

Application No. RD (NWR)/ Appeal u/s 454 (5)/15/2022

BEFORE THE REGIONAL DIRECTOR, NORTH-WESTERN REGION,
MINISTRY OF CORPORATE AFFAIRS, AHMEDABAD

IN THE MATTER OF
THE COMPANIES ACT, 2013

Section 454 Adjudication of Penalties.

In the matter of Appeal under sub section (5) of Section 454 of the Companies Act, 2013 read with Rule 4 of the Companies (Adjudication of Penalties) Rules, 2014 against the adjudication order passed by ROC, Bilaspur dated 05.07.2022.

In the matter of adjudication for non-compliance of Section 12(1) read with 454(3) of the Companies Act, 2013.

And

In the matter of Jai Gurudev Steels Private Limited

1. Mr. Shashank Jain, Director.

H N 424, Ward No. 15, College Road
Mahasamund, Chattisgarh-493445.

..... Applicant

V/s

Registrar of Companies, Bilaspur, Chhattisgarh

..... Respondent

Date of Hearing: - **28.02.2023.**

- Present: -
1. No-one appeared on behalf of the ROC, Bilaspur and Adjudicating Officer.
 2. No-one appeared on behalf of the Applicant.
 3. Shri B.R. Ambedkar, Assistant Director, O/o RD (NWR) Ahmedabad.

ORDER

That the applicant made an on-line Appeal under Section 454 (5) of the Companies Act, 2013 in e-form No. ADJ on 09.08.2022 vide SRN F20244935 against the order dated 05.07.2022 passed by the Adjudicating officer i.e. Registrar of Companies, Bilaspur. On receipt of the appeal, this Directorate vide letter dated 22.09.2022 forwarded the appeal to the Registrar of Companies, Bilaspur for its comments in the matter and with reference to the aforesaid letter, Registrar of Companies, Bilaspur has submitted its report vide letter dated 13.10.2022.

Facts of the Case:-

- I. ROC, Bilaspur has received a complaint dated 01.04.2022 of Shahank Jain against the Company and the matter was taken up with the Company vide their office letter dated 06.04.2022 on its aforesaid registered office address, but the said letter was returned undelivered from the postal authority with the remarks “LEFT”. Thereafter, their office issued a reminder letter on its aforesaid registered office address, but the said letter was also returned undelivered from the postal authority with the remarks of “NOT KNOWN”. Further, their office issued Show Cause Notice vide no. ROC-cum-OL-C.G./SCN/Sec. 12(1)/2022/299 to 302 on 31.05.2022 but the said letter was also returned from the postal authority with the remark “**दरवाजा हमेशा बंध रहेता है**”. Therefore, it appears that company is not maintaining its registered office on the said address in compliance of section 12(1) of the Companies Act,2013.
- II. The ROC being adjudicating officer is empowered u/s. 454 (3) of the Companies, Act, 2013 to adjudicate the penalty For Non-compliance of certain provisions of the Companies, Act, 2013. Therefore, show cause notice dated 11.05.2022 were issued to the company and its Respondent directors for the violation of Section 12 (1) of the Companies, Act, 2013. However, no reply on behalf of the company and its officers had been received.
- III. Thereafter, a “Notices for Inquiry” vide no. ROC-cum-OL-C.G/Legal/ADJ/Sec.454(12)/ 387 to 390 dated 16.06.2022 were issued to the Company and its officers in default as per [Rule 3(3), Companies (Adjudication of Penalties) rules 2014] and the date of hearing was fixed on 30th June,2022, 11:00 Pingley Bhawan of Municipal Corporation Nehru chowk, Bilaspur, Chhattisgarh, 1st floor 495001 but the “Notice for Inquiry” addressed to the company returned with remarks of “**दरवाजा हमेशा बंध रहेता है**”. None of the representatives from the company and directors have appeared on the date so fixed. Hence, as per Rule 3(8) of the Companies (Adjudication of Penalties) Rules, 2014, the matter was being proceeded with the absence of such persons(ex-parte).
- IV. The EX-PARTE order dated 05.07.2022 passed for violation of section 12 (1) of the Companies, Act, 2013 against the company and its three respondents namely Shri Mayank Agrawal (Director), Shri Shashank Jain (Director) and Shri Priya Parakh (Director) who are officers in default and liable for maximum penalty of Rs. 85,000/- each for non-maintenance of registered office of the company during the period of 85 days w.e.f. 06.04.2022 (Date of remark by postal authority on the

first letter) to 30.06.2022(Date of hearing before Adjudicating Officer) in terms of Section 12(1) of the Companies Act, 2013.

2. The appellants have submitted in its appeal that:

- 1) The appellant has informed the ROC about the wrong doings of the company and its directors. He himself being a whistle blower should be entitled to be protected and for immunity in common law. It is the complaint made by the appellant through which Registrar came to know that other directors have not been maintaining the registered office.
- 2) Mr. Shashank Jain, Director of the company being alienated/ marginalized by the other two directors. This fact is evident from the complaint made by him and the reply submitted by the company and its two directors. It can be inferred from the reply submitted by other two directors of the company that the appellant has not been attending the office of the company. It was alleged by them that the appellant has taken away all the papers along with him relating to filing of necessary forms under section 185 and dared that if the appellant will not file them, they (other directors) will complete the filings with photocopies of the documents. Though the allegation of taking away the papers were completely false and misleading however the reply of the other directors whereby they were admitting and indicating that the appellant had no access to the registered office of the company. The appellant in response was in possession of legal notice issued, reply submitted by the other directors.
- 3) It is submitted that the appellant to the best of his information and knowledge solemnly states that no such resolutions had ever been passed by the company. Further, any special resolution could not be passed unless consented by shareholders holding 33.333% of voting rights of the company, so if any resolution would have surely come to knowledge of the appellant.
- 4) It is submitted that the ROC was also aware of the text of the reply of the other directors to the legal notice of the appellant whereby it can be easily concluded that the appellant was marginalized director and was not having any access to the registered office of the company. In fact the Registrar of Companies was requested by the appellant to take actions against the other directors for siphoning of funds. However, instead of taking steps to proceed to resolve the complaint of the appellant, the registrar of companies had departed from the complaint. It is humbly submitted that with the due respect to the action on the incidental issue arising

from the main complaint, it may kindly be appreciated that ROC was aware that the appellant was not an officer in default.

- 5) It is submitted that the action initiated by the Registrar was generated from the complaint filed by the appellant. Therefore, the registrar was well aware of the fact that the appellant is a sufferer both in his capacity as director and in his capacity as a creditor of the company. There was no reason for Registrar to believe that the appellant was an officer in default. The default was committed by the directors who are in active control of the company and the appellant was not having any info about the status of the registered office, nor was he in capacity to dictate to keep the registered office alive for communication. The fact has not been taken note of by the Registrar while imposing the penalty on the appellant also under section 12(8).
- 6) Also, appellant states that crux of the issue under appeal is the action taken by ROC due to non-maintaining the registered office as required under section 12 of the Companies Act. The penal provisions as stated under section (8) of section 12 clearly states that the default made in complying with the requirements of the section will render, the company and every officer who was is in default, liable for the penalty as prescribed in the said sub section. In the instant case the appellant was the complainant and was not having any control over the affairs of the company. The appellant was a marginalized director apart from being a whistle blower of the other defaults made by the company and its two directors. Therefore, the appellant cannot be said to be officer in default.

It is submitted that the Registrar has not taken seriously the complaint of the appellant through email dated 01.04.2022 and through registered post dated 31.03.2022 informing the Registrar about violation of section 185 with a request to take necessary action on the matter, instead he deviated to the matter of registered office and even in deciding the matter under section 12, has failed to take cognizance of the facts stated in the complaint filed by the appellant.

3. **ROC, Bilaspur has submitted its report** vide letter No. ROC-CUM-OL-C.G./Appeal u/s 454(5)/2022/2075 dated 13.10.2022 raising strong objection against the appeal filed and reiterated the facts mentioned in the adjudication order dated 30.06.2022. It is further submitted para wise comment on grounds of appeal in the aforesaid report that:-

- 1) Applicant has not provided any information regarding non-working of registered office of the company. He has raised his complaint only for his grievances. Hence, the averment of the applicant being whistle blower is not tenable.
- 2) There is no such term as “marginalized director” in the Companies Act, 2013. Further, he is one of the 3 directors of the company therefore his defense is not tenable.
- 3) It is the duty of director of the company to make sure that registered office of the company is working as per section 12 of the Companies Act, 2013.
- 4) Section 2(60) define officer in default as: -
 - (iii) where there is no key managerial personnel, such director or directors as specified by the board in this behalf and who has or have given his or their consent in writing to the board to such specification, or **all the directors, if no director is so specified;**As per the records available at office no such person is specified by the board in this behalf hence all 3 directors are covered under the ambit of officers in default.
- 5) No negligence has been committed by their office as proactive action was taken after the receipt of the complaint. However, the letters addressed to the company to resolve the grievances of the complaint was returned back with a postal remark “left” and thereafter proceedings under section 12 have been taken up by this office in accordance with section 12(1) of the Companies Act, 2013.

5. The appellant has submitted its comments in rejoinder vide E-mail 17.11.2022 commenting on the report of ROC, Bilaspur that:

- A. Appellant has stated that he had not been in a position to have its say in the company and that is why has made a complaint against the remaining directors of the company, the adjudicating officer has failed to pay attention and has erred in passing the impugned order.
- B. It is submitted that the ROC has partially acted on the complaint of the appellant and in course of dealing with that, it appeared to him that company is not maintaining its registered office.
- C. In 1st para of aforesaid comments ROC stated that the appellant had not provided any information about non-working of the registered office and therefore refuted the appellant as whistle blower. In this connection ROC submitted that appellant himself being an aggrieved person was not aware of the fact that the registered office was not working. It's the appellant who had pointed out that affairs of the company are being managed in arbitrary manner against the interest of company.

- D. It is submitted that it was exactly in that sense the word marginalized director was used which unfortunately refuted by the ROC as being no term specified in the Act instead of taking the term in its spirit.
- E. The appellant also states that the adjudicating officer has acted in gross negligence as he erred in acting proactively on the main complaint, failed in appreciating the whole facts of the case before passing the judgement about the involvement of the appellant in the default relating to the working of registered office.
4. Thereafter the Directorate has given two opportunities of hearing for the applicant to submit his submissions before the Competent Authority for appeal on 04.01.2023 & 28.02.2023. In the two instances the appellant has failed to present before Hon'ble Regional Director. In view of the above, it is revealed that the appellant is no more interested in pursuing the matter.
5. Having considered the facts and circumstances of the case and submissions filed by the appellants, I am of the opinion that the penalties imposed by the Adjudicating Officer are justified and do not require for any intervention in the interest of justice. Hence, the appeal is dismissed with a direction to pay the penalties imposed by the Adjudicating Officer vide order dated 05.07.2022 within 10 days.

The appeal stands disposed off with these orders.

LADU RAM MEENA Digitally signed by LADU RAM MEENA
Date: 2023.03.23 17:02:43 +05'30'

REGIONAL DIRECTOR
(NWR) AHMEDABAD

To,

1. **Mr. Shashank Jain, Director.**
59 Gram, Dhouri Chhatarpur, Madhya Pradesh -471001.
2. **The Secretary to the Government of India,**
Ministry of Corporate Affairs,
New Delhi.
3. **The Registrar of Companies, Bilaspur with** reference to its office letter No. ROC-CUM-OL-C.G./Appeal u/s 454(5)/2022/2075 dated 13.10.2022.
4. **Master File.**
5. **Office Copy.**