

भारत सरकार
कारपोरेट कार्य मंत्रालय
कंपनी रजिस्ट्रार का कार्यालय
100, "एवरेस्ट", मरिन ड्राईव, मुंबई - 400002
दुरभाष/TELE : 2281 2627, 2281 2645, 2281
3760



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF THE REGISTRAR OF
COMPANIES
100, "EVEREST", MARINE DRIVE,
MUMBAI - 400 002

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3387 To 3389

SPEED POST

RD-25

No.ROC(M)/S.149(1)/SAJJAN/ADJ-ORDER/030874/

Date 8 JAN 2025

कंपनी अधिनियम, 2013 की धारा 149(1) के उल्लंघन के लिए धारा 454(3) के तहत दंड का
आदेश।

Order for Penalty under Section 454(3) for violation of Section 149(1) of the
Companies Act, 2013.

IN THE MATTER OF SAJJAN INDIA LIMITED

(CIN: U51900MH1983PLC030874)

- (I) Adjudicating Officer: B. Mishra, ICLS, ROC, Mumbai
(II) Presenting Officer: Rujuta Bankar, ICLS, AROC, Mumbai
(III) Authorised representative on behalf of Company: Mr Ankit Mishra,
Mr Shwetank Chaubey

Appointment of Adjudicating Officer:-

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

Company:-

2. WHEREAS the company viz SAJJAN INDIA LIMITED (herein after known as 'company') is a registered company with this office under the provisions of the Companies Act, 1956 having its registered office as per MCA21 Registry at address

Urmi Estate, Tower A, 14th Floor, 95, Ganpatrao Kadam Marg, Lower Parel (W)
Mumbai Mumbai City MH 400013 IN.

Law relating to Appointment of Women Director in company: -

3. Section 149:

(1) Every company shall have a Board of Directors consisting of individual as directors and shall have-

(a) A minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and

(b) A maximum of fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution:

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

Rule 3 of the Companies (Appointment and qualification of Directors) Rules, 2014:

The following class of companies shall appoint at least one woman director-

(i) Every listed company

(ii) Every other public company having-

(a) Paid-up share capital of one hundred crore rupees or more; or

(b) Turnover of three hundred crore rupees or more:

Provided that a company, which has been incorporated under the Act and is covered under provision of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation:

Provided further that any intermittent vacancy of a women director shall be filled-up by the Board at the earliest but no later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Explanation- For the purposes of this rule, it is hereby clarified that the paid-up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

Facts about the Case: -

4. As per the Financial Statements filed by the company its Paid up share capital and turnover as on 31.03.2022 is as under: -

Paid up Share Capital	Rs. 3,81,91,000.00/-
Turnover	Rs. 1580,89,06,234.00/-

5. The company is required to appoint a woman director based on the thresholds stated above, but it failed to do so.
6. Thus, this office had issued Show Cause Notice dated 28.03.2023, under section 454 for violation of section 149(1) of the companies Act, 2013 to the Company and its Officers in default.
7. The company vide its letter dated 26.04.2023 has submitted its reply and relevant para of the company's reply is reproduced as under:

- a. In compliance of Section 149 of the Act, Company had appointed a woman director on January 20, 2020, who resigned on May 25, 2022.*
- b. The Company has been in the process of identifying and selecting a suitable candidate with the requisite expertise, knowledge and experience to be appointed as*

per Section 149 of the Act. However, as on the date of the instant response, the appointment of a woman director was yet to be finalized.

- c. The delay in appointment was unintentional and bona fide. Thus, the Company requests that no penalty be imposed in the instant matter.*

Penalty Provision for violation

8. Section 172:

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, 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.

Hearing and reply of the Company

9. Adv. Ankit Mishra and Adv. Shwetank Chaubey being authorized representatives of the Company attended the hearing in person on 11.05.2023.
10. The authorized representatives submitted that there was no mens rea and that the default was committed due to unavoidable circumstances. They further stated that there was no mala fide intention.
11. Further, the Company through Anagrampartners filed compounding application u/s 441 vide SRN F71078539 in GNL-1 dated 25.10.2023 and physical copy on 10.01.2024 for compounding the default of non-compliance of woman director as per Section 149(1) of the Companies Act, 2013 in pursuance to notice received from ROC dated 28.03.2023. In the said Compounding Application the Company

submitted that subsequent to the hearing held on 11.05.2023, the Company vide Board Resolution dated 29.05.2023 appointed Ms Jasmine Makkar holding DIN 10170742 as an Additional Director on the board of the Company in terms of Sec 149 of the Act w.e.f. 29.05.2023, for which DIR 12 was filed on 09.06.2023. The Company further requested to compound the matter. However, Section 149 r/w Section 172 being amenable to adjudication, the present order is being passed in the facts of the matter.

FINDINGS: -

12. As per the Financial Statements filed by the Company its Paid up share Capital and Turnover as on 31.03.2022 is as under: -

Paid up Share Capital	Rs. 3,81,91,000.00/-
Turnover	Rs. 1580,89,06,234.00/-

13. The Company is required to appoint a women director based on the thresholds stated above, but it failed to do so.
14. Therefore, the reply given by the company is not tenable as they were aware of their statutory mandate to appoint a woman director.
15. The company admitted the default vide its letter dated 26.04.2023. Subsequently it appointed a Woman director, but its default for the previous period is established.
16. The 2nd Proviso to Rule 3 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 states that '*any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or 3 months from the date of such vacancy whichever is later.*'

The erstwhile woman director resigned on 25.05.2022 and the resulting intermittent vacancy should have been filled within 3 months, but the Company failed to do so. Hence, the period of default is from 26.08.2022 till 28.03.2023.

17. In view of para 11 supra since the violation of Section 149 of the Act is liable for penal action u/s 172 which is falls under Adjudication of penalties u/s 454 of the Act, therefore, the present order is passed in view of Show cause Notice dated 28.03.2023 and the said Compounding application filed vide SRN F71078539 in GNL-1 dated 25.10.2023 is thus infructuous.

ORDER

18. In exercise of the powers conferred on me vide Notification dated 24.03.2015 and having considered the facts and circumstances of the case besides reply of the company after taking into account the factors mentioned in the relevant Rules followed by amendments in section 454(3) of the Companies Act, 2013, I am of the opinion that penalty shall be imposed for the default related to non-compliance of section 149 of the Act.

19. Having considered the facts and circumstances of the case and after taking into accounts the above factors, I hereby impose a penalty of Rs. 1,57,500/- (Rupees One Lakh Fifty-Seven thousand and Five hundred) on the Company and Rs. 1,00,000/- each on its Officers in default as per the table below for violations of provisions of section 149(1) of the Companies act, 2013

No. of Days of Default.	Penalty imposed on Company / Directors	First Penalty in (Rs.)	Default continuous penalty in (Rs.)	Total penalty in (Rs.)	Maximum Penalty in (Rs.)	Penalty Levied in (Rs.)
215	1. SAJJAN INDIA LIMITED (COMPANY)	50,000	215 X 500	50,000 + 1,07,500 = 1,57,500/-	3,00,000	1,57,500
	2. RAGHUNATHAN ANANTHANARAYANAN CEO (KMP)	50,000	215 X 500	50,000 + 1,07,500 = 1,57,500/-	1,00,000	1,00,000

	3. PAWAN KUMAR AGARWAL CFO (KMP)	50,000	215 X 500	50,000 + 1,07,500 = 1,57,500/-	1,00,000	1,00,000
			TOTAL	4,72,500/-	5,00,000	<u>3,57,500</u>

TOTAL PENALTY PAYABLE - Rs3,57,500/-

(■) The period of violation of provisions under Section 149 of the Companies Act, 2013 is from 26-Aug-2022 till 28-Mar-2023 and delay is 215 days.

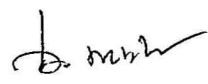
20. I am of the opinion that, the penalty is commensurate with the aforesaid failure of the Company and its officers in default.

21. The company and its Officers in default are hereby directed to rectify the default immediately from the date of receipt of copy of this Order.

22. The Noticee/s shall pay the said amount of penalty through "Ministry of Corporate Affairs" portal and proof of payment be produced for verification within 90 days from receipt of this order.

23. Appeal against this order may be filed with the Regional Director (WR), Ministry of Corporate Affairs, 5TH Floor, 100 Everest Building, Marine Drive, Mumbai, Maharashtra within a period of sixty days from the date of receipt of this order, in Form ADJ [available on Ministry website www.nlca.gov.in] setting forth the grounds of appeal and shall be accompanied by a certified copy of the order. [Section 454(3) & 454(6) of the Act read with Companies (Adjudicating of Penalties) Rules, 2014].

24. Your attention is also invited to section 454(8) of the Act in the event of non-compliance of this order.


(B MISHRA)
 Adjudication officer and Registrar of Companies,
 Maharashtra, Mumbai.

o/c

To,

1. **SAJJAN INDIA LIMITED**
Urmi Estate, Tower A, 14th Floor, 95, Ganpatrao Kadam Marg,
Lower Parel (W) Mumbai, Mumbai City MH 400013 IN.
2. **RAGHUNATHAN ANANTHANARAYANAN, CEO (KMP)**
Usha Kiran Building, Flat No. 46, 23rd Floor, Mumbai 400026
Maharashtra India.
3. **PAWAN KUMAR AGARWAL, CFO (KMP)**
Urmi Estate, Tower A, 14th Floor, 95, Ganpatrao Kadam Marg,
Lower Parel (W) Mumbai, Mumbai City MH 400013 IN.
(Registered office)

Copy to:-

THE REGIONAL DIRECTOR (WR)

Ministry of Corporate Affairs,
100, Everest building, Marine drive,
Mumbai.

For information.

भारत सरकार
कारपोरेट कार्य मंत्रालय
कंपनी रजिस्ट्रार का कार्यालय
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GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF THE REGISTRAR OF
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e-Mail ID : roc.mumbai@mca.gov.in

3394 To 3395

No.ROC(M)/S.149(1)/AASTHA/ADJ-ORDER/

RD-27

Date :

भारत डाक सेवा
SPEED POST

कंपनी अधिनियम, 2013 की धारा 149(1) के उल्लंघन के लिए धारा 454(3) के तहत दंड का आदेश।

8 JAN 2025

Order for Penalty under Section 454 for violation of Section 149(1) of the
Companies Act, 2013.

IN THE MATTER OF AASTHA BROADCASTING NETWORK LIMITED
(CIN: L67120MH1981PLC025111)

- (I) Adjudicating Officer: B. Mishra, ICLS, ROC, Mumbai
(II) Presenting Officer: Rujuta Bankar, ICLS, AROC, Mumbai

Appointment of Adjudicating Officer: -

1. Ministry of Corporate Affairs vide its Gazette Notification No.A-42011/112/2014-Ad.II dated 24.03.2015 appointed the undersigned as Adjudicating Officer in exercise of the powers conferred by section 454 of the Companies Act, 2013 [herein after known as Act] read with Companies (Adjudication of Penalties) Rules, 2014 for adjudging penalties under the provisions of this Act.

Company: -

2. WHEREAS the company viz AASTHA BROADCASTING NETWORK LIMITED (herein after known as 'company') is a registered company with this

office under the provisions of the Companies Act, 1956 having its registered office as per MCA21 Registry at address UNIT NO 317, THIRD FLOOR, MORYA LANDMARK1, PLOT NO B25, CTS NO 594, OFF ANDHERI LINK ROAD, ANDHERI W, MUMBAI, Mumbai City, Maharashtra,400053, India.

Facts about the Case: -

3. As per the Financial Statements filed by the company its Paid up share capital and turnover as on 31.03.2022 is as under: -

Paid up Share Capital	Rs. 10,00,00,000.00/-
Turnover	Rs. 4,96,87,000.00/-

4. The company is clearly required to appoint a woman director based on the thresholds stated above, but it failed to do so. Therefore, the company has violated the provision of section 149(1) of the Companies Act, 2013. Hence, the company and every officer will be liable for penal action u/s 172 of the Companies Act, 2013.
5. Whereas, this office had issued show cause notice dated 28.03.2023 under section 454 for violation of section 149(1) of the companies Act, 2013. No reply received from the Company nor its Director(s).

Section 149 are reproduced as under: -

6. Section 149:

- (1) *Every company shall have a Board of Directors consisting of individual as directors and shall have-*
- (a) *A minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and*
- (b) *A maximum of fifteen directors:*

Provided that a company may appoint more than fifteen directors after passing a special resolution:

Provided further that such class or classes of companies as may be prescribed, shall have at least one women director.

Rule 3 of the Companies (Appointment and qualification of Directors) Rules, 2014:

The following class of companies shall appoint at least one woman director-

- (i) Every listed company*
- (ii) Every other public company having-*
 - (a) Paid-up share capital of one hundred crore rupees or more; or*
 - (b) Turnover of three hundred crore rupees or more:*

Provided that a company, which has been incorporated under the Act and is covered under provision of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation:

Provided further that any intermittent vacancy of a women director shall be filled-up by the Board at the earliest but no later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Explanation- For the purposes of this rule, it is hereby clarified that the paid-up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

Penalty Provision for violation

Section 172:

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, 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.

REPLY OF THE COMPANY:

7. The office issued Show cause notice dated 28.03.2023 to the Company and Mr Kishan Sharma (MD). However, no reply received nor its consignment returned back.

FINDING AND OBSERVATIONS

8. As per the Financial Statements filed by the company its Paid up share capital and turnover as on 31.03.2022 is as under:-

Paid up Share Capital	Rs. 10,00,00,000.00/-
Turnover	Rs. 4,96,87,000.00/-

9. The company is clearly required to appoint a woman director based on the thresholds stated above, but it failed to do so.

Therefore, the company has violated the provision of section 149(1) of the Companies Act, 2013. Hence, the company and every officer will be liable for penal action u/s 172 of the Companies Act, 2013.

10. The issue to be determined is whether the period of default begins from 01.04.2022 or the Company may be provided with a certain time frame to find a suitable candidate. The proviso to Rule 3 provides a period of six months to newly incorporated companies to appoint a woman Director while the second proviso to Rule 3 states that any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but no later than immediate next Board

meeting or three months from the date of such vacancy whichever is later. In the present Case the Company crossed turnover threshold to appoint a Woman Director. Therefore, period of default may be considered from 01.07.2022. The present case does not fall under either of these categories. However, in the interest of justice and through a harmonious reading of these provisions, a period of three months from the beginning of the Financial Year may be considered in order to provide time to the Company to find a suitable candidate and comply with the provisions of the law. Hence, the period of default in the present case is being considered from 1st July of the financial year of default.

11. It is observed from the MCA21 database that the Company has not appointed even a single Woman Director till date. No reply has been received from the Company or its Directors. Therefore, in view of Rule 3(11) of the Companies (Adjudication of Penalties) Rules, 2014 which states that "*(11) If any person fails to reply or neglects or refuses to appear as required under sub-rule (5) or sub-rule (10) before the adjudicating officer, the adjudicating officer may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so.*" the matter is being proceeded with in the absence of such persons (ex-parte).

ORDER

12. In exercise of the powers conferred on me vide Notification dated 24th March, 2015 and having considered the facts and circumstances of the case besides reply of the company after taking into account the factors mentioned in the relevant Rules followed by amendments in section 454(3) of the Companies Act, 2013, I am of the opinion that penalty shall be imposed for the default related to non-compliance of section 149(1) of the Act.
13. Having considered the facts and circumstances of the case and after taking into account the factors above, I hereby impose penalty of Rs. 1,85,000/- on

Company and Rs. 1,00,000/- each on its Officers in default, as per the table below for violation of Section 149(1) of the Companies Act, 2013.

No. of days of default	Penalty imposed on company/ directors	Date of Appointment	Date of cessation	First default penalty in (Rs.)	Default continues penalty in (Rs.)	Total penalty in (Rs.)	Maximum penalty in (Rs.)	Penalty levied in (Rs.)
270	1. AASTHA BROADCASTING NETWORK LIMITED (COMPANY)	-	-	50,000	270 X 500 =135000	=50,000+135000 =1,85,000/-	3,00,000/-	1,85,000/-
	2. SHRI KISHAN VIR SHARMA (Managing Director)	14.06.2014	-	50,000	270 X 500 =135000	=50,000+135000 =1,85,000/-	1,00,000/-	1,00,000/-
	TOTAL							2,85,000/-

(■) The period of violation of provisions under Section 149 of the Companies Act, 2013 is from 01st July, 2022 till 28th March, 2023 and delay is 270 days. As per signatory details available on MCA-21 portal, the above-mentioned individuals as per their appointment dates were Officers in default during the period of violation.

TOTAL PENALTY PAYABLE - Rs. 2,85,000/-

14. I am of this opinion that, the penalty is commensurate with the aforesaid failure committed by every officer of the Company.
15. The Noticee shall pay the said amount of penalty through "Ministry of Corporate Affairs" portal and proof of payment be produced for verification within 60 days of receipt of this order.
16. Please note that as per Section 454(8)(i) of the Companies Act, 2013, where company does not pay the penalty imposed by the Adjudicating Officer or the Regional Director within a period of ninety days from the date of receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees, but which may extend to five lakh rupees.

17. Where an officer of a company who is in default does not pay the penalty within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.
18. Therefore, in case of default in payment of penalty, prosecution will be filed under Section 454(8)(i) and (ii) of the Companies Act, 2013 at your own cost without any further notice.


(B MISHRA)

Adjudication officer and Registrar of Companies,
Maharashtra, Mumbai.

To

1. AASTHA BROAD CASTING NETWORK LIMITED
UNIT NO 317, THIRD FLOOR, MORYA LANDMARK1,
PLOT NO B25, CTS NO 594, OFF ANDHERI LINK ROAD,
ANDHERI W, MUMBAI, Mumbai City,
Maharashtra,400053, India
2. Mr. KISHAN VIR SHARMA (Managing Director),
H. NO. 590, SECTOR-17
FARIDABAD,121002,
Haryana,India

Copy to:-
The Regional Director (WR),
Ministry of Corporate Affairs,
Mumbai.

For information.

भारत सरकार
कारपोरेट कार्य मंत्रालय
कंपनी रजिस्ट्रार का कार्यालय
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3760
फैक्स / FAX : 2281 1977



सत्यमेव जयते

GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF THE REGISTRAR OF
COMPANIES
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Website : www.mca.gov.in
e-Mail ID : roc.mumbai@mca.gov.in

No. ROC/MUM/Adj-Sec 149(1)/2023-24/

Date

RD-426

3390/03393

श्रीम डाक सेवा
SPEED POST

8 JAN 2025

कंपनी अधिनियम, 2013 की धारा 149(1) के उल्लंघन के लिए धारा 454(3) के तहत दंड का आदेश।

Order for penalty for violation of Section 149(1) of the Companies Act, 2013.

IN THE MATTER OF METALLOYS RECYCLING LIMITED
(CIN: U15205MH1987PLC043227)

- (I) Adjudicating Officer: B. Mishra, ICLS, ROC, Mumbai
- (II) Presenting Officer: Rujuta Bankar, ICLS, AROC, Mumbai
- (III) Authorized person on behalf of the Company: Deepak Amanshi Variya,
PCS

APPOINTMENT OF ADJUDICATING OFFICER: -

1. Ministry of Corporate Affairs vide its Gazette Notification No. 011/112/2014-Ad.II, dated 24.03.2015 appointed undersigned as Adjudicating Officer in exercise of the powers conferred by section 454(1) of the Companies Act, 2013 (hereinafter known as Act) r/w Companies (Adjudication of Penalties) Rules, 2014 for adjudging penalties under the provisions of this Act.

COMPANY: -

2. WHEREAS the company viz METALLOYS RECYCLING LIMITED (herein after known as 'the Company') is a registered company with this office under the provisions of the Companies Act, 1956 having its registered office as per MCA21 Registry at address 12-12A, NIRAJ IND. ESTATE, MAHAKALI CAV NEAR PAPER BOX, ANDHERI - EAST MUMBAI MH 400093 IN.

LAW RELATING TO APPOINTMENT OF WOMEN DIRECTOR IN
COMPANY: -

3. Section 149:

Every company shall have a Board of Directors consisting of individual as directors and shall have-

- (a) A minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and*
- (b) A maximum of fifteen directors:*

Provided that a company may appoint more than fifteen directors after passing a special resolution:

Provided further that such class or classes of companies as may be prescribed, shall have at least one women director.

Rule 3 of the Companies (Appointment and qualification of Directors) Rules, 2014:

The following class of companies shall appoint at least one woman director-

- (i) Every listed company*
- (ii) Every other public company having-*
 - (a) Paid-up share capital of one hundred crore rupees or more; or*
 - (b) Turnover of three hundred crore rupees or more:*

Provided that a company, which has been incorporated under the Act and is covered under provision of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation:

Provided further that any intermittent vacancy of a women director shall be filled-up by the Board at the earliest but no later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Explanation- For the purposes of this rule, it is hereby clarified that the paid-up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

FACTS ABOUT THE CASE:

4. As per the Financial Statements filed by the company its Paid up share capital and turnover as on 31.03.2022 is as under:-

Paid up Share Capital	Rs. 5,00,00,000.00/-
Turnover	Rs. 6,19,25,48,663.00/-

5. The Company is required to appoint a Woman Director based on Sec. 149(1) of Companies Act, 2013 r/w R. 3 of Companies (Appointment and Qualification) of Directors Rules, 2014., but it failed to do so.
6. Further, this office had issued show cause notice under section 454 for violation of section 149(1) of the Companies Act, 2013 dated 28.03.2023 to the Company and its directors.
7. Reply dated 28.04.2023 was received from the Company stating that the audited accounts were submitted to them by their auditor in the month of July 2022 and directors have approved the same in the Board meeting dated 28th July 2022 and so the said provision for appointment of woman director under section 149(1) of the Companies Act, 2013 became known to the Company on 28th July 2022. As per the Company, since there was a six-month time period for appointment of a woman director, company thought it had time for the said appointment till 28th January 2023 but the company couldn't find suitable woman director who had knowledge about the company's business. The company expects that the incoming woman directors' vision shall match with the vision of the company. The Company submitted that in India, the woman is least inclined to engage in metal recycling industry due to limited knowledge in metallurgy, operational

know-how of recycling business and secondary metal market. As such the company is into metal industry for last 3 generations and so women are least interested in this industry.

8. However, company is trying its best to find a suitable woman candidate for directorship who has the required skill set but so far has failed to find one and therefore there is a delay in appointment of woman director on Board of the company. Therefore, the company is in search of suitable candidate for appointment of woman director who has adequate knowledge about the Company's business and the same shall be appointed on priority basis.

PENALTY PROVISION FOR VIOLATION

9. Section 172:

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, 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.

HEARING AND REPLY OF THE COMPANY:

10. Deepak Amanshi Variya (Practicing Company Secretary) being authorized representative of the Company attended the hearing in person on 17.05.2023.
11. He stated that the Company is trying its best to find a suitable woman candidate for directorship who has the required skill set but so far has failed to find one and therefore there is a delay in appointment of woman director on Board of the company.

12. The company acknowledges the delay in appointment of woman director for the reasons solely attributed. It was further submitted that the company has been diligently complying with the provisions of the Companies Act, 2013, and other applicable laws.

FINDING AND OBSERVATION:

13. The Company through its authorized representative has admitted its violation of the said provisions. The ground cited by it for failure to appoint a Woman Director are not tenable in law.

14. As per the financial statements filed by the Company its paid up share capital and turnover as on 31.3.2022 is as under:

Paid up share capital	Rs. 5,00,00,000.00/-
Turnover	Rs. 6,19,25,48,663.00/-

15. The company is required to appoint a Woman Director based on the thresholds stated above, but it failed to do so. Therefore, the Company has violated the provision of section 149(1) of the Companies Act, 2013. Hence, the Company and every officer will be liable for penal action u/s 172 of the Companies Act, 2013.

16. Further, in order to calculate the period of default, attention is drawn to the Explanation to Rule 3 which states that "*For the purposes of this rule, it is hereby clarified that the paid-up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.*" In the present case, the Company meets the criteria for appointment of a woman director based on the last date of the latest audited financial statements i.e. 31.03.2022.

17. The issue to be determined is whether the period of default begins from 01.04.2022 or the Company may be provided with a certain time frame to find a suitable candidate. The proviso to Rule 3 provides a period of six months to newly incorporated companies to appoint a woman Director while the second proviso to Rule 3 states that any intermittent vacancy of a woman director shall

be filled-up by the Board at the earliest but no later than immediate next Board meeting or three months from the date of such vacancy whichever is later. The present case does not fall under either of these categories. However, in the interest of justice and through a harmonious reading of these provisions, a period of three months from the beginning of the Financial Year may be considered in order to provide time to the Company to find a suitable candidate and comply with the provisions of the law. Hence, the period of default in the present case is being considered from 1st July of the financial year of default.

ORDER

18. In exercise of the powers conferred on me vide Notification dated 24th March, 2015 and having considered the facts and circumstances of the case besides reply of the company after taking into account the factors mentioned in the relevant Rules followed by amendments in section 454(3) of the Companies Act, 2013, I am of the opinion that penalty shall be imposed for the default related to non-compliance of section 149(1) of the Act. The order is being passed beyond a period of 30 days from the date of hearing for administrative reasons.

19. Having considered the facts and circumstances of the case and after taking into account the factors above. I hereby impose a penalty on the Company and its Officers in default as per table below for violation of provisions of Sec 149 of the Companies Act, 2013 for delay of 271 days. I am of this opinion that, the penalty is commensurate with the aforesaid failure committed by the Notice.

No. of days of default	Penalty imposed on company/ directors	First default penalty in (Rs.)	Default continues penalty in (Rs.)	Total penalty in (Rs.)	Maximum penalty in (Rs.)	Penalty levied in (Rs.)
270	1. METALLOYS RECYCLING LIMITED (COMPANY)	50,000	270X500	50,000 + 1,35,000 = 1,85,000	3,00,000/-	1,85,000/-
	2. VIJAY MOHANLAL PORWAL, DIRECTOR	50,000	270X500	50,000 + 1,35,000 = 1,85,000	1,00,000/-	1,00,000/-
	3. AMBALAL MOHANLAL PORWAL, DIRECTOR	50,000	270X500	50,000 + 1,35,000 = 1,85,000	1,00,000/-	1,00,000/-

	4. SHERNIKKUMAR RANJITMALJI SHAH, DIRECTOR	50,000	270x500	50,000 1,35,000 = 1,85,000	+	1,00,000/-	1,00,000/-
	<u>TOTAL</u>			<u>7,40,000</u>			<u>4,85,000/-</u>

TOTAL PENALTY PAYABLE – Rs. 4,85,000

(■) The period of violation of provisions under Section 149 of the Companies Act, 2013 is from 01st July, 2022 till 28th March, 2023 and delay is 270 days. As per signatory details available on MCA-21 portal, the above-mentioned individuals were Officers in default during the period of violation as follow.

(■) 1. The period of violation of provisions under Section 149 of the Companies Act, 2013 is from 01st July, 2022 till 28th March, 2023. Delay = 270 days.

(■) 2. The period of violation of provisions under Section 149 of the Companies Act, 2013 is from 01st July, 2022 till 28th March, 2023. Delay = 270 days.

(■) 3. The period of violation of provisions under Section 149 of the Companies Act, 2013 is from 01st July, 2022 till 28th March, 2023. Delay = 270 days.

20. The Company and its directors are hereby directed to pay the penalty amount as per the table above. In the director's case such amount is required to be paid out of their own funds.

21. The Company and its directors are hereby directed to rectify the default immediately from the date of receipt of copy of this Order.


22. The Noticee/s shall pay the said amount of penalty through "Ministry of Corporate Affairs" portal and proof of payment be produced for verification within 30 days of receipt of this order.

23. Appeal against this order may be filed in writing with the Regional Director (Western Region) 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 a certified copy of this order.

24. Your attention is also invited to Section 454(8)(ii) of the Companies Act, 2013, where an officer of a company who is in default does not pay the penalty within a period of ninety days from the date of the receipt of the copy of the order, such

officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both. Regarding consequences of non-payment of penalty within the prescribed time limit of ninety days from the date of receipt of this order in terms of the provisions of Section 454(8)(i) of the Companies Act, 2013, where Company does not pay the penalty imposed by the adjudicating officer or the Regional Director within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.

25. Therefore, in case of default in payment of penalty, prosecution will be filed under Section 454(8)(i) and (ii) of the Companies Act, 2013 at your own costs without any further notice.



(B. Mishra)

Adjudication Officer and
Registrar of Companies,
Maharashtra, Mumbai.

To,

1. METALLOYS RECYCLING LIMITED
12-12a, Niraj Ind. Estate, Mahakali Cav
Near Paper Box, Andheri - East
Mumbai Mh 400093 In.
2. VIJAY MOHANLAL PORWAL, Director
201, Kusum kunj, 9th and 10th
Road junction, Khar (west),
Mumbai 400052, Maharashtra India
3. AMBALAL MOHANLAL PORWAL, Director
303, Swasik sadan, 8th road,
Khar west Mumbai 400052 Maharashtra India
4. SHERNIKKUMAR RANJITMALJI SHAH, Director
T/17, Shanti Nagar society,
Near Panchsheel Bus stop, Usmanpura,
Ahmedabad 380013 Gujarat India

6/10

Copy to:-
THE REGIONAL DIRECTOR (WR)
Ministry of Corporate Affairs
100, Everest building, Marine drive,
Mumbai

..... For information.