[SEC-446] APPLICATIONS OF FINES

→ Fine is imposed by the court of any person under the Act.

Power of court :-

Direct whole or any part of fine shall be utilised for :-

(i) Payment for cost of proceeding.

(ii) Payment of a reward to a person on whose information the proceedings were instituted.

FACTORS DETERMINE LEVEL OF PUNISHMENT :-

→ court / special court decides the amount of fine or imprisonment under the Act.

Factors :-

- Size.
- Nature of business carried by co.
- Injury to public interest.
- Nature of the default.
- Repetition of the default.

LESSOR PENALTY FOR ONE PERSON COMPANY AND SMALL COMPANY [SEC-446B]

Default u/s 92(5) → Punishment for non filling of AR.

u/s 117(2) → Punishment for failure to file an agreement or resolution within 30 days

137(3) → Punishment for failure to file FS within time.

2. Effects :- Penalty one half of the penalty.

PUNISHMENT FOR FRAUD (SEC-447)

- guilty of fraud at least ₹ 10,00,000 or 1% of turnover of co.
  WHICHEVER IS LOWER

	FRAUD INVOLVES PUBLIC INTT.	ANY OTHER CASES
Minimum imprisonment	3 years	6 months.
Max.	10 years.	
Min fine	Amount of fraud involved.	
Max fine	3 times of fraud involved.	

- If found guilty less than 1000000 or 1% of turnover of co.
  WHICH EVER IS LOWER

FRAUD DOES NOT INVOLVE PUBLIC INT.

→ imprisonment upto 5 years.
→ fine upto 5 lacs.
→ Both.

SEC-450 (OFFENCE AND PENALTY)

→ so no punishment & penalty specified in Act
fine - 10000
fine → 1000 where offence is of continuous nature.

SECTION – 454 [ADJUDICATION OF PENALTIES]

CG → Appointment of adjudicating officers → Official Gazette

- Number as CG may deem fit.
- Jurisdiction: specified by CG.

Adjudicating officer → SCN:- → officer of co. at default / company / Any other person

* Indicate

- Non compliance or default.
- Relevant provision
- Penalty.
- Reply not less than 15 days and more than 30 days.

Co. / officer / other person → Reply in electronic mode. → Adjudicating officer

Extend → 15 days.
+ sufficient cause.

Pass order by adjudicating officer :-

① Within 30 Days of [sending notice + 15/30 days as case may be].

~~if physical appearance not required.~~

② within 90 days of [issue of notice + 15/30 days] if physical appearance required}

Penalty Decide on basis of :-
1. Size of the co.
2. Nature of business carried on.
3. Injury to public interest.
4. Nature of default.
5. Repetition of Default.
6. Amt of Disproportion gain or unfair advantage.
7. Amt of loss caused ~~by~~ to an investor

Sum of penalty credited to consolidated fund of India

Any person aggrieved. → Appeal against the order of adjudicating officer within 60 Days. → Regional Director
- ↳ confirms
- ↳ set aside
- ↳ Modify order.

Where company fail to comply with order of the RD or Adjudicating authority

- Not complied within 90 Days of receipt of copy of order.

COMPANY		OFFICER
Minimum	= ₹ 25000/-	→ Imprisonment ≤ 6 month
Maximum	= ₹ 500000/-	→ fine. Minimum ₹ 25000
		→ fine. Maximum ₹ 100000
		→ Both

[SEC- 454A] PENALTY FOR REPEATED DEFAULT.

co. / officer / other person and. + Repeated default within 3 yrs. of order of imposing fine.

makes default to comply with provision of the Act.

Amount of Repeated penalty for second and subsequent default

↓

Twice the amount of penalty provided for such default.

[SEC- 455] DORMANT COMPANY :-

Application to ROC :-

CASE-I

(i) formed under Co. Act, 2013

(ii) Purpose
→ future project or
→ Hold an asset or intellectual property.

(iii) significant accounting transaction

Case II

company is an inactive company.

has not made any significant accounting transactions during the last two financial years.

INACTIVE COMPANY :-

which has not been carrying on any Business or operation.

inactive company → has not filled financial statements and annual Returns during the last two financial years.

SIGNIFICANT ACCOUNTING TRANSACTION :-

1. Payment of fees by a company to Register.
2. Payments made by it to fulfill the requirements of this Act.
3. allotment of shares to fulfill the requirement of this Act.
4. Payments for maintenance of its office and records.

\# CO. $\xrightarrow[\text{application for Dormant.}]{\text{MSC-1 + fees.}}$ Registrar

condition for making Application :-

(i) SR.

(ii) Notice to all shareholders.

(iii) consent atleast 3/4th shareholder (in value) is obtained.

company eligible to apply under this rule :-

(i) No inspection, enquiry, or investigation ordered against company.

(ii) No prosecution or case against the company filed.

(iii) Neither have any o/s public deposit + Default in payment of interest thereon.

(iv) No have o/s loan, whether secured or unsecured.

(v) o/s statutory Dues, duties etc payable to CG or SG.

(vi) Not default in workmen dues

(vii) Not listed on any stock exchange

(viii) No dispute b/w Mgmt or ownership for filling MSC-1.

Registrar $\xrightarrow[\text{certificate.}]{\text{form :- MSC-2}}$ company

+ MCA website → Registered as Dormant.

Return of Dormant co. annually

~~co.~~ Dormant co. file [form MSC-3 + annual fees audited by CA

- within 30 Days from the end of financial year

DIRECTORS

① Minimum no. of Directors.

Public	Pvt	or One Person.
3	2	1

③ Rotation of auditor not apply to Dormant company.

Co. → Inactive to Active status :-

Co. application in form MSC-4
+ MSC-3 (fst) → Registrar grant MSC-5 (Active status)

* Registrar striking off the name of company as dormant for period of 5 year

If Registrar believe that Co. directly or indirectly initiate proceeding u/s 206 (Payment of Dividend)

— Remove name of co. as 'dormant co. and treat it as an active co.
after OOBH to Co.