

COMPOUNDING OF OFFENCES UNDER COMPANIES ACT, 2013

Chapter XXVIII

Chapter XXVIII

- Section 441: Compounding of certain offences [Notified Date of Section-01/06/2016]
- Section 621A of the erstwhile Companies Act, 1956 dealt with composition of certain offences

Legal Meaning

Legal Meaning

As per Black's Law Dictionary, "Compound" means

- To settle (a matter) by a money payment, in lieu of other liability;
- To agree for consideration not to prosecute (a crime);

As per Section 3 (38) of General Clauses Act, 1897, "Offence" shall mean

- Any act or omission made punishable by any law for the time being in force

As per Section 2(n) of the Criminal Procedure Code 'Offence' means

- Any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871

Compounding of Offence under Section 441

Compounding of Offence under Section 441

- Compounding is a settlement mechanism under which the party in default or the offender pays some prescribed amount of money to the competent authority in lieu of getting prosecuted.
- Advantages of Compounding
 - Summary proceedings
 - Less time consuming
 - Does not burden court with cases
 - Acts as a deterrent and prevents commission of offence

Compounding of Offence under Section 441

- Compoundable offence is made good by paying the fee as decided by the NCLT/RD. The fee so paid is not a penalty and cannot act as a ground for disqualification of the director. The fine so charged cannot be more than the amount prescribed by the relevant legal provision.
- Any offence punishable under the Companies Act, 2013 committed by Company or any officer may be compounded by
 - Tribunal or
 - Regional Director where the maximum amount of fine imposed for such offence does not exceed Rs.25 Lakhs

Types of Offences under the Companies Act, 2013

Types of Offences under the Companies Act, 2013

- Compoundable offences
 - a) Offences that are punishable with “fine only”
 - b) Offences that are punishable with “fine or imprisonment”

Types of Offences under the Companies Act, 2013

- Non-compoundable offences
 - Offence punishable with “with imprisonment only”
 - Offence punishable with “with imprisonment and fine”
 - Offence cannot be compounded in case a similar offence committed has been compounded and the period of three years has not expired. (Section 441(2))
 - Offence cannot be compounded in case either the investigation has been initiated or is pending (Section 441(1))
- Any subsequent offence committed after the expiry of 3 years from the date of compounding shall be deemed to be a first offence

Procedure For Compounding Of Offence

Procedure For Compounding Of Offence

- Convene Meeting of Board
- Determine the offence and calculate the fine to be paid by the company and/or officer in default as per the relevant section
- Pass the following resolutions
 - To file an application for compounding of offence
 - To authorize director or any officer of the company to sign and submit the application on behalf of the company
 - To appoint professionals (lawyer/CS/CA) to appear before the authority

Procedure For Compounding Of Offence

- Prepare the compounding application in triplicate. Application to be accompanied with:
 - Affidavit verifying the application
 - Memorandum of appearance or Power of Attorney
 - Copy of notice from RoC if any
 - Other necessary documents
- File e-form GNL-1 attaching the application along with prescribed fee with RoC [Rs.1000/- as per NCLT Rules,2016]

Procedure For Compounding Of Offence

- Form GNL-1 can be used for compounding of maximum 8 persons excluding the company. If number of persons is greater than 8, then additional details can be provided in optional attachment. Further, the following attachments are also required to submit with e-Form GNL-1.
- Joint application of company and officer in default is allowed
- Deliver sufficient number of hard copies of the compounding application to ROC

Procedure For Compounding Of Offence

- Based on the amount of fine, ROC forwards the application to the NCLT or Regional Director with his comments
- Personal Hearing before NCLT or RD
- Payment of fees for compounding within the time period mentioned
- Compounding fine shall not exceed the maximum fine imposed for the offence so compounded
- Passing of order by NCLT or RD
- Intimation of order of NCLT or RD to RoC within 7 days of receipt of order [Form INC 28]

Contents of Compounding Application

Contents of Compounding Application

- General details about the company – Name, registered office address, date of incorporation, nature of business , main object of the company
- Facts of the case-nature of offence and period of default
- Relevant section which has been violated
- Fine prescribed in the section for violation
- The details as to how the default has been made good indicating the date on which the default has been made good, wherever applicable;
- Prayer for compounding

Order of the Competent Authority

Order of the Competent Authority

Once the prescribed amount is received by the competent authority, the competent authority would spell out that the applicants had paid the aggregate compounding amount. The order so passed ends with the words “The offence is therefore compounded now”. The said order would be signed, stamped and sealed. A copy of the same is sent to the ROC. After the offence is compounded, it amounts to ‘acquittal’ and not ‘conviction’.

Compounding Before or After Institution of Prosecution

Compounding Before or After Institution of Prosecution

- Compounding Application can be filed either before or after the initiation of prosecution.
- An intimation shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded (whether compounding is initiated before or after the institution of any prosecution)

Compounding Before or After Institution of Prosecution

- 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.

Compounding Before or After Institution of 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 authorized by the Central Government against the offender in relation to whom the offence is so compounded

Failure To Comply With The Compounding Order

Failure To Comply With The Compounding Order

Section 441 (5) :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.

Difference Between Adjudication & Compounding

Difference Between Adjudication & Compounding

Adjudication	Compounding
Section 454 of Companies Act, 2013 read with Companies (Adjudication of Penalties) Rules, 2019	Section 441 of Companies Act, 2013
The Central Government may appoint any of its officers, not below the rank of Registrar, as Adjudicating Officers for adjudicating penalty in their respective jurisdiction	Competent Authority are National Company Law Tribunal or Regional Director (based on the threshold limit of fine prescribed) as the case maybe

Difference Between Adjudication & Compounding

Adjudication	Compounding
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.	As per Section 441 of the Companies Act, the company or any of its officer having committed an offence may apply for compounding voluntarily
AO issues show-cause notice to company or officer in default. Opportunity of hearing is given. Order is passed.	A company or officer in default on their own can apply for compounding

Difference Between Adjudication & Compounding

Adjudication	Compounding
Appeal against the adjudication order to be made to Regional Director within 60 days from the date of receipt of order	No appeal is allowed against Compounding Order
Penalties are imposed by Adjudicating Authority without prosecution	Payment of sum of money not exceeding the maximum fine prescribed in the relevant section
Penalties are fixed amount	Compounding Authority has discretion to impose an amount lesser than the fine prescribed
Civil proceedings	Compounding helps to avoid criminal prosecution

CASE LAWS

Viavi Solutions India Private Limited v. Registrar of Companies ([2017]203CompCas165)

The judgement of the Hon'ble NCLAT is of prime importance as it had laid down factors to be considered when an offence is compounded. The Hon'ble NCLAT observed that the NCLT has the power to compound offences before initiating prosecution, the NCLT/RD must take note of the bigger picture and the circumstances. The Hon'ble NCLAT laid down the following factors to be taken into consideration while compounding any offence/s:

- a) The nature and gravity of the offence.
- b) Whether the act is intentional or unintentional.
- c) The period of default.
- d) The report of the ROC.

Viavi Solutions India Private Limited v. Registrar of Companies ([2017]203CompCas165)

- e) The maximum punishment prescribed.
- f) Whether the defaulter has made good the default.
- g) The financial condition of the company and defaulters.
- h) Whether such an offence was committed previously.
- i) Whether the offence is continuous or one time
- j) Whether petition for compounding is suo moto before or after notice from Registrar of Companies or after imposition of the punishment or during the pendency of a proceeding.
- k) Whether the act of the defaulter is prejudicial to the members, the public in general, or not.
- l) The share value of the company.

Pahuja Takii Seeds Ltd. & Ors. v. Registrar of Companies (Company Appeal (AT) No. 80 of 2018)

The NCLAT was to determine:

- a) Whether the Companies Act, 2013 bars Joint Applications for compounding of offence by a defaulting company along with its officers in default.
- b) Whether joint applications for compounding of the same offence committed in different years can be filed.

The Hon'ble NCLAT ruled that Section 441 neither prohibits filing a single application for compounding the same offence nor does it prohibit a joint application filed by the Company along with the officers in default. The Hon'ble NCLAT observed that “procedures are deemed to be permitted unless expressly barred”.

M/s. Cinepolis India Pvt Ltd & Ors. v. Registrar of Companies (Company Appeal (AT) No.137 of 2017)

The Hon'ble NCLAT was to determine Whether the NCLT, u/s. 441 compound offences which are punishable by both imprisonment and fine. The Hon'ble NCLAT ruled that offences that are punishable by 'imprisonment only' cannot be compounded in light of the restriction placed by Section 441(6). However, when the offence is punishable by both 'imprisonment or fine or both' the NCLT shall act as per the procedure laid down in clause (6) of Section 441 by taking permission of the special court.

RSPL Ltd., (Company petition no. 20/ALD of 2017)

The company had filed its cost audit report after a delay of four years of the prescribed time period. The NCLT (Allahabad bench) held that the application for compounding is to be allowed as the company, though acted belatedly, had shown its bona fide effort to make good the default.

In *S Viswanathan v. State of Kerala* (1993) 113 STC 182 (Ker HC DB);

It was held that once the matter is compounded, neither department nor assesses can challenge the compounding order. Department cannot reopen the matter on the reason that actual suppression was much higher

S V Bagi v. State of Karnataka (1992) 87 STC 138)

A person having agreed to the composition of offence is not entitled to challenge the said proceeding by filing an appeal

Thank You

D.Sangamithra B.A.B.L (HONS)., ACS

Advocate & Insolvency Resolution Professional

Phone Number: 9884138127

Email: sangamithra.vcr@gmail.com

