COMPOUNDING UNDER THE COMPANIES ACT, 2013

Companies must follow certain rules and regulations, and failure to comply can result in penalties. While good corporate governance requires adherence to all legal provisions, lapses in compliance can occur due to the complexity and volume of lengthy regulations. **The Sachar committee in its report given on 30 November 2006** recommended leniency in enforcing corporate laws, acknowledging that many defaults arises from ignorance of legal provisions rather than intentional misconduct, hence companies shall be allowed to compound their unintentional offences.

- There is no specific definition of the word **compounding**; however, in common language compounding can be referred as, "**To settle a matter by money payment as additional compensation in lieu of other liability**."

- With help of reading **section 441** of The Companies Act, 2013 we can interpret that "compounding is nothing but admission of guilt by the person accused of violation of law."

- Section-441 of the Companies act, 2013 categorizes the offences under the following 2 heads:
    - Compoundable offences
        1. Any offence punishable with fine only
        2. Any offence punishable with imprisonment or fine
        3. Any offence punishable imprisonment or fine or both
    - Non-compoundable offences
        1. Any offence punishable with imprisonment only
        2. Any offence punishable with imprisonment and also with fine
        3. If the investigation against such company has been initiated or is pending under this act
        4. Offence is committed within a period of 3 years from the date on which a similar offence is committed

- Here offences falling under **category 1, 2 and 3 can** only be compounded as **category 4 and 5** offences are **non-compoundable offences** and have to go through the trial in the **Special Court** constituted under the **section-435** of the companies act, 2013.

- There is 2 compounding authority created under the companies act, 2013 which are:
    - National company law tribunal (NCLT)
    - Regional Director (RD)

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    - Where the **maximum amount of fine** which may be imposed for an offence **does not exceed 25 lakh rupees**

- National company law tribunal (NCLT)
    - Where the **maximum amount of fine** which may be imposed for an offence **exceeds 25 lakh rupees**

- **PROCEDURE FOR COMPOUNDING:**
    - Board meeting:
        1. Board of directors of the company shall pass board resolution at the board meeting for making an application to relevant compounding authority for compounding of an offence.
        2. Make an application to ROC (Registrar of companies) in **Form GNL-1** which shall forward the copy of an application Tribunal or Regional Director.
        3. RD or Tribunal will conduct hearing and decide the amount to be paid for compounding.
        4. Order passed by the RD or Tribunal shall be filed with ROC within **30 days** of order in **Form INC-28.**

- **Important points:**
  - Where any offence is compounded before or after the institution of any prosecution, information shall be given by the company to the ROC within 7 days from the date on which the offence is so compounded.
  - Where offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence.
  - Where the compounding of any offence is made after the institution of any prosecution compounding shall be brought by the Registrar to the notice of the court in which the prosecution is pending and on notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.
  - Neither department nor assesse can make an appeal against the order of compounding.
  - If the company fails to comply with any order made by the Tribunal or the Regional Director, it shall be punishable with imprisonment for a term which may extend to **6 months, or with fine not exceeding 1 lakh rupees, or with both.**
  - Companies can-not compound the similar offences which has been committed within the **period of 3 years** from the date on which a similar offence is committed

- **Benefits of compounding are as following:**
  1. Directors of the company can get peace of mind.
  2. It provides comfort to individuals and corporates and persons connected with it as they are not required to appear before prosecution authorities.
  3. Amount paid as compounding fee can be claimed as a tax deduction under the Income Tax Act while a penalty paid for contravention is not eligible for deduction.
  4. Speedy disposal of offences and justice.
  5. Judiciary can devote more time and concentrate on serious cases.
- **Permission of the special court**
  1. Before, the Companies (Amendment) Act, 2019, Section 441(6) provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973,
     - Any offence which is punishable under this Act, with **imprisonment or fine, or with imprisonment or fine or with both**, shall be compoundable with the **permission of the Special Court,** in accordance with the procedure laid down in that Act for compounding of offences;
     - Any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine **shall not be compoundable.**

- However, the committee to review offences under the Companies Act, 2013, has recommended that such requirement of section 441(6) (a) should be omitted. Hence in the current scenario permission of the special court is not required for the compounding of an offence.