

**Application No. RD (NWR)/ Appeal u/s 454(5)/030/2022**

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

IN THE MATTER OF  
THE COMPANIES ACT, 2013

**Section 454 Adjudication of Penalties.**

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

In the matter of adjudication for non-compliance of Section 173 read with 454(3) of the Companies Act, 2013.

And

In the matter of

**1. Swati Processors Private Limited**

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

**2. Ashok Kumar Kejriwal, Director**

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

**3. Rajesh Agarwal, Director**

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

**4. Sunilkumar Shivprasad Sihotia, Director**

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

V/s

**Registrar of Companies, Ahmedabad, Gujarat**

.....Respondent

Date of Hearing: - **10.01.2023**

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

**ORDER**

That the applicants made an on-line Appeal under Section 454 (5) of the Companies Act, 2013 in e-form No. ADJ on 12.08.2022 vide SRN F21280342

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

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

- i. It is observed from the MGT-7 for the year ended 31.03.2018 & 31.03.2019 filed by the company that Board meetings were held by the company on 10.05.2017, 09.08.2017, 07.02.2018 and 01.03.2018 during the year 2017-18 and 10.09.2018 & 27.03.2019 during the financial year 2018-19 respectively. As the gap between board meetings dated 09.08.2017 & 07.02.2018 was more than 120 days i.e. 182 days during the financial year 2017-18 and gap between board meetings dated 10.09.2018 and 27.03.2019 were more than 120 days i.e. 194 days during the financial year 2018-19. Thus, the company/directors have violated the provisions of section 173 of the Companies Act, 2013 read with Companies (Meeting of Board and its powers) Rules, 2017 and liable for penalize under sec. 450 of the Companies Act, 2013 for the year 2017-18 & 2018-19.
- ii. The ROC being adjudicating officer is empowered u/s. 454 (3) of the Companies, Act, 2013 to adjudicate the penalty for Non-compliance of certain provisions of the Companies, Act, 2013. Therefore, show cause notice dated 12.10.2021 were issued to the company and its Respondent directors for the violation of Section 173 of the Companies, Act, 2013.
- iii. Thereafter, adjudication notice dated 27.01.2022 was issued to the company and its officers in default as per Rule 3(3) of the Companies (Adjudication of Penalties) Rules, 2014 and the matter was fixed for hearing on 29.03.2022 vide letter dated 21.03.2022. Shri Ranjit Kejriwal, PCS attended the hearing on behalf of Company and Directors.
- iv. The aforesaid default has been reported to the Ld. Regional Director vide report dated 09.12.2021 in the matter of scheme of arrangement in the nature of amalgamation of Rama Crimpers Private Limited and Rama Polysynth Private Limited and Rama Synsilk Mills Private Limited and Jagdish Silk Mills Private Limited and Swati Processors Private Limited and Rama Tradelink Private

Limited and Harmony Logistics Private Limited and Sunflower Infrastructure Private Limited and Life Long Infrastructure Private Limited and Lion Organisers Private Limited with Face Developers Private Limited in C.A. (CAA)35/NCLT/AHM/2021.

**Penalty imposed:**

- v. The order dated 21.06.2022 passed for violation of section 173 of the Companies, Act, 2013 against the company and its three respondents namely Rajesh Mahabir Prasad Agarwal (Director), Ashok Kumar Kejriwal (Director) and Sunilkumar Shivprasad Sihotia (Director), who are officers in default and imposed penalty of Rs. 72,000/- for 2017-18 & Rs. 84,000/- for 2018-19 on the company and Rs. 60, 000/- each on the directors for each defaulting financial year.
2. That the appellants had submitted in their appeal that:
  - 1) That the appellant company is a private limited company and a small company as per section 2(85) of the Companies Act, 2013.
  - 2) That the Company is a small company within the purview of MSME with a loss of Rs. 14,50,971/-, so it is requested that no penalties be levied as the company is not in a position to pay its liabilities.
  - 3) That there is No public interest involved, the company is a private limited company (Closely Held Company) which clarifies that there was no stake of public involved and hence no liability occurred. It is therefore requested that no penalty be levied on the Company.
  - 4) That the alleged default is procedural in nature and non-intentional on the part of the company. The company assures that such alleged default shall not occur again in future and requests to remove the penalties levied and the company faulted for the very first time and reassures that such event shall not occur again in future.
  - 5) That there is no gain or unfair advantage received by any director, shareholders, or stakeholders as a result of the alleged default, hence it is requested that no penalties be levied on the company.
  - 6) There are nil investments in the company from outsiders. The company is small company with very few shareholders and hence no loss is caused to any investor or creditor as a result of alleged default, hence it is requested that no penalties be levied on the company.

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

3. **ROC, Ahmedabad has submitted its report** vide letter No. ROC-GJ/23/Adj.-sec454-appeal/SWATI PROCESSORS/2022-23/5626 dated 17.11.2022 raising strong objection against the appeal filed and reiterated the facts mentioned in the adjudication order dated 21.06.2022. It is further submitted in the aforesaid report that:

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

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

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

I. With regard to para 2 of the ROC Report, it is submitted the company has called the board meetings on 01.12.2017, 15.05.2018 & 31.12.2018 which was not held due to lack of quorum. So, there was no intentional delay on part of directors or company. Also as per notification dated 07.05.2018 the company has been classified as small company and section 173(5) allows small company to hold just 1 meeting in each half year. Such legislation being a beneficial legislation must be given retrospective effect.

II. That the penalty levied by the learned adjudicating authority shall be deleted on following grounds which have not been considered:

a) The order has been passed without considering the exemption from penalties provided in section 454(3) of the Companies Act, 2013.

- b) Rule 3(12) of the Companies (Adjudication of penalties) for lower penalties as per parameters provided therein.
5. Thereafter, the hearing on appeal has been conducted before the Directorate on 10.01.2023. ROC office has not attended the hearing. Mr. Ranjit Kejriwal, Practicing Company Secretary & Authorized Representatives of the appellants was present in the hearing and pleaded for reducing the amount of penalty on the grounds prayed in appeal application.
6. Keeping in view the facts and circumstances of the case, penalty of Rs. 10,000/- imposed on the company and its directors.

The Penalties had been paid by the appellants as follows:

Sr. No.	Name of the Appellants For F.Y. 2017-18 & 2018-19	Amount (Rs.)	SRN & Date
1.	Swati Processors Private Limited	10,000/-	SRN X33442955 Dated 21.01.2023 of Rs. 30,000/- &
2.	Ashok Kumar Kejriwal, Director	10,000/-	
3.	Rajesh Agarwal, Director	10,000/-	
4.	Sunilkumar Shivprasad Sihotia, Director	10,000/-	SRN X36579555 Dated 25.02.2023 of Rs. 10,000/-

The appeal stands disposed off with these orders.

LADU RAM MEENA Digitally signed by LADU RAM MEENA  
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REGIONAL DIRECTOR  
(NWR) AHMEDABAD

To,

1. **Swati Processors Private Limited**  
Plot No. 65, 1st Floor, Subhash Nagar Society,  
Godh dod Road, nr. Ram Chowk,  
Surat, Gujarat-395001.
2. **Ashok Kumar Kejriwal, Director**  
65, Shubhash Nagar Society, Nr. Ram Chowk,  
SVR College, God dod Road,  
Surat, Gujarat-395007.
3. **Rajesh Agarwal, Director**  
B-1002, Ashirwad Complex,  
Bhatar road, Nr. Raj Ampire,  
Surat, Gujarat-395007.
4. **Sunilkumar Shivprasad Sihotia, Director**  
B-1005, Ashirwad Park, Anuvrat Dwar,  
City Light, Surat, Gujarat.
5. **The Secretary to the Government of India,**  
Ministry of Corporate Affairs,  
New Delhi.

6. **The Registrar of Companies, Ahmedabad, Gujarat with** reference to its office letter No. ROC-GJ/23/Adj.-sec 454- appeal/SWATI PROCESSORS/2022-23/5626 dated 17.11.2022.
7. **Master File.**
8. **Office Copy.**

RAMAAMBEDKAR  
BASANAGIRI

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ASSISTANT DIRECTOR