

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

No. ROC-Guj/Adj. Order/Sec. 189/2023/ 915 TO 919

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 189 r.w. 188 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) Authorised 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 O/o ROC, Ahmedabad. During the course of inquiry, the inquiry officer has pointed out the violation of section 189 r.w. 188 of the Companies Act, 2013 as under:

d/c

"It is observed from the Financial Statement of the Company for the financial years 2017-18, 2018-19 and 2019-20 that the company has been intervened into various related party contracts as per section 184(2) and Related Party Transaction u/s. 188 of the Companies Act, 2013. However, the company has not entered the said details in the register of contract u/s 189 of the Companies Act, 2013 in form MBP-4. Hence the Company, its directors and officers in default made violation of section 188 r.w. section 189 of the Companies Act, 2013. As per the Financial Statement of FY 2017-18 (page no. 145-148), FY 2018-19 (Page no. 161 -164) and FY 2019-20 (page no. 164-167), the company has intervened into various Related Parties Transaction as per section 184(2) and 188 of the Companies Act, 2013 and also not provided any supportive documents in respect of Arms Length Transaction and also not made entry in register of contract as per section 189 of the Companies Act, 2013. Therefore, the company and its officers in default have violated the provisions of section 189 r.w. section 188 and 184(2) of the Companies Act, 2013 for the F.Y. 2017-18, 2018-19 and 2019-20 respectively. For contravention of the above every Director who fails to comply with the provisions of this section and the Rules made thereunder shall be liable to a penalty in terms of provisions of section 186(6) of the Companies Act, 2013.

4. The office of the undersigned issued adjudication notice under section 454 of the Companies Act, 2013 for violation of section 189 r.w. 188 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 provisions of the Act.
5. Thereafter the Authorised Representatives 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 the hearing proceeding on 08.05.2023. They submitted reply letter dated 08.05.2023 which is taken on record. They further submitted that all the transactions disclosed in the Financial Statements were at arm's length basis and in ordinary course of business and thus, not covered under the provisions of section 188 of the Companies Act, 2013. Hence, no penalty should be imposed. They further stated that the penal provisions as provided under section 189(6), the company should not be covered for penalty. They further submitted that show cause notice dated 09.03.2013 issued to the Company Secretary is also not covered in the category of officer in default in terms of provisions of section 189(6) of the Companies Act, 2013. Hence, his name should be eliminated from the adjudication proceeding. Considering the above as all the transactions are ordinary course of business and arm's length price, no penalty should be imposed to the Directors of the Company.

7. Submission of the Presenting Officer:

The Presenting Officer submitted that the inquiry officer very categorically stated that as per the financial statement covering the period of three F.Y. i.e. 2017-18, 2018-19 and 2019-20, the company has been entered into various related party transactions and not made the entry in the register of contract required under section 189 of the Act. It is further submitted that the company has not furnished the documentary evidence related to transactions in ordinary course of business and arm's length basis to the I.O. As the Company unable to produce the documents to the I.O. under section 189 of the Companies Act, 2013, every director of the company should be liable for the penalty under the provisions of section 189(6) of the Companies Act, 2013 for each F.Y. separately. The adjudicating authority has power under section 454 of the Act r.w. section 189/188 of the Companies Act, 2013 to impose penalty under section 189(6) of the Companies Act, 213.

ORDER:

8. While adjudging quantum of penalty under section 189 r.w. 188 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 considered 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 189 r.w. 188 of the Companies Act, 2013. I hereby imposed penalty on the Directors of the Company in default for the F.Y. 2017-18 to 2019-20 for violation of section 189 r.w. 188 of the Companies Act, 2013 as per Table below.

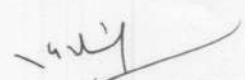
| Sr. No. | Name of the Company/ Director | Section | Year of Violation. | Penalty as per Section 189(6) of the Companies Act, 2013. | Maximum Limit for Penalty (In Rs.) | Penalty Imposed (In Rs.) |
|---------|---|--|--|---|------------------------------------|--------------------------|
| 1. | Mr. Rajesh Shantilal Adani (M.D.) | 189 r.w. 188 of the Companies Act, 2013. | F.Y. 2017-18 F.Y. 2018-19 F.Y. 2019-20 | Rs. 25,000/- | 25,000/- X 3 F. Y. = 75,000/- | 75,000/- |
| 2. | Mr. Vneet S. Jain (WTD) | 189 r.w. 188 of the Companies Act, 2013. | F.Y. 2017-18 F.Y. 2018-19 F.Y. 2019-20 | Rs. 25,000/- | 25,000/- X 3 F. Y. = 75,000/- | 75,000/- |
| 3. | Mr. Gautam Adani, Chairman and Director | 189 r.w. 188 of the Companies Act, 2013. | F.Y. 2017-18 F.Y. 2018-19 F.Y. 2019-20 | Rs. 25,000/- | 25,000/- X 3 F. Y. = 75,000/- | 75,000/- |

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 without any further notice.

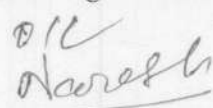
The adjudication notice stands disposed of with this order.


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

Signed this day of May, 2023.

Copy to:

1. RAJESH SHANTILAL ADANI (M.D.),
SHANTI SAGAR BUNGLOW, RAJPATH CLUB
TO BOPAL ROADBODAKDEV, NEAR
KANTAM PARTY PLOT CROSS ROAD,
THALTEJ, AHMEDABAD, 380059, Gujarat.
2. VNEET S JAIN (W.T.D.)
A-702, Sundarvan Epitome, B/s Sundarvan Nature Park,
Opp. Star India Bazar, Satellite Road,
Ahmedabad-380015, Gujarat.
3. Mr. Gautam Adani, Chairman,
Shantivan Farm, S.G. Highway
B/H. Karnbavati Club, Makarba,
Ahmedabad-380051.
4. The Regional Director, (NWR), Ministry of Corporate Affairs,
ROC, Bhavan, Opp. Rupal Park, Ahmedabad- 380 013.
(for information please)
5. Master File
6. Office Copy.


Nareesh
STP
15/5/2023