

Practical Aspects of Audit under Income Tax Act and Companies Act



LUNAWAT & CO.

Chartered Accountants

6th February 2016

Ludhiana, Jalandhar



CA. PRAMOD JAIN

FCA, FCS, FCMA, LL.B, MIMA, DISA

AUDIT PROCESS

APPOINTMENT

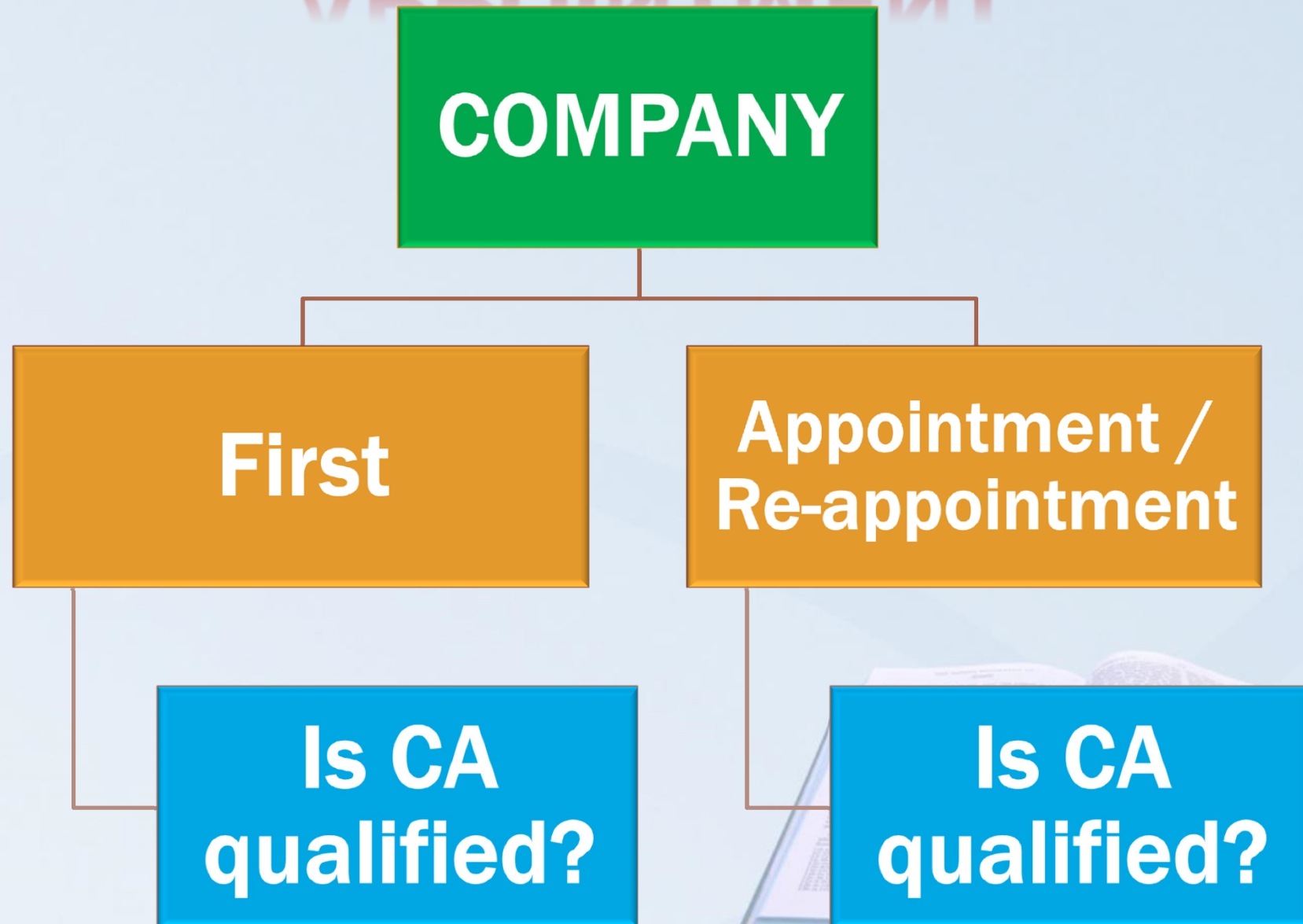
AUDIT

REPORTING

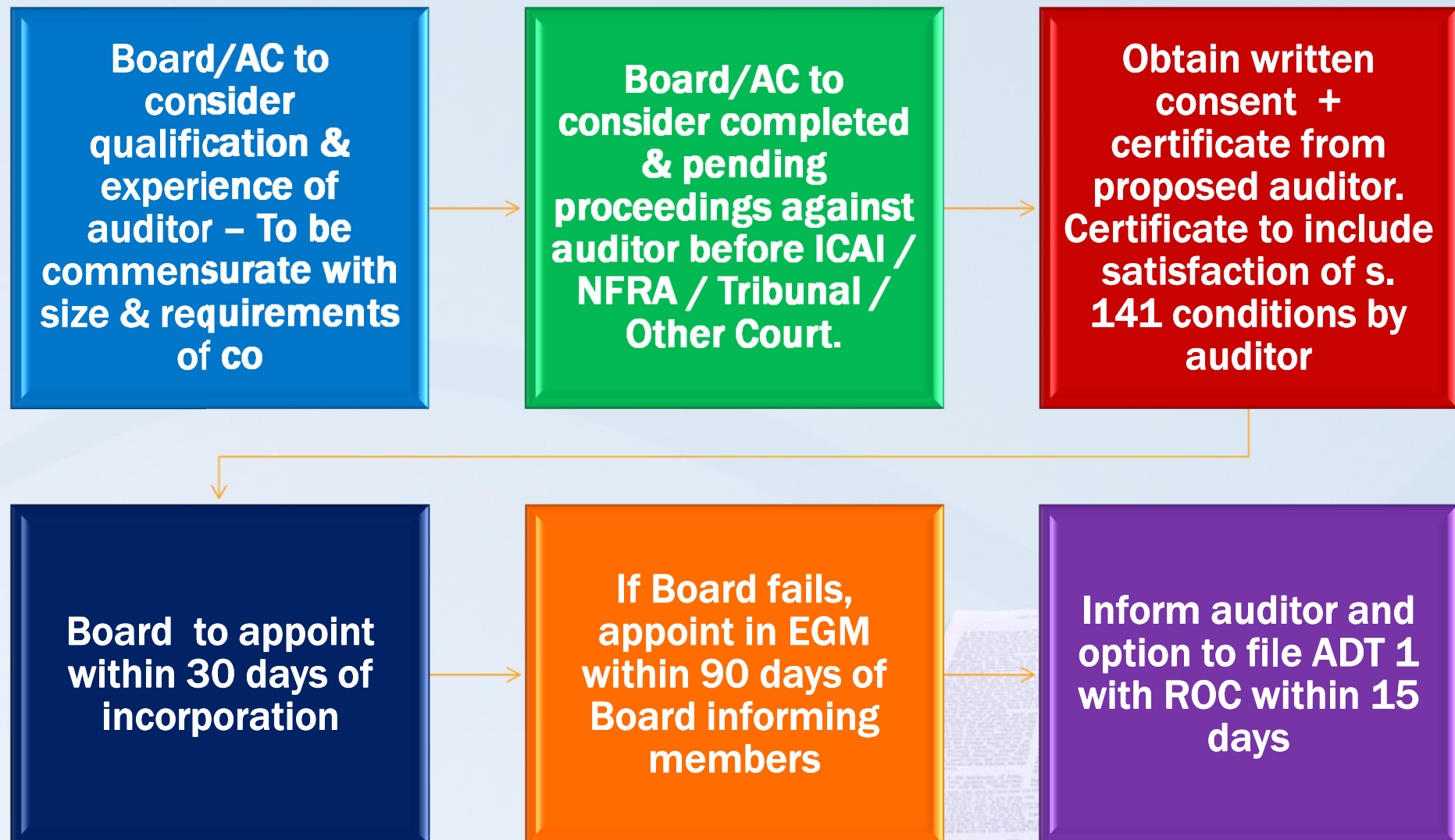
BILLING

COLLECTION

APPOINTMENT

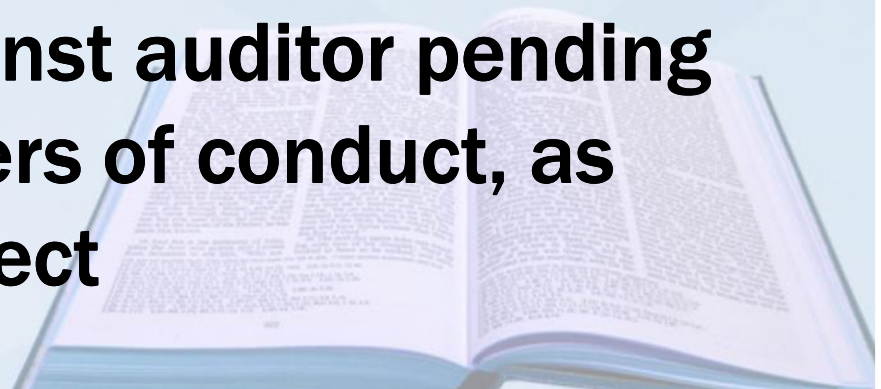


PROCEDURE FOR 1ST APPOINTMENT




CA CERTIFICATE

- ✗ **CA to issue certificate that:**
 - + **He / It is eligible for appointment u/s 141 and is not disqualified under the Act, the CA Act, & related Rules**
 - + **The proposed appointment is within the term allowed**
 - + **The proposed appointment is within the limit**
 - + **List of proceedings against auditor pending w.r.t. professional matters of conduct, as disclosed, is true & correct**



PROCEDURE FOR APPOINTMENT

Board/AC to consider qualification & experience of auditor – To be commensurate with size & requirements of co



Board/AC to consider completed & pending proceedings against auditor before ICAI / NFRA / Tribunal / Other Court.



Obtain written consent + certificate from proposed auditor. Certificate to include satisfaction of s. 141 conditions by auditor



Appointment is to be done in AGM for 5 years. Ratification to be done annually.

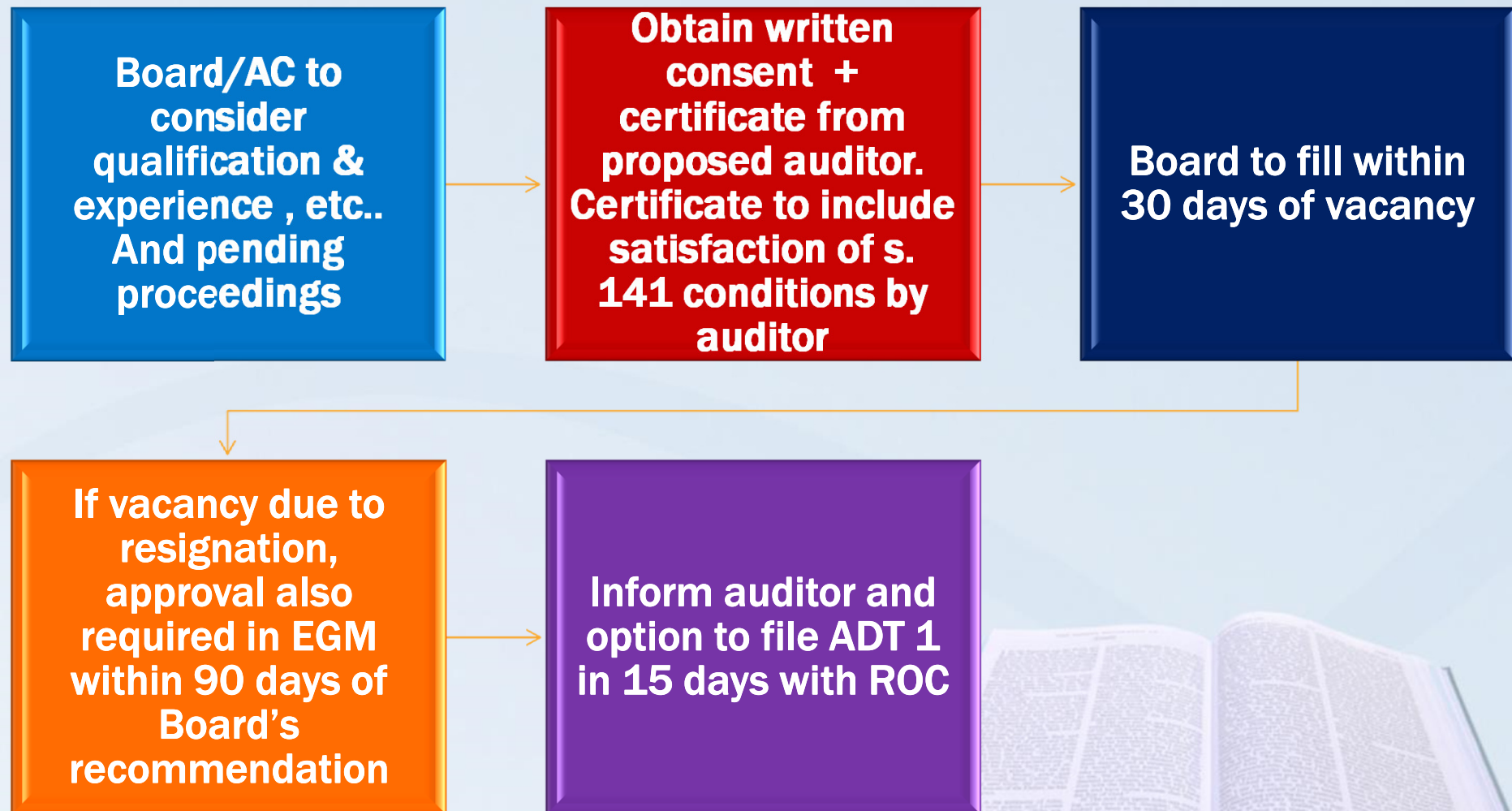


Inform auditor and file ADT 1 with ROC within 15 days of appointment

RE-APPOINTMENT

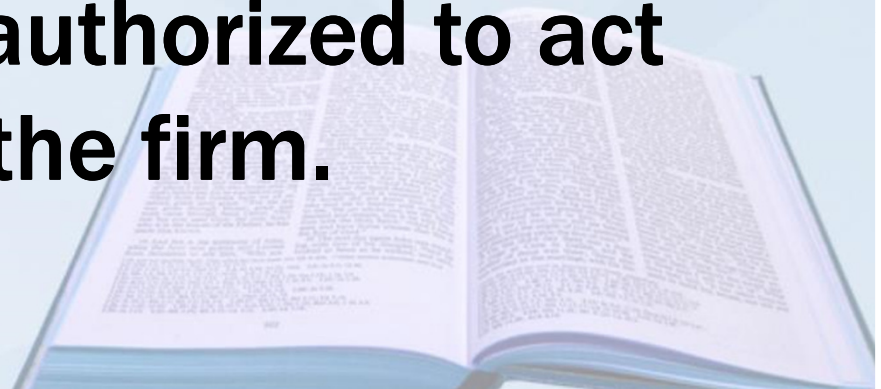
- ✗ **Retiring auditor may be re-appointed at AGM, if—**
 - + **He is not disqualified for re-appointment;**
 - + **He has not given Co. a notice in writing of his unwillingness to be re-appointed; and**
 - + **A SR has not been passed at that meeting appointing some other auditor or providing expressly that he shall not be re-appointed**
- ✗ **Automatic reappointment of existing auditor at AGM if not re-appointed.**

CASUAL VACANCY



QUALIFICATION

- ✗ **Must be a CA**
- ✗ **A firm including LLP whereof majority of partners practicing in India are qualified for appointment as auditor**
- ✗ **Where such firm/LLP is appointed as an auditor of a company, only the partners who are CAs shall be authorized to act and sign on behalf of the firm.**



DISQUALIFICATIONS

- ✗ **A body corporate other than LLP;**
- ✗ **An officer or employee of the company;**
- ✗ **A person who, or his relative or partner—**
 - + **Is holding any security of or interest in Co. or its subsidiary, or of its holding or associate Co. or a subs. of such holding co. Relative – Rs. 1 L**
 - ✗ **Corrective action to bring within limits (relative) – 60 days**
 - + **Is indebted to the co.... – Rs. 5 L (ICAI – 10K)**
 - + **Has given a guarantee / provided security – 1 L**

DISQUALIFICATIONS

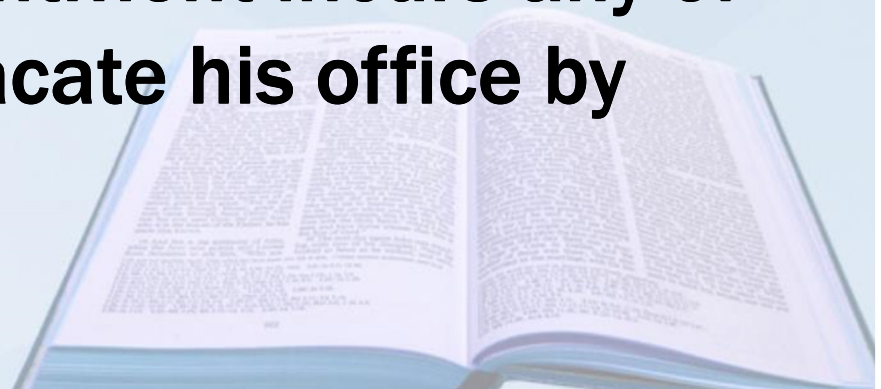
- ✘ **A person who is a partner, or who is in the employment, of an officer or employee of Co**
- ✘ **A person whose relative is a director or is KMP of the company;**
- ✘ **A person who is in full time employment elsewhere**
- ✘ **A person who has been convicted by a court of an offence involving fraud & a period of 10 Yrs has not elapsed from date of such conviction**
- ✘ **A person or a partner of a firm holding appointment as auditor of more than 20 cos**

DISQUALIFICATIONS

- ✗ A person or a firm who, whether directly or indirectly, has business relationship with co., or its of nature i.e., any transaction entered into for commercial purpose except:
 - + In nature of professional services permitted
 - + In the **ordinary course of business of co.** at ALP like
 - ✗ sale of products or
 - ✗ services
 - + To **auditor, as customer, in the ordinary course of business**, by companies engaged in business of telecommunications, airlines, hospitals, hotels & such other similar businesses

DISQUALIFICATIONS

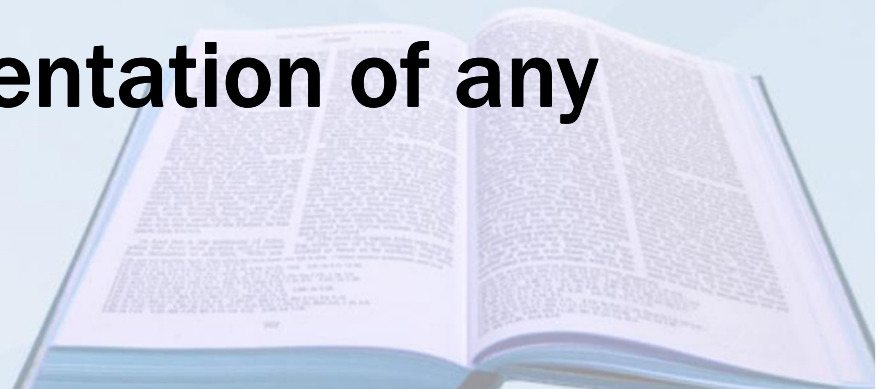
- ✘ **Any person whose:**
 - + subsidiary or
 - + associate company or
 - + any other form of entity,
 - + is engaged as on the date of appointment in consulting and specialized services as provided in s. 144.
- ✘ **If the auditor after appointment incurs any of the disqualifications – vacate his office by casual vacancy**



OTHER SERVICES BY AUDITOR

✕ Auditor not to provide other services directly or indirectly to the company or its holding company or subsidiary company:

- + Accounting & Book Keeping Services;
- + Internal Audit;
- + Design and implementation of any financial IS;



OTHER SERVICES BY AUDITOR

- + Actuarial services;
- + Investment advisory services;
- + Investment banking services;
- + Rendering of outsourced financial services;
- + **Management services;**
- + Others Prescribed



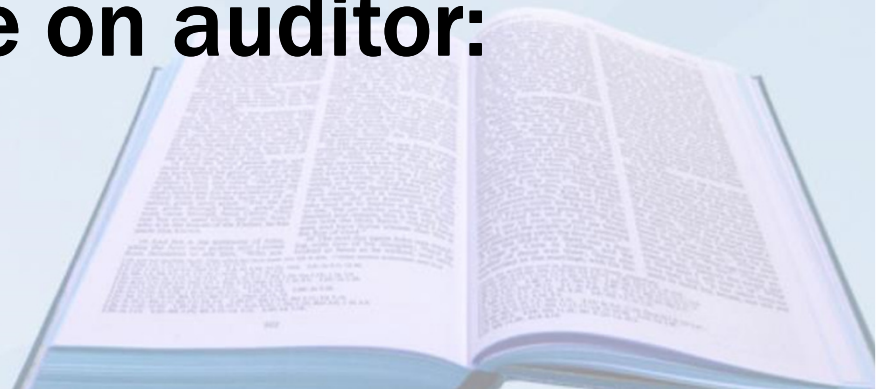
20 LIMIT ON AUDITORS

Not to include:-

- ✗ One person companies,**
- ✗ Dormant companies,**
- ✗ Small companies, and**
- ✗ Private cos. having paid-up share capital less than Rs. 100 Crs**
- ✗ Limit currently as per ICAI is 30 companies per auditor including private companies (unless changed by ICAI later)**

RESIGNATION

- ✘ Auditor may resign before his term.
- ✘ To file a statement with ROC in ADT-3 as well as the Co. within 30 days, indicating reasons
- ✘ In case of Government companies to be filed with CAG too.
- ✘ Non compliance – fine on auditor:
 - + Minimum – 50K
 - + Maximum - 500K



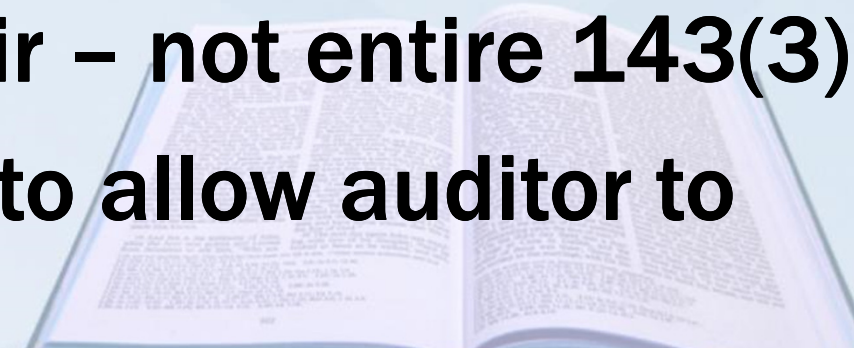
REMOVAL BEFORE TERM

- ✗ **Removal before term**
 - + **Special Resolution; and**
 - + **Prior CG approval – application in ADT-2 within 30 days of Board resolution & filing fee to be paid:**
 - ✗ **OPC & small - < 25 L – 1000; 25 – 50 L – 2500**
 - ✗ **Others - < 25 – 2000; 25 to 50 L – 5000; 50L to 5 Cr – 10000; 5 Cr to 10 Cr – 15000; above 10 Cr - 20000**
 - + **Reasonable opportunity of hearing to be given**
 - + **Co. to hold GM within 60 days of CG approval for SR**
- ✗ **Special notice required at AGM to appoint other auditor than the retiring auditor except in case of rotation**

REMOVAL BY TRIBUNAL

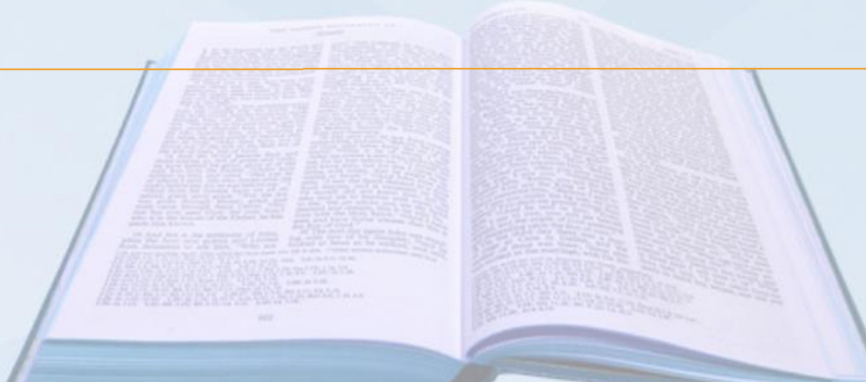
- ✘ Tribunal suo moto or on application of CG or any person concerned may change auditor if it is satisfied, that auditor has directly or indirectly:
 - + Acted in fraudulent manner, or
 - + Abetted, or
 - + Colluded in any fraud by or in relation to, Co. or its directors or officers
- ✘ If on CG application – Tribunal on satisfaction change in 15 days. CG to appoint another auditor
- ✘ On final order - shall not be appointed for 5 yrs in any other Co. and shall be liable u/s 447

SUGGESTIONS BY COMPANY LAW COMMITTEE

- ✗ Ratification requirement to be omitted
 - ✗ ICAI should issue guidance note in consultation with MCA – Mgt. services
 - ✗ Rotation – 3 years from AGM to AGM
 - ✗ Relative for 141 to be suitably amended
 - ✗ Reporting – IFC to be with reference to FS
 - ✗ CFS – only true and fair – not entire 143(3)
 - ✗ ADT 4 to be amended to allow auditor to give his comments
- 

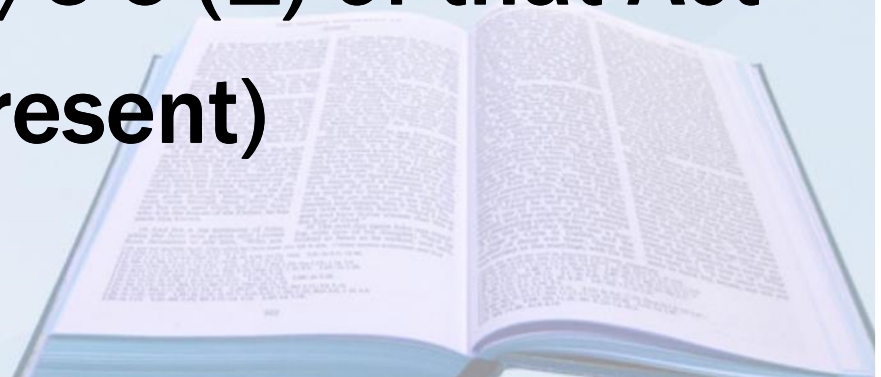
Lunawat & Co.

AUDITOR UNDER INCOME TAX ACT



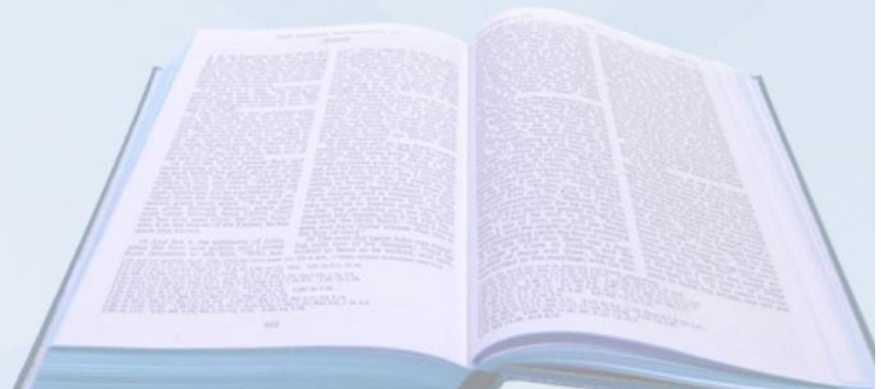
WHO CAN DO AUDIT

- ✗ **W.e.f. 1st June 2015**
- ✗ **Accountant as defined in Explanation below S. 288 (2)**
- ✗ **A Chartered Accountant as defined in section 2 (1) (b) of the Chartered Accountants Act, 1949 who holds a valid certificate of practice u/s 6 (1) of that Act**
- ✗ **CA in practice (can represent)**



DISQUALIFICATION - COMPANIES

- ✖ **Disqualified in Companies Act u/s 141(3) = Disqualified under Income tax Act**
- ✖ **He can not do audits :**
 - + **Tax Audit u/s 44AB**
 - + **MAT certificate u/s 115JB**
 - + **TP Audit u/s 92E**
 - + **Others**

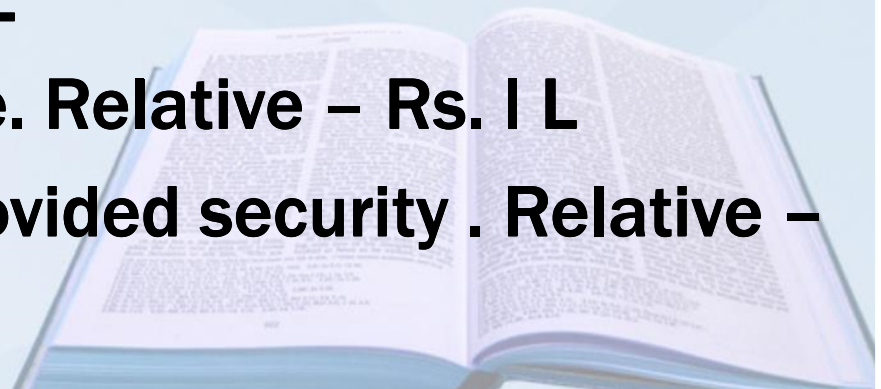


DISQUALIFICATION – OTHERS

- ✖ **Assessee himself**
- ✖ **In case of a firm - any partner of the firm**
- ✖ **In case of AOP - member of the association**
- ✖ **In case of HUF - member of the family**
- ✖ **Person referred to in section 13(3)(a),(b),(c), (cc);**
- ✖ **Relative of any of above persons**
- ✖ **Other than above, person who is competent to verify return u/s 139/140;**
- ✖ **Officer or employee of assessee;**

DISQUALIFICATIONS - OTHERS

- ✘ Who is a partner, or who is in employment, of an officer or employee of assessee;
- ✘ Who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction
- ✘ An individual who, or his relative or partner
 - + Is holding any security of or interest in assessee –
Relative face value - Rs. 1 L
 - + Is indebted to the assessee. Relative – Rs. 1 L
 - + Has given a guarantee /provided security . Relative –
1 L



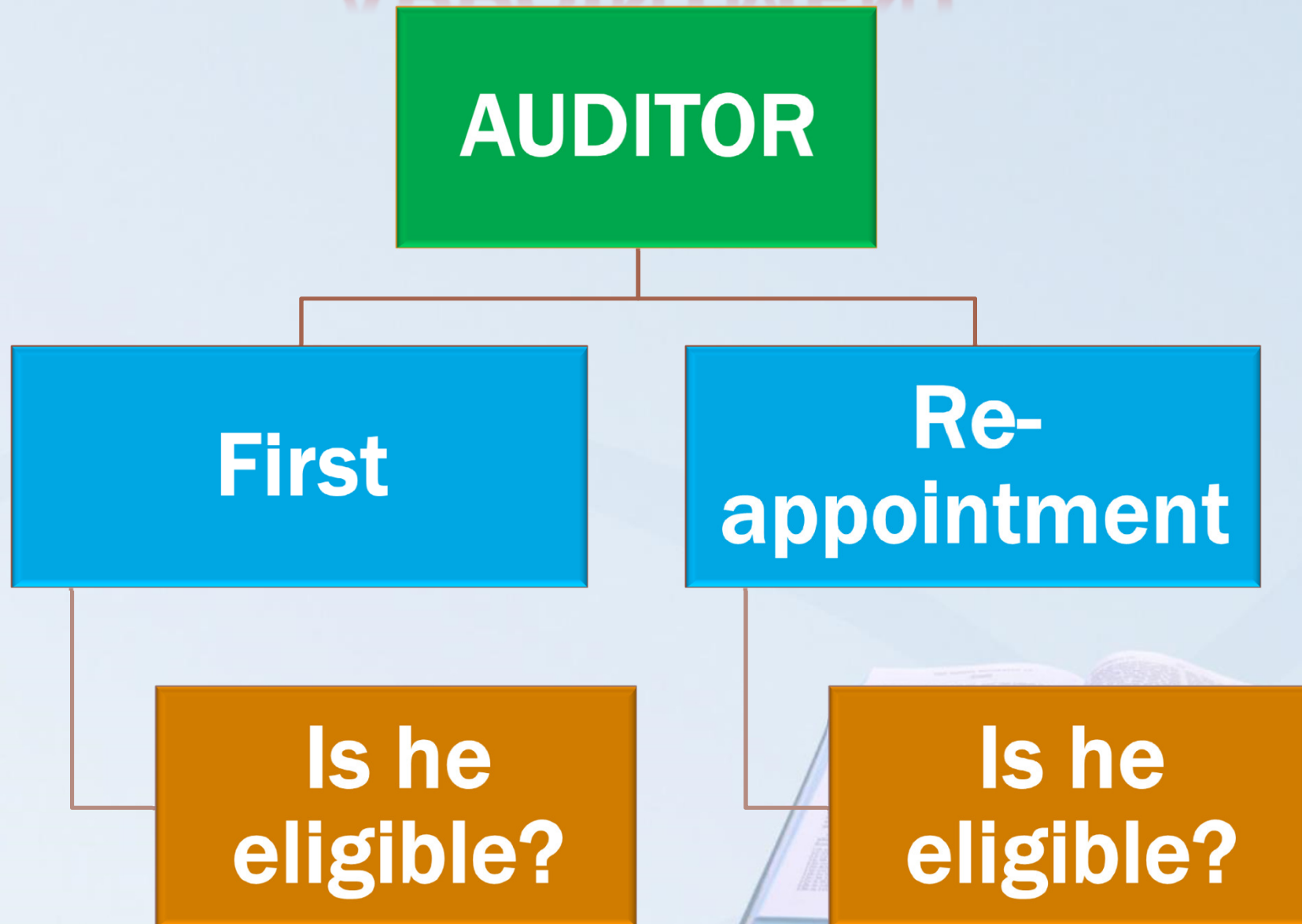
RELATIVE – INCOME TAX AUDITOR

- ✗ **Spouse of the individual;**
- ✗ **Brother or sister of the individual;**
- ✗ **Brother or sister of the spouse of the individual;**
- ✗ **Any lineal ascendant or descendant of the individual;**
- ✗ **Any lineal ascendant or descendant of the spouse of the individual;**
- ✗ **Spouse of a person referred above**
- ✗ **Any lineal descendant of a brother or sister of either the individual or of spouse of individual**

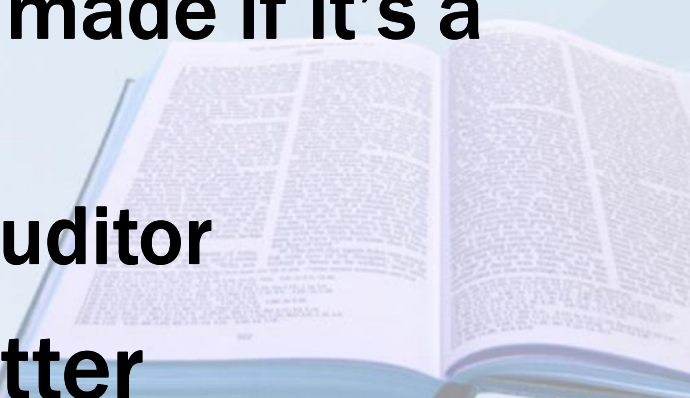
DISQUALIFICATIONS – TAX AUDITOR

- ✗ A person or a firm who, whether directly or indirectly, has business relationship with assessee. i.e., any transaction entered into for commercial purpose except:
 - + In nature of professional services permitted
 - + In the **ordinary course of business of co.** at ALP like
 - ✗ sale of products or
 - ✗ services
 - + To **auditor, as customer, in the ordinary course of business**, by companies engaged in business of telecommunications, airlines, hospitals, hotels & such other similar businesses

APPOINTMENT

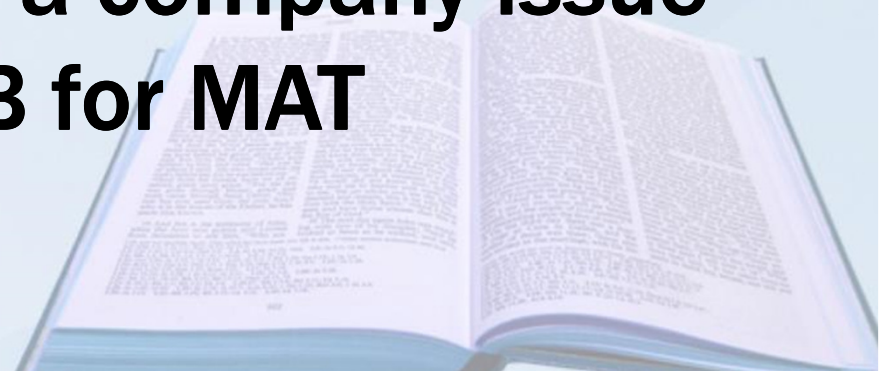


AUDITORS' COMPLIANCE

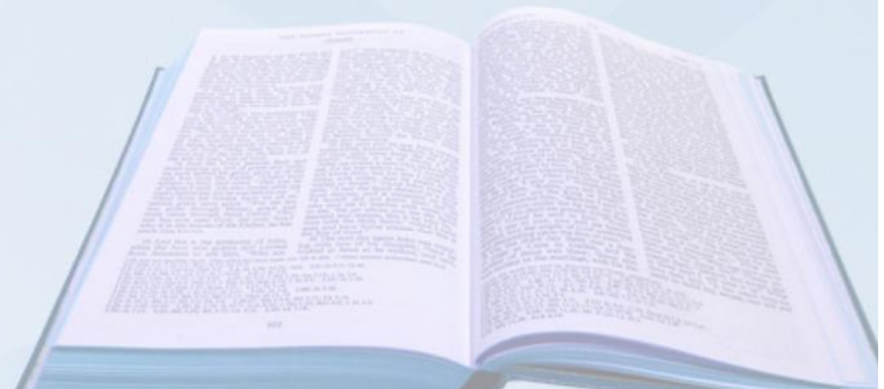
- ✗ **See that he is not disqualified to be appointed.**
 - ✗ **In case of companies issue the required certificate**
 - ✗ **In case of being appointed in place of another auditor**
 - + **Ensure due compliance made if it's a company**
 - + **Intimation to previous auditor**
 - ✗ **Obtain Appointment Letter**
- 

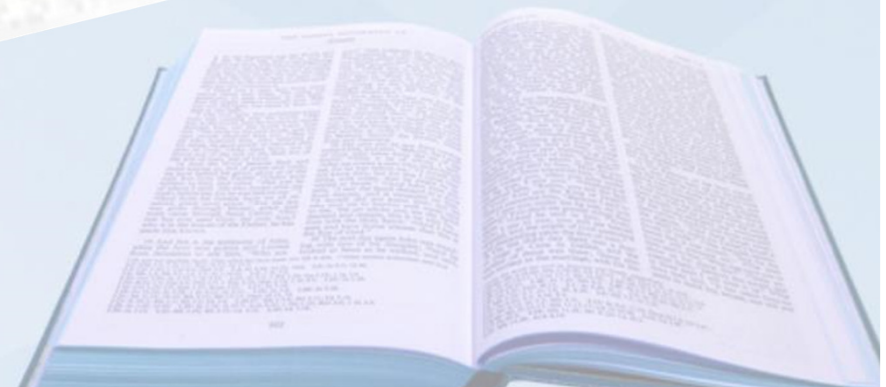
???

- ✗ Can a CA in practice who is giving accounting services to a company conduct tax audit of that company?
- ✗ Can an internal auditor of a company issue Form 15CB certificate for that company?
- ✗ Can a CA in practice who is giving accounting services to a company issue certificate in Form 29B for MAT calculation?



AUDIT





FINANCIAL STATEMENTS

Company

Schedule III

B/S

PL

Cash Flow

Notes

AS Compliance

Others

B/s

PL

Notes

AS Compliance

Cash Flow

FINANCIAL STATEMENTS - COMPANY

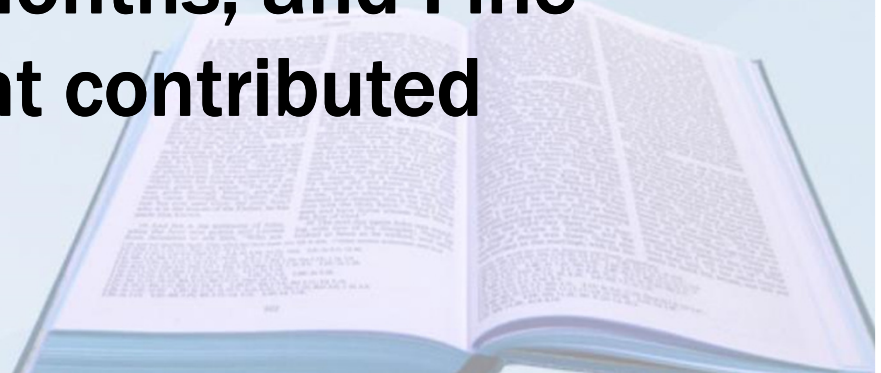
- **Schedule III - amended w.e.f. 4.9.15 to include MSMED details under Trade Payable**
- **Impact of pending litigation on its financial position**
- ✗ **Has to be AS compliant:**
 - + **FS to disclose deviation from AS**
 - + **Reason for deviation**
 - + **Financial effect arising of deviation**
- ✗ **Non- compliance**
 - + **MD, WTD incharge of finance, CFO**
 - + **Any other person charged by Board**
 - + **If no one – all directors**
 - + **Imprisonment upto 1 yr or F – 50 k to 500 k or both**

FINANCIAL STATEMENTS - COMPANY

- ✗ **To disclose in FS full particulars of:**
 - + **Loan given;**
 - + **Investment made;**
 - + **Guarantee given; or**
 - + **Security Provided.**
 - + **Purpose for which loan or guarantee or security is proposed to be utilised by recipient of loan or guarantee or security [186(4)]**
- ✗ **Non- Compliance – Fine on company**
 - + **Min Rs.25 K; Max. Rs.500K**
 - + **On OI D - Imp up to 2 yrs; or Fine -Min. Rs.25 K; Max. Rs.1 L; or both**

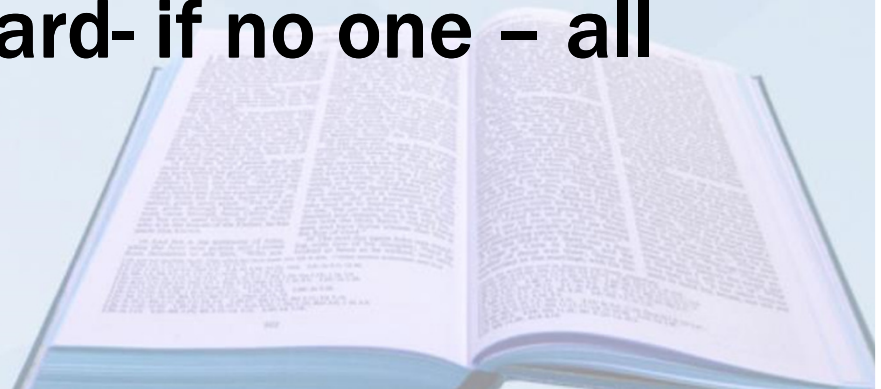
FINANCIAL STATEMENTS - COMPANY

- ✗ **Contribution during the year to National Defence Fund [183(2)]**
- ✗ **Amount contributed to Political Party and name of party [182(3)]**
- ✗ **Non- Compliance – Fine on company**
 - + **Upto 5 times amount contributed**
 - + **On OLD - Imp up to 6 months; and Fine – upto 5 times of amount contributed**



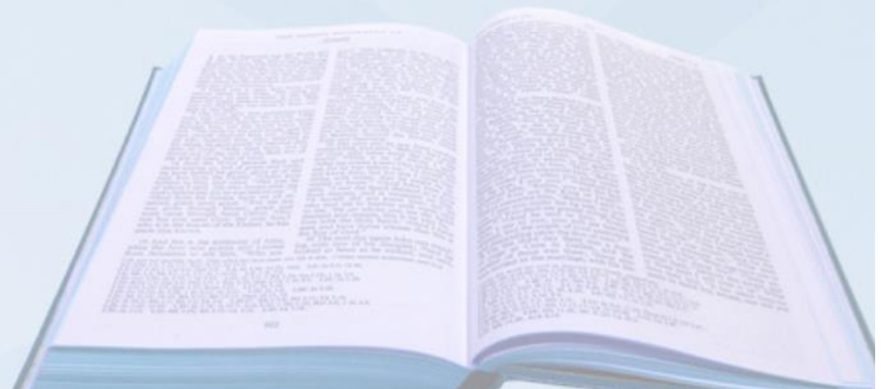
FILING OF FS - COMPANY

- ✗ **To be filed with ROC in Form AOC -4 within 30 days of AGM – To be certified by CA only**
- ✗ **Notified Companies in XBRL**
- ✗ **After 300 days –**
- ✗ **Fine on**
 - + **Company – 1k p. d > 10 L;**
 - + **MD, etc in charge by Board- if no one – all directors**
 - ✗ **Imp. upto 6mnths or**
 - ✗ **Fine – 1L k to 5L or Both**



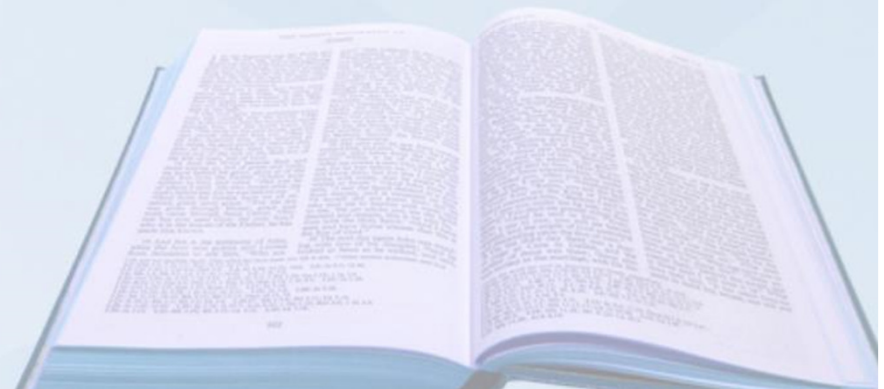
OTHER SPECIFIC ISSUES

- ✗ **CSR**
- ✗ **Depreciation Sch. II – Component Accounting**
- ✗ **Consolidated Financial Statements**



AUDIT

Lunawat & Co.



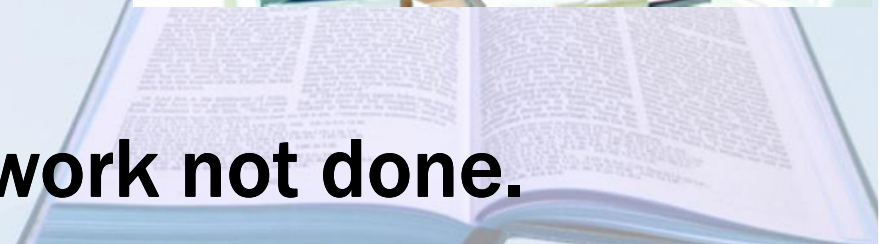
AUDITING STANDARDS

- ✖ Auditor to comply with auditing standards
- ✖ NFRA to notify auditing standards. Till NFRA does – as by ICAI
- ✖ Total 37 SAs

SA. No.	Sub-division	No.
100-199	Introductory Matters	0
200-299	General Principles & Responsibilities	9
300-499	Risk Assessment and Response to Assessed Risks	6
500-599	Audit Evidence	11
600-699	Using Work of Others	3
700-799	Audit Conclusions and Reporting	5
800-899	Specialized Areas	3

DOCUMENTATION

- ✗ Have checklists, tell articles to cross verify
- ✗ Seniors to cross verify
- ✗ Take necessary certificates / representation from management
- ✗ External Confirmations
- ✗ Ensure Compliance of ASs
- ✗ Ensure all applicable regulatory compliances including Companies Act, 2013
- ✗ Comply with SAs
- ✗ Work not documented is work not done.



REPORT

✕ Under Companies Act

+CARO

+Non- CARO

✕ Others

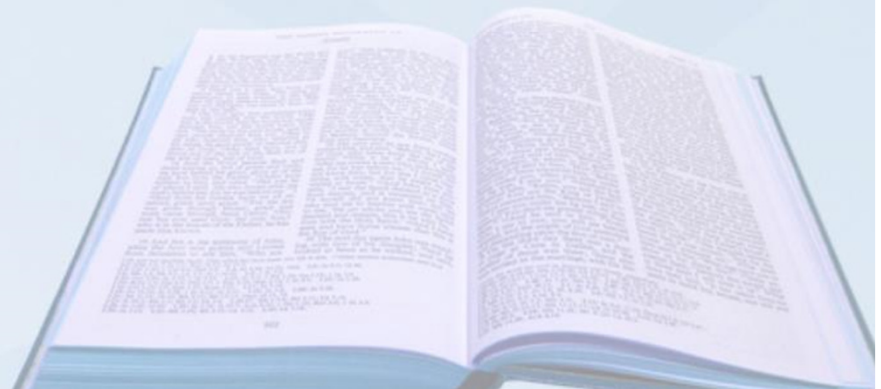
+Tax Audit

✕ Form 3 CA

✕ Form 3 CB

+LLP

+Society



REPORT - COMPANIES

- ✘ Inquiry u/s 143(1) – 6 points – only to be reported when comments required**
- ✘ Report to include:**
 - + Matters specified u/s 143(3) - 8 points**
 - + Matters specified in Rules - 3 points**
 - + Any order made u/s 143(3) for specified Companies in consultation with NFRA – CARO 2015 – 12 points**

CARO 2015

✕ **Applicable to all companies including Foreign Companies. Exception:**

+ **Banking Co.**

+ **Insurance Co.**

+ **Section 8 Co.**

+ **OPC**

+ **Small Co.**

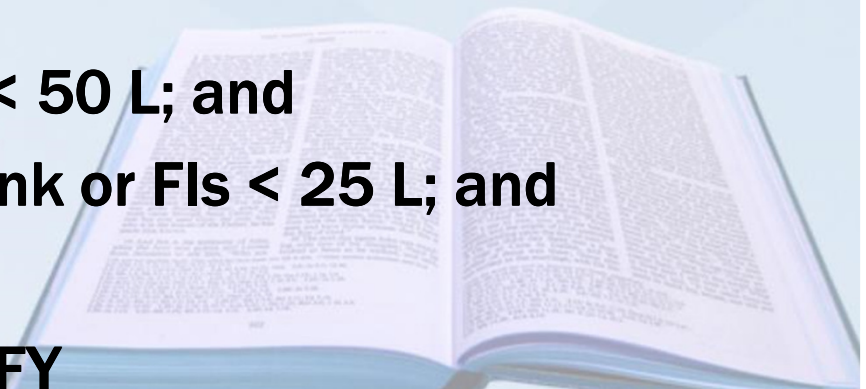
+ **Pvt. Co whose:**

✕ **Paid up capital & reserves < 50 L; and**

✕ **Outstanding Loans from bank or FIs < 25 L; and**

✕ **Turnover < 5 crores**

✕ **At any point of time during FY**



INTERNAL FINANCIAL CONTROL- IFC

- ✘ Voluntary for Auditor to report on adequacy of **IFC** & operating effectiveness of such controls – for 2014-15 but **mandatory for Director Report**
- ✘ IFC means policies & procedures adopted by co. for ensuring orderly & efficient conduct of its business, including:
 - ✘ Adherence to company's policies,
 - ✘ Safeguarding of its assets,
 - ✘ Prevention and detection of frauds and errors,
 - ✘ Accuracy and completeness of the accounting records,
 - ✘ Timely preparation of reliable financial information

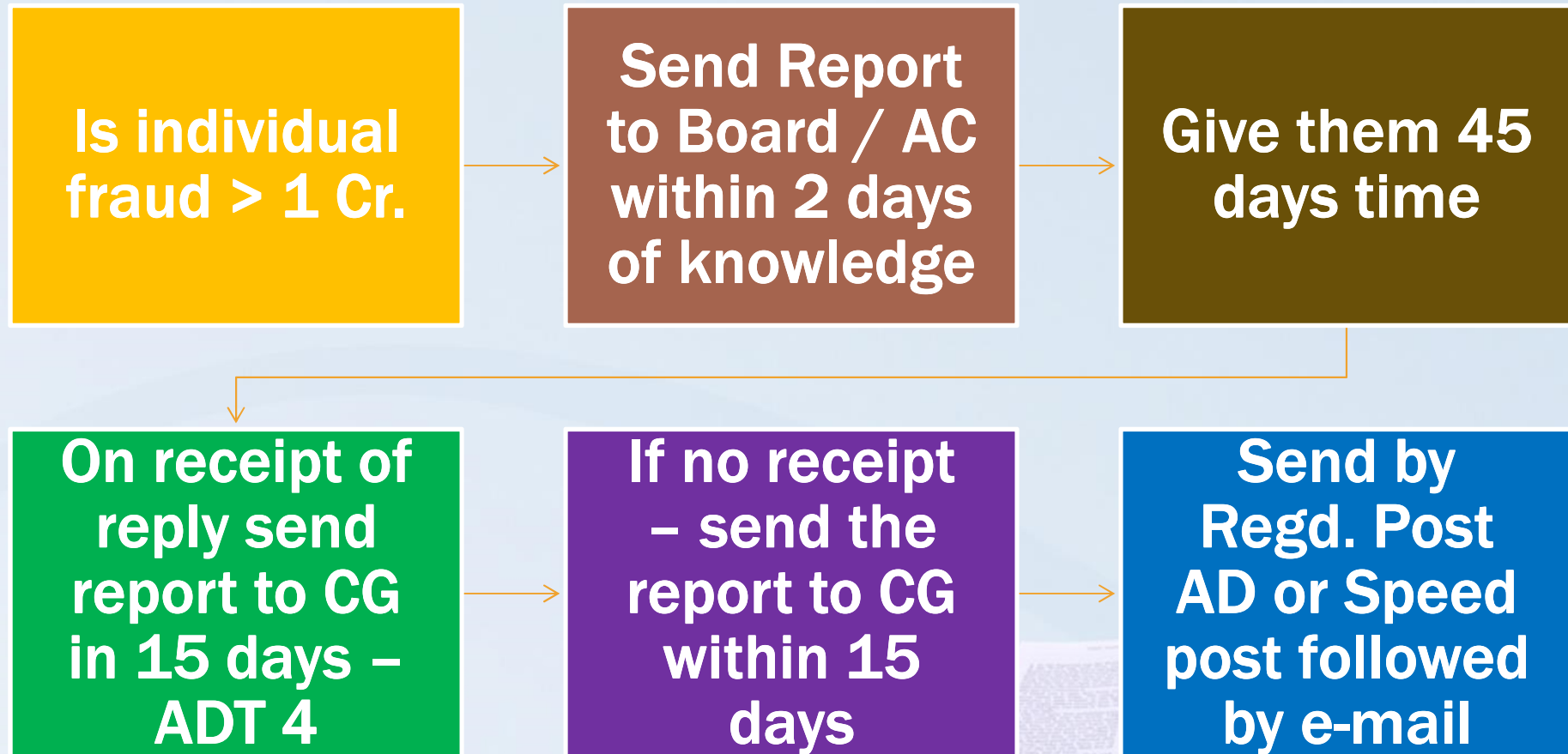
QUALIFIED / ADVERSE / DISCLAIMER

Findings	Opinion
Misstatement is material but not Pervasive	Qualified – true and fair subject to / except
Material misstatement is Pervasive	Adverse – not true and fair
Unable to obtain sufficient appropriate audit evidence but is not Pervasive	Qualified – true and fair subject to / except
Unable to obtain sufficient appropriate audit evidence which is both Material and Pervasive	Disclaimer – no opinion

SOME SPECIFIC DUTIES - COMPANIES

- ✗ **Has to attend AGM unless otherwise exempted**
- ✗ **Has to attend EGM unless otherwise exempted**
- ✗ **To report fraud (in course of audit) being or has been committed against co. by officers or employees – to CG (in excess of Rs. 1Cr. Individually 14.12.15) in ADT-4 (on his letter head with address, e-mail, Phn) within 60 days after following procedure.**
- ✗ **Non- compliance fine - Rs. 1 Lac to Rs. 25 Lacs**

FRAUD REPORTING PROCEDURE TO CG



FRAUD REPORTING PROCEDURE TO BOD / AC

Is individual fraud < 1 Cr.

Send Report to Board / AC within 2 days of knowledge

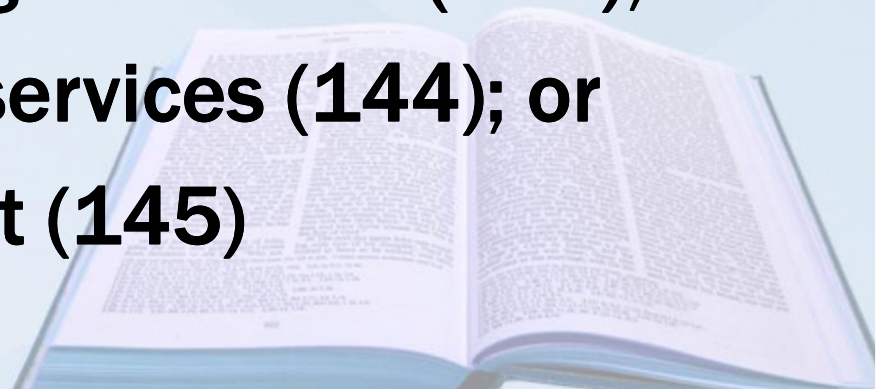
Mention nature of fraud with description, appx.
amount & parties involved

Board to report in its Directors Report including
remedial action taken

Name of the parties to be given only if no remedial
action taken

PENALTIES (147) - COMPANIES

- ✖ **General – Co - Fine 25 K to Rs. 500K;
OID – imp upto 1 yr or fine 10k to 100k
or both**
- ✖ **Auditor – Fine - 25k to 500 k if**
 - + **Wrong appointment (139);**
 - + **Incorrect contents of audit report & non-compliance of auditing standards (143);**
 - + **Rendering prohibited services (144); or**
 - + **Fail to sign audit report (145)**

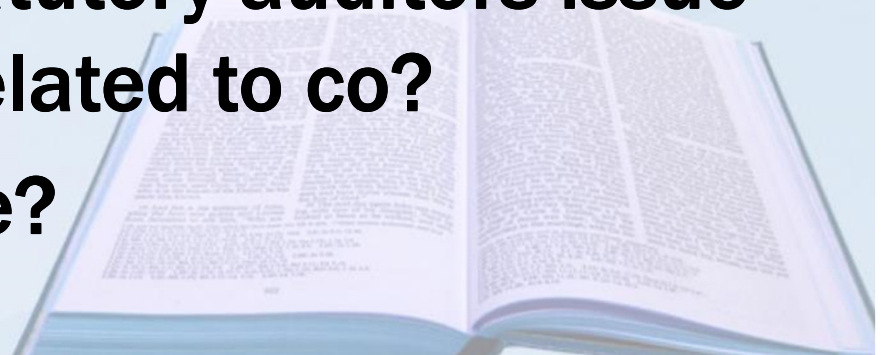


PENALTIES (147) - COMPANIES

- ✗ **Imprisonment up to 1 yr **and** fine from 1 L to 25 L in case there is intention to deceive:**
 - + **Company; or**
 - + **Shareholders; or**
 - + **Creditors; or**
 - + **Tax authorities.**
- ✗ **Where he is convicted for above, then liable to:**
 - + **Refund the remuneration received to the company;**
 - + **Pay damages to co, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his report.**

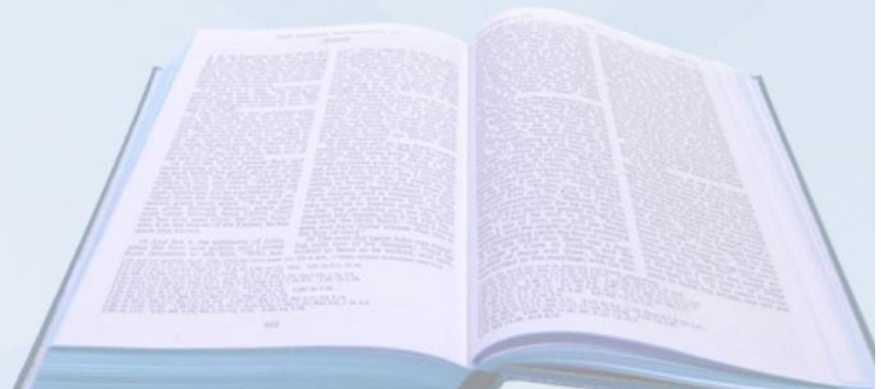
PENALTIES (147) - COMPANIES

- ✘ When it is proved that partner or partners of the audit firm has or have acted in fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the co. or its directors or officers, then liability of the firm jointly and severally for civil as well as criminal liability
- ✘ Penalties by NFRA
- ✘ Can ABC & Co. being statutory auditors issue Form 15CB certificate related to co?
- ✘ If yes, what is to be done?



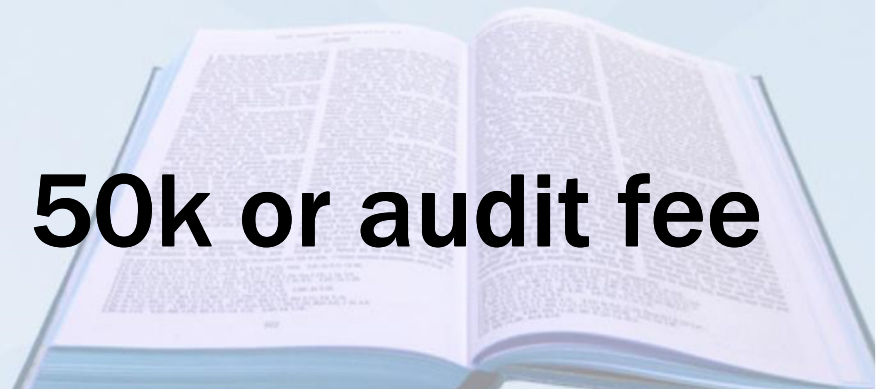
PENALTIES (147) – THE SAVING GRACE

- ✘ **In case of criminal liability of any audit firm, the liability other than fine, shall devolve only on the concerned partner or partners, who acted in a fraudulent manner or abetted or, as the case may be, colluded in any fraud (Rule 9)**



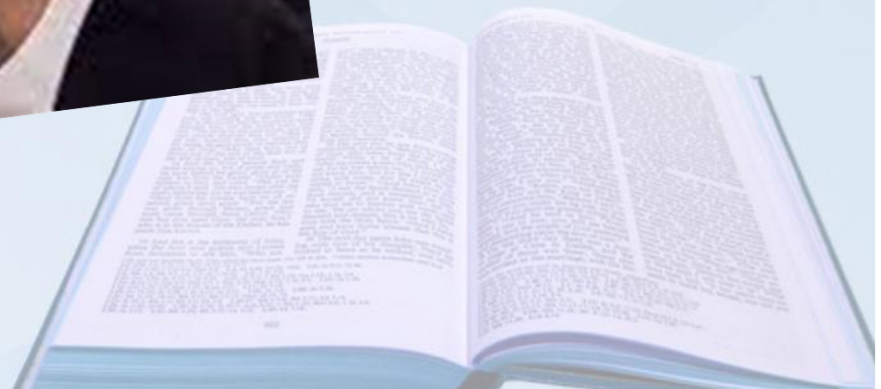
SUGGESTION - AUDITOR - PENALTIES

- ✖ **147 (2) – earlier – 25 k to 5 L;
proposed – max- 5 L or 4 times audit
fee whichever is less**
- ✖ **Proviso to 147(2) – earlier – 1 L –
25L; proposed – 50K to 25 L or 8
times audit fee whichever is less**
- ✖ **NFRA – min – 5 L**
- ✖ **Resignation – min – 50k or audit fee
whichever is less**



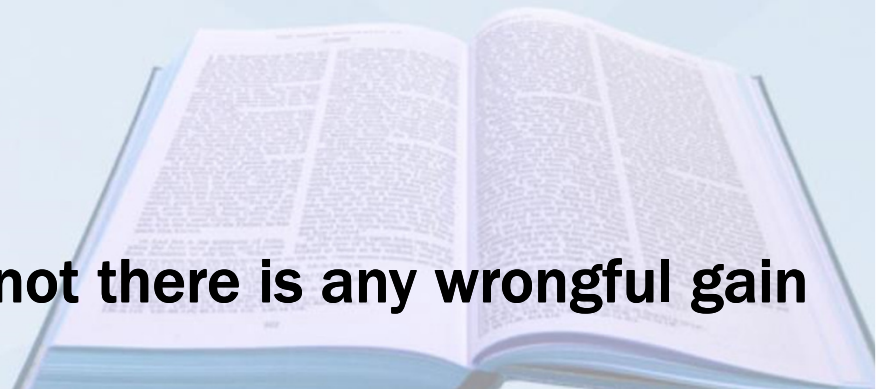
FRAUD

Lunawat & Co.



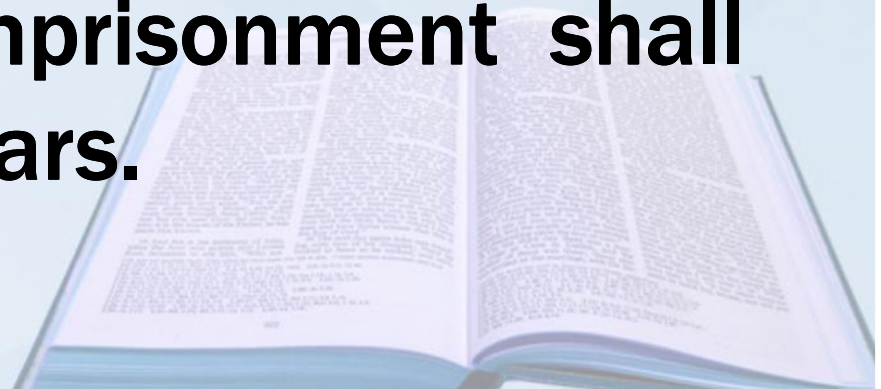
DEFINED (447)

- ✗ Any act or omission,
- ✗ Concealment of fact or
- ✗ Abuse of position of any person (by him or herself or by any other person in connivance in any manner).
- ✗ With the intent to deceive or to gain undue advantage to injure the interest of
 - + Company, or
 - + Shareholders, or
 - + Creditors, or
 - + Any other person (whether or not there is any wrongful gain or loss).



PUNISHMENT

- ✗ Imprisonment not less than 6 months to 10 years
- ✗ + Fine not be less than amount involved in the fraud which may extend to 3 times.
- ✗ If fraud in question involves public interest then the imprisonment shall not be less than 3 years.



FALSE STATEMENT (448)

✗ If any person makes a false statement in any:

+ Return

+ Report

+ Certificate

+ FS

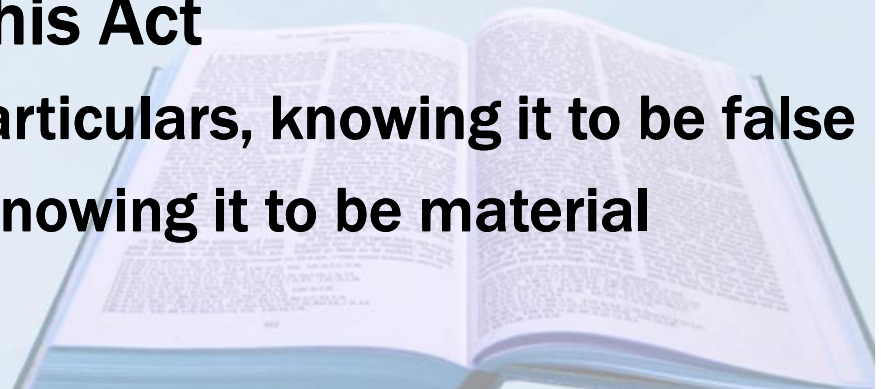
+ Prospectus

+ Other document under this Act

✗ Is false in any material particulars, knowing it to be false

✗ Omits any material fact knowing it to be material

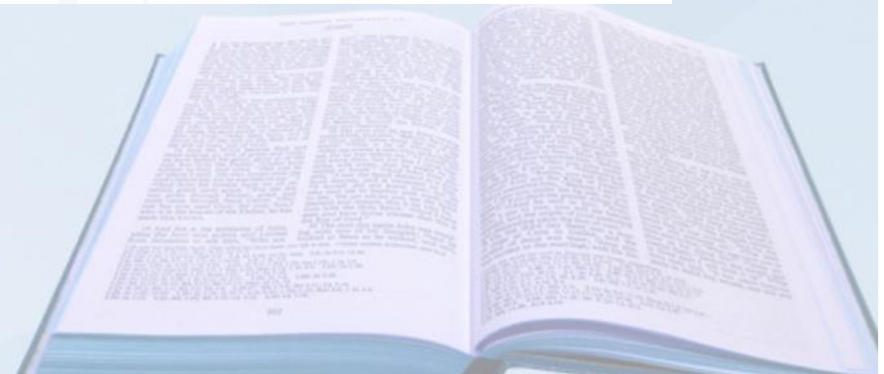
✗ Action u/s 447



FRAUDULENTLY INDUCING PERSON TO INVEST MONEY

- ✗ Any person who, either knowingly or recklessly 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:
 - + any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities;
 - + any agreement, purpose / pretended purpose of which is to secure a profit to any of parties from yield of securities or by reference to fluctuations in value of securities; or
 - + any agreement for, or with a view to **obtaining credit facilities** from any bank or financial institution,
- ✗ shall be liable for action u/s 447. (36)

THE ONLY WAY





**INCREASE YOUR
VALUE**



Thank You!



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