



Imprisonment + Fine (both) for Corporate Fraud in India

1. Introduction on the Imprisonment + Fine (both) for Corporate Fraud under Section 447 of the Companies Act, 2013 (Act).

*(a) Corporate frauds are increasing in India by the person(s) those are **directly or indirectly connected or even not-connected** to the corporate.*

*(b) It's required that high standards for **corporate governance and strong legal provisions** should be introduced to stop and tackle the corporate fraud to be committed by the **Indian corporate**.*

*(c) Now day's a growing tendency in corporate to **manipulate the financial statements** (Balance Sheet and Profit & Loss Account) commonly known as window dressing to **demonstrate as healthy and wealthy** financial statements in front of the Stakeholders, Public, Investors, Creditors and Employee along with the **Govt., banks, financial institution, Foreign Investors** and any other person. This tendency is also included under the head corporate fraud and liable for imprisonment + fine (both)*

*(i) In 2013 strong provisions are **introduced** under section 447 of the Act by way of increasing the **roles and duties** of independent directors and **statutory auditors** (both)*

(ii) The act is more focusing on stopping and tackling of the corporate fraud as to be committed by the Indian corporate.

(iii) Corporate fraud is including the **financial and non financial gain or loss** to a corporate and correspondingly financially and non financially **loss or gain** respectively to the victim of corporate fraud

(iv) Corporate fraud is treated a **criminal liability**. Hence person committing Corporate fraud is liable for imprisonment + fine (both)

(v) **Robbery Vs Fraud**

- There are **2** ways to get something from someone **illegally** like robbery and fraud

(a) **Robbery includes:**

(aa) Robbery is an act where an officer(s) or any other person or group of the persons are **physically forcing someone** by using a gun or any other weapon or a brute force and also to trick someone out of his belongings is called a **robbery**.

(ab) Robbery is often **more violent and traumatic** than a fraud and it's attracts more **public** attention. However the **total loss** from a fraud is much exceeding than a **loss from a robbery**

(b) **Fraud includes:**

(ba) Fraud is an intentional with a deception or a **willful misrepresentation** of the material facts and is to be described by way of cheating and stealing.

(bb) Fraud is **consisting of coercing** the other person to act against his **own best interest** / wish.

(bc) Fraud is an **intentional act to induce** another person to part with something of valuable or to surrender his legal right.

(bd) Fraud is a **deliberate misrepresentation** or concealment of the information's in order to deceive or mislead someone.

(be) Fraud can be within a range from **minor employee theft to large scale misappropriation** of assets and manipulation of financial statements etc.

(vi) *Main reasons for committing a corporate fraud*

- (a) Corporate fraud is generally being committed due to an **external factor** like economic, competitive, social, political and **poor control mechanism**.
- (b) Some persons are **more prone to commit fraud** rather than others.
- (c) Besides the external and internal environmental factors the **nature of people** is also more important for committing the corporate fraud.
- (d) Fraud is being committed by the **white-collar criminals**.
- (e) Corporate is an **artificial juridical person, invisible and intangible as created by law** with a discrete legal entity, perpetual succession and being operated with the common seal. Hence corporate is **more fraud prone entity**.
- (f) Corporate is an **association of various stakeholders** which are commonly known as shareholders, **public**, investors, customers, and employees (SPICE) vendors, **Govt.** and any other person.
- (g) **Major stakeholders** can be expressed in one word like is **SPICE** where :-
S for shareholders
P for **public**
I for investors
C for customers
E for employees
- And along with **Govt.** and any other person. Hence a company must be **fair and transparent** with the stakeholders.
- (h) Corporate fraud is a **globalised scenario** due to the followings reasons:
- (ha) For economical accessing the **global resources**
- (hb) For attracting and retaining the **best human capital** globally

(hc) For having **partnership with the vendors** for collaborations and also need to live in harmony with the society.

(hd) For having embraces and demonstrates the ethical conduct by the corporate.

(vii) **Concept of Corporate Fraud under the Act**

(a) Corporate sector is mainly regulated by the Act **through different provisions** in Act and correspondingly in rules for regulating the affairs of corporate.

(b) The Act is **first time** properly defining about the corporate fraud.

(c) **The definition of fraud is generally represent the following acts:**

(ca) **Misrepresentation** of the material facts

(cb) Misrepresentation must be made by a person(s) **knowingly and deliberately** with intent to deceive another person.

(cc) **Victim** of fraud must have **relied** on the misrepresentation

(cd) **Injury or damage** must be a result due to reliance by the victim on the misrepresentation

2. Imprisonment + Fine (both) for Corporate Fraud

(i) **Definition of the Corporate fraud**

- Now **detailed definition** of the corporate fraud and punishments for committing the corporate fraud are **properly incorporated** under section **447** of the Act.

(ii) **Imprisonment + fine (both) for committing corporate fraud**

- Now an officer(s) or any other person as guilty for committing corporate fraud is liable for an imprisonment + fine (both) under section **447**

(iii) **Quantification for Imprisonment + fine (both) for corporate fraud**

(a) Act is providing an **imprisonment** for a **minimum** period of **6** months and **maximum** period of **10** years where corporate fraud is **minimum** for Rs. **10** lac or **1%** of the turnover whichever is lower

- **And also** a fine **minimum @100%** and **maximum @300%** of the amount of corporate fraud where fraud is **not involving public**

(b) Act is providing an imprisonment for a **minimum** period of **3** years and **maximum** period of **10** years where corporate fraud is **minimum** for Rs. **10** lac or **1%** of the turnover whichever is lower

- **And also** a fine **minimum @100%** and **maximum @300%** of the amount of corporate fraud where fraud is **involving public**.

(c) Act is providing an imprisonment for a **maximum** period of **5** years where corporate fraud is **less than** for Rs. **10** lac or **1%** of the turnover whichever is lower **or** a fine for **maximum** of Rs.**20** Lac **or both** where fraud is **not involving public**.

(iv) **Non-compoundable offence for committing the corporate fraud**

- The punishment for the corporate fraud likes imprisonment + fine (both) are **non-compoundable offences**. Hence non compoundable of offences are a serious consequence for a person(s) committing corporate fraud.

3. **Specimen for the corporate frauds**

- The term corporate fraud is covered under section **447** and also includes under the different provisions at **17** places under the Act. **Some of specimen** is as followings:-

(i) **Incorporation of company** based on the **false and incorrect information's**, like name of first directors, first subscribers **and also** name of the professional who has certified the declaration.

(ii) **Inducing fraudulently** to any other person to invest any money in the company

- (iii) **Personating** in acquisition of securities, etc.
- (iv) **Acceptance of deposits** with intent to commit fraud with the depositor or any other person for the fraudulent purpose
- (v) **Statutory Auditors** as acting in a fraudulent manner through abetting or colluding in any corporate fraud if approved by the **Indian courts** in favor of victim
- (vi) **Business of a company** is being carried on for a **fraudulent and unlawful purpose** with intent to commit fraud with the stakeholders like, shareholders, **Public Investors, Creditors and Employees along with Govt.** and any other person.
- (vii) Filling of application **fraudulently** for removal of name of company or directors
- (viii) Furnishing of any **false statement**, mutilation, destruction of document during any inspection, inquiry or investigation.
- (ix) **Acting, omitting or concealing** of the facts or abusing the position for the purpose of committing a fraud
- (x) Filling of any **return** with the Govt. dept. and banks etc.
- (xi) Submitting a **report** to the Govt. dept. and banks etc,
- (xii) Issuing any **certificate** to the Govt. dept. and banks etc.
- (xiii) Submitting **financial statements** to stakeholder, **Govt.** dept. and banks etc.
- (xiv) Issuing of **prospectus** to stakeholders, the Govt. dept. like SEBI and ROC
- (xv) Submitting of any **other statement** to the Govt. dept and banks etc.

4. **Role of Serious Corporate fraud Investigation Office (SFIO)**

- (i) **Govt. of India** has established the SFIO to investigate the corporate fraud in more scientific and systematic manner.
- (ii) The experts from different areas along with experiences are to be included for forming a team of the SFIO as below:-
- (a) With **Banking** experience
 - (b) With **Corporate affairs** experience
 - (c) With **Direct and Indirect Taxation** experience
 - (d) With **Forensic audit** experience
 - (e) With **Capital market** experience
 - (f) With **Information technology (IT)** experience
 - (g) With **legal** experience
- (iii) During investigation by the SFIO **other investigating agencies** like Govt., police authority, Income tax authorities are **not permitted to proceed** with their **ongoing investigation** and also other investigation agencies are required to **transfer all the relevant documents and records** to the SFIO.
- (iv) The SFIO is required to submit its **report to the central govt.** against the investigation for committing a corporate fraud.

5. **Role of the Statutory Auditors**

- (i) The statutory auditors are required to **report to the central govt.** against a corporate fraud.
- (ii) The **partners and firm** of statutory auditors are **personally and jointly liable** for committing a corporate fraud through **abetting or colluding** in fraud **and also** the Indian **courts** has approved in favor of victim.

6. **Role of corporate**

- (i) The corporate is required to **recover back** the amount as **paid in excess of 11%** of the profits from the MD / WTD/ Manager/ CEO where the financial statements are **revised/re-stated** due to accounting fraud like as happened in **Satyam Computers Limited**
- (ii) The corporate is also required to **recover back** the assets, properties or cash from the Directors, KMP's or any other officer / person who have already **derived any undue advantage or benefit** through a corporate fraud.

7. Conclusion

- (i) Now corporate fraud is treated as **criminal liability**. Hence any person(s) as involved in corporate fraud is liable for imprisonment + fine (both)
- (ii) Introduction of section **447** for corporate fraud is providing very stringent provisions to show the seriousness of **govt. of India** in tackling the problem of corporate fraud.
- (iii) Provisions of section **447** will also be tested for unearthing the corporate fraud which is leading towards the scams by the Indian corporate.
- (iv) The word **SPICE** includes list of **main stakeholders** like shareholders, **public**, investors, customers and employees along with **Govt.** and any other person.
- (v) **Inflating or deflating** of purchases, expenses **and also** incomes along with **diversion of funds** to the related parties **directly or indirectly** and misappropriation of funds through any **other mode** are also known as corporate fraud. Hence liable for imprisonment + fine (both)
- (vi) **Debiting any personal expense** of the director(s) and promoter(s) in company's books of accounts are also known as corporate fraud. Hence liable for imprisonment + fine (both)
- (vii) **Reducing the tax liability** under the head direct tax and indirect tax are also known as corporate fraud through **inflating purchases and direct or**

indirect expenses and misappropriation of funds. Hence liable for imprisonment + fine (both)

- (viii) **Claiming of non allowable allowances and exemptions under direct tax and indirect tax with intention to reduce the tax liability** is also known as a corporate fraud as **directly or indirectly** affecting the welfare of the **public**. Hence liable for imprisonment + fine (both)
- (ix) **Manipulation through related party transactions** without matching with Arm Length Price (ALP) and taking personal benefit of the company's income and assets are known as corporate fraud. Hence liable for imprisonment + fine (both)
- (x) **Directly and indirectly involvement** of the promoter(s), director(s), CEO, CFO and Company Secretary, independent director(s) for any **personal benefits** are known as corporate fraud. Hence liable for imprisonment + fine (both)
- (xi) **Indian courts** are to approve that anyone out of above mentioned is **actually involved** in corporate fraud. Hence liable for imprisonment + fine (both)

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