



ROC(M)/ADJ-42-SHRENI/JTA(AP)/2024/

Date:

31 JAN 2025

**Order for Penalty under Section 454 for violation of Section 42 of the
Companies Act, 2013**

**IN THE MATTER OF M/s. SHRENI SHARES LIMITED
(U67190MH2009PLC195845)**

Adjudicating Officer: - Benudhar Mishra, ICLS, ROC, Mumbai, Maharashtra.

Presenting Officer: - Rujuta Bankar, ICLS, AROC, Mumbai, Maharashtra

Authorised person on behalf of the Company: - Hitesh N Punjani Director and Jai Prakash Sharma, Practicing Company Secretary (PCS).

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 of the Companies Act, 2013 [herein after referred as "the Act"] read with Companies (Adjudication of Penalties) Rules, 2014 for adjudging penalties under the provisions of this Act.

COMPANY: -

2. WHEREAS M/s. SHRENI SHARES LIMITED (herein referred to as Company) was incorporated on 02.02.1996 as a private limited company under the provisions of Companies Act, 1956/2013, registered with this Office and presently having its registered office situated at Office No. 217, Hive 67 Icon, Poisar Gymkhana Road, Lokmanya Tilak Nagar Poisar, Near Raghuleela Mall, Kandivali West, Mumbai, Kandivlai West, Maharashtra, India, 400067. The CIN of the Company is U67190MH2009PLC195845.

FACT ABOUT THE CASE:

3. The Company has electronically filed E-form GNL-1 vide SRN F89852792 on 09/01/2024 with the MCA for Adjudication u/s 454 of the Companies Act, 2013 regarding adjudication of Offence u/s 42 of the Companies Act, 2013. Further, Company through its authorised representative J P Sharma, FCS also submitted physical copy of Adjudication application vide letter dated 11/01/2024.
4. The Company had made preferential allotment u/s 42 of the Companies Act, 2013 on 14/03/2018 for 30,00,000 equity shares of Rs. 10 each amounting to Rs. 3,00,00,000/- in following manner:
 - a. For consideration in cash 10,00,000 equity shares of Rs. 10 each.
 - b. For consideration other than cash – 20,00,000 equity shares of Rs. 10 each by way of conversion of unsecured loan into equity shares.

5. As per the proviso to Sec 42(6) of the Companies Act, 2013, monies received on application under this Section shall be kept in a separate bank account in scheduled bank. However, the money was received in the existing regular bank account of the Company with HDFC Bank having account no. 15770340005852 and no separate account was opened for this purpose, thereby contravening the provisions of Section 42(6) of the Companies Act, 2013.

6. Considering the Adjudication Application, the hearing notice ROC(M)/ADJ-42-SHRENI/JTA(AP)/2024/3045 to 3049 dated 21/03/2024 was issued to the Company and its Promoter(s) to appear on 15/04/2024 at 3:30 pm before adjudicating officer & Registrar of Companies, Maharashtra.

HEARING AND SUBMISSION OF THE COMPANY:

7. The hearing was held before Adjudicating Officer & Registrar of Companies, Mumbai on 15/04/2024 at 3:30pm. During the hearing Shri Hitesh N Punjani Director and Shri Jai Prakash Sharma, PCS have made submission as under:

Crux of the Submission of the Company as under:

- A. The instant suo moto application for adjudication for default occurred under proviso to section 42(6) of the Act, for which penalty is prescribed under Section 42(10) provides the upper limit upto which penalty can be imposed but it does not provide the minimum amount of penalty which can be imposed.
- B. The entire funds were received from promoters of the company only, there is no external investor involved, hence there is no third-party interest is affected adversely.
- C. The issue was to be framed as Rights issue but inadvertently framed as Private Placement u/s 42 which was not required and also not intended.
- D. There was no company secretary with the Company.
- E. Further the PCA in his written submission has stated that the following factors ought to be considered by the Adjudicating Authority the factors prescribed under Rule 3(12) of the Companies (Adjudication of Penalties) Rules, 2014 as follows:

| | |
|---|--|
| i. Size of the Company | Although as per definition of small company under the Companies Act, the Company does not fall under that definition. However, as per industry norms, in which Company is operating (Securities Broking Industry), the size of the Company may be considered small one having regard to the Paid-up capital (Rs. 9.99 Crores) and turnover (Rs. 20.54Crores) as per Balance Sheet of the Company as on 31/03/2023. |
| ii. Nature of Business carried on by the Company | The company carries on the business of securities broking, which is a capital-intensive industry and having very strict deadlines for payments, which is the main cause that the company could not open a separate bank account and received the application money in regular bank account. |
| iii. Injury to public interest: | Entire funds were received from promoters, there is no third-party interest. |
| iv. Nature of default | Default is of technical nature and unintentional |
| vi. Repetition of default | The default was not repeated |
| vii. The amount of disproportionate fair or unfair advantage | NIL |
| viii. The amount of loss caused to an investor or group of investor or creditors as result of default | NIL |

- F. The Company further requested to refer Adjudication order dt 22/03/2023 passed by ROC, Delhi in the matter of ALPUR SOLAR PVT LTD.

- G. During the hearing, the Authorised Representative of the Company was asked to explain whether the funds were utilized before allotment of shares. He stated that the funds were received on 09/03/2018, the allotment was made on 14/03/2018 whereas the PAS-3 was filed on 23/03/2018. Since, they were received in the existing regular account, they could have been utilized.
- H. Further, PCS was asked to explain the delay in the suo-moto application even though the default pertains to FY 17-18, wherein it was stated by PCS that the Company recently underwent a due diligence exercise where the default was noticed. The Company did not have a full time Company Secretary earlier. The PCS was asked to explain procedure followed for the allotment. He stated that Rs. 2 Crores was conversion of Loan into equity for which MGT-14 (SRN: G80299043) was duly filed and s. 1 Crore was on the basis of application made by promoter Ms. Nidhi Shah.
8. That taking into account the facts and submission made by the Company, it is noted that there is violation of Section 42(6) of the Companies Act, 2013 and thus liable for penal action u/s 42(10) of the Act and rules made thereunder.
9. **THE RELEVANT PROVISION OF THE COMPANIES ACT, 2013 AND RULES MADE THEREUNDER ARE AS UNDER (AMENDED VIDE COMPANIES (AMENDMENT) ACT, 2017:**

42. Offer or Invitation for Subscription of Securities on Private Placement.

(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day:

**Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than-*

(a) for adjustment against allotment of securities; or

(b) for the repayment of monies where the company is unable to allot securities.

(10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and Directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

FINDINGS

10. While adjudge quantum of penalty under Section 42(10) of the Act, the Adjudicating Officer shall have due regard to the following factors, namely: -
- a) Size of the Company - Paid up capital Rs. 24,98,78,000/- and Turn over Rs.2,20,54,39,879/- (2022-23).
 - b) Nature of business carried on by the company- Related to Securities broking.
 - c) Injury to public interest- Unquantifiable.
 - d) Nature of the default- Non-compliance of Section 42(6) of the Companies Act, 2013.
 - e) Repetition of the default- No.

f) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default- Unquantifiable.

g) The amount of loss caused to an investor or group of investor or creditor, as a result of the default- Unquantifiable.

h) The company filed suo-moto adjudication application. 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 Noticee to redress the investor grievance are not available on 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. There appears to be a violation of Sec. 62(3) as observed from MGT 14 (SRN: G80299043), a separate SCN may be issued in this regard, the Auditor has failed to point out violation of Section 42, Show Cause notice may be issued in this regard.

11. The authorised representative of the Company has submitted that *"the default is technical in nature and unintentional. Further, the Company carries on the business of securities broking, which is a capital-intensive industry and having very strict deadlines for payments, which is the main cause that the company could not open a separate bank account and received the application money in regular bank account.* The said contention of the applicant Company have been considered keeping in view of the statutory requirement of the provisions related to private placements of Securities involving huge public interest.
12. As required under Section 42(6) of the Companies Act, 2013, monies received on application under this Section shall be kept in a separate bank account in scheduled bank. However, the money was received in the existing regular bank account of the Company with HDFC Bank having account no.15770340005852 and no separate account was opened for this purpose, thereby contravening the provisions of Section 42(6) of the Companies Act, 2013 rendering the Company, its promoters and Directors shall be liable for penal action under Section 42(10) of the Companies Act, 2013.
13. Violation of Section Sec 42(6) of the Act although as claimed by the Applicant is unintentional. The spirit of the provisions of private placement of Securities requires strict compliance of the prescriptive provisions u/s 42 of the Act and rules made thereunder while allotting shares to the allottee pursuant to the private placement as decided by the Company. So the contention of the Company and the violators are not tenable and filing of application on suo-moto basis establishes a case of non-compliance of Sec 42(10) of the Act.
14. During the hearing on 15.04.2024 the authorised representative inter alia submitted to take a lenient view of the contravention which has unintentionally/inadvertently occurred and least penalty may be imposed. The notices have also referred to the order dated 22/03/2023 passed by *the Registrar of Companies, NCT of Delhi and Haryana* wherein penalty has been imposed for violation related to private placement and the filing of Form PAS-3. In the said referred matter the Company utilized funds before allotment, failed to maintain a separate bank account for private placement, and issued a new offer without completing the previous allotment. The Company namely "M/s Alpura Solar Pvt Ltd" self-reported the violation of the Sec 42 of the Act before *the Registrar of Companies, NCT of Delhi and Haryana* (Adjudicating Authority) and penalty of Rs. 2 Lakhs on the Company and Rs. 1 Lakhs on the officers have been imposed.

Keeping in view the circular No. *General Circular No. 1/2020 issued by Ministry of corporate Affairs (F.No. 16/1/2020-Legal)*, the Independent Directors and Non-Executive Directors have not been arrayed as defaulting person for the non-compliance u/s 42(10) of the Act. Hence, Mr BHAVESH HIMMATLAL SHAH, Promoter cum Director, Mr. HITESH NATVARLAL PUNJANI, Promoter cum Director, Ms. SAPNA BHAVESH SHAH, Promoter cum Director, Ms. NIDHI BHAVESH SHAH, Promoter are liable for penal

action u/s 42(10) of the Companies Act, 2013 as per details stated hereinabove.

ORDER

15. As mentioned in para 3(ii) supra, the Company had made preferential allotment u/s 42 of the Act for 30,00,000 equity shares of Rs. 10 each. Out of which 10,00,000 equity shares issued for consideration in cash and 20,00,000 equity shares issued for consideration other than cash. Thus, company has received application money for 10,00,000 Equity Shares, hence an amount of Application money for the same has been considered while adjudicating penalty u/s 42(10) of the Act. The delay, if any, in passing of the order is due to the legal complexities involved in the matter.
16. 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 42(6) of the Act.

For the purpose of determination of penalty, under section 42 (10) the following table is to be considered: -

| Sr. No | Name of the Defaulter | Amount of Share application Money received (In Rs.) | Maximum penalty (In Rs.) | Actual penalty payable |
|--------|--------------------------|---|--------------------------|------------------------|
| 1. | SHRENI SHARES LTD | 1,00,00,000/- | 2,00,00,000 | 26,00,000 |
| 2 | BHAVESH HIMMATLAL SHAH | | | 1,00,000 |
| 3 | HITESH NATVARLAL PUNJANI | | | 1,00,000 |
| 4 | SAPNA BHAVESH SHAH | | | 1,00,000 |
| 5 | NIDHI BHAVESH SHAH | | | 1,00,000 |
| | | | | 30,00,000 |

TOTAL PENALTY PAYABLE: Rs. 30,00,000/-

17. I am of this opinion that, the penalty is commensurate with the aforesaid failure committed by every officer of the Company.
18. The Noticee shall pay the said amount of penalty through "Ministry of Corporate Affairs" portal and proof of payment be produced for verification within 90 days of receipt of this order.
19. 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 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.

20. 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.
21. 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.



(BENUDHAR MISHRA)

Adjudication officer and

Registrar of Companies, Maharashtra, Mumbai.

1.SHRENI SHARES LIMITED

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Near Raghuleela Mall, Kandivali West,
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2.BHAVESH HIMMATLAL SHAH

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3.HITESH NATVARLAL PUNJANI

7, KESHAV KUNJ, DATTA PADA RAOD,
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4.SAPNA BHAVESH SHAH

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5.NIDHI BHAVESH SHAH,

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Copy to:

The Regional Director (WR).

Ministry of Corporate Affairs,

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