16 Special Courts

16.0 Introduction

Chapter XXVIII of the Companies Act, 2013 deals with the concept of Special Courts. This concept has assumed greater importance especially in the recent times as this will help in speedy trial of all offences under the Act. Hence, this will definitely facilitate in good corporate governance and stricter implementation of the Law. Due to this, the stakeholders will be benefited at large. With intent to punish the guilty, the Legislature has bring in, the Special Courts in the Companies Act, 2013. The Act focuses on establishment and the jurisdiction of the Special court. The Companies Act, 2013 overrides the related provisions of the Cr.PC. Following sections (439, 442 to 446) related to the Special Court have been notified of the Companies Act, 2013 vide notification dated 12\textsuperscript{th} September, 2013 and 26\textsuperscript{th} March, 2014. Remaining sections of this chapter is yet to be notified.

16.1 Offences to be non-cognizable (Section 439)

This section has been notified and made effective from 12th of September, 2013. Earlier, it was covered under the section 621 and 624 of the Companies Act, 1956.

Section 439 deals with the offences that are considered of non cognizable nature under the Companies Act, 2013.

The term “Non-cognizable offence” is defined under section 4 of the Cr.PC. It is an offence for which a police officer may not arrest without warrant.

(i) **Offences under the Companies Act, 2013 deemed as non-cognizable:** Overriding the provisions given under the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in section 212(6) of the Companies Act, 2013, which deals with the investigation into affairs of company by serious fraud investigation office, shall be deemed to be non-cognizable within the meaning of the said Code.

Therefore, the offences as covered under section 212(6) shall now be deemed to be cognizable where police officer may arrest person without warrant and are non- bailable. The Companies Act, 2013 establishes the offence covered under the section 212(6) as a public wrong which has to be prevented and controlled. This non- bailable nature of the offences deter the offender and the others from committing further and similar offences.
(ii) **Cognizance of offence:** A court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof only on the written complaint of -

(a) The Registrar,

(b) A shareholder of the company, or

(c) Of a person authorised by the Central Government in that behalf.

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.

Provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

*However, in case of government companies as per the Notification no. G.S.R. 463(E) dated 5th June 2015, court shall take cognizance of any offences under this Act which is alleged to have been committed by any company or any officer thereof on the complaint in writing of a person authorized by the Central Government in that behalf.*

(iii) **Attendance of complainant:** where the complainant is the Registrar or a person authorised by the Central Government as given under sub-section (2), the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

(iv) **Non-application of sub-section (2) on the action of the liquidator:** The provisions of sub-section (2) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

The liquidator of a company shall not be deemed to be an officer of the company within the meaning of sub-section (2).

16.2 **Mediation and Conciliation Panel (Section 442)**

In common parlance Mediation means intervention of some third party in a dispute with the intention to resolve the dispute.

Conciliation means the process of adjusting or settling disputes in a friendly manner through extra judicial means. This new provision introduced by the Companies Act, 2013 has come into force with effect from 1st April, 2014 vide notification dated 26th of March, 2014. Section 442 of the Companies Act, 2013 deals with the constitution and functioning of the mediation and conciliation panel in order to dispose the matter.

Section 442 lays the following law with respect to the constitution and working of the Mediation and Conciliation Panel:
16.3 Corporate and Allied Laws

(1) **Central Government to maintain the Panel of Mediators:** The Central Government shall maintain a panel of experts to be known as Mediation and conciliation panel for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

Hence, it is important that the case should be pending before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

(2) **Panel consisting of experts:** The panel shall consist of such number of experts having such qualification as may be prescribed.

(3) **Filing of application:** Application for mediation and conciliation can be made by:

(i) any parties to the proceedings. (It shall be accompanied with such fees and in such form as may be prescribed.)

(ii) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, *suo motu* refer any matter pertaining to such proceeding to such number of experts as it may deem fit.

(4) **Appointment of expert/s from panel:** The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may appoint one or more experts from the Panel as may be deemed fit.

(5) **Fees, terms and conditions of the experts:** The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

(6) **Procedure for the disposal of matter:** In order to dispose the matter, the Mediation and Conciliation Panel shall follow such procedure as may be prescribed.

(7) **Period for the disposal of matter:** The Mediation and Conciliation Panel shall dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(8) **Filing of objection on the recommendation of the panel:** Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

16.3 Power of Central Government to appoint company prosecutors (Section 443)

This section 443 of the Companies Act, 2013 has come into force with effect from 12th September, 2013. This section lays down the provisions seeking to provide that the Central Government may appoint company prosecutors with the same powers as given under the Cr. PC on Public Prosecutors.

(i) **Appointment of company prosecutors:** The Central Government may appoint (generally, or for any case, or in any case, or for any specified class of cases in any local area) one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act; and
(ii) **Powers and Privileges:** The persons so appointed as company prosecutors shall have all the powers and privileges conferred on Public Prosecutors appointed under section 24 of the Cr. PC.

### 16.4 Appeal against acquittal (Section 444)

According to section 444 of the Companies Act, 2013, the Central Government may, in any case arising under this Act, direct –

(i) any company prosecutor, or

(ii) authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court.

Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

### 16.5 Compensation for accusation without reasonable cause (Section 445)

Under section 445 of the Companies Act 2013 the provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply *mutatis mutandis* (with such changes as may be necessary) to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

### 16.6 Application of fines (Section 446)

Under section 446 of the Companies Act 2013, the court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.