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# Compounding of Offence

■ Varsha Banerjee

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ompounding of offence under Companies Act though being practiced for long was neither defined under the Companies Act, 1956 nor Companies Act, 2013. As per the Black's Law Dictionary, to "Compound" means "to settle a matter by a money payment, in lieu of other liability." In compounding, the Company and/or its officers may Suo Moto admit to the commission of default and make an application seeking compounding of its offences against payment of certain amount as penalty.

Section 621A of the Companies Act, 1956 earlier provided for compounding of offences, however, w.e.f 1st June, 2016, Section 441 now deals with Compounding of offences under Companies Act, 2013. Section 441 of the Companies Act, 2013 departs from the earlier provisions of Section 621A, to a limited extent wherein the offences which are punishable with imprisonment or fine or both which were earlier specifically mentioned in Section 621A of the Companies Act, 1956 now does not specifically finds mention in the

opening para of Section 441 of the Companies Act, 2013. The said omission became critical for exercise of jurisdiction pertaining to compounding of offences by the various National Company Law Tribunals (NCLTs).

The various NCLTs in view of the above stated omission were taking inconsistent views as to whether such offences were compoundable by the NCLT in absence of any specific permission by the Special Court in terms of Sub Section (6) of Section 441 of the Companies Act, 2013. The earlier law as to compounding of offences by the erstwhile Company Law Board (CLB) was duly settled and recognized by the Hon'ble Supreme Court in the matter of VLS Finance Ltd. Vs. Union of India & Ors., (2013) 6 SCC 278. The said judgment categorically provided that the following categories of offences were compoundable by CLBs:

Offences punishable with fine only

Offences punishable with fine or imprisonment

Offences punishable with fine or imprisonment or both

The relevant provisions of Section 441 of



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the Companies Act, 2013, which empower the Tribunal to compound offences and come into play under various circumstances, reads as follows:

## COMPOUNDING OF CERTAIN OFFENCES

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 any offence punishable under this Act (whether committed by a Company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by the Tribunal or where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the Regional Director any officer authorized by the Central Government.

## NOTWITHSTANDING ANYTHING CONTAINED IN THE CODE OF CRIMINAL PROCEDURE, 1973

Any offence which is punishable under this Act, 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.

On a prima facie reading of the provisions of Section 621A of the Companies Act, 1956 vis-à-vis Section 441 of the Companies Act, 2013, it appears that in case of offences punishable “with fine only”, NCLT is duly empowered to compound the offences. However, if the offence is punishable with “imposition of fine or imprisonment” or with “imposition of fine or imprisonment or both”, the remedy under the Companies Act, 2013 appears to be available only in case the Special Court permits such compounding.

The said controversy has been set at rest by the Hon’ble National Company Law Appellate Tribunal (NCLAT) in the matter

of Sapphire Industrial Infrastructure and Precious Energy Services Ltd. wherein the NCLAT held that permission of Special Court for compounding of offences which are punishable with “imposition of fine or imprisonment” or with “imposition of fine or imprisonment or both” is only required in cases where prosecution has been filed or pending against the Company or its officers before Special Court. In absence of any prosecution either being filed or pending against the Company or its officers before the Special Court, the Tribunal is the sole authority competent to compound the offences under the Companies Act, 2013.

The due recognition and authority of the NCLT to compound offences which are punishable “with fine” or “imposition of fine or imprisonment” or with “imposition of fine or imprisonment or both” is in consonance and furtherance of the mandate of law. Section 621A of the Companies Act, 1956 was brought into force as it was felt that there is a need of leniency in the administration of the Companies Act because a large number of defaults are of technical nature, which occurred on account of complex nature of the provisions of the Act.

Compounding of offences which are already made good, is in consonance with the general proposition of law that sufficient opportunity be provided to parties to meet the provisions of law. The Appellate Tribunal has finally put at rest the entire issue as to the power of the Tribunal to exercise jurisdiction for the purpose of compounding of offence. The interpretation which found favour with the Appellate Tribunal is in line with the object and purpose of the Companies Act, 2013. The Companies Act, 2013 has been brought into force to ensure speedy and appropriate determination of issues by the NCLT, which is the sole authority exercising jurisdiction for corporate entities in India. [w](#)



**Varsha Banerjee** is an Associate Partner and did her law in the year 2009 from Amity Law School, IP University, Delhi. She has been in practice for the last 7 years and represents corporate entities, institutional creditors, shareholders, investors, and large lender groups or entities in insolvency matters, major debt restructurings, and asset sale transactions. She focuses her litigation practice on corporate restructuring and insolvency matters with expertise in the rehabilitation of distressed entities, issues pertaining to recovery of debt, securitization-related matters and commercial disputes arising out of other contractual matters, civil suits and arbitration law arising in cases of distressed entities. She regularly appears before various judicial/quasi-judicial authorities in the country including the Supreme Court of India, various High Courts and Tribunals.