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PENALTY & PUNISHMENT FOR AUDITORS

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UNDER COMPANIES ACT, 2013

GOYAL DIVESH & ASSOCIATES,

Practicing Company Secretary

Series- 38

SERIES

NO- 38

A. **Contravention of Provision of Section 139-146**: (Attendance in General Meeting): If any provisions of this Section contravene then:

Penalty on Company:

The company shall be punishable with fine which shall not be less than Rs. 25,000 (Rupees twenty-five thousand) but which may extend to Rs. 5 Lac (Rupees five lac)

AND (+)

Penalty on Officer of Company:

Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year OR with fine which shall not be less than Rs. 10,000/- (Rupees ten thousand) but which may extend to Rs. 1 Lac (Rupees one lakh), OR with BOTH.

B. **Contravention of Provision of Section 145**: (Signing of Auditor Report): If any provisions of this Section contravene then:

Penalty on Auditor (without intention or will):

The auditor shall be punishable with fine which shall not be less than Rs. 25,000/- (Rupees twenty-five thousand) but which may extend to Rs. 5 Lac (Rupees five lakh)

Penalty on Auditor (Contravene the provisions knowingly or willfully):

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, he shall be punishable with imprisonment for a term which may extend to one year **AND** with fine which shall not be less than Rs. Lac (Rupees one lac) but which may extend to Rs. 25 Lac (Rupees twenty-five lac).

Other Liability on Company if Contravene provisions knowingly and willfully:

i. Refund the remuneration received by him to the company; and
ii. Pay for damages to the company, statutory bodies or authorities or to any other persons for loss arising out of incorrect or misleading statements of particulars made in his audit report.

Penalty on all Partners of Firm:

Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, whether civil or criminal as provided in this Act or in any other law for the time being in force, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

Class action against auditors and audit firm:

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Class action against auditor/firm of auditors for such damages, compensation or other action is possible under Section 245 of Companies Act, 2013 for improper and misleading statements in his audit report.

Professional misconduct of auditor:

Certain Acts of auditors will be considered as misconduct and Institute of ICAI can take suitable action. In some cases, action can be taken only with permission of High Court. The provisions are similar in case of all three professional Institutes.

Control over professions- All CA's are required to maintain professional ethics while undertaking audit. The ICAI through its disciplinary committee exercise control over professional misconducts of its members.

Peer Review: ICAI has established an 11 member peer review Board in year 2002 to take care of all functions relating to Peer Review. Peer Review means work done by one person in reviewed by another person of similar standing. The aim is to ensure quality of attestation services and is de-linked from other activities, including disciplinary action.

(Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com) Disclaimer: The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Though utmost efforts has made to provide authentic information, it is suggested that to have better understanding kindly cross-check the relevant sections, rules under the Companies Act, 2013. The observations of the author are personal view and the authors do not take responsibility of the same and this cannot be quoted before any authority without the