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भारत सरकार
GOVERNMENT OF INDIA
कारपोरेट कार्य मंत्रालय

MINISTRY OF CORPORATE AFFAIRS

कम्पनी पंजीयक का कार्यालय, तमिल नाडु, अंदमान & निकोबार द्वीपपुंज, चेन्नई

OFFICE OF REGISTRAR OF COMPANIES, TAMIL NADU, ANDAMAN & NICOBAR ISLANDS, CHENNAI

दूसरा मंजिल, 'सी' विंग, शास्त्री भवन, 26, हाडोस रोड, नुंकमपाक्कम, चेन्नई - 6

II FLOOR, C- WING, SHASTRI BHAVAN, 26, HADDOWS ROAD, NUNGAMBAKKAM, CHENNAI- 6

F.NO.ROC/CHN/KCP INFRA/ADJ/RULE 9A/2024

DATE : 29 OCT 2024

ADJUDICATION ORDER UNDER RULE 9A COMPANIES (PROSPECTUS AND ALLOTMENT OF SECURITIES) RULES, 2014 IN THE MATTER OF M/S. KCP INFRA LIMITED

1. Appointment of Adjudicating Officer: -

The Ministry of Corporate Affairs vide its Gazette Notification No. A-42011/112/2014-Ad.II, dated 24.03.2015 has appointed Registrar of Companies, Chennai as Adjudicating Officer in exercise of the powers conferred by section 454(1) of the Companies Act, 2013 (hereinafter referred as Act or Companies Act, 2013) r/w Companies (Adjudication of Penalties) Rules, 2014 for adjudging penalties under the provisions of this Act.

2. Company: -

Whereas the company viz M/s. KCP Infra Limited with CIN: U45400TN2011PLC099511 (herein after referred as 'company' or 'subject company') is a registered company with this office under the Companies Act, 1956 having its registered office as per MCA21 Registry at No.4, Ground floor, Alayam space Anandha road, Alwarpet, Chennai, Tamil Nadu, India, 600018. The financial & other details of the subject company as available on MCA-21 portal is stated as under:

S.No.	Particulars	Information
1.	Company's Status	Active
2.	Filing Status	Financial Statement: up to 31.03.2023 Annual Return: up to 31.03.2023
3.	Paid up Capital	Rs.9,64,93,800/-
	a. Revenue from Operation (Rs.' in lakhs)	Rs.72,505.47/-
	b. Other Income (Rs.' in lakhs)	Rs.1054.82/-
	c. Profit/Loss for the Period (Rs.' in lakhs)	Rs.4029.26/-
4.	Whether it is a Holding Company	No
5.	Whether it is a Subsidiary Company	No
6.	Whether company registered under Section 8 of the Act?	No
7.	Whether company registered under any other special Act?	No

3. Directors during the period of violation:

S.No.	Name of Director Default	Designation	Date of Appointment	Date of Cessation
1.	Shri. Chandra Prakash	Managing Director	01.04.2014

4. Section and Penal Provision as per Companies Act, 2013

Rule 9A Companies (Prospectus and Allotment of Securities) Rules, 2014 - *Issue of securities in dematerialised form by unlisted public companies.-*

(1) Every unlisted public company shall -

(a) Issue the securities only in dematerialised form; and

(b) Facilitate dematerialisation of all its existing securities

in accordance with provisions of the Depositories Act, 1996 and regulations made there under

(2) Every unlisted public company making any offer for issue of any securities or buyback of securities or issue of bonus shares or rights offer shall ensure that before making such offer, entire holding of securities of its promoters, directors, key managerial personnel has been dematerialized in accordance with provisions of the Depositories Act 1996 and regulations made there under.

(3) Every holder of securities of an unlisted public company, _

(a) who intends to transfer such securities on or after 2nd October, 2018, shall get such securities dematerialised before the transfer; or

(b) who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2nd October, 2018 shall ensure that all his existing securities are held in dematerialized form before such subscription.

Section 450 of the Companies Act 2013 - Punishment where no specific penalty or punishment is provided.

If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

5. Facts of the case

The company M/s. KCP Infra Limited and its Managing Director Mr. K.Chandra Prakash have filed Adjudication application by Suo-moto in e-form GNL-1 vide SRN: F96843081 dt 17.07.2024 for violation of Rule 9A of the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Applicants submitted that the Board of Directors of the company in the meeting held on 29th March 2023, had allotted 8,05,748 Equity shares were allotted to various allottees in lieu of converting 89,000 unsecured convertible cumulative

debentures in physical form. However, the company being unlisted public company to issue securities only in dematerialized form and ensure that the securities held by promoters, directors, and key managerial personnel are also dematerialised before any offer. Furthermore, any individual subscribing to securities post- October 2, 2018, must ensure all their securities are held in dematerialised form. The Company and its Directors inadvertently violated this provision by allotting the equity shares in physical form, without facilitating the dematerialisation of all existing securities. The applicants admitted their violation and Suo moto submitted application.

6. Adjudication Hearing:

The Adjudicating Authority had issued Adjudication Hearing Notice to the Company and its Officers in default on 13.08.2024 by fixing the hearing date as 20.08.2024 at 1.40 P.M. In Pursuant to hearing notice issued on 13.08.2024. Mr. S. Ganeshram, Company Secretary in Practice, authorized representative for the company and the Officers in default had appeared before the Adjudicating Authority and made submissions that, *“the said violation may be adjudicated as it is not likely to cause any prejudice to the company, its member and its creditors.”*

7. The Ministry of Corporate Affairs vide notification no. G.S.R.630 (E) dated 09.10.2024 stated that in the Companies (Adjudication of Penalties) Rules,2014, in sub-rule (1) of rule 3A, the following proviso shall be inserted, namely: -

“Provided that the proceedings pending before the Adjudicating Officer or Regional Director on the date of such commencement shall continue as per provisions of these rules existing prior to such commencement”.

Here, the adjudication proceedings have initiated prior to 16th day of September 2024, effective date of the Companies (Adjudication of Penalties) Amendment Rules, 2014.

8. Analysis of Non- compliance of the Companies Act, 2013:

Rule 9A Companies (Prospectus and Allotment of Securities) Rules, 2014 provides that “every unlisted public company is required to issue securities only in dematerialized form and facilitate the dematerialization of all its existing securities”. However, the Company being unlisted public company and its directors inadvertently violated this provision by allotting the equity shares in physical form, without facilitating the dematerialisation of all existing securities. Thus, the company and Officers in default are liable for penalty under Section 450 of the Companies Act,2013.

The company being a public limited company and Paid-up capital more than Rs.9 Crores does not fall under the definition of small company as per provision of section 2(85) of the companies Act, 2013. Therefore, imposing the provision lesser penalty as per section 446(B) shall not be applicable in this case.

9. Decision

Having considered the facts and circumstances of the case and after taking into account it is concluded that the Company and directors have violated Rule 9A of (Companies Prospectus and Allotment of Securities), Rules, 2014.

Accordingly, I am inclined to impose a penalty as prescribed under Section 450 of the Companies Act, 2013. The details of the penalty imposed on the Company and Officers in default are shown in the table given below:


S.No	Company and Officers in default	Per day penalty for default	Maximum Penalty	Penalty Imposed (Rs)
1.	M/s. KCP Infra Limited	Rs.10,000/- + <i>Rs.1000/- per day in case of Continuing Contravention</i>	Rs.2,00,000/-	Rs.10,000 /-

2.	Shri. Chandra Prakash	Rs.10,000/- + <i>Rs.1000/- per day in case of Continuing Contravention</i>	Rs.50,000/-	Rs.10,000/-
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Therefore, in view of the above said violation, in exercise of the powers vested to the undersigned under Section 454(1) & (3) of the Companies Act, 2013 a penalty of Rs.10,000/- (Rupees Ten Thousand) is imposed on the Company and Rs. 10,000/- (Rupees Ten Thousand) is imposed on Officer in default. Totally Rs. 20,000 /- (Rupees Twenty thousand) as penalty amount for violation of Section 450 of the Companies Act, 2013.

10. The said amount of penalty shall be paid through online by using the website www.mca.gov.in(Misc. head) within 90 days of receipt of this order and intimate this office with proof of penalty paid.
11. Whereas Appeal against this order may be filed with the Regional Director (SR), Ministry of Corporate Affairs, 5th Floor, Shastri Bhavan, 26 Haddows Road, Chennai-600006, Tamil Nadu 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 this order. [Section 454(5) & 454(6) of the Act read with Companies (Adjudicating of Penalties) Rules, 2014].
12. Your attention is also invited to section 454(8) of the Act in the event of non-compliance of this order, *“(8)(i) Where 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 of a company 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 the 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 may extend to one lakh rupees, or with both."


(B. SRIKUMAR, ICLS)
REGISTRAR OF COMPANIES
TAMILNADU, CHENNAI.
ADJUDICATING OFFICER


Am
25/10/24

To,

1. F.NO.ROC/CHN/KCP INFRA/ADJ/RULE.9A/2024
M/s. KCP Infra Limited
U45400TN2011PLC099511
No.4, Ground floor, Alayam space Anandha road
Alwarpet, Chennai, Tamil Nadu, India, 600018
2. F.NO.ROC/CHN/KCP INFRA/ADJ/RULE.9A/2024
Shri. Chandra Prakash
Managing Director- (DIN: 03571464)
15, kathiravan Garden, Dhanalakshmipuram,
singanallur, Coimbatore,641005, Tamil Nadu, India

Copy To

1. The Regional Director (SR)
Chennai For information
2. The E-Governance Cell, Ministry of Corporate Affairs, New Delhi

Received by hand
on 01/11/24

(S GANESHRAM)