

THE COMPANIES (AMENDMENT) ACT, 2019

Study Circle Meeting of Patiala Chapter of NIRC of ICSI

On Sunday, 15th September 2019

By

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Major highlights of the Act

- Shifting the power from Tribunal to CG for:
 - Approving application for adopting a different F.Y.
 - Approving application for Alteration of AoA for conversion of a public co. to a private co.
- Re-insertion of the section for commencement of business
- Physical verification of the registered office of the company by RoC on reasonable cause to believe
- Reduction in time period for registering charges
 - Total 60 days from dt. of creation on application + additional fees
 - Further 60 days on application + ad valorem fees
- Obligation on the company to take steps to identify SBO and require him to disclose
- Providing a time period of 1 year from the dt. of order to the aggrieved party to make an application to Tribunal for relaxing or lifting restrictions on the shares u/s 90
 - Prescriptive power to Central Government to come out with related rules
- Failure to comply with max. no. of directorship shall attract disqualification u/s 164

- **Omission of sub-section 197(7) w.r.t. payment to IDs**
 - Restriction u/s 149(9) still prevails regarding stock options
 - No impact
- Addition of the following criteria for removal of name from the register of companies:
 - Failure to pay subscription amount by subscribers to MoA and no declaration has been filed in this regard by the director u/s 10A
 - Co. is not carrying on business or operations as revealed after physical verification of the registered office
- **Increase in the pecuniary jurisdiction of RD for compounding applications**
 - Rs. 5 lakhs to 25 lakhs
- Max. fine u/s 447 increased from Rs. 20 lakhs to Rs. 50 lakhs
- Adjudication by Adjudicating Officer on any “person” u/s 154
- Repeated default in 3 years shall make the person liable to double penalty as provided in the respective sections
- Shifting from “fine” to “penalty” in for in-house adjudication mechanism
 - Under 18 sect

- **Section 10A- Commencement of Business, etc.**
 - Co to commence business or operation or exercise any borrowing powers only after-
 - Declaration by director is filed with ROC
 - w.r.t receipt of subscription amount from the subscribers
 - Non- filing may lead to removal of name at the instance of ROC
 - **The co. has verified its reg. office with the RoC in e-Form INC-22**
 - **Penalty**
 - Company- Rs. 50K
 - Officer in default- Rs. 1000 per day upto Rs. 1 lac
- **Section 12(9)- Registered office of company**
 - RoC may cause a physical verification
 - Manner to be prescribed
 - Any default may lead to removal of name at the instance of ROC

Section 29-Dematerialisation of securities

- Mandatory issue/ holding of securities in demat form by class of unlisted companies
- May include private companies as well.

• Section 77- Register of charges, etc.

- Erstwhile prov.-
 - Register charge within 30 days of creation
 - Further, 270 days on application + additional fees
 - Beyond 300 days, seek extension

New prov.-

- Register charge within 30 days of creation
- Further, 30 days on application + additional fees
- Beyond 60 days, seek extension within 60 days on application + advalorem fees

- Section 135- CSR provisions

- Companies who are not able to spend the targeted amount, contribute the unspent money to the

- Funds mentioned in Scheduled VII

- If not ongoing project
 - What is ongoing projects- conditions will be prescribed
 - Transfer fund within 6 months from end of FY
 - Opening of special CSR Account within 30 days from end of FY
 - In case of ongoing projects
 - Mandatory utilization of such amount within 3 Fys
 - If contravenes the aforesaid provisions, min fine of Rs. 50,000 and max fine of Rs. 25 lakh on the

- Company

- Officers of the Company liable for imprisonment

- Section 241-243- Power of CG to request the Tribunal for conducting inquiry
 - In case of mismanagement by a person
 - Tribunal to record reasons whether the person is fit and proper
 - If not, prohibition on holding of similar office for 5 years

- Section 248- Power of Registrar to remove name of company from register of companies
 - **Erstwhile prov-**
 - Co. has failed to commence business within 1 year of incorporation;
 - Co. is not carrying on any business or operation for a period of 2 immediately preceding financial years + no application made within such period for obtaining the status of a dormant company under section 455.
 - **New provision added to the above-**
 - Failure in paying subscription amount by the subscribers to the memorandum + declaration not filed by the director in this regard within 180 days
 - Co. is not carrying on any business as revealed in physical verification of the RO

Section	Particulars	Effective Date
2(41)	Financial Year	2 nd Nov 2018
10A	Commencement of Business	2 nd Nov 2018
12	Registered Office of Company	2 nd Nov 2018
14	Articles of Association	2 nd Nov 2018
26	Matters to be stated in Prospectus	15 th Aug 2019
29	Publication offer of Securities to be dematerialised	15 th Aug 2019
35	Civil Liability for Mis-statement in Prospectus	15 th Aug 2019
53	Prohibition on issue of Shares at Discount	2 nd Nov 2018
64	Notice to be given to Registrar for alteration of Share Capital	2 nd Nov 2018
77	Registration of Charges	2 nd Nov 2018
86	Punishment of Contravention	2 nd Nov 2018
87	Rectification by Central Government in Register of Charges	2 nd Nov 2018
90(9)	Register of significant beneficial owners in a Company	2 nd Nov 2018
90(4A)(9A)(11)	Register of significant beneficial owners in a Company	15 th Aug 2019

92	Annual Return	2 nd Nov 2018
102	Statement to be annexed to Notice of EOGM	2 nd Nov 2018
105	Proxies	2 nd Nov 2018
117	Resolution and agreements to be files	2 nd Nov 2018
121	Report on AGM	2 nd Nov 2018
132	NFRA	15 th Aug 2019
135	CSR	MCA to Notify
137	Copy of Financial Statements to be filed with Registrar	2 nd Nov 2018
140	Removal, resignation of auditor and giving of special notice	2 nd Nov 2018
157	Company to inform DIN to Registrar	2 nd Nov 2018
159	Punishment for contravention	2 nd Nov 2018
164	Disqualification for appointment of Director	2 nd Nov 2018
165	Number of Directorships	2 nd Nov 2018
191	Payment to Director for loss of Office	2 nd Nov 2018
197	Overall maximum Managerial Remuneration	2 nd Nov 2018
203	Appointment of KMP's	2 nd Nov 2018

212	Investigation into affairs of Company by SIFO	15 th Aug 2019
238	Registration of offer schemes involving transfer of Shares	2 nd Nov 2018
241	Application to Tribunal for relief in care of Oppression, etc	15 th Aug 2019
242	Powers of Tribunal	15 th Aug 2019
243	Consequences of termination or modification of certain agreements	15 th Aug 2019
248	Power of Registrar to remove Name of Company form register of Companies	2 nd Nov 2018
272	Petition for winding up	15 th Aug 2019
398	Provisions relating to filing of applications, documents in electronic form	15 th Aug 2019
441	Compounding of certain offences	2 nd Nov 2018
446B	Lesser penalties for OPC or Small Companies	2 nd Nov 2018
447	Punishment for Fraud	2 nd Nov 2018
454	Adjudication of penalties	2 nd Nov 2018
454A	Penalty for repeated defaults	2 nd Nov 2018

Different financial year if holding or subsidiary or associate company is outside India

2. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act), in clause (41),—

(a) for the first proviso, the following provisos **shall be substituted**, namely:—

“Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;

(b) in the second proviso, for the words “Provided further that”, the words “Provided also that” **shall be substituted**.

Earlier i.e. before 02.11.2018 this power was with NCLT

Declaration before commencement of business that Shares have been taken by promoters

3. After section 10 of the principal Act, the following section **shall be inserted**, namely:—

“10A.(1) A company incorporated after the commencement of the Companies (Amendment) Act, 2019 and having a share capital shall not commence any business or exercise any borrowing powers unless—

(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(b) the company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) If any default is made in complying with the requirements of this section, the company shall be liable to a penalty of fifty thousand rupees and every officer who is in default shall be liable to a penalty of one thousand rupees for

each day during which such default continues but not exceeding an amount of one lakh rupees. ----- there was no such penal provision as per erstwhile Section.

(3) Where no declaration has been filed with the Registrar under clause (a) of sub-section (1) within a period of one hundred and eighty days of the date of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”.

Removal of Name is Company is not carrying on Business:

4. In section 12 of the principal Act, after sub-section (8), the following sub-section **shall be inserted**, namely:—

“(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.”.

AOA-----Conversion of Public Company into Private Company with the approval of RD

5. In section 14 of the principal Act,—

(i) in sub-section (1), for the second proviso, the following provisos **shall be substituted**, namely:—

“Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.”;

(ii) in sub-section (2), for the word “Tribunal”, the words “Central Government” **shall be substituted**.

Matter to be stated in Prospectus

6. In section 26 of the principal Act,—

- (i) in sub-sections (4), (5) and (6), for the word “registration”, the word “filing” **shall be substituted**;
- (ii) sub-section (7) shall be omitted.

Demat of Securities

7. In section 29 of the principal Act,—

- (i) in sub-section (1), in clause (b), the word “public” shall be omitted;
- (ii) after sub-section (1), the following sub-section **shall be inserted**, namely:—

“(1A) In case of such class or classes of unlisted companies as may be prescribed, the securities shall be held or transferred only in dematerialised form in the manner laid down in the Depositories Act, 1996 and the regulations made thereunder.”.

Civil Liability for Mis-statement in prospectus

8. In section 35 of the principal Act, in sub-section (2), in clause (c), for the words “delivery of a copy of the prospectus for registration”, the words “filing of a copy of the prospectus with the Registrar” **shall be substituted**.

Penalty for issue of Shares at Discount

9. In section 53 of the principal Act, for sub-section (3), the following sub-section **shall be substituted**, namely:—

“(3) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.”.

Penalty for issue of Shares at discount – till 02.11.2018 the power for imposing fine was with Court.

Penalty for failure to give Notice to Registrar for alteration of Capital:

10. In section 64 of the principal Act, for sub-section (2), the following sub-section **shall be substituted**, namely:—

“(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of **one thousand rupees for each day during which such default continues, or five lakh rupees whichever is less.**”

Earlier Provision - If a company and any officer of the company who is in default contravene the provisions of sub-section (1), it or he shall be punishable with fine which may extend to one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.

Time Limit for filing Charge created on or after 02.11.2018

11. In section 77 of the principal Act, in sub-section (1), for the first and second provisos, the following provisos **shall be substituted**, namely:—

“Provided that the Registrar may, on an application by the company, allow such registration to be made—

(a) in case of charges created **before the commencement of the Companies (Amendment) Act, 2019**, within a period of **three hundred days** of such creation; or

(b) in case of charges created on or **after the commencement** of the Companies (Amendment) Act, 2019, within a period of **sixty days** of such creation, on payment of such additional fees as may be prescribed:

Provided further that if the registration is not made within the period specified—

(a) in clause (a) to the first proviso, the registration of the charge shall be made **within six months from the date of commencement of the Companies (Amendment) Act, 2019**, on payment of such additional fees as may be prescribed and different fees may be prescribed for different classes of companies;

(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of **sixty days** after payment of such ad valorem fees as may be prescribed.”

Punishment for not filing Charges or giving false information:

12. Section 86 of the principal Act shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section **shall be inserted**, namely:— “(2) If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.”.

Rectification of Register of Charges by Central Government

13. For section 87 of the principal Act, the following section **shall be substituted**, namely:—

“87. The Central Government on being satisfied that—

- (a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or
- (b) the omission or misstatement of any particulars, in any filing previously made to the Registrar with respect to any charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or **misstatement shall be rectified.**”

Application to NCLT for relaxation on restrictions placed on significant beneficial owner for transfer of Shares

14. In section 90 of the principal Act,—

(i) after sub-section (4), the following sub-section **shall be inserted**, namely:—

“(4A) Every company shall take necessary steps to **identify an individual who is a significant beneficial owner** in relation to the company and require him to comply with the provisions of this section.”;

(ii) for sub-section (9), the following sub-section **shall be substituted**, namely:—

“(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), **within a period of one year from the date of such order:**

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed.”;

(iii) after sub-section (9), as so substituted, the following sub-section **shall be inserted**, namely:— “(9A) The Central Government may make rules for the purposes of this section.”;

(iv) in sub-section (11), after the word, brackets and figure “sub-section (4)”, the words, brackets, figure and letter “or required to take necessary steps under sub-section (4A)” **shall be inserted**.

Penalty for default in filing Annual Return

15. In section 92 of the principal Act, for sub-section (5), the following sub-section **shall be substituted**, namely:—

“(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

Till 02.11.2018 fine could be imposed by Court now penalty can be imposed by ROC/RD

Penalty for not complying with provision relating to explanatory statement with Notice of General Meeting

16. In section 102 of the principal Act, for sub-section (5), the following sub-section **shall be substituted**, namely:— “

(5) Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is higher.”

Till 02.11.2018 fine could be imposed by Court now penalty can be imposed by ROC/RD.

Penalty if Notice of General Meeting does not indicate about provisions of proxy

17. In section 105 of the principal Act, in sub-section (3), for the words “punishable with fine which may extend to five thousand rupees”, the words “liable to a penalty of five thousand rupees” **shall be substituted**.

Notice of General Meeting must prominently indicate that a member can appoint proxy.

Penalty for not filing MGT-14

18. In section 117 of the principal Act, for sub-section (2), the following sub-section **shall be substituted**, namely:— “

(2) If any company fails to file the resolution or the agreement under sub-section (1) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of twenty-five lakh rupees and every officer of the company who is in default including liquidator of the company, if any, shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

Till 02.11.2018 fine for non-filing of MGT-14 could be imposed by Court now penalty can be imposed by ROC/RD

Penalty for not filing Report of AGM by Listed Companies

19. In section 121 of the principal Act, for sub-section (3), the following sub-section **shall be substituted**, namely:—

“(3) If the company fails to file the report under sub-section (2) before the expiry of the period specified therein, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty which shall not be less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

20. In section 132 of the principal Act,—

(a) after sub-section (1), the following sub-section **shall be inserted**, namely:—

“(1A) The **National Financial Reporting Authority** shall perform its functions through such divisions as may be prescribed.”;

(b) after sub-section (3), the following sub-sections **shall be inserted**, namely:—

“(3A) Each division of the National Financial Reporting Authority shall be presided over by the Chairperson or a full-time Member authorised by the Chairperson.

(3B) There shall be an executive body of the National Financial Reporting Authority consisting of the Chairperson and full-time Members of such Authority for efficient discharge of its functions under sub-section (2) [other than clause (a)] and sub-section (4).”;

(c) in sub-section (4), in clause (c), for sub-clause (B), the following sub-clause **shall be substituted**, namely:—

“(B) debaring the member or the firm from—

- I. being appointed as an auditor or internal auditor or undertaking any audit in respect of financial statements or internal audit of the functions and activities of any company or body corporate; or
- II. performing any valuation as provided under section 247, for a minimum period of six months or such higher period not exceeding ten years as may be determined by the National Financial Reporting Authority.”.

21. In section 135 of the principal Act,—

(a) in sub-section (5), —

(i) after the words **“three immediately preceding financial years,”**, the words **“or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years,”** **shall be inserted**;

(ii) in the second proviso, after the words “reasons for not spending the amount” occurring at the end, the words, brackets, figure and letters “and, unless the unspent amount relates to any ongoing project referred to in sub-section (6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year” **shall be inserted**;

(b) after sub-section (5), the following sub-sections **shall be inserted**, namely:—

“(6) Any amount remaining unspent under sub-section (5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

(7) If a company contravenes the provisions of sub-section (5) or sub-section (6), the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such 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.

(8) The Central Government may give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of this section and such company or class of companies shall comply with such directions.”

Penalty for not filing Financial Statements as per provisions

22. In section 137 of the principal Act, in sub-section (3),—

(a) for the words “punishable with fine”, the words “liable to a penalty” **shall be substituted**;

(b) for the portion beginning with the words “punishable with imprisonment”, and ending with the words “five lakh rupees or with both”, the words “shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees” **shall be substituted**.

Penalty if Auditor does not file statement of his resignation to ROC

23. In section 140 of the principal Act, for sub-section (3), the following sub-section **shall be substituted**, namely:—

“(3) If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.”.

Penalty for not informing DIN to ROC

24. In section 157 of the principal Act, for sub-section (2), the following sub-section **shall be substituted**, namely:—

“(2) If any company fails to furnish the Director Identification Number under sub-section (1), such company shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees, and every officer of the company who is in default shall be liable to a penalty of not less than twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of one lakh rupees.”.

Penalty for Violation of provisions by Director relating to DIN

25. For section 159 of the principal Act, the following section **shall be substituted**, namely:—

“159. If any individual or director of a company makes any default in complying with any of the provisions of section 152, section 155 and section 156, such individual or director of the company shall be liable to a penalty which may extend to fifty thousand rupees and where the default is a continuing one, with a further penalty which may extend to five hundred rupees for each day after the first during which such default continues.”.

Director disqualified for appointment if he exceeds the prescribed number of directorships

26. In section 164 of the principal Act, in sub-section (1), after clause (h), the following clause **shall be inserted**, namely:—

“(i) he has not complied with the provisions of sub-section (1) of section 165.”.

Penalty for violating provisions relating to restriction on number of Directorships

27. In section 165 of the principal Act, in sub-section (6), for the portion beginning with the words “punishable with fine” and ending with the words “contravention continues”, the words “liable to a penalty of five thousand rupees for each day after the first during which such contravention continues” **shall be substituted**.

Penalty for violating provisions relating to payments to directors for loss of office

28. In section 191 of the principal Act, for sub-section (5), the following sub-section **shall be substituted**, namely:—

“(5) If a director of the company makes any default in complying with the provisions of this section, such director shall be liable to a penalty of one lakh rupees.”

Stock Option can be give to Independent Directors

29. In section 197 of the principal Act,—

(a) sub-section (7) shall be omitted;

(b) for sub-section (15), the following sub-section **shall be substituted**, namely:—

“(15) If any person makes any default in complying with the provisions of this section, he shall be liable to a penalty of one lakh rupees and where any default has been made by a company, the company shall be liable to a penalty of five lakh rupees.”.

Penalty for not appointing KMP when mandatory

30. In section 203 of the principal Act, for sub-section (5), the following sub-section **shall be substituted**, namely:—

“(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.”

31. In section 212 of the principal Act,—

(a) in sub-section (8), for the words “If the Director, Additional Director or Assistant Director”, the words “If any officer not below the rank of Assistant Director” **shall be substituted**;

(b) in sub-section (9), for the portion beginning with the words “The Director” and ending with the word, brackets and figure “sub-section (8)”, the words, brackets and figure “The officer authorised under sub-section (8) shall, immediately after arrest of such person under such sub-section” **shall be substituted**;

(c) in sub-section (10),—

(i) for the words “Judicial Magistrate”, the words “Special Court or Judicial Magistrate” **shall be substituted**;

(ii) in the proviso, for the words “Magistrate’s court”, the words “Special Court or Magistrate’s court” **shall be substituted**;

(d) after sub-section (14), the following sub-section **shall be inserted**, namely:—

“(14A) Where the report under sub-section (11) or sub-section (12) states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity, has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate orders with regard to disgorgement of such asset, property or cash and also for holding such director, key managerial personnel, other officer or any other person liable personally without any limitation of liability.”.

Penalty for violating provisions relating to circular of offer- Transfer of Shares Scheme

32. In section 238 of the principal Act, in sub-section (3), for the words “punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees”, the words “liable to a penalty of one lakh rupees” **shall be substituted**.

Relief in case of Oppression

33. In section 241 of the principal Act,—

(a) in sub-section (2), the following proviso shall be inserted, namely:—

“Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.”;

(b) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(3) Where in the opinion of the Central Government there exist circumstances suggesting that—

(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.

(5) Every application under sub-section (3)—

- (a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and
- (b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.”.

Powers of Tribunal

34. In section 242 of the principal Act, after sub-section (4), the following sub-section **shall be inserted**, namely:—
- “(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.”.
35. In section 243 of the principal Act,—
- (a) after sub-section (1), the following sub-sections **shall be inserted**, namely:—
- “(1A) The person who is not a fit and proper person pursuant to sub-section (4A) of section 242 shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company for a period of five years from the date of the said decision:
- Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.
- (1B) Notwithstanding anything contained in any other provision of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.”;
- (b) in sub-section (2), after the word, brackets and figure “sub-section (1)”, the words, brackets, figure and letter “or sub-section (1A)” **shall be inserted**.

Removal of name of company if subscription not paid or company not carrying on business

36. In section 248 of the principal Act, in sub-section (1),—

(a) in clause (c), for the word and figures “section 455,”, the words and figures “section 455; or” **shall be substituted**;

(b) after clause (c) and before the long line, the following clauses **shall be inserted**, namely:—

“(d) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not been filed within one hundred and eighty days of its incorporation under sub-section (1) of section 10A; or

(e) the company is not carrying on any business or operations, as revealed after the physical verification carried out under sub-section (9) of section 12.”

37. In section 272 of the principal Act, in sub-section (3), for the words, brackets and letter “or clause (e) of that sub-section”, the words “of that section” **shall be substituted**.

38. In section 398 of the principal Act, in sub-section (1), in clause (f), the word “prospectus,” shall be omitted.

Compounding of Offences

39. In section 441 of the principal Act,—

(a) in sub-section (1), in clause (b), for the words “does not exceed five lakh rupees”, the words “does not exceed twenty-five lakh rupees” **shall be substituted**;

(b) for sub-section (6), the following sub-section **shall be substituted**, namely:—

“(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.”

Lesser penalty of OPC & Small Companies

40. In section 446B of the principal Act, for the portion beginning with the words “punishable with fine” and ending with the words “specified in such sections”, the words “liable to a penalty which shall not be more than one-half of the penalty specified in such sections” **shall be substituted**.

Punishment for small frauds

41. In section 447 of the principal Act, in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” **shall be substituted**.

Adjudication of Penalties

42. In section 454 of the principal Act,—

(i) for sub-section (3), the following sub-section **shall be substituted**, namely:—

“(3) The adjudicating officer may, by an order—

(a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and

(b) 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.”;

(ii) in sub-section (4), for the words “such company and the officer who is in default”, the words “such company, the officer who is in default or any other person” **shall be substituted**;

(iii) in sub-section (8),—

(a) in clause (i), for the words “does not pay the penalty imposed by the adjudicating officer or the Regional Director”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” **shall be substituted**;

(b) in clause (ii)—

(i) for the words “Where an officer of a company”, the words “Where an officer of a company or any other person” **shall be substituted**;

(ii) for the words “does not pay the penalty”, the words, brackets and figures “fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be,” **shall be substituted**.

Double penalty for offence reported within 3 years

43. After section 454 of the principal Act, the following section **shall be inserted**, namely:—

“454A. Where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of this Act.”

44. (1) The Companies (Amendment) Second Ordinance, 2019 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.

Section No.	Default	Penal provisions as per the erstwhile Section	Penal provisions Now
Section 10A- Commencement of Business, etc	Failure to furnish declaration under the section	No such provision	Company- Rs. 50000 Officer-in-default- Rs. 1000 for each day to max. Rs. 1 lac.
Section 53- Prohibition of issue of shares at Discount	Issue of shares at a discount	Company Minimum Fine of Rs. 1 Lakh Maximum Fine of Rs. 5 Lakh Officer in Default Minimum Fine of Rs. 1 Lakh Maximum Fine of Rs. 5 Lakh	Company & Officer in Default Amount raised or Rs. 5 Lakh Company shall also be required to refund the money raised through such issue at a rate of interest of 12% p.a. from the date of issue of shares.
Section 64- Notice for alteration of share capital	Non-filing of notice with Registrar for alteration of share capital of the Company	Company & Officer in default Minimum Fine of Rs. 1000 per day Maximum Fine of Rs. 5 Lakh	Company & Officer in default Minimum Fine Penalty of Rs. 1000 per day Maximum Fine Penalty of Rs. 5 Lakh

Section No.	Default	Penal provisions as per the erstwhile Section	Penal provisions Now
Section 90- SBO	Person fails to make declaration	No such provision	Imprisonment of 1 year along with the fine applicable and may even be levied fine and imprisonment both. (In Ordinance but Not included in Amendment Act)
Section 92- Annual Return	Non-filing of Annual Return (MGT-7)	<p>Company Minimum Fine of Rs. 50,000 Maximum Fine of Rs. 5 Lakh</p> <p>Officer in default Imprisonment of 6 months Or Minimum Fine of Rs. 50,000 Maximum Fine of Rs. 5 lakh</p>	<p>Company & Officer in default Minimum Fine Penalty of Rs. 50,000</p> <p>Further Penalty of Rs. 100 per day</p> <p>Maximum Fine Penalty of Rs. 5 Lakh</p>
Section 102- Statement to be annexed to the Notice	Mis-statement in Explanatory statement	Every promoter, director, manager or other KMP who is in default shall be punishable with fine which may extend to Rs. 50,000 or 5 times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.	Every promoter, director, manager or other KMP who is in default shall be punishable with fine Penalty which may extend to Rs. 50,000 or 5 times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more

Section No.	Default	Penal provisions as per the erstwhile Section	Penal provisions Now
Section 105- Proxies	Notice of General Meeting to contain clause for proxies	Company and Officer in Default Fine of Rs. 5000	Company and Officer in Default Fine Penalty of Rs. 5000
Section 117- Resolutions and agreements to be filed	Non-filing of MGT-14	Company Minimum Fine of Rs. 1 Lakh Maximum Fine of Rs. 25 Lakh Officer in default Minimum Fine of Rs. 50,000 Maximum Fine of Rs. 5 Lakh	Company Minimum Fine Penalty of Rs. 1 Lakh Further Penalty of Rs. 500 everyday Maximum Fine Penalty of Rs. 25 Lakh Officer in default Minimum Fine Penalty of Rs. 50,000 Further Penalty of Rs. 500 per day Maximum Fine Penalty of Rs. 5 Lakh
Section 121- Report on Annual General Meeting	Non-filing of MGT-15	Company Minimum Fine of Rs. 1 Lakh Maximum Fine of Rs. 5 Lakh Officer in default Minimum Fine of Rs. 25000 Maximum Fine of Rs. 1 Lakh	Company Minimum Fine Penalty of Rs. 1 Lakh Further Penalty of Rs. 500 per day Maximum Fine Penalty of Rs. 5 Lakh Officer in default Minimum Fine Penalty of Rs. 25000 Further Penalty of Rs. 500 per day Maximum Fine Penalty of Rs. 1 Lakh

Section No.	Default	Penal provisions as per the erstwhile Section	Penal provisions Now
Section-137- Filing of Financial Statements	Failure in filing financial statements with the Registrar	Company- Fine of Rs. 1000 everyday Maximum Fine of Rs. 10 Lakh Officer in default- Imprisonment of term of 6 months Minimum Fine - Rs. 1 Lakh Maximum Fine - Rs. 5 Lakh	Company- Fine Penalty of Rs. 1000 everyday Maximum Penalty of Rs. 10 Lakh Officer in default- Minimum Fine Penalty- Rs. 1 Lakh Further Penalty- Rs 100 per day Maximum Fine Penalty- Rs. 5 Lakh
Section- 140- Resignation of Auditor	Non-filing of e-Form ADT-3	Auditor: Minimum Fine of Rs. 50,000 or amount equal to remuneration of auditor, whichever is less Maximum Fine of Rs. 5 Lakh	Auditor: Minimum Fine Penalty of Rs. 50,000 or amount equal to remuneration Further penalty of Rs. 500 every day Maximum Fine Penalty of Rs. 5 Lakh
Section 157(2) - Intimation of DIN	Failure to intimate DIN of directors to the Registrar	Company Minimum Fine of Rs. 25,000 Maximum Fine of Rs. 1 Lakh Officer in default Minimum Fine of Rs. 25,000 Maximum Fine of Rs. 1 Lakh	Company Minimum Fine Penalty of Rs. 25,000 Maximum Fine Penalty of Rs. 1 Lakh Further Penalty of Rs. 100 per day Officer in default Minimum Fine Penalty of Rs. 25,000 Maximum Fine Penalty of Rs. 1 Lakh

Section No.	Default	Penal provisions as per the erstwhile Section	Penal provisions Now
Section 159- Punishment for contravention of sections 152, 155, and 156	Punishment for contravention of sections 152, 155, and 156	Individual or Director: Imprisonment of 6 months Or Minimum Fine of Rs. 50,000 Further Fine of Rs. 500 per day	Individual or Director: Imprisonment of 6 months Or Minimum Fine Penalty of Rs. 50,000 Further Fine Penalty of Rs. 500 per day *Prosecution eliminated
Section 165- Number of directorships	Non-compliance of permissible number of directorship by director	Director: Minimum Fine of Rs. 5000 Maximum Fine of Rs. 25,000	Director: Penalty of Rs. 5000 per day Minimum Fine of Rs. 5000 Maximum Fine of Rs. 25,000
Section 191- Payment to Director for loss of office	Contravention of the section	Director: Minimum Fine of Rs. 25,000 Maximum Fine of Rs. 1 Lakh	Director: Minimum Fine of Rs. 25,000 Maximum Fine Penalty of Rs. 1 Lakh

Section No.	Default	Penal provisions as per the erstwhile Section	Penal provisions as per the Ordinance
Section 197- Overall maximum managerial remuneration in case of inadequacy of profits	Non-compliance of the provisions of the section	Minimum Fine of Rs. 1 Lakh Maximum Fine of Rs. 5 Lakh	Minimum Fine Penalty of Rs. 1 Lakh Maximum Fine Penalty of Rs. 5 Lakh
Section 203- Appointment of KMP	Default in appointment of Key Managerial Personnel	Company Minimum Fine of Rs. 1 Lakh Maximum Fine of Rs. 5 Lakh Director/KMP/Officer in default Minimum Fine of Rs. 50,000 Further Fine of Rs. 1000 everyday	Company Minimum Fine of Rs. 1 Lakh Maximum Fine Penalty of Rs. 5 Lakh Director/KMP/Officer in default Minimum Fine Penalty of Rs. 50,000 Further Fine Penalty of Rs. 1000 everyday Maximum Penalty of Rs. 5 Lakh
Section 238- Registration of offer of schemes involving transfer of shares	Contravention of the section	Director: Minimum Fine of Rs. 25,000 Maximum Fine of Rs. 5 Lakh	Director: Minimum Fine of Rs. 25,000 Maximum Fine of Rs. 5 Lakh Penalty of Rs. 1 Lakh

Section No.	Default	Penal provisions as per the erstwhile Section	Penal provisions as per the Ordinance
Section 446B- Application of Fines	Default in filing annual return by OPC and small company	½ of fine or imprisonment or both as may be specified in section 92(5) of the Act	½ of fine penalty or imprisonment or both as may be specified in section 92(5) of the Act
Section 447- Punishment for fraud	Penal provisions for fraud involving Rs. 10 lakh or 1% of turnover and does not involve public interest	Any person guilty : Imprisonment of 5 years Or Fine of Rs. 25 Lakh	Any person guilty : Imprisonment of 5 years Or Fine of Rs. 25 50 Lakhs

Thanking You

CACS JASPAL SINGH DHANJAL