



Adjudication of Penalties under Companies Act, 2013

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A decade of Companies Act, 2013

Jamshed J. Irani – Report on Company Law

- ▶ Responsibility of not only framing the law but also to ensure effective implementation and administration
- ▶ Regime of penalties Commensurate with the offence.
- ▶ Delays in prosecution due to procedural aspects involved in bringing the offender to book under Companies Act, 1956
- ▶ Penalty structure does not provide suitable deterrence
- ▶ Need for prompt administration of the legal sanctions on detection of offence (Inhouse mechanism)

Expert Group on Streamlining prosecution under Companies Act, 1956 – O P Vaish

- ▶ Almost 50% of the Companies do not comply with requirements of the law relating to filing.
- ▶ Filing of complaints in court is irksome and time consuming.
- ▶ Average fine or cost awarded per case is almost nominal relative to the time and cost incurred by the department in pursuing the cases.
- ▶ Prolonged process of prosecution in the trial courts results in dilution of the deterrent effect.
- ▶ Seconded Inhouse mechanism as per J J Irani Company law committee report



India's journey – The Ease of doing business

India's journey – The Ease of doing business

- ▶ India Ranked at 142nd position in World Banks's Ease of Doing Business Ranking in 2014 which came to 63rd position in 2019.
- ▶ India jumps 79 positions from 142nd (2014) to 63rd (2019) in 'World Bank's Ease of Doing Business Ranking 2020
- ▶ More than 39,000 compliances were reduced and more than 3,900 legal provisions have been decriminalized
- ▶ India is one of the top 10 improvers, for the 3rd time in a row, with an improvement of 67 ranks in 3 years

Section 206 - Power to Call for Information, Inspect Books and Conduct Inquiries.

- ▶ Scrutiny of any document filed by the Company or
- ▶ On any information received by him
- ▶ Furnish in writing such information or explanation or
- ▶ Produce such documents with such reasonable time, as may be specified in the notice

Provided that where such information or explanation relates to any past period, the officers who had been in the employment of the [company](#) for such period, if so called upon by the [Registrar](#) through a notice served on them in writing, shall also furnish such information or explanation to the best of their knowledge.

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graph TD; A[Ease of Doing Business Norms] --- B[Amendment Acts]; A --- C[Adjudication Rules]; B --- D[Ordinance Acts]; C --- E[Company Law Committee Reports]; D --- E; E --- B; E --- C;
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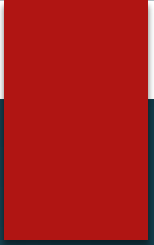
Ease of Doing
Business Norms

Adjudication
Rules

Amendment
Acts

Company Law
Committee
Reports

Ordinance
Acts



Objective of Adjudication Mechanism is
Promoting Business and reducing stress on
criminal justice system

What is an offence

- ▶ Any default
- ▶ Omission or commission
- ▶ Breach
- ▶ Contravention
- ▶ Any Violation
- ▶ Non Compliance

Leads to Liability for punishment under the Act

Adjudication process



Factors considered while adjudging penalty

- ▶ Size of the Company
- ▶ Nature of business carried by the Company
- ▶ Injury to public interest
- ▶ Nature of default
- ▶ Repetition of default
- ▶ Amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of default

MCA-CMS

- ▶ Move towards Artificial intelligence
- ▶ Scrutiny of forms and documents

Question

Whether Adjudication applications
can filed sou moto?

Section 441

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act (whether committed by a [company](#) or any [officer](#) thereof) ¹[not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine], may, **either before or after the institution of any prosecution, be compounded by—**

Rule 3 of Adjudication of penalties Rules, 2014

(2) Before adjudging penalty, **the adjudging officer shall issue written notice in the specified manner**, to the Company, the officer who is in default or any other person as the case may be, to show cause, within such period as may be prescribed in the notice (not being less than fifteen days and more than thirty days from the date of service thereon), why the penalty should not be imposed on it or him



Whether ROC initiates Adjudication proceedings on third party's complaint?

Kisantreat Agritech India Private Limited – Jaipur ROC

- The Registrar of Companies Received complaint against the Company via mail
- ROC while perusing the documents submitted had seen that the Company was using email of one of the shareholders which was considered as violation of section 12.
- Further there was one resolution of EOGM which was not on the letter head of the Company.
- Penalty of 5,000 was imposed

BABA Bhutnath Constructions Private Limited – Kolkata ROC

- ▶ ROC received complaint against the Company from one Mr. Govardhan Das Binani where he alleged that there is no registered office of the company.
- ▶ ROC issued Show Cause notice and conducted physical verification.
- ▶ It was seen that there was no board which was available and the door is closed under lock and key.
- ▶ It was argued that the office is maintained however there was no availability of person.
- ▶ Penalty imposed 25,000 on Company and 10,000 on each of the four Directors

Laxmidurga Constructions Private Limited – Mumbai ROC

- ▶ Complaint was registered by Shri Chandraprakash B Morjal
- ▶ Name of the Company as per MCA portal is **Laxmidurga** Constructions Private Limited having address at Bhandup however the name on the letter head of the Company is **Lakshmidurga** Constructions Private Limited and address is of Panvel.
- ▶ Director argued that it was inadvertently printed and there was no malafide intention.
- ▶ Penalty 1 Lakh on the Company and 1 Lakh on the officers in default.

Fortuneline Utilities Private Limited – ROC-Cum-OI-Odisha

- ▶ Reserve Bank of India, Bhubaneswar has intimated ROC that the representative of Market Intelligence Unit visited the Registered Office address of the Company and found that the company did not exist at the said address.
- ▶ Adjudication notice sent by the office was also returned as undelivered.
- ▶ Penalty of Rs. 61,000 on Company and 61,000 on each Director was imposed.

Harikrishna Tradex Limited – ROC Gujrat, Dadra & Nagar Haveli

- ▶ The stamp and Registration office, Government of Gujrat informed ROC that the Company has failed to pay the applicable stamp duty in the state of Gujrat in connection to scheme of amalgamation
- ▶ It also informed ROC that the authority has sent letter but the company does not exist at that address.
- ▶ ROC conducted physical verification and found that there was no office.
- ▶ ROC clicked photographs wherein the office was used by some advocate.
- ▶ Penalty of Rs. 1,00,000/- on Company and each Officer in default was imposed.

Registered Office

- ▶ Active form compliance
- ▶ Restriction on filing of certain forms unless Active form is filed
- ▶ Cannot File any form
- ▶ Business Commencement form needs photos of Office premises and Directors

ARSS Developers Limited – Cuttack

ROC

- ▶ At the time of inspection it was noticed that some repair work was going on in the Registered office of the Company
- ▶ As the repair work was in process the name board containing all details as per section 12 was removed for few days and was affixed after the repair work.
- ▶ Company submitted copy of work order given to contractor and debit vouchers
- ▶ Penalty of 5000 was imposed on company and on every Director (1000*5 days)


Little Master Auto Cast Private Limited

– Pune ROC

- ▶ The Company had filed compounding application under section 96 read with section 441 of the Companies Act, 2013.
- ▶ Some queries were raised on the application and the said queries were raised vide a letter and the letter was returned by postal authorities with remark Left.
- ▶ Company argued that the Company is stuck in cash flow problems because of which the Company is finding it difficult to have anyone placed in the registered office of the Company.
- ▶ Penalty of 1,00,000 was imposed on company and every Director of the Company.

Niyanta Nidhi Limited - Uttarakhand

- ▶ ROC issued some letter which was returned.
- ▶ The remark by postal authority was “Company Yaha Se Chali Gayee)
- ▶ There was some FIR against the Company and office was seized by the police.
- ▶ Penalty of Rs. 1,00,000/- on Company and each Director in default.



Compounding or Adjudication for
offences committed when the offence
was not under adjudication mechanism?

Thermax SPX Energy Technologies Limited – Pune ROC

- ▶ The Company had filed financial statement for the financial year ended 31st March, 2017 on 29th May, 2018 (Delay of 218 days).
- ▶ Company has applied for compounding application because at the time when the default was committed and till the time the default was rectified section 137 had provision for imprisonment or fine.
- ▶ Section 137 was amended with effect from 2nd November, 2018
- ▶ The compounding application was returned stating that penalty is prescribed and comes under the delegated powers of Registrar of Companies
- ▶ Penalty of 2,11,000 on Company and 1,21,000 on each officer was imposed

Reliance Broadcast Network Limited – Mumbai ROC

- ▶ The Company could not maintain minimum number of three Directors for the period 19.10.2018 to 14.12.2018 (56 Days) which is violation of section 149 of the Companies Act, 2013.
- ▶ At the time of default Section 172 punishment was fine of Minimum 50,000 and maximum of 5,00,000
- ▶ Companies Amendment Act, 2020 which was effective from 21st December, 2020 substituted fine to penalty Company (Min 50,000 plus 500 Per day, maximum 3,00,000) and for officer in default (Min 50,000 plus 500 Per day, maximum 1,00,000)
- ▶ Penalty of 78,000 on Company and 78,000 on two officers in default was imposed.

D.J Shah Investment Finance Private Limited – ROC and AO MCA Gujrat, Dadra & Nagar Haveli

- ▶ Scheme of amalgamation of Premier Solution Private Limited with D.J Shah Investment Finance Private Limited
- ▶ In the ROC report it was pointed out that both Company had not mentioned DIN in the signed financials from FY 2013-14 to FY 2020-21 and Adjudication notice was issued for all the years.
- ▶ Company argued that Section 172 went into adjudication mechanism on 21st December, 2020 and hence the prior period offence should not be considered under adjudication and requested to consider only last three financial years i.e 2019, 2020 and 2021.
- ▶ Penalty for only three years was imposed (Company $50000 \times 3 = 1,50,000$) and (Officers in default $50000 \times 3 = 1,50,000$) total 6,00,000

Abstarct Tech Asia Private Limited – ROC Chennai

- ▶ Company was registered on 07.12.2021
- ▶ Every Company has to issue Share Certificate within 2 months of incorporation
- ▶ The Company had to issue share certificates by 05.02.2022 however the certificates were issued on 05.04.2022 with delay of another 60 days.
- ▶ Penalty of 50,000 on the Company and the officers was imposed (total 1,50,000)

Narayani Nidhi Limited – Chennai ROC

- ▶ The Company had filed application for seeking status of Nidhi in E-Form NDH-4 and it was observed that Company has not filed E-Form MGT-14 for Board Resolution passed for approval of accounts with ROC for the financial years 2015,16,17,18 and 19
- ▶ Adjudication notice was sent
- ▶ Total Penalty of Rs. 11,15,400 was imposed for all the years.

U.P Stock and Capital Limited – Kanpur ROC

- ▶ Inspector was appointed for inspection
- ▶ It was found that serial number on Three Board Meetings minutes was not mentioned
- ▶ Time of conclusion of Board meeting was not mentioned
- ▶ Number of Board meetings and dates were not mentioned and the attendance of directors was not mentioned
- ▶ Penalty of 25000 on company for 2016 and 50000 for 2017
- ▶ Penalty of 5000 on officer for 2016 and 10000 for 2017

Mafatlal Industries Limited

- ▶ It was observed that the minutes of one general meeting were printed on one side and the other side was kept blank and some minutes were not consecutively numbered.
- ▶ Adjudication notice was sent
- ▶ Penalty of 20,000 on the Company for one year and 2,000 for one year was imposed on officer in default

Lava International Limited – ROC Delhi

- ▶ Inspection was ordered by MCA
- ▶ In 2016-2017 the I O observed that the resolutions placed before the Board during the said financial year for the purpose of bank signatory did not contain the specimen signature of authorized signature.
- ▶ The minutes also had no signature of authorized signatories.
- ▶ It was held that minutes are incomplete as per section 118 of the Companies Act, 2013.
- ▶ Rs. 25,000/- on Company and Rs. 5,000/- each on Officer in Default was imposed

Aegis Lifesciences Private Limited – ROC-AO-MCA-Gujrat, Dadra & Nagar Haveli

- ▶ Company was incorporated with an object to convert/acquire/takeover the existing business of M/s. Aegis Lifesciences, Partnership Firm concern
- ▶ Officer of the commissioner of CGST through a letter informed that M/s. Aegis Lifescience Pvt Ltd and Aegis Lifescience, Partnership Firm both are operating.
- ▶ ROC issued adjudication notice for violation of Section 10 of the memorandum of association and liable to penalty under section 450 of the Companies Act, 2013.
- ▶ The management argued due to the pendency of the issuance of Management Systems Certification and EC Certification the Company had to continue manufacturing goods under the name of the partnership firm.
- ▶ Penalty of 5000 on company and on each officer of the Company was imposed.(Small Company)

Centono Solutions Private Limited - ROC-AO-MCA-Gujrat, Dadra & Nagar Haveli

- ▶ Company was incorporated on 31.03.2021 and had to file business commencement by 30.09.2021.
- ▶ The notice was issued on 20.01.2022.
- ▶ Penalty of 50,000 was imposed on company and 1,00,000 each on both the officers in default.

Angel Gems and Jewellery Private Limited – Patna ROC

- ▶ Upon perusal of AOC-4 form filed for the year 2014-2015 and 2015-2016 was observed that the Company has shown an amount of Rs. 1,11,00,000 and Rs. 2,99,75,000 as non-current investment however the company had failed to disclose the name of the body corporate (indicating separately whether such bodies are (i) subsidiaries, (ii) associates, (iii) Joint Ventures, or (iv) Controlled special purpose entities) in whom investment is made.
- ▶ Auditor replied that he is unable to trace the signed financials
- ▶ Penalty of Rs. 10,000 was imposed on the Auditor

Sonasuman Constech Engineers Private Limited – Patna ROC

- ▶ Section 129 – Financials shall give true and fair view of the state of affairs of the Company
- ▶ Comply with accounting standards notified under section 133 and be in form as provided in schedule III
- ▶ Disclosure of shareholders holding more than 5% shares.
- ▶ Company did not disclose and hence contravention of section 129 read with schedule III
- ▶ Borrowings disclosure was also not provided
- ▶ Penalty on Auditors for non compliance of section 143
- ▶ Penalty imposed on Auditors 10,000 and 5000 respectively

Landomous Realty Private Limited – Bangalore ROC

- ▶ Satyaprakash Kumar was using the designation of CEO without the approval of Board and without filing of E-Form-DIR-12.
- ▶ ROC initiated Adjudication proceedings.
- ▶ Penalty of Rs. 50,000 on Satyaprakash Kumar was imposed.

Lava International Limited – ROC Delhi

- ▶ Inspection was ordered.
- ▶ It was found that the Company had entered into settlement agreement with one party post which the Company had liability of USD 23 million plus 8% IRR to be paid to UNIC before 30th June, 2022.
- ▶ The information was material and hence disclosure was required in the Board Report.
- ▶ Non Compliance of 132 – Disclosure of material changes and commitments if any affecting the financial position of the Company which have occurred.
- ▶ Rs. 3,00,000/- on Company and Rs. 50,000/- on each Director Rs. 50,000/- on officer in default (Total penalty Rs. 5,50,000/-)

SDU Agritech Private Limited – ROC Bangalore

- ▶ The report of the Board of Director shall include a statement on compliances of applicable Secretarial Standards
- ▶ During inspection it was observed that the Company as per the Board Report for the year 2016-2017, 2017-2018 and 2018-2019 has failed to include the statement on compliance of applicable secretarial standards.
- ▶ Penalty of Rs.25,000/- for each year – Total Rs. 75,000/- for three years on Company
- ▶ Penalty of Rs.5,000/- for each year – Total Rs. 15,000/- for three years on Officers in default.

SR Asset Advisory Private Limited - Karnataka

- ▶ Company passed special resolution on 22/01/2019 and was required to file the same with ROC by 21/02/2019 however the Company had filed the form on 7/03.2019 by delay of 13 days.
- ▶ Sou Moto application was made
- ▶ Penalty of Rs. 53,250/- on company and Rs. 28,250/- on Directors was levied (Total – Rs.1,09,750/-)

Tablespace Technologies Private Limited - Karnataka

- ▶ Every Company limited by shares shall from the date of its incorporation, maintain register of members in form MGT-1.
- ▶ During inspection it was found that the register of members was incomplete. Particulars of PAN, nationality and email ids were not entered.
- ▶ Rs. 3,00,000/- on Company and 50,000 on Director.

Comvia Technologies Limited – Office of ROC, NCT Delhi & Haryana - CSR

- ▶ The Company was required to spend Rs. 2,88,65,811/- towards CSR in FY 2020-2021.
- ▶ The Company has spent Rs. 2,83,15,689/- towards CSR
- ▶ The Company had unspent amount of Rs. 5,50,122/- which was unspent and which was transferred to specified fund as per schedule VII.
- ▶ Due to technical issues the amount bounced back on the same day and it went unnoticed.
- ▶ The Company spent the amount to the Prime Minister's National Relief Fund on March, 2022
- ▶ Penalty of 11,00,244/- was levied on Company and Rs. 55,012/- on each officer in default (Total Penalty of Rs. 15,40,341/-)

Steps which we should take as Company Secretary

- ▶ Filing forms in time.
- ▶ Doing health check up of status of records.
- ▶ Study Past Transactions
- ▶ Close co-ordination between accounts and secretarial team
- ▶ Curating specific Compliance systems
- ▶ Devising document review systems and processes
- ▶ Transaction Audit
- ▶ Conducting audits before getting appointed as KMP
- ▶ Conducting trainings of accounts team and finance team



Thank you

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