

MONTHLY UPDATES ON ADJUDICATION ORDERS

Edition No.02 February 01, 2023 to February 28, 2023

ADJUDICATION ORDERS OF THE ROC DURING THE MONTH OF FEBRUARY 2023

PRAGYA SPOTLIGHT

1. Patna ROC has imposed the highest number of orders during the Month of February – i.e., 14 orders, followed by Delhi with 13 orders.
2. The highest number of orders have been imposed under Section 12 of the Companies Act, 2013, for non-maintenance of Registered office of the Company.
3. Four instances of listed entity being penalized has been observed, the details of which have been provided below.
4. Payment of additional fees for delayed filing does not absolve the Company from the penal proceedings by the Regulators.
5. Company and the Officers in Default were not penalized for failure to comply with Schedule III format, but the Auditors were penalized for their failure to report on the same.
6. Few Suo motto applications for adjudication were observed for not conducting of Board meetings this month.
7. It's interesting to note that for the non-compliance related to delay in conducting the Board meeting, the defaulter Company was prosecuted twice for the same offence, under two different sections, one of them pertaining to Secretarial Standards.
8. Non compliances adjudicated have been under the following heads:
 - Non filing of Financial Statements and Annual Return
 - Failure to maintain Registered office as communication from Authorities got undelivered.
 - Failure to maintain proper name board in Registered office and in official communications.
 - Delay in filing of forms (Annual returns, Merger related forms, Issue of shares forms)
 - Failure to maintain financials as per Schedule III format.
 - Failure to hold Board meetings.
 - Default in filing proceedings of AGM for Producer company (Chennai ROC).
 - Director's declarations not recorded in minutes.

ADJUDICATION ORDERS OF THE RD DURING THE MONTH OF JANUARY & FEBRUARY 2023

JANUARY

1. South-East Regional Director has passed the highest number of orders during the Month of January – i.e., 49 orders.
2. The highest number of orders have been passed under Section 203 of the Companies Act, 2013, for the non-appointment of Company Secretary, in the month of January – i.e., 47 orders
3. 49 appeals have been disposed off by the various Regional Directors, out of which 41 of them have been modified and 8 of them have been set aside.
4. ROC orders have been set aside marking the orders “a mechanical manner by the ROC” and imposing penalties when due compliance of the Law has been made.
5. In respect of modification of the orders there has been reduction in the penalty imposed by the ROC.
6. 14 orders passed by RD were waivers of penalty for some of the Directors.

FEBRUARY

1. Southern Regional Director has passed the highest number of orders during the Month of February – i.e., 05 orders.
2. The highest number of orders have been passed under Section 203 of the Companies Act, 2013, for the non-appointment of Company Secretary, in the month of February – i.e., 3 orders.
3. Eight Appeals have been disposed off by the various Regional Directors, out of which all of them have modified the orders passed by the respective Registrar of Companies.
4. In respect of modification of the orders there has been reduction in the penalty imposed by the ROC.

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	PATNA - 4	Company: Max: Rs. 7,43,200 Min: Rs. 33,450 Officer in Default: Max: Rs. 3,00,000 Min: Rs. 65,200	Orders passed against the Companies which defaulted in filing of the following: <ul style="list-style-type: none"> • Annual Return – MGT 7 • Annual Financial Statements – AOC 4 	The penalty amount is determined by the number of years of default (Minimum 2 years and Maximum 7 years)

a) Failure to maintain Registered office as communication from Authorities got undelivered				
b) Failure to maintain proper name board in Registered office and in official communications				
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	PATNA - 4	Company: Max: Rs. 91,000 Min: Rs. 1000 Officer in Default: Max: Rs. 1,82,500 Min: Rs. 5000	<ul style="list-style-type: none"> • Failure to paint or affix its name, and the address of its registered office, on the outside of place of business. • Failure to maintain Registered Office – Letters issued to the Company returned undelivered. 	Small Company/Producer Company, so lesser penalty imposed for 3 out of 4 Companies.
2	AHEMDABAD -1	Officer in Default: Rs. 2,00,000	Failure to mention the Name, Registered office, CIN, Telephone Number, Fax, Email and Website – in the attachments to the form PAS 3	Ex- CFO & present MD penalized with maximum penalty imposed on them
3	DELHI - 10	Company: Max: 3,00,000 Min: 500	<ul style="list-style-type: none"> • Failure to paint or affix its name, and the address of its registered office, on the outside of place of business. • Failure to maintain Registered Office – Letters issued to the Company returned undelivered. 	It is observed that a company had applied for suo motto adjudication. For 5 out of 10 Companies lesser penalty imposed, since they were Small

		Officer in Default: Max: 3,00,000 Min: 500	<ul style="list-style-type: none"> Non-compliance u/s 12(3)(c) with respect to display of company details in the letter head of the Company/wrong usage of CIN 	Company/Producer Company.
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Delay in filing of forms				
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	AHMEDABAD - 1	Company: 1,71,000 Officer in Default: 5,13,000	Delay in filing form MGT 14 pertaining to section 62(1)(c) for a period of 71 days	
2	COIMBATORE - 1	Company: Rs. 20,000 Directors: Rs. 2,48,500	Non filing of MGT 14 for approval of accounts and Board's report for the FY 2018-19 and delay in filing for the FY 2019-20	Being a Public Company, not filing returns is considered as denial of information to various stakeholders including public. Small Company – So Lesser Penalty imposed
3	CHHATTISGARH - 1	Company: Rs. 61,000 Directors: Rs. 50,000	Delay in filing Statement of compliance in mergers and amalgamations (CAA 8).	

Failure to maintain financials as per Schedule III format			
ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
PATNA - 4	Auditor: Max: Rs. 5000 Min: Rs. 25,000	Company had failed to comply with format of the Schedule III of the Companies Act, 2013. The Auditor had failed to report the same in their Auditor's Report.	It is interesting to note that the Company and the Officers in Default were not penalized for failure to comply with Schedule III format, but the Auditors were penalized for their failure to report on the same. However, small company benefit was extended while imposing penalty for such Auditors.

Default in filing proceedings of AGM for Producer company				
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	CHENNAI - 1	Company: Rs. 5,16,150 Directors: Rs. 1,75,000	Default in filing proceedings of AGM along with Board's report, Audited balance sheet and profit and loss for the FY 2015-16 as a part of Producer company compliance.	

		Failure to hold Board meetings		
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	PATNA - 1	Company – Rs. 20,000 Directors – Rs. 2,40,000	The Company had not filed Annual Returns (MGT 7) since incorporation. Hence it appears that the Company has not conducted any Board Meetings since incorporation.	
2	DELHI - 2	Company: Max: 64,000 Min: 25,000 Officer in Default: Max: 50,000 Min: 5000	Default in conducting the Board meeting with a delay of 54 days	<p>1. Suo motto application made by the company for adjudication</p> <p>2. Wholly owned subsidiary of a foreign company, hence small company exemption not available for penalty</p> <p>3. It's interesting to note that the same company prosecuted under SS clause 2.1 (Sec.118) for delay in holding Board meeting in addition to prosecution u/s 173</p>

		Director's declarations not recorded in minutes		
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. 50,000 Officer in Default: Rs. 65,000	Director's declarations in MBP 1 not recorded in minutes for the FY 2014-15	It's interesting to note that the Company had made Suo motto application for adjudication for this offence.

SL. NO	RD JURISDICTION AND NUMBER OF ORDERS PASSED	PENALTY REDUCED		NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS
		ROC	RD		
1	SOUTHEAST – 47	Company: Max : Rs. 5,00,000 Min: Rs. 5,00,000 Officer in Default: Max: 50,000 Min: 5000	Company: Max: 4,12,000 Min: 20,000 Officer in Default: Max: 1,07,000 Min: 10,000	<ul style="list-style-type: none"> • Non-Appointment of Company Secretary • Non-Appointment of MD/CEO/Manager/WTD 	Confirmed – 0 Set aside – 8 – Due to mechanical orders passed by the ROC without considering the merits of the case. Modified – 39 – Reduced the penalty amount owing to difficulties like Covid 19, remote location, huge losses made by the Companies etc.

2	SOUTHEAST - 1	ROC Company: Rs. 20,00,000 Officer in Default: 11,00,000	RD Company: 8,00,000 Officer in Default: 1,50,000	Non-compliance with the provisions of section 42 of the Companies Act, 2013 (Private Placement)	Confirmed – 0 Set Aside - 0 Modified – 01 - Reduced the penalty amount owing to loss making company and has accumulated losses.
3	SOUTHEAST - 1	ROC Company: Rs. 3,00,000 Officer in Default: 3,00,000	RD Company: 1,00,000 Officer in Default: 75,000	Non-Regularization of Additional Director	Confirmed – 0 Set Aside - 0 Modified – 01 - Reduced the penalty amount owing to acceptance of inadvertently omitting to notice the compliance.

SL. NO	RD JURISDICTION AND NUMBER OF ORDERS PASSED	PENALTY REDUCED		NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS
1	SOUTH - 5	ROC Company: Max: Rs. 8,65,400	RD Company: Max: 2,00,000	<ul style="list-style-type: none"> • Delay in appointment of Company Secretary • Non-compliance with the provisions of section 42 of the 	Confirmed – 0 Set aside – 0

		Min: Rs. 1,16,000 Officer in Default: Max: 9,00,000 Min: 1,00,000	Min: 20,000 Officer in Default: Max: 60,000 Min: 20,000	Companies Act, 2013 (Private Placement) <ul style="list-style-type: none"> • Non-mention of DIN in signed Financials • Non-filing of Annual returns and financial statements • Default in filing MGT 14 for approval of financials and Board's report. 	Modified – 5 – Reduced the penalty amount owing to difficulties like Remote location, delay in finding the suitable candidate, lack of professional advice, etc.
2	SOUTHEAST - 3	Company: Max: 2,60,000 Min: 20,000 Officer in Default: Max: 63,640 Min: 10,000		<ul style="list-style-type: none"> • Non-maintenance of Registered office of the Company • Delay in appointment of Company Secretary 	Confirmed – 0 Set aside – 0 Modified – 3 – Reduced the penalty amount owing to difficulties like Remote location, delay in finding the suitable candidate, etc.