

Application No. RD (NWR)/ Appeal u/s 454(5)/040/2022

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 08.09.2022.

In the matter of adjudication for non-compliance of Section 158 read with 454(3) of the Companies Act, 2013.

And

In the matter of

1. Premier Solution Private Limited

Universal House, 50/A-1 Shreekunj Society,
Alkapuri, Vadodara, Gujarat-390007.

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 04.11.2022 vide SRN F40014268 against the order dated 08.09.2022 passed by the Adjudicating officer i.e. Registrar of Companies, Ahmedabad, Gujarat. On receipt of the appeal, this

Directorate vide letter dated 30.12.2022 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 03.01.2023.

1. Facts of the Case:-

- i. Default of sec. 158 of the Companies Act, 2013 has been pointed out by the Registrar of Companies, Ahmedabad in its report dated 26.10.2021 in the matter of scheme of amalgamation of Premier Solution Private Limited with D.J. Shah Investment Finance Private Limited in CA(CAA) No. 31 of 2021.
- ii. It is observed from the financial statements for the last three years filed by the appellent company that DIN have not mentioned therein which reveals that the appellent company has violated the provisions of the section 158 of the Companies Act, 2013.
- iii. 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 29.04.2022 were issued to the company and its Respondent directors for the violation of Section 158 of the Companies, Act, 2013.
- iv. Thereafter, adjudication notice dated 23.08.2022 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 01.09.2022. Shri Chirag Shah, PCS attended the hearing on behalf of Company and Directors and made oral submission. He submitted that as obligation to indicate Director Identification Number (DIN) u/s. 158 of the Act very clearly stated that DIN shall be mentioned in return, information or particulars in case where such return, information or particulars related to the director or contain any reference or any director. In their case, the documents as referred in the SCN are the financial statements filed by the company for the year 2013-14 to 2020-21 in which DIN of the directors of the company were not mentioned.
- v. He further submitted that company is a small company having paid up capital of Rs.50.00 lakh and turnover is Nil. No public money involved, as family members are the only director as well as shareholders of the company. Company has not borrowed any money or taken loan from the banks/financial institutions. Company is very much compliant on the part of timely filing of

required e-forms on MCA portal. Financial statements are not exposed to the public at large as it's a private limited company.

Penalty imposed:

- vi. The order dated 08.09.2022 passed for violation of section 158 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. 1,50,000/- each on the company and its directors.

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

- 1) In accordance with the provisions of sec. 158 of the Companies Act, 2013, while furnishing any return, information or particulars, every person or company shall mention the director identification number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.
- 2) The Adjudicating Authority has passed order dated 08.09.2022 stating that the company have not mentioned DIN in the financial statements for the year 2018-19 to 2020-21 whereas it is being noted that financial statements are not the return/information/ particulars related to Directors of the company, however all the necessary details including DIN of the Directors have been provided in all the relevant e form AOC-4.
- 3) The appellant company is a closely held company having paid up capital of Rs. 50.00 lakh and turnover is nil as per audited financial statement for the year 2020-21.
- 4) The appellant company's bottom line and business operations are zero and company's revenue for the last few years is nil.
- 5) The appellant company has not borrowed any money or taken loan from the banks/financial institutions. Therefore, no public money is involved. Mere non-disclosures of DIN of directors in financial statements does not amount to any injury to public at all.
- 6) The appellant company is law abiding and has respect and regard for the compliance of the provisions under the laws of the Country. There is no default in filing of e form AOC4.

7) In view of the facts and circumstances including grounds of appeal set out in detail herein above and intentions behind the laws aimed at ease of doing the business, the appellants humbly and with due respect hereby pray for following:

- a. The impugned penalty order dated 08.09.2022 on the company and the directors be quashed and set aside; or
- b. To take a lenient view and may be warned for better compliance and no penalty to be imposed and even if it is to be imposed, then request to kindly minimize the amount as a token penalty amount only

3. **ROC, Ahmedabad has submitted its report** vide letter No. ROC-GJ/33/Adj.-sec 454- appeal/Premier Sol. STA(V)/2021-22/6131 dated 03.01.2023 raising strong objection against the appeal filed and reiterated the facts mentioned in the adjudication order dated 08.09.2022. 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 13.01.2023 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.
- 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. 15,000/- 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.	Premier Solution Private Limited	15,000/-	X34783548 Dated 04.02.2023
2.	Kirit Harilal Shah, Director	15,000/-	X34784553 Dated 04.02.2023
3.	Bharti Kirit Shah, Director	15,000/-	X34799205 Dated 04.02.2023
4.	Shital Chintan Shah, Director	15,000/-	X34798967 Dated 04.02.2023

The appeal stands disposed off with these orders.

LADU RAM MEENA Digitally signed by LADU RAM MEENA
Date: 2023.03.14 13:18:16 +05'30'

REGIONAL DIRECTOR
(NWR) AHMEDABAD

To,

- 1. Premier Solution Private Limited**
Universal House, 50/A-1 Shree kunj Society,
Alkapuri, Vadodara, Gujarat-390007.
- 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/33/Adj.-sec 454- appeal/Premier Sol. STA(V)/2021-22/6131 dated 03.01.2023.
7. **Master File.**
8. **Office Copy.**

RAMAAMBEDKAR Digitally signed by
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Date: 2023.03.09 10:22:38 +05'30'
BASANAGIRI
ASSISTANT DIRECTOR