

**GOVERNMENT OF INDIA**

कार्पोरेट कार्य मंत्रालय

**MINISTRY OF CORPORATE AFFAIRS**

कार्यालय, कंपनी रजिस्ट्रार सह शासकीय समापक

**OFFICE OF REGISTRAR OF COMPANIES CUM OFFICIAL LIQUIDIAOTR,**

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(1) 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 (1) of the Companies Act, 2013 "Where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered-

*[a]. to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely: -*

*(I). the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days or such lesser number of days as may be prescribed and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;*

*(II). Unless the articles of the company otherwise provide the offer aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them in favour of any other person; and the notice referred to in clause (I) shall contain a statement of this right;*

*(III). after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not disadvantageous to the shareholders and the company;*

*[b]. to employees under a scheme of employees' stock option, subject to special resolution passed by company and subject to such conditions as may be prescribed, or*

*[c]. to any person, if it is authorized by a special resolution, whether or not those persons include the persons referred to in clause (a) or clause (b), either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed."*

**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(1) of the Companies Act, 2013 vide SRN F97049050 in e-Form GNL-1 with this office stating that the Respondent Company has allotted 29,96,200 number of shares on nominal amount to Rs. 10/- on 08.11.2019 on right issue basis pursuant to section 62(1) of the Companies Act, 2013 and filed e-Form PAS-3. The Respondent Company has further stated that the Respondent Company has issued an offer letter 08.07.2019 in the matter. However, Respondent Company has received the amount for the above offer from 12.07.2019 to 10.02.2020 and violated the provisions of section 62(1) of the Companies Act, 2013 as the offer was opened for more than thirty days from the date of the offer.
- 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 has issued an offer letter 08.07.2019. The period of the above offer should be closed on 07.08.2019. However, the same was opened upto 10.02.2020 and therefore, the Respondents have violated the provisions of section 62(1) of the Companies Act, 2013 as the offer was opened for more than thirty days from the date of the offer.

5. In view of the above facts, the undersigned has reasonable cause to believe that the provision of section 62(1) of the Companies Act, 2013 has not been complied with by the Respondents as the timing of offer was exceeded by more than 30 days from the date of offer 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 (In Rs.)
The offer was exceeded by more than thirty days from the date of the offer	Section 62(1) of the Companies Act, 2013.	Kanishk Aluminium India Private Limited	188	10,000/- +188*1,000/- =1,98,000/-	2,00,000/-	99,000/-
		Shri Parmanand Agarwal		10,000/- +188*1,000/- =1,98,000/-	50,000/-	25,000/-
		Ms. Khushboo Agarwal		10,000/- +188*1,000/- =1,98,000/-	50,000/-	25,000/-
<b>Grand Total</b>						<b>1,49,000/-</b>
That the number of days calculated from 07.08.2019 to 10.02.2020.						

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](http://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](http://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.
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.

*WY*

(RUVIT KUMAR)

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

Signed on this 14<sup>th</sup> August 2024.

Place: Jaipur, Rajasthan.

File No. ROCJP/Adj./Sec. 62(1)/2024-25/ *1408*

Date: - *16<sup>th</sup>*  
*2024*

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.**