Dissecting the New Law

List of offences Liable to Fraud and List of Non Compoundable offences

Under The Companies Act, 2013

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Fraud under Companies Act, 2013

Section 447 of the Companies Act, 2013 defines **fraud** as:

a. ***Any act, omission***
b. ***Concealment of any fact***
c. ***abuse of position committed by any person or any other person with the connivance in any manner, with intent to***
    i. ***deceive,***
    ii. ***to gain undue advantage from, or***
    iii. ***to injure the interests of, the company or its shareholders or its creditors or***
    iv. ***any other person,***

whether or not there is any wrongful gain or wrongful loss

Any person who is found to be guilty of fraud, shall be punishable with:

a. imprisonment for a term which shall not be less than six months but which may extend to ten years and
b. 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 fraud.
c. where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

List of Offences Liable u/s 447, i.e. Fraud

Sl.	Section	Title	Provision
1.	7(5)	*Incorporation of company*	Furnishing any false or incorrect particulars of any information or suppression any material information, in any of the documents filed with the Registrar in relation to registration of a company by any person, of which he is aware, the person shall be liable under clause 447.
2	7(6)	*Incorporation of company*	After the incorporation of a company, if it is proved that the company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or

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			information in any of the documents or declaration filed or made for incorporating such company, or by any fraudulent action, promoters, first directors of the company and the persons making declaration for incorporation shall be liable for action under clause 447.
3	8(11)	*Formation of companies with charitable objects, etc.*	When it is proved that the affairs of the companies formed with charitable objects, were conducted fraudulently, every officer in default shall be liable.
4	34	*Criminal liability for misstatements in prospectus*	Where a prospectus, issued, circulated or distributed includes any statement which is untrue or misleading in form or context in which it is included or where any inclusion or omission of any matter is likely to mislead, every person who authorizes the issue of such prospectus shall be liable under clause 447. *This provision will not apply if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.*
5	36	*Punishment for fraudulently inducing persons to invest money*	The person shall be liable, who knowingly or recklessly makes any statement, promise or forecast which is false, deceptive or misleading, or deliberately conceals any material facts, to induce another person to enter into, or to offer to enter into,— a) any agreement for, or with a view to, acquiring, disposing of, subscribing for, or underwriting securities; or b) any agreement, the purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities; or c) any agreement for, or with a **view to obtaining**

Sl.	Section	Title	Provision
			credit facilities from bank or financial institution;
6	38(1)	*Punishment for personation for acquisition, etc., of securities*	The person shall be liable, if he a) makes or abets the making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; b) makes or abets the making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; c) induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name.
7	46 (5)	*Certificate of shares*	If a company with intent to defraud issues a duplicate certificate of shares, every officer of the company who is in default shall be liable under clause 447.
8	56 (7)	*Transfer and transmission of securities*	Where any depository or depository participant, with an intention to defraud a person, has transferred shares, it shall be liable under clause 447.
9	66 (10)	*Reduction of share capital*	If any officer of the company: a) knowingly conceals the name of any creditor entitled to object to the reduction; b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or c) abets or is privy to any such concealment or misrepresentation as aforesaid. he shall be liable.
10	75 (1)	*Damages for fraud*	Where company fails to repay deposit or any interest thereon within the time specified & it is proved that the deposits had been accepted with intent to defraud depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to

Sl.	Section	Title	Provision
			the liability under clause 447, be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.
11	140 (5)	*Removal, resignation of auditor and giving of Special notice*	The Tribunal may either *suo motu* or on an application made by Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors. If application is made by Central Government & Tribunal is satisfied that any change of auditor is required, it shall within 15 days of receipt of such application, make an order that he shall not function as an auditor & Central Government may appoint another auditor in his place. Auditor against whom final order has been passed by Tribunal under this section shall not be eligible to be appointed as an auditor of any company for a period of 5 years from the date of the order and auditor shall also be liable under clause 447.
12	206 (4)	*Power to call for information, inspect books and conduct inquiries*	If the ROC is satisfied on the basis of information available or furnished or on a representation made by any person that business of company is carried on for a fraudulent/unlawful purpose/not in compliance with the provisions of this Act/if grievances of investors are not being addressed, he may, call on the company to furnish in writing any information or explanation on matters specified within such time as he may specify & carry out such inquiry as he deems fit after providing a reasonable opportunity of being heard: Where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be

Sl.	Section	Title	Provision
			punishable for fraud as per clause 447.
13	Proviso to 213	*Investigation into company's affairs in other cases*	If after investigation it is proved that— i. the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or ii. any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer in default of company and persons concerned in the formation of company or the management of its affairs shall be punishable for fraud.
14	229	*Penalty for furnishing False statement, mutilation, destruction of documents*	Where a person who is required to provide an explanation or make a statement during inspection, inquiry or investigation, or an officer or other employee of a company or other body corporate which is also under investigation: a) destroys, mutilates or falsifies, or conceals or tampers or unauthorisedly removes, or is a party to the destruction, mutilation or falsification or concealment or tampering or unauthorized removal of, documents relating to the property, assets or affairs of the company/body corporate; b) makes, or is a party to the making of, a false entry in any document concerning the company/ body corporate; or c) provides an explanation which is false or which he knows to be false, he shall be punishable for fraud.

Sl.	Section	Title	Provision
15	251 (1)	*Fraudulent application for removal of name*	Where it is found that an application by a company under sub-clause (2) of clause 248 has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall — a) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and b) be punishable for fraud in the manner as provided in clause 447.
16	Proviso to 266 (1)	*Power of Tribunal to Assess damages Against delinquent directors, etc*	Such direction by the Tribunal shall be without prejudice to any other legal action that may be taken against the person including any punishment for fraud in the manner as provided in clause 447.
17	339 (3)	*Liability for fraudulent conduct of business*	Where any business of a company is carried on with intent to defraud creditors of the company or any other persons or for any fraudulent purpose, every person who was knowingly a party to the carrying on of the business in the manner aforesaid, shall be liable for action under clause 447.
18	448	*Punishment for false statement*	If in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of this Act or rules thereunder, any person makes a statement,— a) which is false in any material particulars, knowing it to be false; or b) which omits any material fact, knowing it to be material, he shall be liable under clause 447.

List of Non Compoundable Offences

Sl.	Section	Default
1	*46(5)*	Fraudulently issuing of duplicate share certificates by a company
2	*56(7)*	If the depository or depository participant with an intention to defraud a person, has transferred the shares
3	*57*	Deceitfully personating as an owner of any shares or interest in a company
4	*58(6)*	Contravention of an order of the Tribunal regarding the refusal of registration and appeal against refusal
5	*67(5)*	Contravening provisions relating to purchase by company or loans by company for purchase of its own shares.
6	*118(12)*	Tampering with the minutes of the proceedings of meeting
7	*127*	Failure to distribute dividend within thirty days
8	*140(5)*	Final order of Tribunal in relation to fraudulent behaviour of auditor
9	*182 (4)*	Political contribution made in contravention of provisions of Clause 182
10	*186(13)*	Contravention of Provisions with respect to Loans & Investment
11	*204(4)*	Disobeys the direction issued by the Registrar or inspector
12	*217(8)*	Failure to provide information, books or papers etc. to inspector during investigation
13	*245(7)*	Committing default in complying with the order of the Tribunal
14	*247(3)*	Contravention of provisions with an intent to fraud by a Valuer
15	*267*	Violations of the order of 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.
16	*336*	Offences by officers of companies in liquidation
17	*337*	Frauds by officers

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Sl.	Section	Default
18	*338(1)*	Failure to keep proper books of account before winding up
19	*447*	Fraud
20	*449*	Intentionally gives false evidence
21	*452(2)*	Wrongful withholding of property

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