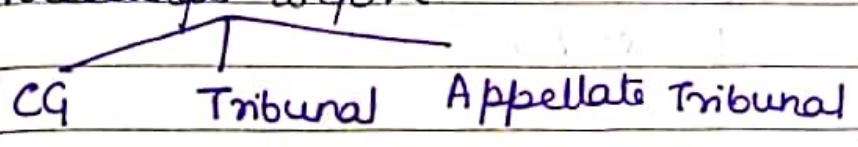
Refer Q.3 pg. 11.14 imp.

(H)

Mediation and Conciliation Panel [sec 442]

① The CG shall maintain a panel of expert to be called as mediation conciliation panel i.e MCP

② It shall consist of such no of expert having such qualification as may be prescribed for mediation b/w the parties during the pendency of any proceedings before



③ Any party to the proceeding shall apply to MCP in such form along with such fees as may be prescribed.

④ The CG/T/AT may also refer suo-moto to the MCP

⑤ The fees and other terms and condition of the expert of MCP shall be as may be prescribed

⑥ The MCP shall dispose the matter referred to it within 3 months from the date of appointment of expert from the panel.

⑦ Any party aggrieved by the Recommendation of MCP may file objection to the CG/T/AT. as the case may be.

Page _____

⑤ Who will appoint Co. prosecutor?

① The CG may appoint one or more person as co. prosecutor generally or for any case or for any specified class of cases in any local area to conduct prosecution arising out of this act

② The person so appointed shall have all the powers as per Sec 24 of Code on Public Prosecutors.

⑥ Appeal against acquittal [Sec 444]

① The CG may direct any

Co. prosecutor (OR) Authorise any person

either (OR) by virtue of his office
by name

to present an appeal from the order of acquittal passed by any court

② All orders are appealable except Highcourt order.

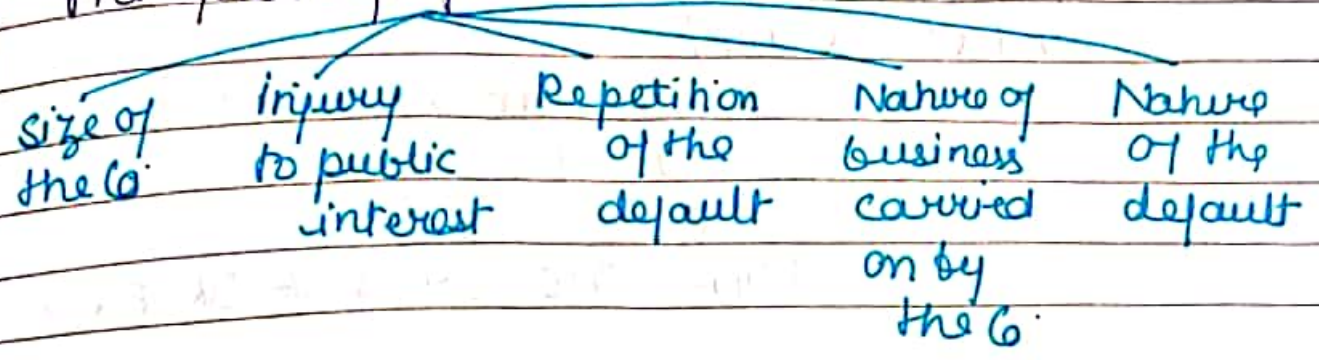
⑦ Application of fines [Sec 446]

The court imposing any fine under this Act shall be applied

towards cost of proceeding (OR) reward to the person on whose info proceeding were instituted

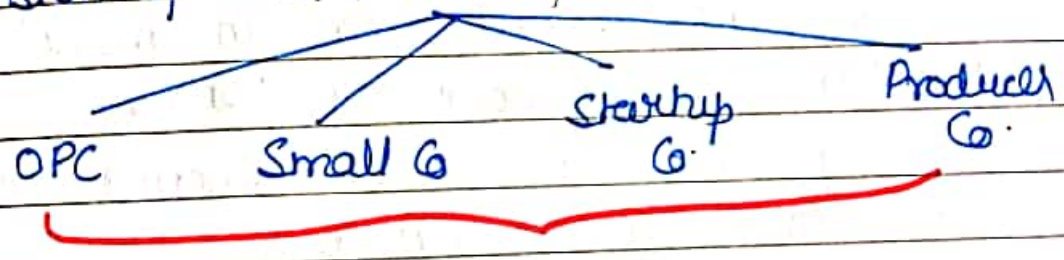
⑧ Factors for Determining Level of punishment [446A]

The Court or Special Court, while deciding the amount of fines or imprisonment shall consider the following factors.



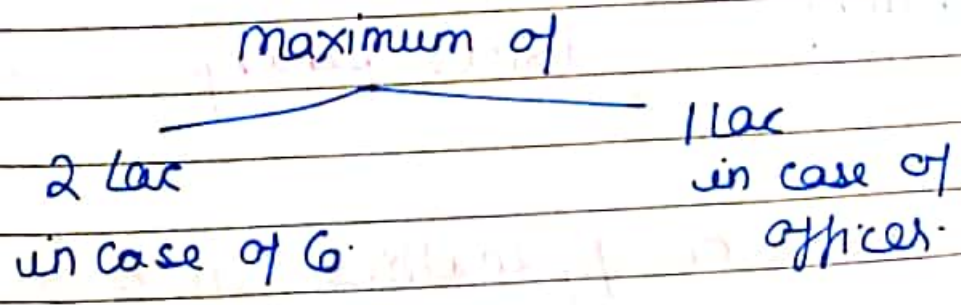
⑨ Lesser penalties for OPC or small Co's [446B]

If penalties is payable for non compliance of any provision of Co's Act 13 by



then,

the Co and officers in default shall be liable to a penalty which shall not be more than one half of the penalty subject to



(10) Penalty for Repeated Default [454A]

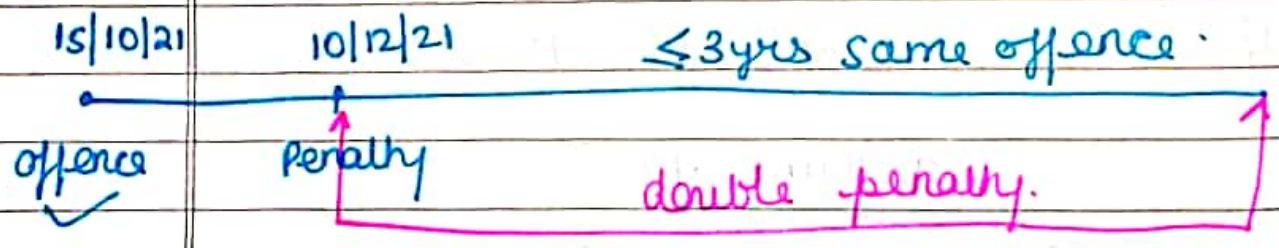
If a Co^{or} and an officer or any other person having already been subjected to penalty under this act,

again commits such defaults within a period of 3 years

↓
FROM THE DATE OF ORDER

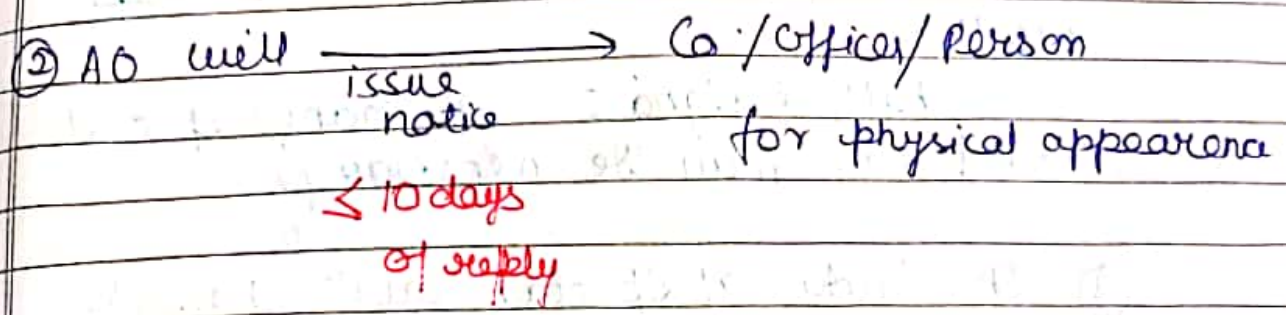
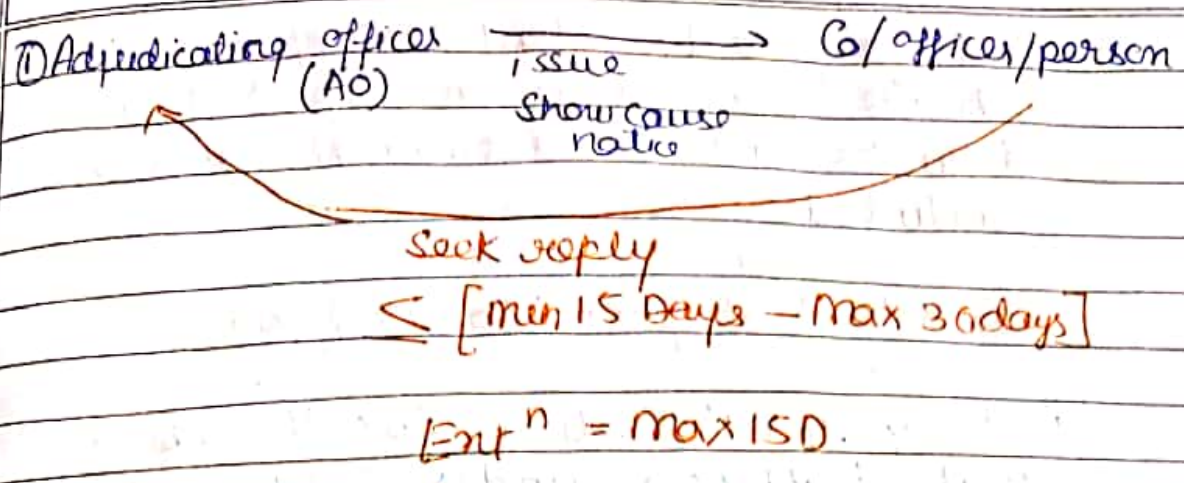
↓
of imposing such penalty of adjudicating officer or Regional Director,

it or he shall be liable for second or subsequent default for an amount equal to twice the amount of penalty provided for such default under the provision of this act.

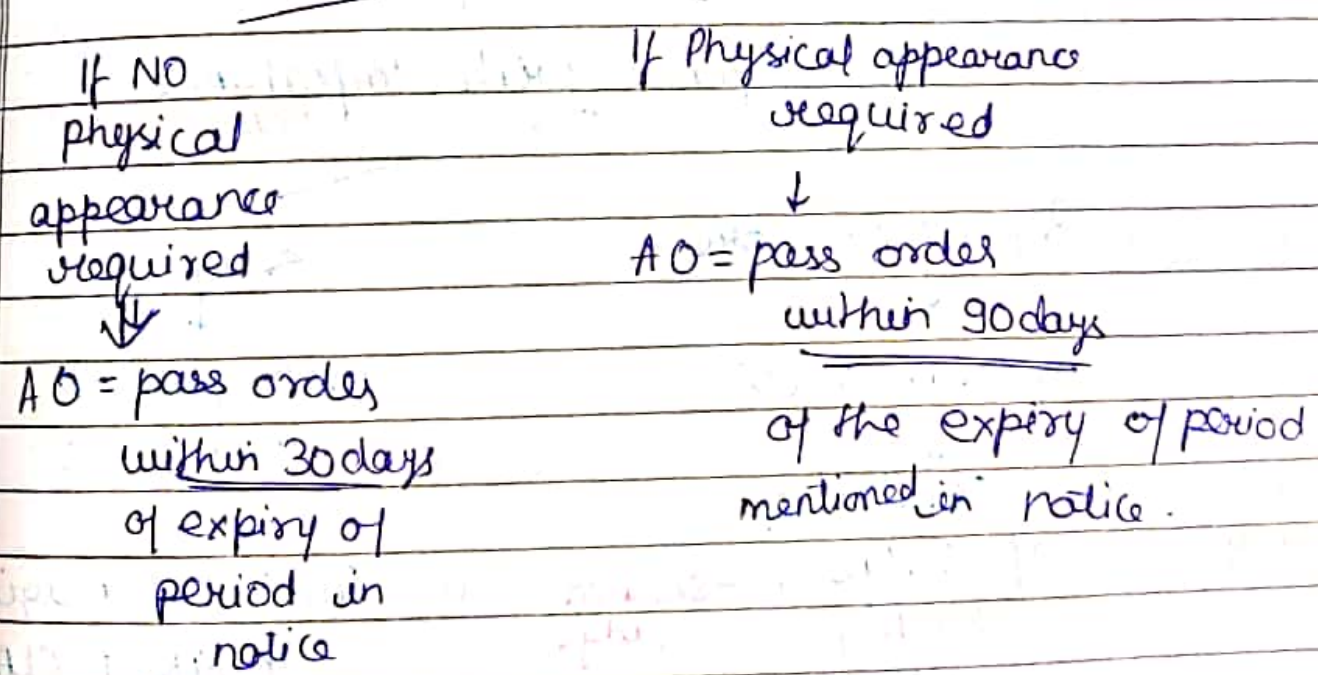


(11) Adjudication of penalties [Sec 454]

Read from module Pg 11.9



③ Time limit for passing order.



④ If there is non compliance of 92(4) i.e AR or 137(2) i.e filing of FS and such default is rectified.

either prior to OR within 30 days } from issue of notice by AO

then no penalty shall be imposed and all the proceedings in respect of such default shall be deemed to have been concluded.

⑫ Establishment of Special Court [Sec. 435]

① The CG by notification for this speedy trial of offences under Co-Act 13 except u/s ~~432~~ 452

shall designate as many special court as may be necessary.

② The judge of special court shall be appointed by CG in consultation with chief justice of high court.

Offence with ~~importance~~ imprisonment

2 years or more

< 2 yrs

Special court

metropolitan magistrate

consist of single

~~consistency~~

of Judge

holding office as

Session Judge

Addⁿ

Session judge.

OR

Judicial magistrate of FIRST CLASS

(13) OFFENCES Triable by Special Court [Sec 436]

- ① All the offences u/s 435 shall be triable only by special court establish for the area in which the registered office of the Co in relation to which the offences is committed is situated
- ② If there are more than one special court then by such one of them as may be specified in this behalf by the HC concerned.

SUMMARY TRIAL

The special Court if it thinks fit may try any offence under this act summarily which is punishable with imprisonment for a term not exceeding three years

In case of conviction maximum sentence of imprisonment that can be passed is one year

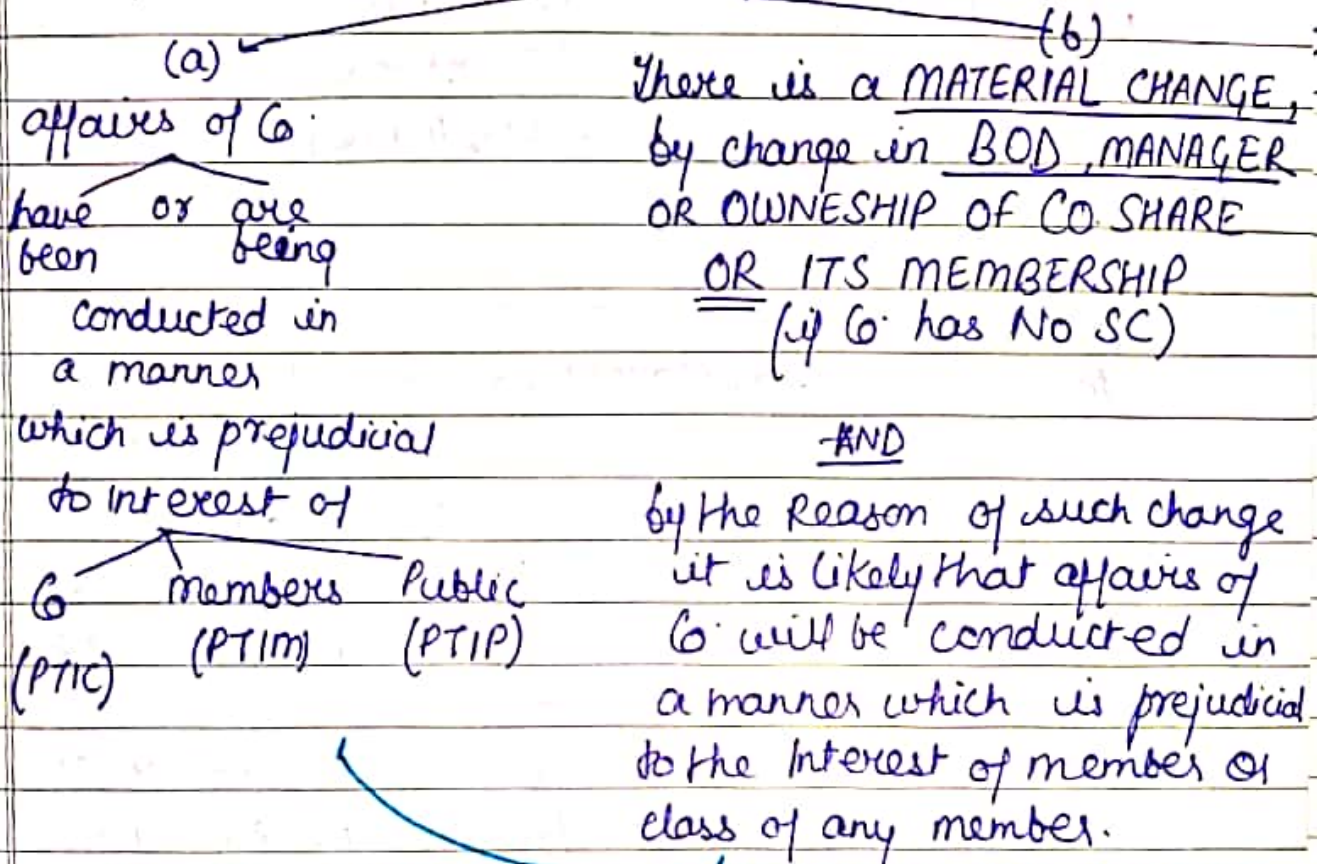
If it appears to special court that the nature of case is such that sentence of imprisonment for exceeding one year may have to be passed or its undesirable to try the case summarily then, the special court may hear the case as per the procedure of regular trial.

OPPRESSION and MISMANAGEMENT

Oppression is not defined in the Act. It means 'burdensome, wrongful, harshact' [Elder v Elder & Watson Ltd] by Lord Cooper

241: Application to Tribunal for Relief in Case of Oppression etc.

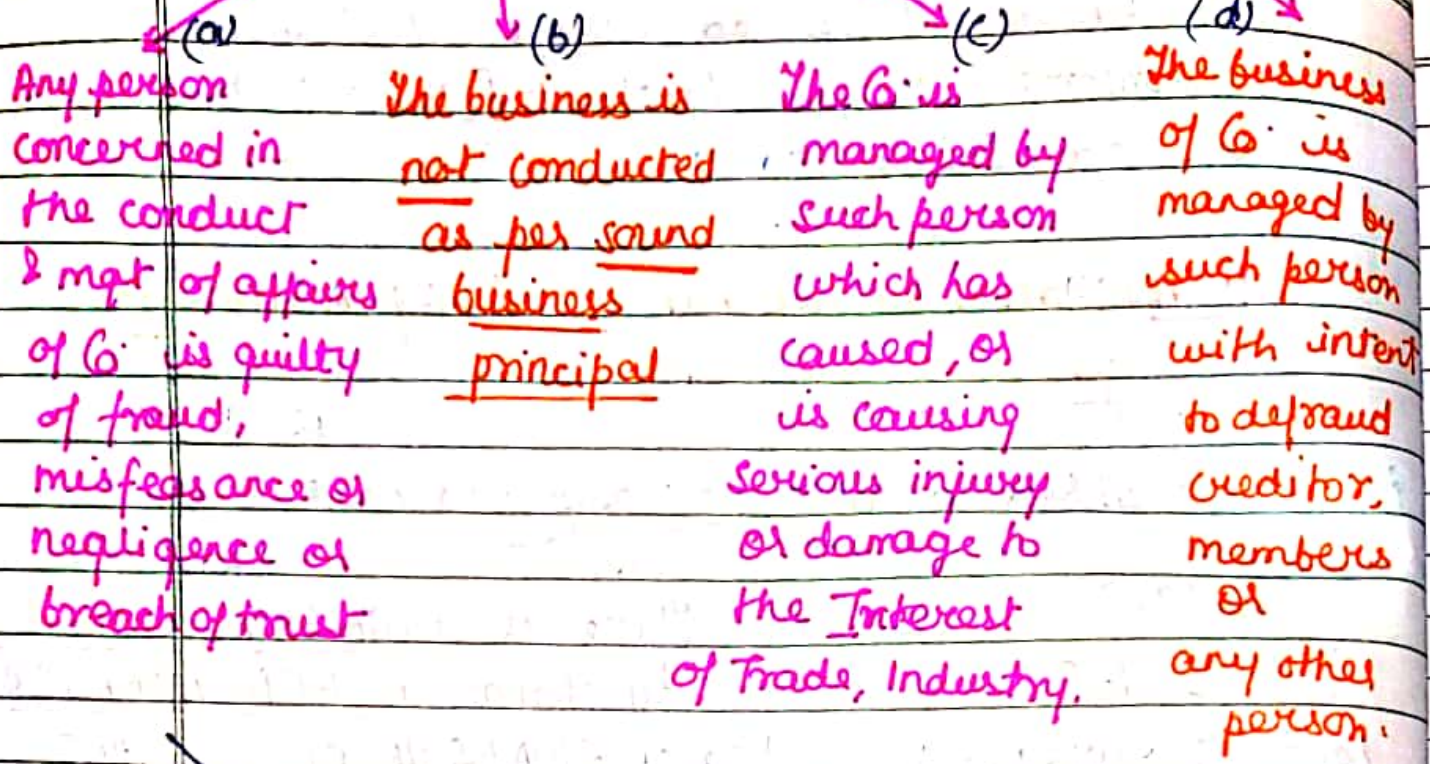
1) Any member of Co. who complains that



then they shall apply to Tribunal for relief u/s 244

2) If CG is of the opinion that the affairs of Co. are conducted in a manner which is prejudicial to Public Int. it shall apply to Tribunal for relief u/s 244.

3) If in the opinion of CG there exist circumstances suggesting that



then Cg will → request → Tribunal to Conduct Inquiry.

and Tribunal will respond back to Cg stating that such a person is whether fit and proper or not

↓
to hold the office of a director or any other office connected with

↓
the Conduct and mgt. of ANY COMPANY

244: Right to apply u/s 241

The following members of a Co. shall have the right to apply u/s 241, namely:-

Co. having SC

- 100 members or
- $1/10^{\text{th}}$ of The total members. or
- holding $1/10^{\text{th}}$ of total Issued SC



subject to the condⁿ that

- the applicant or applicants
- has or have paid
- all calls and other sums due of their shares;

Co. NOT having SC

(Guarantee Co)

- at least $1/5^{\text{th}}$ of the Total No of all members.

Note: 1) The above requirement can be waived or reduced by the Tribunal on case basis

2) SH's can be Equity/Preference/both

3) SC can be E/P/Both.

4) Joint SH shall be counted as one.

5) The above requirement is to be checked at the time of making application. Therefore, if some members withdrew application then still the application is valid.

6) The applicants can choose lead applicant who may or may not be a member

242: Powers of Tribunal

Read only for mcq. Pg. 6.9 module

243: Consequences of Termination or modification of certain agreements

1) If an order is passed u/s 242 Terminating, setting aside, or which modified an agreement then

(a) NO COMPENSATION will be given by the Co. to any person for damages or ~~by~~ for compensation for any loss of office

(b) The MD, Director, or manager whose agreement is so terminated shall be disqualified for 5 years to be the MD, Director or manager of the Co. (same)

If such person is to be appointed within 5 years then it requires tribunals approval

Tribunal will give approval only after making application to CG.

1A) The person who is not fit and proper as per 242(4A) shall not hold the office of a director or any other office connected with the mgt. of the any Co for 5 years.

If such person - - - -

1B) No compensation shall be paid to any person for the loss of office as per 242(4A)

2) Any person who knowingly acts as MD, Director, Manager and every other director who is knowingly a party to such contravention shall be punishable with fine upto 5 Lacs.

245: CLASS ACTION

This section covers members, depositor or any class of members.

Here the wrong doing can be by Co, director, member, auditor, expert or any consultant.

If the member, depositor or class of them are of opinion that the affairs of Co. are conducted in a manner which is prejudicial to Int. of Co.

- members
- depositors.

They may file application to NCLT for seeking all or any of the following orders

(a) to restrain the Co. from committing an act which is ultra vires to AOA/MOA

(b) to restrain the Co. from committing breach of any provision of Co's MOA/AOA

(c) to declare a resolution altering MOA/AOA as void

(d) to restrain the Co. from acting on such Resolution

(e) to restrain the Co. from doing an act which is contrary to the provⁿ of Co's Act

(f) to restrain the Co. from committing any action which is contrary to the resolution passed by the members.

(g) to claim damages or compensation from —

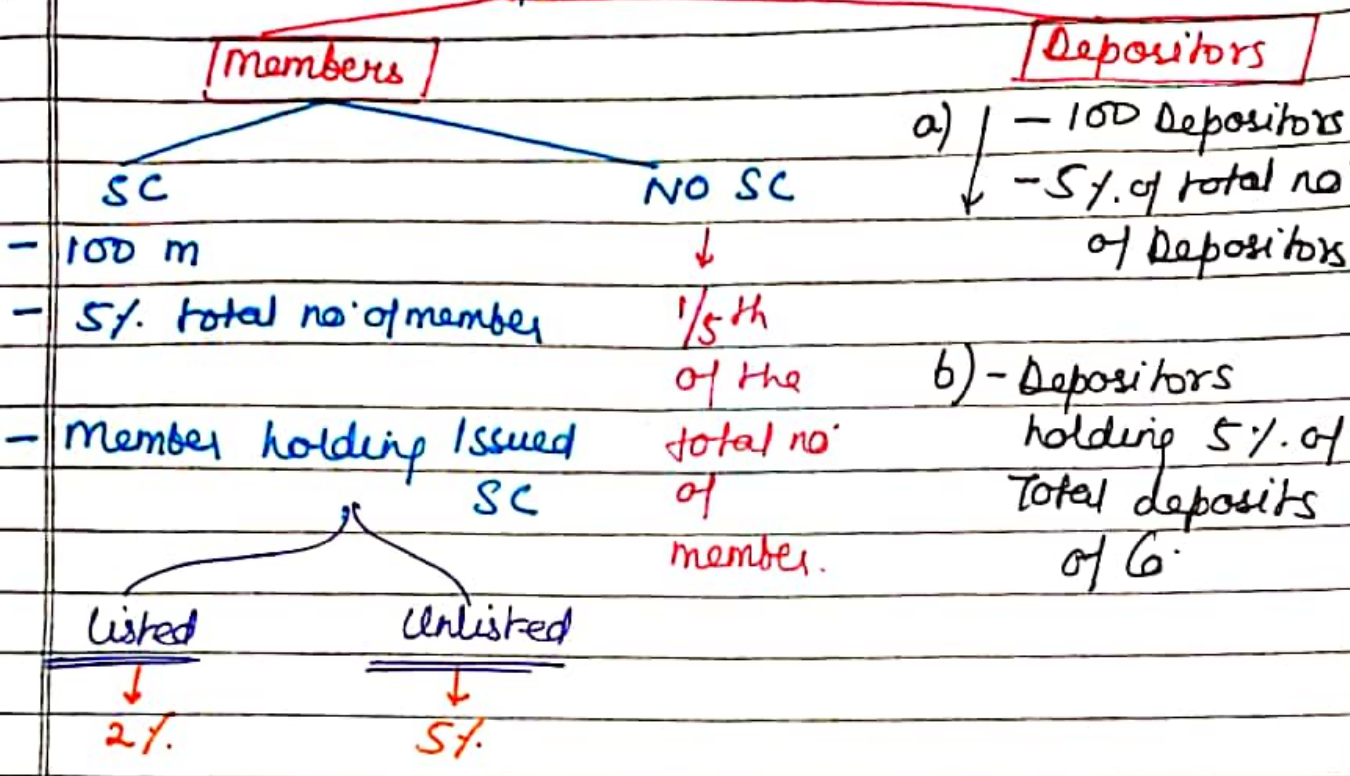
- Co's directors for any fraudulent, unlawful, or wrongful Act
- Auditor including audit firm for any improper OR misleading statement in his AR

(h) any other remedy as the Tribunal may deem fit.

Expert/advisor/consultant or any other person for any misleading statement.

2)

Application by



Notes

- ① All similar application will be consolidated into a single application & lead applicant will be chosen.
In case, there is consensus the Tribunal will appoint a lead applicant.
- ② The cost or expenses for class action suit shall be defrayed by the Co. or any other person (paid) responsible.
- ③ In case of frivolous or vexatious, the application will be rejected and the applicant will pay max. Rs/1ac to opposite party

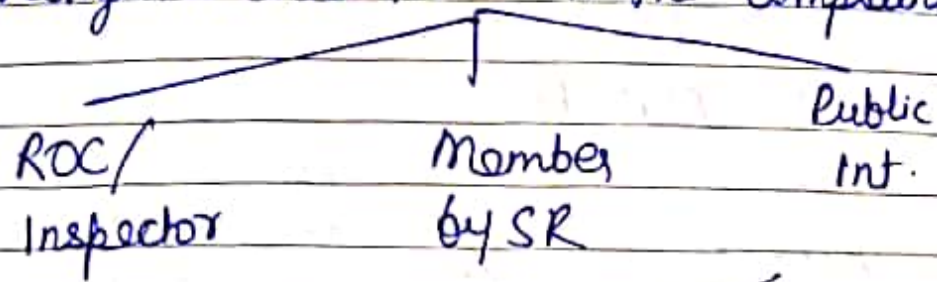
④ This section is not applicable to a banking Co.

INSPECTION, INQUIRY, INVESTIGATION 4-12 marks

Date _____
Page _____

206-208 -

206 ① If CG is of the opinion that it is necessary to investigate into AOC on the complaint of



It may order investigation into AOC

216 ② If investigation order is passed by Court/Tribunal then CG will pass the order for investigation into AOC

220 ③ CG will appoint one or more persons as inspector to investigate into AOC

223 ④ Applicant has to ~~pay~~ give a security of maximum 25000 for costs and expense of investigation.

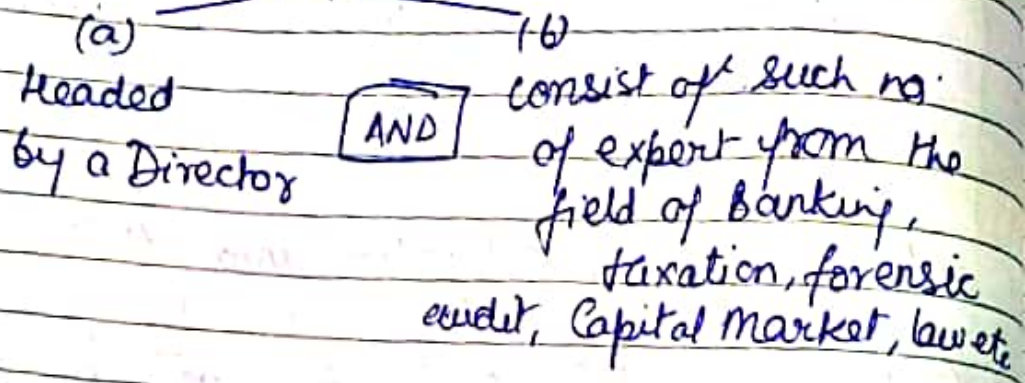
The amt. will be refunded if investigation results into prosecution.

T/O as per previous year BS	Ant of security
1. T/O upto 50 cr	10000
2. T/O more than 50 cr and upto 200 cr	15000
3. T/O more than 200 cr	25000

Establishment of SFIO [211]

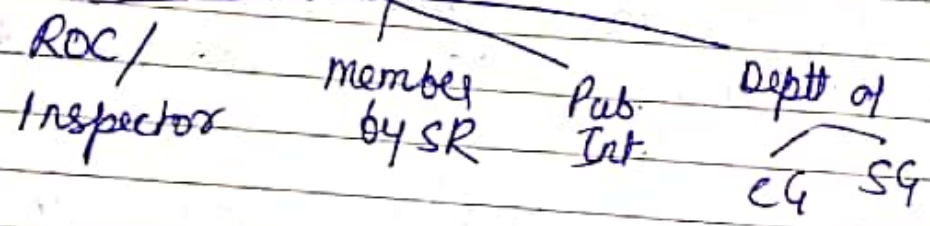
① The CG shall establish SFIO to investigate into the frauds of a Co.

② The SFIO shall be



Investigation into AOC by SFIO [212]

① CG may order investigation into AOA and may assign investigation to SFIO on a complaint of



② SFIO may designate the inspector to carry out the investigation.

③ If any investigation is pending with any other agency then such agency shall transfer all the records to SFIO

④ SFIO will conduct the investigation & report to

CG.
③ All the officers and employees and Co; shall be responsible to provide assistance to investigating officer.

④ the concerned officer of SFIO may arrest the guilty person and shall inform him the grounds for such arrest.

⑤ Such officers of SFIO shall forward the copy of order to SFIO and arrested person shall be taken to Judicial Magistrate or Metropolitan Magistrate having jurisdiction within 24 hr of arrest. such.

The time taken for travel from the place of arrest to the judicial magistrate or metrop. mag. shall be excluded

⑥ the SFIO shall submit interim report and final report to CG.

⑦ On the receipt of report CG may order prosecution against the Co and its officers.

212(6)

Imp. Point If any person is proven guilty as per Sec 212, then he shall be guilty as per Sec 447 i.e. the offences are cognizable and nonbailable

No person shall be released on bail or on his own bond unless -

(a) The public prosecutor has been given an opportunity to oppose the application for such release

Person is below 16 years OR is a women OR is sick or infirm

AND

where the PP opposes the application the court is satisfied that he is not guilty and he will not commit any offence while on bail.

may be released if special court so direct.

The special court will take cognizance of an offence u/s 212(6) only upon a complaint in writing which is made by

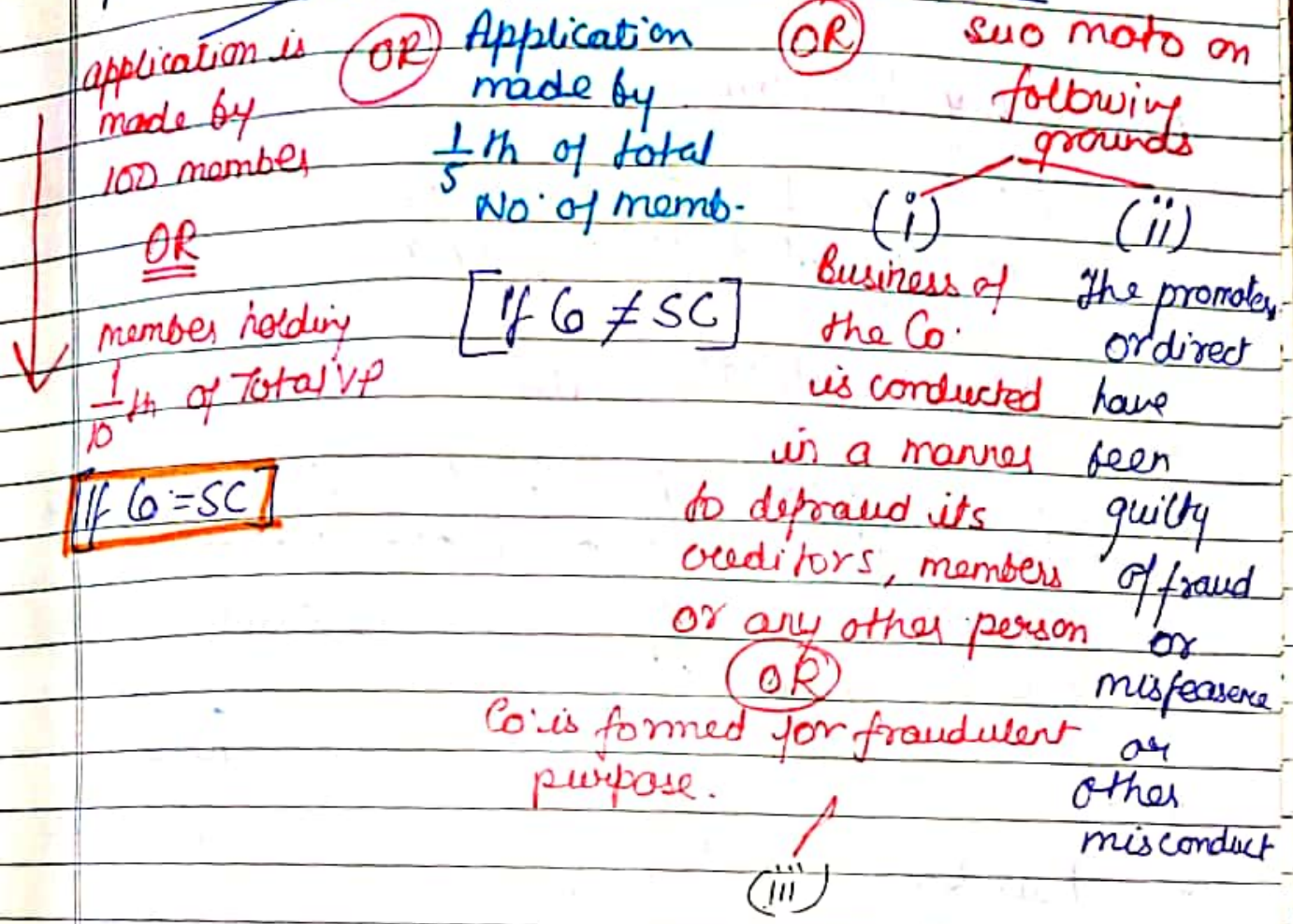
Director of SFIO

OR

any officer of CG authorised by general or special order in writing.
By CG

213: Investigation into affairs of Co. in other cases

① The Tribunal can pass orders for investigation into affairs of Co. in following cases:



members of the Co. have not been given all the info which they expect including info related to calculation of Commission payable to MD, manager, Director.

② After giving ROOBH to the parties concerned, NCLT will pass order for investigation but final order will be pass by CG, who will appoint inspector to conduct the investigation.

③ In case every officers of the Co. who is in default **OR** the promoter **OR** the directors are proven guilty under this section then they shall be liable up to 441.

⑤ Security for Payment of Costs and Exp. of Investigation [214]

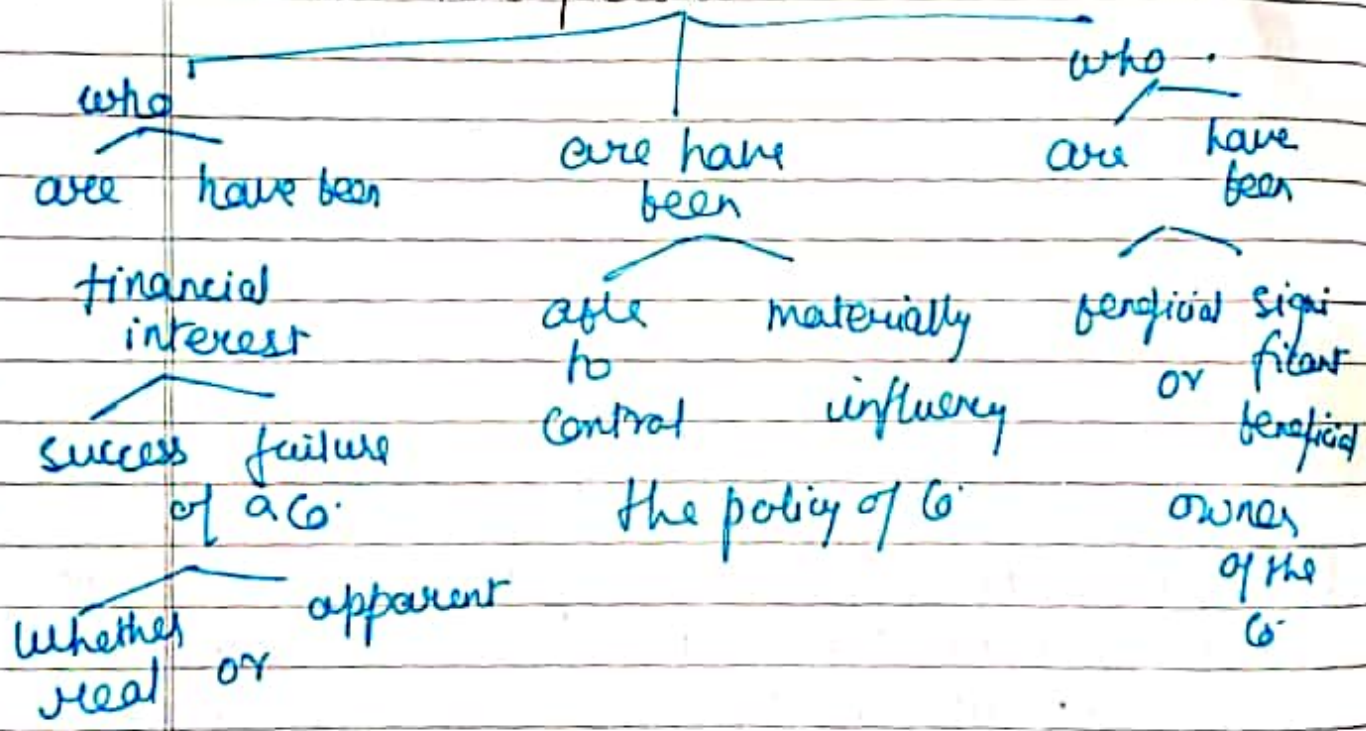
Refer Answer 1 point 4

⑥ Only Individual to be inspector [Sec 215]

No firm, BC or other association shall be appointed as inspector.

⑦ 216 [Investigation into Ownership of Co]

① If it appears to CG that it is necessary to appoint one or more inspectors to investigate & report to determine who are the true persons



② Cg will define scope / matter / period / shares / debentures for investigation.

③ The provision shall also apply to investigation of foreign Co.

⑧ Powers of Inspector [Sec 217]

Refer module Pg. 4.20 - for MCQ

Inspector shall keep Books & papers for maximum 180 days.

⑨ Protection of employees during Investigation [218]

① If any investigation is carried out u/s 210, 212, 213, 219, and the company wants to take any action against the employee during the pendency of any proceeding ie

to discharge, suspend any employee OR to punish him by dismissal, removal, reduction in rank OR to change the terms of employment then Co. shall make an appli-cation to tribunal.

② The tribunal will give approval within 30 days

③ If no reply is received from tribunal it is deemed approval. Co shall proceed with the action.

④ If reply is received and the Co or employee is aggrieved they shall file an appeal to Appellate Tribunal within 30 days.

⑤ NCLT decision will be final and binding on the Co, ~~the~~ tribunal, employee

Action against EE during Investigation.

1) Co → ~~appal~~ application → Tribunal
reply < 30 days

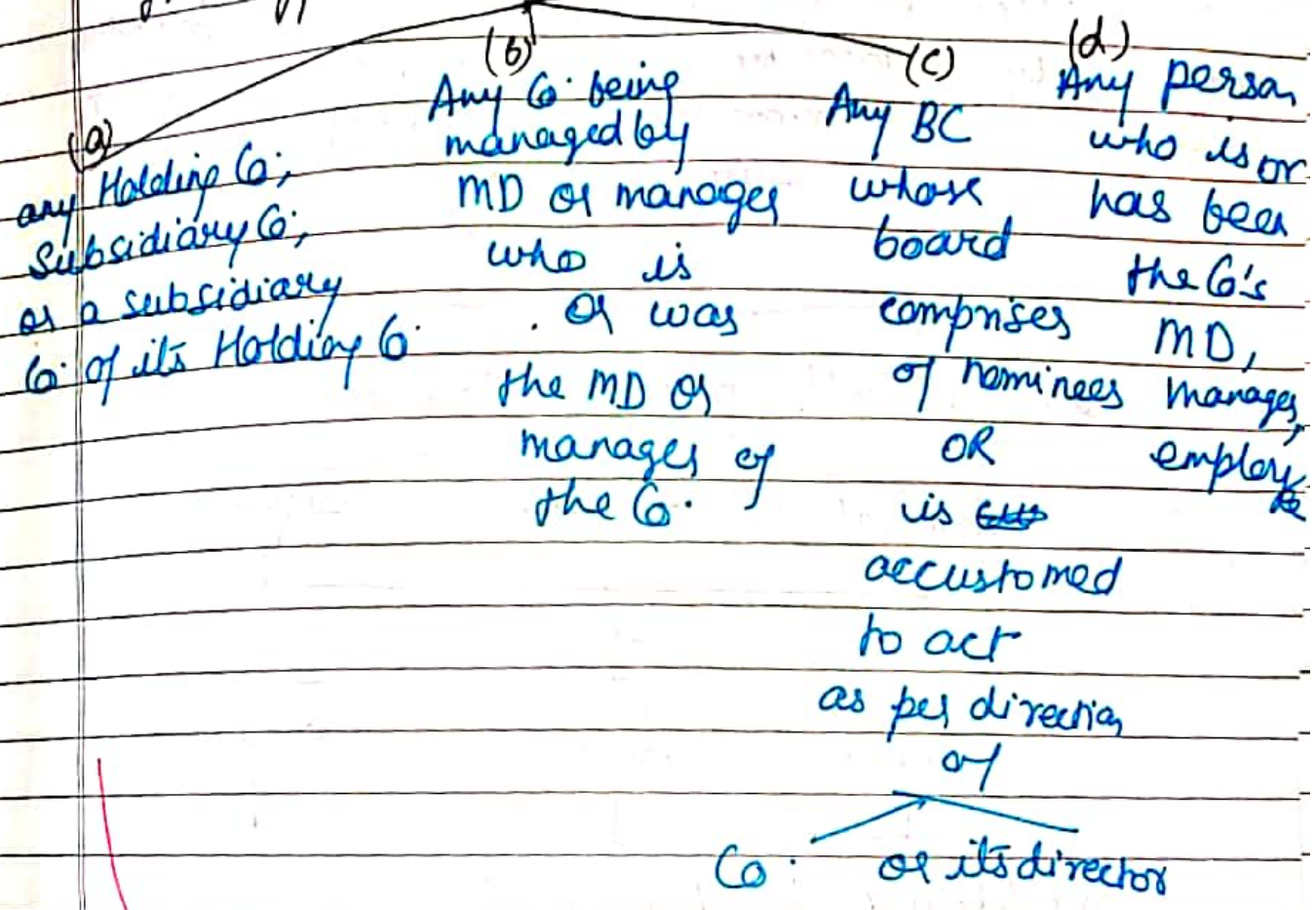
2) Reply X → deemed approval → Co ✓
proceed

③ Reply ✓ → ER/EE → aggrieved → appeal → AT
(Co) < 30d

④ Order of AT = final & binding on All

219 Investigation into affairs of related Co. etc.

If an inspector appointed u/s 210, 212, 213 considers necessary for the purpose of investigation, can also investigate the affairs of



can do only after **PRIOR approval of CG**

11

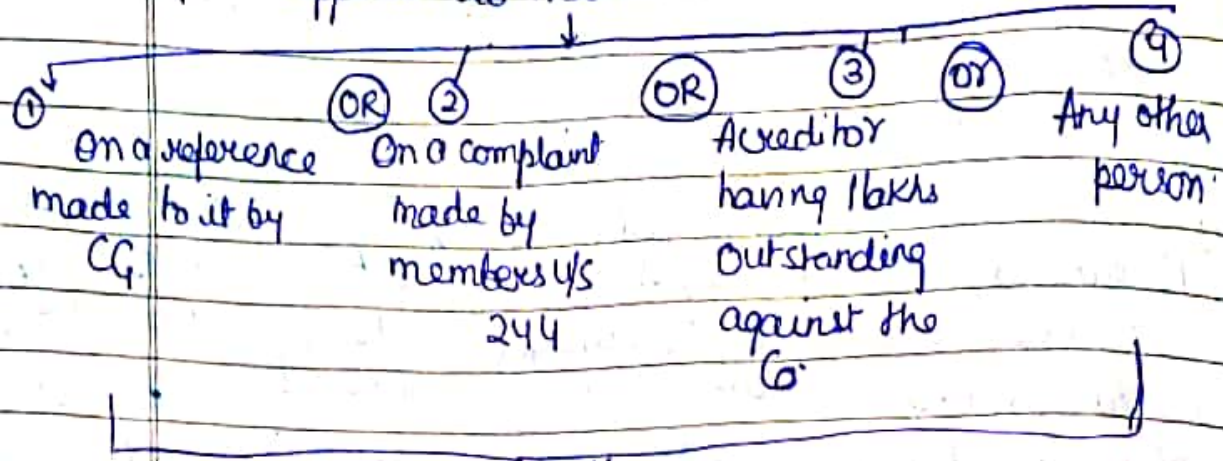
220 - Seizure of Documents

Refer Pg. 4.25 (module)

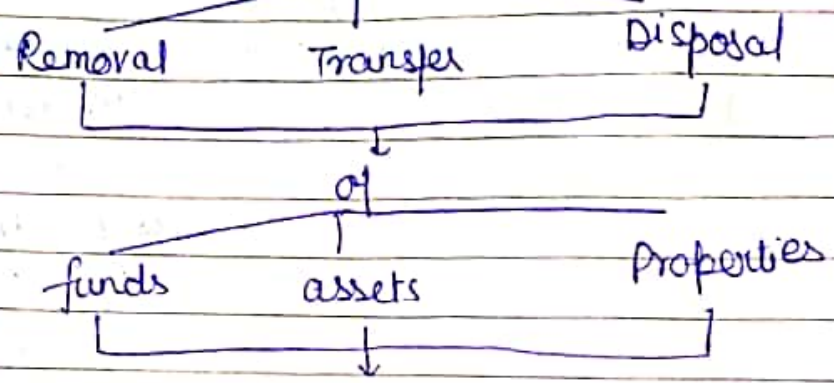
12

221 - Freezing of Assets

① If it appears to the Tribunal



Have Reasonable ground to believe that



are likely to be PTM/PTIC
Then it may order that such transfer, removal, disposal shall not take place for Maximum 3 years or may take place subject to such condition as Tribunal may deem fit

②

If Sec 221 is contravened then :-

Co - 1 lakh to 25 lakhs

Officers - 50k to 5 lakhs
or

3 years imprisonment

or Both

13 222 - Restriction on Securities

① If any investigation is conducted u/s 216 or a complaint is made by any person in that behalf and the Tribunal is of the opinion that certain facts related to securities cannot be found out unless certain restrictions are imposed, then the tribunal will ~~frame~~^{pass} the orders containing such restrictions as it may deem fit for a period not exceeding 3 years

② If Sec 222 is contravened :-

Co - 1 lakh to 25 lakh
Officer - ~~25~~ 25K to 5 lakh
or
Upto 6 month imprisonment
or
both.

14 Inspector's Report (Sec 223)

- ① An inspector may submit interim report to CG, and shall, submit final report to CG.
- ② The report shall be in writing or printed as CG may direct.
- ③ A copy of the report may be obtained by the members, creditors or any other person whose interest is affected by making an application

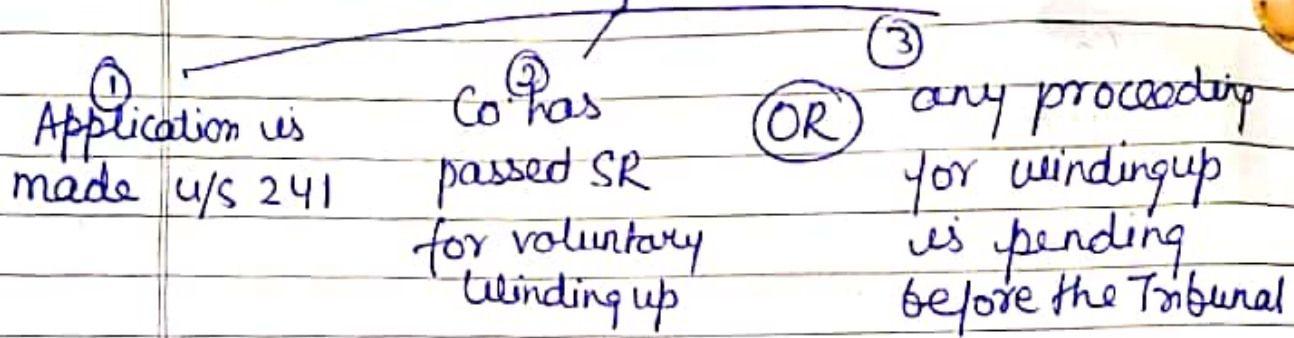
④ The report shall be authenticated by seal, if any (a) certificate of public officer as per Indian Evidence Act 1872.

⑤ This section is not applicable to the report referred in Sec 212

⑮ Sec 224 & 225 - Read from Module Pg. 4:28

⑯ 226 - Voluntary winding up etc not to stop investigation proceeding. ~~Sec 226~~

① No investigation shall be stopped or suspended by the reason of the fact that



② If winding up order is passed by the Tribunal then the inspector shall inform the Tribunal about the pendency of investigation and the Tribunal shall pass such order as it deem fit

③ The director or employee of the Co shall be still liable for the proceedings before the inspector

⑰ Sec 227, 228 - RTP - Pg 4:31

18) Penalty for furnishing false statements, mutilation, Destruction of Documents (Sec.229)

If a person, who is required to make a statement during the course of inquiry, inspection, investigation **OR** an officer **OR** employee of the Company.

- (a) Destroy, mutilates **OR** falsifies or tampers any document relating to property, assets or affairs of the company.
- (b) makes or is a party for making false entry in any document of the Co.
- OR** (c) provide false explanation knowing it to be false.

shall be guilty u/s 447 for fraud.

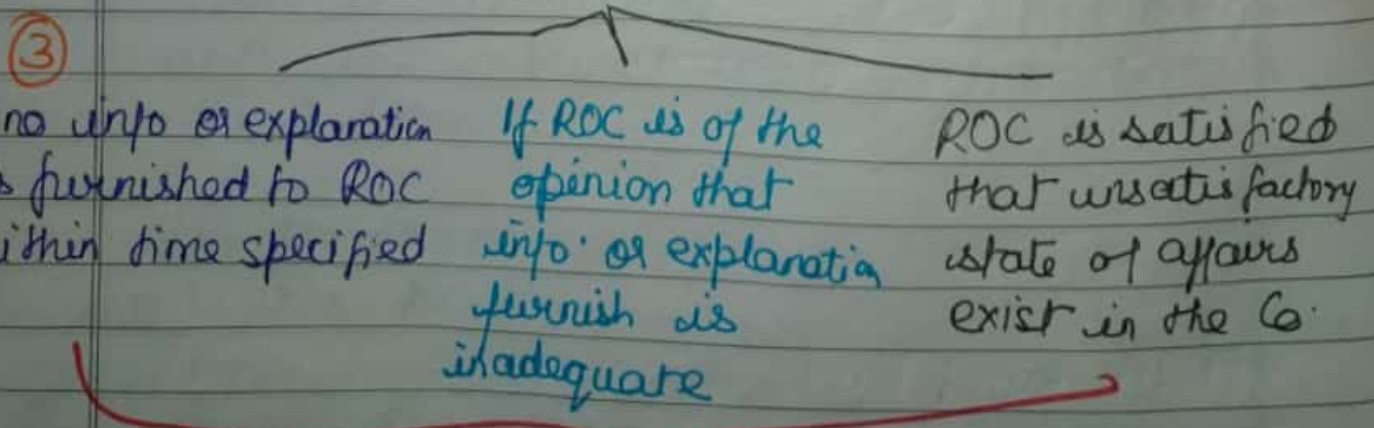
19 206 - Power to Call for Info, inspect Books and Conduct inquiries

(i) If on scrutiny of any document filed by the Co.
(OR)
any info received by ROC

ROC is of the opinion that any further info.
(OR) explanation (OR) documents is required,
then he may by written notice require
the Co. to furnish such info or
explanation or to produce such documents
within such time as may be specified
in the notice

(2) All the officers are required to ^{give} info;
explanation, documents to ROC within
the time specified in the notice.

All the past officers who are not currently
in the employment shall also furnish
info, explanation, or documents



then,

ROC by another written notice may call the Co. to produce books, paper and explanation within at such place within such time as may be specified in the notice.

for calling info / right 1) 2) 3) ^{inspector}

4) Inquiry by ROC
the ROC

on the basis of info available to him ^{OR} on a representation made to him by any person whose the business is carried on for unlawful or fraudulent purpose or in contravention of this act ^{OR} Grievances of investors are not being addressed,

then.

ROC will call the Co. to furnish in writing any info or explanation within such time as he may specified.

Before calling the Co. ROC has to inform the Co. of the allegations by a written order.

The CG if satisfied that circumstances so warrant, may direct the ROC ^{OR} inspector to carry out the inquiry.

The CG can also direct to conduct inspection of Books and papers of the Co. by inspector.

appointed by it.

⑤ If it is prove that the business of the Co is conducted for fraudulent or unlawful purpose then every officer who is in default shall be liable u/s 447.

⑥ If Co fails to furnish any info, explanation or document to ROC then

Co + officers liable for fine upto 1lac

+ 500/day till the default continue.

20

207 - Conduct of Inspection.

① It shall be the duty of every director officer or employee of the Co

to produce documents, to furnish statements, info

AND

to render all assistance @ in connection with such inspection.

② The ROC or inspector appointed u/s 206 they make copies of ~~such inspection~~ or BOA (OR) may place identification marks on BOA, in token of inspection have been made.

③ The ROC or inspector shall have all the powers as vested in civil court under Code of Civil Procedure 1908

(4) If the director or officer disobeys the direction of ROC or inspector then he shall be liable to imprisonment upto 1 year and fine min 25000 to 1 lac.

(5) If the director or the officer is convicted under this section then he shall be deemed to ~~have~~ have vacated his office from the date of such order of conviction,

AND

he shall be disqualified from holding an office in any company

(2) 208 & 209 Refer Pg 4.7 module.

247
248
249
250
251
252
394
447
450
455

① 247 - Registered Valuer:
① If a valuation is required to be made in respect of any property, stocks, shares, debentures, goodwill or any other assets, it shall be valued by a person having such qualification and experience and registered as valuer under companies Act 2013.

② He shall be appointed by AC or in its absence by BOD of that Co.

③ The valuer appointed shall

make an impartial, true and fair valuation of any assets	exercise due diligence while functioning as valuer	make the valuation as per rules	not to undertake valuation of any asset where he has direct or indirect interest at any time during last 3 years prior to his appointment
--	--	---------------------------------	---

No interest ← directly indirectly.

3 yrs | Appointment | 3 yrs

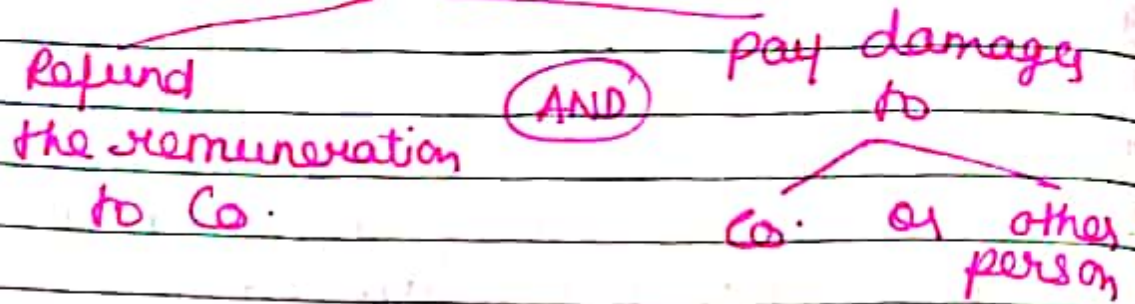
OR

3 years after valuation of asset was conducted by him.

④ If the valuer contravenes any provision of this section, he shall be liable to penalty of 50000 Rs

⑤ If the valuer contravenes the provision of this section with intent to defraud the Co or its members he shall be liable for imprisonment upto 1 year and fine 1 lac to 5 lac.

If the value is convicted he shall also be liable to:



for the loss suffered because of his report.

Refer module Pg 10.3 point 2

Eligibility
(i) (i) important

(2) Sec. 447: Penalty for frauds

FRAUD

FRAUD \geq 10 lac
or 1% T/O \downarrow

FRAUD $<$ 10L
1% T/O \downarrow

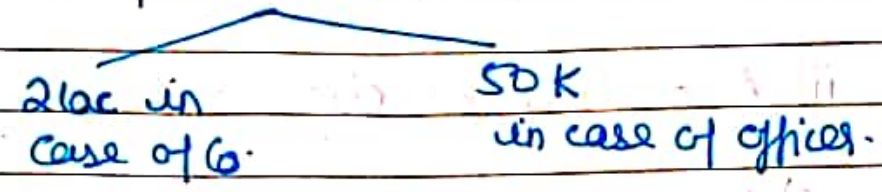
	min	MAX
Imp.	6m 3 yrs	10 years (Normally) 10 yrs (Public Int)
AND		
FINE	Amt. of fraud	3 x Amt of fraud.

& does not involve public interest

\downarrow
Imp upto 5 yrs
or fine upto 50L or both

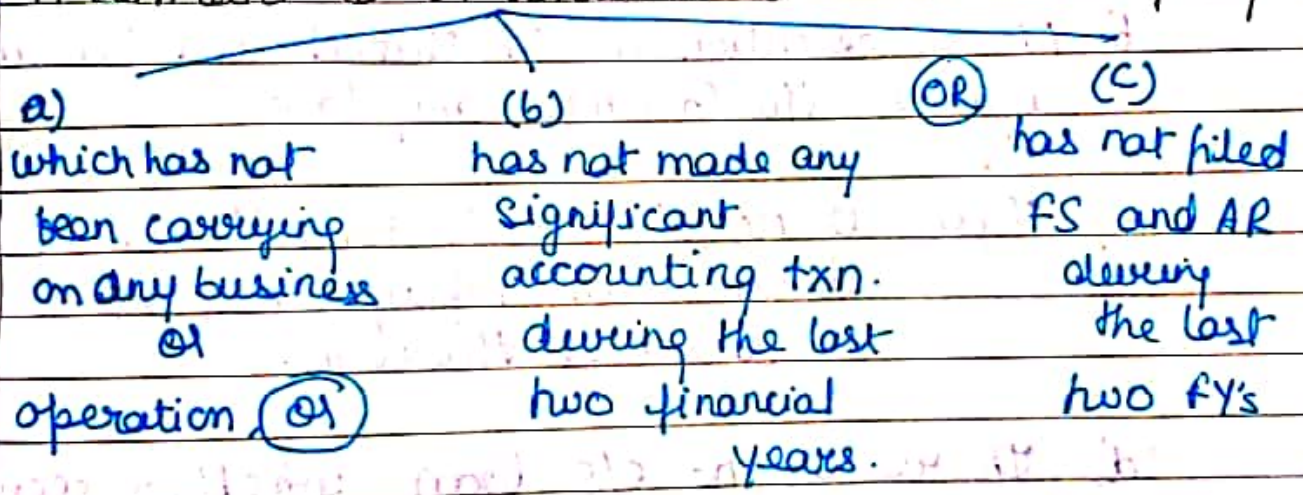
③ 450- Penalty where no specific penalty is provided.
This section will be applicable where no specific penalty is provided else where in the act

Co and every officer shall be liable to a penalty of ₹10000 and in case the contravention is continuing one ₹1000/day till the default continues subject to maximum



④ 455 - Dormant Co.

① A dormant Co or inactive Co means a company.



② "Significant Accounting txn" means any txn other than

- (1) payment of fees by a company to the Registrar
- (2) payments made by it to fulfill the requirements of this Act or any other law;
- (3) allotment of shares to fulfill the requirements of this Act, and
- (4) payments for maintenance of its office and records

③ Procedure for application for becoming dormant Co.

i) A Co. may make application in form - MSC 1 to the ROC along with special resolution passed in GM

(OR) obtaining the consent of atleast 3/4th SH's in value.

ii) A Co. shall be eligible to apply only if -

a) No inspection, inquiry or investigation is ordered or carried out against the Co.

b) No prosecution is initiated and pending against the Co. under any law

c) There is no o/s public deposits NOR default in repayment of interest thereon.

d) There is no o/s loan whether secured or unsecured. #

If there is o/s unsecured loan approval of lender is required

e) There is no dispute in the mgt or ownership of the Co.

f) There is no o/s Statutory taxes, dues payable to CG, or SG or local authority

g) There is no default in payment of workmen dues

h) The Co. which is not listed on any stock exchange within or o/s India.

iii) ROC will issue a certificate ^{of dormant Co.} in form no. MSC-2

iv) A dormant Co. shall file a return of dormant Co. to ROC in form no. MSC-3 within 30 days from the end of each FY.

Refer Eg 9 Pg 10.31 module

④ Application for becoming active Co.

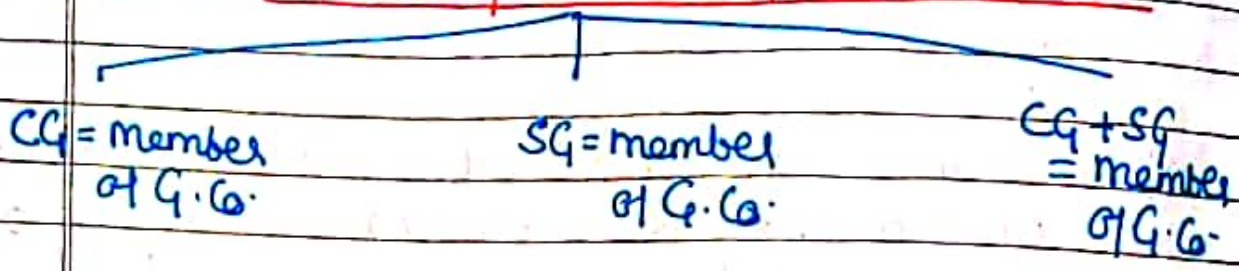
① The dormant Co. shall make an application in form no. MSC-4 to the ROC along with the return in MSC-3 for obtaining the status of active company.

However, the ROC shall initiate the process of striking off the name of the company if the Co. remains as a dormant company for a period of consecutive 5 years.

② The ROC after considering the application will issue a certificate in form no. MSC-5 allowing the status of an active Co. to the applicant.

⑤ The ROC shall strike off the name of a Dormant Co from the Register of Dormant Co which has failed to comply the requirements of this section.
i.e. ~~it~~ (he will make it an active Co)

⑤ 394 - Annual Reports on Government Co.



- Annual Report on
workings & affairs
of G.Co

- to be prepared
within 3m of AGM

- laid before both
the House of Parliament

- both the House
of legislature

- both the house
of Parliament
or legislature

⑥ 248 Power of ROC to Remove the name of Co from register of Companies

① If ROC has reasonable cause to believe that

- a) Co. has failed to commence its business within one year of its incorporation.
- (b) omitted
- (c) Co. is not carrying on business for last 2 fy's (and) has not file an application for status of dormant Co. u/s 455 within 180 days of incorporation. as per Sec 10A
- (d) The subscribers have not paid the Subscription which they had undertaken to pay and after a declaration to this effect is not filed within 180 days of incorporation. as per Sec 10A
- (e) The Co. is not carrying on any business or operations as revealed after physical verification as per Sec 12(9)

He will send show cause notice to the Co. and its director stating his intention to remove the name of Co. from the register of Co's (and) seek the representation within 30 days from the date of notice.

② A Co. may voluntarily apply to ROC to remove the name of Co. from ^{the} Register of Co's on all or any of the grounds specified u/s 248 (1)

- It can apply after extinguishing all its liabilities by -
- Special Resolution
 - (OR)
 - consent of 75% of members in terms of Pt. SC

In case of Co. governed under special act approval of its regulator is also required.

248(2) shall not apply to Sec 8 Co's

③ After the expiry of time mentioned in notice the ROC will strike off the name from the Register of Co's and publish the same in official ~~gazette~~ Gazette **AND** on publication in official Gazette the Co shall stand dissolved.

④ The ROC before passing the order shall satisfy himself that sufficient provision is made for realisation of amount due to the Co and for payment of its liabilities.

AND necessary undertaking is obtained from the directors, MD or other persons in charge of the mgt. of the Co.

The assets of the Co shall be made available for payment of liabilities even after removing the name of Co from the Register of Co's.

⑤ The liability of every Director, Manager or other officer shall continue and may be enforced as if the Co. had not been dissolved.

⑥ Nothing in this section shall affect the power of Tribunal to wind up the Co. the name of which has been strike off ~~the~~ from the Register of Co's

⑦ Restrictions on making application u/s 248 in certain situation

① Application u/s 248 is restricted, if at any time [Sec 249] in the previous three months, the Co. -

- | | | | | |
|---|--|--|--|--|
| (a) | (b) | (c) | (d) | (e) |
| changed its name or shifted its Registered office | made a disposal for value of property or rights held by it | engaged in any other activity EXCEPT the one which is necessary or expedient | made an application to the Tribunal for the sanctioning of a compromise or arrangement | is being wound up under Chapter XX of this Act or under IBC, 2016. |

② If a Co. files an application in violation of restriction as given in sub-section (1) as given above, it shall be punishable with fine which may extend to ONE LAKHRUPPES.

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

⑧ Effect of Company Notified as Dissolved [Sec 248]

Where a company stands dissolved under Section 248, it shall on and from the date mentioned in the notice -

cease to operate as a company,

AND

the Certificate of Incorporation issued to it shall be deemed to have been cancelled from such date:

for the purpose of realising the amount due to the Co. and for the payment or discharge of the liabilities or obligations of the Co., this sub-section shall not effect.

The Company shall be continued in existence.

⑨ Fraudulent Application for Removal of Name [Sec 25]

① where it is found that an application by a Co. has been made with the -

object of Evading the liabilities of the Co.,

OR

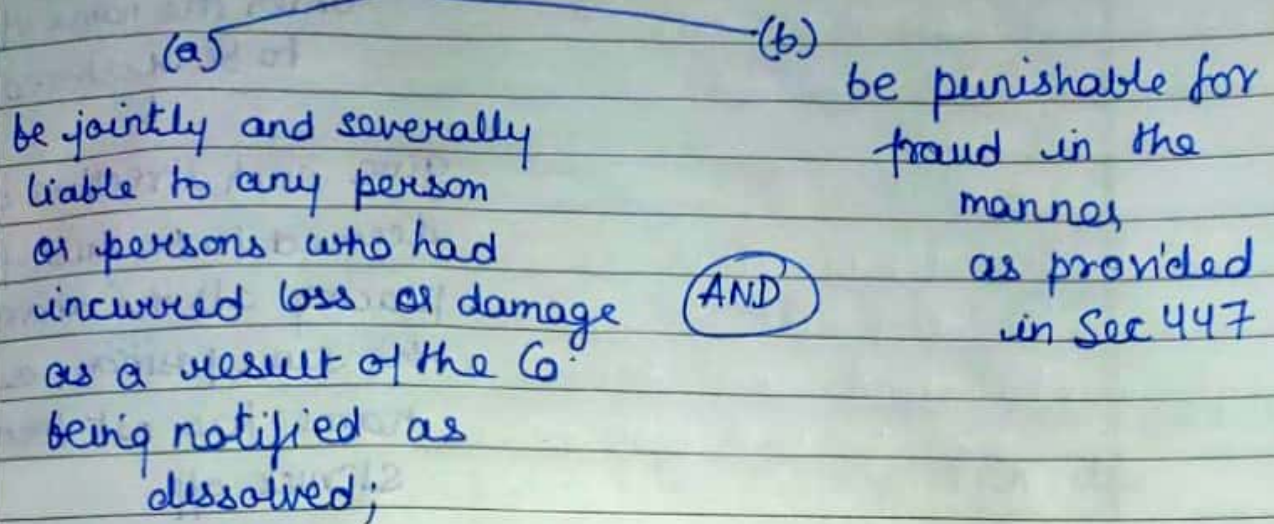
to defraud any other persons,

OR

with the intention to deceive the creditors.

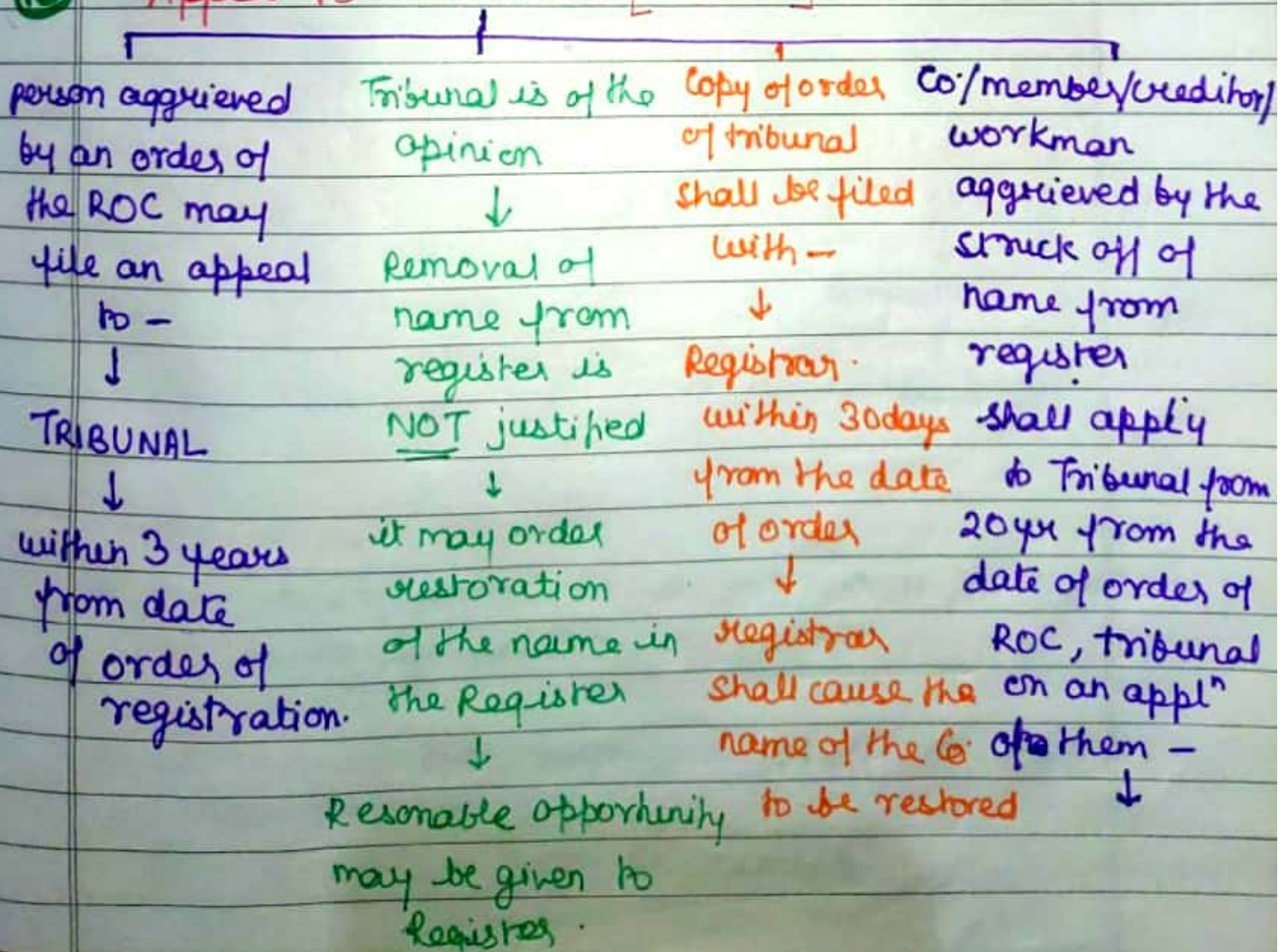
the persons in charge of the management of the Co. shall, notwithstanding that the Co. has been

notified as dissolved -



② The Registrar may also recommend prosecution of the persons responsible for the filing of an application.

⑩ Appeal to Tribunal [Sec 252]



order the name of Co
to be restored

↓
give such directions as
deemed to be just for
placing all the above in
the same position, as the
name has not been
struck off.



HEARTIEST CONGRATULATIONS TO ALL OF YOU

CA FINAL DEC 2021



SALONI GULECHHA
AIR 6



MUSKAAN GUPTA
AIR 14



SAURABH LAHOTI
AIR 27



YATHARTH BAPHNA
AIR 32



CA ABHISHEK BANSAL



BHAUTIK JAKHANIYA
AIR 48



KAMLESH GUPTA
AIR 33



MUKUND R
AIR 48

OUR RESULTS SPEAK THEMSELVES

WE ARE PROUD OF YOU!



CONGRATULATIONS!



CA ABHISHEK BANSAL

RESULTS : CA FINAL DEC 2021

NAME	FINAL AUDIT
YATHARTH BAPHNA [AIR 32]	72
MUSKAAN GUPTA	71
NITIN KUMAR	70
GAURAV JOSHI	69
HARSHADA GAONKAR	68
MOHIT SOJITRA	68
MUKUND R [AIR 48]	68
MANASHREE SHIRGURKAE	68
VAIBHAV PRATAP SINGH	66
NINAD THAKUR	66
NIKITHA CHANNA	64
URJA	63
RUCHA KALE	63
MANAV SHAH	63
MUDIT DAGA	62
HARI GUNDA	61
KUNAL JAIN	60
NIKITA KHATRI	60

NAME	ECO LAW
ABHILASH	78
KOMAL BHAGWAT	76
ROHIT GANGULA	72
ANISHA NIHALANI	72
VAIBHAV PRATAP SINGH	71
MUSKAAN GUPTA [AIR 14]	71
ACHINTO DAS	71
VISHAL RAMPAL	70
DIVYA GULATI	70
SAKSHI BANSAL	70
NABILA	68
NEHA GUPTA	67
DEEPAK GUPTA	66
CHINNAY REDDY	65
ADITI MANGHNANI	64
SHIVAM ARORA	60

NAME	FINAL LAW
MUSKAAN GUPTA [AIR 14]	69
GAYATRI KONDURI	68
VAIBHAV PRATAP SINGH	67
YATHARTH BAPHNA [AIR 32]	67
PRIYANKA SETIA	66
MANAV SHAH	66
RIDDHI SHAH	65
MUKUND R [AIR 48]	61
HARSH KANT CHATURVEDI	61
SAJANA KUMARI	60
PAYAL DHADHICH	60
SAURABH LAHOTI [AIR 27]	57

And Counting...

www.letslearnindia.in / 8448448919

Taj Party Due for 70 + Students

CA ABHISHEK BANSAL

Contact: 8448448919  www.letslearnindia.in



CA ABHISHEK BANSAL

**Fees :10,000 +GST
Video backup (1 view)**

CA FINAL LAW LIVE LECTURE

For Nov 22 & onwards

25th April 2022
to
10th June 2022

MONDAY TO FRIDAY

8:00 am- 10:00 am
7:00 pm - 9:00 pm

COMPROMISE ARRANGEMENT & MERGERS

Sections :

230 – Procedures to be followed for arrangements/ amalgamation

231 – Powers of Tribunal

232 – Procedure for reconstruction, amalgamation , demerger

233 – Fast track merger

234 – Merger and Amalgamation of a company with a foreign co.

235 – Power to acquire shares of dissenting shareholders

236 – Minority shareholders

237 – Amalgamation of 2 or more companies in Public interest

238 – Registration of offer involving transfer of shares

239 – Preservation of BOA

240 – Liability of officers i.r.o offences committed prior to amalgamation

Forms :

CAA – 1 RBI

CAA – 2 Notice

CAA – 3 Sectorals

CAA – 4 Results

CAA – 5 Petition

CAA – 6 Approval

CAA – 7 ROC

CAA – 10 Declaration of Solvency

New Definition Added:

“Corporate action” means any action taken by the company relating to transfer of shares and all the benefits accruing on such shares namely, bonus shares, split, consolidation, fraction shares and right issue to the acquirer.

Section 237 : Amalgamation of 2 or more companies in public interest

1. If CG is satisfied that it is essential in public interest then, CG by an order in Official Gazette, may provide for an amalgamation of those companies into a single company.
2. It may also, by order, provide for continuation of legal proceedings which are pending by or against the company.
3. Every member, creditor, debenture holders of each of the companies shall have same rights or interests against the transferee company as he had in the transferor company.
But if the rights are affected, he shall be entitled to compensation which shall be assessed by an authority prescribed by CG.
4. Any person aggrieved by compensation shall file an appeal to the tribunal within 30 days from the date of publication of such assessment in Official Gazette.

No order shall be made under this section unless:

- The copy of draft is sent to each of the companies.
- The time for preferring the appeal has expired or where the appeal has been preferred, but has been disposed off.
- The CG has given a time limit of minimum 2 months to each of the companies for sending their modifications or draft order.
- The copies of every order made under this section shall be laid before each house of the Parliament.

Section 239 : Preservation of Books of Accounts (BOA)

Any company – amalgamated } cannot dispose off the BOA without prior approval
Any company – shares are acquired } of CG.

And before giving approval, CG has to appoint an Inspector to conduct the inquiry.

The below definition of small company is effective from 01st April, 2021. – Students are advised to wait for clarification by ICAI regarding the same whet

Small Company means a company other than a public company whose:-

1. Paid up share capital is upto 2 crore; and

2. Turnover is upto 20 crore

3. Transferor / transferee – issue notice – ROC, Official liquidator, Affected person- Form CAA 9

4. Transferor / transferee – Declaration of solvency – ROC in Form CAA 10

5. Meetings of members and creditors called for approval.

6. Scheme – approved by – Holding 90% of total holding of shareholders } of respective companies.
- 90% of total creditors }

7. For calling meeting – notice should contain – Details of Merger / Amalgamation
- Declaration of solvency – CAA 10
- Copy of scheme.

8. Transferee company – within 7 days of meeting – copy of approved scheme to CG – CAA 11

9. Copy of scheme – ROC – GNL I along with prescribed fees.

10. Regional Director of CG – Final approval in Form CAA-12 – if there are no objections.

11. If Regional Director of CG –

- Has received objections OR
- Feels scheme is not in public interest / creditors interest



within 60 days of objection – Form CAA-13 to tribunal for consideration under Section 232.

12. Confirmation order – filed < 30 days in INC-28 to ROC by transferor / transferee.

13. Transferor company – dissolved without winding up.

Section 235 : Power to acquire shares of dissenting shareholders

Acquisition of by sale of shares / takeover



1. AB Ltd. – offer – shareholders of Baby ltd. – acquire their shares at stated price by way of notice in form no CAA 14
2. Above offer – accepted by minimum 90% if shareholders in value – within 4 months of offer.
If shares already held by AB ltd. (transferee co.)/ nominee/ subsidiary – not counted in the Calculation of 90%
3. If 90% approval received – within 2 months after expiry of 4 months and give notice to dissenting Shareholders.
4. After receipt of notice – dissenting shareholders < 1 month of receipt of notice – apply to NCLT.
5. If application is not approved – AB ltd. is bound to acquire shares of dissenting shareholders.
6. After expiry of 1 month of notice/ application is disapproved by Tribunal
AB ltd.– instrument of transfer– Baby ltd. and pay to Baby ltd. the amount of consideration.
7. Baby ltd. would now register AB ltd. as holder of shares and within 1 month of such Registration along with price payable to them.
8. All money – kept in separate bank a/c and should be disbursed < 60 days of receipt.

Question:

Special Company Limited, a company incorporated under the Companies Act, 2013 have applied to the Tribunal for a scheme of arrangement under section 230 of the Companies Act, 2013. The Tribunal by way of an order approves the scheme of arrangement involving amalgamation with Flip Company Limited under section 232 of the Act. Accordingly, the required numbers of shareholders have given the approval to become the shareholders of Flip Company Limited under section 235 of the Act. However, few shareholders have not consented to become the shareholder of Flip Company Limited. You are required to state the legal procedure to be followed by dissenting shareholders? (Note: Flip Company Limited has given a notice to dissenting shareholders that it desires to acquire his shares).

Answer:

As per the provisions of section 235 of the Act, where a notice by the transferee company have been given to dissenting shareholders that it desires to acquire his shares, the dissenting shareholders may make an application to the Tribunal within one month from the date on which the notice was given for the Tribunal to pass an order otherwise than the acquisition of shares by transferee company. Accordingly, the dissenting shareholders shall make an application to the Tribunal to pass an order otherwise than the acquisition of shares by Flip Company Limited within a period of 1 month from the date of notice made by Flip Company.

Section 230 : Procedure to be followed for Amalgamation/ Arrangement

1. Company/ member/ creditors/ liquidator



- Application to tribunal - NCLT 1
- Notice of admission - NCLT 2
- Affidavit - NCLT 3
- Copy of scheme of C&A containing -
 - Material of facts relating to company
(latest financial position, latest audit report, pendency of investigation)
 - Reduction of share capital, if any
 - Scheme of corporate debt restructuring consented by min. 75% of secured Creditors → RBI in Form CAA 1

2. Tribunal – give direction – convene a meeting of shareholders/ creditors or class of them.
Tribunal – dispense the meeting of creditors if 90% of creditors in value confirm the scheme.

3. Company – notice – in Form CAA 2 - members/ creditors with explanation statement of scheme of C&A one month before meeting.

Notice should contain following disclosures-

- Summary of valuation report including basis of valuation.
- Fairness opinion, appointed date, effective date, benefits of C&A.

4. Notice published in 2 newspapers – English And Local language.

- Website, if any.
- SEBI, recognised stock exchange where securities are listed.

- Joint advertising of meeting of creditors/ members may be given.
- CG/ROC/IT/ RBI/ SEBI/ CCI/ Stock exchange in Form CAA 3
- to seek obligation < 30 days.
- If no reply received <30 days – assume no objection.

5. Vote – a. Poll b. Electronic mode c. Proxy

Eligible person to object to the compromise or arrangement

- members holding > 10% of shareholding.
- creditors holding > 5% of total creditors as per latest FS (max. 6 months old)

6. Approval of members / creditors

Majority in number AND 3/4th in value – present AND voting

And if such scheme approved by tribunal – binding on ALL

Results in CAA 4 – tribunal – < 3 days of conclusion of meeting by Chairperson.

7. Chairperson – petition to tribunal in CAA 5 < 7 days of submission of result.

8. Tribunal – to fix date of hearing of petition and notice (advertisement in same newspapers as in step 4).

Minimum 10 days notice before meeting.

Tribunal – send notice to members/ creditors/ CG/ regulators who has objected.

- Tribunal – approve the scheme – CAA 6**.
- Order copy – ROC < 30 days of receipt of order – CAA 7

** An order made by the Tribunal shall provide for all or any of the following matters, namely:—

- 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;
- the protection of any class of creditors;
- 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;

- if the compromise or arrangement is agreed to by the creditors any proceedings pending before the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall abate;

- 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:

9. Any compromise or arrangement may include takeover offer made in such manner as may be prescribed.

Provided that in case of listed companies, takeover offer shall be as per the regulations framed by the Securities and Exchange Board.

10. An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit. For the removal of doubts, it is hereby declared that the provisions of section 66 (reduction of share capital) shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

Section 231. Power of Tribunal to enforce compromise or arrangement

(1) Where the Tribunal makes an order under section 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, give 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.

Question:

Internal Limited applied to the Tribunal for a scheme of arrangement between the company and its members under section 230 of the Companies Act, 2013. Accordingly, a meeting was ordered by the Tribunal to be conducted between the company and its members regarding the scheme of arrangement. Few of the members of the company to whom notice was sent have some objections to be made to the scheme of arrangement. State as to who can make objections to scheme of arrangement and period allowed for making such objections?

Answer:

As per the provisions of section 230(4) of the Act, a notice shall provide that the persons to whom the notice is sent may vote in the meeting 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 percent of the shareholding or having outstanding debt amounting to not less than five percent of the total outstanding debt as per latest audited financial statements

Section 232 : Procedure for Reconstruction/ Amalgamation/ Demerger (R/A/D)

1. If the scheme of C&A – Tribunal

- Scheme results in R/A/D

- Involves transfer of whole / part – undertaking, property, liability by 1 company to another.

- Demerger of ≥ 2 companies– tribunal order for meeting of members/ creditors/ class of them.

(Step 2-6 of section 230)

2. Notice – following additional details:

- Draft of proposed scheme

- Confirmation filed with ROC

- Report adopted by Director, KMP , Promoter

- Report of Valuer

- Latest FS

3. Tribunal passes order making following provisions :

- Transfer of – undertaking, property, liability (transferee company)
- Allotment of – shares, debentures, other instruments (transferee company)
- Continuation of legal proceedings.
- Dissolution without winding up.
- Provisions for Dissenting shareholders and Non resident shareholders.
- Transfer of employees to transferee company.
- Other matters.

4. All the property/ liability – now be of transferee company.

5. Tribunal – order – filed with ROC within 30 days.

6. Scheme shall be indicating effective date of reconstruction/ amalgamation/ demerger.

7. Until scheme is completed- file a statement with ROC every year certified by CA/ CS/ CMA.

8. If a company fails to intimate to ROC the company and every officer of the company who is in default shall be liable to a penalty of twenty thousand rupees, and where the failure is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of three lakh rupees.(CAA 2020)

Compensation in case workers refuse to join the transferee company.

1. As per section 394 of Companies Act, 1956 and in case of Nokes v/s Domcaster Amalgamated Collieries Ltd. -

All the properties, rights, undertakings, liabilities are transferred to transferee company i.e. contracts of personal services are not transferred automatically, so if workers refuse to join, they are entitled to compensation.

2. As per section 232 of Companies Act, 2013 – tribunal is empowered to make an order that services of workers shall also be transferred to transferee company and accordingly such transfer of services is a result of operation of law and will be binding on all parties i.e. Transferor, transferee and workers. So if workers refuse to join the transferee company, they are not entitled to compensation. i.e. provisions of Companies Act, 1956 shall not apply.

Clarification for Appointed date (Amendment):

The provision of section 232(6) of the Act enables the companies in question to choose and state in the scheme an 'appointed date'. This date may be a specific calendar date or may be tied to the occurrence of an event such as grant of license by a competent authority or fulfilment of any preconditions agreed upon by the parties, or meeting any other requirement as agreed upon between the parties, etc., which are relevant to the scheme.

The 'appointed date' identified under the scheme shall also be deemed to be the 'acquisition date' and date of transfer of control for the purpose of conforming to accounting standards (including Ind-AS 103 Business Combinations).

Where the 'appointed date' is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/amalgamation in NCLT. However, if the 'appointed date' is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against public interest.

The scheme may identify the 'appointed date' based on the occurrence of a trigger event which is key to the proposed scheme and agreed upon by the parties to the scheme. This event would have to be indicated in the scheme itself upon occurrence of which the scheme would become effective. However, in case of such event based date being a date subsequent to the date of filing the order with the Registrar under section 232(5), the company shall file an intimation of the same with the Registrar within 30 days of such scheme coming into force.

Section 238 : Registration of offer involving transfer of shares

1.
 - Every circular containing offer to members of the transferor company by its director to accept such offer shall be accompanied by such info in such manner as may be prescribed in CAA 15.
 - Every such circular – sent to ROC for registration.
If registration is not done – cannot be issued.
ROC – refuse if it contains false info and communicate to parties within 30 days.
2. If ROC refused, appeal can be made to NCLT.

3. If Director issues circular without registration – Penalty of rupees 1 lakh.

Section 236 : Minority Shareholders

Minority is not defined in the Act.

It means registered holder of shares not exceeding 10%

1. An acquirer entity/ person acting in consent with such acquirer holding about 90% of issued share capital by way of amalgamation/ sale of shares/ other reasons



Shall notify the company its contention to buy the remaining equity shareholding.

2. Majority shareholders – offer minority shareholders – to buy equity shares at price determined on the basis of valuation by registered valuer.

3. Section – opportunity to minority shareholders to offer their shares to majority shareholders.

4. Majority shareholders – deposit an amount to value of share – in separate bank A/c Operated by company for payment to minority shareholders disbursed < 60 days.

Such payment – continue to be made for one year if shareholders fail to claim < 60 days.

5. In the event of a purchase under this section, the 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. If minority shareholders died/ cease to exist –

Shares – transferred on issuance of duplicate share certificate.

Purchase consideration against above

- Remain in separate bank A/c.
- Opened by majority shareholders for a period of 3 years.
- Thereafter, transfer to IEPF u/s 125

7. When shareholders holding 75% of minority equity shareholders negotiate/ reach an understanding on higher price for transfer from acquirer then –

Majority shareholders – share additional compensation received by them with other minority

shareholders.

For Ex: The issued equity share capital of ABC Limited is INR 50 Crores and 90% of such issued capital has been acquired by the XYZ Limited as a part of Amalgamation. In remaining minority shareholding of INR 5 crores, INR 4 crores has been held by Person "A". Hence, if he negotiate with the company with price higher then the decided under the scheme. The extra amount / compensation received by person "A" shall be allocated to all minority shareholders on pro rata basis.

8. If majority shareholders fails to acquire full purchase of shares of minority shareholders, Then too provision of section 236 applicable to residual equity shares even though

Shares of minority
Shareholders : delisted

period of 1 year OR
other period as specified by SEBI elapsed.

Question:

Ram Company Limited, a company incorporated under the Companies Act, 2013 has paid up equity share capital of ₹ 1,00,00,000 of face value of ₹ 10 each divided into 10,00,000 shares. The company's financial position is gradually deteriorating since last 3 years. Rajan Company Limited, which is in the same line of business as of Ram, has paid up equity share capital of ₹ 5,00,00,000 of ₹ 1 each divided into 5,00,00,000 has proposed to take over Ram Company Limited. What minimum numbers of shareholders are required to become the shareholders of Rajan Company limited to complete the amalgamation in the nature of merger?

Answer

As per the provisions of the Companies Act, 2013 one of the conditions for the amalgamation to be in the nature of merger is Shareholders holding not less than 90% of the face value of the equity shares of the transferor company (other than the equity shares already held therein, immediately before the amalgamation, by the transferee company or its subsidiaries or their nominee) become equity shareholders of the transferee company by virtue of the amalgamation. Therefore, Shareholders holding not less than 90% of the face value of equity shares of Ram Company Limited, are required to become the shareholders of Rajan company limited to complete the amalgamation in the nature of merger.



CA ABHISHEK BANSAL

**Fees :10,000 +GST
Video backup (1 view)**

CA FINAL LAW LIVE LECTURE

For Nov 22 & onwards

25th April 2022
to
10th June 2022

MONDAY TO FRIDAY

8:00 am- 10:00 am
7:00 pm - 9:00 pm

Appointment and Qualifications of Directors

Date _____
Page _____

149(1)
149(4)
149(6)

150-163-

① 172 - Penalty

151

164 152

165 152(6)

166 153-159

167 160

168 161(1)

169 (2)

170 (3)

171 (4)

172 162

163

If any provisions of Sec 149 to 171 is contravened and where no specific penalty is provided then:

- Co and every officer who is in default shall be liable.

- Min 50K + 500/day till default continue subject to maximum

3L
= Co

1L

= officer

② 170 Register of Directors and KMP and their Shareholding

① Every Co shall keep at its registered office a register containing the prescribed particulars of its directors and KMP and securities held by them in CHASS.

② Co should file a return in form DIR-12 in respect of its Director and KMP

within 30 days from the appointment

(and)

within 30 day of any change taking place

③ The above Sec is not applicable to wholly owned Govt Co provided it has not defaulted u/s 92 and 137.

③ 171 - Member's Right to Inspect

① The Register of Directors & KMP kept u/s 170 shall be open for inspection during business hours and member

have rights to take extract and copies on request and the same will be provided to them within 30 days free of cost.

② A proxy also has right to inspect such Register.

③ If inspection or copies is refused within 30 days,

then the ROC shall on an application made to him shall order immediate inspection and supply of copies.

④ This Section shall not apply to wholly owned Govt Co provided (137/92)

④ 167 - Vacation of office (VOO)

- S Sec 164 is attracted. He has to vacate from all the Co's except defaulting Co's. [Link it with 164(2)]
- A he is absent from all the BM in the last 12m whether with approval or w/o approval.
- B - Bahas Nikala i.e. he is removed.
- N - No notice of (VOO) will be given.
- E - Ek paisa x i.e. No compensation will be given.
- F - He fails to disclose interest ^{as per 184} or he acts in contravention of Sec 184.
- *O - *Order of court or Tribunal has disqualified him.
*Order of Court has convicted him for imprisonment for min 6m whether involving moral turpitude or otherwise.

Kaho - If 167 is contravened then, he is liable to penalty of min 1lac max 5lac

However Pvt. Co, can provide additional grounds for (VOO) in addition to those specified above through its article.

If all the directors (VOC) the promoters

or, in his absence, CG will appoint required no. of directors who shall

hold office till the directors are appointed by the Co. in General meeting

* For Order of court/Tribunal/conviction by court,
director shall not vacate his office

(i) for 30 days from the date of conviction or
order of disqualification;

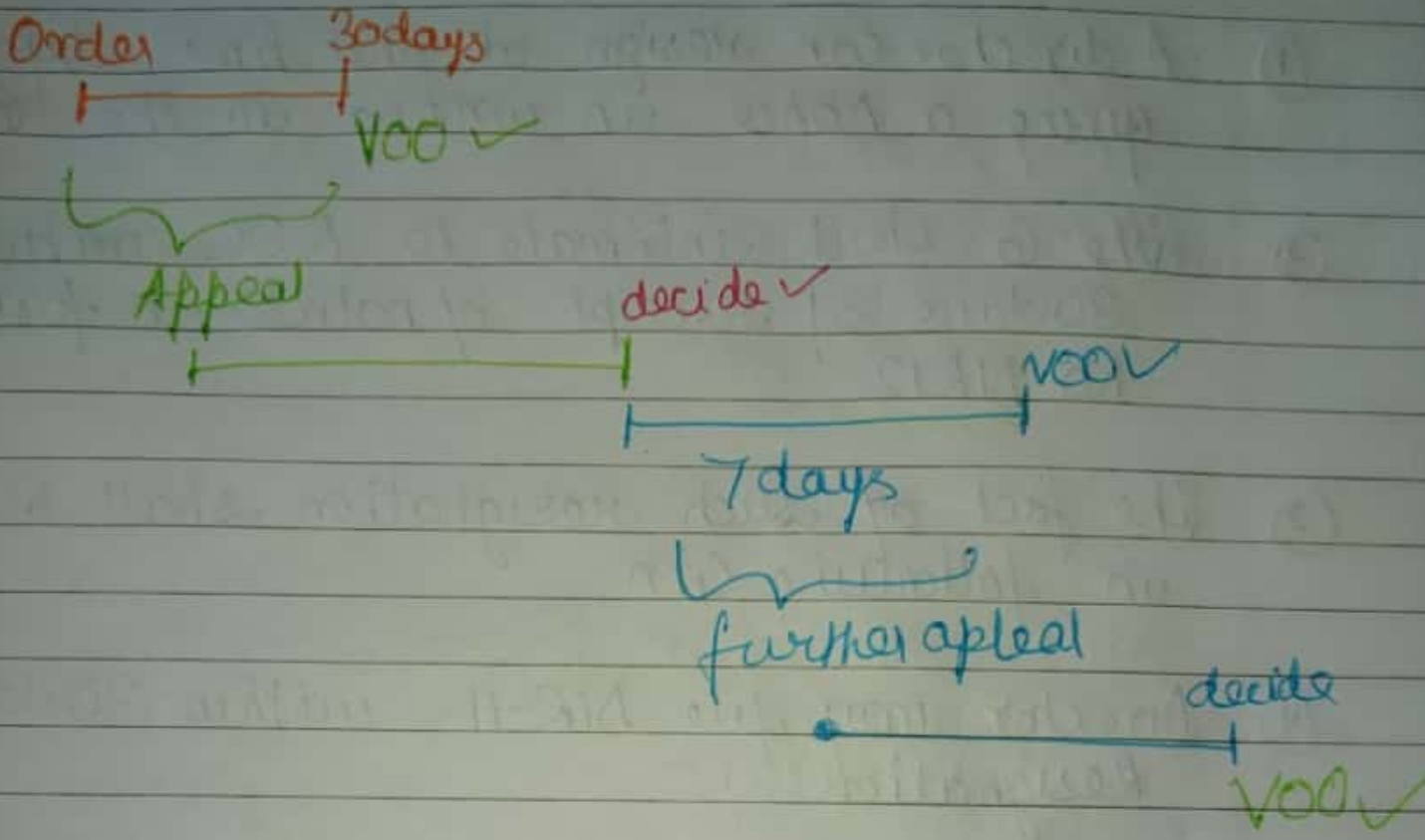
ii) where an appeal or petition is preferred within 30 days as aforesaid

against the conviction resulting in sentence or order, until expiry of

7 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 7 days, until such further appeal or petition is disposed of;



2nd Appeal if against, then VCO

⑤ 168 - Resignation of Director

- ① A director can resign at any time by giving a Notice in writing to the Co.
- ② The Co shall intimate to ROC within 30 days of receipt of notice in form No. DIR 12
- ③ The fact of such resignation shall be placed in following G.M.
- ④ Director may file DIR-11 within 30 days of Resignation.

In case of foreign director he may authorise practising CA/CS/CMA/~~Res~~ Resident Director to file DIR 11

⑤ Resignation shall be effective

from the date
on which the
Notice is received
by the Co.

(OR)

the date, if any
specified by
the director
in his
notice

whichever is
later.

⑥ The director who has so resigned shall be liable even after his resignation for the offences which occurred during his tenure.

⑧ In case all the Directors resign then promoters --- (Refer Sec 167)

⑥ 169 - Removal of Directors

① A Co may by ordinary Res may remove a director before expiry of his term

except

• director appointed by Tribunal
u/s 242

• director appointed by proportional Representation u/s 163.

② If ID is reappointed for his 2nd term, he shall be removed by SR

③ Member will give special Notice to the Co for removal of director and then the Co will forward the Notice to the concerned directors who will have a right of Representation.

④ Special Notice u/s 115 is required to be signed by:

(i)
a member
holding not less
than 1% of total
voting power

OR

(ii) member holding
shares on which
at least
Rs 500000 has
been paid
in the
aggregate.

Such notice shall be sent by the member not earlier than 3 months but at least 14 days before the meeting at which the resolution is desired to be moved.

⑤ If Special Notice of appointment or removal is given, then vacancy will be filled in same meeting.

⑥ If Special Notice for only removal is given then, the vacancy will be filled by the Board like a casual vacancy provided the director who was so removed shall not be appointed.

⑦ The person so appointed shall hold the office till the balance tenure of old director.

⑧ For premature termination where there is no fault of his, he shall be eligible for compensation.

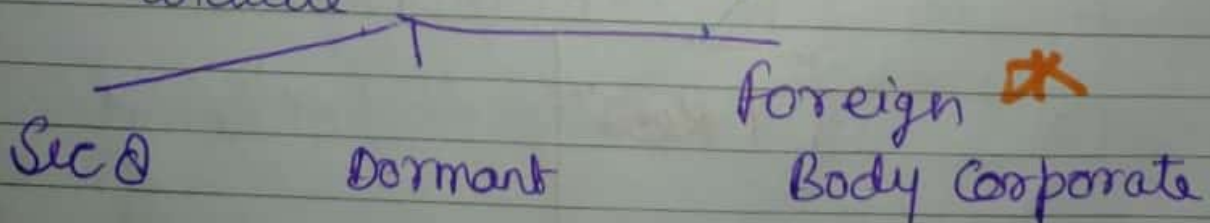
⑦ Maximum No. of Directorship [Sec 165]

① A person can be a director in Max 20 company including any Alternate Directorship at the same time.

② However He can be a director in max 10 public Co's.

* A Pvt. Co. which is a subsidiary of Holding of a Public Co. should be counted on Public Co. side.

② The limit of 20 companies shall not include



This benefit would be given to Sec 8 Co. only if it has not defaulted u/s 137 /92 with ROC.

③ The members may by SR, may specify any lesser no. of Co's in which a Director of a Co. may act as a director

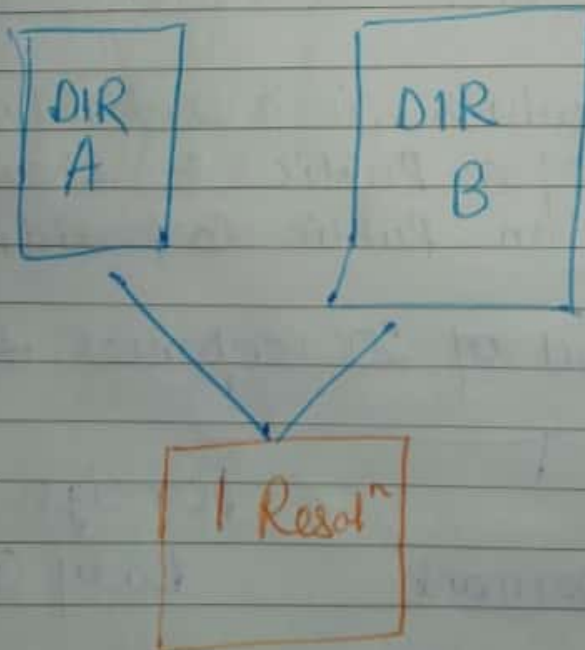
Refer 164(i)(i)

* ④ If 165 is contravened then

the Director will be liable to a penalty of Rs. 2000/day

subject to max. 2 lac. _{rs.}

⑧ Appointment of Directors to be voted Individually - Sec 162 (2 Directors One Resolution - or)



① Generally, 2 or more directors cannot be elected by a single resolution.

② Two or More Director can be elected by a single Resolution if following steps are complied.

step
① All the members of a Co shall agree to appoint 2 or more person as directors by a single Resolution.

i.e No vote should be casted against it (unanimous agreement)

S. ② Pass 1 OR.

S. ③ A resolution moved in contravention of the provision stated above shall be void, whether or not objection thereto was raised at the time when it was so moved.

Non applicability of Sec 162

- a) wholly owned Govt. Co.
 - b) Subsidiary of (a)
 - c) Private Co.
- } This benefit u/s 137/92

Note: This section is also Not applicable if the directors are appointed at Bm.
ie Addⁿ Dir, alternate Dir, Casual Vacancy

(ie They 3 or more Addⁿ Director can be appointed by 1 resolution)

⑨ Disqualification for appointment of Director - S. 164.

164 ① A person shall not be appointed as a director if:

- a) Unsound mind
- b) Undischarged insolvent
- c) applied for insolvency and his application is pending.
- d) convicted by court for an offence involving moral turpitude or otherwise. — Minimum 6m last 5 years

~~Imp. > 7 yrs~~
 Imp. \geq 7 yrs
 ↓
 Life time disqualified.

e) Order of Court / Tribunal

f) Not paid any calls and sick months have elapsed from the last day

fixed for the payment of call.

g) convicted for related party transaction in the last 5 years under Sec 188.

h) NOT complied with DIN provisions.

* i) not complied with Sec 165.

Refer
165

164(2)

AB = DIR of AB Ltd

FS x

OR

AR x

Deposits x Int x

Debent x Int x

for continuous
3 FY

Div x

≥ 1 FY

then such director = disqualified for 5 yrs
from date of default

i.e

cannot be reappointed
in SAME Co

cannot be
appointed in
NEW Co

cannot continue
in any Co
EXCEPT
DEFAULT Co

A new director shall not incur the disqualification for a period of six months from the date of his appointment.

- 164(2) is Not applicable to a Govt. Co.
- Not Repayment of PFI loan/Interest is not a default as per 164(2)
- If ^{the} a director has resigned before 164(2) getting attracted then, he will not be disqualified.

164(3) Pvt Co can provide for additional ground of disqualification

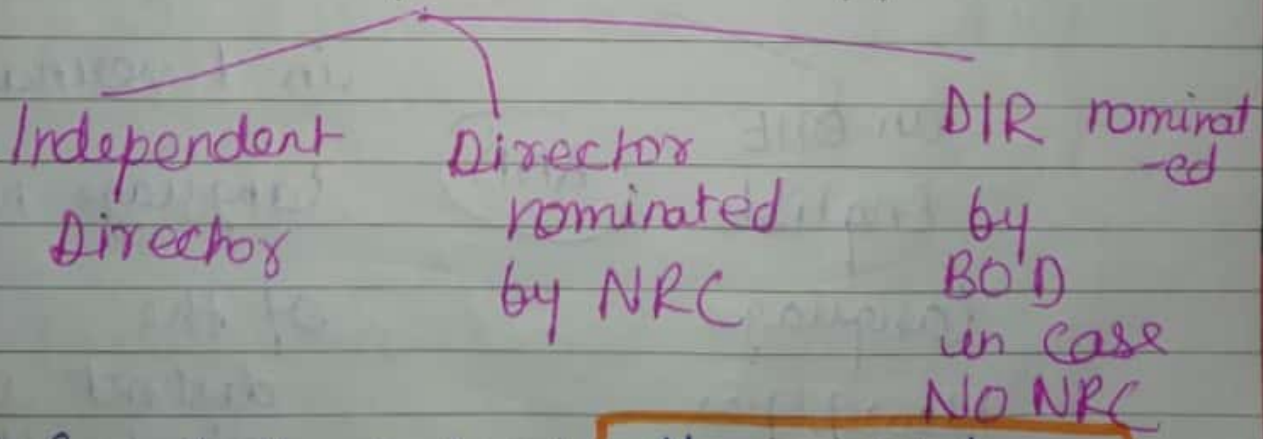
Disqualification refer to 164(1) d/e/g shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification.

⑩ 160-

① A person other than retiring director (New Dir.) shall make an application to the Co. signifying his candidature as a director at least 14 days before the meeting along with the fees of Rs 1 lac at the Registered office of the Co.

⊕ → Some other members can also propose to the Co.

② Rs 1 lac deposit is Not applicable to



③ Co. shall → send at least 7 days before Gm notice to its members

~~by giving Individual~~

by giving
Individual
Notice

AND Placing on
website, if
any

through
email, if email
is provided

OR In writing
to other
members

④ If Co does not want to send Individual
notice then,

it can advertise such candidature
at least 7 days before the GM.

in ONE
English
Language
Newspaper

AND

in 1 vernacular
language newspaper
of the
district in
which the
Registered office
of the Co is
situated

⑤ Deposit will be refunded if

he gets elected

OR

does not get elected

but

get more than 25%

of total valid votes.

Note: ^①In case of Nidhi Co - deposit is of ₹10000.

② for Sec 8 Co, there Board may decide

that Rs 1 lac is to be forfeited

OR refunded if the person fails

to get more than 25% of valid

votes.

⑥ 160 shall not apply to (d) Pvt Co.

(a) wholly owned
govt Co.

(b) sub of
(a)

(c) Sec 8 Co's.
whose
articles provide
for election of
directors by ballot.

This benefit

137/92

② Appointment of Director by SSD

Sec 151

① It applies to every listed Co.

② Small SH means ^{a SH} holding shares of maximum Rs. 20000 of nominal value / face value.

③ A listed Co. can either { suo moto
OR
on request
made by

- i) 1000 small SH
- or
- ii) $\frac{1}{10}$ th of SH

④ The Small SH proposing the intention to appoint a person as a

Director shall give a notice at least

14 days before the meeting specifying

the name, address, sharehold,

folio No.

If the person does not hold any shares the details of ^{for} shares held and folio No. need not be specified in the notice.

⑤ The notice shall state:

- 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 Co.

⑥ SPD shall meet the eligibility criteria of Independent Director.

⑦ He shall not be liable to retire by rotation,

⑧ His term is maximum 3 consecutive year, cooling period 3 year,

not eligible for reappointment.

(9) He shall vacate the office if

- | | | |
|---|--|--|
| (a) | (b) | (c) |
| the director
incurs any
of the
disqualification
specified in
Sec 164 | the office
of the
director
becomes
vacant
in
pursuance
of Sec 167 | the
director
ceases
to
meet
the
criteria
of
independ-
-ence
as provided
in
Sec 149 (6) |

(10) A person can ^{be an} ~~make~~ SSD in
maximum 2 Co's.

2nd Co has to be an non competing
Co.

⑫ 161(1) Addⁿ Director.

① The articles of a Co may confer its BOD the appoint any person as Addⁿ Director at any time.

(i.e he can be appointed at BM or by resolution by circulation)

② A person who fails to get appointed as a director in GM cannot be appointed as Addⁿ Director.

③ He shall hold office upto the date of next AGM or the last date on which AGM should have been held whichever is earlier.

⑬ 161(2) - Alternate Director

① The Board of Directors, if so authorised
[by its article
or
by resolution in GM.

appoint a person to act as an alternate Director if original director is absent for minimum 3 months from India.

② A person who is appointed as an Alternate Director cannot act as an Alternate Director / any other director in the same Co.

③ For Independent Director, the Alternate Director shall also qualified to be an independent.

④ Alternate Director shall vacate if

- Original Director resign
- original Director disqualified
- original Director return to India.

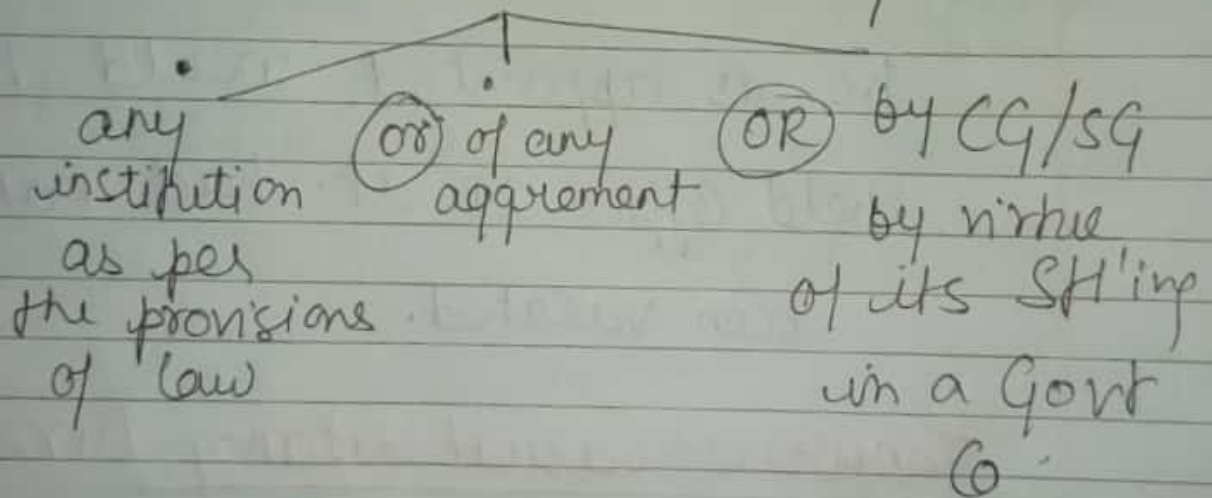
Automatic Reappointment shall be applicable to original and not alternate Director.

Refer Eq 10, 11 - Pg 1.24/1.25

14

Nominee Director - 161(3)

① The Board may if so authorised by articles may appoint a person as a Director to be nominated by



15

161(4) Casual Vacancy

① If the term of office of director ~~expires~~ is vacated before his term expires in a normal course,

- the resulting casual vacancy shall be filled by the Board at BM and shall be ratified in the next GM. subject to the articles.

② He shall hold office

- upto the date upto which the director in whose place he is appointed would have held office if it had not been vacated.

Tenure of Casual Vacancy Director

→ If AGM is held: Date of App. till AGM ✓

→ If AGM is held but Adj: Date of App. till Adj AGM

- If AGM is NOT held : Date of App. till last date on which AGM should have been held.

Note

forexam

If Director appointed u/s 161(1)(2)(3)(4) → is appointed as an ordinary / Regular Director, then the Co has to follow the entire procedure of Sec. 160 as it is mandatory.

However it may not be followed if it is wholly owned Govt Co, its subsidiary or Pvt Co.

16 153 to 159 DIN

① Any Individual who intended to be appointed as Director

① An Individ

→ shall make application → CG (MCA Regional Director)
DIR 3 + Rs 500

allot DIN within 1m of receipt of application.

≤ 1m of receipt of DIN

→ ROC

DIR-3C ≤ 15 D. from date of receipt of intimation from individual

Documents to be attached along with DIR 3

- (i) photo
- (ii) ID proof
- (iii) Address proof
- (iv) Board Resolution proposing his appoint. as director in existing Co
- (v) Specimen Signature duly verified

DIR 3 shall be signed by

applicant
using his/hers
DSC

AND

verified by

CS in whole time employment
OR MD/DIR/CEO/CFO of Co. where he is intended to be appointed as DIR

③ If there are any defect in the applⁿ
then the applicant has to resubmitt
the application within 15 days of
such intimation by CG.

In case the application is rejected, the
fees paid will neither be refunded
nor adjusted in any other application.

④ The DIN so allotted will be valid for
life time of applicant & will not
be allotted to any person

④ If Co. fails to furnish DIN to ROC then,

Co & officer = liable = min 25K
max 1L

+
₹100/day till
default continue.

⑤ If individual or director of Co. contravenes
152/155/156

she shall be liable = upto 50000
+500/day

till default
continue.

Cancellation / Surrender / Deactivation of DIN

The CG or the Regional Director or Any

officer authorised by Regional Director
may cancel ~~the~~ or deactivate the
DIN in case -

a) where DIN is found to be duplicate

b) it is obtained in wrongful & fraudulent manner.

c) death of the Individual

d) the concerned individual has been declared unsound mind.

e) If the individual has been adjudicated as insolvent

f) on an application made in DIR 5 by the DIN holder.

to surrender the DIN along with declaration stating that

he has never been appointed as Director in any Co.

&

the said DIN has never been used for filling.

The CG may deactivate the DIN.

Before cancellation ROOBH will be given.

Procedure for Intimation of changes (in DIN application)

- ① Every Ind. who has allotted a DIN and who requires any changes as stated in DIR 3, shall intimate such change(s) to CG ~~via~~ within a period of 30 days in form DIR 6.
- ② The applicant shall download DIR-6 and attach scanned copy of the proof of the changed particulars & submit electronically.
- ③ DIR-6 has to be digitally verified by practicing CA/CS/CMA.

- The CG upon being satisfied shall intimate the changes to applicant
- The DIN cell of MCA shall also intimate the concerned ROC under whose jurisdiction the Registered office of the Co. is situated.
- The Concerned Individual shall also intimate the changes to the Co. in which he is a director within 15 days of such change.

①7

152 - Appointment of FIRST DIRECTOR

- ① If names is stated in ~~AOE~~ articles, then the individual who are named will be the 1st Director
- If names is not specified but the manner of appointment is specified, then, Ind. who are appointed in the said manner will be the 1st Director.

• If Name X manner X

then,

the subscribers to the memorandum who are individuals shall be deemed to be the 1st Director until the directors are duly appointed.

(2) In case of OPC, the sole member shall be deemed to be 1st Director.

(3) As per Sec 152(5), Co shall file consent of Director with ROC

within 30 days of such appointment in Form DIR 12 along with prescribed fees.

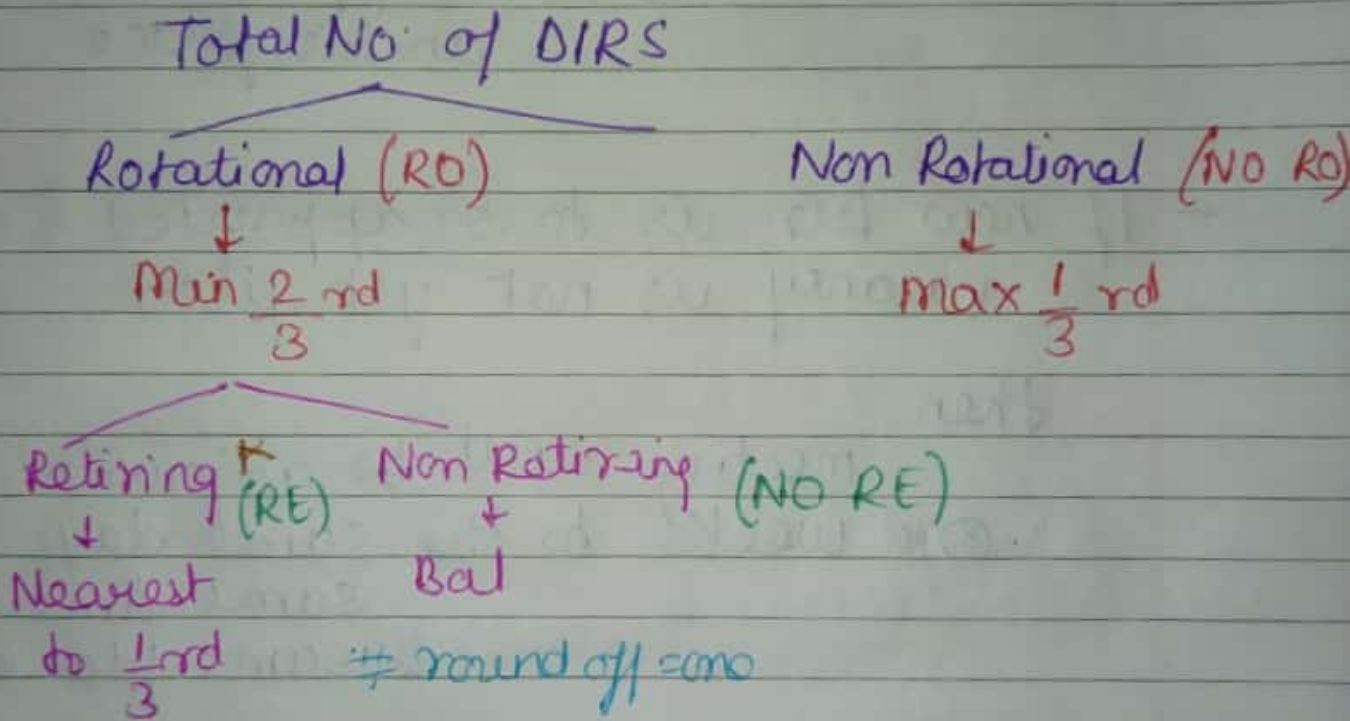
(4) In case of appointment of ID, an explanatory statement annexed to the Notice of GM shall include a statement in the opinion of Board.

that he fulfills all the condⁿ related to appointment specified in this Act.

⑤ 152(5) is not applicable ← Govt Co. } Benefit ✓
Sec 86 } 4

92/137
Complied

⑱ Retirement of Director by Rotation 152(6) & (7)



* Use 0.5 Bachpanwala rule.

Total will include ALL DIRS except **ICAN**

I - Indep. Dir.

C Dir appt by CG

A Alternate DIR

N Nominee of Pure PFI (LIC, IDFC, UTI)

→ Filing up of vacancy :- FIFO

- If on some date { mutually or by lots

→ * The Directors who are retiring by rotation are eligible to be reappointed (or)

Co. can appoint New Dir. in his place.

- If new Dir. is to be appointed & the vacancy is not yet filed

then, meeting will be adjourned by one week to the same day same time & same place

which is not a National Holiday.

- If it is a National Holiday,

then meeting shall be adjourned till next succeeding day which is not a national holiday & at same time same place

- If at the adjourned meeting vacancy is not yet filled,

the Retiring director shall be deemed to be reappointed

with immediate effects.

- Reappointment will be effective from the date of Adjourned meeting.

Automatic reappointment is not possible in following cases: -

R - Resolution is Reqd \leftarrow OR SR for app.

U - Unwillingness

D - Dir is disqualified.

E - EK se jyada (contravention of S. 162)

Papa - Resolution is Put & lost

152(6) & (7) is applicable only to a

public Co. i.e. it is not applicable to Pvt. Co.

i.e. all the directors in Pvt Co. are
Non Rotational Dir.

152(6) & (7) is not applicable to unlisted
Govt Co. & its subsidiary.

Benefit ✓ §92/137 ✓

(19) 150 - Maintenance of Data Bank of ID

Read 4.3 1.43 to 1.45 module.

Exemption from Online proficiency
self assessment.

Pg 1.44 imp.

20) 149(1) - Min/Max No. of Dir.

a) Min No. of Dir.

OpC - 1

Pvt - 2

Pub. - 3

Max. No. of Director

= 15

If > 15 DIRS,

then Pass SR to
increase the
limit.

SR is NA to Govt. @
Sec 8

provided 92/137

Eg: If AOA = states = max 12 DIR

G = has 11 DIRs

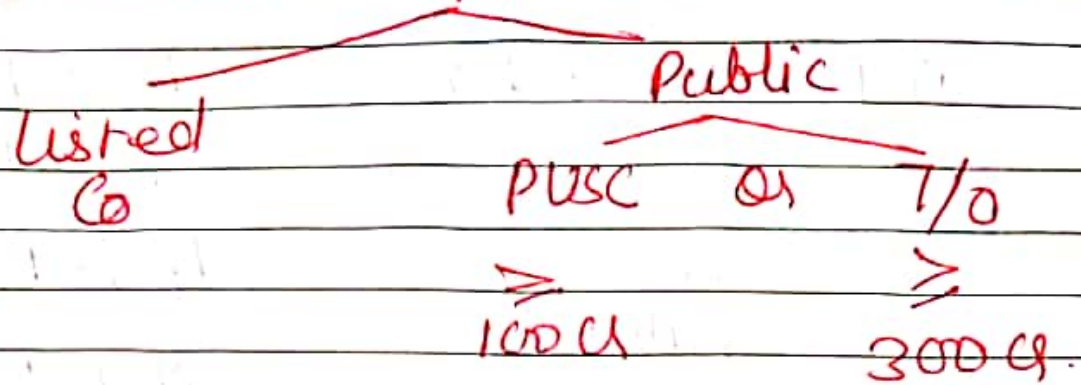
they want to appoint more 6 DIRs.

Ans 1) Pass SR to alter AOA

2) Pass Another SR to increase the
limit

3) Appoint DIRs by OR

② women DIR = Applicable



at least 1 women director shall be on the board of above Co.

CV of WD = Next B m
OR
3 m of vacancy | Later.

Imp

③ Resident Dir.

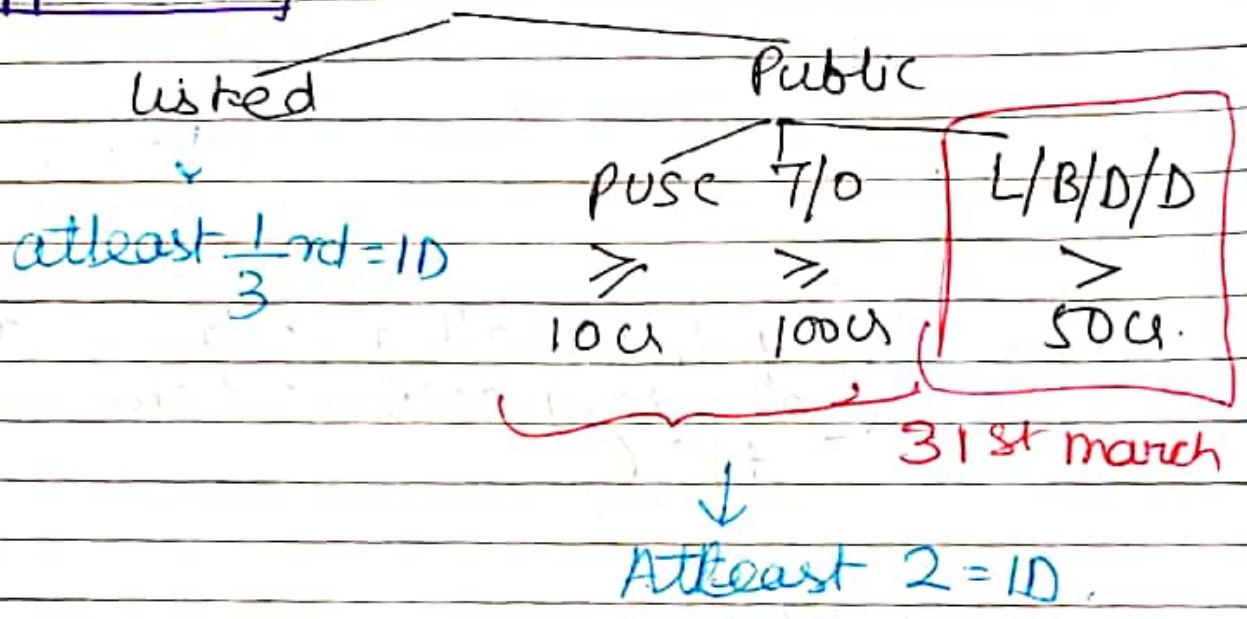
Every Co shall have at least one director who stays in India for a total period of not less than 182 days during the FY

However, in case of newly incorporated Co the above requirement shall apply proportionately at the

end of FY in which it is incorporated

② Independent DIR

① Applicability



② Above Co's Act rules ↑
sec 177 AC higher.

③ # Following Unlisted Pub. Co. ≠ req. to appoint ID

```

    graph TD
      A[Unlisted Pub. Co.] --> B[WOS]
      A --> C[Dormant Co.]
      A --> D[JV]
  
```

④ CV of ID

Next Bm
of 3m of vacancy ↓ Later

⑤ A Co shall not be require ID
↓
if it ceases to fulfill any of
3 condⁿ related to PUSC or T/O
or loans
for 3 consecutive years.

⑥ Every ID shall give a declaration
that he meets the condⁿ of
149(B)

at 1st Bm
in which
he acts
as DIR

or

1st Bm
in
every
fy

or

whenever
there is
any
chance
which
affect his
status as
ID

⑦ ID shall not be entitled to
ESOP.

However, he may receive remunera-
-tion by way of

sitting
fee

Reimbursement
of Bm exp.

Profit related
Commission,
approved by
members.

⑧ If a Co. has No profit or its profits are inadequate,

an ID may receive remuneration, exclusive of any fees payable ~~u/s (under sub-section (5))~~

u/s 197(5), in accordance with the provision of Sch V

ID shall be appointed for a term upto 5 years.

He is eligible for reappointment for another term of 5 years by SR.

After 2 terms there has to be cooling period of 3 years.

During the said 3 years, he shall not be associated/appointed in

the Co., in any other capacity either directly or indirectly.

• If ID is appointed in 2nd term i.e. by SR &

if he is removed in 2nd term
↓

it can be done only by SR

149(6) who can be ID?

Refer Pg 1.36 module.

② 163 - appointment of DIR by Proportional Repres.

① Such appointment provⁿ shall be mentioned in AOA

② It overrides the ^{provision} Co's Act 13.

③ Min $\frac{2}{3}$ rd of total No. of DIR

shall be appointment

with the principal of proportional representation.

- ④ Such appointment shall be made once in every 3 years
- ⑤ CV of such director shall be filled as per 163(4)
- ⑥ Such Director cannot be removed by member in GM.
- ⑦ 163 is not applicable to wholly owned Govt Co. & its subsidiary.

Benefit ✓

92/137 ✓

22-30 marks

Director

Date _____

Page _____

Appointment

149-172

Board Meeting

managerial

6 to 10 marks

Remuneration.

196-205

I

II

4-6m

173-179

180-195

(10-14m)

173

174

175

176

① Sec.175: Resolution by circulation

177

① The Draft Resolution along with necessary paper should be circulated

178

179

180

Circulated to

Approved by MAJORITY

181

ALL DIRECTOR/
MEMBERS of
Committee

AND

OF DIRS, who are
entitled to vote
on resolution

182

183

184

185

Either by

Hard delivery

Post/Courier

Electronic mode

(email/fax)

at their
registered
address
with Co.
in India.

186

187

188

189

190

191

192

193

194

195

② If atleast $\frac{1}{3}^{rd}$ of the Total No of Directors requires that a particular resolution shall be decided at a meeting then the Chairperson shall put such resolution to be decided at a meeting instead of circulation.

③ The resolution passed as above shall be noted in next Bm & shall be made part of minutes

179 - Powers of Board.

14
 11 Sec 3 rules.

- ① The 14 powers are the powers of Board to be exercised by BOD at the Board Meeting by passing Board Resolution.
- ② Members cannot exercise the powers of Board and vice-versa.
- ③ However the members can restrict the Board Power by imposing restriction and conditions if there are reasons to do so.
- ④ Following are the Powers.
 - a) to make calls in respect of unpaid shares;
 - b) to authorise buyback upto 10% of 68.
 - c) to issue securities including debentures, whether in India or O/S India.
 - d) to borrow money
 - e) to invest the funds of Company.
 - f) to grant loans or give guarantee or provide securi-ity
 - g) to approve $\left\{ \begin{array}{l} \text{FS} \\ \text{and} \\ \text{BR} \end{array} \right.$
 - h) to diversify the business

MADAT

- i) Mergers, Amalgamation, Demergers
- j) Acquisition, takeovers.

k) Other matters

- ⑤ Power under Rules
- 1) to make political contributions
 - 2) to appoint or remove KMP
 - 3) to appoint internal auditors and secretarial auditors.

⑥ Powers under d/e/f can be delegated to:

- any committee of director
- the MD
- the manager, or any other principal officer of the Co. OR
- the principal officer of the branch office (if the Co. has a branch office)

⑦ Powers under d/e/f can be done through circulation or at board meeting only for

Sec 8 Co.

this benefit would be given if they have not defaulted u/s 137 (filing of FS with ROC) or Sec 92 (Annual return)

181 - Contribution to Charitable fund

- ① The BOD are empowered to contribute in any FY to charitable fund or bonafide funds

However

If Donation > 5% Avg NP → 3 yrs

↓
PRIOR GMR

(i.e NO limit on Donation)

182 - Political Contribution

- ① A Co. is permitted to contribute any amount (without any limit) directly or indirectly to any political party.

- ② following Co. are prohibited for PC:

G.Co.

Co. which has been in existence for less than three FYs

- ③ Board resolution is required at BM for political contribution

- ④ The Co. shall disclose in its P&L the amount so contributed.

③ It can be done in following modes:

→ by an A/c payee cheque drawn on a bank;

(OR)

→ by an A/c payee bank draft;

(OR)

→ by using electronic clearing system through a bank a/c;

(OR)

↳ through any instrument notified by CG.

⑥ If 182 is contravene.

Co.

upto 5 times
of amount
so contributed

offices

Imprisonment upto 6m

(AND)

fine upto 5 times
amount so contributed

Read electrical Trust circular

from module Pg. 3.38

183- Power^{of Board} to contribute to National Defence fund

① Co can contribute any amount to National Defence fund or any other fund approved by CG for the purpose of National Defence

② This power can be exercised by...

- BOD of the Co. i.e.
- Any person or authority exercising the powers of the BOD (or) of the Co. in GM.

③ Sec 183 has overriding effect on Co's Act / MOA / AOA.

⑦ 174 - QUORUM FOR B.M.

① Quorum: It means min. no. of directors present in order to constitute it as a valid meeting.

$$\text{Quorum} = \uparrow \frac{1}{3} \text{rd of its total strength}$$

OR
2 director.

② Any fraction will be rounded off to ONE.

③ Any Directors attending through videoconferencing shall be counted for Quorum.

④ Total strength shall not include those directors whose places are fallen vacant.

⑤ AOA can provide for HIGHER Quorum
then,

Co. Act Limit \uparrow
OR
AOA

⑥ Special Quorum = $\frac{\text{No. of Interested Director} \geq \frac{2}{3} \text{ of total}}{\#}$

then Quorum,

= No. of uninterested DIR \uparrow (Total - Int.)

OR

2

⑦ for Sec 8, Quorum is:

0 Director.

OR

$\frac{1}{4}$ of total Director

w.e. less

subject to

min. 2 Director

This will be applicable to Sec 8 Co., which has not defaulted u/s 137 & 92.

⑧ If the Quorum is not achieved

If the Board Meeting could not be held DUE TO LACK OF QUORAM,

then the BM shall be adjourned by one week at same day, same place & time which is not a NATIONAL HOLIDAY.

If it is a national holiday, then next succeeding day unless article state otherwise

⑨ 174 is not applicable to OPC where there is only one director.

Interested Director means =

AB = Director of AB Ltd

Baby Ltd

Baby & Co

- Self + other DIR

Partners/owner /

>

members

2% PUSC of Baby Ltd

- Promoter / Mgr / CEO

Eg 1 Total = 12 DIR
Int. DIR = 9 DIR
Q = ?

Int DIR $\geq \frac{2}{3}$ (Total)

$9 \geq \frac{2}{3} \times 12$

$9 \geq 8$

SQ = \uparrow No of UnInt. DIR
or
2

So, $3 \uparrow$ (12-9)
2

= 3

Eg 2 Total = 12 DIR
Int DIR = 7 DIR
Q = ?

Int. DIR $\geq \frac{2}{3}$ (Total)

$7 \leq \frac{2}{3} (12)$

$7 \leq 8$

\therefore Condⁿ NOT satisfied.

Q = $\frac{1}{3} \uparrow$ i.e. $\frac{1}{3} \times 12 = 4 \uparrow$
or
2

4

⑧ 184 - Interested Director

① Every director shall disclose his interest in any Co. or firm or other associations.

(a)	(b)	(c)
at the first meeting of the Board in which he participates as a director,	thereafter, at the first meeting of the Board in every financial year.	whenever there is any change in the disclosures already made, then at the first Board meeting held after such change.
	AND	
		OR

② He shall disclose ~~in~~ his interest in FORM MBP-1 by a written notice.

These notice shall be kept at Registered office for

- eight years from the end of the FY to which they relate.

It shall be in custody of the CS or any other person authorised by Board.

③ Interested director means. # Refer Sec 174 point (6)

④ If Sec 184 is contravened i.e

Interest is not disclosed by direc
↓
- for

the contract shall be voidable at the option of Co.

AND

such director shall be liable for a penalty
of ONE LAKH RUPEES

⑤ Co's Act does not put any restriction on director for having any interest.

⑥ For Sec 8 Co's ¹⁸⁴ is applicable when

- Int DIR Defⁿ &

- S 188 txn. &

→ Amt > Rs 1 lac

All 3 should be checked.

This will be applicable of Sec 8 has not defaulted
Sec 139 or 92 with ROC.

⑨ 189- Register of contracts or arrangements in which Directors are interested.

① It is mandatory for all Co. to keep one or more registers separately giving the particulars of all the contracts or arrangement as per:

S. 184
(Int. DIR)

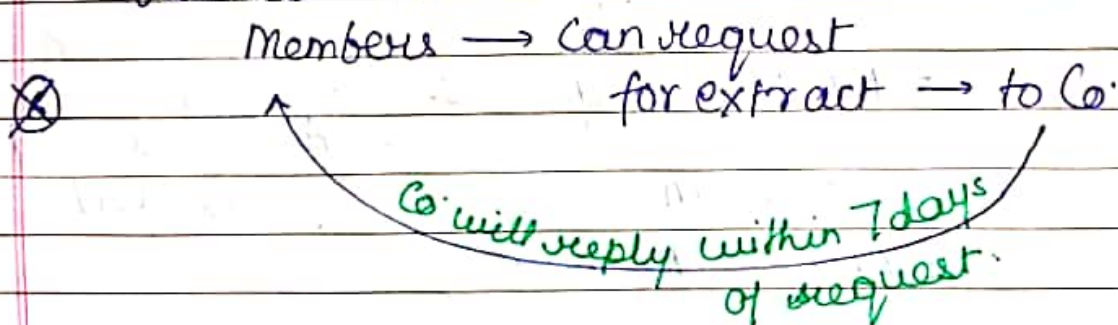
S. 188
(RAT)

② Such Register shall be maintained in form No. MBP-4

③ The Register shall be maintained in chronological order and shall be authenticated by CS or any person authorised by Board.

④ The Register after updation shall be placed in next Board meeting and shall be signed by all director.

⑤ It shall be kept at the Registered office and shall be open for inspection during business hours.



Fees for extract shall be specified in the article subject to maximum Rs 10 per page.

⑥ This register shall be produced at AGM.

Thus, even a proxy has right to inspect the register.

⑦ If 189 is contravened then every director shall be liable to a penalty of Rs 25000

⑧ 189 is NOT Applicable to any contract or arrangement

(a) if it is for sale, purchase or supply of any goods, materials or services

AND

the value of such goods and materials **OR** the cost of such services does not exceed ₹ 500000 in the aggregate in any year;

OR

(b) if it is entered into by a banking Co. for the collection of bills in the ordinary course of its business.

Contract with OPC

⑩ 193 - OPC

① If an OPC enters into a contract with sole member who is also the director, such contract should be in writing.

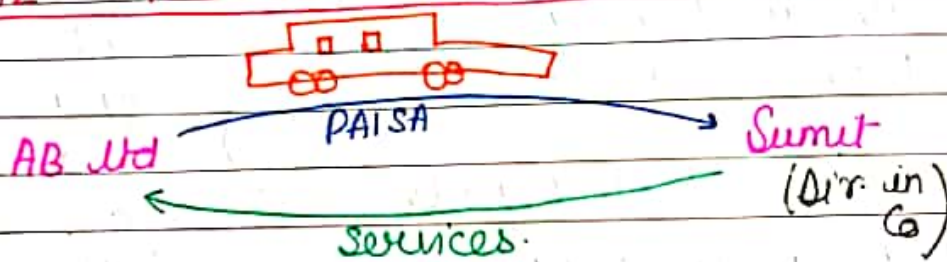
② If it is not in writing the terms shall be entered in a memorandum.

③ Such contract/memorandum shall be recorded in the next board meeting for approval of Board and shall be intimated to ROC.

within 15 days from the date of approval of
by Board.

④ This section is NOT applicable if the
contract are entered in ordinary course
of business.

⑪ 192 - Restriction on Non Cash Txn

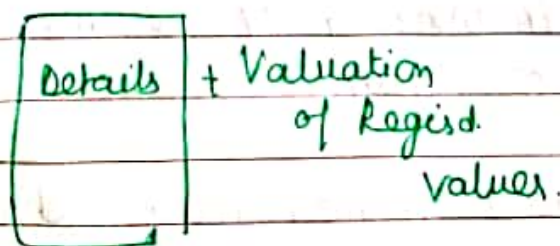


① No Co. shall enter into Non-Cash txn.
with its director or director of its holding
subsidiary or associate Co. [CHAS] OR
a person connected with him or vice-versa.

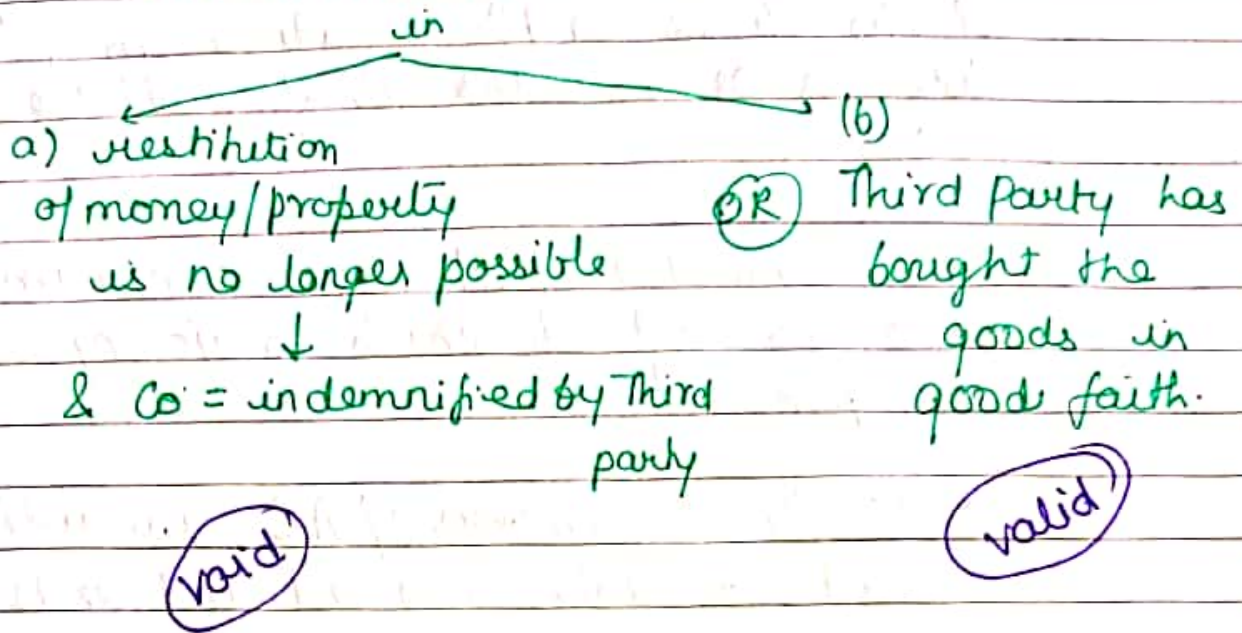
② Generally → NA

③ Allowed → 'PRIOR' GMR

④ Co → Notice → members



⑤ 192x → voidable
But it is not voidable.



⑫ S177 - Audit Committee.

1) Applicability

Listed

Unlisted Public Co.

PUSC

T/O

L/B/D/D

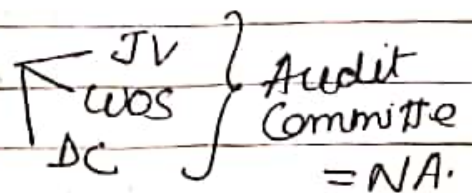
≥ 100cr

≥ 100cr

≥ 50cr

31st March of LY

following unlisted Public Co.



② A Co. shall not be required to constitute an Audit Committee if it ceases to fulfill any of the three condⁿ relating to PuSC or Turnover or O/S loans etc for three consecutive years.

③ Audit Committee shall have minimum three directors out of which majority should be independent.

Majority of members of AC including chairperson shall be able to read and understand FS

④ The Board Report shall disclose the composition of AC

⑤ Responsibilities of AC - Read Pg 3.18 module.

⑥ The auditors of Co. and KMP shall have right to be heard in audit committee meetings but they do not have right to vote.

Note: In Sec 8 Co. audit committee will have minimum three directors
(Independent dir. 4/11 8/11 is NA)

This benefit will be applicable if they have not defaulted u/s 137 or 92.

VIGIL MECHANISM (VM)

1. Applicability.

Listed Co

Other

Co = Accepted

Public

Deposits

Co = which have
borrowed

Bank or FI

in
excess of 50 cr.

② A VM is formed for the directors and employees who may report genuine concerns.

③ VM shall provide for adequate safeguard against victimisation of employees and directors who avail of it

④

Co = having AC ✓



The directors & ee who avails VM may have direct access to the chairperson of AC as AC shall oversee the VM

Co. ≠ having AC



The employee or director who avail VM will have direct access to the



director nominated to play the role of AC.



who will be appointed to play the AC for the purpose of VM

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

⑥ The details of VM shall be disclosed on the website of Co and the Board report.

⑦ If Sec 177 is contravened

Co = SL

officer = 1 Lac.

⑬ Sec. 178 - Nomination and Remuneration Committee

① Applicability → same as AC

② same as AC

③ The NRC shall consist of min. 3 NED out of which minimum one-hay shall be ID.

The Chairperson (whether ED or NED) of the Co shall not chair such committee. However, he may be appointed as a member of the committee.

④ function of NRC - Read Pg 3.24

③ The composition of NRC shall be placed on website of the Co, if any and the web address shall be disclose in Board Report.

The Chairperson or in his absence, any other member of the committee authorised by him in this behalf shall attend the general meeting of the Co.

Note { Sec 178 is applicable to govt. Co. but subsection (2), (3), (4) is not applicable.

{ Sec 178 is not applicable to sec. 8 Co.

This benefit will be applicable if they have not defaulted u/s 137 or 92.

Stakeholder Relationship Comm.

① The BOD of Co which consists of more than 1000 shareholders, debenture-holders, deposit-holders and any other security holders at any time during a FY shall constitute a SRC.

② It shall be headed by chairperson who shall be a NED and it shall consist of such other

members as may be decided by the Board.

③ SPC shall consider and resolve the grievances of security holders of the Co. It shall protect the interests of all security holders and not merely of the equity investors.

④ The chairperson of each committee or in his absence any member of the committee shall attend the GM of the Co.


⑤ If sec 178 is contravene.



14 180 - Restriction on powers of Board.

Following are the powers which can be exercised only by passing SR

a) To sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the Co.

 Note: undertaking means where invest. is more than 20% of NW which generates $\geq 20\%$ of Total Income.

② "Substantially the whole of undertaking" in any FY shall mean 20% or more of the value of the undertaking.

③ No need for SR if selling, leasing etc is part of ordinary business of the Co.

④ To invest ~~at~~ the compensation received by merger or amalgamation.

If investment in trust securities no SR is required.

⑤ To borrow money

1) PUSC = 100

2) GR = 50

3) Surplus
in P/L = 5

• Sec Premium = 5

4) Total (1+2+3) = 160

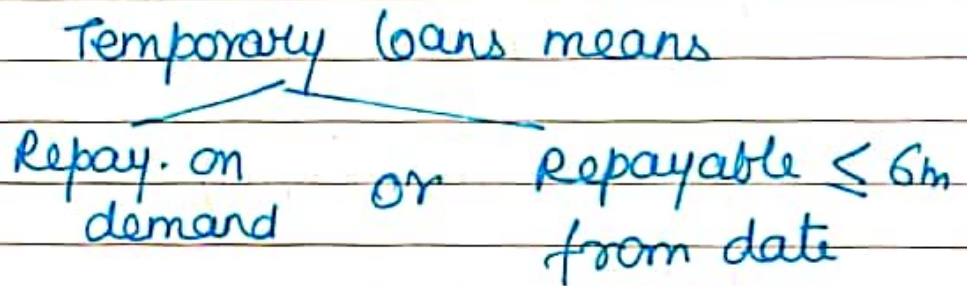
5) If Borrowing is
upto 4 = NO SR

6) Amt. already borrowed = 50

⑦ Borrowing upto bal = "NO SR is required."
(4-6)

Imp. points -

- ① If borrowing is above bal i.e. Step 7
SR is required.
- ② The SR should specify the max. amt the Board can borrow, else it will be void.
- ③ SR is not required in case of Temporary loan.



- ④ If SR is not passed, members can certify. If certification is not done by members then, 3rd party will not be put to loss.
Co. will repay it to 3rd party and will recover it from director.
- ⑤ Loan taken for capital expenditure i.e. P&M irrespective of the period is not a temporary loan.

(Refer May 19, Q6)

d) To remit, or give time for the repayment of, any debt due from a director.

12) Contract of Employment with MD or WTD [Sec 190]

① Every Co. shall keep at its registered office

a contract of service
with MD/WTD if
it is in writing

if it is not
in writing a
written memorandum
- um setting
out its terms.

② The Copies of Contract shall be open for
inspection by any member.

③ If 190 is contravened.

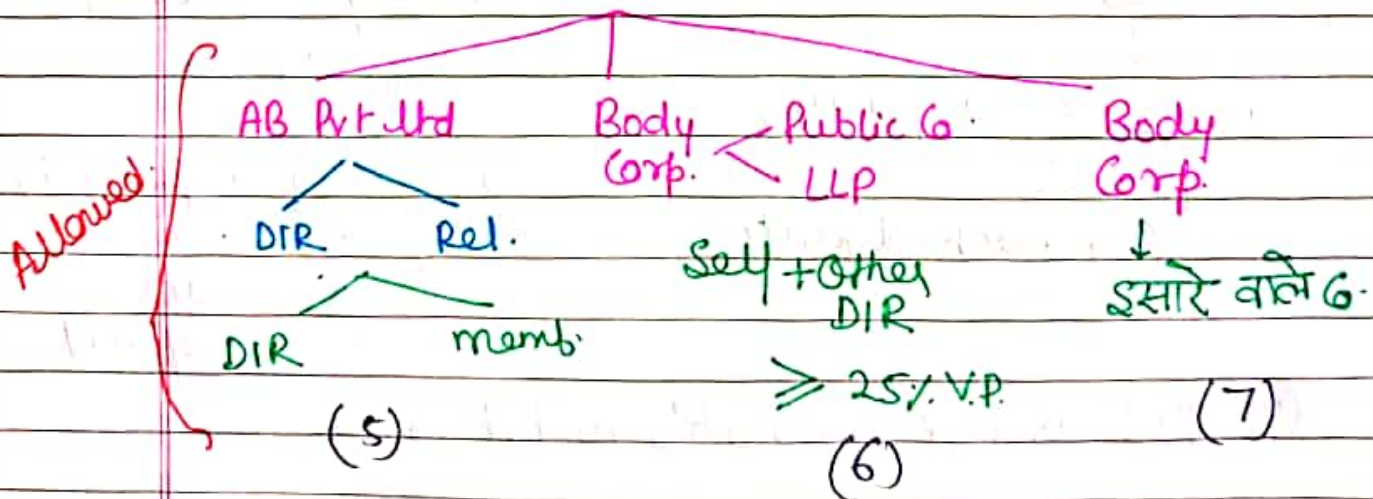
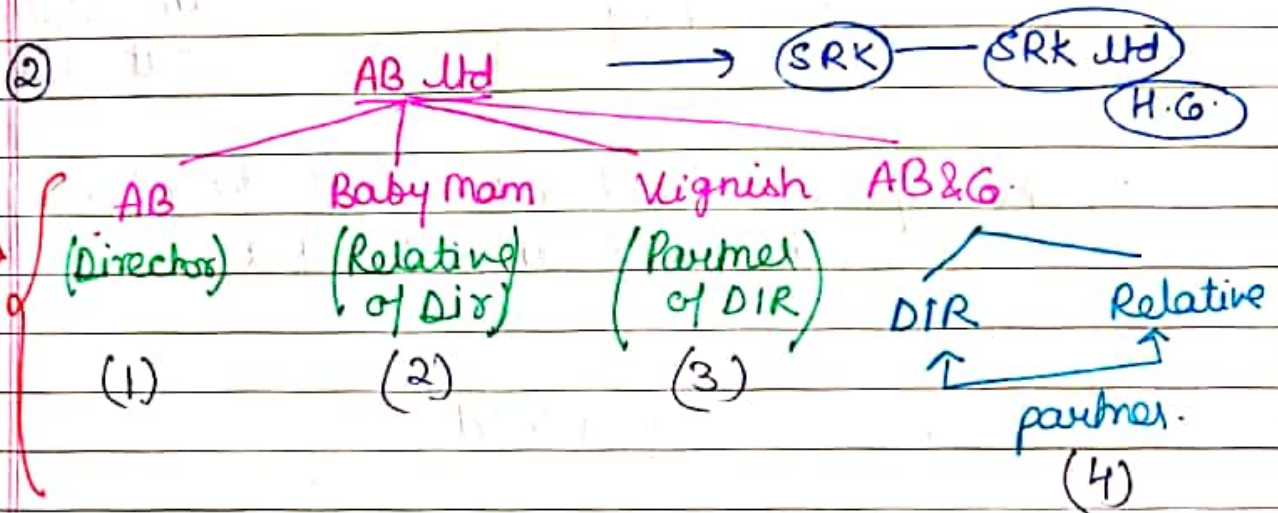
Co.
↓
liable to a penalty
of ₹ 25000
for each default.

Every defaulting
officer
↓
liable to a penalty
of ₹ 5000
for each
default.

④ 192 is not applicable to Pvt Co.

17 185 - Loan to Director etc

① No company can give L/G/S to its director or directors of its Holding Co. (or) these interested party
(Director + Director of H. Co. के Int. party)



3. for 1, 2, 3, 4 → L/G/S Not allowed

for 5, 6, 7 → L/G/S is allowed provided

- special resolution is passed by the Co. in GM along with an explanatory statement to the Notice for the General meeting stating the
- full particulars of the loan given or guarantee given or security provided,
 - the purpose for L/G/S,
 - any other fact &

the loans should be used by the borrowing Co. for its principal business activity.

④ 185 is not applicable in the following cases.

(a) Loan to MD or WTD



if there is a service/scheme extended to all its employees

OR

if there is no such scheme but members has passed SR

(b) where a Co. is in ordinary course of business

- provided the rate of Int is not less than the rate of prevailing yield of 1yr, 3yr, 5yr or 10yr Govt security closest to the tenor of the loan.

e) H Co $\xrightarrow{4/9/S}$ WOS

d) H.Co $\xrightarrow{G/S}$ subsidiary

} provided money is used by subsidiary for its principal business activities

⑤ If 185 is contravene then

G.
SL-25L

officer/ Direc/ any other person
जिसने दिया जिसको दिया

SL-25L or upto 6m or Both.

185 NA \rightarrow Pvt G. (Pvt G. - DIR - loan)

No other G. has invested

&

loan \leftarrow Bank AT Any G.

&

No default is existing for such loan.

\leftarrow
2X PUSC
50 cr \downarrow

Refer Q6(a) Rec 21 suggested

18

Loans and Investments by Co. - S. 186.

① Sec 186(1) a investment Co. is not permitted to make investment through more than 2 layers of Invt. Co. (i.e maximum 2)

Exception

- (a) if a Co. acquires any other Co. incorporated in a country o/s India and if such other Co. has investment subsidiaries beyond two layers as per the law of such country.
- (b) a subsidiary Co. can have more than 2 layers for meeting the requirements under any law, rule, regulation.

② 186(2) - Co. → LIQS → Any Person.

1) PUSC (EQ + PS) = 100

2) FR (GR, PIL, DER, SP) = 50

3) Limit

$$\begin{matrix} 60\% \text{ of } (1+2) & \uparrow & 90 & \uparrow & = & 90 \\ 100\% \text{ (2)} & & 50 & & & \end{matrix}$$

4) LIQS already made (B/s asset) = 50

5) Balance (3-4) = 40

6) Proposed (Adj) = 35/55

7) Approval of BOD

All cases, unanimous, Bm, specific Notice X

8) Approval of Memb.

limit = exceeded, PRIOR SR, gm, specific notice

9) Approval of PFI

• limit = exceed or Default \leftarrow Principal Interest

10) If Public Deposit default = exists \rightarrow LIQS cannot be made

Imp. points

1) Sec 186 = NA H.G. $\frac{4/9/5}{\rightarrow}$ WAS

i.e include in step 4 / ignore in Step 6.

2) Invest in Partnership firm
(i.e ignore in 4/6)

AB Ltd 31/3/21

Public Dep	25	A Ltd (100%)	25
		B Ltd (90%)	10

C Ltd	5
X 26	2 X
(Part. firm)	

197101 ch/20
G: can make LIGS
mat. on 31/3/20
Adj
G: want to invest
mat. on 31/3/20
Adj
Co cannot make LIGS

A Ltd = 15, B Ltd = 10, C Ltd = 15, D Ltd = 10
E Ltd = 10

for step 4 = 40 -
step 6 = 45

③ Every Co shall maintain a register in form MBP-2 of stating the details of LIGS made.

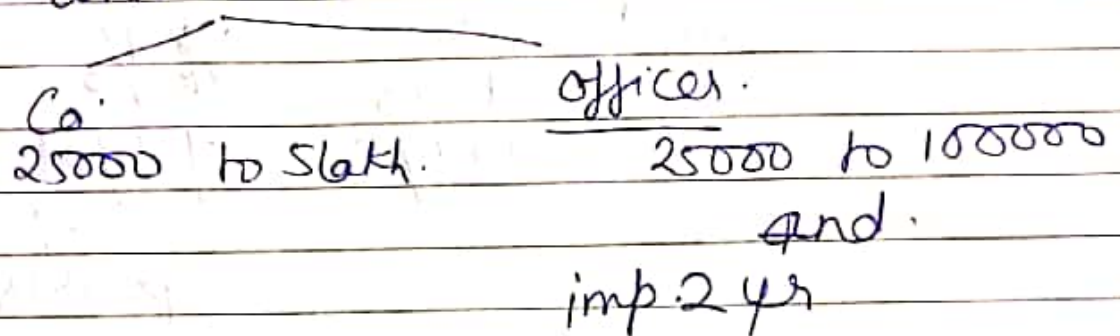
Entries should be made chronologically within 7 days of making LIGS

④ 186(11) - This section is Not applicable to Banking Co., insurance Co., Housing finance Co., Co. engaged in business of financing industrial enterprises.

of providing infrastructural facilities.

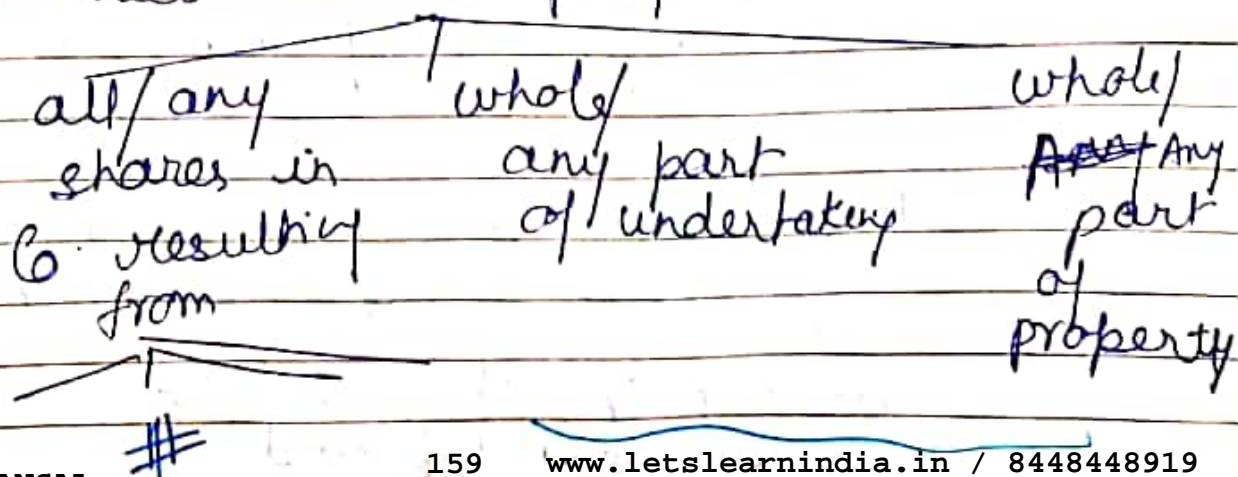
- Investment Co.
- NBFC
- Right share

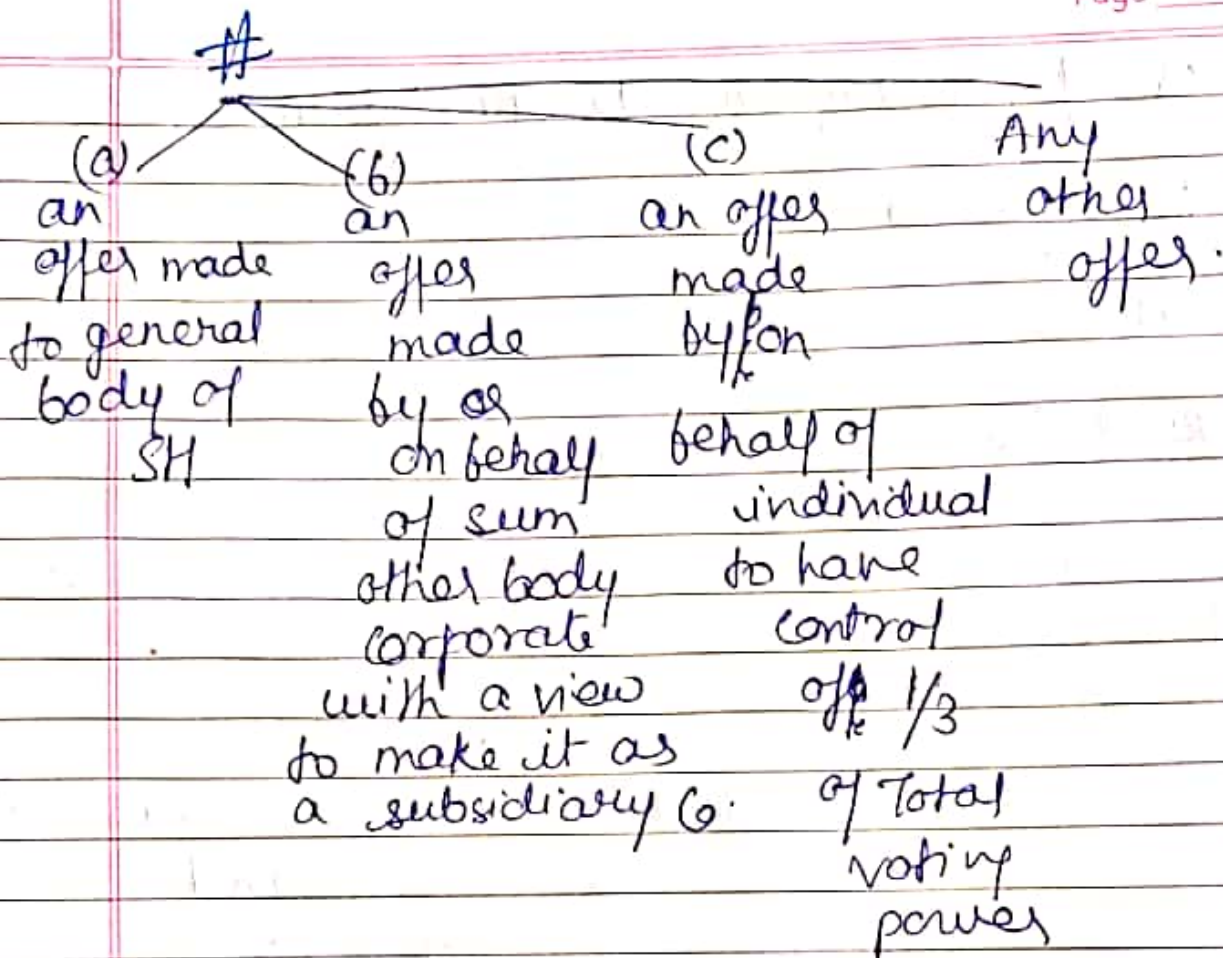
⑤ If 186 is contravened



19 191 - Payment to directors for loss of office etc
in connection with transfer of
 shares undertaking property

① In connection with trf of





Compensation can be give only if following cond's are satisfied.

- 1) particulars of the Compensation should be disclosed to the members and the proposal has been approved by members in GM.
- 2) If the above payment is not approved for lack of Quorum/Adj meeting then proposal shall not be deemed to have been approved.

3) In case a director before the approval in GM, such director shall hold it in trust for the Co.

4) If director contravene Sec 191, he will be liable to a penalty of 1 lac Rs

② The amt. of compensation shall not exceed the limit of Sec 202.

③ Disclosures to members for passing resolutions.

a) name of the director

b) amt proposed to be paid;

c) event due to which compensation becomes payable

d) date of BM recommending such payment;

e) basis for the amt. determined;

f) Reason or justification for the payment

g) manner of payment - whether payable

in cash or otherwise
h) sources of payment; and

i) any other relevant particulars as the board may think fit.

20

Sec 188 - RPT

Co \rightarrow T \rightarrow RP $>$ Limit \rightarrow PRIOR OR. is req.

1. a) S/P/S $\leftarrow \begin{matrix} G \\ m \end{matrix} \leftarrow \begin{matrix} D \\ I \end{matrix} \geq 10\% \text{ T/O}$

b) S/B \rightarrow Prop $\leftarrow \begin{matrix} D \\ I \end{matrix} \geq 10\% \text{ (NW)}$

c) Leasing \rightarrow Prop $\leftarrow \begin{matrix} D \\ I \end{matrix} \geq 10\% \text{ TP}$

d) A/R \rightarrow Service $\leftarrow \begin{matrix} D \\ I \end{matrix} \geq 10\% \text{ T/O}$

2. Appointment at OPP $\# \rightarrow$ Co/Sub/Assoc. $> 2 \text{ SL pm}$

3. Underwriting Com $> 1\% \text{ NW}$

188 = NA $\left\{ \begin{array}{l} \text{Ordinary Course} \\ \& \\ \text{at ALP.} \end{array} \right.$

#. MD position is not an OPP i.e. even if MD is paid more 2.5 lac p.m and is appointed in Co./Sub/Associate

↓
NO PRIOR OR is required.

- If Associate/sub. int Director or his related party is appointed in Holding Co.

↓
NO PRIOR OR is required.

Imp. points

① All RPT txn require Audit comm. approval, if any.
or Board approval at BM by passing BR in other cases.

② Generally No agenda is required for BM. However, ~~it is~~ for Sec 188 agenda is mandatory

③ A member of Co who is a Related party shall not vote on the resolution meant for approving any contract or arrangement which may be entered into by the Co.

However, nothing contained in the second proviso shall apply to a Co. in which 90% or more members; in number, are relatives of promoters or are related parties.

- ④ A member of Pvt. Co. is permitted to vote on the resolution irrespective of the fact that such member is a related party.

This benefit would be given if Co. has not defaulted u/s 137/92.

- ⑤ Sec 188 is Not applicable b/w holding Co. and its wholly owned subsidiary.

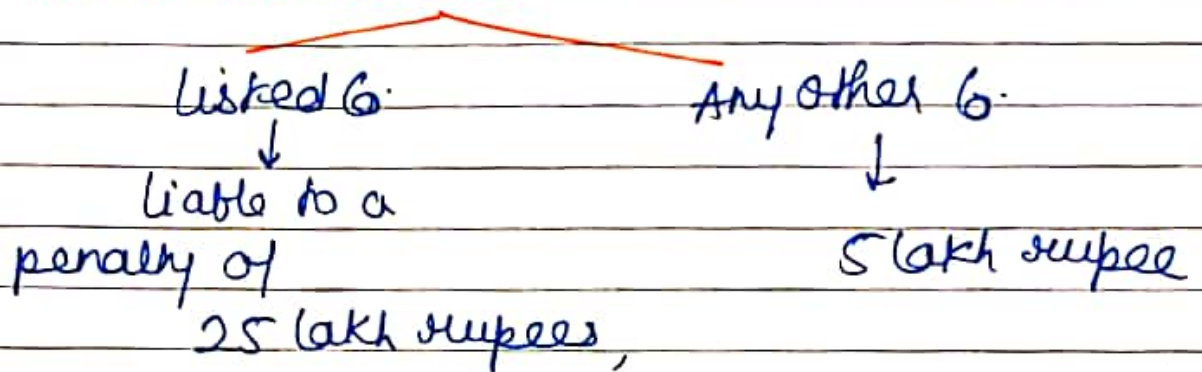
- ⑥ If a Contract is entered w/o Board approval/members approval

then, it shall be ratified by the Board/members within 3 month from the date on which such contract or arrangement was entered into

If it is not ratified then it shall be voidable at the option of the Board/member.

⑦ If 188 is contravened Co. can recover the loss from the Director or employee who entered into such contract or arrangement

If 188 is contravened



15) 173 - Frequency of BM

① First Subsequent

- ~~Min~~ within 30 days of incorp.

- min 4 BM
- Max Gap = 120 days
(Gap हो सकता है)

② OPC / small Co, dormant Co. and startup private Co. #

↓
1 BM in each HALF of Calendar Yr

min gap b/w 2 BM = 90 days

Gap होना चाहिए

③ In case of OPC with one director → NO BM.

this benefit will be given only if it has not defaulted u/s 137/92 with ROC

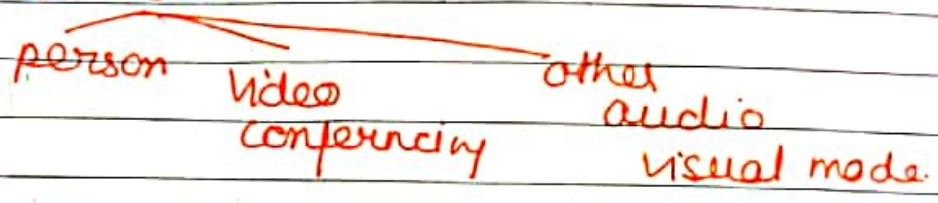
④ for Sec 8 Co → 1 BM in every 6 calendar month

this benefit will be given - 137/92

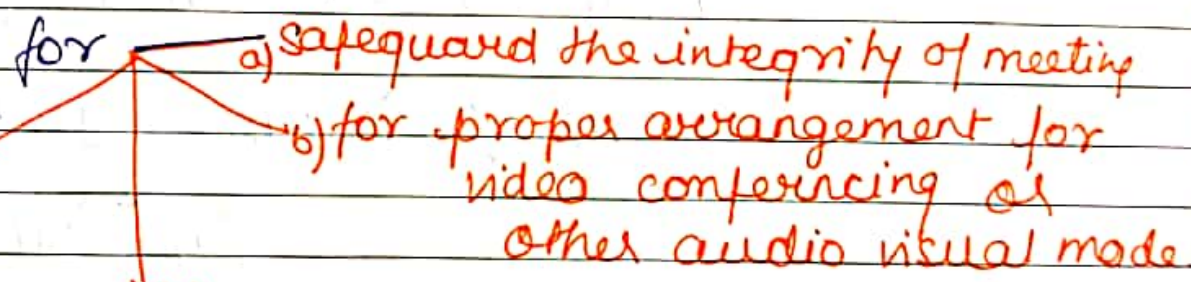
⑤ Only a director can attend BM.
However in case of differently abled person.

he can request to the board to allow any person to accompany him.

⑥ BM = attended



⑦ The Chairman & CS shall be responsible



~~to~~ Safe keeping & preserving the recording.

d) for making arrangement for video / audio-video.

⑧ A director attending through video conferencing shall intimate to Chairman & CS and at the beginning of Calendar Year

AND such declaration shall be valid for 1 calendar year.

If NO intimation assumed attending physically.

→ Attendance

⑨ Roll call will be taken at Bm

⑩ Scheduled venue shall be deemed to be the venue of the meeting which is conducted through
- video conferencing or other audio visual means
and all recordings at such meeting shall be deemed to have been made at that place.

⑪ The Draft minutes shall be circulated to all the director within 15 days either in writing or electronic mode.

After receipt of draft minutes, within 7 days of receipt

↓
the director shall confirm the accuracy of recording of the proceedings of that meeting.

⑫ Notice of Bm shall be given at least 7 days before Bm in writing
- ALL DIRs at the Regd. Address either by Hard, post, electronic mode.

⑬ Generally shorter notice not allowed

Allowed ✓ if IID is present.

If ID is not present
then decision is

circulated & rectify
to All director by IID

⑭ If 173 is contravene
then every office shall be liable
for 25000 Rs.

196

201

4-8 marks

197

202

Managerial Remuneration Date _____
Page _____

198

203

199

204

200

205

① 199 - Recovery of MRem.

① If a Co is required to re-state for any period due to fraud or non-compliance under Co's Act, 2013 and the rules made thereunder,

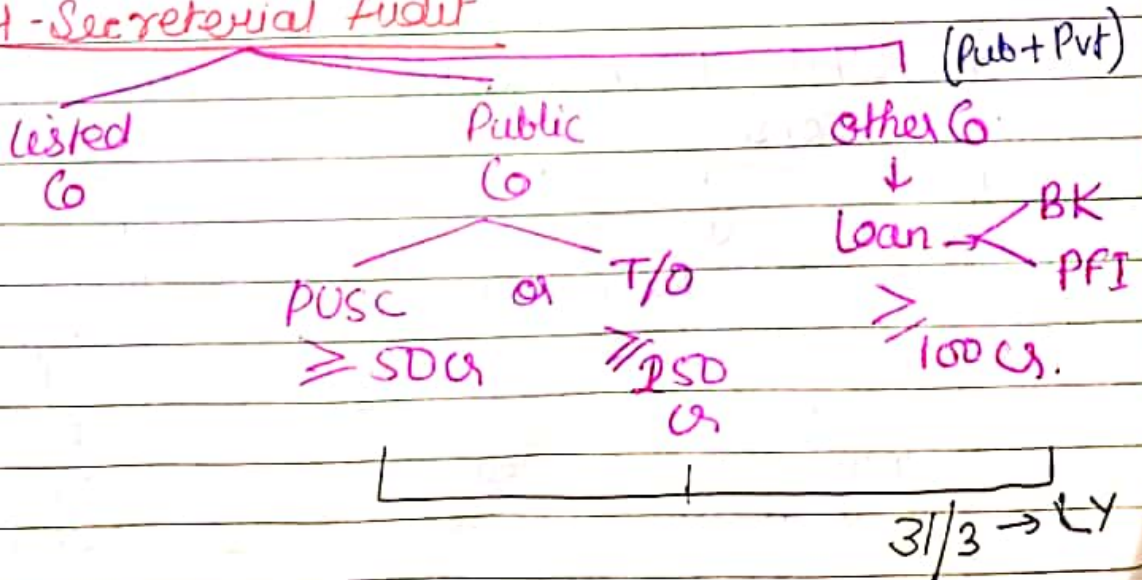
- ↓
- the Co will recover from MD/WTD/manager/CEO - who received the excess remuneration (including stock option)
- during the period for which the FS were re-stated.

eg: '2016 = 1.1 profit = 100, MRem = 11,

New Restated Profit = 10, So MR = 1.1

Therefore, Excess Rem → Recovery → 8.9.

② 204 - Secretarial Audit



② It shall be conducted by Company Secretary in Practice (CSP)

③ CSP shall prepare secretarial Audit Report in form - MR-3

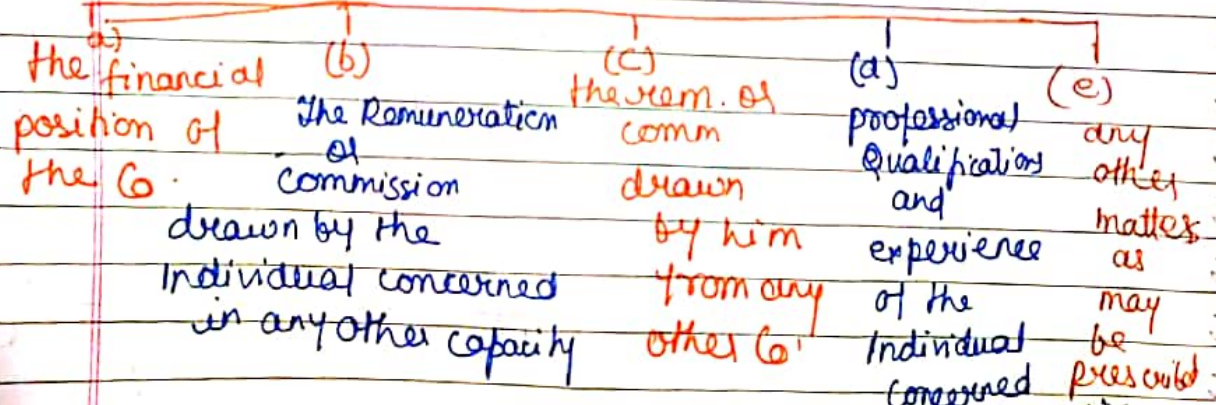
④ If 204 is contravened.
Co/officer/CSP
↓
shall be liable for a penalty of Rs 2 lakh.

③ 205 - function of CS
RTP - Pg. 2.12

④ 200 - Co to fix limit with regard to remuneration

① If Co has inadequate or no profit
- Co will give remuneration as per the limit specified in this Act.

② While fixing such limit the Co shall consider.



Securities including options held by directors in last FY.

Date _____
Page _____

Other matters

financial & operating performance of Co. in last 3 Yrs.	Relationship b/w Remuneration and performance	The proportion of Remuneration of director with other employees of the Co.	If the Remuneration policy of the directors & ee differs, explanation for the difference
---	---	--	--

5) 201-forms of certain application.

Read Pg 2-31

MR-2 90days 196 ✓

6) Definition of $\left\{ \begin{array}{l} \text{MD} \\ \text{mgr.} \\ \text{WTD} \end{array} \right\}$ Read for mcq Pg 2.2

7) Appointment of MD/manager/WTD 196

1) A Co can have MD or manager and WTD [196(1)]

Managerial person shall be appointed for Max 5 years at a time.

It is further provided that No-Reappointment shall be made earlier than one year before the expiry of his term. (ie he can be reappointed after 4th year but effectiveness will come after 5th year only) [196(2)]

③ Eligibility [196(3)]

a) min 21 yr, max 70 yrs.

But if Mgrl. Person > 70 years,
then pass SR for Justification for appoint-
-ment

If NO SR,
then OR+CG approval & appointment
must be most beneficial to the Co,
then CG = approval ✓

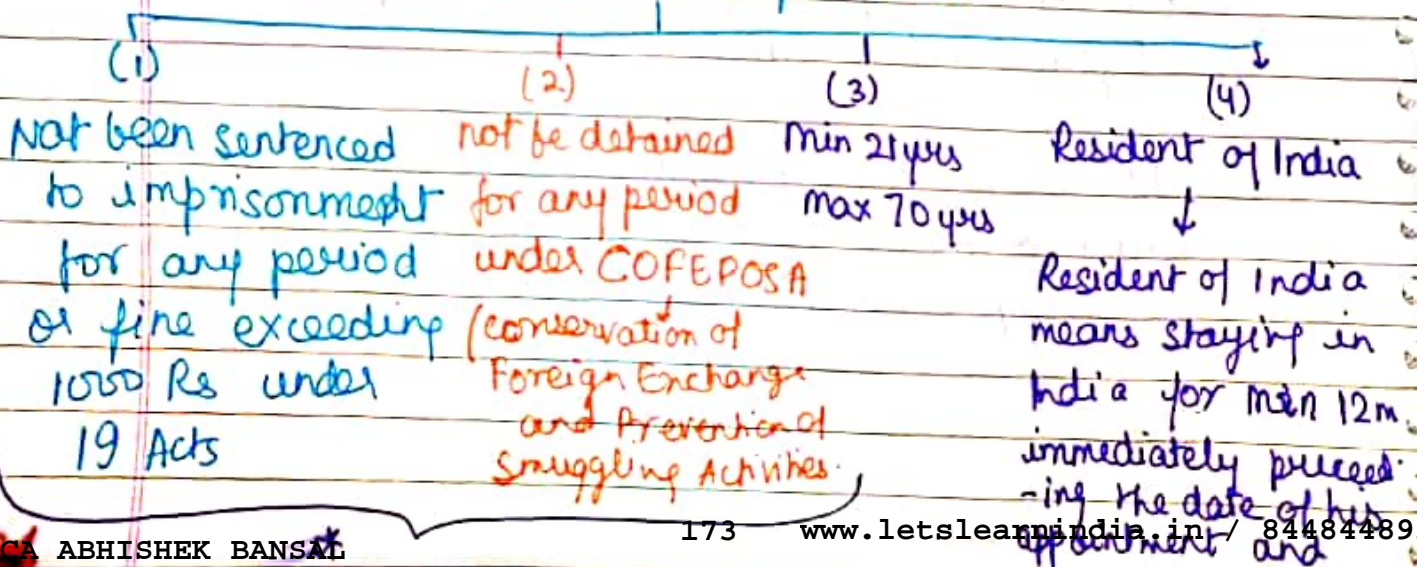
cannot
be
appointed
or
Reapp

b) undischarged insolvent or been adjudged
as an insolvent; or

c) has ~~set~~ suspended payments to creditor
or make composition with them; or

d) convicted by a court of an offence for
more than 6 month.

e) addⁿ condition as per Sch-V



* Generally, such person cannot be appointed.

But if CG = approval taken, then can be appointed.

- includes a person who has come to stay in India

taking up employment in India

for carrying on a business or vocation in India.

However, for Reappointment CG = approval \neq required,

if they are $\left\{ \begin{array}{l} \text{not convicted} \\ \text{not detained again.} \end{array} \right.$

④ Procedure for appointment [196(4)]

- ① Board will pass BR at BM.
- ② the appointment shall also be approved by members through a Resolution in the Next GM of the Co.
- ③ If the condⁿ is at variance CG approval will be required in form MR-2 to be submitted within 90 days of such appointment of MD or WTD or manager in the Co.
- ④ the notice convening BM or GM shall contain the terms of appointment or remuneration payable and such other matters including interest

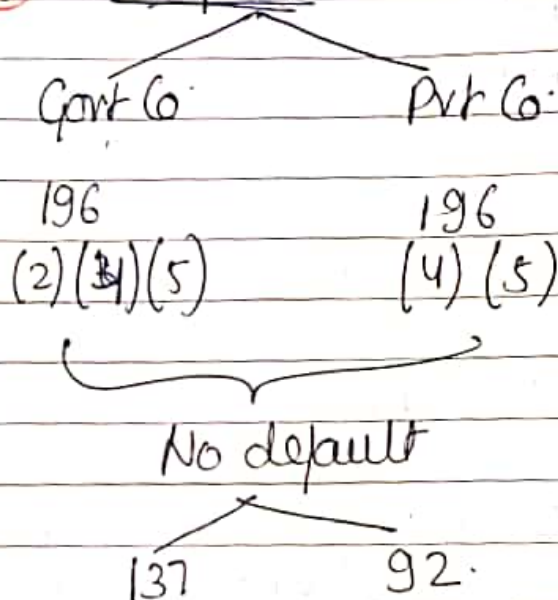
⑤ A return in Form MR-1 should be filed with ROC within 60 days of such appointment.

⑤ Validity of Act [196(5)]

All the acts shall be valid till the defects are known to the Co.

Refer Eq. 2 Pg. 2.0

⑥ Exemptions



Refer Eq 3. Pg. 2.9. Imp.

⑧ 202 - Compensation for Loss

① A Co. may make payment to MD/WTD/mgr by means of compensation for loss of office

② No payment shall be made if the directors resign or vacates the office or
Refer Pg 2.33

③ No such payment of compensation can be made if winding up of the Co. is commenced whether:

before the date on which he has ceased to hold office ;

OR

within 12 months after the date on which he has ceased to hold office.

if the assets on winding up (after deducting expenses on wup) are not sufficient to repay the SH's the Sharecapital, including premiums if any, contributed by them.

④ It does not prohibits the payments to MD/WTD, mgr for remuneration of services rendered by him in any other capacity.

Steps for Calⁿ

a) Total Period

5 yrs

b) Period of office (POO)

3 yrs

c) Bal. Yrs (a-b)

2 yrs.

d) Limit

3 yrs

Balance yr ↓

(short)

3 ↓
2 ↓

= 2 yrs

e) Avg. Remuneration

$$= \frac{\text{Total Rem}^n}{(\text{POO}) / 3 \text{ yrs}}$$

$$= \frac{107 + 11 + 12}{3} = 11L$$

f) Compensation = Step(d) x (e)

$$= \boxed{\text{Rs } 22L}$$

Refer Mr. Doubtful case Q3 Pg 2.40

⑨

KMP

1) APP.

Listed

Public

↳ PUSC \geq 10 cr.} Whole
Time
KMP.

2) Pvt Co \rightarrow PUSC \geq 10 cr \rightarrow whole time CS
(Job वली)

3) KMP includes — MD/WTD/MGR/CEO
& CFO
& CS

Every.

4) KMP is appointed by BR at BM.

A whole time KMP can be a KMP in Max.
2 Companies, second Co. has to be subsidiary.

However, a KMP can be a director in
other Co. with the permission of Board.

Third Proviso to Sec 203(3)

A person can be a MD/MGR/ in 2 Co's,
2nd Co. can be any co.

2nd Co. has to pass unanimous BR.

Specific Notice (ie Agenda) should be given to all the Director's in India.
(ie agenda should be given)

Refer Eq 4 Pg 2.11

⑤ Casual vacancy of KMP shall be filed by the Board within 6 months of such vacancy.

⑥ If 203 is contravened

G = SL

officer/DIR/KMP

50000 + 1000/day

til default continue

subject to max

500000

⑦ Sec 203 = NA to G.6 provided no default of 137/92.

⑧ An individual cannot be appointed or reappointed as the ~~MD~~ chairman or MD/CEO at the same time unless

(A) ← cm + CEO/MD/ MGR

(a) The articles of such Co. provide otherwise

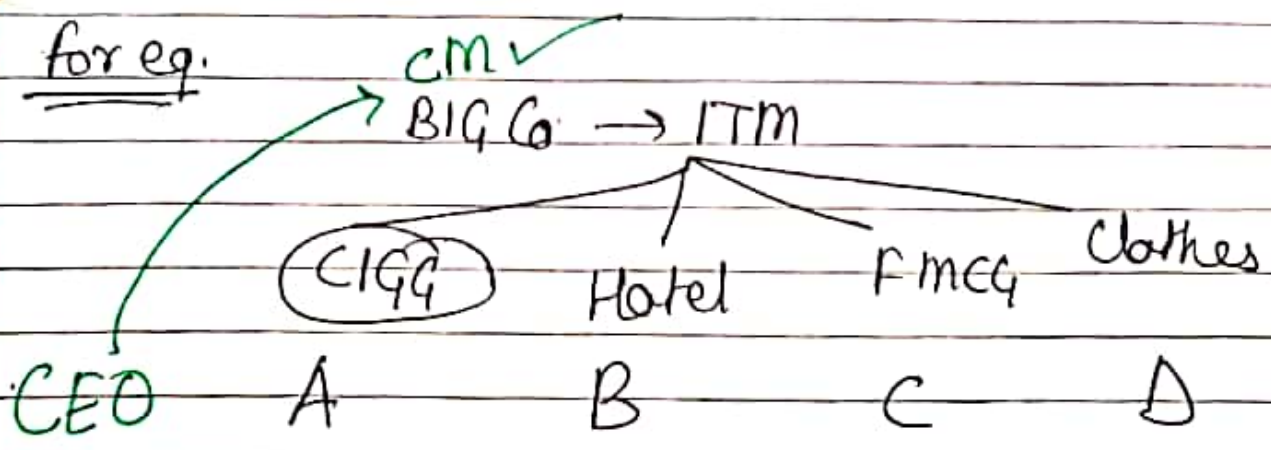
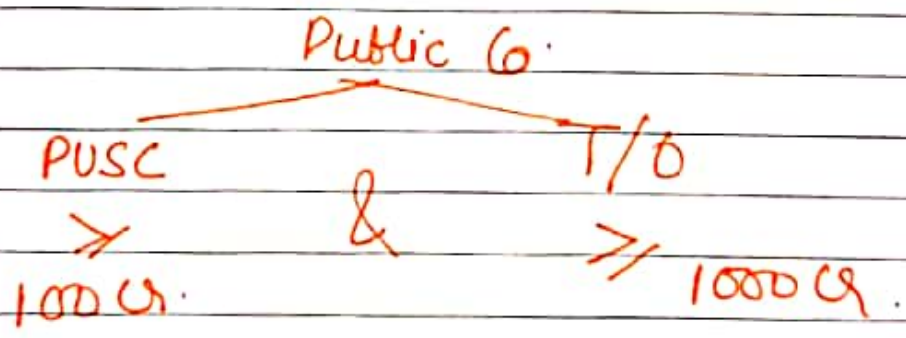
(b) the Co. does not carry multiple businesses.

or

The above prohibition shall not apply to a big Co. ~~who has~~ #

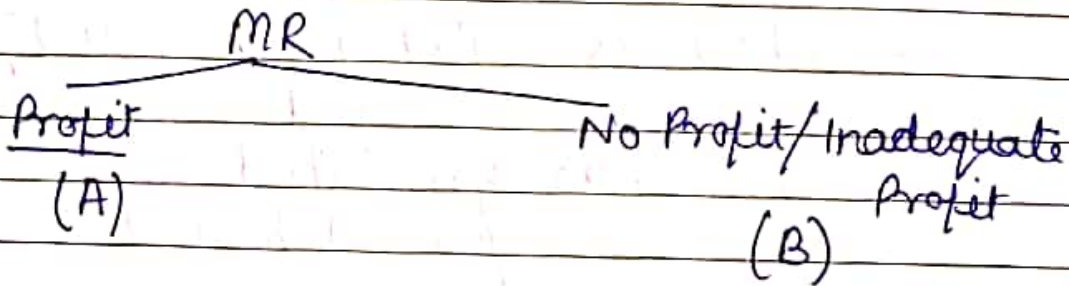
- which is engaged in multiple businesses and
- which has appointed one or more CEO for each such business.

BIG Co. means



197 - Max. Mgr. Remuneration - Overall

① A Co. shall pay ~~the~~ Remuneration to Mgr. Person and other director as per the provision of this Section.



(A) In case of Profit

Overall Max. MR 11%

1 MD/WTD 5%

> 1 MD/WTD 10%

Ordinary DIR 1%

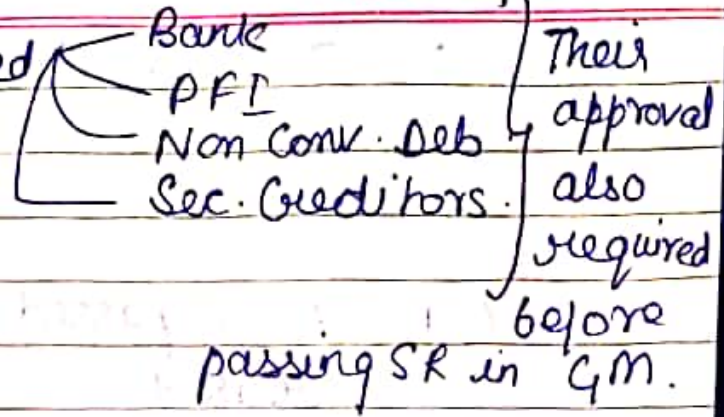
Ordinary DIR 3%

(In case No Mgr. Person)

more than
limit if
Co = pay;

Pass SR#
in GM

In case Co. has defaulted



② In case Co. has No profit or Inadequate profit the Co. may pay remuneration to all directors i.e. ordinary, MD, WTD, Mgr, Non Executive. Independent as per Sch V.

③ Schedule V

In case the Co. has no profit or inadequate profit the Co. may pay Remuneration to Managerial Person or other directors not exceeding the limits under (A) and (B)

(A)

(B)

(A) Effective Capital	Limit for mgr Person p.a. per person	Limit for Ordinary direct p.a. per person.
-ve to less than 5cr	60L	12L
> 5cr but < 100cr	84L	17L
> 100 cr but < 250cr	120L	24L

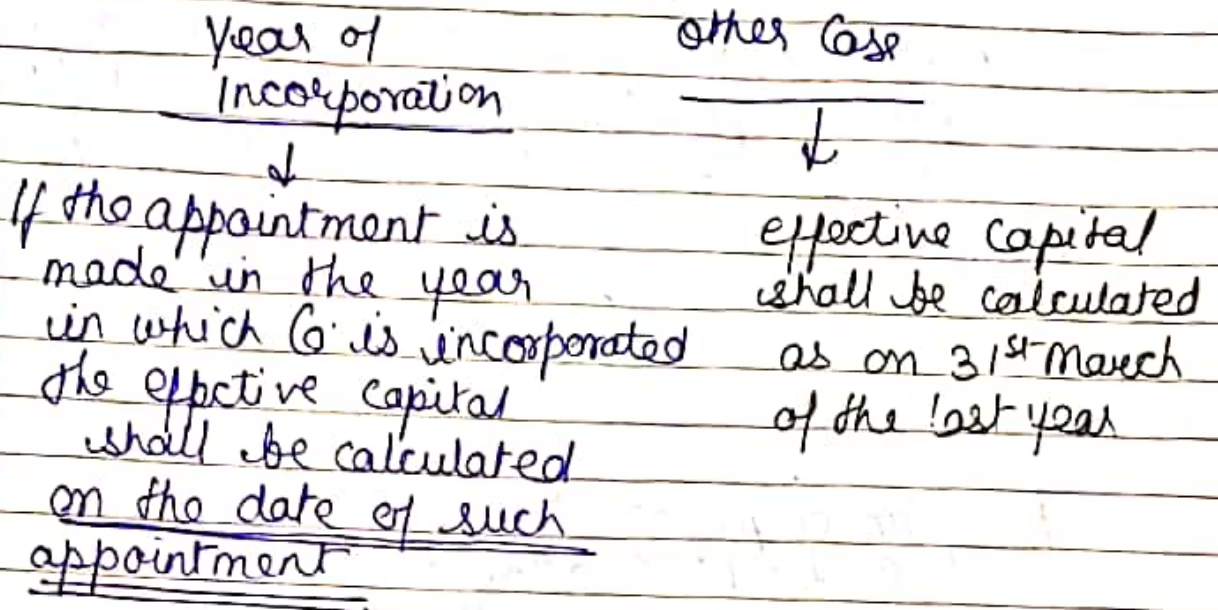
> 250 cr and above	$120 + 0.01\% \text{ (Excess)}$	24L + 0.01% (Excess)
--------------------	---------------------------------	----------------------------

(A) If SR is passed, the above limit can be increased.
If a person has work for less than 1 year then the limit will be prorated.

Effective Capital means.

PUC (excluding share app. money)	XX
Sec Prem.	XX
R/S (Excl. Reval. Res)	XX
LT loan (Including WC/OD/cc/ short term)	XX
	XX
<u>Less</u>	
- Investments (Except stock in trade Investment)	(X)
- Accumulated losses	(X)
- Prel. exp. not w/off	(X)
	XX

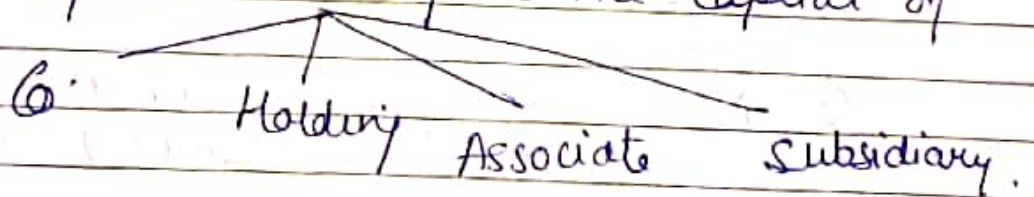
Effective Capital.



(B)

Limit under (B) if Mgr. Person / other director in other capacity.

if a person is not having any interest directly or indirectly in the capital of



(OR)

Directly or indirectly not related to directors or promoters of CHAS at any time

during the last two years before or on or after the date of appointment.

(AND)

possess graduate level qualification with expertise and specialised knowledge in the field in which the Co operates.

Remuneration may be paid as per item (A)

If an employee of a Co is holding 0.5% of the PUSC allotted through ESOP such person shall not be deemed to be related.

Additional condⁿ for (A) and (B)

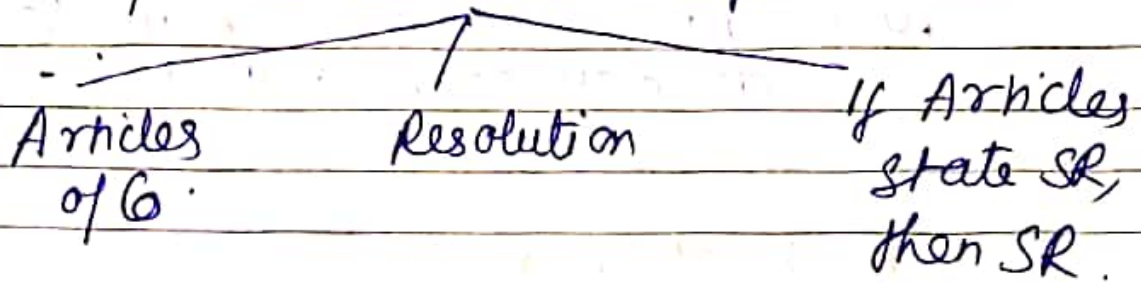
(a) Remuneration shall be approved by NRC/board.

(b) No default of Bank/PFI/non convertible debenture holders/secured creditors.

In case of default there approval is also required.

c) For item (A) = OR/SR. } valid for 3 years.
 item (B) = SR }

④ The Remuneration payable to all directors, may be determined as per



⑤ Remuneration will include every thing except:

(1) sitting fees

(2) Remuneration in professional capacity, provided it is approved by NRC/ Board

Refer Eg 5 Pg 2.2.

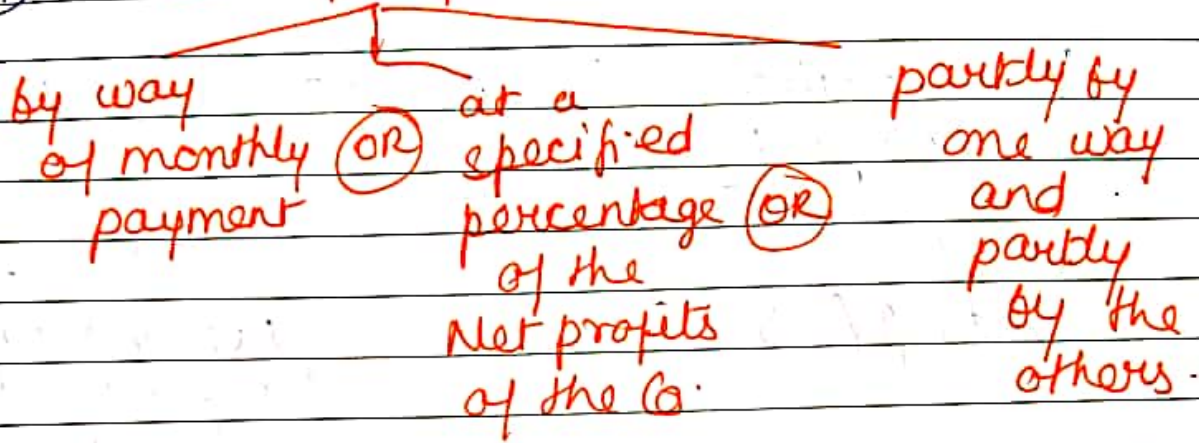
⑥ Sitting fees

Sitting fees is max. 1 lac Rs. per Bm of committee meeting

Independent Director/women director shall not be paid sitting fees less than payable to other directors.

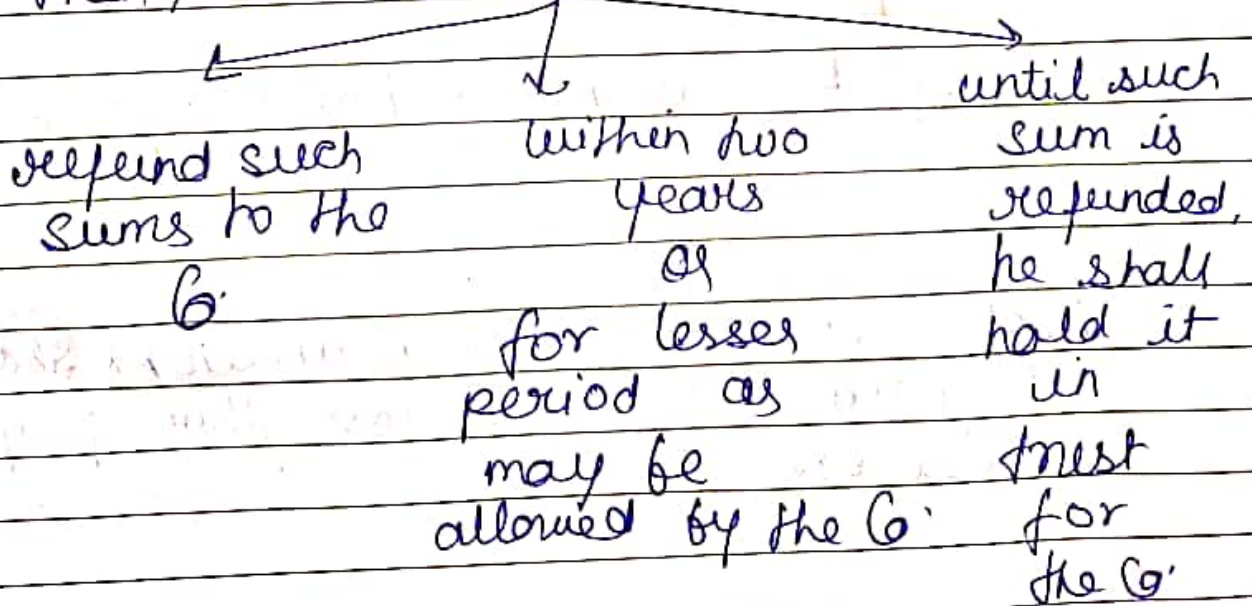
Different fees for different classes of companies and fees in respect to independent directors may be such as may be prescribed.

⑦ Mode of Payment



⑧ If any Director/Managerial Person receive excess remuneration prescribed u/s 197 or w/o SR

then, such Director shall



Waiver of Refund is possible if the Co. has passed SR within 2 years from the date the sum becomes refundable.

In case of default of Bank/PFI/secured creditor/non convertible debenture holders, there prior approval is also required.

⑨ Disclosure in BR by listed Co.

a) Every listed Co shall disclose in the BR, the ratio of remuneration of each director to the median ee's remuneration and other details as prescribed

b) the Board Report shall include a statement showing the names of the top 10 ee's in terms of remuneration drawn and the name of every ee, who -

if ee throughout the FY he received remuneration of Rs 1.02 Cr

If ee part of the FY he received 0.5 lac Rs per month.

if ee through out the FY or part thereof he received a remuneration in excess of

- Remuneration drawn by MD/WTD/MGR +

children
hold min 2% of PUESE
of Co.

- (10) Generally Ins. Premium paid by the Co. on behalf of Managerial Person shall not be part of the Managerial Remuneration.

If such person is proved to be guilty the premium paid on such insurance shall be treated as part of the remuneration.

- (11) If 197 is contravened

Co.
= 5L

Defaulting
officer
= 1Lac

- (12) The auditor of the Co. shall, in his report u/s 143, make a statement regarding remuneration as under:

whether the
rem. paid by the Co.
to its directors
in accordance
with the prov. of S. 197

whether
Rem. paid to
any director (and)
is in excess
of the limit
laid down u/s
197

give such
other
details
as may be
prescribed

Q. Calculation of Profit Sec 198.

Read Pg 2.39 + Eq 4 2.41
+ Dec 21 Q1(a)

— Read Pg 2.36 · Read for MCQ

① What are the Circumstances in which Co. may be wound up by Tribunal? - 271

A Co. may be wound up by Tribunal

- | | | | | |
|----------------------|---|--|--|---------------------------|
| (a) | (b) | (c) | (d) | (e) |
| If Co. has passed SR | If Co. has acted against the Interest of Sovereignty and Integrity of India | On application made by ROC/person authorised by CG | Co. has made default in filing FS or Annual Return with ROC during <u>LAST 5 YEARS</u> | if it is just & equitable |

② Petition for Winding up - 272.

① A petition for winding up can be made by.

- | | | | | | |
|-----|---------------------------------|---|-----|-------------------------------|--|
| (a) | (b) | (c) | (d) | (e) | (f) |
| Co. | Contributory/
Contributories | Combo
of
(a+b)
↓
All or any of
the person
specified above | ROC | person
authorised
by CG | CG/SG
if the
Co. has
acted against
Sovereignty
& Integrity of
India. |

② Petition by contributory

① A contributory is also entitled to file a petition for winding up.

(ii) — He should hold shares which are originally allotted to him and registered in his name
→ AT LEAST 6 MONTHS IN THE LAST 18 months before the commencement of Wup.

(OR)

→ devolved on him through the death of a former holder.

iii) Petition can also be filed if.

He may be the holder of fully paid-up share

Co may have no asset at all.

Co may have No surplus assets left for distribution among the SH after the satisfaction of its liabilities.

Date _____
Page _____

③ Petition by ROC

- ① ROC can file petition for Wup u/s 271 except on (a) ground (i.e. SR)
- ii) Before petition ROC shall obtain previous approval of CG
- iii) CG will give the approval only after OOBH to Co.

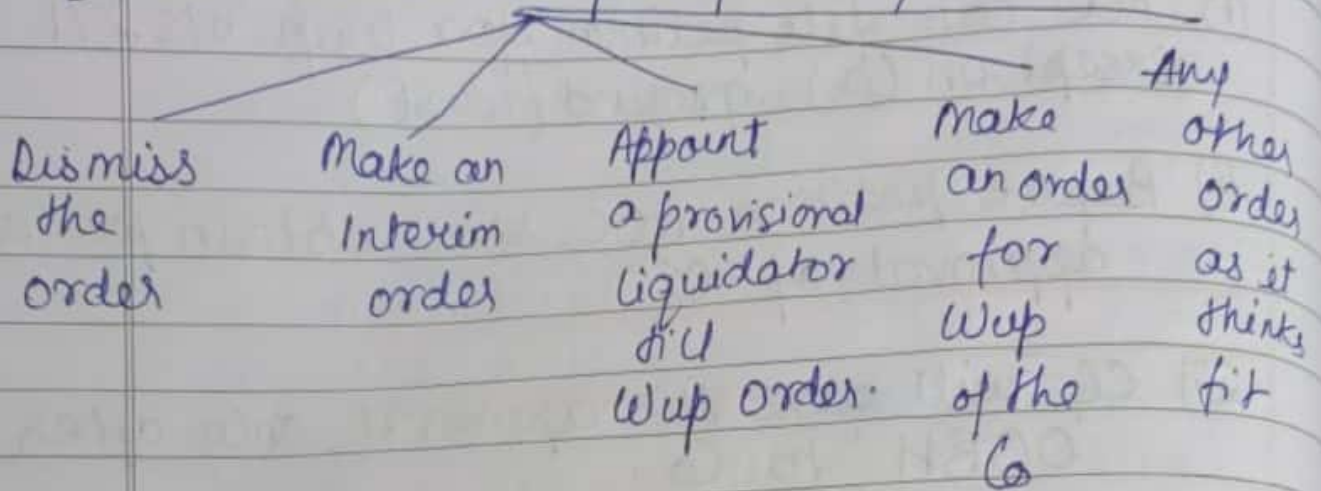
④ Petition by Co.

Co. shall apply to Tribunal for Wup only if has ~~com~~ accompanied a Statement of Affairs (SOA)

- ⑤ A petition copy should also be file with ROC who shall submit his view to tribunal within 60 days of receipt of petition.

③ Power of Tribunal [Sec 273]

① The Tribunal can pass following order:



② The Tribunal will pass the order within 90 days from the date of presentation of the petition.

③ Before appointing PL, ^{Tribunal} ~~Co~~ will give an OOBH to the Co.

④ The Tribunal cannot refuse to make Wup order [if there are NO assets
 OR
 assets are less than liability]

⑤ It is not mandatory for the Tribunal for pass Wup order, if some other remedy is available to the petitioner.

④ Co-liquidator & its appointment - 275

① The PL or CL shall be appointed by the Tribunal from amongst the insolvency professionals registered under the IBC, 2016.

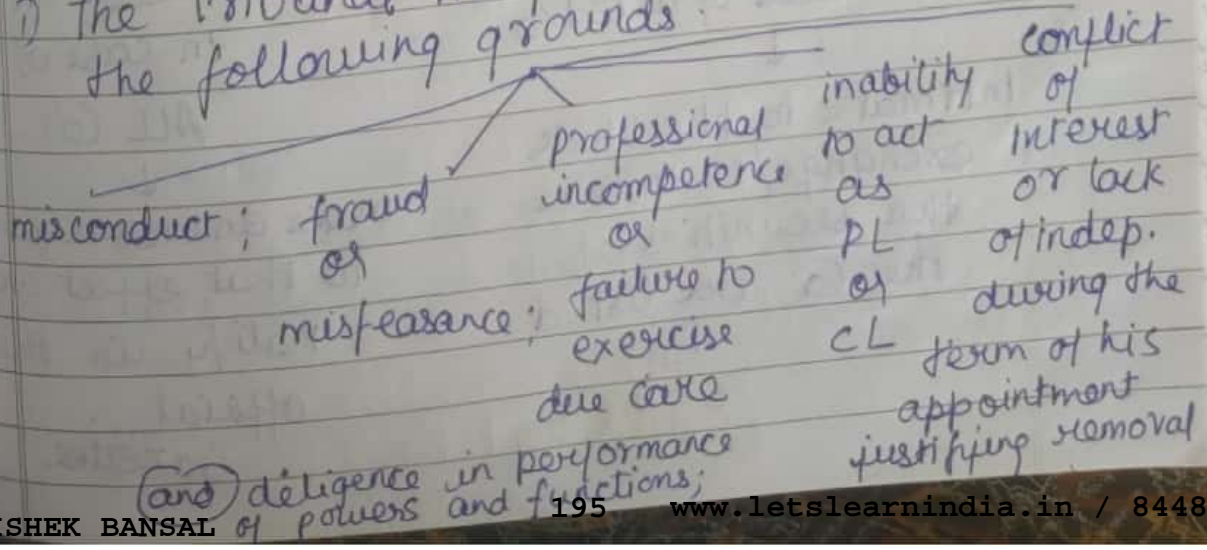
② If PL is appointed the Tribunal may restrict its power or ^{else} he will have same power as of liquidator.

③ The PL or CL shall file a declaration within 7 days of appointment disclosing conflict of interest or lack of independence with the Tribunal, if any.

④ The PL so appointed may be appointed as CL for the conduct of WUP proceedings.

⑤ Removal & Replacement of Liquidator - 276

① The Tribunal may remove PL or CL on the following grounds:



② In the event of death, removal or resignation of PL or CL, the Tribunal may transfer the work assigned to him to another CL

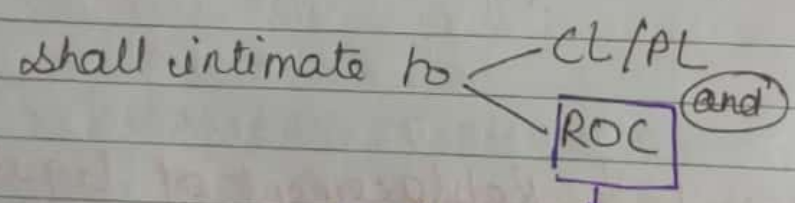
③ If the PL or CL has caused and any loss or damage to Co;

the Tribunal may order it to recover from the liquidator.

④ Before passing any order an OOBH to be given to PL or CL

⑥ Intimation to CL, PL and ROC - 277

① If T has passed WUP order, the Co shall intimate to



↓
shall intimate

in case of listed Co

↓
Intimate to the stock exchange/s where the securities of the Co are listed

In case of ALL Co's.

↓
make an endorsement to that effect and notify in the official Gazettee

② The Wup order shall be a notice of discharge to the officers, employees, workman of the Co.

[except] when the business of Co is continuing.

③ Within 3 weeks of Wup order, the CL shall make application to Tribunal
↓
for constituting Wup committee.

④ Wup Committee shall consist of:

- official liquidator
- nominee of secured creditor
- AND
- a professional nominated by the Tribunal.

⑤ The Wup Committee shall perform following functions.

- taking over assets
- examination of statement of affairs
- sale of assets
- financisation of list of creditor and contributory
- any other function as the T may direct

⑥ The CL shall ~~submit~~ submit to Tribunal ~~also~~ a report along with the minutes of the meeting of the committee on monthly basis.

⑦ This report shall be ~~subm~~ submitted till the dissolution of Co.

⑦ STAY OF SUITS

① When Wop order is passed or PL has been appointed

no suit or legal proceeding shall be commenced

(or) proceeded with by or against the Co.

EXCEPT

with the permission of Tribunal.

② The T will give the permission within 60 days of application.

③ Nothing as above shall apply to any proceeding pending an appeal before SC/HC

Refer Eq 1 Pg 7.10 Refer Q4 Pg 4.97

Submission of Report by CL - 281

① The Co liquidator shall within 60 days of appointment submit to the Tribunal a report containing following particulars.

a) Nature & details of assets including cash in hand & cash at bank
details of

b) Issued, subscribed, paid up capital

c) Existing and contingent liab. giving particulars of creditors.

d) Debts due to the Co.

e) Guarantees, if any

f) List of contributories and dues if any payable by them

g) Details of trademarks and intellectual properties.

h) Details of subsisting contracts, JV and collaborations

i) Details of legal cases

j) Any other information

② The C shall also state in his report

the manner
in which
the Co was
promoted
or
formed

Report on viability
of its business
and steps for
maximising
the value of
assets of the Co

AND

whether in his opinion
any fraud has been
committed.

③ Creditor/contributories or his agent
shall inspect the report
and
take copies
on payment of prescribed fees.

⑧ OVERRIDING PREFERENTIAL Payments

Situation 1 :-

step 1 :- Security Realise

Less

step 2 :- - Workmen Dues (Assumed < 2 yrs)
- (only Salary/wages = IDA, 1947

(All accrued holiday remuneration
(Compensation) (PF + gratuity + Pension)

(a)
If money

- i) Pay secured creditors
and
- ii) workmen dues
> 2 yrs.

(b)
If money X

Pay A in
proportion
i.e

Situation 2

Step 1: Security Realise 10L

Less

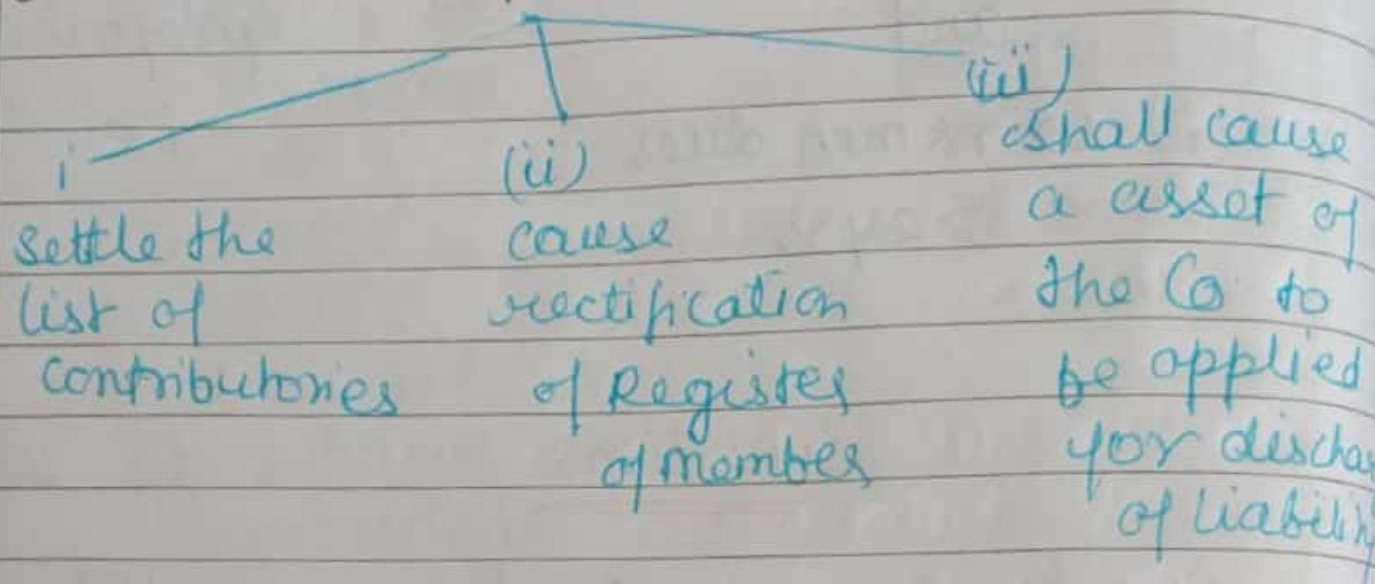
Step 2: Workmen Dues (Assumed fully) \leq 2 yrs)
4L

Step 3: Secured creditor (3L)

further Liab 3L

10 Settlement of List of Contributories and application of assets - 285

① The Tribunal after passing Wup order shall



However tribunal may dispense with the settlement of list of contributories.

② Every contributory shall be liable to contribute to the assets of the Co for.

- i) Cost charges and expenses of Wup
- ii) Payment of Debts and liabilities.
- iii) Adjustment of Right of contributories subject to the following condition.

(i) a member shall not be liable to contribute if he ceased to be a member **ONE YEAR OR MORE** before the commencement of WUP

(ii) A member shall not be liable for debt contracted after he ceased to be a member.

(iii) past members are not liable if present members are able to satisfy the debt.

(iv) In case of Co limited by share if share are fully paid up
↓
NO member is liable

(v) In case of Co Ltd by guarantee with share capital,
↓
No member will be liable if shares are fully paid up.

II Obligation of Directors & manager - 286
Use Ans. 10 + Pg 7.16.

(12) Advisory Committee - Sec 287

Read from module - Pg 7.16

Only MCQ

12 नोव 30 दिन

(13) Audit of Company Liquidator's Accounts - Sec 294

① The Co. Liquidator shall submit to the Tribunal an account of receipt & payments in prescribed form in duplicates twice in each year

AND

shall be verified by a declaration in prescribed form.

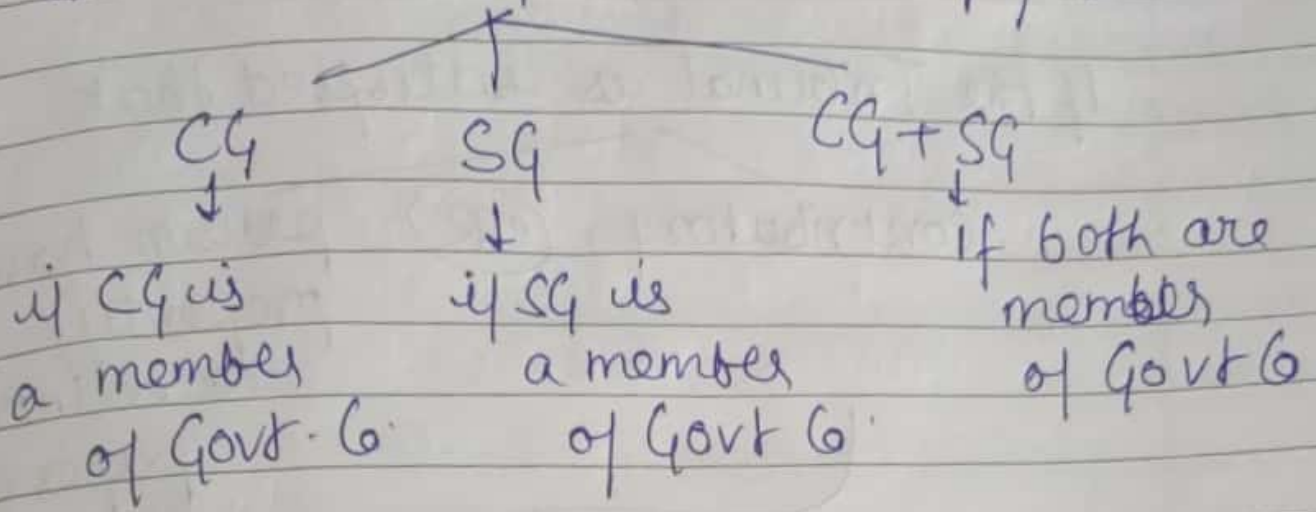
② The Tribunal shall cause the accounts to be audited in such manner as it thinks fit.

③ If the accounts of Co. have been audited

one copy shall be filed by the CL to Tribunal

other copy shall be delivered to ROC which shall be open for inspection

④ If the accounts relates to a Govt Co. the CL shall forward a copy to



⑤ The CL shall cause the audited a/c
or a summary

to be sent to every creditor and contributory.

However the Tribunal may dispense with the above requirement.

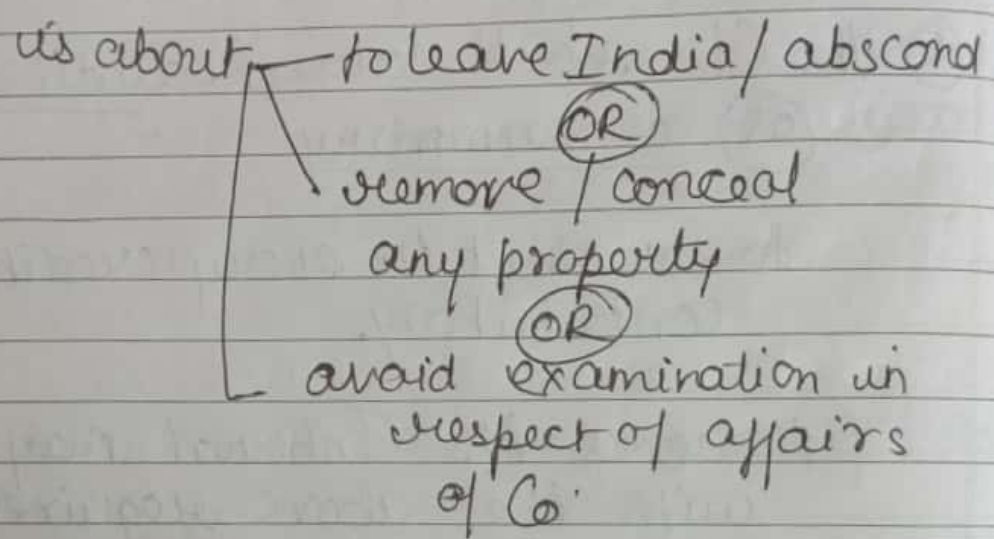
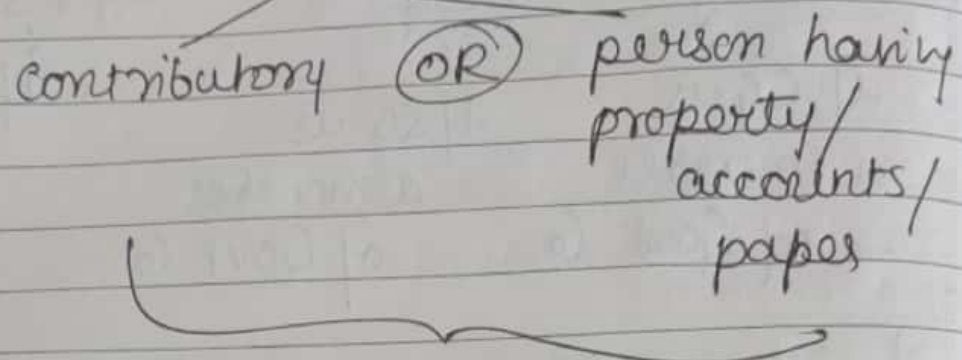
⑭ Payment of Debts by Contributory and Extent of Set-off - 295

Read from Pg 7.21

IMP
15

ARREST OF PERSON TRYING TO Leave India OR Abscond - Sec 301

If the Tribunal is satisfied that



then,

the Tribunal may cause

the Contributory to be detained until such time the Tribunal may order

the Books, Papers & movable property to be seized and safely kept until such time as Tribunal may order.

Refer Q3 Pg 7.46

16) Fraudulent Preference - Sec. 328

① If the Co. has given preference to a person who is the creditor/surety/guarantor

Over other creditor/surety/guarantor

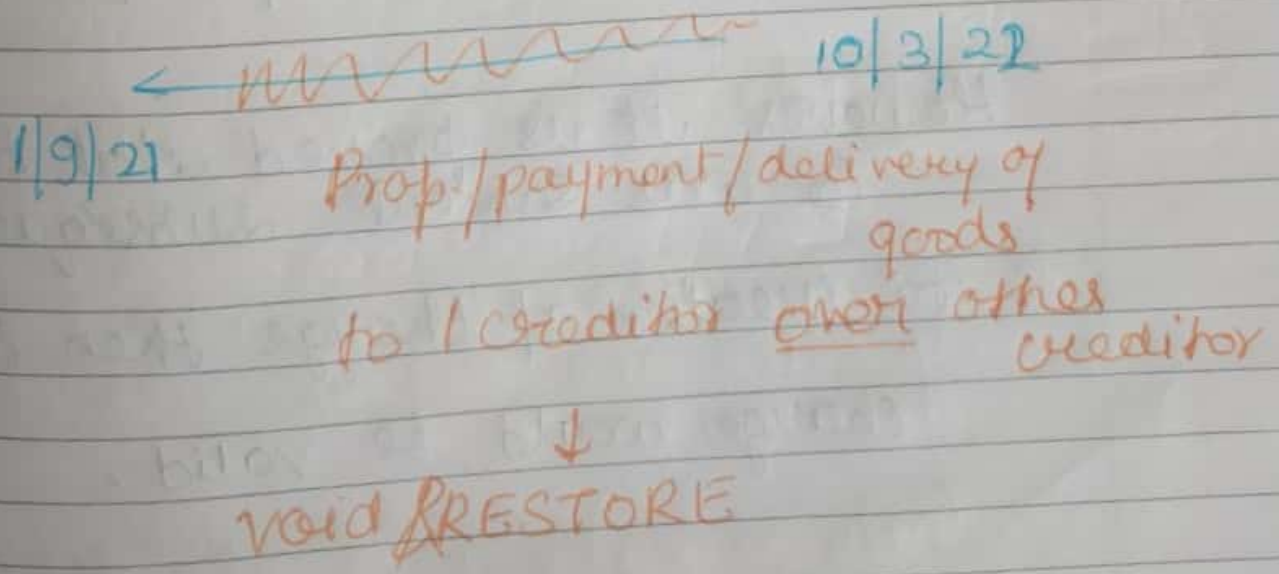
within 6 months before making up Wup application.

then,

the Tribunal may declare such transaction as a fraudulent preference

AND
declare.

it as void & restore the position.



(17)

Effect of floating charge [sec 232]

① If the Co. is being Wup

any floating charge created on property or undertaking

within 12 months before the commencement of Wup.

shall be VOID.

except any amount of Cash paid

to the Co. subsequent to the

creation of charge along with interest @ 5% p.a.

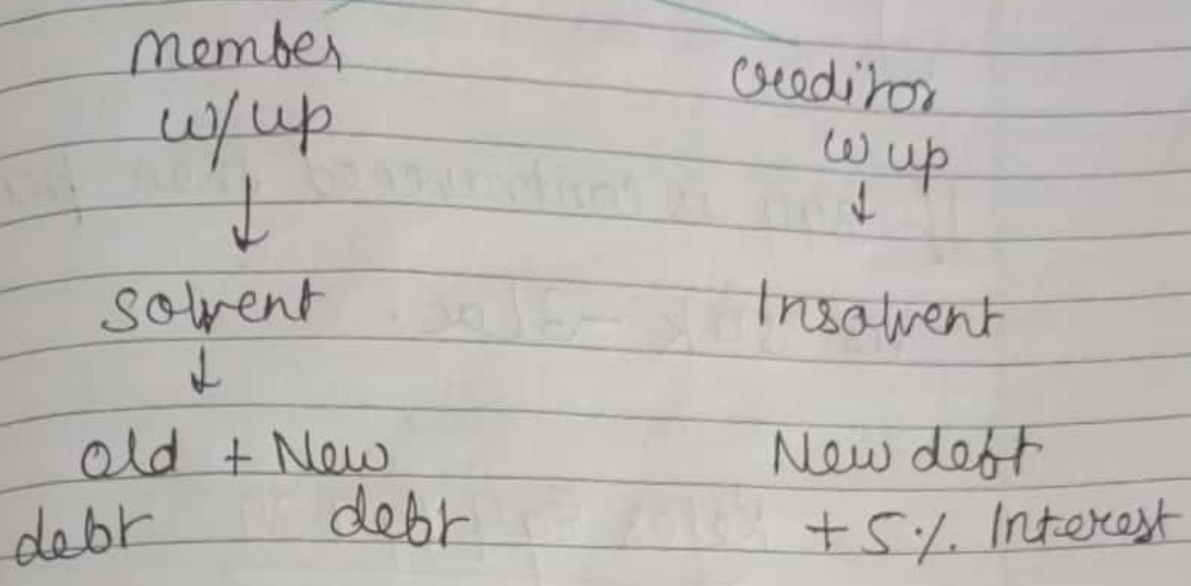
or such other rate as may be notified. by CG.

However it is proved that the Co. was solvent subsequent

to creation of charge then, the

charge would be valid.

11/3/21 ← 12m → 10/3/22
FC



18) Disclaimer of Onerous Property [sec 333]

Read module Pg 7.34.

Reps § 2(a) Dec. 21 suggested

20) Statement that Co is in liquidation.

344

If the Co is being w/up either voluntarily or Tribunal

every invoice/order for good/business letter head

issued by { on behalf of Co
CL
managers of property

shall contain a statement that Co. is in liquidation.

If 344 is contravened then penalty is 50k - 3Lac.

Refer Eq 4 Pg 7.39

(21) Company Liquidation Dividend and Undistributed Asset Account.

- Sec 352

Refer Eq 5 & 6 imp

(22) Liquidator to Make Return - Sec 353

If the CL who has made a default in filing any return, account, document

fails to make good the default within 14 days after the

service of notice on him, the Tribunal may on an application made to it by an contributory / creditor /

R.O.C may order to make ~~the~~ good the default within such time as may be specified in the order..

All the expenses of application shall be borne by CL.

The Tribunal may also impose penalty on CL.

CONCILIATION

① Definition

There is no single definition of Conciliation. It is an Alternative method of dispute resolution. In this party come to agreement through confidential discussion and dialogue.

② Characteristics - VAN FC

Confidentiality - All the matters of conciliation process are confidential.

The parties cannot disclose any matter to any person who is not a party to conciliation.

Assisted Procedure - The Conciliator along with the parties craft a procedure for sharing the info b/w the parties to reach to ~~an~~ an AMICABLE settlement.

Non Adversarial - Instead of winning or losing the parties attempt to find a solution which is beneficial for all the parties involved.

Voluntary - Unless all the parties involved in the dispute agree the matter cannot be conciliated.

Finality of settlement - Settlement agreement is the final outcome which is binding on all the parties.

③ Important points

i) The no. of conciliator may range from 1 to 3. Max 3.

ii) Conciliator are appointed by the parties. However they can request an institution or some other person to recommend a conciliator.

iii) ~~They can~~ When conciliation proceedings are ongoing parties cannot start arbitration proceeding or approach a court regarding the same dispute which is a part of conciliation proceedings. **EXCEPTION** when it concerns preserving its right

↓
Refer eq. 17 Pg 5.34.

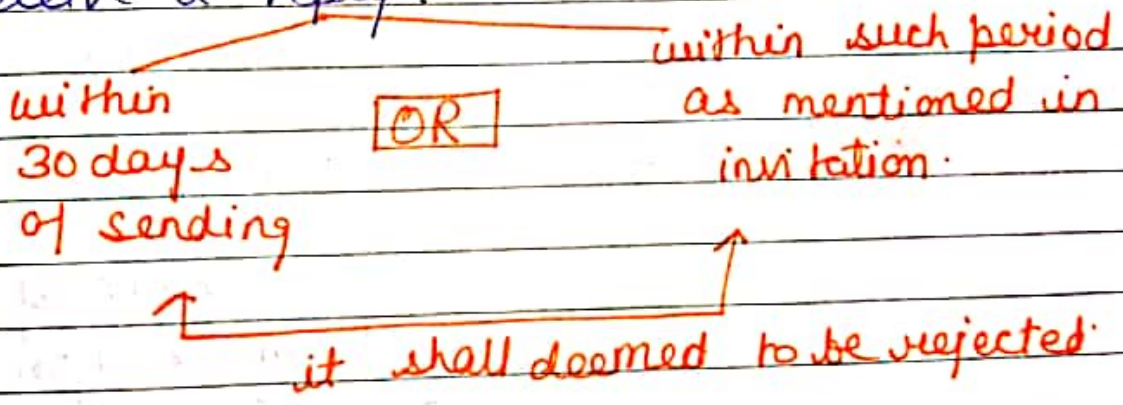
④ Conciliation vs Mediation.

Read from Pg 5.35

Imp

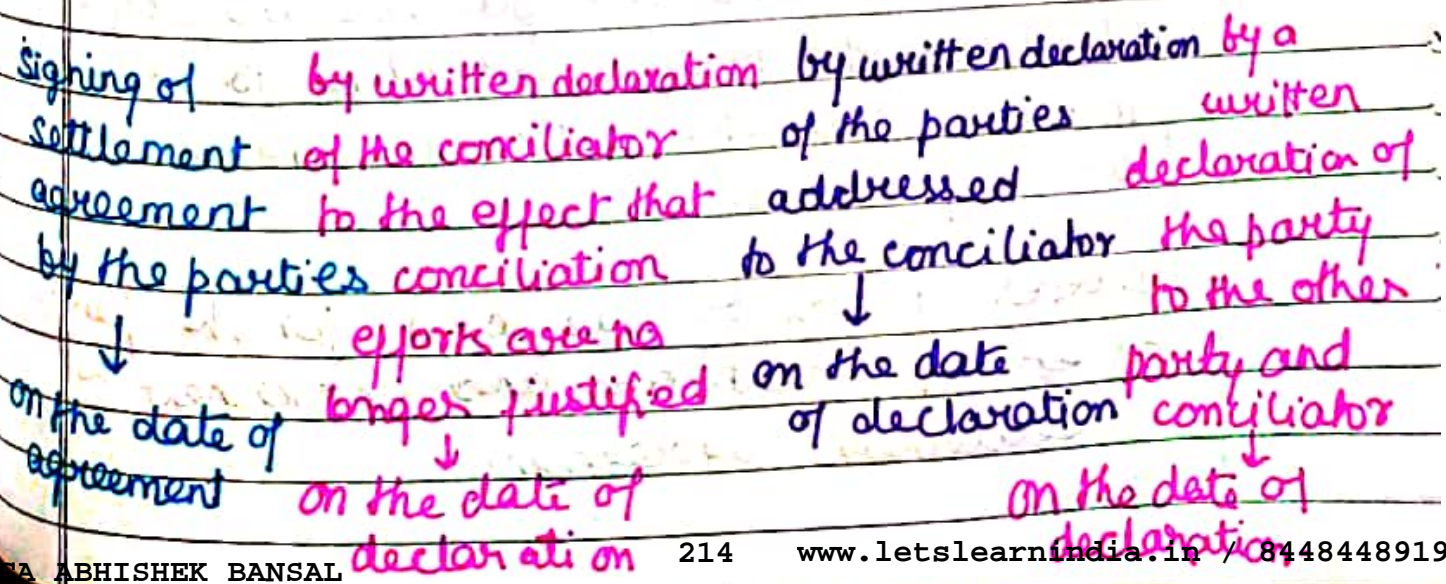
⑤ Commencement of Conciliation proceeding [S. 62]

- ① The party initiating conciliation shall send a written invitation to other party briefly identifying the subject of the dispute
- ② Conciliation will commence when the other party accepts the invitation in writing.
- ③ If other party rejects the invitation there will be no conciliation proceedings.
- ④ If the party initiating conciliation does not receive a reply.



⑥ Termination of conciliation proceeding

It can be terminated by:



⑦ Settlement Agreement - IAE

Initial steps	Agreement	Enforcement
---------------	-----------	-------------

The parties along with the conciliator shall identify the possible terms of settlement	<p>If parties reach a settlement, then it has to be written down as an agreement</p> <p>It is called as settlement agreement OR memorandum of conciliation</p> <p>It has to be sign by the parties and conciliator.</p>	<p>The settlement agreement has the same status as of arbitral award.</p> <p>It is final and binding on parties</p> <p>It can be challenge before court OR</p> <p>If challenge was made and it was unsuccessful, then it can be enforced under Code of Civil procedure, 1908</p>
--	---	--

⑧ Confidentiality

① The conciliator and the parties are required to keep all the matters relating to the proceeding and the settlement agreement as confidential.

However it can be disclosed for the purpose of an implementation and enforcement of settlement agreement.

- ② He cannot act as representative of any party in arbitral or judicial proceedings in respect of dispute that was subject to judicial proceedings.
- ③ Nothing can be used as an evidence in respect of judicial proceedings or arbitration.

ARBITRATION

Definition

① Arbitration agreement means an agreement by the parties
to submit to arbitration
↓
all or certain dispute
↓
which have arisen or which may arise b/w them
↓
in respect of a defined legal relationship,
whether contractual or not.

② Arbitral award " includes an interim award

③ International Commercial arbitration
It means an arbitration relating to dispute where at least one of the parties is

Individual	Body Corporate	AOP/	Government
O/S India	O/S India	BOI	of foreign
		O/S India	country

② Basis features of Arbitration

- ① There has to be Arbitration Agreement
- (ii) The Arbitrator / Arbitral Tribunal ~~has~~ decides the dispute b/w the parties
- (iii) Parties have freedom to select the choice of applicable law, procedure etc
- iv) finality - The decision given in Arbitration is called as Arbitral award.
It cannot be appealed. However it can be set aside on few grounds.
- v) All the matters of arbitration shall be kept confidential.
- vi) It is simpler to enforce arbitral award in foreign nations when judgement rendered by a Court.

③ Difference b/w Litigation and Arbitration

Refer Pg. 5.7 module

④ Authorities under the Act

a) Judicial authority It is not defined in the Act.

It is a concept wider than court
Every court would be a Judicial authority
but every judicial Authority would not be a court

b) Court

International Commercial Arbitration

Domestic Arbitration

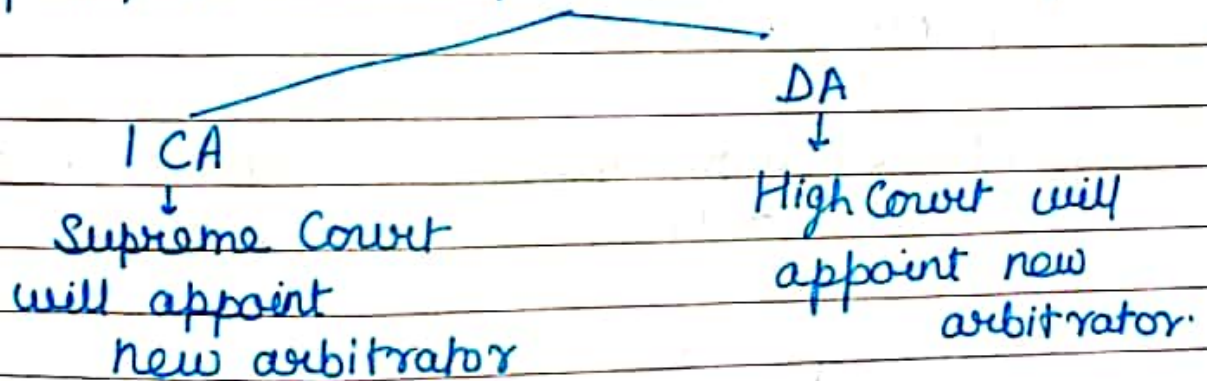
↓
High Court

↓
District Court
↓
High Court in original jurisdiction.

c) Supreme Court

Appointment of Arbitrator

- First original method should be applied
- If original method fails, then in case of:



⑤ Arbitration agreement

i) Refer Defⁿ point ①

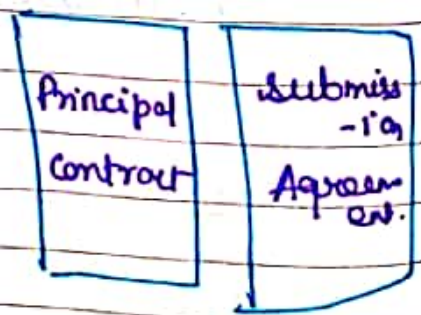
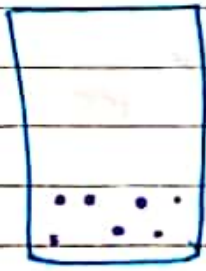
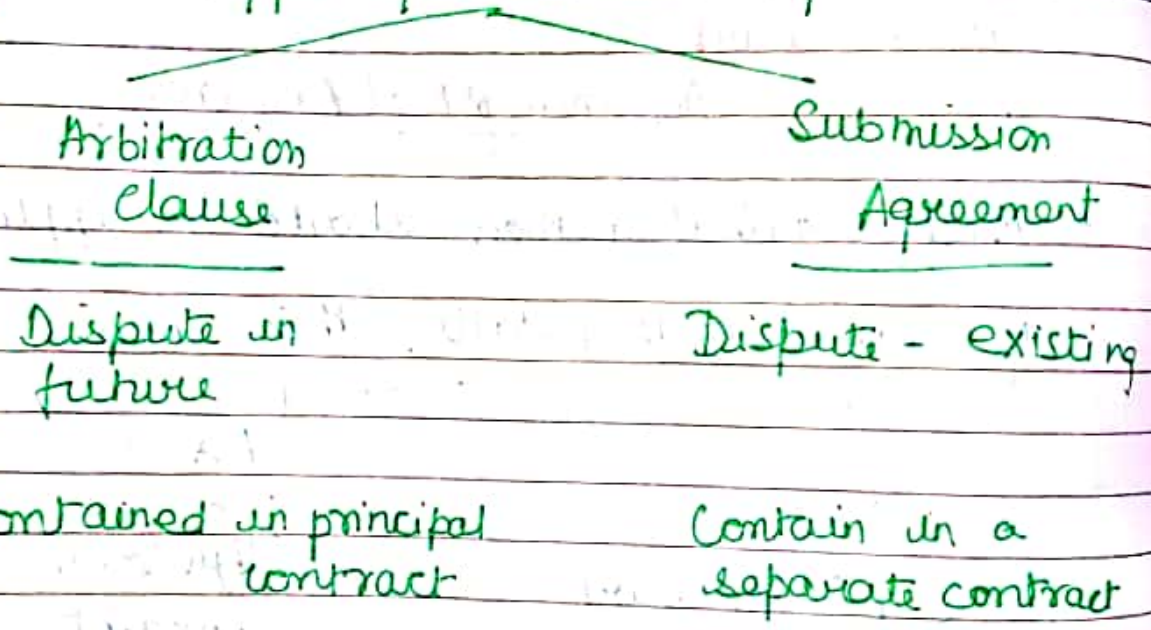
ii) It may be in form of arbitration clause in a contract or in form of separate agreement.

iii) It shall be in writing (i.e. signed + letter, telex, telegram, email)

(Refer Pg 2, 3, Pg 5, 12)

iv) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract. [Reper Eq 6, Pg 5.14]

v) Two types of Arbitration Agreement



vi) There must be consensus ad idem b/w the parties to go for arbitration.

[Reper Eq 4 Pg 5.12]

vii) The arbitrator shall be neutral third person and his decision shall be final and binding upon the parties.

[Refer eg 5, pg 5.13]

viii) Use of word arbitration or arbitrator is not a necessary requirement

ix) The matter must be arbitrable
 [for eg:- CRIMINAL offences, matrimonial dispute, guardianship matters, testamentary matters, mortgage suit for sale of mortgaged property etc, cannot be arbitrated.

x) Signature is mandatory only when arbitration agreement is contained in contract.

However, no signature is required if arbitration agreement is contained in correspondence or exchange of pleadings.

6) Termination of arbitration agreement

- | | | | |
|----------------|-----------------------------------|------------------|------------------|
| (a) | (b) | (c) | (d) |
| Mutual consent | Termination of Principal Contract | Death of Parties | operation of law |

(a)
Mutual
consent

The parties
can
jointly
agree
to put an
end to a
particular
arbitration
agreement.

(b)
Termination
of Principal
contract

If a principal
contract is
terminated
through
discharge
or novation
the arbitration
agreement
terminates
with the
contract.
If the principal
contract is
breached, AA
survives
because of
operation of
doctrine of
separability

↓
Refer Eg 7
Pg 5.14

(c)
Death
of Parties

An arbitration
agreement
is not
discharged
by the death
of any party
It is enforced
by or
against the
legal
representative
of deceased

(d)
Operation
of law

It can be
extinguished
by
operation
of law.

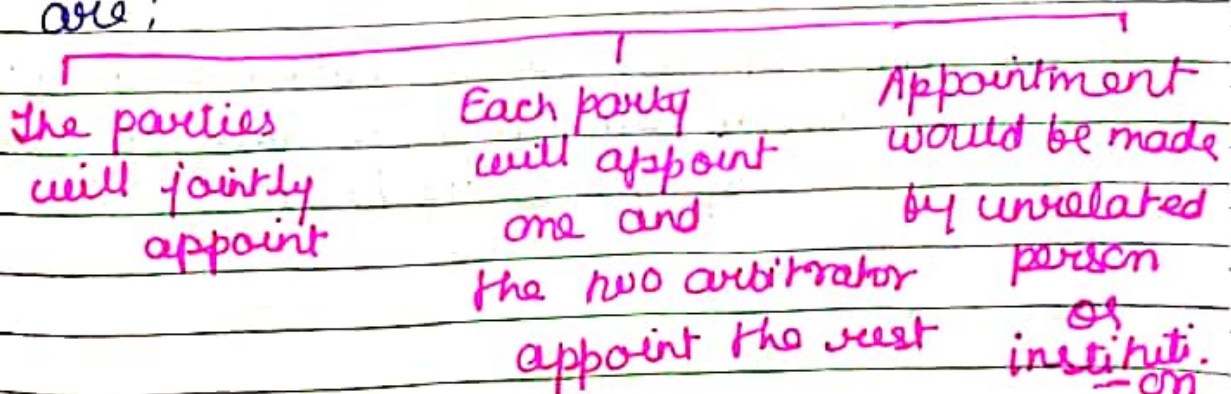
⑦ ARBITRAL Tribunal.

- i) An arbitrator/(s) or Arbitral Tribunal shall mean the same. It performs the function of the judge.
- ii) An person capable of contracting can be an arbitrator.
- iii) Parties are free to decide the arbitrator, procedure for appointment of arbitrator etc.
- iv) The parties are also free to determine the no. of arbitrators provided such no. shall not be an even no. i.e. it should be an odd no.
 failing the determination the AT shall consist of a sole arbitrator.

Even no. of arbitrators is also possible as per case of *Narayana Prasad Lohia vs Nikunj Kumar Lohia*.

Refer Pg 5.18.

v) The most common procedure for appointment are;



vi) Requirements of Arbitral Tribunal.
Refer Pg 5.20.

Eq. 12 Pg. 5.21

vii) Once appointed the party who has agreed for the appointment for the arbitrator cannot raise a challenge on that very same ground. but they can raise a challenge on a new ground.

Refer Eq. 13 Pg 5.22

viii) Termination, removal, substitution of AT

When the arbitrator leaves voluntarily
↓
He is not required to disclose the reason

When all the parties decides that the arbitrator should be removed

operation of law

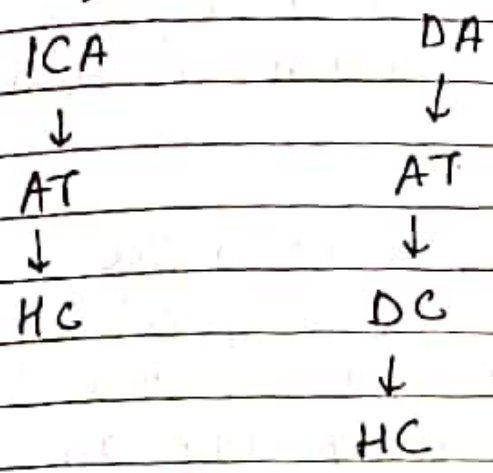
When the court decides the arbitrator should be removed.

AT is unable to continue

or Arbitration process ends

ix) The arbitrator has to make the award within 12m from the date of submission of proceedings to it.

x) Challenge for bias & Appointment



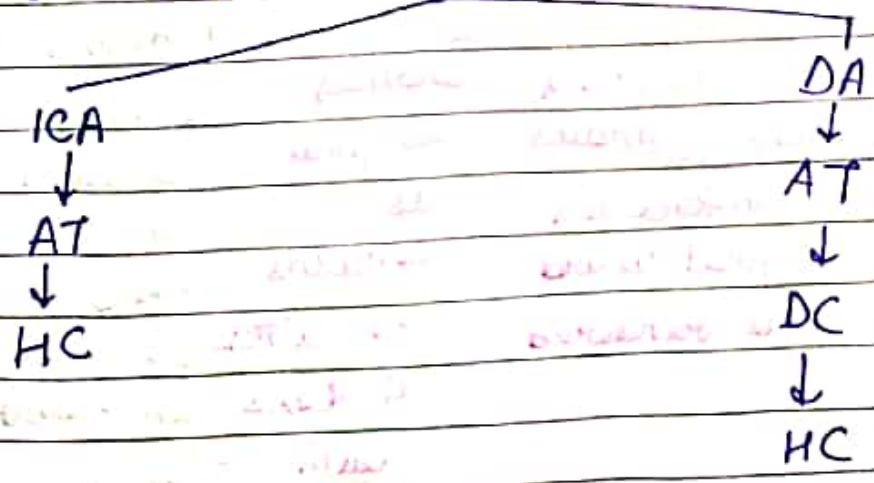
1. Original method (OM)
2. If OM fails, then



Refer Eq 14, Pg 5.25

⑧ Arbitral Award

- i) An arbitral award is similar to a judgment given by a court of law.
- ii) Only a party to the arbitration can challenge an arbitral award.
- iii) It can be challenged in the following manner.

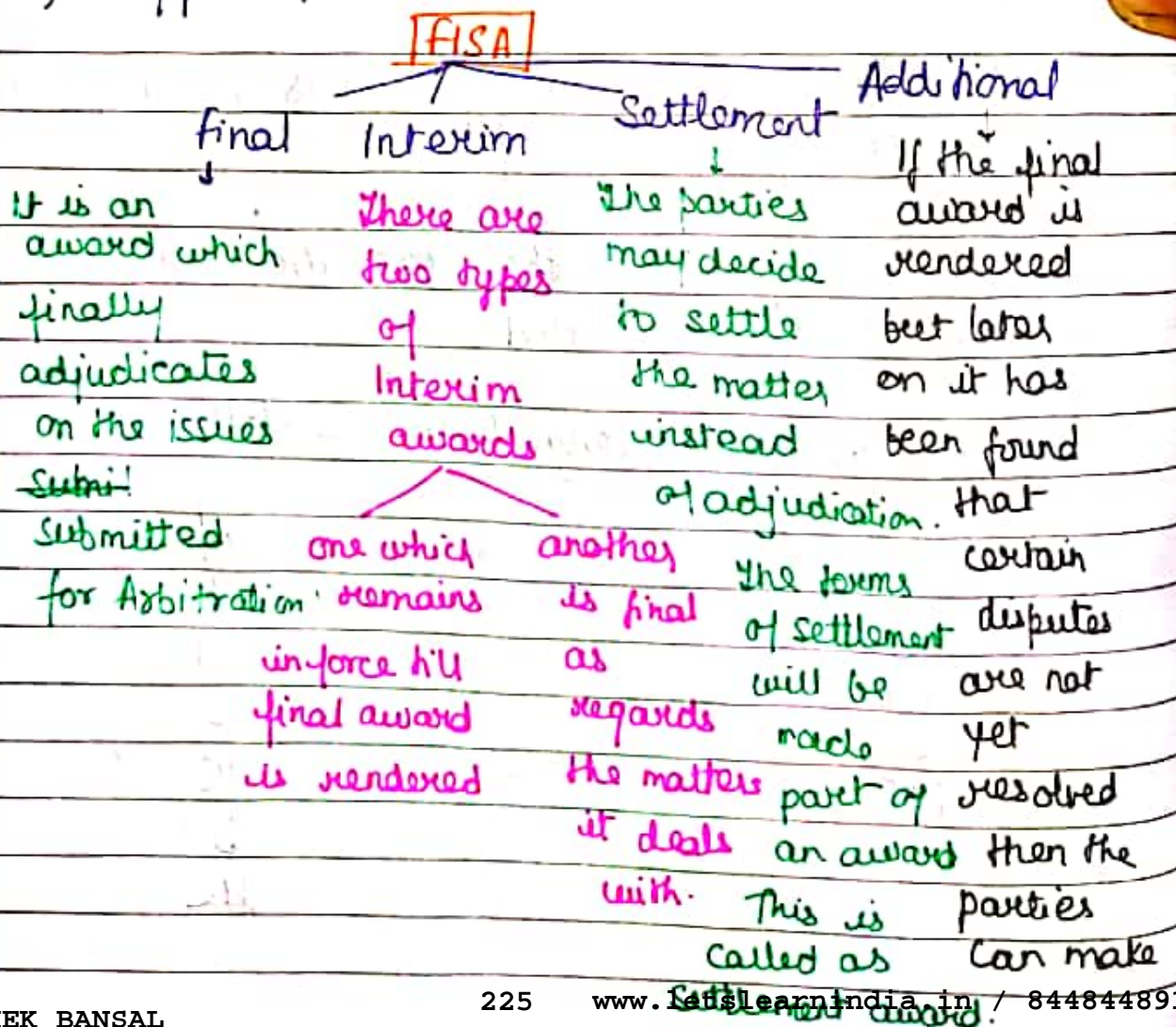


iv) Challenge against Arbitral award can be made within 3 months from the date when the award is received by party with the maximum extension of 30 more days by the court

v) There is no automatic stay on the enforcement. A party has to specifically request for a stay and the court at the time of granting stay can impose conditions.

Refer → Read point 25, Module Pg 5:26

vi) Types of arbitral award.

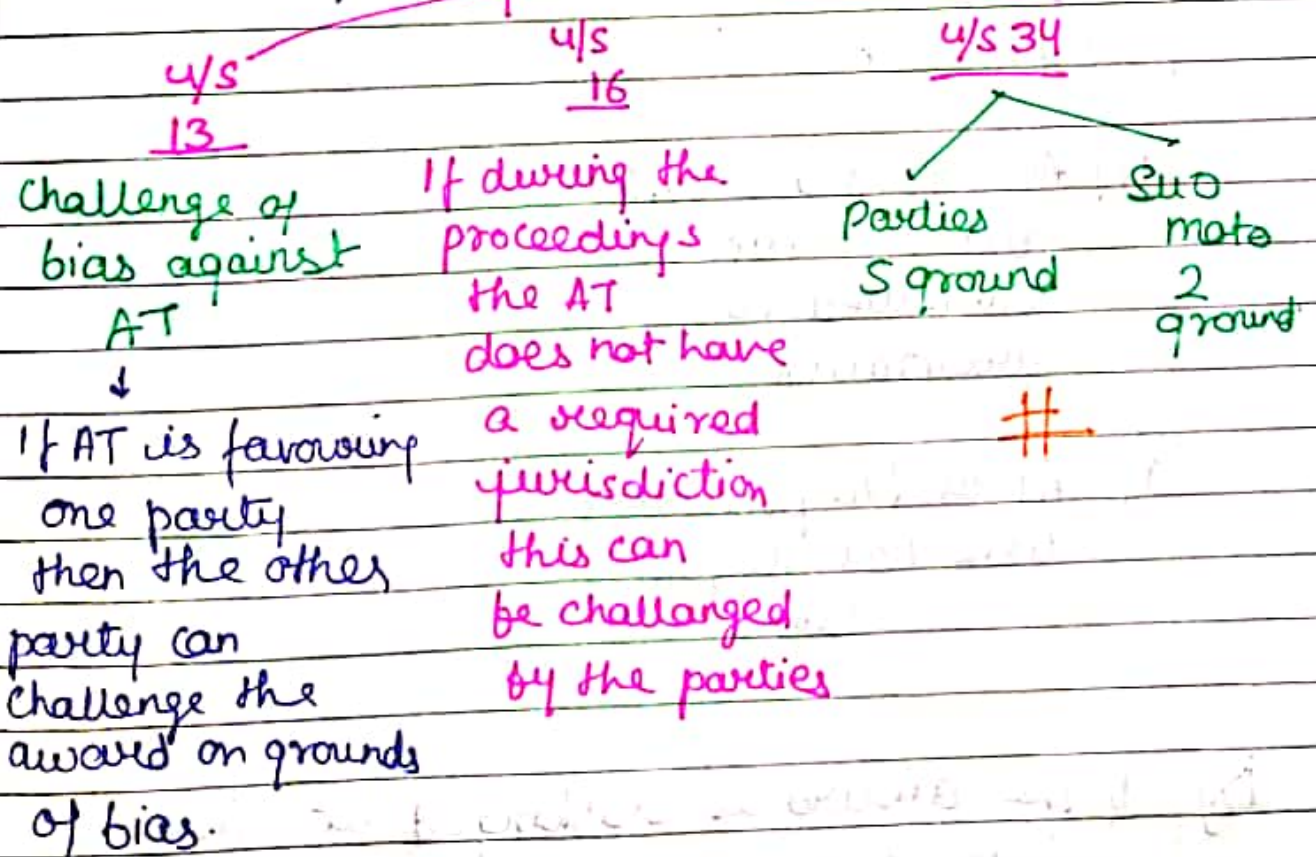


request to
Arbitral Tribunal
to give addⁿ
award within
30 days from
the date of
receipt of final
award.

Refer Eq 15. Pg 5.27

vii) Requirement of Award (Only Read)
Pg 5.28
for MCS.

viii) Challenging an award



#

5 grounds

2 ground

i) Parties under some incapacity

The subject matter of the dispute cannot be Arbitrated

ii) Invalid arbitration agreement

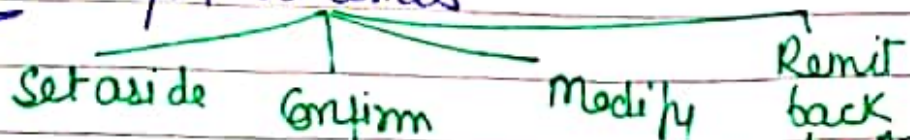
The award is in contravention of public policy of India.

iii) Party is not given proper notice about appointment of arbitrator or arbitral proceedings

iv) Award deals with disputes not submitted to arbitration

v) AT of the procedure was not as per law

ix) If the award is challenged it has four major outcomes

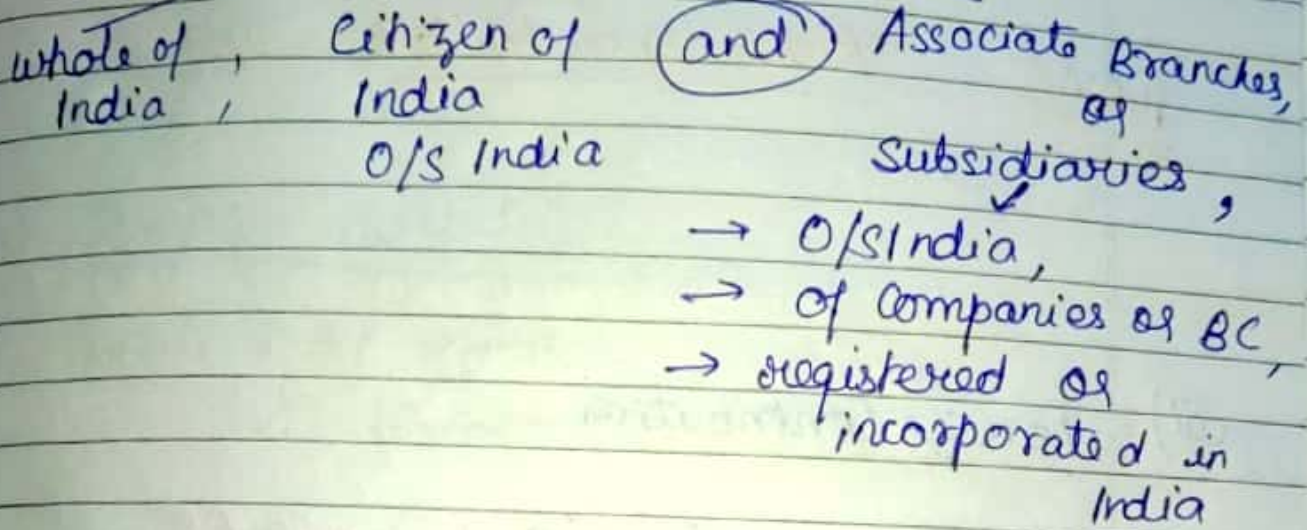


x) Enforcement of an award shall happen under the Code of Civil Procedure 1908 in the same manner as if it were a decree of the court.

Foreign Contribution (Regulation) Act, 2010

Applicability - Sec 1

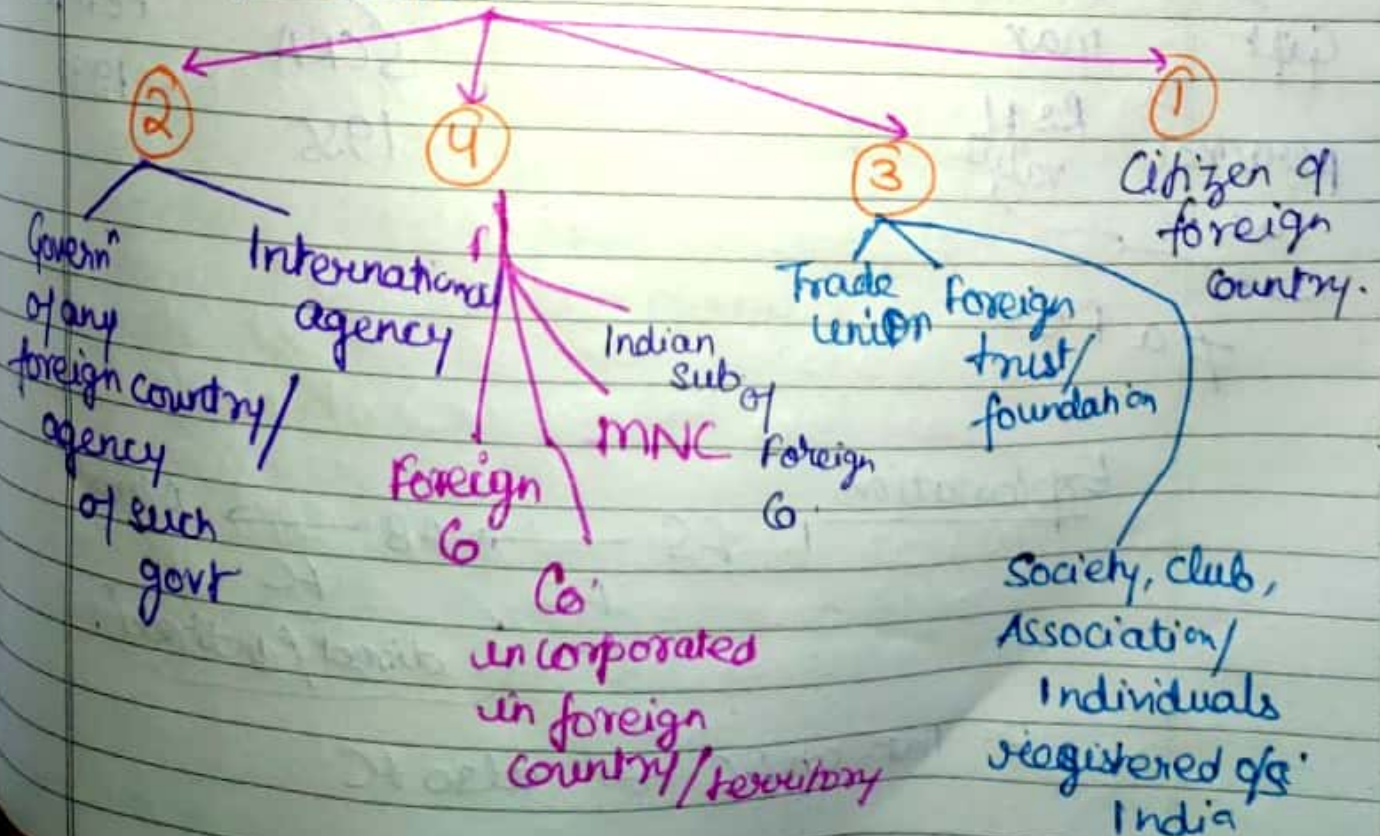
① This Act apply to:



② Definition - Sec 2

① FOREIGN COMPANY → Refer Pg 4.4 + Eq 1

② FOREIGN SOURCE

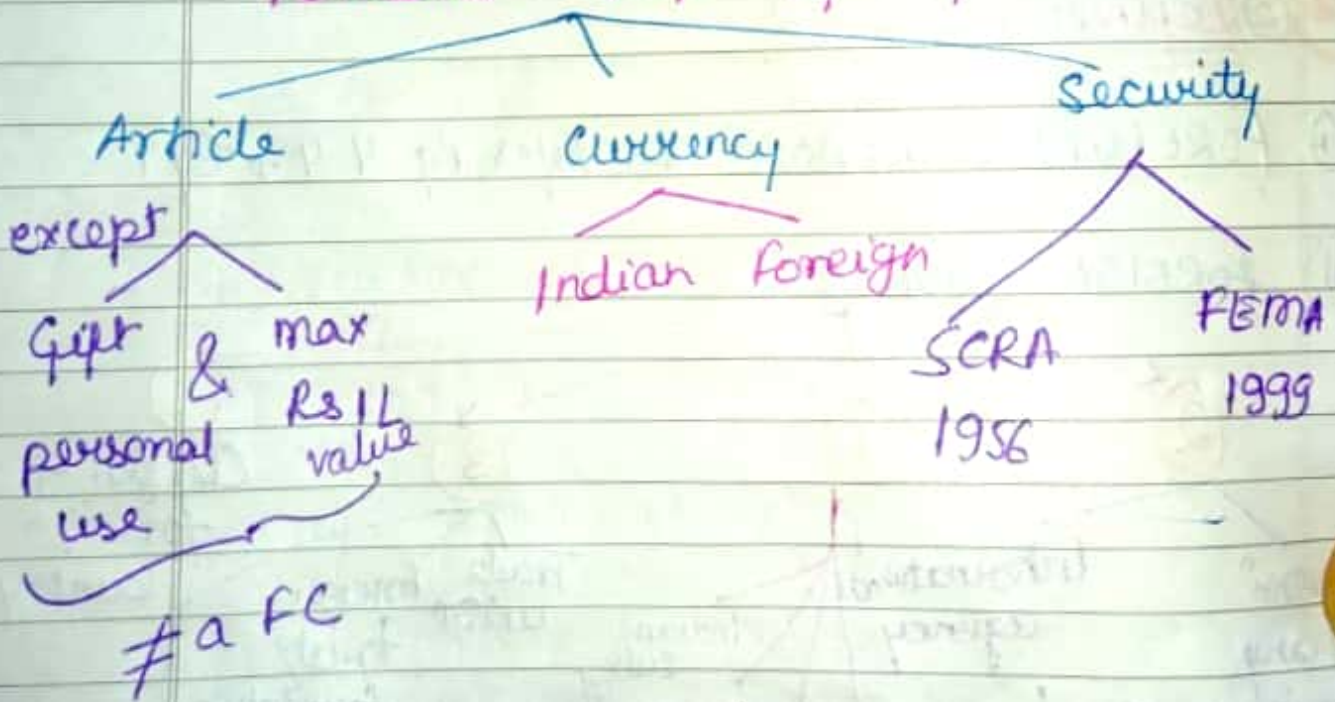


UN, World Bank, IMF and some other international agencies or org.'s are exempted from foreign source.

Proviso Repeals eq 6 Pg 4.7

(iii) Foreign Contribution.

FC means = D/D/T by any FS



Explanation

1. FS $\xrightarrow{\text{FC}}$ AB $\xrightarrow{\text{FC}}$ Actual
direct/indirect

2. Int. on FC \rightarrow also FC

3. fees ← Education
 business
 agen } ≠ a FC

Refer Eg 2 to 7 Pg 4.7

iv) Foreign Hospitality

means any offer

- NOT being a casual one (i.e. formal)

- made in { Cash
 or
 Kind } by foreign source

for providing a person with

Costs of travel to any foreign country

(OR)

with free boarding, lodging, transport

(OR)

medical treatment

v) Relatives means as per Sec 2(77) of CACT 2013

Module Q = 8.5

③ Prohibition to accept FC [Sec 3]

No FC shall be accepted by

- a) election candidate
- b) correspondent (हिंदी/ग़ीदी), columnist, cartoonist, editor of a registered newspaper;
- c) public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Govt.
- d) member of legislature
- e) political party or office bearer
- f) org. of political nature.
- g) Co. engaged in broadcast of audio news or audio visual news.
- h) correspondent, columnist, ~~cartoonist~~ cartoonist, editor of the association or Co. referred in (g)

Directly

Modiji cannot accept FC

1st Indirect

AB → Modiji → cannot accept FC

(Resident in India /
Citizen of India but
Resident o/s India)

2nd Indirect

- Baby → AB → Modiji → cannot accept FC

(Resident ---
- o/s India)

Sec 4 -

4

Situation where Sec 3 shall not apply

Sec. 3 people can accept the following:

a) Salary, wages, remuneration due to him

b) Payment in ordinary course of business transacted by him o/s India.

c) As an agent of foreign source in relation to any transaction made by such foreign source with the Central Government or SG.

d) by way of gift or presentation made to him as a member of Indian deligation.

e) from his relative*

* any person receiving FC in excess of Rs 1 lac or equivalent in a FY, from any of his relative shall inform the CG

in form FC 1 within 30 days from the date of receipt of such

FC

R f) by way of Remittance received.

S g) by way of scholarship, stipend or any payment of like nature.

Refer Eq. & Pg 4.13

⑤ Restriction on acceptance of foreign hospitality [Sec 6]

① Any M - member of a legislature

O - Office bearers of political parties

G - Government servant

J - Judges

E - Employee of any Corporation
or

any other body owned or controlled by the Govt.

can accept FH by obtaining prior permission from CG. [MORA]

② Every application shall be accompanied by an invitation letter from the host

Date _____
Page _____

of host country and administrative clearance of the ministry

(OR)

the department concerned
in case
of visits sponsored by a
Ministry or department
of the
Govtⁿ.

③ The application shall reach 2 weeks before the proposed date of onward journey.

④ → In case of emergency medical aid no permission is required.

→ Only it has to be intimated to CG within one month of such receipt.



giving full details including the

- source ,

- approximate value in Indian Rupees,

- the purpose ^(AND) for which .

- ~~and~~ ^(and) the manner in which it was
utilised

→ However, No intimation is required if the value of such FH in emergent medical aid is upto ONE lakh or equivalent thereto.

⑥ Prohibition to Transfer FC to other Person
- Sec 7

No person who
is registered and
granted a certificate
or
has obtained prior
permission AND receives any FC
shall transfer such FC to any
other person.

⑦ Restriction to utilize FC for administrative purpose
- Sec 8

Every person who receives FC shall
utilised such FC for the purposes
for which the contribution has
been received. use maximum 20%
of such FC in a
financial year to meet
Administrative expenses.

If more than 20% prior CG approval
is required.

Note: Any FC shall not be used for speculative business.

Speculative Business means

Any activity or investment that has an element of risk of appreciation or depreciation of the original investment linked to market forces, including investment in mutual funds or shares.

Participation in any scheme that promises high return like investment in chits or land or similar assets not directly linked to the declared aims and objective of the org or associations.

~~Note:~~ A debt based secure investment shall NOT be treated as speculative investment

⑧ Amount that constitute Adm. Exp /
Not admin expenses.

- Read from Pg 4.16.

⑨ Registration of certain person with Co
- Sec 11

There are two modes for accepting FC

Registration

specific prior
permission

An application for certificate of Registration for accepting FC shall be made in Form FC 3A.

with an affidavit executed by each office bearer and key functionary and member in ~~the~~ Proforma 'AA'.

An application for obtaining prior permission for accepting FC shall be made in Form FC 3B with

an affidavit executed by each office bearer and key functionary and member proform AA, appended to these ~~rules~~.

Any person for ~~make~~ making an application for registration shall have an FCRA A/c #

FCRA Account

Receiving FC

↓
only one account

utilizing FC

↓
multiple account in multiple Bank account

Intimation to CG ≤ 15 days of opening of any account in form FC-60

Refer Eq 9, 10, 11.

Pg. 4.21 module.

No fund other than Foreign contribution shall be received or deposited in any such account

(10) Grant of certificate of Registration - Sec 12

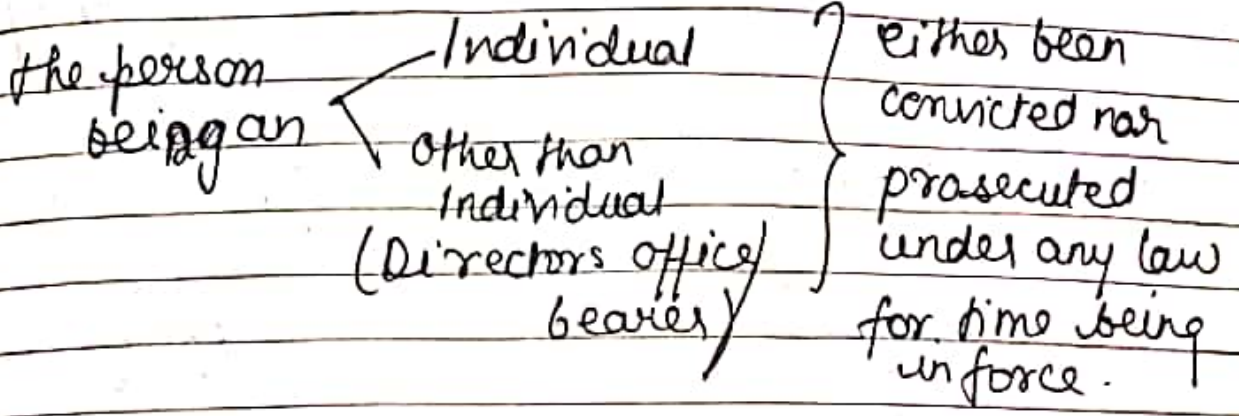
The CG will grant a registration or permission prior

if the person making an application is:

- | | | |
|---|--|--|
| (i)
not
fictitious
or
benami | (ii)
not
prosecuted
or
convicted
for converting
from one
religious faith
to another. | (iii) not prosecuted
or convicted
for
creating
communal
tension
or
disharmony |
| (iv)
not found
guilty or
misutilization
of fund | (v)
not engaged
in violent
methods | (vi)
not likely
to use
FC for
personal
gains |
| vii)
not contravened
any provision
of act | (viii)
not been
prohibited
from accepting
FC | |

the person making application has undertaken reasonable activity and project

for the benefit of society for which FC is proposed to be utilised



→ The acceptance of foreign contribution by the association person is not likely to affect prejudicially.

- The sovereignty and integrity of India
- the security, strategic, scientific or economic interest of the state;
- the public interest
- Freedom or fairness of election to any legislature;
- friendly relation with any foreign state;
- Harmony b/w religious, racial, social, linguistic, regional groups, castes or communities.

→ Acceptance of FC

shall not lead
to
incitement of
an offence;

shall not endanger
the life
or
physical safety
of any person

→ Application ^{shall be} made → CG

Accept

- within 90 days
- will give registration/permission

- Registration valid for
5 yrs

- Permission - valid for
Specific

- Amt
- Purpose
- Service

Reject

Communicate
reasons to
applicant

except
prohibited
by RTI Act,
2005

→ No person shall prepare a second application for registration or prior permission within a period of six months after submitting an application either for grant of prior permission for the same project or for registration.

If FC amount is more than 1 cr

CG may permit its receipts in installment

However, 2nd and subsequent installment shall be released after submission of proof of utilisation of 75% of FC.

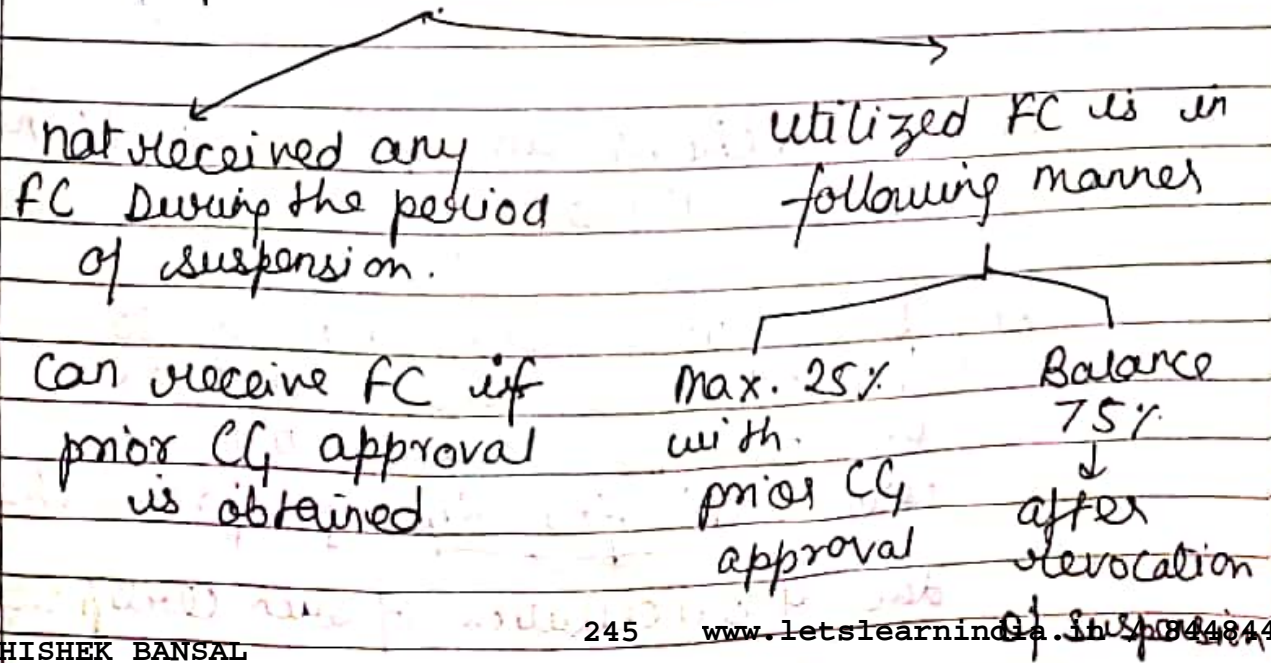
received in previous installment and after field inquiry of utilization of such FC.

II Suspension of certificate (Sec 13)

The CG has a power to suspend the certificate on the ground mentioned in Section 14.

Suspension will be for maximum 180 days.

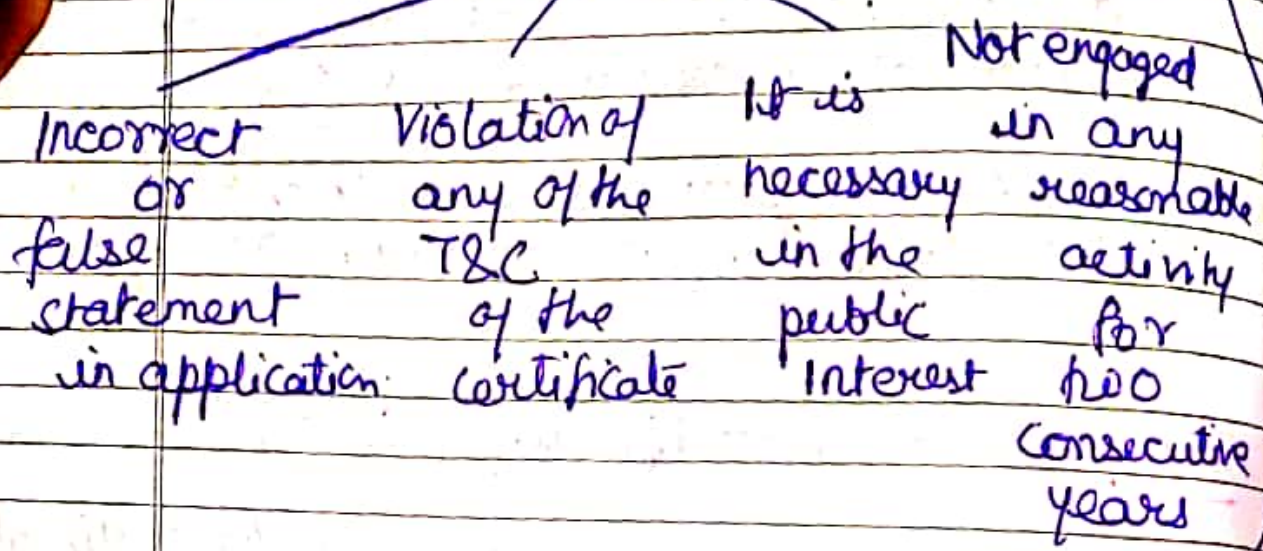
Every person whose certificate has been suspended shall



12

Cancellation of certificate (Sec 14)

The CG can cancel the certificate on following grounds:



Violation of any of the provisions of this Act / Rules / order.

Before cancelling an opportunity of being heard would be given.

Any person whose certificate is so cancelled, who shall not be eligible for registration or permission for 3 yrs from the date of cancellation of such certificate.

12

Surrender of certificate (Sec 14A)

Any person who has been granted certificate of registration shall make an application to CG in form [FC-7] for surrender of certificate of registration.

The validity of certificate surrender shall be deemed to have expired on the date of acceptance of request by CG.

13

Renewal (Sec 16)

Every person who has been granted certificate shall make an application for renewal in [FORM NO FC-3C] along with

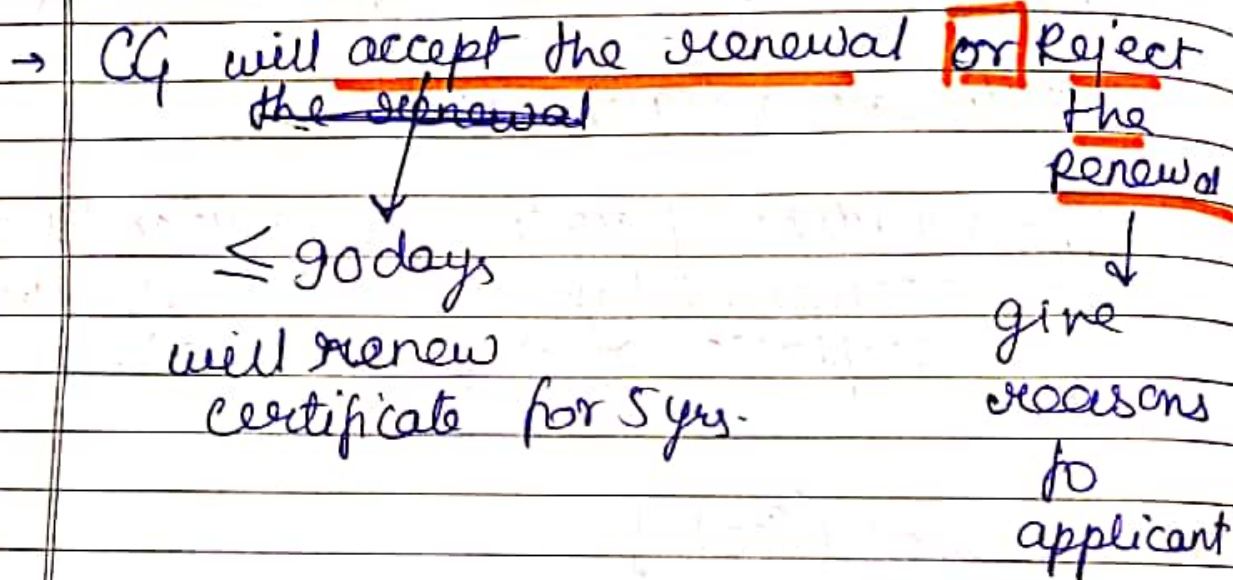
an affidavit executed by each office bearer, ~~Key functionary~~ Key functionary and members in proforma AA and

₹5000 within Six 6 month before

the expiry of the period of the certificate.

If No application for renewal is received or if it is Not accompanied by

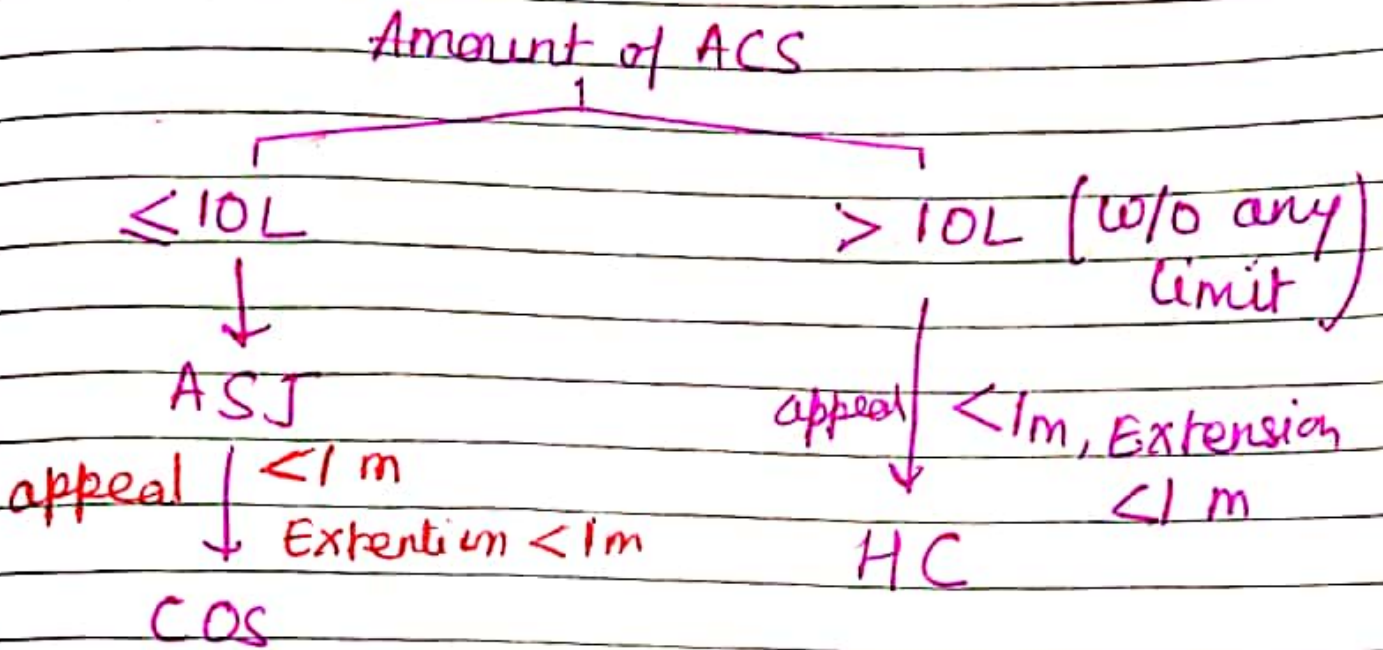
requisite fee than the certificate shall be deemed to have cancelled from date of completion of 5 years.



→ Extension for renewal

Maximum One year after the expiry of original certificate of registration along with late fee of ₹5000

Adjudication & Appeal



→ If organisation of political nature (OR) Person whose application is rejected (OK) whose certificate is cancelled

Appeal to

HC < 600 of order.

Definitions

- a) money laundering
- b) Proceeds of crime
- c) Property
- d) Payment system
- e) Schedule offence
- f) Beneficial owner
- g) Client
- h) FI
- i) Intermediary
- j) Reporting entity.

Pg. 3.3

ii) Person carrying on designated Business or Profession

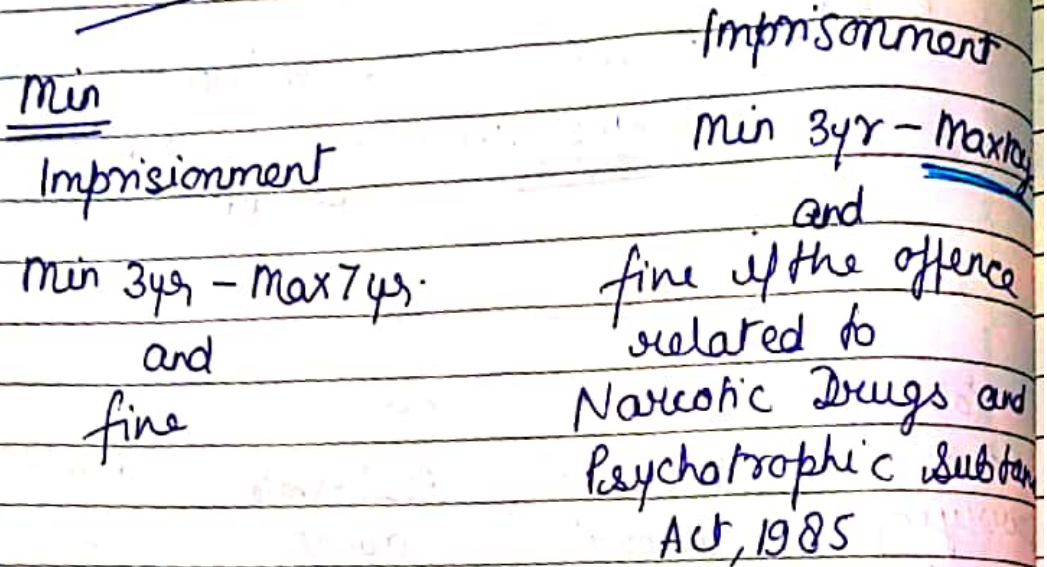
- (a) Person carrying on activities for playing game of chance for cash or kind including activity connected with casino
- (b) Inspector General as per Registration Act, 1908
- (c) Real estate agent having T/O of min Rs 20L
- (d) dealer in precious stone, precious metal, High value goods
 ↓
 if they engage in cash txn. of min Rs 10 lac in single or several operation.

(e) person engaged in safe keeping and administration of cash & liquid security on behalf of other person

(f) person carrying on such activities as may be notified by CG.

Punishment under POMLA

If any person commits the offence of money laundering he will be liable to.



OBLIGATION OF REPORTING ENTITY i.e FBI

① RE has to keep records and inform prescribed txn. to the director who is appointed under the act.

② Every reporting entity shall

(a) shall maintain a record of all txn. which may be prescribed

(b) & furnish such info to the director within such time as may be prescribed.

(c) X

(d) X

(e) & they shall maintain documents related to identity of its clients and beneficial owners as well as business correspondence relating to its client.

③ The records referred in clause (a) [details of txn] shall be maintain for 5 years from the date of txn's b/w a client and Reporting entity.

④ The records referred in clause (e) i.e KYC shall be maintained for 5 years from the date of cessation of relationship b/w a client and reporting entity or the account closure; whichever is later.

REFER Pg 3.16 - module - Maintenance of Records of txn - table - MCQ.

④ POWER OF DIRECTOR TO IMPOSE FINE - Sec 13

Refer Pg 3.18 + Pg. 3.19 module.

⑤ APPEAL TO AT/HIGH COURT

Sec. 26

① Any Reporting entity aggrieved by order of director OR Director or Any Person aggrieved by the order of AA

shall file an appeal to APPELLATE TRIBUNAL within 45 days from the date of order of Director or AA,

as the case may be.

in prescribed form along with prescribed fees

② AT may allow extension if sufficient cause is shown

③ AT may confirm, modify or set aside the order

④ AT shall dispose off the appeal within 6 months from the date of filing of the appeal.

⑤ Sec 42 Any person aggrieved by AT shall file Appeal to HC within 60 day from the date of order of AT on question of law/fact

⑥ HC may allow extension if sufficient cause is shown i.e. maximum 60 days.

⑦ HC means

HC within

jurisdiction where aggrieved party resides, carries on business or personally works for gain;

where CG is aggrieved party Highcourt within the jurisdiction of which the respondent

OR, where there are more than one respondent, any of the respondent, resides or carries on business personally works for gain

DECISION TO BE TAKEN BY MAJORITY. (Sec 38)

⑥

Generally the decision to

However if bench consisting of two members differ in opinion then, they shall state the point or points on which they differ and make a reference to Chairman.

Who shall hear the case himself or

forward the case to the third member of AT & then ^{the} decision will be given by the new majority of the members of AT including those who first heard it.

Note: No civil court will have any jurisdiction or entertain any suit OR pass any injunction order under PMLA [Sec 41]

⑦

SPECIAL COURT

Sec 43

- ① CJ in consultation with Chief Justice of HC for the trial of offence of money laundering shall designate one or more Courts of Sessions as Special Court or Special Courts for such area or areas or class or group of cases as may be prescribed.

② Special Court shall also try an offence with which the accused may be charged at the same trial under Criminal Procedure Code, 1973

Imp ③ The Special Court cannot take cognizance of any offence punishable under sec 4 of the Act, unless a complaint in writing is made by:-

^{The}
a) Director or

b) Any officer of the CG or a SG authorised in writing in this behalf by the CG by a general or special order made in this behalf by that Government.

④ Police officers can investigate offence under this Act only if he is authorised

⑤ Special Court while trying an offence under PMLA shall hold trial as per the provisions of CrPC 1973.

⑧ When bail can be granted under PMLA?

① All offences under PMLA shall be cognizable and non bailable.

However bail can be granted under following

(a)

The Public Prosecutor has been given an opportunity to oppose the application for such release and

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

(b)

If a person is less than 16 years OR is a woman OR is a sick OR infirm OR if he either alone OR along with co-accused is accused of money laundering for a sum of less than one crore

may be released on bail, if special court, so direct.

Imp

(9)

Punishment for VEXATIOUS SEARCH (Sec 62)

Any officer or authority under this Act, who without reason to be recorded in writing

(a) searches or causes to be searched any building or place;

OR

(b) detains or searches OR arrests any person.

shall be liable upto 2 year
or
upto 50000 or both.

(10) Punishment for false info. (Sec 63)

(1)

(2)

(3)

if any person
willfully give
any false info
causing an
arrest or
search to be
made

↓
shall be liable
imprisonment
upto 2 year
or

fine upto 50K
or
both.

if any person
refuses
to answer
any Q, put
by authority
OR

refuses
to sign
any
statement
made by
him in
course of
proceeding

omits to
appear
or
produce
document

Shall be liable for
fine min 500
max 10000
for each
default.

or
(3)

Before passing any order, OOBH = given

11 Recovery of fine or penalty [Sec 69]

① If any fine or penalty is imposed under Sec 69

and

it is not paid within 6 month from the date of imposition of fine or penalty, then

↓
The Director or any officer shall recover the amt. ~~for~~ from said person in the same manner as prescribed in Sch-II of Income tax Act, 1961 for recovery of arrears

and he shall have the same powers of tax recovery officer as mentioned in the said schedule.

12 Offences by Companies [Sec 70]

① If an offence is committed under PMLA, by a Co. then every officer who was responsible for the conduct of business of the Co. as well as the Co. shall be guilty and punished accordingly.

However, if he proves that he has exercised all due diligence to prevent such contravention then he will not be guilty.

② If the offence under PMLA is committed by Co. with the consent or connivance of any Director, manager, secretary or officer then, such director, manager, secretary or officer, shall also be deemed to be guilty and punished accordingly.

③ For the purpose of this section.

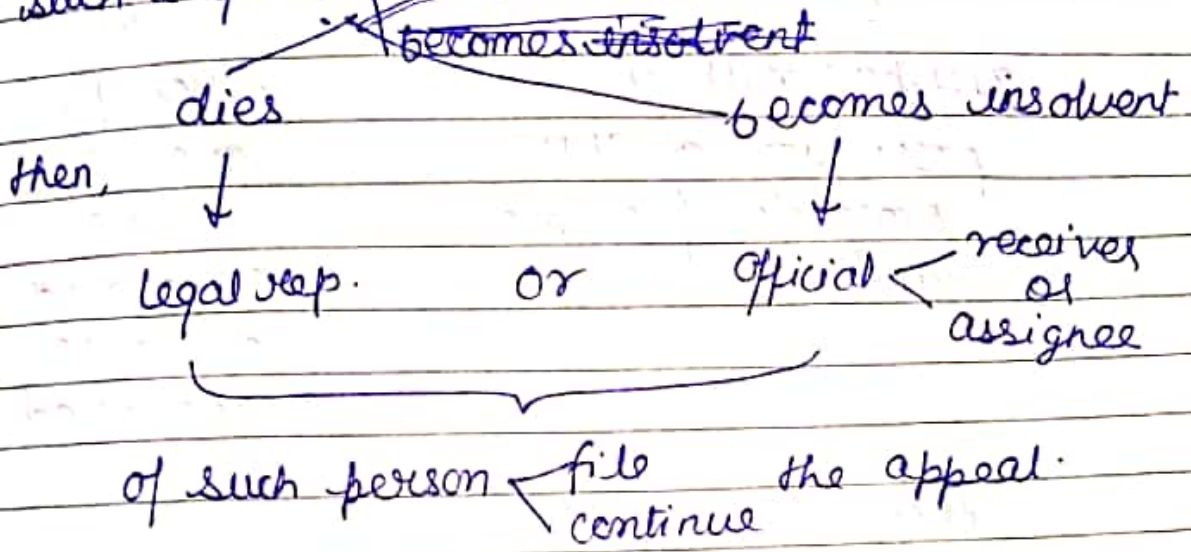
(i) 'Co' means any BC and includes a firm or other association of individuals; and

(ii) "Director", in relation to a firm, means a partner in the firm

13) Continuation of proceeding in the event of death of Insolvency [Sec 72]

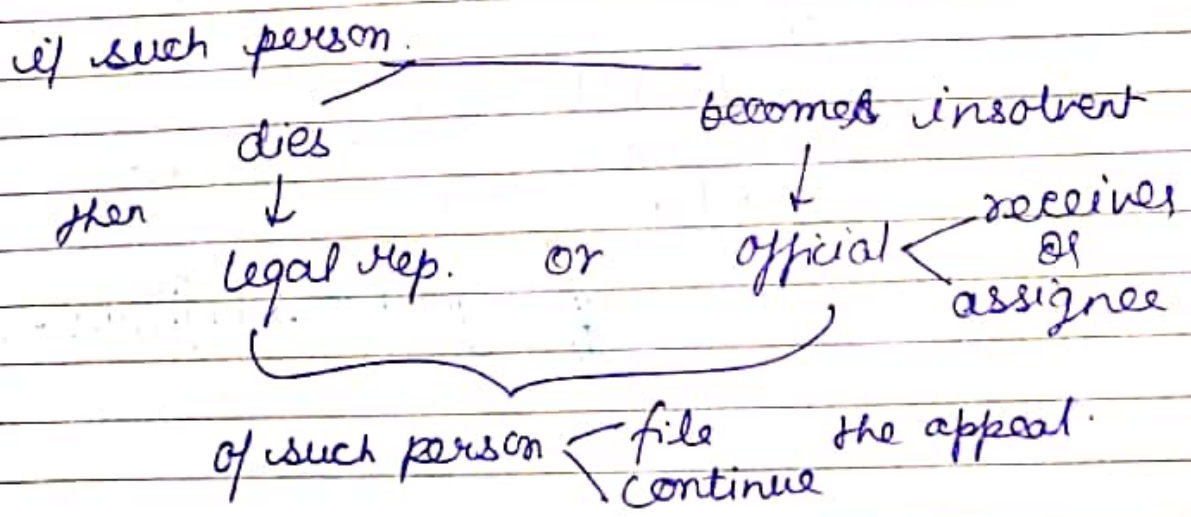
① Where property of a person is attached & no appeal is been made

or
Where the appeal has been made to AT but such a person dies



② Where on the decision of AT, no appeal has been to HC

OR
Where appeal has been made to HC
AND.



(14)

Attachment - Sec 5

① Where the director, or any officer, not below the rank of deputy director has reason to believe that

(a)

any person is in possession of any proceeds of crime and

(b)

such proceeds are likely to be concealed or to be transferred

then,

He may by order PROVISIONALLY ATTACH SUCH PROPERTY for

max 180 DAYS

for computing 180 days, the period of HC stay order shall be excluded and

a period of max 30 days from the date of order of location shall be included.



[i.e 180 - stay order^{HC} + 30]

No order of attachment shall be made unless a report has been forwarded to Magistrate as per Code of Criminal procedure, 1973

OR

a complainant has been filed by a person before the magistrate or court.

② The Director or an officer not below the rank of Deputy Director shall forward the order copy to the adjudicating authority within 30 days from the order of such attachment

③ Every order of attachment shall cease to exist after the expiry of period mentioned i.e. 180 days OR an order made under Sec 8 i.e. Adjudication whichever is earlier

④ However, the person interested is entitled for the enjoyment of immovable property attached.

Person interested includes all persons claiming or entitled to claim any interest in the property.

⑮ Adjudication [Sec 8]

Read from module Pg. 3.10

⑯ Vesting of property in CG [Sec 9]

① When an order of confiscation has been passed in respect of any property of a person,

then all the rights and titles in such property shall vest with CG free from all encumbrances.

② If special court or Adjudication Auth. is of the opinion that any encumbrance on the property or lease hold interest is created with a view to defeat the provisions of this chapter then it shall declare such encumbrance or lease hold interest as void and the property shall vest with CG

free from encumbrances.

③ However, the person will still be liable from any liability in respect of such encumbrances; even though the property is vested with CG.

RECIPROCAL ARRANGEMENT FOR ASSISTANCE

① Refer Eq 2. Pg. 3.26.

② Agreements with foreign country [sec 56]

Pg. 3.24 chart

③ Letter of request to a contracting state [sec 57]

Diag. Pg. 3.25

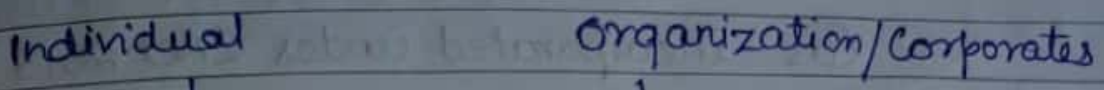
④ Letter of request from contracting state [sec 58]

Diag. Pg. 3.26

Refer Eq 3 Pg. 3.26.

⑤ Refer sec 58 B, sec 59. Pg 3.30

① Term Insolvency can be used for -



State when an Individual or Co. are not able to pay the debt (and) 1

the value of assets held by them are less than liability

If, untreated insolvency, it will lead to -

For non corporates

Corporates

↓
Bankruptcy

↓
Liquidation

② Extent and Commencement of the Code

- As per Sec 1 of IBC, 2016 it applies to
• WHOLE OF INDIA

- It came into force on 28th May 2016

③

IBBI

Departments

Authorities

Corporate

Indiv/P Firm

Insolvency professionals (IP)

Ins. Prof. Agency (IPA)

Info. utility (IU)

↓
NCLT

↓
DRT

↓
NCLAT

↓
DRAT

↓
SC

↓
SC

③ Applicability of the Code - Sec 2

It applies to following entities:

- a) Co's incorporated under C Act 2013 or any previous law
- b) Co governed by any special Act
- c) LLP under LLP Act 2008
- d) Any other Body Corporate notified by CG.
- e) Personal guarantors to corporate Debtors (CD)
- f) Partnership firm and proprietorship firm
- g) Individual referred other than the (e).

→ The Code does not ~~not~~ cover Bank, FI, Insurance Co, Asset Reconstruction Co, MF, Collective Investment Schemes or Pension Fund.

→ IBC is applicable to ~~and~~ NBFC (including Housing Finance Co) with asset size of ₹500cr or more as per last audited B/S.
(ie. Suits against Complain can be file through IBC)

④' Definition - Sec 3 & 5

Read - Corporate Person

- Debt
- Default
- Adjudication Authority
- Corporate Applicant

- Financial Creditor
- Insolvency Comm. date
- Insolvency resolution period

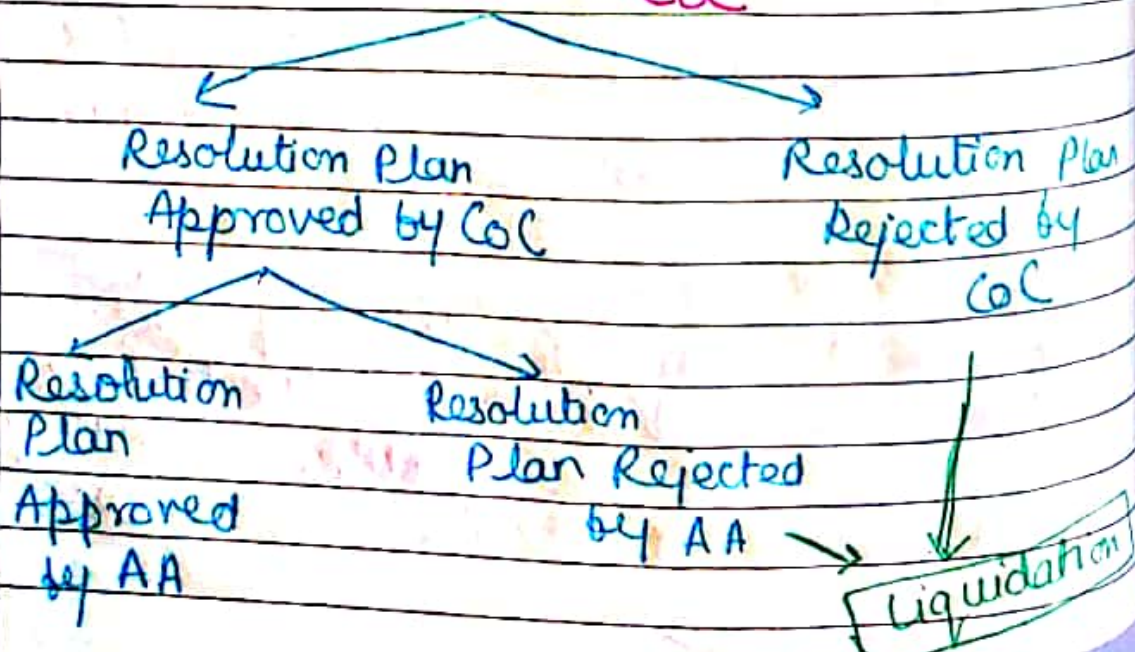
- Voting share.

5

CIRP-Overview

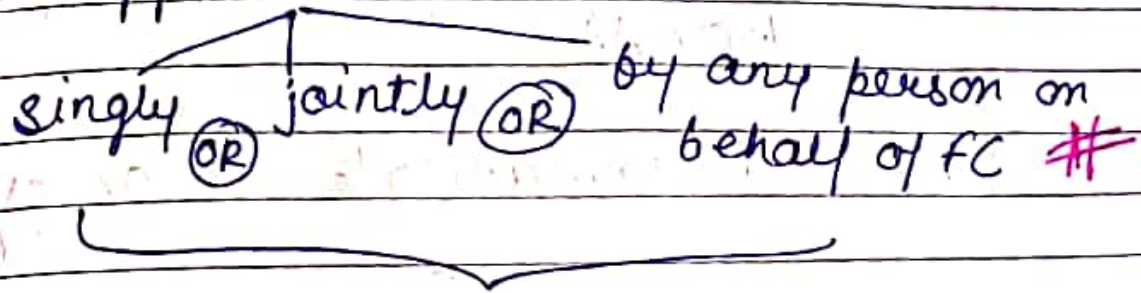
FC
OC
CD

- ① Commitment of Default
- ② Filing of Application with the AA
- ③ Appointment of IRP
- ④ Formation of Committee of Creditor (CoC)
- ⑤ Appointment of RP
- ⑥ Preparation of Info Memorandum by RP
- ⑦ Invitation of Expression of Interest (EOI)
- ⑧ Submission of Resolution Plans by Resolution Applicants
- ⑨ Evaluation of Resolution Plans by CoC



Initiation of CIRP by FC

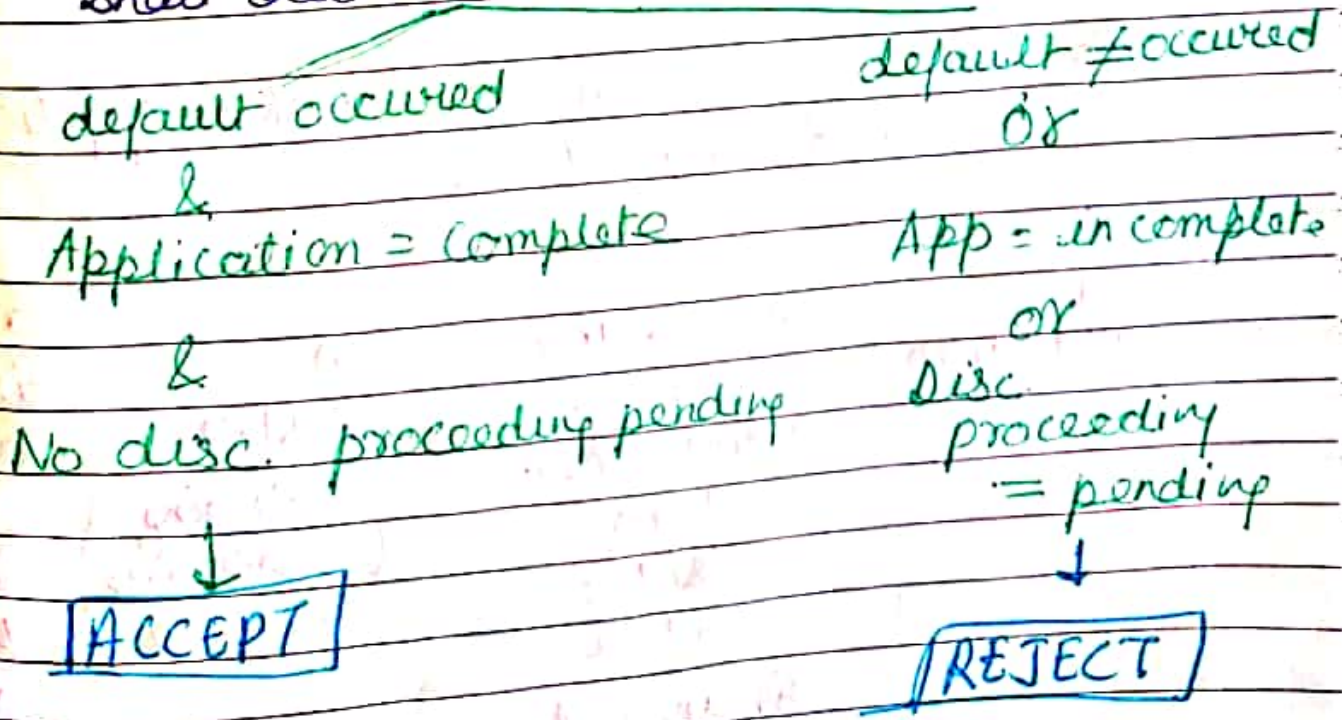
① On Occurrence of Default, a FC shall make an application



shall make an application.
+ record of default
+ Name of RP
+ Any other info.

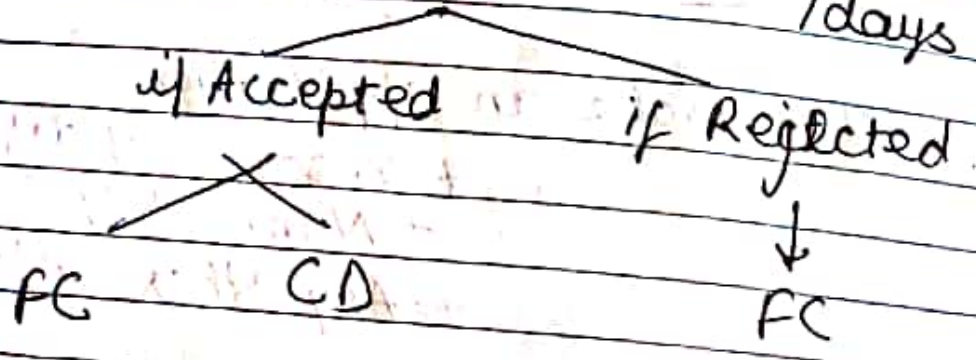
AA (NCLT)

② AA within 14 days of Receipt of application shall decide



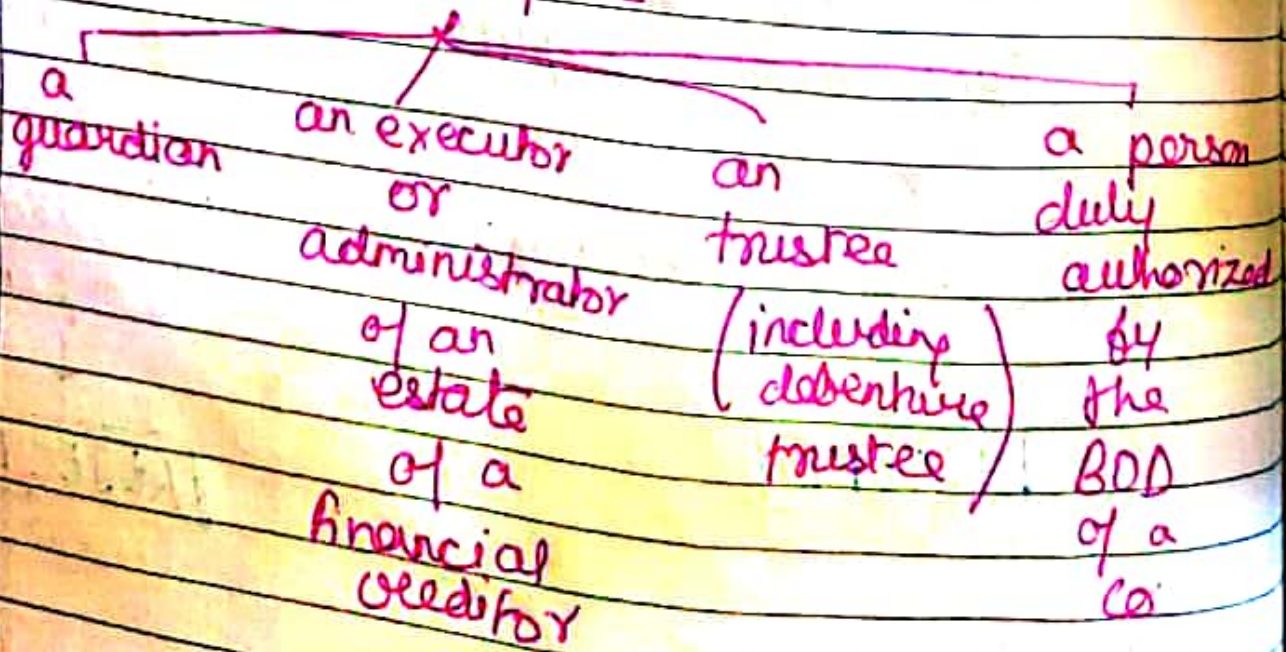
③ Before Rejecting AA will give a chance to Rectify the defect to the applicant within 7 days of Receipt of Intimation from AA.

④ AA will communicate the order within 7 days



⑤ The CRP will commence from the date of admission of application.

following person can make application on behalf of FC



Note: ① An application for CIRP u/s 21(GA)
- (a)(b)

shall be jointly filed by ~~Min.~~
Min. 100 creditor in that class

OR

$\frac{1}{10}$ th of total no. in that class

② An application for CIRP by FC who
are allottees under a Real
Estate Project shall be filed
by

Min. 100 such allottee under same
real estate project

OR

$\frac{1}{10}$ th of total no. of such allottee
under same real estate
project

③^A FC against whom there is no default
cannot file an application individu-
ally but it can file jointly with
other FC provided there

is default against such FC.

⑥ Withdrawal of Application

(A)
Before Admission of Application

(B)
After Admission of Application

a) withdraw

+

AA approval

a) Before COC

↓

AA approval

b)

After COC, Before EOI

↓

Application for withdrawal

shall be submitted

to COC,

COC will give the approval within 7 days.

It shall be approved by COC with 90% of voting share.

The RP shall submit the application of withdrawal to AA within 3 days of such approval.

c)
After EOJ

↓
Same as (b)

+
along with justification
for withdrawal.

Initiation of CIRP by OC

① On occurrence of default,

OC shall submit { Demand Notice
Copy of Invoice } → to CD.

will Reply within 10 days

Stating

existence of dispute
about debt, if any

payment of
unpaid
operational debt
attaching
electronic trf.
copy / cheque
copy.

② If No reply is received (a) no payment
(b) no notice of dispute is received
then,

OC shall file an application to AA for
initiating CIRP

+ invoice copy/demand notice

+ Affidavit stating No notice of dispute is given by CD.

+ Bank statement copy confirming that there is no payment made by CD

+ Any other info

③ Step 2 to 5 of answer 6

⑧ CIRP by Corporate applicant [Sec 10]

① If the default has occurred the corporate applicant shall file an application for CIRP to AA

+ BOA and such other documents

and

+ name of proposed IRP

+ SR passed by SH of CD

or

at least 3 th of the total no. of

partners of the CD

2) Step 2 to 5 of answer 6.

9) Reasons NOT entitled to initiate Insolvency process. [Sec 11]

- a) CD undergoing CIRP/PPIRP
- b) A FC/CC undergoing a PPIRP
- c) CD having completed CIRP 12m before the date of making of the application.
- d) a CD in respect of whom a resolution plan has been approved under Chapter III-A, 12 months preceding the date of making of the application.
- e) CD violating the term of Resolution Plan.
- f) CD in respect of whom a liquidation order has been made.

Refer Eq Pg. 6.32

Page _____

(10) Disposal of application under Sec 54C or Sec 7, 9, 10

① If application for CIRP is filed and any application for PIRP is filed within

14 days of CIRP

↓
Preference given to

↓
PIRP

After ~~the~~ 14 days of CIRP

↓
Preference given to

↓
CIRP

29/6/32

(11) Time limit for CIRP.

① CIRP shall be completed within 180 days

from the date of admission of application.

② It can be extended for 90 days (only once) if COC by a vote of 66% of the voting share.
pass a resolution and make an application to AA

③ The CIRP shall mandatorily be completed

within 330 days from the insolvency commencement date including any extension of the period of CIRP granted and the time taken in legal proceedings in relation to such resolution process of CD.

12) Appointment of Interim Resolution Professional (IRP)

① 'RP' means an insolvency professional appointed to conduct the CIRP and includes an IRP.

- ② If applicant proposes for appointment of insolvency professional
- obtain written commⁿ from IA/insolvency professional.
 - for appointment as IRP

13) Declaration of moratorium and public announcement.

After admission of application, the AA shall pass the following orders

Declare moratorium u/s 14 & cause a public announcement of CIRP	call for submission of claim u/s 15	appoint an IRP u/s 16
---	-------------------------------------	-----------------------

② The public announcement shall be made immediately i.e. within 3 days from the date of appointment of IRP

③ Contents/Particulars of Public announcements

As per Sec 15 of the Code, following are the particulars -

a) Name & address of the CD under CIRP

b) Name of the Authority with which CD is incorporated or registered

c) Name of the IRP who shall be vested with the mgt. of CD.

d) Penalties for false or misleading claims

e) last date for submission of claims.

f) the date on which CIRP will end.

The expenses of the public announcements shall be borne by the applicant which may be

reimbursed by the COC

(14)

Moratorium -

- ① After the commencement of CIRP a calm period, known as Moratorium period is declared, during which all the proceeding against CD held in abeyance.
- ② As per Sec 14 of the Code, the AA shall by order declare moratorium prohibiting all of the following :-
 - a) the institution of suits or continuation of pending suits or proceedings against the CD.
 - b) transferring, encumbering, alienating or disposing of by the CD any of its assets.
 - c) any action to enforce any security interest as per SARFAESI, 2002.
 - d) recovery of any property by owner or lessee.

③ The supply of essential goods or services shall not be terminated or suspended during moratorium period to ^{the} CD

④ The Acts prohibited during moratorium period shall not apply to:

such txn as may be notified by CG in consultation with any financial sector regulator

A surety in a contract of guarantee to a CD.

Thus insolvency, resolution process / recovery proceedings / Bankruptcy proceeding, can be initiated against surety (guarantor) even if moratorium is granted to CD.

⑤ the moratorium will be effective from the date of order

till the completion of CIRP

⑥ moratorium will cease to have effect

if AA approves the resolution plan.

if AA passes the order for liquidation.

Refer eg Pg. 6.37

15

Appointment & Terms & Powers of IRP

① If the application for CIRP is made by

FC/CA

the name proposed in application.

will be IRP.

OC

name proposed

he will be IRP

name not proposed

the AA shall make a reference to the Board for Recommendation

of Insolvency Professional

who may
act as
IRP.

② The term of IRP shall continue till the date of appointment of the RP
u/s 22. [Sec 16]

③ Duties / Powers of IRP.

Read Pg 6.38

16

Resolution Professional (RP)

① The first meeting of CoC shall be held within 7 days of constitution of CoC

② At the first meeting of CoC, the CoC by minimum 66% of the voting shares of FC either

confirm
his appointment
as RP

or

Replace with
him another
RP.

As Replacement of IRP/RP

- If At any time during CIRP,

CoC wants to Replace RP/IRP then,

CoC shall make an application with '66%' vote to AA.

- AA will forward the application to IBBI



within 10 days

confirm
the new RP/IRP.

Refer eg on Pg 6.41

Read Role & Duties of RP - Pg 6.41

The fees payable to RP shall be paid in priority before payment to any creditor.

Eligibility to be appointed as RP

An insolvency professional shall be eligible for appointment as RP

if he and all his partners, directors
are

(a)	(b)	(c)	(d)
eligible to be appointed as an ID on the board of the CD under Sec 149 of the Co Act 13, ↓ where the CD is a Co	Not a Related Party of the CD	not an ee or e proprietor or a partner of a firm of auditors or legal secretarial auditors in practice or Past Auditors of the CD in the last 3 fys.	Not an ee or proprietor or a partner or legal or consulting firm that has or had any txn with the CD amounting to 5% or more of the Gross Turnover of such firm in the last 3 fys.

17 CoC

① The IRP shall constitute a committee of creditor (CoC).

It shall comprise of all FC of CA

② If CD owes financial debt to two or more FC

then each such FC shall have voting right to be determined on the basis of financial debt ~~owe~~ owed to them.

③ If a person is FC as well as OC

He shall be FC to the extent of financial debt owed by CD

He shall be OC to the extent of operational debt owed by CD.

④ If FC or its authorised representative is a Related Party of the CD.

then, ~~the~~ they will have no right to vote in meeting of CoC.

However, if such FC has become Related party of CD on account of conversion or substitution of debt into ES prior to the insolvency commencement date,

then his rights will not be affected.

⑤ Who can act as an authorised representative - fine?

If the financial debt is in the form of security of deposits

&
the terms provides for appointment for Trustee or Agent

↓
Such Trustee or Agent will be AR for all FC.

If the financial debt is owed to a class other than (A)

then

↓

IRP - appⁿ → AA

+

List of FC

+

Name of Insolvency professional

to

Act as AR.

whether the financial debt is represented

by Guardian, Executor, administrator

↓

Such person

shall be

AR

⑥ The IRP shall offer name of 3 insolvency professional

to Act as AR who must be from the State/UT,

which has the highest No. of creditors in the class, as per the record of CD.

If the State or UT does not have adequate no. of Insolvency professional

then

Insolvency professional from nearby state shall be considered.

⑦ All the decision of CoC shall be taken by vote of minimum 51% of voting share of FC

⑧ The CoC shall comprise of all FC.

If CD has NO FC or where all FC are related Party,

then.. CoC shall consist of

10 OC

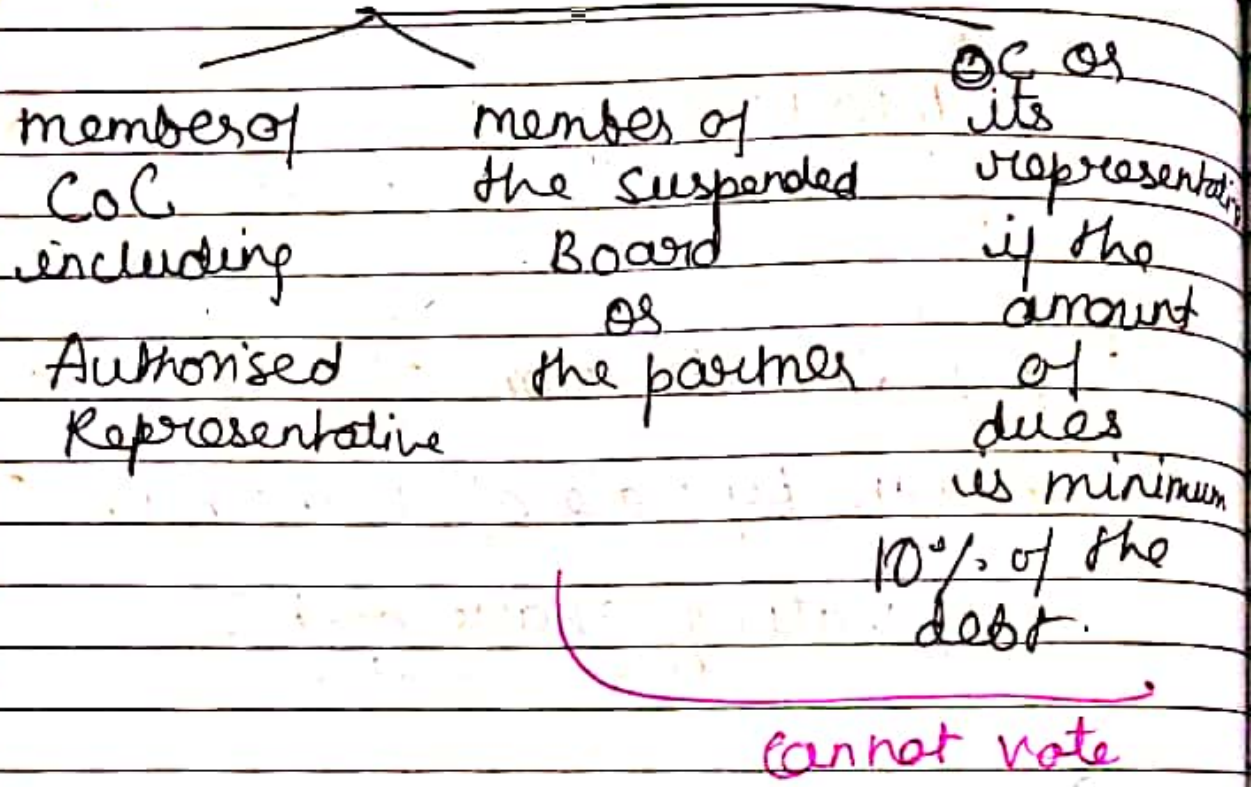
by value

1 representative of workman

1 rep. of ee.

⑨ The

9) The notice of meeting shall be served to the following



10) The IRP shall file a report certifying constitution of CoC to AA, within 2 days of the verification of claims received.

11) The IRP shall hold 1st meeting of CoC within 7 days of filling the Report as mentioned above.

⑫ A Resolution Professional may convene a meeting of CoC — whenever require.

However, it can be requested by member of CoC representing 33% of voting right.

⑬ min. 5 days notice in writing is required for meeting of CoC.

→ 5 days can be reduced
But
min 24 hrs. is required.

If Authorised Representative is there,
min. 48 hr. is required.

Quorum for meeting

- Member holding 33% of voting share } either in person OR Audio visual.

• Quorum X → meeting adjourned
↓
next day, same ← time
place

At Adjourned meeting, member present will be valid Quorum.

18

Persons Not eligible to be Resolution applicant

(Read Pg 6.51 module
or

Paper Q. 18 RTP May 22)

19

Resolution Plan

① It is plan proposed by resolution applicant for Resolution of CD as a going concern.

② Condition for submission of resolution plan by Resolution professional to CoC.

(a) It provides for the payment of Insolvency Res. payment cost to other debts of CD

(b) It provides for the debts of OC as may be specified by the Board.

(c) It provides for the management of affairs of CD after approval of Resolution plan.

d) Implementation & supervision of Resolution Plan.

e) does not contravene any provisions of the law

f) conforms to such other requirement as may be specified by the Board.

③ The GC shall approve the plan with 66% of voting shares of the FC after considering the feasibility and viability.

④ The Resolution applicant may attend the meeting of CoC in which the Resolution plan of applicant is considered.

But

he will have not right to vote unless he is a FC.

⑤ Voting on Resolution plan

If one plan is put to vote

↓
it will be approved if 66% vote is received.

shall be considered as approved.

If 2 or more plan is put to vote

↓
the plan with highest vote subject to Min 66% vote

tie-breaker formula

announced before voting

If 2 or more plan receives equal votes then

↓
CC shall approve any one of them

↓
subject to Min 66% of vote as per the

If None of the plan receive requisite vote

↓
the CoC shall vote on the plan that received highest vote

↓
subject to the timelines under the votes

⑥ The Resolution professional shall submit the Resolution plan, as approved by CoC to AA

⑦ If AA is satisfied that the plan meets all the requirements, it shall approve the Resolution plan, which shall be binding on all.

If AA is satisfied that the plan does not confirm the requirements, it may reject the Resolution plan.

⑧ If the plan is approved, the moratorium order passed shall cease to have effect

△
the RP shall forward all the records to the Board

↓
to be recorded on its database (11)

If the plan provides for combination as per Sec 5 of the competition Act,

the RP shall obtain the approval of competition Commission of India (CCI)

prior to the approval of Resolution plan by CoC

Imp

20

~~Appeal~~ Appeal against Approval of Resolution Plan.

An appeal against order of AA for approving the plan, may be filed on the following grounds

- a) the approved Resolution plan is in contravention of any law
- b) There has been material irregularity in exercise of power by Resolution professional.

c) the debts owed to OC have not been provided

in the Resolution plan.

d) The insolvency Resolution processed cost

have not been provided for repayment in priority to other debts

e) the plan does not comply with any other criteria specified by the Board.

If the plan is not filed within 180 days of the commencement date

OR such other extend period

the AA may pass order for liquidation.

21

LIQUIDATION

① A Co. CD may be put into liquidation in following cases.

① Non Receipt of Plan during CIRP.

② 66% of members of CoC resolves to liquidate CD

at any time during the Insolvency Resolution process

before confirmation of Resolution Plan.

③ The CoC does not approve the plan within 180 days or extended 90 days

④ NCLT rejects the plan submitted to it on technical ground.

⑤ The debtor contravenes the agreed resolution plan and an affected person makes an

application to NCLT to liquidate the

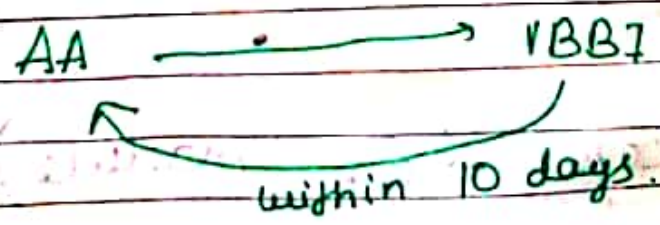
22

LIQUIDATOR

If AA passes the order for liquidation, the Resolution professional appointed for CIRP or PIRP shall act as liquidator. unless replaced.

The AA may direct the board to propose a name of another Insolvency Professional to be appointed as liquidator.

The Board will propose a new Name within 10 days of direction issued by AA.



Grounds for replacement

the Resolution Plan submitted by the R.P

was rejected for failure

to meet the requirements;

the Board recommends the replacement of a RP

(OR)

to the AA

for

reason

to be recorded in writing

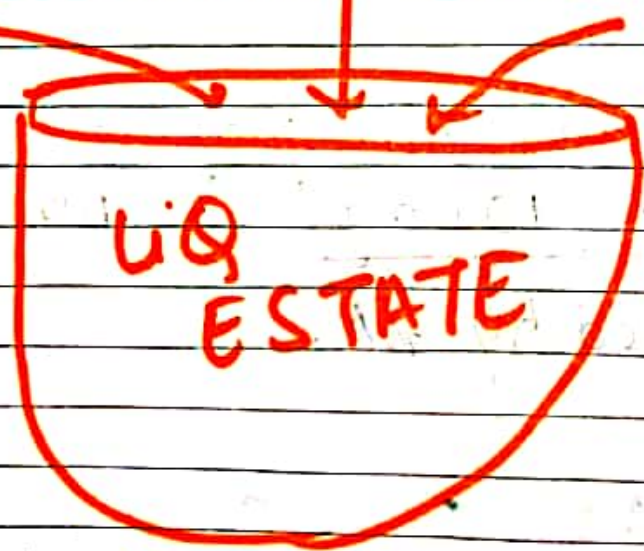
the Resolution professional

fails

to

submit written Consent

23 LIQUIDATION ESTATE



(Refer 6.67 module)

(जो अपना है वो आरगा)

(24) DISTRIBUTION OF PROCEEDS FROM SALE OF LIQUIDATION ESTATE

It should be distributed in the following order of priority.

a) Insolvency Resolution process cost and liquidation cost

b) the following Debts shall rank equally

(i) workman due for 24 months

preceding liquidation commencement date

(ii) Debts owed to secured creditor

if secured creditor has relinquish (give up) security.

c) wages & unpaid dues owed to employees for 12 months preceding the liquidation commencement date.

d) financial debts to unsecured creditor

e) following debt shall ranked equally;

- (i) amounts due to CG/SG for 2 years preceding the liquidation commencement date
- (ii) debt owed to secured creditor for any amt. unpaid following the enforcement of security interest

who has sold the security & there is shortfall

- f) any remaining debts and dues.
- g) PSH
- h) ESH or partners

- The order has to be followed strictly
- The fees payable to liquidator

shall be deducted proportionately from each class of recipient

(Refer Q13 19.6.96)

The liquidator shall distribute proceeds from realisation within 90 days.

from the receipt of amount to the stake holders.

②5 Dissolution of CD

Where the assets of CD have been completely liquidated,

• Liquidator → applⁿ → AA for dissolution of CD.

• AA on receipt → order → dissolution.

• order copy → filed → within 7 days of order to the Authority with ~~with~~ with the CD is registered.

• The liquidator shall liquidate CD within one year.

• If he fails, he shall make an application to AA → to continue such liquidation along with report explaining the reasons for Non completion & specifying the addⁿ time that shall be required for liquidation.

26 Fast TRACK insolvency

(i) An application for fast track shall be made in respect of following

CD :-

- a) small Co. u/s 2(85)
- b) a startup (other than partnership firm) as per 23/5/2017 notification.
- c) unlisted Co. with total assets not exceeding ONE crore as per the last FY.

② The fast track CIRP shall be completed within 90 days from the insolvency commencement date.

③ Extension = 45 days, ONLY ONCE for extension, the RP shall make application to AA, if the resolution is passed by CoC having 75% of voting share

②7 Voluntary liquidation of corporate person - Sec 59

① A corporate person may liquidate voluntarily who has not committed any default.

② Condition:

(a) a declaration from majority of the directors along with affidavit stating that.

(i)

they have made full inquiry into Affairs of Co. & they are of the opinion that there is NO DEBT

If there is DEBT they will pay in full from the proceeds of voluntary liquidation.

OR

AND

(ii) Co. is not being liquidated to defraud its

(b) The declaration shall be accompanied with

audited FS + record of business operation of 2 years

report of values prepared by registered valuer.

OR
Incorporation period

whichever is later

c) within 4 weeks of declaration.

SR = passed
requiring the Co.

to be liquidated
voluntarily

&
appointing insolvency
professional

to act as
liquidator.

Gm resolution
requiring the
Co. to be liquidated
voluntarily

after expiry of period
or occurrence of event
mentioned in
AOA
fixed by ADA.

& appoint
insolvency professional
at

to act as
liquidator.

In either case (SR/Gm) if Co. owes debt

creditor representing $\frac{2}{3}$ rd in value

shall approve the resolution within
7 days of such resolution

③ The Co shall notify ROC & IBBI about the resolution to liquidate within 7 days of such resolution

④ The Voluntary liquidation proceeding shall be deemed to be have commenced from the date of passing of resolution.

Imp

⑤ The Corporate person may to replace the liquidator by passing SR.

& appoint new Insolvency professional from the panel.

Such Insolvency professional within 3 days of appointment

intimate the IBBI about such appointment

⑥ If the affairs have been completely wound up then

- Liq → Appⁿ → AA for dissolution
- AA on receipt, pass order for dissolution.
- order copy → forwarded → Authority with which it is registered within 14 days of order.

% of IBC

66% → COC approval for all IBC decision

51% (majority) → COC approval for business decision.

90% → withdrawal of application.

75% → Extⁿ for fast track CIRP

33% → Quorum/Req. by COC for meeting

→ Full Resolⁿ = Completed = 180 days
process Ext = 90 days

→ If legal cases pending = 330 days
(specific cases only)

→ AA to decide $\left\{ \begin{array}{l} \text{Accept} = 14 \text{ days} \\ \text{Reject} \end{array} \right.$

→ Rectification of Applⁿ = 7 days.

→ Communication of Order $\left\{ \begin{array}{l} \text{Accept} = 7 \text{ days} \\ \text{Reject} \end{array} \right.$

→ Public Announcement = 3 days

→ Term of IRP = till RP appointed.

→ CoE 1st meeting = 7 days of confirmation report submitted by RP

RP to submit confirmation report
≤ 2 days of constitution of COC.

→ Application increase of OC = CD to reply ≤ 10 days

→ Replacement $\left\{ \begin{array}{l} \text{RP} \\ \text{liq.} \end{array} \right. = \text{IBBI} = \text{revert} \leq 10 \text{ days}$

→ Voluntary liq. = within 4 weeks → pass SR/ of declaration GMR

→ Dissolution order copy $\left\{ \begin{array}{l} \text{CIRP} = 7 \text{ days} \rightarrow \text{Authority} \\ \text{voluntary} = 14 \text{ days} \rightarrow \text{Authority} \\ \text{liq.} \end{array} \right.$

- Fasttrack CIRP = 90 days

EXTⁿ = 45 days.

Pre-Packaged Ins. Resolution Process (PIRP)

Sec 54A - 54P

PIRP → Applicable to Micro, Small and Medium Enterprise (MSME) [Co./LLP]

Default Amt → min 10 lac & max 1 cr.

- MSME required to get Udyam Regist. Certificate.

- To get registered under MSME, 2 condⁿ simultaneously should be satisfied -

↓

	<u>Micro</u>	<u>Small</u>	<u>Medium</u>
--	--------------	--------------	---------------

① Invest. in P&M	≤	1 cr	10 cr	50 cr.
+				

② Annual T/O	≤	5 cr	50 cr	250 cr
--------------	---	------	-------	--------

Difference in CIRP vs PPRIP.

CIRP

PPRIP

1) Min. Default.	1cr.	10 lakh.
2) Applicability	All (Sec 7/9/10)	MSME (6/UP)
3) Base Sec for App. Application.	Sec 7/9/10	S4C
4) Control.	T/f to Creditors	Remain with promoters
5) Who can make application.	FC/OC/CD	only CD i.e. MSME
6) Management	RP is respons. for mgt during IRP	only ED same mgt, continues unless wrong doing
7) Time limit	180 + 90 + 60 = 330 max	120 days <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p>Pre intimation Phase</p> <p>↓</p> <p>90 days</p> </div> <div style="text-align: center;"> <p>acceptance by AA</p> <p>↓</p> <p>30 days</p> </div> </div>
8) CoG approval	66% / 75% / 90% / 51%	66% for all approval.
9) Resolution Plan.	prepared after CIRP initiated	Base plan is ready at the time of appl.

CIRP

⑧ ~~Resolution Plan~~

⑩ Condition for application.	Default should exist	Default + SR of majority of members
⑪ RP.	first IRP then RP	Directly RP (No consent of IRP)

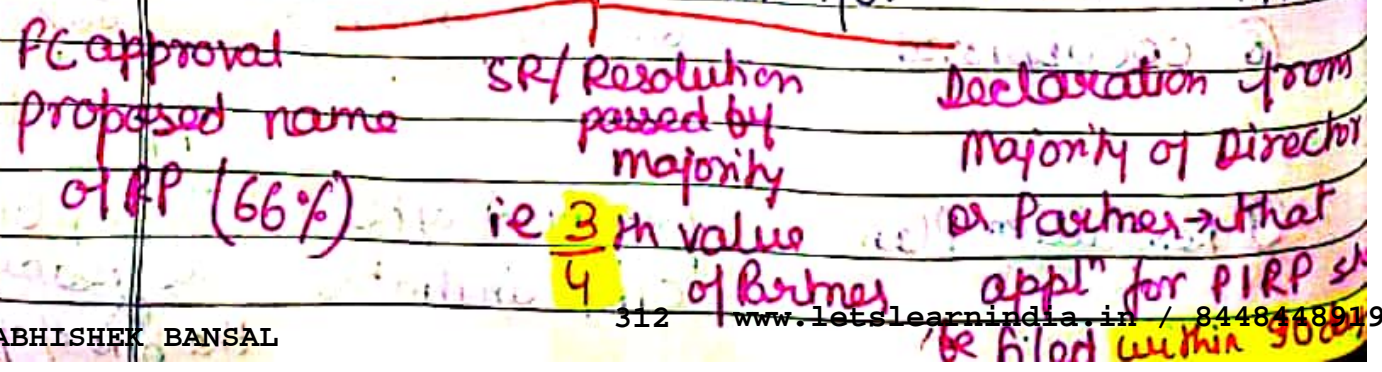
Common

- 1) Moratorium (only no. of days different)
- 2) Section 30 (Criteria of Resolution Plan)
- 3) Liquidation process
- 4) IBC 4/s 53

Sec 54 A & C

MSME (G. LLP) → Min 10 lakh
Max 1 cr default exist

CD (ie MSME) → make application before AA for initiation PIRP



Within 14 days AA either:

Accept

Reject

→ Default exist

→ No default exist

→ No litigation is pending against RP

→ Pending litigation against RP.

→ Application is complete

→ Application incomplete



Communicate acceptance within **7 days**

Reject



from date of acceptance to CD

But before rejection time to rectify within **7 days**



Communicate rejection within **7 days** of rejection to CD.

PPIRP → commenced on the date of admission of Application.

from Commencement date:

#

(i)

Completion of PIRP within 120 days

(ii)

Submission of Resolution plan by RP (after approval of COC, 66%) to AA within 90 days.

(iii)

Declaration of Moratorium of Moratorium
↓
• same day
• cease when PPIRP end.

i.e. 90 days में COC Plan approve करेगा

and 30 days में NCLT plan approve करेगा

(iv)

Submission of list of claims
↓
Promoter within 2 days submit to RP
↓

• list of claims
• Preliminary info and submit base resolution plan to RP within 2 days.

(v)

Constitution of CoC
↓
RP → 7 days based on list of claims
↓
1st meeting date held within 7 days of constitution.

→ If base plan is

Resolution plan

↓

within 21 days

↓

and atleast 15 days should be provided for submission of plan to Resolution applicant.

Sec 11 A

Simultaneous Applⁿ made under CIRP (7/9/10) and PPIRP (54C)

↓

Applⁿ u/s 54C is pending

↓

PPIRP.

Application u/s 7/9/10

is made before application u/s 54C

Application u/s 54C is made within 14 days

↓

Applⁿ u/s 54C (PPIRP)

↓

First Disposed

Applⁿ u/s 54C is made after 14 days

↓

Application u/s 7/9/10 (CIRP)

↓

First Disposed.

Sec 43:- Preferential transactions

i) If Liquidator / Resolution Professional = Opinion that CD

↓
Preference in such transaction / such manner

↓
Apply to Adjudicating Authority for avoidance of preferential transactions

ii) A CD shall be deemed to have given preference if

TRF of Property / Interest for benefit of creditor / surety / guarantor

AND

Such transfer has effect of putting such creditor / surety / guarantor in a better position

iii) Following are not preferential transactions

transfers in ordinary course of business

Any transfer creating a security interest in property acquired by CD to the extent that

it creates new value to CD

&

such trf was registered with information utility on or before 30 days after CD receives possession of such property

iv) A preference shall be deemed to be given at relevant time if

given to Related Party during 2 yrs preceding insolvency commencement date

given to other than RP during 1 year preceding insolvency commencement date

Sec 44:- Orders in case of Preferential Transaction

— AA can pass following orders:-

- a) Require property to be vested in CD.
- b) Require any property to be so vested if it represents application of proceeds of sale of property so trfd or of money so trfd.
- c) Release / discharge any security interest created by CD.
- d) Require any person to pay such sums in respect of benefits received by him to liquidator / RP.
- e) direct any guarantor whose financial debts / operational debts were released to be revived as AA deems appropriate.
- f) direct for providing security or charge on any property for discharge of any financial debt / operational debt
- g) direct for providing the cost to person whose property is so vested in CD.

→ ↑ order shall not affect if transfers are in good faith.

Sec 45 :- Avoidance of Undervalued transaction

→ If the Liq/RP believes that certain transactions were undervalued →

↓
Application to AA → to declare such transactions as **VOID & REVERSE** the effect of such transaction

→ UNDERVALUED TRANSACTION → WHEN CP

MAKES A **GIFT** TO A PERSON

OR

ENTERS INTO A TRANSACTION WHERE VALUE IS SIGNIFICANTLY **LESS THAN VALUE** OF CONSIDERATION PROVIDED BY CP & IT IS NOT IN ORDINARY COURSE OF BUSINESS

Sec 46:- Relevant Period for avoidable transaction

If Made with

RP
within 2 years
preceeding insolvency
commencement date

Other than RP
within 1 year
preceeding insolvency
commencement date

Sec 47:- Application by Creditor in case of undervalued transactions

→ If undervalued transaction = taken place
but RP/Liq. ≠ reported to AA,

then CREDITOR / MEMBER / PARTNER OF CO



Applⁿ to AA to declare such transaction
as VOID & REVERSE their effect

→ If AA = satisfied that,

- 1) undervalued transaction had occurred &
- 2) Liquidator / RP ≠ reported,

then,

AA = pass order

Restore
the position as it
existed before
& reverse its
effect

require the BOARD
to initiate disciplinary
proceedings against the
Liq. / RP.

Sec 48 :- Order in case of undervalued transaction

AA may pass following order

- Require any property to be vested in CO.
- Release/discharge any security interest granted by CO
- Require any person to pay such sums as AA may decide.
- Require payment of such consideration as determined by expert.

Sec 49:- Transactions defrauding Creditors

→ Where CO has entered into undervalued transactions & it was deliberately entered into by such CO

for keeping assets of CO beyond the reach of any person = entitled to make a claim against CO

Adversely affect the interest of such persons then,

→ AA = order

Restoring the position & protect the interests of persons who are victims of such transaction.

→ It will not affect if done in good faith.

Sec 50:- Extortionate Credit transaction

→ Where the CD has been a party to an extortionate credit transaction involving receipt of financial / operational debt during within 2 years preceding insolvency commencement date;

Liq / RP → applⁿ to AA for avoidance of such transaction

— Board may specify circumstances which will be covered under this

Sec 51 :- Orders of AA for extortionate transaction

AA will order :-

- Restore the position as it existed before
- set aside \leftarrow whole part of debt.
- modify the terms of transactions
- require any person to repay any amt received by such person
- require any security interest that was part of extortionate credit transaction to be relinquished in favour of Liq / RP.



CONGRATULATIONS!

CA FINAL JAN 21 RESULT



ALL INDIA RANK
(AIR) **29th**

SHUBHAM KAKHANI



ALL INDIA RANK
(AIR) **36th**

PRANCHAL KASERA

Sr. No.	Name	LAW
1	Shubham Kakhani	74
2	Hitesh Rajesh Soni	71
3	Ritik Pachori	68
4	Abhishek Arora	65
5	Shoyal Shukla	64
6	Nikhil Rathit	64
7	Neha Gupta	64
8	Laxmikant Bohra	62
9	Pranchal Kasera	61
10	Devansh Unadhyay	60

Sr. No.	Name	AUDIT
1	Saipriya Sridhar Chari	66
2	Pranchal Kasera	51

Sr. No.	Name	ECO LAW
1	Rithik Pachori	60



CA ABHISHEK BANSAL

Contact: 8448448919
www.letslearnindia.in

CA ABHISHEK BANSAL

322