

13. Miscellaneous Provisions of the Companies Act, 1956

Admissibility of computer printout as evidence (Sec 610A)

- Company may file return or document to ROC in paper, or computer readable media
- ROC checked authentication and company has to take care in presentation or they take care for its preservation.
- The computer printout is
 - ✓ Deemed to be a document
 - ✓ Admissible as evidence
 - ✓ No further proof of original is required

Fees in schedule X to be paid (Section 611)

- Company have to pay fees if he files document;
 - ✓ Within prescribed time – pay fees under schedule x
 - ✓ After prescribed time – pay additional fees to ROC
- Where a document already filed is revised, the filing of revised document also requires a fresh payment of filing fee.
- The words 'without prejudice to any other liability' as used in section 611 clearly indicate that payment of additional fees for delay in filing of a document will not exonerate the defaulter from civil or criminal liability to which he may otherwise be subject. Once a default is made, an offence is committed and it is not wiped by payment of additional fees.

Condonation of delays by the central government (section 637B)

- Cases:
 - ✓ Delay in making any application to the CG within the time specified under the act,
 - ✓ Delay in filing any document with the registrar within the time specified under the act
- The CG should be satisfied that there was sufficient cause for not making the application or filing the document in time and the explanation provided by the company covers the entire period of delay than CG can grant Condonation.
- The provision of section 637B shall apply notwithstanding anything contained in the act.

Inspection, production and evidence of document kept by registrar (Section 610)

- Any person can inspect any document or he can obtain certified copy or extract of any document of company from registrar after paying prescribed fees.
- A copy of any document kept by the registrar, duly certified by him to be a true copy, is admissible in evidence in all the legal proceedings and is required by law to be treated as having equal validity with the original documents.

Filing of application, inspection of documents etc. through electronic mode (Section 610B)

- Rules for filing in electronic form
- Rule for maintenance of records in electronic form.
- Rules for services of documents in electronic form.
- Rules for inspection thorough electronic form.
- Rules for payment of fees through electronic form.
- Rules for discharge of duties by registrar through electronic form.

- Scheme for carrying out electronic filing, inspection etc.
- Over riding effect of the rules.

Officer in default (Section 5)

‘Officer in default’ means

- The managing director or managing directors;
- The whole time director or whole time directors;
- The manager;
- The secretary;
- Any person in accordance with whose directions or instructions the board of directors of the company accustomed to act;
- Any person charges by the board with the responsibility of complying with that provision, provided the person so charges has given his consent in this behalf to the board;
- Where any company does not have any of the officers specified in (a) to (c), any director or directors who may be specified by the board in this behalf or where no director is so specified, all the directors.

Cognisance of offence and jurisdiction to try offences (Section 621 & 622)

- Who can complain
 - ✓ The registrar; or
 - ✓ A shareholder of the company; or
 - ✓ A person authorised by the CG in that behalf.
- Exception
 - ✓ This section not affects any power of the company to prosecute any of its officers.
 - ✓ The action taken by liquidator
 - ✓ Application by SEBI, if the offence relates to,
 - Issue and transfer of securities; or
 - Non-payment of dividend.
- Personal attendance of complainant is not required.
- No court inferior to that of a presidency magistrate or a magistrate of the first class shall try and any offence punishable under this act. (Section 622)

Penalty for Wrongful withholding of property (Section 630)

- Penalty: an officer or employee of a company shall be punishable with fine which may extend to Rs. 10,000 in the following cases:
 - ✓ Where he wrongfully obtains the possession of the property of the company
 - ✓ Where he being already in the possession of any property of the company, wrongfully applied it in other than specified purpose.
- Complainant
 - ✓ The company; or
 - ✓ Any creditor of the company; or
 - ✓ Any contributory of the company.
- Power of the court
 - ✓ To deliver any such property to the company within a time to be fixed by the court

- ✓ If the office or employee fails to comply with the order of the court, the court may order him to suffer imprisonment for a term which may extend to 2 years.
- This section also apply to such property which is not owned by the company but only to the extent if company has leasehold right for such property. No legal title is required.

Offence and penalties under the Act (Section 629A)

- Contravention of any provision of the act (for which no penalty has been specified in the act) shall result in a fine up to Rs. 5,000 or fine up to Rs. 500/day where the offence is of continuing nature.

Composition of offence (Section 621A)

M.Bhandari P.N. 13.14 for practical

- Compoundable offence
 - ✓ Only the following offences can be compounded under this section:
 - Offences punishable with fine.
 - Offences punishable with fine *or* imprisonment *or* both.
 - ✓ As can be see, following offences can not be compounded
 - Offences punishable with imprisonment.
 - Offences punishable with imprisonment *and* fine
- Company or any officer in default can apply for composition.
- Authority for compounding
 - ✓ Offence punishable with fine not exceeding Rs. 50,000 may be compounded by the regional director (RD).
 - ✓ All other offences can be compounded by CLB.
- An application or computing of offences may be made either before or after the institution of any prosecution. Issue of show cause notice by the registrar is also not essential for filing an application for filing an application for compounding of offences.
- Payment of sum specified for compounding can not exceed the maximum amount of the fine which may be imposed for the offences so compounded.
- Compounding of offences is not a matter of right. The authority may reject the application.
- While compounding the offence, the CLB/RD may direct any officer of the company to file a return or other document in question within such time, as may be specified in the order. Non-compliance of such order shall be punishable with imprisonment for a term which may extend to 6 months, or with fine not exceeding Rs. 50,000 or both.
- Where an offence is compounded, it is the duty of the company to inform the registrar within 7 days from the date of compounding.
- If the offence has been compounded during the prosecution, it is the duty of the registrar to bring it to the knowledge of the court the offence has been compounded.
- A contravention committed within a period of 3 years from the date on which a similar contravention was committed cannot be compounded.
- Effect of compounding
 - ✓ No prosecution shall be launched in the offence.
 - ✓ If compounded during the prosecution than no further procedure carried out by court and discharge the company and person form such offence
 - ✓ Compounding of offence does not amount to conviction by the court of law.

➤ Example of Offence and its penalty for decide whether compounded or not

Offence	Penalty		Result
	Fine	Imprisonment	
Not state true and fair view about company in annual accounts [211(1)]	10,000	6 Month	Yes
Violation of section 297 – previous approval of CG not obtained for contract	5000 + 500/day	-	Yes
Failure in appointment if MD of a public company	<50,000	6 month	Yes
Non appointment of whole time secretary u/s 383A	500/day		Yes (if fine upto Rs. 50,000)
Failure to Hold AGM (186)	2500/day	-	Yes
Failure to file copies of Accounts with registrar (220(3))	500/day	-	Yes
Acceptance of deposit in excess of the prescribe limits	-	5 years	No
Non-distribution of dividend within time	1000/day	3 years	Both so no

Powers of Court to grant relief in certain cases (Section 633)

➤ When

- ✓ *Relief where proceedings are pending.* In any proceedings for negligence, default, breach of duty, the court may relieve him from liability, if it appears to court that-
 - He is or may be so liable;
 - He has acted honestly and reasonably; and
 - Having regard to all the circumstances of the case, ought to fairly to be excused
- ✓ Relief by way of preventive action. (Same as above)

- The relief may be partial or complete.
- The court shall no power to grant relief on nay criminal proceedings. In criminal proceedings, the court shall have no power to grant relief from even civil liability.
- Before granting any relief u/s 633, the court shall serve a notice on the registrar and such other person, as the court thinks fir, to show cause why such relief should not be granted.
- Relief U/S/ 633 cannot be extended in respect of any liability under the act, other than the companies act, 1956.

Protection of acts done in good faith (Section 635A)

- No, suit prosecution or other legal proceedings shall lie against the government or any officer of government or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this ac or any rules or orders made there under, or in respect of the publication be or under the authority of the government or such officer or any report, paper or proceedings.

Public interest

- The expression ‘public interest’ is not capable of a precise definition and has not a rigid meaning. It must be construed in the sense in which it has been used in the statue. The concept of public interest varies with the time and the state of the society and its needs. Thus, what is ‘public interest’ today may not be so considered a decade later.
- It is true that the concept of ‘public interest’ has been making rapid inroads into the Indian company law. Some of the provisions of the act, that take into account are stated briefly:

- ✓ Appointment of directors by the CG (408)
- ✓ Removal of a director by the CG (388B to 388E)
- ✓ Disapproval of appointment of managerial person (269)
- ✓ Exemption from requirements of balance sheet and P & L account (211)
- ✓ Amalgamation in public interest (396)
- ✓ Claiming relief from oppression or mismanagement (397 and 398)

Contract where company is disclosed principal (Section 416)

- The section seeks to ensure that an unprofitable contract entered into by an agent of the company is not passed on to the company.
- Compliance required where the company is an undisclosed principal; he shall
 - ✓ Make a memorandum in writing of the terms of the contract;
 - ✓ Ensure that the memorandum specifies the person with whom the contract is entered into;
 - ✓ Forthwith deliver the memorandum to the company;
 - ✓ Forthwith send copies of the memorandum to each of the directors;
 - ✓ Ensure that the memorandum is filed in the office of the company and laid before the BOD at the next board meeting.
- Default
 - ✓ The contract shall, at the option of the company, be voidable
 - ✓ The person, who enters into the contract, shall be punishable with a fine which may extend to Rs. 2,000.

Employees' moneys and securities (Section 417)

- The money or security which received from employee shall be deposit in post office saving bank or scheduled bank within 15 days from such receipt.
- No portion of such moneys or securities shall be utilised by the company except for the purpose agreed to in the contracts of service.

Employees' Provident Fund (Section 418)

- **Deposit:** where a PF has been constituted by a company for its employees or any class of its employees shall, within 15 days-
 - ✓ Deposit the contribution in a post office saving bank account; or
 - ✓ Special saving account in SBI or in a scheduled bank; or
 - ✓ Where a company is itself a scheduled bank than in special account; or
 - ✓ Invest the contribution in securities mentioned under section 29 of the Indian Trust Act.
- **Meaning of contribution**
 - ✓ Contribution by the company
 - ✓ By the employees; or
 - ✓ Interest accrued or received on such contribution.
- **Other points**
 - ✓ No employees shall be entitled to receive interest at a rate exceeding the rate of interest yielded by the aforementioned investments.
 - ✓ An employees shall be entitled obtain advance from the fund or to withdraw money standing to his credit in the fund.

- Where a trust has been created by a company with respect to a provident fund, the company shall, within 15 days pay the contribution to the trustee of such trust.
- In such a case (where, trust manages the PF) the company shall not be liable in respect of any other obligation. All other obligation laid on the company under this section shall devolve on the trustee and shall be discharged by them.

Lien on shares

- A company cannot have lien on shares unless provided in the articles. In so far as the articles of a company limited by shares do not exclude or modify the regulations contained in Table 'A' in schedule I, the regulations contained in Table A shall apply to such company. Regulation 9 of Table A in schedule I to the companies Act, reads as under-
 1. *The company shall have a first paramount lien-*
 - a. *On every share (not being a full-paid share), for all moneys (whether presently payable or not) called, or payable at a fixed-time, in respect of that share; and*
 - b. *On all share (not being fully paid shares) standing registered in the name of a single person, for all moneys presently payable by him or his estate to the company:*
Provided that the BOD may at any time declare any share to be wholly or in part exempt from the provision of this clause.
 2. *The company's lien, if any, on a share shall extend to all dividends payable thereon.*

Unlimited Liability of directors in limited company (Section 322 and 323)

1. Director and manager with UL in Limited company (322)
 - a. In a LC, the liability of the directors or any director or manager may, if so provided by the memorandum, be unlimited.
2. Making liability of directors or manager, unlimited (323)
 - a. A LC may, if so authorised by its articles, by special resolution, alter its memorandum so as to render unlimited the liability of its directors or any director or manager.
 - b. Upon the passing of any such special resolution, the provisions thereof shall be as valid as if they had been originally contained in the memorandum.
 - c. However, such alteration of the memorandum shall be binding on any director or manager who was holding the office before the date of the alteration, until the expiry of his term, unless he has accorded his consent to his liability becoming unlimited.