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भारतीय कम्पनी सचिव संस्थान

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SUPPLEMENT PROFESSIONAL PROGRAMME

**(This supplement covers Amendments/ Developments
from August, 2021 to May, 2024)**

RESOLUTION OF CORPORATE DISPUTES, NON-COMPLIANCES & REMEDIES

MODULE 2

PAPER 6

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Lesson 1 - Shareholders' Democracy

1. SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5.5.2021.

In regulation 44(3) of SEBI(Listing Obligations and Disclosure Requirements) Regulations, 2015 by the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 w.e.f. 5.5.2021, the words “forty eight hours” has been replaced by the word “Two Working Days”.

The revised regulation 44(3) reads as under:

The listed entity shall submit to the stock exchange, within two working days of conclusion of its General Meeting, details regarding the voting results in the format specified by the Board.

2. SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2022 (January 24, 2022)

SEBI vide its notification dated January 24, 2022, has amended the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which came into force on the date of their publication in the Official Gazette.

The amendments *inter alia* provide that-

- The listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors or as a manager is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier. [Regulation 17(1C)].
- The appointment or a re-appointment of a person, including as a managing director or a whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting, shall be done only with the prior approval of the shareholders. Further, the statement referred to under sub-section (1) of section 102 of the Companies Act, 2013, annexed to the notice to the shareholders, for considering the appointment or re-appointment of such a person earlier rejected by the shareholders shall contain a detailed explanation and justification by the Nomination and Remuneration Committee and the Board of directors for recommending such a person for appointment or re-appointment. [Proviso to Regulation 17(1C)].

For details: <https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2022-55526.html>

3. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023(June 14, 2023)

SEBI(LODR) (Second Amendment), 2023 has *inter alia* added a regulation 31B to the SEBI(LODR) Regulations, 2015. Regulation 31B reads as under:

“(1) Any special right granted to the shareholders of a listed entity shall be subject to the approval by the shareholders in a general meeting by way of a special resolution once in every five years starting from the date of grant of such special right:

Provided that the special rights available to the shareholders of a listed entity as on the date of coming into force of this regulation shall be subject to the approval by shareholders by way of a special resolution within a period of five years from the date of coming into force of this regulation:

Provided further that the requirement specified in this regulation shall not be applicable to the special rights made available by a listed entity to a financial institution registered with or regulated by the Reserve Bank of India under a lending arrangement in the normal course of business or to a debenture trustee registered with the Board under a subscription agreement for the debentures issued by the listed entity, if such financial institution or the debenture trustee becomes a shareholder of the listed entity as a consequence of such lending arrangement or subscription agreement for the debentures.”

Details of Change

Regulation 31B has been added SEBI (LODR) Regulations, 2015 which mandates the company to obtain the approval of the shareholders by way of Special Resolution in case of grant any special right every five years starting from the date of grant of such special right. It further mandates the approval of shareholders by way of a special resolution for existing special rights available to the shareholders of a listed entity. However, financial institution registered with or regulated by the Reserve Bank of India under a lending arrangement in the normal course of business and debenture trustee registered with the Board under a subscription agreement for the debentures issued by the listed entity are exempted from the requirement of this regulation.

Lesson 2 - Corporate Disputes

1. Section 9 of the Companies (Amendment) Act, 2020 amended Section 56(6) of the Companies Act, 2013 w.r.t. Transfer and Transmission of Securities. w.e.f. December 21, 2020

Section 56(6)

Old Penal Provision

Where any default is made in complying with the provisions of sub-sections (1) to (5) of Section 56 of the Companies Act, 2013 w.r.t. provisions of the Transfer and Transmission of Securities, the company shall be punishable with fine which shall not be less than ₹ 25000 but which may extend to ₹ 5 lakh and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 10,000 but which may extend to ₹ 1 lakh.

New Penal Provision

Where any default is made in complying with the provisions of sub-sections (1) to (5) of Section 56 of the Companies Act, 2013 w.r.t. the provisions of Transfer and Transmission of Securities, the company and every officer of the company who is in default shall be liable to a penalty of ₹ 50000.

Details of Changes:

Reduction in amount of monetary Penalty.

For more details:

http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

2. Section 10 of the Companies (Amendment) Act, 2020 omitted Section 59(5) of the Companies Act, 2013 w.r.t. Rectification of Register of Members. w.e.f. December 21, 2020 Section 59(5)

Old Penal Provision

If any default is made in complying with the order of the Tribunal under Section 59 of the Companies Act, 2013, the company shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 5 lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 3 lakhs, or with both.

Details of changes:

Section 59(5) of the Companies Act, 2013 w.r.t. penal provisions for default in complying with the order of NCLT relating to rectification of register of members has been omitted.

For more details:

http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

3. Section 64 of the Companies (Amendment) Act, 2020 has amended Section 452 of the Companies Act, 2013 w.r.t. “Punishment for Wrongful Withholding of Property”- Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)

In Section 452(2) of the Companies Act, 2013, the following proviso has been inserted, namely:—
"Provided that the imprisonment of such officer or employee, as the case may be, shall not be ordered for wrongful possession or withholding of a dwelling unit, if the court is satisfied that the company has not paid to that officer or employee, as the case may be, any amount relating to—

(a) provident fund, pension fund, gratuity fund or any other fund for the welfare of its officers or employees, maintained by the company;

(b) compensation or liability for compensation under the Workmen's Compensation Act, 1923 in respect of death or disablement."

*For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MO==&docCategory=Notifications&type=open>*

Lesson 4 - Fraud under Companies Act, 2013 and Indian Penal Code, 1860

1. Section 30 of the Companies (Amendment) Act, 2020 amends Section 143(15) of the Companies Act, 2013 w.r.t. Powers and Duties of Auditors and Auditing Standards w.e.f. December 21, 2020

Section 143(15)

Old Penal Provision

If any auditor, cost accountant or company secretary in practice do not comply with the provisions of sub-section (12) of Section 143 of Companies Act, 2013, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

New Penal Provision

If any auditor, cost accountant, or company secretary in practice does not comply with the provisions of sub-section (12) of Section 143, he shall,—

- (a) in case of a listed company, be liable to a penalty of five lakh rupees; and
- (b) in case of any other company, be liable to a penalty of one lakh rupees.

Details of the Change

Penalties for auditor, cost accountant, or company secretary in practice who does not comply with the provision of 143(12) related to reporting of fraud are fixed.

For more details:

http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

2. Securities Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2003, Dated October 19, 2020

In regulation 4, in sub-regulation (1), the following Explanation shall be inserted, namely:—
“Explanation.—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.”

Details of the Change

Regulation 4(1) of Securities Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 provides that no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets. An

explanation has been added to the said regulation for explaining deemed manipulative, fraudulent and an unfair trade practice in the securities market.

For more details:

https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-prohibition-of-fraudulent-and-unfair-trade-practices-relating-to-securities-market-second-amendment-regulations-2020_47963.html

Lesson 5 - Regulatory Action

1. Securities Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second Amendment) Regulations, 2003 Dated October 19, 2020

In regulation 4, in sub-regulation (1), the following Explanation shall be inserted, namely:—
“Explanation.—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.”

Details of the Change

Regulation 4(1) of Securities Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 provides that no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets. An explanation has been added to the said regulation for explaining deemed manipulative, fraudulent and an unfair trade practice in the securities market.

For more details:

https://www.sebi.gov.in/legal/regulations/oct-2020/securities-and-exchange-board-of-india-prohibition-of-fraudulent-and-unfair-trade-practices-relating-to-securities-market-second-amendment-regulations-2020_47963.html

2. Section 33 read with Part X of the second schedule of International Financial Services Centres Authority Act, 2019 inserts section 44A of Foreign Exchange Management Act, 1999 w.e.f. October 1, 2020

Section 44A of Foreign Exchange Management Act, 1999

New provision

Powers of Reserve Bank not to apply to International Financial Services Centre.— Notwithstanding anything contained in any other law for the time being in force, the powers exercisable by the Reserve Bank under this Act,— (a) shall not extend to an International Financial Services Centre set up under sub-section (1) of section 18 of the Special Economic Zones Act, 2005 (28 of 2005); (b) shall be exercisable by the International Financial Services Centres Authority established under sub-section (1) of section 4 of the International Financial Services Centres Authority Act, 2019, in so far as regulation of financial products, financial services and financial institutions that are permitted in the International Financial Services Centres are concerned.

Details of Change

By virtue of section 33 of International Financial Services Centres Authority Act, 2019, section 44A is inserted in Foreign Exchange Management Act, 1999 excluding the Powers exercisable by

Reserve Bank of India under Foreign Exchange Management Act, 1999 for International Financial Services Centre and entrusting the powers to International Financial Services Centres Authority in so far as regulation of financial products, financial services and financial institutions that are permitted in the International Financial Services Centres.

For more details:

www.egazette.nic.in/WriteReadData/2019/214809.pdf

3. Section 4 (XIX) of the Taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020 amends proviso to Section 133A(6) of Income-Tax Act, 1961 Dated September 29, 2020

Proviso to Section 133A(6) of Income Tax Act, 1961

Old Provision

Provided that—

(a) in a case where the information has been received from such authority, as may be prescribed, no action under sub-section (1) shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner, as the case may be;

(b) in any other case, no action under sub-section (1) shall be taken by a Joint Director or a Joint Commissioner or an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Director or the Commissioner, as the case may be."

Details of Change

By virtue of the amendment, the powers of approval under section 133A of Income Tax Act, 1961 is delegated to Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner which were earlier with Joint Director or the Joint Commissioner/ Director or the Commissioner as the case may be.

New Provision

Provided that no action under this section shall be taken by an income-tax authority without the approval of the Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner.

For more details

www.egazette.nic.in/WriteReadData/2020/222110.pdf

**4. Section 4 (XX) of the Taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020 amends proviso to Section 133C (2) and inserts section 133C (4) in Income-Tax Act, 1961 Dated September 29, 2020
Section 133C (2) of Income Tax Act, 1961**

Old Provision

133C (2) Where any information or document has been received in response to a notice issued under sub-section (1), the prescribed income-tax authority may process such information or document and make available the outcome of such processing to the Assessing Officer.

New Provision

133(2) Where any information or document has been received in response to a notice issued under sub-section (1), the prescribed income-tax authority may process and utilise such information and document in accordance with the scheme notified under sub-section (3) or the provisions of section 135A].

Details of Change

Any information or document received in response to a notice issued under section 133C(1), the prescribed income-tax authority may process and utilise such information and document in accordance with the scheme notified under sub-section (3) or the provisions of section 135A which is related to Faceless collection of information. Section 135A provides for ensuring imparting greater efficiency, transparency and accountability.

Section 133C (4) of Income Tax Act, 1961

New Provision

133 (4) The scheme made under sub-section (3) shall cease to have effect from the date on which the scheme notified under section 135A in respect of this section comes into effect.]

Details of Change

The scheme made under section 133A (3) shall cease to have effect from the date on which the scheme notified under section 135A in respect to section 133A comes into effect.

For more details:

www.egazette.nic.in/WriteReadData/2020/222110.pdf

5. Section 4 (XXI) of the Taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020 inserts Section 135A in Income-Tax Act, 1961 Dated September 29, 2020

New provision

Section 135A. (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of calling for information under section 133, collecting certain information under section 133B, or calling for information by prescribed income-tax authority under section 133C, or exercise of power to inspect register of companies under section 134, or exercise of power of Assessing Officer under section 135 so as to impart greater efficiency, transparency and accountability by—

- (a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;
- (c) introducing a team-based exercise of powers, including to call for, or collect, or process, or utilise, the information, with dynamic jurisdiction.

(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Details of Change

Section 135A is inserted w.e.f. 1st November, 2020 in Income Tax Act, 1961 so as to impart greater efficiency, transparency and accountability by (a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible, optimising utilisation of the resources through economies of scale and functional specialization and (c) introducing a team-based exercise of powers, including to call for, or collect, or process, or utilise, the information, with dynamic jurisdiction.

For more details:

www.egazette.nic.in/WriteReadData/2020/222110.pdf

6. The MCA notified commencement date for Section 23 of the Companies (Amendment) Act, 2020 (Notification dated September 28, 2020) (Effective from March 24, 2021)

The MCA has appointed March 24, 2021 as the commencement date for Section 23 of the Companies (Amendment) Act, 2020 which seeks to amend Section 124(7) of the Companies Act, 2013 by imposing Penalty on Company and every officer of the Company instead of earlier notified fine for non-compliance of Section 124 of the Companies Act, 2013 w.r.t. Unpaid Dividend Account.

Old Penal Provision

If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

New Penal Provision

If a company fails to comply with any of the requirements of Section 124, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to

a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjY1OA==&docCategory=Notifications&type=open>

https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

7. Amendments under the Companies (Amendment) Act, 2019 and the Companies (Amendment) Act, 2020

The provisions related to CSR under the Companies (Amendment) Act, 2019 came into force w.e.f. 22nd January, 2021 as under:

(a) Provisions on CSR Spending

Section 135(5) of the Companies Act, 2013 has been amended vide the Companies (Amendment) Act, 2019—

*Amended Section 135(5) provides that the Board of every company referred to in Section 135 (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years **or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.***

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

*Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, is required to specify the reasons for not spending the amount **and, unless the unspent amount relates to any ongoing project referred to in section 135(6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.***

After Section 135 (5), the following sub-section (6), (7) & (8) is inserted, namely:—

Section 135(6)

Any amount remaining unspent under Section 135(5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

(b) The Companies(Amendment) Act, 2019 has introduced Penalty for Non-Compliance of Section 135(5) & (6)

Section 135 (7)

If a company contravenes the provisions of sub-section (5) or sub-section (6) of Section 135, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(Note: It may be noted that the above section 135(7) is again amended by subsequent amendment by the Companies (Amendment) Act, 2020 which decriminalised the above w.e.f. same day i.e. 22nd January, 2020)

The amended Section 135(7) is as under:

If a company is in default in complying with the provisions of sub -section (5) or sub -section (6) of the Companies Act, 2013, the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or Rs.1 crore, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one -tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or Rs.2 Lakhs, whichever is less.

Section 135(8)

The Central Government is empowered to give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of section 135 and such company or class of companies shall comply with such directions.

***For details: https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc0OA==&docCategory=Notificati ons&type=open>***

The provisions related to CSR under the Companies (Amendment) Act, 2020 came into force w.e.f. 22nd January, 2021 as under:

(c) Set off of excess spending on CSR

In Section 135(5), after the second proviso, the following proviso has been inserted, namely:

—
"Provided also that if the company spends an amount in excess of the requirements provided under this sub -section, such company may set off such excess amount against the requirement to spend under this sub -section for such number of succeeding financial years and in such manner, as may be prescribed.";

Details of Changes

This Amendment inserted a new provision that in case of the companies, which spends an amount in excess of the requirement of 2%, will be allowed to set off such excess amount out of

their obligation to spend for such number of succeeding financial years as prescribed in the CSR rules.

(d) A new sub -section 9 has been inserted in Section 135 of the Companies Act, 2013, namely:

Where the amount to be spent by a company under Section 135(5) of the Companies Act, 2013 does not exceed Rs. 50 Lakh, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open>

8. The MCA notified the commencement date for Section 45 of the Companies (Amendment) Act, 2020 (Notification No: S.O. 1303 (E), Dated March 24, 2021)

The MCA has appointed March 24, 2021 as the commencement date for Section 45 of the Companies (Amendment) Act, 2020 which seeks to amend Section 247(3) of the Companies Act, 2013 by imposing penalty on valuer instead of earlier notified fine for contravention of the provisions of section 247 or the rules made thereunder.

Old Penal Provision

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

New Penal Provision

“If a valuer contravenes the provisions of section 247 or the rules made thereunder, the valuer shall be *[liable to a penalty of fifty thousand rupees].*”

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjY1OA==&docCategory=Notifications&type=open>

https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

9. Section 62 of the Companies (Amendment) Act, 2020 has amended Section 446B of the Companies Act, 2013 w.r.t. “Lesser penalties for One Person Companies or Small Companies”-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)

Section 446B

Old Penal Provision

Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117

or sub-section (3) of section 137, such company and officer in default of such company shall be liable to a penalty which shall not be more than one half of the penalty specified in such sections.

New Penal Provision

Notwithstanding anything contained in the Companies Act, 2013, if penalty is payable for non-compliance of any of the provisions of the Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be.

Explanation.—For the purposes of this section:

(a) "Producer Company" means a company as defined in clause (l) of section 378A;

(b) "start-up company" means a private company incorporated under this Act or under the Companies Act, 1956 and recognised as start-up in accordance with the notification issued by the Central Government in the Department for Promotion of Industry and Internal Trade.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MO==&docCategory=Notifications&type=open>

10. Section 65 of the Companies (Amendment) Act, 2020 has amended Section 454 of the Companies Act, 2013 w.r.t. “Adjudication of Penalties”-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)

In Section 454(3) of the Companies Act, 2013, the following proviso has been inserted, namely:—
"Provided that in case the default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub-section (2) of section 137 and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded."

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MO==&docCategory=Notifications&type=open>

11. SEBI notified the Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 on 9th August, 2021

SEBI notified Issue and Listing of Non-Convertible Securities which came into force on the seventh day from the mentioned date. The regulation *inter alia* provides as under:

(i) Regulation 52 of these regulations provides the power of investigation to SEBI. The said regulation provides that SEBI may *suo-moto* or upon information received by it, appoint one or more persons to undertake the inspection of the books of account, records and documents of the issuer or lead manager(s) or any other intermediary associated with the issue, for any of the following purposes, namely, -

- (a) to verify whether the provisions of the SEBI Act, 1992, the Companies Act, 2013, Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 and/or the rules and regulations made thereunder in respect of issue of securities have been complied with;
- (b) to verify whether the requirements in respect of issue of non-convertible securities as specified in these regulations have been complied with;
- (c) to verify whether the requirements of listing conditions and continuous disclosure requirements have been complied with;
- (d) to inquire into the complaints received from investors, other market participants or any other persons on any matter of issue and transfer of non-convertible securities governed under these regulations;
- (e) to inquire into affairs of the issuer in the interest of investor protection or the integrity of the market governed under these regulations; and,
- (f) to inquire whether any direction issued by the Board has been complied with.

(2) While undertaking an inspection under these regulations, the inspecting authority or the SEBI, as the case may be, shall follow the procedure specified by the SEBI for inspection of the intermediaries.

(ii) Regulation 53 of the said regulations provides the power of giving direction by SEBI. It provides that Without prejudice to the action under Sections 11, 11A, 11 B, 11D, Section 12(3), Chapter VIA and Section 24 of the SEBI Act, 1992 or Section 439 of the Companies Act, 2013, SEBI may either *suo-moto* or on receipt of information or on completion or pendency of inspection, inquiry or investigation, in the interests of the securities market, issue or pass such directions as it deems fit including any or all of the following:

- (a) directing the issuer to refund of the application monies to the applicants in an issue;
- (b) directing the persons concerned not to further deal in securities in any particular manner;
- (c) directing the persons concerned not to access the securities market for a particular period;
- (d) restraining the issuer or its promoters or directors from making further issues of nonconvertible securities;
- (e) directing the person concerned to sell or divest the non-convertible securities;
- (f) directing the issuer or the depository not to give effect to transfer or directing further freeze of transfer of non-convertible securities;
- (g) any other direction which the Board may deem fit and proper in the circumstances of the case: Provided that SEBI shall, either before or after issuing such directions, give an opportunity of being heard to the persons against whom the directions are issued or proposed to be issued: Provided further that if any ex-parte direction is required to be issued, SEBI may give post decisional hearing to affected person.

For more details: https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-issue-and-listing-of-non-convertible-securities-regulations-2021_51764.html

12. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 inserted section 144B in the Income-tax Act, 1961

Section 144B has been inserted in the Income-tax Act, 1961 which provides for the provisions related to faceless assessment. The provisions of this section are applicable w.e.f. 01.04.2021. It provides as follows:

Faceless Assessment.

144B. (1) Notwithstanding anything to the contrary contained in any other provisions of this Act, the assessment under sub-section (3) of section 143 or under section 144, in the cases referred to in sub-section (2), shall be made in a faceless manner as per the following procedure, namely:—

(i) the National Faceless Assessment Centre shall serve a notice on the assessee under sub-section (2) of section 143;

(ii) the assessee may, within fifteen days from the date of receipt of notice referred to in clause (i), file his response to the National Faceless Assessment Centre;

(iii) where the assessee—

(a) has furnished his return of income under section 139 or in response to a notice issued under sub-section (1) of section 142 or under sub-section (1) of section 148, and a notice under sub-section (2) of section 143 has been issued by the Assessing Officer or the prescribed income-tax authority, as the case may be; or

(b) has not furnished his return of income in response to a notice issued under sub-section (1) of section 142 by the Assessing Officer; or

(c) has not furnished his return of income under sub-section (1) of section 148 and a notice under sub-section (1) of section 142 has been issued by the Assessing Officer, the National Faceless Assessment Centre shall intimate the assessee that assessment in his case shall be completed in accordance with the procedure laid down under this section;

(iv) the National Faceless Assessment Centre shall assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(v) where a case is assigned to the assessment unit, it may make a request to the National Faceless Assessment Centre for—

(a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify;

(b) conducting of certain enquiry or verification by verification unit; and

(c) seeking technical assistance from the technical unit;

(vi) where a request for obtaining further information, documents or evidence from the assessee or any other person has been made by the assessment unit, the National Faceless Assessment Centre shall issue appropriate notice or requisition to the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit;

(vii) the assessee or any other person, as the case may be, shall file his response to the notice referred to in clause (vi), within the time specified therein or such time as may be extended on the basis of an application in this regard, to the National Faceless Assessment Centre;

(viii) where a request for conducting of certain enquiry or verification by the verification unit has been made by the assessment unit, the request shall be assigned by the National Faceless Assessment Centre to a verification unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(ix) where a request for seeking technical assistance from the technical unit has been made by the assessment unit, the request shall be assigned by the National Faceless Assessment Centre to a technical unit in any one Regional Faceless Assessment Centre through an automated allocation system;

(x) the National Faceless Assessment Centre shall send the report received from the verification unit or the technical unit, based on the request referred to in clause (viii) or clause (ix) to the concerned assessment unit;

(xi) where the assessee fails to comply with the notice referred to in clause (vi) or notice issued under sub-section (1) of section 142 or with a direction issued under sub-section (2A) of section 142, the National Faceless Assessment Centre shall serve upon such assessee a notice under section 144 giving him an opportunity to show-cause, on a date and time to be specified in the notice, why the assessment in his case should not be completed to the best of its judgment;

(xii) the assessee shall, within the time specified in the notice referred to in clause (xi) or such time as may be extended on the basis of an application in this regard, file his response to the National Faceless Assessment Centre;

(xiii) where the assessee fails to file response to the notice referred to in clause (xi) within the time specified therein or within the extended time, if any, the National Faceless Assessment Centre shall intimate such failure to the assessment unit;

(xiv) the assessment unit shall, after taking into account all the relevant material available on the record make in writing, a draft assessment order or, in a case where intimation referred to in clause (xiii) is received from the National Faceless Assessment Centre, make in writing, a draft assessment order to the best of its judgment, either accepting the income or sum payable by, or sum refundable to, the assessee as per his return or making variation to the said income or sum, and send a copy of such order to the National Faceless Assessment Centre;

(xv) the assessment unit shall, while making draft assessment order, provide details of the penalty proceedings to be initiated therein, if any;

(xvi) the National Faceless Assessment Centre shall examine the draft assessment order in accordance with the risk management strategy specified by the Board, including by way of an automated examination tool, whereupon it may decide to—

(a) finalise the assessment, in case no variation prejudicial to the interest of assessee is proposed, as per the draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment; or

(b) provide an opportunity to the assessee, in case any variation prejudicial to the interest of assessee is proposed, by serving a notice calling upon him to show cause as to why the proposed variation should not be made; or

(c) assign the draft assessment order to a review unit in any one Regional Faceless Assessment Centre, through an automated allocation system, for conducting review of such order;

(xvii) the review unit shall conduct review of the draft assessment order referred to it by the National Faceless Assessment Centre whereupon it may decide to—

(a) concur with the draft assessment order and intimate the National Faceless Assessment Centre about such concurrence; or

(b) suggest such variation, as it may deem fit, in the draft assessment order and send its suggestions to the National Faceless Assessment Centre;

(xviii) the National Faceless Assessment Centre shall, upon receiving concurrence of the review unit, follow the procedure laid down in—

- (a) sub-clause (a) of clause (xvi); or
- (b) sub-clause (b) of clause (xvi);
- (xix) the National Faceless Assessment Centre shall, upon receiving suggestions for variation from the review unit, assign the case to an assessment unit, other than the assessment unit which has made the draft assessment order, through an automated allocation system;
- (xx) the assessment unit shall, after considering the variations suggested by the review unit, send the final draft assessment order to the National Faceless Assessment Centre;
- (xxi) the National Faceless Assessment Centre shall, upon receiving final draft assessment order follow the procedure laid down in—
 - (a) sub-clause (a) of clause (xvi); or
 - (b) sub-clause (b) of clause (xvi);
- (xxii) the assessee may, in a case where show-cause notice has been served upon him as per the procedure laid down in sub-clause (b) of clause (xvi), furnish his response to the National Faceless Assessment Centre on or before the date and time specified in the notice or within the extended time, if any;
- (xxiii) the National Faceless Assessment Centre shall,—
 - (a) where no response to the show-cause notice is received as per clause (xxii),—
 - (A) in a case where the draft assessment order or the final draft assessment order is in respect of an eligible assessee and proposes to make any variation which is prejudicial to the interest of said assessee, forward the draft assessment order or final draft assessment order to such assessee; or
 - (B) in any other case, finalise the assessment as per the draft assessment order or the final draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;
 - (b) in any other case, send the response received from the assessee to the assessment unit;
- (xxiv) the assessment unit shall, after taking into account the response furnished by the assessee, make a revised draft assessment order and send it to the National Faceless Assessment Centre;
- (xxv) the National Faceless Assessment Centre shall, upon receiving the revised draft assessment order,—
 - (a) in case the variations proposed in the revised draft assessment order are not prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, and—
 - (A) in case the revised draft assessment order is in respect of an eligible assessee and there is any variation prejudicial to the interest of the assessee proposed in draft assessment order or the final draft assessment order, forward the said revised draft assessment order to such assessee;
 - (B) in any other case, finalise the assessment as per the revised draft assessment order and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;
 - (b) in case the variations proposed in the revised draft assessment order are prejudicial to the interest of the assessee in comparison to the draft assessment order or the final draft assessment order, provide an opportunity to the assessee, by serving a notice calling upon him to show-cause as to why the proposed variation should not be made;
- (xxvi) the procedure laid down in clauses (xxiii), (xxiv) and (xxv) shall apply mutatis mutandis to the notice referred to in sub-clause (b) of clause (xxv);

(xxvii) where the draft assessment order or final draft assessment order or revised draft assessment order is forwarded to the eligible assessee as per item (A) of sub-clause (a) of clause (xxiii) or item (A) of sub-clause (a) of clause (xxv), such assessee shall, within the period specified in sub-section (2) of section 144C, file his acceptance of the variations to the National Faceless Assessment Centre;

(xxviii) the National Faceless Assessment Centre shall,—

(a) upon receipt of acceptance as per clause (xxvii); or

(b) if no objections are received from the eligible assessee within the period specified in sub-section (2) of section 144C,

finalise the assessment within the time allowed under sub-section (4) of section 144C and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxix) where the eligible assessee files his objections with the Dispute Resolution Panel, the National Faceless Assessment Centre shall upon receipt of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, forward such directions to the concerned assessment unit;

(xxx) the assessment unit shall in conformity of the directions issued by the Dispute Resolution Panel under sub-section (5) of section 144C, prepare a draft assessment order in accordance with sub-section (13) of section 144C and send a copy of such order to the National Faceless Assessment Centre;

(xxxi) the National Faceless Assessment Centre shall, upon receipt of draft assessment order referred to in clause (xxx), finalise the assessment within the time allowed under sub-section (13) of section 144C and serve a copy of such order and notice for initiating penalty proceedings, if any, to the assessee, alongwith the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment;

(xxxii) the National Faceless Assessment Centre shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.

(2) The faceless assessment under sub-section (1) shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board.

(3) The Board may, for the purposes of faceless assessment, set up the following Centres and units and specify their respective jurisdiction, namely:—

(i) a National Faceless Assessment Centre to facilitate the conduct of faceless assessment proceedings in a centralised manner, which shall be vested with the jurisdiction to make faceless assessment;

(ii) Regional Faceless Assessment Centres, as it may deem necessary, to facilitate the conduct of faceless assessment proceedings in the cadre controlling region of a Principal Chief Commissioner, which shall be vested with the jurisdiction to make faceless assessment;

(iii) assessment units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of making assessment, which includes identification of points or issues material for the determination of any liability (including refund) under the Act, seeking information or clarification on points or issues so identified, analysis of the material furnished by the assessee or any other person, and such other functions as may be required for the purposes of making faceless assessment;

(iv) verification units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of verification, which includes enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification;

(v) technical units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter which may be required in a particular case or a class of cases, under this section; and

(vi) review units, as it may deem necessary to facilitate the conduct of faceless assessment, to perform the function of review of the draft assessment order, which includes checking whether the relevant and material evidence has been brought on record, whether the relevant points of fact and law have been duly incorporated in the draft order, whether the issues on which addition or disallowance should be made have been discussed in the draft order, whether the applicable judicial decisions have been considered and dealt with in the draft order, checking for arithmetical correctness of variations proposed, if any, and such other functions as may be required for the purposes of review.

(4) The assessment unit, verification unit, technical unit and the review unit shall have the following authorities, namely:—

(a) Additional Commissioner or Additional Director or Joint Commissioner or Joint Director, as the case may be;

(b) Deputy Commissioner or Deputy Director or Assistant Commissioner or Assistant Director, or Income-tax Officer, as the case may be;

(c) such other income-tax authority, ministerial staff, executive or consultant, as considered necessary by the Board.

(5) All communication among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment shall be through the National Faceless Assessment Centre;

(6) All communications between the National Faceless Assessment Centre and the assessee, or his authorised representative, or any other person shall be exchanged exclusively by electronic mode; and all internal communications between the National Faceless Assessment Centre, Regional Faceless Assessment Centres and various units shall be exchanged exclusively by electronic mode: Provided that the provisions of this sub-section shall not apply to the enquiry or verification conducted by the verification unit in the circumstances referred to in sub-clause (g) of clause (xii) of sub-section (7);

(7) For the purposes of faceless assessment—

(i) an electronic record shall be authenticated by—

(a) the National Faceless Assessment Centre by affixing its digital signature;

(b) assessee or any other person, by affixing his digital signature if he is required to furnish his return of income under digital signature, and in any other case, by affixing his digital signature or under electronic verification code in the prescribed manner;

(ii) every notice or order or any other electronic communication shall be delivered to the addressee, being the assessee, by way of—

(a) placing an authenticated copy thereof in the assessee's registered account; or

- (b) sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or
- (c) uploading an authenticated copy on the assessee's Mobile App, and followed by a real time alert;
- (iii) every notice or order or any other electronic communication shall be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered email address of such person, followed by a real time alert;
- (iv) the assessee shall file his response to any notice or order or any other electronic communication, through his registered account, and once an acknowledgement is sent by the National Faceless Assessment Centre containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated;
- (v) the time and place of dispatch and receipt of electronic record shall be determined in accordance with the provisions of section 13 of the Information Technology Act, 2000 (21 of 2000);
- (vi) a person shall not be required to appear either personally or through authorised representative in connection with any proceedings before the income-tax authority at the National Faceless Assessment Centre or Regional Faceless Assessment Centre or any unit set up under this sub-section;
- (vii) in a case where a variation is proposed in the draft assessment order or final draft assessment order or revised draft assessment order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per the such draft or final draft or revised draft assessment order, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the income-tax authority in any unit;
- (viii) the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, under which the concerned unit is set up, may approve the request for personal hearing referred to in clause (vii) if he is of the opinion that the request is covered by the circumstances referred to in sub-clause (h) of clause (xii);
- (ix) where the request for personal hearing has been approved by the Chief Commissioner or the Director General, in charge of the Regional Faceless Assessment Centre, such hearing shall be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, in accordance with the procedure laid down by the Board;
- (x) subject to the proviso to sub-section (6), any examination or recording of the statement of the assessee or any other person (other than statement recorded in the course of survey under section 133A of the Act) shall be conducted by an income-tax authority in any unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony in accordance with the procedure laid down by the Board;
- (xi) the Board shall establish suitable facilities for video conferencing or video telephony including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorised representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end;

(xii) the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre shall, with the prior approval of the Board, lay down the standards, procedures and processes for effective functioning of the National Faceless Assessment Centre, Regional Faceless Assessment Centres and the unit set up, in an automated and mechanised environment, including format, mode, procedure and processes in respect of the following, namely:—

- (a) service of the notice, order or any other communication;
- (b) receipt of any information or documents from the person in response to the notice, order or any other communication;
- (c) issue of acknowledgement of the response furnished by the person;
- (d) provision of "e-proceeding" facility including login account facility, tracking status of assessment, display of relevant details, and facility of download;
- (e) accessing, verification and authentication of information and response including documents submitted during the assessment proceedings;
- (f) receipt, storage and retrieval of information or documents in a centralised manner;
- (g) circumstances in which proviso to sub-section (6) shall apply;
- (h) circumstances in which personal hearing referred to clause (viii) shall be approved;
- (i) general administration and grievance redressal mechanism in the respective Centres and units.

(8) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Principal Chief Commissioner or the Principal Director General in charge of National Faceless Assessment Centre may at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case, with the prior approval of the Board.

(9) Notwithstanding anything contained in any other provision of this Act, assessment made under sub-section (3) of section 143 or under section 144 in the cases referred to in sub-section (2) [other than the cases transferred under sub-section (8)], on or after the 1st day of April, 2021, shall be non est if such assessment is not made in accordance with the procedure laid down under this section.

(10) Notwithstanding anything contained in this section, the function of verification unit under this section may also be performed by a verification unit located in any other faceless center set up under the provisions of this Act or under any scheme notified under the provisions of this Act; and the request for verification may also be assigned by the National Faceless Assessment Centre to such verification unit.

Explanation.—In this section, unless the context otherwise requires—

- (a) "addressee" shall have the same meaning as assigned to it in clause (b) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (b) "authorised representative" shall have the same meaning as assigned to it in sub-section (2) of section 288;
- (c) "automated allocation system" means an algorithm for randomised allocation of cases, by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources;
- (d) "automated examination tool" means an algorithm for standardised examination of draft orders, by using suitable technological tools, including artificial intelligence and machine learning, with a view to reduce the scope of discretion;
- (e) "computer resource" shall have the same meaning as assigned to it in clause (k) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);

- (f) "computer system" shall have the same meaning as assigned to it in clause (l) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (g) "computer resource of assessee" shall include assessee's registered account in designated portal of the Income-tax Department, the Mobile App linked to the registered mobile number of the assessee, or the registered email address of the assessee with his email service provider;
- (h) "digital signature" shall have the same meaning as assigned to it in clause (p) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (i) "designated portal" means the web portal designated as such by the Principal Chief Commissioner or the Principal Director General, in charge of the National Faceless Assessment Centre;
- (j) "Dispute Resolution Panel" shall have the same meaning as assigned to it in clause (a) of sub-section (15) of section 144C;
- (k) "faceless assessment" means the assessment proceedings conducted electronically in 'e-Proceeding' facility through assessee's registered account in designated portal;
- (l) "electronic record" shall have the same meaning as assigned to it in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (m) "eligible assessee" shall have the same meaning as assigned to in clause (b) of sub-section (15) of section 144C;
- (n) "email" or "electronic mail" and "electronic mail message" means a message or information created or transmitted or received on a computer, computer system, computer resource or communication device including attachments in text, image, audio, video and any other electronic record, which may be transmitted with the message;
- (o) "hash function" and "hash result" shall have the same meaning as assigned to them in the Explanation to sub-section (2) of section 3 of the Information Technology Act, 2000 (21 of 2000);
- (p) "Mobile app" shall mean the application software of the Income-tax Department developed for mobile devices which is downloaded and installed on the registered mobile number of the assessee;
- (q) "originator" shall have the same meaning as assigned to it in clause (za) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000);
- (r) "real time alert" means any communication sent to the assessee, by way of Short Messaging Service on his registered mobile number, or by way of update on his Mobile App, or by way of an email at his registered email address, so as to alert him regarding delivery of an electronic communication;
- (s) "registered account" of the assessee means the electronic filing account registered by the assessee in designated portal;
- (t) "registered e-mail address" means the e-mail address at which an electronic communication may be delivered or transmitted to the addressee, including—
- (i) the e-mail address available in the electronic filing account of the addressee registered in designated portal; or
 - (ii) the e-mail address available in the last income-tax return furnished by the addressee; or
 - (iii) the e-mail address available in the Permanent Account Number database relating to the addressee; or
 - (iv) in the case of addressee being an individual who possesses the Aadhaar number, the e-mail address of addressee available in the database of Unique Identification Authority of India; or
 - (v) in the case of addressee being a company, the e-mail address of the company as available on the official website of Ministry of Corporate Affairs; or

- (vi) any e-mail address made available by the addressee to the income-tax authority or any person authorised by such authority;
- (u) "registered mobile number" of the assessee means the mobile number of the assessee, or his authorised representative, appearing in the user profile of the electronic filing account registered by the assessee in designated portal;
- (v) "video conferencing or video telephony" means the technological solutions for the reception and transmission of audio-video signals by users at different locations, for communication between people in real-time.

13. Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) (Amendment) Rules, 2021(December 31, 2021)

Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995(said rules) are made for the purpose of holding inquiry for the purpose of imposing penalty under Chapter VI-A of the SEBI Act, 1992 which is related to penalties and adjudication under this Act.

Now, by Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) (Amendment) Rules, 2021, the Central Government has amended said rules w.e.f. December 31, 2022.

Amendment to Rule 2

In rule 2(b), for the word, figures and letter "section 15L", the word, figures and letter "section 15I" has been substituted.

Amendment to Rule 7

Rule 7 has been substituted with the following:

Service of notices and orders.

(1) A notice or an order issued under these rules shall be served on the person through any of the following modes, namely:—

- (a) by delivering or tendering it to that person or his duly authorised agent; or
- (b) by sending it to the person by fax or electronic mail or electronic instant messaging services along with electronic mail or by courier or speed post or registered post:

Provided that the courier or speed post or registered post shall be sent to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain, with acknowledgment due:

Provided further that a notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned: Provided also that a notice sent through electronic mail or electronic instant messaging services along with electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.

(2) In case of failure to serve a notice or an order through any one of the modes provided under sub-rule (1), the notice or order may be affixed on the outer door or some other conspicuous part

of the premises in which the person resides or is known to have last resided, or carried on business or personally works, or last worked, for gain and a written report thereof shall be prepared in the presence of two witnesses.

(3) In case of failure to affix the notice or order on the outer door as provided under sub-rule (2), the notice or order shall be published in at least two newspapers, one of which shall be in an English daily newspaper having nationwide circulation and another shall be in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.

For details: <https://www.sebi.gov.in/legal/rules/jan-2022/securities-and-exchange-board-of-india-procedure-for-holding-inquiry-and-imposing-penalties-rules-1995-last-amended-on-december-31-2021-55412.html>

14. Faceless Jurisdiction of Income-tax Authorities Scheme, 2022 (March 28, 2022)

Section 30 of the Income-tax Act, 1961(the Act) empowers the Central Government to make a scheme for the following purposes:

- (a) exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities by or under this Act as referred to in section 120; or
- (b) vesting the jurisdiction with the Assessing Officer as referred to in section 124; or
- (c) exercise of power to transfer cases under section 127; or
- (d) exercise of jurisdiction in case of change of incumbency as referred to in section 129,

The scheme intend to impart greater efficiency, transparency and accountability by:

- (i) eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible;
- (ii) optimising utilisation of the resources through economies of scale and functional specialisation;
- (iii) introducing a team-based exercise of powers and performance of functions by two or more income-tax authorities, concurrently, in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases, with dynamic jurisdiction.

In terms of above section, the central government has notified Faceless Jurisdiction of Income-tax Authorities Scheme, 2022. The scheme provides the coverage relating to Scope, Powers and Performance of functions of income-tax authorities which are as under:

- (a) the exercise of all or any or the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities, by or under the Act as referred to in section 120 of the Act; or
- (b) vesting the jurisdiction with the Assessing Officer as referred to in section 124 of the Act, shall be in a faceless manner, through automated allocation, in accordance with and to the extent provided in—

- (i) section 144B of the Act with reference to making faceless assessment of total income or loss of assessee;
- (ii) the Faceless Appeal Scheme, 2021 notified under sub-sections (6B) and (6C) of section 250 of the Act with reference to the disposal of appeals;
- (iii) the Faceless Penalty Scheme, 2021 notified under sub-sections (2A) and (2B) of section 274 of the Act with reference to imposition of penalty under Chapter XXI of the Act;
- (iv) the e-Verification Scheme, 2021 notified under sub-sections (1) and (2) of section 135A of the Act with reference to the calling for of information under section 133 of the Act, collecting certain information under section 133B of the Act, or calling for information by prescribed authority under section 133C of the Act, or exercise of power to inspect register of companies under section 134, or exercise of power of Assessing Officer under section 135 of the Act;
- (v) the e-Settlement Scheme, 2021 notified under sub-sections (11) and (12) of section 245D of the Act with reference to the settlement of pending applications by the interim Board;
- (vi) the e-advance rulings Scheme, 2022 notified under sub-sections (9) and (10) of section 245R of the Act with reference to dispute resolution for persons or class of persons, as specified by the Board, who may opt for dispute resolution under the Chapter XIX-AA of the Act with reference to dispute arising from any variation in the specified order fulfilling the specified conditions.

Impact

Now, the vesting of jurisdiction with the Assessing Officer as referred to in section 124 of the Act shall be in a faceless manner through automated allocation for the purposes including Faceless Assessment, Faceless Appeal, Faceless Penalty, e-Verification, e-Settlement schemes.

For details: <https://incometaxindia.gov.in/communications/notification/notification-15-2022.pdf>

15. Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Amendment) Regulations, 2022

1. Amendment to Regulation 4(2)(k)

Regulation 4(2)(k) of the said regulations has been substituted as under:

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading in a reckless or careless manner and which is designed to, or likely to influence the decision of investors dealing in securities.

Impact

The words “in a reckless or careless manner” has been inserted in this clause for the purpose of deciding whether the Dealing in securities be deemed to be a manipulative fraudulent or an unfair trade practice.

2. Amendment to regulations 6 relating to Powers of Investigating Authority

i. In regulation 6(2), after the words “has been conducting” and before the words “in violation of”, the words “its activities” has been inserted. The revised regulation reads as under:

to undertake inspection of any book, or register, or other document or record of any listed public company or a public company (not being intermediaries referred to in section 12 of the Act) which intends to get its securities listed on any recognized stock exchange where the Investigating Authority has reasonable grounds to believe that such company has been conducting its activities in violation of these regulations.

ii. regulation 6(4), the words “one month which may be extended upto a period of” and the words “by the Board” shall be omitted. The revised regulation reads as under:

to keep in his custody any books, registers, other documents and record produced under this regulation for a maximum period of six months.

iii. after regulation 6(6), the following new clauses have been inserted, namely–

(7) to call for information and record from any person including any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which are under investigation;

(8) to make an application to the Judge of the designated court in Mumbai as notified by the Central Government for an order for the seizure of any books, registers, other documents and record, if in the course of investigation, the Investigating Authority has reasonable ground to believe that such books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner may be destroyed, mutilated, altered, falsified or secreted;

(9) to keep in his custody the books, registers, other documents and record seized under these regulations for such period not later than the conclusion of the investigation as he considers necessary and thereafter to return the same to the person, the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person from whose custody or power they were seized:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof;

(10) save as otherwise provided in this regulation, every search or seizure made under this regulation shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

3. Regulation 7 relating to Power of the Investigating Authority to be exercised with prior approval has been omitted.

4. Amendment to regulation 8 relating to duty of every person in respect of whom an investigation has been ordered.

i. Amendment to regulation 8(1)

In regulation 8(1),

- a. the words and figure “under regulation 7” shall be substituted with the words and figure “under regulation 5”;
- b. in clause (b), the words and figure “or regulation 7” shall be omitted;

Impact

The effect of deletion of regulation 7 has been effected.

ii. Amendment to regulation 8(3)

- a. in clause (a), after the words “Investigating Authority” and before the words “to have access”, the words “or any person authorized by him in this behalf” has been inserted. The revised regulation reads as under:

*allow the Investigating Authority **or any person authorized by him in this behalf** to have access to the premises occupied by such person at all reasonable times for the purpose of investigation.*

- b. in clause (b), after the words “Investigating Authority” and before the words “reasonable facilities”, the words “or any person authorized by him in this behalf” has been inserted.

The revised regulations reads as under:

*extend to the Investigating Authority **or any person authorized by him in this behalf** reasonable facilities for examining any books, accounts and other documents in his custody or control (whether kept manually or in computer or in any other form) reasonably required for the purposes of the investigation.*

- c. clause (c) has been substituted with the following, namely—

provide to such Investigating Authority or any person authorized by him in this behalf any such books, accounts and records which, in the opinion of the Investigating Authority, are relevant to the investigation or, as the case may be, allow the Investigating Authority or any person authorized by him in this behalf to take computer print-outs thereof.

5. Amendment to regulation 11

Regulation 11(2) has been substituted with the following:

Any final order passed under regulation (1) shall be put on the website of the Board.

6. Amendment to regulation 11A relating to Manner of service of summons and notices issued by the Board

Regulation 11A dealing with Manner of service of summons and notices issued by the Board has been substituted as under:

A summons or notice issued by the Board under these regulations shall be served on the person through any of the following modes, namely—

- (a) by delivering or tendering it to that person or his duly authorised agent; or
- (b) by sending it to the person by fax or electronic mail or electronic instant messaging services along with electronic mail or by courier or speed post or registered post:

Provided that the courier or speed post or registered post shall be sent to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain, with acknowledgment due:

Provided further that a summons or notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned:

Provided further that a summons or notice sent through electronic mail or electronic instant messaging services along with electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.

(2) In case of failure to serve a summons or notice through any one of the modes provided under sub-regulation (1), the summons or notice may be affixed on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided, or carried on business or personally works, or last worked, for gain and a written report thereof shall be prepared in the presence of two witnesses.

(3) In case of failure to affix the summons or notice on the outer door as provided under sub-regulation (2), the summons or notice shall be published in at least two newspapers, one of which shall be in an English daily newspaper having nationwide circulation and another shall be in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.”

For details visit: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-prohibition-of-fraudulent-and-unfair-trade-practices-relating-to-securities-market-amendment-regulations-2022_55595.html

16. CBDT notified amendment in Faceless penalty scheme, allowing mandatory personal hearing (Notification Dated May 27, 2022)

The Central Board of Direct Taxes (CBDT) has notified the amendment in the faceless penalty scheme, allowing mandatory personal hearing through electronic mode to any taxpayer who has sought a hearing. The amendment has omitted the Regional Faceless Penalty Centre from the Faceless Penalty Scheme and provides that electronic records shall be authenticated by the National Faceless Penalty Centre and even hearing should be done *via* them and not regional faceless penalty centre.

The Faceless Penalty (Amendment) Scheme, 2022 provides that such hearing will be held exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony.

For details: <https://egazette.nic.in/WriteReadData/2022/236054.pdf>

17. Investor Grievance Redressal Mechanism and Amendment to SEBI Circular no. SEBI/HO/DMS/CIR/ P/2017/15 dated February 23, 2017 (Circular No. SEBI/HO/MRD1/ ICC1/ CIR/ P/2022/94 dated July 04, 2022)

Online Web Based Complaints Redressal System

SEBI has implemented an online platform (SCORES) designed to help investors to lodge their complaints, pertaining to securities market, against listed companies and SEBI registered intermediaries.

In line with the same, to enable investors to lodge and follow up their complaints and track the status of redressal of such complaints from anywhere, all Recognized Stock Exchanges including Commodity Derivatives Exchanges / Depositories are advised to design and implement an online web based complaints redressal system of their own, which will facilitate investors to file complaints and escalate complaints for redressal through Grievance Redressal Committee (GRC), arbitration, appellate arbitration etc. in accordance with their respective byelaws, rules and regulations. The above redressal mechanism shall be implemented within 6 months from the issuance of this circular. The salient features of the system are enclosed as Annexure to this circular.

The system is intended to expedite redressal / disposal of investors' complaints as it would also obviate the need for physical movement of complaints. Further, the possibility of loss, damage or misdirection of the physical complaints would be avoided. It would also facilitate easy retrieval and tracking of complaints at any time.

For details:

https://www.sebi.gov.in/legal/circulars/jul-2022/investor-grievance-redressal-mechanism-and-amendment-to-sebi-circular-no-sebi-ho-dms-cir-p-2017-15-dated-february-23-2017_60535.html

18. The Finance Act, 2023 (March 31, 2023)

Finance Act, 2023 has *inter alia* has brought the following changes in the Income-tax Act, 1961:

1. In section 131 of the Income-tax Act, for the words and brackets ", Commissioner (Appeals)", the words and brackets ", Joint Commissioner (Appeals), Commissioner (Appeals)" shall be substituted.

2. In section 132 of the Income-tax Act,—

(a) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The authorised officer may requisition the services of,—

(i) any police officer or of any officer of the Central Government, or of both; or

(ii) any person or entity as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the procedure, as may be prescribed, in this regard,

to assist him for all or any of the purposes specified in sub-section (1) or sub-section (1A) and it shall be the duty of every such officer or person or entity to comply with such requisition.";

(b) for sub-section (9D), the following sub-section shall be substituted, namely:—

"(9D) The authorised officer may, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, make a reference to,—

(i) a Valuation Officer referred to in section 142A; or

(ii) any other person or entity or any valuer registered by or under any law for the time being in force, as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the procedure, as may be prescribed, in this regard,

who shall estimate the fair market value of the property in the manner as may be prescribed, and submit a report of the estimate to the authorised officer or the Assessing Officer, as the case may be, within a period of sixty days from the date of receipt of such reference.";

(c) for Explanation 1, the following Explanation shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2022, namely:—

"Explanation 1.—For the purposes of sub-sections (9A), (9B) and (9D), the last of authorisation for search shall be deemed to have been executed,—

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or

(b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorised officer."

3. In section 133 of the Income-tax Act, for the words and brackets "the Commissioner (Appeals)" wherever they occur, the words and brackets "the Joint Commissioner (Appeals) or the Commissioner (Appeals)" shall be substituted.

4. In section 134 of the Income-tax Act, for the words and brackets "the Commissioner (Appeals)" at both the places where they occur, the words and brackets "the Joint Commissioner (Appeals) or the Commissioner (Appeals)" shall be substituted.

5. In section 135A of the Income-tax Act, in sub-section (2), after the proviso, the following proviso shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2022, namely:—

"Provided further that the Central Government may amend any direction, issued under this sub-section on or before the 31st day of March, 2022, by notification in the Official Gazette."

For details: <https://egazette.gov.in/WriteReadData/2023/244830.pdf>

19. The Competition (Amendment) Act, 2023(April 11, 2023)

The Competition (Amendment) Act, 2023 has *inter alia* made the following amendments in Competition Act, 2002:

1. In section 3 of the principal Act,—

(a) in sub-section (3), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that an enterprise or association of enterprises or a person or association of persons though not engaged in identical or similar trade shall also be presumed to be part of the agreement under this sub-section if it participates or intends to participate in the furtherance of such agreement.";

(b) in sub-section (4),—

(i) for the words "Any agreement amongst enterprises or persons", the words "Any other agreement amongst enterprises or persons including but not restricted to agreement amongst enterprises or persons" shall be substituted;

(ii) in clause (b), for the word "supply", the word "dealing" shall be substituted;

(iii) before the Explanation, the following proviso shall be inserted, namely:—

"Provided that nothing contained in this sub-section shall apply to an agreement entered into between an enterprise and an end consumer.";

(iv) in the Explanation,—

(i) for clauses (a) and (b), the following clauses shall be substituted, namely:—

'(a) "tie-in arrangement" includes any agreement requiring a purchaser of goods or services, as a condition of such purchase, to purchase some other distinct goods or services;

(b) "exclusive dealing agreement" includes any agreement restricting in any manner the purchaser or the seller, as the case may be, in the course of his trade from acquiring or selling or otherwise dealing in any goods or services other than those of the seller or the purchaser or any other person, as the case may be;'

(ii) in clause (c), after the word "goods", at both the places where it occurs, the words "or services" shall be inserted;

(iii) in clause (d), after the word "goods", at both the places where it occurs, the words "or services" shall be inserted;

(iv) in clause (e), for the words "includes any agreement to sell goods on condition", the words "includes, in case of any agreement to sell goods or provide services, any direct or indirect restriction" shall be substituted;

(c) in sub-section (5), in clause (i), after sub-clause (f), the following sub-clause shall be inserted, namely:—

"(g) any other law for the time being in force relating to the protection of other intellectual property rights."

2. In section 4 of the principal Act, in sub-section (2), in clause (a), in the Explanation, for the words "discriminatory condition or price", the words "condition or price" shall be substituted.

3. In section 19 of the principal Act,—

(a) in sub-section (1), the following provisos shall be inserted, namely:—

"Provided that the Commission shall not entertain an information or a reference unless it is filed within three years from the date on which the cause of action has arisen:

Provided further that an information or a reference may be entertained after the period specified in the first proviso if the Commission is satisfied that there had been sufficient

cause for not filing the information or the reference within such period after recording its reasons for condoning such delay.";

(b) in sub-section (3),—

(i) in clause (c), the words "by hindering entry into the market" shall be omitted;

(ii) in clause (d), for the words "accrual of benefits", the words "benefits or harm" shall be substituted;

(c) in sub-section (6), after clause (h), the following clauses shall be inserted, namely:—

"(i) characteristics of goods or nature of services;

(j) costs associated with switching supply or demand to other areas.";

(d) in sub-section (7),—

(i) in clause (a), after the words "end-use of goods", the words "or the nature of services" shall be inserted;

(ii) after clause (f), the following clauses shall be inserted, namely:—

"(g) costs associated with switching demand or supply to other goods or services;

(h) categories of customers."

4. In section 20 of the principal Act,—

(a) in sub-section (1), for the words, brackets and letter "clause (c) of that section", the words, brackets, letters and figure "clause (c) of section 5 or acquisition of any control, shares, voting right or assets of an enterprise, merger or amalgamation referred to in clause (d) of that section" shall be substituted;

(b) in sub-section (3), for the words "by notification, enhance or reduce, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, the value of assets or the value of turnover", the words "enhance or reduce by notification, or keep at the same level, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, or such factors that in its opinion are relevant in this matter, the value of assets or the value of turnover or value of transaction" shall be substituted; (c) in sub-section (4), in clause

(c), for the word "combination", the word "concentration" shall be substituted.

5. In section 26 of the principal Act,—

(a) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) The Commission may not inquire into agreement referred to in section 3 or conduct of an enterprise or group under section 4, if the same or substantially the same facts and issues raised in the information received under section 19 or reference from the Central Government or a State Government or a statutory authority has already been decided by the Commission in its previous order.";

(b) after sub-section (3), the following sub-sections shall be inserted, namely:—

"(3A) If, after consideration of the report of the Director General referred to in sub-section (3), the Commission is of the opinion that further investigation is required, it may direct the Director General to investigate further into the matter.

(3B) The Director General shall, on receipt of direction under sub-section (3A), investigate the matter and submit a supplementary report on his findings within such period as may be specified by the Commission.";

(c) in sub-section (4), for the word, brackets and figure "sub-section (3)", at both the places where they occur, the words, brackets, figures and letter "sub-sections (3) and (3B)" shall be substituted;

(d) in sub-section (5), for the word, brackets and figure "sub-section (3)", the words, brackets, figures and letter "sub-sections (3) and (3B)" shall be substituted;

(e) in sub-section (8), for the word, brackets and figure "sub-section (3)", the words, brackets, figures and letter "sub-sections (3) and (3B)" shall be substituted;

(f) after sub-section (8), the following sub-section shall be inserted, namely:—

"(9) Upon completion of the investigation or inquiry under sub-section (7) or sub-section (8), as the case may be, the Commission may pass an order closing the matter or pass an order under section 27, and send a copy of its order to the Central Government or the State Government or the statutory authority or the parties concerned, as the case may be:

Provided that before passing such order, the Commission shall issue a show-cause notice indicating the contraventions alleged to have been committed and such other details as may be specified by regulations and give a reasonable opportunity of being heard to the parties concerned."

7. In section 29 of the principal Act,—

(a) in sub-section (1), for the words "within thirty days", the words "within fifteen days" shall be substituted;

(b) after sub-section (1A), the following sub-section shall be inserted, namely:—

"(1B) The Commission shall, within thirty days of receipt of notice under sub-section (2) of section 6, form its prima facie opinion referred to in sub-section (1).";

(c) in sub-section (2),—

(i) for the words "within seven working days", the words "within seven days" shall be substituted;

(ii) for the words "within ten working days", the words "within seven days" shall be substituted;

(d) in sub-section (3), for the words "within fifteen working days", the words "within ten days" shall be substituted;

(e) in sub-section (4), for the words "within fifteen working days", the words "within seven days" shall be substituted;

(f) in sub-section (5), for the words "within fifteen days", the words "within ten days" shall be substituted;

(g) for sub-section (6), the following sub-sections shall be substituted, namely:—

"(6) After receipt of all information, the Commission shall proceed to deal with the case in accordance with the provisions contained in section 29A or section 31, as the case may be.

(7) Notwithstanding anything contained in this section, the Commission may accept appropriate modifications offered by the parties to the combination or suo motu propose modifications, as the case may be, before forming a prima facie opinion under sub-section (1)."

Need for amendments: Background

- Significant growth of Indian markets and a paradigm shift in the way businesses operate.
- The Government of India constituted Competition Law Review Committee (CLRC) in 2018, to examine and suggest the modifications in the Competition Act, 2002.
- CLRC submitted its recommendations to the Government in 2019
- After review of the recommendations proposed by CLRC and public consultations, amendments to the law were mooted
- The aim was to provide regulatory certainty and trust-based business environment

Impact of the Amendment

- Broadening the scope of anti-competitive agreements
- Reduction in time-limit for review of M&As from 210 days to 150 days
- Introduction of Deal Value as another criterion for notifying M&As
- Limitation Period of 3 years for filing Information(s)
- Penalty indexed to Global Turnover
- Introduction of Settlement & Commitment framework for faster market correction
- Hub-and-Spoke type arrangements brought under the presumptive rule of Appreciable Adverse Effect on Competition (AAEC)
- Leniency Plus
- Framing of Regulations after public consultations
- Issuance of Guidelines
- Appointment of the Director General by the Commission, with prior approval of Central Government

For details: <https://www.cci.gov.in/images/legalframeworkact/en/the-competition-amendment-act-20231681363446.pdf>

Lesson 6 - Adjudication, Prosecutions, Offences and Penalties

1. Decriminalization pursuant to Companies (Amendment) Act, 2020 w.e.f. December 21, 2020

Companies (Amendment) Act, 2020, which is notified on 28th September, 2020, decriminalize certain offences and reduced penalties for many provisions under Companies Act, 2013. The provisions of the said amendment act shall come into effect from the date to be notified. MCA has notified 45 section to come into force w.e.f. 21st December, 2021. Due to changes more offences are now compoundable by regional director and many non-compoundable offence can be compounded.

For more details: http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
www.mca.gov.in/Ministry/pdf/CommencementNotification_24122020.pdf

2. Section 65 of Companies (Amendment) Act, 2020 added proviso to section 454 of Companies Act, 2013 w.e.f. December 21, 2020

Section 454

Old provision

454. (1) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner provided by The Companies (Adjudication of Penalties) Rules, 2014.

(2) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1).

(3) The adjudicating officer may, by an order-

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.

New Provision

454. (1) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner provided by the Companies (Adjudication of Penalties) Rules, 2014.

(2) The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1).

(3) The adjudicating officer may, by an order-

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.

Provided that in case the default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub-section (2) of section 137 and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.

Details of the Change

Proviso to section 454(1) of the Companies Act, 2013 has been added for rectifying the default under section 92(4) or 137(2) either prior to, or within thirty days of, the issue of the notice by the adjudicating officer.

For more details:

http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

3. Section 63 of the Companies (Amendment) Act, 2020 amends Section 450 of the Companies Act, 2013 w.r.t. Punishment where no specific penalty or punishment is provided w.e.f. December 21, 2020

Section 450

Old Penal Provision

If a company or any officer of a company or any other person contravenes any of the provisions of Companies Act, 2013 or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

New Penal Provision

If a company or any officer of a company or any other person contravenes any of the provisions of Companies Act, 2013 or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

Details of the change

The penalty provisions under section 450 of Companies Act, 2013, which provides for the punishment where no specific penalty or punishment is provided, is relaxed by providing the maximum amount of Penalty.

For more details:

http://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

4. Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2020 Dated July 22, 2020

The Securities and Exchange Board of India amended the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018. They shall come into force on the date of their publication in the Official Gazette.

(i) Regulation 15(2)**Old Regulation**

Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -
(a) remit the settlement amount forming part of the settlement terms, not later than fifteen calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by fifteen calendar days:

Explanation. – Remittance of settlement amount shall be done by way of a demand draft drawn in favour of 'Securities and Exchange Board of India' payable at Mumbai or by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised mode of payment.

New Regulation

Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -
(a) remit the settlement amount forming part of the settlement terms, not later than thirty calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by sixty calendar days, only after receipt of an application seeking extension of time within thirty days from the date of receipt of notice of demand:

Explanation. – Remittance of settlement amount shall be done by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised electronic mode of payment.

Details of change

- (i) The time limit for remit the settlement amount forming part of the settlement terms is increased.*
- (ii) Chapter VIII relating to notice of settlement is omitted.*
- (iii) In regulation 34, sub regulation 4 is inserted are under, -
Notwithstanding the omission of Chapter VIII, a Settlement Notice issued under regulation 18, shall be dealt with as if the Chapter VIII is still in force and continue to be dealt with accordingly.”*
- (iv) Last row of Table VI of Chapter VI of Schedule II and Table X of Chapter VI of Schedule II is substituted.*

For more details:

https://www.sebi.gov.in/legal/regulations/jul-2020/securities-and-exchange-board-of-india-settlement-proceedings-amendment-regulations-2020_47147.html

5. Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) (Amendment) Rules, 2021(December 31, 2021)

Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (Said Rules) are made for the purpose of holding inquiry for the purpose of imposing penalty under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G3, 23GA and 23H of the Securities Contracts (Regulation) Act, 1956.

Amendment to Rule 7

Rule 7 has been substituted with the following:

Service of notices and orders.

(1) A notice or an order issued under these rules shall be served on the person through any of the following modes, namely:—

- (a) by delivering or tendering it to that person or his duly authorised agent; or
- (b) by sending it to the person by fax or electronic mail or electronic instant messaging services along with electronic mail or by courier or speed post or registered post:

Provided that the courier or speed post or registered post shall be sent to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain, with acknowledgment due:

Provided further that a notice sent by fax shall bear a note that the same is being sent by fax and in case the document contains annexure, the number of pages being sent shall also be mentioned:

Provided also that a notice sent through electronic mail or electronic instant messaging services along with electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service.

(2) In case of failure to serve a notice or an order through any one of the modes provided under sub-rule (1), the notice or order may be affixed on the outer door or some other conspicuous part of the premises in which the person resides or is known to have last resided, or carried on business

or personally works, or last worked, for gain and a written report thereof shall be prepared in the presence of two witnesses.

(3) In case of failure to affix the notice or order on the outer door as provided under sub-rule (2), the notice or order shall be published in at least two newspapers, one of which shall be in an English daily newspaper having nationwide circulation and another shall be in a newspaper having wide circulation published in the language of the region where that person was last known to have resided or carried on business or personally worked for gain.

For details: https://www.sebi.gov.in/legal/rules/dec-2021/securities-contracts-regulation-procedure-for-holding-inquiry-and-imposing-penalties-amendment-rules-2021_55155.html

6. Offences within the purview of Adjudication

Section 454 of the Companies Act, 2013 provides the provisions relating to Adjudication of Penalties.

According to section 454(1), the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as prescribed under the The Companies (Adjudication of Penalties) Rules, 2014. The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under section 454(1).

According to 454(3), the adjudicating officer may, by an order-

- (a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and
- (b) direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit.

However, in case the default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub-section (2) of section 137 and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.

The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company, the officer who is in default or any other person. Any person aggrieved by an order made by the adjudicating officer under sub-section 454(3) may prefer an appeal to the Regional Director having jurisdiction in the matter.

Every appeal to abovementioned appeal shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees as may be prescribed.

The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

(i) Where company fails to comply with the order made under section 454(3) or section 454(7), within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.

(ii) Where an officer of a company or any other person who is in default fails to comply with the order made under section 454(3) or section 454(7), within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

It is important to note that Penalties which makes the Company and Officer in Default liable comes under the purview of Adjudication of Penalties. It does not cover the instances where punishment in the nature of Fines and/or Imprisonment is provided for the offence.

An inclusive list of Offences which comes under the purview of Adjudication of Penalties is provided hereinafter:

S. No.	Section	Nature of Offence	Penalty
1	10A (2)	Failure complying with the requirements relating to Commencement of business	If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.
2	12(8)	Default in complying with the provision of not maintaining the registered office	If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.
3	15(2)	Default in complying with the provisions of alteration of MoA	If a company makes any default in complying with the provisions of sub-section (1), the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration.
4	17(2)	Default in giving copies of MoA to members	If a company makes any default in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable for each default, to a penalty of one thousand

			rupees for each day during which such default continues or one lakh rupees, whichever is less.
5	33(3)	Default in issue of Application Forms for Securities	If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.
6	39(5)	Default in allotment of Securities by Company	In case of any default under sub-section (3) or sub-section (4), the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.
7	42(9)	Default in filing the return of allotment by Company	If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and Directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.
8	42(10)	Violation of provisions related to offer or invitation for subscription of securities on private placement	Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and Directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.
9	53(3)	Violation of provisions relating to issue of shares at discount	Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.

10	56(7)	Transfer and Transmission of Securities	Where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.
11	60(2)	Default in Publication of Authorised, Subscribed and Paid-Up Capital	If any default is made in complying with the requirements of sub-section (1), the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.
12	86(1)	Contravention of any provision relating to Registration of Charges	If any company is in default in complying with any of the provisions of Chapter VI, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.
13	88(5)	Failure to maintain register of members/debenture holders/other security holders as prescribed	If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.
14	89(5)	Failure to declare beneficial interest by a person	If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.
15	89(7)	Failure to file return for beneficial interest by company	If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default.

16	91(2)	Default in Power to Close Register of Members or Debenture-Holders or Other Security Holders.	If the register of members or of debenture-holders or of other security holders is closed without giving the notice as provided in sub-section (1), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day subject to a maximum of one lakh rupees during which the register is kept closed.
17	92(5)	If any company fails to file its annual return	If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default.
18	92(6)	If company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made there under	If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be liable to a penalty of two lakh rupees.
19	94(4)	Default in Place of keeping and Inspection of	If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of

		Registers, Returns, etc.	the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continues.
20	102(5)	Default in complying with the provisions of this section relating to statement to be annexed to notice	Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.
21	105(3)	If default is made in complying with sub-section (2) relating to proxies	If default is made in complying with sub-section (2), every officer of the company who is in default shall be, liable to penalty of five thousand rupees.
22	105(5)	If invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued	If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who issues the invitation as aforesaid or authorises or permits their issue, shall be liable to a penalty of fifty thousand rupees: Provided that an officer shall not be liable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.
23	111(5)	Default in Circulation of Members' Resolution	If any default is made in complying with the provisions of this section, the company and every officer of the company who is in

			default shall be liable to a penalty of twenty-five thousand rupees.
24	117(2)	Failure in filing with the Registrar the copy of notice or agreement within stipulated time	If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.
25	118(11)	Minutes of Proceedings of General Meeting, Meeting of Board of Directors and Other Meeting and Resolutions Passed by Postal Ballot	If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.
26	119(3)	Default in Inspection of Minute-Books of General Meeting	If any inspection under sub-section (1) is refused, or if any copy required under sub-section (2) is not furnished within the time specified therein, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each such refusal or default, as the case may be.

27	121(3)	Failure to file Report on annual General meeting	If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.
28	124(7)	Failure to transfer the amount of accumulated profits to unpaid dividend account and violating other provisions of section 124	If a company fails to comply with any of the requirements of this section, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees
29	134(8)	Financial Statement & Board Report	If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.
30	136(3)	Right of Member to Copies of Audited Financial Statement	If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.

31	137(3)	Failure to file financial statements with the Registrar	If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein, the company shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of two lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the Directors of the company, shall be liable to a penalty of ten thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of fifty thousand rupees.
32	140(3)	Non-Compliance by auditor of sub-section (2) relating to filing of resignation information	If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

33	157(2)	Failure to furnish DIN to Registrar	If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.
34	159	Penalty for Default of Certain Provisions	If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues
35	165(6)	Acting as a director of more than 20 companies	If a person accepts an appointment as a director in violation of this section, he shall be liable to a penalty of two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees.
36	172	Punishment for contravention of provisions contained under Chapter XI (Appointment and Qualification of Directors)	If a company is in default in complying with any of the provisions of this Chapter and for which no specific penalty or punishment is provided therein, the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees, and in case of continuing failure, with a further penalty of five hundred rupees for each day during which such failure continues, subject to a maximum of three lakh rupees in case of a company and one lakh rupees in case of an officer who is in default.

37	173(4)	Meetings of Board	Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.
38	178(8)	Default in complying with the provisions of section 177 & of this section relating to Committees like NRC & SRC	In case of any contravention of the provisions of section 177 and this section, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of one lakh rupees. Provided that inability to resolve or consider any grievance by the Stakeholders Relationship Committee in good faith shall not constitute a contravention of this section.
39	184(4)	Disclosure of Interest by Director	If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be liable to a penalty of one lakh rupees
40	187(4)	Contravention of the provisions of this section relating to investment of company	If a company is in default in complying with the provisions of this section, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.
41	189(6)	Register of Contracts or Arrangements in Which Directors are Interested	Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees.
42	190(3)	Contract of Employment with Managing or Whole-Time Directors	If any default is made in complying with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default.
43	191(5)	Contravention of the provisions of this section relating to payment to director for loss of office in connection with	If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

		transfer of property	
44	197(15)	Contravention of the provisions of this section relating to managerial remuneration in case of absence or inadequacy of profits.	If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
45	203(5)	Contravention of the provisions of this section relating to appointment of Key Managerial personnel	If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.
46	204(4)	Contravention of the provisions of this section relating to Secretarial Audit for bigger companies.	If a company or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be liable to a penalty of two lakh rupees.
47	232(8)	Contravention of the provisions by the transfer and transferee company in case of merger or amalgamation	If a company fails to comply with sub-section (5), 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.

48	238(3)	Failure to register the offer of Schemes involving transfer of shares.	The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be liable to a penalty of one lakh rupees.
49	405(4)	Failure to furnish information or statistics etc. by the companies required by the Central Government	If any company fails to comply with an order made under sub-section (1) or sub-section (3), or furnishes any information or statistics which is incorrect or incomplete in any material respect, the company and every officer of the company who is in default shall be liable to a penalty of twenty thousand rupees and in case of continuing failure, 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.
50	450	Penalty for contravention of any of the provisions of the Act or the rules made, for which no penalty or punishment is provided	If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be ¹ liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

Lesson 7 - Relief and Remedies

1. Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2020 (July 22, 2020)

The Securities and Exchange Board of India amended the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018. They shall come into force on the date of their publication in the Official Gazette.

(i) Regulation 15(2)

Old Regulation

Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -
(a) remit the settlement amount forming part of the settlement terms, not later than fifteen calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by fifteen calendar days:

Explanation. – Remittance of settlement amount shall be done by way of a demand draft drawn in favour of 'Securities and Exchange Board of India' payable at Mumbai or by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised mode of payment.

New Regulation

Where the Panel of Whole Time Members accepts the recommendation of the High Powered Advisory Committee to settle the specified proceedings, the applicant shall be issued a notice of demand within seven working days of the decision of the panel and the applicant shall, -
(a) remit the settlement amount forming part of the settlement terms, not later than thirty calendar days from the date of receipt of the notice of demand, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by sixty calendar days, only after receipt of an application seeking extension of time within thirty days from the date of receipt of notice of demand:

Explanation. – Remittance of settlement amount shall be done by way of direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorised electronic mode of payment.

Details of change

- (i) *The time limit for remit the settlement amount forming part of the settlement terms is increased.*
- (ii) *Chapter VIII relating to notice of settlement is omitted.*
- (iii) *In regulation 34, sub regulation 4 is inserted are under, -*

Notwithstanding the omission of Chapter VIII, a Settlement Notice issued under regulation 18, shall be dealt with as if the Chapter VIII is still in force and continue to be dealt with accordingly.”

(iv) Last row of Table VI of Chapter VI of Schedule II and Table X of Chapter VI of Schedule II is substituted.

For more details:

https://www.sebi.gov.in/legal/regulations/jul-2020/securities-and-exchange-board-of-india-settlement-proceedings-amendment-regulations-2020_47147.html

2. Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2022 (January 14, 2022)

Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 (Settlement Proceedings Regulations) had been notified to provide for the terms of settlement and the procedure of settlement and matters connected therewith or incidental thereto. These regulations were notified on November 31, 2018 and are in force with effect from January 1, 2019

Now, by Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2022, SEBI has amended the above said Settlement Proceedings Regulations w.e.f. January 14, 2022. The changes made by this amendment *inter-alia* includes as under:

i. Regulation 4(2) has been omitted which was as under:

“Notwithstanding anything contained in regulation 4(1), the Board may consider the application, if satisfied that there was sufficient cause for not filing it within the specified period and it is accompanied with non-refundable fees as specified in Part-B of the Schedule-I:

Provided that, where the application is filed after sixty calendar days from the expiry of the period specified in sub-regulation (1), the settlement amount determined in accordance with Schedule-II of these regulations shall be increased by twenty-fivepercent:

Provided further that, no such delayed application shall be considered if the application is filed after one hundred and twenty calendar days from the expiry of the period specified in sub-regulation (1) or after the first hearing, whichever is earlier.”

Impact

The provision relating to the power of considering application after the specified period is omitted.

ii. Amendment to Regulation 6

Regulation 6(1)(b)

Earlier

Where the applicant does not submit or delays the submission of information, document, etc., as called for by the Board.

Now

Where the applicant does not submit or delays the submission of information, document, Revised Settlement Terms, etc., as called for by the Board

Impact

The application may also be rejected if the applicant does not submit or delays the submission of Revised Settlement Terms or any other information or document as called for by the SEBI. The words “Revised Settlement Terms” has been specifically added by the amendment.

Regulation 6(1)(f)

Regulation 6(1)(f) providing one more ground for rejection of application has been added, which is as under:

“Where the applicant fails to comply with the condition precedent(s) for settlement within the time as required by the Internal Committee.”

iii. Amendment to Regulation 9

a. Regulation 9(2)(j)

Regulation 9(2) provides the inclusive list of non-monetary settlement terms. Clause j has added to this list which is as under:

Restraining from accessing the securities market and/or prohibiting from buying, selling or otherwise dealing in securities, directly or indirectly and associating with the securities market in any manner for a specific period.

b. Explanation to regulation 9(4)

The explanation which defines the “Legal Costs” has been amended by including other expenses incurred by the Board in any other proceeding before any Court or Tribunal in respect of such application

iv. Amendment to Regulation 13

Regulation 13 provides the provisions regarding Proceedings before the Internal Committee. Clause (ba) has been added to sub-regulation 13(2) empowering the Internal Committee to:

“require the applicant to comply with certain condition precedent(s) within a specified time period for consideration of the application for settlement.”

Regulation 13(2)(c) has been amended by empowering Internal Committee to permit the applicant to submit revised settlement terms within a period not exceeding fifteen working days from the date of the Internal Committee meeting in place of period of ten days which was provided earlier. Further, the proviso to regulation 13(2)(c) has been omitted which was as under:

“Provided that the revised settlement terms received after ten working days, but within twenty working days may be considered subject to an increase of ten percent over the recommended settlement amount”

v. Regulation 15

Regulation 15 provides the provisions related to Action on the recommendation of High Powered Advisory Committee.

Amendment to Regulation 15(2)(a)

Regulation 15(2)(a) has been amended by omitting the provision for allowing the extension of time for remitting the settlement amount, which was as under:

”, which may be extended by the Panel of Whole Time Members for reasons to be recorded, by sixty calendar days, only after receipt of an application seeking extension of time within thirty days from the date of receipt of notice of demand.

Explanation to regulation 15(2)(a)

Earlier the remittance was allowed by “direct credit in the specified bank account through NEFT/RTGS/IMPS or any other authorized electronic mode of payment”

Now this provision has been substituted by allowing the “*payment through the dedicated payment gateway provided for the purpose*”.

vi. Schedule I and II of the Settlement Proceedings Regulations have also been amended.

For details: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-settlement-proceedings-amendment-regulations-2022_55363.html

3. Amendment to the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 (January 17, 2023)

SEBI has issued the Securities and Exchange Board of India (Settlement Proceedings) (Amendment) Regulations, 2023. The amendment has made changes to regulation 23 of the principal regulations.

Regulation 23(1) has been amended as under:

“(1) The Whole Time Member, Adjudicating Officer or the competent officer of the Board before whom the proceedings are pending, shall dispose of the respective proceedings, by an appropriate order, on the basis of the approved settlement terms.”;

Earlier, regulation 23(1) was as under, which has now been omitted:

“The Adjudicating Officer shall by an appropriate order dispose of the proceeding pending before him on the basis of the approved settlement terms.”

The below explanation to regulation 23(1) has also been omitted.

Explanation. -In case of concurrent proceedings, a comprehensive order may be passed by the Panel of Whole Time Members and thereafter the concerned Adjudicating officer may pass an order, disposing of the relevant proceedings before him, in view of the settlement.”

Further, regulation 23(2) of the principal regulations has also been deleted. Prior to the amendment, it was as under:

“The Panel of the Whole Time Members shall by an appropriate order dispose of proceedings initiated or proposed to be initiated other than the proceedings referred to in sub-regulation (1).”

For details: https://www.sebi.gov.in/legal/regulations/jan-2023/securities-and-exchange-board-of-india-settlement-proceedings-amendment-regulations-2023_67424.html

4. Amendments to the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

In the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015,

(i) in regulation 40 (8), the words and symbols “: Provided further that in case of any claim, difference or dispute under this sub-regulation the same shall be referred to and decided by arbitration as provided in the bye-laws and/or regulations of the stock exchange(s)” shall be omitted.

(ii) regulation 67 (5) shall be substituted with the following, namely, —

“(5) All claims, differences or disputes between the listed entity and its investor arising out of or in relation to the activities of the listed entity in the securities market shall be submitted to a dispute resolution mechanism that includes mediation and/or conciliation and/or arbitration, in accordance with the procedure specified by the Board.”

Old regulation 67(5)

In case of any claim, difference or dispute under the provisions of this chapter and other provisions of these regulations applicable to the listed entity, the same shall be referred to and decided by arbitration as provided in the bye-laws and regulations of the stock exchange(s).

Details of Change

Through this amendment, SEBI has brought the changes in SEBI (LODR) Regulations, 2015 for the purpose of resolution of disputes between investors and listed entities with the aid of Alternate Dispute Resolution System i.e. Arbitration, Mediation and Conciliation. Earlier under this regulation, the disputes were settled with the aid of Arbitration in accordance with the bye-laws and regulations of the stock exchange(s).

Further, it may be noted that the above provision applies only to listed entity whose securities market regulators are signatories to the Multilateral Memorandum of Understanding of International Organization of Securities Commission issuing ‘Indian Depository Receipts’ as defined under Rule 13 of the Companies (Registration of Foreign Companies) Rules, 2014.

For details: https://www.sebi.gov.in/legal/regulations/jul-2023/securities-and-exchange-board-of-india-alternative-dispute-resolution-mechanism-amendment-regulations-2023_73454.html

5. Securities and Exchange Board of India (Settlement Proceedings) (Second Amendment) Regulations, 2023(August 9, 2023)

Regulation 23(2A) has been added in SEBI (Settlement Proceedings) Regulations, 2018 have been by the amended regulation. Regulation 23(2A) reads as under:

“In case of specified proceedings which may be initiated or are proposed to be initiated, the Panel of Whole Time Members shall dispose of such proceedings on the basis of the approved settlement terms.”

Details of Change

The power of disposing of specified proceedings under the settlement proceedings regulations are entrusted to the Panel of Whole Time Members in case of specified proceedings. As per regulation 2(1)(f) of SEBI(Settlement Proceedings) Regulations, 2018 "specified proceedings" means the proceedings that may be initiated by the SEBI or have been initiated and are pending before SEBI or any other forum, for the violation of securities laws, under Section 11, Section 11B, Section 11D, Section 12(3) or Section 15-I of the SEBI Act, 1992 or Section 12A or Section 23-I of the Securities Contracts (Regulation)Act, 1956 or Section 19 or Section 19H of the Depositories Act, 1996.

6. Compounding of Offences under Companies Act, 2013

Section 441 of the Companies Act, 2013 provides the provisions relating to Compounding of Offences.

According to Section 441 (1), notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine, may, either before or after the institution of any prosecution, be compounded by—

(a) the Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed twenty-five lakh rupees, by the Regional Director or any officer authorised by the Central Government,

on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify:

Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:

Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account:

Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

According to above mentioned provisions where any amount “fine” only is provided for any offences or “fine or Imprisonment” is provided for any offence, the offence can be compounded by NCLT, Regional Director or Any other officer authorised by the Central Government. When the maximum fine for any offences is 25 Lakh the offence can be compounded by the Regional Director or provided for any other officer authorised by the Central Government. However, no such limit is provided for the NCLT.

It may be noted that there is no amount restrictions (Upper or Lower) on the powers of NCLT to Compound the Offences. However, where the maximum amount of fine which may be imposed for such offence does not exceed twenty-five lakh rupees, the Regional Director or any officer authorised by the Central Government Compounds the Offences generally.

An inclusive list of offences compoundable under the Companies Act, 2013 is provided hereinafter:

COMPOUNDABLE OFFENCES UNDER THE COMPANIES ACT, 2013

S. No.	Section	Provision	Fine as per Section	Compounding Authority
1	8(11)	Formation of companies with charitable objects, etc.	If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the Directors and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees: Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447.	NCLT
2	26 (9)	Matters to be stated in Prospectus	If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall	Regional Director or any officer authorised by the Central

			not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupee.	Government or NCLT
3	40(5)	Securities to be dealt in with in stock exchanges	If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.	NCLT
4	46(5)	Certificate of Shares	If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.	NCLT
5	68(11)	Power of company to purchase its own Securities	If a company makes any default in complying with the provisions of this section or any regulation made by the Securities and Exchange Board, for the purposes of clause (f) of sub-section (2), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees	Regional Director or any officer authorised by the Central Government

			and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.	
6	74(3)	Repayment of deposits, etc., accepted before commencement of this Act	If a company fails to repay the deposit or part thereof or any interest thereon within the time specified in sub-section (1) or such further time as may be allowed by the Tribunal under sub-section (2), the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.	NCLT
7	99	Punishment for default in complying with provisions of sections 96 to 98	If any default is made in holding a meeting of the company in accordance with Section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.	NCLT
8	128 (6)	Books of accounts, etc., to	If the managing director, the whole-time director in charge of finance, the Chief Financial	Regional Director or any officer authorised by the Central

		be kept by Company	Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees-	Government or NCLT
9	129 (7)	Financial Statement	If a company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the Directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.	Regional Director or any officer authorised by the Central Government or NCLT
10	147 (1)	Punishment for contravention of provisions of Section 139 to 146	If any of the provisions of sections 139 to 146 (both inclusive) is contravened, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable Omitted with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.	Regional Director or any officer authorised by the Central Government or NCLT
11	166(7)	Duties of Director	If a director of the company contravenes the provisions of this	Regional Director or any officer authorised

			section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.	by the Central Government or NCLT
12	167(2)	Vacation of office of Director	If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.	Regional Director or any officer authorised by the Central Government or NCLT
13	185(4)	Loan to Directors, etc	If any loan is advanced or a guarantee or security is given or provided or utilised in contravention of the provisions of this section,— (i) the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; (ii) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and (iii) the director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.	Regional Director or any officer authorised by the Central Government or NCLT

14	206(7)	Power to call for Inspection of Books of Accounts and conduct enquiries	If a company fails to furnish any information or explanation or produce any document required under this section, the company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.	NCLT
15	221(2)	Freezing of assets of company on inquiry and Investigation	In case of any removal, transfer or disposal of funds, assets, or properties of the company in contravention of the order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.	Regional Director or any officer authorised by the Central Government or NCLT
16	222(2)	Imposition of restrictions upon securities	Where securities in any company are issued or transferred or acted upon in contravention of an order of the Tribunal under sub-section (1), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but	Regional Director or any officer authorised by the Central Government or NCLT

			which may extend to five lakh rupees, or with both.	
17	242(8)	Power of Tribunals	If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.	Regional Director or any officer authorised by the Central Government or NCLT
18	249(2)	Restriction on making Application under Section 248 in certain situation	If a company files an application under sub-section (2) of section 248 in violation of sub-section (1), it shall be punishable with fine which may extend to one lakh rupees.	Regional Director or any officer authorised by the Central Government or NCLT
19	344(2)	Failure to make a statement that Company is under Liquidation	If a company contravenes the provisions of sub-section (1), the company, and every officer of the company, the Company Liquidator and any receiver or manager, who wilfully authorises or permits the non-compliance, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.	Regional Director or any officer authorised by the Central Government or NCLT
20	347(4)	Contravention of rule framed or an Order under Section 347(3) regarding disposal of books.	If any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with fine which may extend to fifty thousand rupees.	Regional Director or any officer authorised by the Central Government or NCLT
21	392	Punishment for contravention of provisions from section 379 to 393	Without prejudice to the provisions of section 391, if a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall	NCLT

		except section 391	not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.	
22	452(1)	Punishment for wrongful withholding of Property	If any officer or employee of a company— (a) wrongfully obtains possession of any property, including cash of the company; or (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.	Regional Director or any officer authorised by the Central Government or NCLT
23	454(8) & (9)	Punishment for failing to pay penalty imposed by Adjudicating Officer or RD	Where company fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be, within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.	Regional Director or any officer authorised by the Central Government or NCLT

			Where an officer of a company or any other person who is in default fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.	
24	464(3)	Prohibition of association or partnership of persons exceeding certain number	Every member of an association or partnership carrying on business in contravention of sub-section (1) shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.	Regional Director or any officer authorised by the Central Government or NCLT

Lesson 8 - Crisis Management & Risk and Liability Mitigation

SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021 (August 3, 2021)

SEBI vide its notification dated August 03, 2021, amends the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which came into force on January 1, 2022. The amendments, inter alia, include the following:

- The requirement of undertaking Directors and Officers insurance has been extended to the top 1000 companies with effect from January 01, 2022. [Reg. 25(10)].

For more details: https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html

Lesson 9 - Misrepresentation and Malpractices – Civil and Criminal Trial Procedure

1. Section 58 of the Companies (Amendment) Act, 2020 has amended Section 410 of the Companies Act, 2013 w.r.t. “Constitution of Appellate Tribunal”-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)

(i) in the opening portion, the words "not exceeding eleven" is omitted;

Details of Changes:

The restriction on the appointment of the number of judicial and technical members in the Appellate Tribunal by the Central Government has been removed.

(ii) in clause (b), for the word, figures and letter "section 53N", the word, figures and letter "section 53A" is substituted.

Details of Changes:

The NCLAT constituted under Section 410 of the Companies Act, 2013 is empowered to hear appeals against any direction, decision or order referred to in Section 53A of the Competition Act, 2002 in accordance with the provisions of that Act.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open>

2. Section 59 of the Companies (Amendment) Act, 2020 has inserted a new Section 418A of the Companies Act, 2013 w.r.t. “Benches of Appellate Tribunal”-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)

Section 418A- (1) The powers of the Appellate Tribunal may be exercised by the Benches thereof to be constituted by the Chairperson:

Provided that a Bench of the Appellate Tribunal shall have at least one Judicial Member and one Technical Member.

(2) The Benches of the Appellate Tribunal shall ordinarily sit at New Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify:

Provided that the Central Government may, by notification, after consultation with the Chairperson, establish such number of Benches of the Appellate Tribunal, as it may consider necessary, to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002 and under section 61 of the Insolvency and Bankruptcy Code, 2016.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjcIMO==&docCategory=Notifications&type=open>

3. Section 60 of the Companies (Amendment) Act, 2020 has amended Section 435 of the Companies Act, 2013 w.r.t. “Establishment of Special Courts”-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)

In section 435 (1) of the Companies Act, 2013 for the words "offences under this Act, by notification", the words and figures "offences under this Act, except under section 452, by notification" has been substituted.

Details of Changes:

With this amendment, the offence under section 452 of the Companies Act, 2013 i.e. punishment for wrongful withholding of property, is excluded from the applicability of section 435 i.e. the Special Court.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjcIMO==&docCategory=Notifications&type=open>

Note: Students appearing in December, 2024 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by ICSI, MCA, SEBI, RBI & Central Government upto 31st May, 2024.