

PENALTIES, FINES, OFFENCE, CONTRAVENTION UNDER COMPANIES ACT 2013



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Introduction

Non Compliance of the provisions of any Act would attract its penal provisions. These penal provisions in the new Act are more stringent. The penal provisions in this Act may be classified into three categories as detailed below:

- Penal provisions for Companies;
- Penal provisions for officer who is in default ;
- Penal provisions for persons other than companies and officer in-default.

Officer who is in default

Section 2(60) of the Act defines the term defines the terms 'officer who is in default any provision in this Act which enacts that an officer of the company who is in default any penalty or punishment by way of imprisonment, fine or otherwise, means any officers of a company, namely -

- Whole-time director,
- Key managerial personnel,

Where there is no key managerial personnel, such director or directors as spec in this behalf and who has or have given his or their consent in writing to the B specification, or all the directors, if no director is so specified,

Any person who, under the immediate authority of the Board or any Key Managerial Personnel charged with any responsibility including maintenance, filing or distribution of ac records, authorizes, actively participation in, knowingly permits, or knowingly fail steps to prevent, any default,

Any person in accordance with whose advice, directions or instructions the Board the company is accustomed to act, other than a person who gives advice to the professional capacity.

Every director, in respect of contravention of any of the provisions of this Act, who such contravention by virtue of the receipt by him of any proceedings of the Board in such proceedings without objecting to the same, or where such contravention ha with his consent or connivance;

In respect of the issue of Transfer of any shares of a Company, the shares of a company, the Share transfer agents, registrars and merchants bankers to the issue or transfer.

Chapter II : Incorporation of Company and Matters Incidental thereto

| Section No. | Nature of default | Person responsible | Punishment for Contravention |
|---------------|--------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| Section 8(11) | Formation of Companies with Charitable Objects -Default in compliance | In Case of Company | Fine:-Minimum -Rs. 10,00,000 Maximum -Rs. 1,00,00,000 |
| | | In case of Director and every officer of the company who is in default shall be punishable with | Fine:- Minimum-Rs. 25,000 Maximum -Rs. 25,00,000 |
| Section 12(8) | Registered Office of Company | In Case of the company and every officer who is in default shall be punishable with | Fine: one thousand rupees for every day during which the default continues but not exceeding one lakh rupees. |

Chapter III: Part-I Prospectus and Allotment of Securities

| Section No. | Nature of default | Person responsible | Punishment for Contravention |
|-------------|---------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|------------------------------------------------|
| Section 26 | Matters to be stated in prospectus-Contravention of provisions relating to issue of a prospectus. | In Case of Company | Fine-Minimum -Rs.50,000 |
| | | In Case of every person who is knowingly a party to the issue of such prospectus shall be punishable with. | Fine-Minimum -Rs.50,000 Maximum - Rs. 3,00,000 |

Chapter VII: Management and Administration

| Section No. | Nature of default | Person responsible | Punishment for Contravention |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------|---------------------------------------------------------|
| Section 92(1) Annual return | In case a company fails to file its annual return within specified period (i.e. 60 days from AGM). | Company and every officer who is in default shall be punishable with | Fine-Minimum -Rs.10,00,000 Maximum - Rs. 1,00,00,000 |
| Section 92(6) Annual return | If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder. | Such Company Secretary in practice | Liable to Rs.2,00,000 |

Chapter IX:Account of Companies

| Section No. | Nature of default | Person responsible | Punishment for Contravention |
|--------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|------------------------------|
| Section128 Books of | If the MD, the WTD in charge of finance, CFO or any other person of accompany charged by the Board with the duty of complying with the provisions of this section, contravenes such provisions. | Such MD, WTD in charge of finance, CFO or such other person of the company shall be punishable. | Fine- Minimum-Rs. 50,000 |
| Section134 Financial statement, Board's | If a company fails to comply with the provisions regarding signing of financial statement and contents & signing of Board's Report. | In case of Company | Penalty of Rs.3,00,000 and |
| | | Every officer of the company. | Penalty of Rs.50,000. |

| Section No. | Nature of default | Person responsible | Punishment for Contravention |
|------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 135 | Company is in default in complying with the provisions of sub-section (5) or sub-section (6), | In case of Company | Penalty of 2 x amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent CSR Account, as the case may be, or Rs. 100,00,000, whichever is less, and |
| | | Every officer of the company. | Penalty of 1/10 the of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent CSR Account, as the case may be, or Rs. 2,00,000, whichever is less. |
| Section 137 Copy of financial statement to be filed with Registrar. | If a company fails to file the copy of the financial statements with the Registrar with in the time specified there in (i.e. within 30 days from the date of AGM). | In case of Company | Minimum -10,000 and in case of continuous default Rs. 100 for each day during which the failure continues and Maximum amount of penalty Rs. 200,000. |
| | | In case of MD/CFO/directors who is in default | Minimum -10,000 and in case of continuous default Rs. 100 for each day during which the failure continues Maximum amount of penalty Rs. 50,000. |

Chapter X: Audit and Auditors

| Section No. | Nature of default | Person responsible | Punishment for Contravention |
|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 140 Removal, Resignation of Auditor and Giving of Special Notice | Auditor fails to file his resignation with the Registrar within the time specified therein (i.e.30days from the date of resignation). | Auditor | Penalty of Rs. 50,000 or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty Rs. 500 for each day after the first during which such failure continues, subject to a maximum of Rs. 200,000. |
| Section 143 Powers and duties of auditors and auditing standards. | If any auditor, cost accountant or company secretary in practice does not comply with the provisions regarding reporting of fraud. | Such professional shall be liable to a penalty: | In case of a listed company: Rs. 5,00,000; In case of any other company: Rs.1,00,000. |

Chapter XII: Meetings of Board and its Powers

| Section No. | Nature of default | Person responsible | Punishment for Contravention |
|----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-----------------------------------------------------------------------------------------|
| Section184 Disclosure of interest by director. | If a director of the company does not disclose the nature of his interest under this section. | Director of a Company | Rs.1,00,000 |
| Section 187 Investments of company to be held in its own name. | If a company contravenes the provisions of this section. | In case of Company | Rs.5,00,000. |
| | | Every officer of the company. | Rs.50,000. |
| Section 188 Related Party transactions | Any director or any other employee of a company, who had entered into or authorized the contractor arrangement in violation of the provisions of this section. | Such director or employee | In case of listed company -Rs. In case of company other than listed company -Rs. |

Chapter XII: Appointment and Remuneration of Managerial Personnel

| Section No. | Nature of default | Person responsible | Punishment for Contravention |
|-------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|------------------------------------------------------------|
| Section 204 Secretarial audit for bigger companies | Any director or any other employee of a company, who had entered into or authorized the contract or arrangement in violation of the provisions of this section. | Such director or employee | In case of listed company –Rs. 25,00,000 |
| | | | In case of company other than listed company –Rs. 5,00,000 |

Recent Summary of the Cases on which penalty is levied:-

1. Penalty levied by the Registrar of Companies, Ahmedabad for not mentioning the DIN of directors in the financial statements. This is a violation of Section 158 of Companies Act, 2013. Total penalty of ₹6,00,000 on the company and the directors.

2. Summary of the Order Use of Designation- CEO

As we all know in Start-Up, Many founders or professional designated as a CEO of a Company (Private Company), As per the Indian Companies Act, 2013 we have to follow the provisions of appointment of a KMP, its applicability, process and penalty. Section 203 of the said Act, which deals with appointment of Key Managerial Persons i.e., CEO, MD, Manager or CFO is not applicable to private limited companies and hence many private limited companies designate their employees as CEO, MD, CFO etc. without passing a Board Resolution or filing Form DIR 12 with ROC for such appointments.

In one of the recent orders passed by Registrar of Companies, Karnataka, imposed a penalty on Company and its directors, where even though the company was not falling class of companies prescribed under section 203 of the Companies Act, 2013 and it didn't require to appoint a KMP, it was fined for usage of abbreviation 'CEO' as designation by one of the director, without having proper approval of the Board of Directors and filing of form DIR-12 with ROC. This was considered as a violation of the Companies Act, 2013 by the ROC.

It was observed that a Director cannot sign any official communication of the Company in the capacity the of CEO in such cases. Therefore, all companies including private limited companies are advised to follow the prescribed procedure as laid down under the Companies Act, 2013, before designating their employees or directors as CEO, MD, CFO etc and file Form DIR-12 with the ROC for such appointments.

3. Violation of provision of Section 161 of the Act.

ROC, Bangalore imposes penalty of Rs.10 lakh on the company, its Directors, KMPs & Company Secretary for failure to co-opt MD as Additional Director before his appointment as MD, in contravention of Sec. 161 of the Companies Act.

- (i) Company appointed as MD and CEO of a company (KMP) for a period of 5 years through Board Resolution.
- (ii) By inadvertence, Board had omitted to co-opt him as Additional Director before appointing him as MD.
- (iii) Pursuant to the said omission, the approval for his appointment by the shareholders (regularization) at the first AGM was omitted to be obtained.
- (iv) Consequently, MD was deemed to have vacated his office w.e.f. the date of the AGM in terms of Sec. 161 of the Companies Act.

4. Violation of provision of Section 56 of the Act.

In one of the recent orders by the Registrar of Companies ("ROC"), penalty of total INR. 2,00,000 (Indian Rupees Two Lakhs) were imposed on company and its officer in default, on occasion of non-compliance with respect to delay in issuance of share certificates to the subscribers within period of 2 (two) months from date of incorporation.

Section 56(4) requires every company to deliver the certificates within a period of two months from the date of incorporation, to the subscribers of the memorandum. However, in this particular instance, the company had issued a share certificate with a delay of 30 (thirty) days. Therefore, penalty was imposed as per Section 56(6) of the Companies Act, i.e. INR. 50,000 (Indian Rupee Fifty Thousand) each on company and every officer in default.

Conclusion:- The provisions of the Act are clear as regards the consequences of non-compliance. It is on the company and its officers to ensure that it functions in a fair, transparent, and compliant manner. If you think compliance is expensive, try non-compliance! Also it takes less time to do things right than to explain why you did wrong. So looking at above case laws and penalties it become important that along with doing business we do not side line the importance of compliance.

