

**COMPOUNDING & ADJUDICATION OF OFFENCES
UNDER COMPANIES ACT, 2013**

**PRESENTATION BY
DR. S. K. JAIN
PRACTISING COMPANY SECRETARY**

COMPOUNDING OF OFFENCES

- Section 441 of the Companies Act, 2013 deals with Compounding of Offences which has been notified on 1st June 2016.
- Section 441 starts with non-obstante clause and overrides the provision of Code of Criminal Procedure relating to Compounding of Offence.
- **What is the meaning of Compounding?**

The word Compounding is not defined anywhere in the Act. As per the Black's Law Dictionary, "Compound" means "to settle a matter by a money payment, in lieu of other liability". The Oxford Dictionary defines the word Compound as "Settle (a debt or other matter) in exchange for money or other consideration."

- As per Section 320 of Code of Criminal Procedure, Compounding means to contribute the two rival parties by compromise. Compounding of an offence means, in order to restore harmony between the victim and accused, they resolve their disputes amicably and peacefully.

- In simple words, Compounding of offence means to give an option to offender to pay money instead of lengthy prosecution procedure to avoid time of Courts/ Tribunals.

- **What is the meaning of Offence?**

The word “offence” is also not defined in the Act. Section 3(38) of the General Clauses Act, 1897 defines the word offence as “Offence” shall mean any act or omission made punishable by any law for the time being in force.” In simple words anything punishable under the Act is an offence under the Act.

- Continuing Offence: Non-appointment of CS, Non-holding of AGM, Section 188 etc.
- One time offence: Non-holding of Board Meeting in a quarter by listed Company
- Annual Offences: Disclosure in Board Report, Financial Statement, etc.

- **Who will be considered as an “Officer in default”**

As per Section 2(60) “officer who is in default” for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:—

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

ADVANTAGES OF COMPOUNDING

- No personal appearance for officer in default, as in case of prosecution for an offence in a criminal court.
- No further prosecution shall be initiated either by registrar or shareholder or any other person in respect of that offence after compounding.
- Summary proceeding, less time consuming.
- The Compounding fee cannot be more than the maximum fine levied under the relevant provision
- No Appeal against order of Composition as the Order is passed with the consent of the parties.

OFFENCE UNDER ACT ARE NON-COGNIZABLE (SECTION 439)

- Every offence under the Act, except the offences referred to in sub-section (6) of Section 212 shall be deemed to be non-cognizable
- Court to take Cognizance of offence- on written complaint by Registrar, Shareholder of the Company of a person authorized by the Central Government in that behalf.
- In case of offence relating to issue and transfer of securities and non payment of Dividend- the Court may take cognizance of offences on the complaint of any person authorized by SEBI

WHICH OFFENCES CAN BE COMPOUNDED AND BY WHOM?

Not all offences under Act, 2013 can be compounded. Only the following offences as mentioned below can be compounded under Section 441 of Act, 2013.

1. Offence punishable with "**fine only**"- by **NCLT/ RD /any officer authorised by Central Government**, as the case may be;
2. Offence punishable with "**fine or imprisonment or both**" or "**fine or imprisonment**" by NCLT

No compounding shall be done in the following cases:

1. Offence punishable with "**imprisonment only**"; or
2. Offence punishable with "**imprisonment and fine**"; or
3. Where investigation has been initiated or is pending against the company;

PROCEDURE FOR COMPOUNDING OF OFFENCES UNDER THE ACT, 2013

- As per Section 403 read with Rule 12 of Companies (Registration Offices and Fees) Rules, 2014, the compounding application has to be made to ROC by filing e-Form GNL-1.



DRESS CODE FOR A CS APPEARING BEFORE JUDICIAL/ QUASI JUDICIAL BODIES AND TRIBUNALS.

- For Male Members
 - a) Navy Blue Suit (Coat and Trouser), with CS logo, Insignia OR
Navy Blue Blazer over a sober colored Trouser
 - b) Neck Tie (ICSI)
 - c) White full sleeve Shirt
 - d) Formal Black Leather Shoes (Shined)
- For Female Members
 - a) Navy Blue corporate suit (Coat and Trouser), could be with a neck tie/ Insignia OR
 - b) Saree/ any other dress of sober colour with Navy Blue Blazer with CS logo
 - c) A sober footwear like Shoes/ Bellies/ Wedges, etc (shined)
- Members in employment- Same as prescribed above

RIGHT TO LEGAL REPRESENTATION

- Section 432 of the Companies Act, 2013 states as under:

A party to any proceeding or appeal before the Tribunal or the Appellate Tribunal, as the case may be, either appear in person or authorize one or more Chartered Accountants or Company Secretaries or Cost Accountants or Legal Practitioners or any other person to present his case before the Tribunal or the Appellate Tribunal, as the case may be.

APPLICATION FOR COMPOUNDING

Erstwhile	Existing
CLB Regulations, 1991	NCLT Rules
General Heading in Form 1	General Heading- Form NCT 4
Application in Form 3	Application- Form NCT 1
Affidavit verifying Petition	Affidavit- Form NCT 6
Notice of hearing to be issued	Notice of hearing- Form NCT 5
Memorandum of Appeal- Form 5	Memorandum of Appeal- Form NCT 12
Fees: NIL	FEES: INR 1000/-

PROCEDURE TO COMPOUND AN OFFENCE UNDER THE ACT

- **Calling of Board Meeting:** Company will call a Board Meeting as per the provisions of Companies Act, 2013 and Secretarial Standard 1 issued by ICSI
- **Calculate the amount of fine:** Board will calculate the amount of fine as per the relevant Section.
- **Pass a Resolution:** Board will pass Resolution for filing of application with appropriate authority for compounding of offence and Authorize Director of the Company for preparation and signing of documents
- **Preparation of Compounding Application:** Company will prepare Compounding Application as per the NCLT Rules
- **Filing of Form GNL-1:** Compounding Application shall be submitted electronically to ROC in Form GNL 1 along with payment of applicable fees. The following documents shall be attached to the compounding application:
 - Detailed Petition
 - Affidavit verifying the Petition
 - Memorandum of appearance or vakalatnama as the case may be along with Board Resolution giving authority to appear.
 - Board Resolution giving authority to sign the application/ petition.
 - Evidence showing the offence is being made good.
 - ROC/RD notice in case received any.
 - Any other relevant documents depend upon the matter of the Compounding Application
- This Form will be forwarded by ROC with the Comments thereon to RD/ NCLT/ Officer authorized by Central Government as the case may be.

- **Who can file application in with ROC in Form GNL-1**

The Application can be filed for Company, Director/ Manager/ others- Details of 8 persons can be filed- for additional persons and optional sheet is to be attached.

In case of Director- DIN, Manager/ Secretary- PAN, Other- PAN or Passport. Prefix 0 to make it 12 digit number.

Applicant is a Company: Director/ Secretary/ Manager/ CEO & CFO of Indian Company duly authorized by the Board of Directors.

Foreign Company: Authorized Representative

Others: Individuals who does not have a DSC, by practicing Professional (CS/CA/ICWA)

- **Hearing before Authority:** RD/NCLT will give personal hearing and accordingly pass a speaking order giving reasons.
- Where an offence is compounded, intimation thereof shall be given by the Company to ROC within 7 days from the date on which such order is made available to the Applicant/ Petitioner.
- Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.
- Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.
- The Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order. (Section 441(4))

- If any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4), the maximum amount of fine for the offence proposed to be compounded under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided.
- **Punishment in Case of Repeated Default. (Section 451)**
If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.
- **Permission of Special Court No More required:**
As per sub-section (6)(a) of section 441 as stood before being amended by the **Companies (Amendment) Ordinance 2018**, permission of the Special Court was required for compounding of any offence which is punishable under this Act, with imprisonment or fine, or with both. Such offences can now be compounded without the permission of the special Court in view of the said amended effective from 2nd November, 2018.

- **Discretionary power to reject the Application?**

The Compounding application cannot be rejected without due consideration. The Company Law Board (now NCLT) in the case of **Amadhi Investments Ltd.**, in Para 14 has held as under:

“Taking into consideration the submission of counsel for the petitioner, I am of the opinion that neither the Registrar of Companies nor the Central Government or SEBI have the discretion to reject the compounding request made by accused officers in the default. I agree with the opinion expressed in the book- Guide to the Companies Act by A. Ramaiya- where it is stated that discretion to purchase peace by compounding of offence or face prosecution and prove innocence in the court of law, is with the accused officers in default and once they opt for a particular posture neither the government nor the Registrar of Companies has any chance except to go with their decision”

- **Whether NCLT has powers to review its own decision?**

The NCLAT in the case “APC Credit Rating Private Limited Vs. Registrar of Companies, NCLAT of Delhi and Haryana, [2018] 143 CLA 166 (NCLAT) held that;

“it is clear that there is no inherent power to review, as is under Order 47 Rule 11 of the Code of Civil Procedure, 1980 but the Tribunal has power conferred by sub-section (2) of Section 420 of the Act, 2013 to rectify any mistake apparent from the record and to amend the order accordingly.”

Therefore, we can categorically say that NCLT has power to review its own orders unless the statute is amended to make way for such review. From the above decision of NCLAT it is clear that inherent powers under Rule 11 of the NCLT Rules can't be said to be empowering NCLT with a power to review.

ILLUSTRATIVE COMPOUNDING ORDERS PASSED BY NCLT

Sr. No	Date of Order	Name of Applicants	Violation of provision	Period of violation	Fine as per relevant provision of the Act	Compounding fee imposed by NCLT
1.	28.11.2018	M/s Hira Power and Steels Limited Mr. Vikas Agarwal Mr. Om Prakash Goyal Mr. Kamal Devraj Gulati Mr. Devendra Pratap Singh	Section 134 (3) (0) of CA, 2013	Non spending of CSR amount for the FY 2014-15 and not making disclosure in the Directors Report	On Company not less than fifty thousand rupees but which may extend to five lakhs On every officer in default, imprisonment which may extend to 3 years or with fine not less than fifty thousand rupees but which may extend to five lakhs rupees or both	Compounding fees of rupees ten thousand per applicant, i.e total fifty thousand rupees

Sr. No	Date of Order	Name of Applicants	Violation of provision of CA, 1956/2013	Period of violation	Fine as per relevant provision of the Act	Compounding fee imposed by NCLT
2.	30.06.2017	<p>M/s Stanley Engineering Fastening India Pvt Ltd</p> <p>Rajesh Patil</p> <p>Kathryn Patridge Sherer</p>	<p>383A of CA, 1956</p> <p>&</p> <p>203 of CA,2013</p>	<p>1527 days under Companies Act,1956</p> <p>542 days under Companies Act,2013</p> <p>Total days 2069</p>	<p>Section 383A(1A) of CA,1965- Company and every officer of the company who is in default, shall be punishable with fine which may extend to Rs.500 for every day during which the default continues</p> <p>Section 203(5) of CA,2013- Company shall be punishable with fine which shall not be less than Rs.1 lakh but which may extend to Rs.5 lakh and every director and KMP of the company who is in default shall be punishable with fine which may extend to Rs. 50000 and where the contravention is a continuing one, with a further fine which may extend to Rs.1000 for every day after the first during which the contravention continues.</p>	<p>Section 383A On Company – Rs. 381750</p> <p>&</p> <p>On both Directors Rs. 305400 each</p> <p>Section 203(5) On Company – Rs. 208400</p> <p>&</p> <p>On both Directors Rs. 118400 each</p>

Sr. No	Date of Order	Name of Applicants	Violation of provision of CA, 1956/2013	Period of violation	Fine as per relevant provision of the Act	Compounding fee imposed by NCLT
3.	20.04.2018	<p>Nagandu Power Private Limited</p> <p>Mr. Arumugam Dakshinamoorthy</p> <p>Mr. Raju Jagubhai Parmar</p>	Section 159 of CA, 1956	Non filing of Annual Return with ROC within 60 days of AGM, which was filed after a delay of 1057 days.	Section 162 of Companies Amendment Act, 2000 On Company and every officer of the Company who is in default shall be liable to a penalty of rupee five hundred per day	Compounding fees of rupees one lakh on the Company and rupees fifty thousand for each Applicant

COMPOUNDABLE OFFENCES UNDER ACT, 2013

Sr No.	Section	Provision	Remark	Fine as per the relevant Section	Authority
1.	8(11)	Formation of companies with charitable objects, etc.	Compoundable for company, director and every officer of the company who is in default	Company shall be punishable for a fine not less than ten lakh rupees but which may extend to one crore. Director and every officer who is in default shall be punishable with fine not less than twenty five thousand rupees which may extend to twenty five lakhs	NCLT
2.	26(9)	Matters to be stated in Prospectus	Compoundable for company and every person who is knowingly a party to issue of such prospectus	Company and every such other person who is knowingly a party to issue of such prospectus shall be punishable with fine not less than fifty thousand rupees but which may extend to three lakhs.	RD

Sr No.	Section	Provision	Remark	Fine as per the relevant Section	Authority
3.	40(5)	Securities to be dealt in with in stock exchanges	Compoundable for both company and every officer of the Company who is in default	Company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable which shall not be less than fifty thousand but which may extend to three lakhs	NCLT
4.	46(5)	Certificate of Shares	Compoundable for Company and every officer of the company who is in default	Company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.	RD/NCLT

Sr No.	Section	Provision	Remark	Fine as per the relevant Section	Authority
5.	68(11)	Power of company to purchase its own Securities	Compoundable for both company and every officer of the company who is in default	Company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.	RD
6.	74(3)	Repayment of deposits, etc., accepted before commencement of this Act	Compoundable for both company and every officer of the Company who is in default	Company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees and every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both.	NCLT

Sr No.	Section	Provision	Remark	Fine as per the relevant Section	Authority
7.	99	Punishment for default in complying with provisions of sections 96 to 98	Compoundable for both company and every officer of the company who is in default.	Company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.	RD
8.	128(6)	Books of accounts, etc., to be kept by Company	Compoundable for both company and managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section	If the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions, such managing director, whole-time director in charge of finance, Chief Financial officer or such other person of the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees	RD

Sr No.	Section	Provision	Remark	Fine as per the relevant Section	Authority
9.	129(7)	Financial Statement	Compoundable for both company and MD, WTD, CFO or any other person charged by the Board for complying with the requirements of this section	Company contravenes the provisions of this section, the managing director, the whole-time director in charge of finance, the Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.	RD
10.	147(1)	Punishment for contravention of provisions of Section 139 to 146	Compoundable for both company and every officer of the Company who is in default.	Company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.	RD

Sr No.	Section	Provision	Remark	Fine as per the relevant Section	Authority
11.	166(7)	Duties of Director	Compoundable for the Director of the Company	Director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.	RD
12.	167(2)	Vacation of office of Director	Compoundable for person who functions as a Director even after him becoming disqualified.	A person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.	RD
13.	185(4)	Loan to Directors, etc	Compoundable for both company and every officer of the Company who is in default	Company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees; and he director or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both	RD

Sr No.	Section	Provision	Remark	Fine as per relevant Section	Authority
16.	206(7)	Power to call for Inspection of Books of Accounts and conduct enquiries	Compoundable for both company and any officers	Company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.	RD
17.	221(2)	Freezing of assets of company on inquiry and Investigation	Compoundable for both company and every officer of the Company who is in default	Company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.	RD/NCLT

Sr No.	Section	Provision	Remark	Fine as per relevant Section	Authority
18.	222(2)	Imposition of restrictions upon securities	Compoundable for both company and every officer of the company who is in default.	Company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both	RD/NCLT
19.	242(8)	Power of Tribunals	Compoundable for both company and every officer of the company who is in default.	Company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees	RD/NCLT

Sr No.	Section	Provision	Remark	Fine as per relevant Section	Authority
20	249(2)	Restriction on making Application under Section 248 in certain situation	Compoundable for the Company .	Company files an application under sub-section (2)of section 248 in violation of sub-section (1), it shall be punishable with fine which may extend to one lakh rupees.	RD/NCLT
21.	344(2)	Failure to make a statement that Company is under Liquidation	Compoundable for both company and every officer of the company who is in default.	Company, and every officer of the company, the Company Liquidator and any receiver or manager, who willfully authorizes or permits the non-compliance, shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees	RD
22.	347(4)	Contravention of rule framed or an Order under Section 347(3) regarding disposal of books.	Compoundable for any person who acts in contravention of this provision.	Any person acts in contravention of any rule framed or an order made under sub-section (3), he shall be punishable with fine which may extend to fifty thousand rupees	RD

Sr No.	Section	Provision	Remark	Fine as per relevant Section	Authority
23.	348(6)	Information as to Pending Litigations	Compoundable for the Company Liquidator	Where a Company Liquidator, who is an insolvency professional registered under the Insolvency and Bankruptcy Code, 2016 is in default in complying with the provisions of this section, then such default shall be deemed to be a contravention of the provisions of the said Code, and the rules and regulations made thereunder for the purposes of proceedings under Chapter VI of Part IV of that Code	RD
24.	392	Punishment for contravention of provisions from section 379 to 393 except section 391	Compoundable for both the foreign company and every officer of the foreign who is in default.	If a foreign company contravenes the provisions of this Chapter, the foreign company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees	RD

Sr No.	Section	Provision	Remark	Fine as per relevant Section	Authority
25.	441(5)	Failure to Comply with Order of Tribunal or RD in relation to Compounding of Offences	Compounding for any officer or the employee of the Company	If any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4), the maximum amount of fine for the offence proposed to be compounded under this section shall be twice the amount provided in the corresponding section in which punishment for such offence is provided	RD
26.	447	Punishment for fraud involves amount less than ten lakh rupees or one per cent of the turnover of the company, whichever is less and does not involve public interest	Compoundable for any person guilty of such fraud	where the fraud involves an amount less than ten lakh rupees or one per cent. of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to fifty lakh rupees or with both	RD/NCLT

Sr No.	Section	Provision	Remark	Fine as per relevant Section	Authority
27.	451	Punishment for repeated default within 3 years	Compoundable for both company and every officer of the company	Company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.	RD
28.	452(1)	Punishment for wrongful withholding of Property	Compoundable for both company and any officers	Any officer or employee of a company on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.	RD/NCLT

Sr No.	Section	Provision	Remark	Fine as per relevant Section	Authority
29.	453	Punishment for improper use of Limited or Private Limited	Compoundable for any person.	If any person or persons trade or carry on business under any name or title, of which the word "Limited" or the words "Private Limited" or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.	RD/NCLT
30.	454(8)	Punishment for failing to pay penalty imposed by Adjudicating Officer or RD	Compoundable for both company and any officers	Company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.	RD

Sr No.	Section	Provision	Remark	Fine as per relevant Section	Authority
31.	464(3)	Prohibition of association or partnership of persons exceeding certain number	Compoundable for every member of an association or partnership.	Every member of an association or partnership carrying on business in contravention of sub-section (1) shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.	RD/NCLT
32.	469(3)	Power of Central Government to make rules	Compoundable for both company and any officers	Contravention shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which such contravention continues	RD/NCLT

NON COMPOUNDABLE OFFENCES UNDER THE ACT, 2013

Sr No.	Section	Provision	Who are liable to face penal action?	Fine & Imprisonment
1.	57	Punishment for personation of shareholders	Any person	Imprisonment minimum of one year but may be extended to three years and with fine not less than Rs.1 lakh but may be extended to Rs. 5 lakh.
2.	58(6)	Refusal of registration and Appeal against refusal	Company and every officer of the company who is in default	Company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.
3.	67(5)	Restrictions on purchase by company or giving of loans by it for purchase of its own Shares	Company and every officer of the company who is in default	Company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

Sr No.	Section	Provision	Who are liable to face penal action?	Fine & Imprisonment
4.	118(12)	Minutes of Proceedings of General Meetings, Meeting of BOD and other Meetings and Resolutions passed by Postal Ballot	Any person	Imprisonment upto two years and fine not less than Rs.25,000 but may be extended to Rs.1 lakh.
5.	127	Punishment for failure to distribute Dividend	Every director of the company and Company	Imprisonment upto two years and fine not less than Rs.1,000 for each day of failure (for every director) and 18% interest liability on company
6.	147(2)	Punishment for contravention	Auditor of the company	The auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees: Provided that if an auditor has contravened such provisions knowingly or wilfully with the intention to deceive the company or its shareholders or creditors or tax authorities, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.

Sr No.	Section	Provision	Who are liable to face penal action?	Fine & Imprisonment
7.	182(4)	Prohibitions and restrictions regarding Political Contribution	Company and every officer of the company who is in default	Company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.
8.	186(13)	Loan and Investment by Company	Company and every officer who is in default	Company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
9.	207(4)	Conduct of Inspection and Inquiry	Director and Officer	The director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
10.	217(6)	Procedure, powers, etc of Inspectors	Director and Officer	The director or the officer shall be punishable with imprisonment which may extend to one year and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Sr No.	Section	Provision	Who are liable to face penal action?	Fine & Imprisonment
11.	217(8)	Procedure, powers, etc of Inspectors	Any person	Imprisonment for a term which may extend to six months and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.
12.	245(7)	Class Action	Company and every officer	Any company which fails to comply with an order passed by the Tribunal under this section shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees
13.	247(3)	Registered Valuer	Valuer	Valuer shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
14.	336(1)	Offences by officers of company in liquidation	Any person	Person shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

Sr No.	Section	Provision	Who are liable to face penal action?	Fine & Imprisonment
15.	336(2)	Offences by officers of company in liquidation	Any person	Person shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than three lakh rupees but which may extend to five lakh rupees
16.	337	Penalty for fraud by officers	Any person	Person punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.
17.	338(1)	Liability where proper accounts not kept	Every officer of the company who is in default	Imprisonment not less than one year but may be extended to three years and fine not less than Rs.1 lakh but may be extended to Rs.3 lakh.

Sr No.	Section	Provision	Who are liable to face penal action?	Fine & Imprisonment
18.	447	Punishment for fraud	Any person	<p>Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud involving an amount of at least ten lakh rupees or one per cent. of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud</p> <p>Imprisonment not less than 3 years but may be extended to 10 years and fine not less than the amount involved in fraud but may be extended to 3 times the amount involved in fraud.</p>
19.	449	Punishment for false evidence	Any person	Imprisonment not less than three years but may be extended to seven years and fine upto Rs. 10 lakh.
20.	452(2)	Punishment for wrongful withholding of property	Any officer or employee of the company	To deliver up or refund any such property or cash wrongfully obtained; the benefits that have been derived, imprisonment for a term which may extend to two years.

ADJUDICATION OF PENALTIES

- **Who Can adjudicate penalties under the Companies Act, 2013**

As per Rule 3(1) of Companies (Adjudication of Penalties) Rules, 2019 The Central Government may appoint any of its officers, not below the rank of Registrar, as Adjudicating Officers for adjudicating penalty under the provisions of the Act.

- **Jurisdiction of Adjudication officer.**

MCA has vide **Notification No. S.O. 831(E) dated 24.03.2015** appointed various ROC's as adjudicating officer for adjudging penalties in their respective jurisdiction

- **Whether adjudicating officer can impose penalty on non-compliance or default under the provisions of Companies Act, 2013?**

Yes, as per Section 454(3) Adjudicating officer can impose penalty on non-compliance or default under the provisions of Companies Act, 2013 and direct such Company, or officer who is in default, or any other person, as the case may be to rectify the default, wherever he considers fit.

Note: In case the default relates to non-compliance of Section 92(4) or Section 137 (1) or (2) and such default has been rectified either prior to, or within 30 days of, the issue of notice by the Adjudicating officer, no penalty shall be imposed in this regard and all the proceedings under this section in respect of such default shall be deemed to be concluded.

- **On whom penalties may be imposed by adjudicating officer**

Companies and officer in Default and any other person ("any other person" was inserted by Companies (Amendment) Act, 2019

PROCESS OF ADJUDICATION

Foremost Adjudication Office will Find out the defaults. Once adjudication officer will find out default will start process of adjudication:

STEP-I: ISSUE OF SHOW CAUSE NOTICE TO COMPANY AND OFFICER IN DEFAULT:

As per Rule 3(2) The adjudicating officer shall issue a written notice to the company and to every officer of the company who is in default to show cause “why penalty should not be imposed on it or him”.

As per Rule 3(3) every Notice under sub-rule(2) shall indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company and officer in default and also draw attention to relevant penal provisions of the Act and maximum penalty which can be imposed on Company and officer in default, as the case may be.

Period of Show Cause Notice: Not being less than fifteen days and more than thirty days from the date of service thereon.

Extension of period of Show Cause Notice: As per Rule 3(4) the above time limit may be extended by a further period not exceeding fifteen days, if the company or officer (as applicable) satisfies the said officer that it has sufficient cause for not responding to the notice within the stipulated period.

STEP-II: OPPORTUNITY OF BEING HEARD:

The act provides for providing of opportunity of being heard before imposing of any penalty to the Company, or officer in default, or any other person.[Section 454(4)].

PROCESS OF ADJUDICATION

STEP-III: ENQUIRY BY ADJUDICATION OFFICER- NOTICE FOR HEARING: As per Rule 3(5) if, after considering the reply given by such company or officer or any other person as the case may be, the adjudicating officer is of the opinion that physical appearance is required, he shall issue a notice, within a period of 10 working days from the date of receipt of such reply fixing a date for the appearance.

Provided that if any person who to whom notice is issued under sub-rule (2), desires to make an oral representation and has indicated the same while submitting his reply, Adjudicating Officer shall allow such person to make such representation after fixing date of appearance.

STEP-IV: HEARING: As per Rule 3(6) if on the date fixed for hearing and after giving a reasonable opportunity of being heard to the person(s) concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.

STEP-V: ORDER: Adjudicating Officer shall pass an order:

- Within 30 days from the expiry of period to show cause and such extended period where Adjudicating officer does not require physical presence as per sub-rule (5)
- Within 90 days from the issue of notice where any person has appeared before the Adjudication officer as per sub-rule (5)
- Every such order passed shall be dated and signed and shall also state reasons for requiring physical appearance under sub-rule (5) [Rule 3(8)]

PROCESS OF ADJUDICATION

- **Copies of order of Adjudication officer.(Rule 3(9))** The adjudicating officer shall send a copy of the order passed by it to
 - The concerned company or officer who is in default or any other person and
 - To the Central Government.
 - And the order shall also be uploaded on the website
- **Powers of Adjudication officer during hearing (Rule 3(10)):** While holding an inquiry, the adjudicating officer shall have the following powers, namely:- To summon and enforce the attendance of any person acquainted with the facts and circumstances of the case; To order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry.

If Company and Officer in default make absence themselves from the Hearing?

- **EX-PARTE HEARINGS (Rule 3(11)):** If any person fails, neglects or refuses to appear before the adjudicating officer, the adjudicating officer may impose penalty in the absence of such person after recording the reasons for doing so.

- Under Rule 3(12) the Adjudicating Officer while adjudging the quantum of Penalty shall have due regards to the following factors:
 - a) Size of the Company
 - b) Nature of business carried on by the Company
 - c) Injury to public interest
 - d) Nature of default
 - e) Repetition of the default
 - f) The amount of disproportionate gain or unfair advantage, wherever quantifiable
 - g) Loss caused to an investor or group of investors or creditors
- In no case the penalty imposed shall be less than the minimum penalty prescribed under the relevant section of the Act.
- Wherein a fixed sum of penalty is provided for the default of a provision, the Adjudicating Officer shall impose that fixed sum, in case of default therein
- Payment of penalty shall be done only through portal of Ministry of Corporate Affairs [Rule 3(14)]
- All sums realized by way of penalties under the Act shall be credited to the consolidated fund of India [Rule 3(15)]

PROCESS OF ADJUDICATION

- **Appeal to RD shall be made within how many days?[Section 454 (5) and (6)]**

Any person aggrieved by an order of Adjudicating officer under sub-section 3 may prefer an Appeal to RD having jurisdiction in the matter within a period of sixty days from the date of receipt of Copy of the order of adjudicating officer by the aggrieved party, in Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought.

- **Opportunity of being heard given by RD [Section 454(7)]**

RD may after giving the parties to the Appeal an opportunity of being heard pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

- **Who can appear before RD on behalf of the Party?**

Authorized Representative consent to be attached with appeal: Company can appear by authorized representative, Where the party is represented by an authorized representative, a copy of such authorization in favour of the representative and the written consent thereto by such authorized representative shall also be appended to the appeal.

PROCESS OF ADJUDICATION

PROCESS FOR APPEAL IN REGIONAL DIRECTOR














- **Endorsement of Date on Appeal:** On the receipt of an appeal, office of the Regional Director shall endorse the date on such appeal and shall sign such endorsement.
- **Registration/Admission:** If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number or If, on scrutiny, the appeal is not found to be in order or defective, the Regional Director may allow the appellant such time, not being less than 14 days following the date of receipt of intimation by the appellant from the Regional Director about the nature of the defects, to rectify the defects.
- **If the appellant fails to rectify the defects:** The Regional director may by order and for reasons to be recorded in writing, decline to register such appeal and communicate such refusal to the appellant within a period of 7 days thereof:
- **Extension of period of rectification of defects:** RD may, for reasons to be recorded in writing, extend the period referred to in the first proviso above by a further period of 14 days if an appellant satisfies the RD that the appellant has sufficient cause for not rectifying the defects with in the period of 14 days.
- **Copy of Notice to Adjudication officer:** On the admission of the appeal, the Regional Director shall serve a copy of appeal upon the adjudicating officer against whose order the appeal is sought along-with a notice requiring such adjudicating officer to file his reply thereto with in such period, not exceeding twenty-one days, as may be stipulated by the Regional Director in the said notice. The time may be further extended by 21 days.
- **Reply of Adjudication officer:** A copy of every reply, application or written representation filed by the adjudicating officer before the Regional Director shall be forthwith served on the appellant by the adjudicating officer.













PROCESS OF ADJUDICATION













- **Intimation of Date of Hearing by RD:** The Regional Director shall notify the parties, the date of hearing of the appeal which shall not be a date earlier than Thirty Days following the date of such notification for hearing of the appeal.
- **Hearing by RD:** On the date fixed for hearing the Regional Director may, subject to the reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.
- **Ex parte hearing** In case the appellant or the adjudicating officer does not appear on the date fixed for hearing, the Regional Director may dispose of the appeal ex-parte.
- **Setting aside ex-parte order** Provided that where the appellant appears afterwards and satisfies the Regional Director that there was sufficient cause for his non-appearance, the Regional Director may make an order setting aside the ex-parte order and restore the appeal.
- **Signing of Order** Every order passed under this rule shall be dated and signed by the Regional Director.
- **Communication** A certified copy of every order passed by the Regional Director shall be communicated to the adjudicating officer and to the appellant forthwith and to the Central Government.
- **Fine:** Where the Company fails to comply with the order of Adjudicating officer or RD, within a period of 90 days from the date of the receipt of the copy of order, the company shall be punishable with fine which shall not be less than Rs. 25000 but which may extend to Rs. 5 lakh

In case the officer of the Company or any other person fails to comply with the order of Adjudicating officer or RD within a period of 90 days from the date of receipt of copy of order, such officer shall be punishable with imprisonment which may extend to 6 months or fine which shall not be less than Rs. 25000 but which may extend to Rs. 1 lakh or with boths.

**PROVISIONS PUNISHABLE WITH FINE
SUBSTITUTED BY PENALTY UNDER
COMPANIES (AMENDMENT) ACT, 2019 & 2020**

S. No.	Section	Section Description	Companies (Amendment) Act, 2019	Companies (Amendment) Act, 2020
1.	53(3)	Prohibition of Issue of shares at a discount		-
2.	56(6)	Transfer and transmission of Securities	-	
3.	64(2)	Notice to be given to Registrar for alteration of share capital		-
4.	86	Punishment for contravention of provisions from section 77 to 87 under chapter VI	-	
5.	88(5)	Register of Members	-	
6.	89(5) & (7)	Declaration in respect of beneficiary interest in any Share	-	
7.	90(10)& (11)	Register of significant beneficial owners in a company	-	
8.	92(5)	Annual Return		-
9.	92(6)	Certifying Annual Return in contravention of the provisions of this Section	-	
10.	102(5)	Statement to be annexed to Notice		-
11.	105(3)	Proxies		-
12.	105(5)	Invitation of Proxies issued at Company's Cost	-	
13.	117(2)	Resolutions and Agreements to be filed		-

Sr. No.	Section	Section Description	Companies (Amendment) Act, 2019	Companies (Amendment) Act, 2020
14.	121(3)	Report on annual general meeting		-
15.	124(7)	Unpaid Dividend Account	-	
16.	134(8)	Financial Statement Board's Report	-	
17.	135(7)	Corporate Social Responsibility	-	
18.	137(3)	Copy of financial statement to be filed with Registrar		-
19.	140(3)	Removal, resignation of auditor and giving of special notice		-
20.	143(15)	Punishment for Failure to report fraud to Central Government by the Auditor	-	
21.	157(2)	Company to inform Director Identification Number to Registrar		-
22.	159	Punishment for Contravention – in respect of DIN		-
23.	165(6)	Number of Directorships		-
24.	172	Punishment for contravention of provisions from section 149 to 172	-	
25.	178(8)	Nomination and Remuneration Committee and Stakeholders Relationship Committee	-	
26.	184(4)	Disclosure of Interest by Director	-	

S. No.	Section	Section Description	Companies (Amendment Act) ,2019	Companies (Amendment) Act, 2020
27.	187(4)	Investment of the Company held in its own name	-	
28.	188(5)	Related Party Transaction	-	
29.	191(5)	Payment to Director for Loss of Office		-
30.	197(15)	Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits		-
31.	203(5)	Appointment of Key Managerial Personnel		-
32.	204(4)	Secretarial Audit for Bigger Companies	-	
33.	232(8)	Merger and Amalgamation of Companies	-	
34.	238(3)	Registration of the offer of scheme involving transfer of shares		-
35.	247(3)	Valuation by Registered Valuers	-	
36.	405(4)	Power of Central Government to direct companies to furnish information or Statistics	-	
37.	446(B)	Penalties for One Person Company or Small Companies		-
38.	450	Punishment where no specific penalty is provided	-	

ILLUSTRATIVE ADJUDICATION ORDERS PASSED BY ADJUDICATING OFFICER

Sr. No	Date of Order	Name of persons/entities to whom SCN was issued	Violation of provision of CA, 1956/2013	Period of violation	Penalty as per relevant provision of the Act	Final Penalty Imposed
1.	12.05.2021	M/s Baba Resorts Private Limited Mr.Kripal Singh Mr. Vikram Sharma Mr. Dharam Pal Singh Mr, Navneet Singh	Section 12(1)- Non maintenance of registered office	32 days	Rs.1000 per day for Company and every officer of the Company who is in default	Rs. 32000 each on the Company and every officer who is in default
2.	06.04.2021	Karmabhoomi Real Estate Limited Mr. Sardar Singh Mr. Manoj Senger Mr. Mahipal Singh	Section 12(1)- Non maintenance of registered office	More than a year	Rs.1000 per day for Company and every officer of the Company who is in default	Rs. 100000 each on the Company and every officer who is in default

Sr. No	Date of Order	Name of Applicants	Violation of provision of CA, 1956/2013	Period of violation	Penalty as per relevant provision of the Act	Final Penalty Imposed
3.	07.04.2021	Avanotr Performance materials India Limited Mr. Devashish Ohri Mr. Dheeraj Tiwari Mr. Siddhartha Agarwal	Section 92- Non filing of Annual Return	31 days	Rs.50000 and in case of continuing offence Rs. 100 each day for company and every officer of the company who is in default	No penalty imposed as the company filed the form prior to the issue of notice by adjudicating officer.
4.	20.04.2021	Orind Steels Limited Mr. Kashi Jhunjhunwala Mr. Kanhaiya Lal Murarka Mr. Sanjay Kumar Murarka Mr. Ashok Kumar Murarka Mr. Bhaskar Chandra Sethi Mr. Gaurav Kumar Das	Section 203(1)- Non appointment of KMP and Company Secretary	KMP- 02.011.2019 to 31.10.2019 CS- 02.11.2018 TO 30.09.2019 and again from 1.06.2020 to 23.03.2021	Rs.5 lakhs on the Company and for every officer in default Rs. 50000 and for continuing default Rs.1000 per day but not exceeding Rs. 5 lakhs	Rs. 10 lakhs on the Company and on every officer in default as per their term of holding of office during the default.

ILLUSTRATIVE ADJUDICATION ORDERS PASSED BY REGIONAL DIRECTOR

Sr. No	Date of Order	Name of Applicants	Violation of provision of CA, 1956/2013	Period of violation	Penalty as per relevant provision of the Act	Penalty imposed by Adjudicating officer	Final Penalty Imposed by RD
1.	27.01.2021	M/s Jivrom Technologies Private Limited	Section 10A- Non filing of E-form INC-20A within 180 days of commencement of business	Delay of 56 days	Rs. 50000 on the Company and Rs. 1000 per day on officer of the Company	Rs. 50000 on the Company and Rs. 56000 on officer in default of the Company	Rs. 15000 on the Company and Rs. 12500 on officer in default of the Company
2.	26.02.2021	Gaffino resorts and motels private limited	Section 92- Non filing of Annual return for the year 2018 Section 137- Non filing of Financial Statements	133 days in case of Financial Statements 104 days in case of Annual return	Section 92- Rs. 50000 on company and every officer in default and in case of continuing offence Rs. 100 per day , subject to maximum of Rs. 5 lakhs Section 137- Rs 1 lakh on company and every officer in default and in case on continuing offence Rs. 100 per day, subject to maximum of Rs. 5 lakhs	Section 92- Rs. 604000 on the Company and on every officer in default Section 137- Rs. 133000 on the Company and Rs. 60400 on every officer in default	Section 92- Rs.12080 on company and every officer in default Section 137 Rs. 26600 on the Company and Rs. 22660 on every officer of the Company in default

ILLUSTRATIVE ADJUDICATION ORDERS PASSED BY REGIONAL DIRECTOR

Sr. No	Date of Order	Name of Applicants	Violation of provision of CA, 1956/2013	Period of violation	Penalty as per relevant provision of the Act	Penalty imposed by Adjudicating officer	Final Penalty Imposed by RD
3.	12.02.2021	CF Pharmaceuticals Limited	Section 92- Non filing of Annual Return	30.11.2015-05.10.2017	Rs. 50000 on company and every officer in default and in case of continuing offence Rs. 100 per day , subject to maximum of Rs. 5 lakhs	Rs. 117400 on the Company and every officer in default	Rs. 11740 on the Company and every officer in default
4.	12.02.2021	Tokyo Finance Limited	Section 203	11.08.2017-26.02.2019	Rs.5 lakhs on the Company and for every officer in default Rs. 50000 and for continuing default Rs.1000 per day but not exceeding Rs. 5 lakhs	Rs.5 lakh on the Company and Rs. 167000 on officer of the Company	Rs. 125000 on the Company and Rs. 11750 on the officer of the Company

IMPORTANT JUDGEMENTS OF HON'BLE SUPREME COURT ON ADJUDICATION PROCEEDINGS UNDER SEBI ACT, 1992

- **The Chairman, SEBI Vs. Shriram Mutual Fund & Another (Appeal (Civil) 9523 of 2003-9524 of 2003)**

Para 5 of the said Order:

Chapter VI-A of the SEBI Act deals with the penalties and the adjudication. Section 15-I of the Act envisages appointment of Adjudicating Officer for holding an inquiry in the prescribed manner, after giving reasonable opportunity of being heard for the purpose of imposing any penalty. Section 15-J provides various factors which are to be taken into consideration while adjudging the question of penalty under Section 15-I namely, the amount of disproportionate gain or unfair advantage whenever quantifiable, loss caused to an investor or group of investors and the repetitive nature of default. The legislature in its wisdom had not included mens rea or deliberate or willful nature of default as a factor to be considered by the Adjudicating Officer in determining the quantum of liability to be imposed on the defaulter. Sections 15A to 15H and 15HA employ the words “ shall be liable” and therefore, mandatorily provides for imposition of monetary penalties for respective breaches or non compliance of provisions of the SEBI Act and the Regulations. Default or failure, as contemplated under the Act includes:

15A- Failure to furnish Information, return

15B- Failure to enter into agreement with clients

15C- Failure to redress investor's grievances

15D- Default in case of mutual funds

15E- Failure to observe rules and regulations by an asset management Company

15F- Default in case of Stock Brokers

15G- For Insider Trading

15H- Non-disclosure of acquisition of shares and takeovers

15HA- Fraudulent and unfair trade practices

15HB- Penalty, if not separately provided

Para 9 of the said Order:

It is settled law that when a penalty is imposed by an Adjudicating Officer, it is done so in adjudicatory proceedings and not by way of fine as a result of prosecution of an accused for commission of an offence in criminal proceedings.

Para 11 of the said Order:

In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must be made by the defaulter with guilty intention or not.

- **The Chairman, SEBI Vs. Roofit Industries Limited (Civil Appeal No 1364-1379 of 2005)**

Para 5 of the said Order

A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non compliance occurs and recurs there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.

Adjudicating Securities and Exchange Board of India Vs. Bhavesh Pabari (Civil Appeal No 11311 of 2013)

- Para 6 of the said Order:

Sections 15-A(a) to 15-HA have to be read along with Section 15-J in a manner to avoid any inconsistency or repugnancy. We must avoid conflict and head-on-clash and construe the said provisions harmoniously. Provisions of one section cannot be used to nullify and obtrude another unless it is impossible to reconcile the two provisions. The explanation to Section 15-J of SEBI Act added by Act No.7 of 2017, quoted above, has clarified and vested in the Adjudicating Officer a discretion under Section 15-J on the quantum of penalty to be imposed while adjudicating defaults under Sections 15-A to 15-HA. Explanation to Section 15-J was introduced/ added in 2017 for the removal of doubts created as a result of pronouncement in M/s Roofit Industries.

- Para 9 of the said Order:

*A narrow view would be in direct conflict with the provisions of Section 15-I(2) of the SEBI Act which vests jurisdiction in the Adjudicating Officer, who is empowered on completion of the inquiry to impose **“such penalty as he thinks fit in accordance with the provisions of any of those sections.***

**IF YOU ARE WORKING ON
SOMETHING THAT YOU REALLY
CARE ABOUT, YOU DON'T HAVE TO
BE PUSHED. THE VISION PULLS YOU.**

THANK YOU