

**MONTHLY UPDATES ON ADJUDICATION ORDERS**

**Edition No.05 May 01, 2023 to May 20, 2023**

**ADJUDICATION ORDERS OF THE ROC DURING THE MONTH OF MAY 2023**

**PRAGYA SPOTLIGHT**

1. Patna ROC has imposed the highest number of orders during the Month of May – i.e., 25 orders, followed by Gujarat with 16 orders.
2. The highest number of orders have been imposed under Section 12 of the Companies Act, 2013, for non-maintenance of Registered office which was substantiated through in person visits/ return of Show Cause Notice from the Registered Address.
3. Payment of additional fees for delayed filing does not absolve the Company from the penal proceedings by the Regulators.
4. One instance was noticed wherein Statutory Auditors (Deloitte for 3 years and SRBC & Co LLP for 1 year and CJ Goswami & Associates for 1 year) of the Company have been penalized for not having reported accurately on “Related Party”. In the same case, Secretarial Auditor of the Company was also penalized under section 143(14) of the Companies Act, 2013
5. No penalty imposed on the Company and its Directors for Non filing of Annual Return and Financial Statements under Section 454(3) - “Adjudication of penalties” which states that if the default under sub-section (4) of section 92 or sub-section (2) of section 137 has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.
6. The E – Form MGT 14 certified by Practicing Company Secretary was declared Void – ab – initio since he was also an Independent Director in the Company at the time of certification.
7. Company and its Directors penalized for violation section 118(10) wherein the member who was a related party to the contract or arrangement has voted in such resolution passed for approving such contract or arrangement.
8. The signatory and the Chartered Accountant have been penalized for certifying the Form AOC-4 with wrong attachments in violation of Rule 8(3) of Companies (Registration Of Office and Fees) Rule 2014.

9. ROC Delhi, in its order for violation of section 135, has excluded KMPs who do not hold Board positions in the Company, from penalty while some ROCs have penalized the KMP and Directors together for same non-compliance.
10. ROC-Hyderabad has penalized the transferee company for, violation of section 203 by the dissolved transferor Company.
11. Non compliances adjudicated have been under the following heads:
  - Non filing of Financial Statements and Annual Return
  - a) Failure to maintain Registered office as communication from Authorities returned undelivered
  - b) Non – maintenance of registered office which was validated through in -person visit by Authorities
  - Non-compliance with respect to provisions pertaining to Private Placement of shares including issue of offer letter before filing of Form MGT -14, utilization of funds before filing of Form PAS 3 (allotment of Shares)
  - Delay in filing of e-forms
  - a) Failure to maintain minutes of the Board Meeting in prescribed form
  - b) Failure to observe secretarial standards
  - Failure to transfer unspent CSR amount within six months from the end of the financial year.
  - Delay in filing of annual Financial Statements
  - Failure to report Related Party in the Auditors Report
  - a) Appointment of Director without a valid DIN
  - b) Non – disclosure of Directorship holdings in Form DIR -2
  - Non-disclosure of Shareholding pattern of the Director in interest in other entities
  - Failure to get approval of the Central Government for remuneration to KMPs
  - Delay in appointment of KMP
  - Failure to report non-compliance in Secretarial Audit Report resulting in a penalty of Rs 2,00,000 on the Secretarial Auditor
  - Non filing of proceedings of Annual General Meeting of Producer Company

## ADJUDICATION ORDERS OF THE RD DURING THE MONTH OF MAY 2023

1. South-East Regional Director has passed the highest number of orders during the Month of May – i.e., 16 orders.
2. All the orders have been passed under Section 203 of the Companies Act, 2013 i.e. for the non-appointment of Company Secretary
3. 16 appeals have been disposed off by the South -East Regional Director, out of which 13 of them have been modified and 3 of them have been set aside.
4. In respect of the orders set aside, the RD has advised ROC “to re-examine issues in its totality.”
5. In respect of modification of the orders there has been a reduction by the RD in respect of penalty imposed by the ROC due to reasons like, Covid -19 pandemic, Company incurring huge losses, registered office being located in remote places.
6. In 4 of the 16 orders, the penalty levied on the Managing Director was not reduced, even though the penalty levied on other Directors were reduced.
7. In 2 of the 16 orders the penalty levied on the Directors has been set aside and only the Managing Director or CFO, wherever appointed, have been penalized.

Non filing of Financials and Annual Return				
SL. NO	ROC JURISDICTION AND NUMBER OF ORDERS PASSED	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS
1	PUNJAB - 1	Company: Rs 4,77,900  Officer in Default: Rs 7,84,500	Orders passed against the Companies which defaulted in filing of the following:  <ul style="list-style-type: none"> <li>• Annual Return – MGT 7</li> <li>• Annual Financial Statements – AOC 4</li> </ul>	The penalty amount is determined by the number of years of default i.e. 5 years
2	PATNA - 9	Company: Max: Rs 7,55,000 Min: Rs 44,950  Officer in Default: Max: Rs 3,26,700 Min: Rs 44,950	Orders passed against the Companies which defaulted in filing of the following:  <ul style="list-style-type: none"> <li>• Annual Return – MGT 7</li> <li>• Annual Financial Statements – AOC 4</li> </ul>	The penalty amount is determined by the number of years of default i.e. 7 years
3	HYDERABAD -1	No penalty was levied pursuant to section 454 (3) of the Companies Act, 2013	Orders passed against the Companies which defaulted in filing of the following:  <ul style="list-style-type: none"> <li>• Annual Return – MGT 7</li> </ul>	Since the Company had made good the offence before issuance of Notice by ROC, in accordance with proviso to section 454(3) no penalty was imposed by Adjudicating Officer.

			<ul style="list-style-type: none"> <li>• Annual Financial Statements – AOC 4</li> </ul>	
<b>4</b>	<b>GUJARAT - 1</b>	<p>Company: Rs 81,600</p> <p>Officer in Default: Rs 50,000</p>	<p>Orders passed against the Companies which defaulted in filing of the following:</p> <ul style="list-style-type: none"> <li>• Annual Return – MGT 7</li> <li>• Annual Financial Statements – AOC 4</li> </ul>	The penalty amount is determined by the number of years of default i.e. 2 years
<b>5</b>	<b>GOA -1</b>	<p>Company: Rs 1,68,800</p> <p>Officer in Default: Rs 1,00,000</p>	<p>Orders passed against the Companies which defaulted in filing of the following:</p> <ul style="list-style-type: none"> <li>• Annual Return – MGT 7</li> <li>• Annual Financial Statements – AOC 4</li> </ul>	The penalty amount is determined by the number of years of default i.e. 2 years

		a) Failure to maintain Registered office as communication from Authorities got undelivered		
		b) Non – maintenance of registered office as required upon physical verification by Authorities		
SL. NO	ROC JURISDICTION AND NO. OF ORDERS PASSED	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	<b>CUTTAK -1</b>	Company: Rs 1,00,000 Officer in Default: Rs 1,00,000	<ul style="list-style-type: none"> <li>Failure to respond to the show-cause Notice issued by the ROC</li> </ul>	
2	<b>GOA -1</b>	Company: Rs 1,00,000 Officer in Default: Rs 1,00,000	<ul style="list-style-type: none"> <li>Based on physical verification initiated according to section 206(4) of the Companies Act, 2013; it was found that no registered office was maintained at the address provided at the time of incorporation</li> </ul>	
3	<b>GUJARAT - 3</b>	Company: Rs 1,00,000 Officer in Default: Rs 1,00,000	<ul style="list-style-type: none"> <li>In one of the instances, based on physical verification initiated according to section 206(4) of the Companies Act, 2013; letter issued to the Company has returned undelivered with postal remarks “LEFT RTS”</li> <li>Failure to disclose registered office Address on the name board of the Company</li> </ul>	
4	<b>MAHARASHTRA - 1</b>	Company: Rs 26,000	<ul style="list-style-type: none"> <li>Non-disclosure of Registered office at the premises of the Company</li> </ul>	

		Officer in Default: Rs 26,000		
5	<b>PATNA - 8</b>	Company: Rs 1,00,000 Officer in Default: Rs 1,00,000	<ul style="list-style-type: none"> <li>The Show Cause Notice issued to different companies were returned with postal remarks either with "Address not found"/ "insufficient Address", etc.</li> </ul>	
6	<b>PUDUCHERRY -1</b>	Company: Rs 50,000 Officer in Default: Rs 50,000	<ul style="list-style-type: none"> <li>The Show Cause Notice issued to returned with postal remarks "No such Address"</li> </ul>	

Non compliance with respect to provisions pertaining to Private Placement of shares				
SL. NO	DATE OF ORDER AND ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	<b>COIMBATORE -1</b>	Company: Rs 2,00,000 Officer in Default: Rs 1,00,000	The Private placement offer letter was issued prior to the filing of e-form MGT - 14.	Company being a small company the amount of penalty levied was reduced to 50%
2	<b>HYDERABAD -1</b>	Company: Rs 80,00,000 Officer in Default: Rs 20,00,000 each on the 6 Directors	<ul style="list-style-type: none"> <li>• Failure to open “separate bank account” for receipt of funds</li> <li>• Utilization of funds before even the shares were allotted.</li> </ul>	ROC has instructed the Company to return the allotment money to the Subscribers with 12% interest rate.
3	<b>MUMBAI -1</b>	Company: Rs 2,00,00,000	<p>Company has failed:</p> <ul style="list-style-type: none"> <li>• To issue Private placement offer letter and application in PAS 4</li> <li>• Board has failed to identify group of persons to whom private placement offer was made.</li> <li>• Failure to obtain approval of the Shareholders for the private placement.</li> <li>• Non closure of previous private placement offer period</li> </ul>	ROC has instructed the Company to return the allotment money to the Subscribers with 12% interest rate.



			<ul style="list-style-type: none"> <li>Non allotment of shares against the application money received within 60 days.</li> </ul>
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Delay in filing of e-forms			
ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
<b>GUJARAT - 3</b>	Company: Max: Rs 2,00,000 Min: Rs 57,600 Officers in default: Rs 50,000	<ul style="list-style-type: none"> <li>Delay in filing E- Form MGT-14 in different cases like MD reappointment, Amendment to MOA, etc</li> </ul>	<b>In one instance, the E-form MGT 14 certified by a Practicing Company Secretary who was also an Independent Director in the Company was declared void-ab-initio.</b>
<b>HYDERABAD - 2</b>	Company:	<ul style="list-style-type: none"> <li>Continuous default in filing E- form MGT -14</li> </ul>	

<p>Max: Rs 1,51,000</p> <p>Min: Rs 37,500</p> <p>Officers in default:</p> <p>Max: Rs 60,000</p> <p>Min: 30,000</p>			
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		<ul style="list-style-type: none"> <li>• <b>Failure to maintain minutes of the Board Meeting in prescribed form</b></li> <li>• <b>Failure to observe secretarial standards</b></li> </ul>		
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	GUJARAT -1	<p>Company: Rs 1,00,000</p> <p>Officers in default: Rs 20,000</p>	Failure to observe secretarial standards	<b>A member who was a related party to the contract or arrangement has voted in such resolution passed for approving such contract or arrangement</b>
2	MAHARASHTRA-1	<p>Company: Rs 50,000</p> <p>Officers in default: Rs 5,000</p>	Minutes of the meeting was not dated and numbered by the Chairman	

Failure to transfer unspent CSR amount within six months from the end of the financial year.				
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	DELHI -1	Company: Rs 11,00,000 All Directors of the company: Rs 5,00,000	Failure to transfer unspent amount within six months from the end of the financial year.	KMP who do not hold any Board position are not liable for non-compliance under section 135, as the onus of compliance under section 135 lies on the Board of the Company.
2	HYDERABAD - 3	Company: Max: Rs 84,18,256 Min: Rs 23,59,402 Officers in default: Max: Rs 2,00,000 Min: Rs 1,17,970	Failure to transfer unspent amount within six months from the end of the financial year.	The Company and Officers in default as defined under section 2(60) were penalized for non-compliance under section 135

		Delay in filing of annual Financial Statements		
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	PATNA - 4	Company: Max: Rs 7,70,000 Min: Rs 47,550 Officers in default: Max: Rs 4,71,600 Min: Rs 33,100	Non filing of Annual Financial Statements within six months from the end of the year or such extended period as may be prescribed	
2	HYDERABAD -1	No penalty was levied pursuant to section 454 (3) of the Companies Act, 2013	Delay in filing of annual Financial Statements	
3	PUNJAB -1	Company: Rs 4,92,900 Officers in default: Rs 60,000	Delay in filing of annual Financial Statements	

Failure to report Related Party in the Auditors Report				
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	GUJARAT - 3	Statutory Auditors: Rs 50,000	Non reporting of related party by the Auditors in their Audit Report. Violation of section 143(3) of the Companies Act, 2013	

<ul style="list-style-type: none"> <li>• Appointment of Director without a valid DIN</li> <li>• Non – disclosure of Directorship holdings in Form DIR -2</li> </ul>				
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	GUJARAT - 1	Company: Rs 3,00,000 Officers in default: Rs 1,00,000	Non – disclosure of Directorship holdings in Form DIR -2. The Director’s shareholding in Foreign companies were not disclosed in the DIR 2	
2	HYDERABAD - 1	Company: Rs 41,900 Officers in default: Rs 41,900	Appointment of a Director without a valid DIN	

<b>Non-disclosure of Shareholding pattern in interest in other entities</b>				
<b>SL. NO</b>	<b>ROC JURISDICTION</b>	<b>ORDER PASSED AGAINST AND AMOUNT OF PENALTY</b>	<b>NATURE OF NON-COMPLIANCE</b>	<b>OTHER RELEVANT POINTS, IF ANY</b>
	<b>GUJARAT -1</b>	Company: Rs 2,00,000 Officers in default: Rs 50,000	Director's shareholding pattern in interested entities were not disclosed in the E – Form DIR 12	

<b>Failure to get approval of the Central Government for remuneration to KMPs</b>				
<b>SL. NO</b>	<b>ROC JURISDICTION</b>	<b>ORDER PASSED AGAINST AND AMOUNT OF PENALTY</b>	<b>NATURE OF NON-COMPLIANCE</b>	<b>OTHER RELEVANT POINTS, IF ANY</b>
<b>1</b>	<b>GUJARAT -1</b>	Company: Rs 5,00,000 Officers in default: Rs 1,00,000	The Company has failed to get approval of the Central Government as required prior to the Companies (Amendment) Act, 2017.	

Delay in appointment of KMP				
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	KOLKATA	Company: Rs 5,00,000 Officers in default: Rs 5,00,000	Company being listed on Regional Stock exchange has failed to appoint a Company Secretary	
2	HYDERABAD - 2	Company: Max: Rs 5,70,000 Min: Rs 6,00,000 Officers in default: Max: Rs 1,50,000 Min: Rs 1,20,000	Delay in appointment of Company Secretary	

<b>Failure to report non-compliance in Secretarial Audit report</b>				
<b>SL. NO</b>	<b>ROC JURISDICTION</b>	<b>ORDER PASSED AGAINST AND AMOUNT OF PENALTY</b>	<b>NATURE OF NON-COMPLIANCE</b>	<b>OTHER RELEVANT POINTS, IF ANY</b>
<b>1</b>	<b>GUJARAT- 1</b>	Secretarial Auditor – Rs 2,00,000	Failure to report non – compliance under section 186 (“Loans and Investment by company) and non-maintenance of Minutes book of the Board and Committee as required under Secretarial Standards, in the Secretarial Audit Report	

<b>Non filing of proceedings of Annual General Meeting of Producer Company</b>				
<b>SL. NO</b>	<b>ROC JURISDICTION</b>	<b>ORDER PASSED AGAINST AND AMOUNT OF PENALTY</b>	<b>NATURE OF NON-COMPLIANCE</b>	<b>OTHER RELEVANT POINTS, IF ANY</b>
<b>1</b>	<b>PATNA -1</b>	Company: Rs 5,50,100 Directors: Rs 1,88,500	Non-filing of proceedings of Annual General meeting, Board of Director’s Report, Audited balance sheet and Profit and Loss account for the FYs 2014-15 to 2021-22	



SL. NO	RD JURISDICTION AND NUMBER OF ORDERS PASSED	PENALTY REDUCED		NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS
1	SOUTHEAST – 16	<b>ROC</b>  <b>Company:</b> Max : Rs. 5,00,000 Min: Rs. 5,00,000  <b>Officer in Default:</b> Max: 50,000 Min: 50,000	<b>RD</b>  <b>Company:</b> Max: 4,00,000 Min: 58,000  <b>Officer in Default:</b> Max: 1,07,000 Min: 22,000	Non-Appointment of Company Secretary	Confirmed – 0  Set aside – 3 – ROC has been advised to view the facts/issues in totality.  Modified – 13 – Reduced the penalty amount owing to difficulties like Covid 19, remote location, huge losses made by the Companies etc.