COMPOUNDING OF OFFENCES UNDER SECTION 621A OF COMPANIES ACT, 1956

Imposition of fine in place of heavy penalty

Provisions and procedure for Compounding of offences, which are punishable under Companies Act, 1956 are stipulated under section 621A of the act. The meaning of word compounding of offence is not defined under Companies Act, 1956. However if we try to analyze the section 621A, we can draw one clear interpretation i.e. "It`s nothing but admission of guilt" In the process of compounding, the person may either Suo Moto or on receipt of notice of default/initiation of prosecution, admits the commission of default and make an application for compounding of the concern offence. The defaulters agree to pay penalty which may be ordered by the Central Government. We will try to analyze the provisions and procedure of compounding.

I. **Applicability**: - Only those offences which are punishable with either Penalty or Penalty or imprisonment i.e. where it is at discretion of the court to impose penalty or imprisonment, are compoundable under section 621A. In other words offence which is specifically punishable with imprisonment only or imprisonment plus fine is non-compoundable.

Similarly, offence must not be a subsequent offence committed within period of 3 years from Compounding of offence of similar nature. It means if an offence is compounded in favour of a person and if that person commits that offence once again within span of three (3) years from the previous compounding then the subsequent offence shall not be eligible for compounding. However if the period of 3 years has lapsed from previous compounding then the subsequent offence shall be considered as fresh offence and shall be eligible for compounding.

II**. Jurisdiction**: - the power of Compounding of offence is conferred upon Company Law Board and Regional Director. Where the maximum amount of fine which may be imposed for the commission of the offence does not exceed ` 50,000/- that offence is compounded by the Regional Director. All other applications for compounding of offences shall be entertained and tried by the Company Law Board. The Regional Director acts under direction, control and supervision of the Company Law Board.

III. Penalty: - Penalty, which may be imposed under the order of compounding by the CLB or RD shall not exceed the maximum amount of fine which may be imposed for commission of that offence. Means if the maximum fine for an offence is 10 times of basic fees, then the penalty shall not exceed the 10 times of basic fees.

The fine imposed under the order of Compounding is considered as additional fees and payable under section 611 (2) and not regarded as penalty. This has a significant implication for qualifications and disqualifications of Directorship.

IV. Effects of Compounding: - Compounding has very significant impacts. They are as follows;

i. 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.

ii. 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.

iii. 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.

iv. Failure of compliance with the order of Compounding is an offence punishable with imprisonment of six months or fine not exceeding ` 50,000/- or with both.

v. Once the offence is compounded, the intimation of compounding needs to be given to the Registrar within period of seven days from the day on which the offence is so compounded.

PROCEDURE FOR COMPOUNDING

1. The procedure for compounding of offence under section 621A can be suo moto or on initiation of prosecution by government authorities i.e. Registrar of Companies. A petition is required to be prepared in form no. 1 of Companies (court) Rules, 1959 (Please refer annexure I). Following documents are required to be attached with petition;

- Board resolution authorizing director for filing petition.
- Affidavits duly notarized
- Power of attorney / Memorandum of Appearance
- Sometimes Copies of 3 years attested financial statements.
- Copy of agreement (if any)

2. E-form No. 61 is required to be filed with Registrar of Companies.

3. The complete set for petition is to be prepared in triplicate

i. One for filing with Registrar of Companies

ii. One for presenting in Company Law Board/Regional Director

iii. One as an acknowledgment.

4. Once the form 61 is filed and physical set of petition is submitted with the ROC, he forwards the same with his comments for Compounding.

5. After that application can be made to the CLB or RD as the case may be for compounding of offence.

6. Once the order of Compounding is passed, the same needs to be filed with the registrar of companies in e-form 21.

Courtesy: ICSI/ ICAI/ICWAI Bulletins