



PRAGYA [Issue no. 17]

A SUMMARY ON ADJUDICATION ORDERS OF ROCs

DURING THE MONTH OF MAY 2024

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- ROCs undertake procedural scrutiny of the Annual Returns and based on statement of non-compliance made by Company / PCS in the MGT-7 and sends notices and penalizes the Company.
- Registered owner and beneficial owner penalized for delay in submission of Declaration in Form MGT 4 and MGT 5. ROC rejected the argument that declaration regarding the fact that Individual was acting as a nominee shareholder was given at the time of incorporation itself, so there is no need to comply with the provision of section 89.
- **Non signing of Balance Sheet and Profit & Loss statement were considered as two separate offences and the Company and Directors were penalized under Section 134.**
- **A Chief Financial Officer of a Public Limited Company was penalized was holding position of Director in another Private Limited Company without obtaining prior permission of the Board .**
- In two instances, companies were penalized for non spending of CSR money. Total Penalty amount was more than twice of the money to be spent
- A company undertook businesses which are not specified under the main objects clause of the memorandum of association. The Company and Directors were penalized under section 10 (1) and section 13 of the Companies Act, 2013.

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- In two instances (2 Public Limited Companies) has not dematerialised its shares and transferred shares in demat form. The company and directors were penalised under Section 29.
- A Company failed to submit the mode of payment or source of payment for allotment of shares. Company made submission that the allotment of shares were under Companies Act, 1956 and Section 42 (6) cannot be applied. ROC mentioned that the reply was not satisfactory and noted that subscription money was not realized by the Company and penalized the Company and Directors under Section 42 (6)
- A Company filed suo moto adjudication for offering NCDs on private placement basis without completing the allotment of process of previous private placement of shares. The Company was penalised for non compliance under Section 42 (5) of the Companies Act, 2013
- In two instances, companies were penalised for raising loan and converting them into securities, without obtaining approval via special resolution before raising the loan under Section 62 (3)

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- A company did not attach Explanatory Statement along with form MGT 14 and was penalised under Section 102
- In two instances companies were penalised under Section 117 for non-filing of special resolutions with Registrar
- A Company was penalised under Section 118 for not holding Annual General meeting with the extended date for the FY 2020-21
- In one instance, A Company attached the minutes of the meeting along with form INC 24 (Application for approval of Central Government for change of name) and the ROC found that it is not in compliance with S 118 and SS 2 and penalized the company under Section 118.
- A Company was penalized for the following non compliances under Section 118
 - Not recording date and place of the Board Meeting Minutes while signing the minutes.
 - Non signing of Minutes in few cases
 - Not numbering minutes books of AGM, EGM and Board meeting

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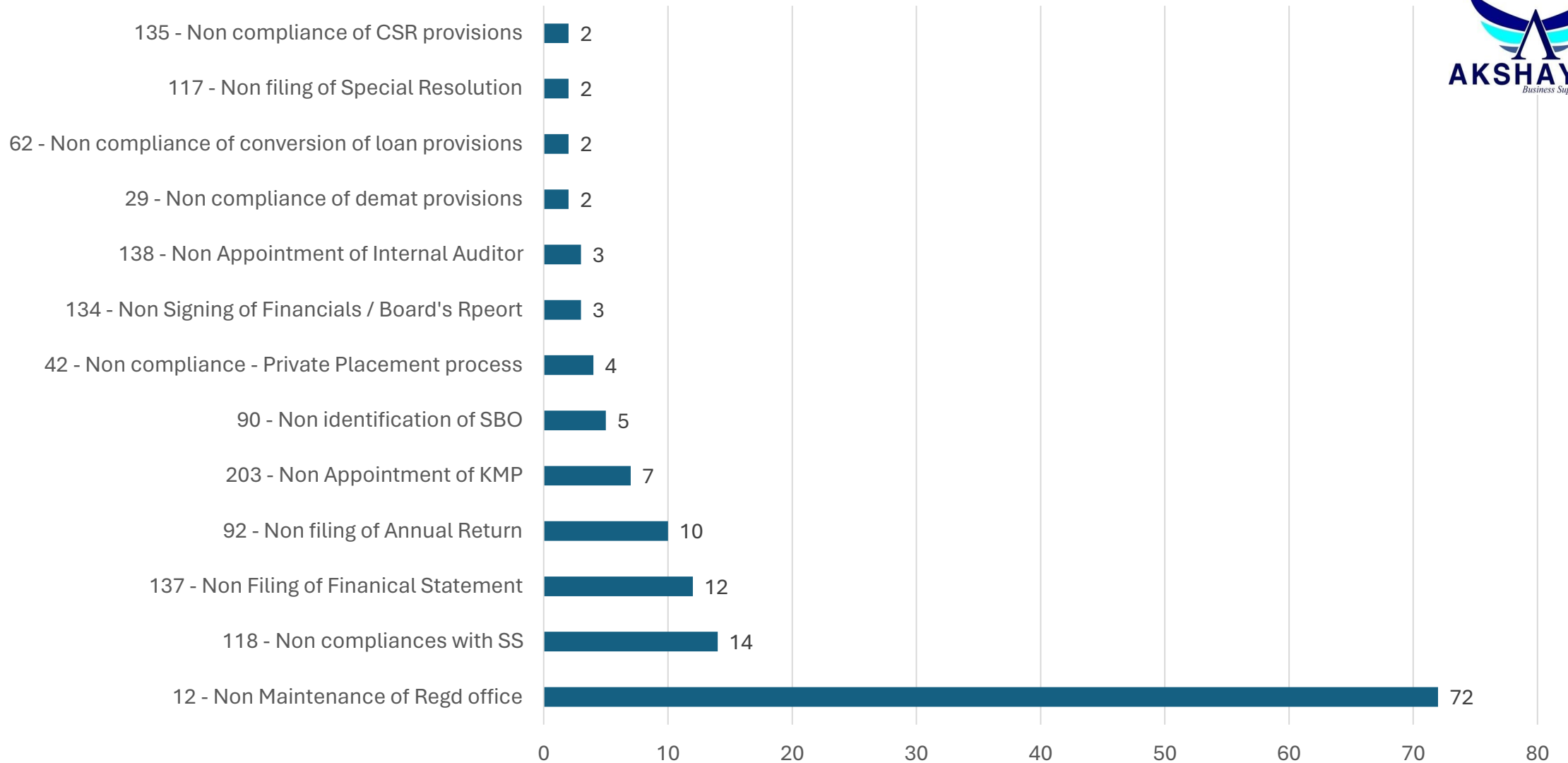
- In one case, the Company was penalised for filing of AOC 4 with unsigned Financial Statements, Auditors Report and Board's Report
- **In one instance, A company was penalized for not constituting the CSR committee and also for delay in spending CSR amount. In this case, CSR provisions were applicable based on Financials of FY 2020 and the company had to spend CSR money before 31st March 2021. Company mentioned that the requirement of constituting the committee were exempted from 22.01.2021. RoC rejected this argument and noted that before the exemption was granted, six (06) board meetings were held, and no CSR committee was established despite the provisions were applicable. For all these meetings, there is no ways and means to predict that the provisions will not be applicable w.e.f. 22.01.2021 which is a future date. Hence the Company and officers in default have clearly defaulted in constituting the CSR committee.**
- In three instances (2 Public cos & 1 Private co), the Companies were penalized for non-appointment of Internal Auditor.
- In one instance, the directors were penalized for not submitting the form MBP 1 in the first meeting of the financial year

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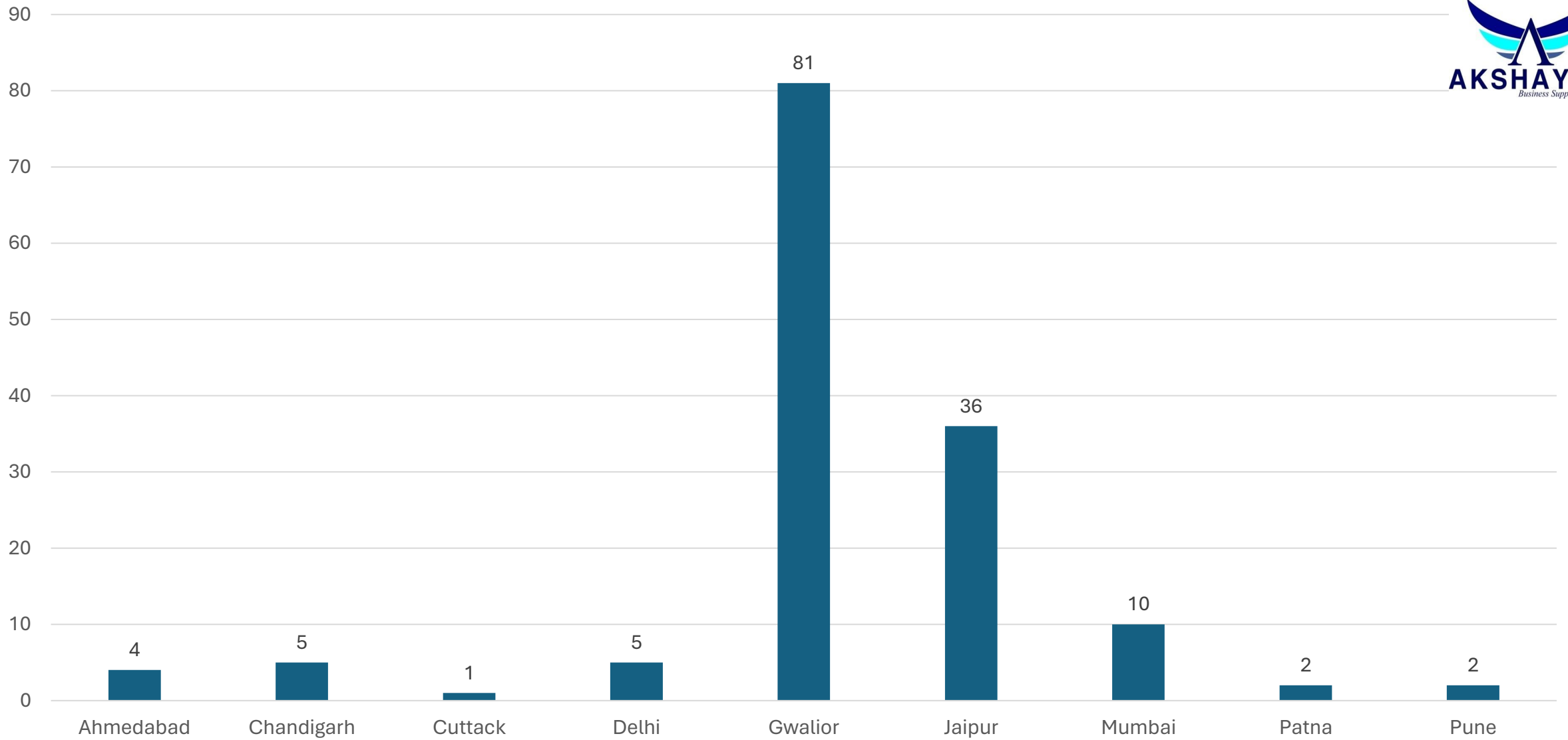
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- In one instance, the company penalized under Section 161(1) for not regularizing the additional director within the prescribed time limit
- In one instance, A company and its directors were penalised under Rule 14 of PAS rules, for not filing MGT 14 of Special resolution before issuance of private placement cum application letter.
- In few instances, the companies were penalised under Section 118 for not serially numbering the attendance registers of Board Meetings and General meetings and also for non-authentication of attendance register by Chairperson / Company secretary.
- **In one instance, a Private Limited Company was issued a show cause notice for not appointing Company Secretary. The Company replied that the company has already appointed a Company Secretary and due to new MCA V3 version, the Company was not able to file DIR 12 on time and the form was subsequently filed. Considering the same, ROC disposed off the notice.**
- In two instances, the companies were penalized for the following non compliances under Section 90
 - 90(1) & 90 (10): Failure to file declaration by Significant Beneficial Owner (SBO)
 - 90(4A) & 90 (11) : Failure to identify relation between SBO and Company
 - 90(5) & 450 : Failure to send notice in the prescribed manner



Instances of Non-Compliances – Provisions wise



Count of Penalty Orders – ROC wise



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