

**Application No. RD (NWR)/ Appeal u/s 454(5)/032/2021**

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 (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 31.12.2021.

In the matter of adjudication for non-compliance of Section 42(6) read with 454(3) of the Companies Act, 2013.

And

In the matter of

**1. Tatva Chintan Pharma Chem Limited**

Plot No 502/17, GIDC Estate, Ankleshwar  
GIDC, Ankleshwar, Bharuch, Gujarat-393002.

**2. Mr. Chintan Nitin Kumar Shah, Director**

16, Panchvati Society, Nr. Amarkunj Society,  
Ellora Park, Vadodara, Gujarat-390023.

**3. Mr. Shekhar Rasiklal Somani, Director**

Abhishek Bungalow, Mahavir Society,  
Zaveri Sadak, Navsari, Gujarat-396445.

**4. Mr. Ajaykumar Manshukhlal Patel, Director**

103, Karuna Sagar Society, Nr. Umrigar High  
School, Umra, Surat, Gujarat-395007.

V/s

**Registrar of Companies, Ahmedabad, Gujarat**

..... Respondent

Date of Hearing: - **27.06.2022**

Present:- 1. Mr. Parag Jhaveri, Practicing Chartered Accountant &  
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 28.02.2022 vide SRN T83698696 against the order dated 31.12.2021 passed by the Adjudicating officer i.e. Registrar of Companies, Ahmedabad, Gujarat. On receipt of the appeal, this

Directorate vide letter dated 10.03.2022 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 13.04.2022.

**Facts of the Case:-**

1. That Registrar of Companies, Ahmedabad, Gujarat vide its order dated 31.12.2021 pursuant to Section 42 (6) of the Companies Act, 2013 and in exercise of powers vested with him under sub Section (3) of Section 454 of the Companies Act, 2013 observed as under:-
  - i. The company approached the ROC, Ahmedabad Suo Motto to adjudicate the default committed u/s. 42(6) of the Companies Act, 2013, as it received share application money in general bank account of the company instead of a separate bank account in a scheduled bank.
  - 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, ROC has verified the DRHP of the company filed in GNL-1 vide SRN T30390819 in which on page No. 37, the signatory to the prospectus has submitted that the company has filed adjudication application in ROC for violation of sec. 42 of the Companies Act, 2013 as committed by them to SEBI at the time of approval of DRHP.
  - iii. The company has stated that the company in compliance with section 62 and section 42 of the Companies Act, 2013 has complied with all the requirements except opening of separate bank account with scheduled bank and accepted share application money in general bank account of the company as stated in suo motto application of the company.
  - iv. Thereafter, during the hearing on adjudication the representative of the applicant has argued that there may not be any violation of sec. 42 (6) of the Companies Act, 2013 and the Adjudication application should be revised accordingly. As the root documents pertaining to this matter are already in public domain of MCA-21 system as well as with SEBI, no revision of any pleading or argument can be considered by the Adjudicating Authority and the same attract further complication before the vigil eye of the public and law.
  - v. In view of the above facts the Adjudicating Authority has reasonable cause to believe that the provision of section 42(6) of the Companies Act, 2013

has not been complied with by the company and its officers in default. Thus, the company and its officers in default have rendered themselves liable to penal action as provided in sub-section (10) of section 42 of the Companies Act, 2013.

- vi. 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 notice or loss caused to the investor as a result of the delay on the part of the notice to redress the investor grievance are not available on the record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the notice or the loss caused to the investors in a default of this nature.
- vii. The Adjudicating Authority has imposed following penalty on the company and its respective Directors/KMPs as on the date of filing the Adjudication Application:

Sr. No.	Name of the company/Directors/KMP	Amount
1	Tatva Chintan Pharma Chem Limited	1 Cr.
2	Mahesh Tanna, CFO	20 lakhs
3	Chintan Nitinkumar Shah, Director	20 lakhs
4	Shekhar Rasiklal Somani, Director	20 lakhs
5	Ajaykumar Mansukhlal Patel, Director	20 lakhs
6	Apurva Dubey, CS	20 lakhs

2. That the appellants had submitted in their appeal that:
- a) The appellant company was a private limited company at the time of allotment of 36,75,000 equity shares of Rs. 10/- each to the three of its promoter groups only on 31.03.2015. However, it is pertinent to note that amount lying to the credit to various accounts of members of promoter group have been appropriated towards allotment of shares to the three promoter groups by the Appellant company. Non opening of separate account, if required at all, has not caused any prejudice to any person or investor. There is no gain or unfair advantage derived by the Appellant company on account of such non opening of separate account. The non-opening of such account was due to reason and without any bad intention.
- b) During the process for offering its shares to public through IPO (Initial Public Offer) in the month of November, 2020, the agency in its report has stated that the company has violated provisions of Sec. 42(6) of the Companies Act, 2013.

- c) In a rush for completing formalities for IPO, the Appellant company filed Suo moto application for Adjudication u/s 454 of the Act with the Adjudicating Officer without cross verification of observation/findings of agency who carried out due diligence, which was also due to non-availability of adequate secretarial staff.
- d) Subsequent to filling of an adjudication application by the Appellant company with the Adjudicating Officer, the Appellant tried to find out facts and series of events before and after the allotment of 36,75,000 equity shares of Rs. 10/- each by the Appellant Company. From such findings, which were submitted/presented before Adjudicating Officer during the course of hearing of Adjudication application filed by the Appellant company, it revealed that issue involved may be covered under the provisions of Sec. 62 of the Companies Act, 2013 as well.
- e) Based on the identification of actual facts, the Appellant company had made representation to the Adjudicating Officer from time to time during Adjudication proceedings, and accordingly the Appellant company had made oral request to the Adjudicating Officer to withdraw the Suo moto Adjudication application made by the Appellant company so as to enable it to file fresh adjudication application considering actual series of facts presented by the Appellant company before the Adjudicating Officer.
- f) The Adjudicating Officer without taking into consideration facts of the Appellant company in its right perspective as well as oral submission and request for withdrawal had passed an Adjudication order dated 31.12.2021 levying penalty of Rs. 1,00,00,000/- on the company and Rs. 20,00,000/- each on three directors, Chief Financial Officer and Company Secretary. It is submitted that CFO & CS were neither the employees of the Appellant Company and nor the director of the Appellant company at relevant point of time. Hence, the penalty imposed on CFO & CS shall be set-aside as they are not required to be punished as per the provisions of section 42(10) of the Companies Act, 2013.
- g) In fact, there is neither any advantage to the appellant company nor any loss to any one due to non-opening of any separate bank account. On the contrary the appellant company and its promoters/shareholders suffered heavy losses by way of defamation and heavy reduction in its market capitalized due to heavy fall in its share price on the day when the order issued by the Adjudicating Officer came to public knowledge.

3. ROC, Ahmedabad has raised strong objection through its comments vide letter dated 13.04.2022 reiterated the facts mentioned in the adjudication order dated 31.12.2021. It is further stated that:

1)“As per record of the office the appellant company has accepted application money other than in separate bank account under the provisions of Sec. 42(6) of the Companies Act, 2013. The appellants wanted to modify the suo moto adjudication application due to certain reason, therefore wished to withdraw the same. However, no such withdrawal application was filed by the company or the applicant Directors/KMPs in this regard.

2)The circumstances and observations mentioned by the Adjudicating officer in its order as well as aforesaid report is self-explanatory and the penalty imposed under given facts are justified, hence may not deserve for any intervention by the Appellate Authority in the interest of justice, as the appeal of the appellant is not sustainable. Therefore, the adjudication order dated 31.12.2021 may be confirmed and the appellants may be directed to comply the order dated 31.12.2021 in such terms and conditions as may be decided by the Appellate Authority.”

4. Thereafter, the hearing on appeal has been conducted before the Directorate on 27.06.2022. ROC office has not attended the hearing. Mr. Parag Jhaveri, Practicing Chartered Accountant & 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.

5. Keeping in view the facts and circumstances of the case, the penalty of Rs. 10,00,000/- (Rs. Ten Lakhs Only) has been imposed on the company and Rs. 2,00,000/- (Rs. Two Lakhs Only) on its three directors. The Penalty imposed on CFO & CS by the ROC being Adjudicating Authority is set aside.

The Penalties had been paid by the appellants as follows:-

<b>Sr. No.</b>	<b>Name of the Applicants</b>	<b>Amount (Rs.)</b>	<b>SRN &amp; Date</b>
1.	Tatva Chintan Pharma Chem Limited	10,00,000/-	X18485136 Dated 29.06.2022 X18481671 Dated 29.06.2022
2.	Mr. Chintan Nitin Kumar Shah, Director	2,00,000/-	X18597393 Dated 30.06.2022
3.	Mr. Shekhar Rasiklal Somani, Director	2,00,000/-	X18599407 Dated 30.06.2022

4.	Mr. Ajaykumar Manshukhlal Patel, Director	2,00,000/-	X18603589 Dated 30.06.2022
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The appeal stands disposed off with these orders.

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REGIONAL DIRECTOR  
AHMEDABAD (NWR)

To,

1. **Tatva Chintan Pharma Chem Limited**  
Plot No 502/17, GIDC Estate, Ankleshwar GIDC, Ankleshwar,  
Bharuch, Gujarat-393002.
2. **Mr. Chintan Nitin Kumar Shah, Director**  
16, Panchvati Society, Nr. Amarkunj Society,  
Ellora Park, Vadodara, Gujarat-390023.
3. **Mr. Shekhar Rasiklal Somani, Director**  
Abhishek Bungalow, Mahavir Society,  
Zaveri Sadak, Navsari, Gujarat-396445.
4. **Mr. Ajaykumar Manshukhlal Patel, Director**  
103, Karuna Sagar Society, Nr. Umrigar High School,  
Umra, Surat, Gujarat-395007.
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/GUJ/Sec.454/Appeal/2022/220 dated 07.04.2022.
7. **Master File.**
8. **Office Copy.**

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ASSISTANT DIRECTOR