

“Compounding of Offenses”

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22nd February, 2018

Companies Act, 2013

Compounding of Offenses

- Offences punishable with fine only and imprisonment or fine;
- No investigation against the company shall be pending;
- Either before or after the institution of prosecution;
- If amount of fine –
 - ▣ maximum 5 Lacs - Compounding by RD or any other officer authorised by CG
 - ▣ More than 5 Lacs - Compounding by NCLT
- An amount not exceeding the amount of fine for compounding of an offence which shall also be including additional fee under section 403(2) is charge by the concerned Compounding Authority;

- ❑ **Non-Compoundable Offences**
 - Offences punishable with –
 - imprisonment only, or
 - with imprisonment and also with fine.
- ❑ **Offences compoundable by Special Courts**
 - Offences punishable with
 - imprisonment or fine,
 - or with imprisonment or fine,
 - or with both.

Case Laws

- **Viavi Solutions India Pvt. Ltd. vs. Registrar of Companies, NCT Delhi and Haryana[CA (AT) 49,50,51,52 & 53 of 2016]**

NCLAT held that the Tribunal is required to notice the relevant factors while compounding any offence, such as –

- The gravity of the offence;
- The act is intentional or unintentional;
- The maximum punishment prescribed for such

- offence, such as fine or imprisonment or both fine and imprisonment;
- The report of the ROC;
- The period of default;
- Whether the petition for compounding is suo-moto before or after notice from ROC or after imposition of the punishment or during the pendency of a proceeding;
- The defaulter has made good of the default;
- Financial condition of the company and other defaulters;

- Offence is continuous or one-time;
- Similar offence earlier committed or not;
- The act of defaulters is prejudicial to the interest of the members or company or public interest or not
- Share value of the company etc.

❑ **Gopalapolyplast Ltd. & Others Vs. ROC, Ahmedabad, Gujarat [CA (AT) 33 of 2016]**

NCLAT held that the Tribunal while passing the order of compounding shall notice different factors and grounds apart from nature of offence such as –

- ✓ Whether the violation of a provision is willful or not;
- ✓ Whether the violation of a provision was due to oversight;
- ✓ Whether similar offence was compounded during the last 3 years;
- ✓ Whether company is a vanishing company;

□ **Sapphire Industrial Infrastructures Pvt. Ltd. Vs. ROC, NCT Delhi & Haryana [CA (AT)106 of 2017]**

NCLAT held that where no prosecution has been filed or pending against the company or its officers, the question of obtaining permission from the special court, as stipulated in clause (a) of sub-section (6) of section 441 of the Act-2013, does not arise. The Tribunal is competent to compound the offence taking into consideration the minimum and maximum fine prescribed under the Act.

- **Goyal Achal Sampatti Vikas and Niyojan Nigam Limited (C.P. No. 16/100/17) (11.08.2017-NCLT-ND)**

Compounding of offence u/s 137 of Companies Act, 1956 read with AS-29 was allowed.

- **Dharampal Satyapal Limited(C.P. No. 16/162(ND)17) (29.08.2017-NCLT-ND)**

Compounding of offence u/s 211 read with Schedule VI of Companies Act, 1956 was allowed.

Special Courts – Section 435-446

- ❑ Permission for compounding of offense of Imp & fine or both
- ❑ In line it Special Courts in other laws
 - ❑ Notified by CG
 - ❑ Special Judge to be appointed by CG in concurrence with Chief Justice of High Court where such Special Court will function
 - ❑ Not less than SJ / ASJ
 - ❑ To be formed where registered office of co. is situated
- ❑ Offences :
 - ❑ Triable, power for custody, police report, other powers
- ❑ Appeal to High Court
- ❑ Non cognizable offense
- ❑ Transitional Provision - Till established by Court of Sessions of that area

Special Courts – Com. Amendment Act, 2017 – 03.01.2018

- ❑ After section 446 of the principal Act, the following sections shall be inserted, namely:—
- ❑ "446A. The court or the Special Court, while deciding the amount of fine or imprisonment under this Act, shall have due regard to the following factors, namely:
 - ❑ (a) size of the company;
 - ❑ (b) nature of business carried on by the company;
 - ❑ (c) injury to public interest;
 - ❑ (d) nature of the default; and
 - ❑ (e) repetition of the default.

□ **COMPOUNDING ORDER**

▪ **Intimation of the Order**

- Intimate the ROC within 7 days whether any prosecution was pending or not
- ROC shall inform the Court where prosecution against the officers/company is pending, if any

▪ **Non-Compliance of the Order**

- The officers/employees of the company shall be punishable with imprisonment for a term of maximum 6 months, or with fine of maximum 1 lacs , or with both.

EFFECTS OF COMPOUNDING

- Same offence shall not be compounded again for 3 years;
- No prosecution shall be instituted for the offence so compounded;
- The officers/company shall be discharged from the prosecution.

□ **PROCESS OF COMPOUNDING**

- Application is made to the ROC;
- ROC forwards it to the RD/Tribunal along with its comments;
- The Compounding Authority may ask for any documents or direct to deliver or submit any document to ROC by the officers of the company.

Why legal drafting is important ?

- Improves your case
- Makes your task easier
- Enhance you as a professional

Nuances of Drafting

Concise

Legal
words ?

Subject

Precise

Action
words ?

Review

Organize

Edit

Relief's

Unneeded words

Wordy idioms Don't say

- Say at this point in time - now
- despite the fact that - although
- for the duration of - during
- in the event that - if
- in accordance with - by, under

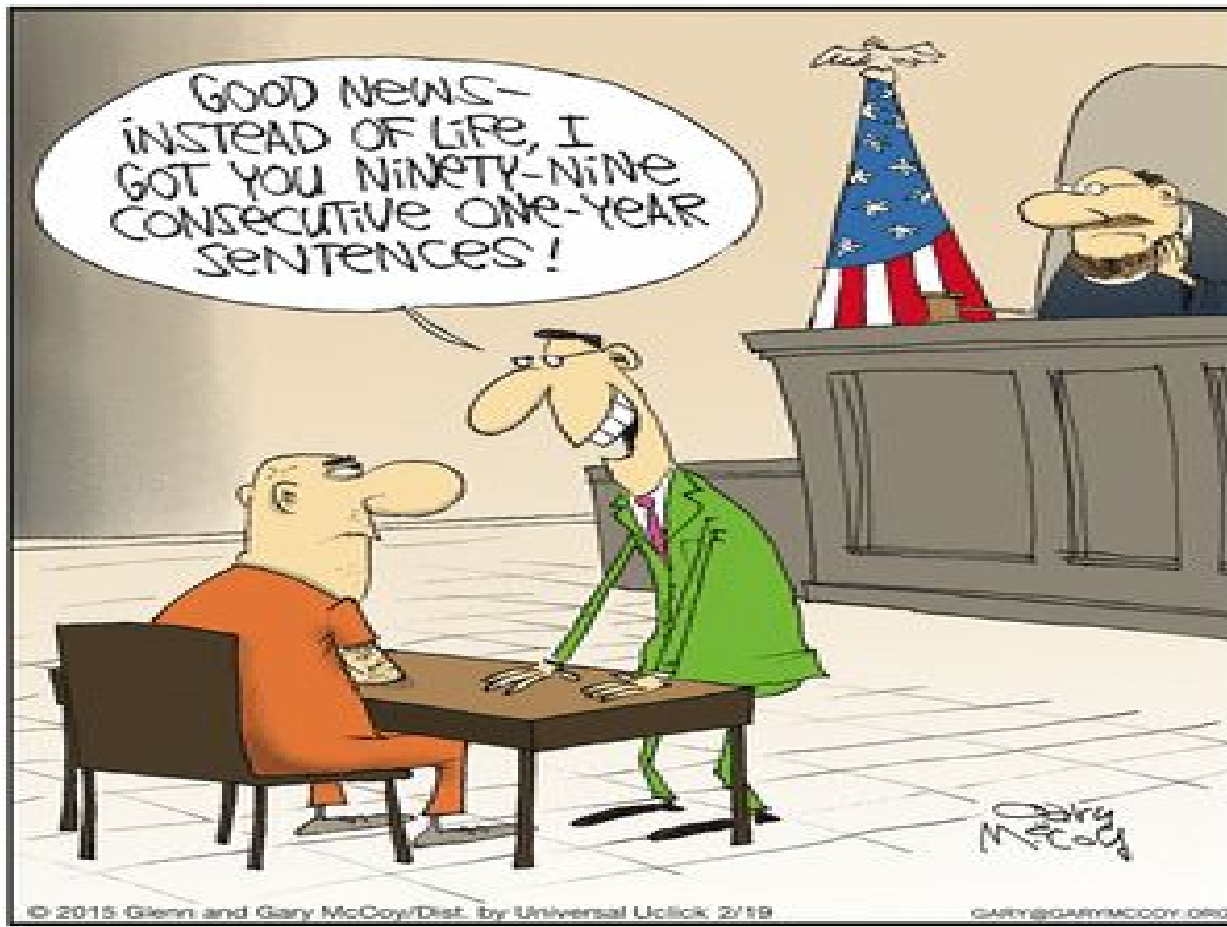
Art of Appearance



A woman was found guilty in traffic court and when asked for her occupation she said she was a schoolteacher. The judge rose from the bench.

"Madam, I have waited years for a schoolteacher to appear before this court." He smiled with delight. "Now sit down at that table and write `I will not run a red light` five hundred times."

Client Handling



Client handling





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