

CHAPTER 1

APPOINTMENT & QUALIFICATION OF DIRECTORS

+ Company (Appointment & Qualification of Director) Rules, 2014

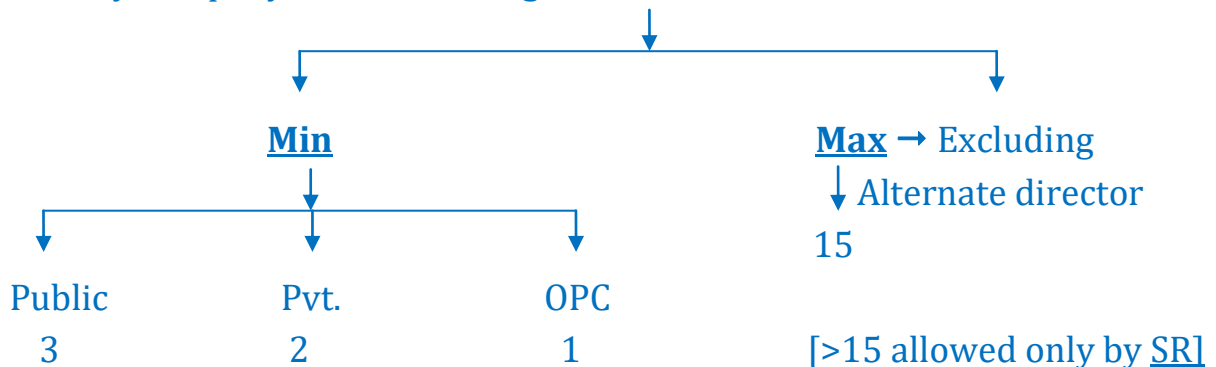
Shortcuts used:

1. SR	Special Resolution	41. Inq	Inquiry
2. FS	Financial Statement	42. Doc"/Docu"	Document
3. IMP	Imprisonment	43. B/P	Books/Paper
4. NLT	Not less than	44. Crs	Creditors
5. trans.	Transaction	45. A/L	Asset/Liability
6. S.to	Subject to	46. M/A	Merger/Amalgamation
7. Deb.	Debenture	47. Consi,	Consideration
8. PFI	Public financial Institute	48. Red"	Reduction
9. Incl.	Include	49. Obj.	Objection
10. B.C.	Body Corporate	50. ESH	Equity Shareholder
11. BM	Board Meetings	51. PSH	Preference shareholder
12. dir.	Director	52. LABS	Latest audited balance sheet
13. Remu"	Remuneration	53. C/A	Compromise/Arrangement
14. B4	Before	54. RPT	Related Party Transaction
15. appli.	Application	55. R.V	Registered valuer
16. O/s	Outstanding	56. RVO	Registered valuer organisation
17. PSC	Paidup Share Capital	57. CJ	Chief justice
18. Dep	Deposit	58. S.C.	Special Court
19. H/S/A	Holding/Subsidiary/Associates	59. Megi.	Magistrate
20. tran	Transaction	60. AT	Appellate tribunal
21. FV	Face value	61. A.O.	Adjudicating officer

22. s.s.	Small Shareholder	62.R.D.	Regional Director
23. OBH	Opportunity of being heard	63. b/w	Between
24. Mgr	Manager		
25. C.P.	Chairperson		
26. V.C.	Video Conferencing		
27. Reso.	Resolution		
28. L/G/S	Loan/Guarantee/Security		
29. R'ment	Repayment		
30. A.P.	Authorized Person		
31. Acq.	Acquisition		
32. S.P.	Security premium		
33. LTB	Long term borrowing		
34. ALP	Arm's length price		
35.BMR	Board meeting resolution		
36. S/p of G/s	Sale/purchase of goods/services		
37.NCD	Non convertible debenture		
38.MP	Managerial Person		
39. KMP	Key managerial person		
40.BOA	Books of accounts		

⇒ **Section →149: Company to have board of director.**

Every company = BOD = having “**individuals**” as director.



Question: What if in AOA it is written that only 10 directors can be appointed?

Hint: 2 SR.first for 149 nd second for AOA.

149(3) → at least 1 Director = stayed in India in during financial year for at least 182 days (Resi. Director)

Notification { → criteria of min & max → N.A. to sec. 8 company.
→ criteria of max → N.A. to government company
Both Exemption only if no default in filing FS u/s 137 or annual report u/s 92

⇒ **Section 164 : Disqualification of director**

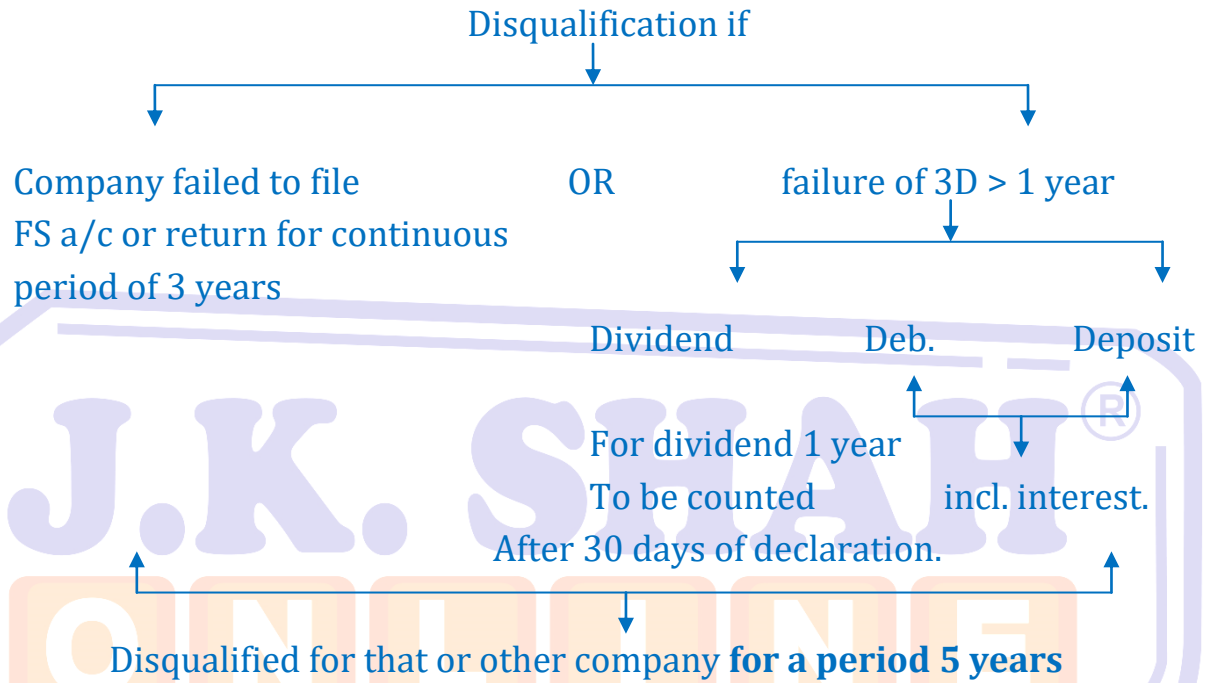
I- 164 (1) “For those who are not yet director. For all co’s existing director.

- 1) Unsound mind (Declared by court)
- 2) **Undischarged** insolvent (discharged insolvent can be director) [®]
- 3) **Applied** for insolvency & pending.
- 4) Convicted [i.e judgement came](Evenif appeal filed)
+ offence which incl. moral turpitude or otherwise (i.e any crime)
+ Imprisonment NLT 6 months (So if no IMP or Imp < 6 months then no disqualification.)
+ Period of 5 years has not elapsed from **expiry of sentence.**
However, if convicted & imprisonment 7 years or more than life time can’t be director.
- 5) Any court / trib. has ordered for disqualification. (Evenif appeal filed)
- 6) If he is S.H. of co. & calls are in arrears for ≥ 6 months. [can’t be director of any company]—Even in case of joint owner evenif his name is second still he will have disqualification even though primary responsibility is of first owner.
- 7) Convicted for violation of sec. 188 in **any last 5 years** (related party trans.)(Evenif appeal filed)
(So if only contract is voidable and not imp then no disqualification)
- 8) Not complied with DIN → 152(3)
- 9) Not complied with 165(1) → related to specified no. of directorship.

For point no. 4, 5, 7, 164(1) N.A. upto

- a) 30 days from order **or**
- b) If appeal preferred then upto 7 days from appeal order

II - 164 (2): for all company (**except government company-s.to 137,92**):
Disqualification of the company only in which he is existing director.



Note: Means he can't be appointed in other company also for 5 years from date of default and if he is director in other companies **then sudden vacation** & can't be reappointed in defaulting company (**Means no vacation in defaulting company till his tenure get over but then no reappointment**).—as per section 167.

Questions: What is failure to repay interest of PFI or Bank?

Hint: No disqualification.

- Note:**
- 1) If company cured the default then also disqualification continues.
 - 2) If any new director appointed to such defaulted company then no disqualification u/s 164(2) for 6 month from appointment.

III -164 (3): Only for pvt co. (Except Subsidiary of public co.)→ they can provide any disqualification in articles in addition to (1) & (2). (e.g. related to age or educational Qualification)

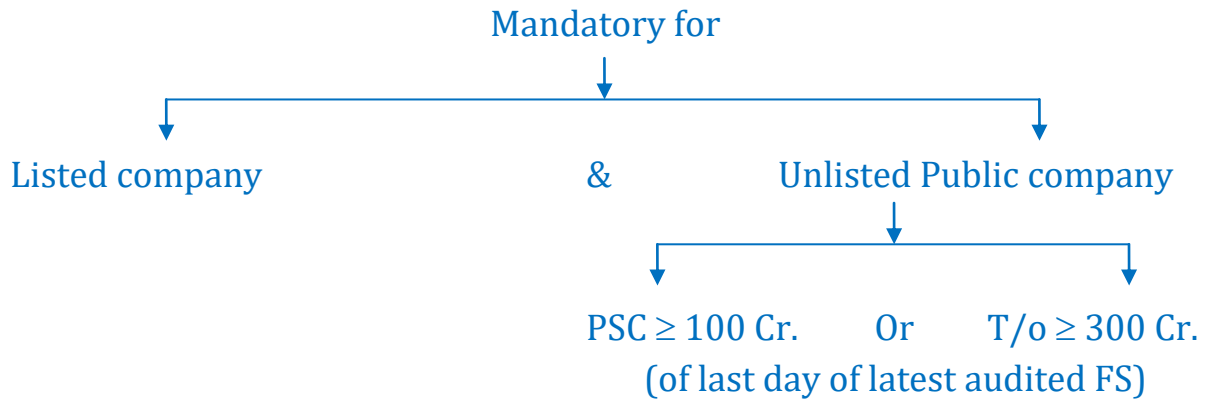
⇒ **Section 165 : Maximam no. of directorship**

- ⇒ Max **20** companies at same time.
- ⇒ This will **not incl.** sec-8 company(S.to 137,92) & dormant company
- ⇒ However max number of **public companies in this 20 is 10.** company]
- ⇒ Member by **SR can reduce** max no. of companies in which director can be director.
- ⇒ Violation then → penalty.**Min 2000 per day** after 1st day of contravention-max 2 Lakh.
- ⇒ A person can't be small shareholder director in > 2 company at same time.(Section 151)

⇒ **Sec-167 : Vacation of office**

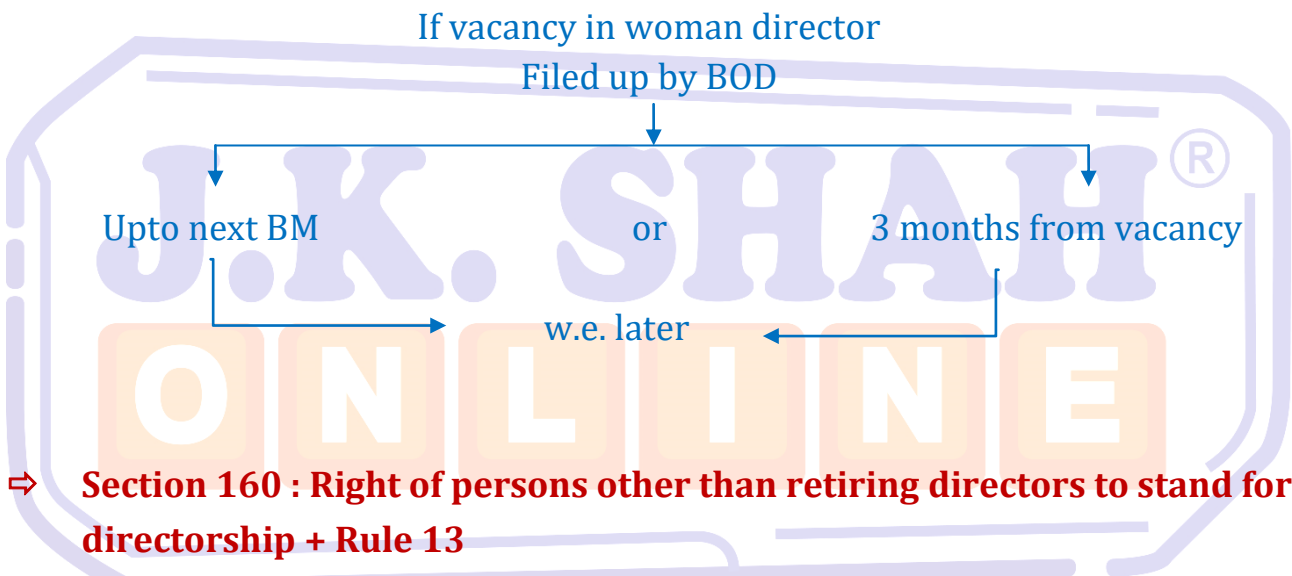
- a) If disqualified u/s 164 or
- b) Absent from all board meeting for 12 month with/ without leave. [12 month from last board meeting attended]
e.g. last BM was on 7/5/19 & then no BM attended upto 7/5/20 then vacation
- c) Acts in contravention of sec. 184 (Interested dir)
- d) Fails to disclose int. as per sec. 184
- e) Disqualified by order of court
- f) Moral turpitude or otherwise + imprisonment \geq 6 month
for **e&f** : no vacation for 30 days from original order or if appeal filed then 7 days from order.(After such period vacate evenif appeal filed)
- g) Sec. 169 → removal of director.
- h) If he was director because of any other employment & he is removed from that employment.
 - Penalty → for not vacating office even if he knows that disqualification attracted.
Fine-1L-5L
 - if all director vacated then promoter or CG = appoint required director.
 - Pvt. Company may add other vacate conditions

⇒ **Woman directors [Rule 3 + 2nd proviso to sec-149]**



⇒ **Time limit for appointment of woman director:**

Company incorporated under Company act, 2013: Within 6 month of incorporation



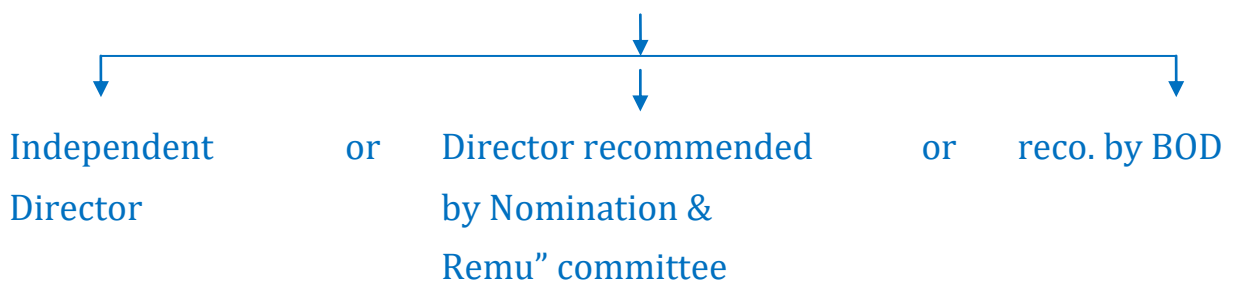
⇒ **Section 160 : Right of persons other than retiring directors to stand for directorship + Rule 13**

[General process to appoint a new director]

[Appli. For all company]

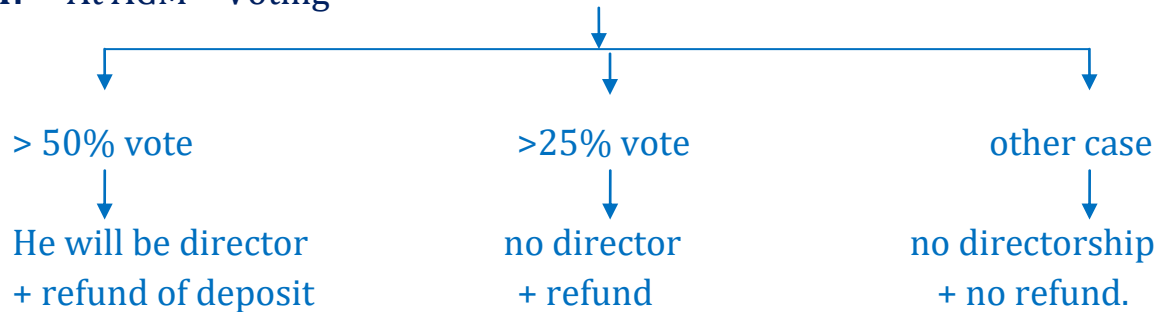
Steps:

1. Atleast 14 days before GM notice in writing to company (By member or others)
2. Deposit to be made for Rs.100000 or higher amt. (For Nidhi Co.10000)
Deposit of ₹ 1L will not apply in case of appointment of



3. Then company will send individual notices to members about such proposed candidature through → a) email or b) in writing + website.
No need to send individual notice if at least 7 days b4 AGM company give advertisement in: At least 1 vernacular newspaper + 1 English language.

4. At AGM = Voting

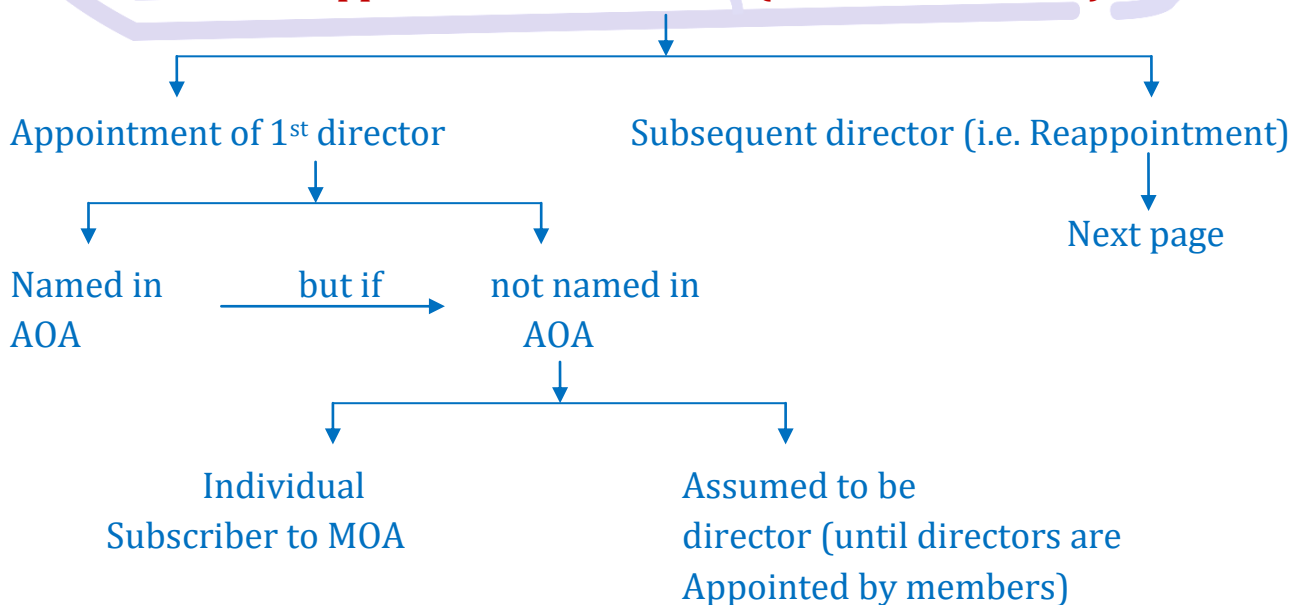


5. In case of section 8 if person gets lower than 25% then BOD will decide whether to forfeit deposit or not.

6. This process is for all appointment except retiring director by rotation. So, for additional director alternate director, nominee director etc. same process of section 160(at time of becoming regular director).

7. Section 160 N.A. to private company, 100% govt. company. (only if no default in filing FS u/s 137 & annual return u/s 92]

⇒ **Section 152 : Appointment of directors (other than sec 160)+Rule 8**



⇒ No person = dir. Unless he has DIN (Director identification number)

⇒ **Process:**

Director $\xrightarrow{\text{on or b4}}$ DIR-2 & Company $\xrightarrow{\text{within 30 day}}$ DIR 12 to ROC.
 appointment to Company $\xrightarrow{\text{of appointment}}$

- This process N.A. to govt. company of which director appointed by CG/SG. (S.to 137,92)
- upto now it was appli. to all company [152(1) to 152(5)]
- **Now onwards only to Public company**
[152 (6) & 152(7)]

⇒ **Subsequent Director [152(6)]**

↓
 Retirement of director by rotation → to avoid self-perpetuating management [for pvt company all can also be non-rotational]

↓
 Unless AOA provides otherwise (i.e. for rotation of all director):

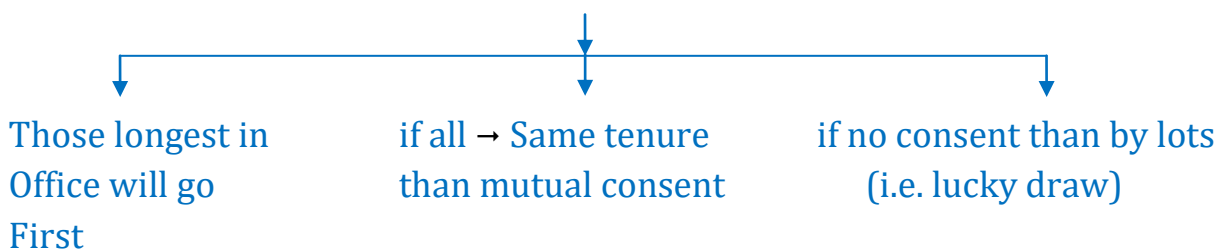
- 1) At least $\frac{2}{3}$ of total director shall retire by rotation [if in fraction → take higher no.]
- 2) $\frac{1}{3}$ of such $\frac{2}{3}$ → shall retire by rotation on each AGM [if in fraction → take nearest no.]

Means max tenure of retiring director = 3 years

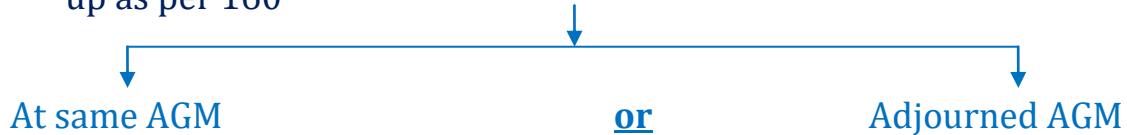
↓
 In “Total director” Independent director & Nominee dir not to be counted.

Some directors will always be non rotational: Independent dir, Nominee director proportional representation director, small shareholder director.

How to select directors from all?



3) The vacancy which arises due to rotation of $1/3^{\text{rd}}$ of $2/3^{\text{rd}}$, can be filled up as per 160



4) If no vacancy filled as above then retiring director by rotation = deemed reappointed.

Note: Any change in total no. of director during 3 years has to be ignored recalculation for $2/3$ & $1/3$ to be done after 3 years.

5) **Yet the vacancy due to retiring director will not be filled by deemed reappointment if:**

I. Not qualified for appointment.

II. Retiring director → in written represent → his unwillingness for re-appointment.

III. Resolution is passed not to be filled up vacancy.

IV. If resolution for such reappointment was put to vote & lost (i.e. resolution could not be completed then no deemed reappointment of old director).

V. Section -162 violation.

→ Section 152 N.A to: Pvt company, unlisted Govt. company, subsidiary of such govt. company—s.to 137,92 **(So, If listed govt co. then rotation applicable)**

→ **Section 162:** Each appointment of director has to be voted individually. Unless a proposal for single vote is **approved unanimously** (i.e. if all say yes then only > 1 director can be appointed by single / joint vote otherwise individual voting)

→ Any resolution in contravention of section 162 is void.

→ **How section 152 & 162 is jointly works?**

E.g. in place of director A & B who are retiring, P & Q are appointed by single vote (not by taking prior approval) then it is contravention of section 162. So, P & Q appointment is not valid but still A & B can't be deemed reappointed.

Section 162 N.A to (Means all dir can be appointed by single resolutions):

Pvt.Ltd.,100% Govt. Co.

⇒ **Section 161: Appointment of**

↓
→ By BOD (Rest all director by members)

Additional director 161(1)	Alternate director 161(2)	Nominee Director 161(3)	Casual Vacancy 161(4)
1) Only of AOA authorizes to appoint.	1) If AOA Permits & if not, then SH can pass OR to empower BOD	1) If AOA permits	1) If AOA permits but to be approved by member in next GM
2) To fill any urgent requirement (E.g. lack of quorum at adjourned board meeting)	2) When to appoint? When original director → not in India for ≥ 3 months	2) When can be appointed? → As per other law → as per any agree with bank etc. → if SH= Govt.	2) What is that? Vacancy of any director who was appointed in GM
3) Tenure: upto date of AGM or last date upto which to be conducted. <i>w.e. earlier</i>	3) Tenure: Max. time permissible to original director (Death also incl.) or original coming back to india → <i>w.e. earlier</i>	3) Tenure : as specified in agreed appointment letter.	3) Tenure? Max. o/s period of vacating director
4) Counted for max. & total no. of director	4) Not counted for max. director	4) Counted for max but still non rotational	4) Counted for max & total if vacated director was counted.
5) Any no. of additional director can be appointed. (s.to max dir)	5) Alternate director for independent director to be qualified as independent		5) There can't be casual vacancy of director who was appointed because of other casual vacancy [Because it

	director		was not by company in AGM]
6) Additional director can be appointed as Managing director	6) 1 alternate director can't be for 2 original director in same co.+ He can't be original dir in same Co.		
7) BOD can't remove additional director → appointment process as per section 160	7) Alternate director can't be deemed reappointed. (Original dir can be)		

Note

- ⇒ Such directors must have DIN
- ⇒ Only those individual can be additional directors who were not failed to be appointed in AGM earlier.
- ⇒ When one elected dir rejects to assume the office, It is not casual vacancy.

⇒ **Section 163 : Optional → Proportion representation for appointment of director**

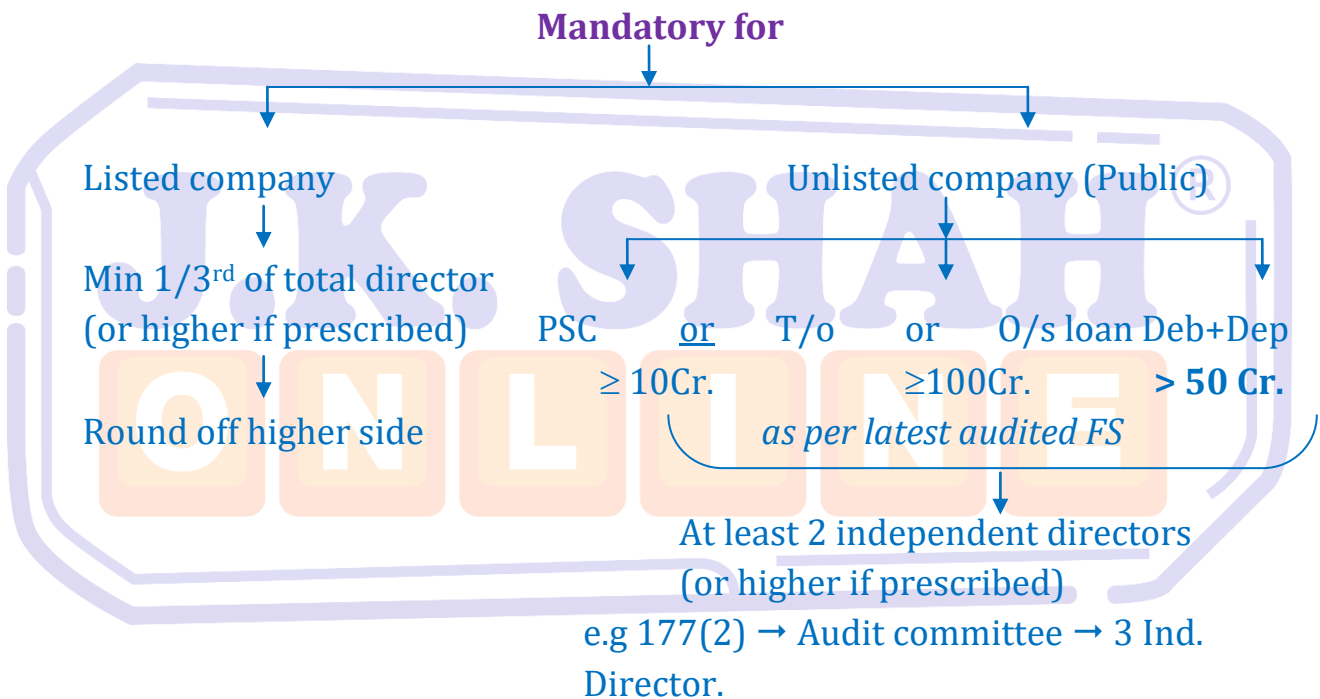
(To give pleasure to minority SH, having upto 49%)

- ⇒ Notwithstanding any provision (e.g. section 152 → Rotation N.A)
- ⇒ If AOA permits.
- ⇒ The representation of minority shareholder in board of director is called “proportion representation”.
- ⇒ The option to appoint such director is with company [i.e majority S.H. itself]
- ⇒ In case option is exercised → min 2/3 directors have to be appointed from minority S.H.
- ⇒ Tenure: 3 years [non rotational]
- ⇒ Specific provisions in articles is required.
- ⇒ Section 163 N.A. to 100% govt. company + subsidiary.—s.to 137,92.

⇒ **Section 166 : Duties of directors**

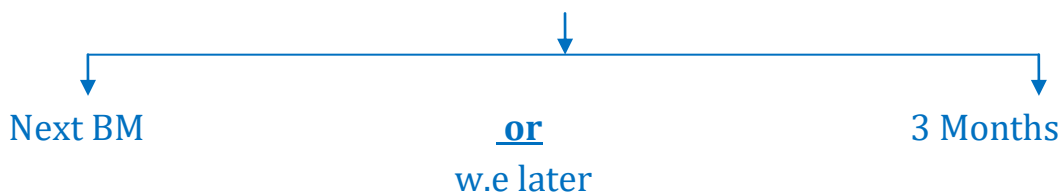
- 1) Act as per AOA
- 2) Act in good faith to promote object of company
- 3) Due & reasonable care + independent judgement
- 4) Not to get involved where conflict in int.
- 5) Not attempted or not to achieve to get undue gain or doing advertise for himself or relative + partner.
- 6) Shall not assign his office to other → if assigned then it will be void.
Penalty = Min 1L, Max 5L

⇒ **Independent director [section 149(4) onwards] + Rule 4**



N.A. to JV, Wholly owned subsidiary, Dormant Co.
Provision N.A. to section 8 company (S.to.137,92)

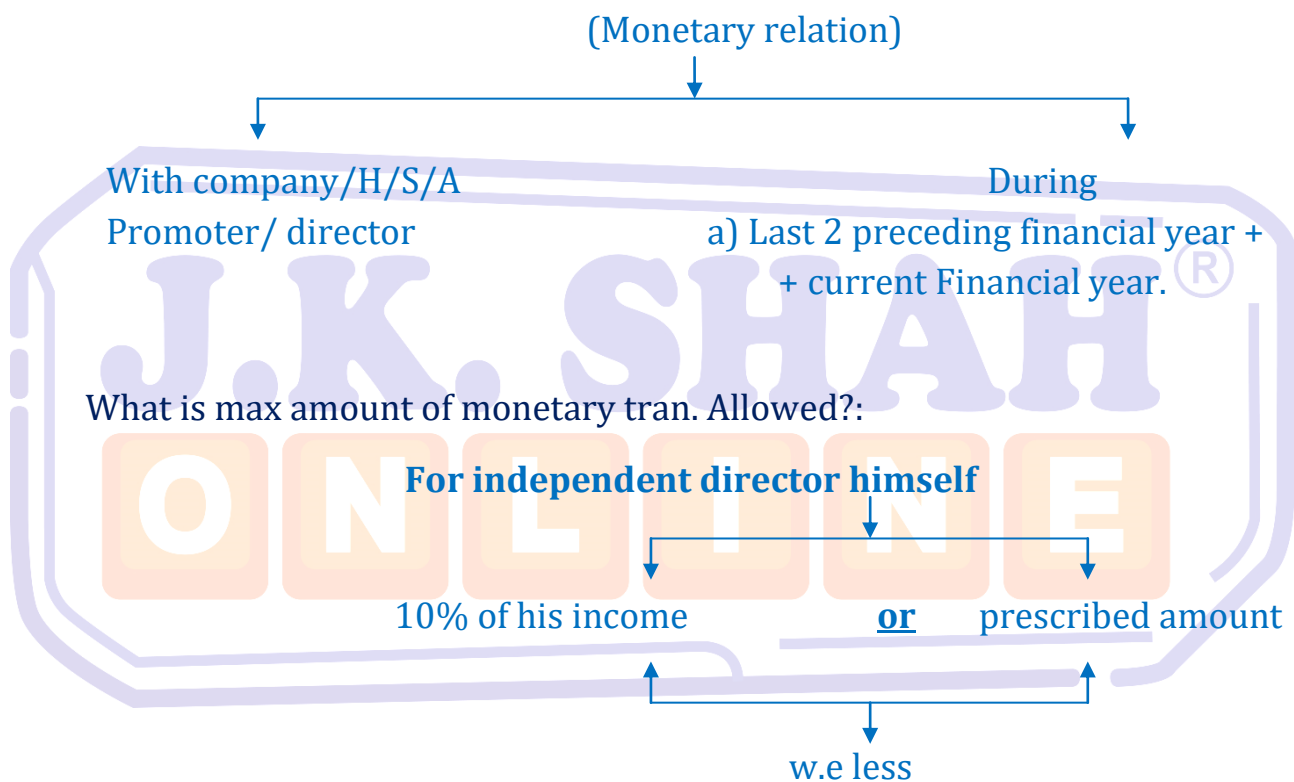
⇒ **Any vacancy to be filled within**



⇒ If criteria to appoint individual director ceases for 3 consecutive year after such appointment then after 3rd years, such director can be removed.

⇒ **Qualification for independent director:** 149(6)

- 1) Other than Managing Director, whole time director, nominee director (so, can be women director etc.)
- 2) In opinion of BOD → person of integrity + possesses experience & expertise.
- 3) Should not or was not promoter or relative of promoter or relative of director of company. (So he can be dir of the company-except MD, WTD, Nominee)
(company incl. holding + subsidiary + associate)
- 4) No pecuniary relation

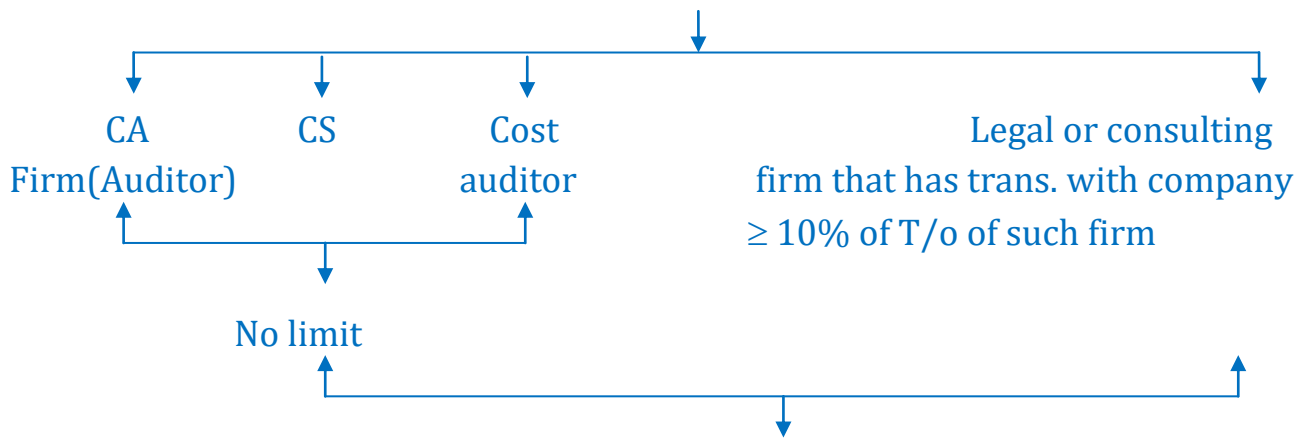


⇒ This don't incl. remuneration, Don't include ordinary transaction entered at arm's length price. Point no (iv) N.A to govt. company.(s.to 137,92)

- 5) a. himself/ relative → holds/has held as KMP / employee of company/H/S/A in any of 3 preceding P.Y. in which proposed to be appointed.

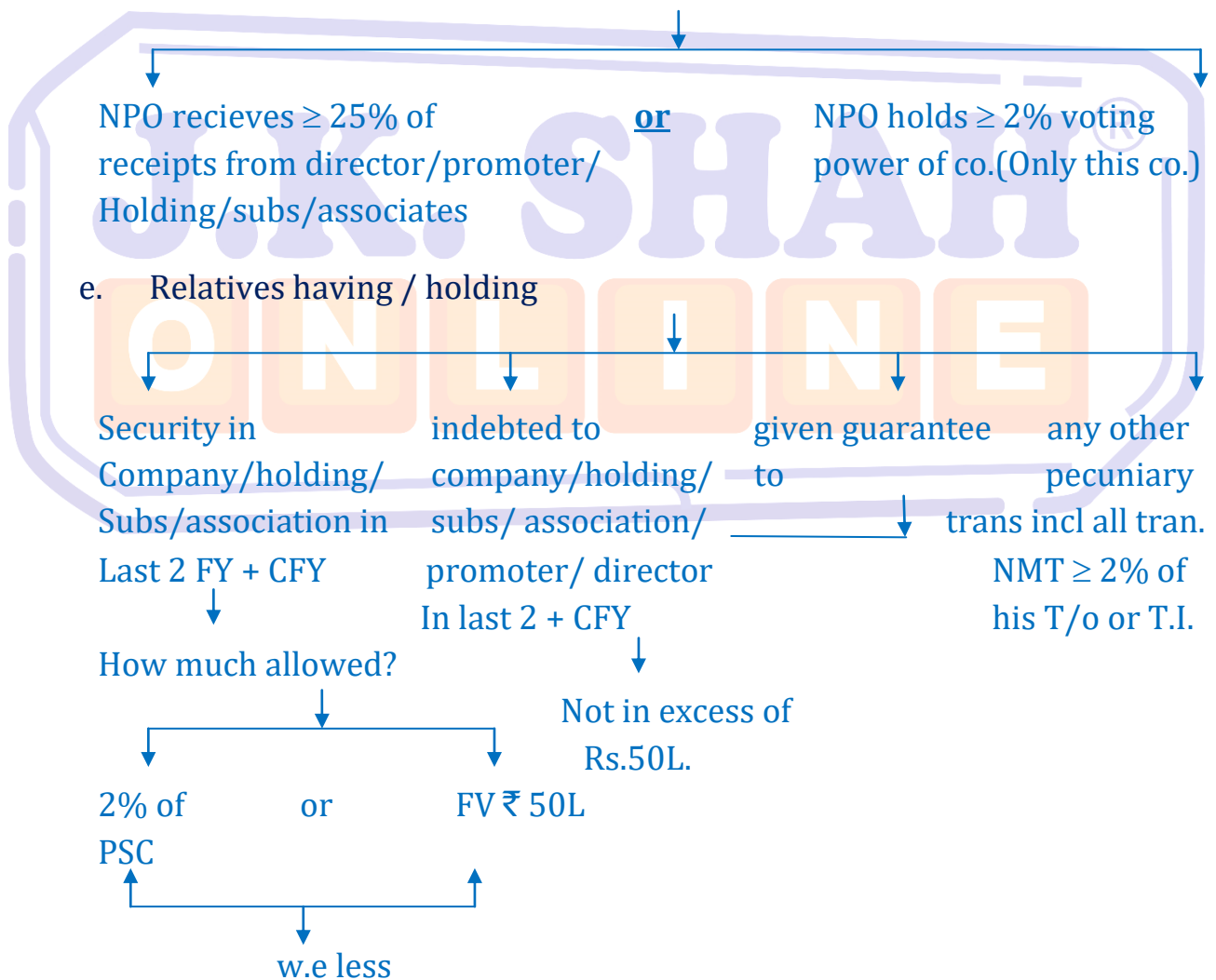
However, employee can be relative in last 3 years.

- b. Should not be employee/ proprietor/ partner of below appointed by company/holding/subsidiary / association in last 3 years.



if such firms were appointed in any of 3 preceding financial year.

- c. He + relative together holds $\geq 2\%$ voting power of company [only this company]
- d. He + relative should not be CEO/ Director of NPO if



⇒ Once individual director is eligible then he has to give declaration that he comply with 149(6)
[when ? → in first & then in each 1st BM of F.Y.]

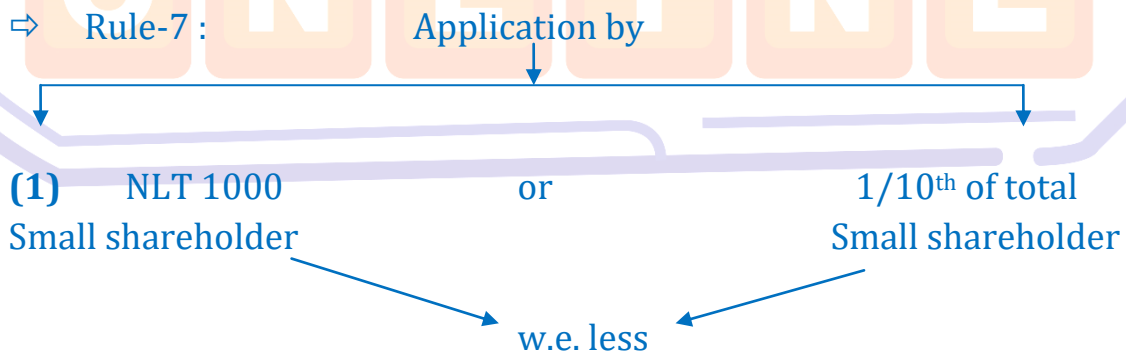
- ⇒ Individual director shall abide schedule IV [prof. conduct + role etc]
 - ⇒ Individual director **cannot have stock option + can have remuneration or seating fees or reimbursement of exps or profit based commission as approved by members.(If company has no profit or inadequate profit then company can pay as per schedule V)**
 - ⇒ Tenure = max 5 years (can be lower time) **after 5 years reappointment after SR.**
 - ⇒ Can hold 2 consecutive terms after that cooling period of 3 years.
During that 3 years → he shall not be appointed / associated with company in other capacity [after 3 years can be reappointed]
 - ⇒ The director ≠ liability for any contravention in which they had not consented or has no knowledge.
 - ⇒ Rotation → N.A
 - ⇒ Section 164 → Appli.
 - Appointing nominee director ≠ independent Director.
 - ⇒ **Section 150: Manner of selection of independent directors & maintenance of data bank of individual director + Rule 6.**
- CG → Notify any body/ Associates → Will maintain data bank for persons who Is willing & eligible → Company will appoint ind. director from that data bank.
- For independent director.
- ⇒ Rule 6: Authorized agency will create data bank & placed on website of MCA.
 - Details to be incl:
 - a) DIN
 - b) Name, surname, father's name, DOB, gender
 - c) Nationality, address, occupation
 - d) Phone, mail id, Qualification, expertise.
 - e) Legal proceeding
 - f) List of LLP in which he is designated partner with name of LLP nature of individual.
 - g) Same if director in any company.

- ⇒ After registering with data bank if any changes in his pts, then he shall intimate the agency in 15 days of change.
- ⇒ Within 1 year if inclusion of name in such databank he has to pass online proficiency test (Atleast 60%) (No limits on attempts).
- ⇒ However this test is N.A. if individual has served for at least 10 years as a dir or KMP as on date of inclusion of name in databank in Listed public Company **or** Unlisted Public Co. PUSC ≥ 10 cr. **Or** B.C. listed on recognized stock exchange.
E.g. Mr.A is working as a dir for 5 years in X ltd. at the same time for 5 years in Y Ltd. So total tenure will be 5 years only and not 10 years.
- ⇒ Company has to apply due diligence b4 appointing from data bank.
- ⇒ Appointment of ind. director to be approved in AGM + Notice of AGM will have annexed explanation statement giving justification of choosing the person.

⇒ Section 150 N.A. to section 8 company. (s.to 137,92)

⇒ **Section 151 : Small Shareholder Director**

- ⇒ Small shareholder shares (eq. + pref.) of F.V. $\leq 20,000$.
- ⇒ Only for listed company (**may have**) only 1 small shareholder.
He can be any person → S.H. or not.
- ⇒ Rule-7 :



& 1 director may be appointed by such small shareholder (Means in Gm only S.S. will vote) **Or**

Listed company can also appoint small shareholder suo moto.

- (2) After deciding proposed candidate small shareholder will give notice b4 14 days to AGM. The notice will have name, address, folio no. of such candidate
(if no shares, then no folio no.)

(3) Notice will have a statement stating : a) DIN b) Not disqualified c) his consent

⇒ Such director shall (mandatorily) be consider as independent director s.to. section 149(6) + declaration of his independence u/s 149(7)

⇒ a) Not to be rotational (it will be counted in total but not to retire)

b) Tenure ≤ 3 years

c) After tenure, not to be reappointed.

⇒ Small shareholder will vacate if:

a) Disqualified u/s 164

b) Vacate as per 167

c) Ceases to meet criteria u/s 149(6) (independent director)

⇒ 1 person can be small shareholder director only of 2 company at a time.

But the second company shall not have conflicting or competing business with 1st company.

⇒ After ceases as small shareholder director → can not be appointed in any manner with that company for 3 years.

⇒ **Section 168 : Resignation of director : [Rule 15+16]**

⇒ Notice in writing to company + **May** inform ROC within 30 days [with detailed reason] → DIR 11.

⇒ Notes: Foreign director may autho. Practicing CA, CMA, CS, resident director to file DIR 11 on his behalf.

⇒ BOD will take note on this.

⇒ Company will also inform ROC within 30 days of receipt of notice (DIR 12) + post on website

⇒ BOD will place the fact of resignation in director report of next meeting.

⇒ Resignation will be effective from receipt of notice by company or date mentioned in notice w.e later.

⇒ Director → liable for offence during his tenure.

⇒ If all director resigns then promoter or CG will appoint more director.

⇒ A director can withdraw his resignation only with the consent of BOD.

⇒ MCA : if all director resign & company can't file DIR-12 due to lack of authorize sign then MCA will allow any resigned director to file DIR-12 of company.

⇒ **Section 169 : Removal of director by shareholder**

Steps:

1. Atleast 14 days b4 AGM but not before 3 months. Special notice required to remove director.

⇒ Special notice Section 115: by such no. of members holding NLT 1% of total voting power or holding shares FV NLT ₹ 5L w.e.lower.

2. Company shall inform to shareholders 7 days b4 AGM + notice to director.

3. He will be given OBH at meeting

Written repre. B4 meeting

or

oral at meeting

Except

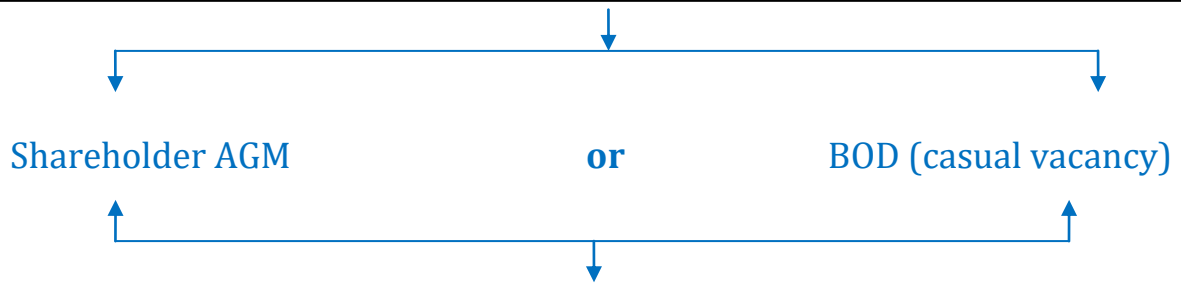
i.e. no OBH → if trib has ordered after considering that director is abusing his rights.

4. Votings will be done to remove him.

⇒ OR to be passed to remove director.

⇒ SR to be passed for independent director reappointed for **second time. (Because he was appointed by SR) director appointed by trib (242)+proportional director (163)+ nominee director by F.I.(161(3)) can't be removed.**
for removal of independent director → SR

5. Vacancy can be filled up by another director in same meeting if "special notice" is given. Appointment by



Tenure: time available with predecessor director.

BOD can't appoint the removing director.

Cross ref.:

⇒ **Section 202: Compensation for loss of office or retirement from office for.**

“Managing director or whole time director or manager”

⇒ No payment if:

- 1) Director resign [either because of amalgamation appointed in new company or due to other reason]
- 2) Director vacates u/s 167(1)
- 3) Company is in winding up due to negligence or default of director.
- 4) Director has been removed because of being guilty in fraud or any other thing
- 5) If within from removal within 12 month company goes into winding up & no sufficient money for shareholder, no compensation to director.

⇒ Any payment made to them **shall not exceed:**

Average remuneration of director Of 3 years <u>or</u> his term. w.e. lower	X	Balance term <u>or</u> 3 year .w.e. lower
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⇒ Once company has given compensation → No provision for recovery if afterwards its found that director was guilty.

⇒ Section 153 to 159 : Directors Identification No. (DIN)

- ⇒ It is allotted by CG. DIN incl. DPIN. i.e designated partnership identification no. as per LLP act, 2008
- ⇒ **Section 152 (3)** → No person to be appointed as director unless allotted DIN.
- ⇒ **Section 153:** Person appli. → to CG → Allot DIN.
- ⇒ **Section 154:** CG shall allot DIN in 1 month from receipt of application.
- ⇒ **Section 155 :** No appli. for another DIN
- ⇒ **Section 156:** In 1 month from receipt of DIN intimate to all company in which he is director.
- ⇒ **Section 157:** Every company in 15 days of receipt of intimation, furnish DIN of all director to ROC. If fails then penalty to company.

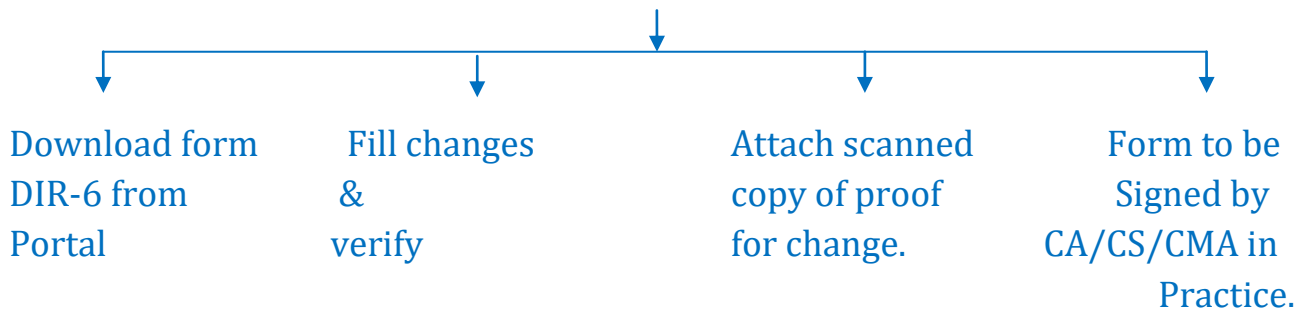
₹ 25000 & + every officer of Min → ₹ 25000 if continues then
+ if continues then company ₹ 100 per day
₹ 100 every day [Max. ₹ 1L]
[Max. ₹ 1L]

- ⇒ **Section 158 :** For any communication with ROC, DIN to be furnished.
- ⇒ **Section 159 :** If any contravention in section 152, 155, 156, then → for director. Penalty → upto ₹ 50,000 & it continuing then upto ₹ 500 for each day.

⇒ Rule - 11 : Cancellation of DIN if:

- 1) DIN found to be duplicated
 - 2) DIN was obtained in wrongful manner (after OBH)
 - 3) Death of person.
 - 4) When he has declared as unsound mind.
 - 5) If adjudicated as insolvent.
 - 6) On appli. by person in DIR-5 to surrender DIN (if unused & never a director in company)
- ⇒ If no KYC filed then, ROC can deactivate DIN which is to be reactivated only after e-filed **DIR-3 KYC**.

⇒ Rule-12 : Intimation for change in DIN if change in any Pts of DIN → Intimation to CG in 30 days in DIR-6 in this manner.



⇒ **Section 170 : Register of directors & KMP**

⇒ Every company will maintain & keep at its register office a register containing details as per rule 17 for directors, KMP along with details of securities held by them in company, holding, subsidiary, associates' company.

⇒ If any new appointment or in details then within 30 day → company will file DIR-12.

⇒ Entire 170 N.A. to 100% Govt. company.(S.to.137,92)

⇒ **Section 171 : Members right to inspect**

⇒ Register for director & KMP → open for inspection in business hours, member = right to take extract on request copy will be provided in 30 days (free).

⇒ Register → open in every AGM
[N.A. to 100% Govt. Company](S.to 137,92)

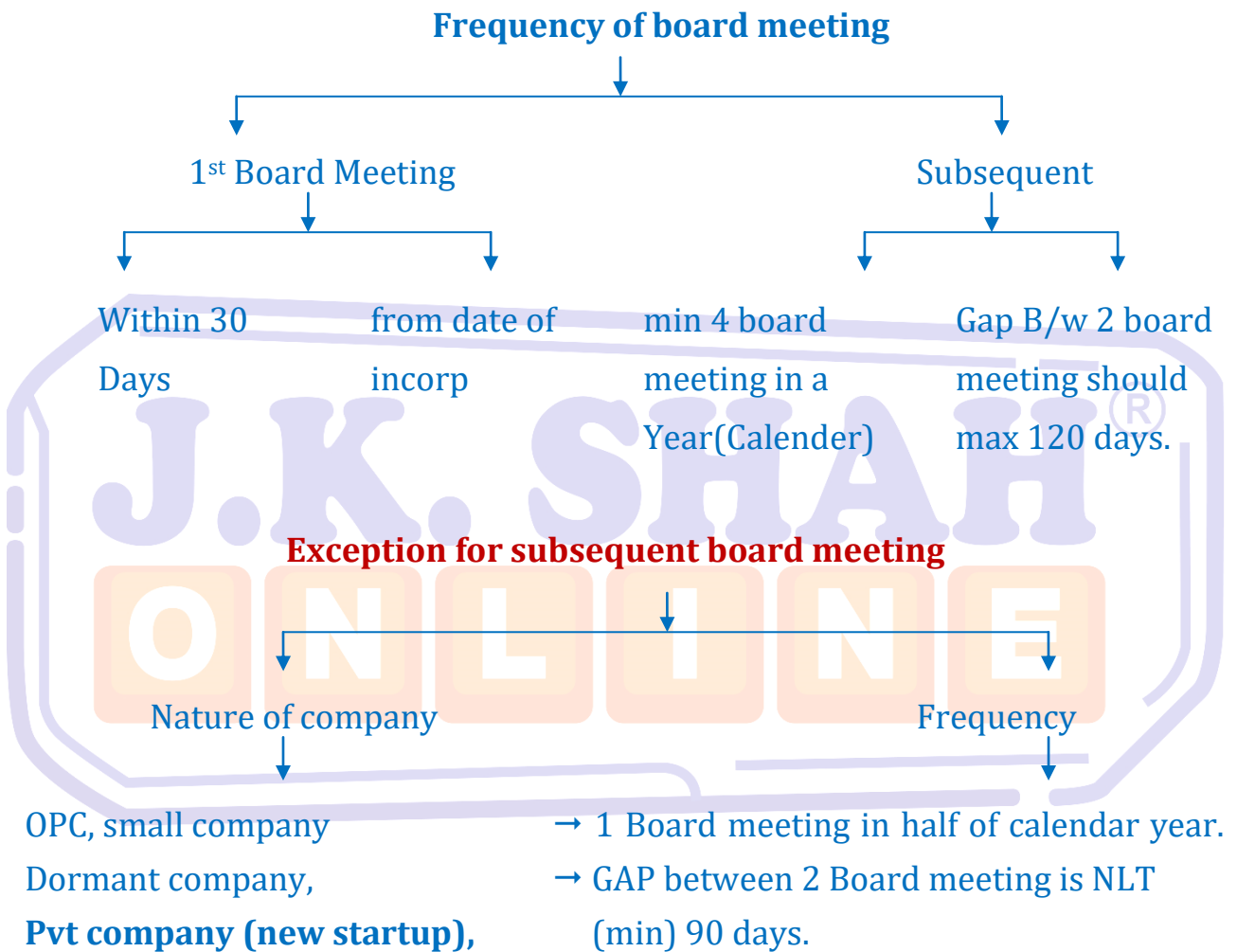
⇒ **Section 172:** if from 149 to 171 any contravention & no specific penalty then → co + every officer → Min ₹ 50,000...continue then 500 per day max 300000(For Co.) & Max 100000(For officer).

CHAPTER 2

MEETING OF BOARD & ITS POWERS

Companies (Meeting of board & its power) rules, 2014

Section 173: Meeting of board:

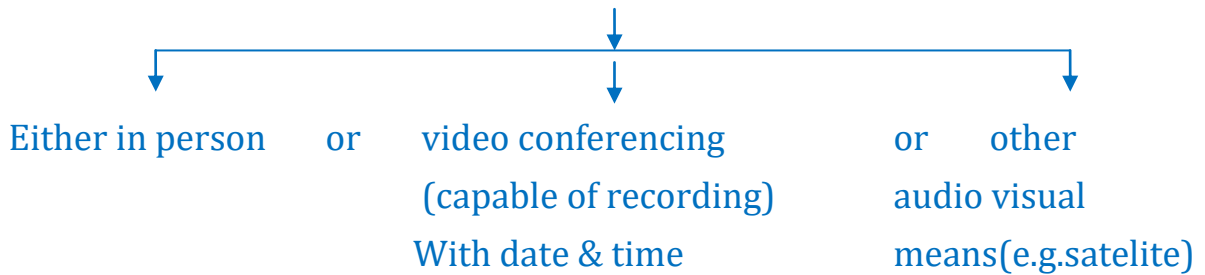


For Section 8 Co.(S.to.137,92) one meeting in half calendar year.
(No 120 days,90 days)

The above section N.A to OPC having 1 director so, no board meeting to be held by 1 director only.

⇒ Adjourned board meeting ≠ counted in 4 board meeting.

Participation in board meeting.



⇒ Matters **not to be discussed through video conferencing** or audio-visual means only to be discussed physically **(Rule-4)**

[Quorum should be physical for these]

- a) Adoption of annual F.S.
- b) Approval of board report
- c) Approval of prospectus
- d) Audit committee meeting for approval of CFS.
- e) Matters relating to merger, amalgamation, acquisition.

⇒ However if quorum is present in physical presence then other (extra) director, is allowed through video conferencing to discuss on these matters also.

⇒ **Some general process for video-conference or other audio video means (Rule-3)**

(in summary)

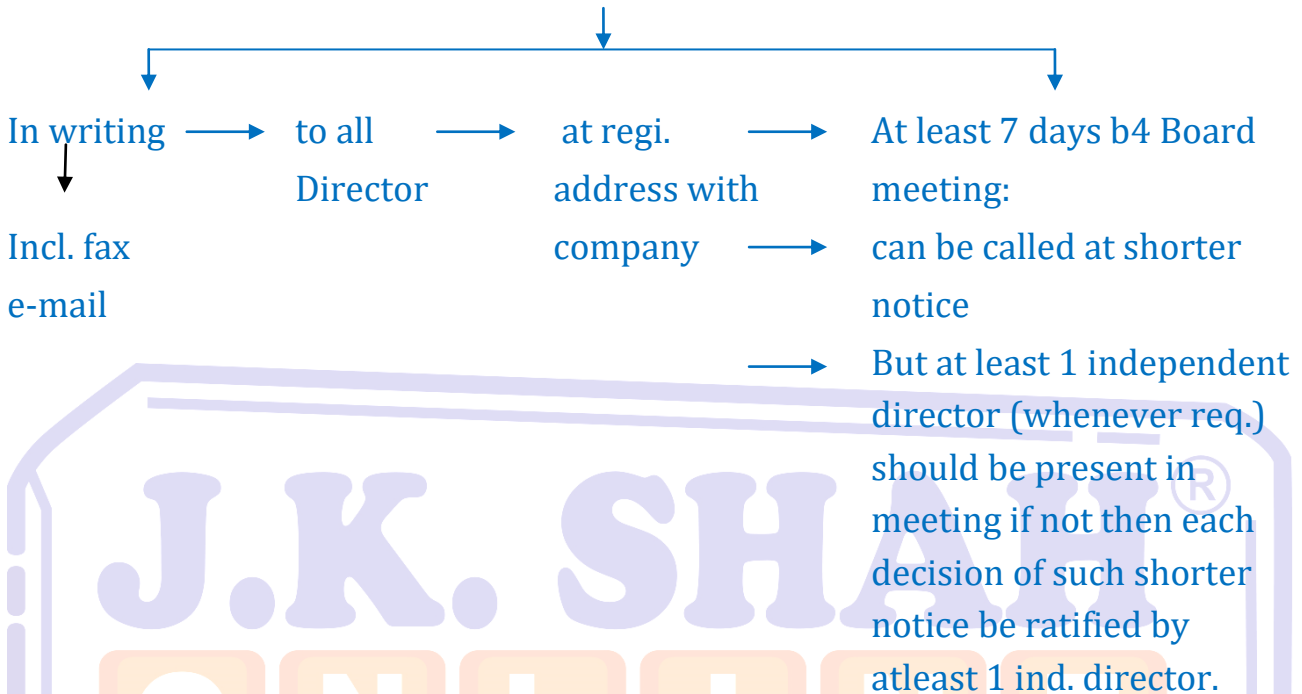
- ⇒ Company to make necessary arrangement to avoid failure of connection.
- ⇒ Chairperson & CS → to safeguard integrity of process. To store it to ensure that no other person is attending it.
- ⇒ At commencement of meeting:

Chairperson → Roll call → every director parti. Through V.C. will share → Name, location, he has received agenda, no one except that director is attending the meeting.

- ⇒ No person except chairperson, CS, director or person autho, by board is allowed to access the place from where director is attending meeting.
- ⇒ Draft minutes of meeting will be circulated among all directors **within 15 days** of meeting in writing or e-mode.

- ⇒ **Within 7 days** from receipt of draft every director (personal or V.C) → confirm in writing about accuracy of recording of proceeding in draft minutes.
- ⇒ Then it will be entered in minutes book.

⇒ **Notice of board meeting : to be sent**

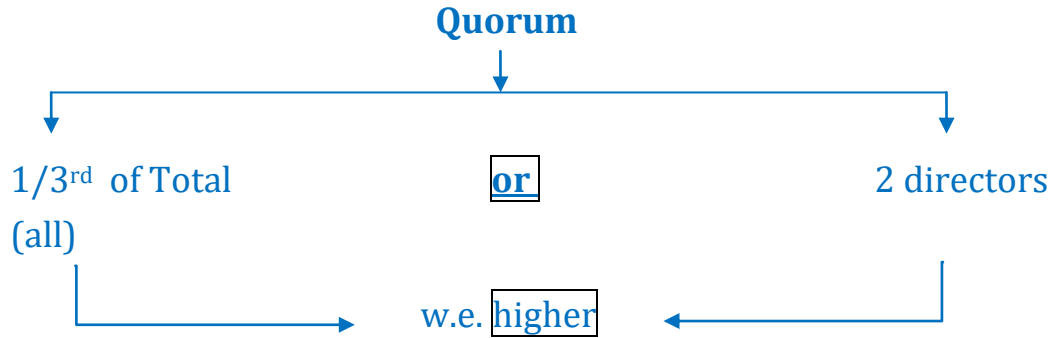


Question: Whether notice to be sent to :

- a. Interested director,
- b. Original director if alternate director is appointed
- c. Director who has shown incapability to attend meeting?

- ⇒ In notice → inform that director are having option to participate through V.C. or audio-video.
- ⇒ If director wants to attend by that → to inform intension to C.P. or C.S.
- ⇒ If director wants to attend from beginning in all board meeting through V.C. → he can intimate to company in beginning of C.Y. & valid for 1 year.
(however he can attend in person also)
- ⇒ Any failure to sent notice → penalty ₹ 25000 to every officer of company.
- ⇒ No provision in act for specific place.
- ⇒ No provision in act that in notice, agenda is to be written, however, as a good secretarial practice it has to be.

⇒ **Section 174 : Quorum of Board meeting [through the meeting]**



AOA can't fix lower quorum but can fix higher one.

Exception: if in adjourned board meeting director are less than quorum then such continuing director.

Can appoint such director that **or** call shareholder meeting
Fulfill min. no. of quorum.
(E.g. additional dir.)

Note: in quorum "interested director" (sec.184) are not counted
[means quorum = uninterested director]

However in case of Pvt Co. (S.to 137,92) Interested dir can be counted in quorum after disclosure.

⇒ If no. of interested director $\geq 2/3^{\text{rd}}$ of total then.

Quorum = 2 director or no. of uninterested director
Round off → higher. [w.e. higher]

Adjournment : Next week in same day place, time. Adj. meeting can't be national holiday. (then next day)

[**Note:** original board meeting can be on national holiday) [Sunday ≠ national holiday]

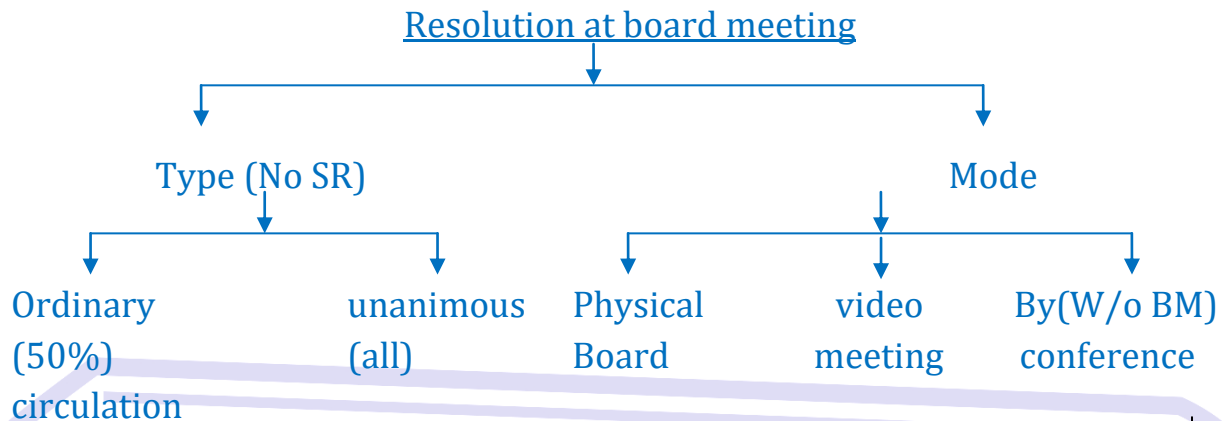
Exception : for section 8 company : Quorum =
8 or 25% w.e. less (provided 137, 92)

Note : Director participating through v.c. → incl. in quorum. (Except those special cases)

: to OPC having 1 director, quorum N.A.

- ⇒ The minutes of board meeting should be entered in minutes book within 30 days of board meeting.
- ⇒ Any director can compel to enter certain matters in minutes if it is necessary to create “evidential value”. However, it can't be if defamatory.

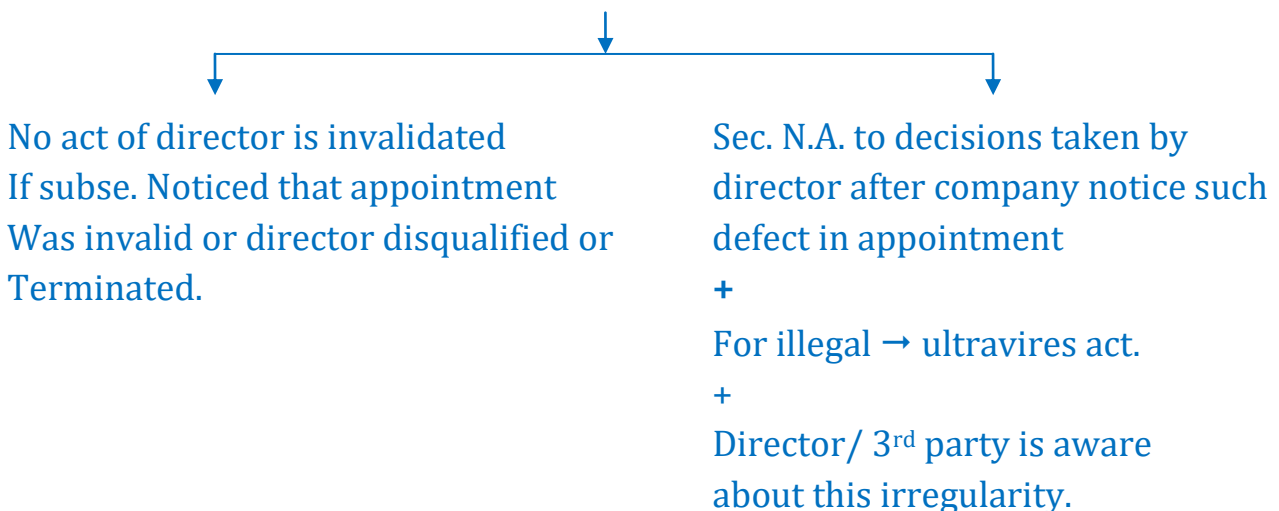
⇒ **Section 175 : Resolution by circulation:**



If matter ≠ much imp then instead of physical board meeting → resolution by circulation **in India.**

- ⇒ To be sent on regular address of all director by hand or post or e-mode. (Rule-5 : email or fax valid)
- ⇒ If 1/3rd of total director, insist that matters not to be circulated then no circulation can be made [only then physical meeting]
- ⇒ Such resolution passed by circulation → noted in next meeting of board & part of minutes of next board meeting.

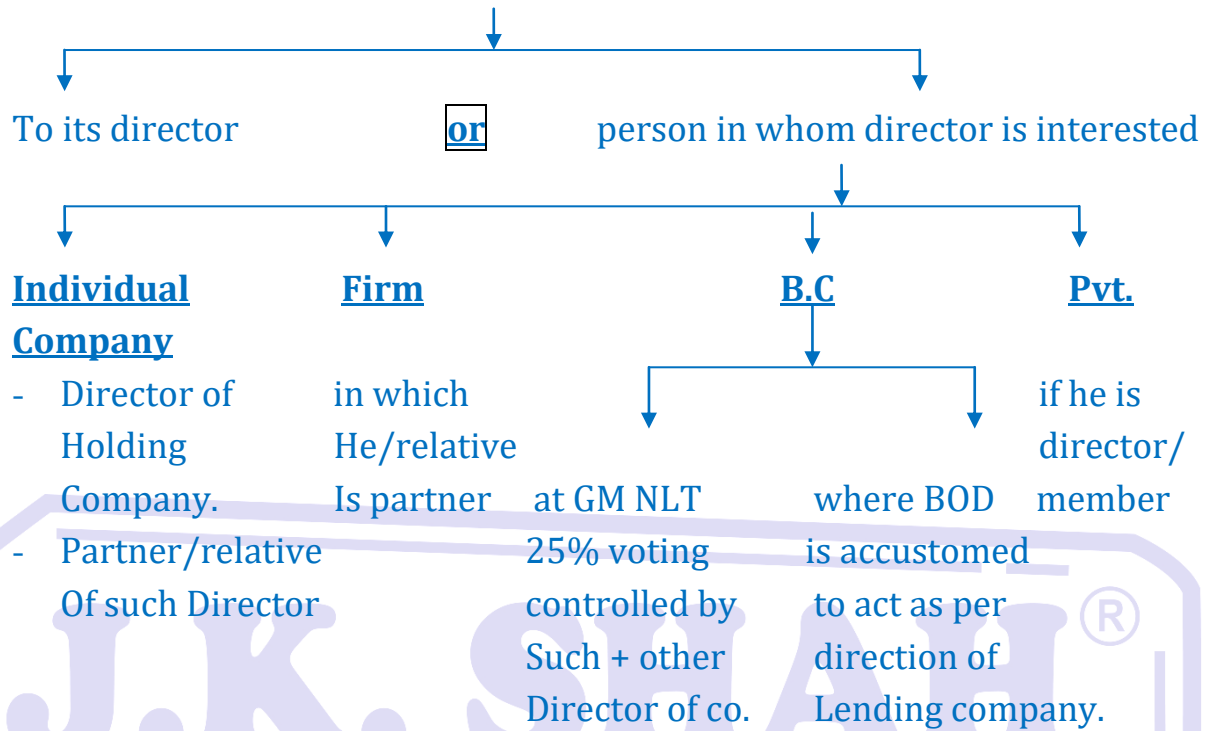
⇒ **Section 176: Defect in appointment of director not to invalidate actions :**



⇒ **Section 185 : Loans to directors**

[why? Many company took loan from bank & then to director then fraud]

No company shall give loan, guarantee, security dir./indir.



⇒ **Exception (i.e. allowed)**

1) Loan to MD/WTD → (Not g/s)

1. as per policy of company for all employee of company **or**
2. by way of passing SR

2) Any company = ordinary course of business to give L + G + S. & int. rate = at least prevailing yield of 1,3,5,10 years govt. security closest to tenure of loan.

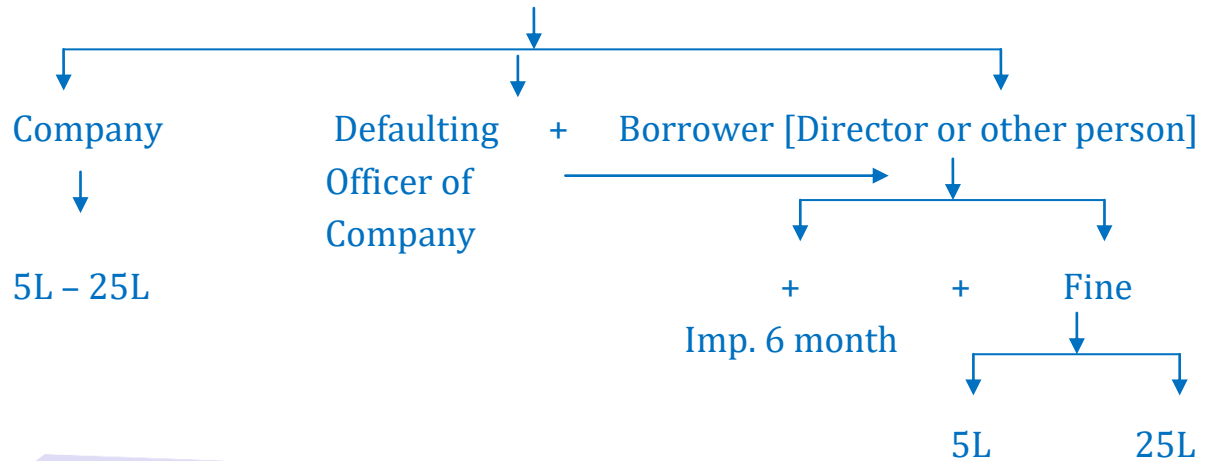
3) i) L/G/S by H → wholly owned S → utilised by S for its principal business activities.

(How they are related to dir: Company who is accustomed to act as per BOD of lending Co.)

4) G/S by holding w.r. to any loan made to **subsidiary**. By **bank / FI** → for principal business activity (wholly owned word not used)

- 5) L/ G/S can be given to B.C, pvt company in which director is interested, after SR [in notice of GM → disclose → pts of loan, purpose, other fact] + borrowing company utilizing for principal business activity.

⇒ **Effect of violation : Penalty on**



⇒ **This section N.A to Pvt co. if (137,92)**

- Means loans to director can be given
- a) In capital → No B.C - has invested +
 - b) Borrowing from Bank etc. is less than [twice of paid up capital] or ₹ 50 Cr. W.e. lower +
 - c) Company has not defaulted in such r'ment.

⇒ N.A to govt. company if company obtains approval of CG/SG ministry by making L/G/S(S.to.137,92)

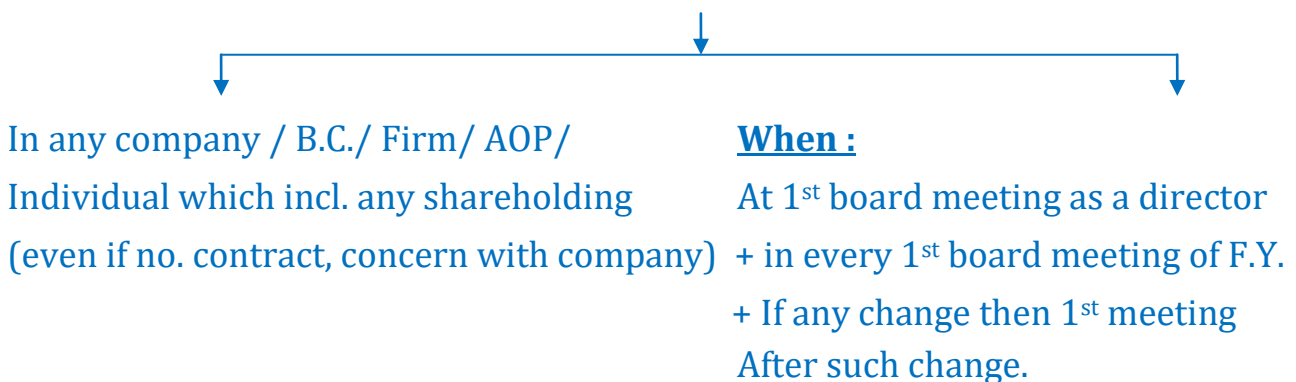
⇒ N.A to Nidhi company.

⇒ **Section 184 : Disclosure of interest by director.**

Interested director shall disclose nature of interest in any kind of contract or arrangement between company & individual / firm / B.c.

⇒ **Two type of interest → General & Specific.**

1) **General interest to be disclosed.**

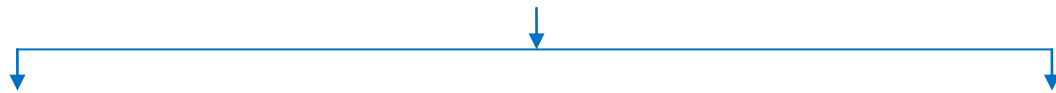


⇒ **How to disclose? Rule-9**

- I. Director → Written notice in MBP-1
- II. Director will disclose this in next board meeting after notice which is to be kept at register office of company for 8 years from end of F.Y. (In custody of CS or other A.P.)

2) **Specific Interest disclosure:**

If director is interest in any B.C./ company / firm with which company is entering into contract or arrangement then.



When can be said interested-dir/ind

- 1) B.C. in which he + other Director > 2%(PUSC) S.H. or 1st time
- 2) In that director is prom/mgr/ CEO
- 3) In firm he is partner/

or
Owner / member

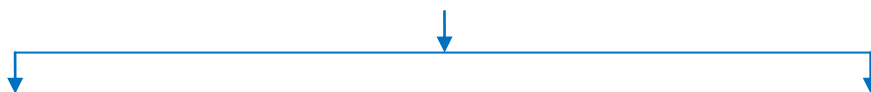
When to disclose

- 1) At board meeting in which such contract is discussed

- 2) If afterward interest arised Then 1st board meeting after This.

(Here in all above cases relative's shares etc Not concerned)

⇒ Interested director not allowed to.



Participate in board Meeting(No discussion)
(Not counted in quorum)

Not to vote in such Board meeting.

⇒ **Effect of violation for not disclosure of Interest**

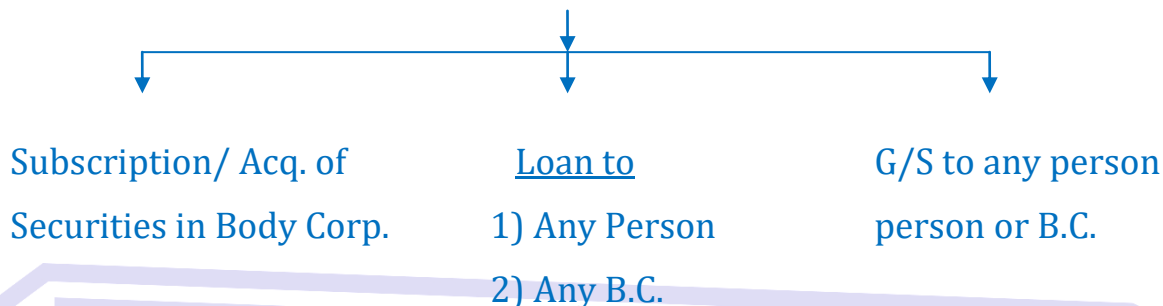
- 1) Contract = voidable at option of company.
- 2) Such director → fine → ₹ 1L + Vacate as per section 167.

Exception (137, 92): Interested director may participate in meeting after disclosure of interest (Pvt.Company)(137,92)

Sec-8 : Section 184 appli. only if matter is of section 188 or amalgamation > 1L(137,92)

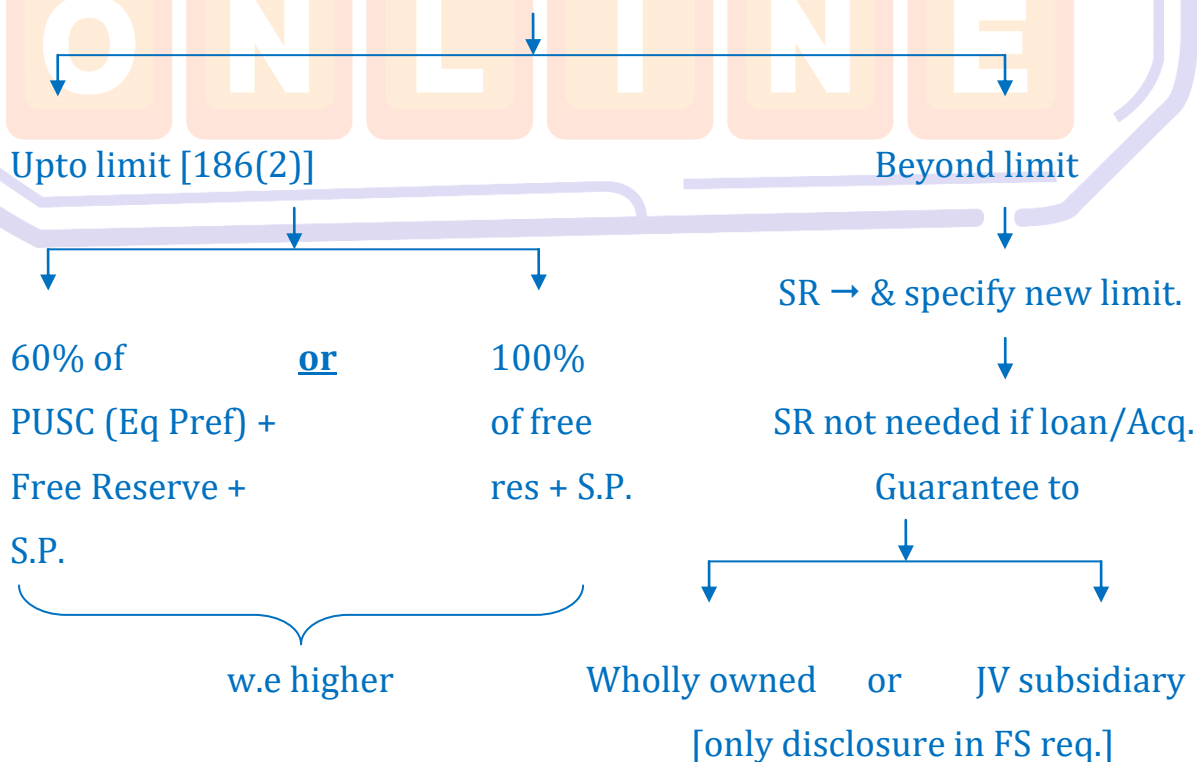
⇒ **Section 186 : Loan & Invest by company.**

Meaning of investment(Apart from this—Not within limit)



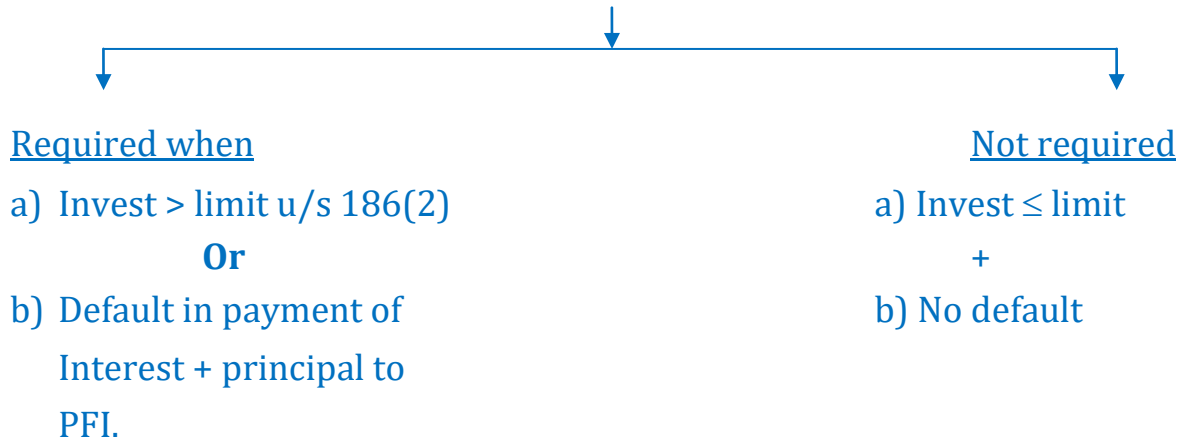
Note: So investment in Firm,FD,etc not covered.)

⇒ **Max amount of invest (Inter corporate invest)**



⇒ **Procedure for invest.(Even within limit)**

- 1) Unanimous BMR (Board meeting reso.)
- 2) Approval of public financial institution of which loan is o/s



3) If there is any default in payment of public deposit then company is not allowed to make invest by L/G/Acquisition till default is subsisting.

4) Other provision:
→ Invest can be done only **through** max.2 layer invest company [to avoid diversion of funds] (This is vertically restricted not horizontally.)

⇒ 2 - Layer :In 2 layer wholly owned subsidiary is not to be counted in 1st layer.

⇒ The rule of 2-layer is N.A. if:

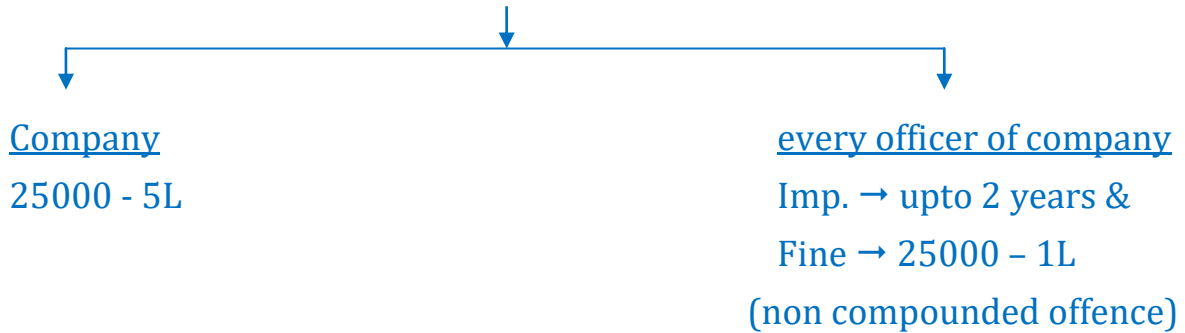
- 1) Invest in acquisition of foreign company & that country allows to invest in > 2 layer **or**
- 2) Invest in > 2 layer as per any law.

5) Invest / loan @ int. NLT yielding rate of govt securities 1/3/5/10 yrs..
Note: N.A. to Company u/s - 8 if ≥ 26% paid up capital by CG/SG & this co. funding for industrial research & development project. (S.to 137,92)

- 6) Company shall maintain register (MBP 2) of investment.
 - a) If acq → then entry to be done in 7 days
 - b) If dispose off → then entry to be done in 7 days

- ⇒ Register to be kept at registered office in custody of CS in manually or e-mode
- ⇒ Member can take extract at a fee as per AOA NMT ₹ 10 per page. (inspection is also allowed)

7) Any contravention of section 186 then



⇒ **Section 186 N.A to :**

- 1) Banking / ins / infra / housing finance company having main activity of giving L/G/S.(2 layer point..186(1) applicable)
- 2) Invest by investment company. (> 50% of total asset/>50% of total income through investment) .(2 layer point..186(1) applicable)
- 3) Invest made u/s 62 i.e. right shares.
- 4) Invest by NBFC. .(2 layer point..186(1) applicable)
- 5) Invest by Govt. company in defense or other govt. company (unlisted) taking approval off CG/SG.(S.to. 137,92)
- 6) Any loan by any company to its employee (in accordance with condition of service).

⇒ **Section 188 : Related party transaction :**

- ⇒ **w/o board meeting resolution** → No company shall enter into any contract with related party for transaction mentioned.

⇒ **Who all are related party ? → 2(76)**

- 1) Director, KMP & their relative.
- 2) Firm in which director/manager/ relative is partner.
- 3) Pvt. Company in which our director/manager or their relative is director or member.

- 4) Public company in which our director/manager is director **and** they or their relative holds >2% of its paid up SC.
- 5) Any B.C/person who are accustomed to act as per advise of our director manager (not in prof. capacity)
- 6) Any person on whose advice our dir/mgr is accustomed to act.(Not in prof.capacity)
- 7) B.C. which is holding or subs. Or associate or another subsidiary of our holding or investing company or venturer.
[this is N.A. to pvt. Company] s.to.137,92
- 8) Director /KMP other than ind. director of holding company or their relative.

⇒ **Relative means [2(77)]**

- 1) HUF members
- 2) Husband - wife
- 3) Father-mother, son (incl. step)
- 4) Son's wife
- 5) Daughter (not step)
- 6) Daughter' husband
- 7) Brother, sister (incl. step)

⇒ **Which transaction covered in section 188:**

- 1) Purchase / sale / supply of Goods /Material / services
- 2) Purchase / sale / lease any prop.
- 3) Appointment of agent for for purchase/sale of goods.services,property.
- 4) Appointment at "place of profit" in company/subsidiary /asso.
- 5) Underwriting subscription of security.

Note: In BMR, member of BOD who is himself related party → can't vote.
(N.A. to pvt company]

: No BMR required if transaction is in ordinary course + at arm's length price.

: If not at ALP then BMR req. notice of Board meeting shall incl. following disclosure in Agenda

- 1) Name of related party, nature of relationship

- 2) Nature of contract terms of contract (incl. value) advance paid / received.
- 3) Manner of deciding pricing & commercial terms.
- 4) Other info.

⇒ In following cases contract can be entered with **related party with BMR + ordinary resolution**. [in case of contract between H & 100% subsidiary resolutions not required]

- 1) Purchase / sale / supply of G / mat. / service director or through agent for amount.
 $\geq 10\%$ of T/o
 (Limit → aggregate for all related party in F.Y.)

- 2) Purchase / sale of any kind of prop.
 10% of Net worth

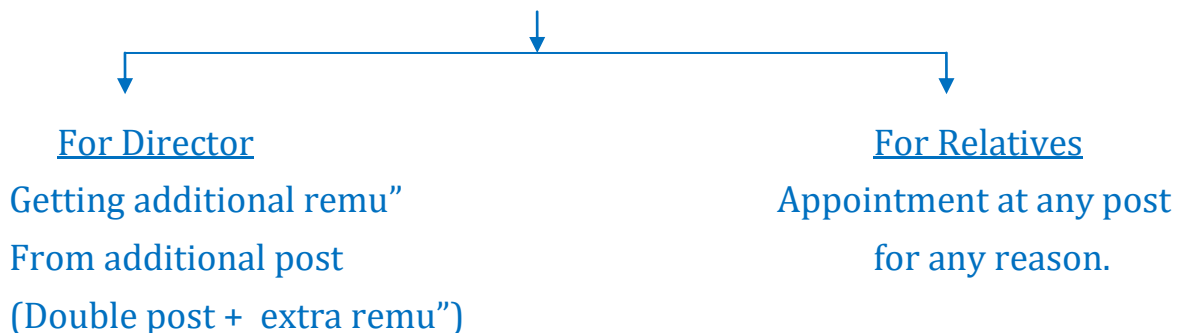
- 3) Lease of prop. $\geq 10\%$ of T/o

- 4) Service director / agent → $\geq 10\%$ of T/o

- 5) Appointment of related party to “place of profit” on remu. $> 2.5L$ p.m.

- 6) Underwriting of shares / sec / derivate → Commi = $> 1\%$ of net worth.
 (T/o, N.W. → on latest audited FS)

⇒ **What is “place of profit”**



E.g. Mr. A is director of company and his relative is appointed in company-
RPT

Mr.B is employee of company and then his relative is appointed as director of company-No RPT

⇒ The member of company who is related party shall not vote in resolution.(N.A.to Private Co. s.to.137,92..Means OR to be passed bt all can vote)

If in company $\geq 90\%$ members are related party then every member can vote.

⇒ **Effect of violation of section 188:**

1) Contract has to be ratified within 3 months by BOD or members
(if not in 3 months then voidable)
+ Director shall compensate company for any loss.

2) Penalty : for <u>Listed Company</u>	<u>Unlisted Company</u>
Every such Director / employee	Fine → 5L
Fine-25L	

⇒ **Provision of OR & member not to vote shall not be appli. to govt. company if(137,92)**

1) Contract between 2 govt company or with CG or SG or any combination
2) Contract by unlisted govt. co. if approval taken from ministry.

⇒ Whenever audit committee is required to be formed, every related party trans. Shall be approved by audit committee.

Rule- 6A: Omnibus approval for related party transaction on annual basis.



Audit committee → after approval of BOD, specify the criteria of omnibus approval which shall include:

- Max value in aggregate
- Max value per transaction
- Extent & manner of disclosure to audit committee for approval.
- Review at such interval as deem fit.
- Trans not s.to omnibus.

Audit committee shall consider

Repetitiveness of transaction & Justification for need of omnibus.

⇒ If after all, it is in int. of company then give approval which shall contain:

- a) Name of related party
- b) Nature & duration of transaction
- c) Max amount of transaction
- d) Indicate base price (Price range)

⇒ If above details not available then, approval for only value ≤ 1 Cr. Per transactions.

⇒ Omnibus valid for 1 F.Y. after that new approval.

⇒ Omnibus shall not be made for transaction of selling / disposing undertaking of company.

⇒ **Section 181 : Company contri" to charitable fund (bonafied)(Not related to company and employee)**

Max upto 5% of
Avg. net profit

> 5% → consent of SH by
OR.

Of 3 preceding F.Y.

In case of loss → adj. loss & make avg.

if company for < 3 years → Avg. of companies existence.

⇒ **Section 182 : contribution to political fund / party.**

No political party contribution by

Govt. company

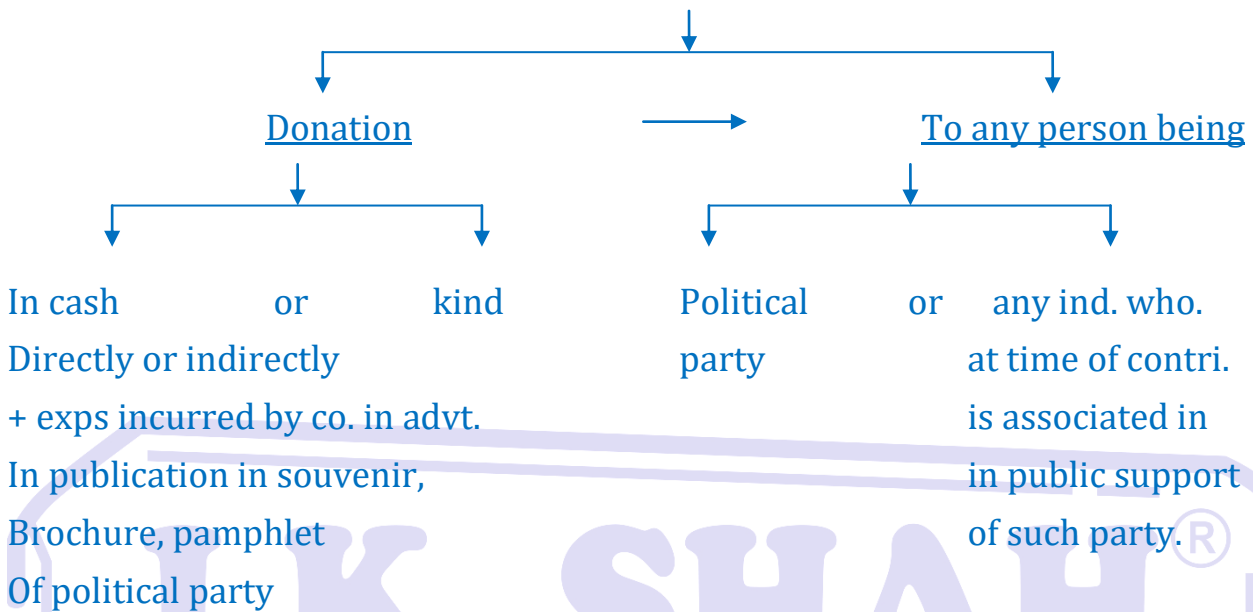
&

Company in existence for
< 3 years.

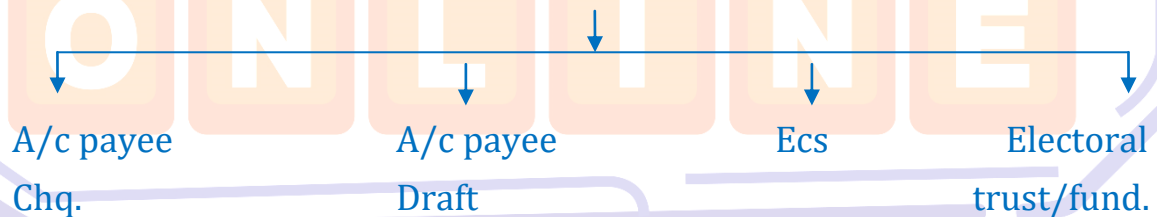
⇒ Contribution only if autho. By BMR.

- ⇒ In P & L of that year, amt of donation & name of party to be mentioned.
- ⇒ Political party means register u/s 29A of Representation of people Act, 1951.

⇒ **Meaning of political contribution:**



⇒ **Contri. To be made through.**



⇒ **Penalty for contravention:**

- Company → Fine → 5 times of amount contribution.
- Officer → Imp. → upto 6 month
- Fine → 5 X amount contri.

Note : if company contributing in electoral trust then → no disclosure of name of party in P & L (only “electoral trust”)

Electoral trust will required to disclose all amount received & paid to political party.

⇒ **Section 183 : Contribution to national defence fund**

- No limit
- Even in case of loss it can be given
- No section (even MOA/AOA) prevail in case of conflict.
- In P & L to be disclosed.

⇒ **Section 179 : Power of board + Rule 8**

1) Board = entitle to exercise all powers to do acts as company authorized to exercise.

[s. to provision of Law, GM, MOA, AOA]

Board ≠ exercise power that is to be exercises by company in GM.

2) No regulation made in GM can invalidate prior acts of board.

3) Board shall exercise following powers by means of resolution passed at board meeting [& not by resolution at circulation]

a) Make calls on unpaid shares

b) Autho. Buy-back of security

c) Issue security, deb. In or o/s India

d) To borrow money
committee

e) To invest money

f) To grant or give loan/guarantee

can be delegated to other

(Branch mgr./ MD, etc)

g) To approve FS & board report

h) To diversify business of company

i) To approve amalgamation, merger etc.

j) To take over a company / acquire stake.

Section 8
(137,92)
can pass
by reso"at
circulation

Rule – 8: Board can also exercised following powers (not by circular) by BMR:

a) To make political contri.

b) To appoint or remove KMP (CEO/CFO/CS, etc)

c) To appoint internal & secretarial auditor.

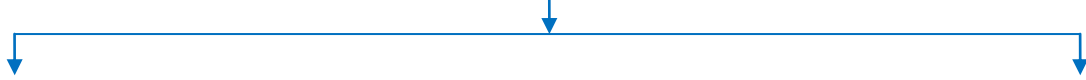
4) Board = power to institute a suit

5) Board may ratify all such acts & things done by other that board could have done itself (except act is ultravires)

6) For a banking company accepting deposit & giving loan in ordinary course is not deemed to “borrow money” or “investing fund”.

⇒ Company can in general meeting impose instruction on rights of board.

⇒ Generally shareholder can't interfere the board. But, shareholder are empowered to exercise the powers of board if



Directors are acting **or** all director are interested **or** dead lock in mgmt
 Malafied in particular transaction [unwilling to act]
 [wrong doer, own benefit]

⇒ **Section 180: Restriction of power of board**[Section N.A. to pvt company-137,92]

Means following transactions by **BMR+SR**

⇒ Board shall exercise following powers only by obtaining shareholder

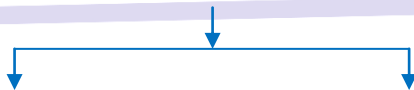
SR

a) To sale, lease, dispose of whole or subs. whole of undertaking.

Meaning

Undertaking

Substantially



Inv. of company
> 20% of
Networth as
Per LABS

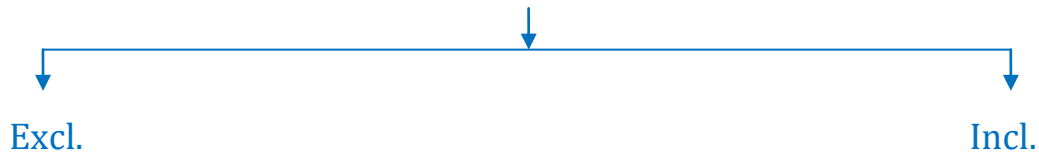
or Undertaking generates
> 20% of
income in
previous F.Y.

≥ 20% of value of undertaking

⇒ No SR if sale & lease of prop = ordinary course of co.

⇒ No SR will affect right of title of buyer or lessor if he has acquired in good faith.

- b) To invest otherwise than in trust securities (investment as per Indian trust act—11(5) of income tax act) of amount received as a result of merger or amalgamation.
- c) To borrow



Temporary loan from banker

(Upto 6 month)

E.g.cashcredit,working cap from bank

Loan for capex+w.cap loan from others.

[even temporary for capex]

Together with already borrowed if.
> "Paidup sc+ free res + SP".

- ⇒ Every SR shall specify amount upto which it can be borrowed.
- ⇒ If lender lends money above the limit then it shall not be enforceable / valid unless lender proves that advance was given w/o knowledge that limit imposed by clause has been exceeded.

d) To remit, give time for repayment of debt due from director.

- ⇒ Board shall exercise some of the power after OR of company e.g. contri. > 5% to ch. Trust.

⇒ **Section 177 : Auditors committee:**

- ⇒ Mandatory for(Same as independent director)

Listed company

or

Public company with (Rule-6)

(As per LABS)

Paid up cap
≥ 10 Cr.

or

T/o
≥ 100 Cr.

or

L/B/Deb/ Dep
> 50 Cr.

⇒ **Composite (Who are members ?)**

- a) Min 3 director (other than MD)
- b) **Majority(>50%)** independent director. (i.e. at least 2)
(ind dir condition N.A. to section 8 company-137,92)
- ⇒ Majority of member including C.P. = able to read FS.

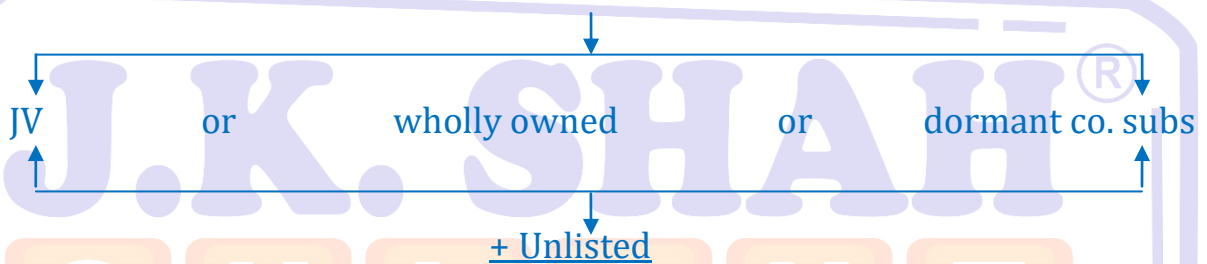
⇒ **Purpose / function of audit committee**

- a) Recommendation of appointment of auditor & remu.” [N.A. to govt company-137,92]
- b) Review of FS
- c) Approval of RPT + verify invest
- d) Valuation of asset & evaluation of ICS (internal control system)
- e) Monitor use of funds in IPO
- f) Investigate in above matters

⇒ **Other provision**

- a) Auditor is having right to participate but they can't vote
- b) Board report will disclose composition of audit committee
- c) Supervise vigil mechanism.

⇒ **Certain companies not to form committee**

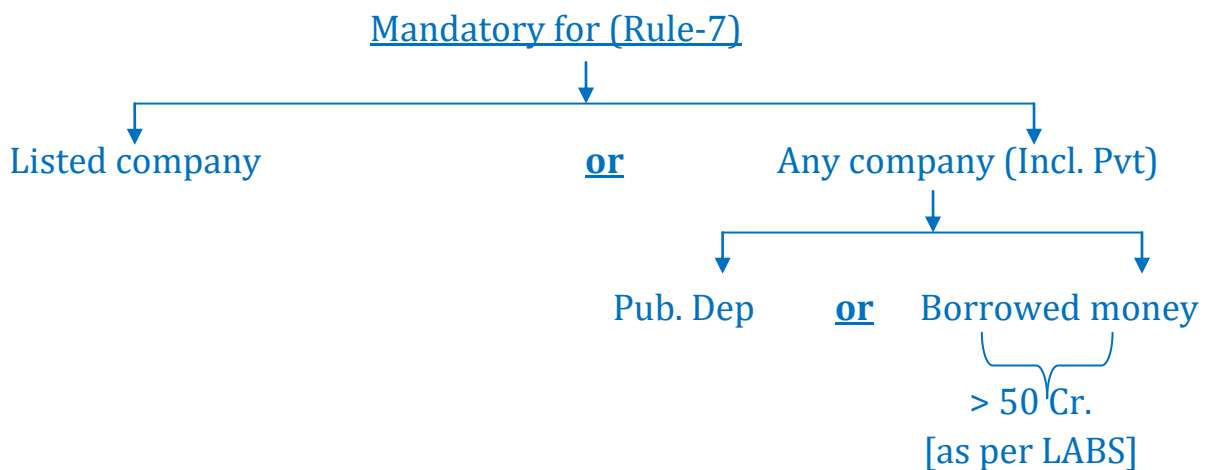


⇒ If company cease to fulfil criteria of PUSC, T/o, etc for 3 consecutive years → not to constitute committee.

⇒ **Effect of violation**

Co.-5L Officer-1L

⇒ **Section 177 : Vigil mechanism**



It's a mechanism through which employee can report misbehavior / fraud, etc.

⇒ **Purpose / function (whistle blowing)**

- a) Report genuine concern of director / employee.
- b) Protect against victimization (Cruel or unjust)
- c) Action against false complaints.

⇒ **Rules of vigil mechanism**

1. For companies who have audit committee → role of vigil mechanism will be played by audit committee.
2. For company not having it, BOD will nominate a person to discharge function.
3. Vigil mechanism should ensure that no false complaint should be registered & if anybody misuses the prov. Then appropriate action should be taken against the complaint.
4. If the complaint is against the member of audit committee itself then such member will recuse (step down) from proceeding.
5. If BOD has appointed any person & complaint against that → then BOD will appoint new person.
→ Penalties → same as audit committee.

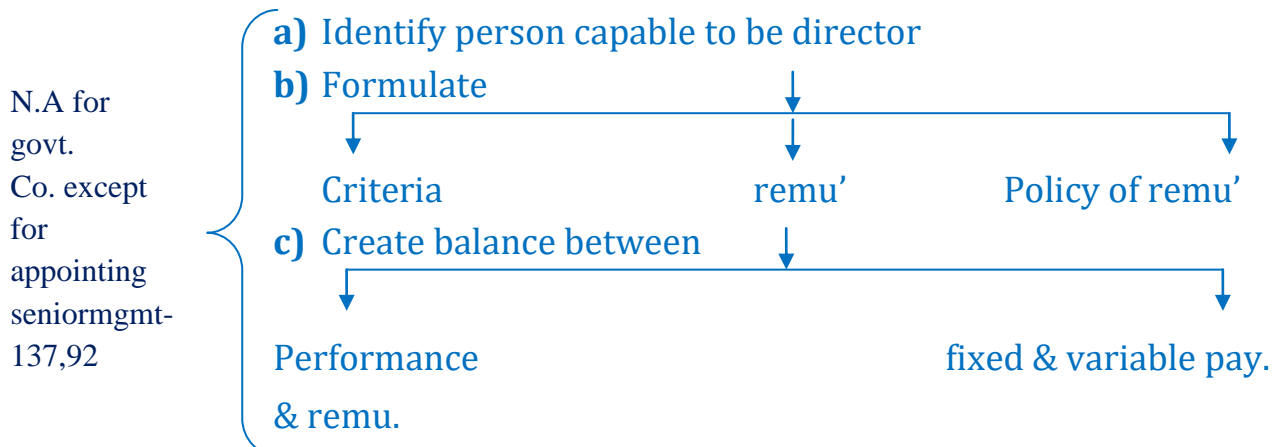
⇒ **Section 178 : Nomination & remuneration committee → NRC**

- ⇒ Mandatory for → same as audit committee
not appli. for → same as audit committee

⇒ **Composition:**

- a) Min 3 non executive director (No MD/WTD/MGR)
- b) At least **50%** ind. Director.

⇒ **Purpose / function**

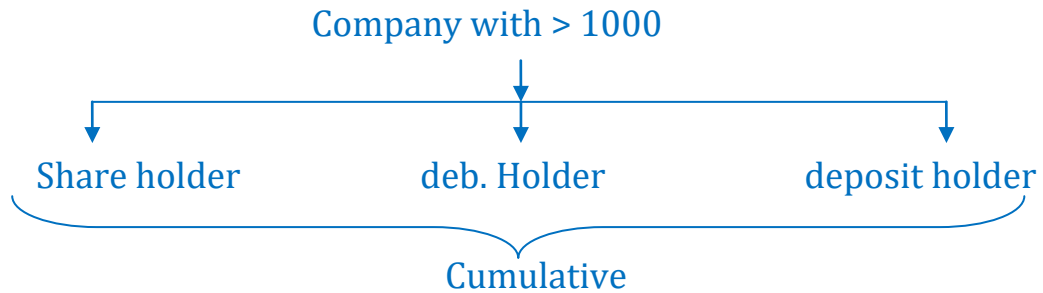


- ⇒ Effect of violation → same as audit committee
- ⇒ C.P. or A.P. of committee shall attend general meeting

⇒ **Section 178 : stakeholder relationship committee.**

(N.A for section 8 company-137,92)

- ⇒ Mandatory for



- ⇒ Constitution :

- a) C.P. → Non-executive director
- b) Members as decided by BOD

- ⇒ Purpose :

- a) Solve investor complaint
- b) Chairman of committee to attend AGM

- ⇒ Penalties → same.

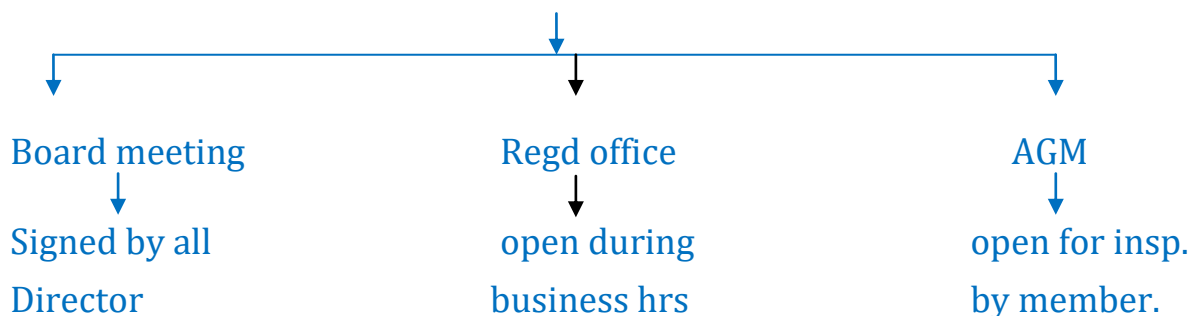
- ⇒ Inability of committee to solve grievance in good faith is not a contravention.

Note: For all listed company all committee provision to be governed by SEBI (LODR) regulation.

⇒ **Section 189 : Register of contracts / arrangements in which director are interested**

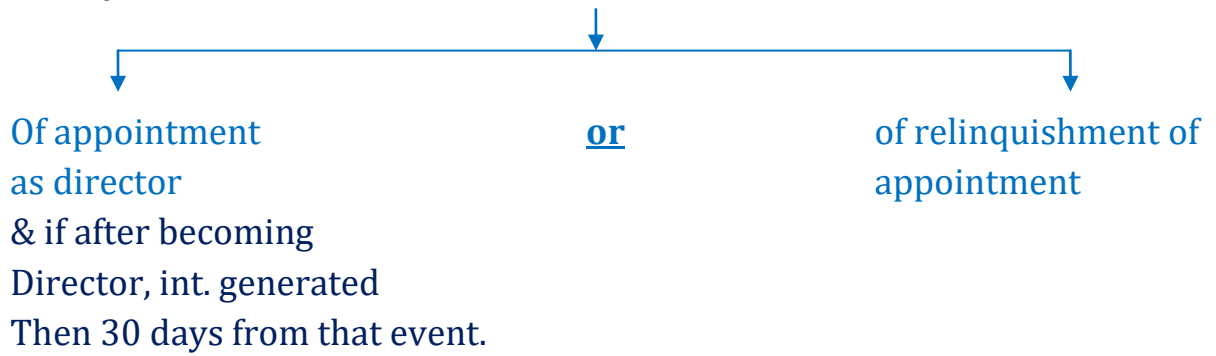
- ⇒ A register for details for tran. u/s 184 + 188 to be kept at regd. office of company.

- ⇒ Such register to be made appli. at.



[extract to member → in 7 days → ₹ 10 per page]

- ⇒ Director shall give relevant disclosures to be entered in register in 30 days.

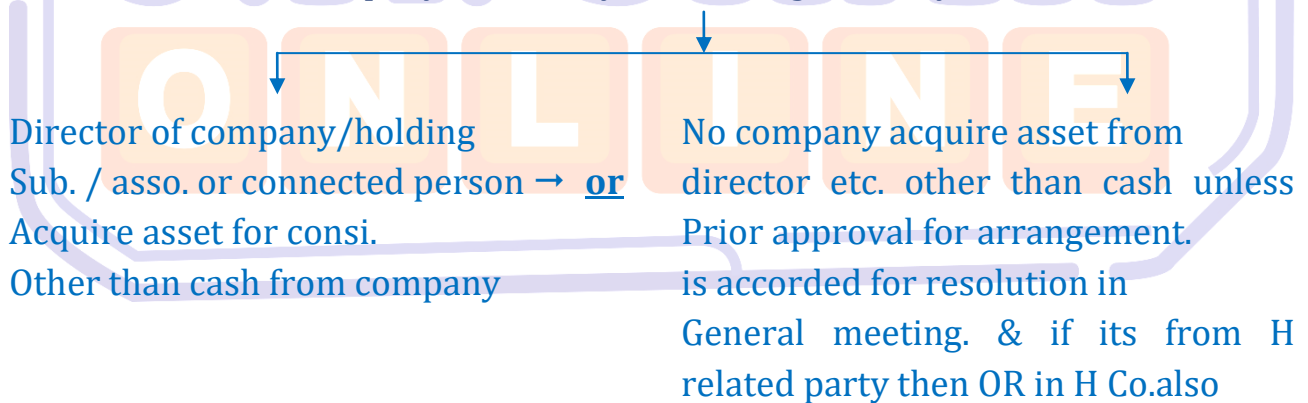


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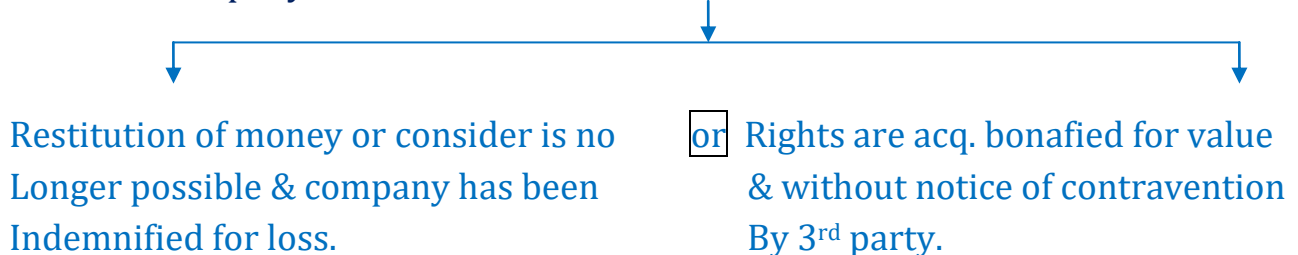
- : Details of transaction upto ₹ 5L in year need not to be entered in register for S/P of G/S
- : No register by banking company in ordinary course
- ⇒ Violation → then penalty = ₹ 25000 for director
- ⇒ This section appli. to section 8 company only if value of contract > 1L

⇒ **Section 192 : Restriction of non cash transaction involving directors:**

No company shall entry into arrangement by which



- ⇒ The notice for approval of resolution by company/holding in general meeting shall incl. pts of arrangement along with value of asset calc. by regi. Valuer.
- ⇒ Any arrangement in violation of this section is voidable at instance of company unless

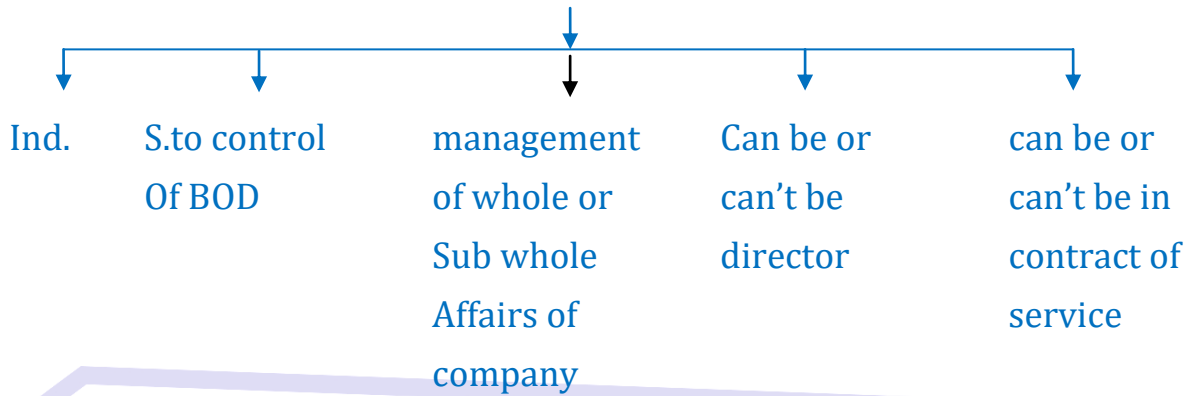


CHAPTER 3

APPOINTMENT & REMUNERATION OF MANAGERIAL PERSONNEL

Companies (Appt & remuneration of managerial personnel) Rules, 2014+
Schedule V

⇒ **Manager [2(53)]**



⇒ **Managing director [2(54)]**

→ Director entrusted with subs. Power of management of company by AOA or agree" with company or resolution in AGM or Board meeting.
So if he ceases to be director, he will cease to be MD.

⇒ **Whole time director [2(94)]** → Director who is in whole time e'ment of company.

❖ **Section 196 : appointment of managing director, whole time director or manager**

[s. to section 164] **not other director.**

⇒ No company → appoint → at same time a managing director & manager [so managing director & whole time director can be at sametime]

Not for
govt co.-
137,92

⇒ No company → appoint or reappoint any person as managing director, whole time director or manager for a term exceeding 5 years at a time [no reappointment earlier than 1 year b4 expiry of term]

Adv. Booking max 1 year by4

⇒ No company → appoint or continue e'ment who

(whole time director / managing director / manager)

Is < 21 years
Or ≥ 70 years
↓
To appoint or
Conti > 70 years
→ SR

or

if he is
undischarged
Insolvent or
adjudged as
insolvent

or

has
suspended
payment
to his
crs.

or

has at any time
convicted by
court for
offence &
Imp > 6 month

N.A for
Nidhi,
govt co.
Pvt. Co.-
137,92

⇒ Appointment & remu of managing director / whole time director / manager to be 1st approved by BOD → then approved by resolution at next AGM.

- If condition in sch-V not satisfied then approval by CG also (in form MR-2 in 90 days of appointment)

⇒ If approval not obtained in general meeting then act done by him by approval → not deemed to be invalid.

Schedule - V (Part - I)

Extra conditions to be fulfilled to appointment managing director / whole time director / manager **w/o approval of CG**

Not sentenced to imp for Any period

Not been detained for any period

> 21 years or < 70 years

resi. of India

With rem' upto max permissible limit.

Or

Fine > 1000
Under 19 acts

under
"conservation Of F.exch & Prevention of Smuggling Activities act,1974"

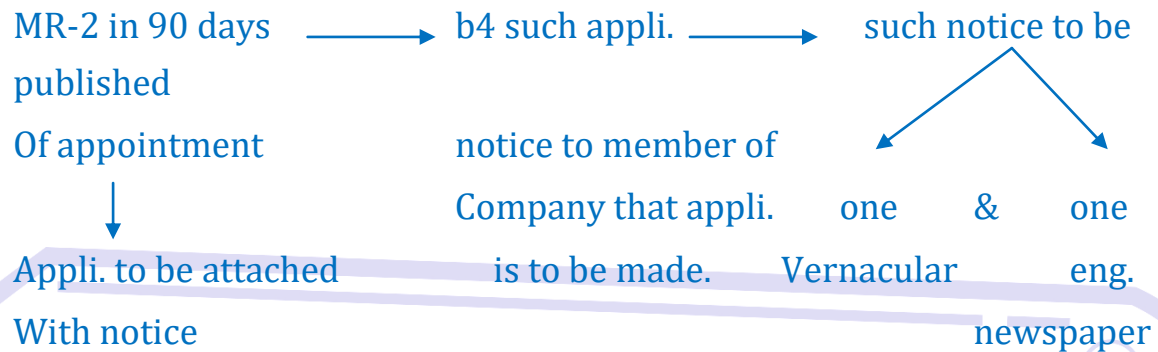
≥ 70 & SR taken then no CG approval [so if no SR passed then by CG approval → can be reappointed only if majority (50%) members has accepted in that resolution.

if once approved by CG (in case of contra")
Then no need for taking Approval for reappoint

⇒ “Resident in India” incl. person who is in India for ≥ 12 months immediately b4 appointment (no condition for company in SEZ)

❖ **Section 201 + Rule 7 : Forms, procedure for certain application.**

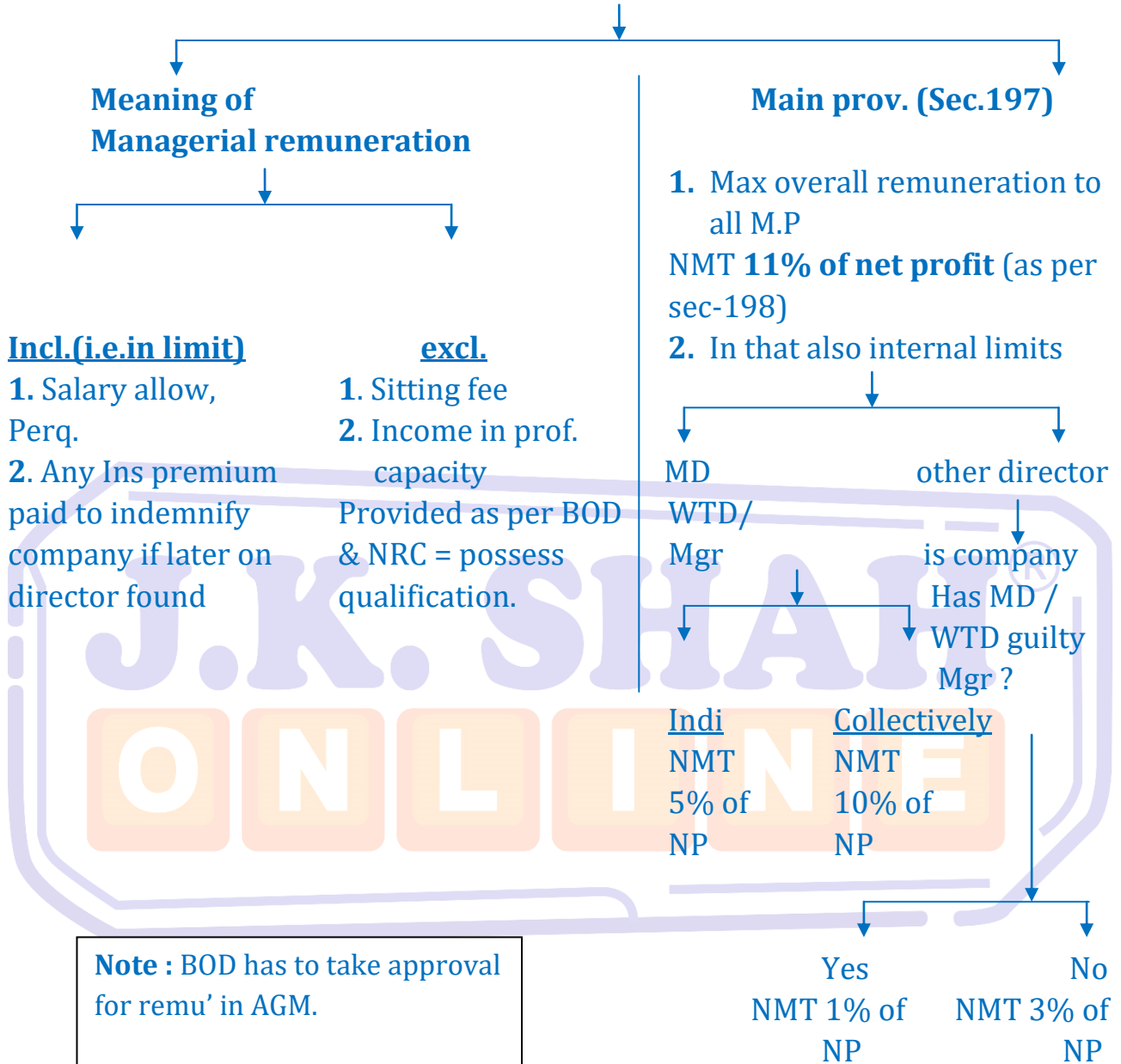
⇒ If to appoint MD – as per 196 SR is required (if aged > 70) but it could not be passed though majority members has voted in favour (i.e. $> 50\%$) then he can appoint by taking CG approval.



❖ **Section 197 : Overall maximum managerial remuneration**

For Public company

1) Company with adequate profit (profit which is enough to pay salary)



Note : BOD has to take approval for remu' in AGM.

→ If company has defaulted in p'ment of Bank PFI, Deb, then first approval of them then

Limit of 11% → can be increased by OR
all other 5/1/3/10 → increased by SR.

2) Companies with inadequate profit [Sch V](Section II of Part II)



Meaning of Max. remu. (TO MD,WTD,Mgr,non executive director incl ind dir)

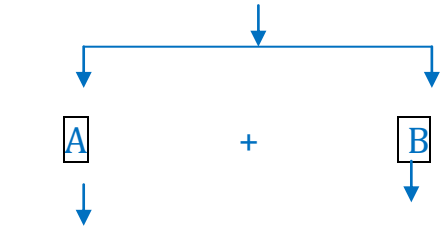
Remu\'

1. Salary + all + Perq.
2. excludes (Section IV)



for all
Gratuity,
P.F, SAF,
Leave
Encash.

Only for
expatriate (NR)
Child edu. Allow.
(12000 p.m.per child
max upto 2)
Holiday allow.LTC.



based on
effective
cap.

For MP in
Professional
Capacity remu\' can
Be paid as per A

if

A) No int.in capi. of company
/H / S [means ≤ 0.5%
of PUSC]

+B) Not related to director/
promoter of Co./H/S
in last 2 years.

+C) Adequate qualification
& expertise.

Std yearly remu\'

Effective capital	Remu.(To each managerial personnel)
-Ve or < 5 Cr.	60 L
≥ 5 Cr. - < 100 Cr.	84 L
≥ 100 Cr. - < 250 Cr.	120 L
≥ 250 Cr.	120 L + 0.01% of e.cap above 250 Cr.

⇒ Remuneration above limit can be paid only by taking approval by SR

⇒ If appointment < 1 year → pro rata

⇒ Effective capital : means "T1-T2"

T1 = PUSC + SP + R&S (Excl.revaluation res) + LT Loan [> 1 Years]

T2 = Investment + Accu. Losses + preliminary exp not w/o off+ Application money

To be cal. as on last day of FY preceding the FY of appointment of M.P.

⇒ **Conditions for p'ment of remu' i.e. in limit.**

- 1) Approved by BOD & also by nomination & remu' committee. &
- 2) If any default in p'ment to bank, NCD, Crs then 1st their approval. &
- 3) Approval in A.G.M. (i.e. OR) & if > limit then SR.
[OR/SR valid for NMT 3 years]

⇒ **Section 198 : Calc. of profit.**

⇒ Incl. in income : subsidies from govt. except CG direct otherwise.

⇒ **Not incl. in income:**

- a) Profit by way of prem, or disc [unless company = invest company]
- b) Profit on sale of forfeited shares.
- c) Profit from capital nature
- d) Profit from sale of immovable prop. [unless ordinary business]
In case of prop sold above WDV then credit = original cost - WDV → i.e. equal to past depre taken.
- e) Unrealised gain, notional gain, revaluation of asset.

⇒ **Deducted:**

- a) Usual working charges
- b) Director remu' (not from GP)
- c) Bonus, commission
- d) Tax notified by CG in special circumstances.
- e) Any tax on business profit
- f) Int, in deb. Issued by company
- g) Int. on mortgage executed by company
- h) Int. on unsecured loans
- i) Repairs (not capex)
- j) Dep to the extent sec.123
- k) Any damages, compensation
- l) Way of ins against any risk
- m) Bad debts

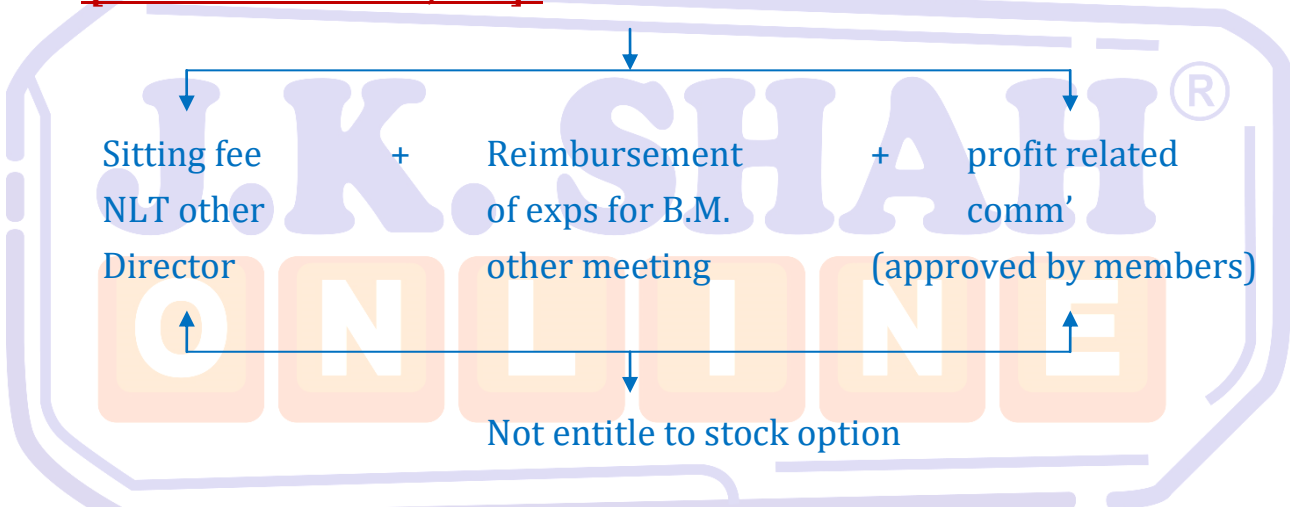
⇒ **Not deducted**

- a) Income tax
- b) Compensation which is paid voluntarily
- c) Loss of cap. Nature.

❖ **Sitting Fees [over and above remu']-197(5)**

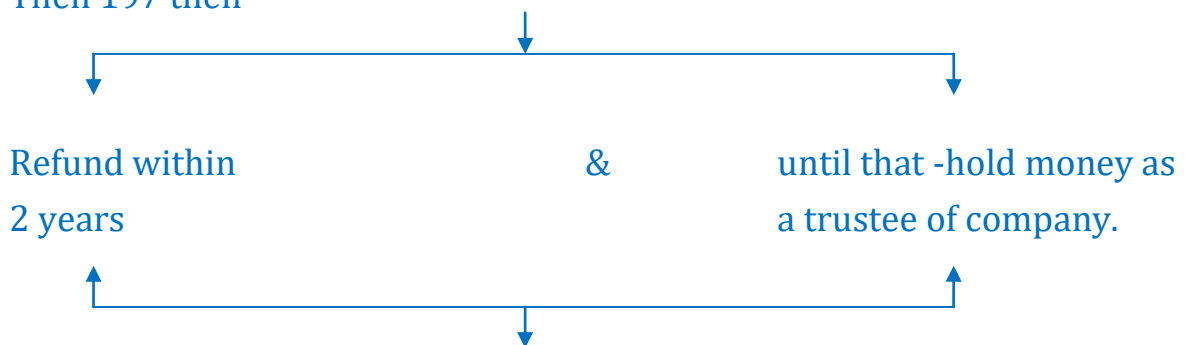


❖ **Remu' to independent director**
[Within limit of 197, 198]:



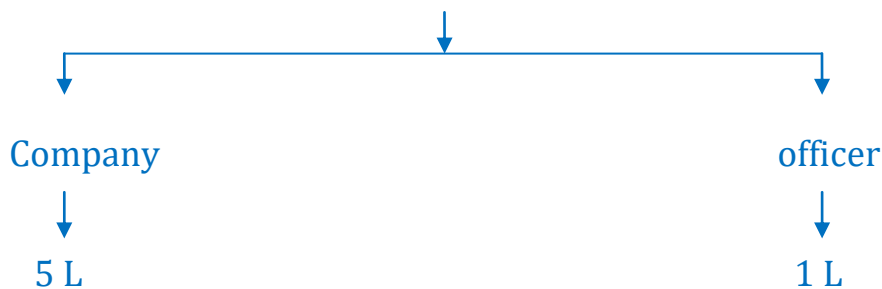
❖ **197(9)(10) : if director draws excess remu'**

Then 197 then



- Company can't waive such refundable amount.
- However within 2 years by SR it can be waived. [if any default in bank, PFI, NCD then b4 SR, their approval is req.]

❖ **197(15)** : If violation of section 197 then



❖ **197(16)** : Auditor in report u/s 143 shall make statement regarding:

Whether remu' is in accordance of 197 or higher.

⇒ Whole section 197 → N.A. to govt company [137, 92]

❖ **Section 199** : Recovery of managerial remu' in certain cases :

If company is required to restate FS due to fraud or non compliance as per companies act then

Remu' to be recalculated (Incl. stock option) & if excess paid then it is to be recovered (as per recalculation.

⇒ This recovery does not escape them from liability that may be incurred as per companies act.

❖ **Section 203** : Appointment of key managerial person (KMP)

Mandatory (Rule-8)

a) Listed co.

b) Unlisted public co.

PUSC ≥ 10 Cr.

Which type

1) MD/ CEO / Mgr/

WTD &

2) CS &

3) CFO

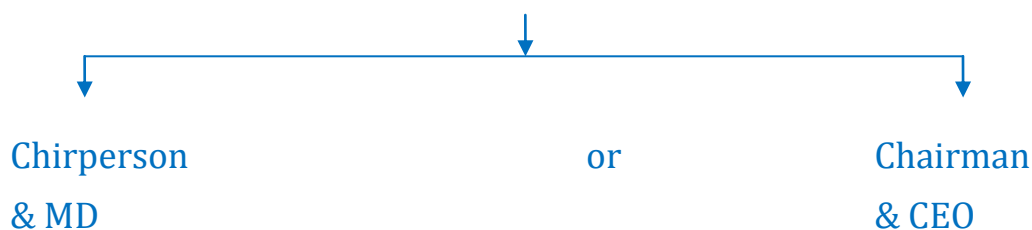
To be appointed by BOD

Resolution

[Not by circulation]

(No one can be wholetime CS & CFO simultaneously because word is "&")

⇒ No individual at same time can be



Except:

1) But if AOA permits then such ind. Can hold 2 position at same time.

e.g. mukesh → CP & MD

2) C.P. can be CEO if (Even if AOA does not permit)



Public co. PUSC ≥ 100 Cr.
& T/o ≥ 1000 Cr.

+

Multiple
Business

+

Appoint CEO for each
business separately.

⇒ **Provisions for appointment:**

1) KMP can be appointed as KMP in max 1 company + Subs. Of that company.

However, MD / Mgr can become MD/Mgr in other company by unanimous BMR

(means 1 person can be KMP only in 1 company + subs. But MD/ Mgr → in max 2 company + subs.)

2) KMP can be director of other company with approval of BOD.

3) Vacancy of KMP → filled up by BOD in 6 month.

4) Penalty → company → 5L

KMP → 50000 [if continues then 1000 per day] [NMT 5L]

⇒ **Rule - 8A:** In addition to rule-8, a company (pvt) with paid up sc ≥ 10 Cr. → whole time CS (No other CEO, CFO, etc)

Point to note: As per section 2(71) subsidiary of public co. = Public co. (Even if it is pvt co. as per AOA)

Note: Whole section N.A. for MD/CEO/Mgr /WTD of Govt. company.

Chart for Rules

Listed Co.	Unlisted Public Co. (PUSC < 10 cr)	Unlisted Public Co. (PUSC > 10 cr)	Pvt Co. (PUSC < 10 cr)	Pvt Co. (PUSC ≥ 10 cr)
CS	No CS	CS	NO CS	CS
KMP	No KMP	KMP	NO KMP	No KMP

❖ **Section 204 : Secretarial audit for bigger Companies :**

⇒ Every listed company + companies under rule-9

Rule-9 : Public company

PUSC ≥ 50 Cr.

Or

T/o ≥ 250 Cr.

Or **Every Co.** Loan from Bank/PFI ≥ 100 cr

shall annex with BR, a secretarial board report [CS in practice form MR-3]

⇒ BOD shall in report u/s 134(3) shall explain in full any qualification or observation by CS.

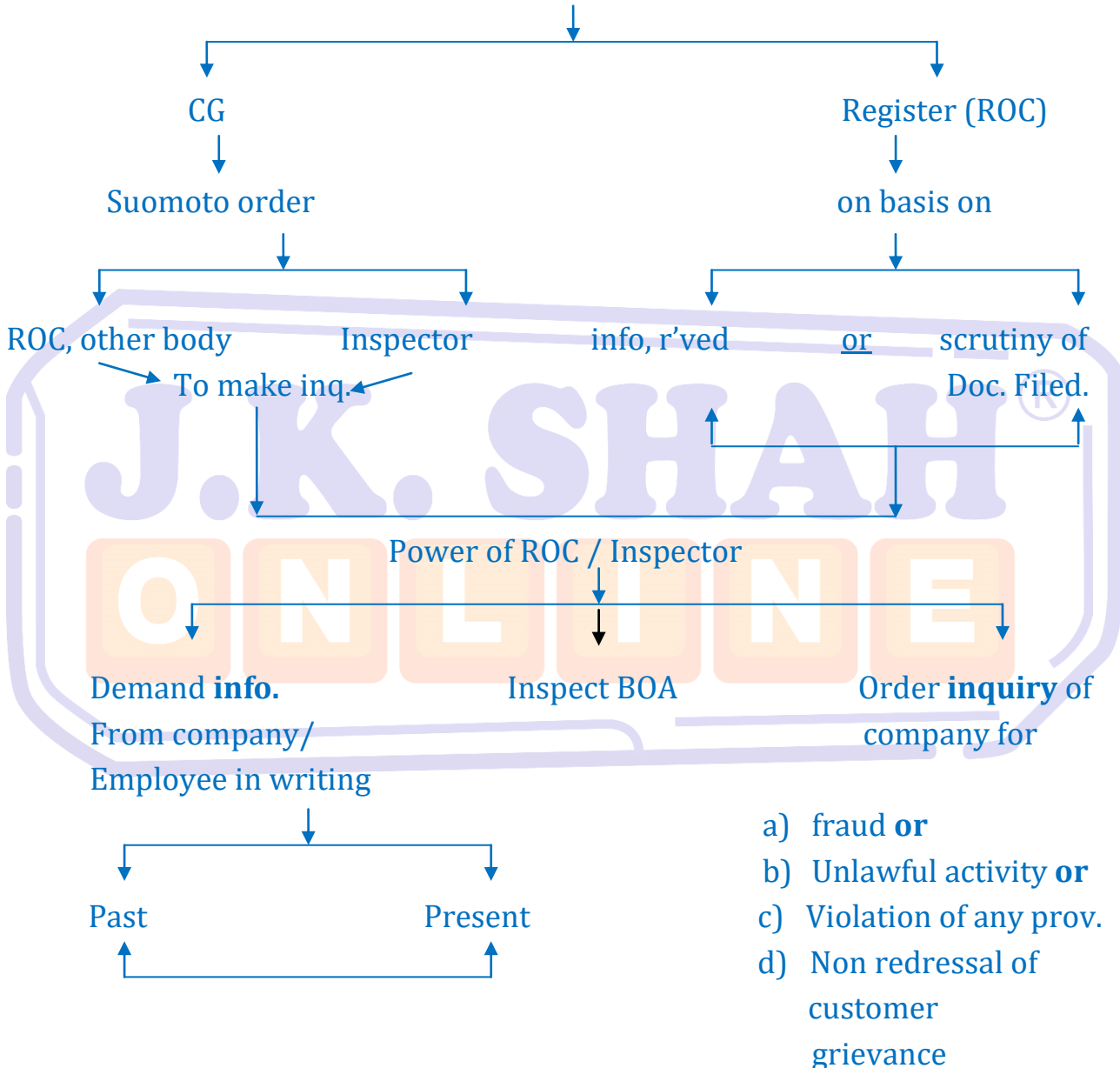
⇒ Any contravention then company or officer or cs in practice → fine 2L

CHAPTER 4

INSPECTION, INQUIRY & INVESTIGATION

Company (Inspection, Investigation & inquiry) rule, 2014

❖ **Section 206 : Power to call for info: inspect BOA & conduct inquiries.**



Duty to furnish

- ⇒ Inspection → No need of any ground
- ⇒ Inquiry → only for certain ground.
- ⇒ If co. fails to furnish info then Penalty for 206 → Company + officer upto 1 L + ₹ 500 per day

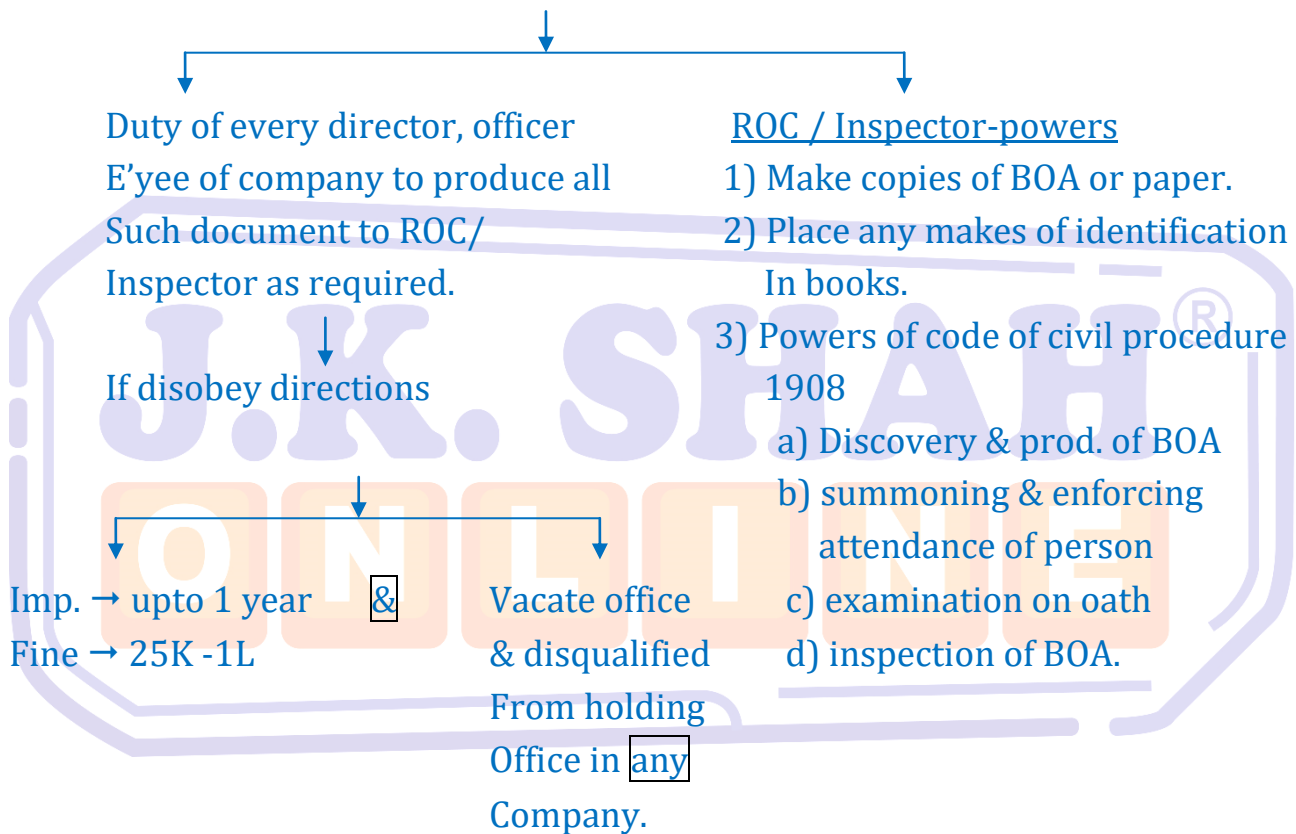
⇒ If no info furnished or on examination of Doc". ROC –opinion that into is inadequate or from scrutiny of doc → ROC = opinion that unsatisfactory state of affair exist.



May by another written notice call company to produce for inspection further BOA, paper etc.

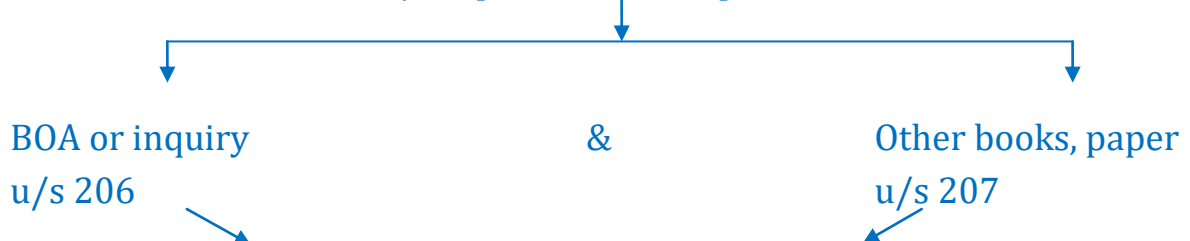
❖ **Section 207: Conduct of inspection & inquiry :**

Where register / inspector calls for BOA & other books, paper u/s 206.



❖ **Section 208 : Report on inspection made**

ROC/ inspector after inspection of



submit a report in writing to CG with document (if any) & such report incl. recommendation that further investigation into affairs of company req. or not.

❖ **Section 209 : Search & seizure**

ROC/Inspector = view that books, papers are likely to be destroyed, mutilated (Change), altered, falsified or secreted [related to company/ director/ auditor / CS / KMP)

He may after special court approval

Enter with such assistance & search the place where B/P are kept.

Seize such B/P after allowing company to take copies its cost.

- ⇒ Such seized document to be returned on or b4 180 days. Can be further called in writing for another 180 days.
- ⇒ Before returning ROC/ Insp. May take copies & put identification marks.

❖ **Section-210 & 213 : investigation into affairs of company by CG & 213 : in other case.**

CG may appoint 1 or more persons as inspector to investigate into affairs of company & to report CG will order if necessary, from

From report Of ROC/insp. U/s 208

On intimation of SR passed by company (Director to CG)

if in public int

order passé by court/ trib.

member apply to trib. & trib. Order to CG

May Order

may order

may

must

Must

(So if SR them CG if not then trib)

Section 213 : How much min. member to apply to trib.

Company with sh. Cap. Then sh. Cap.

Company without sh. Cap.

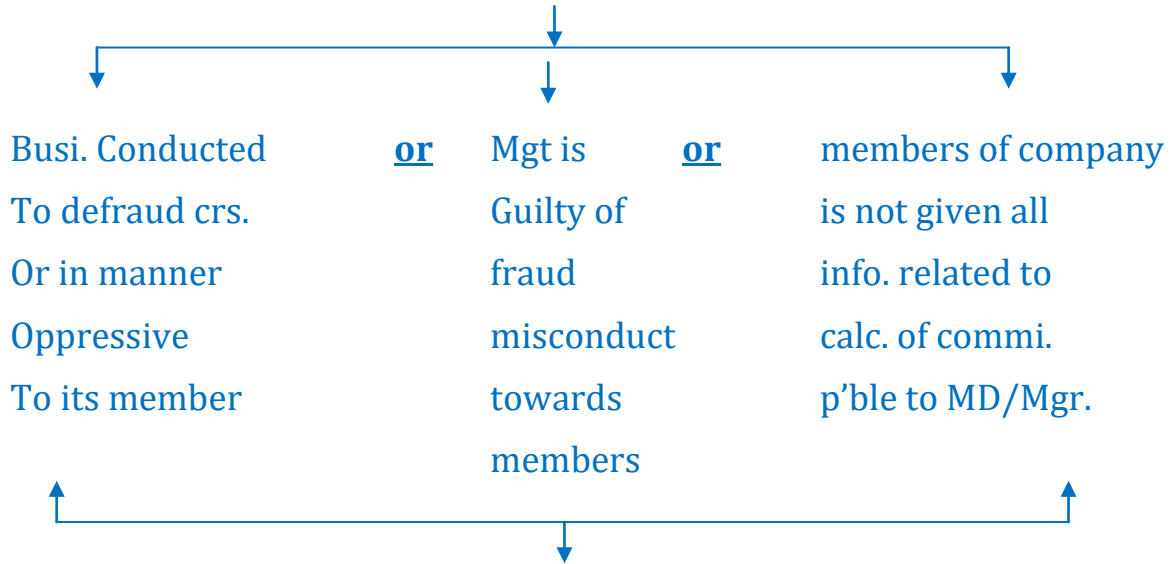
NLT 100 member

or

member NLT 10% of Voting

at least **20%** members

⇒ On appli. by min members if trib. Is satisfied that



Trib. After OBH → order CG to investigate

If after investigation, company or officers found guilty then section 447.

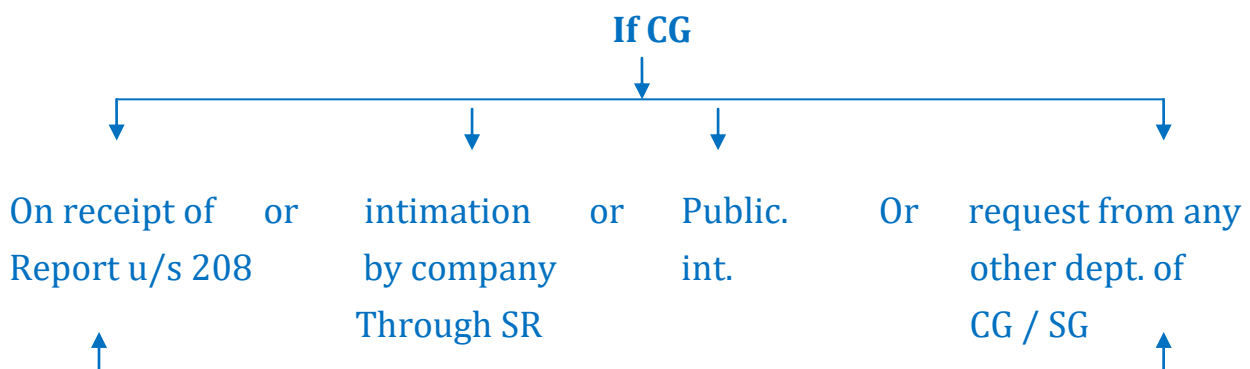
⇒ For section- 210, 213 applicant to give security NMT ₹25000 for cost & exps of investigation.(Given in section 210+214)

⇒ If invest results in persecution then refund deposit.

❖ **Section - 211 : establishment of serious fraud investigation office (SFIO)**

⇒ CG → notification → establish SFIO

❖ **Section - 212 : investigation into affairs of company by SFIO.**



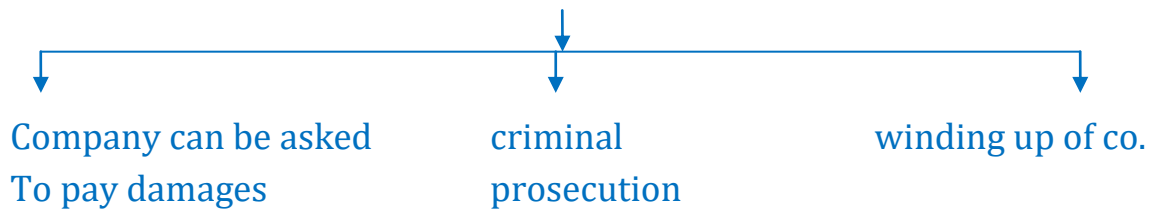
Opinion = inv. by SFIO then assign to SFIO → which will designate such Number of inspectors.



⇒ SFIO → submit interim reports & then on completion, final report to CG.

⇒ If any person seeks report → appli to special court.

⇒ CG → direct SFIO → after referring report to initiate prosecution against company/ officer / e'ye.



⇒ During investigation → all e'ye, officer, director shall co-operate.

⇒ SFIO can search & seize BOA & docu' but for max 180 days after that again in writing for further 180 days.

⇒ Can extract copies & place identification marks.

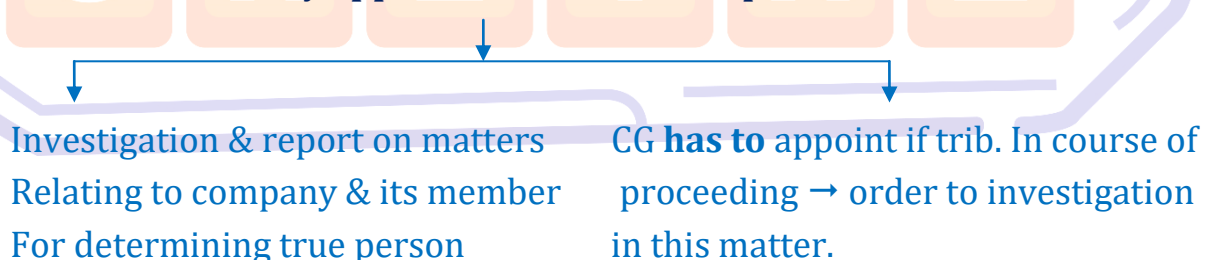
All govt. agencies shall share info. To SFIO & vise - versa.

⇒ Power u/s 217

⇒ If this report of SFIO states that fraud has taken place & director/KMP has any undue gain then CG may file appli, to tribunal for disgorgement of such prop.

❖ **Section 215 : No firm, B.C. or asso. → Appointed as inspector.**

❖ **Section 216 : Investigation of ownership of company**
CG may appoint one or more inspector for



a) Who are or have been financially Int. in success or failure

Or

b) Who are or have been able to Control policy of company

or

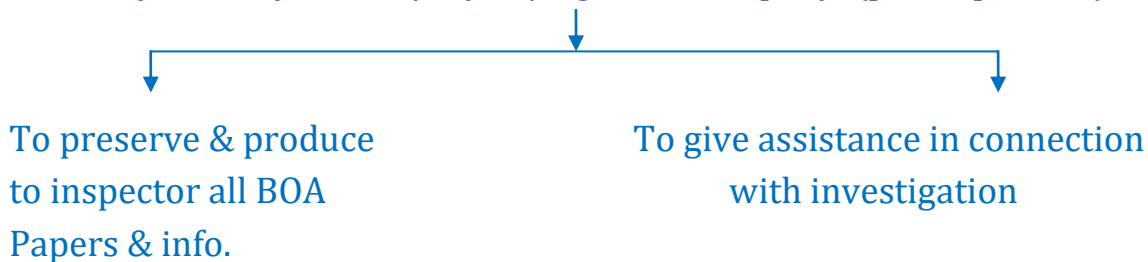
c) Benefit owner

While appointing inspectors CG may define scope of Investigation.

(e.g. period or only related to share, etc.)

❖ **Section 217 : Procedure, power of inspectors**

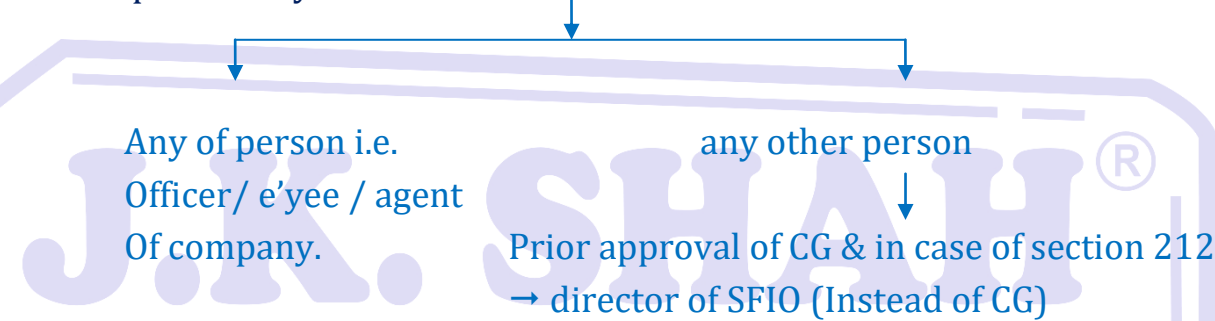
⇒ It is duty of every officer / e'ye / agent of company. (past + present)



⇒ Inspector may require any other B.C. to produce BOA, paper, info. If relevant for purpose of investigation.

⇒ All books → custody NMT 180 days after returning insp. May again call in writing NMT 180 days.

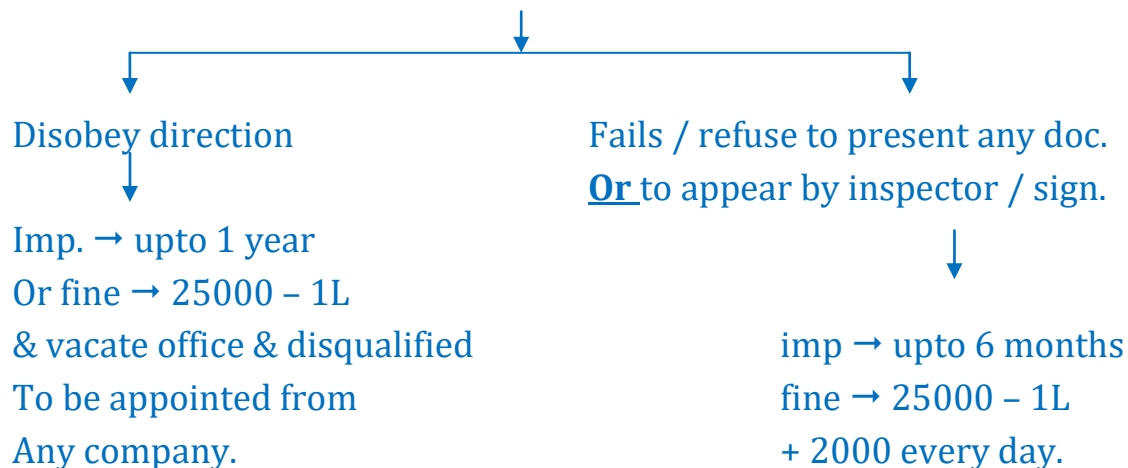
⇒ Inspector may examine on oath.



⇒ Powers of SFIO = code of civil procedure 1908

- a) Discovery & production of BOA
- b) Summoning & enforcing attendance of person
- c) Inspection of BOA, register, document.

⇒ Penalty for officer / e'ye / agent

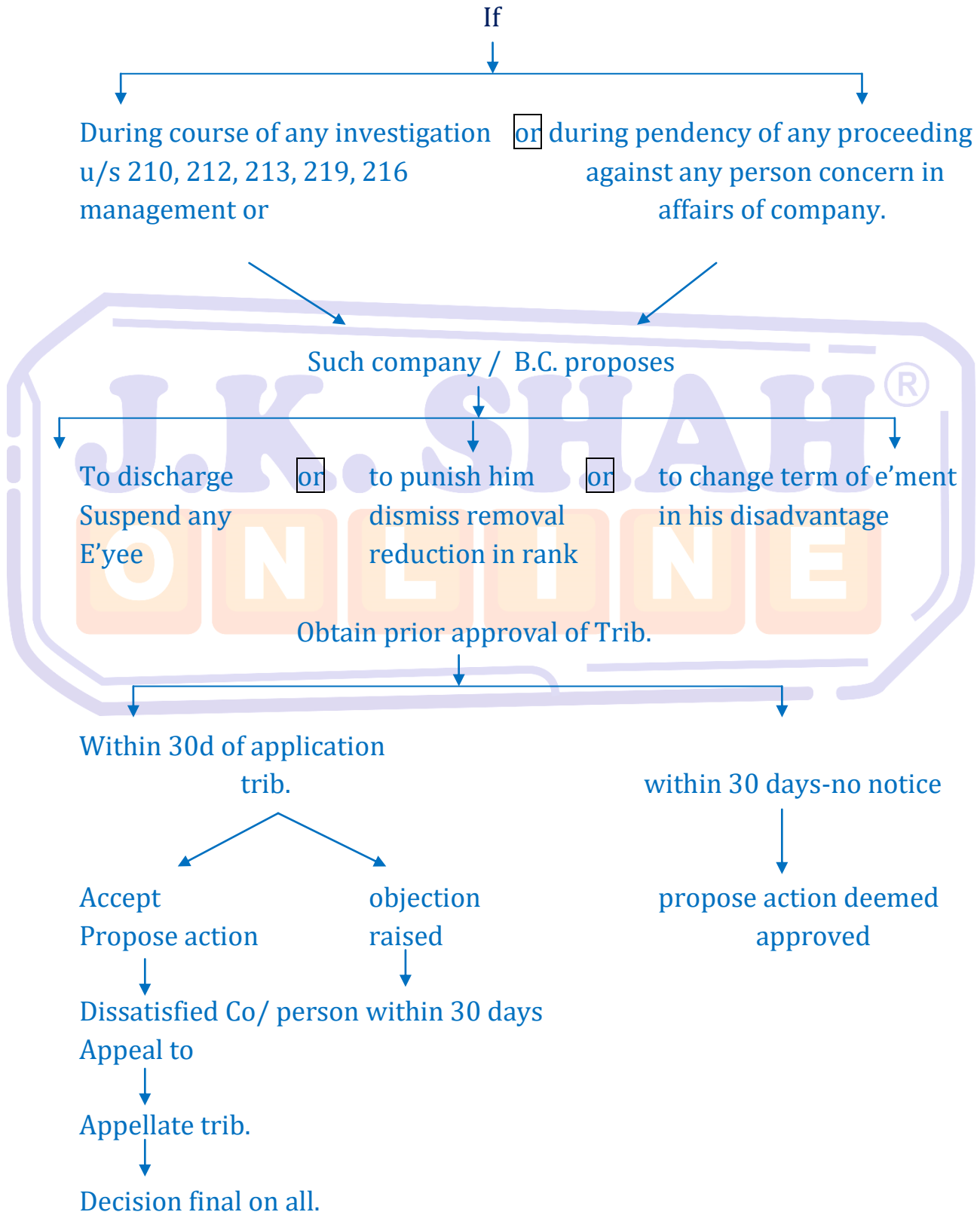


⇒ CG → may by notification → make reciprocal arrangement with other country to assist in investigation.

⇒ Inspector if believe that evidence is or may be in a place country o/s India.

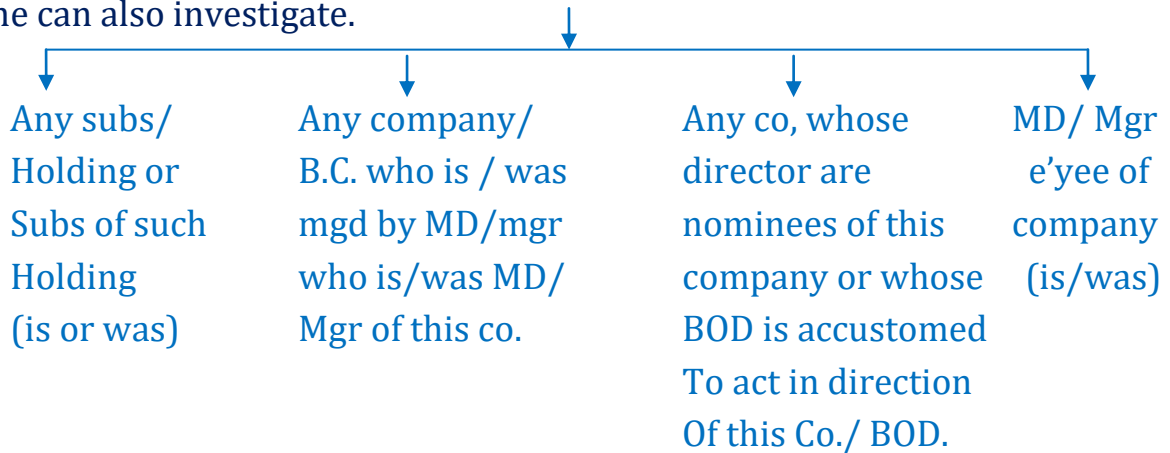
Request competent court in India → which will issue a letter of request to a court or autho. In such country / place.

❖ **Section 218 : Protection of e' yee during investigation.**



❖ **Section 219 : Power of inspector to conduct investigation into affairs of related companies etc.**

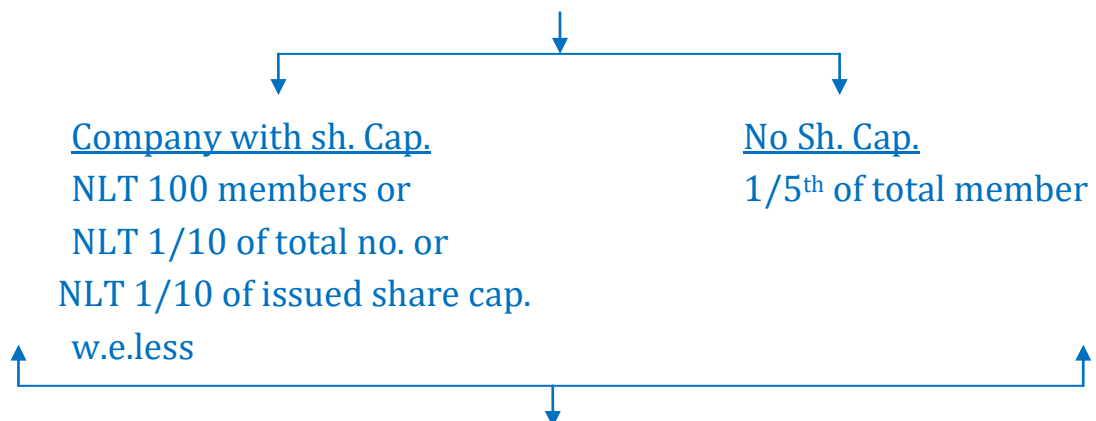
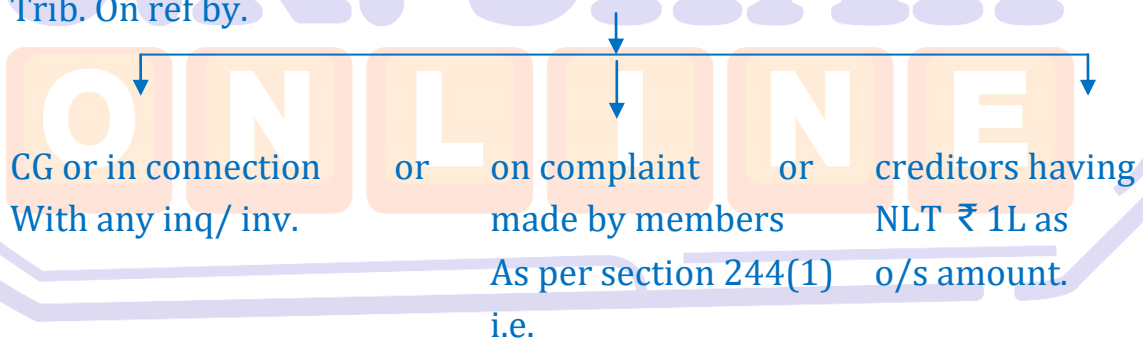
While investigating u/s 210, 212, 213 if inspector consider if necessary than he can also investigate.



⇒ For this prior approval of CG is required.

❖ **Section 221 : Freezing of assets of company on inquiry & investigation.**

Trib. On ref by.



if trib. Has reasonable ground to believe that removal, transfer, disposal of fund, asset, property → can take place in manner prejudicial to int. of company / shareholder / crs / Public int.

Trib. → order → not to effect such transfer for period NMT 3 years.

If any contra then.

Company

Fine : 1L - 25 L

officer

Imp → 3 years

Fine → 50000- 5 L

Or both.

❖ **Section - 222 : Imposition of restriction upon securities**

Trib. = opinion → to investigate u/s 216 or on complaint made by any person → that fact can't be found unless certain restriction are imposed then trib, can order.

Not to trf sec → NMT 3 years.

contravention

Company : 1L - 25L

officer : Imp → 6 month
Fine → 25K - 5L or both.

❖ **Section - 223 : inspectors report [N.A. for SFIO]**

Every inspector → interim & on conclusion final report to CG.

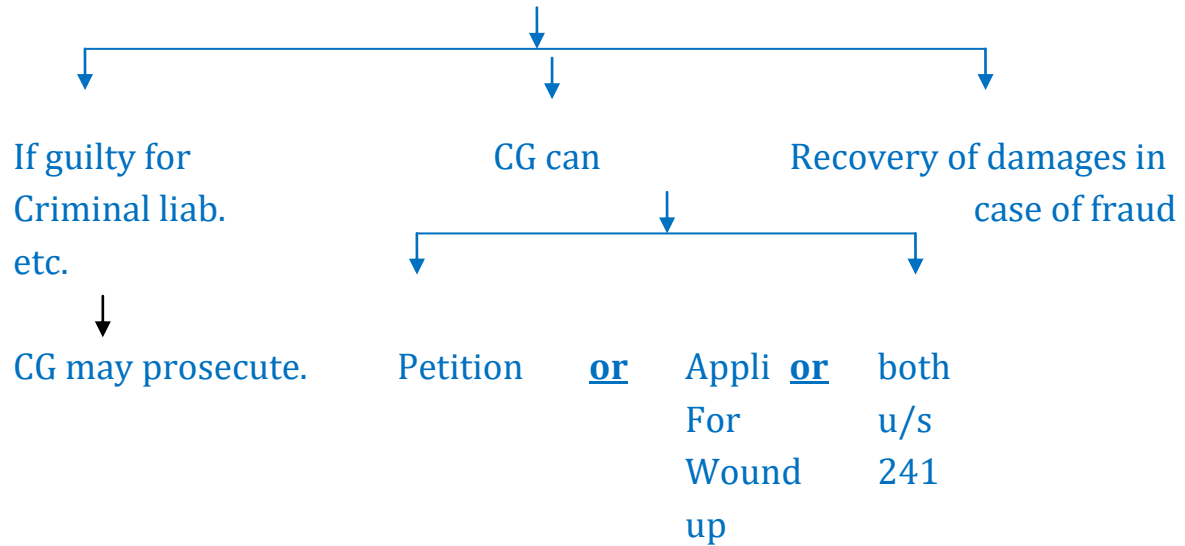
- ⇒ Every report → in writing or printed.
- ⇒ Copy to any person → on appli. to CG.
- ⇒ Report under this section to be authenticated by

Seal of company of which
Affairs are invest.

or

By certi. Of public officer
Having custody.

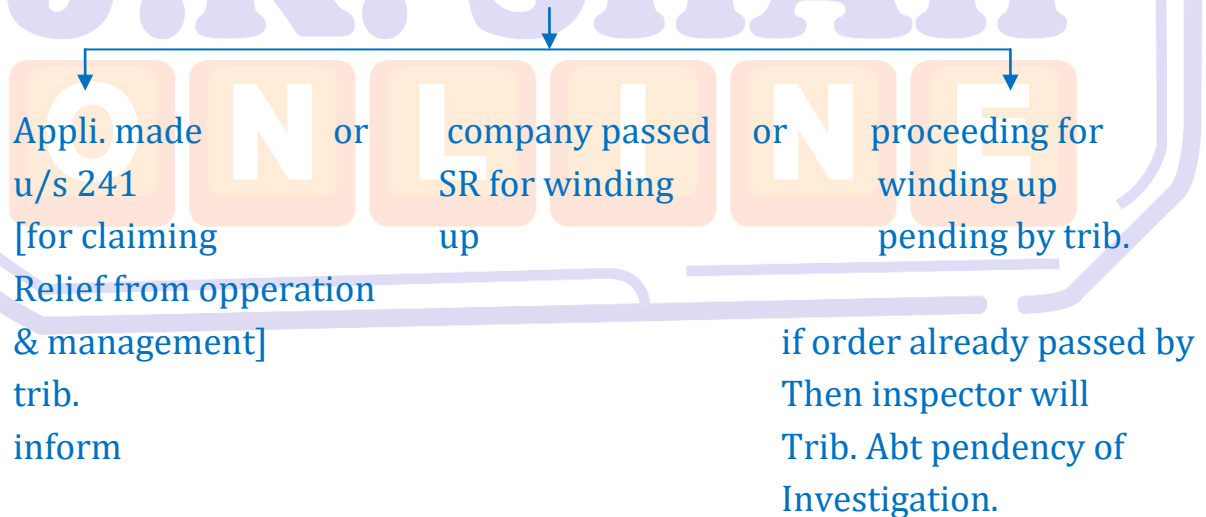
❖ **Section 224 : Action to be taken in pursuance of inspector's report**



⇒ CG shall be indemnified for any cost by such company.

⇒ If by fraud any prop./ cash has been taken by KMP / Director etc. then CG on appli. to trib. Can disgorged such asset / prop. / cash etc.

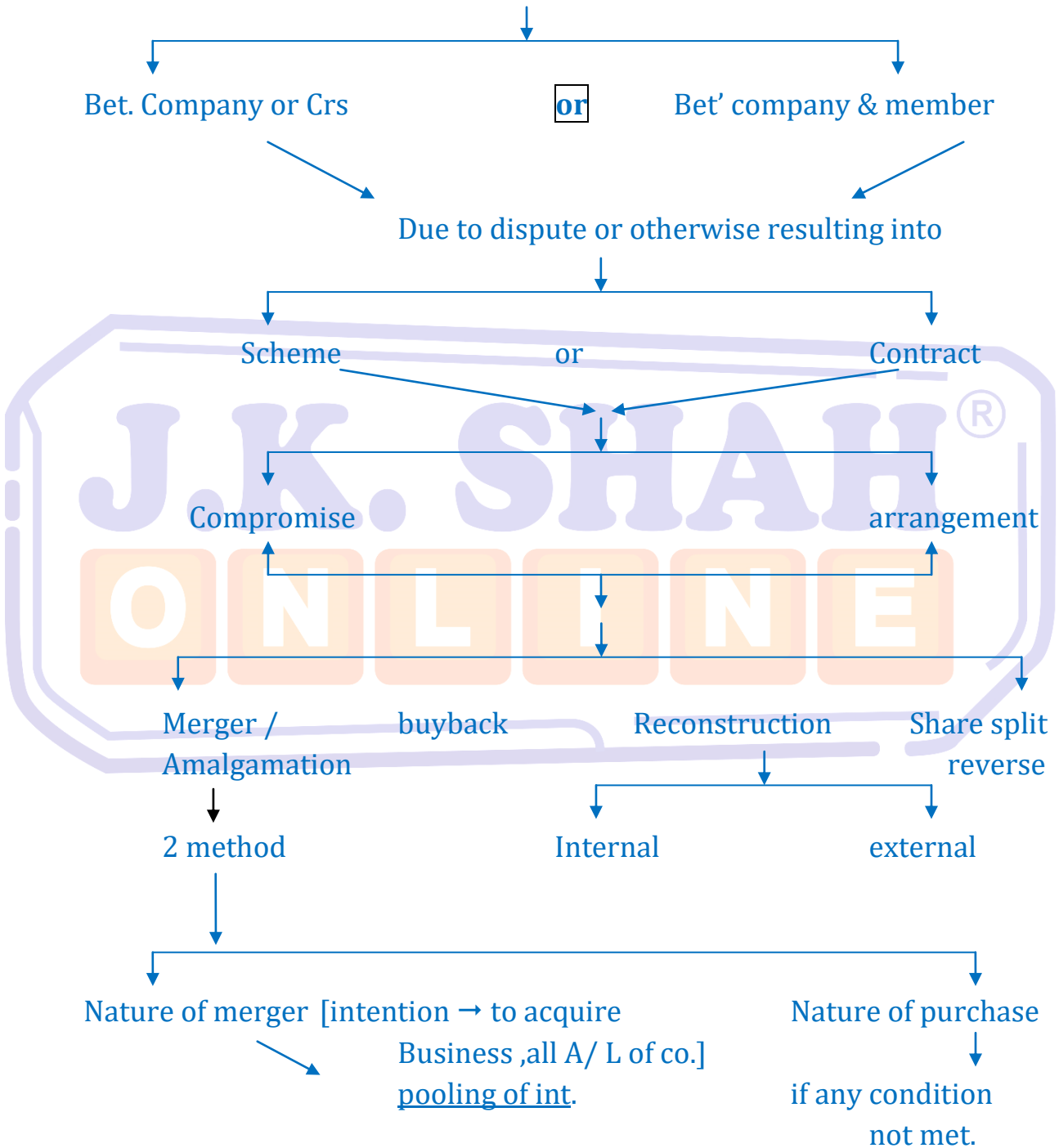
❖ **Section - 226 : Following events shall not stop/Suspend investigation.**



CHAPTER 5

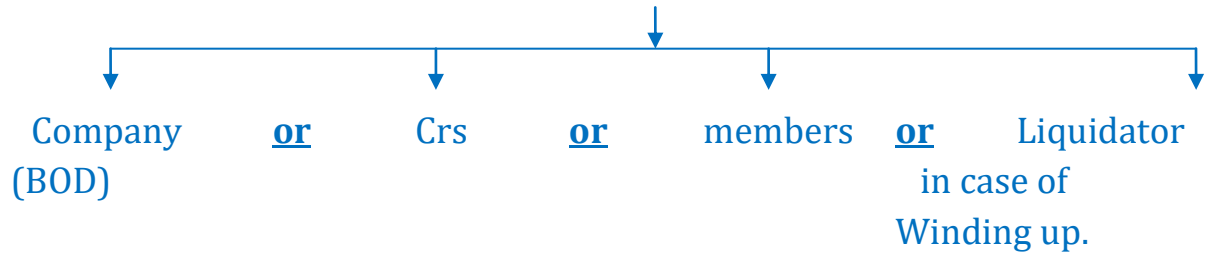
COMPROMISE ARRANGEMENT & AMALGAMATION

Concepts : Any adj. of right / Liab.



❖ **Section 230 : Power to compromise or make arrangement with crs & members**

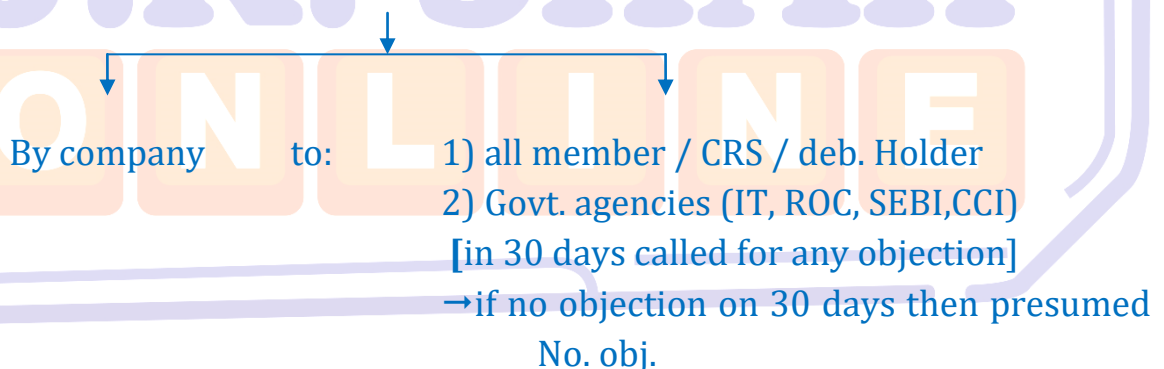
Appli. to be made to tribunal by.



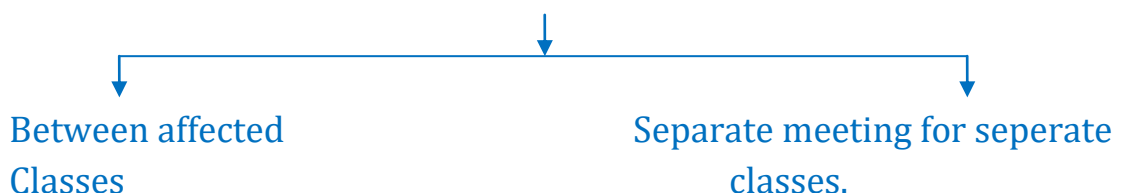
1) Appli. shall contain :

- a) All details of company (financial + Non Financial)
- b) If company is going to do corporate debt restricting (CDR) → then declaration that CDR is as per RBI guidelines + approved by NLT 75% crs.
- c) Valuation of all movable + immovable asset is from reg. valuer.
- d) If in comp./ arr. → Red" of Share Capital is there then that details

2) Notice of such appli to be given:At regd Address+Website



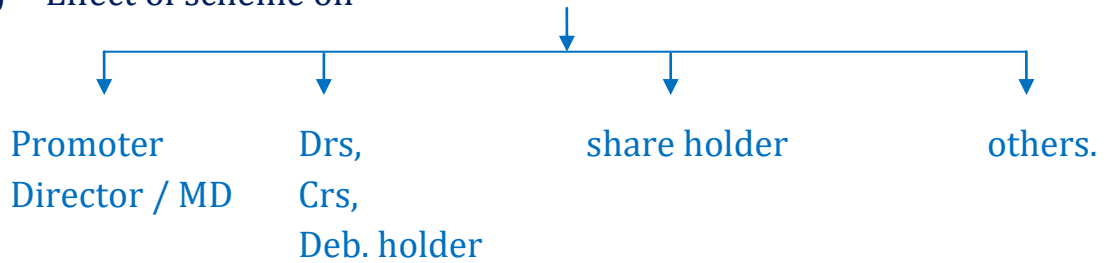
3) Trib. Will order for meeting to be conducted



⇒ Notice of such meeting will be sent to all crs/members at registered address containing.

- 1) Content of scheme to be explained in detail
- 2) Copy of valuation report

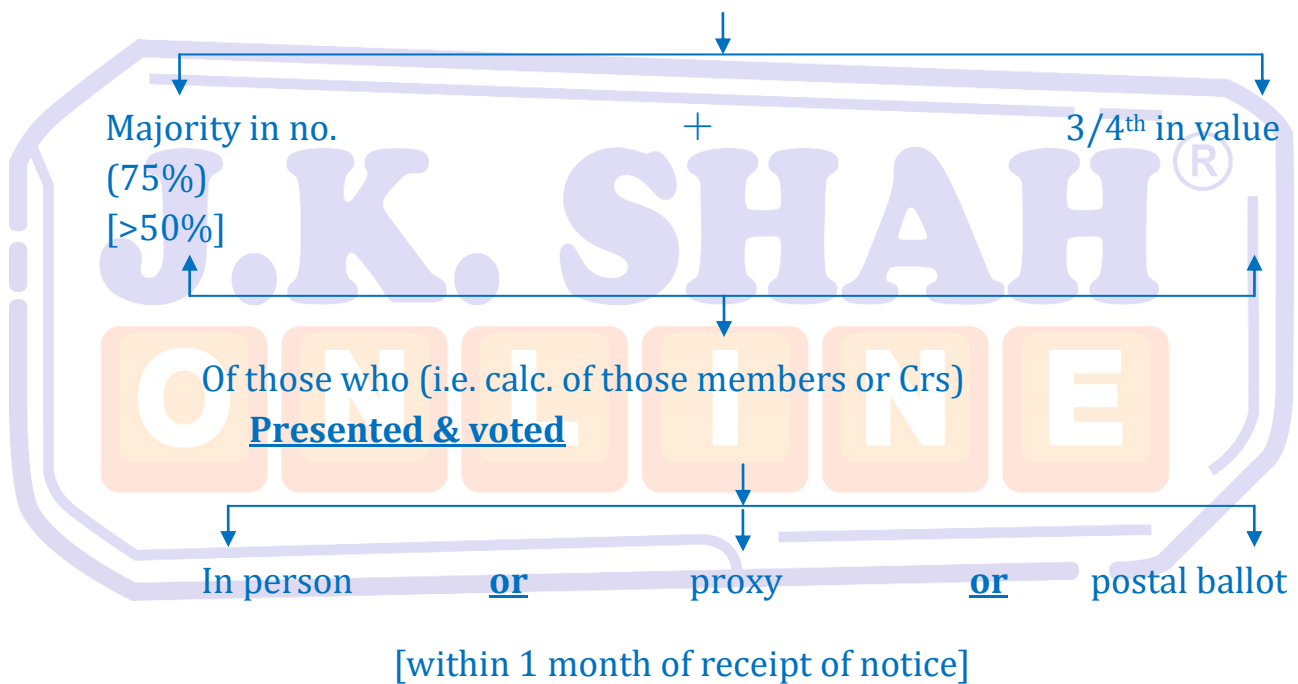
3) Effect of scheme on



4) This notice & all documents to be uploaded on website. If listed then sent to SEBI also.

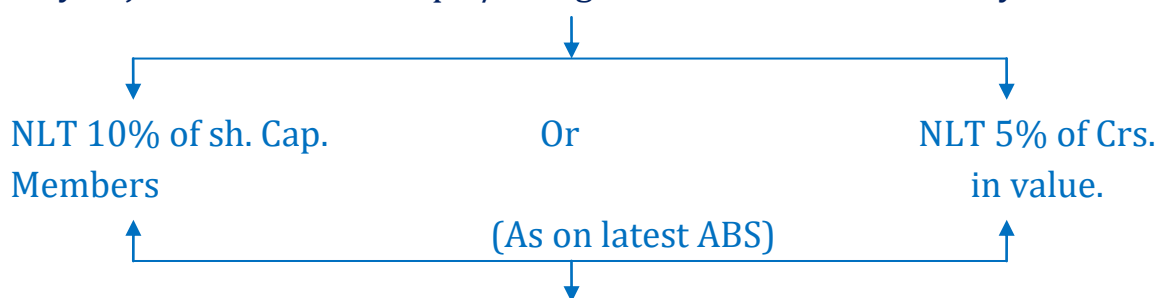
⇒ Trib. can dispense the calling meeting of Crs or class of Crs. If at least 90% (in value) agree for scheme by affidavit.

4) **Such scheme to be approved by [member-ESH & PSH or Crs]**



e.g.: out of 800 members, 400 members attended & 300 voted then 50% / 75% of 300]

if any objection to such compo / arrage. Then it is to be raised by either



Filed to trib. in or after meeting in reasonable time.

- 5) On approval of scheme, appli. to be sent to trib. → Trib. may give its approval + can give appropriate order.

Trib. can sanction only after certi, by companies auditor → filed indicating right treatment of AS, etc.

- 6) Order of trib → to be filed to ROC in 30 days & binding to all

- 7) Buyback if to be done → as per section-68

Any red' in SC → can be done by overruling-Section -66.

- 8) Other provisions [from judgments]

By giving approval trib. should ensure.

There was fair Representation of class → scheme is fair & reasonable → reason of "yes" by member & "No"

❖ **Section 231 : Power of trib. To enforce compro. Or arrangement.**

After passing order u/s 230, for sanctioning compro./ arrange trib.have power.

To supervise the Implementation comp/A

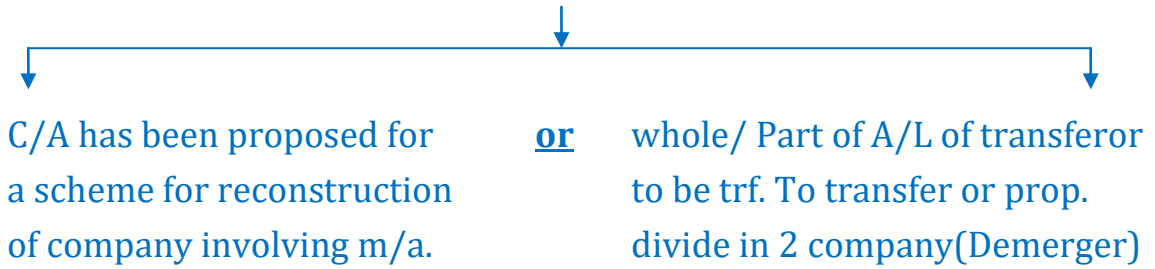
To give such direction/ modification for proper imple.

If trib. → satisfied that C/A can't be implemented or company is unable to pay debt as per scheme.

Order for winding up → deemed order u/s 273

❖ **Section 232 : Prov. For merger/ amalgamation of company (over & above 230)**

Where appli. is made to trib. u/s 230 & it is shown to trib. That.



⇒ On such appli. trib. Will order meeting of Crs / members & section-230 will apply.

⇒ **Order of trib. For meeting shall also require to circulate:**

- 1) Draft of proposed term of scheme.
- 2) Confirmation that copy of draft is submitted to ROC.
- 3) Report adopted by director of company → explaining effect on scheme on all.
- 4) Report of expert w.r. to valuation.
- 5) Supplementary a/c statement (if last annual a/c belongs to > 6 month old)

⇒ **Once trib. Sanction the scheme for m/a in subsequent order trib. Will order:**

- 1) To transfer prop / liab/. undertaking to transferee company. From a date fixed by parties (Except trib. Decides date)
- 2) To allot/appropriate shares, deb. Instru" in other company / person.(Transferee Co. not to hold any shares in its own name dir/ind from trust,susbs,associate.
- 3) Contribution of any legal proceeding.
- 4) Dissolution (w/o winding up) of transfer company.
- 5) Provision to be made for dissenting shareholder
- 6) If shares held by NR under FDI norms then allotment of new shares as per manner specified.
- 7) Transfer of e'ye to new company
- 8) Where old (ror) = listed & new (transferee)=

Unlisted

Transferee = unlisted until
Becomes listed.

+ if share holder of transferor wants to opt
out then prov. to be made by trib. for
value to be paid
[NLT value by SEBI]

- ⇒ Auditor's certi, abt AS
- ⇒ Company → submit copy of order to ROC in 30 days of receipt
- ⇒ Scheme shall clearly indicate the appointed date from which it will be effective.
- ⇒ If contravention by any company then.
Co. & Officer- 25000 and if continuing then 1000 per day after 1st max 300000

❖ **Section-233: Merger or amalgamation of certain companies in fast track method.**

⇒ For below mentioned company section 232 can be skipped.

1) If M/A b/w [option to follow 233]

2 or more Small company (PUSC ≤ 50L + T/o ≤ 2 cr) or Holding & wholly owned subsidiary

Notice to be given for
Inviting objection
(in 30 days)

ROC official
Liquidators
(OL)

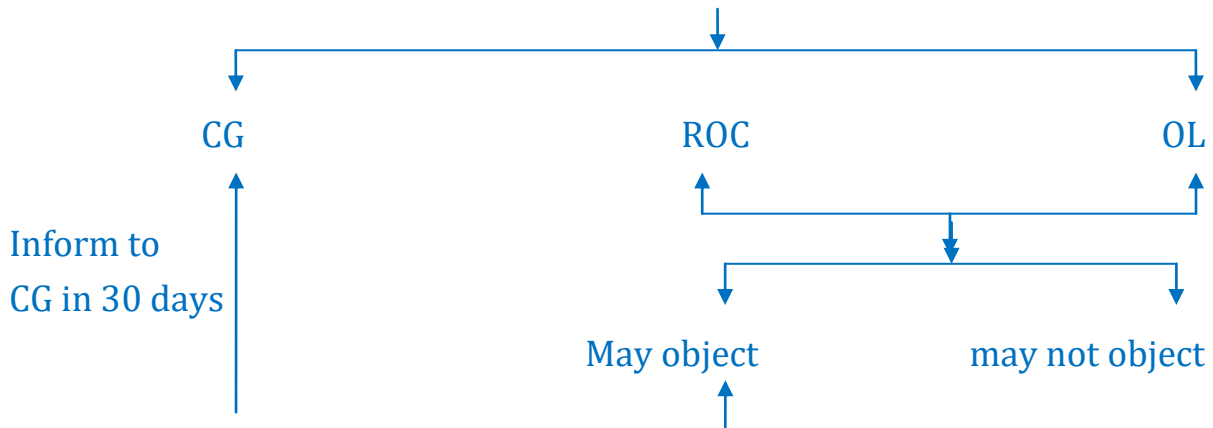
Approval to be taken

Shareholder (in GM) CRS (in meeting)

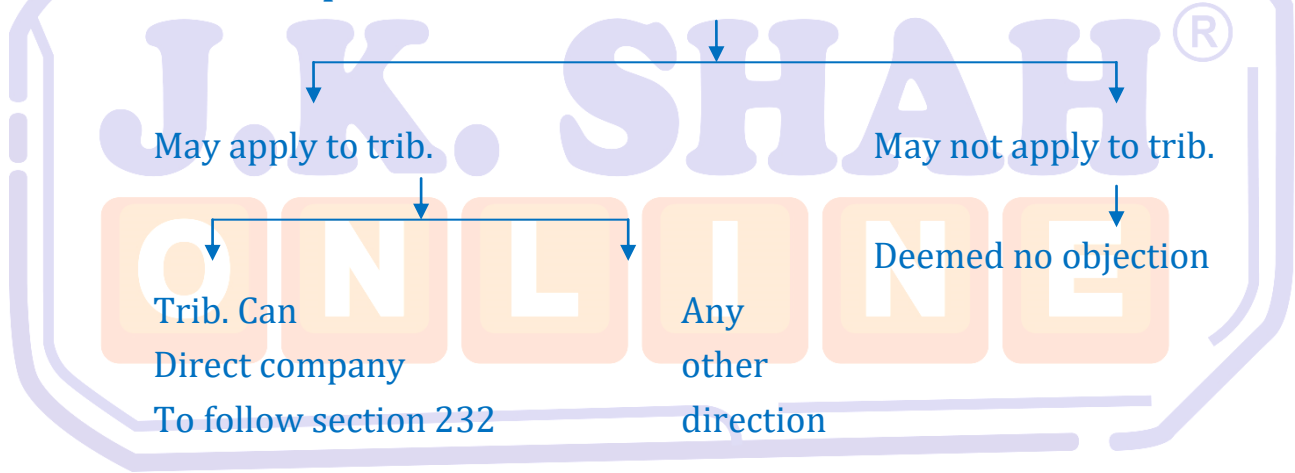
90% of share cap.
share cap.
(no req of no.) 90% of loan
+ majority in no.
(Notice of
meeting → 21 days)

⇒ BOTH company will file “declaration of solvency” to ROC at regd office place.

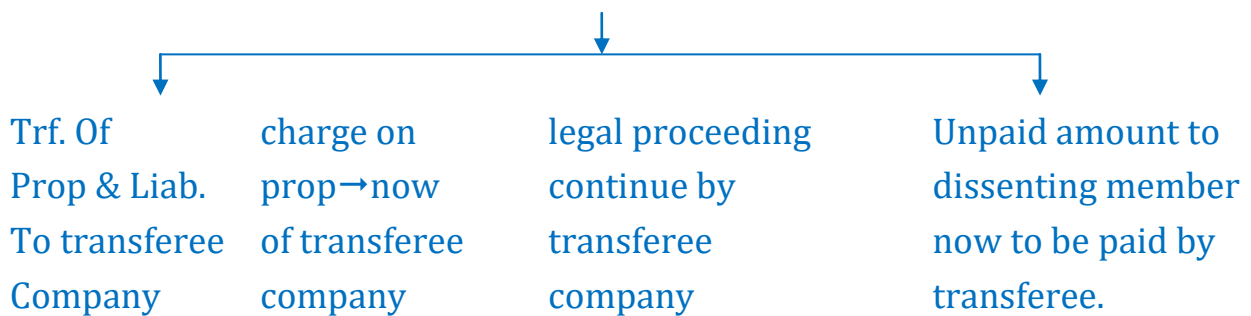
Notice of approval to be given to



2) CG on suomoto or on receipt of objection with 60 days from receipt of scheme.



⇒ If no objection then scheme will be registered & transfer company shall be dissolved w/o process of winding up.

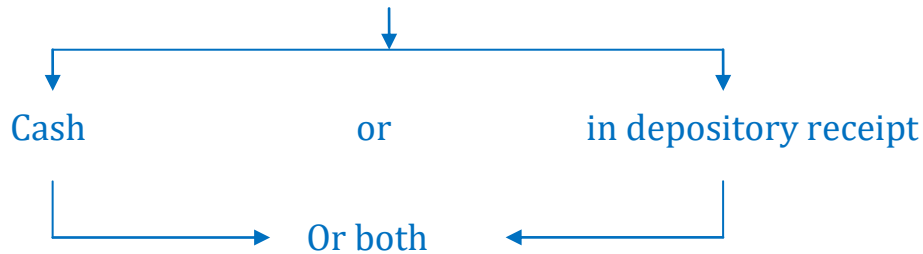


⇒ Transferee company ≠ hold shares on its own/H/s's name on M/A

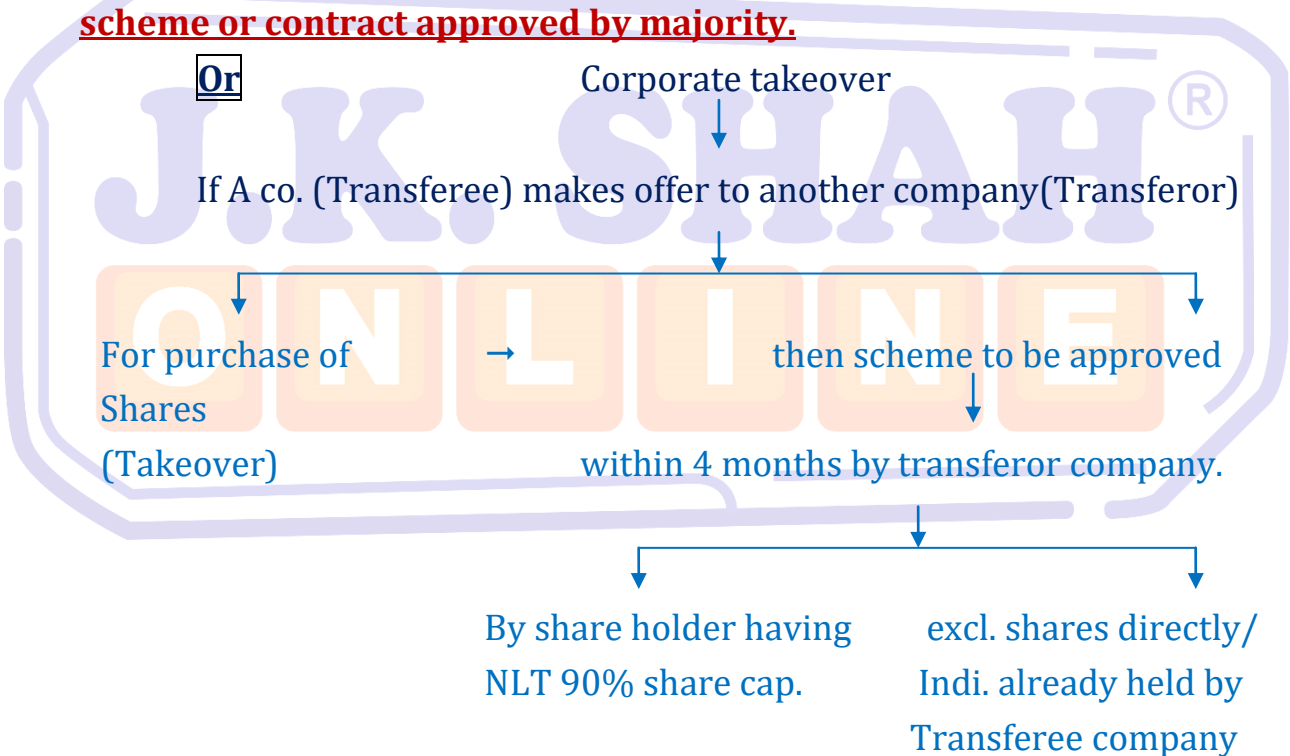
⇒ New company will file appli. to ROC for revised A.cap. & pay fees.

❖ **Section 234 : Merger or Amalgamation of company with foreign company.**

- ⇒ All prov. → mutatis mutandis apply to F.C
- ⇒ CG in consultation with RBI may make rules
- ⇒ If with prior approval of RBI → foreign company merge into Indian company then consi. to share holder in

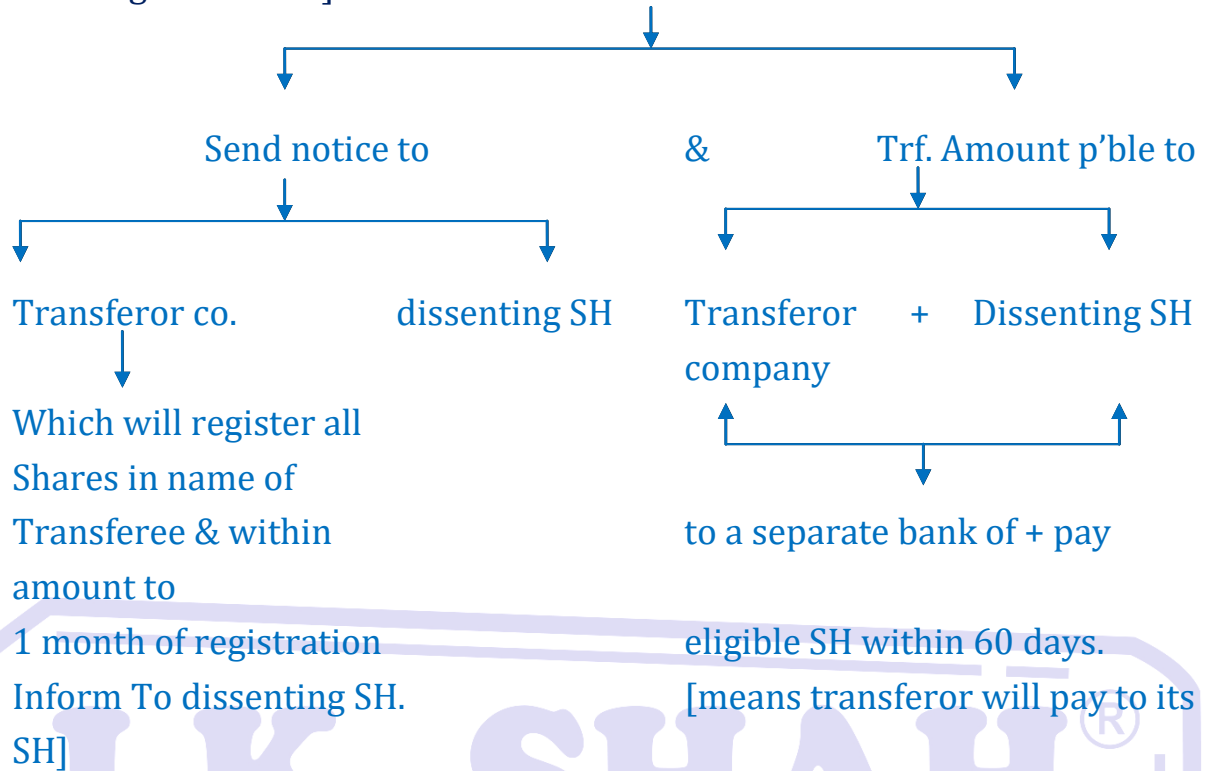


❖ **Section 235 : Power to acquire shares of shareholders dissenting from scheme or contract approved by majority.**



- ⇒ Transferee company then shall give notice to dissenting (disagreeing) share holder in 2 months from expiry of 4 months.(If scheme approved by NLT 90%)
- ⇒ Transferee is entitled & bound to purchase share of dissenting on same T & C on expiry of 1 month from notice if no appli. made to trib. By such share holder.
- ⇒ Dissenting may apply to trib. For any relief (i.e. for valuation of shares)

Transferee will [on expiry of 1 month or if trib. has rejected appli. or not gone to trib.]



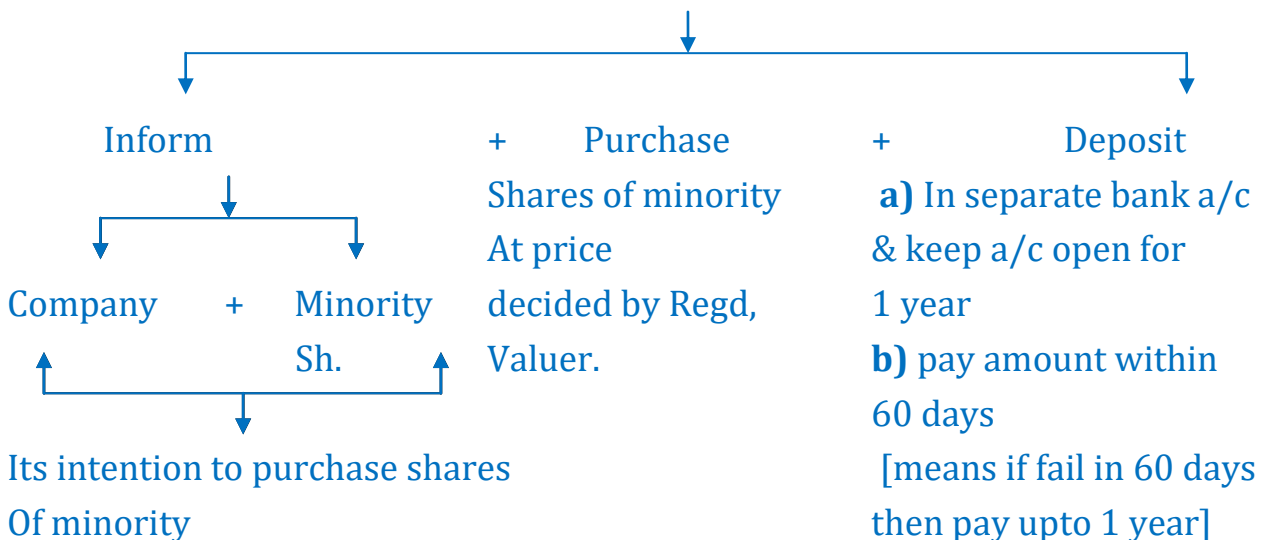
❖ **Section - 236 : Purchase of minority shareholding**

If any person (natural or artificial) → directly or collectively
Becomes registered holder of 90% of ESC

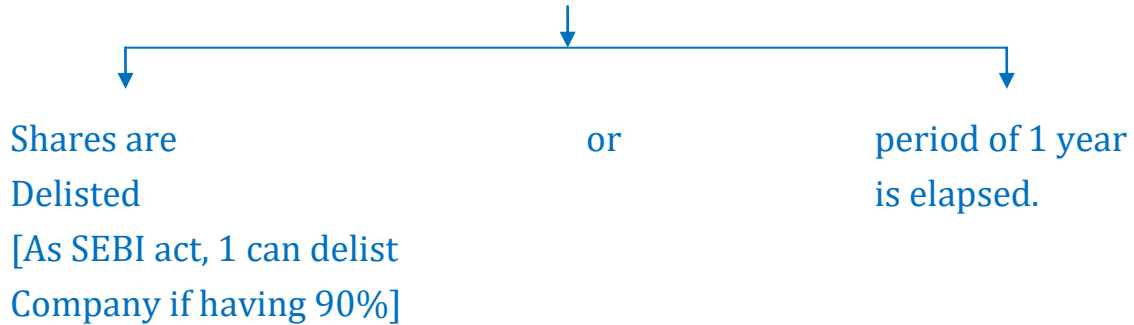


(i.e. this sec-apply when suddenly 1 investor becomes holder of > 90% ECS)

Then such person shall



- ⇒ Minority can also suo motu request majority to purchase such shares.
- ⇒ Share holder having 75% of minority can negotiate for higher price but then it will be appli. to all minority.
- ⇒ When majority eq. sh. fails to acquire full purchase of shares of minority then this section shall continue to apply eventhough

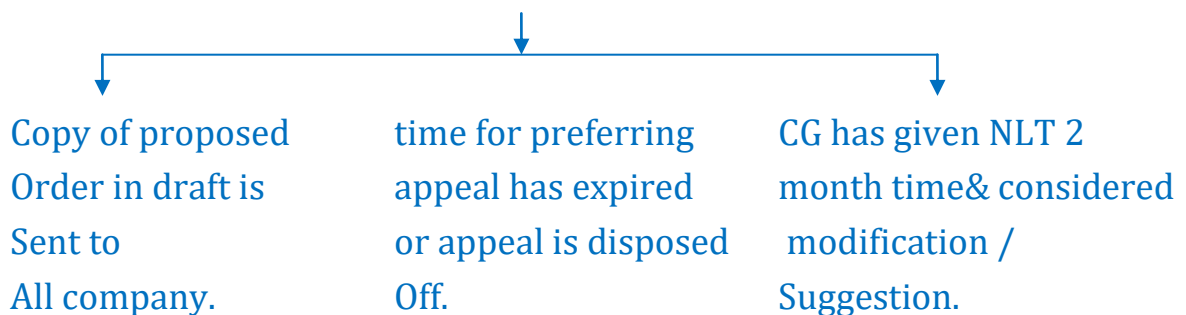


❖ **Section 237 : Power of CG**

- 1) CG can M/A any 2 or more companies if it is in public interest.
- 2) CG will issue noti. In official gazette
- 3) CG will decide the share exch ratio or other compensation if any share holder, Crs or other party is not acquiring same int or nearly same int.
- 4) Any legal suits i.e. pending will be continued in name of resulting company.
- 5) Any aggrieved party (from compensation) within 30 days from publication

Appeal to trib. & then trib. Will decide.

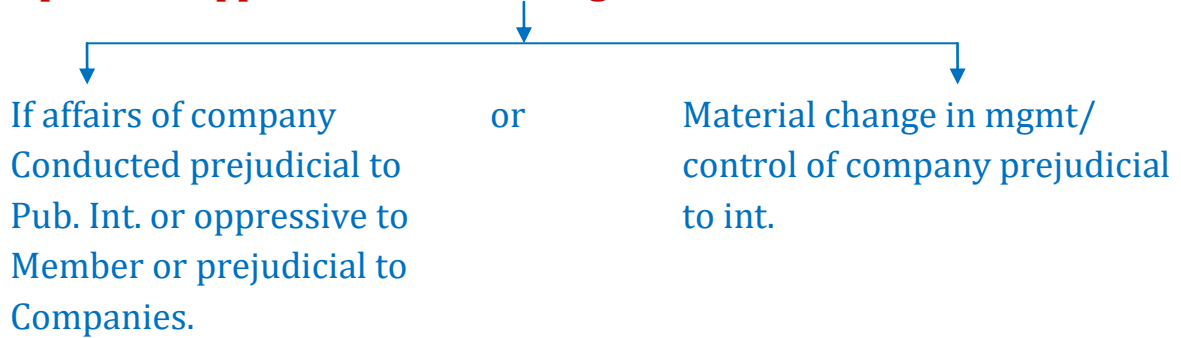
- 6) No order under this section by CG unless



CHAPTER 6

PREVENTION OF OPPRESSION & MISMANAGEMENT

⇒ **As per Act : Oppression & mismanagement means**

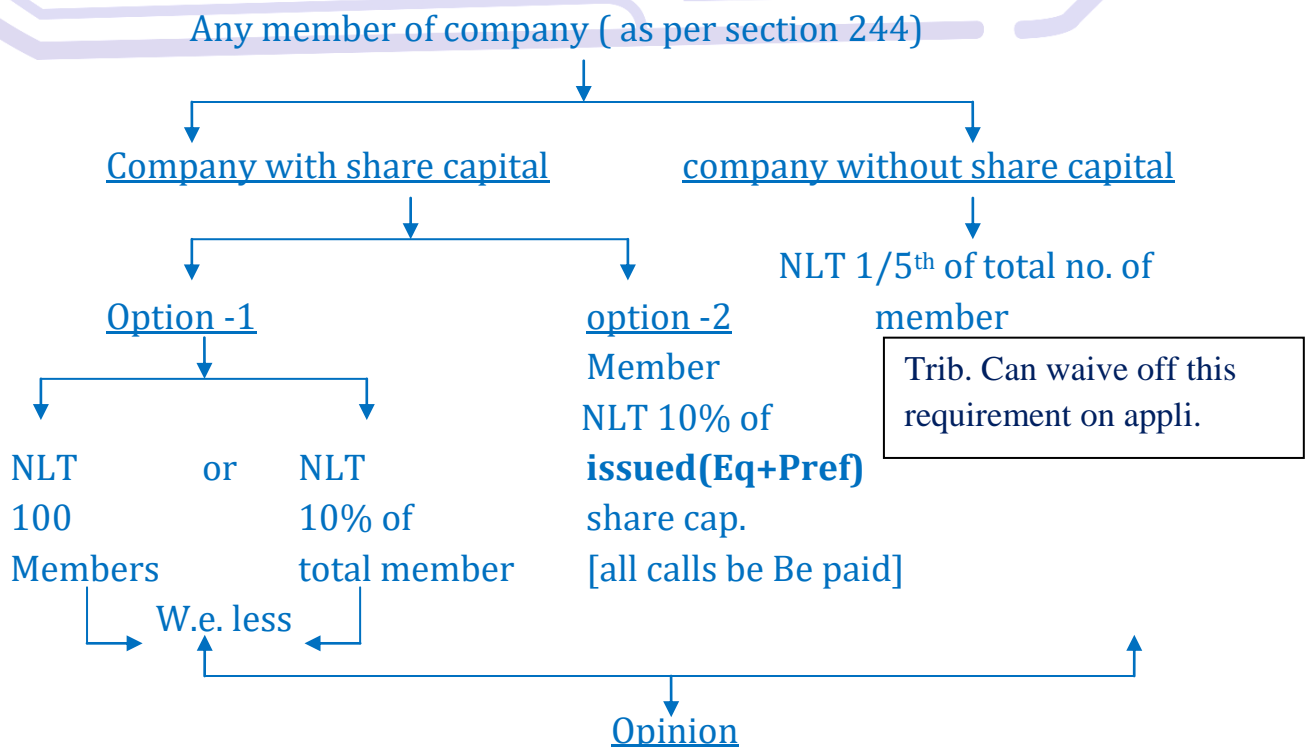


Generally it means “fraud on the minority”. To safeguard minority SH this chapter is there.

Oppression means

- a) Exploitation of members
- b) Deviation from std of fair play.
- c) Legal vs. illegal → X [here no discussion on legality]
Ethical vs. unethical → ✓ [here no discussion on ethicality]
- d) To obtain unfair / undue advantage.

❖ **Section 241: Application to tribunal for relief in cases of oppression etc.**



That oppression & mismanagement (as above 2 points):

→ May apply to trib.+ CG may also apply

→ CG if of the opinion that:

Person of mgmt. is guilty of fraud, misfeasance, persistent or default in making obligations under law **OR**

Business not conducted with sound business prudent commercial practice **OR**

Co. conducted by person in a manner that cause injury to int of trade, industry etc. **OR** business of company conducted in manner prejudicial to public int...

then CG may initiate case in tribunal for decision that whether he is proper or not to hold position and after all hearing tribunal will give decision(Decision U/s 242).

Once that person is held as guilty then he will not hold office for conducting mgmt. in any company for a period of 5 years however CG after tribunal permission may reduce this period.(No compensation will be paid to such person NWS any law, AOA, MOA, etc.)

❖ **Some Judgements/points:**

- 1) Not declaring dividend is not oppression (it is decision of BOD)
- 2) Continues losses is not oppression.
- 3) Consent to be checked at beginning of proceeding. withdrawal during proceeding shall not affect maintainability of petition.
- 4) Legal heir of deceased member can also file petition.
- 5) If 2 or more jointly held 1 shares then they all will be counted as one member.
- 6) The application can be done by minimum no. of SH. There is no criterial for maximum. So even majority SH can file application against minority.
- 7) Complaint that mgmt. has entered in illegal acts are not base for oppression unless it is proved that it is oppressive to minority and prejudicial to interest of company.
- 8) Prejudicial int to any person who is not a member will not amount to oppression.

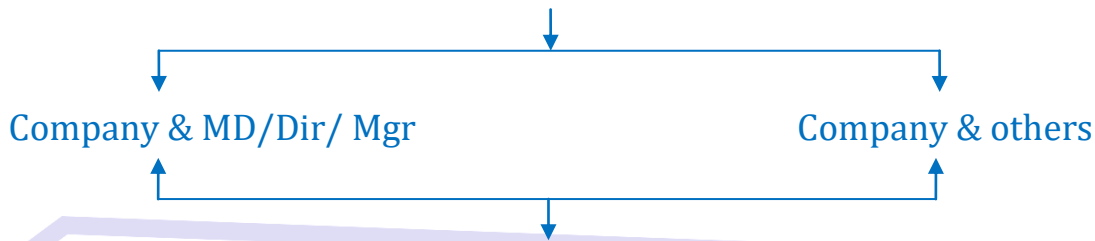
❖ **Section 242 : Power of tribunal:**

- 1) Trib. Will pass order when trib. is of opinion that :
 - a) Companies affair = prejudicial or oppressive

b) Company is in position of wind up (i.e. complaint is serious & not trivial)

2) Power of trib. Incl. [w/o prejudicial to sub.(1)]

- a) Regu" of companies affairs in future
- b) Purchasing shares from one of the disputing members
- c) Purchase by company by way of capital reduction.
- d) Restriction on transfer of share of company.
- e) Termination / modification of any agree b/w



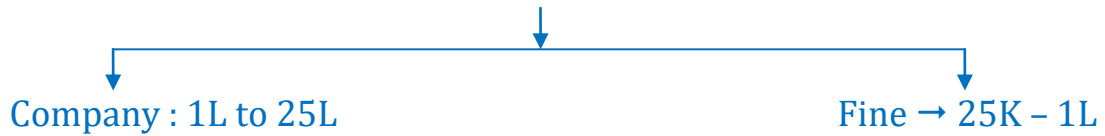
With due notice & after consent of parties concerned. (refer sec-243)

- f) To set aside any transfer / delivery of goods or payment or other act properly
Appli. for this u/s 241 to be made to trib. Within 3 months of transfer etc.
(after 3 month → no complaint)
- g) Remove MD/ Mgr / Dir & procedure for subsequent appointment of director
- h) Trib. Can pass order to recover undue gain to managerial person & way to distribute such recovery.
- i) Trib. Can appoint nominee director & such directors can't be remove by shareholder.
- j) Imposition of cost for case.
- k) Any order → fair & reasonable.

Process:

- 1) Certified copy of order of trib. → to ROC → in 30 days.
- 2) Trib. Can pass interim order to conduct business of company in between as trib think feet.
- 3) Trib. Can order for alteration in MOA/AOA company shall not have power to alter that clause in MOA/AOA which was altered by Trib.
- 4) Trib. Alteration of MOA/AOA → same effect as if altered by SH.
- 5) Certified copy of order to alter MOA/AOA → submit to ROC

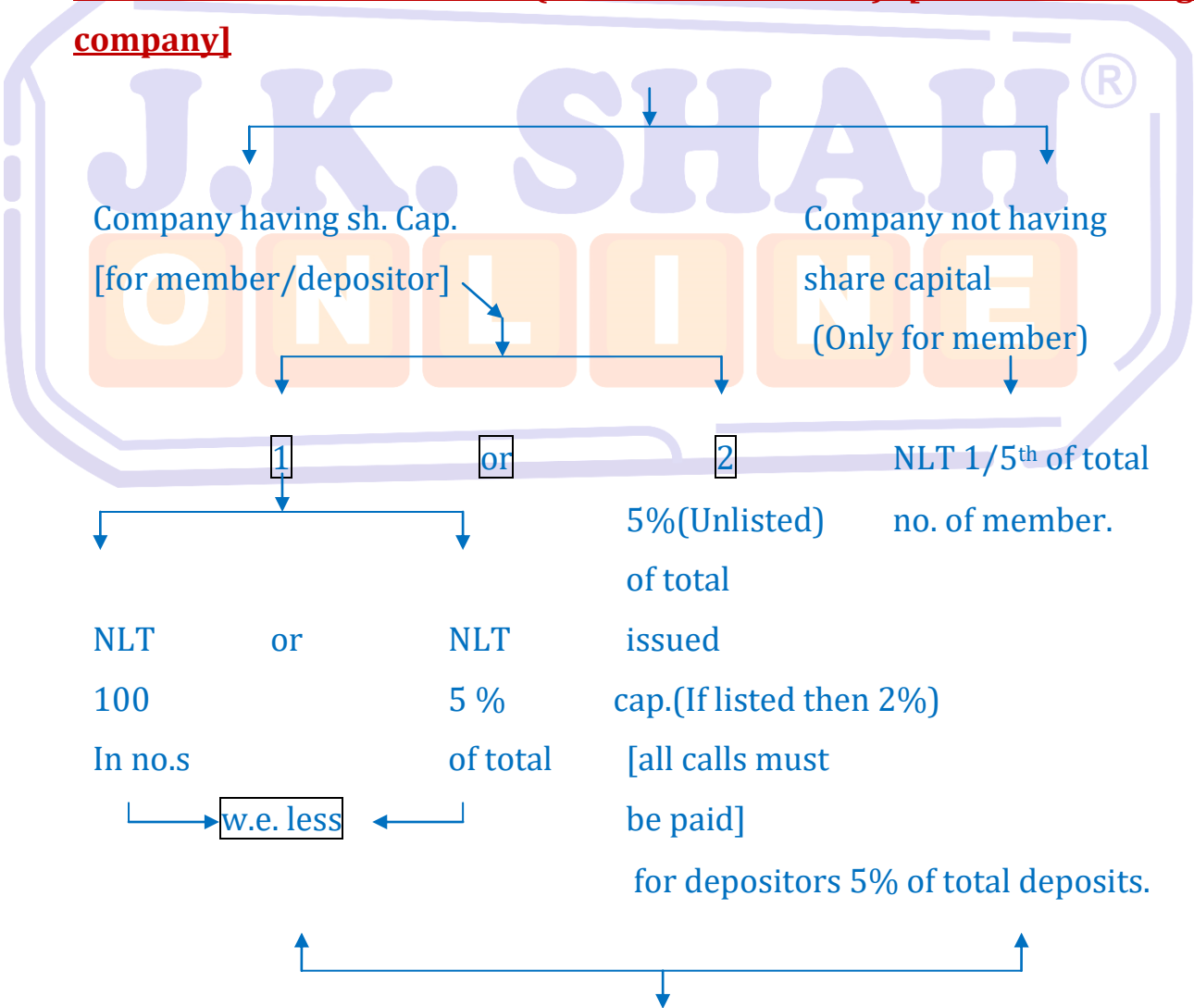
6) If company alter that clause then



❖ **Section 243 : Consequences of termination or modification of certain agreement.**

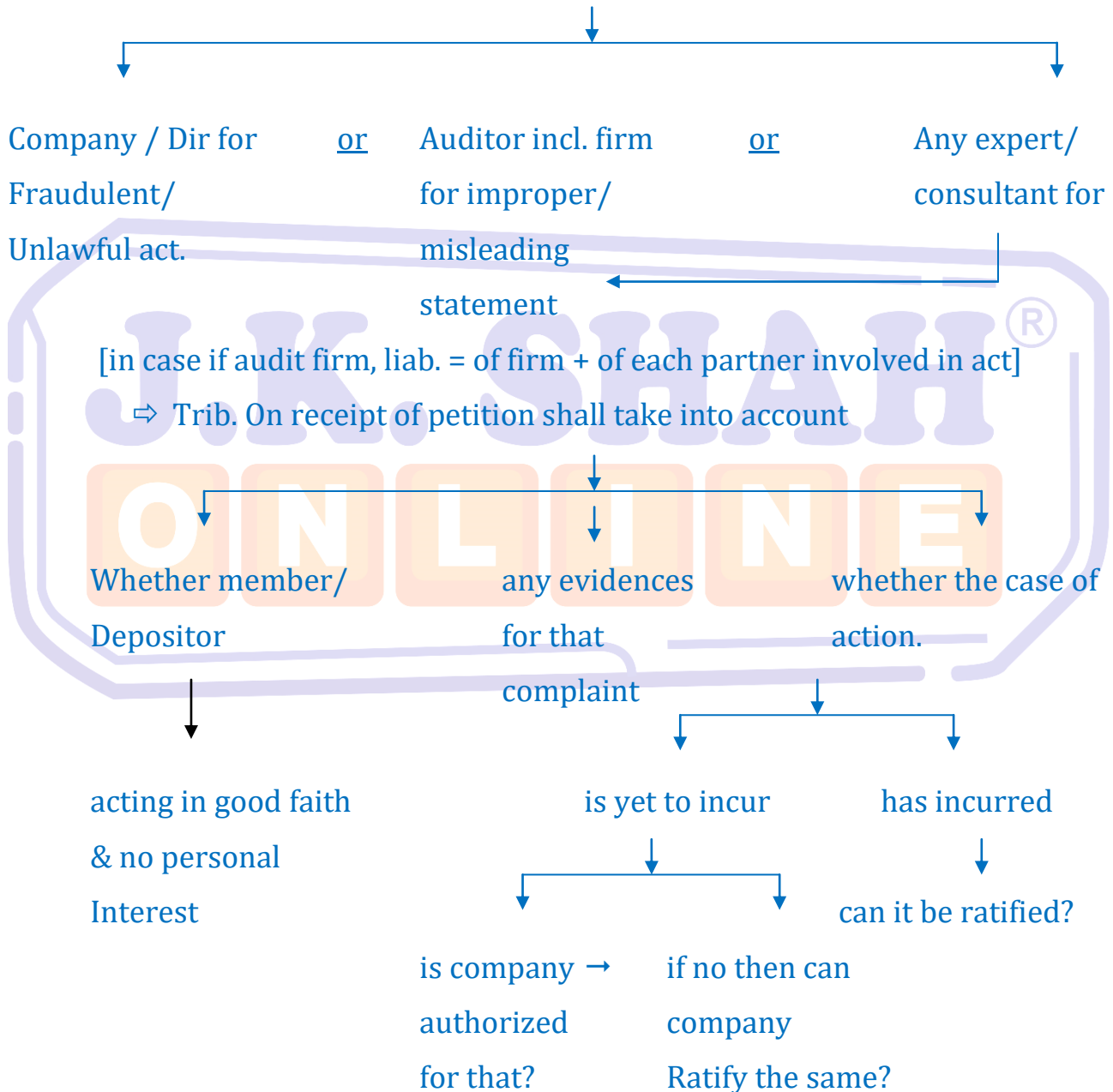
- a) Does not give rise to any compensation
- b) No MD/Director whose agree” is set aside can become MD/Director/ Mgr for 5 years after that order in same company. (Trib. Can reduce this period → approval of CG)
- c) Penalty for contravention : Fine → upto 5 L.

❖ **Section: 245 : class action(i.e. combine action) [N.A for banking company]**



Can file appli. (petition) b4 tribunal on behalf of all members / depositor for seeking all or any of orders namely:

- 1) To restrain company → committing ultra vires act
- 2) To restrain company → Breach of prov. Of MOA.
- 3) To declare → any resolution altering MOA.As void if passed by suppression of fact.
- 4) To restrain company → for act contrary to Act.
- 5) To restrain company → for action contrary to resolution.
- 6) To claim damages or compensation or demand against



Tribunal



Accept then

Reject

- | | |
|--|--|
| <p>1) Pub. Notice to all member/Depositor.</p> <p>2) All similar application → consolidated
In single & class members/
Depositors shall allowed to
Select “lead applicant”
If they fail → trib.= power =
Appoint lead applicant who
Shall have charge(Lead applicant can/cant be member)</p> <p>3) No two class action for
Same cause.</p> <p>4) Cost / exps → shall be borne
By company or person responsible
For oppressive act.</p> <p>5) Order of trib. = binding on Company & all member incl. Audit firm, expert,
etc.</p> | <p>if found frivolous or Vexatious</p> <p>↓</p> <p>reason in writing</p> <p>↓</p> <p>order to pay by applicant
to opposite party for
cost NMT ₹ 1L</p> |
|--|--|

⇒ **Any contravention**

Company
5L - 25L

officer
Imp → 3 years
Fine → 25000 - 1L

CHAPTER 7

WINDING UP

What is difference between two words: Winding up and liquidation:

Winding up: Broder term and includes liquidation. Winding up closing down business and shut the company. **Liquidation** means sells the asset and shut the company.

When to follow companies act and IBC:

1. For voluntary winding up compulsory follow IBC. No provision now in companies act.
2. Earlier before IBC creditors were allowed to file petition for winding up of company to tribunal and even ROC was allowed to apply to trib on basis of non payment of debt. Now they can't. Now compulsory they will follow IBC.

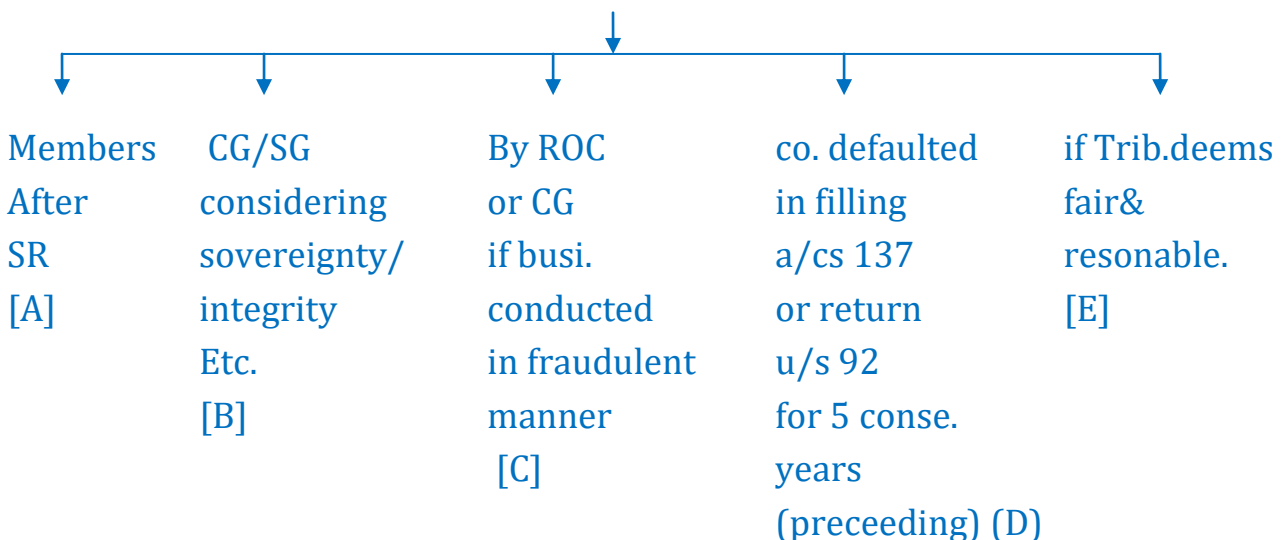
❖ **2 (94A) winding up means**

Winding up Under company Act, 2013 **or** Liquidation under IBC, 2016

270: Part-1 Appli to winding up of company by trib.

Part-1 → winding up by trib. [271 - 303]

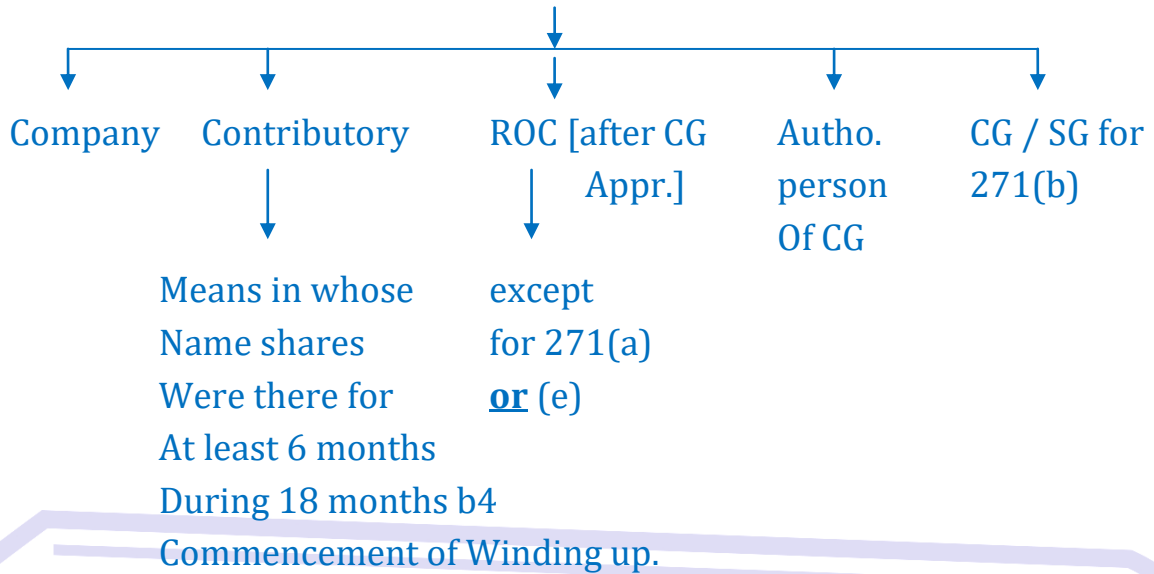
271: Circumstances in which company may be wound up by trib. : Appli. by.



270 is for grounds and 272 is for who can be applicant.

272 : Petition for winding up

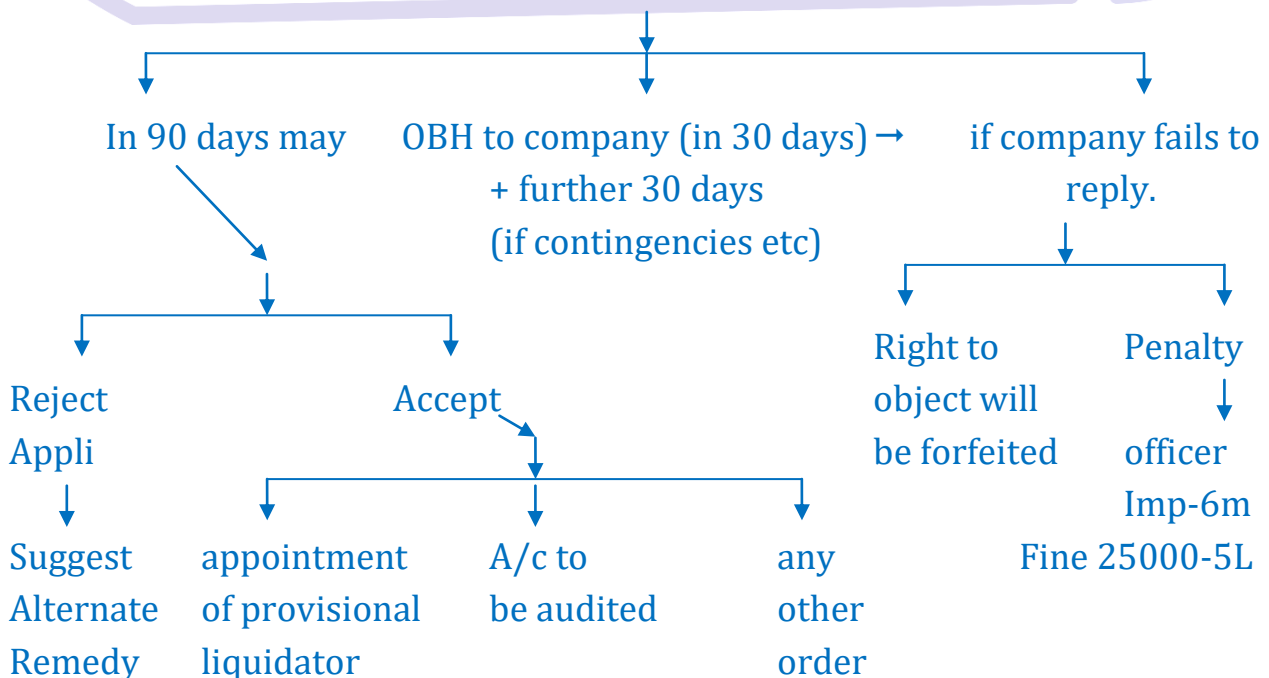
Appli can be made by



- ⇒ Copy of petition shall also file to ROC & ROC to submit view to trib. within 60 days of receipt.
- ⇒ Contri. Means person liable to contribute for asset of company in event of winding up.
- ⇒ Person with fully paid up SC = contri. But only rights, no liab.

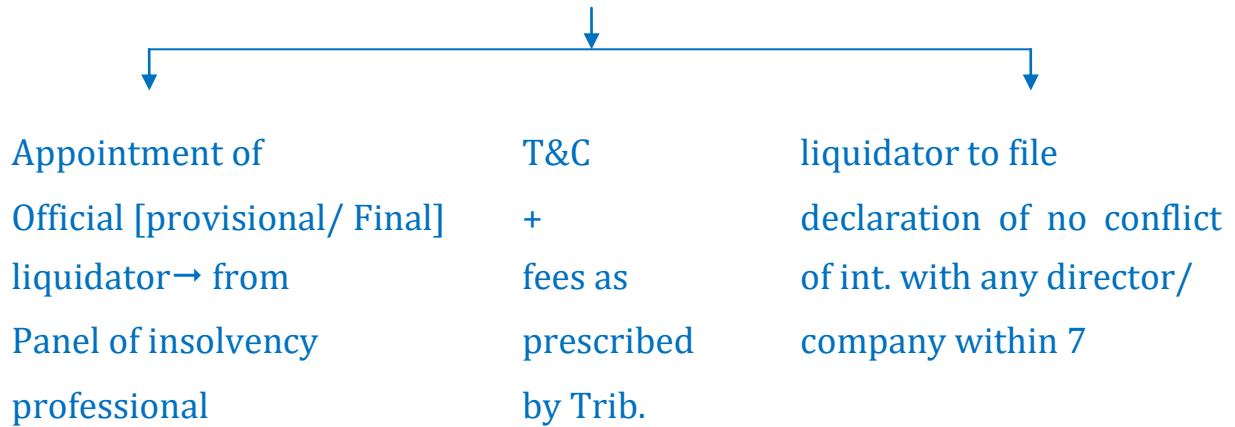
❖ Section-273 + 274 : Power of trib. + direction for filling statement of affairs

On receipt of appli. - trib.



⇒ Trib. shall not refuse to make winding up only on reason that company has no asset or asset of company is mortgaged for value of asset.

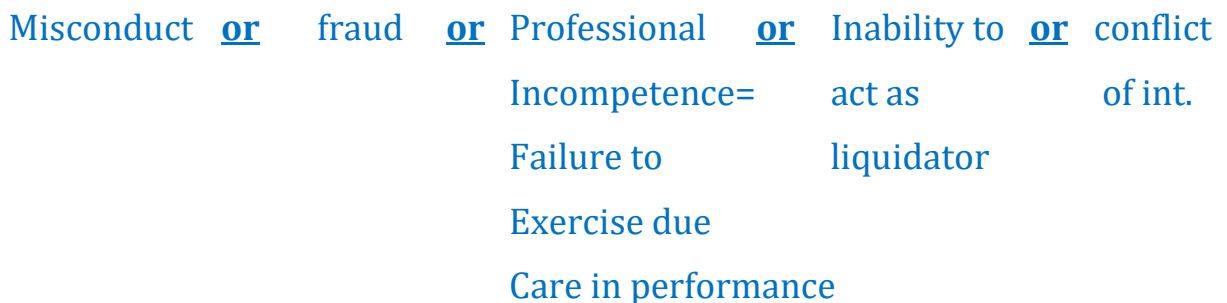
❖ **Section 275 : Appointment of liquidator by trib.**



while passing this order, trib can also opt to make provisional liqui.(u/s 273) as company liquidator.

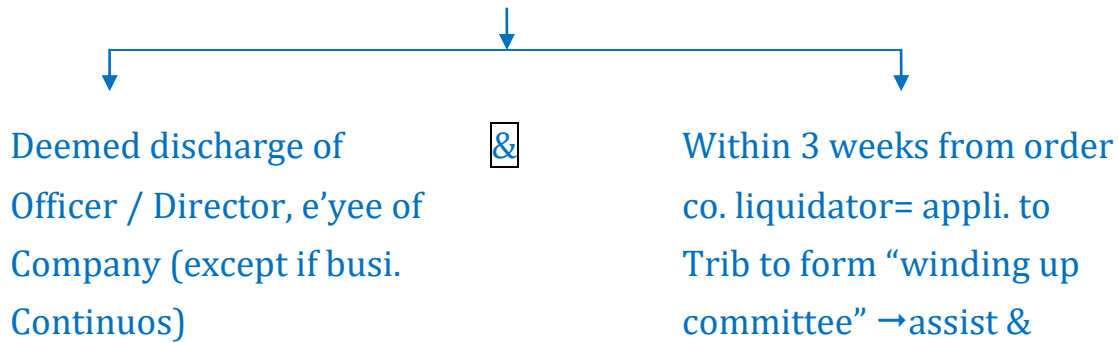
❖ **Section 276 : Removal & replacement of liquidator**

Trib. May on reason in writing remove liquidator (any)

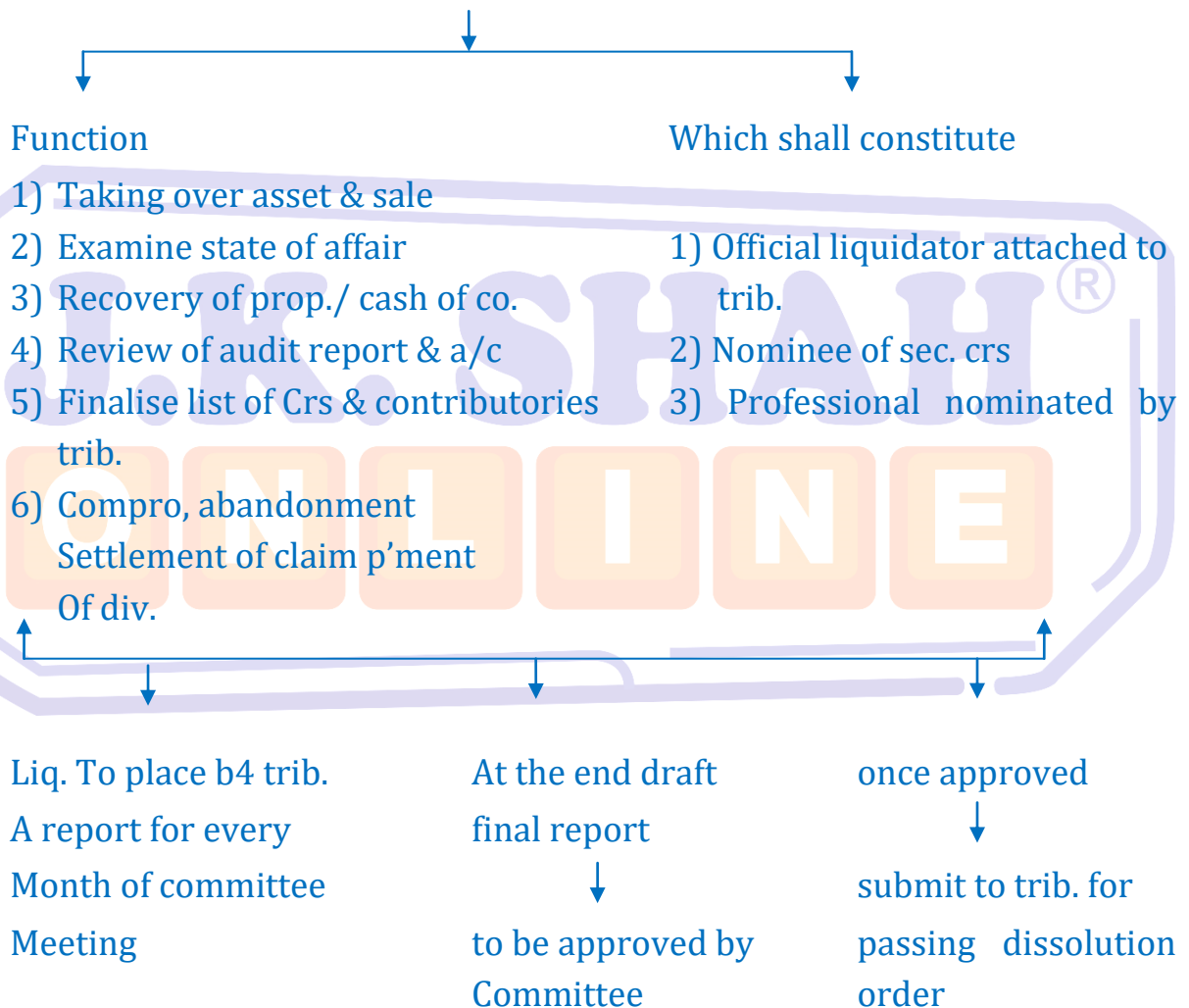


- ⇒ In case of death/resignation / removal → Liqui. May transfer work to other.
- ⇒ If due to liqui. Any loss → Trib. Can recover it.
- ⇒ OBH to Liqui.

⇒ **Winding up order**



Monitor



❖ **Section 285 : Settlement of list of contributories & application of asset.**

- 1) A person who has been member shall not be liable contribute if he cease to be member for preceding ≥ 1 year from comm. Of winding up.
- 2) A person \neq liable for debt/liab. incurred after he ceased to be member.
- 3) No person who has been member shall be liable to contribute until trib = opinion = present member unable to satisfy contri,"

- 4) If company = ltd by shares then contri, ltd. Upto unpaid amount of shares
- 5) Company ltd by guarantee, contri” ltd upto guarantee undertaken.

❖ **Section 287: Advisory committee**

Trib while passing order of winding up—may order to form advisory committee.(To advise Company liquidator & report to tribunal)

1. Co.liquidator shall hold a meeting of crs+contributories in 30 days from date of order of winding up.
2. From that trib.will determine advisory committee NMT 12 members from crs & contributories or other in proportion
3. Meeting of advisory committee will be chaired by company liquidator.
4. They have right to inspect BOA, asset, documents, etc.

❖ **Section : 290 : Powers & duties of company liquidator**

- a) To continue business to the extent beneficial to company.
- b) To enter/execute, contracts, deeds, promissory notes, cheque etc.
- c) To sale / pledge etc. → asset, prop. of company.
- d) To file or defend any legal suits
- e) To settle claims of crs/e’yee & recover dues from drs & contributory.

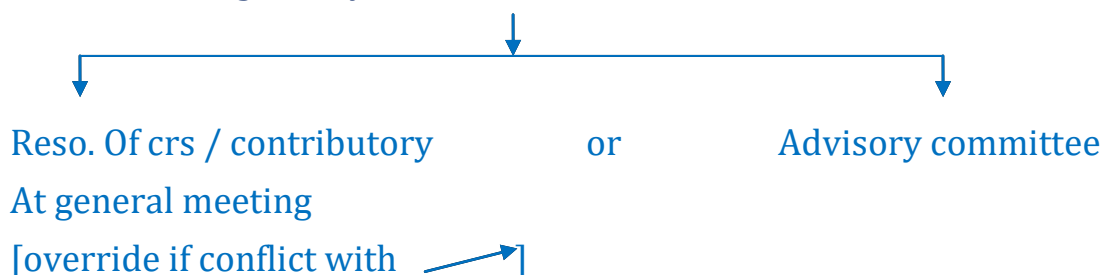
Section - 291 obtain prof. assistance from CA/CS, lawyer, etc [after disclosing conflict of int. to trib.]

- g) To sale whole undertaking as going concern
- h) To raise money on security of asset
- i) To inspect record & return files of ROC.

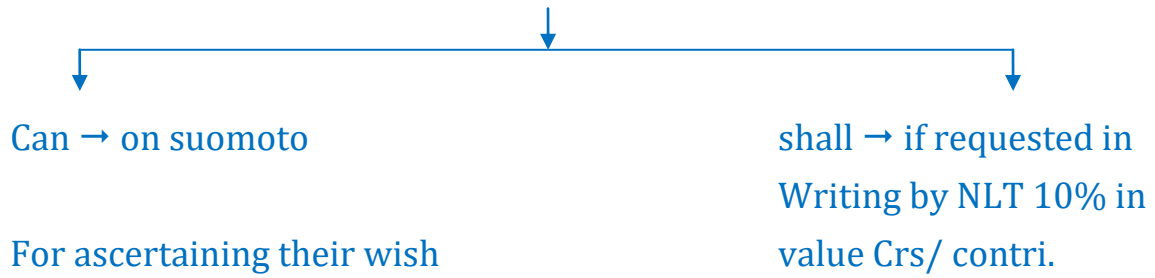
Control of trib. On power of liqui.

❖ **Section 292 : Exercise & control of company liquidator power:**

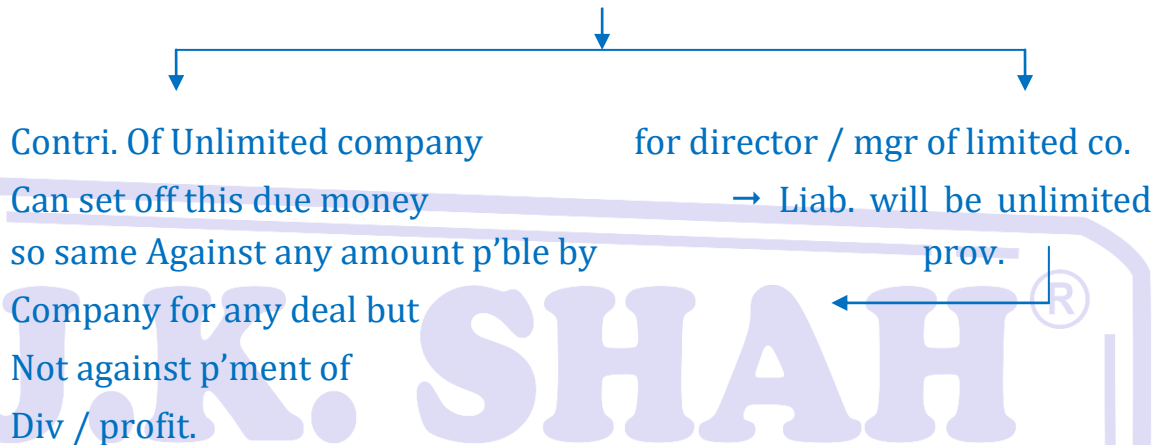
⇒ Company liquidator → for admin & distri. Of asset → shall follow directions given by



⇒ Company liquidator → summon meeting of Crs or contributory.



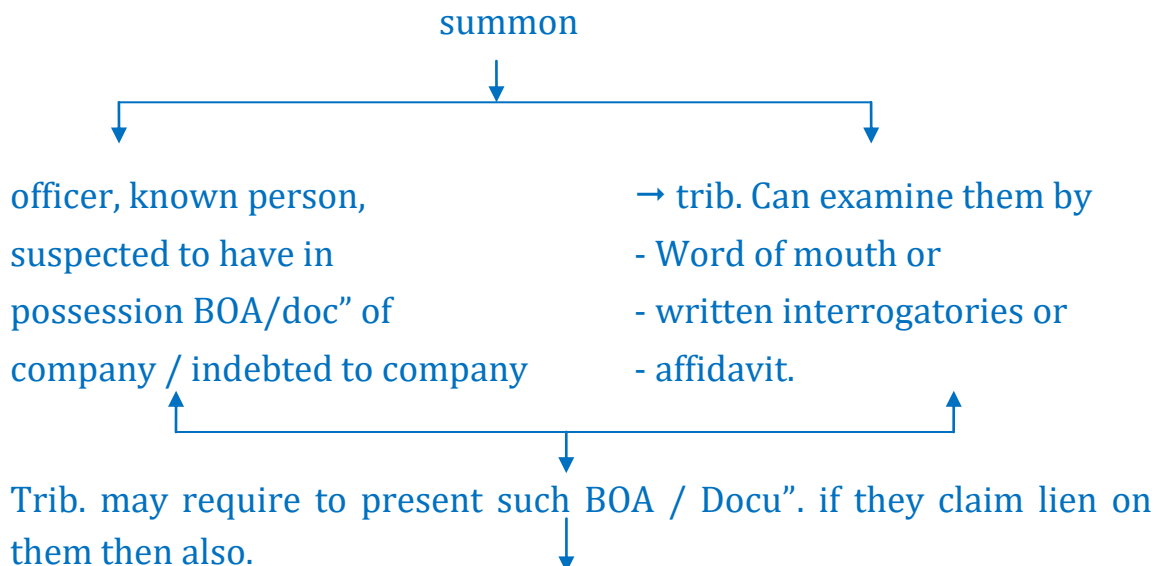
❖ **Section 295 : Trib. can pass order requiring contributories to pay money due to company (from him or estate of legal heir)**



[This is regarding any amount payable-- not unpaid share call]

❖ **Section 299 : Power to summon persons suspected of having prop. of company etc.**

Trib may at time of appointing prov. Liquidator/passing of winding up order.



Trib. May order liqui. To file report of debt/ prop. of company → in possession of other.



If trib. finds that any person indebted to company → To pay.

Having prop. of company → to deliver to prov. Liquidator.

❖ **Section - 301:** if trib is satisfied that any contributory or person having prop./ A/c, BOA of company is to leave India or abscond then trib. Can order to detain him until time of order & seize books, papers, prop.

❖ **Section-302 : Dissolution of company by Trib.**

When company completely wound up → company liquidator to make application to trib for dissolution

❖ **within 30 days from date of order:**

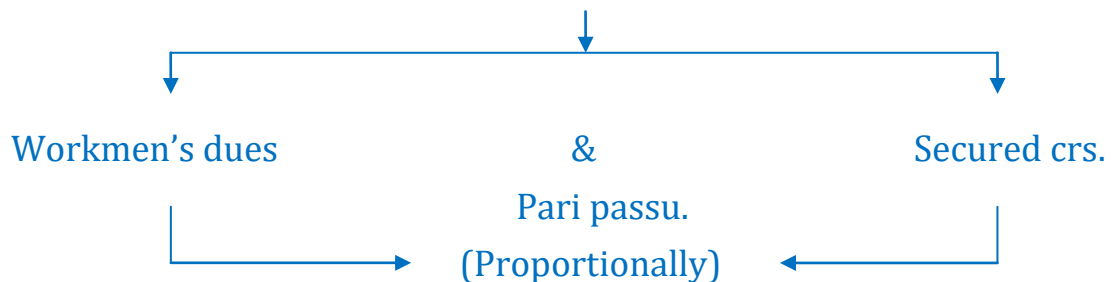
1. Trib. → Order for dissolution send to ROC
2. Company liquidator to send order copy to ROC

❖ **Section-304-323 :** Voluntary winding up → omitted (because of IBC)

❖ **Section 324 :** For winding up all debts → present, future, contingency to be estimated.

❖ **Section 326 :** Overriding preferential p'ment

From debt first to be paid



However, workmen's dues + holiday remu. p'ble for > 2 years b4 winding up is paid first then all remaining b/w workmen & Sec.Crs pari passu.

❖ Section 327 : Preferential payment

After Section 326 → there shall be paid in priority

- 1) All govt. liab → due & payable within 12 months, immediately b4 that date.
- 2) All wages, salary for period not exceeding for 4 months within 12 months immediately b4 relevant date.
- 3) Due to e'ye for PF, pension fund, gratuity fund.
- 4) Exps of investigation u/s 213 & 216.



All pari passu.

Relevant date = date of appt. of provisional liquidator & if no prov. Then date of winding up order.

❖ Section 328 : Fraudulent preference

Where company make payment to unsecured crs before liquidation by giving fraudulent preference (within prior 6 months of liquid.) -Section 357-Winding up commences from date of petition.

→ trib. Order to restore the position & treat payment invalid.

Language : Putting such crs(i.e. other crs) into position which in event of liquidation is better than position he would have been if payment not done.

❖ Section 329 : Transfer in good faith

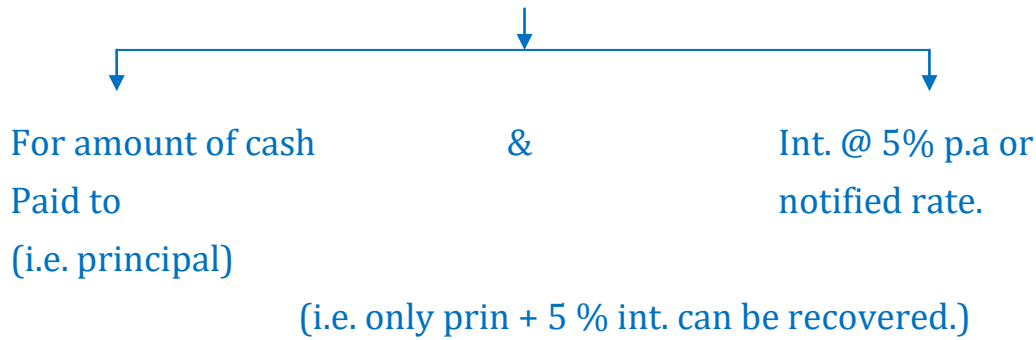
Any transfer of property or delivery of goods within 1 year before presentation of petition of winding up shall be void unless



Trf. is in ordinary + In favour of + for valuable consi.
Course of busi. Purchaser in
Good faith

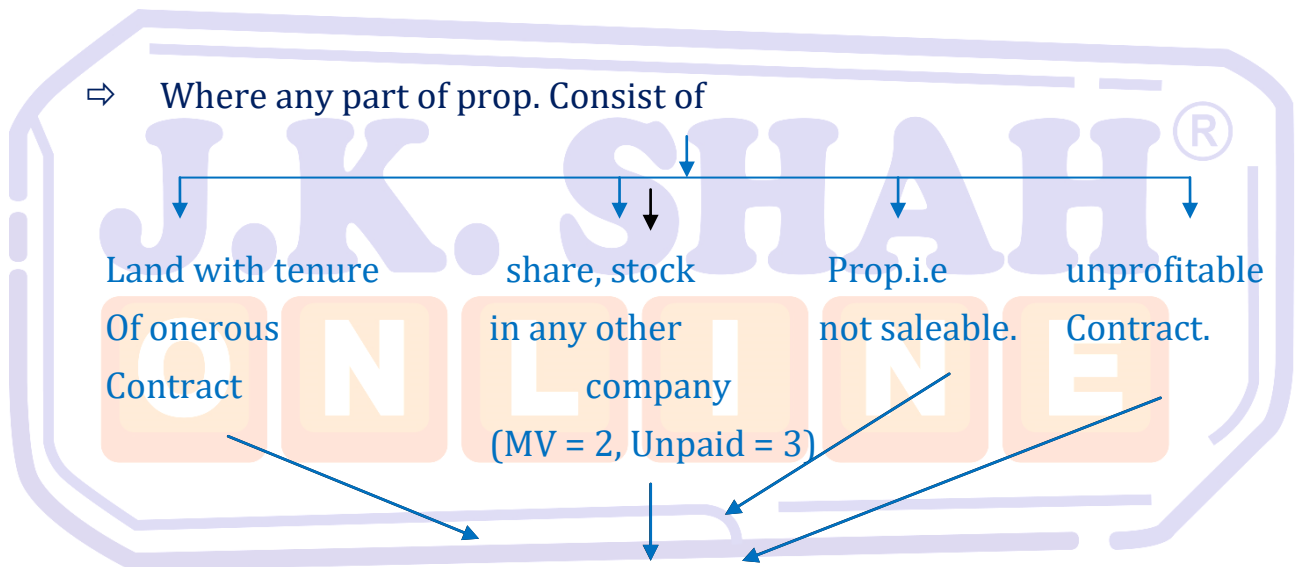
❖ **Section 332 : Effect of floating charge (on stock, drs etc)**

Where company is wound up → floating charge created within 12 month immediately preceding of winding up shall be invalid except.

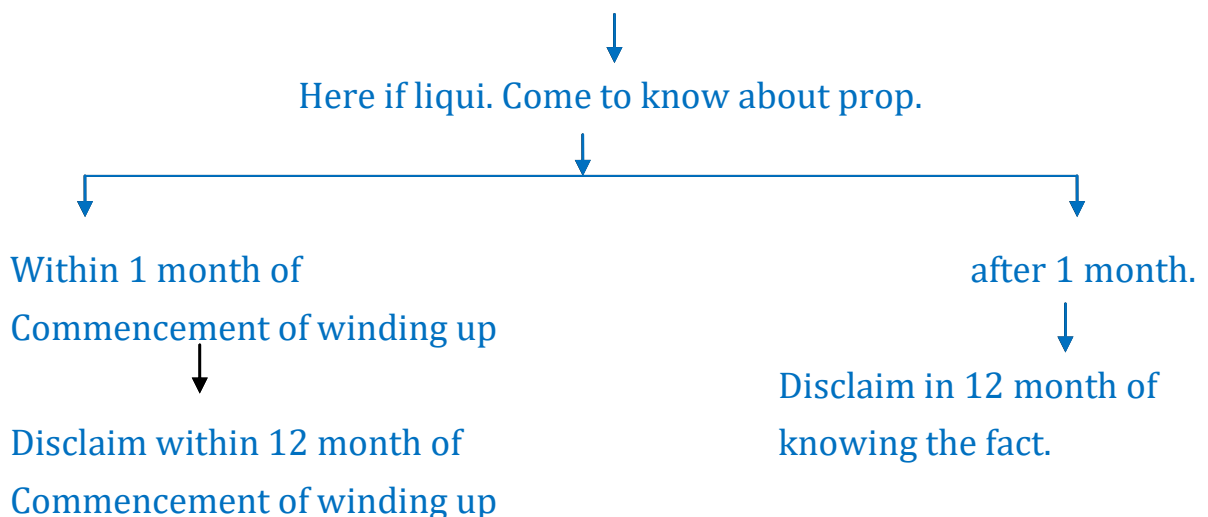


❖ **Section 333 : Disclaimer of onerous property :**

(Loss making property)



Liquidator = right with leave of trib., by writing signed by him → to disclaim (Disown) prop.



⇒ If any person appli to trib. For p'ment of damages etc → trib. If just & proper allow.

⇒ However if before making appli to trib.

Person interested
In onerous prop. $\xrightarrow[\text{In writing}]{\text{apply}}$ to liquidator to decide
whether he wants to disclaim or not

↓
He has to reply within 28 days or
extended time & if not then deemed
accepted. (Not to disclaim)

❖ **Section – 344** : whenever company is wound up, every invoice, order for goods, busi. Letter by company / liquidator shall have a statement that “company is being wound up”

Fine → 50000 – 3L

❖ **Section 352 : Company liquidation dividend & undistributed asset a/c**

⇒ When company is being wound up & liquidator has in his hand monies representing

Dividend p'ble to Crs
Unpaid for 6 months

Asset refundable to SH undi.
For 6 months.

Send money in “company liquidation divi & undistributed asset a/c” in
scheduled bank

↓
Any person can claim from ROC

↓
Registrar to settle claim within 60 days

↓
If fail → inform to regional director

↓
After 15 years if unclaimed → trf amount to “General revenue a/c” of CG.

↓
If then also any person wants to claim → same process.

↓
If any liquidator fails to pay to this a/c → int. @ 12 p.a. + any exps on default.

❖ **Section 353 : company liquidator has to send notice, return, a/c in 14 days after service on him a notice requiring to do so.**

If fails then → order of trib. To make good the default + pay cost, etc.

❖ **Section 357 : Winding up of company by trib.**

⇒ Deemed to commence at time of presentation of petition for wind up.

❖ **Section 248 : Power of registrar to remove name of company from register (w/o procedure of winding up)** (From misc. chapter)

Register shall strike off name if:

- 1) Company fail to commence busi. Within 1 year of incorpo.
- 2) Company → not in busi. for immediately preceding 2 years still not obtained status of “dormant”(So if obtained status of dormant then can't striked off)
- 3) Company → after extinguishing all liab. → by SR or only consent of **members holding 75% PUSC** (Only diff is in SR MGT 14 to be filled and in consent it should not)→ apply to ROC and ROC will cause a public notice. (If company is registered in special act then approval of regulatory body of that act to be taken)
(This is N.A. to section 8)

However, no appli. can be made if in preceding 3 months company(Section 249) →

- a) Has changed the name or shifted registered office from one state to another.
- b) Has made disposal of property for gain or business.
- c) Has engaged in any activity except one necessary to make appli.
- d) Has apply to trib. For compro/ arrange
- e) Is being wound up → companies act or IBC

If contra → fine → 1 L & appli to be withdrawn by company or ROC.

4) Subscribers to MOA → not paid amount & company has not filed this declaration in 180 days of incorp.

5) In physical veri. u/s 12 → revealed that company ≠ carrying business.

⇒ Before passing order of strike off ROC to sent notice to all director & representation in 30 days.

⇒ The above notice to strike off → to be published in official gazette & any objection to be called for time mentioned.

⇒ Then ROC → strike off name from register

❖ **Section 250 : effect of company notified as dissolved**

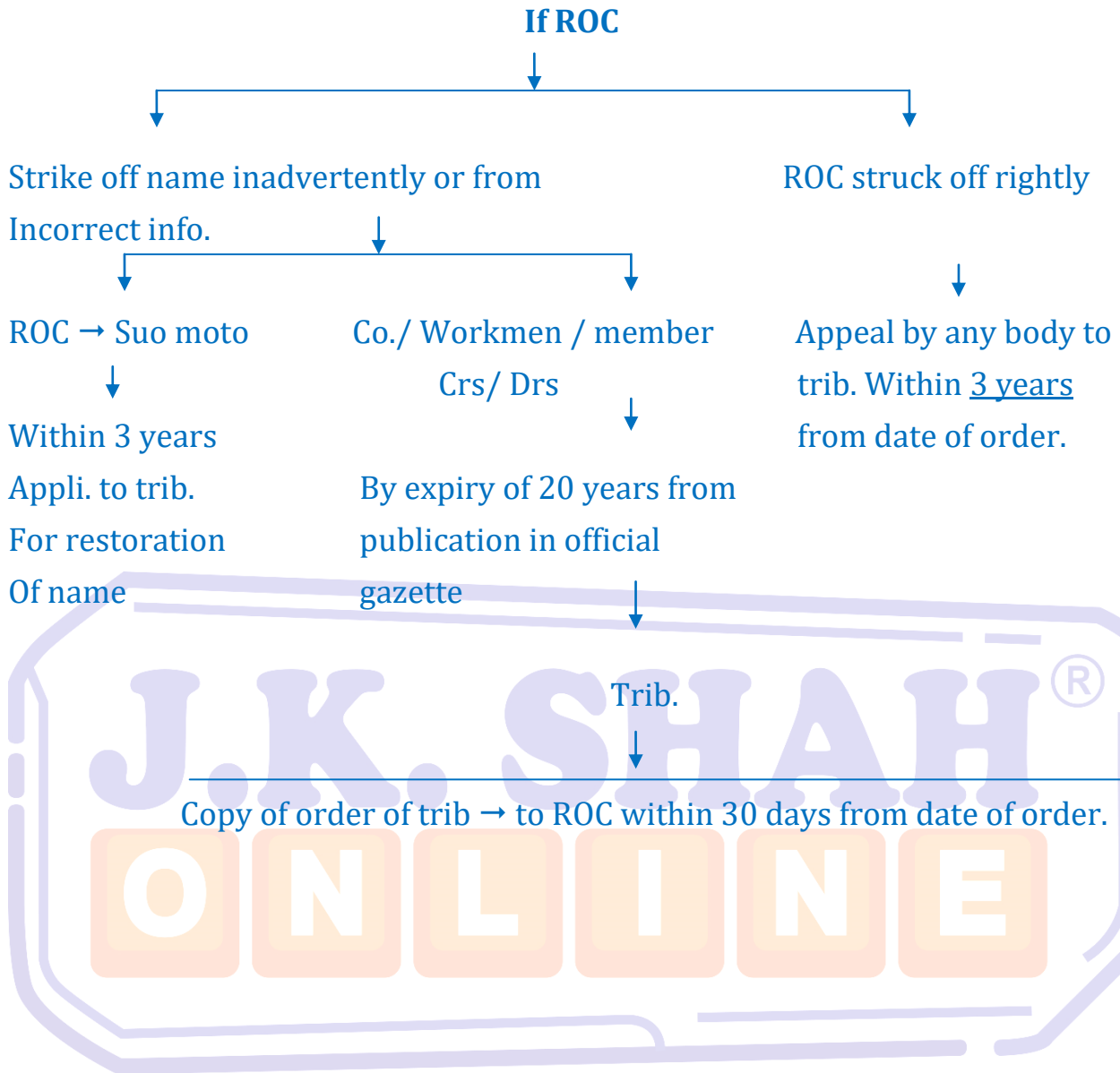
- 1) Cease to operate as company
- 2) Certificate of incorp. = deemed cancelled.
- 3) No effect on realizing amount due to company & paying debt (for that company is in existence)

❖ **Section 251 : Fraudulent appli. for removal of name:**

Where it is found that appli. u/s 248(2) i.e. by SR → is with intention to deceive the Crs or defraud any person / company / PIC.

PIC = J & S liab for losses + 447 + Registrar = Prosecution.

❖ **Section 252 : Appeal to tribunal**



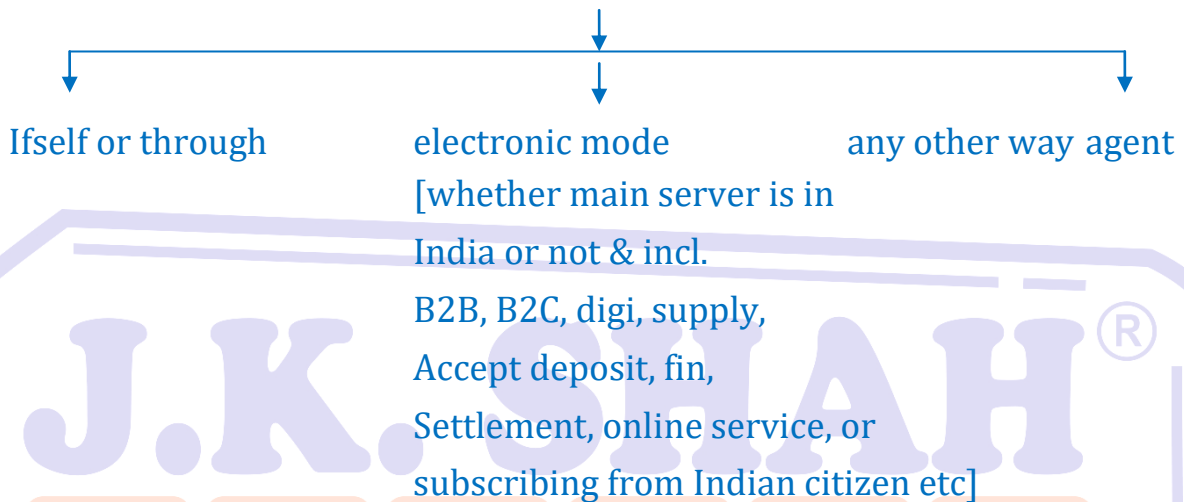
CHAPTER 8

COMPANIES INCORPORATED OUTSIDE INDIA (FOREIGN COMPANY)

Companies (Regi. Of Foreign company) Rules, 2014

- ❖ **Meaning [2(42)]** : means a company incorporated o/s India + doing business in India by

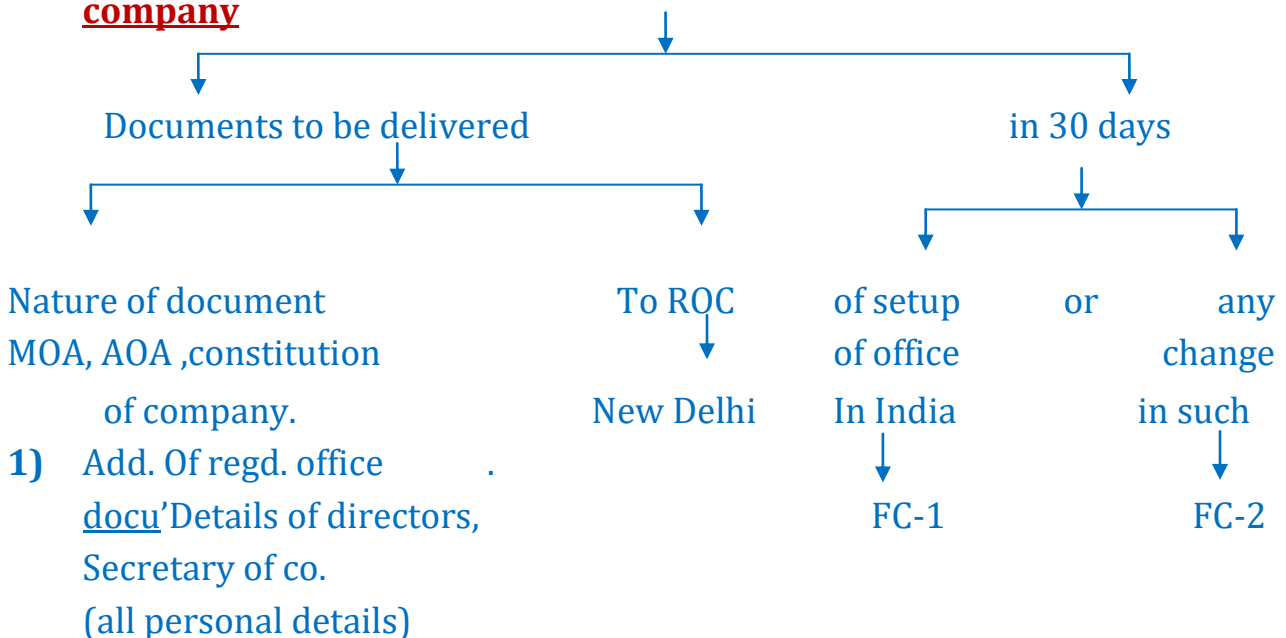
Place of business



Place of busi. Incl. share transfer office, agent or registered office (Sec-386)- [e.g. P.N. 9.8]

Note: Merely conducting BM in India is not business activity in india.

- ❖ **Section 380 : Documents etc, to be delivered to registrar by foreign company**



- 2) Name + Address of Person in charge in India + autho. to receive notices From govt.
 - 3) Add. of office in India(= deemed princi. office)
 - 4) Pts of opening & closing place of busi. In India on earlier occasion.
 - 5) Declaration that director of FC ≠ convicted
 - 6) Attest copy of approval from RBI under FEMA.
- [All document in English or certified translation in English]

❖ **Section-381 : Accounts of foreign company.**

- ⇒ All foreign company → prepare account as per calendar year & for Indian operations & audit → same manner as Indian company.
- ⇒ Format → as applicable to Indian company (Sch. III)
- ⇒ CG may prescribe rules for Account
- ⇒ Account (FS) to be filed to ROC – 6 months from end of FY & Annual return within 60 days from end of F.Y.
- ⇒ Rules: With FS, also file FC-3 for list of all places of business in India on B/S date

So, FS- 6 months. Annual return – 60 days from end of F.Y.

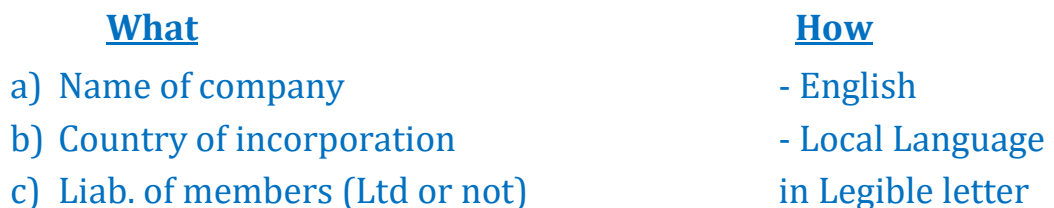
[in 6 months from F.Y.]

FS will have following document



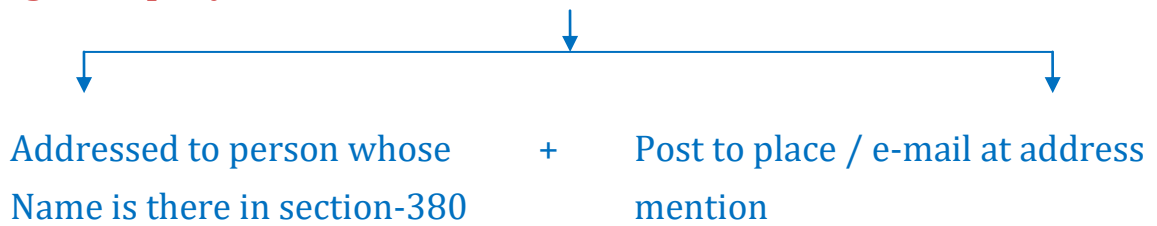
❖ **Section 382 : Display of name of etc of foreign company.**

Display of into by foreign company



Where : o/s every office: Letter, invoice, advertisement, notice: Prospectus.

❖ **Section 383 : Any process, notice, document” = deemed served to foreign company if**



❖ **Section 384 : Which section are appli. to foreign company.**

- 1) Section - 71 → Debenture
- 2) Section - 72 → Annual return → 60 days.
- 3) 135 → CSR
- 4) 128 → BOA
- 5) Chapter VI (Section 77 to 87) : Regi. Of charge
- 6) Chapter XIV → (206 to 229) : Inspection, inquiry & investi.
- 7) Audit
- 8) Winding up

❖ **Section-387, 388, 389, 390, 390: Provisions of prospectus:**

- ⇒ Prospectus to be dated + signed + Regd. with ROC.
- ⇒ Contents of prospectus (in addition to normal Prov. Of section 26)
 - 1) Law in which regd in foreign country
 - 2) Address in India where instrument can be inspected.
 - 3) Date of incorporation
 - 4) Constitution of company
 - 5) Place of business in India.

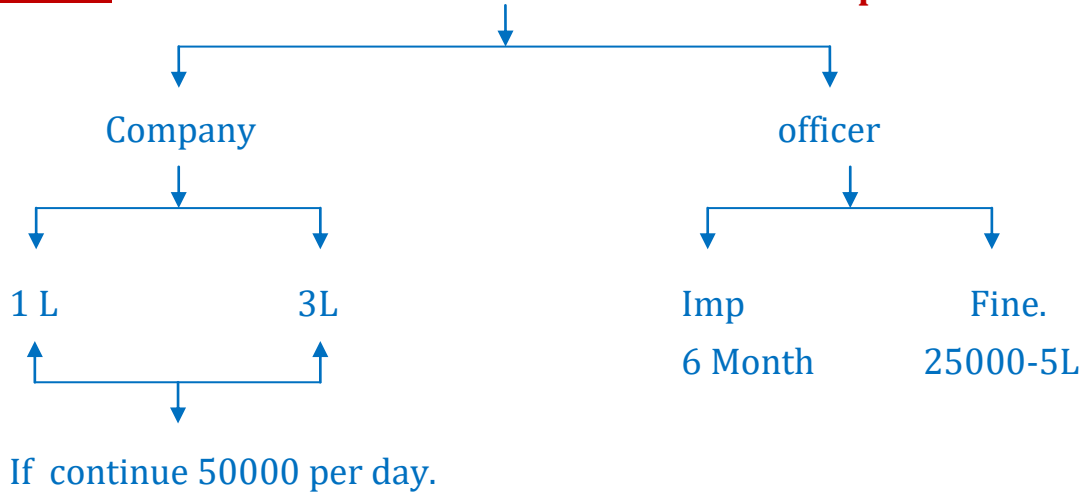
(Pt. No. 1, 2, 4 N.A. if prospectus after 2 years of com. Of business)

⇒ Appli for IPO → as per rules

⇒ **388 : If prospectus contain statement of expert then**

- a) Consent letter of expert
 - b) If statement withdrawn by expert then notice of withdrawal by expert.
- ⇒ CG can make rules for IDR(Indian depository receipt) (Section 390)
 - ⇒ Civil + criminal liab. for any wrong statement in prospectus = appli to Foreign company [Section 34 to 36]

❖ **Section : 392 : Punishment for contravention for full chapter**

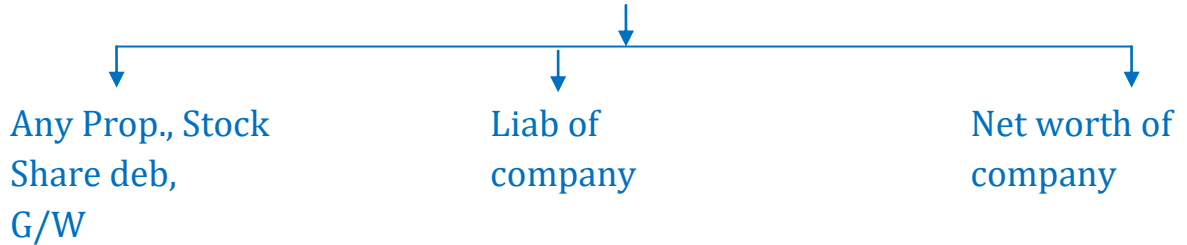


CHAPTER 9

MISC. PROVISION

❖ **Section : 247 : Registered valuer:**

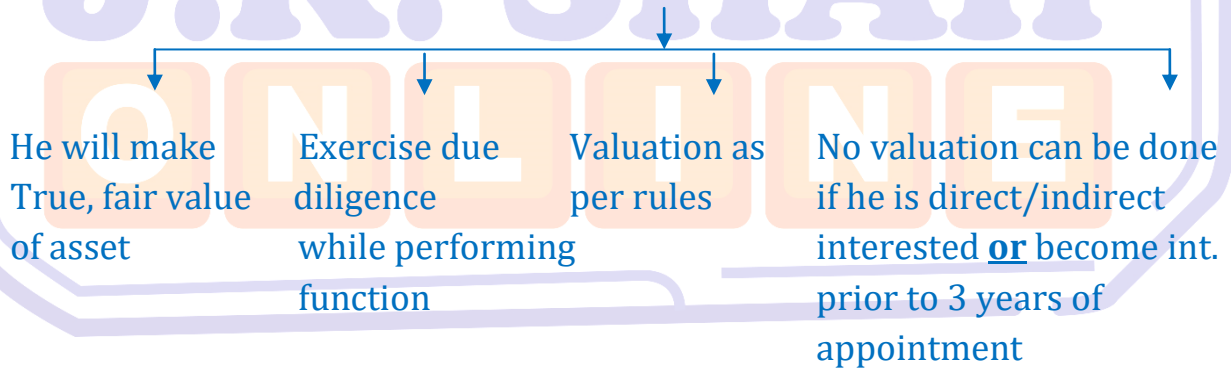
It shall apply where valuation to be made of.



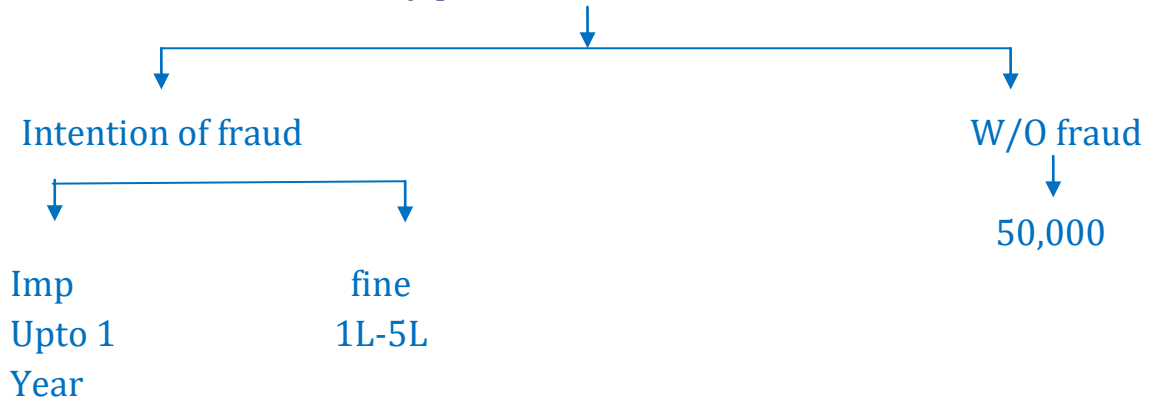
⇒ **By whom ?** : Only by registered valuer, who shall be appointed by:

- a) **Audit committee** or
- b) **BOD** (if no committee)

⇒ **Duties of regd valuer**



⇒ **If contravention of any provision**



In both cases

- +Refund remu to co.
- +Pay damages to Co.

Companies (Registered valuer & valuation) Rules, 2017

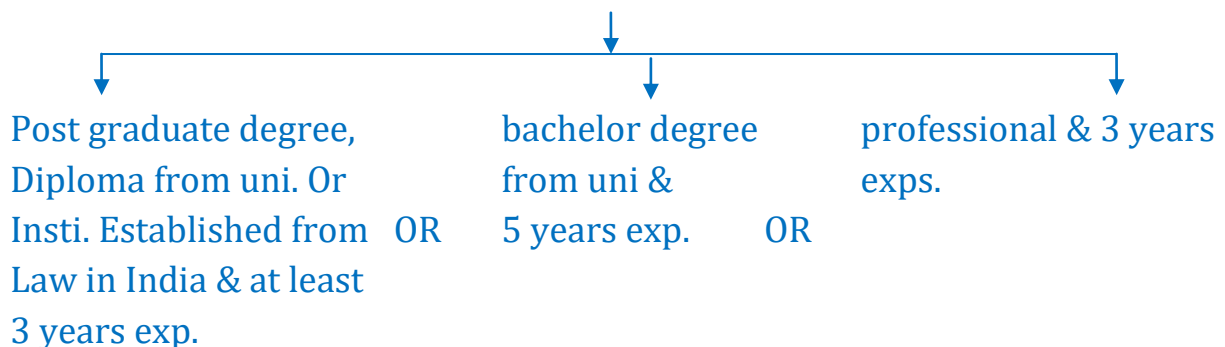
⇒ **Eligibility to be registered valuer if**

- 1) Valuer is member of registered valuer organization
- 2) Recommended by that org.
- 3) Has passed valuation exam within 3 years preceding date of making appli. for registration.
- 4) Possess qualification + experience
- 5) Is not minor
- 6) Not been declared unsound mind
- 7) Not undischarged bankrupt
- 8) Resi. In India (as per FEMA)
- 9) Not offended punishable > 6 month or for offence involving moral turpitude & 5 years not elapsed from sentence.
- 10) Not levied 271J of I.T. act
- 11) Fit & proper (w.r. to integrity, financial solvency etc)

⇒ **No partnership entity or company = eligible if**

- 1) Setup for object other than rendering prof. or fin. Service
- 2) If company → it is subsi. / JV / asso. of other company
- 3) Undergoing insolvency reso. or undischarged bankruptcy
- 4) Any partner or director ineligible
- 5) NLT 3 or all w.e. lower = not regi. Valuer.

❖ **Qualification & experience of individual for registration:**



❖ **Conditions of registration:**

- 1) All time possess eligibility – qualification
- 2) Comply rules regu”.

- 3) Take prior permission for shifting membership from 1 regi. Value org. to another
- 4) Take adequate step for redressal of grievance
- 5) In case of firm only "R.V." can act & sign.
- 6) Firm → all partner J & S liable.
- 7) Firm / Co. → inform autho. on removal of partner / director – along with reason
- 8) Maintain record of each assignment for at least 3 years from completion of assignment.

❖ **Conduct of valuation:**

- ⇒ Regi. Valuer → comply valuation std. until it is notified by CG → as per internationally accepted valuation std. & std. adopted by regi. Valuer org.
- ⇒ May take inputs from another valuer. however, in his report he will mention that all liab. is of his own.
- ⇒ The valuer in his report state:
 - a) Info. Of asset, purpose of valuation
 - b) Identity of valuer & other expert
 - c) Disclosure of conflict in int. & date of appoint, report date.
 - d) Inspection taken
 - e) Nature & source of info.
 - f) Process adopted, restriction on use of report
 - g) Conclusion.

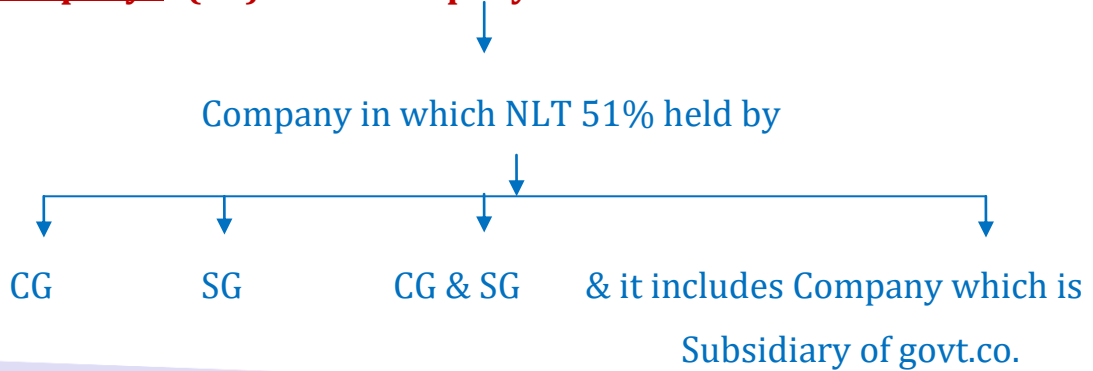
❖ **Temporary surrender**

- ⇒ Reg. valuer may surrender temporarily as per rules & inform autho.
- ⇒ Regi. valuer org. = inform autho. If member has temp. Surrender & put details of such member on website.

❖ **Eligibility of registered valuer organization:**

- ⇒ Company u/s 8 of companies act, 2013
- ⇒ Society reg. under soc, reg. act, 1860
- ⇒ Org. set up by trust by Indian trust act, 1882

- ❖ **Punishment for any contravention:**
As per 469(3) (upto 5000 conti. → 5000 p. day)
- ❖ **Punishment for false statement:**
Any report, certi → false → 448=same as 447
- ❖ **Govt. company :2(45) : Govt company**



- ⇒ So if share held by govt company → then not counted for determining govt company.
- ⇒ But subsi. → then govt. company.

Question.:

In A Ltd. CG has 20%, Guj govt has-20% and one govt co.has 20%.Whether A ltd.is govt co.?

Ans.:

No.Holding of govt company is not to be considered.

Question:

Suppose in above example in A Ltd.Govt company has 51% then?

Ans.:

Subsidiary of govt company=govt co.

Question:

A Ltd. Is govt co.B Ltd is subsidiary of A Ltd.C Ltd is wholly owned subsidiary of B Ltd.Whether C Ltd.is govt co.

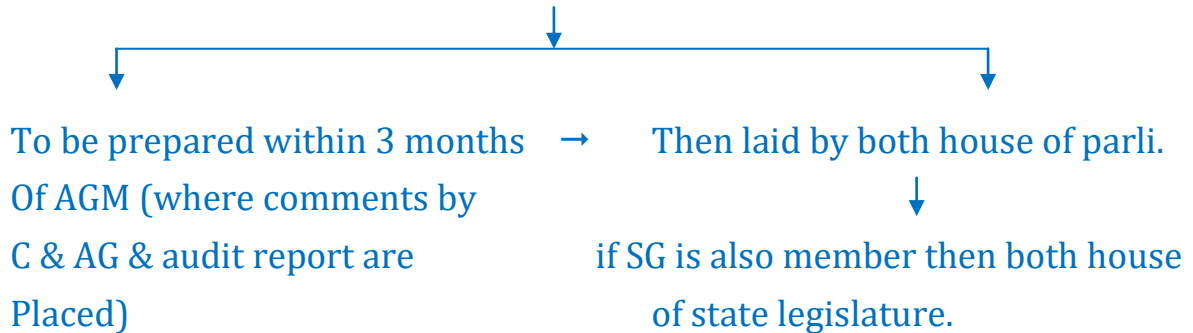
Answer:

Yes.Since B Ltd is subs of A ltd.B ltd=Govt co.Since C ltd is subs of B Ltd. C Ltd=Govt co.

⇒ **394 : Annual reports on govt companies**

1) Where CG is member of govt. company:

CG shall cause → annual report on working & affairs of company.



⇒ **395 : where SG is member then it will prepare report same as above.**

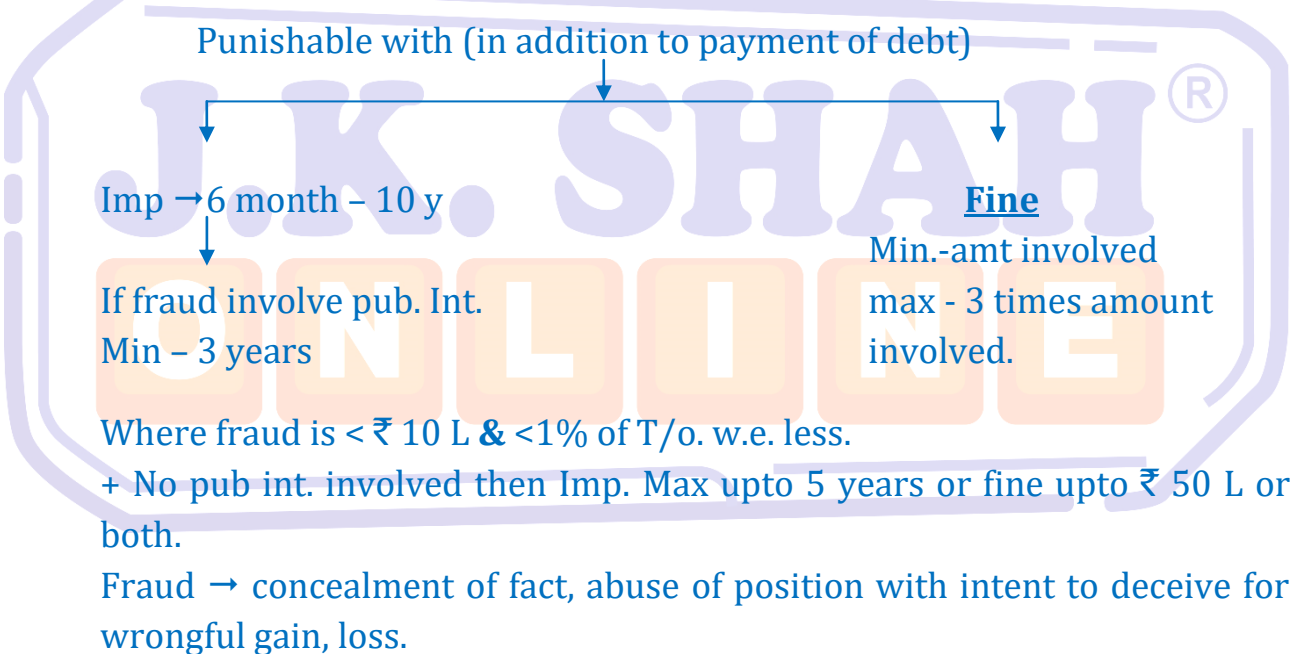
❖ **Nidhi company (Section 406+Nidhi rules, 2014) :**

Company which is incorporated with object of developing habit of thrift & reserve funds among member.

- CG after receiving appli.(form NDH 4 & fees) from public company declare co. as Nidhi Co. This application to be filed withn 1 yr from date of incorporation or as extended time by regional director.
- If NDH 4 nit filed then it cannot file SH-7(Notice to registrar of any alteration to share cap.) & form PAS-3(Return of allotment)
 - : Accept money & give loan to member
 - : member can't be B.C. or trust, or minor
 - : No obj. in MOA except habit of thrift & saving in member
 - : Always public company (always) & "Nidhi Ltd" after name & min PUSC 5L.
 - : Min 200 members
 - : No pref. shares (only equity), no debenture, debt instru,
 - : Annual Return in NDH 1. Within 90 days from closure of F.Y.
 - : Busi. ≠ chit find, hire purchase, lease, insuring
 - : can't acquire another company by anyway.
 - : May provide locker on rent to member (Rent income shall not exceed 20% of total income)
 - : Div. Rate ≤ 25% & If want to increase Dividend rate then Condition: Approval from regional dir + Amt trf to GR + No default in repayment to deposit or int.

- : Dir. from members (term 10 years) → follow 152, 164, reappointment after 2 year cooling period.
 - : Not to open current a/c with member.
 - : Not to advertise soliciting deposit. Only amongst member FD scheme with words “For Pvt. Circulation to member only”
 - : Not to tale or lend deposit to any B.C.
 - : Can take deposit in name of mini=or if his guardian is member.
 - : Auditor : Ind → 5 years firm → 2 term (Cooling period 2 years— compared to general cooling of 5 years)
- ⇒ Any contravention then company & officer → 5000. If continuing ₹ 500 per day.

❖ **Section 447 : Punishment for fraud**



❖ **Section 450 : Punishment where no specific penalty or punishment is involved**

Company + officer → fine ₹ 10000, if continuing ₹ 1000 per day max 200000 for co & for officer 50000.

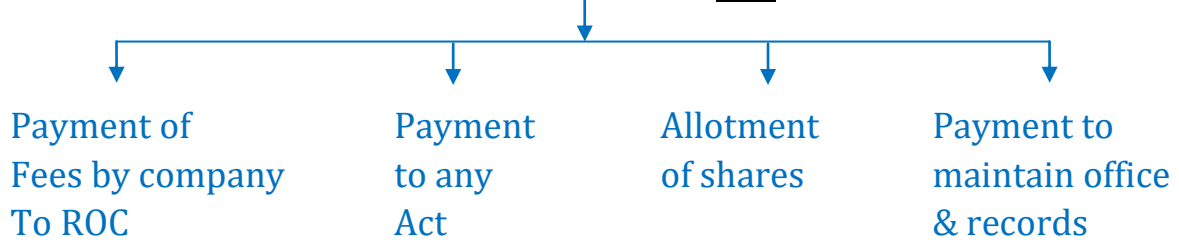
❖ **Section - 455 : Dormant company :**

where company is formed & regi. under this act for future project or to hold properties & no significant a/c trans.
Then such company **or** an inactive company may make appli. to registrar for obtaining “Dormant company” status.

❖ **Explanation : inactive company :**

means company not carrying busi. **or** no signi a/c transaction during last 2 F.Y. **or** not filed F.S. & annual returns during last 2 F.Y.

Significant a/c transaction does **not** include.

⇒ **Appli. for obtaining status of dormant company.**

1) Company to make appli. in form MSC-1 after passing – SR or after 3/4th value of SH approval.

2) Company eligible to make appli. only if:

a) No inspection, inquiry, investigation has been ordered.

b) No prosecution initiated / pending.

c) Company → No pub. Dep o/s nor default in int.

d) Company → no o/s loan (if unsec. Loan the appli. can be made after appr. Of lender).

e) No dispute of management, ownership.

f) Company → Not having statutory dues etc.

g) Company → not defaulted in workmen dues.

h) Securities = unlisted.

⇒ On appli → registrar to issue certi. In MSC-2.

⇒ Registrar to maintain list of dormant company on e-portal.

⇒ Dormant company to file “return of dormant co” annually indicating fin. Position audited by CA in practice in MSC-3 within 30 days from end of FY.

⇒ Rotation of auditors → N.A. to dormant company

⇒ Dormant company → Pub. → Min 3 director.

Pvt → Min 2 director.

OPC → Min 1 director.

⇒ If continuously dormant for 5 years → registrar shall strike off name of company.

⇒ If in between company wants to obtain status of “active company” then → appli. in MSC-4 + Return of F.Y. in MSC-3

⇒ Registrar to issue certi. In MSC-5

⇒ Where dormant company do any act mentioned in ground of appli. then in 7 days file appli. for active company.

⇒ ROC can suo moto treat if “Active” also.

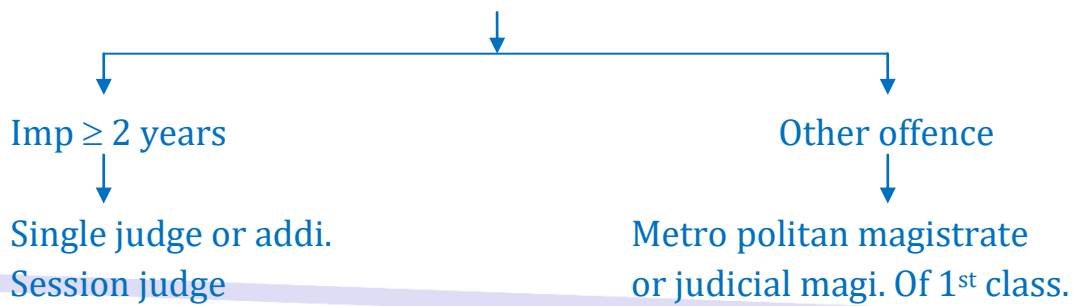
CHAPTER 10

COMPOUNDING OF OFFENCES ADJUDICATION & SPECIAL COURT

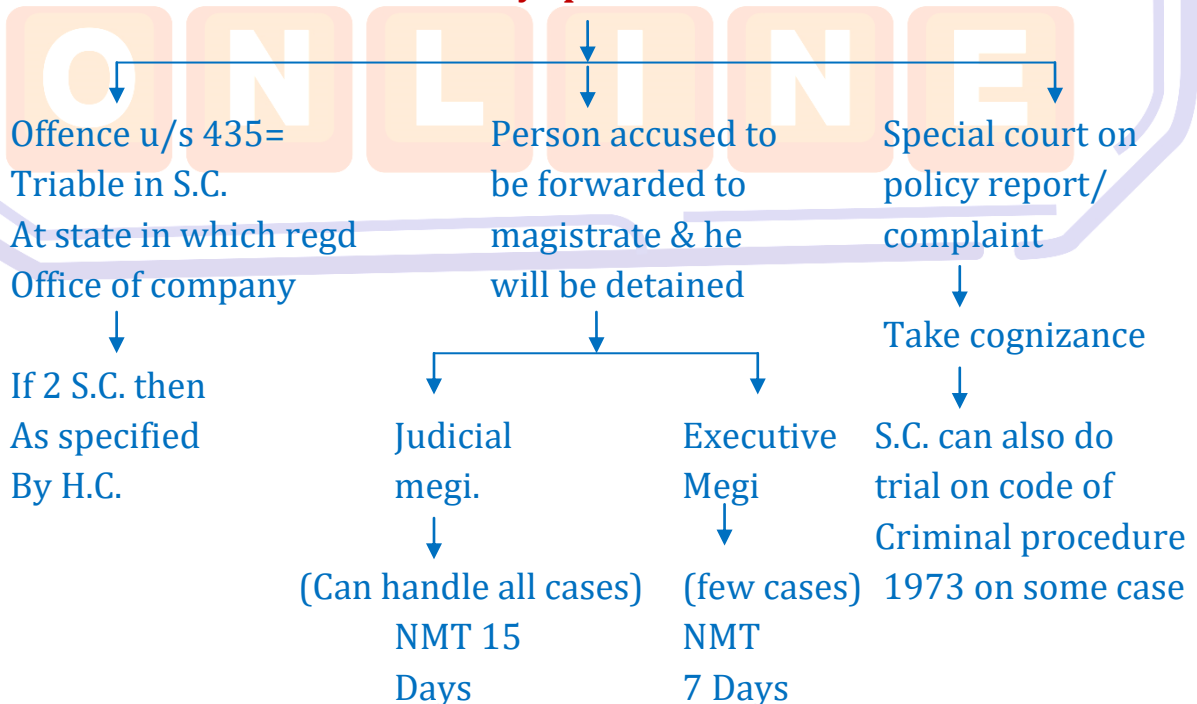
❖ **Special courts**

⇒ **Section-435 : Establishment:**

For speedy trial of offence → special court



Section-436 : offences triable by special court



(If detention unnecessary then Forward him to S.C.)

Special Court

For any offence punishable
Imp NMT 3 years

S.C. = Summary trial

In that Imp NMT 1 year

if want to give that Imp > 1 yr
or thinks no summary then

hear/rehear on regular Trial.

❖ **Section 437** : For appeal revision → HC

❖ **Section 438** : Proceedings of S.C. = same as per code of crim. Procedure, 1973 as if it is session court or metrolitan court or 1st class judicial megistrate

❖ **Section 439 : Offences to be non-cognizable**

Every offence under Act except 212(6) = Non cognizable

SFIO [police warrant + bailable]

⇒ No court shall take cognizance (on company + officer) except complain in writing by.

Registrar

or

Person autho.

or

Shareholder

By CG [for govt co.]

For these 2 → presence in
Court not required unless
court requires.

Note:

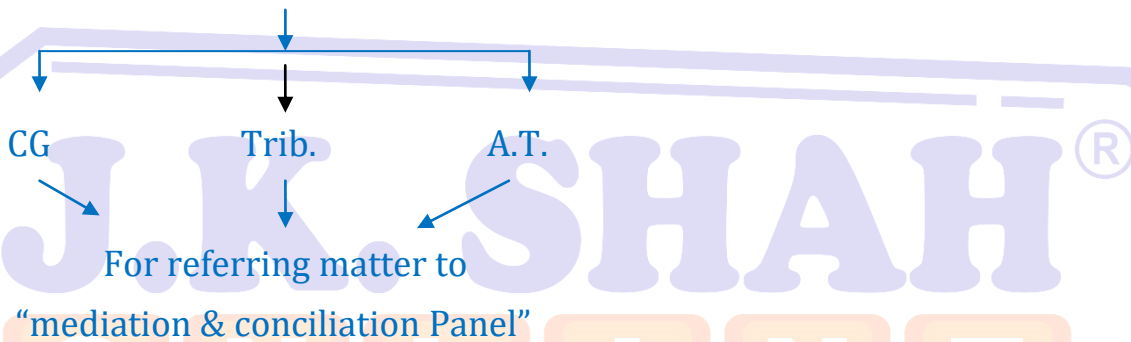
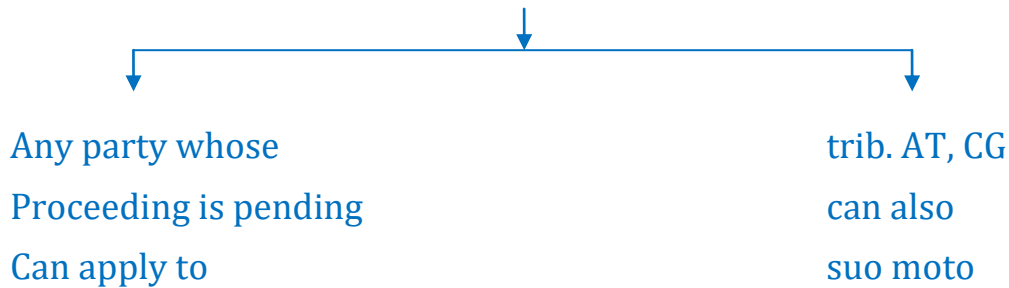
- ⇒ For any action taken by liquidator for winding up then liquidator + officer
- ⇒ For trf of security or non payment of securities complaint can be filed by autho. person of sebi.

❖ **Section 442 : Mediation & conciliation panel**

(do resolution between 2 party with help of 3rd party)

CG to maintain panel consisting of expert having qualification as mentioned for mediation b/w parties during pendency of proceeding by CG, Trib. Appellate trib.

⇒ Who can recommend matter to panel?

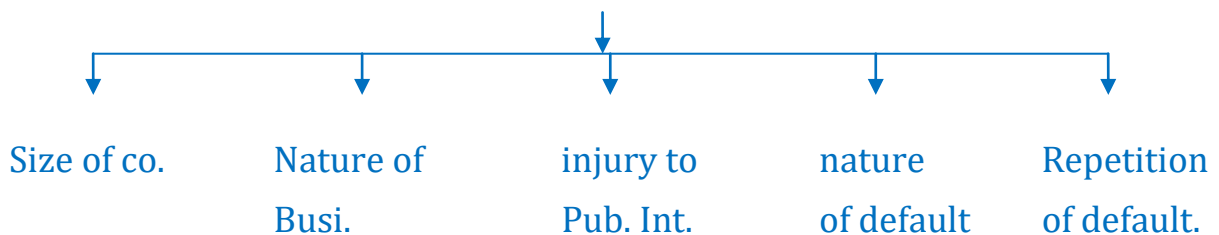


⇒ Panel shall follow process & dispose matter within 3 months & forward recomm. To CG/ Trib. / AT

⇒ Aggrieved party → can file objection to CG, Trib. A.T.

❖ **Section 446 :** Court may order while determining fine then it shall be applied towards payment of cost of proceeding

❖ **Section 446A:** Court / special court while deciding fine or Imp. Consider.



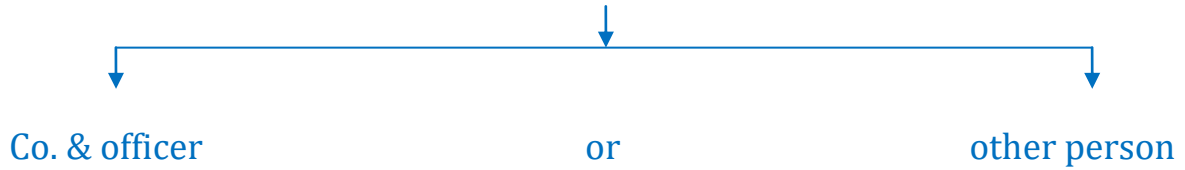
❖ **Section 446B :** if OPC or small co. or startup pvt co. or producer co. or officers fails to comply any provision of act then

Then max penalty = half amount prescribed in that section or max 200000 for co & max 100000 for officer in default.

❖ **Section 454 : Adjudication of penalties**

CG → appoint office → as “adjudicating officer” (A.O) for levying penalty (not below rank of registrar)

⇒ A.O. → b4 imposing penalty → issue written notice to



To show cause (OBH) within period said in notice [NLT 15 days, NMT 30 days]

Notice to indicate reason, nature of noncompliance penal provision of act, max penalty that can be imposed

Reply to notice in e-mode only, on proper reason time can be extended by AO NMT 15 days

After reply if A.O. wants → can send notice to physically appear within NMT 10 working days (itself or A.P. or officer).

Accused can in reply of e-mode demand for oral representation

Order of penalty to be passed

If no physical presence

Physical

Within 30 days of submission-of reply

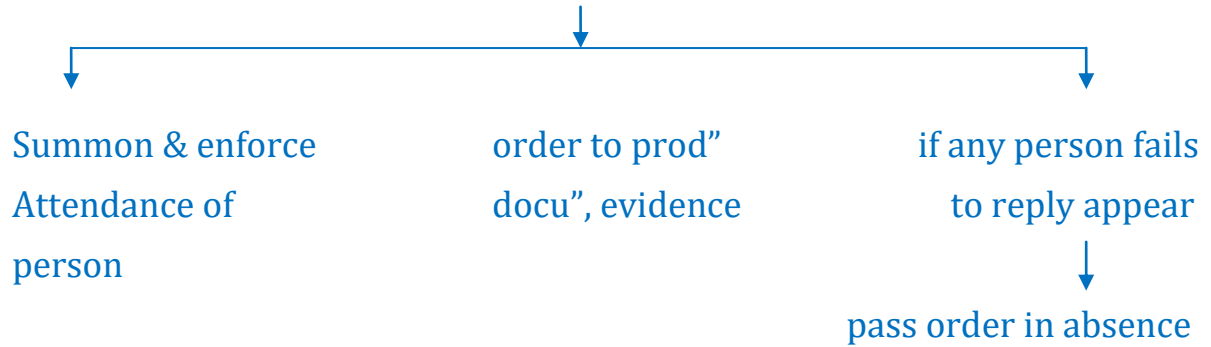
90 days

can be passed after 30/90 days by reason recorded in writing & it shall be valid.

Order = sign + Date + reason for physical appearance

A.O. → send copy of order to company officer, other person or all or CG & on website.

Power of A.O.



⇒ For deciding penalty → factors u/s 446A + amount of wrong gain, loss to 3rd parties.

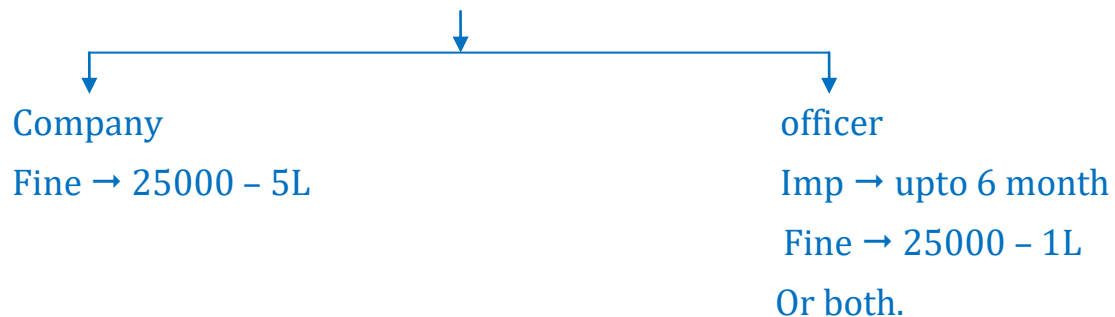
[penalty can't be less than min, penalty in section & if fix sum then → levied fix amount]

If default is of section 92 or 137 & default is rectified within 30 days from issue of notice by AA then no penalty & all proceedings deemed concluded.

Penalty to be paid through MCA portal & credited to consolidated fund of India.

⇒ Any person aggrieved by order → appeal to regional director in 60 days from receipt of order + fees → R.D. → after OBH → Can confirm, modify, set aside order.

If on order of A.O. or R.D Company / officer fails to pay amount then in 90 days.



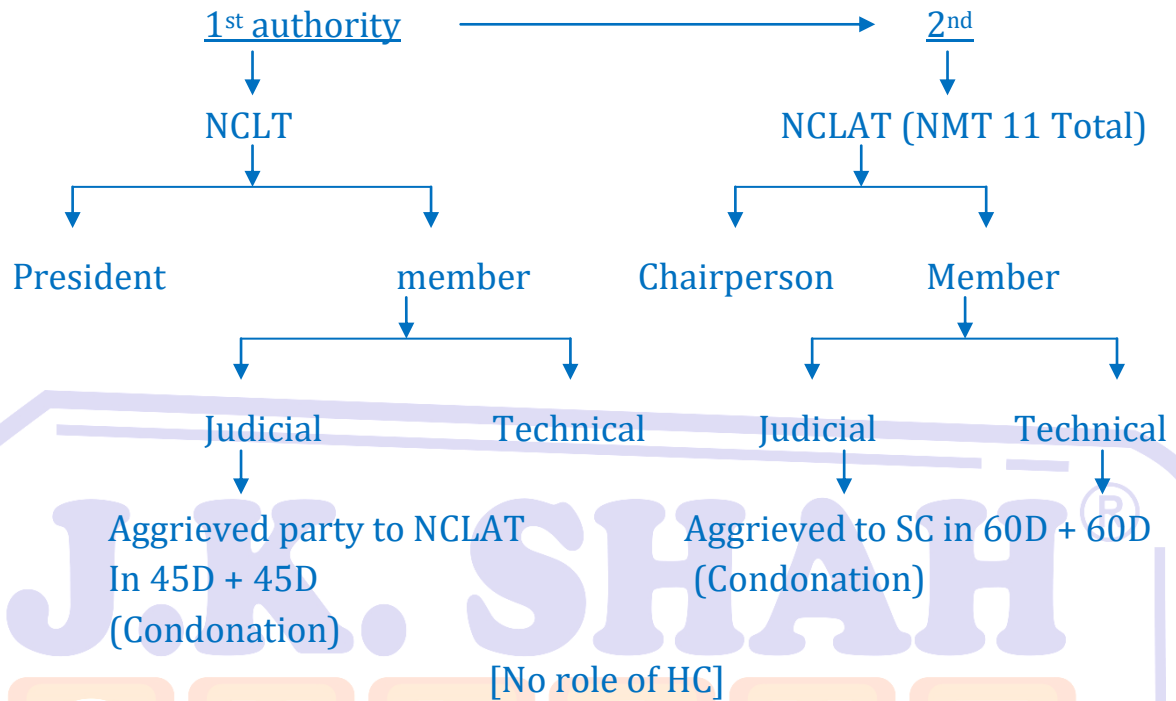
❖ **Section 454A** : If company / officer /any person commits same defaults second time within 3 years from date of penalty order then 2nd or subsequent.

↓
Twice amount of penalty.

CHAPTER 11

NATIONAL COMPANY LAW TRIB. & APPELATE TRIB.

⇒ **Section 407, 420, 421, 422, 423, 424**



- ⇒ Trib can rectify its order within 2 years for correction of mistake (rectification) if appeal not filed.
- ⇒ Trib. Will dispose appeal within 3 months from date of presentation. If delay → reason recorded in writing but then extension NMT 90 days.
- ⇒ NCLT / NCLAT → not bound by process of code of civil procedure, 1908. But as per prin. of natural justice & IBC, 2016, regulate own process.

Power same as civil court under code of civil procedure, 1908:

- 1) Summoning + examine on oath
- 2) Reg. discovery & prod." of docu"
- 3) Received evidence on affidavits
- 4) Requisitioning public record
- 5) Issuing commission for exam of witness
- 6) Setting aside any order of dismissal of representation



All proceeding : Judicial proceeding under IPC NCLT & NCLAT = Civil code.