

Companies Act, 2013,

Section 342 - Prosecution of Delinquent Officers and Members of Company

(1) If it appears to the Tribunal in the course of a winding up by the Tribunal, that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company, the Tribunal may, either on the application of any person interested in the winding up or suo motu, direct the liquidator to prosecute the offender or to refer the matter to the Registrar.

(2) If it appears to the Company Liquidator in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty of any offence in relation to the company under this Act, he shall forthwith report the matter to the Registrar and shall furnish to him such information and give to him such access to and facilities for inspecting and taking copies of any books and papers, being information or books and papers in the possession or under the control of the Company Liquidator and relating to the matter in question, as the Registrar may require.

(3) Where any report is made under sub-section (2) to the Registrar,--

(a) if he thinks fit, he may apply to the Central Government for an order to make further inquiry into the affairs of the company by any person designated by him and for conferring on such person all the powers of investigation as are provided under this Act;

(b) if he considers that the case is one in which a prosecution ought to be instituted, he shall report the matter to the Central Government, and that Government may, after taking such legal advice as it thinks fit, direct the Registrar to institute prosecution:

Provided that no report shall be made by the Registrar under this clause without first giving the accused person a reasonable opportunity of making a statement in writing to the Registrar and of being heard thereon.

(4) If it appears to the Tribunal in the course of a voluntary winding up that any person, who is or has been an officer, or any member, of the company has been guilty as aforesaid, and that no report with respect to the matter has been made by the Company Liquidator to the Registrar under sub-section (2), the Tribunal may, on the application of any person interested in the winding up or suo motu, direct the Company Liquidator to make such a report, and on a report being made, the provisions of this section shall have effect as though the report had been made in pursuance of the provisions of sub-section (2).

(5) When any prosecution is instituted under this section, it shall be the duty of the liquidator and of every person, who is or has been an officer and agent of the company to give all assistance in connection with the prosecution which he is reasonably able to give.

Explanation. -- For the purposes of this sub-section, the expression "agent", in relation to a company, shall include any banker or legal adviser of the company and any person employed by the company as auditor.

(6) If a person fails or neglects to give assistance required by sub-section (5), he shall be liable to pay fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

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