

Application No. RD (NWR)/ Appeal u/s 454(5)/009/2022

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 13.04.2022.

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. D.J. Shah Investment Finance Private Limited

619, Yash Kamal Building, Sayajigaunj,
Vadodara, Gujarat-390005.

2. Kirit Harilal Shah, Director

98, Kunj Society, Alkapuri,
Vadodara, Gujarat-390007.

3. Bharti Kirit Shah, Director

98, Kunj Society, Alkapuri,
Vadodara, Gujarat-390007.

4. Shital Chintan Shah, Director

16, Panchvati Society, Nr. Amrakunj Soc.,
Elorapark, Vadodara, Gujarat-390023.

V/s

Registrar of Companies, Ahmedabad, Gujarat

.....Respondent

Date of Hearing: - **30.01.2023**

Present:- 1. Shri S. Samdani & Shri Chirag Shah, 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 01.06.2022 vide SRN F03797271 against the order dated 13.04.2022 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 18.11.2022.

1. Facts of the Case:-

- i. It is observed from the MGT-7 for the year ended 31.03.2018 filed by the company that Board meetings were held by the company on 30.06.2017, 15.07.2017, 12.12.2017 and 24.03.2018 during the year 2017-18. As the gap between board meetings dated 15.07.2017 & 12.12.2017 was more than 120 days i.e. 150 days during the financial year 2017-18. 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.
- 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 20.01.2022 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 18.02.2022 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 16.03.2022. Shri J.J. Gandhi, PCS attended the hearing on behalf of Company and Directors. He submitted that the company has convened four board meetings on 30.06.2017, 15.07.2017, 12.12.2017 and 24.03.2018 during the year 2017-18. The company has also convened Board meeting on 07.11.2017, however the board meeting convened at shorter notice could not take place as there were no quorum. In such situation, the company circulated the agenda of transfer of shares and the same was approved by circulation of resolution. The annual return i.e. MGT-7 filed for the financial year 2017-18 had already mentioned the date of approval of transfer of shares i.e. 07.11.2017.
- iv. It is observed from the transfer list of shares attached with MGT-7 that the date of board resolution i.e. 07.11.2017 as claimed by Ld. PCS is not mentioned anywhere in the share transfer form attached with MGT-7 for the FY 2017-18. However, the date of execution of transfer of shares as 07.11.2017 is mentioned

therein, which may not assume the date of Board Resolution. This type of activity should be avoided and such ignorance of law should not be excused.

Penalty imposed:

- v. The order dated 13.04.2022 passed for violation of section 173 of the Companies, Act, 2013 against the company and its three respondents namely Kirit Harilal Shah (Director), Ms. Bharti Kirit Shah (Director) and Ms. Shital Chintan Shah (Director), who are officers in default and imposed penalty of Rs. 40, 000/- each on the company and its directors.

2. That the appellants had submitted in their appeal that:

- 1) That the appellant company is a closely held private limited company having Rs. 10.00 Lakh Authorized capital and Rs. 8.5 Lakh paid up capital.
- 2) That the company has not borrowed an amount from bank or any financial institution. The company has not made any gain or unfair advantage. There is no injury cause to public interest. Violation of sec. 173 of the Companies Act, 2013 is inadvertent, unintentional and procedural in nature. It's a bona fide mistake & none of the stakeholder's interest is affected adversely due to the violation.
- 3) That appellants would like to make further submission and also file the necessary and relevant information/evidence during the course of appellate proceedings.
- 4) That the appellants crave leave to add to, alter, amend or withdraw the aforesaid grounds of appeal.
- 5) That considering the above said grounds of appeal, appellants request Hon'ble RD to set aside the penalty order passed by the Adjudicating Authority.

3. **ROC, Ahmedabad has submitted its report** vide letter No. ROC-GJ/32/Adj.-sec454-appeal/D.J. Shah/2022-23/5661 dated 18.11.2022 raising strong objection against the appeal filed and reiterated the facts mentioned in the adjudication order dated 13.04.2022. It is further submitted in the aforesaid report that:

- a) The aforesaid default has been reported to the Ld. Regional Director, NWR, Ahmedabad vide this office report dated 26.10.2021 in the matter of Scheme of Amalgamation of Premier Solution Private Limited and D.J. Shah Investment and Finance Private Limited u/s. 230 & 232 of the Companies Act, 2013 in C.A.(CAA)31/ (AHM)/2021.

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 letter dated 05.12.2022 commenting on the report of ROC, Ahmedabad and reiterating the facts given in the appeal that:

- I. The appellant company is a closely held company having small scale business operations and aiming at improved bottom line. Company's revenue for the last few years is not of substantial amount and it is mainly from rental income received on account of leasing of ideal properties.
 - II. Company has not borrowed any money or taken loan from the banks/financial institutions. Therefore, no public money is involved.
 - III. Company is law abiding and has respect and regard for the compliance of the provisions under the laws of the country.
5. Thereafter, the hearing on appeal has been conducted before the Directorate on 30.01.2023. ROC office has not attended the hearing. Mr. S. Samdani & Mr. Chirag Shah, Practicing Company Secretary & Authorized Representatives of the appellants were 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. 12,500/- imposed on the company and its directors.

The Penalties had been paid by the appellants as follows:

Sr. No.	Name of the Appellants	Amount (Rs.)	SRN & Date
1.	D.J. Shah Investment Finance Private Limited	12,500/-	X34799924 Dated 04.02.2023
2.	Kirit Harilal Shah, Director	12,500/-	X34802611 Dated 04.02.2023
3.	Bharti Kirit Shah, Director	12,500/-	X34806430 Dated 04.02.2023
4.	Shital Chintan Shah, Director	12,500/-	X34807347 Dated 04.02.2023

The appeal stands disposed off with these orders.

LADU RAM
MEENA

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REGIONAL DIRECTOR
(NWR) AHMEDABAD

To,

1. **D.J. Shah Investment Finance Private Limited**
619, Yash Kamal Building, Sayajigaunj,
Vadodara, Gujarat-390005.
2. **Kirit Harilal Shah, Director**
98, Kunj Society, Alkapuri,
Vadodara, Gujarat-390007.
3. **Bharti Kirit Shah, Director**
98, Kunj Society, Alkapuri,
Vadodara, Gujarat-390007.
4. **Shital Chintan Shah, Director**
16, Panchvati Society, Nr. Amrakunj Soc.,
Elorapark, Vadodara, Gujarat-390023.
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/32/Adj.-sec454-appeal/D.J. Shah/2022-23/5661 dated
18.11.2022.
7. **Master File.**
8. **Office Copy.**

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ASSISTANT DIRECTOR