

# *The Companies (Amendment) Ordinance, 2018*

CH-CH-CH-CHANGES!



# Key changes..

*Restructuring of corporate offences*



*Decriminalization of minor offences*



*Delegation of Powers*



# The journey of Ordinance...

**A Committee was formed by the Ministry**

**The Committee submitted its Report in August**

**The Union Cabinet proposed the Ordinance to The President of India**

**The President of India gave Nod to the ordinance on 2<sup>nd</sup> November, 2018**

# Why Ordinance ???

When either of  
the Houses is not  
in Session

It is required  
essentially to  
enforce immediately

# Section 2(41)- Different FY

Different financial years for a company / body corporate which is a holding company / subsidiary / associate of a company outside India

**THEN**

**Application to NCLT**

**NOW**

**Central  
Government**

# Conversion of Public co. to Pvt.

THEN

**NCLT**

NOW

**Central  
Government**

# Power of Compounding Offences u/s 441

● **Compounding of Offences by RD – Not exceeding 5 Lakhs**

● **Amount stands increased to 25 Lakhs**

**Amendment to Section 441 (6) in respect of offences which are non-compoundable**

# Commencement of Business

## *insertion of Section 10A*

*Reinstated Section 11 of the Companies Act, 2013*

**Declaration by  
Director within  
180 days of  
incorporation**


**Filing with  
Registrar**

**If not filed,  
Registrar may  
initiate process  
of Removal**



# Power of Name removal also in case of verification of Registered Office

Registrar on physical verification of default of Sub-section (1) of Section 12



**Initiate action for removal of name**

# Disqualification for Directors

If not complied with provisions  
of Section 165(1)



**Maximum  
Directorship in companies**

**Section 165 (6) of the Act –  
Violation – penalty of rupees 5000  
per day**

*(earlier maxm...25,000)*

# SBO – Sec. 90

## Restriction on rights attached to Shares

Application  
to Tribunal

Application  
to Tribunal  
within 1 year  
from Order



If no application. Transfer shares to  
IEPF

# Charges

THEN

Within 300 days

If Charge created before commencement of this ordinance, then period of 6 months is provided to file

NOW

Within 60 days

Registrar further may grant 60 days with *advalorem fees*

*Power to CG u/s 87 for registration of charge beyond timeline has now been removed*

*Liable for action u/s 447 for submitting false / incorrect information / suppressing information*

# Removal of names u/s 248

## THEN

Where the Registrar has reasonable cause to believe that—

- (a) a company has failed to commence its business within one year of its incorporation [or];
- (b) [Omitted].
- (c) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under [section 455](#),  
he shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of the relevant documents, if any, within a period of thirty days from the date of the notice.

## NOW

Insertion of new Clause –

- (d) The subscribers failed to pay subscription undertaken and declaration has not been filed
- (e) The Company is not carrying on any business or operations, as revealed after the physical verification carried out u/s 12(9)

## Section 64

**If a company and any officer of the company who is in default contravenes the provisions of sub-section (1), it or he shall be punishable with fine which may extend to one thousand rupees for each day during which such default continues, or five lakh rupees, whichever is less.**



**Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of one thousand rupees or each day during which such default continues, or five lakh rupees whichever is less.**

# PENAL PROVISIONS



## Section 102 (5)

Then

If any default is made in complying with the provisions of this section, every promoter, director, manager or other key managerial personnel who is in default shall be punishable with fine which may extend to fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager or other key managerial personnel or any of his relatives, whichever is more.

Now

Without prejudice to the provisions of sub-section (4), if any default is made in complying with the provisions of this section, every promoter, director, manager, or other key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees or five times the amount of benefit accruing to the promoter, director, manager, key managerial personnel or any of his relatives, whichever is higher.

## Section 105 (3)

Then

If default is made in complying with sub-section (2), every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

Now

If default is made in complying with sub-section (2), every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

# KMP u/s 203

## THEN

If a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues

## NOW

if any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company **who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees.**



# Section 197 - Overall maximum remuneration

## THEN

If any person contravenes the provisions of this section, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees

## NOW

if any person makes any default in complying with the provisions of this section, he shall **be liable to a penalty of one lakh rupees** and where any default has been made by a company, the **company shall be liable to a penalty of five lakh rupees.**

*Remuneration by way of fees, reimbursement by way of fees / Stock Option etc. to ID*

# Fraud u/s 447

Penalty for imprisonment for a term of extendable to 5 years or with fine extendable to 25 Lakh or with both

Penalty for imprisonment for a term of extendable to 5 years or with fine extendable to 50 Lakh or with both

# New Section 454A

*Where a Company or an officer of a Company or any other person having already been subjected to penalty for default under any provisions of this Act again commits such default within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or he shall be liable **for the second or subsequent defaults for an amount equal to twice the amount of penalty** provided for such default under the relevant provisions of this Act.*

# Relaxation in imprisonment u/s 446B

## THEN

Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be ~~punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections.~~

## NOW

Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be liable to a penalty which **SHALL NOT BE MORE THAN ONE HALF** of the **PENALTY** specified in such sections

# Relaxation in imprisonment

## Section 92 (5)

Imprisonment up to 6 month

Removed and additionally penalty up to 100 Rupee per day



## Section 159 – Punishment for violation 152, 155 and 156

Imprisonment up to 6 month

Removed



## Section 53 (3)

Imprisonment up to 6 month

Removed

# Penalty

## Section 121 – Report on AGM

Penalty can range up to 1 lakh and maximum 5 lakh in case of continuing failure

Penalty fixed at 1 lakh, rupees 500 per day thereafter and up to 5 Lakh



## Section 140 –Removal, resignation of Auditors

Penalty may extend to 5 Lakhs

May extend up to 5 Lakh, rupees 500 per day per day



## Section 157 – Co. to inform DIN to Registrar

Penalty up to 1 lakhs

May extend up to 1 Lakh, rupees 500 per day per day

# Penalty

## Section 64 – Notice to Registrar for alteration

Penalty extendable up to 1000 per day or 5 Lakh, whichever is LESS

Penalty fixed at 1000 per day or 5 Lakh, whichever is LESS



## Section 191 - Compensation for loss of office

punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

*shall be liable to a penalty of one lakh rupees.*



## Section 238 – Registration of offer of schemes

shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees

*shall be liable to a penalty of one lakh rupees.*

# Power to adjudicating officer u/s 454

## THEN

The adjudicating officer may, by an order impose the penalty on the company and the officer who is in default stating any non-compliance or default under the relevant provision of the Act.

## NOW

The adjudicating officer may, by an order

a) impose the penalty on the company, the officer who is in default, or ANY OTHER PERSON, as the case may be, stating any non-compliance or default under the relevant provision of the Act.

B) DIRECT SUCH COMPANY OR OFFICE WHO IS IN DEFAULT OR ANY OTHER PERSON, AS THE CASE MAY BE, TO RECTIFY THE DEFAULT, WHEREVER HE CONSIDER FITS.

Sub-section 8 replaced **WITH FAILS TO COMPLY WITH ORDER**



*Kabhi Alvidaa*

*Naa*

*Kahna.....*

