At the end of this Chapter, students will be able to –

- Understand the types of penalties that can be levied for the commission of an offence under this Act.
- Know the compoundable and non-compoundable offences.
- Explain the jurisdiction of courts for the trial of offences.
- Identify the establishment of special courts and its Jurisdiction.
- Know of the procedure of appeal and revision.
- Identify offences which are non-cognizable and are of compounding nature.
- Know about the Mediation and Conciliation Panel.
- Know of the power of Central Government to appoint company prosecutors, provisions related to appeal against acquittal, compensation for accusation and application that can be applied for imposing of fine.
- Explain the procedure related to adjudication of penalties.
1. INTRODUCTION

An offence is a commission of an act which is contrary to any law or forbidden by the law and is not confined to commission of crime only. Such commission of act against the law requires a particular punishment levied through the way of penalty.

Types of Penalties

There are five types of penalties that can be levied on the commission of the offences that have been contemplated under the Companies Act, 2013. They are as follows:

- **Compoundable offences** are those offences where, the complainant (one who has filed the case) enters into a compromise, and agrees to have the charges dropped against the accused.
- **Non-Compoundable offences** are those which are not compoundable because of grievous nature of offence.

2. JURISDICTION OF COURT FOR TRIAL OF OFFENCES

According to section 2(29) of the Companies Act, 2013, the term courts means –

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>Types of courts</th>
<th>Jurisdiction</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>High Court</td>
<td><strong>Having jurisdiction in relation to the place</strong> at which the registered office of the company concerned is situate, except to the extent to which jurisdiction has been conferred on any district court or district courts subordinate to that High Court under sub-clause (ii);</td>
</tr>
</tbody>
</table>
2. District Court

In cases where the Central Government has, by notification, empowered any district court to exercise all or any of the jurisdictions conferred upon the High Court, within the scope of its jurisdiction in respect of a company whose registered office is situated in the district;

3. Session Court

having jurisdiction to try any offence under this Act or under any previous company law

4. Special Court

The Central Government may, provide for speedy trial of offences punishable under this Act with imprisonment of two years or more by notification, establish or designate as many Special Courts as may be necessary. (Section 435)

5. Any Metropolitan Magistrate or a Judicial Magistrate of the First Class

having jurisdiction to try any offence under this Act or under any previous company law

3. ESTABLISHMENT OF SPECIAL COURT [SECTION 435]

Section 435 of the Companies Act deals with the establishment of the Special Court. The provisions state the number of special court that may be established with the required number of judges for the working.

(1) Establishment of number of special court: The Central Government may by notification-

- for the purpose of providing speedy trial of offences
- punishable under this Act
- with imprisonment of two years or more,

establish or designate as many Special Courts as may be necessary.

Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.

<table>
<thead>
<tr>
<th>Types of court</th>
<th>Nature of trial of offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Courts</td>
<td>Offences punishable under this Act with imprisonment of two years or more</td>
</tr>
<tr>
<td>A Metropolitan Magistrate or a Judicial Magistrate of the First Class</td>
<td>All other offences under this Act or under any previous company law.</td>
</tr>
</tbody>
</table>
(2) **Appointment of judge:** A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) **Eligibility:** A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

4. **OFFENCES TRIABLE BY SPECIAL COURTS [SECTION 436]**

(1) **Powers of special courts with respect to trial of offences:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

<table>
<thead>
<tr>
<th>Powers of the special courts</th>
<th>Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offences triable by the special court</td>
<td>All offences specified under section 435(1) shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed.</td>
</tr>
<tr>
<td>In case of more than one Special Courts</td>
<td>Where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;</td>
</tr>
<tr>
<td>Where a person accused of, or suspected of the commission of, an offence under this Act</td>
<td>Such person is forwarded to a Magistrate under section 167 of the Code of Criminal Procedure, 1973. (i) such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate, (ii) and seven days in the whole where such Magistrate is an Executive Magistrate: Provided that where such Magistrate considers that the detention of such person (upon or before the expiry of the period of detention) is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;</td>
</tr>
<tr>
<td>Vested with same power as provided under the Cr. P.C</td>
<td>the Special Court may exercise the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section;</td>
</tr>
</tbody>
</table>
Cognizance of offence by special court

A Special Court may, upon perusal of the police report or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) Special Court to try an offence other than an offence under this Act: When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

(3) Summary Trial: Notwithstanding anything contained in the Code of Criminal Procedure, 1973,

<table>
<thead>
<tr>
<th>Power of special court on summary trial of an offence</th>
<th>Nature of summary trial</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Special Court may, if it thinks fit, try in a summary way any offence under this Act</td>
<td>Which is punishable with imprisonment for a term not exceeding three years</td>
</tr>
<tr>
<td>In the case of conviction in a summary trial</td>
<td>no sentence of imprisonment for a term exceeding one year shall be passed</td>
</tr>
<tr>
<td>When at the commencement of, or in the course of, a summary trial, it appears to the Special Court that –</td>
<td>the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.</td>
</tr>
<tr>
<td>• the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed, or</td>
<td></td>
</tr>
<tr>
<td>• that it is, for any other reason, undesirable to try the case summarily</td>
<td></td>
</tr>
</tbody>
</table>

5. APPEAL AND REVISION [SECTION 437]

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX which deals with appeals, Reference and Revision of the Code of Criminal Procedure, 1973 on a High Court-

As if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.
6. APPLICATION OF CODE TO PROCEEDINGS BEFORE SPECIAL COURT [SECTION 438]

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

7. OFFENCES TO BE NON-COGNIZABLE [SECTION 439]

This section provides for the offences that are non-cognizable. According to this section:

<table>
<thead>
<tr>
<th>Offence</th>
<th>Nature of offence</th>
</tr>
</thead>
<tbody>
<tr>
<td>every offence under the Companies Act, 2013 except the offences referred to section 212(6)</td>
<td>shall be deemed to be non-cognizable within the meaning of the Cr.P.C</td>
</tr>
<tr>
<td>Court shall take cognizance of any offence under the Companies Act which is alleged to have been committed by any company or any officer thereof</td>
<td>Only on the written complaint of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf.</td>
</tr>
<tr>
<td>Cognizance of offences relating to issue and transfer of securities and non-payment of dividend</td>
<td>The court may take cognizance on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.</td>
</tr>
<tr>
<td>Non-application of section 439(2)</td>
<td>To a prosecution by a company of any of its officers</td>
</tr>
<tr>
<td>Where the complainant is the Registrar or a person authorised by the Central Government</td>
<td>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</td>
</tr>
<tr>
<td>Non-application of section 439(2)</td>
<td>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 (Winding up) 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.</td>
</tr>
</tbody>
</table>
As per the Notification G.S.R. 463(E) dated 5th June 2015, in case of a government companies, court shall take cognizance of an offence 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.

8. TRANSITIONAL PROVISIONS [SECTION 440]

According to the section, any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.

9. COMPOUNDING OF CERTAIN OFFENCES [SECTION 441]

Section 441 deals with the process of compounding of certain offences.

(1) Who may compound the offence: Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by—

(a) the Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the-

- Regional Director or

- any officer authorised by the Central Government,

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

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

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

No compounding of an offence on initiation/pending of an investigation: Provided also that any offence covered under this sub-section by any company or its officer shall not be
compounded if the investigation against such company has been initiated or is pending under this Act.

(2) **Restriction:** Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

*Explanation.*—For the purposes of this section,—

(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;

(b) “Regional Director” means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

(3) **Filing of application to Registrar:**

(a) **Application to be made to the Registrar:** Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.

(b) **Intimation of compounding of offence:** Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) **No prosecution shall be instituted:** Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) **Compounding of any offence to be brought to the notice of the court:** Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.

(4) **Central Government to authorise for dealing with a proposal for compounding of offence:** The Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or
other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order.

(5) **In case of failure in compliance:** Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.

(6) **Offences which can be compounded:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(a) any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compounding with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;

(b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compounding.

(7) **Restriction:** No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.

10. **MEDIATION AND CONCILIATION PANEL [SECTION 442]**

(1) **Maintenance of panel of experts:** The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel.

**Composition:** It shall be consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before-

- the Central Government or
- the Tribunal or
- the Appellate Tribunal under this Act.

(2) **Referring of matters by any parties to the proceedings to Mediation and Conciliation Panel:** Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or Tribunal or the
Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).

3) **Suo moto referring of matters to Mediation and Conciliation Panel:** The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, suo moto, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.

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

5) **Procedure and disposal of matter:** The Mediation and Conciliation Panel shall follow such procedure as may be in Rule 11 of the Special Courts (Companies Mediation and Conciliation) Rules, 2016, and 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.

6) **Objection to the recommendation of the Mediation and Conciliation 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.

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11. **POWER OF CENTRAL GOVERNMENT TO APPOINT COMPANY PROSECUTORS [SECTION 443]**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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.

The persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code on Public Prosecutors appointed under section 24 of the Code.

12. **APPEAL AGAINST ACQUITTAL [SECTION 444]**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may, in any case arising under this Act, direct any-
company prosecutor or
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, and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

13. COMPENSATION FOR ACCUSATION WITHOUT REASONABLE CAUSE [SECTION 445]
The provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply *mutatis mutandis* to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

14. APPLICATION OF FINES [SECTION 446]
According to this section, 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.

15. ADJUDICATION OF PENALTIES [SECTION 454]
(1) The Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of this Act in the manner as provided in Rule 3 of the Companies(Adjudication of Penalties) Rules, 2014.

Manner of adjudication of Penalties
(i) **Appointment of Adjudicating officers:** The Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.
(ii) **Issue of written notice by an adjudicating officer:** Before adjudging penalty, the adjudicating officer shall issue a written notice-

- to the company and
- to every officer of the company who is in default,

to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than forty five days from the date of service thereon), why the inquiry should not be held against him:
Provided that every notice issued under this sub-rule, shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company and officer in default, as the case may be:

Provided further that the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding fifteen days, if the company or officer (as applicable) satisfies the said officer that it has sufficient cause for not responding to the notice within the stipulated period.

(iii) **Adjudicating officer can held inquiry:** If, after considering the cause, if any, shown by such company or officer, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of such company, through its authorised representative, or officer of such company whether personally or through his authorised representative

(iv) **Passing of an order by the adjudicating officer:** On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person(s) concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.

(v) Every order passed shall be dated and signed by the adjudicating officer.

(vi) **Forwarding of copy of an order:** The adjudicating officer shall send a copy of the order passed by it to the concerned company or officer who is in default and to the Central Government.

(vii) **Powers of Adjudicating Authority:** While holding an inquiry, the adjudicating officer shall have the following powers, namely:-

(a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case;

(b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry.

(viii) **Failure to be present before the adjudicating authority:** If any person fails, neglects or refuses to appear before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

(ix) **Consideration to following factors while levying penalty:** While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors or creditors as a result of the default;

(c) the repetitive nature of the default.

(x) **Sum to be credited to the Consolidation Fund of India:** All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.

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

(3) The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default stating any non-compliance or default under the relevant provision of the Act.

(4) The adjudicating officer shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default.

(5) Any person aggrieved by an order made by the adjudicating may prefer an appeal to the Regional Director having jurisdiction in the matter.

(6) Every appeal shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees In Rule 4 of the Companies(Adjudication of Penalties) Rules, 2014.

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

(8) (i) Where company does not pay the penalty imposed by the adjudicating officer or the Regional Director within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.

(ii) Where an officer of a company who is in default does not pay the penalty within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.
**TEST YOUR KNOWLEDGE**

**Question 1**

*Which offences are deemed to be Non-cognizable under the Companies Act, 2013? Enumerate the relevant provisions.*

**Answer**

**Offences to be non-cognizable:** According to section 439 of the Companies Act, 2013:

(i) Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub-section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

(ii) No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf. Whereas in case of a government companies, court shall take cognizance of an offence 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. [Vide Notification G.S.R. 463(E) dated 5th June 2015]

(iii) 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.

(iv) Nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

(v) Where the complainant is the Registrar or a person authorised by the Central Government, 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.

(vi) The above provisions 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.

(vii) The liquidator of a company shall not be deemed to be an officer of the company.

**Question 2**

*In the annual general meeting of XYZ Ltd., while discussing on the matter of retirement and reappointment of director Mr. X, allegations of fraud and financial irregularities were levelled against him by some members. This resulted into chaos in the meeting. The situation was normal only after the Chairman declared about initiating an inquiry against the director Mr. X, however, could not be re-appointed in the meeting. The matter was published in the newspapers next day.*
On the basis of such news, whether the court can take cognizance of the matter and take action against the director on its own?

Justify your answer with reference to the provisions of the Companies Act, 2013.

Answer

Section 439 of the Companies Act, 2013 provides that offences under the Act shall be non-cognizable. As per this section:

1. Notwithstanding anything in the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in sub section (6) of section 212 shall be deemed to be non-cognizable within the meaning of the said Code.

2. No court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof, except on the complaint in writing of the Registrar, a shareholder of the company, or of a person authorized by the Central Government in that behalf.

Thus, in the given situation, the court shall not initiate any suo moto action against the director Mr. X without receiving any complaint in writing of the Registrar of Companies, a shareholder of the company or of a person authorized by the Central Government in this behalf.

Question 3

What are provisions related to constitution and working of the Mediation and Conciliation Panel as per Section 442 of the Companies Act, 2013?

Answer

Mediation and Conciliation Panel: 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 1\textsuperscript{st} April, 2014 vide notification dated 26\textsuperscript{th} 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:

(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.

**Question 4**

*What are the powers of the Central Government under the Companies Act, 2013 regarding:*

(i) To appoint company prosecutors

(ii) To Appeal against acquittal

**Answer**

(i) **Power of Central Government to appoint company prosecutors:** 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.

(a) **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

(b) **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.

(ii) **Appeal against acquittal:** According to section 444 of the Companies Act, 2013, the Central Government may, in any case arising under this Act, direct –

(a) any company prosecutor, or

(b) 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.

**Question 5**

*What is the object of Constituting Panel for Mediation and Conciliation under the Companies Act, 2013? Who can file application for mediation and conciliation?*

**Answer**

Under section 442 of the Companies Act, 2013, it is provided that the Central Government shall maintain a panel of experts for mediation between the parties during pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under the Act. In common parlance, mediation means intervention of some third party in a dispute with the intention to resolve the dispute. Similarly, conciliation means the powers of adjusting or settling disputes in a friendly manner through extra-judicial means. The object behind the panel is to dispose the matter pending before the Government / Tribunal as mentioned above.

Filing of application: Application for mediation and conciliation can be made by:

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

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

**Question 6**

*Mr. Joseph, a member of Armaments Ltd., is aggrieved due to failure of the company to make payment of dividend declared in the AGM held in August, 2015. He makes a complaint, in writing, before the court of competent jurisdiction within the prescribed period of limitation, but the court refused to take cognizance of the alleged offence. Explain the legal position in this regard under the Companies Act, 2013.*
Also state the offences under the Companies Act, 2013 which are cognizable and which are non-cognizable.

Answer

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.

In the present case, Mr. Jose ph, a member of Armaments Ltd. is aggrieved due to failure of the company to make payment of dividend declared in the AGM held in August 2015. He makes a complaint, in writing, before the court of competent jurisdiction within the prescribed period of limitation, but the court refused to take cognizance of the alleged offence.

Here, the Court shall take cognizance of the offence relating to non-payment of dividend as the shareholders have made a complaint in writing before the competent jurisdiction.

Cognizable and non-cognizable offences: Overriding the provisions given under the Code of Criminal Procedure, 1973, every offence under the Companies Act, 2013 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 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.