

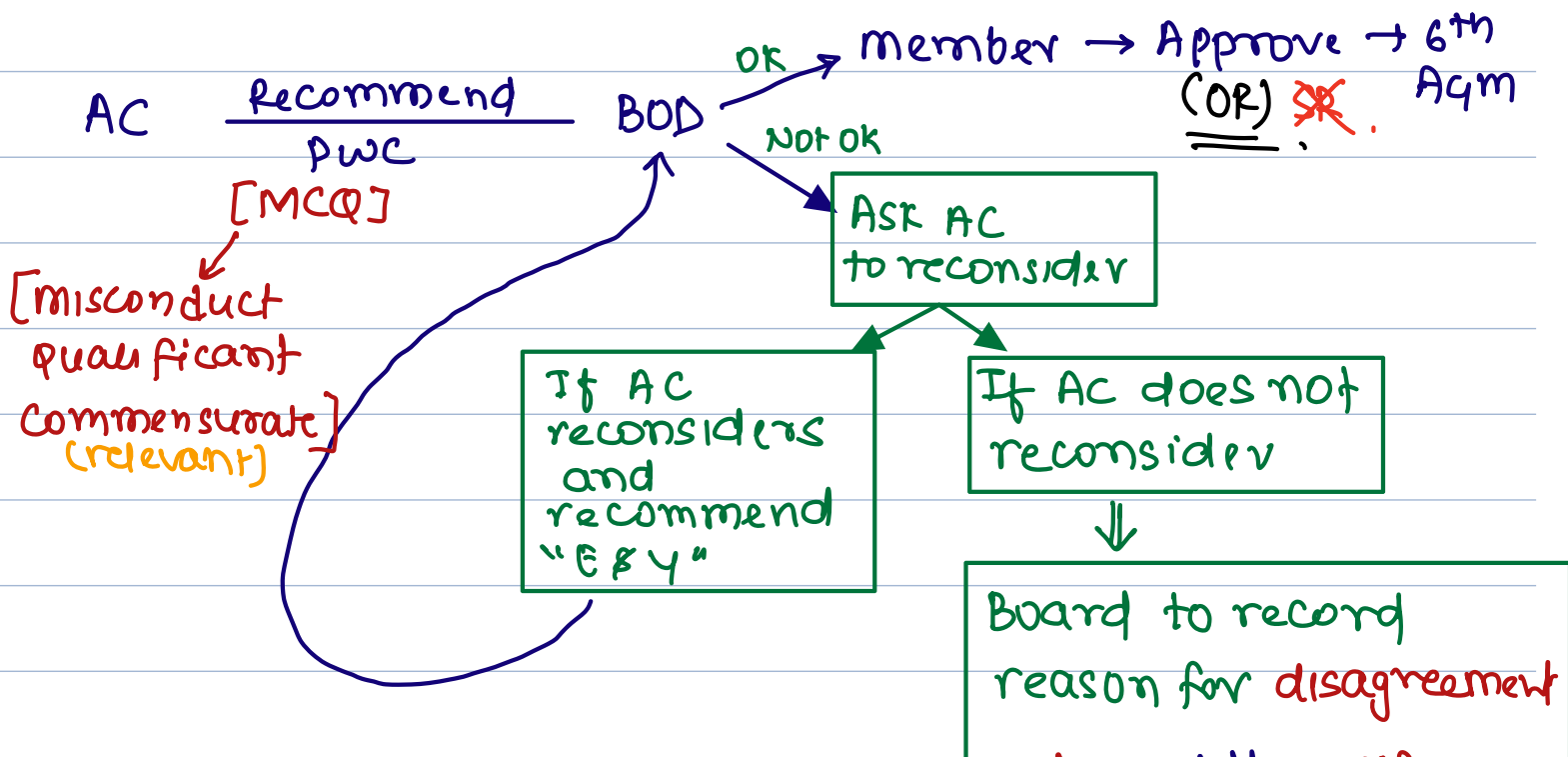
Chapter 10 - Audit and Auditors

[Sec 139 - 148]

Section 139: Appointment of auditors

	First auditor	Subsequent	Casual vacancy
Other than Govt co (Normal co.)	<p>Inc BOD SH 120 days Tenure = upto First AGM</p>	Discussed below ④	<p>30 day BOD Resignation - 3m - SH (OR) Tenure = Next AGM</p>
Govt co & Govt controlled entities	<p>60 CRAQ 30 BOD 60 SH 150 day Tenure = First AGM</p>	<p>180 days Start of FY CRAQ Tenure = Next AGM</p>	<p>30 CRAQ 30 BOD Tenure = Next AGM</p>

④ Subsequent auditor in case of Normal co:



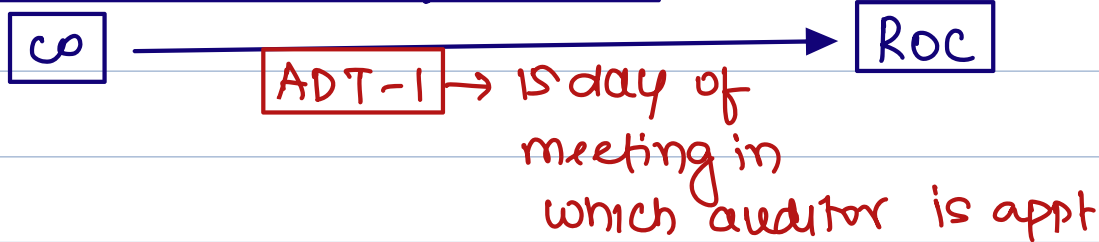
and send its own
recommendation
in Agm

Before appointment, auditor has to provide:

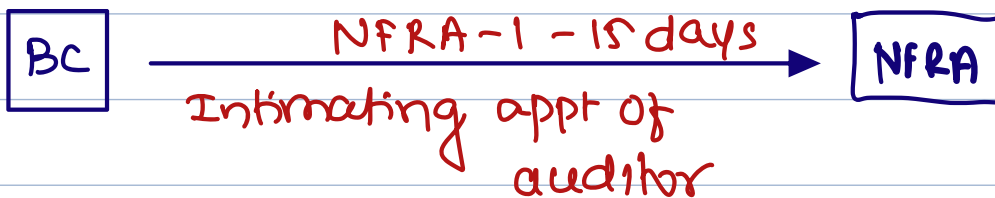
- a) Written consent
- b) Certificate stating

Eligible for appt.
Appt. is as per Terms provided in Act
Appt. is within limit
List of proceeding disclosed is true and complete.

On appointment of auditor:



Extra knowledge: [NFRA rules - sec 132]



② Tenure, reappointment & cooling period:

Following cos.
[except OPC & small co.]

- listed co
- Unlisted Public co → PUSC \geq 10 cr.
- Unlisted private co. → PUSC \geq 50 cr.
- All cos. → Borrowing/Deposit \geq 50 cr.

Tenure!

Individual → 1 term of 5 consecutive years

Firm → 2 terms of 5 " " [i.e. 10 years]

cooling off period:

Individual } After completion of tenure
Firm }



Not be eligible for re-appointment
in same co. for 5 years

Note:

- 1) Can such auditor be appt. as internal auditor of co. during cooling period → Yes
- 2) Can such auditor be appt. as Statutory auditor of holding / sub sy co. ? → Yes.

Note: Following person are also ineligible during cooling off period:

- 1) Audit firm having common partners to the audit firm whose tenure just expired.
- 2) Audit firm associated with outgoing auditor under the same network of audit firms.
 - ↳ same brand name (E & Y)
 - ↳ same trade name
 - ↳ common control.

- 3) If a partner, who is incharge of audit firm AND certifies FS

↓
Retires the firm & joins another firm

↓
Ineligible for appt for
5 years

Manner of rotation:

- 1) AC to recommend name of indiv/firm who may replace existing auditor on expiry of tenure.
[If no AC → Then BOD itself to consider]
- 2) BOD to consider AC's recommendation.

3) Transition period:

- In case^{of} an auditor, office held prior to commencement of this Act shall be taken into account for calculating 5-10 years.
- Example: On transition, it was provided that auditor may continue for:
3 years (or)
Remaining tenure } whichever is higher.

<u>Deloitte</u>	2014	<u>Period for which deloitte can continue</u>
A	15y	— 3 year
B	8y	— 3 year
C	5y	— 5 year.

4) In case of joint auditors, co. may follow rotation in manner such that – all joint auditors do not retire in the same year

③ Rotation of partners of auditor internally:

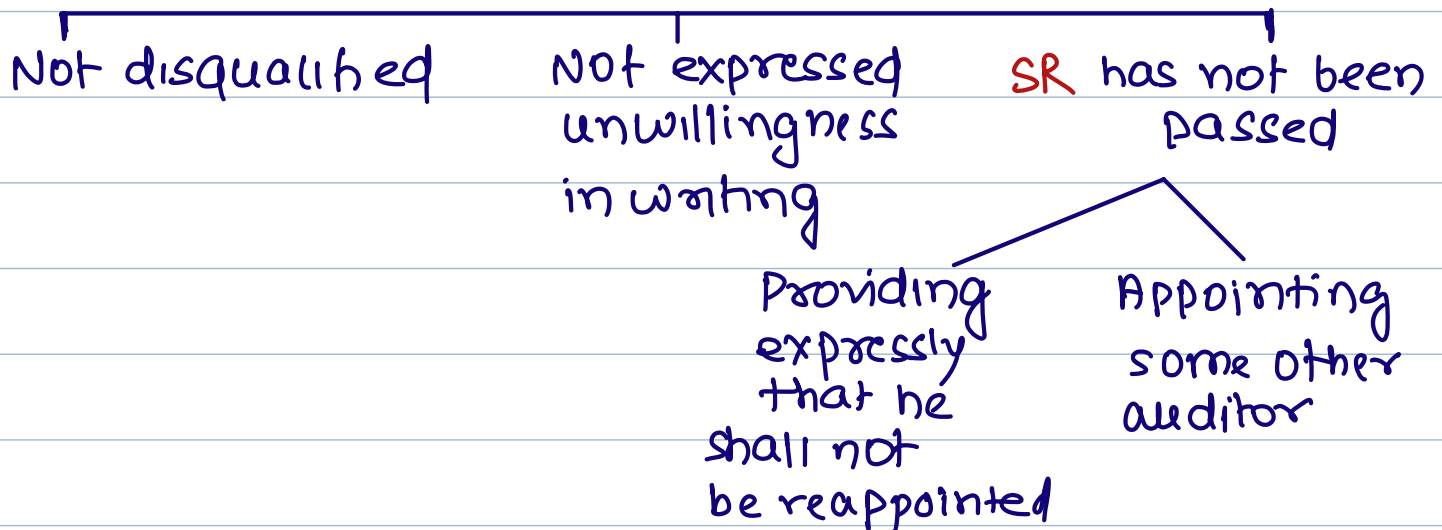
Members may resolve (OR):

Auditing partner & his team shall rotate within audit firm.

OR

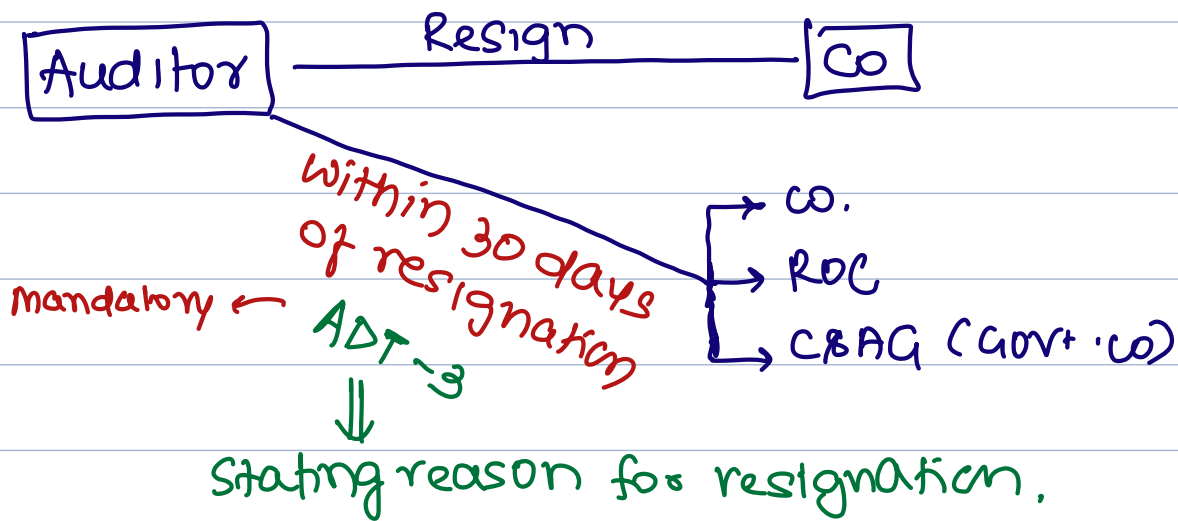
Audit shall be conducted by more than 1 auditor

* A retiring auditor may be reappointed if:



Section 140: Removal and Resignation of auditor

1) Resignation of auditor:



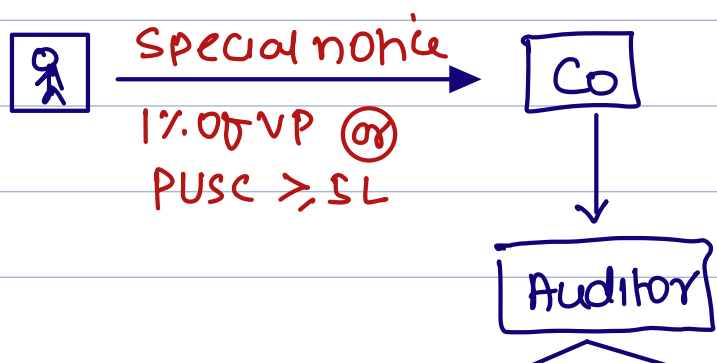
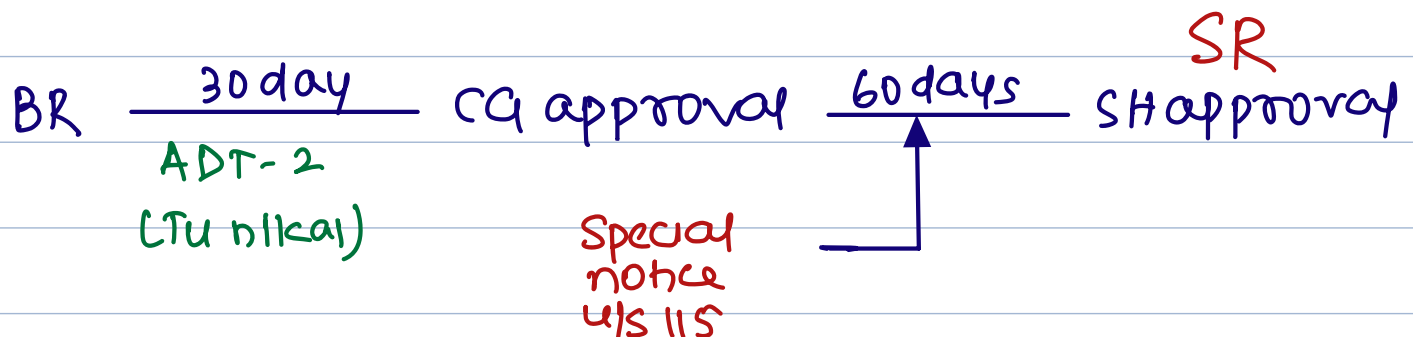
If auditor fails to file ADT-3, liable to:

Penalty: lower of - 50,000 (or)

\ Amt. equal to remuneration.

Continuing failure → ₹ 500/day upto 2 lacs

(2) Removal by Shareholders



Note: Aggrieved person may apply to NCLT. If Tribunal is satisfied that WR is being **ABUSED**, it may order:

- Not to send WR
- Not to read out WR

oral
representation

written representation (WR)

↓
Auditor may request co.
to forward such WR to SHs

Co. fails to forward
WR to member for
any reason

Co. forwards WR
to member

↓
End

↓
Auditor may request
that such WR be read
out loud at AGM
(without prejudice to right
of oral representation)

3) Removal by Tribunal:



Tribunal

Suo-motu

(OR)

Application by CG or
any person

Satisfied that auditor

Acted in fraudulent
manner (OR)

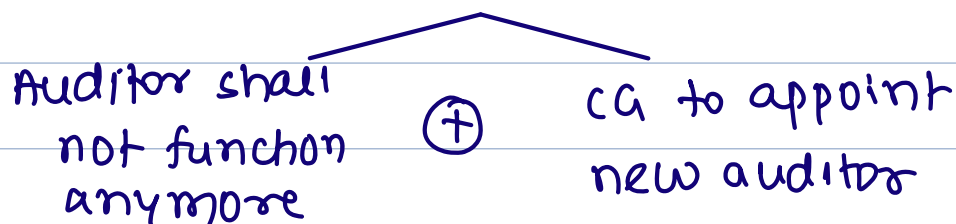
Colluded with
directors/officers
in any fraud

↓
Tribunal may, by order,
direct co. to change auditor

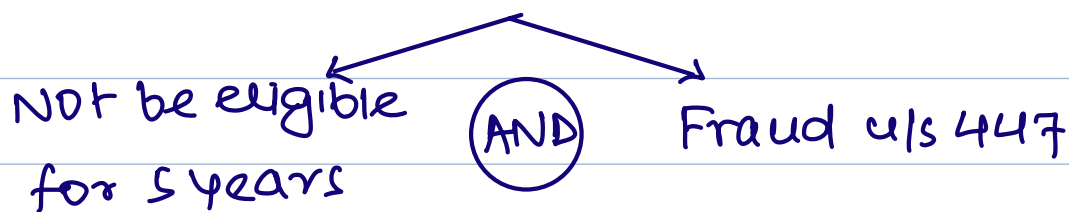
* If application is made by CG and NCT is satisfied that change is required



Within 15 days of such application Tribunal to order:



* Where NCT make such order, Auditor shall:



Section 141: Eligibility, Qualification - Auditor

1) Eligibility: Individual → (CA)
Firm → Majority - CA in Practice

In case of firm → Only CAs in practice to sign.

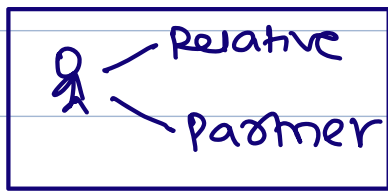
2) Disqualification: Following are disqualified:

a) Body corporate (other than LLP)

b) Officer or employee → CO. [OE]

c) Partner or employee of above → [PE of OE]

d)



Any security → CASH or SOH
 Except: Relative - co.
 - FV 1 Lakh - Security exact → corrective action = 60 days

"

Indebted > 5 Lakh → CASH or SOH

"

Guarantee/Security exceeding 1 Lakh → CASH or SOH

e) Person/Firm Business relation CASH/SOH/AOH

↓
 Exception — OCOB + ALP
 — Proof. service render



g) Person — Full time employee
 — Holds appt. of more than 20 companies

NOTE: In case of firm, the limit of 20 will be for each CA partner

↓
 Exclude: - OPC
 - small co.
 - Dormant co.
 - Pvt co. → PUSC < 100cr

h) Person — convicted — Offence involving fraud

↓
Disqualified for 10 years from date of conviction.

i) Person renders service u/s 144

- Co.
- ~~Associate~~ → x
- Subsy
- Holding

imp

* Where auditor incurs disqualification after appt. → Deemed vacate [casual vacancy]

Sec 142: Remuneration of an auditor

• Remuneration to be decided by shareholders at Gm [Subsequent auditor]

First auditor → Board to decide

(Jo appoint karrega, woh remuneration decide karrega)

• Remuneration: (Fees payable to auditor)

Include

- Expenses incurred for such audit
- Facilities extended

Exclude

Remuneration paid for any other services provided by him.

Section 143: Power and duties of Auditors

Refer charts uploaded separately.

Section 144: Auditor not to render certain services

Auditor shall NOT include following services (directly or indirectly) to CASH namely:

[KIS A BF OM]

- K - Accounting & book keeping service
- I - Internal audit
- S - Financial info. system
 - Design
 - Implementation
- A - Actuarial service
- B - Investment advisory & banking services.
- F - Rendering of outsourced financial services
- M - Management services
- O - Others as may be prescribed

Explanation: For this section, "directly or indirectly" shall include rendering of services by:



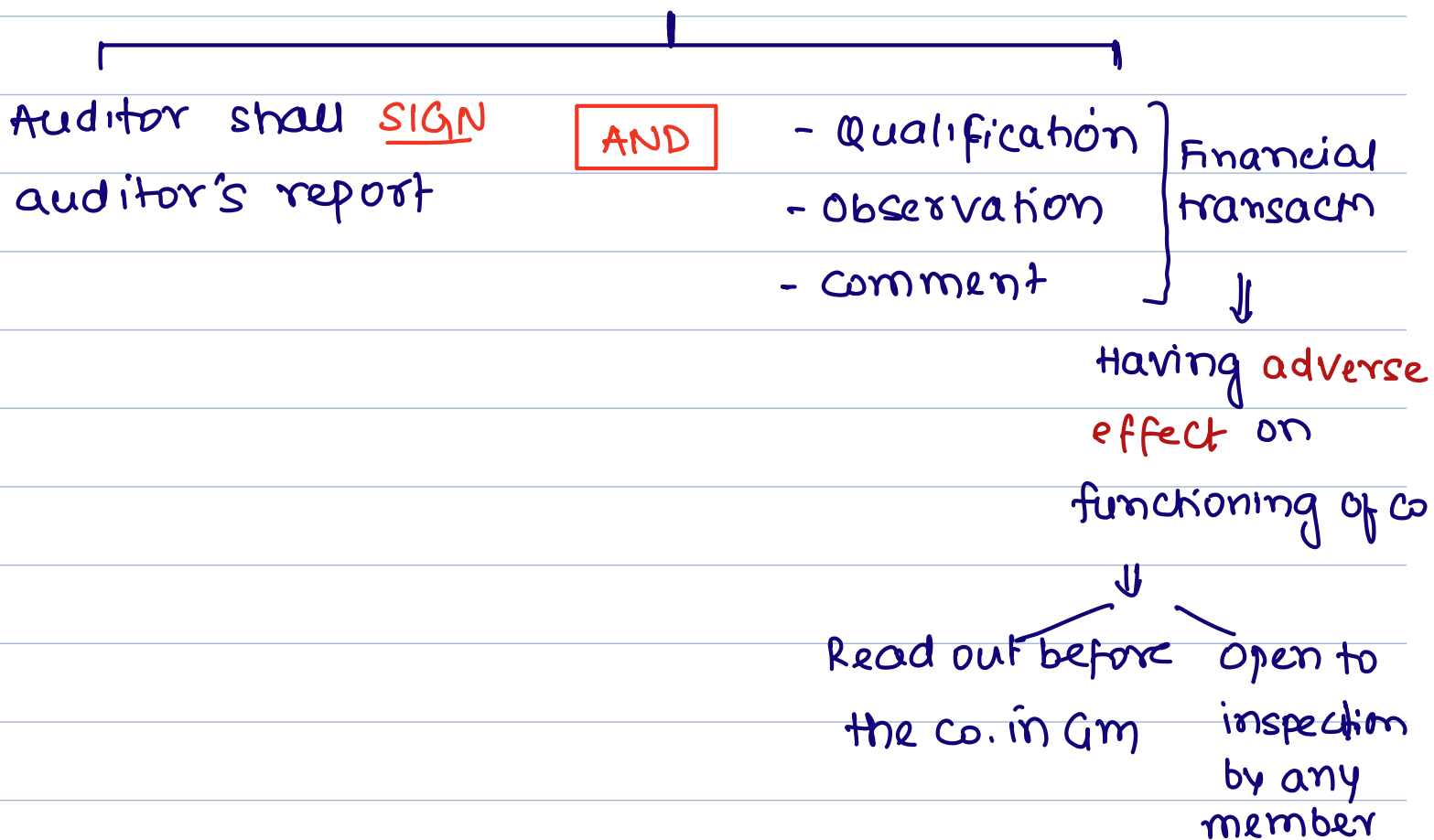
Entity ⁱⁿ which ^{he} has significant influence

partners
other entity in which firm/partner has significant influence.

Q. Can stat. auditors be appointed as GST auditors or tax auditor → YES

Q. Can stat. auditor be appointed as cost auditor → NO. Specifically restricted u/s 148.

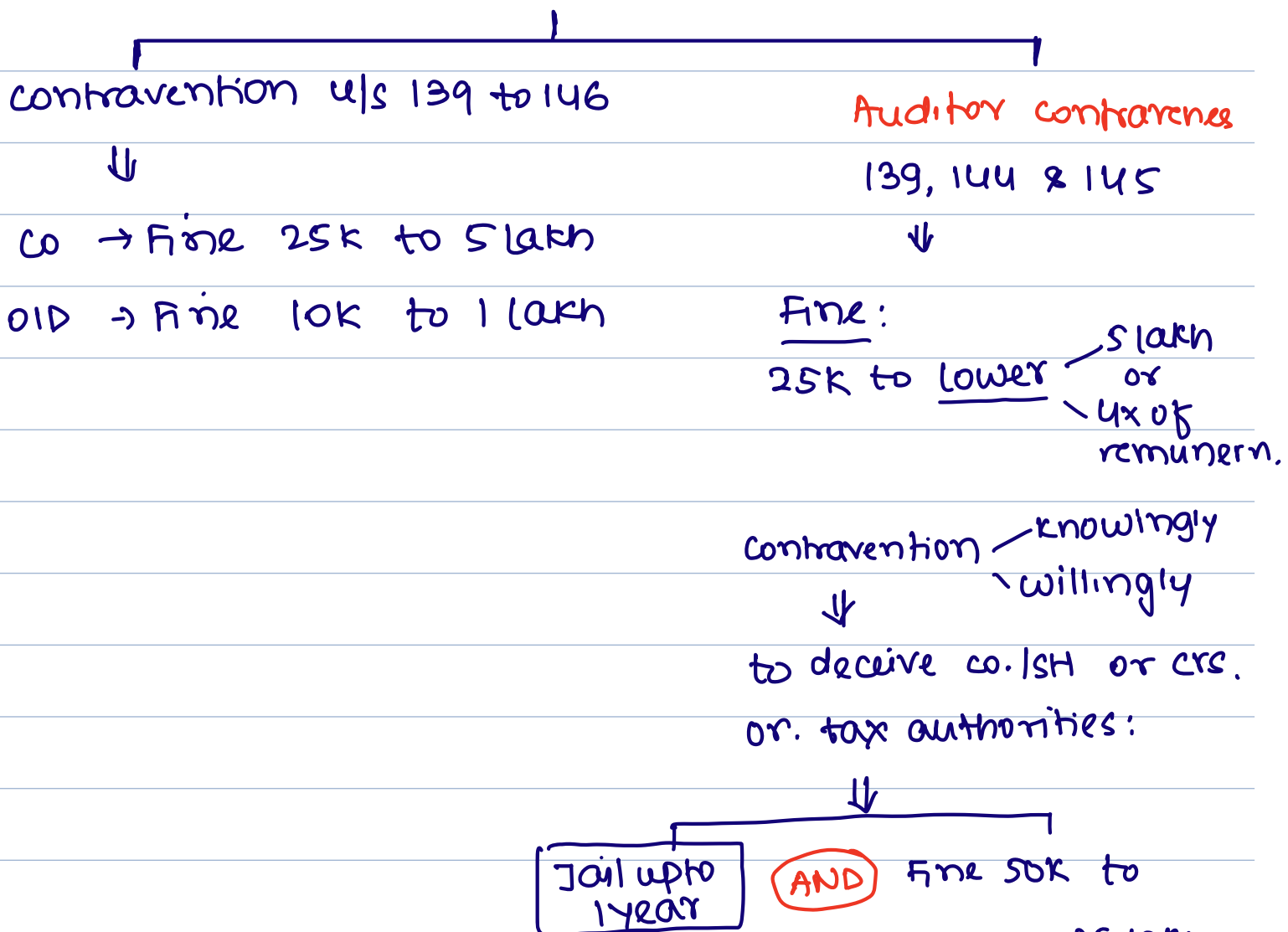
Section 145: Auditor to sign audit reports:



Section 146: Auditor to attend GM:

- Notices to be forwarded to auditor
 - Auditor shall attend such GM
 - Auditor shall have **right to be heard** on such business which concerns him as an auditor.
- Himself
Through AR who is qualified to be an auditor.

Section 147: Punishment for contravention:



lower \leq 25 lakh or
ex Rem.

Where auditor is contravenion:

Refund
remuneration

pay damages to companies/
stat. bodies or members/crs.
for loss arising out of
incorrect/misleading statement.

In case of firm, it is proved — Acted in fraudulent
manner
— Abetted/colluded in
any fraud.

Liability (civil/criminal) = Shall be of partners
concerned.

AND

Firm → Jointly & severally

Section 148: CG to specify cost audit:

(1) CG may, by order, companies engaged in
prescribed goods or providing prescribed services



Direct that particulars relating to — utilisation of
material
— labour
— other items of
cost.

Provided that, prior to passing such orders for co. regulated under special Act, CQ shall consult the concerned regulatory body.

(2) If CQ is of the opinion that it is necessary

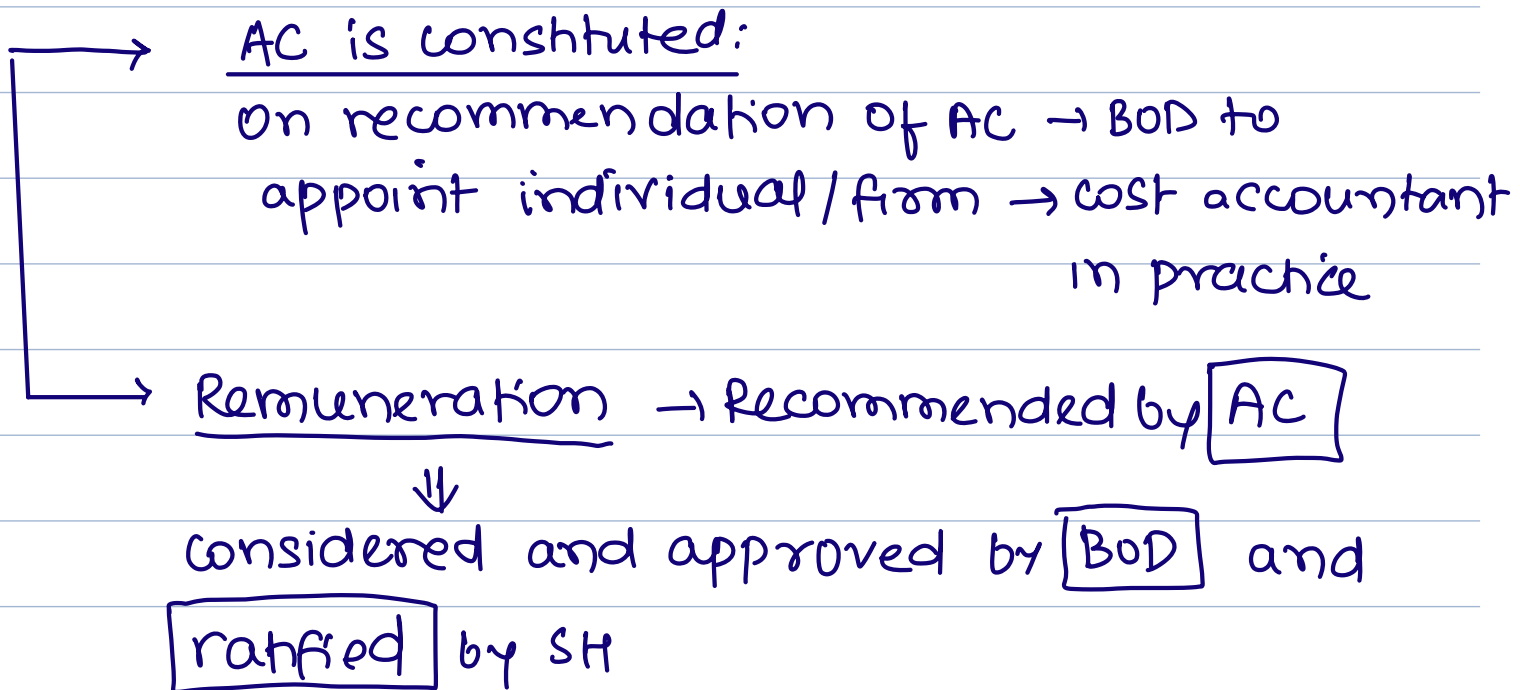
↓

By order - Direct audit of such records

↓

of co. having $\left\{ \begin{array}{l} \text{NW} \\ \text{Turnover} \end{array} \right\}$ as may be prescribed.

(3) Appointment of cost auditor:



In case of other companies:

(a) BOD → Appoint $\left\{ \begin{array}{l} \text{individual} \\ \text{firm} \end{array} \right\}$ cost A/c in practice.

(b) Remuneration thereof



considered and approved by BOD

AND

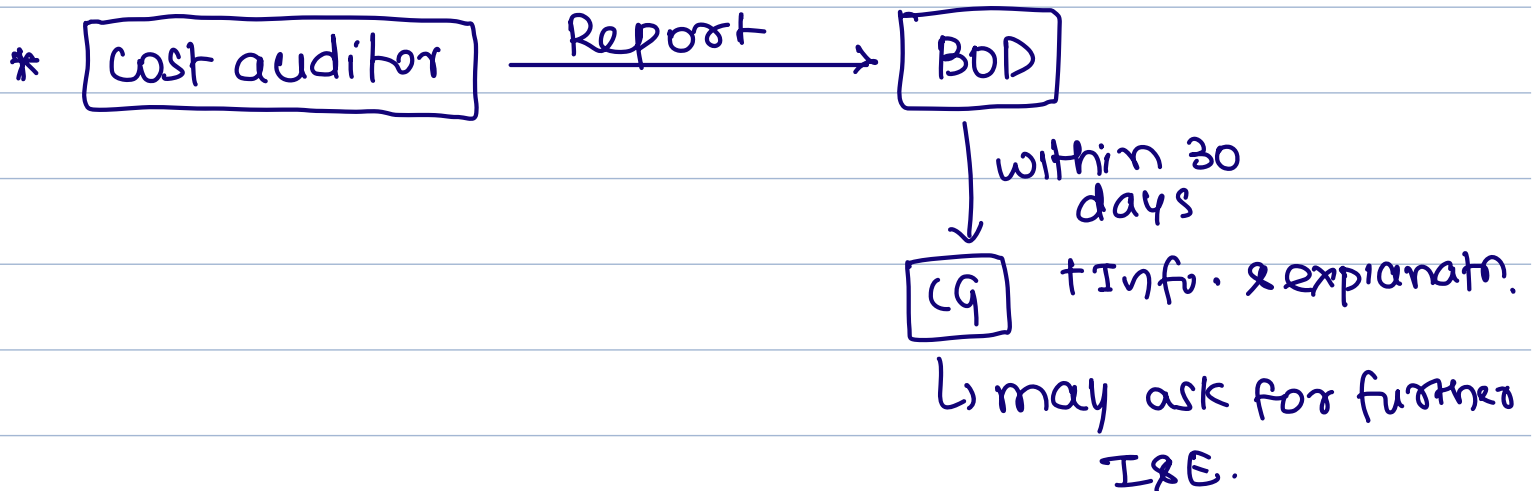
Ratified by SH subsequently.

Important note: Auditor u/s 139 of Co. cannot be appointed as auditor of cost record.

* Cost auditor = Qualification, disqualification



Applicable to auditors



Default u/s — CO & CID = 147(1)
— cost auditor = 147(2) to (4).