

ADJUDICATION VS COMPOUNDING

- AMAN SHAH

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COMPOUNDING OF OFFENCES

- Section 441 of the Companies Act, 2013 deals with Compounding of Offences which have been notified on 1st June 2016.
- Section 441 overrides the provision of Code of Criminal Procedure relating to Compounding of Offence.

What is the meaning of Compounding?

The word Compounding is not defined anywhere in the Act. As per the Black'S Law Dictionary, "Compound" means "to settle a matter by a money payment, In lieu of other liability". The Oxford Dictionary defines the word Compound as "Settle (a debt or other matter) in exchange for money or other consideration."

In legal parlance, compounding refers to the process by which a person or entity who has committed an offence agrees to pay a penalty or fine instead of facing prosecution. In simple language, it is a compromise or settlement permitted under law, particularly for technical or procedural violations, provided such violations are not grave or malicious in nature.

COMPOUNDING OF OFFENCES

What is the meaning of Offence?

The word “offence” is also not defined in the Act. As per section 3(38) of General Clauses Act, 1897 "Offence" shall mean any act or omission made punishable by any law for the time being in force. In simple words anything punishable under the Act is an offence under the Act.

ADVANTAGES OF COMPOUNDING

- Avoids protracted litigation and court proceedings.
- Prevents criminal prosecution and conviction.
- Facilitates quicker compliance regularization.
- Minimizes reputational harm to the company.
- Preserves managerial time and business focus.
- Summary proceeding, less time consuming.
- Any offence punishable under the Companies Act, 2013 committed by Company or any officer may be compounded by Tribunal or Regional Director where the maximum amount of fine imposed for such offence does not exceed Rs.25 Lakhs

WHICH OFFENCES CAN BE COMPOUNDED

Only the following types of offences as mentioned below can be compounded under Section 441 of Act, 2013.

- I. Offences punishable with a fine only; - These offences are compoundable by the Regional Director (RD) or Registrar of Companies (RoC).
- II. Certain offences under the Act are punishable with “imprisonment or fine or both” - These can be compounded only by the National Company Law Tribunal (NCLT), as per Section 441(1)(b) of the Companies Act, 2013.

NO COMPOUNDING SHALL BE DONE IN THE FOLLOWING CASES:

- Offences punishable with “Imprisonment” only or with “Imprisonment and Fine”; or
- Offences involving fraud under Section 447.
- An offence cannot be compounded if any similar offence committed has already been compounded and the duration of three years has not passed as per Section 441(2).
- Where investigation has started or is still pending as per Section 441(1), the offence cannot be compounded.

PROCEDURE FOR COMPOUNDING OF OFFENCES UNDER THE ACT, 2013

As per Section 403 read with Rule 12 of the Companies (Registration Offices and Fees) Rules, 2014, the application to the Registrar of Companies (ROC) for compounding of an offence is filed through e-Form GNL-1, regardless of the fine amount.

- The application is then forwarded by the ROC to the (Regional Director if the maximum fine does not exceed ₹25 lakh
- or The application is forwarded by the ROC to the National Company Law Tribunal (NCLT) if the maximum fine exceeds ₹25 lakhs.

PROCEDURE TO COMPOUND AN OFFENCE UNDER THE ACT

- The company/officer identifies a non-compliance or default that is compoundable under Section 441 of the Companies Act, 2013
- A Board resolution is to be passed authorising a director/company secretary to file the compounding application.
- Prepare the compounding application in triplicate
- An application in e-Form GNL-1 is to be filed with the jurisdictional RoC.
- Hearing and Order
- Payment and Compliance

For a compounding application, the following forms and documents are required, based on the NCLT Rules, 2016:

LIST OF DOCUMENTS REQUIRED



1

General Heading—Form NCLT 4

2

Application—Form NCLT -1

3

Affidavit—Form NCLT 6

4

Memorandum of Appearance—Form NCLT 12

5

Notice of Admission—Form NCLT 2

6

Vakalatnama (*This document authorizes the advocate to act on behalf of the company. It may be filed in place of or in addition to Form NCLT 12, depending on who is appearing.

PROCEDURE TO COMPOUND AN OFFENCE UNDER THE ACT

Filing of Form GNL-1:

Compounding Application shall be submitted electronically to ROC in Form GNL 1 along with payment of applicable fees.

The following documents shall be attached to the compounding application:

- Detailed Petition
- Affidavit verifying the Petition
- Memorandum of appearance or vakalatnama as the case may be along with Board Resolution giving Authority to appear
- Board Resolution giving authority to sign the application/ petition.
- Evidence showing the offence is being made good.
- ROC/RD notice if received any.
- Any other relevant documents depend upon the matter of the Compounding Application

This Form will be forwarded by ROC with the Comments thereon to RD/ NCLT/ Officer authorized by Central Government as the case may be.



Punishment in Case of Repeated Default (Section 451)

If a company or an officer of a company commits an offense punishable either with a fine or with imprisonment and where the same offense is committed for the second or subsequent occasions within a period of 03 years, then that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offense in addition to any imprisonment provided for that offense.

Permission of Special Court no more required

As per Sub-Section (6)(a) of Section 441 as stood before being amended by the Companies (Amendment) Ordinance 2018, permission of the Special Court was required for compounding of any offence which is punishable under this Act, with imprisonment or fine, or with both. Such offenses can now be compounded without the permission of the Special Court in view of the said amended effective from 2nd November 2018.



ADJUDICATION OF PENALTIES

Adjudication of penalties is governed by Section 454 of the Companies Act 2013.

What is the meaning of Adjudication?

Adjudication is the process by which the authority imposes the penalty on non-compliance after examining your data and information filed with them and giving you a reasonable opportunity of being heard. Pursuant to the Companies (Amendment) Act, 2019, some of the provisions have been amended by substituting the word 'fines' with 'penalties' which can be directly imposed without any prosecution.

Difference between Fine and Penalty

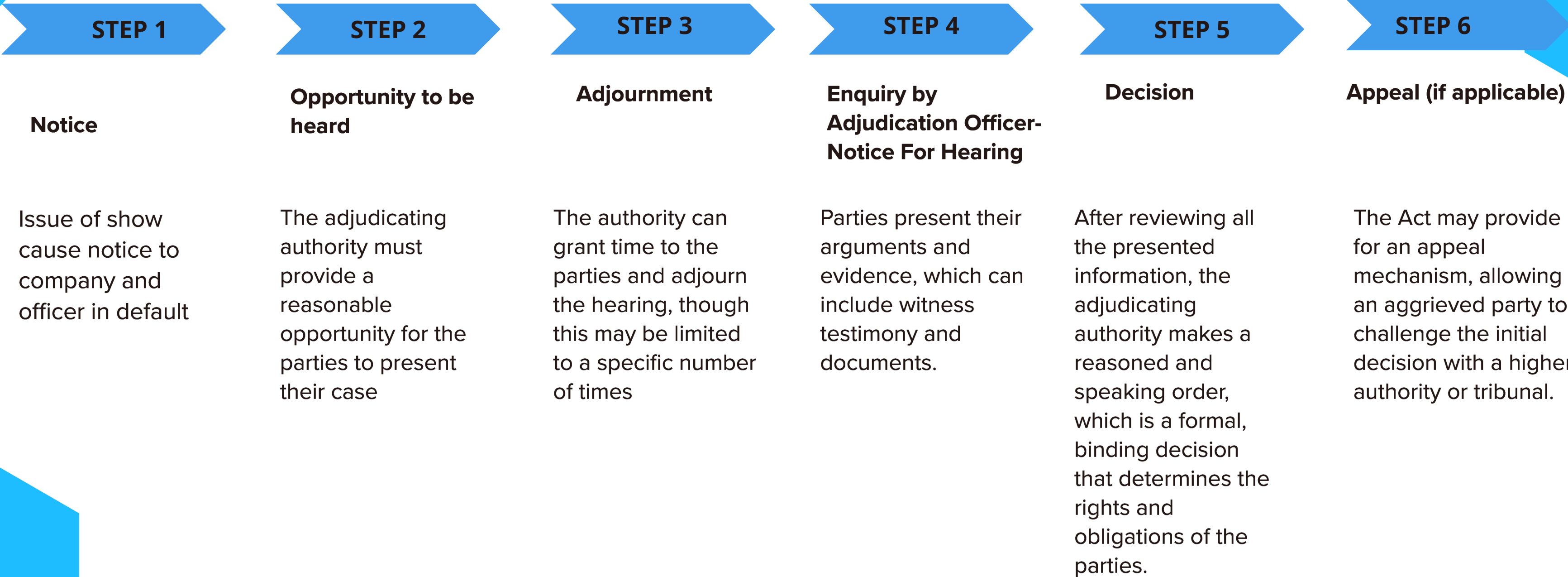
In the Companies Act, 2013, penalty is meant for civil default. Fine is meant for criminal offences. Penalty is adjudicated in house. Fine will be imposed by the Court or compounded by the NCLT/RD.

MCA-CMS PORTAL

MCA-CMS stands for 'Ministry of Corporate Affairs Compliance Monitoring System,' which is a move of the ministry towards the adoption of ARTIFICIAL INTELLIGENCE by which the government will be doing scrutiny of the actions.

The MCA-CMS Portal is an automated system for monitoring corporate compliance and issuing show-cause notices for non-compliance with the Companies Act, 2013. Version 3 of the system will improve efficiency by ensuring common data is automatically updated across different forms, and it will make the entire adjudication process fully online, eliminating the need to visit a Registrar of Companies (ROC) office. The new system will automatically generate and send e-notices to companies that are not complying with the law.

PROCESS FOR ADJUDICATION UNDER THE ACT



Can the company and the defaulting officer be absent from the hearing?

EX-PARTE HEARINGS (Rule 3(11)): If any person fails, neglects, or refuses to appear before the adjudicating officer, the adjudicating officer may impose a penalty in the absence of such person after recording the reasons for doing so.

Under Rule 3(12), the Adjudicating Officer, while adjudging the quantum of penalty, shall have due regard to the following factors:

Size and Nature of the
Company

Injury to Public Interest

Nature and repetition of
default

The amount of
disproportionate gain or
unfair advantage,
wherever quantifiable

In no case the penalty Imposed shall be less than the minimum penalty prescribed under the relevant Section of the Act.

All Sums realized by way of penalties under the Act Shall be credited to the consolidated fund of India [Rule 3(15)]

Wherein a fixed Sum of penalty is provided for the default of a provision, the Adjudicating Officer shall impose that fixed Sum, In case of default therein

Payment of penalty shall be done only through portal of Ministry of Corporate Affairs [Rule 3(14)]



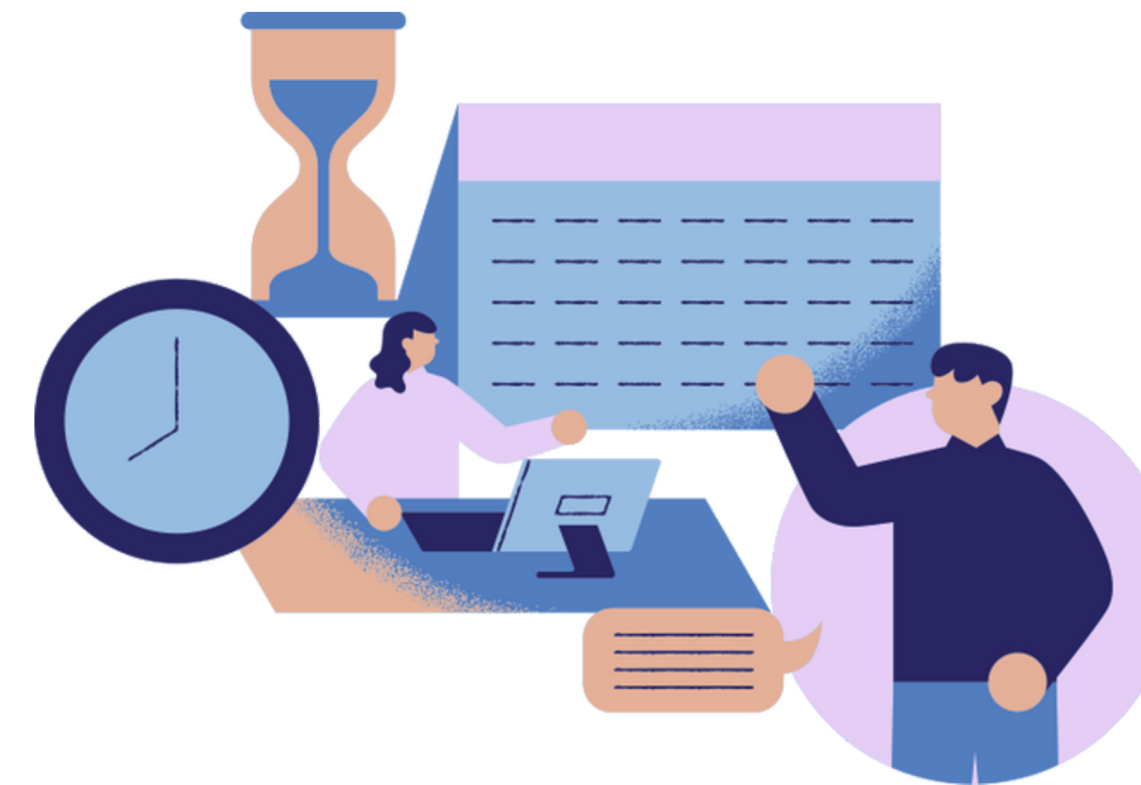
Instances Where Compounding or Adjudication Applies

COMPOUNDABLE OFFENCES UNDER SECTION 441 OF THE ACT

- Fails to repay deposit or interest within the time.(Section 74)
- Default in holding a meeting in accordance with section 96-98. (Section 99)
- Contravention of provisions of Books of account, etc., to be kept by company. (Section 128)
- Contravention of provisions of Financial statement. (Section 129)
- Contravention of provisions of Duties of Directors. (Section 166)
- If a person functions as director even when he knows that the office of director held by him has become vacant on account of disqualification. (Section 167)
- Loan is advanced or guarantee given in contravention of Section 185.

MATTERS WHICH ARE SUBJECT TO ADJUDICATION

- Failure/delay in filing a notice for alteration of share capital u/s. 64
- Failure/delay in filing an annual return U/s 92
- Failure/ delay in filing certain resolutions u/s 117
- Failure/ delay in filing financial statements u/s 137
- Failure/delay in filing statement by the auditor after the resignation u/s 140(3)
- Accepting directorships beyond specified limits U/S165(6)
- Violation of CSR provisions u/s 135
- Violation of related party transactions U/s 188



DIFFERENCE BETWEEN ADJUDICATION AND COMPOUNDING

PARTICULARS	ADJUDICATION	COMPOUNDING
Section	Section 454 of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules 2019	Section 441 of the Companies Act 2013
Office Bearers	The Central Government may appoint any of its officers, not below the rank of Registrar, as Adjudicating Officers for adjudicating penalty in their respective jurisdiction	Competent authority are NCLT or RD (based on the threshold limit of fine prescribed) as the case may be
Applicant	As per Section 454 (3) Adjudicating officer can impose penalty or non compliance or default under the provisions of Companies Act 2013, and direct such Company, or officer in default, or any other person, to rectify the default, wherever he considers fit.	As per Section 441 of the Companies Act, 2013 the company or any of its officer having committed an offence may apply for voluntary compounding.
Application Criteria	AO issues show-cause notice to company or officer in default. Opportunity of being heard is given. Order is passed.	A company or officer in default on thier own can apply for compounding
Timeline for Application	Appeal against the adjudication order to be made to the Regional Director within 60 days from the date of receipt of the order.	No appeal is allowed against Compounding Order
Penalties and Prosection	a.Penalties are imposed by Adjudicating Authority without prosecution b.Penalties are fixed amounts	1.Payment of sum of money not exceeding the maximum fine prescribed in the relevant section 2.Compounding authority has discretion to impose an amount lesser than the fine prescribed

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THANK YOU