1. Introduction

Chapter XXVIII of the Companies Act, 2013 deals with the concept of Special Courts. This concept has assumed greater importance especially in the recent times as this will help in speedy trial of all offences under the Act. Hence, this will definitely facilitate in good corporate governance and stricter implementation of the Law. Due to this, the stakeholders will be benefited at large. With intent to punish the guilty, the Legislature has bring in, the Special Courts in the Companies Act, 2013. The Act focuses on establishment and the jurisdiction of the Special Court. The Companies Act, 2013 overrides the related provisions of the Cr.PC.

2. Establishment of Special Court [Section 435]

Section 435 of the Companies Act deals with the establishment of the Special Court. The provisions state the number of special court that may be established with the required number of judges for the working.

(1) Establishment of number of special court: The Central Government may by notification-

- for the purpose of providing speedy trial of offences punishable under this Act
- punishable under this Act
- with imprisonment of two years or more,

establish or designate as many Special Courts as may be necessary.

Provided that all other offences shall be tried, as the case may be, by a Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this Act or under any previous company law.

<table>
<thead>
<tr>
<th>Types of court</th>
<th>Nature of trial of offences</th>
</tr>
</thead>
<tbody>
<tr>
<td>Special Courts</td>
<td>Offences punishable under this Act with imprisonment of two years or more</td>
</tr>
<tr>
<td>A Metropolitan Magistrate or a Judicial Magistrate of the First Class</td>
<td>All other offences under this Act or under any previous company law.</td>
</tr>
</tbody>
</table>
(2) **Appointment of judge:** A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

(3) **Eligibility:** A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

3. **Offences Triable by Special Courts [Section 436]**

(1) **Powers of special courts with respect to trial of offences:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

<table>
<thead>
<tr>
<th>Powers of the special courts</th>
<th>Provisions</th>
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<tbody>
<tr>
<td>Offences triable by the special court</td>
<td>All offences specified under section 435(1) shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed.</td>
</tr>
<tr>
<td>In case of more than one Special Courts</td>
<td>Where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;</td>
</tr>
<tr>
<td>Where a person accused of, or suspected of the commission of, an offence under this Act</td>
<td>Such person is forwarded to a Magistrate under section 167 of the Code of Criminal Procedure, 1973. (i) such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate, (ii) and seven days in the whole where such Magistrate is an Executive Magistrate: Provided that where such Magistrate considers that the detention of such person( upon or before the expiry of the period of detention) is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;</td>
</tr>
</tbody>
</table>
Vested with same power as provided under the Cr. P.C

the Special Court may exercise the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section;

Cognizance of offence by special court

A Special Court may, upon perusal of the police report or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

(2) **Special Court to try an offence other than an offence under this Act:** When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

(3) **Summary Trial:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973,

<table>
<thead>
<tr>
<th>Power of special court on summary trial of an offence</th>
<th>Nature of summary trial</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Special Court may, if it thinks fit, try in a summary way any offence under this Act</td>
<td>Which is punishable with imprisonment for a term not exceeding three years</td>
</tr>
<tr>
<td>In the case of conviction in a summary trial</td>
<td>no sentence of imprisonment for a term exceeding one year shall be passed</td>
</tr>
<tr>
<td>When at the commencement of, or in the course of, a summary trial, it appears to the Special Court that –</td>
<td>the Special Court shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or rehear the case in accordance with the procedure for the regular trial.</td>
</tr>
<tr>
<td>• the nature of the case is such that the sentence of imprisonment for a term exceeding one year may have to be passed, or</td>
<td></td>
</tr>
<tr>
<td>• that it is, for any other reason, undesirable to try the case summarily</td>
<td></td>
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</tbody>
</table>
4. Appeal and Revision [Section 437]

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX which deals with appeals, Reference and Revision of the Code of Criminal Procedure, 1973 on a High Court.

As if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

5. Application of Code to Proceedings before Special Court [Section 438]

Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

6. Offences to be non-cognizable [Section 439]

This sections provides of the offences that are non-cognizable. According to this section:

<table>
<thead>
<tr>
<th>Offence</th>
<th>Nature of offence</th>
</tr>
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<tbody>
<tr>
<td>every offence under the Companies Act, 2013 except the offences referred to section 212(6)</td>
<td>shall be deemed to be non-cognizable within the meaning of the Cr.P.C</td>
</tr>
<tr>
<td>Court shall take cognizance of any offence under the Companies Act which is alleged to have been committed by any company or any officer thereof</td>
<td>Only on the written complaint of the Registrar, a shareholder of the company, or of a person authorised by the Central Government in that behalf.</td>
</tr>
<tr>
<td>Cognizance of offences relating to issue and transfer of securities and non-payment of dividend</td>
<td>The court may take cognizance on a complaint in writing, by a person authorised by the Securities and Exchange Board of India.</td>
</tr>
<tr>
<td>Non-application of section 439(2)</td>
<td>To a prosecution by a company of any of its officers</td>
</tr>
<tr>
<td>Where the complainant is the Registrar or a person authorised by the Central Government</td>
<td>The presence of such officer before the Court trying the offences shall not be necessary unless the court requires his personal attendance at the trial</td>
</tr>
<tr>
<td>Non-application of section 439(2)</td>
<td>To any action taken by the liquidator of a company in respect of any offence alleged to have been committed in respect of any of the matters in Chapter XX (Winding up)</td>
</tr>
</tbody>
</table>
or in any other provision of this Act relating to winding up of companies
The liquidator of a company shall not be deemed to be an officer of the company.

As per the Notification G.S.R. 463(E) dated 5th June 2015, in case of a government companies, court shall take cognizance of an offence under this Act which is alleged to have been committed by any company or any officer thereof on the complaint in writing of a person authorized by the Central Government in that behalf.

7. Transitional provisions [Section 440]

According to the section, any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code to transfer any case or class of cases taken cognizance by a Court of Session under this section.

8. Compounding of certain offences [Section 441]

Section 441 deals with the process of compounding of certain offences.

(1) **Who may compound the offence:** 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—

(a) the Tribunal; or

(b) where the maximum amount of fine which may be imposed for such offence does not exceed five lakh rupees, by the-

- Regional Director or
- any officer authorised by the Central Government,

on payment or credit, by the company or, as the case may be, the officer, to the Central Government of such sum as that Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, may specify:

**Limit of fine:** Provided that the sum so specified shall not, in any case, exceed the maximum amount of the fine which may be imposed for the offence so compounded:
Provided further that in specifying the sum required to be paid or credited for the compounding of an offence under this sub-section, the sum, if any, paid by way of additional fee under sub-section (2) of section 403 shall be taken into account:

No compounding of an offence on initiation/pending of an investigation: Provided also that any offence covered under this sub-section by any company or its officer shall not be compounded if the investigation against such company has been initiated or is pending under this Act.

(2) Restriction: Nothing in sub-section (1) shall apply to an offence committed by a company or its officer within a period of three years from the date on which a similar offence committed by it or him was compounded under this section.

Explanation.—For the purposes of this section,—

(a) any second or subsequent offence committed after the expiry of a period of three years from the date on which the offence was previously compounded, shall be deemed to be a first offence;

(b) “Regional Director” means a person appointed by the Central Government as a Regional Director for the purposes of this Act.

(3) Filing of application to Registrar:

(a) Application to be made to the Registrar: Every application for the compounding of an offence shall be made to the Registrar who shall forward the same, together with his comments thereon, to the Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be.

(b) Intimation of compounding of offence: Where any offence is compounded under this section, whether before or after the institution of any prosecution, an intimation thereof shall be given by the company to the Registrar within seven days from the date on which the offence is so compounded.

(c) No prosecution shall be instituted: Where any offence is compounded before the institution of any prosecution, no prosecution shall be instituted in relation to such offence, either by the Registrar or by any shareholder of the company or by any person authorised by the Central Government against the offender in relation to whom the offence is so compounded.

(d) Compounding of any offence to be brought to the notice of the court: Where the compounding of any offence is made after the institution of any prosecution, such compounding shall be brought by the Registrar in writing, to the notice of the court in which the prosecution is pending and on such notice of the compounding of the offence being given, the company or its officer in relation to whom the offence is so compounded shall be discharged.
(4) **Central Government to authorise for dealing with a proposal for compounding of offence:** The Tribunal or the Regional Director or any officer authorised by the Central Government, as the case may be, while dealing with a proposal for the compounding of an offence for a default in compliance with any provision of this Act which requires a company or its officer to file or register with, or deliver or send to, the Registrar any return, account or other document, may direct, by an order, if it or he thinks fit to do so, any officer or other employee of the company to file or register with, or on payment of the fee, and the additional fee, required to be paid under section 403, such return, account or other document within such time as may be specified in the order.

(5) **In case of failure in compliance:** Any officer or other employee of the company who fails to comply with any order made by the Tribunal or the Regional Director or any officer authorised by the Central Government under sub-section (4) shall be punishable with imprisonment for a term which may extend to six months, or with fine not exceeding one lakh rupees, or with both.

(6) **Offences which can be compounded:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

(a) any offence which is punishable under this Act, with imprisonment or fine, or 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;

(b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable.

(7) **Restriction:** No offence specified in this section shall be compounded except under and in accordance with the provisions of this section.

9. **Mediation and Conciliation Panel [Section 442]**

(1) **Maintenance of panel of experts:** The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel.

**Composition:** It shall be consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before-

- the Central Government or
- the Tribunal or
- the Appellate Tribunal under this Act.

(2) **Referring of matters by any parties to the proceedings to Mediation and Conciliation Panel:** Any of the parties to the proceedings may, at any time during the
proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).

(3) **Suo moto referring of matters to Mediation and Conciliation Panel:** The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, suo moto, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.

(4) **Fees and other conditions of experts:** The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

(5) **Procedure and disposal of matter:** The Mediation and Conciliation Panel shall follow such procedure as may be in Rule 11 of the Special Courts (Companies Mediation and Conciliation) Rules, 2016, and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(6) **Objection to the recommendation of the Mediation and Conciliation Panel:** Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

**10. Power of Central Government to Appoint Company Prosecutors**

[Section 443]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may appoint-

- generally, or
- for any case, or
- in any case, or
- for any specified class of cases in any local area,
- one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act.

The persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code on Public Prosecutors appointed under section 24 of the Code.
11. Appeal against Acquittal [Section 444]
Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may, in any case arising under this Act, direct any-
- company prosecutor or
- authorise any other person either by name or by virtue of his office,
- to present an appeal from an order of acquittal passed by any court, other than a High Court, and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

12. Compensation for Accusation without Reasonable Cause [Section 445]
The provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply mutatis mutandis to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

13. Application of fines [Section 446]
According to this section, the court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

RELEVANT AMENDMENTS

Amendments through the Companies (Amendment) Act, 2017

<table>
<thead>
<tr>
<th>Relevant sections</th>
<th>Amendment</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amendment of section 435. Establishment of Special Courts</td>
<td>For section 435 of the principal Act, the following shall be substituted, namely:— 435. (1) The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary. (2) A Special Court shall consist of— (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and</td>
<td>Not notified till 30th April, 2018</td>
</tr>
<tr>
<td>Amendment of 438.</td>
<td>In section 438 of the principal Act, for the words &quot;deemed to be a Court of Session&quot;, the words &quot;deemed to be a Court of Session or the court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be,&quot; shall be substituted.</td>
<td>Notified till 30th April, 2018</td>
</tr>
<tr>
<td>Amendment of 439.</td>
<td>In section 439 of the principal Act, in sub-section (2), after the words &quot;a shareholder&quot;, the words &quot;or a member&quot; shall be inserted.</td>
<td>Notified till 30th April, 2018</td>
</tr>
<tr>
<td>Amendment of 440.</td>
<td>In section 440 of the principal Act, for the words &quot;Court of Session&quot;, at both the places, the words &quot;Court of Session or the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class, as the case may be&quot; shall be substituted.</td>
<td>Notified till 30th April, 2018</td>
</tr>
<tr>
<td>Amendment of 441.</td>
<td>In section 441 of the principal Act, in sub-section (1), for the words &quot;with fine only&quot;, the words &quot;not being an offence punishable with imprisonment only, or punishable with imprisonment and also with fine&quot; shall be substituted.</td>
<td>Notified till 30th April, 2018</td>
</tr>
<tr>
<td>Insertion of new section 446A.</td>
<td>After section 446 of the principal Act, the following sections shall be inserted, namely:—  &quot;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.</td>
<td>Notified till 30th April, 2018</td>
</tr>
</tbody>
</table>
446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, of the minimum or maximum fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections.".

| Lesser penalties for One Person Companies or small companies. | 446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be punishable with fine or imprisonment or fine and imprisonment, as the case may be, which shall not be more than one-half of the fine or imprisonment or fine and imprisonment, as the case may be, specified in such sections.". |