



भारत सरकार

कार्पोरेट कार्य मंत्रालय

कार्यालय कम्पनी रजिस्ट्रार, गुजरात, दादरा एवं नगर हवेली  
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अंकुर बस स्टैंड के पास, नारणपुरा, अहमदाबाद (गुजरात) - 380013.  
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सत्यमेव जयते

GOVERNMENT OF INDIA  
MINISTRY OF CORPORATE AFFAIRS  
OFFICE OF THE REGISTRAR OF COMPANIES,  
GUJARAT, DADRA & NAGAR HAVELI  
ROC Bhavan, Opp. Rupal Park,  
Nr. Ankur Bus Stand, Naranpura, Ahmedabad (Gujarat) - 380013.  
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**SPEED-POST**

NO.ROC-GJ/ADJ-Order/Section 454/STA (V)/2021-22/ 454 To 5V

Dated:

08 SEP 2022

**BEFORE THE ADJUDICATING OFFICER**

**REGISTRAR OF COMPANIES, GUJARAT, DADRA & NAGAR HAVELI**

IN THE MATTER OF ADJUDICATION OF PENALTY UNDER SECTION 454 (3) OF THE COMPANIES ACT 2013 READ WITH RULE 3 OF THE COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014 FOR VIOLATION OF SECTION 158 OF THE COMPANIES ACT, 2013

IN THE MATTER OF M/S. PREMIER SOLUTION PRIVATE LIMITED

(U93000GJ2008PTC053827)

Date of hearing- 01.09.2022

**PRESENT :**

1. Shri R.C. Mishra (ROC), Adjudicating Officer
2. Mr. Indrajit Vania (DROC), Presenting Officer

**Company/ Officers/Directors/KMP/Authorized Representative : Mr. Chirag Shah,**  
Representative of Company/Directors

**Appointment of Adjudication Authority:-**

1. The Ministry of Corporate Affairs vide its Gazette Notification No. A-42011/112/2014-Ad.II dated 24.03.2015 has appointed the undersigned as Adjudicating Officer in exercise of the powers conferred under section 454 of the Companies Act, 2013 (hereinafter known as Act) read with Companies (Adjudication of Penalties) Rules, 2014 (Notification No. GSR 254(E) dated 31.03.2014) for adjudging penalties under the provisions of Act.

**Company:**

2. M/s. Premier Solution Private Limited (herein after referred to as "company") is a company having its registered office at "Universal House, 50/A-1 Shreekunj Society, Alkapuri, Vadodara, Gujarat, 390007, India" registered under the provisions of the Companies Act, 1956. The CIN of the Company is U93000GJ2008PTC053827.

### **Fact about of the case**

3. Ld. Regional Director, NWR, Ministry of Corporate Affairs, Ahmedabad vide letter No. RD (NWR)/ 230-232/ (496)/2021/479 dated 29.04.2022 has informed to ROC, Ahmedabad that O/o ROC, Ahmedabad has pointed out certain violations and non-compliance of the companies Act, 2013 by both the petitioner companies in ROC's report dated 26.10.2021 in the matter of Scheme of Amalgamation of Premier Solution Private Limited with D.J. Shah Investment Finance Private Limited and their respective shareholders and creditors in CA(CAA) No. 31 of 2021. Directorate has further instructed to this office that it is observed from last three years financial statements filed by Transferor and transferee company that both companies have not mentioned DIN therein in accordance with section 158 of the Companies Act, 2013. Thus, the Transferor and Transferee company have violated the provisions of the Section 158 of the Companies Act, 2013. In this regard, Directorate has instructed to take necessary action for violation of Section 158 of the Companies Act, 2013 and submit action taken report to the Directorate.

#### **4. Relevant Provisions of Companies Act, 2013:**

##### **Section 158 of the Companies Act, 2013:**

*Section 158 of the Companies Act, 2013 provides that Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director;*

##### **Section 172 of the Companies Act, 2013 as on date of default as under:**

**172-Punishment.**— *If a company contravenes any of the provisions of this Chapter and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.*

**Section 172 of the Companies Act, 2013 got amended w.e.f. 21.12.2020 vide Notification dated 28.09.2020 and Companies (Amendment) Act, 2020**

**172-Penalty:** *If a company is in default in complying with any of the provisions of this Chapter and for which no specific penalty or punishment is provided therein, the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees, and in case of continuing failure, with a further penalty of five hundred rupees for each day during which such failure continues, subject to a*

maximum of three lakh rupees in case of a company and one lakh rupees in case of an officer who is in default.”

**Show Cause Notice, reply and personal Hearing:-**

5. The Presenting Officer submitted that as per the financial statement viz. Balance Sheet and Profit and Loss as on 31.03.2014, 31.03.2015, 31.03.2016, 31.03.2017, 31.03.2018, 31.03.2019, 31.03.2020 and 31.03.2021, available under the MCA21 portal, it is noticed that the company/Officers have not mentioned *Director Identification Number (DIN)* in such return, information, which attracted non compliance of the provisions of Section 158 of the Companies Act, 2013. The details of non-compliance of the aforesaid provisions are as under:

Financial Year	Date of signing Financial Statements without mentioning DIN by the Company/Director(s)
2013-14	20.07.2014
2014-15	07.09.2015
2015-16	16.06.2016
2016-17	07.07.2017
2017-18	17.04.2018
2018-19	01.05.2019
2019-20	21.06.2020
2020-21	28.06.2021

In view of the above, under the compliance of instructions of the Directorate's vide letter No. RD (NWR)/ 230-232/ (496)/2021/479 dated 29.04.2022, an Adjudication Notice was issued to company and its directors vide No. ROC-GJ/05-ADJ/Section 454/STA (V)/2021-22/1848 to 1851 dated 14.06.2022 under Section 454 of the Companies Act, 2013 read with Companies (Adjudication of Penalties) Rules 2014 for violation of Section 158 of the Companies Act, 2013. The Company has furnished its reply vide letter dated 06.07.2022 and requested to grant extension of 15 days time from the date of reply to the Notices issued by the Adjudicating Officer. The company vide letter dated 25.07.2022 received in this office on 04.08.2022 has submitted its reply along with Authorization letter to appears before the Adjudicating Office and sought personal hearing in the matter.

6. Thereafter, a “written Notice” vide No. No. ROC-GJ/05-ADJ/Section 454/STA (V)/2021-22/4085 to 4088 dated 23.08.2022 were issued to the company and its officers as per sub-section 4 of 454 of the Companies Act, 2013 read with Rule 3 of Companies (Adjudication of Penalties) Rules, 2014 and a hearing was fixed for 01.09.2022.



7. Mr. Chirag Shah, Practicing Company Secretary, attended the hearing conducted on 01.09.2022 on behalf of the company and /or the director(s)/applicant(s) mentioned in the Application and made oral submission in the line of company's reply dated 25.07.2022. Ld. PCS submitted that Penalty should not be imposed on the company and its Directors/ Officers in default under the provisions of Section 172 of the Companies Act, 2013. As obligation to indicate Director Identification Number u/s 158 of the Act very clearly stated that DIN shall be mentioned in return, information or particulars in case where such return, information or particulars related to the Director or contain any reference or any director. In their case, the documents as referred in the SCN are the financial statements filed by the company for the financial years 2013-14 to 2020-21 through e-Form(s) 23AC/ AOC-4, as the case may be, in which DIN of the Directors of the company were not mentioned. In common parlance, Financial Statements are formal records of the financial activities and positions of a business or entity. Accordingly, it is being noted that financial statements are not the return/ information /particulars related to Directors of the Company. Further, it can not be considered as document containing reference of any Director as Financial Statement are written records of financial position of the company as mentioned above. Ld PCS further submitted that in e-Form 23AC and AOC-4 also includes DIN, Name of Director, Designated and Date of signing Balance Sheet, Financial Statements, Board's Report. All the necessary details including DIN of the Director(s) who have signed the Balance Sheet, Financial Statements, Board's Report, have been provided in all e-Form(s) viz. 23AC /AOC-4 as the case may be, filed with the ROC for the purpose of filing Balance Sheet/ Financial Statement and other Documents, as the case may be for the Financial Years 2013-14 to 2020-21.

Ld. PCS reliance the finding of Lex Prospicit Non Respicit -Law looks forward not backward: As mentioned in SCN, the ROC vide the Companies (Amendment) Act, 2019 is entrusted with power to adjudicate penalty as provided under Section 172 of the Companies Act, 2013 with effect from 21.12.2020. It is well established rule of law that the provisions/ Statue would be only prospective on operation unless it is explicitly provided otherwise under the Statute(s). The idea behind the rule is that a current law should govern current activities. Law passed today or made effective today cannot apply to events of the past.

Ld. PCS further reliance the judgement of Zila Singh v. State of Haryana (2004), the Supreme Court examined the various authorities on statutory interpretation and concluded as under: It is cardinal principal of construction that every statue is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. Unless there are words in the statue sufficient to show the intension of legislature to affect existing rights, it is deemed to be prospective only.

Ld. PCS further submitted that company is small company, paid-up capital of the Company is Rs. 50Lakhs and Turnover is Nil. No borrowing from Bank / Financial Institutions, No public money involved, Indicia of a 'Pseudo Partnership' as family members are the only Director as well as Shareholders of the Company. Company is very much compliant on the part of timely filing of required e-Form(s) on the portal of the MCA. Financial Statements are not exposed to the 'Public at large as it's a Private Limited Company and documents are only filed with honorable office.

8. The Presenting Officer responded that provisions of Section 158 regarding obligation to indicate Director Identification Number is enforced with effect from 01.04.2014 which intra alia provides that Every person or **Company**, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the DIN in such return, information or particulars in case such return, information or particulars related to the director or concoction any reference of any director. **Financial Statement** should not be discrete with the word '**any return, information or particulars**' provides under the Law. Hence, submission of the Ld. PCS not sustainable.
9. The Presenting Office further submitted that the object of filing such information on financial statement/Audit report etc. under the MCA-21 portal/public Domain is in the public interest, to enable the investors, public and whosoever interested in the company can access the information pertaining to Director(s) of the Company under the Law. Non-filing of adequate/correct documents under the MCA portal will result in denial of information to public regarding DIN of the director(s) the company and this type of activity should be avoided.
10. Ld. PCS further requested to kindly take cognizance the default for the financial year 2018-19, 2019-20 and 2020-21 in compliance to instructions of the Directorate vide letter dated 29.04.2022 received in ROC, office as the company is falling under the small company and pleaded for minimum penalty as the company did not commence commercial operation from since long.
11. By keeping in mind, the ease of doing business in India and oral submission made by Ld. PCS as well in compliance to instructions dated 29.04.2022 received from Directorate in the instant case, the undersigned is considered to cognizance the default committed for the financial year 2018-19, 2019-20 and 2020-21 (only last three years). Accordingly, the undersigned is adjudicated even though the offence has been committed prior to 21.12.2020.
12. Under the above circumstances, it is concluded that the company and its Officers in default are liable for penalty under Section 172 of the Companies Act, 2013 for non-mentioning *Director Identification Number (DIN) in financial Statement 2018-19, 2019-20 and 2020-21, which attracted non compliance of the provisions of Section*



158 of the Companies Act, 2013 and the undersigned has reasonable cause to believe that the company and its Director(s) have violated the provisions of Section 158 of the Companies Act, 2013 as noticed from aforesaid financial Statement available under the MCA21 portal. In view the facts narrated above, the company and its directors /officers, in default are liable for penalty as per Section 172 of the Companies Act.

13. While adjudging quantum of penalty under section 158 of the Act, the Adjudicating Officer shall have due regard to the following factors, namely;

- a. The amount of disproportionate gain or unfair advantage, whenever quantifiable, made as a result of default.
- b. The amount of loss caused to an investor or group of investors as a result of the default.
- c. The repetitive nature of default.

14. The Presenting Officer further submitted that with regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the noticee or loss caused to the investor as a result of the delay on the part of the notice to redress the investor grievance are not available on the record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the noticee or the loss caused to the investors in a default of this nature.

15. The Presenting Officer further submitted that it is observed from the Balance Sheet as at 31.03.2021 that the paid-up capital of the company is Rs. 50,00,000.00 and Turnover is Nil. However, as the company is a Holding company of D.J. SHAH INVESTMENT FINANCE PRIVATE LIMITED also it is subsidiary company of MARVEL INDENTING PRIVATE LIMITED. Hence, as per the Ministry's Notification No. GSR 92(E) dated 01.02.2021, with respect to the provisions of Section 2(85) of the Companies Act, 2013, the Company does not fall under the ambit of "small company". Therefore, the provisions of imposing lesser penalty as per the provisions of Section 446B of the Companies Act, 2013 do not apply to the company.

16. The Presenting Officer submitted that the company has designated Mr. KIRIT HARILAL SHAH as Managing Director/KMP w.e.f. 20.04.2022 through filing of Form DIR-12 vide SRN F01546092 on 18.05.2022. However, as the default occurred by the company/ Director(s) prior to appointment/designated of such KMP, Hence, instructions of the Ministry vide General Circular No. 01/2020 dated 02.03.2020 do not applicable to this instant case. Hence, penalty should be imposed on the

Officer(s) for the relevant period of default. This issue also agreed by the Ld. PCS/representative of the company.

**ORDER:**

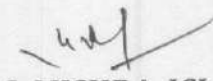
1. Having considered the facts and circumstances of the case and submissions made by the Presenting Officer and oral submission made by Ld. PCS and after taking into accounts the factors above, I hereby imposed following penalty on company and its directors as prescribed under Section 172 of the Companies Act, 2013 for violation of section 158 of the Companies Act, 2013, I am of the opinion that penalty is commensurate with the aforesaid failure committed by the Noticees:

Nature of default	Violation of Section of the Companies Act, 2013	company/Officers to whom penalty imposed	Penalty as per Section 172 of the Act,	Total penalty for 03 (Three) financial year i.e. 2018-19, 2019-20 and 2020-21 (Rs.)	Maximum Penalty for 03 (Three) financial year in pursuant to Section 172 (Rs.)	Penalty Imposed for 3 Financial years (Rs.)
Non-disclosure of DIN in the Financial Statements last three years as requested by representative of company/director(s) in compliance to instructions of the Directorate	Section 158	On Company	50,000	50,000*3 =1,50,000	3,00,000*3years =9,00,000	1,50,000
		Mr. Kirit Harilal Shah	50,000	50,000*3 =1,50,000	100,000*3years =3,00,000	1,50,000
		Ms. Bharti Kirit Shah	50,000	50,000*3 =1,50,000	100,000*3years =3,00,000	1,50,000
		Ms. Shital Chintan Shah	50,000	50,000*3 =1,50,000	100,000*3years =3,00,000	1,50,000

2. The noticee shall pay the amount of penalty individually for the company and its officers from their personal sources/income by way of e-payment available on Ministry website [www.mca.gov.in](http://www.mca.gov.in) under "Pay miscellaneous fees" category in MCA fee and payment Services under Rule 3(14) of Company (Adjudication of Penalties) (Amendment) Rules, 2019 within 60 days from the date of receipt of this order and copy of this adjudication order and Challan/SRN generated after payment of penalty through online mode shall be filed in INC-28 under the MCA portal without further reference.
3. Appeal against this order may be filed in writing with the Regional Director, North Western Region, Ministry of Corporate Affairs, ROC BHAVAN, OPP. RUPAL PARK, NR. ANKUR BUS STAND, NARANAPURA, AHMEDABAD (GUJARAT)-380013 within a period of sixty days from the date of receipt of this order, in Form ADJ setting forth the grounds of appeal and shall be accompanied by the certified copy of this order. [Section 454(5) & 454(6) of the Companies Act, 2013 read with the Companies (Adjudicating of Penalties) Rules, 2014 as amended by Companies (Adjudication of Penalties) Amendment Rules, 2019].
4. Your attention is also invited to **Section 454(8)(i) and 454(8) (ii) of the Companies Act, 2013**, which state that in case of non-payment of penalty amount, the company shall be

punishable with fine which shall not less than Twenty Five Thousand Rupees but which may extend to Five Lakhs Rupees and officer in default shall be punishable with Imprisonment which may extend to Six months or with fine which shall not be less than Twenty Five Thousand Rupees by which may extend to one Lakhs Rupees or with both.

The adjudication notice stands disposed of with this order.

  
(R.C. MISHRA, ICLS)  
REGISTRAR OF COMPANIES &  
ADJUDICATING OFFICER  
MINISTRY OF CORPORATE AFFAIRS  
GUJARAT, DADRA & NAGAR HAVELI

To

NO.ROC-GJ/ADJ-Order/Section 454/STA (V)/2021-22/

Dated:

1. M/S. PREMIER SOLUTION PRIVATE LIMITED  
UNIVERSAL HOUSE, 50/A-1 SHREEKUNJ SOCIETY,  
ALKAPURI,,VADODARA,Gujarat,390007,India

NO.ROC-GJ/ADJ-Order/Section 454/STA (V)/2021-22/

Dated:

2. MR. KIRIT HARILAL SHAH (DIN 00175193)  
W/O. SHRI HARILAL HANSRAJ SHAH  
98 KUNJ SOCEITY,ALKAPURI,VADODARA  
VADODARA,390007-Gujarat, India

NO.ROC-GJ/ADJ-Order/Section 454/STA (V)/2021-22/

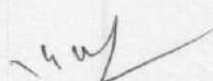
Dated:

3. MS. BHARTI KIRIT SHAH (DIN 01257852)  
D/O. SHRI MANILAL PREMCHAND SHAH  
98, KUNJ SOCIETYALKAPURI,  
VADODARA-390007, Gujarat

NO.ROC-GJ/ADJ-Order/Section 454/STA (V)/2021-22/

Dated:

4. MS. SHITAL CHINTAN SHAH (DIN 02024502)  
D/O SHRI KIRIT HARILAL SHAH  
16, Panchvati Society, Near Amrakunj Society  
Ellorapark, Vadodara-390023, Gujarat, India

  
(R.C. MISHRA, ICLS)  
REGISTRAR OF COMPANIES &  
ADJUDICATING OFFICER  
MINISTRY OF CORPORATE AFFAIRS  
GUJARAT, DADRA & NAGAR HAVELI

No. ROC-GJ/ADJ-Order/Section 454/STA (V)/2021-22

Dated:

[Copy to:

Ministry of Corporate Affairs, (Through Proper Channel)  
The Regional Director, (NWR), Ministry of Corporate Affairs, Ahmedabad-380013  
(for information please)