

MONTHLY UPDATES ON ADJUDICATION ORDERS

Edition No.03 March 01, 2023 to March 31, 2023

ADJUDICATION ORDERS OF THE ROC DURING THE MONTH OF MARCH 2023

PRAGYA SPOTLIGHT

1. Delhi ROC has imposed the highest number of orders during the Month of March – i.e., 9 orders, followed by Ahmedabad with 5 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. Few instances where companies had raised funds through private placement made via online service providers were penalized by Delhi ROC, as the same had amounted to public advertisement made for private placement which is a violation u/s 42 the Companies Act, 2013.
4. Six Ex-Parte orders have been issued by the ROC this month pertaining to section 12 and section 137.
5. Payment of additional fees for delayed filing does not absolve the Company from the penal proceedings by the Regulators.
6. It is interesting to note that Company was penalized by the ROC as minutes did not contain the specimen signatures for the purpose of bank signatory this month.
7. One Suo motto application for adjudication was observed for violation under section 42 of the Companies Act, 2013 this month.
8. ROC Bangalore has removed 454 Companies from the Register of Companies for not carrying business operations/filing annual returns and financial statements.
9. 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 (Return of allotment)
 - Non-maintenance of minutes as per section 118 of the Companies Act, 2013
 - Failure to place Related party transactions before Audit committee, where company has one.
 - Failure to disclose material facts related to Company, Boards' comments on qualifications by Independent Auditor in the Audit report and POSH related compliances in the Directors' report of the Company.
 - Failure to disclose Place, time, number and mode of Board meetings held during the year in the Annual report of the Company.

- Violations pertaining to private placement such as non-maintenance of separate bank account for and utilization of funds before filing the return of allotment.
- Usage of online service platforms for raising funds for private placement
- Failure to place before the Board meeting/sign register of contracts/arrangements in which Directors are interested.
- Delay in convening EGM for grant of ESOP.

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	AHMEDABAD – 2 COIMBATORE - 1	Company: Max: Rs. 2,47,400 Min: Rs. 94,300 Officer in Default: Max: Rs. 16,94,000 Min: Rs. 1,00,000	Orders passed against the Companies which defaulted in filing of the following: • Annual Return – MGT 7 • Annual Financial Statements – AOC 4	The penalty amount is determined by the number of years of default (Minimum 1 year and Maximum 4 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 - 1	Company: 26,000 Officer in Default: 78,000	<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. 	Ex-parte order since no response from Defaulter
2	AHEMDABAD -3	Company: Max: 1,00,000 Min: 1000 Officer in Default: Max: 7,00,000 Min: 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. • Failure to file INC 22 for shifting of Registered office, as a result of which letters issued to the old office returned undelivered. 	Ex-parte order since no response from Defaulter It is observed that penalty is levied only for the day on which default was found, if proven by the Defaulter that Registered office is maintained
3	DELHI - 2	Company: 500 Officer in Default: 1000	<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. 	It is observed that penalty is levied only for the day on which default was found, if proven by the Defaulter that

			<ul style="list-style-type: none"> Failure to maintain Registered Office – Letters issued to the Company returned undelivered. 	Registered office is maintained
4	UTTARAKHAND - 1	Company: 1,00,000 Officer in Default: 1,50,000	<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. 	

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	DELHI - 1	Company: Rs. 18,000 Directors: Rs. 72,000	Company had delayed in filing the form Return of allotment (PAS 3) for allotment via Private placement by 18 days.	It is interesting to note that the Company had filed suo - motto application for this offense and for the same reason ROC Delhi had reduced the Penalty even though the Company was neither a small Company /OPC/ Producer Company nor a startup

Violation of provisions related to Private placement			
ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
DELHI - 3	<p>Company:</p> <p>Max: 4,00,000</p> <p>Min: 2,00,000</p> <p>Officer in Default:</p> <p>Max: 8,00,000</p> <p>Min: 2.00,000</p>	<ul style="list-style-type: none"> • Company had failed to maintain a separate bank account for funds received via private placement. • Company had utilized the monies received via private placement before filing the Return of allotment. • Company had used an online service providing platform for raising funds via private placement which amounted to public advertisement. 	<p>It is observed that the Company had filed suo - motto application for this offense and for the same reason ROC Delhi had reduced the Penalty even though the Company was neither a small Company /OPC/ Producer Company nor a startup.</p> <p>It is interesting to note that raising funds for private placement via online service providers amounted to public advertisement, which is a violation of section 42, though the online service provider neither acted as an intermediary to offer nor invited public to subscribe to securities of any company and merely collected investment interests from its community of members who were around 1.5 lakh in number.</p>

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No proper maintenance of minutes of Meetings of the Company as per the act.				
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. 75,000 Directors: Rs. 60,000	<ul style="list-style-type: none"> Place, time, number and mode of meetings have not been furnished in the Annual report for the FY 2017-2018, to 2019-2020. 	It is observed that Company is penalized under section 118(10), though the violation was non-disclosure in the Annual report, however the subject was on Meetings of the Company.
2	PUNE - 1	Company: Rs. 25,000 Directors: Rs. 20,000	<ul style="list-style-type: none"> Minutes not signed by Chairman. Minutes not paginated/numbered. 	
3	DELHI - 2	Company: Max: 25,000 Min: 20,000	<ul style="list-style-type: none"> Company had failed to place Related party transactions before the Audit Committee. Resolutions placed before the Board during the aforesaid financial year for the purpose of bank signatory did not contain the specimen signatures and the same was also not contained in the minutes. 	

		Officer in Default: Max: 25,000 Min: 20,000		
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Non-disclosure of certain items in Directors' report mandated as per the Act.				
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	CHENNAI - 2	Company: Max: 3,00,000 Min: 3,00,000 Officer in Default: Max: 6,00,000 Min: 50,000	<ul style="list-style-type: none"> • Failure to disclose Directors' comments on qualifications by Independent Auditor in the Audit report in the AGM for a non-compliance related to AS 15 - Actuarial valuation for gratuity and leave encashment. • Failure to disclose POSH related compliances in Directors' report for the FY 2019-20 	

2	DELHI – 1	Company – Rs. 3,00,000 Directors – Rs. 2,50,000	Company had failed to disclose material facts in Board's report relating to a settlement agreement entered with UNIC worth Rs. 23 billion USD	
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Delay in convening General meeting for grant of ESOP				
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	CHENNAI - 1	Company: 2,10,000 Officer in Default: 1,20,000	Delay in holding Extra ordinary general meeting for Issue of shares under ESOP pertaining to section 62(1)(b) for a period	

No proper maintenance of Statutory Registers relating to Contracts and Arrangements in which Directors are interested.				
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	DELHI - 1	Officer in Default: 2,25,000	Company had neither placed the board, nor signed the Register of Contracts and Arrangements in which Directors are interested, however entries were made in the Register.	

Failure to maintain financials as per Schedule III format				
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	PATNA - 1	Auditor: Max: Rs. 25,000 Min: Rs. 5,000	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.

Failure to maintain registers and copies of Annual Return filed				
SL. NO	ROC JURISDICTION	ORDER PASSED AGAINST AND AMOUNT OF PENALTY	NATURE OF NON-COMPLIANCE	OTHER RELEVANT POINTS, IF ANY
1	PATNA - 1	Auditor: Max: Rs. 1,00,000 Min: Rs. 50,000	Company had failed to maintain registers and records such as stock register, register of contract and register of charges.	