

Din must be Mentioned on Financial Statements to avoid Penalty

The Companies Act, 2013 (**CA 2013**) and rules made thereunder are drafted in such a manner that the compliances related to one subject matter are specified under different sections/rules. Accordingly, one section/rule may have a bearing on the other. Therefore, it is imperative that one should read CA 2013 and rules made thereunder holistically to avoid ignoring even the minutest compliances, which may lead to imposition of the penalty.

One such compliance under CA 2013 relates to quoting of Directors' Identification Number (**DIN**) of the directors on returns, information or particulars. Section 158 of the CA 2013 provides that every person or company, while furnishing any return, information or particulars as are required to be furnished under CA 2013, should mention DIN in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director. It is important to note here that the return, information or particulars where DIN needs to be mentioned must relate to the director or contain any reference of the director.

The CA 2013 also provides for a general penalty under Section 172, where Section 158 has not been complied with. Section 172 of the CA 2013 provides that the company and every officer of the company who is in default should be liable to a penalty of INR 50,000, and in case of continuing failure, with a further penalty of INR 500 for each day during which such failure continues, subject to a maximum of INR 300,000 in case of a company and INR 100,000 in case of an officer who is in default.

Recently, in the matter of M/s. Premier Solution Private Limited (**Company**), the question came up for adjudication before the Adjudicating Officer, Registrar of Companies, Gujarat, Dadra & Nagar Haveli (**Adjudicating Officer**) as to whether failure to mention the DIN of the directors on the financial statements of a company is a default under CA 2013 and would attract penalty thereunder.

Facts of the case

The Company filed its last three years financial statements with the Registrar of Companies, Ahmedabad (**ROC**) in the matter of Scheme of Amalgamation of the Company with M/s. D.J. Shah Investment Finance Private Limited and their respective



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shareholders and creditors, where it was observed that the Company have not mentioned DIN of their directors in the Financial Statements, thereby violating the provisions of Section 158 of CA 2013. The ROC filed its report before the Regional Director, Ahmedabad (**Directorate**) highlighting certain violations and non-compliance of the CA 2013. The Directorate instructed to take necessary action for violation of Section 158 of the CA 2013 in respect of failure to mention the DIN on the financial statements of the Company for the last 3 years and submit action taken report to the Directorate.

In view of the Directorate's instructions, an Adjudication Notice was issued to the Company and its directors for violation of Section 158 of the CA 2013. The Company submitted its replies and sought personal hearing in the matter. Thereafter, a 'written notice' was issued to the Company and its officers for appearance in the matter.

Contentions/Submissions of Parties

The Company Secretary appearing on behalf of the Company and its directors during the hearing contended that in common parlance, financial statements are formal records of the financial activities and positions of a business or entity and are not return/information/particulars related to directors of the Company. He also mentioned that it cannot be considered as a document containing reference of any director as financial statements are written records of financial position of a company. He further contended that the necessary details of the directors (including DIN) who have signed the financial statements are provided in e-Forms 23AC/AOC 4 (as may be applicable) filed on MCA Portal.

Inversely, the Presenting Officer submitted that the financial statements should not be distinguished from '*the return, information or particulars*', as mentioned under Section 158 of CA 2013. He further submitted that the object of filing such information on financial statement/audit report etc. on MCA Portal/public domain is in the public interest, to enable the investors, public and whosoever interested in the Company can access the information pertaining to directors of the Company under the CA 2013. Non-filing of adequate/correct documents on the MCA Portal would result in denial of information to public regarding DIN of the directors of the Company and the same should be avoided.

Order

After having considered the facts and circumstances of the case and submissions made by the Presenting Officer and the Company Secretary, the Adjudicating Officer imposed the minimum penalty of INR 150,000 (i.e. INR 50,000 x 3 years) on the Company and each of the 3 directors totaling to INR 600,000. The Adjudicating Officer categorically mentioned that the penalty amount should be paid by the Company and its officers from their personal sources/income by way of e-payment available on MCA Portal.

Conclusion

The companies and its directors/officers should be aware and updated even about the minutest compliances under CA 2013 as they are inevitable. The Adjudicating Officer has set an example that the ignorance of law can turn out to be a costly affair for the company and its directors/officers, who might not have been aware that failure to mention the DIN on the financial statements could cost them INR 600,000. Compliances are critical for every business. They help in better corporate governance and reduce the chances of imposition of the fines and penalties. One should keep himself/herself updated before becoming a director in a company.