

**Application No. RD (NWR)/ Appeal u/s 454(5)/031/2022**

BEFORE THE REGIONAL DIRECTOR, NORTH-WESTERN REGION,  
MINISTRY OF CORPORATE AFFAIRS, AHMEDABAD

IN THE MATTER OF  
THE COMPANIES ACT, 2013

**Section 454 Adjudication of Penalties.**

In the matter of Appeal under sub section (5) of Section 454 of the Companies Act, 2013 read with Rule 4 of the Companies (Adjudication of Penalties) Rules, 2014 against the adjudication order passed by ROC, Ahmedabad dated 21.06.2022.

In the matter of adjudication for non-compliance of Section 136 read with 454(3) of the Companies Act, 2013.

And

In the matter of

**1. Swati Processors Private Limited**

Plot No. 65, 1<sup>st</sup> Floor, Subhash Nagar Society,  
Godh dod Road, nr. Ram Chowk,  
Surat, Gujarat-395001.

**2. Ashok Kumar Kejriwal, Director**

65, Shubhash Nagar Society, Nr. Ram Chowk,  
SVR College, God dod Road,  
Surat, Gujarat-395007.

**3. Rajesh Agarwal, Director**

B-1002, Ashirwad Complex,  
Bhatar road, Nr. Raj Ampire,  
Surat, Gujarat-395007.

**4. Sunilkumar Shivprasad Siotia, Director**

B-1005, Ashirwad Park, Anuvrat Dwar,  
City Light, Surat, Gujarat

V/s

**Registrar of Companies, Ahmedabad, Gujarat**

.....Respondent

Date of Hearing: - **10.01.2023**

Present:- 1. Shri Ranjit Kejriwal, practicing company secretary &  
Authorized Representative of the Appellants.  
2. Shri B.R. Ambedkar, Assistant Director, O/o RD (NWR)  
Ahmedabad.

**ORDER**

That the applicants made an on-line Appeal under Section 454 (5) of the Companies Act, 2013 in e-form No. ADJ on 12.08.2022 vide SRN F21279898

against the order dated 21.06.2022 passed by the Adjudicating officer i.e. Registrar of Companies, Ahmedabad, Gujarat. On receipt of the appeal, this Directorate vide letter dated 12.10.2022 forwarded the appeal to the Registrar of Companies, Gujarat for its comments in the matter and with reference to the aforesaid letter Registrar of Companies, Ahmedabad, Gujarat has submitted its report vide letter dated 17.11.2022.

**1. Facts of the Case:-**

- i. It is observed from the MGT-7 for the year ended 31.03.2018 filed by the company that company has practice of sending notice of AGM and balance sheet to members by hand delivery/ordinary post. No proof of dispatch could be produced, and the company has not furnished proof of dispatch of AGM notice to members which revealed that company has committed the Default/Non-compliance of section 136 of the Companies Act, 2013.
- ii. The ROC being adjudicating officer is empowered u/s. 454 (3) of the Companies, Act, 2013 to adjudicate the penalty for Non-compliance of certain provisions of the Companies, Act, 2013. Therefore, show cause notice dated 12.10.2021 were issued to the company and its Respondent directors for the violation of Section 136 of the Companies, Act, 2013.
- iii. Thereafter, adjudication notice dated 27.01.2022 was issued to the company and its officers in default as per Rule 3(3) of the Companies (Adjudication of Penalties) Rules, 2014 and the matter was fixed for hearing on 29.03.2022 vide letter dated 21.03.2022. Shri Ranjit Kejriwal, PCS attended the hearing on behalf of Company and Directors.
- iv. The aforesaid default has been reported to the Ld. Regional Director vide report dated 09.12.2021 in the matter of scheme of arrangement in the nature of amalgamation of Rama Crimpers Private Limited and Rama Polysynth Private Limited and Rama Synsilk Mills Private Limited and Jagdish Silk Mills Private Limited and Swati Processors Private Limited and Rama Tradelink Private Limited and Harmony Logistics Private Limited and Sunflower Infrastructure Private Limited and Life Long Infrastructure Private Limited and Lion Organisers Private Limited with Face Developers Private Limited in C.A. (CAA)35/NCLT/AHM/2021.

**Penalty imposed:**

- v. The order dated 21.06.2022 passed for violation of section 136 of the Companies, Act, 2013 for non-compliance of provisions of section 136(1) for the year 2017-18 against the company and its three respondents namely Ashok Kumar Kejriwal (Director), Rajesh Mahabir Prasad Agarwal (Director) and Sunilkumar Shivprasad Sihotia (Director), who are officers in default and imposed penalty of Rs.25,000/- on the company an Rs.5,000 /- each on the directors for the year 2017-18.
2. That the appellants had submitted in their appeal that:
  - 1) That the appellant company is a private limited company and a small company as per section 2(85) of the Companies Act, 2013.
  - 2) That the Company submitted before the adjudication officer that although the proofs for dispatch of notices were not to the certifying professional due to administrative issues, the same has been furnished to the adjudicating officer.
  - 3) That the Company is a small company within the purview of MSME with a loss of Rs. 14,50,971/-, so it is requested that no penalties be levied as the company is not in a position to pay its liabilities.
  - 4) That there is No public interest involved, the company is a private limited company (Closely Held Company) which clarifies that there was no stake of public involved and hence no liability occurred. It is therefore requested that no penalty be levied on the Company.
  - 5) That the alleged default is procedural in nature and non-intentional on the part of the company. The company assures that such alleged default shall not occur again in future and requests to remove the penalties levied and the company faulted for the very first time and reassures that such event shall not occur again in future.
  - 6) That there is no gain or unfair advantage received by any director, shareholders, or stakeholders as a result of the alleged default, hence it is requested that no penalties be levied on the company.
  - 7) That sec 136 of the act, provides penalty for non-dispatch of the notice of AGM to the members and not for timely production of proof. The company had submitted the confirmation from each shareholder for receipt of notice of AGM for the year ended 31.03.2018. So, as all the shareholders have confirmed in

writing that they have received the notice of AGM, no penalty shall be levied on the Applicant.

8) Also, even if penalty is levied, it is prayed that the penalty shall be reduced considering the circumstances provided under rule 3(12) of The Companies (Adjudication of Penalties) Rules, 2014.

3. **ROC, Ahmedabad has submitted its report** vide letter No. ROC-GJ/23/Adj.-sec454-appeal/SWATI PROCESSORS/2022-23/5625 dated 17.11.2022 raising strong objection against the appeal filed and reiterated the facts mentioned in the adjudication order dated 21.06.2022. It is further submitted in the aforesaid report that:

a) That during the procedural scrutiny of statutory annual return/financial statement filed by the company under the MCA21 portal, it is observed from the MGT-7 for the year ended 31.03.2018 that company has committed the default/ non-compliance of provisions of Section 136 of the Companies Act,2013 that “Company has not furnished proof of dispatch of AGM notice to members.” Thus, it has revealed from the above-mentioned facts that the Company and officers in default/Directors have violated the provisions of Section 136 of the Companies Act,2013.

b) It is observed that the Adjudicating Authority has provided proper opportunity of being heard to the appellant company/Directors. Hence, contention that opportunity to the appellant was not given to company/officers may not be accepted.

c) Under the circumstances as mentioned in the report, the observations of the Adjudicating Authority are self-explanatory and the penalty imposed under those given circumstances are justified, hence, may not deserve for any intervention by the Appellate Authority in the interest of justice. As such the penalty imposed by the Adjudicating Officer is as per the statutory provisions of the Law for the relevant default. Therefore, the adjudication order dated 21.06.2022 may be confirmed and the appeal of the appellants is not sustainable in law as observed hereinabove.

4. **The company has submitted its comments in rejoinder vide E-mail 02.11.2022 commenting on the report of ROC, Ahmedabad that:**

I. With regard to para 2 of the ROC Report, it is submitted that the Company has already stated that it was unable to furnish the proof of dispatch of AGM

notices to members to the certifying professional due to administrative issue. But the same shall not be interpreted that dispatch of notice was not done as required by section 136(1). Even confirmation of each and every shareholder, that they have received the notice of AGM has been submitted before the adjudicating authority during hearing. The same has not been taken cognizance of inadvertently.

- II. Also, at the risk of repetition, it is again submitted that the company has never said that notice of AGM has not been dispatched. It was only stated that proof of dispatch was not furnished. Under no stretch of imagination, it may be assumed that notice was not dispatched. Even the Companies Act, nowhere requires to keep a proof of dispatch of notice. Where each and every shareholder is confirming the receipt of notice, there cannot be any violation of section 136(1).
- III. That the penalty levied by the learned adjudicating authority shall be deleted on following grounds which have not been considered:
- a) Confirmation from every shareholder has been submitted for receipt of notice of AGM.
  - b) The order has been passed without considering the exemption from penalties provided in section 454(3) of the Companies Act, 2013.
  - c) Rule 3(12) of the Companies (Adjudication of penalties) for lower penalties as per parameters provided therein
5. Thereafter, the hearing on appeal has been conducted before the Directorate on 10.01.2023. ROC office has not attended the hearing. Mr. Ranjit Kejriwal, Practicing Company Secretary & Authorized Representatives of the appellants was present in the hearing and pleaded for reducing the amount of penalty on the grounds prayed in appeal application.
6. Keeping in view the facts and circumstances of the case, penalty reduced to 10% as imposed by ROC on company and its directors with strict direction to not repeat the default in future. The Penalties of Rs. 4,000/- has been paid by the appellants vide SRN X33608951 dated 21.01.2023

The appeal stands disposed off with these orders.

Digitally signed by LADU RAM  
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MEENA  
Date: 2023.02.22 17:06:03 +05'30'  
**REGIONAL DIRECTOR  
(NWR) AHMEDABAD**

To,

- 1. Swati Processors Private Limited**  
Plot No. 65, 1st Floor, Subhash Nagar Society,  
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Surat, Gujarat-395001.
- 2. Ashok Kumar Kejriwal, Director**  
65, Shubhash Nagar Society, Nr. Ram Chowk,  
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Surat, Gujarat-395007.
- 3. Rajesh Agarwal, Director**  
B-1002, Ashirwad Complex,  
Bhatar road, Nr. Raj Ampire,  
Surat, Gujarat-395007.
- 4. Sunilkumar Shivprasad Sihotia, Director**  
B-1005, Ashirwad Park, Anuvrat Dwar,  
City Light, Surat, Gujarat.
- 5. The Secretary to the Government of India,**  
Ministry of Corporate Affairs,  
New Delhi.
- 6. The Registrar of Companies, Ahmedabad, Gujarat with** reference to its  
office letter No. ROC-GJ/23/Adj.-sec 454- appeal/SWATI PROCESSORS/  
2022-23/5625 dated 17.11.2022.
- 7. Master File.**
- 8. Office Copy.**

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**ASSISTANT DIRECTOR**