

# *Scanner* Appendix

**CS Professional Programme Group - I  
(2022 Syllabus)  
(Solutions of June - 2024)**

**Paper - 2 : Drafting, Pleadings and Appearances**

## **Chapter - 2 : General principles of Drafting**

**2024 - June [4A] (Or) (iii) Meaning of E-stamping:** E-stamping is a computer based application and a secured electronic way of stamping documents.

The prevailing system of physical stamp paper/franking is being replaced by E-stamping system. The Stock Holding Corporation of India Limited is the Central Record Keeping Agency (CRA). E-Stamping is a computer based procedure and a secure manner for the state to pay non- judicial stamping duties. The prevailing system of physical stamp paper / franking is being replaced by E-Stamping system.

### **Benefits of E-stamping:**

1. E-stamps are less time-consuming;
2. They are very easily accessible;
3. They save cost; e-Stamp Certificate generated is tamper proof;
4. e-Stamp Certificate generated has a Unique Identification Number;
5. they are Easily accessible, they are Secure and user friendly.

## **Chapter - 3 : Laws relating to Drafting and Conveyancing**

**2024 - June [2] (a) Case Law:** The facts of the given situation are similar to the facts of the case Chinnaya v. Ramaya, (1882) 4 Mad. 137. In this case, a lady by a deed of gift made over certain property to her daughter directing her to pay an annuity to the donor's brother as had been done by the donor herself before she gifted the property. On the same day, her daughter executed in writing in favour of the donor's brother agreeing to pay the

annuity.

Afterwards the donee declined to fulfil her promise to pay her uncle saying that no consideration had moved from him. The Court, however, held that the uncle could sue even though no part of the consideration received by his niece moved from him. The consideration from her mother was sufficient consideration.

**Conclusion:** it can be said that the contention of Narmada is not tenable. In this case, the Court held that the uncle could sue even though no part of the consideration received by his niece moved from him.

The consideration from her mother was sufficient consideration. Unlike under English law, in India, privity of consideration is not strictly applicable. It means that consideration may be paid by parties or any other person.

#### **Chapter - 4 : Drafting of Agreements, Deeds and Documents**

**2024 - June [3]** (a) Where a Court sends a Show Cause Notice, the person to whom such notice is given must give it the highest priority. The show cause notice must not be taken lightly and its seriousness should be understood. The reason being that by sending a reply to the show cause notice, he/she can avoid criminal charges put on him and also the liabilities which arise from them.

Accordingly, Abdul Rehamn must consider the following points while writing the reply to the show cause notice:

1. A proper explanation has to be provided at the earliest.
2. It should be kept as brief as possible.
3. It must be written in such a manner that the Court is satisfied with the fact that he/she is aware of the gravity of the situation.
4. It must give a reasonable excuse.

Any individual must draft his/her reply in such a way that if any layman would read it he should find the same as reasonable. Moreover, always sound humble in your reply and also sound sorry for the same. Lastly, be always very careful to file the reply within the specified time limit mentioned in the notice.

**Case Law:** In case of Meenakshi v. State of Haryana, Considering the chain of facts and highlighting the reply filed by the petitioner to the notice under Section 340, the Court clarified that there was nothing illegal in it and did not

amount to miscarriage of justice at all, for the opportunity of being heard was given to the petitioner as she was allowed to file reply to the show- cause notice. It is the non-acceptance of the forgiveness sought that has led to the filing of the complaint in the Court. Inderjit Singh, J accordingly held that there is no merit in the case and accordingly, dismissed the petition.

**2024 - June [3]** (b) Reply to Legal Notice under Section 138 of Negotiable Instruments Act, 1881

Name of the Advocate XXXXX  
Advocate, New Delhi - XXXXXX  
Date: 10.04.2024

To,  
Sh ..... Advocate  
..... Delhi High Court  
New Delhi - xxxxxx

**SUB: REPLY TO YOUR LEGAL NOTICE U/S 138 NEGOTIABLE INSTRUMENT ACT, 1881 DATED .....**

Dear Sir

Your legal notice dated ..... has been placed before me by my client Mr. Y at Connaught Place, New Delhi-xxxxxx and I, the undersigned, have been instructed to reply to your said notice by my client on his behalf as under:

- A. That, at the outset you are being informed that the notice under reply, you have sent on behalf of your above said client, contains false and frivolous facts provided by your said client against my client, thereby your notice under reply deserves to be withdrawn, with unconditional apology by your client, because the claim made by you is without any basis and is based upon concocted facts, as no claim is made out against my client and in favour of your client.
- B. That, in fact, my client did not place any order for supply of machines whatsoever, as alleged by you. But, with a view to dispose off your old stock of outdated machines, you requested my client to place them at his shop for sale. Keeping in view old relations my client agreed to your client's proposal, which was subject to the

condition that payment would be made only after those machines were sold out.

- C. That, however, your client has cheated my client by misusing that cheque which is not in the handwriting of my client. As a matter of fact, your client has committed fraud in the matter and, consequently, is liable to be proceeded under the relevant provisions of law.
- D. That, therefore, it is denied that the cheque in question was issued by my client to your client in discharge of any liability. Rather, your client has misused that blank cheque with ulterior motives, after forging the same.

**Reply on merits**

- 1. That the contents of para 1 of your legal notice are wrong and denied and whatsoever is stated above is reiterated. It is denied that my client purchased from you client any machines whatsoever.
- 2. That the contents of para 2 are denied for want of knowledge. However, it is reiterated that my client never issued any cheque, in the manner as alleged by you.
- 3. That, in reply to para 3 of your legal notice, what is stated above is reiterated. It is submitted that your client was not entitled to use that cheque for encashment and deposit the same in his bank.
- 4. That the contents of para's 4 & 5 are denied for want of knowledge. However, it is reiterated that any cheque was issued in discharge of any liability towards my client to your client.
- 5. That the contents of para 6 need no comments. However, it is denied that my client committed any offence whatsoever.

In view of the above provision you are being advised to further advice your client to withdraw the said notice under reply and further advise him not to drag my client in any frivolous litigation, failing which my client shall be constrained to contest the same, besides proceeding against your client under the relevant provisions of law, at the costs, risks and consequences of your client only. Copy kept for future record and reference.

Yours Sincerely,

Advocate

**2024 - June [4] (b) Meaning of Alternate Dispute Resolutions:**

Alternate Dispute Resolution (ADR) is a mechanism of dispute resolution that is non adversarial, i.e. working together co-operatively to reach the best resolution for everyone.

ADR can be instrumental in reducing the burden of litigation on courts, while delivering a well- rounded and satisfying experience for the parties involved. It provides the opportunity to "expand the pie" through creative, collaborative bargaining, and fulfil the interests driving their demands.

**Types of Alternate Dispute Resolutions:**

**1. Arbitration**

The dispute is submitted to an arbitral tribunal which makes a decision on the dispute that is mostly binding on the parties. It is less formal than a trial, and the rules of evidence are often relaxed. Generally, there is no right to appeal an arbitrator's decision. Except for some interim measures, there is very little scope for judicial intervention in the arbitration process.

**2. Conciliation**

A non-binding procedure in which an impartial third party, the conciliator, assists the parties to a dispute in reaching a mutually satisfactory agreed settlement of the dispute. Conciliation is a less formal form of arbitration. The parties are free to accept or reject the recommendations of the conciliator. Although if both parties accept the settlement document drawn by the conciliator, it shall be final and binding on both.

**3. Mediation**

In mediation, an impartial person called a "Mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

**2024 - June [4A] (Or) (i)** A Licence is defined under Section of 52 of the Indian Easements Act, 1882, which reads as under:

"Where one person grants to another, or to a definite number of other persons, right to do, or continue to do, in or upon the immovable property of

the grantor, something which would, in the absence of such right be unlawful and such right does not amount to an easement or an interest in property, the right is called Licence".

1. Licence is a grant of a right to do something upon an immovable without creating interest in the property. It is therefore, distinguishable from an allied grant such as a lease or an easement.
2. A licence is notionally created where a person is granted the right to use the premises without becoming entitled to the exclusive possession of them or the circumstances and conduct of the parties show that all that was intended was that the grantee should be granted a personal privilege with no legal interest.
3. A licence is a personal right given to the licensee and, therefore, Section 56 of the Easements Act, 1882 States that licence cannot be transferred by the licensee or exercised by his servants and agents.

#### **Chapter - 6 : Documents under Companies Act, 2013**

**2024 - June [1]** (a) XYZ Ltd. can opt for passing resolutions through circulation as per the provisions of section 175 of the Companies Act, 2013 as an alternate way to approve the strategic partnership with the tech start-up. The said resolution may be circulated in draft, together with necessary papers, if any, to all the directors or members of the Committee at their address registered with the Company in India by hand delivery or courier/ post or through electronic means including e-mail/fax. The same must be approved by majority of directors or members, who are entitled to vote on the resolution.

A resolution passed through circulation shall be noted at a subsequent meeting and made part of minutes of such meeting.

Further, where not less than 1/3<sup>rd</sup> of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board.

(b) Date: .....

On the basis of the reference received from W, the following question has been framed for legal opinion:

Question: Whether the attachment of Bank Account of director is sustainable merely on the ground of allegation against Company.

1. Section 83 of the Central Goods and Services Act, 2017.

#### **Provisional attachment to protect revenue in certain cases**

- (1) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.
1. Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).
- (2) The Delhi High Court in the case of Roshni Sana Jaiswal v. Commissioner of Central Taxes GST has inter alia decided as under: The petitioner claimed, in her voluntary statement, that she was paid Rs. 1.50 crores in the FY 2019- 2020 for rendering services in her capacity as a mentor/advisor to Milkfood Ltd. Therefore, even if we assume, for the moment, that, since investigations are on against the taxable person, and therefore, proceedings are pending under section 67 of the Act, there is nothing placed on record to show that there was material available with the respondent, linking the petitioner to purported fake invoices.
- In other words, in the absence of such material, the impugned action concerning provisional attachment of the petitioner's bank accounts, which is otherwise a "draconian" step, was unsustainable. In the zeal to protect the interest of the revenue, the respondent cannot attach any and every property, including bank accounts of persons, other than the taxable person.

**Analysis:**

In the above provisions and the case decided by the Hon'ble High Court of Delhi, attachment of the petitioner's bank accounts may be unsustainable. Disclaimer: The opinions expressed herein are given to you solely for your use and may not be relied upon by any other person or entity or for any purpose whatsoever without our prior written consent. The opinions herein are provided as legal opinions only, and not as representations of fact. The opinions expressed herein are as of the date of this letter and we have no obligation to update these opinions for any period following the date of this letter.

I advice accordingly. Sincerely yours,

(P)

(Name & Signature)

- (c) Under section 73 of Indian Contract Act, 1872, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him, which naturally arose in the natural course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.
- (i) No compensation shall be given to any remote and indirect loss or damage sustained by reason of breach.
  - (ii) Compensation in regard to failure to discharge obligation which resembles those created by the contract.
  - (iii) An obligation resembling those created by contract has been incurred and has not been discharged, any person affected by the failure to discharge it is entitled to receive the same compensation from the party in default as if such person had contracted to discharge it and had broken his contract.
  - (iv) Compensation for loss or damage which naturally arose in the usual course of things from such breach.
  - (v) Compensations to be recovered for loss or damage which the parties knew or which would have naturally arisen in the usual course, to be likely to result from the breach of it.

"Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be either such as may reasonably and fairly be considered as arising naturally, i.e., according to usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it."

XYZ Ltd. is advised to take action for the loss caused in accordance with above mentioned provision and case law.

- (d) Considerations to be taken into account while preparing the Tender document are as under:
1. Name and address of the organisation: The name and address of the organisation be mentioned on the initial page of the document.
  2. Subject of the document: The subject of the tender documents to be mentioned in clear and comprehensive manner in order to attract the attention of the Bidder.
  3. Index of the tender document: The index of the documents can make the document convenient for the prospective bidder.



4. Important dates and necessary information: The information such as Tender Publication Date, Last date and time for sending Pre-Bid Queries in writing, Cost of Tender, Earnest Money Deposit, Pre-Bid Meeting date, time & venue, Last Date & address of Submission of Bids, Date, time & Venue of opening of Technical Bids and Financial Bids, contact details etc. should be provided in the tender document.
5. Job Description: The job description in details should be mentioned in the tender document in order to acquaint prospective bidders with the requirements attached with the Job and evaluate and prepare their bids accordingly.
6. Division of tender documents in parts: The tender document be preferably prepared asking for Bid submissions in two parts i.e. Technical Bid and Financial Bids.
7. Fees and Deposits: The tender document should mention the fees and deposits commensurating the nature and quantum of work. The cost of the tender document may be required from the prospective bidder. Further, the provisions relating to Earned Money Deposit and Security Deposit are also to be placed in the tender document.
8. Conditions for forfeitures of EMD: The clause providing for the circumstances in which EMD may be forfeited to be mentioned in the tender document. The general conditions in which EMD be forfeited are as under:
  - i. If the bidder withdraws its bid;
  - ii. the selected bidder delays or does not accept the Purchase / Work Order;
  - iii. the selected bidder fails to supply goods / services as per the terms of the Tender or fails to execute Purchase / Work Order.
9. Pre Bid Meeting: Pre Bid Meetings be conducted in order to provide any clarification sought on the tender.
10. Scope of Work: The scope of work in details be mentioned in the tender documents.
11. Mention of Technical and administrative requirements: The technical and administrative requirement be mentioned comprehensively in order to prevent the halt in the Job at the later stage. The document should be clear and specific with respect to technical and administrative requirements for performing the Job.
12. Eligibility Criteria: Essential Requirements are to be mentioned in the tender document.

13. Necessary forms and documents: Formats such as of Technical Bids, Financial bids, past experience of the bidder, Tender Acceptance Letter, Standard Terms and Condition of Agreement may be mentioned in the tender document.

**(e) Prohibitions must be included in e-contracts**

The contract must specifically prohibit the following:

1. Using "deep-link", "page-scrape", "robot", "spider" etc. to access, acquire, copy or monitor any portion of the service.
2. Reproducing the navigational structure or presentation of the service.
3. Circumventing the navigational structure or presentation of the service.
4. Attempting to gain unauthorized access to any portion or feature of the service.
5. Harvesting or collecting user names, email addresses or other member identification information.
6. Probing, scanning or testing the vulnerability of the service.
7. Tracing information relating to other users.
8. Using the service for any unlawful purpose.

**Limitation of liability of XYZ Ltd.**

The contract must clearly mention that 'XYZ Ltd' will not be liable to the customer for:

1. Access delays or interruptions to the 'XYZ Ltd' web site.
2. The loss of registration or processing of an order.
3. The unauthorized use of the customer's account.
4. Deletion of, failure to store, or failure to process or act upon email messages sent by customers to 'XYZ Ltd' staff.
5. Errors taking place with regard to the processing of the customer's orders.
6. Any direct, indirect, incidental, special consequential or exemplary damages incurred by the customer pursuant of his use of the 'XYZ Ltd' website.
7. Any loss of profit, any loss of goodwill or business reputation, any loss of data suffered, cost of procurement of substitute goods or services, or other intangible loss incurred by the customer pursuant of his use of the 'XYZ Ltd's services.
8. Any loss or damage incurred by the customer as a result of relationship or transactions with advertisers using the website.
9. Changes in or cessation of the 'XYZ Ltd' services.
10. Customer's failure to keep his account information, passwords etc

secure and confidential

**2024 - June [2] (b) Simple mortgage:** In a simple mortgage, the mortgagor without delivering possession of the mortgaged property binds himself personally to pay the mortgage money and agrees expressly or impliedly that if he fails to pay the debt and interest in terms of the mortgage deed, the property may be sold and the proceeds applied in payment of the mortgaged money.

This is true that in a simple mortgage, the security for the debt is two-fold:

- (a) the personal obligation; and
- (b) The property.

**Case Law:** In *Ram Narayan Singh v. Adhindra Nath*, the Court held that the fact that some immovable property has been mentioned as security for its repayment does not displace the personal liability of mortgagor to repay the loan with interest.

**2024 - June [2] (c) Meaning of Amalgamation:** means merging of two corporations, destroying both in the process and creating an entirely new entity i.e. a new financial organization. This emergence allows the newly formed company to inherit the assets and liabilities of its constituent parties to incorporate within as a sort of successor to both of them being bigger and better than both as well.

**Case Law:** In case of *Speed line Agencies Vs. T Stanes & Co. Ltd* - Supreme Court has decided that, in amalgamation, all proceedings in which Transferor Company was a party be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the Transferor Company as if the Scheme had not been made. The above would be so with effect from the effective date.

In other words, when a transferor company stands dissolved due to amalgamation, its right under the decree for eviction devolves on the transferee company.

**2024 - June [3] (c) Resolution for Approval and Adoption of CSR Policy**  
"RESOLVED THAT pursuant to section 135 of the Companies Act, 2013 as amended from time to time and such other provisions as may be applicable and based on the recommendation of the CSR committee, the Board of Directors of the company do and hereby approve and adopt a CSR Policy.

RESOLVED FURTHER THAT the CSR Policy be and is hereby approved and signed by Mr./Ms.

.....Director.

RESOLVED FURTHER THAT the Directors of the company be and are hereby authorized severally to take necessary steps to give effect to the above resolutions and do all such acts, deeds and things as may be required to ensure compliance of the CSR Policy including disseminating the contents of policy on the website of the company."

### **Chapter - 7 : Art of Opinion Writing**

#### **2024 - June [4] (c)**

1. If, after accepting the Audit Engagement, the Appointing Authority imposes a limitation on the scope of the audit which, in the opinion of the Auditor, is likely to result in the need to express a modified opinion or to disclaim an opinion, the Auditor shall request the Appointing Authority to remove the limitation.
2. If the Appointing Authority refuses or fails to remove the limitation, the Auditor shall communicate the matter to the Management and determine whether it is possible to perform alternative procedure to obtain sufficient and appropriate Audit Evidence.
3. If the Auditor is unable to obtain sufficient and appropriate Audit Evidence, the Auditor shall determine the implications as follows:
  1. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be nonmaterial, the Auditor shall modify the opinion;  
or
  2. If the Auditor concludes that the possible effects of unavailable Audit Evidence could be material, the Auditor shall express disclaimer of opinion.

**2024 - June [4A] (Or)** (ii) Generally, opinions include legal conclusions concerning the corporate nature and existence of the Company and its ability to transact business.

- They also often include legal conclusions concerning the good standing and ability of the Company to transact business in other jurisdictions.
- These opinions customarily are based on certificates of public officials

in the various jurisdictions involved. The principal certificate among them is the certified copy of the Articles of Incorporation, together with amendments.

- This certification represents conclusive evidence of the formation of the corporation and prima facie evidence of its existence for all purposes.
- Certain certificates may be required from various state agencies. For instance in loans backed by mortgage of immovable property, certificates showing the title to the property may be required.
- Many states have implemented websites on which such information can be accessed at any time. The information on any particular website can only be relied upon as current to the extent specified by the state agency responsible for that website.
- Because certificates of public officials will normally bear a date before the delivery of the opinion, the opinion giver must decide what additional verification, if any, is necessary for purposes of the opinion.
- Additional verification may or may not be necessary depending upon the facts and circumstances of the case.
- In general, customary practice does not require that every certificate be updated.
- Opinion recipients routinely accept opinions that in part are based on certificates of a reasonably recent date.

### **Chapter - 8 : Commercial Contract Management**

**2024 - June [4]** (a) Compensation under quantum meruit is awarded for the services rendered by the contractor when the payment thereof is not fixed by the contract.

Quantum meruit is a right which arises outside a construction contract. A quantum meruit claim arises, where work is done or services rendered by the contractor for the employer or owner, in circumstances which entitle the party doing the work or rendering the services to receive a reasonable additional remuneration, the situation being one where either there is no contract or there is a contract but the particular situation is not covered under that contract.

The three conditions under section 70 of Indian Contract Act, 1872 are as

follows:

1. The first condition is that the claimant should either lawfully do something for another person or deliver something to him.
2. The second condition is that while doing or delivering something, the claimant must not be acting gratuitously; and
3. Thirdly, the person for whom something is done or to whom something is delivered must enjoy the thing done for or delivered to him as the case may be.

### **Chapter - 9 : Judicial & Administrative framework**

**2024 - June [5]** (a) The e-Courts Mission Mode Project, is a Pan-India Project, monitored and funded by Department of Justice, Ministry of Law and Justice, Government of India for the District Courts across the country.

#### **The objective of the e-court mission:**

1. To provide efficient & time-bound citizen centric services delivery as detailed in e-Court Project Litigant's Charter.
2. To develop, install & implement decision support systems in courts.
3. To automate the processes to provide transparency in accessibility of information to its stakeholders.
4. To enhance judicial productivity, both qualitatively & quantitatively, to make the justice delivery system affordable, accessible, cost effective, predictable, reliable and transparent.

The website [https://ecourts.gov.in/ecourts\\_home/index1.php](https://ecourts.gov.in/ecourts_home/index1.php) provides the updated data with respect to High Court Complexes'/District and Taluka Court Complexes' Pending cases, disposed cases and cases listed as on date. The parties can search the status of the cases, caveats and courts orders online.

The services of the Supreme Courts are also available on the website <https://main.sci.gov.in/>. The services inter alia includes:

1. Cause List
2. Latest Updates
3. Latest Judgments
4. Listing notices
5. E-SCR
6. Online Appearances

7. Live Streaming of Cases
8. Physical Hearing (Hybrid Options).
  - (b) Section 115 of the Code of Civil Procedure, 1908(CPC) empowers the High Court to satisfy itself upon three matters, viz.,
    - (a) that the order of the subordinate court is within its jurisdiction;
    - (b) that the case is one in which the court ought to exercise jurisdiction; and
    - (c) that in exercising jurisdiction the court has not acted illegally, that is, in breach of some provision of law, or with material irregularity.

If the High Court is not satisfied upon those three matters, it can interfere with the order of the subordinate courts.

If the High Court is satisfied upon those three matters, it does not interfere because it differs, however profoundly, from the conclusions of the subordinate court upon questions of fact or law.

The High Court will not interfere with an incorrect decision of the lower court where there is no question of lack of jurisdiction or material irregularity in procedure. Where, there is a willful disregard or conscious violation of a rule of law or procedure the case is one of material irregularity calling for interference in revision.

Further, as per section 115(1) of CPC, the High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto along with the satisfaction of the Court on above mentioned three matters.

Conclusion in the given it can be said that if appeal does not lie from the order the court can interfere with the decision of subordinate court. But if "the appeal lies from the order", the court should not interfere with the decision of subordinate court.

- (c) Necessary facts to include in the suit for the recovery of Interest from T are as follows:
  - (1) Where the plaintiff seeks interest, the plaint shall contain a statement to that effect along with the details set out.
  - (2) Where the plaintiff seeks interest, the plaint shall state whether the plaintiff is seeking interest in relation to a commercial transaction within the meaning of section 34 of the Code of Civil Procedure, 1908 and, furthermore, if the plaintiff is doing so under the terms of a contract or

under an Act, in which case the Act is to be specified in the plaint; or on some other basis and shall state the basis of that.

- (3) Pleadings shall also provides that:
- (a) the rate at which interest is claimed;
  - (b) the date from which it is claimed;
  - (c) the date to which it is calculated;
  - (d) the total amount of interest claimed to the date of calculation; and
  - (e) the daily rate at which interest accrues after that date.

### **Chapter - 11 : Art of Advocacy and Appearances**

**2024 - June [6A]** (Or) (ii) The objective of issuing the ICSI (Guidelines for Attire and Conduct of Company Secretaries), 2020 is to:

- (a) Provide the rules of etiquette and decorum for appearance before the courts, statutory bodies and quasi-judicial bodies such as NCLT, NCLAT, SEBI, CCI, etc.
- (b) Ensure respect for authority and to maintain dignity of the profession of company secretaries.
- (c) Prevent company secretaries from contemptuous behaviour to the judicial authorities.
- (d) Guide company secretaries as to which attire is considered unsuitable, unconventional or inappropriate and interfering with the orderly administration of justice.
- (e) Project a professional image amongst the regulators and build a brand for the profession of Company Secretaries.

### **Chapter - 12 : Application, Pentitions and Appeals under Companies Act, 2013**

**2024 - June [6]** (a) As per rule 27 of NCLT Rules, 2016, a document other than English language intended to be used in any proceeding before National Company Law Tribunal(NCLT) shall be received by the Registry accompanied by a copy in English, which is agreed to by both the parties or certified to be a true translated copy by authorised representative engaged on behalf of parties in the case or if the authorised representative engaged in the case authenticates such certificate or prepared by a translator



approved for the purpose by the Registrar on payment of such charges as he may order.

Appeal or petition or other proceeding shall not be set down for hearing until and unless all parties confirm that all the documents filed on which they intend to rely are in English or have been translated into English and required number of copies are filed into NCLT.

**Conclusion:** it can be said that refusal of the Registry is tenable.

**2024 - June [6]** (b) For the removal of a director, the following requirements are to be adhered to:

- A special notice shall be required of any resolution, to remove a director.
- On receipt of notice of a resolution to remove a director under section 169 of the Companies Act, 2013 the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be Conclusion on the resolution at the meeting.

In the above provisions the requirements are fulfilled but the notice is not sent from the place, where registered office is situated but was sent from some other place (Hassan in Karnataka).

The facts of the given case are similar to the case of Manmohan Singh Kohli (Capt.) v. Venture India Properties P. Ltd.

The given case, it was decided that the dispatch of notice is not bad in law because it is sent from some other post office which is not situated near to the company's registered or working office.

Conclusion: it can be said that the contention of the shareholder of Poornabodha Limited is not correct.

**2024 - June [6]** (c) **Nature of Offence which can be compounded:**

AS per Section 441 of the Companies Act 2013, any offence punishable under this Act (whether committed by a company or any officer thereof) not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine may be compounded by National Company Law Tribunal or Regional Director or any officer authorised by the Central Government. Therefore, offences which are punishable with fine only or with

imprisonment or fine or both, can be compounded.

**Jurisdiction for Compounding of Offence:**

The power of compounding which is vested with National Company Law Tribunal/Regional Director/ Person authorized by Central Government is categorized in a following arrangement:

- If the fine does not exceed Rs. 25 lakhs, the offence can be compounded by the Regional Director or any other officer as may be authorized by the Central Government;
- If the offence is punishable with fine exceeding Rs 25 lakhs, the same can be compounded by the National Company Law Tribunal.

**Chapter - 13 : Adjudications and Appeals under SEBI Laws**

**2024 - June [6A]** (Or) (i) AS per section 15J of SEBI Act, 1992, while adjudging quantum of penalty under 15-I or section 11 or section 11B, the Securities and Exchange Board of India or 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 as a result of the default;
- (c) the repetitive nature of the default.

**Case Law:** In the case of SEBI v. Bhavesh Pabari, a full bench of the Hon'ble Supreme Court held that an Adjudicating Officer (AO) has the right and discretion to determine the quantum of fine when any provisions specified in the SEBI Act or SCRA are not complied with.

The decision broadened the application of Section 15J of the SEBI Act, 1992 and highlighted that the three reasons listed therein must only be regarded as illustrative and not exhaustive in nature, hence allowing the AO to assess the punishment after a consideration of all aggravating and mitigating factors. This decision has evolved considerably over the years, to now recognise the ability of AOs to not impose penalties at all, even in cases where a non-compliance is identified, but is not significant enough to merit a penalty.

**Chapter - 14 : Appearance before other Regulatory and Quasi-judicial Authorities**

**2024 - June [6A] (Or) (iii) Appellate Authorities under the Competition Act, 2002:**

The following are the appellate authorities under the Competition Act, 2002:

1. **National Company Law Appellate Tribunal:** The NCLAT is a quasi-judicial body established under the Companies Act, 2013, and also acts as the appellate tribunal for competition- related matters. The NCLAT hears appeals against orders passed by the Competition Commission of India (CCI) and orders of the Director-General of the CCI. The NCLAT has the power to confirm, modify, or set aside any order passed by the CCI or the DG.
2. **High Courts:** High Courts have jurisdiction to hear appeals against the orders of the CCI or the DG. Appeals to High Courts are filed under Article 226 of the Constitution of India, which allows for the judicial review of decisions taken by administrative bodies. The appellate authorities play a critical role in ensuring the effective implementation of the Competition Act, 2002, and providing a mechanism for parties to challenge orders passed by the CCI or the DG.
3. **Supreme Court of India:** The Supreme Court of India is the highest court of appeal in the country and has the power to hear appeals against the orders of the NCLAT. Appeals to the Supreme Court are usually filed in cases where the NCLAT has erred in law or where there is a substantial question of law to be decided.

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