

BEFOR THE ADJUDICATING OFFICER
REGISTRAR OF COMPANIES, GUJARAT, DADRA & NAGAR HAVELI

No. ROC-Guj/Adj. Order/Sec. 92(4)/2023/ *HS 920 To 26*

Dated: **16 MAY 2023**

ORDER FOR PENALTY UNDER SECTION 454 OF THE COMPANIES ACT, 2013 READ WITH COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014 FOR VIOLATION OF SECTION 92(4) OF THE COMPANIES ACT, 2013.

IN THE MATTER OF M/s. ADANI POWER LIMITED

(L40100GJ1996PLC030533)

Date of hearing- 08.05.2023

PRESENT:

1. Shri R. C. Mishra (ROC), Adjudicating Officer
2. Mr. Indrajit Vania (DROC), Presenting Officer.

Company/Officers/Directors/KMP/Authorised Representative:

Mr. Jaladhi Shukla (CS) and Mr. Chirag Shah (PCS) authorized representatives of the Company/Directors.

Appointment of Adjudication Authority: -

1. The Ministry of Corporate Affairs vide its Gazette Notification No. A-42011/112/2014-Ad. II dated 24.03.2015 has appointed the undersigned as Adjudicating Officer in exercise of the powers conferred under section 454 of the Companies Act, 2013 (hereinafter known as Act) read with Companies (Adjudication of Penalties) Rules, 2014 (Notification No. GSR 254(E) dated 31.03.2014) for adjudging penalties under the provisions of Act.

Company:

2. M/s. ADANI POWER LIMITED (herein after referred to as "the Company") is a Company registered under the provisions of the Companies Act, 1956/2013 in the State of Gujarat, having CIN (L40100GJ1996PLC030533) and presently having its registered office situated at Adani Corporate House, Shantigram, Near Vaishno Devi Circle, S.G. Highway, Khodiyar, Ahmedabad, Gujarat- 390 007.

Fact of the case:

3. The Ministry of Corporate Affairs vide letter No. 7/453/2014/CL-II dated 05.04.2018 has ordered for Inquiry of the Company under section 206(4) of the Companies Act, 2013. Accordingly, inquiry under section 206(4) of the Companies Act, 2013 has been carried-out by the office of ROC, Ahmedabad. During the course of inquiry, the inquiry officer has pointed out the violation of section 92(4) of the Companies Act, 2013 as under:

SV

It is observed from the e-forms MGT-7 towards Annual Returns vide SRNs Q71477111 and G80882798 for the F.Y. 2014-15 and 2016-17 respectively that the company has not attached the details of Shareholders with the said forms as required under the provisions of section 92 of the Companies Act, 2013 and the same are pending for more than 6 to 7 years. Therefore, the said e-forms has not been taken on record on MCA portal so far. Thereby company and its officer are in default for violation of section 92(4) of the Companies Act, 2013.

4. The office of the undersigned has issued adjudication notice under section 454 of the Companies Act, 2013 for violation of section 92(4) of the Companies Act, 2013 to the Company and its officers in default on 09.03.2023 with request to remit the penalty as prescribed under the provisions of the Act.
5. Thereafter the representative of the company vide letter dated 24.04.2023 requested the Adjudicating Authority for physically hearing in the matter. Accordingly, the undersigned had fixed the hearing on 08.05.2023 at 12.30pm in the O/o ROC, Ahmedabad.

Reply / submission made by Authorized Representatives.

6. Mr. Jaladhi Shukla (CS) and Mr. Chirag Shah (PCS) authorized representatives of the Company/Directors are present in hearing proceeding on 08.05.2023. They submitted reply vide letter dated 08.05.2023 which is taken on record. They further submitted that e-form MGT-7 for the 2014-15 and 2016-17 were filed within time vide SRN Q71477111 and G80882798 respectively. For the financial year 2014-15, the company has filed fresh e-form MGT-7 vide SRN F60423023 on 11.04.2023 with additional fees totaling to Rs. 1,82,400/-. The same has also been approved. Therefore, no penalty should be imposed.

They further submitted that the SRN: G80882798 pertaining to e-filing MGT-7 for the F.Y. 2016-17, was pending due to non-mentioning the Investor details/ not attaching the Shareholders list and after filling/uploading the said details in the form MGT-7 on 23.03.2023, the same was approved immediately. So there is no question to impose penalty, as the original e-form MGT-7 has already approved on 23.03.2023 through STP Mode. It is further submitted that in terms of purview of provisions of section 454(3) in case the default relates to section 92(4) and such default has been rectified either prior to or within 30 days of issue of notice by the Adjudicating Authority, no penalty shall be imposed in this regard.

During the hearing, the representatives of the Company/directors have requested to take a lenient view and not to impose penalty in the matter.

Submission of the Presenting Officer:

7. During the hearing, the Presenting Officer has submitted that the Adjudication notice for violation of section 92(4) of the Act was issued on 09.03.2023 and the company has filed fresh MGT-7 for the F.Y. 2014-15 vide SRN: F60423027 on 11.04.2023 and SRN G80882798 for F.Y. 2016-17 has resubmitted on 23.03.2023 with adequate details in compliance of show cause notice issued by Adjudication Officer for rectifying the default. However, it should be filed on or before 08.04.2023 for rectifying the default. The company has filed fresh MGT-7 for the F.Y. 2014-15 after issue of adjudication notice dated 09.03.2023 delayed by 2 (two) days. Hence, company and its officer in default should be liable for penalty prescribed under the provisions of section 92(5) of the Companies Act, 2013 for F.Y. 2014-15. The adjudicating authority has power under section 454 of the Act r.w. section 92(4) of the Companies Act, 2013 to impose penalty under section 92(5) of the Companies Act, 2013. Accordingly, penalty should be imposed for non-compliance of section 92(4) of the Companies Act, 2013 for financial year 2014-15 in the interest of justice.

ORDER:

8. While adjudging quantum of penalty under section 92(4) of the Companies Act, 2013, the Adjudication Officer shall have due regard to the following factors, namely:
- (a) The amount of disproportionate gain or unfair advantage, whenever quantifiable, made as a result of default.
- (b) The amount of loss caused to an investor or group of investors as a result of the default.
- (c) The repetitive nature of default.
9. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the noticee or loss caused to the investor as a result of the delay on the part of the noticee to redress the investor grievance are not available on the record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the noticee or the loss caused to the investors in a default of this nature.
10. The undersigned considered the submission made by the authorized representatives of the company/ Directors and Presenting officer. Having considering the facts and circumstances of the case and after taking into account the above factors, the undersigned has reasonable cause to believe that the company and its officers, in default have violated the provision of section 92(4) of the Companies Act, 2013 by delay filing of Annual Return for the F.Y. 2014-15 after issue of adjudication notice. I hereby imposed penalty on the company and its Directors in default for delay filing of e-form MGT-7 in respect of annual return for the F.Y. 2014-15 for violation of section 92(4) of the Companies Act, 2013 as per Table below:-

<u>Violation under Companies Act, 2013 for the F.Y. 2014-15</u>	<u>Company/ Directors/Officers</u>	<u>Penalty in pursuant to Section 94(5) of the Companies Act, 2013 for default (Rs.)</u>	<u>Maximum Penalty to be imposed (Rs)</u>	<u>Penalty imposed</u>
Sec. 92(4)	Company	10000+100 X 2 Day	10,200/-	10,200/-
	Rajesh Shantilal Adani (M.D.)	10000+100 X 2 Day	10,200/-	10,200/-
	Vneet S Jain (WTD)	10000+100 X 2 Day	10,200/-	10,200/-
	Vinod Bhandawat (CFO)	10000+100 X 2 Day	10,200/-	10,200/-
	Deepakbhai Sanatkumar Pandya (C.S.)	10000+100 X 2 Day	10,200/-	10,200/-

11. The noticee shall pay the amount of penalty individually for the company and its directors (out of own pocket) by way of form No. INC-28 of e-payment (available on Ministry Website www.mac.gov.in) under "Pay miscellaneous fees" category in MCA fee and payment Service within 90 (ninety) days of this order and the Challan/SRN generated after payment of penalty through online mode shall be forwarded to this office along with the copy of form No. INC- 28.
12. Appeal if any, against this order may be filed in writing with the Regional Director, North Western Regional, Ministry of Corporate Affairs, ROC Bhavan, Opp. Rupal Park, Nr. Ankur Bus stand, Naranpura, Ahmedabad (Gujarat) 380 013 within a period of sixty days from the

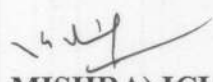
date of receipt of this order, in e-Form ADJ setting forth the grounds of appeal and shall be accompanied by the certified copy of this order. (Section 454 of the Companies Act, 2013 read with the Companies (Adjudicating of Penalties) Rules, 2014 as amended by Companies (Adjudication of Penalties) Amendment Rules, 2019).

13. Please note that as per the provisions of **section 454(8)(i)** of the Companies Act, 2013, where company does not pay the penalty imposed by the Adjudication officer or the Regional Director within a period of **Ninety days (90 days)** from the date of the receipt of the copy or order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakhs rupees. Further as per section **454(8)(ii)** of the Companies Act, 2013, where an officer of a company who is in default does not pay the penalty within a period of **Ninety days (90 days)** from the date of receipt of the copy of the order, such officers 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.
14. Your attention is also invited to section 454(8) of the Companies Act, 2013 in the event of non-compliance of this order which provides that in case of default in payment of penalty, prosecution will be filed u/s. 454(8)(ii) of the Companies Act, 2013 at your own risk, cost and responsibility without any further notice.

The adjudication notice stands disposed of with this order.

Signed this day of May, 2023.

Copy to:


(R. C. MISHRA) ICLS
Adjudicating officer,
Registrar of Companies,
Gujarat, Dadra and Nagar Haveli.

O/C
Navresh
SJA
15/05/2023

1. M/s. ADANI POWER LIMITED
Adani Corporate House, Shantigram,
Near Vaishno Devi Circle, S.G. Highway,
Khodiyar, Ahmedabad, Gujarat- 382 421.
2. RAJESH SHANTILAL ADANI (M.D.),
SHANTI SAGAR BUNGLOW, RAJPATH CLUB
TO BOPAL ROADBODAKDEV, NEAR
KANTAM PARTY PLOT CROSS ROAD,
THALTEJ, AHMEDABAD, 380059, Gujarat.
3. VNEET S JAIN (W.T.D.)
A-702, Sundarvan Epitome, B/s Sundarvan Nature Park,
Opp. Star India Bazar, Satellite Road,
Ahmedabad-380015, Gujarat.

4. DEEPAKBHAI SANATKUMAR PANDYA (C.S.)
12, SURYARATNA BUNGLOWS,
SOLA SCIENCE CITY ROAD, SOLA,
AHMEDABAD-380060, Gujarat
5. Mr. Vinod Bhandawat (CFO)
20C, Block 302, Ideal Heights,
Raja Ram Mohan Sarani, Kolkata, W. B.
6. The Regional Director, (NWR), Ministry of Corporate Affairs,
ROC, Bhavan, Opp. Rupal Park, Ahmedabad- 380 013.
(for information please)
7. Master File
8. Office Copy