



भारत सरकार/GOVERNMENT OF INDIA

कॉर्पोरेट कार्य मंत्रालय/MINISTRY OF CORPORATE AFFAIRS

कम्पनी रजिस्ट्रार का कार्यालय, मध्यप्रदेश,

Office of The Registrar of Companies, Madhya Pradesh

संजय कॉम्प्लेक्स, 'ए' ब्लॉक, तीसरी मंजिल, / Sanjay Complex, 'A' Block, 3rd Floor, By Speed Pos
जयेन्द्रगंज, ग्वालियर - 474 009/ Jayendraganj, Gwalior - 474009.

E.mail: roc.gwalior@mca.gov.in

3907-394

No. ROC-G/Adj. Pen./u/s. 42(6)/Excel Vehicle/3907-394 Dated: 18 MAY 2023

To:

✓ (1) M/s. Excel Vehicles Private Limited,

6, Malviya Nagar, Near IDBI Bank, Bhopal 462003, M.P.

Mail I.D.: contact@excelvehicle.in

✓ (2) Smt. Manju Garg, Director (DIN-01792555), 7/88, SBI Colony, Arera

Colony, Tehsil Huzur, Bhopal 462016, M.P.

E-mail I.D.: gargmanju31031967@gmail.com

✓ (3) Sh. Rishab Garg, Director (DIN- 06528496), 7/88, Arera Colony,

Shahpura, R.S. Nagar, Bhopal 462016, M.P.

E-mail I.D.: contact@mycarbhopal.com

✓ (4) Sh. Beni Madhav Garg, Additional Director (DIN-01094084), 10/437,

Khalasi Lines, Kanpur 208001, U.P.

E-mail I.D.: bmsfreeji@gmail.com

✓ (5) Regional Director, North-Western Region, Ministry of Corporate Affairs,

Ahmedabad (Gujarat).

Subject: Order under Section 454 of the Companies Act, 2013 for violation of
Section 42(6) of the Companies Act, 2013 read with Companies
(Adjudication of Penalties) Rules, 2014.

Sir,

Please find enclosed herewith copy of order dated 18.05.2023 passed in the matter of M/s. Excel Vehicle Private Limited for necessary compliance.

Yours faithfully,

Encl: As above.

मुकेश कुमार सोनी
(Mukesh Kumar Soni, ICLS),
Adjudicating Officer/Registrar of Companies,
Madhya Pradesh, Gwalior.

/c my
18.05.2023

In the matter of Companies Act, 2013

And

In the matter of adjudication proceeding under sub-section (6) of
Section 42 of the Companies Act, 2013.

And

In the matter of

M/s. Excel Vehicles Private Limited

(CIN- U50400MP2012PTC028568)

Date of hearing 3rd of May, 2023

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 undersigned as adjudicating officer in exercise of the powers conferred by Section 454 of the Companies Act, 2013 (hereinafter known as "Act") read with Companies (Adjudication of Penalties) Rules, 2014 for adjudicating penalties under the provisions of this Act.

Company:

Whereas company M/s. excel Vehicles Private Limited (CIN- **U50400MP2012PTC028568**) hereinafter known as company] is a registered company with this office under the provisions of Section 7 of the Companies Act, 2013 (earlier Companies Act, 1956) having its registered office situated at 6-Malviya Nagar, Near IDBI Bank, Bhopal, M.P. 462003, as per the MCA website.

Sl. No.	Particulars	Details
1.	Paid-up Capital (F.Y. 2016-17)	15,00,00,000
2.	Turnover (F.Y. 2016-17)	
	a. Revenue from operation	1,20,53,81,815
	b. Other income	69,04,024
3.	Holding company	NO
4.	Subsidiary company	NO
5.	Whether company registered under Section 8	NO
6.	Whether company registered under any other Special Act	NO

2. Facts about the case:

Whereas inquiry u/s. 206(4) of the Companies Act, 2013 conducted by the ROC, Gwalior. The Directorate vide its direction dated 22.07.2022 has directed to ROC, Gwalior to take necessary action in the matter for violation of Section 42 of the Companies Act, 2013. During the inquiry u/s. 206(4) of the Companies Act, 2013. The company and directors have failed to submit the mode of payment or source of payment, information about the forfeiture/notice of forfeiture of shares and account details thereof. Hence, it appears that shares application money of Rs. 14.99 Crore for subscription of Rs. 15/- Lakh shares for the share allotment dated 25.02.2013 and 31.12.2013 is not paid or realised in the account of the company. Hence, allotment money was never credited in the company's account as directors was unable to produce any documentary proof. Hence, this is a violation of Section 42(6) of the Act.

3. Subsequently, this office had issued show cause notice U/s. 42(6) to the company and its officers in default vide No. ROC-G/Adj.Pen./u/s. 42(6)/Excel Vehicle/2661 to 2664 dated 30.03.2023. In response of show cause notice dated 30.03.2023, this office has received a letter dated 08.04.2023 from the company, therein the company has replied on following points:

- (i) We wish to submit that the allotment of shares was made under the provisions of Companies Act, 1956. The Companies Act, 2013 cannot be applied from retrospective date and therefore, it is humbly submitted that Section 42(6) of the Companies Act, 2013 is not applicable on the share allotment dated 42(6) of the Companies Act, 2013. Hence, there is no violation of Section 42(6) of the Companies Act, 2013.

- (ii) We wish to submit that the allotment of shares was made under the provisions of Companies Act, 1956. The Companies Act, 2013 cannot be applied from retrospective date and therefore, it is humbly submitted that Section 42(10) of Companies Act, 2013 is not applicable. Hence, there is no violation of Section 42(6) of the Companies Act, 2013.

The reply of the company is not satisfactory. Thus, the company and its officers in defaults have violated the provisions of Section 42(6) of the Companies Act, 2013. Hence, the company and its officers are liable for penal action under Section 42(10) of the Companies Act, 2013.

4. Thereafter, "Notices of Inquiry" vide No. ROC-G/Adj. Pen./42(6)/NOI/Excel Vehicle/159 to 162 dated 19.04.2023 were issued to the company and its officers in default. As per [Rule 3(3), companies (Adjudication of Penalties) Rules, 2014 and the date of hearing was fixed on **03.05.2023** at **11.00 A.M.** in the office of Registrar of Companies, Madhya Pradesh, Sanjay Complex, A-Block, 3rd Floor, Jayendraganj, Gwalior.
5. On the date of hearing i.e. 03.05.2023 Ms. Manju Garg, director of the company has authorised vide authorization letter dated 03.05.2023 to Sh. Rajeev Shrivastava, Manager Account and Sh. Ravinder Singh, Manager Account of the company were authorised for attending the hearing which was fixed on 03.05.2023 at 11.00 A.M. and both persons have attended the hearing.
6. As per section 42(6) of the Companies Act, any company making an offer or invitation under this section shall allot its securities within 60 days from the date of receipt of the application money for such securities provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank.

7. The company and directors of the company have failed to submit the mode of payment or source of payment,. Information about the forfeiture/notice of forfeiture of share and account details thereof. Hence, it appears that shares application money of Rs. 14.99 Crore for subscription of 15 Lakh shares for the share allotment dated 25.02.2013 and 31.12.2013 not paid or realized in the account of the company.

8. Order:

Having considered the facts and circumstances of the case and after taking into account the factors above, it is concluded that the company and its officers in default are liable for penalty as prescribed under Section 42(10) of the Act for default is made in complying with the requirements of Section 42(6) of the Act of the company viz. Excel Vehicles Private Limited.

9. As per provisions of Section 42(10) of the Companies Act, 2013, 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 involved in the offer or invitation or two crore rupees, whichever is lower and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

10. Accordingly, I am inclined to impose a penalty as prescribed under Sub-section 10 of section 42 of the Companies Act, 2013. The details of the penalty imposed on the company and officers in default are shown in the table below:

Sl. No.	Name of the company/Director	Amount of penalty
01.	M/s. Excel Vehicles Private Limited	Rs. 2,00,00,000/-

a. The company is directed to refund all the monies to the complainants alongwith interest at the rate of twelve per cent per

annum as per the provisions of Section 42(6) of the Act, within 30 days from the date of order as per the provisions of section 42(10) of the Act.

- b. The penalty amount shall be remitted by the company through MCA-21 portal within 60 days from the date of order. The company needs to file INC-28 as per the provisions of the Act, attaching the copy of adjudication order alongwith payment challan.
- c. Any person aggrieved by the order of Adjudicating Authority under sub-section (3) of Section 454 may prefer an appeal to the Regional Director having jurisdiction in matter.
- d. Every appeal under sub-section (5) of Section 454 shall be filed within 60 days from the date on which the copy of order made by the Adjudicating Authority is received by the aggrieved person and shall be in such form, manner and be accompanied by such fee as may be prescribed.
- e. As per Section 454(8)(i) where a company fails to comply with the order made under sub-Section (3) of sub-section (7) as the case may be within a period of 90 days from the date of receipt of the copy for the order, the company shall be punishable with fine which shall not be less than twenty five thousands, but which may extend to five lakh rupees.
- f. Where an officer of a company or any other person who is in defaults fails to comply with the order made under sub-section (3) or sub-section (7) as the case may be within a period 90 days from the date of receipt of the order, such officer shall be punishable with imprisonment which may extend to six months or with the fine which shall not be less than twenty five thousands rupees but which may extend to one lakh or with both.

- g. This order is without prejudice to the rights available to this office to initiate separate actions including but not limited to the penal actions for contraventions of related, incidental and/or continuing offence/contraventions.
- h. The delay for issuance of the order if any is due to complexity of the issue and time taken by the respondents to submit their replies and examinations of the issues involved.
11. In terms of the provisions of sub-rule 3 of the Companies (Adjudication of Penalties) Rules, 2014 copy of the order is being sent to Excel Vehicles Private Limited, c, Malviya Nagar, Near IDBI Bank, Bhopal 462003, M.P., Smt. Manju Garg, Director (DIN- 01792555), 7/88, SBI Colony, Arera Colony, Tehsil Huzur, Bhopal 462016, M.P., Sh. Rishab Garg, Director (DIN- 06528496), 7/88, Arera Colony, Shahpura, R.S. Nagar, Bhopal 462016, M.P., Sh. Beni Madhav Garg, Additional Director (DIN- 01094084), 10/437, Khalasi Lines, Kanpur 208001, U.P. and Regional Director, North-Western Region, Ministry of Corporate Affairs, Ahmedabad and will also be uploaded on MCA website

The adjudication notice stand disposed off with this order.


(Mukesh Kumar Soni), ICLS
Adjudicating Officer/Registrar of Companies,
Madhya Pradesh, Gwalior.

Order reserved on 03.05.2023

Order pronounced on 18.05.2023

Place: Gwalior, Madhya Pradesh.

