

ADJ – DG - 05

PENALTY FOR DEFECT IN INFORMATION MENTIONED IN AOC-4 XBRL

Date: 26.07.2023

SHORT SUMMARY:

As Per Rule 8(3) of Chapter XXIV, The Companies (The Registration Offices and Fees) Rules, 2014: The authorized signatory and the professional, if any, who certify e-form shall be responsible for the correctness of the contents of e-form and correctness of the enclosures attached with the electronic form.

Every corporation must comply with the above provision in order to preserve good governance. Many Companies registered with the MCA (Ministry of Corporate Affairs) do not follow this clause of the Company Act 2013.

Ministry of Corporate Affairs appointed undersigned as Adjudicating Officer in exercise of the powers conferred by Section 454 of the Act, 2013

The Company AT & T Communication Services India Private Limited launched a Suo moto submission of an application respecting the terms of As Per Rule 8(3) of Chapter XXIV, The Companies (The Registration Offices and Fees) Rules, 2014. In this editorial we will discuss one of those order issued by ROC Delhi ;& Haryana. The complete matter shall be covered here.

“Adjudication Order in the Matter of AT & T COMMUNICATION SERVICES INDIA PRIVATE LIMITED”

1. FACTS OF THE CASE:

- a) Company had erroneously reported the total amount of turnover from its principal product or services under the HSN Code.
- b) Such turnover came into the attention of the company when it received the Show Cause Notice from the Cost Audit Branch of Ministry of Corporate Affairs on 09.05.2021.
- c) The Cost Audit Department sent a letter to company on 23.03.2023 for some clarifications.
- d) In response, the reply have been given by the Company on 01.04.2023, 28.04.2023 & 12.05.2023 which includes a certificate from CA who has certified HSN code wise break up of Annual Turnover for the F.Y. 2020-21.
- e) As per Reply given by the Company, Cost audit Branch of MCA observed that company had erroneously reported the total amount of turnover in the said AOC-4 XBRL for F.Y. 2020-21.
- f) A show cause notice was issued to the company and its signatories on 31.05.2023
- g) Company has given reply against notice on 09.06.2023 and it was Stated that company had erroneously reported the total amount of turnover in the e-form AOC-4 XBRL for F.Y. 2020-21.
- h) The Company has filed a Suo-moto application vide GNL-1 e-form on 25.01.2023 filed by the company regarding adjudication of the defect in filing of e-form AOC-4 XBRL dated 28.10.2021.

2. ORDER:

As per Section 450 (Punishment where no specific penalty or punishment is provided) of Companies Act 2013: 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, 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.

ROC Carefully Perused the Reply Made by the Company and Found that:

- I. There is a default /non-compliance of the provision of Rule 8(3) of the Companies (Registration Offices and Fees) Rules, 2014 and as such there is no specific penalty under these rules. Hence, provision of section 450 of the Companies Act, 2013 gets attracted.
- II. Directors & Certifying Professional certifying the form with Incorrect Information, accordingly they are also liable for the violation.

Important Point: The subject company does not get covered under the purview of small Company as defined u/s 2(85) of the Act. Hence, the benefit of section 446B would not be applicable on the company.

The Adjudicating Officer do hereby impose a penalty under Section 450 on the Company and Professional who certified the form as per Table below for violation of Rule 8(3) of Chapter XXIV, The Companies (The Registration Offices and Fees) Rules,2014.

Violation Section	Penalty imposed on Signatories	Penalty Imposed (Rs.)
Rule 8(3) of Chapter XXIV, The Companies (The Registration Offices and Fees) Rules,2014.	Director	10,000
	Certifying Professional	10,000
	Total	20,000

3. CONCLUSION: -

The foremost reason of receiving of notice form cost audit department can be followings:

- ✓ Misreporting in Financial Statement.
- ✓ Misreporting of activity code in AOC-4 (Filing of Financial statement)
- ✓ Misreporting activity code in MGT-7 (Annual Return)

Professionals should take proper care while filing the above-mentioned forms and documents.

Further, Every Company Secretary and auditor of the Company should report this non-compliance in MGT-7, MGT-8, and their Statutory Audit report to avoid future penalties.

Author – CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com.

Disclaimer: The whole content of this document was created using pertinent laws and the information available at the time of creation. I take no responsibility despite the fact that every effort has been made to assure the accuracy, reliability, and completeness of the material supplied. Users of this information are expected to consult the pertinent, currently in effect laws. The information's user acknowledges that it is not expert advice and that it is subject to change at any time. I disclaim all liability for the results of using such information.

I will never be responsible for any direct, indirect, incidental, special, or consequential damages that result from, arise from, or are related to the use of the information.