

# The Companies (Adjudication of Penalties) Rules, 2014

UNION OF INDIA

India

## The Companies (Adjudication of Penalties) Rules, 2014

### Rule

### THE-COMPANIES-ADJUDICATION-OF-PENALTIES-RULES-2014 of 2014

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The Companies (Adjudication of Penalties) Rules, 2014 Published vide Notification No. G.S.R. 254 (E), 31st March, 2014 Last Updated 23rd February, 2019 G.S.R. 254(E). - In exercise of the powers conferred by section 454 read with section 469 of the Companies Act, 2013, the Central Government hereby makes the following rules, namely:-

#### 1. Short title and commencement.

(1) These rules may be called the Companies (Adjudication of Penalties) Rules, 2014. (2) They shall come into force on the 1st day of April, 2014.

#### 2. Definitions.

(1) In these rules, unless the context otherwise requires, -(a) "Act" means the Companies Act, 2013 (18 of 2013); (b) "Annexure" means the Annexure enclosed to these Rules; (c) "Fees" means fees as prescribed in the Companies (Registration Offices and Fees) Rules, 2014; (d) "Form" or "e-Form" means a form set forth in Annexure to these rules which shall be used for the matter to which it relates; (e) "Regional Director" means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director; (f) "section" means section of the Act; (2) Words and expressions used in these rules but not defined, and defined in the Act or in the Companies (Specification of definitions details) Rules, 2014 shall have the meanings respectively assigned to them in the Act or in the said Rules.

### **3. [ Adjudication of penalties. [Substituted by Notification No. G.S.R. 131(E), dated 19.2.2019 (w.e.f. 31.3.2014).]**

(1)The Central Government may appoint any of its officers, not below the rank of Registrar, as adjudicating officers for adjudging penalty under the provisions of the Act.(2)Before adjudging penalty, the adjudicating officer shall issue a written notice in the specified manner, to the company, the officer who is in default or any other person, as the case may be, to show cause, within such period as may be specified in the notice (not being less than fifteen days and more than thirty days from the date of service thereon), why the penalty should not be imposed on it or him.(3)Every notice issued under sub-rule (2), shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default, or any other person, as the case may be and also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed on the company, and each of the officers in default, or the other person.(4)The reply to such notice shall be filed in electronic mode only within the period as specified in the notice :Provided that the adjudicating officer may, for reasons to be recorded in writing, extend the period referred to above by a further period not exceeding fifteen days, if the company or officer in default or any person as the case may be, satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice within the stipulated period or the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply.(5)If, after considering the reply submitted by such company, its officer, or any other person, as the case may be, the adjudicating officer is of the opinion that physical appearance is required, he shall issue a notice, within a period of ten working days from the date of receipt of reply fixing a date for the appearance of such company, through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative :Provided that if any person, to whom a notice is issued under sub-rule (2), desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance.(6)On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including an order for adjournment :Provided that after hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice under sub-rule (2), relevant for determination of the default.(7)The adjudicating officer shall pass an order, -(a)within thirty days of the expiry of the period referred in sub-rule (2) or of such extended period as referred therein, where physical appearance was not required under sub-rule (5);(b)within ninety days of the date of issue of notice under sub-rule (2), where any person appeared before the adjudicating officer under sub-rule (5):Provided that in case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the adjudicating officer and no such order shall be invalid merely because of its passing after the expiry of such thirty days or ninety days as the case may be.(8)Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance under sub-rule (5).(9)The adjudicating officer shall send a copy of the order passed by him to the concerned company, officer who is in default or any other person or all of them and to the Central Government and a copy of the order

shall also be uploaded on the website.(10)For the purposes of this rule, the adjudicating officer shall exercise the following powers, namely: -(a)to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;(b)to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter.(11)If any person fails to reply or neglects or refuses to appear as required under sub-rule (5) or sub-rule (10) before the adjudicating officer, the adjudicating officer may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so.(12)While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely: -(a)size of the company;(b)nature of business carried on by the company;(c)injury to public interest;(d)nature of the default;(e)repetition of the default;(f)the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and(g)the amount of loss caused to an investor or group of investors or creditors as a result of the default:Provided that, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act.(13)In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.(14)Penalty shall be paid through Ministry of Corporate Affairs portal only.(15)All sums realised by way of penalties under the Act shall be credited to the Consolidated Fund of India.Explanation 1. - For the purposes of this rule, the term "specified manner" shall mean service of documents as specified under section 20 of the Act and rules made thereunder and details in respect of address (including electronic mail ID) provided in the KYC documents filed in the registry shall be used for communication under this rule.Explanation 2. - For the purposes of this rule, it is hereby clarified that the requirement of submission of replies in electronic mode shall become mandatory after the creation of the e-adjudication platform.]

#### **4. Appeal against the order of adjudicating officer.**

(1)Every appeal against the order of the adjudicating officer shall be filed in writing with the Regional Director having jurisdiction in the matter within a period of sixty days from the date of receipt of the order of adjudicating officer by the aggrieved party, in Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought:Provided that where the party is represented by an authorised representative, a copy of such authorisation in favour of the representative and the written consent thereto by such authorised representative shall also be appended to the appeal:Provided further that an appeal in Form ADJ shall not seek relief(s) therein against more than one order unless the reliefs prayed for are consequential.(2)Every appeal filed under this rule shall be accompanied by such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

#### **5. Registration of appeal.**

(1)On the receipt of an appeal, office of the Regional Director shall endorse the date on such appeal and shall sign such endorsement.(2)If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number:Provided that where the appeal is found to be defective, the Regional Director may allow the appellant such time, not being less than fourteen days following the date of receipt of intimation by the appellant from the Regional Director about the nature of the

defects, to rectify the defects and if the appellant fails to rectify such defects within the time period allowed as above, the Regional Director may by order and for reasons to be recorded in writing, decline to register such appeal and communicate such refusal to the appellant within a period of seven days thereof: Provided further that the Regional Director may, for reasons to be recorded in writing, extend the period referred to in the first proviso above by a further period of fourteen days if an appellant satisfies the Regional Director that the appellant had sufficient cause for not rectifying the defects within the period of fourteen days referred to in the first proviso.

## 6. Disposal of appeal by Regional Director.

(1) On the admission of the appeal, the Regional Director shall serve a copy of appeal upon the adjudicating officer against whose order the appeal is sought along-with a notice requiring such adjudicating officer to file his reply thereto within such period, not exceeding twenty-one days, as may be stipulated by the Regional Director in the said notice: Provided that the Regional Director may, for reasons to be recorded in writing, extend the period referred to in sub-rule (1) above for a further period of twenty-one days, if the adjudicating officer satisfies the Regional Director that he had sufficient cause for not being able to file his reply to the appeal within the above-said period of twenty-one days. (2) A copy of every reply, application or written representation filed by the adjudicating officer before the Regional Director shall be forthwith served on the appellant by the adjudicating officer. (3) The Regional Director shall notify the parties, the date of hearing of the appeal which shall not be a date earlier than thirty days following the date of such notification for hearing of the appeal. (4) On the date fixed for hearing the Regional Director may, subject to the reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date. (5) In case the appellant or the adjudicating officer does not appear on the date fixed for hearing, the Regional Director may dispose of the appeal ex-parte: Provided that where the appellant appears afterwards and satisfies the Regional Director that there was sufficient cause for his non-appearance, the Regional Director may make an order setting aside the ex-parte order and restore the appeal. (6) Every order passed under this rule shall be dated and signed by the Regional Director. (7) A certified copy of every order passed by the Regional Director shall be communicated to the adjudicating officer and to the appellant forthwith and to the Central Government. Annexure

FORM NO.ADJ[Pursuant to Section 454(5) of the companies Act, 2013 and rule 4(1) of the Companies (Adjudication of Penalties) Rules, 2014]]

Memorandum of Appeal

Form

languageEnglishHindiRefer the instruction kit for filing the form.|-

Before the

Regional Director|-

In the matter of the Companies Act, 2013|-

And|- In the matter of appeal against the order made ob by| |

1.| \*Category of Appellant|

2.| \*Corporate identity number (CIN) or Foreign Company registration number (FCRN)| |

3.| (a) Name of the Company|

