

## **PENALTY AND ADJUDICATION**

### **43. PENALTY FOR DAMAGE TO COMPUTER, COMPUTER SYSTEM, ETC.**

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network –

accesses or secures access to such computer, computer system or computer network or computer resource];

downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

disrupts or causes disruption of any computer, computer system or computer network;

denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;

charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network;

[(i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;

(j) steal, conceal, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;]

2[he shall be liable to pay damages by way of compensation to the person so affected.]

**Explanation.**—For the purposes of this section,—

—computer contaminant<sup>1</sup> means any set of computer instructions that are designed—

to modify, destroy, record, transmit data or programme residing within a computer, computer system or computer network; or

by any means to usurp the normal operation of the computer, computer system, or computer network;

—computer data-base<sup>1</sup> means a representation of information, knowledge, facts, concepts or instructions in text, image, audio, video that are being prepared or have been prepared in a formalized manner or have been produced by a computer, computer system or computer network and are intended for use in a computer, computer system or computer network;

—computer virus<sup>1</sup> means any computer instruction, information, data or programme that destroys, damages, degrades or adversely affects the performance of a computer resource or attaches itself to another computer resource and operates when a programme, data or instruction is executed or some other event takes place in that computer resource;

—damage<sup>1</sup> means to destroy, alter, delete, add, modify or rearrange any computer resource by any means.

1[(v) —computer source code<sup>1</sup> means the listing of programme, computer commands, design and layout and programme analysis of computer resource in any form.]

#### **44. PENALTY FOR FAILURE TO FURNISH INFORMATION RETURN, ETC.**

If any person who is required under this Act or any rules or regulations made thereunder to-

furnish any document, return or report to the Controller or the Certifying Authority fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure.

file any return or furnish any information, books or other documents within the time specified therefor in the regulations fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues.

maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

## **45. RESIDUARY PENALTY**

Whoever contravenes any rules or regulations made under this Act, for the contravention of which no penalty has been separately provided, shall be liable to pay a compensation not exceeding twenty-five thousand rupees to the person affected by such contravention or a penalty not exceeding twenty-five thousand rupees.

## **46. POWER TO ADJUDICATE**

(1) For the purpose of adjudging under this Chapter whether any person has committed a contravention of any of the provisions of this Act or of any rule, regulation, 1[direction or order made thereunder which renders him liable to pay penalty or compensation,] the Central Government shall, subject to the provisions of sub-section (3), appoint any officer not below the rank of a Director to the Government of India or an equivalent officer of a State Government to be an adjudicating officer for holding an inquiry in the manner prescribed by the Central Government.

2[(1A) The adjudicating officer appointed under sub-section (1) shall exercise jurisdiction to adjudicate matters in which the claim for injury or damage does not exceed rupees five crore:

Provided that the jurisdiction in respect of the claim for injury or damage exceeding rupees five crores shall vest with the competent court.]

The adjudicating officer shall, after giving the person referred to in sub-section (1) a reasonable opportunity for making representation in the matter and if, on such inquiry, he is satisfied that the person has committed the contravention, he may impose such penalty or award such compensation as he thinks fit in accordance with the provisions of that section.

No person shall be appointed as an adjudicating officer unless he possesses such experience in the field of Information Technology and legal or judicial experience as may be prescribed by the Central Government.

Where more than one adjudicating officers are appointed, the Central Government shall specify by order the matters and places with respect to which such officers shall exercise their jurisdiction.

Every adjudicating officer shall have the powers of a civil court which are conferred on the—Appellate Tribunal under sub-section (2) of section 58, and—

all proceedings before it shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860);

shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974);

1[(c) shall be deemed to be a civil court for purposes of Order XXI of the Civil Procedure Code, 1908 (5 of 1908).]

## **47. FACTORS TO BE TAKEN INTO ACCOUNT BY THE ADJUDICATING OFFICER**

While adjudging the quantum of compensation under this Chapter, the adjudicating officer shall have due regard to the following factors, namely:—

- the amount of gain of unfair advantage, wherever quantifiable, made as a result of the default;
- the amount of loss caused to any person as a result of the default;
- the repetitive nature of the default.