

भारत सरकार
कार्पोरेट कार्य मंत्रालय
कार्यालय कंपनीज़ रजिस्ट्रार, दिल्ली एवं हरियाणा
चतुर्थ तल, आई.एफ.सी.आई. टॉवर, 61 नेहरू प्लेस,
नई दिल्ली -110019



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS,
OFFICE OF REGISTRAR OF COMPANIES,
NCT OF DELHI & HARYANA
4TH FLOOR, IFCI TOWER, 61, NEHRU
PLACE,
NEW DELHI -110019

Order for Penalty for Violation of Section 42 of the Companies Act, 2013

IN THE MATTER OF

SEPTANOVE TECHNOLOGIES PRIVATE LIMITED

(CIN: U72900HR2019PTC081372)

Adjudication in respect of violation of Companies Act, 2013

1. Appointment of Adjudicating Officer: -

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

2. Company: -

Whereas the company viz. **SEPTANOVE TECHNOLOGIES PRIVATE LIMITED** (herein after known as 'company' or 'subject company') is a registered company with this office under the provisions of the Companies Act, 2013 having its registered office as per MCA21 Registry at address **C4B- 114 Carton Estate Dlf Phase 5 Gurga Gurgaon Haryana 122009**. The financial & other details of the subject company for immediately preceding F.Y. as available on MCA-21 portal is stated as under:

S. No.	Particulars	Details as on FY 2021-22
1.	Paid up capital	Rs. 2,00,000
2.	a. Revenue from operation	Rs. 12,45,000
	b. Other Income	Nil
	c. Profit for the Period	Rs. 3,06,844.91
3.	Holding Company	No
4.	Subsidiary Company	No

5.	Whether company registered under Section 8 of the Act?	No
6.	Whether company registered under any other special Act?	No

3. Facts about the Case: -

- I. On the basis of the information which came to the notice, it was seen that the subject company had issued its Compulsorily Convertible Debentures (herein after referred as "CCDs") using the website <https://www.tykeinvest.com> (herein after referred as "Tyke"). From the website of Tyke, it was noted that the subject company collected the investment under brand name "NUTKHAT" and the campaign for raising fund closed on 08 March 2022. Other details as enlisted on the website of Tyke are as follows:

Total number of Subscriber	196
Average per Subscriber	Rs. 16587
Percentage Raised	162.55 %
Type of Instrument	CCD

- II. The above mentioned information was cross-verified with the e-form **PAS-3 (SRN No. T93842631, Dated – 05 April 2022)** which revealed the following information:

Number of Securities Allotted	3251
Total Nominal Amount	Rs. 32,51,000
Date of Board Approval	01 March 2022
Date of Shareholder approval	26 March 2022
Date of Circulation of Private placement offer	29 March 2022
Date of Allotment	31 March 2022

- III. Thus a *prima facie* case was made out that the subject company had violated sub-section (7) of Section 42 of the Act so a Show Cause Notice dated 27th Dec 2022 was issued to the subject company and its officers to furnish the reasons as why penalty as mentioned in sub-section (10) of Section 42 of the Act should not be imposed.

- IV. The subject company submitted its reply vide letter dated 11th Jan, 2023 and the following key points emerged from the same:

- A. The company approached Tyke platform (owned and operated by Tyke Technologies Private Limited) which is engaged in the business of running a technology-based community platform under the brand name "Tyke". This network is created through registration on the Tyke platform and includes individuals from the business industry, corporate executives and professionals who are part of the Startup ecosystem.
- B. The members of the Tyke platforms can access knowledge content available on the platform about Investing in Startups and attend pitch sessions, which are

targeted to promote startup investments. Tyke platform facilitates in organising online pitching sessions.

- C. The Tyke platform also provides various services, including but not limited to, facilitation of setting up of escrow bank account for accepting the investment in the separate subscription bank account, identity verification of proposed investors (KYC Verification) using Aadhar authentication and PAN verification, and assistance in completing the compliance procedures of Private Placement as provided under Companies Act, 2013. These services are offered by the Tyke platform through third-party vendors and the Tyke platform acts as a facilitator to these services.
- D. Further, the Tyke platform has published the Terms of Use including the Privacy Policy, and Risks ("Terms of Use") to govern the use of the website of Tyke platform (source - <https://www.tykeinvest.com/terms-and-conditions>). These Terms of Use provides the following key terms (refer Annexure – I), which are significant to us –
- *Any transaction in securities that companies may offer or conclude with any other member of the platform shall be offered, issued, allotted or transferred in strict compliance of all applicable laws including but not limited to private placement rules under applicable securities laws.*
 - *Our platform has an internal mechanism to restrict the number of Investors that view the detailed profile to 200 by default thereby making it compliant with the applicable laws. However, it shall be the company's responsibility to comply with the provisions of applicable laws including the Companies Act, 2013 and the private placement rules thereunder.*
 - *Nothing on this website is intended to constitute (i) an offer, or solicitation of an offer, to purchase or sell any security, other asset or service, (ii) investment advice or an offer to provide such advice, or (iii) a basis for making any investment decision. Except as expressly stated by Tyke's entity in writing, neither this website nor any of the materials make any effort to present a comprehensive or balanced description of Tyke or its investment activities.*
 - *The Terms of Use shall not be construed so as to create a partnership or joint venture between you and us. Nothing in the Terms of Use shall be construed so as to constitute you and us as agents of one another.*
- E. Tyke is neither acting as an intermediary to offer nor inviting public to subscribe to securities of any company and is merely collecting investment interests from its community of members. Also, the Tyke platform is not acting as an agent of the company to inform the public at large about any private placement offer.
- F. Tyke platform organized an online pitching session (referred as "AMA" or "Ask Me Anything") for the subject company to interact with community members of the Tyke and collect investment interest. Thereafter, the members of the Tyke

platform have communicated their intention to invest in the subject company as per the framework provided in the Companies Act, 2013 and rules made thereunder.

- G. Subsequently, the subject company identified 196 members of the Tyke platform who were willing to invest in the company and therefore the Board of Directors passed a resolution in the Board Meeting held on 01st March, 2022, to issue 3251 (Three Thousand Two Hundred Fifty One) 0.001% Compulsorily Convertible Debentures of the company having face value of Rs. 1000/- (Rupees One Thousand only) each at par for a total consideration of Rs. 32,51,000 (Rupees Thirty Two Lakhs Fifty One Thousand only) on Private Placement basis and Preferential basis in such manner and on terms and conditions as clearly set out in the Private Placement offer letter cum application form, to the 196 (One Hundred Ninety Six) identified persons, subject to approval of members in an extra-ordinary general meeting.
 - H. The subject company appointed Tyke Technologies Private Limited to facilitate the verification of information provided by each identified person with respect to identity verification and, to facilitate the collection of subscription amount in the designated escrow account of Company.
 - I. The members of the subject Company passed a Special Resolution in an Extra – Ordinary General Meeting held on 26th March 2022, to approve the private placement offer of 0.001% Compulsorily Convertible Debentures and a copy of the said resolution was submitted through eForm MGT-14 vide SRN T91887570.
 - J. Thereafter, the subject Company circulated the Private Placement Offer Letter cum application form (in Form PAS-4) to invite the subscription money from the identified persons. 100% of the subscription amount was received from the identified persons in the virtual escrow account of the subject company which was facilitated using the Tyke platform and the subscription amount was transferred to our Company's separate bank account.
 - K. At last the subject company stated that it has complied with the provisions of the Act related to private placement and requested for an oral representation in this matter.
- V. The reply of the company was not satisfactory as the company did not provide any response for observations mentioned in the SCN, namely:
- a) No response was provided to the fact that while the campaign for raising fund closed on 08th March 2022, the company had already got a Board approval of identified persons on 01st March, 2022.
 - b) No response was provided to the fact that the CCDs was oversubscribed, as was displayed on the website of Tyke.

- c) Whether engaging the services of Tyke amounted to violation of sub-section (7) of Section 42 of the Act.
- d) It was also not clear as to whether Tyke was collecting any commission or service fees.

Also it is interesting to note that the details of the banking transactions enclosed by the company suggest that the money in the virtual escrow account of the company was received from the investors at different dates ranging from 18.02.2023 to 08.03.2022 in the virtual escrow account, whereas the approval of the members in the EGM was received only on 26.03.2022.

VI. Considering all these issues, it was important that representatives/officers of Tyke be given an opportunity of being heard in this matter. Accordingly, Shri Karan Mehra Director, Tyke Technologies of Private Limited was called for hearing on 30th Jan, 2023. However, based on his request, the hearing was rescheduled for 6th Feb, 2023.

VII. On the scheduled date, Sh. Karan Mehra appeared on behalf of Tyke and gave detailed submissions on the working of Tyke platform, as under:

“Steps involved in the Tyke platform:

- a. *Company approaches Tyke to access the community of Tyke platform and avail various other services.*
- b. *Tyke verifies the KYC of the Company and directors, collects basic information and documents like COI, MOA, AOA, Audit Reports. Tyke also conducts diligence on the business model of the company.*
- c. *The scope of services is identified between the company and Tyke and thereafter a Service Agreement is executed.*
- d. *Tyke charges a fee (on-boarding fees from company) approx. Rs.25000/- for accessing the Tyke platform. After gathering the interest in the company and upon completion of all aggregated services provided by Tyke including facilitation of raising capital transactions, completion of KYC of community members who may be prospective investors in the company, opening of virtual Escrow Account of the company through a SEBI registered Escrow agents.*
- e. *Tyke allows the Company to display the pitching information on the Tyke's website and organises Ask me Anything (AMA) sessions for the directors/key representative of company to showcase the company's business. **The AMA sessions are accessible to all the community members which are approximately 1.5 lacs as of now.** The AMA sessions are meant to be Q&A sessions for the community members to make informed decision for investing or not investing. Then, the recorded videos of these AMA sessions are uploaded on the Youtube channel of TYKE.*

- f. Community members can communicate their intention to invest in the company by parking the proposed investment amount for a specific company in their own virtual escrow account which is facilitated by the SEBI Registered Escrow Agent. Any service fee paid to the SEBI Registered Escrow agent to manage the Escrow accounts of the community members / company is borne by Tyke which is collected in the service fee from the community member/company, as the case may be. Tyke charges 2% plus GST on the amount transferred in the Escrow Account by the community member.
- g. The Company can access the list of community members anytime who have parked their money in their own virtual escrow account to show interest in investing in the Company. **The number of community members at this stage can exceed 200. In case the community members who have shown interest to invest exceed 200 or the investment commitment has exceeded the amount sought by the company, this is termed as, 'over-subscription'.** On the basis of this information, the company finalises the list of identified persons to whom private placement offer is made.
- h. Tyke offers the support in facilitating the setup of escrow account of the company, access to third party vendors to complete the KYC verification of these identified persons, namely, BureauID India Private Limited or others and also, consulting firms who offer professional services to private placement compliances. (Tyke is acting as a single point aggregator).
- i. The company thereafter passes a board resolution with such identified group of people to initiate the private placement process and also, calls for an EGM to take necessary approvals. A form PAS-4 is circulated by the company to such identified group of people using the Tyke platform via hosting it on the profile of the user and at times over email as well. Also, the Company enters into investment Agreements with each of the identified people, individually.
- j. Upon compliance with private placement offer requirements and submissions of relevant documents with the Escrow Agent, the proposed investment amount is remitted by the Escrow Account Agent to the Company's Separate bank account.
- k. Thereafter, the company allots the securities through a Board Resolution and the same is filed via eForm PAS – 3 with the Registrar of Company and thereafter issues the security certificates to each investor.
- l. Tyke charges the company a Service fees which is calculated as a percentage, ranging from 1% to 4% of the amount raised from the investors and transferred to the company's Escrow Account.

VIII. Further, as per request made by the subject company, a hearing was scheduled on 14th Feb 2023. Thereafter, the subject company requested for rescheduling the said hearing by 30 days. In response, it was communicated that the period so desired is non-viable and also the pleas and responses being taken by subject company are identical with another company (M/s Anbronica Technologies Private Limited), which may not be a mere co-incidence. However, on considerate basis, an additional one week time was granted. One day prior to the scheduled hearing (i.e 20th Feb, 2023), one of the director namely Ms. Sonal Mehta requested to grant an extension of one week time, citing the reason that their authorized representative is out of town. Simultaneously, an extension of one week was sought by the other company (M/s Anbronica Technologies Private Limited), however, different reason was cited this time. In response to this, either of the directors or their authorized representative was directed to appear on the scheduled date. On 21st Feb, 2023, Sh. Satinder Singh, proprietor of S P Singh and Associates appeared for the scheduled hearing, carrying an authorization letter signed by Ms. Sonal Mehta, Director of the subject company and an authorization letter signed by Sh. Ananya Meena, director of (M/s Anbronica Technologies Private Limited). Shri Singh gave the following submissions:

Issue I. *Sh. Singh was asked to explain about how the company got to know about the TYKE platform and how the compliance of section 42 of the Companies Act, 2013 was ensured.*

Reply of Sh. Satinder Singh-

1. *Sh. Singh submits that both the companies came to know about TYKE thorough online start up community events.*
2. *The Companies have only availed the value added services (VAS) which is provided by the Tyke platform.*
3. *Tyke provides value added services in the form of facilitation of connecting like-minded people. Community with start-ups. Tyke also provides the verification of KYC, identification of KYC of people who have shown interest to invest in the company.*
4. *Mere, availing the value added services from TYKE platform will not amount to issue of public advertisements and company has complied section 42(7) while issuing of CCDs.*

Issue II. *Sh. Singh was asked as to how did the company utilize the TYKE platform to raise CCDs?*

Reply of Sh. Satinder Singh-

Company connected with persons who showed the interest in their business on TYKE. The company availed the services of the TYKE and entered into the agreement with TYKE. CCDs were issued to the investors identified by Board. Value added services like facilitation of opening of ESCROW bank account to keep the funds, verification of their KYCs. TYKE charged a fee on entering into agreement and fix percentage upon completion of CCDs. The exact amount is not known to Sh. Singh.

Issue III. *Sh. Singh was asked about oversubscription of CCDs in respect of both the companies.*

Reply of Sh. Satinder Singh-

He knew that TYKE platform showed that the issue of CCDs were over-subscribed but Sh. Singh was not having the details of over subscription of CCDs

Issue IV. *Sh. Singh was asked about the total number of members available on the TYKE community platform and the number of members of the TYKE platform who showed interest in the CCDs issued by both the companies.*

Reply of Sh. Satinder Singh-

Sh. Singh is neither aware about the number of members on the TYKE Platform nor having details of number of members on the TYKE platform who showed interest in the CCDs issued by companies and Anbronica Technologies Private Limited.”

IX. With respect to facts of the case, following is noted:

- a) Section 42 of the Act clearly provides that the private placement shall be made to a select group of persons who have been identified by the Board. The number of such persons cannot exceed 200 (prescribed in the rules). The Explanation I. to section 42(3) makes it very clear that the process of “private placement” covers:

- the offer, or
- invitation to subscribe, or
- issue of

securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in the section.

- b) The provision requires the company to adhere to the limit of 200 persons not just with respect to the number of persons who ultimately subscribe to the securities of the company, but also the said number, i.e. 200, cannot be exceeded at the time of making an offer or invitation to offer of the securities of the company. Thus section 42(7) provides that no company issuing securities under this section shall release any public advertisement or utilize any media, marketing or distribution channels or agents to inform the public at large about such issue.
- c) Since the issue of the SCN to the company, the website of Tyke has been going through continuous changes, earlier a lot of pitch related information about companies who have utilized or are in the process of utilizing the Tyke platform with the ultimate aim of raising securities was visible without any login. However, now the accessibility of the information is provided after a user logs in to the website. Nonetheless, even if it is assumed for the sake of argument that the pitch related information is visible to the members of the Tyke platform, such

number is around 1.5 lakhs (also admitted by the director of Tyke before this office, which is noted at para VIII(e) above). Also, while explaining the issue of over-subscription for fund campaign on its website(as noted at para VII (g) above), the representative of Tyke admitted that community members showing interest in the company can exceed 200. Therefore, the “Terms of Use” of Tyke which was quoted by the subject company that the platform restricts the number of investors to 200 is clearly not true.

- d) In this present case, the website of Tyke has been clearly used by the company as a media/marketing/distribution channel/agent to inform the public at large about the issue of securities. Tyke has collected its fees/commission at various stages from the company, like providing onboarding services to charging a commission/fees at the time the amount was deposited by the investor in the virtual escrow account of the company. Tyke, based on its own submissions has also collected money from the investors who have used the platform for investing in different companies. Thus the role of Tyke cannot be relegated to mere “generation of interest in the company”. Instead, it is an active facilitator for allowing the companies to raise investments through its portal and it is providing end-to-end services, either by itself or through its agents/partners.
- e) In view of the above facts and circumstances, it has been found that the company and its promoters/directors are liable for penalty for violation of section 42(7).

4. The relevant provision of the sections 42 of the Act, namely sub-section 7 and sub-section 10 as on date of default are as under: -

Section 42 (Issue of Shares on Private Placement basis)

(7) No company issuing securities under this section shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an issue.

(10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

5. Adjudication of penalty: -

- a. That the provision pursuant to sub-section (7) of Section 42 of the Act, no company issuing securities under this section shall release any public advertisements or utilize any media, marketing or distribution channels or agents to inform the public at large about such an issue. As mentioned in para (IX)(d) above, with the use of Tyke platform for raising securities, the subject company

has violated sub-section (7) of section 42 of the Act. The penal provision for the same is provided at sub-section (10) of Section 42 of the Act.

- b. However, the provisions of Section 42 of the Act do not allow the undersigned to impose any penalty on Tyke Technologies Private Limited, which has clearly facilitated the subject company in the act of commission of default of sub-section (7) of Section 42.
- c. The nature of the present violation on the part of the subject company is serious. Whereas, under the Act, the subject companies fulfill the requirements of a small company. Thus, the penalty on the subject company would be governed by Section 446B of the Act. As per sub-section (10) of Section 42 of the Act, the maximum penalty in this case cannot exceed Rs 32.51 lakhs (which was raised by the subject company). However, in accordance with provisions of Section 446B, the amount of penalty in case of a company and officer in default shall not exceed Rs 2 lakhs and Rs 1 lakhs respectively.
- d. Now in exercise of the powers conferred on the undersigned vide Notification dated 24th March, 2015 and having considered the reply submitted by the subject company in response to the notice issued vide No ROC/D/Adj/section 42/Septanove/7098-7101 dated 27.12.2022 and hearing in the matter held on 06.02.2023 and 21.02.2023, hereby impose the penalty on the company and its officers in default under section 42 (10) r/w section 446B, for violation of section 42 (7) of the Companies Act, 2013 which are as follows:-

Violation	Penalty imposed on company/ director(s)	Period of default	Calculation of penalty amount as per Section 446B	Total penalty imposed u/s 42 of the Companies Act, 2013
A	B	C	D	E
Section 42 (7)	SEPTANOVE TECHNOLOGIES PRIVATE LIMITED	FY 2021-22	Rs 2,00,000/-	Rs 2,00,000/-
	ROHIT MEHTA, Promoter and Director	FY 2021-22	Rs 1,00,000/-	Rs 1,00,000/-
	SONAL MEHTA Promoter and Director	FY 2021-22	Rs 1,00,000/-	Rs 1,00,000/-

company has allotted CCD on 31st March 2022 which falls under F.Y. 2021-22.

6. Order:

- a. Names of party as mentioned in the table above are hereby directed to pay the penalty amount as per column no. 'E' therein. In case of parties other than company, such amount is required to be paid out of their own funds.

- b. The said amount of penalty through online by using the website www.mca.gov.in (Misc. head) in favor of "Pay & Accounts Officer, Ministry of Corporate Affairs, New Delhi, payable at Delhi, **within 90 days of receipt of this order, and intimate this office with proof of penalty paid.**
- c. Appeal against this order may be filed with the Regional Director (NR), Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003 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 the order. [Section 454(5) & 454(6) of the Act read with Companies (Adjudicating of Penalties) Rules, 2014].
- d. Your attention is also invited to section 454(8) of the Act in the event of non-compliance of this order.

Place: New Delhi.


(Pranay Chaturvedi, ICLS)
(Adjudicating Officer)
Registrar of Companies,
NCT of Delhi & Haryana

No. ROC/D/ADJ/Section 42/ Septanove/ 974-977

Date: 1/03/23 

To,

1. SEPTANOVE TECHNOLOGIES PRIVATE LIMITED
C4B- 114 CARTON, ESTATE DLF PHASE 5,
GURGA, Gurgaon, Haryana, 122009, India.
Rohit1024@gmail.com
2. ROHIT MEHTA
C-4B114 CARLTON ESTATE,
D L F PHASE 5 GALLERIA DLF-IV
GURGAON, 122009, Haryana, India
3. SONAL MEHTA
H.NO C-4-B 114, CARLTON ESTATE
D.L.F PHASE-5, GALLERIA DLF-IV GURGAON, 122009, Haryana, India

Copy to:

Regional Director (NR), Ministry of Corporate Affairs, B-2 Wing, 2nd Floor,
Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003.