

**A. REGULATORS :**

**National Company Law Tribunal (NCLT or Tribunal) [Section 407 to 434]:**The 2013 Act provides for constitution of Tribunal and Appellate Tribunal with the objective of facilitating expeditious disposal of proceedings. All the matters, issues and disputes falling within the ambit of the 2013 Act will now be referred to NCLT. Appeal would lie before the Appellate Tribunal and thereafter can be challenged before the Supreme Court. High Courts will now have no jurisdiction in matters related to company law.

**National Financial Reporting Authority (NFRA) [Section 132]:**The 2013 Act also provides for constitution of NFRA which will substitute the National Advisory Committee on Accounting and Auditing Standards. NFRA will supervise and regulate the activities of auditors and companies and see that they are in compliance with accounting and auditing standards.

**Serious Fraud Investigation Office (SFIO) [Section 211]:** SFIO is an expert body established by Central Government in 2003 as a special organization to examine serious cases of fraud and scams received from Ministry of Company Affairs. The body was formed to carry out investigations under the provisions of the 1956 Act and was formed in light of the rise in white collar crimes and stock market scams. The 2013 Act now itself incorporates within its folds the mandate for setting up an investigative body and recognizes the already existing SFIO as the investigative body.

**Mediation and conciliation panel:** The new law constitutes a Mediation and Conciliation Panel ('Panel') consisting of such number of experts, and having such qualifications as may be prescribed for carrying out mediation between the parties during any proceedings pending before the central government, the NCLT or the Appellate NCLT.

The new law provides that parties to a dispute may voluntarily apply to the central government, NCLT or the Appellate NCLT (as the case may be) to refer the matter to the Panel. Alternatively, the central government, NCLT and the Appellate NCLT before which any proceedings are pending may, on its own, refer any matter pertaining to such proceedings to the Panel.

The time period provided for disposal of the matter by the Panel is 3 months from the date of reference.

**B. INVESTOR PROTECTION & FRAUD :*****Punishment for fraudulently inducing persons to invest money [Section 36 read with Section 447]***

The 2013 Act provides punishment for fraud by 'any person' who either recklessly or knowingly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into any agreement for, or with a view to, obtaining credit facilities from any bank or financial institution.

***Investigation [Section 213]***

The 2013 Act has strengthened the provisions relating to investigation and inquiry into the affairs of the company. It provides for special provision for freezing the assets of a company under investigation. Also, it requires the companies under investigation to intimate the NCLT before suspending and terminating any of its employees.

The Serious Fraud Investigation Office ('SFIO') has been provided with more powers under the new law. The SFIO will have the powers to scrutinize the companies suspected of frauds. The report filled by SFIO in a court for framing of charges will be equivalent to a police report under the Code of Criminal Procedure, 1973. Moreover, it will have power to arrest persons for suspected fraud.

#### ***Class action [Section 245]***

The 2013 Act provides for class action under the chapter 'Prevention of Oppression and Mismanagement' giving a right to members and depositors or any class of them being a minimum of 100 members or 100 depositors or holding a minimum shareholding or deposits to file an application before the NCLT seeking an order, such as, restraining the company from committing an act which is *ultra vires* the articles or memorandum; restraining the company from committing a breach of any provision of the memorandum or articles of a company; or passing an award for damages, compensation, demand or any suitable action from or against the company, its directors, auditors and in some cases experts, advisors or consultants to the company (on certain prescribed grounds). Failure to comply with NCLT's order will result in monetary penalty and imprisonment. If frivolous applications are made the applicant can be asked to pay up to Rs. 1,00,000 to the opposite party.

Banking companies are exempted from class action.

#### ***Fraud [Section 447]***

For the first time 'fraud' has been defined. It includes any act, omission, concealment of any fact or abuse of position with intent to deceive, to gain undue advantage from, or to injure the interests of the company or shareholders or creditors or any other person.

Person found guilty of fraud could face severe penalties which could lead to imprisonment of 6 months to 10 years and monetary fine from 1 to 3 times the amount involved in fraud. Cases where fraud involves public interest, minimum imprisonment is 3 years.