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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 7032/2017

KVS INTERNATIONAL PRIVATE LIMITED
& ORS ..... Petitioners

Through: Mr Rakesh Kumar and Mr Parmod Sachdeva, Advocates.

versus

UNION OF INDIA ..... Respondent

Through

**CORAM:**
**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**O R D E R**

% **18.08.2017**

**CM No.29202/2017**

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

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3. Since the order impugned in the present petition has been passed by the respondent, the need is not felt to issue the notice to the said authority and the petition has been taken up for hearing.

4. The petitioners have filed the present petition, *inter alia,* impugning an order dated 19.05.2017, passed by the Regional Director, Northern Region, Ministry of Corporate Affairs (hereafter 'the RD') whereby the petitioner’s appeal against the order dated 08.09.2016, passed by the Registrar of Companies (hereafter 'the ROC'), imposing a penalty of ₹1 lakh on each of the petitioners, was rejected.

5. Petitioner no. 1 is an incorporated company and petitioner nos. 2 and 3 are its directors. The ROC had imposed a penalty on the petitioners for violation of Section 12 of the Companies Act 2013, since it was found that all the communications sent to the petitioners were being returned with remarks such as "*no such person in this number*"; "*Dukaann band raythi hai";* and "*firm band raythi hai*."

6. In view of the above, the ROC concluded that the provisions of Section 12 of the Companies Act, 2013, which enjoined every company to maintain a registered corporate office and ensure that all communications are received, were violated.

7. It is also relevant to state that the show cause notice dated 19.07.2016 issued to the petitioners also could not be delivered as none was present at the registered office of the company to receive the notice.

8. In view of the above, ROC passed an order dated 08.09.2016, imposing a penalty of ₹1 lakh each on the petitioners. Aggrieved by the same, the petitioners filed an appeal before the RD, which was also dismissed by the impugned order.

9. It is the case of the petitioners' that they had shifted books and records of the petitioner no.1 company to an office at Chandigarh and, therefore, the registered office of the petitioner no.1 was practically non-functional. It is stated that the petitioners had also employed a caretaker, who was on most occasions absent on account of his deteriorating health.

10. It is thus seen that it is an admitted case of the petitioners that they were not maintaining the registered office as required under the Companies Act, 2013. The learned counsel for the petitioners has also not contested the aforesaid fact. He has assailed the impugned order on the sole ground of

proportionality.

11. He referred to the Companies (Adjudication of Penalties) Rules, 2014 and drew the attention of this Court to Rule 3(9) of the said Rules which lists out the factors that are required to be considered by the Adjudicating Authority while adjudging the amount of penalty. He earnestly contested that in the present case although this ground was urged before the RD but the same was not considered.

12. Rule 3(9) of the aforesaid rules reads as under:

> "While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-
> (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
> (b) the amount of loss caused to an investor or group of investors or creditors as a result of the default;
> (c) the repetitive nature of the default."

13. The operative part of the impugned order reads as under:-

> "7.0 After going through the Company's petition, and hearing the arguments of both the parties, Registrar of Companies Report and Oral submissions, and by virtue of the powers vested in Regional Director under section 454(7) of the Companies Act, 2013 read with the Companies (Adjudication of Penalties) Rules, 2014, the Appeal is rejected and the Penalty Order of Registrar of Companies, NCT of Delhi and Haryana dated 08/09/2016 is upheld. If the company or its Directors fails to deposit the penalty amount within the prescribed time, action under section 454(8)(i) and (ii) of the Companies, Act, 2013 shall be initiated against the company and its officers in default."

14. It is *ex facie* apparent from the above that the respondent has not

considered the aforesaid plea raised by the petitioner. Thus, the impugned order cannot be sustained.

15. In view of the above, the impugned order is set aside and the matter is remanded to the RD to consider the question of proportionality as well as the factors referred to in Rule 3(9) of the Companies (Adjudication of Penalties) Rules, 2014. The respondent shall pass a fresh order after hearing the petitioners in this regard.

16. The petition is disposed of with the aforesaid directions.

**VIBHU BAKHRU, J**

**AUGUST 18, 2017**
**MK**