



भारत सरकार

कारपोरेट कार्य मंत्रालय

कार्यालय कम्पनी रजिस्ट्रार, गुजरात, दादरा एवं नगर हवेली

आर.ओ.सी. भवन, रुपल पार्क के सामने,

अंकुर बस स्टेन्ड के पास, नारणपुरा, अहमदाबाद (गुजरात) - 380013.

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सत्यमेव जयते



GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

OFFICE OF THE REGISTRAR OF COMPANIES,

GUJARAT, DADRA & NAGAR HAVELI

ROC Bhavan, Opp. Rupal Park,

Nr. Ankur Bus Stand, Naranpura, Ahmedabad (Gujarat) - 380013.

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SPEED-POST

DATED:

28 JUN 2023

1589

BEFORE THE ADJUDICATING OFFICER

REGISTRAR OF COMPANIES, GUJARAT, DADRA & NAGAR HAVELI

IN THE MATTER OF ADJUDICATION OF PENALTY UNDER SECTION 454 (3) OF THE COMPANIES ACT 2013 READ WITH RULE 3 OF THE COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014 FOR VIOLATION OF SECTION 10A (1)(a) OF THE COMPANIES ACT, 2013 READ WITH RULE 23A OF THE COMPANIES (INCORPORATION) RULES, 2014

IN THE MATTER OF M/S. SQUAREROOT DATA CENTERS PRIVATE LIMITED

Date of hearing -06/06/2023

PRESENT :

1. Shri R. C. Mishra (ROC), Adjudicating Officer
2. Shri Neelambuj, AROC, Presenting Officer
3. Smt Bharti N. Rajput, UDC

Company/ Officers/Directors/KMP/Authorized Representative:

Mr Parth Pandya, Practicing Company Secretary-Authorised representative of the Company/Director of the company present before the Adjudicating Authority.

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.
2. M/s. SQUAREROOT DATA CENTERS PRIVATE LIMITED (herein after referred to as "company") is a company having its registered office at C/O BHARATBHAI RAMLAL PATEL,B.R. CORPORATION, VILL- HANSALPUR, HIMATNAGAR, Sabar Kantha,Gujarat,383001,India registered under the provisions of the Companies Act, 2013. The CIN of the Company is U72900GJ2021PTC121444.

Fact about of the case

3. It is observed from the record of the Company available on Record Room of the e-registry of Ministry of Corporate Affairs, Government of India on the MCA portal that the subject company was incorporated on 22/03/2021 and therefore the mandate contained under

section 10-A, the prescribed e- form i.e. INC-20A was required to be filed by the company latest by 18/09/2021 (herein after referred to be the "last due date") i.e. within a period of 180 days of the date of incorporation. The company has filed the e-form INC-20A bearing SRN- T97777635 on 27/04/2022 with a delay of 220 days commencing from the last due date and therefore, default is made in complying with the aforesaid statutory provisions by non-filing of the declaration of commencement of business (INC-20A) within the prescribed statutory period of 180 days of incorporation date and for such default the Company and every officer who is in default are liable for penalty under Section 10A of the Act.

4. The Registrar of Companies had issued the STK-1 notices to the company and its officers in default to initiate action for the removal of the name of the company from the register of companies under Chapter XVIII as the company failed to file declaration with the Registrar of Companies as per the requirement of clause (a) of sub-section (1) of Section 10A of the Companies Act, 2013 within a period of one hundred and eighty days of the date of incorporation of the company
5. The company has belatedly filed the e-form INC-20A bearing SRN- T97777635 on 27/04/2022 by a delay of 220 days commencing from the last due date i.e. on or before 18/09/2021 accordingly, this office has dropped the action for removing the name of the company from the register of companies. However, as the Company and every officer have contravened the provisions of Section 10A of the Act and thus liable to penalize under section 10A(2) of the Companies Act, 2013 and Rules made thereunder.

Show Cause Notice and Reply/Submission of the Company/Director/Authorised Representative:-

6. An Adjudication Notice was issued to company and its directors vide No. Roc/GJ/248(1)/Sec.10A(2)/ADJ.Notice/701 to 703 Dated: 03/05/2023 for default of Section 10A (1)(a) of the Companies Act, 2013 read with Rule 23A of the Companies (Incorporation) Rules, 2014 and Companies (Adjudication of Penalties) Rules 2014.
7. The Authorized Representatives of the company present in the hearing submitted that during the financial year 2021-22, the company has not started business due to covid pandemic and the company & its directors has decided not to continue business activities as per the MOA. It is further submitted by the Authorized Representative that bank account of the company has already closed. The Company has not maintained any assets and liabilities and has already filed application of Strike-off the company u/s 248(2) of the Companies Act, 2013, by filing e-form STK-2 vide SRN:F60270212, dated-04/04/2023. He further submitted that the company is closely held company and no public interest affected by the same. Therefore, the Authorized Representative of the Company requested to take a lenient view and no penalty to be imposed in view of Strike-off application of the company and facts of the present case.

Submission of the Presenting Officer

8. The Presenting Officer submitted that the Ministry of Corporate Affairs vide General Circular No. 11/2020 dated 24.03.2020 had taken Special Measures under Companies Act, 2013 to file a declaration for Commencement of Business within 180 days of incorporation under section

10A of the Companies Act, 2013. However, company/directors have not complied with provision of Section 10A(1)(a) of the Act. Hence, this is a fit case of imposing penalty against the company and its directors/Officers.

9. The Presenting Officer further submitted that as per the MCA21 record, the company has failed to file the e-form INC-20A within prescribed time frame as per the relevant provision of the act and therefore, default has been occurred in complying with the aforesaid statutory provisions by delay filing of the declaration of commencement of business (INC-20A) and for such default the Company and every officer who is in default are liable for penalty under Section 10A of the Act.
10. It is further submitted by the presenting officer that the Ministry vide letter no. CL-II-03/211/2020-O/o DGCOA-MCA, dated 23/05/2023, as indicated to submit the proposal of striking off companies u/s 248 of the Companies Act, 2013, where the company have neither bank account nor maintaining any assets and liabilities, considering these case under special categories cases (SPLCC). As the company has already closed its bank account and filed application of Strike-off u/s 248(2) of the Companies Act, 2013. Hence lenient view may be taken in the matter for not imposing any penalty.

ORDER

11. While adjudicating quantum of penalty u/s 10A(1)(a) of the Companies Act, 2013, 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 group of investors as a result of the default.
 - c. The repetitive nature of default.
12. 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.
13. The undersigned considered the submission made by the Auhorised representative of the Company and its directors & Presenting Officer. Having considered the facts and circumstances of the case and after taking into account the factors above, the undersigned has reasonable cause to believe that the violation made by the company and its officer(s) in default by delay in filing of e-form 20A are not intentional and deserve to be considered favorably in the interest of natural justice. The company has already filed suo-moto application for Strike-off u/s 248(2) of the Companies Act, 2013, hence **"NO-PENALTY"** imposed in the matter keeping in line of the Ministry letter no. CL-II-03/211/2020-O/o DGCOA-MCA, dated 23/05/2023.

14. Appeal 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 e-form ADJ (i.e. Memorandum of Appeal), setting forth the grounds of appeal and shall be accompanied by the certified copy of this order. [Section 454(5) & 454(6) of the Companies Act, 2013 read with the Companies (Adjudicating of Penalties) Rules, 2014 as amended by Companies (Adjudication of Penalties) Amendment Rules, 2019].
15. Your attention is also invited to Section 454(8)(i) and 454(8) (ii) of the Companies Act, 2013, which state that in case of non-payment of penalty amount, the company shall be punishable with fine which shall not less than Twenty Five Thousand Rupees but which may extend to Five Lakhs Rupees and officer in default shall be punishable with Imprisonment which may extend to Six months or with fine which shall not be less than Twenty Five Thousand Rupees by which may extend to one Lakhs Rupees or with both.

The adjudication notice stands disposed of with this order.


R. C. MISHRA (ICLS)

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

To

1. **SQUAREROOT DATA CENTERS PRIVATE LIMITED**
C/O BHARATBHAI RAMLAL PATEL, B.R. CORPORATION,
VILL- HANSALPUR, HIMATNAGAR, SABAR
KANTHA, GUJARAT, 383001, INDIA
2. **PRINCE BHARATBHAI PATEL**
52, UMIYA CITY, GAYATRI MANDIR ROAD, MAHAVIRNAGAR
, HIMATNAGAR
SABARKANTHA HIMATNAGAR,
383001, GUJARAT, INDIA
3. **PRADHYUMANSINH RAJENDRASINH CHAVDA**
76, DEVBHUMI BUNGLOWBERNA ROAD HIMATNAGAR,
383001, GUJARAT, INDIA
- 4 **THE REGIONAL DIRECTOR, (NWR),**
MINISTRY OF CORPORATE AFFAIRS,
AHMEDABAD-380013
(FOR INFORMATION PLEASE)
- 5 **THE DIRECTOR LEGAL,**
MINISTRY OF CORPORATE AFFAIRS
(FOR PUBLICATION ON WEBSITE)