

BEFORE THE ADJUDICATING OFFICER  
REGISTRAR OF COMPANIES KERALA AND LAKSHADWEEP

ADJUDICATION ORDER NO. ROC/ADJ/S-12(1) & (4)/2019-2020

Dated. -07-2019

ADJUDICATION UNDER SECTION 12(1) & (4) OF THE COMPANIES ACT, 2013 EFFECTIVE FROM 08-03-2018, READ WITH SECTION 12(8) & 454 OF THE COMPANIES ACT, 2013

**In the matter of:** M/s COCHIN CONSULTANCY AND MANAGEMENT SERVICES LIMITED. Bearing PAN: **NIL**

1. **Brief details of the Company: -**

For the brief details of the Company the Master data of company is produced herein below

CIN	U74140KL2012PLC031517
Company / LLP Name	COCHIN CONSULTANCY AND MANAGEMENT SERVICES LIMITED
ROC Code	RoC-Ernakulam
Registration Number	031517
Company Category	Company limited by Shares
Company SubCategory	Non-govt company
Class of Company	Public
Authorised Capital(Rs)	42500000
Paid up Capital(Rs)	15700000
Number of Members(Applicable in case of company without Share Capital)	0
Date of Incorporation	26/06/2012
Registered Address	RUBICON BUILDING DOOR NO 39/3635A NEAR SOUTH OVERBRIDGE VALANJAMBALAM Ernakulam KL 682016 IN
Email Id	cs.c.radhakrishnan@gmail.com
Whether Listed or not	Unlisted
Date of last AGM	-
Date of Balance Sheet	-
Company Status(for efilling)	Active

Charges			
Assets under charge	Charge Amount	Date of Creation	Date of Modification
No Charges Exists for Company/LLP			

Directors/Signatory Details			
DIN/PAN	Name	Begin date	End date
0005139405	JAYAKUMAR KANTHEESWARAN	17/11/2012	-
0006428187	THANNIPPARA AZHAKAPPA PILLAI SREEKUMAR	17/11/2012	-
0006529289	JOHN KUMBILUVELIL JOSEPH	03/04/2013	-



2. **BACKGROUND OF THE CASE: -**

A Notice issued by the Registrar of Companies, Kerala on 22-05-2017 by registered post to the company has been returned/undelivered with postal endorsement "addressee Left". Thereafter, another two notices were issued on 17-06-2017 & 13-03-2018 calling on the company and its directors. The said notices addressed to the company was also returned with postal endorsement "Addressee left". Finally an adjudication notice was issued to the company and its directors on 03-04-2019 u/s 454 of the Companies Act, 2013 read with Section 12(8) of the Act and Rule 3(2) of the Companies (Adjudication of Penalties) Rules, 2014 for default under section 12(1), 12(4) of the Companies Act, 2013, requesting them to submit their reply, if any, within 15 days from the date of service of the notice. Neither the company nor any one of the directors replied to the said adjudication notice. Whereas as per sec. 12(4) of the Act, notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar of Companies within 15 days of the change, who shall record the same. Whereas the subject company has not intimated any such change in the address of its registered office. Since the notices issued to the company were returned with postal endorsement "addressee Left", the company and its directors have failed to comply with the requirements of provisions of Section 12(1) & (4) of the Act.

3. **APPOINTMENT OF ADJUDICATING OFFICER**

Vide Notification bearing No. S.O. 831. (E) dated 24<sup>th</sup> March 2015 the Govt. of India Ministry of Corporate Affairs has appointed the Registrar of Companies Ernakulam as Adjudicating Officer under the Companies Act, 2013 (18 of 2013) read with the Companies (Adjudication of Penalties) Rules, 2014 with respect to all companies having its registered office with in the State of Kerala and Union territory of Lakshadweep Islands. I am vested with jurisdiction and empowered to adjudicate the matter in hand within the prescribed legal frame.

4. **PERSONAL HEARING**

This office has issued email to all directors of the company directing them to appear before Registrar on 08-07-2019. One Mr. C Radhakrishnan vide his email dated 06-07-2019 informed his inability to appear on 08<sup>th</sup> July, 2019 and thereafter appeared on 10<sup>th</sup> July, 2019. He has informed that he is former director of the company who resigned from directorship on 25-01-2014. He has informed that he has no association with the company in consequent to his resignation and he has appeared as the email issued to the company was received in his email for the reason that the company has not changed the email-id since incorporation. He has further submitted a written explanation regarding his position vide his letter dated 10-07-2019 received by this office on 12-07-2019.

5. **ISSUES OF CONSIDERATION: -**

The issues that arise for consideration in the present case are:

- 1) Whether the Company has violated the provisions of section 12 (1) & (4) of the Act?
- 2) Who are liable for penalty for the violation of section 12 (1) & (4)?
- 3) Whether the default is of continuing nature and when it ceased to continue?
- 4) What would be the quantum of monetary penalty that can be imposed?

6. **RELEVANT PROVISIONS OF THE ACT AND RULES**

Before adverting to the issues in hand, it will be fitting to denote the germane provisions of the Companies Act, 2013 read with applicable Rules.



**Section 12(1) & (4) of the Companies Act, 2013 --**

Where as per Section 12(1) of the Companies Act, 2013, a company shall within 30 days of its incorporation and at all time thereafter, have a registered office capable of receiving and and acknowledge all communications and notices as may be addressed to it.

Whereas as per sec. 12(4) of the Act, notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar of Companies within 15 days of the change, who shall record the same.

**THE COMPANIES (INCORPORATION) RULES, 2014 (as amended vide G.S.R. 411 (E) dated 07th June 2019).**

**THE COMPANIES (REGISTRATION OFFICES AND FEES) RULES, 2014 (as last amended vide G.S.R. 340(E) dated 30<sup>th</sup> April 2019).**

R.12- Fees.-

(1) The documents required to be submitted, filed, registered or recorded or any fact or information required or authorised to be registered under the Act shall be submitted, filed, registered or recorded on payment of the fee or on payment of such additional fee as applicable, as mentioned in Table annexed to these rules.

**THE COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014(as amended vide G.S.R. 131 (E) dated 19<sup>th</sup> February 2019).**

R.3- Adjudication of penalties. - (Substituted w. e. f. 19<sup>th</sup> February 2019)

(1) The Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.

(2) Before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner, to the company, the officer who is in default or any other person, as the case may be, to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than thirty days from the date of service thereon), why the penalty should not be imposed on it or him.

(3) Every notice issued under sub-rule (2), shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default, or any other person, as the case may be and also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed on the company, and each of the officers in default, or the other person.

(4) The reply to such notice shall be filed in electronic mode only within the period as specified in the notice:

Provided that the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding fifteen days, if the company or officer in default or any person as the case may be, satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice within the stipulated period or the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.

(5) If, after considering the reply submitted by such company, its officer, or any other person, as the case may be, the adjudicating officer is of the opinion that physical appearance is required, he shall issue a notice, within a period of ten working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative:



Provided that if any person, to whom a notice is issued under sub-rule (2), desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance.

(6) On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including an order for adjournment :

Provided that after hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice under sub-rule (2), relevant for determination of the default.

(7) The adjudicating officer shall pass an order,-

(a) within thirty days of the expiry of the period referred in sub-rule (2) or of such extended period as referred therein, where physical appearance was not required under sub-rule (5);

(b) within ninety days of the date of issue of notice under sub-rule (2), where any person appeared before the adjudicating officer under sub-rule (5):

Provided that in case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the adjudicating officer and no such order shall be invalid merely because of its passing after the expiry of such thirty days or ninety days as the case may be,

(8) Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance under sub-rule (5).

(9) The adjudicating officer shall send a copy of the order passed by him to the concerned company, officer who is in default or any other person or all of them and to the Central Government and a copy of the order shall also be uploaded on the website.

(10) For the purposes of this rule, the adjudicating officer shall exercise the following powers, namely: -

(a) to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;

(b) to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.

(11) If any person fails to reply or neglects or refuses to appear as required under sub-rule (5) or sub rule (10) before the adjudicating officer, the adjudicating officer may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so,

(12) While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely: -

(a) Size of the company;

(b) Nature of business carried on by the company;

(c) Injury to public interest;

(d) Nature of the default;

(e) Repetition of the default;

(f) The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and

(g) The amount of loss caused to an investor or group of investors or creditors as a result of the default:

Provided that, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act.

(13) In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.

(14) Penalty shall be paid through Ministry of Corporate Affairs' portal only.

## 7. FINDINGS

On perusal of the available records and bearing in mind the facts and circumstances of the case, I record my findings as hereunder:

**Issue 1:** Whether the Company has violated the provisions of section 12(1)(A)?

Upon textual reading of Section 12(1) of the Companies Act, 2013, it is clear that a company shall within 30 days of its incorporation and at all time thereafter, have a registered office capable of receiving and acknowledge all communications and notices as may be addressed to it.

Whereas as per sec. 12(4) of the Act, notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar of Companies within 15 days of the change, who shall record the same. This office has issued a Notice on 22-05-2017 by registered post to the company and the same has been returned/undelivered with postal endorsement "addressee Left". Thereafter, another two notices were issued on 17-06-2017 & 13-03-2018 calling on the company and its directors. The said notices addressed to the company was also returned with postal endorsement "Addressee left". In view of such facts, the Registrar has reason to believe that the company has neither maintained its registered office in the given address nor intimated the change of address in the e-registry of the Ministry and hence company has violated section 12(1)(A) of the Act.

**Issue 2:** Who are liable for penalty for the violation of section 12(1)(A)?

Section 12(8) carries that If any default is made in complying with the requirements of the Section 12, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding One Lakh rupees. The word "Officer" has been defined under Section 2(59) and includes any directors also. The company have three directors therefore a question arises for attention that whether all the three directors of the applicant along with the company are liable for penalty? "officer who is in default" as defined under section 2(60) means any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default.

The Board of directors of the company is consisting three persons namely JAYAKUMAR KANTHEESWARAN, THANNIPARA AZHAKAPPA PILLAI SREEKUMAR & JOHN KUMBILUVELIL JOSEPH and hence, I am of the opinion that the company along with all the above mentioned three directors are "Officers in Default".

**Issue 3 –** Whether the default is of continuing nature and when it ceased to continue?

The date of first Notice issued by the Registrar of Companies, Kerala i.e. 22-05-2017 is to be considered as date of commencement of of default. Since nobody represented the company till date, I am of the opinion that the default is continuing in nature till the date of adjudication i.e. up to 17-07-2019. Therefore, the default continues for a period from 22-05-2017 to 17-07-2019. I.e. default continued for a period of **787** (Seven eighty seven) days.

Issue 4- What would be the quantum of monetary penalty that can be imposed?

If any default is made in complying with the requirements of the section 12 of the Companies Act, 2013, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding One Lakh rupees. Considering this, I hold that the quantum of penalty shall be same as enumerated therein the Act.

8. ORDER

Since the notices issued to the company in its registered office address by the Registrar of Companies, Kerala on 22-05-2017, 17-06-2017 & 13-03-2018 were returned with postal endorsement "addressee Left", the Registrar of Companies, Kerala has ample reason to believe that the company has not maintained its registered office. Further, the company has not filed any eform intimating the change in registered office of the company in the e-registry of Ministry of Corporate Affairs. Hence the company and its 3 directors contravened the provisions of Sec. 12(1) & (4). In exercise of the powers conferred on me vide Notification bearing No. S.O. 831. (E) dated 24<sup>th</sup> March 2015 the Govt. of India Ministry of Corporate Affairs read with Rule 3 of the Adjudication Rules and as envisaged in Section 12(8) of the Companies Act, 2013, I hereby limit the quantum of penalty @ Rs. 1,00,000/- (Rupees One Lakh) upon the Company and each three directors and altogether Rs. 4,00,000/- (Rupees Four Lakhs only) for the violation of section 12 (1) & (4) of the Act.

I am of the view that the said penalty for defaults committed by the Company and directors commensurate with the penalty structure provided in Act read with relevant Rules. The adjudicatory authority has no discretion to levy penalty less than what is legally and statutorily leviable.

10. The Company and the Officer in default shall remit / pay the said amount of penalty within 30 (thirty) days from the date of receipt of this order by way of e-payment facility available on MCA portal while uploading the e-form namely Form No. INC-28 prescribed for filing of Court orders or other orders including the adjudication orders.

(G. C. YADAV)  
(Adjudicating Officer)

Registrar of Companies, Kerala and Lakshadweep

To,

3305 M/s COCHIN CONSULTANCY AND MANAGEMENT SERVICES LIMITED,  
Rubicon Building, Door No. 39/3635 A, Near South Over Bridge,  
Valanjambalam, Ernakulam - 682 016

Copy to:

3306 1). Mr. Jayakumar Kantheewaran,  
Flat 5D, Royal Palace, Manjalipadom Rad,  
North Fort, Erroor Post, Cochin - 682 036.

3307 2). Mr. Thannippara Azhakappa Pillai Sreekumar,  
No. 337B(371), Thanippara, 8, Kanjirappaly-Petta,  
Kanjirappaly Panchayath, Kerala - 686 507.

3308 3). Mr. John Kumbiluvellil Joseph,  
Kumbuluvellil, Vengaloor (P.O),  
Thodupuzha, Idukki - 685 584

(i) Adjudication Section

(ii) Master Folder legal cell

3309 25/7/19

