



**Offences under  
Companies Act, 2013  
& Compounding**

**CS Ranjeet Pandey - FCS, LL.B.**

**Central Council Member, ICSI**

**Ranjeet Pandey & Associates**

**Company Secretaries**

**Tel: 09810558049, 011 – 46074119**

**e-mail: [cs.ranjeet@gmail.com](mailto:cs.ranjeet@gmail.com)**

## What is the meaning of Offence ??

---

- ❖ Term “**Offence**” not defined in Companies Act.
- ❖ 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.
- ❖ Offence may be “**Compoundable**” or “**Non-Compoundable**”

## Categories of Default / Non-compliances

---

- ❖ Non- maintenance of Statutory **Registers /Books**;
- ❖ Default/delay in **filing** of statutory documents;
- ❖ Non holding/delayed holding of **meetings**;
- ❖ Non-issuance of **notices**, defective resolutions, agreements;
- ❖ Non - adherence of **Corporate Governance Norms**;
- ❖ Not-maintaining **RO** or change without intimation;
- ❖ Non-adherence of **Accounting principles, polices, Standards**;
- ❖ **Financial Statements** not prepared on the prescribed format;
- ❖ Non- adherence of **Audit** , Cost Audit Rules;
- ❖ Incomplete/no prescribed **disclosures** given;
- ❖ Un-approved Financial or Non-financial transaction;

## 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 Govt. 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**.

## General Punishment for various offences, fraud.

---

### Punishment for Fraud (Sec. 447):

Imprisonment for a term **6 months**, which **extend to 10 years** and fine extend to **amount involved in fraud**, extend to **3 times the amount involved in the fraud**.

Fraud involves public interest, **imprisonment not be less than 3 years**.

### Punishment for False Statement (Sec. 448)

In any **return, report, certificate**, financial statement, prospectus, statement or other document, **he shall be liable under section 447**.

### Punishment for False Evidence (Sec. 449)

False Evidence in any of affidavit, deposition or solemn affirmation, **imprisonment 3 years but extend to 7 years and with fine to Rs. 10 lakh**.

# General Punishment for various offences, fraud.

---

## No specific punishment or punishment is provided (Sec. 450)

Co. and Officer in Default or other person - **fine Rs. 10,000/-**, and continuing default - **further fine Rs. 1,000/-** for every day after the first, during which the contravention continues.

## Punishment in case of repeated default (Sec. 451)

Same offence is committed for the second or subsequent occasions within 3 years, then - **twice the amount of fine for such offence in addition to any imprisonment provided for that offence.**

## Punishment for wrongful withholding of property (Sec. 452)

Officer or employee of the company shall, on complaint of the company or of any member or creditor or contributory thereof, **fine Rs. 1 lakh to 5 lakh.**

# Compounding & Process

# What is Compounding ??

---

- ❖ Non-compliance of Law results into **offences** by Company or Officer in Default.
- ❖ Offences can be classified into civil and criminal offences. Further, it may further be classified as **Compoundable and Non-compoundable offences**.
- ❖ While there is no definition of the word "**compounding**" in the Act, however, the legal meaning of compounding is **"doing good the default / non-compliance"**.
- ❖ The Compounding of offences is nothing but a "**settlement**" for the offence committed by any company or any officer thereof and a short cut method to avoid litigation and **to bring an end to a default**.



# Advantages of Compounding

---

- ❖ No personal appearance for officer in default, as in case of prosecution for an offence in a criminal court.
- ❖ Summary proceeding less time consuming.
- ❖ The defaulter can be discharged on payment of composition fee, which cannot be more than the maximum fine leviable under the relevant provision.
- ❖ Fees payable on compounding are not treated as penalty, hence no disqualification for Directors.

# Notification MCA and its impact on Compounding

---

- ❖ The MCA vide its notification dated June 1, 2016 has enforced **29 sections** of the Companies Act, 2013 with immediate effect i.e. from **1st June, 2016**.
- ❖ Amongst other important Sections of the Act, 2013, Section 441 dealing with "**Compounding of certain offences**" has also been notified.
- ❖ No rules as of now. The corresponding rules of Section 441, the same are **yet to be notified**.

## Transfer of Pending Compounding Cases (section 434)

---

- ❖ All matters pending before CLB before **Effective Date (i.e. 1<sup>st</sup> June, 2016)** shall stand transferred to NCLT, which shall dispose of such matters in accordance with provisions of the New Act [Sec. 434(1) (a)].
- ❖ Therefore, all compounding cases already filed before CLB and not yet heard, shall be **transferred to jurisdictional benches of NCLT**.
- ❖ Compounding cases already filed and pending before CLB and required to be heard by Special Court to be transferred to jurisdictional session court / special court (**section 440**).
- ❖ Appeal from order of CLB on any Compounding matter made before the **Effective Date** may be filed with High Court within **60 days (plus 60)** from date of communication of order on **question of law**.
- ❖ All cases where Order is reserved prior to the Effective Date to be reopened and reheard by NCLT (**Draft Rule 65**).

## Section 441 & major departure

---

Three major departure brought by Section 441 are:

- ❖ Offences punishable with imprisonment or fine or imprisonment or fine or both, shall now be compounded with **permission of Special Court.**
- ❖ Now, any offence punishable with fine only, cannot be compounded, if the **investigation** against such company has been **initiated or is pending** under Act, 2013.
- ❖ Monetary limit for compounding of offence by Regional Director has been **raised from INR 50,000 to INR 5 Lakhs.**

## Circumstances where compounding not possible

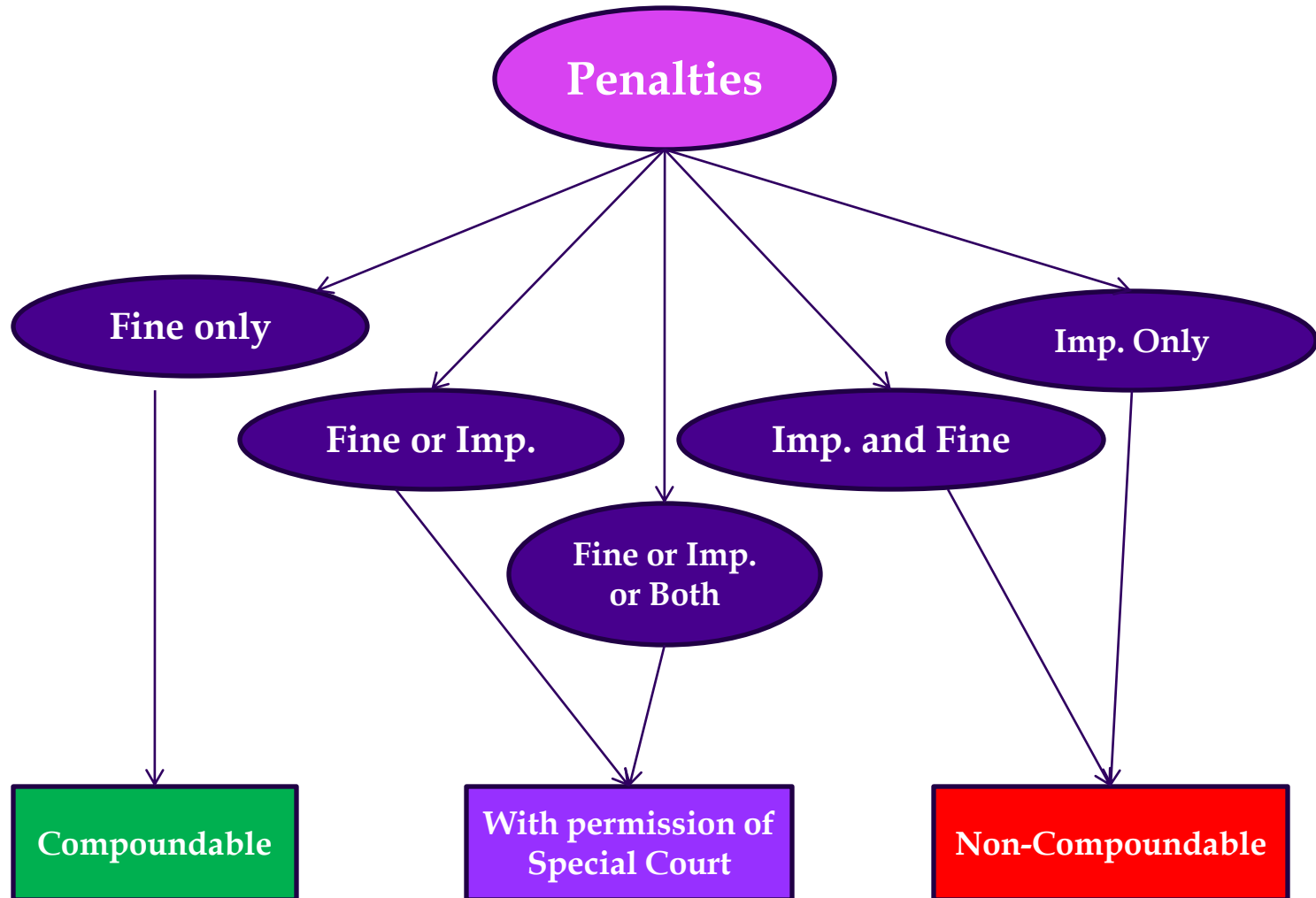
---

The third proviso to sub-section (1) of Section 441 says that:

- The offence cannot be compounded in case either the investigation has been initiated or is pending.
- The offence cannot be compounded in case similar offence committed has been compounded and period of three years has not expired.
- Any offence which is punishable under this Act with **imprisonment only** or with **imprisonment and also with the fine**; cannot be compounded

# Compoundable vs Non-Compoundable offences

---



## Section 441 – Jurisdiction

---

**NCLT**

- **Fine only exceeding INR 5 Lakhs**

**Regional Director/  
Prescribed Officer**

- **Fine does not exceed INR 5 Lakhs**

**Special Court**

- **Imprisonment or fine or both can be compounded with the permission of Special Court.**

## Section 441 – Who can be applicant ??

---

OFFICER IN  
DEFAULT  
2(60)

WHOLE TIME DIRECTOR

KMP

If no KMP, any specified Director /  
all Directors, if no specified Directors

Any person charged with responsibility for  
compliance by Board/ KMP

Any person on whose instructions Board is  
accustomed to Act

Every Director having knowledge or acted  
in connivance to contravention

STA/ Registrar/ MB for contravention of  
issue/ transfer



## Can compounding application be rejected

---

- ❖ The Company Law Board in the case of **Amadhi Investments Ltd.**, held that neither of the CLB or the Regional Director has been authorized with discretionary power to reject a compounding application without **due consideration**.

## Application for compounding

---

- ❖ As per sub-section 3(a) of Section 441, every **application of compounding** of offence shall be made **to the Registrar of Companies**, who, in turn, shall forward the same along with his comments to the NCLT or RD or any other officers, as may be authorized by the Central Government for the purpose of adjudication.
- ❖ There is no change under the new provisions.

# Application for Compounding

Existing	Proposed
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 in Form NCT 5
Memorandum of Appe. - F 5	Memo of App. - Form NCT 12
Fees: NIL	Fees: INR 1,000/-

- ❖ In a situation not provided for in these rules, the Tribunal may, for reasons to be recorded in writing, determine the procedure in a particular case in accordance with the principles of natural justice (**Draft Rule 3(1)**).

# Drafting of Application / Petition

---

- ❖ Heading in Form NCT 4
- ❖ General profile and history of the company.
- ❖ Particulars of Petitioner(s)
- ❖ Jurisdiction of Bench /RD
- ❖ Limitation
- ❖ Facts of the case i.e. nature of offence and period of default.
- ❖ How and when the default is made good.
- ❖ Matters not previously filed or pending before any court.
- ❖ Relief(s) sought : Prayer to the competent authority.
- ❖ Annexure

## How to make Default good

---

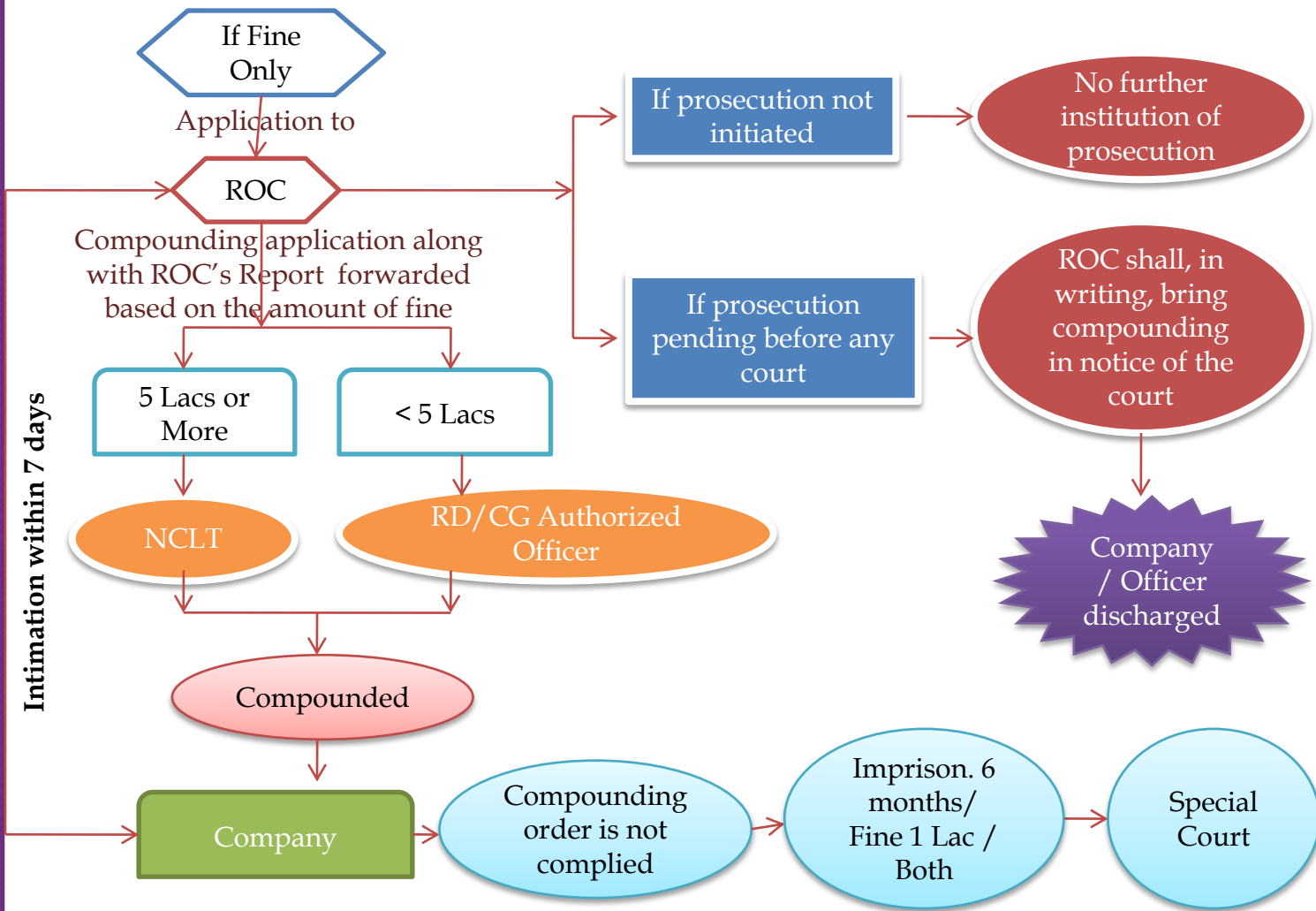
- ❖ Continuing Offences: Non - appoint of CS, Non - holding of AGM, section 188, etc
- ❖ One Time Offence: Non-holding of Board Meeting in a quarter by listed Company, section 188.
- ❖ Annual Offences: Disclosure in Board Report, Financial Statement, etc.

## E-filing of application with ROC - GNL 1

---

- ❖ The Application can be filed for Company, Director / Manager / others - Details of 8 persons can be filled - for Additional person(s) - Need to attach optional sheet.
- ❖ In case of Director - DIN, Manager /Secretary- PAN, Others- 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 BOD
- ❖ Foreign Company: Authorized Representative
- ❖ Others: Individual who does not DSC, by practicing Professional : CS/CA/ ICWA

# PROCESS OF COMPOUNDING BEFORE / AFTER INSTITUTION OF PROSECUTION



## Section 441 - Post Compounding Obligations

---

- ❖ Wherein the offence has been compounded, either before or after the institution of any prosecution, **an intimation** shall be given by the Company to the ROC **within 7 days** from the date on which, the offence is so compounded.
- ❖ In case the offence has been compounded before the institution of any prosecution, **no prosecution** shall be filed either by ROC or by any shareholder or by any person authorized by the Central Government.
- ❖ Period of 7 days shall be **reckoned** with from the date on which the order is made available to the petitioner/applicant.



## Section 441 – Post Compounding obligations of ROC

---

- ❖ 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.
- ❖ 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**.

## Penalty for non-compliance of order

---

- ❖ NCLT or RD, while dealing with a compounding application for an offence of non-filing with ROC of any return or other document, may order any officer or other employee of the company to file or register such return or document.
- ❖ Penalty for non-compliance – to comply with the order made by Tribunal/RD/Officer authorized by the Central Govt.
- ❖ Non-compliance regarding filing of Order – punishable with imprisonment for term which may extend to six months, or with fine not exceeding one lakh rupee or both.

# Compounding by Special Court

---

- CG to set up special courts for speedy trial of offences.
- All offences under the Act shall be triable by the Special Court having **jurisdiction over area of registered office** of the company.
- The Special Court would have the liberty to **try summary proceedings** for offences punishable with imprisonment for a term not exceeding **three years**. In case of summary trial it can award a maximum imprisonment for **1 year**.
- **Appeal** against order of Special Court to lie with High Court.
- Except as specified under the Act, provisions of Cr P C shall apply before the Special Court and they shall be deemed to be Court of Session.

## Companies Amendment Bill, 2016

---

- The CLC has observed that most of the offences which are punishable with fine or imprisonment or both are **technical / procedural in nature**, and thus, for the **leniency and ease in administration** of the Act, the old provisions relating to compounding may be re-instated.
- Therefore, Companies (Amendment) Bill, 2016 proposes an amendment under sub-section (1) of section 441 to give power to the Tribunal to compound the offences punishable with fine as well as offences punishable with imprisonment or fine or both.

# **Adjudication of Penalties under section 454**

## Adjudication of Penalties under section 454

---

- ❖ CG to appoint Registrar, as adjudicating officers for adjudging penalty.
- ❖ Reasonable opportunity of being heard to company and the officer by giving notice of **min. 15 days and not more than 45 days(plus15 days)**.
- ❖ ROC may, by an order impose the penalty company and officer in default stating any non-compliance or default under the relevant provision.
- ❖ **Appeal to the Regional Director** within 60 days from the date on which the copy of the order made by the adjudicating officer.
- ❖ The RD may pass order confirming, modifying or setting aside the order appealed against.
- ❖ **Company** not paid penalty imposed within **90 days**, **Company**: fine Rs. 25,000/- but may extend to Rs. 5 Lacs. **Officer**: imprisonment 6 months or with fine Rs. 25,000/- but may extend to Rs. 1 Laca, or with both.

# Condonation vs. Compounding

---

## Condonation

1. Unable to upload form thereby unable to make the default good
2. Move an application in Form CG 1 to MCA
3. SRN of INC - 28 inbuilt in e-form

## Compounding

1. Form taken on record / Default is made good
2. Move application for Compounding - Concerned authority - RD or CLB
3. SRN of INC - 28 not inbuilt in e-form

CS Ranjeet Pandey  
Central Council Member, ICSI  
Practising Company Secretary  
# 09810558049, 011 - 46074119  
cs.ranjeet@gmail.com



*Thank you*