

**GOVERNMENT OF INDIA**

कारपोरेट कार्य मंत्रालय

MINISTRY OF CORPORATE AFFAIRS

कार्यालय, कंपनी रजिस्ट्रार सह शासकीय समापक

OFFICE OF REGISTRAR OF COMPANIES CUM OFFICIAL LIQUIDATOR,

अधीनस्थ राजस्थान उच्च न्यायालय, जयपुर बेंच, जयपुर

ATTACHED TO RAJASTHAN HIGH COURT, JAIPUR BENCH AT JAIPUR

कॉर्पोरेट भवन, जी/6-7, रेजीडेन्सी एरिया, सिविल लाइंस, जयपुर- 302001

CORPORATE BHAWAN, G/6-7, RESIDENCY AREA, CIVIL LINES, JAIPUR- 302001

ORDER FOR PENALTY UNDER SECTION 454 OF THE COMPANIES ACT, 2013 READ WITH COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014 AND COMPANIES (ADJUDICATION OF PENALTIES) AMENDMENT RULES, 2015 FOR THE VIOLATION OF SECTION 62(3) OF COMPANIES ACT, 2013 IN THE MATTER OF: -

01. Kanishk Aluminium India Private Limited, Company

Plot No E-849 A, Fourth Phase RIICO Boranada, Jodhpur, Rajasthan- 342001.

02. Shri Parmanand Agarwal, Director

Behind Dhanwantri Hospital, 21 Kanti Nagar, Pal Road Jodhpur, Rajasthan- 342008.

03. Ms. Khushboo Agarwal, Director

Behind Dhanwantri Hospital, 21 Kanti Nagar, Pal Road Jodhpur, Rajasthan- 342008.

..... Respondents

Date of hearing - 05.08.2024

Present: -

01. Shri Ruvit Kumar, ROC-Cum-OL, Rajasthan, Jaipur**02. Shri Raunak Agrawal, AROC-cum-AOL, Rajasthan, Jaipur****03. Shri Gaurav Goyal, Practicing Company Secretary and Authorized Representative of the Respondents.****ADJUDICATION ORDER****1. Appointment of Adjudicating Officer: -**

WHEREAS the Ministry of Corporate Affairs vide its Gazette Notification No. SO 831 (E) dated 24.03.2015 appointed the Registrar of Companies/undersigned as Adjudicating Officer in exercise of the Power conferred by Section 454 of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules, 2014. The Registrar of Companies vide the Companies (Amendment) Act, 2019 is entrusted with power to adjudicate penalty as provided under Section 450 of Companies Act, 2013.

2. Respondent Company:

WHEREAS Kanishk Aluminium India Private Limited (CIN U27109RJ2018PTC063198) is registered with this office under the provisions of Companies Act, 2013 and having its

registered office at Plot No E-849 A, Fourth Phase RIICO Boranada, Jodhpur, Rajasthan-342001.

3. Relevant provisions of the Companies Act, 2013: -

WHEREAS as per the provision of Section 62 (3) of the Companies Act, 2013 *“nothing in this section shall apply to the increase of the subscribed capital of a company caused by the exercise of an option as a term attached to the debentures issued or loan raised by the company to convert such debentures or loans into shares in the company: provided that the terms of issue of such debentures or loan containing such an option have been approved before the issue of such debentures or the raising of loan by a special resolution passed by the company in general meeting.”*

WEHEREAS as per the provision of Section 450 of the Companies Act- *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.”*

4. Facts of the Case:

- That the Respondent Company has filed a suo-moto adjudication application for adjudication of violation of section 62(3) of the Companies Act, 2013 vide SRN F97050488 in e-Form GNL-1 with this office stating that the Respondent Company has taken unsecured loan(s) from the directors of the Respondent Company namely Shri Parmanand Agarwal and Ms. Khushboo Agarwal since 02.02.2019 amounting to Rs. 1,85,38,000/-. The Respondent Company has further stated that the above unsecured loan(s) have been converted into shares on 02.07.2019. However, the Special Resolution was passed by the Respondent Company on 01.07.2019 pursuant to section 62(3) of the Companies Act, 2013. Therefore, the Respondents have violated the provision of section 62(3) of the Companies Act, 2013.
- The above application has been examined by this office and accordingly, the date of hearing in the matter was fixed by the Competent Authority on 31.07.2024.

Further, at the time of hearing, Shri Gaurav Goyal, Practicing Company Secretary and authorized representative of the Respondents has appeared in the matter. The Competent Authority asked the authorized representative to furnish additional documents in the matter. In this regard, Shri Goyal sought an extension of time

from the Competent Authority to furnish the requisite documents in the matter. The above request was considered by the Competent Authority and the matter was adjourned for hearing on 05.08.2024.

- Further, at the time of hearing, Shri Gaurav Goyal, Practicing Company Secretary and authorized representative of the Respondents appeared in the matter and furnished the requisite documents asked vide e-mail dated 01.08.2024. Further, Shri Goyal requested Competent Authority to impose minimum penalty considering the Respondent Company as Small Company in terms of section 446B of the Companies Act, 2013 as the company was incorporated on 05.12.2018 with a paid-up capital of Rs. 5,00,000/.

After examination of the above documents, it was seen that the Respondent Company was required to pass Special Resolution before raising the convertible loan(s) from the directors starting from 02.02.2019, however, the same was passed on 01.07.2019. Therefore, there was a default of section 62(3) of the Companies Act, 2013 for the period of 02.02.2019 to 30.06.2019.

5. In view of the above facts, the undersigned has reasonable cause to believe that the provision of section 62(3) of the Companies Act, 2013 has not been complied with by the Respondents and therefore liable for penal action under section 450 of the Companies Act, 2013. Accordingly, in exercise the power of 454 (3) of the Companies Act, 2013, I inclined to impose a penalty on the respondents in accordance with section 446B of the Companies Act, 2013, as under: -

Nature of default	Relevant section of the Companies Act, 2013	Name of persons on whom penalty imposed	No. of days of default	Total defaulting amount (In Rs)	Maximum Limit for Penalty (In Rs.)	Final Penalty Imposed in accordance with section 446B of the Companies Act, 2013 (In Rs.)
Delay in passing of Special Resolution.	Section 62(3) of the Companies Act, 2013.	Kanishk Aluminium India Private Limited	149	10,000/- +149*1,000/- =1,59,000/-	2,00,000/-	79,500/-
		Shri Parmanand Agarwal		10,000/- +149*1,000/- =1,59,000/-	50,000/-	25,000/-
		Ms. Khushboo Agarwal		10,000/- +149*1,000/- =1,59,000/-	50,000/-	25,000/-
Grand Total						1,29,500/-
That the number of days calculated from 02.02.2019 to 30.06.2019.						

I am of this opinion that penalty is commensurate with the aforesaid failure committed by the Respondents and penalty so imposed upon the Officers-in-default shall be paid from their personal sources/ income. The said amount of penalty shall be paid through online by using the website www.mca.gov.in (Misc. head) in favour of "Pay & Accounts

Officer, Ministry of Corporate Affairs, New Delhi, within 90 days of receipt of this order, and intimate this office with proof of penalty paid.

6. Appeal against this order may be filed in writing with the Regional Director (NWR), Ministry of Corporate Affairs, Ahmedabad within a period of sixty days from the date of receipt of this order, in e-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 Companies Act, 2013 read with Companies (Adjudicating of Penalties) Rules, 2014).
7. Attention is also invited to section 454(8)(i) and 454(8)(ii) of the Companies Act, 2013, which state that in case of non-payment of penalty amount, 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 and officer in default 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 both.
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8. In terms of the provisions of sub-Rule (9) of Rule 3 of the Companies (Adjudication of Penalties) Rules, 2014, copy of the order is being sent to the following: -
- I. Kanishk Aluminium India Private Limited at Plot No E-849 A, Fourth Phase RIICO Boranada, Jodhpur, Rajasthan- 342001.
 - II. Shri Parmanand Agarwal at Behind Dhanwantri Hospital, 21 Kanti Nagar, Pal Road Jodhpur, Rajasthan- 342008.
 - III. Ms. Khushboo Agarwal at Behind Dhanwantri Hospital, 21 Kanti Nagar, Pal Road Jodhpur, Rajasthan- 342008.
 - IV. Regional Director, NWR, Ministry of Corporate Affairs, Ahmedabad at ROC Bhavan, Opp. Rupal Park Society, Behind Ankur Bus Stop, Naranpura, Ahmedabad, Gujarat- 380 013.


(RUVIT KUMAR)

ROC-cum-OL & Adjudicating officer,
Rajasthan, Jaipur

Signed on this 14th August 2024.
Place: Jaipur, Rajasthan.

File No. ROCJP/Adj./Sec. 62(3)/2024-25/ 1414

Date: - 16/8/24

To,

01. Kanishk Aluminium India Private Limited, Company

Plot No E-849 A, Fourth Phase RIICO Boranada, Jodhpur, Rajasthan- 342001.

02. Shri Parmanand Agarwal, Director

Behind Dhanwantri Hospital, 21 Kanti Nagar, Pal Road Jodhpur, Rajasthan- 342008.

03. Ms. Khushboo Agarwal, Director

Behind Dhanwantri Hospital, 21 Kanti Nagar, Pal Road Jodhpur, Rajasthan- 342008.

04. Regional Director, NWR

ROC Bhavan, Opp. Rupal Park Society, Behind Ankur Bus Stop, Naranpura,
Ahmedabad, Gujarat-380013.

✓ **05. Guard File.**

06. Office Copy

07. E-mail to content manager for publication on the Ministry's website.