

# CORPORATE LAWS

## Case Law Update



CS Makarand Joshi

### Companies Act – Case 1

#### Adjudication order dated 1st April 2024 by ROC Hyderabad in the matter of Premier Energies Limited

##### Facts of the case

- Premier Energies Limited (hereinafter called as company) is incorporated in the jurisdiction of ROC Hyderabad.
- During the period between December 2019 to September 2021, the Company made total 8 (eight) Allotments of securities. 7 (seven) of which were through preferential issue and one was through ESOP.
- Out of 7 (seven) allotments made through the preferential issue, one allotment was pertaining to the issue of Compulsory Convertible Debentures (CCDs).
- However, during this period, the shareholding of the Promoter Director of the company was in physical mode.
- Allotment of fresh securities while the promoter shareholding is in physical mode is a violation of section 29(1A) of the Companies Act 2013 (the Act) read with rule 9A of Companies Prospectus and Allotment of Securities Rules.

- Section 29(1A) read with rule 9A states that shares of specified unlisted public companies should be held and transferred in dematerialized form only. Further, it should be ensured before making any fresh issue of securities that the shareholding of the promoters of the company is held in demat mode.
- Also, during this period, a corporate shareholder of the company transferred its shares held in physical mode to an individual shareholder. This is in violation of section 56 read with rule 9A sub-rule three of Companies Prospectus and Allotment of Securities Rules.

##### Arguments of the Company

- The application was filed as a Suo-moto application before the Registrar of Companies (ROC) to get both the non-compliances adjudicated.
- The Company admitted the non-compliance of section 29(1A) and section 56 read with rule 9A on its part.
- The Company made good its offence in March 2024 by dematerializing the shares of its promoters.

**ROC's observations**

After considering all the relevant documents and the company's submissions, the ROC held that,

- Having considered the facts and circumstances of the case and after considering the factors and submissions made in the application and by the Authorized Representative during the hearing on 01.04.2024 and the facts of the case, it is proved beyond doubt that the company and the officer of the company have defaulted in complying the provisions under Section 29(1A) of the Act.

- However, the Company made the offence good on 19th March 2024 by converting the physical shares of promoter into Demat.
- This is a one-time offense on the part of the Company.

**Penalty imposed**

After considering all the factors, ROC imposed penalty under section 450 on the company, its directors and company secretaries for non-compliances of section 29(1A) and section 56 read with rule 9A of Companies Prospectus and Allotment of Securities Rules.

<i>On Company and Officer in default</i>	<i>Penalty as per act</i>	<i>Penalty Imposed</i>
<b>On Company :</b> Premier Energies Limited	<b>On default :</b> ₹ 90,000/-	₹ 90,000/-
	<b>On Continuous default :</b> Nil	
	<b>Total Penalty :</b> ₹ 90,000/-	
<b>Officer in default :</b> Shri. Chiranjeev Singh Saluja (Managing Director)	<b>On default :</b> ₹ 90,000/-	₹ 90,000/-
	<b>On Continuous default :</b> Nil	
	<b>Total Penalty :</b> ₹ 90,000/-	
Shri. Surender Pal Singh Saluja (Whole time Director)	<b>On default :</b> ₹ 90,000/-	₹ 90,000/-
	<b>On Continuous default :</b> Nil	
	<b>Total Penalty :</b> ₹ 90,000/-	
Shri, Revathi Rohini Buragadda (Executive Director)	<b>On default :</b> ₹ 70,000/-	₹ 70,000/-
	<b>On Continuous default :</b> Nil	
	<b>Total Penalty :</b> ₹ 70,000/-	
Shri. Shantipriya Ramesh Kalkur (erstwhile Company Secretary)	<b>On default :</b> ₹ 50,000/-	₹ 50,000/-
	<b>On Continuous default :</b> Nil	
	<b>Total Penalty :</b> ₹ 50,000/-	

<i>On Company and Officer in default</i>	<i>Penalty as per act</i>	<i>Penalty Imposed</i>
Shri. Shruti Walia (erstwhile Company Secretary)	<b>On default</b> : ₹ 40,000/-	₹ 40,000/-
	<b>On Continuous default</b> : Nil	
	<b>Total Penalty</b> : ₹ 40,000/-	

## SEBI – Case 2

### Securities Exchange Board of India's Adjudication Order in the Matter of Prabhu Steels Industries Limited

#### Facts of The Order

1. Securities Exchange Board of India had received the Financial Reporting Quality Review Report ('FRQRR'/report) from the National Financial Reporting Authority ('NFRA') dated February 14, 2022. The report raised concerns over serious lapses with respect to accounting and auditing standards observed by Prabhu Steel Industries Limited ('PSIL'/'Company'). In FRQRR, NFRA observed that the Company had grossly violated the provisions of the Companies Act, 2013 and applicable Indian Accounting Standard Framework ('Ind AS') while preparing the financial statements for the Investigation Period. On receipt of the said report, the Securities Exchange Board of India ('SEBI') investigated to ascertain if there was misrepresentation in financial statements of PSIL. SEBI in this regard carried out an investigation in the Company for the financial year 2019-2020.
2. The observations of NFRA recorded in the FRQRR was investigated from the perspective of violations of the securities market and related laws. SEBI on investigation categorised the alleged violations as follows: (A) Disclosure

and presentation violations; and (B) Disclosure and misrepresentation of financials/information violations.

3. On investigation, SEBI observed that a few of the instances of lapses observed by SEBI were that Indian Accounting Standards was applicable to PSIL in the FY 2019-20, but PSIL has not followed the requirements of Ind AS Framework, while preparing its financial statements, rather it has prepared its financial statements in accordance with Accounting Standards framework.
4. Further under the head "Management Discussion and Analysis," PSIL had not discussed some of the matters such as industry structure and developments, opportunities and threats, segment-wise or product-wise performance, outlook, key ratios etc. as required by Part B of Schedule V of SEBI LODR.
5. Further, SEBI observed that PSIL had not disclosed the date when the financial statements were approved for issue, thereby violating the provisions of Ind AS 10 relating to 'Events after the Reporting Date'.
6. Further, SEBI observed that PSIL has made misleading disclosures regarding one of the key elements of financial statements viz. "Revenue from Operations" and had also not made any disclosures as required under Ind AS 115. Therefore, SEBI alleged that the company had not presented its

financial statements in accordance with applicable standards of accounting. Based on findings of investigation, SEBI then initiated adjudication proceedings against PSIL. Show cause notice was then issued to four Noticees [Harish Gangaram Agrawal (hereinafter referred

to as Noticee 2), Dinesh Gangaram Agrawal (hereinafter referred to as Noticee 3) and Akshita Harish Agrawal (hereinafter referred to as Noticee 4)] and the FRQRR was also enclosed with SCN.

### Charges Levied

Noticee No.	Name of Noticee	Charges Levied
1	Prabhu Steel Industries Limited	Regulations 4(1)(a), (b), (c), (g) and (h), 33(1)(a)(c), 48 and 34(3) read with part B of Schedule V of SEBI LODR Regulations read with Section 21 of SCRA, 1956
2	Harish Gangaram Agrawal	Regulations 4(1)(a), (b), (c), (g) and (h), 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(7), 4(2)(f)(ii)(8), 4(2)(f)(iii)(1), 4(2)(f)(iii)(3), 4(2)(f)(iii)(6), 4(2)(f)(iii)(12), 33(1)(a)(c), 48, 34(3) read with part B of Schedule V of SEBI LODR Regulations read with Sections 21 & 24 of SCRA, 1956 and Section 27 of the SEBI Act, 1992.
3	Dinesh Gangaram Agrawal	Regulations 4(1)(a), (b), (c), (g) and (h), 4(2)(f)(i)(2), 4(2)(f)(ii)(2), 4(2)(f)(ii)(7), 4(2)(f)(ii)(8), 4(2)(f)(iii)(1), 4(2)(f)(iii)(3), 4(2)(f)(iii)(6), 4(2)(f)(iii)(12), 33(1)(a)(c), 33(2)(a), 48, 34(3) read with part B of Schedule V, 17(8) read with Part B of Schedule II of SEBI LODR Regulations read with Sections 21 & 24 of SCRA, 1956 and Section 27 of the SEBI Act, 1992.
4	Akshita Harish Agrawal	Regulations 33(2)(a), Regulation 17(8) read with Part B of Schedule II of SEBI LODR Regulations read with Sections 21 & 24 of SCRA, 1956.

### Contention by Noticee's

- Noticees failure to present a true and fair view of financial statements, by not following the prescribed accounting standards and policies:**
  - Noticee No 1 to 4 ('Noticees') together contended that the main object of disclosures under Securities and Exchange Board of India (Listing

Obligation and Disclosure Requirement), 2015 ('SEBI LODR') is to give true and timely update of the material financial and non-financial information about the company's performance to the investors/shareholders/stakeholders so that they can invest/trade in the shares of that company on the basis of correct and timely information about performance

of the company. Hence the purpose is to protect investors/shareholders/stakeholders from wrong and delayed disclosures of material information by the company.

- Since there was no trading in the PSIL's shares after 2001, hence no investor/shareholder were caused any loss due to disclosure lapses under SEBI LODR.
- Further, Noticees contended that disclosure and other lapses under SEBI LODR were due to a mistake on the part of the statutory auditor of the Company who was already been debarred by NFRA.
- Further, Noticees contended that there was very miniscule difference in profit/loss and revenue figure as per the revised financial statement which was as per Indian Accounting Standard for the financial year 2019-20 compared to the financials prepared under the Accounting Standard. The mistake was unintentional on the part of the Company.
- Noticees mentioned that they had subsequently disclosed all the relevant disclosures as alleged to be made in the annual report for FY 2019-20, in the FY 2021-22 annual report.
- Noticees at last contended that there has been no *malafide* intention on the part of the Noticees, and no gain or advantage were made by the Noticees, its board of directors, officers, or employees on account of non-compliances. The Noticees had always been prompt and forthcoming in discharging their contractual and statutory obligations and had always promptly addressed and resolved investors' grievances.

### Submission by SEBI

1. **Noticees failure to present a true and fair view of financial statements, by not following the prescribed accounting standards and policies:**
  - SEBI Adjudicating Officer ('SEBI AO') noted that though there was no trading in the scrip of the Company. The Company being a listed company was required to comply with the provisions of the Companies Act, 2013 Securities Contract Regulation Act, 1947 and rules, regulations made thereunder. No trading activity in the scrip does not absolve Noticee No. 1 from the legal responsibility of complying with relevant laws.
  - Further, SEBI AO mentioned that Noticees have not argued upon the observations in FRQRR and SEBI investigation report but rather accepted the non-compliances in respect of preparation of financial statements in terms of accounting, auditing standard and also stated that these errors were on account of the then statutory auditor of PSIL, who made mistakes while preparing the financial statements. In respect of the above, SEBI AO noted that the primary responsibility regarding compliances of requisite regulations, and accuracy with respect to its financial statements were on PSIL for which it could have availed services of professionals having expertise in the domain.
  - Further, it was incumbent upon the Company to ensure, that its devoid of any error or non-compliances, for which it could have adopted proper checks and balances in its working. SEBI AO also stated that though the financial statements were prepared by the statutory auditor but same were also

given for pursual and approval to the board of directors of PSIL which were approved.

- SEBI AO further highlighted that Noticee No 1 cannot take refuge under the reason that it was not aware of the legal requirement and the same was the responsibility of the statutory auditor because ignorance of the law. SEBI AO further noted that the charge on Noticees was that of non-compliance of accounting standard, not merely about the quantum of difference in amount. Further, with respect to Noticee No. 2, SEBI AO mentioned that he was whole time director and key managerial personnel during the investigation period. Further SEBI AO also mentioned that Noticee No. 2 was member of stakeholder relationship committee and had attended its meetings along with board meetings during the investigation period.
- Further, SEBI AO noted that Noticee No 2 had signed form MGT-9 management discussion and analysis report, annexure III, corporate governance report, annexure A referred in the auditor's report, annexure B of auditor's report, schedule 10: significant accounting policies, balance sheet, profit and loss statement, cash flow statement of the Company. Hence SEBI AO was of the view that Noticee No. 2 failed to present a true and fair view of the relevant financial statements.
- Further SEBI AO noted that Noticee No 3 was the Chairperson & Managing Director and KMP of the Company during the investigation period. SEBI also noted that Noticee No. 3 was member of the audit committee and

attended all meetings along with board meetings during the investigation period. SEBI AO also noted that Noticee No. 3 inter alia signed form MGT-9 (extract of annual return), management discussion and analysis report, annexure III, corporate governance report, annexure A referred in the auditor's report, annexure B of auditor's report, schedule 10: significant accounting policies, balance sheet, profit and loss statement, cash flow statement of the Company and had provided CEO/CFO certification under reg. 33(2)(a) of SEBI LODR.

- Hence, SEBI AO was of the view that Noticee No. 3 failed to present true and fair view of the relevant financial statements. Further, with respect to Noticee No. 4, SEBI AO noted that he was Chief financial officer ('CFO') of the company during the investigation period. SEBI AO observed that Noticee no 4 had signed the balance sheet, profit and loss statement, cash flow statement of the Company and also had provided CEO/CFO certification under reg. 33(2)(a) of SEBI LODR during the investigation period. SEBI AO observed that financial statements contained errors and were not in compliance of accounting/auditing standards and there was misleading misrepresentation hence SEBI AO was of the view that Noticee No. 4 also violated regulations.

### Penalty

Penalty of ₹ **3,00,000/-** each on all Noticees was imposed under Section 15HB of the SEBI Act, 1992 and Section 23A(a) and 23(H) of the Securities Contracts (Regulation) Act, 1956.

