

F.No:9/16/ADJ/SEC.42(6) OF 2013/TELANGANA/RD(SER)/2023 /4146
BEFORE THE REGIONAL DIRECTOR, SOUTH EAST REGION
MINISTRY OF CORPORATE AFFAIRS, HYDERABAD
IN THE MATTER OF COMPANIES ACT, 2013

IN THE MATTER OF PAYSWIFF TECHNOLOGIES PRIVATE LIMITED

1. Pyswiff Technologies Private Limited
2. Mr. Prabhuram Radhakrishnan, Managing Director
3. Mr. Abhay Deshpande Raosaheb, Director
4. Mr. Ravi Kiran Pedarla, Director
5. Mr. Anil Bharadwaj Vedam, Director
6. Mr. Mitesh Majithia, Director
7. Mr. Priti Maulik Shah, Director

Appellants

Date of hearing: 12.09.2023

Present : Mr. Manoj Kumar Koyalkar, PCS

ORDER

This is an appeal filed under section 454(5) of the Companies Act, 2013 by the above appellants in e-form ADJ vide SRN F61968632 dated 19.06.2023 against the adjudication order F.No. ROCH/U74900TG2013PTC089686/TELANGANA/42 of 2013/2023 dated 13.05.2023 under section 454 of the Act passed by the Registrar of Companies, Telangana for default in compliance with the requirements of Section 42(6) r/w Section 454 of the Companies Act, 2013.

2. Registrar of Companies in his order that pursuant to the provisions of Section 42(6) of the Companies Act, 2013, the money received on application under this section shall be kept in a separate bank account in a Scheduled Bank. However, the company failed to keep the money received for the preferential issue in a separate bank account, resulting in contravention of the provisions of Section 42(6) of the Companies Act, 2013. Pursuant to the provisions of Section 42(4) of the Companies Act, 2013, a company can not utilize money raised through preferential issue unless allotment is made and the return of allotment is filed with the Registrar. However, the company has erroneously utilized the funds before allotment of shares for the purpose of carrying on its business operations.

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Registrar of Companies in his Adjudication Order has stated that after considering the submissions made in the application and by the authorized representative and the facts of the case, it is proved beyond doubt that the company and its directors have defaulted in complying the provisions under Section 42(4) and 42(6) of the Companies Act, 2013 and stated the company and its six directors during the relevant time are liable and imposed a penalty as follows:

S.No	Name of the Applicants	Penalty imposed by ROC (Amount in Rs.)
1	Payswiff Technologies Private Limited	80,00,000/-
2	Mr. Prabhuram Radhakrishnan, Managing Director	20,00,000/-
3	Mr. Abhay Deshpande Raosaheb, Director	20,00,000/-
4	Mr. Ravi Kiran Pedarla, Director	20,00,000/-
5	Mr. Anil Bharadwaj Vedam, Director	20,00,000/-
6	Mr. Mitesh Majithia, Director	20,00,000/-
7	Mr. Priti Maulik Shah, Director	20,00,000/-

3. An opportunity of being heard was given to the Appellants on 22.08.2023. The authorized representative Mr. Manoj Kumar Koyalkar, Practicing Company Secretary appeared on behalf of the appellants and reiterated the submissions made in the appeal and also submitted the details as under:

The Capital Structure of the Company and other details of the Company as available on MCA-21 portal is stated as under:

S.No	Particulars	Amount (in Rs.)
1	Authorised Capital 50,00,000 (Fifty Lakhs) Equity shares of Rs.10/- (Rupees Ten) each	5,00,00,000
2	Issued, Subscribed and Paid-up Capital Rs. 37,63,468/- (Thirty Seven Lakhs Sixty Three Thousand Four Hundred and Sixty Eight only) Equity shares of Rs.10/- (Rupees Ten) each	3,76,34,680
3	Revenue from operations (as on 31-03-2022)	6,70,31,000
4	Net Loss (as on 31-03-2022)	23,01,30,000

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4. The brief facts of the case are as under:

(a) That the appeal is filed by the Appellants.

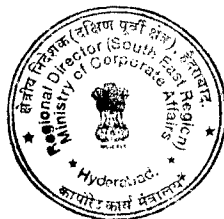
(b) That the Company had allotted the following Equity Shares during the FY 2019-20, on preferential basis, as detailed below:

1	2	3	4	5	6	7
S.No	Date of Board Meeting	No. of Allottees	No of Equity Shares	Face Value (in Rs.)	Premium (Rs.)	Amount (in Rs.)
1.	10/06/2019	1	5,492	10	1,810.52	99,98,295.84
2.	18/06/2019	1	4,120	10	1,810.52	75,00,542.40
3.	15/07/2019	3	31,465	10	1,810.52	5,72,82,661.80
4.	23/09/2019	1	1,946	10	1,810.52	35,42,731.92

(c) That however, the Company has erroneously utilized the monies raised through preferential issue before allotment is made and the return of allotment is filed with the Registrar. Further the Company failed to keep the monies received on application in a separate bank account in a scheduled bank. Hence, the Company have violated the provisions of sub-Section (4) and (6) of Section 42 of the Act.

(d) That the Company had suo-moto filed an application for adjudication with the Adjudication Authority and the authorized representatives of the Company i.e., Mr. Manoj Kumar Koyalkar, FCS and Ms. Kushbu Vijayvargi, FCS (M/s M&K Associates, Company Secretaries, Hyderabad) appeared on behalf of the Company before the Adjudicating Authority.

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(5) That after considering all the facts and circumstances the Registrar of Companies, Hyderabad had imposed the following directing:

(i) To pay a total sum of Rs. 2,00,00,000/- (Rupees Two Crore Only) as a penalty under Section 42 of the Act; and

(ii) To refund the monies for which the allotment is already completed, with an interest of 12% to the shareholders within 30 (thirty) days from the date of order of the ROC

(6) Further submitted the following:

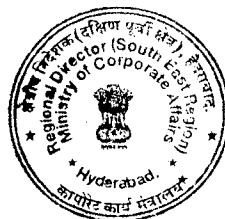
(a) That the Company had issued the shares detailed in para 5(b) supra, to meet the funds requirement for the business of the Company. The Company is still trying to stabilize its operations and is still running into losses. The net loss of the Company as per the latest Audited Financial Statement (i.e. for FY 2021-22) is Rs. 23,01,30,000 (Rupees Twenty-Three Crore One Lakh Thirty Thousand). The Company is in its initial stage of growth and expansion and the financial position of the Company is not sound enough to pay huge penalty as prescribed under the Act.

(b) That the non-compliances done by the Company are not prejudicial to the interest of any of the shareholders, investor, creditors, stakeholder of the Company or public at large in any adverse manner. The said non-compliances occurred due to lack of proper professional guidance and were not willful and were purely unintentional by the Company, without any malafide intentions.

(c) That the original subscribers to the allotment made by the Company as per para 5(b) supra have transferred their shares held in the Company to the third parties.

(d) That there is no disproportionate gain or unfair advantage in the Preferential issue as the issue was entirely subscribed by only 6 (six) shareholders and was only addressed

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(e) to them and the Company has utilized the monies for its genuine business operations, in a very transparent and bonafide manner.

(f) That the Hon'ble Supreme Court has in its various judgments upheld Principle of Proportionality in prescription of punishment with regard to the gravity of offence involved and that the same principles should be applied to the present Appeal.

(g) That all the affairs of the Company are managed by Mr. Prabhuram Radhakrishnan, Managing Director during the Financial Year 2019-20 and that there were total 06 (six) Directors on the Board of the Company during the FY 2019-20, out of which 02 (two) Directors were non-executive Directors and were not involved in the day to day affairs of the Company. The same is summarized below:

Directors of the Company during the FY 2019-20

S. No.	Name of the Director	Designation	Nature
1.	Mr. Prabhuram Radhakrishna	Managing Director	Executive
2.	Mr. Anil Bharadwaj Vedam	Director	Executive
3.	Ms. Priti Maulik Shah	Director	Executive
4.	Mr. Ravi Kiran Pedarla	Director	Executive
5.	Mr. Abhay Deshpande Raosaheb	Director	Non-executive
6.	Mr. Mitesh Majithia	Director	Non-executive

(h) That the above mentioned penalty by the Adjudication Authority is levied on the Executive and Non-Executive Directors, who were not in default for the contraventions herein.

(i) Further, the factors which should be considered while levying penalty are stipulated in Rule 3(12) of Companies (Adjudication of Penalties) Rules, 2014. The same is reproduced hereunder-



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(6) While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-

(a) size of the company:

(b) nature of business carried on by the company

(c) injury to public interest

(d) nature of the default

(e) repetition of the default

(f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default

(g) the amount of loss caused to an investor or group of investors or creditors as a result of the default

(h) That this was the first such contravention by the Company and otherwise the Company is regular in timely compliance of its obligations under the Act: Apparently no other violations are noticed.

(6A) It is observed that:

(a) size of the company: Having Authorised Capital of Rs. 5,00,00,000/- & issued, subscribed and paid up capital of Rs.3,76,34,680/-. Revenue from operations & Net Loss (as on 31.03.2022) is Rs.6,70,31,000/- and Rs.23,01,30,000/- respectively.



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(b) nature of business carried on by the company: Company is engaged in the business of providing online payment gateway services for e-commerce business including ancillary services thereto.

(c) injury to public interest: No

(d) nature of the default: Procedural lapse.

(e) repetition of the default: No

(f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default: Nil

(g) the amount of loss caused to an investor or group of investors or creditors as a result of the default: Nil

(h) That this was the first such contravention by the Company and otherwise the Company is regular in timely compliance of its obligations under the Act: Apparently no other violations are noticed.

7. This authority has carefully considered the impugned order, all the submissions made by the Appellant in the appeal and oral submissions made by the Learned Representative of the Company during the hearing. It was accordingly noted that:

(a) There is a violation of sub-Section (4) and (6) of Section 42 of the Act, for which the liabilities arise under sub-Section 10 of Section 42 of the Act.

(b) The relevant provisions of the Act are as under:

Section 42. Offer or invitation for subscription of securities on private placement.

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Section 42(4)

Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person along with subscription money paid either by cheque or demand draft or other banking channel and not by cash:

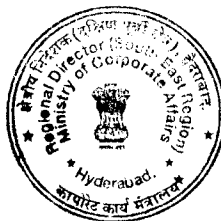
Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8).

Section 42(8)

A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

Section 42(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



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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—

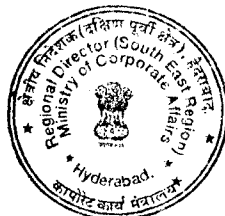
(a) for adjustment against allotment of securities; or

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

Section 42(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.

(c) This authority is of the view that the penal clause of imposing the penalty and the directions for refund are applicable if a Company makes contravention while making an offer or accepts money in contravention of the Section 42. In the instant case, while making offer for private placement, there was no contravention, further



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while accepting the money for Private Placement, there was no contravention. In this case the contravention of the Section 42 is not for making an offer or accepting money but merely confined to opening of a separate bank account and utilization of money received from the Private Placement, before allotment is made and the return of allotment is filed with the Registrar. The heavy penalty provided in sub-Section (10) of Section 42 cannot be applied for a procedural violation i.e., opening of a separate account because the procedural non-compliance of opening of a separate account cannot be equated with the wrong offering of private placement and acceptance of money in contravention of the Section 42. Therefore, for a procedural non-compliance, such major penalty is not desirable and the Company deserves relief from the penalty imposed by the Adjudicating Authority.

(d) During the course of argument, the authorized representatives invited the attention of this authorities on the following orders passed by different RoCs for the same offence committed by various other companies as under:

Sl. No.	Name of the RoC	Nature of Offence	Name of the Company and Order Number and Date	Penalty
1	NCT of Delhi and Haryana	Section 42(4), 42(6) and 42(8)	Alpur Solar Private Limited (CIN U40300DL2018PTC331162) Order No. ROC / D / ADJ / Section 42 / ALPUR / 1324 to 1329 dated 22-03-2023	1. Overall monetary Penalty of Rs.12,90,000; 2. With no instructions for refund of monies with interest;

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2	Karnataka	Section 42(6)	Firstprinciple AppsforBharat Private Limited Order No. ROC(B) / ADJ. ORD. 454-42/ FIRSTPRINCIPLE / CO. NO. 141630 / 2023 dated 13-03-2023	1. Overall Monetary Penalty of Rs.12,39,992; 2. With no instructions for refund of monies with interest;
3	Mumbai, Maharashtra	42(6)	Burger King India Limited Order No. ROC(M) / CMC/ RS/ ADJ-ORDER / 249986 / 3835 / 3838 dated 03-02-2020	Overall monetary Penalty of Rs.5,00,000; 2. With no instructions for refund of monies with interest;

The submissions of the authorized representatives clearly indicate that there are no aggravating circumstances on account of which a higher penalty can be levied.

(8) Taking into consideration the facts of the appeal and submissions made by the Authorised Representatives, I am of the considered view that it would meet the end of justice if the penalty imposed by the Registrar of Companies, Telangana is reduced as follows and the appellants are directed to comply with this order and also provisions of Section 454(8) of the Companies Act, 2013 read with Companies (Adjudication of Penalties) Rules, 2014:

Sl. No.	Name of the Company and Officer in Default	Penalty (Rs.)
1	Payswiff Technologies Private Limited	6,00,000
2	Mr. Prabhuram Radhakrishnan, Managing Director	1,00,000
3	Mr. Abhay Deshpande Raosaheb, Director	1,00,000
4	Mr. Ravi Kiran Pedarla, Director	1,00,000
5	Mr. Anil Bharadwaj Vedam, Director	1,00,000
6	Mr. Mitesh Majithia, Director	1,00,000
7	Mr. Priti Maulik Shah, Director	1,00,000
Total		12,00,000

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Further, as stated in para 7(c) of this order, that the default is merely confined to not opening of a separate bank account and utilization of money received from the Private Placement, before allotment is made and the return of allotment is filed with the Registrar, therefore there is no order for refund of share application monies received by the Company.

The, penalty was paid by the appellants as under:

Sl. No.	Name of the Company and Officer in Default	Details of SRNs	Penalty paid Amount in (Rs.)
1	Payswiff Technologies Private Limited	X52663788	6,00,000
2	Mr. Prabhuram Radhakrishnan, Managing Director	X52660685	1,00,000
3	Mr. Abhay Deshpande Raosaheb, Director	X52662111	1,00,000
4	Mr. Ravi Kiran Pedarla, Director	X52663150	1,00,000
5	Mr. Anil Bharadwaj Vedam, Director	X52664430	1,00,000
6	Mr. Mitesh Majithia, Director	X52665932	1,00,000
7	Mr. Priti Maulik Shah, Director	X52666161	1,00,000
Total			12,00,000

Accordingly, this order is issued to the Appellants with a copy to Registrar of Companies, Telangana and Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi for information and necessary action.

Issued under my hand and seal on this the 27th day of September 2023.




(DR. RAJ SINGH)
REGIONAL DIRECTOR (SER)
HYDERABAD

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- ✓ 1. Payswiff Technologies Private Limited,
2-48/5/6, Vaishnavi's Cynosure, 10th Floor, Opp. RTTC, Telecom Nagar Extn,
Gachibowli NA Hyderabad Rangareddi TG 500032.
2. Registrar of Companies, Ministry of Corporate Affairs, Telangana, Hyderabad
3. The Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi




(DR. RAJ SINGH)
REGIONAL DIRECTOR (SER)
HYDERABAD