

भारत सरकार

GOVERNMENT OF INDIA

कारपोरेट कार्य मंत्रालय

MINISTRY OF CORPORATE AFFAIRS

कंपनी पंजीयक का कार्यालय

OFFICE OF THE REGISTRAR OF COMPANIES

सं. 7, दूसरी मंजिल, करुवदिकुपम मुख्य सड़क, मुथियलपेट, पुडुचेरी - 605 003.

NO. 7, 2ND FLOOR, KARUVADIKUPPAM MAIN ROAD, MUTHIALPET, PUDUCHERRY - 605 003.

F.No. ROC/PDY/Adj/Sec.42/02211/2024

Dated: 6 MAR 2024

ORDER OF ADJUDICATION OF PENALTY UNDER SECTION 454 OF COMPANIES ACT 2013 READ WITH RULE 3 OF THE COMPANIES (ADJUDICATION OF PENALITIES) RULES 2014 FOR VIOLATION OF PROVISIONS OF SECTION 42 OF THE COMPANIES ACT 2013 BY M/S LA VILLA HOTEL PRIVATE LIMITED

1. APPOINTMENT OF ADJUDICATION OFFICER:

Ministry of Corporate Affairs vide its Gazette Notification No.A-42011/112/2014-Ad.II, dated 24.03.2015 (see SO 831(E) dated 24.03.2015) appointed undersigned as Adjudication Officer in exercise of the powers conferred by Section 454 (1) of the Companies Act, 2013(herein after known as Act) r/w Companies (Adjudication of Penalties) Rules, 2014 for adjudication penalties under the provisions of this Act.

2. COMPANY:

Whereas M/s LA VILLA HOTEL PRIVATE LIMITED incorporated on 20.08.2008 under the jurisdiction of Registrar of Companies, Puducherry with the registered office situated at No.8, Kasthuribhai Street, Nethaji Nagar, Uppalam, Puducherry 605001. The below particulars as per the data from MCA portal.

S. No	Particulars	Remarks
1.	Paid up capital (Equity & Preference Shares)	43,139,400.00
2.	Turn Over (Revenue from operation)	23,543,509.26
3.	Holding company	NA
4.	Subsidiary company	NA
5.	Whether company registered under Section 8 of the Act?	No
6.	Whether company registered under any other special Act?	No
7.	Whether company is small company	No
8.	Whether Sec. 446B is applicable to the company? (Lesser penalties for certain companies)	No

3. FACTS ABOUT THE CASE:

- Whereas the company had infused funds to the business by issuing share capital through private placement under section 42 of companies Act, 2013 and has filed return of allotment in Form PAS-3, subsequently the company had filed form GNL 2 vide SRN: G84477272 on 23.04.2018 along with PAS 4 & 5, however on perusal of the said GNL 2 form it was prima facie found that the company has been carrying share application money pending allotment in its books for more than 7 years and hence a suo-moto technical scrutiny of the e-filing made by the company was conducted and report submitted to Directorate on 27.08.2018.
- Whereas it is also observed from the Financial Statement as at 31.03.2014, a sum of Rs. 63,84,800/- shown towards "Shares application money pending allotment" and a sum of Rs. 2,91,45,111.50/- has been shown towards "Application money received for allotment of Securities" under the heading "Other Current Liabilities". As per financial statement as at 31.03.2015, the company has collected a further sum Rs. 39,94,812/- for allotment of securities as shown under "Other Current Liabilities". Further, the company in its reply dated 01.08.2018 vide para 1 admitted that it has accepted several subscriptions i.e. on 7 occasions against which the shares are issued only on 27.10.2017. It has been reflected in the financial statements filed by the company for the Financial Years 2014-15, 2015-16 & 2016-17.
- Show Cause Notice for violation of Section 42 (3) of the Companies Act, 2013 read with Rule 14(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 were issued vide No. ROC/PDY/SCN/Sec.42/02211/ 2023 dated 05.09.2023 to the company and its two directors in default viz., 1. Shri. Sanjay Razdan, 2. Paquiry Segiyane. However, the company has filed adjudication application with this office on 01.01.2024. Hence Adjudication hearing was fixed on 25.01.2024.

4. PROVISIONS OF THE ACT:

- Sub-Section (3) of Section 42 of the Act provides that a company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed.
- As per Rule 14(8) (Appointment of Key Managerial Personnel) of the Companies (appointment and Remuneration of Managerial Personnel) Rules, 2014 a company shall issue private placement offer cum application letter only after the relevant special resolution or board resolution has been filed in the Registry.

- Provided that private companies shall file with the Registry copy of the Board resolution or special resolution with respect to approval under clause (c) of subsection (3) of section 179.

5. ORDER


- As per provision of Section 454 of the Act read with Rule 3 of the Companies (Adjudication of Penalties) Rules, 2014 hearing was scheduled on 25.01.2024 at 03.00 PM before the undersigned. The said hearing was attended by Shri. S. Ganeshram, PCS on behalf of Company and its directors along with power of attorney and Memorandum of Appearance. He has stated that the subject company is a private limited company and its ambit of small company only 39.44 lakhs pending allotment after the applicability of u/s. 42 of the Companies Act, 2013. Further, last allotment happened on 21.12.2009. after 2014, 39.44 lakhs have been received and allotted on 27.10.2017 for 11 allottees. Since, FIRC and KYC has not been received from RBI within 60 days, the allotment has been delayed.
- As per Section 42(8) of the Act stated that "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, address, number of securities allotted, and such other relevant information as may be prescribed.
- Upon considering the matter on hearing, the company does not come under the definition of small company and hence Sec. 446(B) is not on company and its directors as per table below for violation of Section 42(9) of Companies Act, 2013 read with Rule 14(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014.
- As per section 42(9) of the Act, 2013 if a company defaults in filing the return of allotment within the period prescribed under Sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

Penal Section for the violation	Period of Violation	Name of Defaulters	Maximum penalty	Penalty levied
42(9) of the Act, 2013 read with Rule 14(8) of the companies (Prospectus and Allotment of Securities) Rules, 2014	01.04.2014 to 27.10.2017 (1305 days)	M/s. LA Villa Hotel Private Limited (Company)	Rs. 25,00,000	(1000x1305)= Rs. 13,05,000
		Shri. Paquiry Segiyane (Director)	Rs. 25,00,000	(1000x1305)= Rs. 13,05,000
		Shri. Sanjay Razdan (Director)	Rs. 25,00,000	(1000x1305)= Rs. 13,05,000
		Total		Rs. 39,15,000

- a. The company and its directors are hereby directed to pay the penalty amount as per the above table. In case of directors such amount is required to be paid out of his own funds.
- b. The company and its directors are hereby directed to rectify the default immediately from the date of receipt of copy of this order.
- c. the notices shall pay the said amount of penalty through online by using the website www.mca.gov.in (Misc. head) in favor of "Pay & Accounts Officer, Ministry of Corporate Affairs, Chennai, payable at Chennai, within 90 days of receipt of this order, and intimate this office with proof of penalty paid.
- d. Appeal against order may be filed with the Regional Director (SR), Ministry of Corporate Affairs, 5th Floor, Shastri Bhavan, 26 Haddows Road, Chennai-600006, within a period of sixty days from the date of receipt of this order, in form ADJ (available on Ministry website www.mca.gov.in) setting forth the grounds of appeal and shall be accompanied by a certified copy of the order. (Section 454 (5) & 454(6) of the Act read with Companies (adjudicating of penalties) Rules, 2014.
- e. Your attention is also invited to Section 454(8) of the Act in the event of Non-compliance of this order.

(i) Please note that as Section 454 (8) (i) of the Companies Act, 2013, whereas company fails to comply with the order made under sub-section (3) or sub-Section (7) as the case may be, within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty five thousand rupees but which may extend to five lakh rupees.

(ii) Where an officer or any other person who is in default fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be, within a period of ninety days from the date of receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty five thousand rupees but which shall not be less than twenty five thousand rupees but which may extend to one lakh rupees or with both.


(A. GOKULNATH, ICLS)
(ADJUDICATION OFFICER)
REGISTRAR OF COMPANIES,
PUDUCHERRY

To:

1. **M/s. LA VILLA HOTEL PRIVATE LIMITED,**
No.8, Kasthuribhai Street, Nethaji Nagar,
Uppalam, Puducherry 605001.
2. **Shri. SANJAY RAZDAN**
Director of M/s. LA Villa Hotel Private Limited,
L-13/6 Phase -2 DLF City Gurgaon,
Haryana, 122002
3. **Shri. PAQUIRY SEGIYANE**
Director of M/s. LA Villa Hotel Private Limited,
No.8, Kasthuribhai Street, Nethaji Nagar,
Uppalam, Puducherry 605001.