☎ 0612-2950121

E-Mail : roc.patna@mca.gov.in
Website : www.mca.gov.in

भारत सरकार/Government of India
कारपोरेट कार्य मंत्रालय/ Ministry Of Corporate Affairs
कार्यालय कम्पनी रजिस्ट्रार, बिहार-सह-शासकीय समापक उच्च न्यायालय, पटना
Office of the Registrar of Companies, Bihar-Cum-Official Liquidator, High Court, Patna
चौथा तल, 'क' खण्ड, मौर्या लोक काम्प्लेक्स/4th Floor, 'A' Wing, Maurya Lok Complex
डाक बंगला रोड, पटना-८०००१/Dakbunglow Road, Patna-800001

No. ROC/PAT/Inquiry/13665/ 834 Dated: 18.08.2023

Order for penalty for violation of section 143 of the Companies Act, 2013
In the matter of VINAYAK BUILDERS AND DEVELOPERS PRIVATE LIMITED
CIN: U70101BR2008PTC013665

Company:-

1. Whereas, Company M/s. Vinayak Builders and Developers Private Limited, CIN: U70101BR2008PTC013665 (herein after known as Company) is a company incorporated on 26.05.2008 under the provisions of Companies Act, 1956/2013 in the state of Bihar and having its registered office situated at 101, Vaidnath Appartment Road No. 3, Mahesh Nagar, Patna Bihar, India as per MCA website.

2. As per documents available on MCA Portal, Shri Shishir Kumar was the auditor of the company for the financial year 31.03.2017.

Facts about the case:-

3. As per Ministry's Notification No. G.S.R. 307(E) dated 30.03.2017, in the Companies (Audit and Auditors) Rules, 2014 in rule 11, after clause (c), the following clause shall be inserted, namely:-
"(d) Whether the company had provided requisite disclosure in its financial statements as to holdings as well as dealings in specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company".

4. AND WHEREAS it is apparent from the financial statements for the financial year ended 31.03.2017, in the column details of Specified Bank Notes (SBN) held and transacted during the period from 8th November, 2016 to 30th December, 2016, in which it has been mentioned that amount deposited in banks during 8th November, 2016 to 30th December is

0. However, the director in its reply dated 17.01.2019 has enclosed a letter dated 16.01.2019 of ICICI Bank in which the details of deposit amount has been mentioned as follows:-

Date	Amount	Denomination
14.11.2016	150000	1000 X 150
15.11.2016	50000	1000 X 50
24.11.2016	200000	1000 X 200
02.12.2016	150000	1000 X 150

Whereas, in Auditors report nothing has been mentioned in respect of Rule 11(d) of the Companies (Audit and Auditors) Rules, 2014 .

5. Hence, it appears that the provisions of Section 143(3) of the Companies Act, 2013 r.w. Rule 11(d) of the Companies (Audit and Auditors) Rules, 2014 has been contravened by the auditor for the financial year 31.03.2017 and therefore he is liable for penalty u/s 450 of the Companies Act, 2013, for the financial year 31.03.2017.

6. Whereas, this office has issued show cause notice for default under section 143 of the Companies Act, 2013 vide this office letter no. ROC/PAT/Inquiry/13665/359 dated 29.05.2023. However, this office has not received any reply from the auditor.

7. Whereas, this office had issued "Notice for Hearing" vide No. ROC/PAT/ Inquiry/13665/706 dated 27.07.2023 to the auditor in default to appear personally or through authorizsed representative under Rule 3(3), Companies (Adjudication of Penalties) Rules, 2014 on 11.08.2023 at 12.30 PM and also to submit their response, if any, one working day prior to date of hearing i.e. 10.08.2023.

8. That, on the date of hearing, auditor does not appear also no submission has been made regarding the aforesaid non-compliance. Hence, it is concluded that the provisions of Section 143 of the Companies Act, 2013 has been contravened by the auditor and therefore he is liable for penalty u/s. 450 of the Companies Act, 2013 for the Financial Year 31.03.2017.

Section 450 states that:- *"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".*

9. Further Section 446B states that *"if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be"*.

10. As per clause 85 of section 2 of the Companies Act, 2013, *small company means a company whose paid up capital and turnover shall not exceed rupees four crore and rupees forty crore respectively*. As per MCA portal, paid up capital of the company- Vinayak Builders and Developers Private Limited is Rs. 8,00,000/- and the revenue from operation is Rs. 27,47,500 as per balance sheet of the financial Year 31.03.2022. Therefore,. the benefits of small company are extended to this noticee while adjudicating penalty.

ORDER

11. Having considered the facts and circumstances of the case and after taking into account the provisions of Rule-11(d) of Companies (Audit and Auditors) Rules, 2014 (as amended), I hereby impose a penalty on Shri Shishir Kumar, Chartered Accountants as per Table Below for failure in compliance of section 143 of the Companies Act, 2013 r.w. Rule 11(d) of Companies (Audit and Auditors) Rules, 2014 for the Financial Years 31.03.2017:

Nature of default	Violation of Section of the Companies Act, 2013	Company/ Officers to whom penalty imposed	No. of days in default	Penalty for defaults (Rs.) as per Section 450 of the Act	Total Penalty (Rs.)	Penalty Imposed (Rs.) As per Sec. 446B of the Act
Non-reporting of violations in audit report of 31.03.2017	Section 143 r.w Rule 11(d)	Shri Shishir Kumar, Chartered Accountants-	NA	Rs.10000	Rs.10000	5,000

12. The noticee shall pay the amount of penalty individually 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. The Challan/SRN

generated after payment of penalty through online mode shall be forwarded to this office.

13. Appeal against this order may be filled in writing with the Regional Director (ER), Ministry of Corporate Affairs, Kolkata, within a period of 60 (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 this order {Section 454(5) and 454(6) of the Act read with Companies (Adjudication of Penalties) Rules, 2014}.

14. Please note that if the noticee does not pay the penalty amount imposed herein within a period of ninety days from the date of receipt of the copy of the order, he 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 in terms of section 454(8)(ii) of the Companies Act, 2013; apart from the liability to pay the penalty amount in compliance to this order, and for which prosecution will be filed without further notice in this regard.

(Aparajit Barua)
Adjudicating Officer &
Registrar of Companies-Cum-
Official Liquidator, Patna

To:-

Shri Shishir Kumar
Chartered Accountant,
107, First Floor, Jagat Trade Centre
Fraser Road Patna 800001, Bihar India

Copy to:-

The Regional Director (ER),
Ministry of Corporate Affairs,
234/4 A.J.C. Bose Road, 2nd MSO Building,
2nd Floor, Kolkata 700020, for information please.