



IF YOU THINK COMPLIANCE IS COSTLY TRY NON-COMPLIANCE

“If you think compliance is costly, try non-compliance,” said someone. It is indeed true. Corporates today are expected to adhere compliance which is not limited to filling returns and reports on time but expands to internal and external corporate responsibilities like workers safety, equality, social and environmental responsibilities. In this newsletter we are confining to discussing about the need for establishing effective systems and processes to ensure adequate and timely compliance of provisions of the Companies Act, 2013 (the Act) which has been in force for almost a decade now.

We can definitely say that the Act has done a lot in improving ease of doing business while strengthening governance aspects to offer better protection to stakeholders. The provisions of the Act are intended to achieving transparency, timely sharing of information to stakeholders, and measures to detect contraventions at the earliest. The Act is substantially a procedural law and many requirements apply only if something is done or proposed to be done by a company. Otherwise, “non-event” based compliance requirements are not too many. In case a company is able to comply with the applicable provisions, it enhances the value of the company. Therefore, when a company follows the statutory requirements as stated by the law, it gains the trust of its stakeholders. No doubt, this trust is the foundation of company’s goodwill.

A company that has established a trust worthy relationship with its stakeholders can easily walk up the ladder of growth, success, and reputation. In today’s competitive business edge adhering to regulatory standards is crucial for every company. Famous Indian names like TATA and Infosys are looked upon as an icon of good governance. Even if these companies face a down time, the stakeholders trust continues. Good governance is the key to such factors and good governance requires on time compliances.

One of major changes that was recently brought about by the Government of India was decriminalization of offences across the Act. It was an exercise aimed to remove punishment by way of fine or imprisonment or both for non-compliances which punishments are awarded only by criminal courts. The Act was substantially amended to introduce monetary penalties and towards the same established an adjudicatory mechanism to adjudge contraventions and impose penalties. In this new environment, the procedure for punishing contraventions has been simple and directors and officers have been relieved from running to ordinary criminal courts in respect of those provisions where non-compliance attracts only a monetary penalty.

Across the Act, several provisions stipulate compliance requirements and non-compliances and delays in compliances expose the company and its directors and officers to hefty monetary penalties. Some of the compliance requirements include the need to file annual returns (Section 92); mandatorily disclose specified matters in the Board’s report to the shareholders (Section 134); provisions relating to corporate social responsibility (Section 135); submission of copies of audited financial statements to Registrar (Section 137) and related party transactions (Section 188), to name a few.



In some cases, levy of penalties could prove to be not only very costly but also may inflict a dent on the reputation of the company probably built over years. Listed companies must make a disclosure of penalties levied and availability of orders passed by adjudicating officers in the public domain makes it possible for everyone to learn about non-compliances by a company and levy of penalties.

Section 454 of the Act read with Companies (Adjudication of Penalties) Rule, 2019 provides for adjudicating mechanism. In accordance with the Act, any non-compliance of section where penalties are imposed shall be adjudicated by an Adjudicating Officer (AO) appointed by the Central Government. Such in house adjudicating mechanism (IAM) will help reduce the burden laid on NCLT and the special court for handling non-compliance of penalty sections. Thus, it becomes easier for the government to identify and penalize any non-compliance by the company and/or its officer without any delay. Such IAM removes the prosecution of cases before criminal courts.

In case on any non-compliance, AO shall issue a show cause notice in writing indicating the non-compliance, the relevant penal provisions, and the maximum penalty which can be imposed on the company and each of the officers in default or any other person. The company should reply to such notice within the prescribed time. After considering the reply, on a date fixed for hearing and giving a reasonable opportunity for being heard, the AO may pass an order in writing.

It is necessary to note under Rule 3(12) of the aforesaid Rules, the AO has no power to impose a penalty less than as prescribed under the relevant section of the Act. Of course, there is a provision declaring lesser penalties to some classes of companies such as small companies, start-up companies and one person companies. Otherwise, penalties are going to be very costly. Though there is a provision to prefer an appeal against any order of the AO, even that would be a costly and time-consuming exercise. Moreover, provisions enabling compounding of offences under Section 441 will not apply to cases where punishment prescribed is monetary penalty falling under the domain of AO pursuant to Section 454 of the Act.

There are innumerable cases where non-compliances had led to levy of penalties running into lakhs rupees. Recently, an order passed by AO on 11th October, 2023 in the matter of N.S.J.L Nidhi Limited under section 39(4) [RoC(P)/ADJ/order/39(4)/23-24/ 12/ 1586], it was observed that the company has filed PAS-3 forms wherein the list of allottees to be attached is not certified by the signatory as required under Rule 12 of the Companies (Prospectus and Allotment of Securities) Rule, 2014. Thus, all the 16 PAS-3 forms filed in non-compliance of the provision attracted the penalty under section 39(5); were both the company and the officers in default were penalized. A total of Rs. 64,00,000/- was imposed as penalty that is Rs, 16,00,000/- on the company and Rs. 16,00,000/- each on three directors of the company.

The following cases will help one understand the cost of non-compliances. It is worth noting that in certain cases, non-compliances could adversely affect the reputation of the company too.



Table showing Penalty Imposed by AO under various scenario (in INR)

Sr. No.	Company Name	Non-Compliance under	Penalty on Company	Penalty on Officers	Total Penalty
1.	Viraj Profiles Private Limited	Section 42	2,01,08,000	2 Dir - 1,08,000 each	Rs. 2,03,24,000/-
2.	RHI Magnesita India Limited	Section 135	1,00,00,000	4 Dir – 2,00,000 each	Rs. 1,08,00,000/-
4.	NDO India Private Limited	Section 203	5,00,000	7 Dir – 5,00,000 each 4 Dir – 2,34,000 each	Rs. 49,36,000/-
6.	First Data (India) Private Limited	Section 203	10,00,000	2 Dir – 5,50,000 each	Rs. 21,00,000/-
8.	Resonance Eduventures Limited	Section 149	3,00,000	2 Dir – 1,00,000 each	Rs. 5,00,000/-

As the saying goes prevention is better than cure, a corporate shall invest its time, resources, and technology prior hand to create a system that will ensure compliance at all levels. Planning, reviewing, and acknowledging the mitigating factors even when there is a slight diversion in compliance, would result in saving time consuming proceedings and prevent reputational damage.

Thus, there is no doubt that compliance is better than non-compliance.

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