

BEFORE THE ADJUDICATING OFFICER

REGISTRAR OF COMPANIES KERALA AND LAKSHADWEEP

ADJUDICATION ORDER NO. ROC/ADJ/S-10A/001/2019-2020

Dated. 01-07-2019

ADJUDICATION UNDER SECTION 10A OF THE COMPANIES ACT, 2013 EFFECTIVE FROM 2ND NOVEMBER 2018, READ WITH THE COMPANIES (INCORPORATION) RULES, 2014, THE COMPANIES (REGISTRATION OFFICES AND FEES) RULES, 2014 AND THE COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014,.

In the matter of: M/s RIDHVI CONSTRUCTIONS AND INTERIORS PRIVATE LIMITED.
Bearing PAN: **AAJCR2516E**

And

In the matter of: An application dated 21-06-2019 received by this office on 24-06-2019 from M/s RIDHVI CONSTRUCTIONS AND INTERIORS PRIVATE LIMITED.

1. Brief details of the Company: -

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

Company Master Data	
CIN	U45309KL2018PTC055525
Company / LLP Name	RIDHVI CONSTRUCTIONS AND INTERIORS PRIVATE LIMITED
ROC Code	RoC-Ernakulam
Registration Number	055525
Company Category	Company limited by Shares
Company SubCategory	Non-govt company
Class of Company	Private
Authorised Capital(Rs)	1000000
Paid up Capital(Rs)	500000
Number of Members(Applicable in case of company without Share Capital)	0
Date of Incorporation	15/11/2018
Registered Address	FLAT NO:304, TOPAZ SOBHA CITY, PUZHAKKAL PO THRISSUR Thrissur KL 680553 IN
Email Id	devi.deepkumar@gmail.com
Whether Listed or not	Unlisted
Date of last AGM	-
Date of Balance Sheet	-
Company Status(for e filing)	Active

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

Directors/Signatory Details				
DIN/PAN	Name	Begin date	End date	
0002501274	TITU PRASANNAN	15/11/2018	-	
0005179828	KRISHNAN KODAPPULLY RAVY	15/11/2018	-	
0006385518	DEVI DEEPKUMAR	15/11/2018	-	

Details of subscriber to the memorandum w.r.t. Paid-up Capital is as bellow: -

Subscribers detail *****

Sr.	Name of the subscriber	DIN	No of shares subscribed	Amount of shares
1	DEEPKUMAR KOMANTHAKKAL RAGHAVAN	05348065	7500	75000
2	PRASANNAN POZHEKADAVIL DAMODARAN	03535849	10,000	100000
3	DEVI DEEPKUMAR	06385518	12500	125000
4	TITU PRASANNAN	02501274	10000	100000
5	KRISHNAN KODAPPULLY RAVY	05179828	10000	100000

2. BACKGROUND OF THE CASE: -

An application dated **21-06-2019** has been filed on 24-06-2019 to this office by the Company stating there that the company has violated the provisions of Section 10A of the Companies Act, 2013 (effective from 2nd November, 2018) read with Companies (Incorporation) Rules, 2014 effective from 18th December, 2018 [Rule 23A. by not filing the declaration of commencement of business in E-Form No.-INC-20A required to be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014. However, it is implored in the application that there was no intension to delay the remittance of amount of paid up capital to the company account and there was no will full default in filing of Form INC-20 A Since, the same was not filed within 180 days from the date of incorporation

3. APPOINTMENT OF ADJUDICATING OFFICER

Vide Notification bearing No. S.O. 831. (E) dated 24th 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

Mr. Amal M S. PCS (Membership no. 45743, CP No. 16659) is present duly authorised by the Board resolution dated 22-05-2019. Sri Mr. Amal M S. has also submitted the copy of Board Resolution dated 01-05-2019 designating Ms. Devi Deepkumar as the officer in default u/s 2(60) of the Companies Act, 2013 and thereby she was charged with responsibility of compliance with all the provisions of the C. A. 2013 with effect from the incorporation of the company. Ms. Devi Deepkumar has accepted the responsibility of the compliance by giving her free consent. Copy of the both board resolutions dated 22-05-2019 and 01-05-2019 has been taken on record.

5. I have carefully perused the averments made in application by the Company and the documents available on record/MCA portal. After considering the facts mentioned in the application and other

evidences /materials available on record and hearing upon the submissions made by the duly authorised representative of the Company, I hereby, proceed to decide the case on merit.

6. **ISSUES OF CONSIDERATION: -**

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

- 1) Whether the Company has violated the provisions of section 10A (1) (a)?
- 2) Who are liable for penalty for the violation of section 10A (1) (a)?
- 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?
- 5) Whether the company can make an application to Adjudicating authority for adjudication of penalty under section 10A and tenable?

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

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

Section 10A of the Companies Act, 2013 – (Effective from 2nd November, 2018 inserted vide **Companies (Amendment) Second Ordinance, 2019**)

[(1) A company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless—

(a) **a declaration is filed** by a director within a period of **one hundred and eighty days** of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration; and

(2) If any default is made in complying with the requirements of this section, the **company** shall be liable to a penalty of **fifty thousand rupees** and **every officer who is in default** shall be liable to a penalty of **one thousand rupees for each day** during which such **default continues** but not exceeding an amount of one lakh rupees.

Section-2 of the Companies Act, 2013 (Definitions):-

- 2(59) **“officer” includes** any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act;
- 2(60) **“officer who is in default”**, for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:-
- (iv) 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 COMPANIES (INCORPORATION) RULES, 2014 (as amended vide G.S.R. 411 (E) dated 07th June 2019).

R.23A. Declaration at the time of commencement of business: -

The declaration under section 10A by a director shall be in Form No, INC-20A and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014 and the

contents of the said form shall be verified by a company Secretary or a chartered Accountant or a cost Accountant in practice:

THE COMPANIES (REGISTRATION OFFICES AND FEES) RULES, 2014 (as last amended vide G.S.R. 340(E) dated 30th 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 19th February 2019).

R.3- Adjudication of penalties. - (Substituted w. e. f. 19th 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.**



8. FINDINGS

On perusal of the material available on record 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 10A?

Section 10A (1)(a) plainly carries that the company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless **a declaration is filed** by a director within a period of **one hundred and eighty days** of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the **date of making of such declaration**. **R.23A of the Companies (Incorporation) Rules, 2014** carries that the declaration under section 10A by a director shall be in E-Form No. - LNC-20A and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014 and the contents of the said form shall be verified by a company Secretary or a chartered Accountant or a cost Accountant in practice. Admittedly the company has not filed the e-form INC-20A till date which is a statutory requirement.

The compliance of Companies Act is a statutory obligation on the Company and every officer of the Company, and the penal liability arises as soon as provisions under the Act are violated. Therefore, the intention of the parties committing such violation becomes wholly irrelevant". The law is well settled that that the ignorance of law has no excuse. It is also relevant to mention here that the penalty under a statute is for breach of civil obligation and is mandatory and the mens-rea is not an essential element for imposing the penalty. Therefore, the grounds for non-filing of INC-22A as described in application dated is not tenable and the Company and its officers have violated the provisions of Section 10A attracting penalty.

Issue 2: Who are liable for penalty for the violation of section 10A?

Section 10A (2) carries that If any default is made in complying with the requirements of this section, the **company and every officer who is in default** shall be liable to a penalty. 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.

On careful perusal of the rule 3 of the Companies (Adjudication of Penalties) Rules, 2014 it may be also be observed that with in the whole text of the rule the word "officer in default" is finding place and not the word "every officer in default" as appearing in section 10A(2). The very purpose of rule is to ensure the smooth administration of the act by the administrative ministry. The company has placed on record the board resolution dated 01-05-2019 authorising one of its directors namely Ms. Devi Deepkumar to ensure the compliance under the companies act and for that he has accorded his consent also

Therefore, after considering the aforesaid entire facts / circumstance of the case I hold that the Company and only one Director namely Ms. Devi Deepkumar who is officer in default in terms of section 2(59), 2(60) and in pursuance of board resolution dated 01-05-2019 are liable for penalty for the said violations of provisions of section 10A read with R.3 of **Companies (Adjudication of Penalties) Rules, 2014**,

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

Under the provisions of section 10-A, a company incorporated after the commencement of the Companies (Amendment) Ordinance, 2018 dated 02.11.2018 and having a share capital shall not commence any business or exercise any borrowing powers unless a **declaration (i.e. e-form INC-20A) is filed** by a director within a period of **one hundred and eighty days** of the date of incorporation of the company. After expiry of 180 days from the date of its incorporation (15/11/2018). Therefore, on and after 14th May, 2019 (the expiry of 180 days beginning from the date of incorporation, the company is debarred from filing such declaration without the payment of penalty as may be determined and levied by the adjudicating authority. Only upon payment of penalty and filing of INC-28 attaching therewith the adjudication order the company can file INC-20A. The company has applied for adjudication of penalty vide letter dated 21-06-2019 filed to this office on 24-06-2019 only. The question arises whether the default continues up to date of adjudication order or up to the date of application or up to the date of actual filing of INC-20A?

In my judgement the company should not suffer for any delay in adjudication at the end of adjudicator which is beyond its control and I hold that continuing nature of offence ceased to continue on the date of application. Therefore, there is delay of 42 days and only the officer in default namely Ms. Devi Deepkumar designated vide board resolution dated 01-05-2019 and Company shall be legally responsible for penalty.

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

While determining the quantum of penalty under sections 10A, it is important to consider the Rule - 3(13) of the **Companies (Adjudication of Penalties) Rules, 2014**, which reads as under: -

Rule - 3(13): - **In case a fixed sum of penalty is provided** for default of a provision of the Act, the adjudicating officer shall impose that fixed sum, in case of any default therein.

Section 10A (2):-

If any default is made in complying with the requirements of this section, the **company** shall be liable to a penalty of **fifty thousand** rupees and **every officer who is in default** shall be liable to a penalty of **one thousand rupees for each day** during which such **default continues** but not exceeding an amount of one lakh rupees.

Considering the both provisions that is R.3 (13) and Section 10A (2), I hold that the quantum of penalty shall be same as enumerated therein the Act.

Issue 5- Whether the company can make an application to Adjudicating authority for adjudication of penalty under section 10A and tenable?

Upon textual reading of the Rule 3A of the Companies (Adjudication of Penalties) Rules, 2014, it can be understood that the rules provide a very exhaustive procedure for adjudication proceeding like a complete code of procedure also guiding the adjudicating authority to determine the quantum of penalty. First and foremost, requirement of the procedural rule is that a show cause notice to the Company and defaulting Officer/s must be issued by the adjudicating officer giving the full details of violation, its consequence, fixing the date of hearing/personal appearance e.t.c.,. No doubt the adjudicating officer is required to issue such show cause notice once he noticed any violation of the act but beyond the any stretch of imagination the violators cannot be precluded to apply before the authority for adjudication. The non-filing of INC-20A by the company/directors is sprouting an absolute incapability upon the Company to commence any business or filling any statutory returns/records. To remove the incapability and to commence business, company has every right to apply before the authority for adjudication of penalty. The issue is decided in positive.

9. **ORDER**

In exercise of the powers conferred on me vide Notification bearing No. S.O. 831. (E) dated 24th March 2015 the Govt. of India Ministry of Corporate Affairs read with Rule 3 of the Adjudication Rules, I hereby impose a penalty of Rs. 50,000/- (Rupees fifty thousand) upon the Company and Rs. 42,000/- (Forty two thousand only) upon the Officer in default who is one of the director namely Ms. Devi DeepKumar @ Rs.1000.00 per day for a total defaulting days of 42 (forty two) for the violation of the provision of section 10A.

I am of the view that the said penalty commensurate with the defaults committed by the Company in terms of 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 days 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 the adjudication orders/ Court orders.
11. The order has been dictated and typed in presence of the authorised representative of the defaulting company and also read over before him. He has acknowledged the receipt of the copy of this order by properly endorsing the signature.



(G. C. YADAV)

(Adjudicating Officer)

Registrar of Companies

Kerala and Lakshadweep

To,

M/s RIDHVI CONSTRUCTIONS AND INTERIORS PRIVATE LIMITED

Copy to:

(i) Adjudication Section

(ii) Master Folder legal cell



Amal. M.S
Company Secretary in Practice
M.No - 45 JHB
Cop - 16659.