

Fax : 011 -26235702  
Website : [www.mca.gov.in](http://www.mca.gov.in)  
E-Mail : roc.delhi@mca.gov.in

(011)2623570  
(011)2623570  
(011)2623570

भारत सरकार  
कार्पोरेट कार्य मंत्रालय  
कार्यालय कंपनीज रजिस्ट्रार, दिल्ली एवं हरियाणा  
चतुर्थ तल, आई.एफ.सी.आई. टॉवर, 61 नेहरू प्लेस,  
नई दिल्ली -110019



GOVERNMENT OF INDIA  
MINISTRY OF CORPORATE AFFAIRS,  
OFFICE OF REGISTRAR OF COMPANIES,  
NCT OF DELHI & HARYANA  
4<sup>TH</sup> FLOOR, IFCI TOWER, 61, NEHRU PLACE,  
NEW DELHI -110019

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No. ROC/D/Adj Order/454/Kusum/13366-13374 Dated 24, Nov., 2020

ADJUDICATION ORDER OF PENALTIES UNDER SECTION 454(3) OF THE COMPANIES ACT, 2013 READ WITH RULE 3 OF COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014 AS AMENDED BY COMPANIES (ADJUDICATION OF PENALTIES) AMENDMENT RULES, 2019 IN THE MATTER OF NON-COMPLIANCE OF THE PROVISIONS OF SUB-SECTION (1) OF SECTION 137 OF THE COMPANIES ACT, 2013.

In respect of:

Kusum Healthcare Private Limited  
(CIN U65929DL1997PTC085780)

**1. Appointment of Adjudicating 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 Adjudicating 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 adjudging penalties under the provisions of this Act. The undersigned vide Companies (Amendment) Ordinance, 2019 is entrusted to adjudicate penalties under section 137 of the Companies Act, 2013 with effect from 02.11.2018.

## 2. Company:

Kusum Healthcare Private Limited (*herein after known as 'company'*) is a registered company with this office under the provisions of section 7 of the Companies Act, 2013 having its registered office as per MCA21 Registry at address D-158A, Okhla Industrial Area, Phase-I, New Delhi-110020.

## 3. Facts about the Case:

- a) Sub section (1) of section 137 of the Act *inter alia* provides that a copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed.
- b) In the instant case, the company alongwith its directors have *suo-moto* filed application vide eform GNL-1 (SRN R34198614) for adjudication of penalty under the provisions of section 454 of the Act and rules thereunder and stated therein *inter alia* as under:-
  - The company has shifted its ERP software from CBO (Control Business Online) to SAP (Systematic Applications and Products) during the last Financial Year. It has also changed its Statutory Auditor in the previous year.

- Due to such changes, there was a delay in finalization of Accounts for the Financial Year 2018-19 and resultant non-compliance of section 96 and 137 of the Act.
  - The Annual General Meeting for the Financial Year 2018-19 was held on 24.01.2020 and in the said AGM the audited accounts for adoption by its shareholders were placed.
  - The company has filed its financial statement with the Registrar vide **SRN R33277534 dated 17.02.2020.**
  - The company has prayed to pass an order for adjudicating the penalty for violation of the provisions of section 137 of the Act.
- c) The provisions of section 454(3) of the Act and rules made thereunder *inter alia* stipulate the manner for adjudging penalties for non-compliance of the relevant provisions of this Act. Accordingly, in the interest of natural justice, before imposing the penalty on the company, the officer who is in default, or any other person, as the case may be, a reasonable opportunity of being heard was given to them by issuing a Notice for Hearing under sub-section 4 of Section 454 the Act.
- d) Shri Vijay Kumar Singhal, Practicing Company Secretary, on behalf of the applicants, attended the hearing, in person, on 17.11.2020 and given a written representation dated 17.11.2020 wherein stated *inter alia* that:

- the company has received hearing notice for non-compliance of the provisions of sub-section 92(1) and 137(1) of the Act. However, he has objected the contravention of section 92 of the Act as the required eform MGT-7 alongwith Annual Return has been filed on 11.02.2020 which is within the time prescribed time limit of sixty days;
- he also informed that the non-compliance of the provisions of section 96 of the Act has been compounded by the Regional Director (Northern Region) vide its order dated 28.09.2020;
- he further informed about filing of revised petition as the company has Managing Director liable for action under section 137(3) of the Act and accordingly, withdrawn the application filed by applicant No. 3, 4 and 5 namely Mr. Badri Prasad Gupta, Mr. Pramod Madhav Sapre and Mr. Chand Rashekhar Tippasandra Gowripathi respectively; and
- accordingly prayed for adjudicating the penalty for violation of section 137 of the Act.

#### **4. Provisions of the Companies Act, 2013 provides:**

**Section 137(1) of the Act provides *inter alia*** provides that a copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed.

**Sub-section (3) of section 137 of the Act provides** that if a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein, the company shall be liable to a penalty of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the Managing Director and the Chief Financial Officer of the company, if any, and, in the absence of the Managing Director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of one lakh rupees and in case of continuing failure with further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

#### **5. ORDER:**

- a. The company, Managing Director and its Company Secretary have admitted the default of the provisions of section 137(1) of the Act for filing its due Financial Statement for the Financial Year 2018-19 with a delay of **109 days** making themselves liable for penalties under section 137(3) of the Act.
- b. In exercise of the powers conferred on me vide Notification dated 24<sup>th</sup> March, 2015 and having considered the facts and circumstances of the case besides written and oral submissions made by the representative of Noticee(s) at the time of hearing and after taking into account the factors mentioned in the relevant Rules, I do hereby impose the penalty on the

company and its officers in default as per table below for violation of section 137(1) of the Act:-

Violation for the Financial Year	Penalty imposed on company/ director(s)	Period of Violation	Fixed Penalty (In Rs.)	Total Penalty (In Rs.)
2018-19	On company	31.10.2019 to 16.02.2020	N.A.	$1,000 \times 109 = 1,09,000$
	Sanjeev Gupta, MD		1,00,000	$100 \times 109 = 10,900 + 1,00,000 = 1,10,900$
	Meenakshi Tyagi, CS		1,00,000	$100 \times 109 = 10,900 + 1,00,000 = 1,10,900$

- c. I am of the opinion that penalty so imposed is commensurate with the aforesaid failure committed by the Noticee(s).
- d. The Noticee(s) shall pay the penalty so imposed through Ministry of Corporate Affairs portal only.
- e. Appeal against this order may be filed in writing with the Regional Director (Northern Region), Ministry of Corporate Affairs, B-2, Wing, 2<sup>nd</sup> Floor, Pt. Deendayal antyodaya Bhawan, CGO Complex, New Delhi-110003, within a period of sixty days from the date of receipt of this order, in Form **ADJ** setting forth the grounds of appeal and shall be accompanied by a certified copy of this order. [*Section 454 of the Act read with Companies (Adjudication of Penalties) Rules, 2014 as emended by Companies (Adjudication of Penalties) Amendment Rules, 2019*].
- f. Your attention is also invited to section 454(8) of the Act regarding consequences of non-payment of penalty within the prescribed time limit.

g. In terms of the provisions of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014 as amended by Companies (Adjudication of Penalties) Amendment Rules, 2019, copy of this order is being sent to Kusum Healthcare Private Limited, Sanjeev Gupta, Managing Director and Meenakshi Tyagi, Company Secretary also to Office of the Regional Director (Northern Region), Ministry of Corporate Affairs at New Delhi.

Place : New Delhi.

Dated: 24.11.2020'



(SANTOSH KUMAR)  
(ADJUDICATION OFFICER)

Registrar of Companies,  
NCT of Delhi & Haryana

To,

1. Kusum Healthcare Private Limited, D-158A, Okhla Industrial Area, Phase-I, New Delhi-110020.  
*(By Registered Post and at the e-mail address of the company with the request to serve a copy or order on all the directors of the company).*
2. Mr. Sanjeev Gupta, Managing Director r/o B4/117, Safdarjung Enclave, New Delhi-110029.
3. Ms. Meenakshi Tyagi, Company Secretary r/o WZ-12, Old Allahabad Bank Building, Budhela, Vikaspuri, New Delhi-110018.

Copy for information and records to:

- Joint Director, Legal, Ministry of Corporate Affairs, in compliance to Rule 3(9) of Companies (Adjudication of Penalties) Rules, 2014.
- Office copy.
- E-mail to content Manager for publication on Ministry's website with a copy to Regional Director (Northern Region) at New Delhi.