



THE INSTITUTE OF  
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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(Under the jurisdiction of Ministry of Corporate Affairs)

# SUPPLEMENT PROFESSIONAL PROGRAMME (NEW SYLLABUS)

*for*

*December, 2021 Examination*

## RESOLUTION OF CORPORATE DISPUTES, NON-COMPLIANCES & REMEDIES

### MODULE 2

### PAPER 6

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## Lesson 2 - Corporate Disputes

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

In Section 452(2) of the Companies Act, 2013, the following proviso has been inserted, namely:—

"Provided that the imprisonment of such officer or employee, as the case may be, shall not be ordered for wrongful possession or withholding of a dwelling unit, if the court is satisfied that the company has not paid to that officer or employee, as the case may be, any amount relating to—

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

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

*For details: [https://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)*

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

## Lesson 5 - Regulatory Action

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

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

#### Old Penal Provision

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

#### New Penal Provision

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

*For details:*

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

[https://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)

### 2) Amendments under the Companies(Amendment) Act, 2019 and the Companies(Amendment)Act, 2020

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

### **(a) Provisions on CSR Spending**

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

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

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

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

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

#### **Section 135(6)**

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

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

#### **Section 135 (7)**

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

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

**The amended Section 135(7) is as under:**

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

**Section 135(8)**

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

For details: [https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT\\_01082019.pdf](https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf)

[https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc0OA==&docCategory=Notificati  
ons&type=open](https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc0OA==&docCategory=Notificati&type=open)

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

**(c) Set off of excess spending on CSR**

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

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

### *Details of Changes*

*This Amendment inserted a new provision that in case of the companies, which spends an amount in excess of the requirement of 2%, will be allowed to set off such excess amount out of their obligation to spend for such number of succeeding financial years as prescribed in the CSR rules.*

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

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

*For details: [https://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)*

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

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

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

### **Old Penal Provision**

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

### **New Penal Provision**

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

*For details:*

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

[https://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)

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

### **Old Penal Provision**

#### **Section 446B**

Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be liable to a penalty which shall not be more than one half of the penalty specified in such sections.

### **New Penal Provision**

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

Explanation.—For the purposes of this section:

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

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

*For details: [https://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)*

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



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

In Section 452(2) of the Companies Act, 2013, the following proviso has been inserted, namely:—

"Provided that the imprisonment of such officer or employee, as the case may be, shall not be ordered for wrongful possession or withholding of a dwelling unit, if the court is satisfied that the company has not paid to that officer or employee, as the case may be, any amount relating to—

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

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

*For details: [https://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)  
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjcIMO==&docCategory=Notifications&type=open>*

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

In Section 454(3) of the Companies Act, 2013, the following proviso has been inserted, namely:—

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

*For details: [https://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)  
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjcIMO==&docCategory=Notifications&type=open>*

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

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

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

*Details of Changes:*

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

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

*Details of Changes:*

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

*For details: [https://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)*

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

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

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

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

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

Provided that the Central Government may, by notification, after consultation with the Chairperson, establish such number of Benches of the Appellate Tribunal, as it may consider

necessary, to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002 and under section 61 of the Insolvency and Bankruptcy Code, 2016.

*For details:* [https://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)  
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjcIMQ==&docCategory=Notifications&type=open>

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

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

*Details of Changes:*

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

*For details:* [https://www.mca.gov.in/Ministry/pdf/AmendmentAct\\_29092020.pdf](https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf)  
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjcIMQ==&docCategory=Notifications&type=open>

**Note: Students appearing in December, 2021 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 31<sup>st</sup> May, 2021.**