

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

No. ROC-GJ/ADJ. ORDER/ DEXTER BIOCHEM/ Sec.140/ 2023-24/ 2832/33 Dated:

15 SEP 2023

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, 2019 FOR VIOLATION OF SECTION 140(2) OF THE COMPANIES ACT, 2013 READ WITH RULE 8 OF COMPANIES (AUDIT AND AUDITORS) RULES, 2014

IN THE MATTER OF DEXTER BIOCHEM PRIVATE LIMITED

(U24120GJ2012PTC069603)

Date of Hearing: 04.09.2023

PRESENT :

1. Shri Keerthi Thej N. (ROC), Adjudicating Officer
2. Shri Indrajit Vania (DROC), Presenting Officer

Auditors of Dexter Biochem Private Limited /Authorised Representative: Mr. Mukund H. Dave, PCS, Authorised representative of DKN & Associates, Chartered Accountant

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 the 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. The Registrar of Companies vide the Companies (Amendment) Act, 2019 is entrusted with power to adjudicate penalty as provided under Section 140(3) of the Act with effect 02.11.2018.

Company:

2. Dexter Biochem Private 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: U24120GJ2012PTC069603" and presently having its registered office situated at Plot No. A1/5301, NR. MEGA MACHINERY, MEGA CHOKADI, GIDC ANKLESHWAR, ANKLESHWAR, GUJARAT-393002, INDIA

Fact of the case:

3. On perusal of MCA21 portal record, it is observed that the Auditor's Firm M/s DKN & Associates, was appointed as Statutory Auditors of the company from 01.04.2015 to 31.03.2020 (five financial years). Further, the company had appointed M/s. P.U. Nensonaiya & Co., Chartered Accountant Firm as statutory Auditors of the Company from 01.04.2017 to 31.03.2022. Whereas, no compliance of Section 140(2) of the Companies Act, 2013 has been made by the Auditors of the Company. This office has reported the aforesaid violation to the Directorate vide letter No. ROC-

GJ/2/Sec.140/2021-22/9893 dated 04.10.2021. The Directorate vide order dated 25.11.2021 has issued directions to ROC, Ahmedabad to take necessary action for observations reported in report dated 04.10.2021 and submit action taken report within 15days.

4. In compliance of the Directorate's instructions, this office has issued SCN u/s 140(2) of the Companies Act, 2013 to M/s DKN & Associates, Statutory Auditors of the company on 16.12.2021. However, no reply has been received from the Auditors of company. The Directorate vide letter dated 02.05.2023 has asked to furnish Action taken report within 15days. Accordingly, this office has issued a letter to the company and DKN & Associates, Chartered Accountant Firm to clarify the matter along with supporting documents, whether the company had removed the Auditor u/s 140(1) of the Companies Act, 2013 or Auditors Firm M/s. DKN & Associates had resigned pursuant to Section 140(2) of the Companies Act, 2013. The company vide letter dated 24.05.2023 has replied that "*we have forwarded the above referred notice to M/s DKN & Associates and have requested to file Form ADT-3 for their resignation at the earliest to make the default good*". It was revealed from the reply of the company that M/s DKN & Associates, Statutory Auditors have violated the provisions of Sub-Section 2 of Section 140 of Companies Act, 2013 due to non- filing of notice of resignation in prescribed e-form ADT-3 on MCA21 portal which is a violation of Section 140(2) of the Companies Act, 2013 attracted penal provisions of Section 140(3) of the Companies Act, 2013.

Show Cause Notice, Reply and Personal Hearing:-

5. Adjudication Notices vide No. ROC-GJ/ADJ-Sec. 454 r.w. Sec. 140/ Dexter Biochem/2023-24/1447 dated 21.06.2023 was issued to M/s Kaushal Amidhar Surti, Partner of the Audit Firm DKN & ASSOCIATES, (Membership No. 122912 and FRN 120386W) under Section 454 of the Companies Act, 2013 read with Rule 3 of for violation of Section 140(2) of the Companies Act, 2013 upon confirmation received from the Company regarding non-compliance of the provisions of the Section 140(2) of the Act committed by the Ex-Auditors of the Company. Further, no reply was received from the Auditors firm in default.
6. Thereafter, for providing an opportunity of being heard a "written Notice" has been issued to the mailing address of the Auditors of Company pursuant to sub-section 4 of Section 454 of the Companies Act, 2013 read with Rule 3 of Companies (Adjudication of Penalties) Rules, 2014 and a hearing was fixed for 04.09.2023.
7. On the Scheduled date of hearing i.e. on 04.09.2023, Mr. Mukund H. Dave, PCS, Authorised representative of the Auditor of the Company did appear in the hearing

proceedings and submitted written submission of M/s DKN & Associates, Chartered Accountant dated 31/08/2023. The Authorized Representative of the Auditor submitted that "due to ill health conditions, the auditor was not able to file e-form ADT-3 for his resignation in a time bound manner as per the provisions of section 140 of the Companies Act, 2013. However, the Auditors has filed ADT-3 vide SRN F61797544 on 08.06.2023 under the MCA portal with additional Fee of Rs. 7,200/-. He further submitted that "the office address of the auditor M/s DKN & Associates, Chartered Accountant was also shifted from 30-31, Amardeep Complex, Near Falshruti Nagar, Station Road to 416-417, Nexus Building Hub, Near Raj Rajeshwar Petroleum, Maktampur Road, Kasak Bharuch-392001. Therefore, Adjudication Notice issued by this office to the Auditor was returned undelivered with remark 'Left'". He had also submitted that the Auditors were engaged in a small company and the provisions of Section 446B be considered at the time of levying penalties.

Submission of Presenting Officer:

8. The presenting Officer responded that additional fees paid for delayed filing prescribed under the Companies (The Registered offices and Fees) Rules, 2014 is only a fees paid for filing of form as the cost of facility of delayed filing and it is neither Fine nor Penalty specified under the Act. Fine is "a sum of money exacted as a penalty by a court of law for the criminal liability" and Penalty is "a sum of money imposed for breaking a law, rule, or contract in the nature of civil default" by an authority prescribed under the law other than the Courts of Justice. Therefore, payment of additional fee does not absolve the Auditor Firm of the default and from payment of Penalty as prescribed under the Act.
9. The Presenting Officer has submitted that during the examination of documents/e-forms filed by the company under the MCA-21 portal, it is observed that Auditors Firm M/s DKN & Associates, was appointed as Statutory Auditors of the company from 01.04.2015 to 31.03.2020 for five financial years. Further the company had appointed M/s. P.U. Nensonaiya & Co. , Chartered Accountant Firm as statutory Auditors of the Company from 01.04.2017 to 31.03.2022. It is proved from the reply dated 31.08.2023 submitted by the DKN & Associates, Chartered Accountant that they have resigned w.e.f. 01.09.2018 and the Auditors were required to file ADT-1 on or before 30.09.2018. However, the Auditors in default have filed e-form ADT-3 vide SRN F61797544 on 08.06.2023 with a delay of 1711 days beyond the prescribed time limit and thus it is an established violation of Section 140(2) of the Companies Act, 2013. Hence, the matter is fit to impose penalty against the Auditors in default for violation of the provisions of Section 140(2) of the Companies Act, 2013 read with Rule 8 of companies (Audit and Accounts) rules, 2014 from the period from 01.10.2018 to 07.06.2023 (1711 days) as contemplated in Section 140(3) of the

Companies Act 2023 read with Rules made thereunder as ignorance of the law is no excuse.

10. The Presenting Officer further submitted that as per the provision of section 140(3) of the Companies Act, 2013, if the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees. It is observed from the master data available on MCA's website that the paid-up capital of the company is Rs. 2,25,45,000 /- and Turnover is 9,47,98,190/-. Hence, as per the Ministry's Notification No. G.S.R. 700(E) dated 15.09.2022 for Notification of Companies (Specification of definition details) Amendment Rules, 2022 read with provisions of Section 2(85) of the Companies Act, 2013, the Company does fall under the ambit of "small company". Therefore, the provisions of imposing lesser penalty would be governed pursuant to Section 446B of the Companies Act, 2013.

ORDER:

1. While adjudging quantum of penalty under section 140(3) of the Act, the Adjudicating 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 a group of investors as a result of the default.
 - c. The repetitive nature of the default.
2. 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 notice 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.
3. Having considered the facts and circumstances of the case and submissions made by the Presenting Officer and Ld. PCS, after taking into accounts the factors above, the undersigned has reasonable cause to believe that the Auditors Firm M/s. DKN & Associates in default have failed to comply with the provisions of Section 140(2) of the Companies Act, 2013. With the aforementioned circumstances on hand, it is felt due and justified to levy a penalty of Rs. 1,00,000/- on the Auditors of company in default. I hereby imposed penalty as under:

Penalty on Auditor's Firm for default:

<u>Name of Auditor's Firm</u>	<u>Penalty (in Rs.)</u>	<u>Penalty Continuing failure in pursuant to Section 140(3) r.w. Section 446B of the Act (Rs.)</u>	<u>Maximum Penalty (in Rs.)</u>	<u>Penalty imposed in pursuant to Section 140(3) r.w. Section 446B of the Act (Rs.)</u>
DKN & Associates, Chartered Accountant	50,000 or an amount equal to the Remuneration of Auditors which is less As per the financial statement 'No' remuneration given to the Auditor for FY. 2017-18/ 2016-17	1711 days*250=4,27,750/-	2,00,000	1,00,000

AO is of the opinion that penalty is commensurate with the aforesaid default committed by the Noticees:

- The noticee shall pay the amount of penalty by way of e-payment (available on Ministry website www.mca.gov.in) under "Pay miscellaneous fees" category in MCA fee and payment Services within 90 (ninety) days of this order and the Challan/SRN generated after payment of penalty filed in INC-28 under the MCA's website also furnish a copy of SRN to this office without fail.
- Appeal if any against this order may be filed in writing with the Regional Director, North Western Region, Ministry of Corporate Affairs, ROC BHAVAN, OPP. RUPAL PARK, NR. ANKUR BUS STAND, NARANAPURA, AHMEDABAD (GUJARAT)-380013 within a period of sixty days from the date of receipt of this order, in 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].
- Your attention is invited to section 454(8) of the Act 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 costs without any further notice.

The adjudication notice stands disposed off with this order.

प्राप्त दिनांक.....
Received Date:.....
प्रदेशिक निदेशक कार्यालय, उ.प.क्षे., अहमदाबाद
O/o. Regional Director, NWR, Ahmedabad
कारपोरेट कार्य मंत्रालय
Ministry of Corporate Affairs
समग्री सत्यापित नहीं है / Contents not verified

KX: 14.09.23
(KEERTHI THEJ N. ICLS)
Registrar of Companies & Adjudicating Officer
Gujarat, Dadra & Nagar Haveli

To :

**MR. KAUSHAL AMIDHAR SURTI,
PARTNER OF THE AUDIT FIRM DKN & ASSOCIATES,
(MEMBERSHIP NO. 122912 AND FRN 120386W)
416, 417, 4TH FLOOR, NEXUS BUSINESS HUB,
BESIDES RAJ RAJESHWAR PETROL PUMP,
MAKTAMPUR ROAD, KASAK,
BHARUCH-392001, GUJARAT
(e-mail : info@dknca.com)**

14.09.23
(KEERTHI THEJ N., ICLS)

Registrar of Companies & Adjudicating Officer
Gujarat, Dadra & Nagar Haveli

[Copy to:

Ministry of Corporate Affairs, (Through Proper Channel)

The Regional Director, (NWR), Ministry of Corporate Affairs, Ahmedabad-380013
(for information please)

01/08/14.09.2023