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(Company Secretaries and RTMA)

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(Partner of Corporate Legal Service Firm)

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(Appearance before Registrar of Companies and Regional Director)

INTRODUCTION

The Companies (Amendment) Ordinance, 2018 is effective from 2nd November, 2018. As per new Amendments, the Compliance is the **Most Important** for all companies. If the Companies will not change their liberal attitude towards Compliances, they pay heavy penalties.

Under the Companies (Amendment) Ordinance, 2018, has various provisions like Section 10A, Section 53, Section 64, Section 92, Section 105, Section 117, Section 121, Section 137, Section 140, Section 157, Section 159, Section 165, Section 197, Section 203, Section 447 etc. specified the huge amount of penalties to be imposed by the Adjudicating Officers on Companies or other concern.

ADJUDICATING OFFICERS

According to Rule 3 of the Companies (Adjudication of Penalties) Amendment Rules, 2019, The Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.

APPEARANCE BEFORE REGISTRAR OF COMPANIES OR ADJUDICATION OFFICERS

Before adjudging the Penalty, the Adjudication Officers (Hereinafter called “AO”) will take following actions:-

A. ISSUANCE OF SHOW CAUSE NOTICE

- 1) AO shall issue shall issue a written notice in the specified manner, to the company, the officer who is in default or any other person, as the case may be, to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than thirty days from the date of service thereon), why the penalty should not be imposed on it or him.
- 2) The Notice must be contained the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default, or any other person, as the case may be and also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed on the company, and each of the officers in default, or the other person.
- 3) The Company or concern shall file reply through electronics mode as prescribed in the Notice. Further, it shall be notable that the AO may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding fifteen days, if the company or officer in default or any person as the case may be, satisfies the AO that it or he has sufficient cause for not responding to the notice within the stipulated period or the AO has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.

B. PHYSICAL APPEARANCE

- 1) On submission of documents, the AO does not satisfy and he has opine that Physical Appearance is required. Then, he shall issue a notice, within a period of ten working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorized representative, or officer of such company, or any other person, whether personally or through his authorized representative.

- 2) if any person, to whom a notice is issued, desires to make an oral representation, whether personally or through his authorized representative and has indicated the same while submitting his reply in electronic mode, the AO shall allow such person to make such representation after fixing a date of appearance.
- 3) On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the AO may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including an order for adjournment.
- 4) After hearing, AO may require the concerned person to submit his reply in writing on certain other issues related to the notice, relevant for determination of the default.

C. PASSING ORDER

1. The AO shall pass the Order within 30 days where No Physical Appearance or Expiry of Notice or Expire of extension granted by the AO.
2. The AO shall pass the Order within 90 days where Physical Appearance is made.
3. Order must be dated and signed and clearly mentioned the reason for requiring appearance.
4. The AO shall send a copy of the order passed by him to the concerned company, officer who is in default or any other person or all of them and to the Central Government and a copy of the order shall also be uploaded on the website.

D. POWER OF AO

1. The AO shall exercise the following powers, namely
 - (a) To summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;
 - (b) To order for evidence or to produce any document, which in the opinion of the AO, may be relevant to the subject matter.

2. If any person fails to reply or neglects or refuses to appear as required before the adjudicating officer, the AO may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so

E. ADJUDGING QUANTUM OF PENALTY

The AO 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; (e) repetition of the default; (f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and (g) the amount of loss caused to an investor or group of investors or creditors as a result of the default

Note:- In no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act. In case a fixed sum of penalty is provided for default of a provision, the AO shall impose that fixed sum, in case of any default therein.

F. PAYMENT METHOD

Penalty shall be paid through Ministry of Corporate Affairs portal only

G. OTHER REQUIREMENTS

1. For the purposes of this rule, the term “specified manner” shall mean service of documents as specified under section 20 of the Act and rules made thereunder and details in respect of address (including electronic mail ID) provided in the KYC documents filed in the registry shall be used for communication under this rule.
2. For the purposes of this rule, it is hereby clarified that the requirement of submission of replies in electronic mode shall become mandatory after the creation of the e-adjudication platform

H. APPEAL

1. Any person aggrieved by an order made by the AO may prefer an appeal to the Regional Director having jurisdiction in the matter.
2. Every appeal shall be filed within sixty days from the date on which the copy of the order made by the AO is received by the aggrieved person and shall be in such form i.e. Form ADJ, manner and be accompanied by such fees.

PENALTY FOR NON-COMPLIANCE OF ORDER

- (i) Where company fails to comply with the order made within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.
- (ii) Where an officer of a company or any other person who is in default fails to comply with the order made as the case may be within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

Thanking You