

**CONSEQUENCES AND PENALTIES FOR NON-COMPLIANCE:**

Another glaring issue is the consequence of non-compliance. There are clear penal consequences if you fail to even set up the CSR committee, fail to create a policy etc. In the New Companies Act, 2013 penal provisions have been increased significantly. For regular non compliance like not filing return etc can lead to criminal prosecution.

**Section 450 of the 2013 Act – Punishment where no specific penalty or punishment is provided**

Many Sections in the 2013 Act, do not state specific penalty or punishment. Whereas, Section 450, which specifies penalty or punishment in such cases. This section corresponds with Section 629A of the 1956 Act.

According to Section 450, if a company or any officer of a company or any other person contravenes any of the provisions of 2013 Act or the rules made there under, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day (\*penalty doubled from 1956 Act) after the first during which the contravention continues.

However if a company fail to spend the specified money on CSR activities, they only have to report this along with reasons. Failure to so report has a clear penal consequence with fine etc. However, if it is reported, there is no penalty for actually not spending the money. The good part is that if the report does not provide good and bona fide reasons, the directors can be hauled up for failing in their duty to take reasonable care, skill and diligence under Section 166 of the Companies Act 2013. Failure for non-compliance or default attracts personal liability on directors/officials for loss suffered by the company, imposition of penalty or prosecution and disqualification from acting as director in any company for a period of five years.

This seems at first glance acceptable as the new law is meant more to push companies to do more for social good and hence not something to be treated as demanding a harsh non-compliance provision. However it seems that the law would have been better served if certain penal consequence for non-compliance with the provisions of the 2013 Act had been provided.