

Adjudication under Companies Act, 2013

Adjudication

The dictionary meaningⁱ of ‘adjudication’ is to give or pronounce a formal judgment or decree in a court proceeding. In light of the Companies Act, 2013 (‘Act’), adjudication is a process by which the relevant authority imposes a penalty for the non-compliance or default, after considering the relevant facts and circumstances. The adjudication mechanism is governed by section 454 of the Act read with the Companies (Adjudication of Penalties) Rules, 2014.

Under the Act, the adjudicating officerⁱⁱ has power to impose penalty on the defaulting company, the officer who is in default, or any other person, as the case may be, for non-compliances and defaults under the relevant provisions of the Act.

Prior to adjudging the penalty, the adjudicating officer(s) issues show cause notice (‘SCN’) to the concerned person(s) seeking explanation for the default made and the reason as to why the penalty should not be imposed. The SCN indicates the nature of non-compliance or default under the Act alleged to have been committed, the relevant penal provisions of the Act and the maximum penalty which can be imposed. After receiving the SCN, the concerned person(s) needs to submit a reply of such SCN within the prescribed time limit. The adjudicating officer may allow physical appearance in a matter in the following instances:

- (a) if after considering the reply to SCN submitted by the concerned person(s) the adjudicating officer is of the opinion that physical appearance is required, or
- (b) if the concerned person(s) desires to make an oral representation.

After giving a reasonable opportunity of being heard to the concerned person(s), the adjudicating officer may, pass the order in writing as he thinks fit levying a penalty on the concerned person(s). The adjudicating officer while adjudging the quantum of penalty considers various relevant factors, such as, size of the company, nature of its business, prejudice to public interest, nature and repetition of the default. In any case, the adjudicating officer cannot impose a penalty which is less than the minimum penalty prescribed, if any, under the relevant section of the Act.

Appeal against adjudication order

If the concerned person(s) feels aggrieved by the order of adjudicating officer then he/she may make an appeal to the Regional Director having jurisdiction in the matter, within 60 days from the date of receipt of the copy of the order made by the adjudicating officer.

On the admission of the appeal, the Regional Director serves a copy of appeal to the adjudicating officer against whose order the appeal is sought along with a notice requiring such adjudicating officer to file his reply thereto within the time period prescribed in the notice.

The Regional Director notifies the date of hearing of the appeal to the parties. On the date fixed for hearing, the Regional Director may, subject to the reasons to be recorded in writing, pass any order as he thinks fit, confirming, modifying or setting aside the order appealed against.

Penal provisions in relation to non-compliance of adjudication order

Where a company or an officer of a company or any other person fails to comply with the order made by the adjudicating officer or Regional Director, as the case may be, within a period of 90 days from the date of the receipt of the order copy. Then following fines may be levied:

- a) company is punishable with a fine ranging from INR 25,000 to INR 500,000; and
- b) the officer of such company or any other person who is in default is punishable with imprisonment which may extend to 6 months or with fine ranging from INR 25,000 to INR 100,000, or with both.

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ⁱ Black's Law Dictionary, (sixth edition, page no. 42.)

ⁱⁱ The Central Government vide its notification dated 24.03.2015 appointed following persons as adjudicating officers https://www.mca.gov.in/Ministry/pdf/Notification_26032015.pdf