

CRITICAL ANALYSIS OF ADJUDICATION ORDERS PASSED BY ROC

25 March 2023

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LAKSHMI SUBRAMANIAN
& ASSOCIATES

PRACTISING COMPANY SECRETARIES

Adjudication of Penalties – Section 454 & 454A



CG - may appoint any of its officers, not below the rank of Registrar, as Adjudicating Officers for **adjudicating penalty** under the provisions of the Act in accordance with the Companies (Adjudication of Penalties) Rules, 2014



Various **ROC's are appointed as adjudicating officer** for their respective jurisdiction [MCA has vide Notification No. S.O. 831(E) dated 24.03.2015]



Section 454(3) AO's can impose penalty **on non-compliance or default** under the provisions of Companies Act, 2013 on:

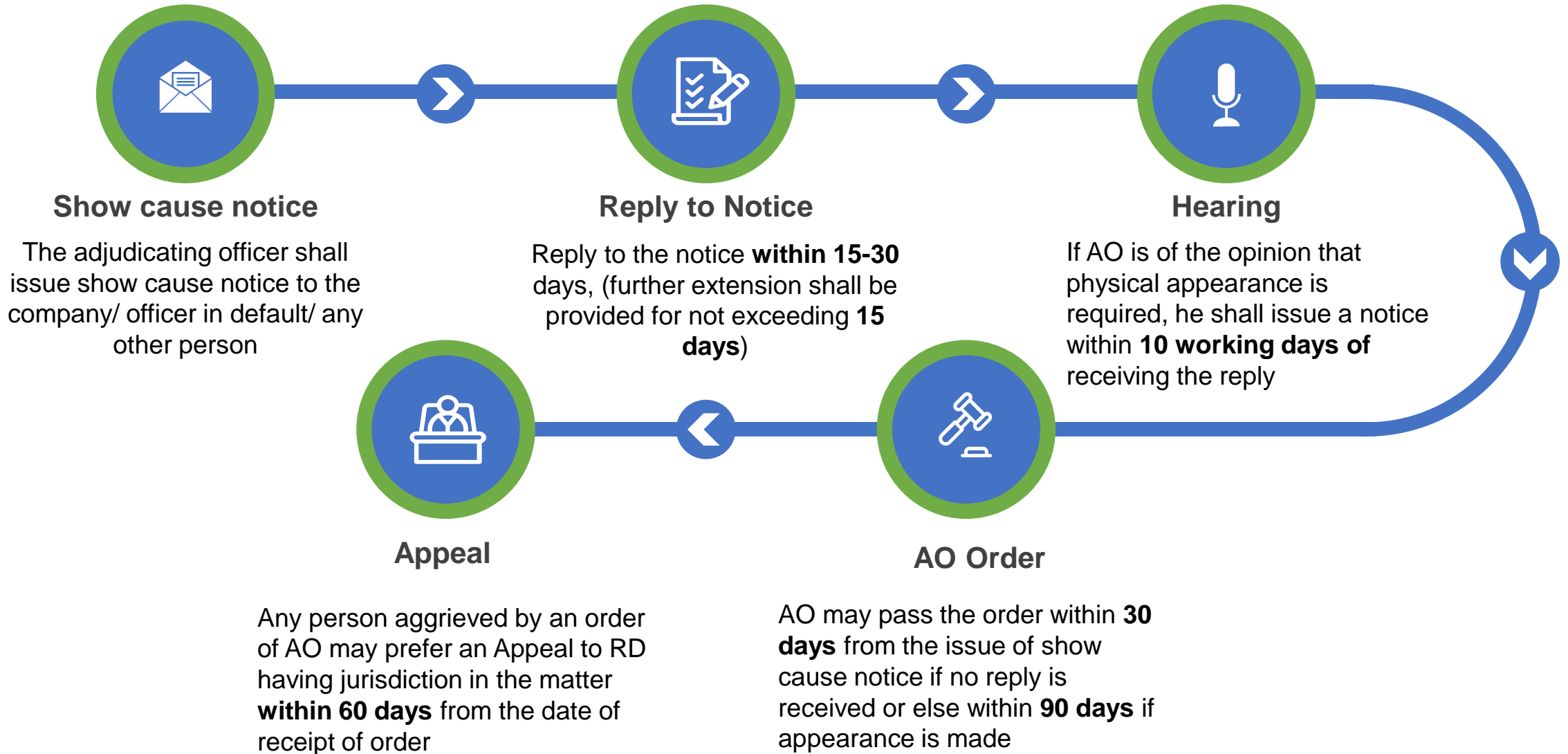
- The Company, or
- Officer who is in default, or
- Any **other person**, &
- Issue direction to rectify default

Note: In case the non-compliance relates to S. 92(4) – Non Filing of Annual return or S. 137(2) then the penalty shall be imposed after the compliance is done



Prior to imposing penalty the AO shall provide an opportunity of being heard to the Company/ officer in default/ any other person

Adjudication Process



Adjudication Process – Audi Alteram Partem



Notice Contents

Notice should specify the alleged violation, reference to the Act and Maximum Penalty. If notice does not contain these – it is not valid.



Adjourment

The AO has powers to adjourn the personal hearing by passing an order in writing



Personal Hearing

Fixing of hearing for personal appearance will be done if the AO thinks there is a need for it or if the noticee **requests for it**



Other Submissions

After hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice



Opportunity of being heard

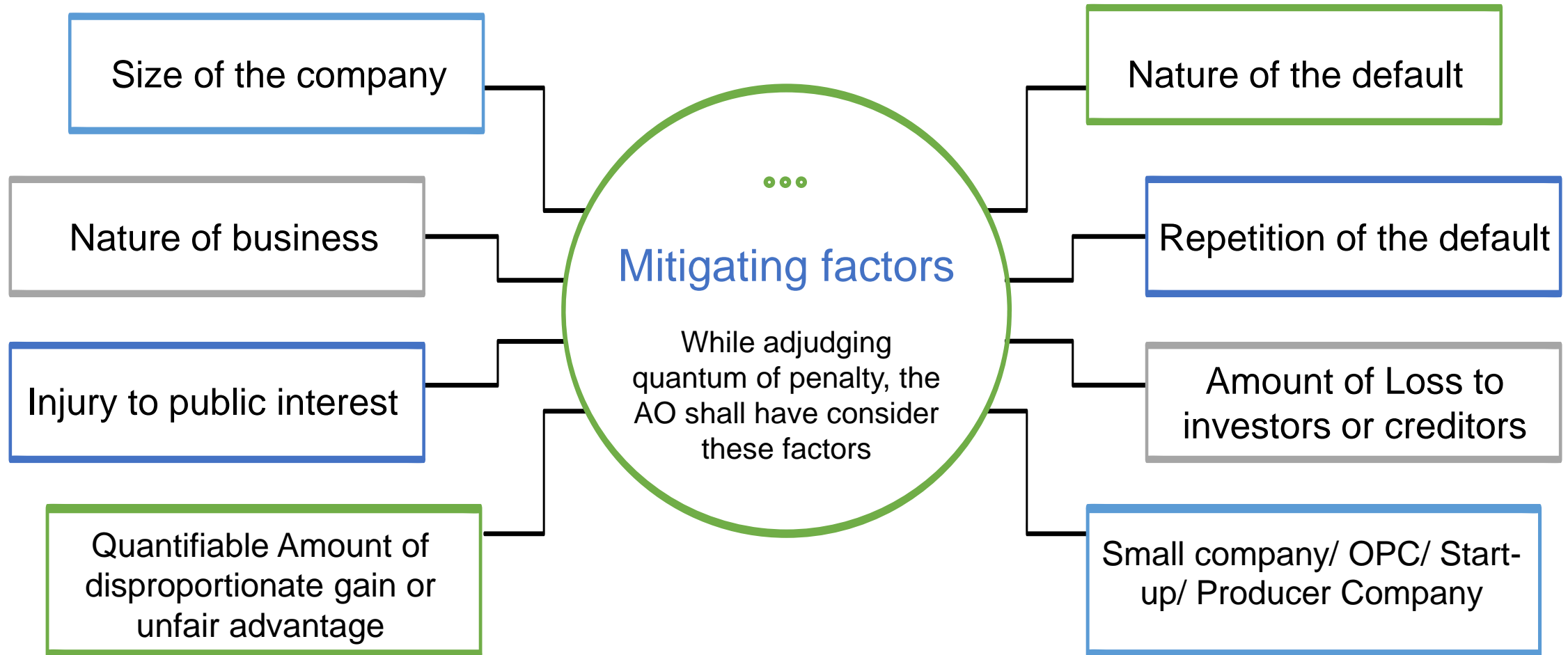
Can be through a hearing or through written submission – but a reasonable opportunity has to be provided



Reasons for passing an order

The rationale or reasons for passing an order by the AO has to be put in writing. If there is a delay in passing the order, the same should also be mentioned.

Adjudication – Mitigating Factors



In no case, the penalty imposed shall be less than the minimum penalty prescribed in the Section

Officer in Default

Section 2 (60) of the Companies Act,
2013 defines Officer-in-Default

- 1 Whole-time director
- 2 Key Managerial Personnel
- 3 Where no key managerial personnel - Directors who had consented or All directors
- 4 Other Persons charged with responsibility
- 5 Deeming Directors on whose directors Board is accustomed to act
- 6 Every Director who is aware of such contravention by virtue of the receipt of minutes or has participated or consented
- 7 In respect of the issue or transfer of any shares of a company RTA & Merchant Banker

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per the provision of Companies Act, 1956/ 2013	Arguments by the company	Response by the Adjudicating Officer	Final Penalty Imposed
1.	<p>HARIDRA LAXMI PROPERTY MANagements PRIVATE LIMITED</p> <p>The Company filed a Suo-motto application for adjudication. The Company had taken a loan from a Multistate Credit Co-operative Society amounting to Rs.10 Crores as on 17.01.2022, but the declaration of commencement of business in Form INC-2OA was filed only on 14.02.2022 thereby violating the provisions of Section 10A of the Companies Act, 2013</p>	<p>Violation: Delay in filing Form INC 20A (Declaration of commencement of business) – by 28 days</p> <p>Penalty: Section 10A(2) states that penalty shall be levied on</p> <ul style="list-style-type: none"> • Company – Rs 50,000 • Every Officer in default – Rs 1,000 per day during which such default continues but not exceeding an amount of Rs 1,00,000 	<ul style="list-style-type: none"> • Company stated that the default was caused inadvertently and unintentionally due to lack of knowledge. 	<p>After considering the factors for adjudicating the penalty, AO imposed the penalty as per Companies act, 2013.</p>	<p>Penalty imposed on</p> <ul style="list-style-type: none"> • Company – Rs 50,000 • Officers in default – Rs 27,000 each (Rs 1000 per day) • Here the penalty was imposed on both directors <p>Total penalty – Rs 1,04,000</p>

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per the provision of Companies Act, 1956/ 2013	Arguments by the company	Response by the Adjudicating Officer	Final Penalty Imposed
2.	<p>SAIYOGA NIDHI LIMITED</p> <p>Adjudication notices were issued on 06.01.2023 to the company and its three directors for non-filing of return of allotment in the Form PAS-3 under Section 39(4) for the allotment of shares which was made on 28.09.2020 during the FY 20-21.</p>	<p>Violation: Non filing of Form PAS-3 to Registrar within thirty days of allotment of securities.</p> <p>Penalty: Section 39(5) states that penalty shall be levied on the</p> <ul style="list-style-type: none"> Company and Officers in default Rs 1,000 for each day during which such default continues or Rs1,00,000, whichever is less. 	<p>The company has responded to the notice received but the said reply was not tenable under the provisions of act.</p>	<p>The A.O is of the opinion that as the response by the notices is not tenable as the reply was not received within the time and was not in electronic mode.</p> <p>AO was of the opinion that the Company continue in committing default by non filing the overdue return.</p> <p>Therefore A.O imposed penalty on company and its directors as per section 39(4) read with Rule 12(1) of the Companies Act, 2013.</p>	<p>Penalty imposed on</p> <ul style="list-style-type: none"> Company – Rs 8,32,000 Three Directors (Officer in default) Rs. 8,32,000 each <p>Penalty was capped at Rs 1 Lakh</p> <p>No of days default – 832 days</p> <p>Total penalty : Rs. 4,00,000 (Maximum limit)</p>

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per Companies Act, 1956/ 2013	Arguments by the company	Response by the Adjudicating Officer	Final Penalty Imposed
3.	<p>M/s HERB NUTRA LAB PRIVATE LIMITED:</p> <p>ROC examined the e-form PAS-3 filed by the company dated 16.01.2020 for issue of Rs. 9,00,000/- worth equity shares through private placement offer.</p> <p>ROC has inferred that the board meeting agenda speaks only about allotment of shares with no mentions of private placement to M/s Wellness Noni Limited.</p> <p>Minutes of the general meeting for allotment of 90,000 shares by private placement was not attached.</p> <p>The Director admitted that an EGM was not called for approving the issue.</p>	<p>Violation: Section 42 r/w Section 62 of the Companies Act, 2013.</p> <p>Penalty: As per Section 42 (10) if a company makes an offer or accepts monies in contravention of this section,</p> <p>The Company, its Promoters and directors shall be liable for a penalty which may extend to:</p> <p>a. Amount raised through the private placement; Or b. Rs 2 crores,</p> <p>Whichever is lower.</p>	<p>Based on the Adjudication notice issued to the company dated 29.03.2022, the director of the company replied that a fresh form will be filed with proper documentation.</p> <p>The Director then appeared and had confirmed that no EGM was conducted for allotment of the 90,000 shares through private placement to M/s Wellness Noni Limited and the consent of Shri A Shahul Hameed was also not obtained.</p> <p>The company and its directors had requested stating that they are willing to avail professional help, and has therefore sought an adjournment of 2 weeks, which was granted by the officer. The practicing company secretary appointed by the company as an authorized representative then made representations and made submissions that the said violation may be adjudicated.</p>	<p>Based on directions from the Regional Director, penal actions against the company and its officers in default were initiated.</p> <p>The AO then adjudicated the matter and imposed the final penalty.</p>	<p>Penalty imposed on:</p> <ol style="list-style-type: none"> Company – Rs. 9,00,000/- Each director (Officers in default) – Rs. 9,00,000/- each. <p>Totaling to Rs. 36,00,000/-</p> <p>This order was later appealed before the RD.</p> <p>The company cancelled the allotment to Wellness Noni Limited and refunded the money,</p> <p>Penalty reduced to Rs 50,000 for company and each director</p>

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per the provision of Companies Act, 1956/ 2013	Arguments by the company	Response by the Adjudicating Officer	Final Penalty Imposed
4.	<p>M/s HERBOATMAN HEALTHCARE PRIVATE LIMITED.</p> <p>The Company has filed e-form SH-7 for increase in authorized share capital from Rs. 2,00,000/- to Rs. 1,00,00,000/- by way of meeting of the members held on 29.09.2022 under the provisions of Section 64 of the Companies Act, 2013.</p> <p>The Form SH-7 ought to have been filed with the ROC within 30 days as per the provisions of the Act.</p> <p>However the said form was filed with a delay of 15 days.</p>	<p>Violation: Delay in filing of SH-7 with the limit prescribed under the Act.</p> <p>Penalty: As per the provisions of Section 64 (2), where any company fails to comply with the provisions:</p> <p>Such company and every officer shall be liable to penalty of Rs 500 for each day of continuing failure, subject to a maximum of</p> <ul style="list-style-type: none"> Rs 5 lakh in case of company. Rs 1 lakh in case of an officer in default. 	<p>Pursuant to the issue of notice by the AO, the officer of the company stated that inadvertently the e-form SH-7 could not be filed in time frame as prescribed in under the provisions of section 64 of the Companies Act,2013.</p> <p>He further stated that the company falls under the definition of small company, therefore, penalty may be levied in view of the provisions of Section 2 (85) of the Companies Act,2013.</p>	<p>The Adjudicating officer keeping in view that the company is a small company as per the relevant provisions and the various factors while adjudging the quantum of the penalty, imposed the final penalty on the Company as per Section 446 B of the Companies Act, 2013.</p>	<p>Penalty imposed on</p> <p>Company – Rs. 3750/- (50% of Rs 500 * 15 days)</p> <p>Directors – Rs. 3750/- each.</p>

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per the provision of Companies Act, 2013	Arguments by the company	Response by the Adjudicating Officer	Final Penalty Imposed
5.	<p>M/s CONTLO TECHNOLOGIES PRIVATE LIMITED.</p> <p>The Company filed a Suo-motto application where:</p> <p>The share capital of the Company is held by three shareholders, of which majority of the shares is held by a body corporate.</p> <p>The company had identified that significant beneficial ownership is applicable to the company.</p> <p>The company had received the declarations in Form BEN-1 on 20.01.2022 and was required to report the same to the ROC in Form BEN -2 within 30 days of obtaining the declarations.</p> <p>However the company had filed the Form BEN-2 with a delay of 163 days violating the provisions of the Companies Act,2013.</p>	<p>Violation:</p> <p>Delay in filing the Form BEN -2 within the prescribed limit.</p> <p>Penalty:</p> <p>As per Section 90 (11), if a company contravenes any provisions of Section 90</p> <p>Company shall be liable to penalty of Rs. 1,00,000/- and for continuing failure Rs. 500/- for each day subject to a maximum of Rs 5 lakh rupees.</p> <p>Every officer of the company liable to a penalty of Rs. 25,000/- and For continuing failure Rs. 200/- for each day subject to maximum of Rs. 1,00,000/- .</p>	<p>The Company has suo-moto filed adjudication application on 22.08.2022 for violation of Section 90 (4) of the Companies Act, 2013 admitting the delay in filing.</p>	<p>Based on the oral and written submission made by the authorized representatives of the company it was seen that:</p> <ul style="list-style-type: none"> The company is not a small company as the shareholding of the company mentioned in Form Ben-2 clearly states that 99.98% of the shares are held by Contlo INC, USA. The Company has made the necessary compliance though belatedly by filing e-form BEN -2 with a delay of 163 days. <p>Accordingly the final penalty was imposed.</p>	<p>Penalty imposed on</p> <ol style="list-style-type: none"> Company- Rs. 1,81,500/- Officers in default – Rs. 57,600/ each.

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per Cos Act, 2013	Arguments by the company	Response by the AO	Final Penalty Imposed
6.	<p>M/s SONASUMAN CONSTECH ENGINEERS PRIVATE LIMITED</p> <p>The Company has defaulted in disclosing few information's in its financial statements as required under the provisions of Companies Act, 2013 due to which the financial statements does not provides a true and fair view.</p> <ol style="list-style-type: none"> 1. Shareholding > 5%, 2. Class of share capital, the number of shares issued, subscribed and fully paid, and subscribed but not fully paid, par value per share, reconciliation of the number of shares outstanding at the beginning and at the end of the reporting period 3. The long-term/ short –term advances were not classified into secured/ unsecured 4. The name of the related party and the nature of the related party relationship where the control exists. <p>The auditors have not provided the comments for the same in their auditors report.</p>	<p>Violation: Non reporting of violation/non compliance made by the company in the audit report.</p> <p>Penalty: Section 450 provides for penalty where no specific section in the Act covers the default/ non-compliance as under:</p> <ul style="list-style-type: none"> • Company- Rs 10,000 <p>Continuing failure – Rs 1,000 per day, subject to maximum- Rs 2,00,000</p> <ul style="list-style-type: none"> • Officers in default- 10,000 <p>Continuing failure- Rs 1000 per day</p> <p>Subject to maximum- Rs 50,000</p>	<p>No arguments were made as the Company or the Auditors as they have not responded to any of the notices issued by the AO.</p>	<p>AO issued show cause notices for default under Section 143 of the Companies Act,2013.</p> <p>AO imposed the penalty keeping in view the relaxation provided under 446B for small companies</p> <ol style="list-style-type: none"> 1. Paid up Capital less than Rs 4 crores 2. Turnover less than Rs 40 crores 	<p>Penalty imposed under section 450</p> <ul style="list-style-type: none"> • Auditors– Rs 10,000/- (*No of years) <p>For the financial years 2017-18, 2018-19 and 2019-20.</p>

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per the provision of Companies Act, 2013	Arguments by the company	Response by the Adjudicating Officer	Final Penalty Imposed
7.	<p>M/s RELIANCE BROADCAST NETWORK LIMITED.</p> <p>The company could not maintain the minimum number of directors, as required to be maintained by the public limited company during the period 19.10.2018 – 14.12.2018.</p>	<p>Violation: non- maintenance of minimum number of Directors on the Board as per Section 149(1).</p> <p>Penalty:</p> <p>As per Section 179 company and every officer of the company who is in default shall be liable to penalty of Rs. 50,000/-, and</p> <p>In case of continuing failure, Rs. 500/- for each day subject to maximum of</p> <ul style="list-style-type: none"> Rs 3 Lakhs in case of a company Rs 1 Lakh in case of an officer in default. 	<p>The Company had suo-moto applied for the adjudication proceedings for violation of the provisions of Section 149(1) of Companies Act, 2013.</p> <p>The submissions made by the authorized representatives stated that the company could not maintain the minimum number of three directors in the case of public company.</p>	<p>The company had not complied with the provisions for a period of 56 days.</p> <p>The AO imposed the final penalty by taking into account all the factors to be considered while adjudging the penalty.</p>	<p>Penalty imposed on :</p> <ol style="list-style-type: none"> Company – Rs. 78,000/- Officers in default CFO/ CEO– Rs. 78,000/ each. <p>Total : 2,34,000/-.</p>

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per Cos Act, 2013	Arguments by the company	Response by the Adjudicating Officer	Final Penalty Imposed
8.	<p>IMC INDIA SECURITIES PRIVATE LIMITED</p> <p>The Company should have issued the share certificates within the period of 60 (sixty) days from the date of its incorporation i.e. November 03, 2020 to subscribers to the memorandum i.e. 01.02,2021.</p> <p>The bank account of the company was opened on February 16,2021 and the company executed share certificate to subscribers to the memorandum on March 24, 2021 and April 20,2021. Thus, there was delay of 109 days from 01.02.2021 until 20.04.2021.</p> <p>Thereafter the company and its officer in default have suo-moto moved on application for adjudication of default for violation the provision counted in section 56 of Companies Act, 2013</p>	<p>Violation:</p> <p>Failed to deliver the certificate of securities within a period of two month from the date of incorporation i.e by 02.01.2021.</p> <p>Penalty:</p> <p>Section 56 (6) provides that</p> <ul style="list-style-type: none"> • Company – Rs 50,000 • Every officer – Rs 50,000 	<p>The company in its written statement argued that the company faced difficulties during Covid -19 pandemic in</p> <p>(i) opening of bank account of the initial foreign subscribers in their home country</p> <p>(ii) Submission of supporting documents of foreign subscribers to bankers in India</p> <p>(iii) Additional time taken by the Indian Bank to review</p> <p>(iv) Delayed timeline for making payment for stamp duty.</p> <p>The Company sought exemption from penalty for one of its WTD stating that he was appointed only in March 23, 2021.</p>	<p>The officer mentioned about the General Circular no 01/2020 dated 02.03.2020 issued by the MCA.</p> <p>In the present case, the Non – Executive director was a subscriber to the memorandum and admittedly attended Board meeting. Thus, the omission was to his knowledge.</p>	<p>Penalty imposed on</p> <ul style="list-style-type: none"> • Company – Rs 50,000 • Every officer – Rs 50,000 <p>Total penalty – Rs 1,50,000</p>

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per the provision of Companies Act, 2013	Arguments by the company	Response by the Adjudicating Officer	Final Penalty Imposed
9.	<p>GANDHARV GEMS PRIVATE LIMITED</p> <p>During the course of inquiry, the company turnover exceeded 200 crores during the FY 2017-18 but failed to appoint Internal Auditor for the year 2018-19 and 2019-20.</p> <p>As per the law an Private Company with turnover of Rs 200 crores and Outstanding loans of Rs 100 crores is required to appoint Internal Auditors</p>	<p>Violation:</p> <p>Non appointment of internal auditor for the Financial year 2018-19 and 2019-2020</p> <p>Penalty: Under section 450</p> <ul style="list-style-type: none"> Company- 10,000 <p>Continuing failure- 1,000 per day, subject to maximum- 2,00,000</p> <ul style="list-style-type: none"> Officers in default- 10,000 <p>Continuing failure- 1000 per day Subject to maximum- 50,000</p>	<p>The company, KMP and officers in spite of notice received on 05.09.2022 and written notice received 17.10.2022 did not respond to the notices nor appeared on the hearing date.</p>	<p>A.O decided to pass ex-parte order as per provisions of Section 454 of the Companies Act, 2013 read with sub-rule 11 of Rule 3 of the Companies (Adjudication of Penalties) Rules, 2014.</p> <p>Presenting officer further observed that from the last balance sheet as at 31.02.2020, the company does not fall under the ambit of “small company”.</p>	<p>Penalty imposed for the FY 2018-19</p> <ul style="list-style-type: none"> Company – Rs.10,000 Officers in default – 10,000 each <p>Penalty imposed for the FY 2019-20</p> <ul style="list-style-type: none"> Company – Rs.10,000 Officers in default – 10,000 each <p>Total penalty – 1,10,000</p>

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per the provision of Companies Act, 2013	Arguments by the company	Response by the Adjudicating Officer	Final Penalty Imposed
10.	<p>SAIYOGA NIDHI LIMITED</p> <p>Adjudication notices were issued to the company and its managing director for non-filing of MGT 14 for Board Resolution passed for the approval of Financial statements and Boards report for the Financial Year ending 31.03.2020 and 31.03.2021.</p>	<p>Violation: Non filing of Form MGT-14 for resolutions passed at meeting of the board under section 179(3)(g)</p> <p>Penalty: Section 117 (2) provides for the penalty on: <ul style="list-style-type: none"> Company- 10,000 Continuing failure- 100 per day, subject to maximum-2,00,000 <ul style="list-style-type: none"> Officers in default- 10,000 Continuing failure- 100 per day Subject to maximum- 50,000</p>	<p>The company has responded to the notice received but the said reply was not tenable under the provisions of act.</p>	<p>The A.O is of the opinion that as the noticee's have not responded to the notices sent by A.O and continue in committing default by non filing the overdue return.</p>	<p>Penalty imposed for the FY ending 31.03.2020</p> <ul style="list-style-type: none"> Company – Rs 87,700 Officers in default – Rs. 1,50,000 <p>No of days default: 777 days</p> <p>Penalty imposed for the FY ending 31.03.2021</p> <ul style="list-style-type: none"> Company – Rs 54,200 Officers in default – Rs. 1,50,000 <p>No of days default: 442 days</p>

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per the provision of Companies Act, 1956/ 2013	Arguments by the company	Response by the Adjudicating Officer	Final Penalty Imposed
11.	<p>SDU HOLDINGS PRIVATE LIMITED</p> <p>During the course of inquiry u/s206 the statutory register in MGT-1 was perused by the inspector and it was noticed that the register was incomplete and many columns remain unfilled such as nationality, email ID, occupation details & CIN of body corporates were left unfilled.</p>	<p>Violation: non maintenance of register of members as per Section 88</p> <p>Penalty: section 88(5) provides the penalty for such violation to be imposed on:</p> <ul style="list-style-type: none"> • The company- Rs. 3,00,000 • Every officer in default- Rs.50,000/- 	<ul style="list-style-type: none"> • The company accepted the default • Informed that the offence has been made good by updating the register of members and • Requested for a minimum penalty. 	<p>AO was satisfied that the company has made a default and also noticed that as the company is a holding company, it cannot fall under the definition of small company and thus lesser penalty cannot be levied.</p>	<p>It was imposed on</p> <ul style="list-style-type: none"> • Company – Rs.3,00,000/- • Officer in default- Rs.50,000/- <p>Total penalty – Rs.3,50,000/-</p>

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per the provision of Companies Act, 1956/ 2013	Arguments by the company	Response by the Adjudicating Officer	Final Penalty Imposed
12.	<p>M/S BOCK COMPRESSORS INDIA PRIVATE LIMITED:</p> <p>The company has filed suo-moto application stating the default made for the disclosures to be made on the conservation of energy, technology absorption, foreign exchange earnings and outgo in the Board's Report as prescribed in the rules.</p>	<p>Violation: non-disclosure of conservation of energy, technology absorption, foreign exchange earnings and outgo in the Board's Report as per 134(3)(m)</p> <p>Penalty: section 134(8) provides penalty for the violation to be imposed on:</p> <ul style="list-style-type: none"> • Company- Rs.3,00,000 • Every officer in default- Rs.50,000 	<ul style="list-style-type: none"> • The company submitted that the default was made due to wrong interpretations while approving the Board's Report. • Board's Report states that due to non-coverage of activities, disclosure is not required. • Company requested for minimum penalty to be levied. 	<p>The AO after giving reasonable opportunity of being heard imposed the final penalty.</p>	<p>It was imposed on</p> <ul style="list-style-type: none"> • Company- Rs.3,00,000 • Officer in default- Rs.50,000 each <p>Total penalty- Rs.4,00,000/-</p>

Adjudication Orders – Issued by ROC

S.No	Brief Facts	Violation and penalty as per the provision of Companies Act, 1956/ 2013	Arguments by the company	Response by the Adjudicating Officer	Final Penalty Imposed
13.	<p>M/S RAMA SYNSILK MILLS PVT LTD</p> <p>It is observed from the MGT-7 for the year ended 31.03.2019 that "the company has not furnished proof of dispatch of AGM notice to members."</p>	<p>Violation: Non dispatch of financial results to members as per Section 136.</p> <p>Penalty: Section 136(3) provides penalty for the violation to be imposed on:</p> <ul style="list-style-type: none"> Company- Rs.25,000 Officer in default- Rs.5,000 	<p>The company argued that:</p> <ul style="list-style-type: none"> They held AGM and sent notices through hand delivery and the proof of which was not kept due to administrative issue for the year 2019. Section 136 provides penalty for non-dispatch of the notice of AGM to the members and does not mandate keeping of the proof of service of notice. They have submitted the confirmation from each and every shareholder with which the violation ends. 	<ul style="list-style-type: none"> The AO responded that the company has suo-moto admitted the default at column No. XI of e-Form MGT-7. AO rejected the request from the company for no penalty to be levied as the company being a holding company, is not a small company and has committed the default. 	<p>It was imposed on</p> <ul style="list-style-type: none"> Company- Rs.25,000 Officers in default- Rs.5,000 each. <p>Total penalty: Rs.35,000</p>

136. Right of member to copies of audited financial statement.

(1) A copy of the financial statements, including consolidated financial statements, if any, auditor's report and every other document required by law to be annexed or attached to the financial statements, which are to be laid before a [company](#) in its general meeting, shall be sent to every member of the company, to every trustee for the debenture-holder of any debentures issued by the company, and to all persons other than such member or trustee, being the person so entitled, not less than ¹[twenty-one days] before the date of the meeting:

Provided that if the copies of the documents are sent less than twenty-one days before the date of the meeting, they shall, notwithstanding that fact, be deemed to have been duly sent if it is so agreed by members-

(a) holding, if the [company](#) has a share capital, majority in number entitled to vote and who represent not less than ninety-five per cent. Of such part of the [paid-up share capital](#) of the [company](#) as gives a right to vote at the meeting; or

(b) having, if the [company](#) has no share capital, not less than ninety five percent. of the [total voting power](#) exercisable at the meeting:

101. Notice of Meeting

(1) A general meeting of a [company](#) may be called by giving not less than clear [twenty-one days](#) notice either in writing or through electronic mode in such manner [as may be prescribed](#):

Number of other directors whose remuneration details to be entered

0

S. No.	Name	Designation	Gross Salary	Commission	Stock Option/ Sweat equity	Others	Total Amount
1							0
	Total						

XI. MATTERS RELATED TO CERTIFICATION OF COMPLIANCES AND DISCLOSURES

* A. Whether the company has made compliances and disclosures in respect of applicable provisions of the Companies Act, 2013 during the year Yes No

B. If No, give reasons/observations

Adjudication Orders – Issued by ROC

S.No	FACTS OF THE CASE	Violation and penalty as per the provision of Companies Act, 1956/2013	Arguments by the company	Response made by the Adjudicating Officer	Final penalty imposed
14.	<p>BURGER KING INDIA LIMITED</p> <ul style="list-style-type: none"> The company made application for voluntary adjudication w.r.t a private placement made by the Company after taking approval of its members and the offer was opened for subscription from 28.10.2018 to 2.11.2018 However the subscription amount towards the issue was credited to the existing bank account of the company instead of a separate bank account 	<p>Violation- not opened separate bank account for receiving the subscription amount for the private offer made.</p> <p>Penalty- section 42(10) states that if company contravenes the provision for private placement, company and all the officers in default shall be liable to penalty of:</p> <ul style="list-style-type: none"> Amount raised through private Placement or Rs.2,00,00,000, whichever is lower, and The company shall refund the money with interest to the subscribers within 30 days of the order imposing penalty. 	<ul style="list-style-type: none"> The Company offered to refund the application amount to the investor but they gave written consent that they wish to be issued securities as offered and granted a waiver for refund Company also prayed for a waiver of section 42(10) from the Authority for non refund of the amount 	<p>AO responded to the application as, taking into account the fact that</p> <ul style="list-style-type: none"> the amount was not kept in separate bank account for a period of 6 days; and waiver granted to the company regarding refund of money 	<p>It was imposed on</p> <ul style="list-style-type: none"> Company – Rs.2,00,000 Officer in default- Rs.1,00,000 each <p>Total penalty- Rs.5,00,000/-</p>

Adjudication Orders – Issued by ROC

S.N O	FACTS OF THE CASE	Violation and penalty as per the provision of Companies Act, 1956/2013	Arguments by the company	Response by the Adjudicating Officer	Final penalty imposed
15.	<p>M/S BOCK COMPRESSORS INDIA PRIVATE LIMITED:</p> <ul style="list-style-type: none"> The company has approved availing a credit facility in a Board Meeting u/s 179, but failed to file the resolution with the Registrar in MGT-14. The company has made suo-moto application in GNL-1 for the adjudication. 	<p>Violation: non-filing of MGT-14 u/s Section 117(3)(g).</p> <p>Penalty* : section 117(2)-pre-amendment provides the penalty for the violation to be imposed on:</p> <ul style="list-style-type: none"> Company- Rs.1,00,000, in case of continuing default, further penalty of Rs.500 per day maximum- Rs.25,00,000 Officer in default- Rs.50,000, in case of continuing default, further Rs.500 per day subject to maximum- Rs.5,00,000. 	<ul style="list-style-type: none"> MCA notified that provisions of section 117(3)(g) shall not be applicable to private limited company w.e.f. 05.06.2015 The company in its application stated that it has inadvertently defaulted to file MGT-14 in respect of Board Resolution as required u/s 117(3)(g) for the period from 10.08.2014-05.06.2015. 	<p>AO has the reasonable cause to believe that the company has not complied the provisions of section 117(3)(g) and have rendered themselves liable to penal action.</p>	<p>It was imposed on</p> <ul style="list-style-type: none"> Company- Rs.2,49,500 Officers in default- Rs.1,99,500 each <p>No of days for default- 299 days</p> <p>Total penalty- Rs.6,48,500</p>

THANK YOU

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