

# Special Courts under Companies Act, 2013\*

## Introduction

The provisions related to Special Courts were provided under Chapter XXVIII of the Companies Act, 2013. Although the provisions related to Special Courts i.e. Section 435 to 438 & 440 were not notified for being in force till 2016. In the Report of Companies Law Committee chaired by Shri Tapan Ray dated February 1, 2016 noted that the establishment/designation of Special Courts under the Act would result in faster prosecution of defaulting companies. The Committee recommended the early establishment/designation of the Special Courts. It was also recommended to be considered that the Special Courts at the subordinate level may also be established, in addition to the Sessions Judge or Additional Sessions Judge. The Central Government is empowered to establish or designate Special Courts by notification for the purpose of providing speedy trial of offences under the Companies Act, 2013. Consequently, Ministry of Corporate Affairs notified sections 435 to 438 and section 440 vide notification dated May 18, 2016. The purpose of Special Courts is to provide speedy trial of offences under the Companies Act, 2013. Although, the option of approaching the regular courts for trial of offences under Companies Act was available to complainants but for the want of expertise and special attention required for these offences, it was necessary to establish the Special Courts. The Special Courts are generally designated from the existing setup of the court system dealing with the criminal offences. The Special Courts were facilitated by Companies (Amendment) Act, 2019 by strengthening Internal Adjudication Mechanism, resulting into reduced burden on Special Courts and allowing them to focus on serious offences under the 2013 Act.

## Genesis of Special Courts

The special court shall consist of a single judge holding office as Session Judge or Additional Session Judge for offence providing for imprisonment of two years or more and Metropolitan Magistrate or a Judicial Magistrate of the First Class, in any other case 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. Section 60 of the Companies (Amendment) Act, 2020 has given exception to Section 452 from the applicability of provisions related to Special Courts. The excluded section provides for Punishment for wrongful withholding of property by the officer or employee of a company.

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*Views expressed in the Article are the sole expression of the Author and may not express the views of the Institute.*

## Number of Special Courts

The Ministry of Corporate have issued 18 circulars as on date designating various courts as Special Courts. The state wise inclusive list of courts is as under:

States	Number of Special Courts
UT of Dadra & Nagar Haveli and Daman & Diu, Goa, Gujarat, Madhya Pradesh, UT of Andaman & Nicobar Islands, West Bengal, NCT of Delhi, Chhattisgarh, Rajasthan, Punjab, Haryana, UT of Chandigarh, Puducherry, Manipur, Meghalaya, Telangana, Andhra Pradesh, Telangana, Bihar, Karnataka, Odisha, Nagaland, Manipur & Arunachal Pradesh.	1
Tamil Nadu, Kerela, UT of Lakshadweep, Assam and Uttar Pradesh.	2
UT of Jammu & Kashmir, Maharashtra and Uttarakhand.	3
<b>Total Number of Courts</b>	<b>41</b>

Recently, Ministry of Corporate Affairs has designated 5 Special Courts in respect of the cases filled by SEBI vide notification dated November 27, 2020. The place wise list of these courts is as under:

Place	Number of Courts
Mumbai	2
Kolkata and Chennai	1
<b>Total</b>	<b>4</b>

## Complaints before the courts and Offence to be Non Cognizable

The offences under Companies Act, 2013 are deemed to be non-cognizable, except the offences covered under Section 447 (Punishment for Fraud). The complainants under the Companies Act, 2013 are restricted and may include Registrar of Companies, a shareholder/member of the Company, any person authorized by the Central Government, any person authorized by the Securities and Exchange Board of India. The Special Courts shall take cognizance only on the complaint of persons/authorities mentioned under Section 439 of the Companies Act, 2013.

## Jurisdiction of Special Courts & NCLT

Indicative matter under Special Courts	Indicative matters under NCLT
1. All the cases in which imprisonment is provided for two years or more, by a designated Special Court consist of a single judge holding office as Session Judge or Additional Session Judge. <ul style="list-style-type: none"> <li>• Contravention of provisions related to loan, guarantee etc. for the purpose of purchase or subscription for any shares in the company or in its holding company.</li> <li>• Matters pertaining to knowingly failure to distribute dividends.</li> <li>• Matter related to Fraud including repayment of any debt.</li> </ul>	1. Matters pertaining of Oppression & Mismanagement.
	2. Matters related to compromise or arrangements with creditors and members.
	3. Class Action by members or depositors.
	4. Rectification of register of members.
	5. Confirmation on reduction of share capital by the company.
	6. Calling of Annual General Meeting or other meeting of members in case of default in holding of General Meetings.
2. All other cases in which the imprisonment is provided for less than 2 years, by a designated Special Court consists of a Metropolitan Magistrate or a Judicial Magistrate of the First Class. <ul style="list-style-type: none"> <li>• Contribution in contravention of the provisions relating to Prohibitions and restrictions regarding political contributions.</li> <li>• Disobeying the direction issued by the Registrar or the inspector under section 207.</li> <li>• Disobeying the direction issued by the Registrar or the inspector under section 217.</li> </ul>	7. Matters pertaining to Amendment of Articles for public company into a private company.
	7. Matters related to issue and transfer of securities; and non-payment of dividend.
	8. Cancellation of variation in the Rights of Shareholders.
The jurisdiction of the courts are decided on the basis of registered office of the Company or if more than one court having jurisdiction, as may be specified by the High Court.	
High Court is the appellate authority for Special Courts and NCLAT is appellate authority for NCLT.	

### Powers of the Special Court

Under Companies Act, 2013, the judicial magistrate or executive magistrate may authorize the detention for 15 Days or 7 Days only respectively. These magistrate(s) are also empowered to forward the person accused to the Special Court without unnecessary detention. The Special Courts are empowered to take cognizance of the offence without accused being committed for trial upon perusal of the police report and also to try an offence under the Code of Criminal Procedure, 1973 with which the accused may be charged at the same trial. The Special Courts may also try an offence summarily for which the imprisonment is provide for a term not exceeding three years. However, the punishment for conviction in a summary trial is limited to

one year. The provisions of reversion back to the regular trial and condition thereto are also provided under the act. The person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

### **Transitional Provisions**

The transitional provisions are added and power rests with the Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class for trial of offence under the act. The powers of the high court relating to transfer cases and appeals is reserved specifically as per the provisions of section 407 of Criminal Procedure Code.

### **Conclusion**

The need and benefits of designating the special courts may be seen in the Para 6 of the Order dated 14.12.2018 passed by the Special Court **in the matter of Serious Fraud Investigation Office and Ors. and Rahul Modi and Ors. The extracts is as under:**

Admittedly as per the provisions of Section 212(3) of the Companies Act, the investigations ordered are required to be completed within the specified time. But the issue is even if it not so done, what should be consequences and whether further proceedings or investigations shall be unlawful. The answer to the mind of this court is simply no because the time frame mentioned is to complete the investigations in a time bound manner but the said time can be extended from time to time by the same authority.

The quantum of monetary impact on economy involved in corporate cases and the expertise required to deal with these cases swiftly, undoubtedly substantiates the need and importance of designation and establishment of Special Courts.

### **Reference**

- <http://ebook.mca.gov.in/default.aspx>
- [https://www.mca.gov.in/Ministry/pdf/Report\\_Companies\\_Law\\_Committee\\_01022016.pdf](https://www.mca.gov.in/Ministry/pdf/Report_Companies_Law_Committee_01022016.pdf)
- [https://main.sci.gov.in/supremecourt/2019/231/231\\_2019\\_Judgement\\_27-Mar-2019.pdf](https://main.sci.gov.in/supremecourt/2019/231/231_2019_Judgement_27-Mar-2019.pdf)

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