

SPECIAL COURT

JURISDICTION OF COURT FOR TRIAL OF OFFENCES

High court (Registered office is Situated), District court (CG empowered any district court to exercise or all any of jurisdictions conferred upon high court) , Sessions court, Special court (Speedy trial of offences with imprisonment two years or more), Any metropolitan magistrate/First class judicial magistrate.

OFFENCES TO BE NON-COGNIZABLE (SECTION 439)

Section 439 deals with the offences that are considered of non cognizable nature under the Companies Act, 2013.

The term “Non-cognizable offence” is defined under section 4 of the Cr.PC. It is an offence for which a police officer may not arrest without warrant.

Offences under the Companies Act, 2013 deemed as non-cognizable: Overriding the provisions given under the Code of Criminal Procedure, 1973, every offence under this Act except the offences referred to in section 212(6) of the Companies Act, 2013, which deals with the investigation into affairs of company by serious fraud investigation office, shall be deemed to be non-cognizable within the meaning of the said Code.

Therefore, the offences as covered under section 212(6) shall now be deemed to be cognizable where police officer may arrest person without warrant and are non- bailable. The Companies Act, 2013 establishes the offence covered under the section 212(6) as a public wrong which has to be prevented and controlled. This non- bailable nature of the offences deter the offender and the others from committing further and similar offences.

COGNIZANCE OF OFFENCE

A court shall take cognizance of any offence under this Act which is alleged to have been committed by any company or any officer thereof only on the written complaint of -

- (a) The Registrar,
- (b) A shareholder of the company, or
- (c) Of a person authorized by the Central Government in that behalf.

Provided that the court may take cognizance of offences relating to issue and transfer of securities and non-payment of dividend, on a complaint in writing, by a person authorized by the Securities and Exchange Board of India.

Provided that nothing in this sub-section shall apply to a prosecution by a company of any of its officers.

Attendance of complainant: where the complainant is the Registrar or a person authorized by the Central Government as given under sub-section (2), the presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial.

Non-application of sub-section (2) on the action of the liquidator: The provisions of sub-section (2) shall not apply to any action taken by the liquidator of a company in respect of any offence alleged

to have been committed in respect of any of the matters in Chapter XX or in any other provision of this Act relating to winding up of companies.

The liquidator of a company shall not be deemed to be an officer of the company within the meaning of sub-section (2).

MEDIATION AND CONCILIATION PANEL (SECTION 442)

Conciliation means the process of adjusting or settling disputes in a friendly manner through extra judicial means.

Section 442 lays the following law with respect to the constitution and working of the

Mediation and Conciliation Panel:

Central Government to maintain the Panel of Mediators: The Central Government shall maintain a panel of experts to be known as Mediation and conciliation panel for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

Hence, it is important that the case should be pending before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

Panel consisting of experts: The panel shall consist of such number of experts having such qualification as may be prescribed.

Filing of application: Application for mediation and conciliation can be made by:

- (i) any parties to the proceedings. (It shall be accompanied with such fees and in such form as may be prescribed.)
- (ii) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, suo motu refer any matter pertaining to such proceeding to such number of experts as it may deem fit.

Appointment of expert/s from panel: The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may appoint one or more experts from the Panel as may be deemed fit.

Fees, terms and conditions of the experts: The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

Procedure for the disposal of matter: In order to dispose the matter, the Mediation and Conciliation Panel shall follow such procedure as may be prescribed.

Period for the disposal of matter: The Mediation and Conciliation Panel shall dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

Filing of objection on the recommendation of the panel: Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be

POWER OF CENTRAL GOVERNMENT TO APPOINT COMPANY PROSECUTORS (SECTION 443)

Appointment of company prosecutors: The Central Government may appoint (generally, or for any case, or in any case, or for any specified class of cases in any local area) one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act; and

Powers and Privileges: The persons so appointed as company prosecutors shall have all the powers and privileges conferred on Public Prosecutors appointed under section 24 of the Cr. PC.

APPEAL AGAINST ACQUITTAL (SECTION 444)

According to section 444 of the Companies Act, 2013, the Central Government may, in any case arising under this Act, direct –

- (i) any company prosecutor, or
- (ii) authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court.

Appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

COMPENSATION FOR ACCUSATION WITHOUT REASONABLE CAUSE (SECTION 445)

Under section 445 of the Companies Act 2013 the provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply mutatis mutandis (with such changes as may be necessary) to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

APPLICATION OF FINES (SECTION 446)

Under section 446 of the Companies Act 2013, the court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted

COMPOUNDABLE AND NON COMPOUNDABLE

Compoundable offences are those offences where, the complainant (one who has filed the case) enters into a compromise, and agrees to have the charges dropped against the accused (Fine only, Imprisonment or fine, Imprisonment or fine or with both are compoundable)

Non-Compoundable offences are those which are not compoundable because of grievous nature of offence (Imprisonment and fine, Imprisonment only are non compoundable)

ESTABLISHMENT OF SPECIAL COURT [SECTION 435]

Section 435 of the Companies Act deals with the establishment of the Special Court. The provisions state the number of special court that may be established with the required number of judges for the working.

- (1) Establishment of number of special court: The Central Government may by notification-
- for the purpose of providing speedy trial of offences
 - punishable under this Act
 - with imprisonment of two years or more, establish or designate as many Special Courts as may be necessary.

Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law

(2) **Appointment of judge:** A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) **Eligibility:** A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

COMMON POINTS

- ✓ Offences triable only by special court established for area in which registered office of the company situated
- ✓ If more than one special court then specified by the high court
- ✓ Vested with the same powers under CrPC
- ✓ Cognizance of special court upon a police report

ADJUDICATION OF PENALTIES [SECTION 454]

(1) The CG, by an order published in the Official Gazette, appoint as many officers of the Central Government, not below the rank of Registrar, as adjudicating

Appointment of Adjudicating officers: The CG may appoint any of its officers, not below the rank of Registrar,

(ii) Issue of written notice by an adjudicating officer: Before adjudging penalty, the adjudicating officer shall issue a written notice-

- to the company and, to every officer of the company who is in default,

to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than forty five days from the date of service thereon + 15 days if sufficient reasons), why the inquiry should not be held against him:

- ✓ In notice nature of offence shall be indicated
- ✓ Adjudicating officer can held inquiry
- ✓ Passing of an order by the adjudicating officer
- ✓ Every order passed shall be dated and signed by the adjudicating officer.
- ✓ Forwarding of copy of an order: The adjudicating officer shall send a copy of the order passed by it to the concerned company or officer who is in default and to the Central Government.
- ✓ Powers of Adjudicating Authority: While holding an inquiry, the adjudicating officer shall have powers of civil court

- ✓ Failure to be present before the adjudicating authority: the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.
- ✓ Consideration to following factors while levying penalty:
 - (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
 - (b) the amount of loss caused to an investor or group of investors or creditors as a result of the default;
 - (c) the repetitive nature of the default.
- ✓ Sum to be credited to the Consolidation Fund of India
- ✓ The Central Government shall while appointing adjudicating officers, specify their jurisdiction in the order under sub-section (1).
- ✓ Any person aggrieved by an order made by the adjudicating may prefer an appeal to the Regional Director having jurisdiction in the matter.
- ✓ Every appeal shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person
- ✓ The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.
- ✓ Where company does not pay the penalty imposed by the adjudicating officer or the Regional Director within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.
- ✓ Where an officer of a company who is in default does not pay the penalty within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.