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Newsletter for August, 2016
By Amita Desai & Co.



We love to serve and add value to business of our clients



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Greetings and a warm welcome to our August Month's edition of Newsletter!

We are pleased to share our Newsletter for the month of August 2016. The newsletter covers the updates / amendments of [Ministry of Corporate Affairs \(MCA\)](#), [Securities and Exchange Board of India \(SEBI\)](#), [Reserve Bank of India \(RBI\)](#) and [Department of Industrial Policy and Promotion \(DIPP\)](#)

The Newsletter is part of our knowledge sharing initiative. Efforts have been made to share notifications and circular issued by regulatory authorities during the month in concise and in simplified manner. We have tried to cover the penal provisions imposed under the Companies Act, 2013 as the [Article of the Month](#).

Please feel free to leave comments, thoughts or suggestions.

We appreciate your support and are so happy to have you as a reader.

With warmest thanks,

Amita Desai & Team



A. ISSUANCE OF RUPEE BONDS TO OVERSEAS INVESTORS BY INDIAN COMPANIES:

MCA vide its General Circular No. 09/2016 dated August 03, 2016 clarified that the provisions of **Chapter III (Prospectus and Allotment of Securities) of Companies Act, 2013** and **Rule 18 of Companies (Share Capital and Debentures) Rules, 2014** relating to issue of debentures shall not apply to issue of rupee denominated bonds made exclusively to persons resident outside India unless otherwise provided in circular /directions/regulations issued by Reserve Bank of India ('RBI'). RBI has the authority to regulate the issue of rupee denominated bonds to overseas investors.

The link of the above Circular is as under:

http://www.mca.gov.in/Ministry/pdf/GeneralCircular09_03082016.pdf

B. INSOLVENCY AND BANKRUPTCY CODE, 2016:

MCA vide notification dated August 5, 2016 Notified Sections 188 to 194 of Insolvency and Bankruptcy Code, 2016 which shall be effective from August 05, 2016. The following are the crux of the notified sections :

- 188 (Establishment and incorporation of Board) – The Board shall be body corporate .The head office will be in National Capital Region.
- 189 (Constitution of Board) – The Board shall be comprise of a Chairperson , three members as appointed by the Central Govt., one member from RBI and such other members as may be prescribed.
- 190 (Removal of member from office) – The Board has power to remove a member from his office

- 191 (Powers of Chairperson) – The Chairperson shall have general suprintendence powers.
- 192 (Meetings of Board) - The Board may meet such times as may be determined by regulation. The Chairperson shall have casting vote in case of the equality of votes.
- 193 (Members not to participate in meetings in certain cases) – Any member being a Director of a Company has pecuniary interest in any matter should disclose his interest and not participate in the decision making of such matter.
- 194 (Vacancies, etc., not to invalidate proceedings of Board, Officers and employees of Board). - The act done by the Board shall be not be invalid merely by reason of any vacancy in or defect in the constitution of the Board.

The link of the above Notification is as under:

<http://www.mca.gov.in/Ministry/pdf/Notificationdated05.08.2016.pdf>

C. COMPANIES (SHARE CAPITAL)
FOURTH AMENDMENT RULES,
2016:

MCA vide its notification dated August 12, 2016 inserted Sub-rule (11) after Sub-rule (10) of Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 relating to Debentures Issue.

As per Sub-rule (11) provisions of Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 relating to Debentures Issue shall not apply to rupee denominated bonds issued exclusively to overseas investors.

The link of the above Notification is as under:

http://www.mca.gov.in/Ministry/pdf/CompaniesFourthAmendmentRules_17082016.pdf

SEBI UPDATES:

A. Foreign investment in Rupee denominated bonds issued overseas by Indian Corporates

- SEBI Vide circular No. 17 dated September 29, 2015 RBI had permitted Indian Corporates to issue Rupee denominated bonds overseas within the ceiling of Foreign Portfolio Investor (FPI) investments in Corporate debt.
- Foreign investments in overseas Rupee denominated bonds shall now be reckoned against combined corporate debt limit of INR 244,323 cr. These shall not be treated as FPI investments and shall not be under the purview of SEBI(Foreign Portfolio Investor), Regulations, 2014.
- Partial Modification to para 5 vide SEBI circular CIR/IMD/FIIC/6/2013 dated April 01, 2013, the entire Combined Corporate debt limit of INR 244,323 cr shall be available on tap for investment by foreign investors.
- Criteria for foreign investments in Overseas Rupee denominated bonds shall be defined by RBI from time to time.
- The depositories (NSDL and CDSL) shall put in place the necessary systems for receiving data on foreign investments in Overseas Rupee denominated bonds from RBI on a periodic basis.

B. Revised Formats for Financial Results and Implementation of Ind AS by listed entities which have their debt securities and/or non-cumulative redeemable preference shares listed

SEBI vide its Circular dated November 27, 2015 has drawn attention of all listed entities which have listed their debt securities and/or non-cumulative

redeemable preference shares and all recognized Stock Exchanges pertaining to existing formats for disclosure of half yearly and annual financial results in terms of Regulation 52 (1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations'). Earlier, SEBI vide its Circular dated November 27, 2015, had prescribed formats for disclosure of half yearly and annual financial results. Now, SEBI has decided that the existing formats as stated in Circular dated November 27, 2015 shall continue till the period ending December 31, 2016.

- The formats for the disclosure of half yearly and annual financial results, i.e. the Balance Sheet and the Statement of Profit and Loss for the period ending after December 31, 2016 shall be as per the formats for Balance Sheet and Statement of Profit and Loss (excluding notes and detailed sub-classification) as prescribed in Schedule III to the Companies Act, 2013.
- SEBI further stated that until Companies (Indian Accounting Standards) Rules, 2015 ('Ind AS Rules') become applicable for a listed entity, the listed entity shall adopt Companies (Accounting Standards) Rules, 2006 ('AS Rules') as prescribed by the Ministry of Corporate Affairs ('MCA').
- In order to facilitate smooth transition some relaxations are given for the first half year of the adoption of Ind AS:
 1. The timeline for submitting the said financial results would be extended by one month.
 2. The limited review or audit of comparative half yearly results is not mandatory.
 3. With regard to the comparative financial results for the preceding full year, the submission of such comparative full year results is not mandatory.

For detailed instructions, please refer the below pasted link:
www.sebi.gov.in/cms/sebi_data/attachdocs/1470830193897.pdf

C. SEBI introduces e-payment facility for payment of penalties, disgorgement amounts, etc.

SEBI vide its Circular dated August 09, 2016 has made available an option to make payment by e-mode

For payment of penalties, disgorgement amounts, settlement amounts, legal charges and recovery amounts, SEBI has introduced an option for e-payment of such amounts. Such payments may be remitted to the SEBI accounts.

For detailed instructions, please refer the below pasted link:

<http://www.sebi.gov.in/sebiweb/home/detail/34399/yes/PR-SEBI-introduces-e-payment-facility-for-payment-of-penalties-disgorgement-amounts-etc->

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RBI UPDATES:

A. IMPLEMENTATION OF INDIAN ACCOUNTING STANDARDS (IND AS)

- RBI vide circular no. 34 dated August 04, 2016 has thrown a light on Implementation of Indian Accounting Standards (IAS) which had been notified by Ministry of Corporate Affairs (MCA) on Feb 16, 2015 in accordance with the reference invited to Press Release dated Jan 18, 2016 issued by MCA.
- It is advised that select All-India Term Lending and Refinancing Institution (AIFIs) shall follow the Indian Accounting Standard.
- AIFI shall disclose in their Annual Report the strategy for Ind AS implementation, including the progress made in this regard.
- For detailed instruction, please refer the below pasted link:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10542&Mode=0>

B. NBFC ACCEPTANCE OF PUBLIC DEPOSIT

- RBI vide circular no. 38 dated August 25, 2016 has considered it necessary in the public interest and being satisfied, in exercise of powers conferred by sections 45J, 45JA, 45K, 45L and 45MA of the Reserve Bank of India Act, 1934 and in supersession of the earlier direction contained in Notification dated January 31, 1998 issued the following NBFC acceptance of Public Deposits (Reserve Bank) Directions, 2016 applicable to every NBFC.
- As per the direction an NBFC having Net Owned Fund (NOF) of Rs. 25 Lakh shall accept public deposit from any one of the approved credit rating agencies.

- Approved Credit Ratings Agencies and Minimum Investment Grade Credit Rating (MIGCR):

Name of the Agencies	MIGCR
The Credit Rating Information Services of India Ltd.(CRISIL)	FA-(FA Minus)
ICRA Ltd.	MA-(MA Minus)
Credit Analysis & Research Ltd.(CARE)	CARE BBB(FD)
Fitch Rating India Private Ltd.	tA-(ind)(FD)
Brickwork Rating India Private Ltd. (Brickwork)	BWR FBBB
SME Rating Agency of India Ltd. (SMERA)	SMERA A

- For detailed instruction, please refer below pasted link:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10563&Mode=0>

A. MAJOR ACHIEVEMENTS / SIGNIFICANT DEVELOPMENTS

1. START-UP INDIA

- The Department of Industrial Policy and Promotion (DIPP) organised a **Startup India States** conference with aim to provide a platform for States to discuss the progress made on the action points of Startup India initiative and to interact with other stakeholders of the ecosystem.
- During the Panel discussion with Incubator the need to include a course on Entrepreneurship to inculcate the Spirit among youth of Country & the key role in Educational Institution Play.

2. MAKE IN INDIA

- A seminar was held on “Make In India” in Cairo with an objective to increase awareness of the “Make in India” initiatives, Updates on Government policies to promote India as business and investment destination amongst the potential Egyptian investors. The Senior Officials from the General Authority for Investments and Free Zones and Officials from chambers of Commerce attend the event.
- Feedback was given from Industry representatives on Industry’s perspective on achievements of “Make In India”
- The representatives also provided with suggestions for further action.

3. NATIONAL MANUFACTURING POLICY

- Green Manufacturing Advisory Committee constituted under National Manufacturing Policy (NMP) was held for considering various proposal under the categories of acquisition technology, clean technology in manufacturing and solid waste management, were consider and approved by GMAC under the scheme.

- High Level Committee constituted under the National Manufacturing Policy approved **National Investment & Manufacturing Zone** at Kalinganagar, Jajpur district in Odisha

4. LAUNCH OF NATIONAL IPR POLICY

- Union Cabinet approved the National Intellectual Property Rights (IPR) Policy that will lay the future Roadmap for the intellectual property in India.

For detailed instruction, please refer the below pasted link:

http://dipp.gov.in/English/Schemes/Intellectual_Property_Rights/National_IPR_Policy_08.08.2016.pdf

5. FOREIGN DIRECT INVESTMENT

- Ninth Edition incorporates all FDI Policy amendments carried out since May.

For detailed instructions, please refer the below pasted link:

http://dipp.nic.in/English/Policies/FDI_Circular_2016.pdf

and for newly announced DIPP policy, please refer the below pasted link:

http://dipp.nic.in/English/acts_rules/Press_Notes/pn5_2016.pdf.

6. INDUSTRIAL INFRASTRUCTURE

- Information and Communication Technology (ICT) consultants for Dholera Special Investment Region have been appointed in the month of May.
- Mass Rapid Transit System (MRTS) project between Ahmedabad to Dholera is being implemented so as to provide last mile connectivity to the Dholera Special Investment Region.
- The Global City Project is being implemented as part of phase-1 development of Manesar Bawal Investment Region in Haryana. The Joint Venture Agreement (JVA) has been Executed between DMIC Trust and HSIIDC in June, 2016, Steps have

been initiated for formation of the project SPV.

- Mass Rapid Transit System (MRTS) is planned between Gurgaon and Bawal (Haryana) to provide direct Connectivity to MBIR.
- Integrated Multi Modal Logistics Hub (IMLH) Project in Haryana is to functions not just as the Storage, aggregation and export/import of the industrial freight in the region but also services that shall allow for finishing of goods, packing, repacking etc commercial space.
- Smart Micro-Grid project in India, was the First demonstrating the integration of solar power with industrial diesel generators sets. The Power Purchase Agreement (PPA) has also been executed

7. KOREA PLUS

- Government of India and Government of the Republic of Korea, launched **Korea plus**, a special initiative to promote and facilitate Korean Investment in India.
- Korea Plus, comprises of a representative from the Ministry of Industry, Trade and Energy, Government of the Republic of Korea and representative from Korea Trade Investments and Promotion Agency and three representative from Invest India.

8. PUBLIC FINANCIAL MANAGEMENT SYSTEM

- Life Certificate is an annual feature of pension disbursement. Number may be used in future for electronic submission of Life Certificate by the pensioner.
- The Public Sector Bank authorised to collect the receipts had remitted it in Government Account after permissible period and accordingly penal interest was imposed on them.

For more detailed information, please refer the below pasted link:

http://dipp.nic.in/English/AboutUs/achievements/MajorAchievements_AprilJuly2016_23August2016.pdf

ARTICLE OF THE MONTH

COMPOUNDING OF OFFENCE FOR FINES AND PENALTIES

BRIEF HISTORY OF COMPOUNDING OF OFFENCE



The Companies Act, 2013 (“the Act”) provides for impositions of fines, penalties and imprisonment for non-compliances of several provisions under different sections, to the Company or its officers for ensuring proper and timely compliance. Under the Act the offences punishable only with fine shall be compounded by the National Company Law Tribunal (“NCLT”) or Regional Director or any officer as may be authorized by Central Government.

Earlier, it was felt that leniency is required in the administration of the provisions of the Companies Act particularly penalty provisions because a large number of defaults were of technical nature and arose out of lack of interpretation. The concept of compounding of offences was evolved as a measure to avoid the long drawn process of prosecution, which would save both cost and time by the defaulting person.

MEANING

Compounding:

The meaning of word compounding of offence is not defined under Companies Act, 1956/2013. “Compound” means “to settle a matter by way of monetary, in lieu of other liability.”

The above definition states the concept of Compounding as a settlement mechanism, a settlement by paying the liability in monetary terms in lieu of facing the prosecution for the offences committed.



COMPOUNDING OF OFFENCE UNDER COMPANIES ACT, 2013

Section 441 of the Companies Act 2013 was notified vide Notification no S.O. 1934 (E) dated June 01, 2016

According to section 441 (1) (a) power of compounding of an offence punishable under this Act (whether committed by a company or any officer thereof) **with fine** either before or after the institution of any prosecution is with National Company Law Tribunal (“NCLT”)/Regional Director/ Person authorized by Central Government.



JURISDICTION OF COMPOUNDING OF AN OFFENCE

Companies Act, 2013: Section 441(1) (b)		Under Companies Act, 1956: Section 621A	
Particulars	Power to condone	Particulars	Power to condone
Where the maximum amount of fine which may be imposed for such offences doesn't exceed Rupees Five Lac	Regional Director	Where the maximum amount of fine which may be imposed for such offences doesn't exceed Rupees Fifty Thousand	Regional Director
Where the maximum amount of fine which may be imposed for such offences exceeds Rupees Five Lac	National Company Law tribunal	Where the maximum amount of fine which may be imposed for such offences exceeds Rupees Fifty Thousand	Company Law Board

Maximum Amount of Penalty: The sum so specified after compounding shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded.

The Amount of penalty for the compounding of an offence should include **additional fees to be paid** under sub-section (2) of section 403.

LIST OF OFFENCES WHICH CAN NOT BE COMPOUNDED:

The third proviso of Section 441 provide that following offences can't be compounded by the Company or its officer:

1. which is under investigation either initiated or is pending under this Act;
2. Offence committed within a period of three years from the date on which a similar offence committed by it or him;
3. Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with the fine; cannot be compounded.

PROCEDURE FOR THE APPLICATION OF COMPOUNDING OF OFFENCE



According to section 441 (3) of the Act, The following procedure need to be followed for the compounding of an offence.

1. Every application for the compounding of an offence shall be made to the Registrar of Company who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.

2. Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.
3. Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.
4. 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.

ORDER FOR FILING OF ANY RETURN, ACCOUNT OR OTHER DOCUMENT



According to Section 441(4) of the Act, The NCLT or the Regional Director or any officer authorised by the Central Government while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act may direct by **an order to file any return, account or other documents or on payment of fees or on additional fees** to the Company or any officer of the Company.

According to section 441(5) of the Act, failure to comply the order made under section 441(4) of the Act, by (5) by any officer or other employee of the company shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.

SPECIAL COURT CAN COMPOUND OFFENCE IF OFFENCE PUNISHABLE WITH IMPRISONMENT OR FINE OR BOTH

Any offence which is punishable under the Act with the imprisonment or with fine, or with imprisonment or fine or with both, shall be compoundable with the permission of Special Court, in accordance with the procedure laid down in Code of Criminal Procedure for compounding of offences.

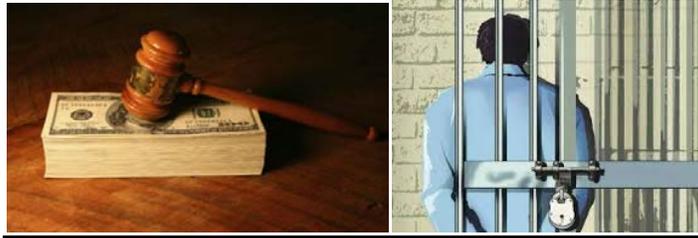
However, any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

SPECIAL COURT:



Section 435 came into force from May 18, 2016, leading into the establishment of **Special Courts** for the purpose of speedy trial of offences punishable under this Act with imprisonment of two years or more .

DETAILS OF FINE AND IMPRISONMENTS METIONED UNDER THE ACT



Sr.No	Section	Particular of Section	Details of Penalties under CA,2013 (Fines or /And Imprisonment)
1	46	Certificate of shares	<u>If a company with intent to defraud issues a duplicate certificate of shares, the company shall be punishable with fine which shall not be less than five times the face value of the shares involved in the issue of the duplicate certificate but which may extend to ten times the face value of such shares or rupees ten crores whichever is higher and every officer of the company who is in default shall be liable for action under section 447.</u>
2	57	Punishment for personation of Shareholder.	Any person deceitfully personates as an : i)Owner of any security or, ii) Interest in a company or of any share warrant or coupon and thereby obtains or attempts to obtain any of the above mention points, such Person shall be punishable with <u>imprisonment for a term which shall not be less than one year but which may extend to three years and with fine</u> which shall not be less than one lakh rupees but which may extend to five lakh rupees.
3	58	Refusal of Registration and appeal against refusal.	If the order of the Tribunal in respect of registration of transfer or transmission of shares of the Company is contravenes by a person then such Person shall be punishable with <u>imprisonment for a term which shall not be less than one year but which may extend to three years and with fine</u> which shall not be less than one lakh rupees but which may extend to five lakh rupees.

4	67	Restrictions on purchase by Company or giving of loans by it for purchase of its shares.	<p>Default in complying with the provision laid in the said Section:</p> <p>Company shall be punishable with fine which shall <u>not be less than one lakh rupees but which may extend to twenty-five lakh rupees</u> and every Officer of the Company who is in default shall be punishable <u>with imprisonment for a term which may extend to three years</u> and with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.</p>
5	118	Minutes of proceedings of General Meeting , Meeting of Board of Directors and other Meeting and Resolution passed by Postal Ballot.	<p>Default in complying with the provision laid in the said Section:</p> <p>i)Company shall be liable to a penalty of twenty-five thousand rupees and every Officer of the Company who is in default shall be liable to a penalty of five thousand rupees.</p> <p>ii)If any Person is found <u>guilty of tampering with the minutes</u> of the proceedings of meeting, he shall be punishable <u>with imprisonment for a term which may extend to two years and with fine</u> which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.</p>
6	127	Punishment for failure to distribute dividends.	<p>If Company has declared dividend but has not been paid or the warrant in respect thereof has not been posted within thirty days from the date of declaration to the shareholder of the Company, every Director of the Company shall, if he is knowingly a party to the default, be punishable <u>with imprisonment which may extend to two years</u> and with fine which shall not be less than one thousand rupees for everyday during which such default continues and the Company shall be liable to pay simple interest at the <i>rate of 18 per cent per annum</i> during the period for which such default continues.</p>
7	182	Prohibitions and Restrictions regarding Political Contributions.	<p>Default in complying with the provision of the said Section:</p> <p>Company shall be punishable <u>with fine which may extend to five times the amount so contributed to Political Party</u> and every Officer of the Company who is in default shall be punishable with <u>imprisonment for a term which may extend to six months and with fine</u> which may extend to five times the amount so contributed.</p>
8	186	Loan and Investment by Company.	<p>Default in complying with the provision of the said Section:</p> <p>Company shall be punishable <u>with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees</u> and every Officer of the Company who is in default shall be punishable <u>with imprisonment for a term which may extend to two years</u> and with fine which shall not be</p>

			less than twenty-five thousand rupees but which may extend to one lakh rupees.
9	207	Conduct of Inspection and Inquiry.	Default in obeying the direction issued by the Registrar or the Inspector in respect of inspection and inquiry of the Books of Accounts or any documents of the Company, the Director or the Officer shall be <u>punishable with imprisonment which may extend to one year and with fine</u> which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees
10	217	Procedure, Powers, etc., of Inspectors.	(6) Default in obeying the direction issued by the Registrar or the Inspector under the said section, the Director or the Officer shall be <u>punishable with imprisonment which may extend to one year and with fine</u> which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. (8) If any person fails without reasonable cause or refuses to produce book or paper and to furnish information to inspector or to any authorised person shall be <u>punishable with imprisonment for a term which may extend to six months</u> and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, and also with a further fine which may extend to two thousand rupees for every day after the first during which the failure or refusal continues.
11	245	Class action.	<u>Default in complying the order of the tribunal passed under this section:</u> Company shall be punishable with fine <u>which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees</u> and every Officer of the Company who is in default shall be punishable with <u>imprisonment for a term which may extend to three years</u> and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
12	247	Valuation by Registered Valuers.	<u>Default in complying with the provision of the said section:</u> Fine: A registered valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees. Imprisonment and Fine If the valuer has contravened such provisions with the intention to defraud the company or its members, he shall be punishable with imprisonment for a term which may extend to one year and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

13	267	Punishment for certain offences. (For Revival and Rehabilitation of Sick Companies)	Violation of the provisions of Chapter XIX-Revival and Rehabilitation of Sick Companies or any scheme, or any order of the Tribunal or the Appellate Tribunal or makes a false statement or gives false evidence before the Tribunal or the Appellate Tribunal or attempts to tamper with the records of reference or appeal filed under this Act, he shall be <u>punishable with imprisonment for a term which may extend to seven years and with fine which may extend to ten lakh rupees.</u>
14	336	Offences by Officers of the Companies in liquidation.	<p>Any Officer (who is or has been an officer) of a Company at the time of the commission of the alleged offence, is being wound up, whether by the Tribunal or voluntarily, or which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up contravenes with the provision of the said section <u>shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.</u></p> <p>Any Officer (who is or has been an officer) of a Company pawns, pledges or disposes of any property which has been obtained on credit and has not been paid for, unless it is in the ordinary course of business of the company, every person who knowingly takes in pawn or pledge or otherwise receives the property, shall be <u>punishable with imprisonment for a term which shall not be less than three years but which may extend to five years and with fine which shall not be less than three lakh rupees but which may extend to five lakh rupees.</u></p>

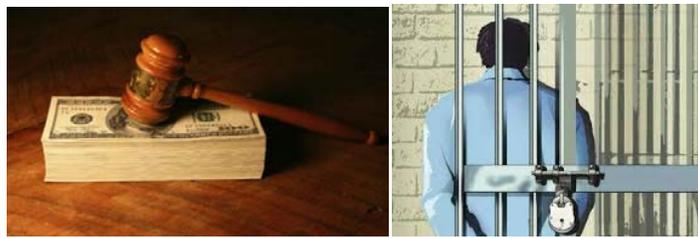
15	337	Penalty for frauds by officers in case of winding up.	<p>At the time of the Commission of the alleged offence, which is subsequently ordered to be wound up by the Tribunal or which subsequently passes a resolution for voluntary winding up, an officer of a Company, makes :</p> <p>a) By false pretences or by any other mean of fraud, induced any person to give credit to the company,</p> <p>b)with intent to defraud creditors of the company or any other person, has made or caused to be made any gift or transfer of, or charge on, or has caused or connived at the levying of any execution against the property of the company; or</p> <p>(c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company since the date of any unsatisfied judgment or order for payment of money obtained against the company or within two months before that date,</p> <p>shall be <u>punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.</u></p>
16	338	Liability where proper Books of Accounts are not kept by the Company.	<p>In case of wound up, proper books of account not kept by the company:</p> <p>i)throughout the period of two years immediately ,</p> <p>ii)preceding the commencement of the winding up, or</p> <p>iii)the period between the incorporation of the company and the commencement of the winding up, whichever is shorter.</p> <p>Every Officer of the Company who is in default shall, unless he shows that he acted honestly and that in the circumstances of the business of the Company was carried on, the default was excusable, be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.</p>
17	447	Punishment for fraud.	<p>Any person who is found to be guilty of fraud including repayment of any debt under the Act or any other law for the time being in force, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.</p> <p>In case of the fraud involving public interest, the term of imprisonment shall not be less than three years.</p>

18	449	Punishment for false evidence.	<p>Any person intentionally gives false evidence in respect of:</p> <p>i) Upon any examination on oath or solemn affirmation, authorised under the Act, or</p> <p>ii) In any affidavit, deposition or solemn affirmation, in or about the winding up of the company or otherwise in or about any matter arising under the Act,</p> <p>shall be punishable with <u>imprisonment for a term which shall not be less than three years but which may extend to seven years</u> and with fine which may extend to ten lakh rupees.</p>
19	451	Punishment in case of repeated default.	<p>If Company or an Officer of a Company commits an offence punishable either with fine or with imprisonment and where the <u>same offence is committed for the second or subsequent occasions within a period of three years</u>, then that Company and Every Officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.</p>
20	452	Punishment for wrongful withholding of property.	<p>On the complaint of the Company or of any Member or Creditor or Contributory, if any Officer or Employee of a Company:</p> <p>(a) wrongfully obtains possession of any property, including cash of the company; or</p> <p>(b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, be punishable <u>with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.</u></p> <p>The Court may also order such Officer or Employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo <u>imprisonment for a term which may extend to two years.</u></p>

21	<u>Note:</u>	Definition of Officer who is in default u/s 2(60) of Companies Act,2013	<u>Officer who is in default of a Company</u> means: (i) Whole-time Director; (ii) Key Managerial Personnel; (iii) Where there is no Key Managerial Personnel, such Director or Directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified; (iv) Any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default; (v) Any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity; (vi) Every Director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance; (vii) In respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.
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Amita D. Gupta

DETAILS OF FINE OR IMPRISONMENT OR BOTH UNDER THE ACT



Sr.No	Section	Particular of Section	Details of Penalties under CA,2013 (Fines or /And Imprisonment)
1	8	Formation of Companies with charitable objects etc	<p><u>Default in complying with the requirements laid in the said Section:</u> Company shall be punishable with fine which shall not be less than <u>Ten lakh rupees</u> but which may <u>extend to one Crore rupees</u> and Directors and every Officer of the Company who is in default shall be punishable <u>with imprisonment for a term which may extend to three years</u> or <u>with fine</u> which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both.</p>
2	26	Matter to be stated in prospectus	<p><u>Prospectus issued in contravention of the said Section:</u> Company shall be punishable with fine which shall not be less than <u>fifty thousand rupees</u> but which may <u>extend to three lakh rupees</u> and Every person who is knowingly a party to the issue of prospectus shall be punishable <u>with imprisonment for a term which may extend to three years</u> or <u>with fine</u> which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.</p>
3	40	Securities to be dealt with in Stock Exchanges	<p><u>Default in complying with the requirements laid in the said Section:</u> Company shall be punishable with a fine which shall not be less than <u>five lakh rupees</u> but which may <u>extend to fifty lakh rupees</u> and Every Officer of the Company who is in default shall be punishable <u>with imprisonment for a term which may extend to one year</u> or <u>with fine</u> which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.</p>
4	48	Variation of shareholders rights	<p><u>Default in complying with the requirements laid in the said Section:</u> Company shall be punishable with fine which shall not be less than <u>twenty-five thousand rupees</u> but which may <u>extend to five lakh rupees</u> and Every Officer of the Company who is in default shall be punishable <u>with imprisonment for a term which may extend to six months</u> or <u>with fine</u> which</p>

			shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, <i>or with both.</i>
5	53	Prohibition on issue of shares at discount	<u>Company shall not issue shares at discount except Sweat Equity Shares.</u> If Company contravenes Company shall be punishable with fine which shall not be less than <u>one lakh rupees</u> but which may <u>extend to five lakh rupees</u> and every Officer who is in default shall be punishable <u>with imprisonment for a term which may extend to six months or with fine</u> which shall not be less than one lakh rupees but which may extend to five lakh rupees, <i>or with both.</i>
6	59	Rectification of Register of Members.	If any <u>default is made in complying with the order of the Tribunal in respect of registration of transfer or transmission of shares in the Register of Members of the Company</u> , Company shall be punishable with fine which shall not be <u>less than one lakh rupees</u> but which may <u>extend to five lakh rupees</u> and every Officer of the Company who is in default shall be punishable with <u>imprisonment for a term which may extend to one year or with fine</u> which shall not be less than one lakh rupees but which may extend to three lakh rupees, <i>or with both.</i>
7	68	Power of Company to purchase its own securities.	If Company makes any default in complying with the provisions laid in the said Section or any regulation made by the Securities and Exchange Board (applicable to Listed Companies), Company shall be punishable with fine which shall <u>not be less than one lakh rupees</u> but which may <u>extend to three lakh rupees</u> and every Officer of the Company who is in default shall be punishable <u>with imprisonment for a term which may extend to three years or with fine</u> which shall not be less than one lakh rupees but which may extend to three lakh rupees, <i>or with both.</i>
8	71	Debentures	<u>Default in complying with the order of the Tribunal as laid in the said Section:</u> Every Officer of the Company who is in default shall be punishable with <u>imprisonment for a term which may extend to three years or with fine</u> which shall not be less than two lakh rupees but which may extend to five lakh rupees, <i>or with both</i>
9	74	Repayment of deposits, etc., accepted before commencement of the Act.	If a Company fails to repay the deposit or part thereof or any interest thereon within one year from such commencement or from the date on which such payments are due, whichever is earlier or such further time as may be allowed by the Tribunal. Company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, <u>be punishable with fine which shall not be less than one Crore rupees</u> but which may extend to ten

			Creore rupees and Every Officer of the Company who is in default shall be punishable <u>with imprisonment which may extend to seven years or with fine</u> which shall not be less than twenty-five lakh rupees but which may extend to two Crore rupees, or with both.
10	76A	Punishment for Contravention of Section 73 or Section 76	Default in complying of Section 73 or Section 76 : 1. The Company shall in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one Crore rupees but which may extend to ten Crore rupees ; and 2. Every officer in default of the Company shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty - five lakh rupees but which may extend to two crores rupees or with both
10	86	Punishment for contravention. (Registration of Charges and Mortgages)	If a Company contravenes any provision of the Chapter VI-Registration of Charges, Company shall be punishable with fine which shall <u>not be less than one lakh rupees but which may extend to ten lakh rupees</u> and every Officer of the Company who is in default shall be punishable <u>with imprisonment for a term which may extend to six months or with fine</u> which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.
11	92	Annual Return	<u>Default in filing Annual Return by the Company :</u> Company shall be punishable with fine which shall <u>not be less than fifty thousand rupees but which may extend to five lakhs rupees</u> and every Officer of the Company who is in default shall be punishable <u>with imprisonment for a term which may extend to six months or with fine</u> which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.
12	128	Books of Account, etc, to be kept by Company.	<u>Default in complying with the provision laid in the said Section:</u> i)The Managing Director, ii) Whole-Time Director in charge of finance, iii) Chief Financial Officer or any other person of a Company charged by the Board with the duty of complying with the provisions of the section, shall be punishable <u>with imprisonment for a term which may extend to one year or with fine</u> which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

13	129	Financial statement.	<p><u>Default in complying with the requirement laid in the said Section:</u></p> <p>i)The Managing Director, ii)Whole-Time Director in charge of finance, iii)Chief Financial Officer or any other person charged by the Board with the duty of complying with the requirements of this section and <u>in the absence of any of the officers mentioned above, all the directors shall be punishable with imprisonment for a term which may extend to one year or with fine</u> which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.</p>
14	134	Financial statement, Board's report, etc.	<p><u>Default in complying with the requirement laid in the said Section:</u></p> <p>Company shall be punishable <u>with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every Officer of the Company who is in default</u> shall be <u>punishable with imprisonment for a term which may extend to three years or with fine</u> which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.</p>
15	137	Copy of financial statement to be filed with Registrar.	<p><u>Default in filing the copy of the financial statement with the Registrar:</u></p> <p>Company shall be punishable <u>with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees,</u> and</p> <p>i)Managing Director and ii)Chief Financial Officer of the company, if any, or any other Director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the Directors of the Company, shall be punishable with <u>imprisonment for a term which may extend to six months or with fine</u> which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.</p>

16	147	Punishment for contravention. (For Audits and Auditors)	<p>If a Company contravenes any provision of the Chapter X-Audit and Auditors :</p> <p>i)Company shall be punishable with fine which <u>shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees</u> and every Officer of the Company who is in default shall be punishable <u>with imprisonment for a term which may extend to one year or with fine</u> which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.</p> <p>ii)An auditor of a Company contravenes any of the provisions of the said Section, the auditor shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.</p> <p>iii)If an auditor has contravened such provisions knowingly or willfully with the intention to deceive the Company or its Shareholders or Creditors or Tax Authorities, <u>shall be punishable with imprisonment for a term which may extend to one year and with fine</u> which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees.</p>
17	159	Punishment for contravention of Section 152, 156 and Section 156	<p>Default made in complying with the provisions of Section 152, 155 and 156 :</p> <p>The Director of the Company shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during the contravention continues.</p>
17	167	Vacation of office of Director.	<p>On account of any Disqualification specified in said Section, if any person function as a Director of the Company knowingly that the office of director has become vacant ,such person shall be punishable <u>with imprisonment for a term which may extend to one year or with fine</u> which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.</p>
18	178	Nomination and Remuneration Committee and Stakeholders Relationship Committee.	<p><u>Default in complying with the provision of Audit Committee and the said Section:</u></p> <p>Company shall be punishable <u>with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees</u> and every Officer of the Company who is in default shall be punishable with <u>imprisonment for a term which may extend to one year or with fine</u> which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.</p>

19	184	Disclosure of Interest by Director.	<p><u>Default in disclosing of interest by the Director of the Company :</u> Such Director shall be punishable with <u>imprisonment for a term which may extend to one year or with fine</u> which shall not be less than fifty thousand rupees but which may extend to one lakh rupees, <i>or with both</i>.</p>
20	185	Loan to Directors, etc.	<p>If Company advances any loan or a guarantee or security is given or provided in contravention of the provisions of the said Section: Company shall be punishable <u>with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, and the Director or the other person to whom</u> any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable <u>with imprisonment which may extend to six months or with fine</u> which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, <i>or with both</i>.</p>
21	187	Investments of Company to be held in its own name.	<p><u>Default in complying with the provision of the said Section</u> Company shall be punishable <u>with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees and every Officer of the Company who is in default</u> shall be punishable <u>with imprisonment for a term which may extend to six months or with fine</u> which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, <i>or with both</i>.</p>
22	188	Related Party Transactions.	<p>Any Director or any other Employee of a Company, who had entered into or authorised the contract or arrangement in violation of the provisions of the said section shall: (i) <u>In case of Listed Company:</u> such Director or any other Employee of a Company be punishable <u>with imprisonment for a term which may extend to one year or with fine</u> which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, <i>or with both</i> and ii) <u>In case of other Companies:</u> such Director or any other Employee of a Company, be punishable <u>with fine</u> which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.</p>

23	194	Prohibition on forward dealings in securities of the Company by Director or Key Managerial Personnel.	If any Director or Key managerial personnel of the Company deals in forward securities of the Company, shall be punishable <u>with imprisonment for a term which may extend to two years or with fine</u> which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both. Note: As per Section 2(51) of Companies Act,2013 “ Key managerial personnel ”, in relation to a company, means— (i) The Chief Executive Officer or the Managing Director or the Manager; (ii) The Company Secretary; (iii) The Whole-Time Director; (iv) The Chief Financial Officer; and (v) Such other officer as may be prescribed;
24	195	Prohibition on Insider Trading of Securities.	Any person including any Director or Key managerial personnel of a Company enters into insider trading shall be <u>punishable with imprisonment for a term which may extend to five years or with fine</u> which shall not be less than five lakh rupees but which may extend to twenty-five Crore rupees or three times the amount of profits made out of insider trading, whichever is higher, or with both.
25	221	Freezing of assets of Company on inquiry and investigation.	If the Company contravenes the order of the Tribunal in respect of any removal, transfer or disposal of funds, assets, or properties of the Company as per the said section , Company shall be punishable <u>with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees</u> and every Officer of the Company who is in default shall be punishable <u>with imprisonment for a term which may extend to three years or with fine</u> which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.
26	222	Imposition of restrictions upon securities.	If the Company contravenes the order of the Tribunal in respect of securities of the Company issued or transferred or acted as per the said section, Company shall be punishable <u>with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees</u> and every Officer of the Company who is in default shall be punishable <u>with imprisonment for a term which may extend to six months or with fine</u> which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.

27	232	Merger and Amalgamation of Companies.	<p><u>Default in complying with the provision of the said section:</u> The Transferor Company or the Transferee Company, as the case may be, shall be punishable with <u>fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees</u> and every Officer of such Transferor or Transferee Company who is in default, shall be punishable with <u>imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, or with both.</u></p>
28	242	Powers of Tribunal.	<p>If a Company contravenes the order of the Tribunal in respect any alteration in Memorandum and Article of Association of the Company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration which is inconsistent with the order, either in the memorandum or in the articles then the Company shall be <u>punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees</u> and every Officer of the Company who is in default shall be punishable <u>with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.</u></p>
29	243	Consequence of termination or modification of certain agreements.	<p>As per the said section, no Managing Director or other Director or Manager whose agreement is so terminated or set aside shall for a period of five years from the date of the order without the leave of the Tribunal, be appointed or act as the Managing Director or other Director or Manager of the Company . If any person who knowingly acts as a Managing Director or other Director or Manager and every other Director of the Company who is knowingly a party to such contravention shall be <u>punishable with imprisonment for a term which may extend to six months or with fine which may extend to five lakh rupees, or with both.</u></p>
30	274	Directions for filing statement of affairs.	<p><u>Default in filing statement of affairs in case of Petition of winding up with the Tribunal and violation of the provision of the said section:</u> Director or Officer of the Company who is in default shall be punishable with <u>imprisonment for a term which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both.</u></p>

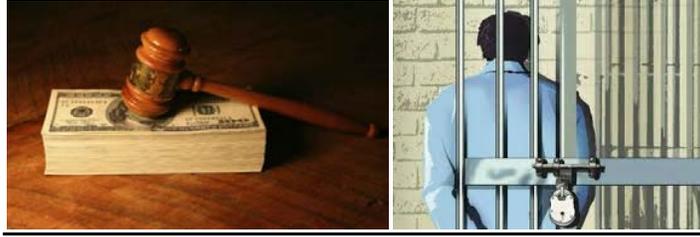
31	284	Promoters, Directors, etc., to cooperate with Company Liquidator.	<p>The Promoters, Directors, Officers and Employees, who are or have been in employment of the Company or acting or associated with the Company shall extend full co -operation to the Company Liquidator who are appointed by the Tribunal in case of winding up of the Company in discharge of his functions and duties.</p> <p>Where any person (mentioned above), without reasonable cause, fails to discharge his obligations he shall be <u>punishable with imprisonment which may extend to six months or with fine</u> which may extend to fifty thousand rupees, or with both.</p>
32	305	Declaration of solvency in case of proposal to wind up voluntarily.	<p><u>Voluntarily wind up of the Company:</u> If a Company has proposed for wind up voluntarily, its majority of Directors shall, at a meeting of the Board, make a declaration verified by an affidavit to the effect that they have made a full inquiry into the affairs of the company and have formed an opinion that the company has no debt or whether it will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up.</p> <p>Any Director of a Company making a declaration without having reasonable grounds for the opinion that the Company will be able to pay its debts in full from the proceeds of assets sold in voluntary winding up <u>shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to five years or with fine</u> which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.</p>
33	306	Meeting of Creditors.	<p><u>Default in complying with the provision of the said section:</u> Company shall be punishable with <u>fine which shall not be less than fifty thousand rupees but which may extend to two lakh rupees</u> and the Director of the Company who is in default shall be <u>punishable with imprisonment for a term which may extend to six months or with fine</u> which shall not be less than fifty thousand rupees but which may extend to two lakh rupees, or with both.</p>
34	347	Disposal of books and papers of Company at the time of completion of winding up of the Company.	<p>Default in complying with the rules framed or an order made by the Central Government in respect to the said section ,such person <u>shall be punishable with imprisonment for a term which may extend to six months or with fine</u> which may extend to fifty thousand rupees, or with both.</p>

35	348	Information as to pending liquidations.	<p>In case of winding up of the Company is not concluded within 1 year after the commencement , a Company Liquidator shall file a statement within 2 months of the expiry of such period by the qualified auditor of the Company. In case Company Liquidator contravenes the provisions of the said section:</p> <p><u>Fine:</u> Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the failure continues.</p> <p><u>Imprisonment:</u> If a Company Liquidator makes willful default in causing the statement audited by a person who is not qualified to act as an auditor of the company, the Company Liquidator shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one lakh rupees, <i>or with both.</i></p>
36	392	Punishment for contravention. (Companies incorporated outside India)	<p>Default in complying with the provision of Chapter XXII -Companies incorporated outside India ,Foreign Company shall be punishable with fine <u>which shall not be less than one lakh rupees but which may extend to three lakh rupees</u> and in the case of a continuing offence, with an additional fine which may extend to fifty thousand rupees for every day after the first during which the contravention continues and Every Officer of the Foreign Company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees, <i>or with both.</i></p>
37	405	Power of Central Government to direct Companies to furnish information or statistics.	<p>The Central Government may, by order, require Companies to furnish information or statistics with regard to the constitution or working of the Company or to produce such records or documents or allow inspection by the officer or furnish further information as Government may consider necessary ,within such time, as may be specified in the order.</p> <p>If Company fails to comply with an order made or knowingly furnishes any information or statistics which is incorrect or incomplete in any material respect, the Company shall be <u>punishable with fine which may extend to twenty-five thousand rupees</u> and Every Officer of the Company who is in default, shall be punishable with imprisonment for a <u>term which may extend to six months or with fine</u> which shall not be less than twenty-five thousand rupees but which may extend to three lakh rupees, <i>or with both.</i></p>

38	441	Compounding of certain offences.	Default in complying with the order made by the Tribunal or the Regional Director or any Officer authorised by the Central Government in respect of compounding of an offence, any Officer or other Employee of the Company , shall be <u>punishable with imprisonment for a term which may extend to six months or with fine not exceeding one lakh rupees, or with both.</u>
39	454	Adjudication of Penalties.	If the Company fails to pay the penalty imposed by the Adjudicating Officer or the Regional Director within 90 days from the date of the receipt of the copy of the order: Company shall be punishable <u>with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.</u> An officer of a company who is in default does not pay the penalty within 90 days from the date of the receipt of the copy of the order, such officer shall be punishable with <u>imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.</u>

Amita Desai

DETAILS OF FINE OR IMPRISONMENT UNDER THE ACT



Sr.No	Section	Particular of Section	Details of Penalties under CA,2013 (Fines or /And Imprisonment)
22	159	Punishment for contravention. (For Appointment and Qualification of Directors)	<u>Default in complying with the following Section:</u> i)Any individual or Director of a Company, contravenes any of the provisions of a)Appointment of Director (section 152), b)Prohibition to obtain more than one Intimation of Director Identification Number (section 155) and c)Intimation of Director Identification Number by Director to the Company(section 156), such individual or Director of the Company shall be punishable with <u>imprisonment for a term which may extend to six months or with fine</u> which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

Amita



DETAILS OF FINE UNDER THE ACT

Sr.No	Section	Particular of Section	Details of Penalties under CA,2013 (Only Fine)
1	12	Registered office of Company	Default in complying with the requirements of Section 12 : The Company and every officer who is default shall be liable to a penalty of one thousand rupees for every day during the default continues but not exceeding one lakh rupees
2	15	Alteration of memorandum or articles to be noted in every copy	Default in complying with the provisions of Section 15 : The Company and every officer of the Company who is default shall be liable to a penalty of one thousand rupees and every officer who is default shall be liable with a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration
3	16	Rectification of name of company.	<u>Default in complying with the following Section 16 (1):</u> The company shall be punishable with <u>fine of one thousand rupees for every day</u> during which the default continues and every officer who is in default shall be punishable with <u>fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.</u>
4	17	Copies of memorandum, articles, etc., to be given to members	Default in complying with the provisions of Section 17 : The Company and every officer of the Company who is default shall be liable for each default to a penalty of one thousand rupees for each day during such default continues or one lakh rupees whichever is less
5	33	Issue of application forms for securities	<u>Default in complying with the following Section:</u> If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.
6	39	Allotment of securities by company.	<u>Default in complying with the sub section (3) and (4) of Section 39:</u> The company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

7	42	Offer or invitation for subscription of securities on private placement	Default in complying with the following Section 42: If a company makes an offer or accepts monies in contravention of Section 42 , the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two Crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.
8	56	Transfer and transmission of securities	<u>Default in complying with the following Section:</u> The company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.
9	60	Publication of authorised, subscribed and paid-up capital	Default in complying with the following Section: If any default is made in complying with the requirements of sub-section (1), the company shall be liable to pay a penalty of ten thousand rupees and every officer of the company who is in default shall be liable to pay a penalty of five thousand rupees, for each default.
10	64	Notice to be given to Registrar for alteration of share capital.	<u>Default in complying with the following Section:</u> If a company and any officer of the company 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.
11	66	Reduction of share capital	<u>Default in complying with the following Section 66 subsection (4):</u> If a company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees.
12	88	Register of Members	<u>Default in complying with the following Section:</u> The company and every officer of the company who is in default shall be <u>punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees</u> and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.

13	89	Declaration in respect of beneficial interest in any share.	<p><u>Default in complying with the following Section 89 (1), (2) & (3):</u> If any person shall be <u>punishable with fine which may extend to fifty thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.</u></p> <p><u>Default in complying with the following Section 89 (6):</u> the company and every officer of the company who is in default shall be <u>punishable with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.</u></p>
14	91	Power to close register of members or debenture-holders or other security holders	<p><u>Default in complying with the following Section:</u> If the register of members or of debenture-holders or of other security holders is closed without giving the notice as provided in sub-section (1), or after giving shorter notice than that so provided, or for a continuous or an aggregate period in excess of the limits specified in that sub-section, the company and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for every day subject to a maximum of one lakh rupees during which the register is kept closed.</p>
15	92	Annual Return	<p><u>Default in complying with the following Section:</u> If a <u>company secretary in practice</u> certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be <u>punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.</u></p>
16	94	Place of keeping and inspection of registers, returns, etc	<p>If any inspection or the making of any extract or copy required under this section is refused, the company and every officer of the company who is in default shall be liable, for each such default, to a penalty of one thousand rupees for every day subject to a maximum of one lakh rupees during which the refusal or default continues</p>
17	99	Punishment for default in complying with provisions of sections 96 to 98.	<p><u>Default in complying with the following Section:</u> If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.</p>

18	102	Statement to be annexed to notice.	<u>Default in complying with the following Section:</u> Every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine which may extend to 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 more.
19	105	Proxies	<u>Default in complying with the following Section 105(2) :</u> Every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees. <u>Default in complying with the following Section:</u> If for the purpose of any meeting of a company, invitations to appoint as proxy a person or one of a number of persons specified in the invitations are issued at the company's expense to any member entitled to have a notice of the meeting sent to him and to vote thereat by proxy, every officer of the company who knowingly issues the invitations as aforesaid or willfully authorises or permits their issue shall be punishable with fine which may extend to one lakh rupees: Provided that an officer shall not be punishable under this sub-section by reason only of the issue to a member at his request in writing of a form of appointment naming the proxy, or of a list of persons willing to act as proxies, if the form or list is available on request in writing to every member entitled to vote at the meeting by proxy.
20	111	Circulation of members resolution	If any default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees
21	118	Minutes of proceedings of general meeting, meeting of Board of Directors and other meeting and resolutions passed by postal ballot.	If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees

22	119	Inspection of minute-books of general meeting	If any inspection under sub-section (1) is refused, or if any copy required under sub-section (2) is not furnished within the time specified therein, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each such refusal or default, as the case may be
23	121	Report on annual general meeting	<u>Default in complying with the following Section:</u> The company shall be <u>punishable with fine</u> which shall <u>not be less than one lakh rupees</u> but which may <u>extend to five lakh rupees</u> and every officer of the company who is in default shall be <u>punishable with fine which shall not be less than twenty-five thousand rupees</u> but which may <u>extend to one lakh rupees</u> .
24	124	Unpaid Dividend Account	<u>Default in complying with the following Section:</u> The company shall be <u>punishable with fine</u> which shall <u>not be less than five lakh rupees</u> but which may <u>extend to twenty-five lakh rupees</u> and every officer of the company who is in default shall be <u>punishable with fine which shall not be less than one lakh rupees</u> but which may <u>extend to five lakh rupees</u> .
25	136	Right of member to copies of audited financial statement.	If any default is made in complying with the provisions of this section, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees.
26	157	Company to inform Director Identification Number to Registrar	<u>Default in complying with the following Section:</u> The company shall be <u>punishable with fine</u> which shall <u>not be less than twenty-five thousand rupees</u> but which may <u>extend to one lakh rupees</u> and every officer of the company who is in default shall be <u>punishable with fine which shall not be less than twenty-five thousand rupees</u> but which may <u>extend to one lakh rupees</u> .
27	165	Number of Directorships	<u>Default in complying with the following Section:</u> Person shall be punishable with fine which shall <u>not be less than five thousand rupees</u> but which may <u>extend to twenty-five thousand rupees</u> for every day after the first during which the contravention continues.
28	166	Duties of Directors	<u>Default in complying with the following Section:</u> Director shall be <u>punishable with fine</u> which shall <u>not be less than one lakh rupees</u> but which may <u>extend to five lakh rupees</u> .

29	172	Punishment	If a company contravenes any of the provisions of Chapter XI and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.
30	173	Meetings of Board.	Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees
31	188	Related Party Transactions.	Default in complying with the following Section:: (In case of other Company other than the Listed Company: Any director or any other employee of a company, who had entered into or authorised the contract or arrangement in violation of the provisions of this section be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.
32	189	Register of contracts or arrangements in which directors are interested.	Every director who fails to comply with the provisions of this section and the rules made thereunder shall be liable to a penalty of twenty-five thousand rupees
33	190	Contract of employment with managing or whole-time directors.	If any default is made in complying with the provisions of sub-section (1) or sub-section (2), the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for each default.
34	191	Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares.	Default in complying with the following Section:: If a director of the company contravenes the provisions of this section, such director shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
35	197	Overall maximum managerial remuneration and managerial remuneration in case of absence or inadequacy of profits	<u>Default in complying with the following Section:</u> Person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
36	203	Appointment of key managerial personnel	<u>Default in complying with the following Section:</u> The company shall be punishable with fine which shall <u>not be less than one lakh rupees</u> but which may <u>extend to five lakh rupees</u> and every director and key managerial personnel of the company who is in default shall be punishable with fine which may <u>extend to fifty thousand rupees</u> and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every

			day after the first during which the contravention continues.
37	204	Secretarial Audit for bigger companies.	<u>Default in complying with the following Section:</u> If a company(for which Section 204 applicable) or any officer of the company or the company secretary in practice, contravenes the provisions of this section, the company, every officer of the company or the company secretary in practice, who is in default, shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
38	206	Power to call for information, inspect books and conduct inquiries	<u>Default in complying with the following Section:</u> The company and every officer of the company, who is in default shall be punishable with a fine which may extend to one lakh rupees and in the case of a continuing failure, with an additional fine which may extend to five hundred rupees for every day after the first during which the failure continues.
39	238 (Section yet to be notified)	Registration of offer of schemes involving transfer of shares	<u>Default in complying with the following Section:</u> The director shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.
40	249	Restrictions on making application under section 248 in certain situations	<u>Default in complying with the following Section:</u> If a company files an application under sub-section (2) of section 248 in violation of sub-section (1), it shall be punishable with fine which may extend to one lakh rupees.
41	302	Dissolution of Company by Tribunal.	<u>Default in complying with the following Section:</u> If the Company Liquidator makes a default in forwarding a copy of the order within the period specified in sub-section (3) of section 302, the Company Liquidator shall be punishable with fine which may extend to five thousand rupees for every day during which the default continues.
42	307	Publication of resolution to wind up voluntarily	<u>Default in complying with the following Section:</u> The company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees for every day during which such default continues.
43	312	Notice of appointment of Company Liquidator to be given to Registrar	<u>Default in complying with the following Section:</u> The company and every officer of the company who is in default shall be punishable with fine which may extend to five hundred rupees for every day during which such default continues.
44	342	Prosecution of delinquent officers and members of company.	<u>Default in complying with the following Section:</u> Every person, who is or has been an officer and agent of the company shall be liable to pay <u>fine</u> which shall <u>not be less than twenty-five thousand rupees</u> but which may extend to one lakh rupees.

45	344	Statement that company is in liquidation	<p><u>Default in complying with the following Section:</u> The company, and every officer of the company, the Company Liquidator and any receiver or manager, who willfully authorises or permits the non-compliance, shall be <u>punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.</u></p>
46	356	Powers of Tribunal to declare dissolution of company void.	<p><u>Default in complying with the following Section:</u> It shall be the duty of the Company Liquidator or the person on whose application the order was made, within thirty days after the making of the order or such further time as the Tribunal may allow, to file a certified copy of the order with the Registrar who shall register the same, and if the Company Liquidator or the person fails so to do, the Company Liquidator or the person shall be <u>punishable with fine</u> which may <u>extend to ten thousand rupees</u> for every day during which the default continues.</p>
47	403	Fee for filing, etc.	<p>Where a company fails or commits any default to submit, file, register or record any document, fact or information under sub-section (1) before the expiry of the period specified in the first proviso to that sub-section with additional fee, the company and the officers of the company who are in default, shall, without prejudice to the liability for payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.</p>
48	446	Application of fines	<p><u>Default in complying with the following Section:</u> The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.</p>
49	450	Punishment where no specific penalty or punishment is provided.	<p>If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be <u>punishable with fine which may extend to ten thousand rupees</u>, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.</p>

50	452	Punishment for wrongful withholding of property.	Default in complying with the following Section: If any officer or employee of a company— (a) wrongfully obtains possession of any property, including cash of the company; or (b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act, he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.
51	453	Punishment for improper use of “Limited” or “Private Limited”	<u>Default in complying with the following Section:</u> If any person or persons trade or carry on business under any name or title, of which the word “Limited” or the words “Private Limited” or any contraction or imitation thereof is or are the last word or words, that person or each of those persons shall, unless duly incorporated with limited liability, or unless duly incorporated as a private company with limited liability, as the case may be, <u>punishable with fine which shall not be less than five hundred rupees but may extend to two thousand rupees for every day for which that name or title has been used.</u>
52	454	Adjudication of penalties.	<u>Default in complying with the following Section:</u> Where company does not pay the penalty imposed by the adjudicating officer or the Regional Director within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.
53	464	Prohibition of association or partnership of persons exceeding certain number	<u>Default in complying with the following Section 464 (1):</u> Every member of an association or partnership punishable with <u>fine</u> which may <u>extend to one lakh rupees</u> and shall also be personally liable for all liabilities incurred in such business.
54	469	Power of Central Government to make rules	<u>Default in complying with the following Section 469 (1):</u> Any rule made under sub-section (1) may provide that a contravention thereof shall be <u>punishable with fine</u> which may <u>extend to five thousand rupees</u> and where the <u>contravention is a continuing one</u> , with a further fine which may <u>extend to five hundred rupees</u> for every day after the first during which such contravention continues.

EFFECTS OF COMPOUNDING- Compounding has very significant impacts, which are as follows;

1. Once the offence is compounded, no further prosecution shall be initiated either by registrar or shareholder or any other person in respect of that offence.
2. If the offence is committed for non filing of any return or document with registrar, then that return or documents needs to be filed with the registrar along with fees and additional fees as may be imposed under the order and within such time frame as may be stipulated under the order.
3. If any prosecution is going in any court in respect of the offence, then on successful compounding of the same, the person against whom the prosecution is going on shall be discharged.

CONCLUSION:

In case of prosecution for an offence in a criminal court, the accused has to appear before the Magistrate at every hearing and an advocate needs to be engaged for appearing before the criminal court. Further court proceedings are time consuming and expensive. The compounding of an offense is big relief for all the stakeholders.

After Establishment of National Company Law Tribunal (NCLT), The cases of Compounding of an offence will be compounded by the NCLT and after enforcement of section 441, the cases and matters will be disposed by NCLT which is Speedy, efficient and time bound.

INSPIRATIONAL QUOTES

never get so
busy making a
living
that you forget
to make a
life



Disclaimer

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