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SPEED POST

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI

RD(WR)/Sec. 454(5)/CFL Pharmaceuticals Ltd. /H30575468/2020 /3419

16 FEB 2021

In the matter of Companies Act, 2013: Section 454(5)

AND

In the matter of CFL PHARMACEUTICALS LIMITED

having Registered Office at Dempo Tower, 5<sup>th</sup> Floor, EDC Patto Plaza,

Panjim, Goa - 403 001, India.

.....Appellant

**Parties Present:**

**For Petitioner:** Shri Manish Baldeva, Company Secretary attended the hearing through Video Conference on behalf of the Appellant Company and officers in default.

**Date of Hearing:** 23.12.2020

**ORDER**

Heard.

1. This appeal is filed under sub-Section (5) of Section 454 of the Companies Act, 2013 (hereinafter referred to as the "Act") read with Companies (Adjudication of Penalties) Rules, 2014 (hereinafter referred to as the "Rules") by CFL Pharmaceuticals Limited (hereinafter referred to as the "Company" or "Appellant") having CIN U24246GA1981PLC000465, incorporated under the Companies Act, 1956, having its registered office at Dempo Tower, 5<sup>th</sup> Floor, EDC Patto Plaza, Panjim, Goa - 403 001 against the order passed by Registrar of Companies-cum-Official Liquidator (ROC), Goa, adjudicating a penalty for violation of Section 92(5) and Section 137(3) of the Act vide Order No. ROCGDD/AO/92(5)/2019/1151 dated 22/11/2019.
2. The order was passed by the ROC on 22/11/2019 and the appeal is filed with this appellate forum having jurisdiction in the matter being the Regional Director having jurisdiction in the State of Maharashtra and Goa. Thus, this appellate forum is having jurisdiction.

3. The appeal on Form ADJ (SRN R30575468) is filed on 18/01/2020. As per provisions of Section 454(6), an appeal under sub-Section (5) of Section 454 is to be filed within a period of 60 days from the date of which the copy of the order made by the adjudicating officers is received by the aggrieved person. In this case, the appellant company has admitted that the order was received on 28.11.2019 and the appeal is filed on 18.01.2020. The appeal was filed on 18.01.2020 and thus is within the stipulated period of 60 days in terms of provisions of Section 454(5) of the Act.
4. In this case, the appellant company has not mentioned the date of receipt of the order in the Appeal. However, it appears that the appeal is filed within sixty days from the date of order on 18.01.2020. The appeal was filed on 18.01.2020 and thus is within the stipulated period of 60 days in terms of provisions of Section 454(5) of the Act.
5. The brief facts of the case are as under:
  - a. The appeal is filed by the Appellant Company and its officers in default namely Ms. Maryann Veronica Menezes (DIN: 145980 Activ), Dr. Brenda Juliette Nazareth Menezes (DIN: 01126236) and Ms. Chritine Stephanie Menezes (DIN 06549798).
  - b. The appellant company was defaulting in filing of its Annual Returns for the Financial Year 2014-15.
  - c. The ROC has issued show cause notice under Section 92(5) of the Act vide notice dated 01.11.2016 to the company and its directors namely Mr. Andre Jose Joao De Menezes DIN: 00145908, Ms. Maryann Veronica Menezes (DIN: 145980), Dr. Brenda Juliette Nazareth Menezes (DIN: 01126236) and Ms. Chritine Stephanie Menezes (DIN 06549798) calling them to show cause for non-filing of such documents.
  - d. The ROC, Goa had filed Case for default under section 92(5) of the Companies Act, 2013 before the Hon'ble CJM Court, Goa, Numbered as L.C. No.98 of 2017/A for non-filing of the Annual return for the financial year ended 31.03.2015. During the pendency of the said case the Accused Company and its directors informed to the Court that they have moved an application for compounding under section 441 of the Companies Act, 2013 on 19.12.2018. The ROC vide its letter dated 08.08.2019 forwarded its report on the compounding application to the office of the Regional

Director, western region, Mumbai. The Regional Director vide their letter No. RD(WR) Compound/39(1)/2019/3331 dated 30.08.2019 has directed the ROC that the application GNL-is post ordinance and as per Companies (Amendment) Ordinance, 2018 w.e.f. 02.11.208, the penalty is charged for Section 92(5) of the Companies Act, 2013 under the delegated powers of Registrar of Companies, and returned the compounding report to this office.

- e. The ROC vide letter dated 20.09.2019 fixed hearing on 24.09.2019 to adjudicate the default under Section 92(5) of the Companies Act, 2013. The representative of the defaulters attended the hearing on 24.09.2019 on behalf of the Applicant of compounding application.
- f. The company has made its default good by filing Annual Returns on 06.10.2017 for the financial year 2015.
- g. The ROC has imposed a total penalty of Rs.5,87,000/- (Rupees Five Lakhs Eighty Seven Thousand Only) on the company and its Four Directors as detailed herein below:

Document required to be filed	No of Days of Default	Penalty imposed in Company/Director	First Default (in Rs)	Default Continues (in Rs)	Total (in Rs)
Annual Returns u/s 92(4) of the Companies Act, 2013	6/4	On Company	Rs. 50,000/-	Rs. 100x674 days = Rs. 67,400/-	Rs.1,17,400
		Andre Jose Joan De Menezes (Director)	Rs. 50,000/-	Rs. 100x674 days = Rs. 67,400/-	Rs.1,17,400
		Maryann Veronica Menezes (Director)	Rs. 50,000/-	Rs. 100x674 days = Rs. 67,400/-	Rs.1,17,400
		Brenda Juliette Nazareth Menezes (Director)	Rs. 50,000/-	Rs. 100x674 days = Rs. 67,400/-	Rs.1,17,400
		Christine Stephanies Menezes (Director)	Rs. 50,000/-	Rs. 100x674 days = Rs. 67,400/-	Rs.1,17,400

- No. of days have been calculated from 30.11.2015 to 05.10.2017 for Annual Return till the date of offence was made good.

- h. The Appellant Company has not yet deposited the said penalty.
6. In the appeal, the appellant has taken the following grounds:
- a. The Company's Financial Statement could not get prepared and audited within stipulated time limit as in the Month of November, 2013 the patriarch of the family Late Mr. Cosme Menezes expired, following which from July, 2015 onwards there has been an ongoing dispute between the family members, who are also directors of the Company,

before the Civil Court Goa, High Court and the Hon'ble Supreme Court. This disrupted the smooth working and functioning of the Company. And as a result of which there has been delay in conducting the Board meeting and holding the Annual Meeting, this further delayed the finalizing of the financial statements and Annual report of the Company for the financial year ended on 31.03.2015.

- b. The Company holds the Annual General Meeting on 10.11.2019 for the financial year ended on 31.03.2015.
- c. The company has already filed the Annual Return for the financial year ended on 31.03.2015 on 06.10.2017
- d. The learned Adjudicating Officer vide his notice dated 20.09.2019 summoned the Company and its directors providing opportunity for hearing on 24.09.2019. The said notice was received on 23.09.2019. As per provision of Rule 3 (2) of the Companies (Adjudication of penalties) Rules, 2014, notice of hearing should have been given for not less than fifteen days, but notice was given for one day only. However, the authorized representative of the Company & its Directors have presented their case before the Adjudicating Officer on 24.09.2019.
- e. The hearing was held on 24.09.2019, and as per minutes of the said hearing, the Learned Adjudicating Officer was to issue order within 15 days of hearing i.e. by 09.10.2019, however the Learned Adjudicating Officer grossly failed in issuing the said order within the time period and the penalty order was issued on 22.11.2019.
- f. The appellants have made a prayer as under:
  - (a) That the impugned penalty order dated 22.11.2019 imposing penalty on the Company and its three applicant directors be quashed for the following reasons:
    - (i) The impugned penalty order is bad in law as the same was not passed within prescribed time limit as provided in the minutes of hearing held on 24.09.2019;
    - (ii) The quantum of penalty imposed on the Company and its directors is not only exorbitant, unreasonable but without considering the facts and circumstances of the case and was imposed without considering the factors as enumerated under Rule 3(12) of the Rule, as amended.

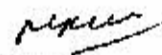
(b) That such further order or other orders may be made affording necessary relief as in this premises the Hon'ble Regional Director may deem fit and proper.

7. On careful consideration of the impugned order, the appeal and the documents on record, this forum has observed as under:
- a. The Appellant has taken ground that notice of hearing was not given as per provision of Rule 3 (2) of the Companies (Adjudication of penalties) Rules, 2014 by which, notice of hearing should have been given for not less than fifteen days, but notice was given for one day only. However, at the same time, the Appellants have attended the said hearing. Further, as per minutes of hearing held on 24.09.2019 signed by Appellants, it is observed that Appellants did not raise this issue of notice before the Adjudicating Officer. Thus, in present Appeal, the Appellant cannot take this ground now.
  - b. Further, Appellants have submitted that the hearing was held on 24.09.2019, and as per minutes of the said hearing, the Learned Adjudicating Officer was to issue order within 15 days of hearing i.e. by 09.10.2019, however the Learned Adjudicating Officer grossly failed in issuing the said order within the time period and the penalty order was issued on 22.11.2019. In this regard, the Adjudicating Officer in his order submitted that due to pre occupation of the AO in other urgent office matter there is delay in issue of this order which is not wilful. In this regard, it is observed that it is technical issue as there are no reasons or facts to show that the delay was wilful.
8. I have carefully considered the impugned order, all the submissions made by the appellant in the Appeal, Written submission and oral submissions made by the Learned Representative of the company during the hearing held on 23.12.2020. I do not see any purpose in sending or remanding the matter back to the Adjudicating Officer to conduct proceedings fresh just for technical non compliances occurred in delay in passing the order by AO. I am of the considered opinion that in view of technical non compliances as mentioned is observation made hereinabove, the impugned order is to be revised / modified and the penalty is revised as below:

Document required to be filed	Penalty imposed on Company/Director	Total (in Rs)	Revised Penalty
Annual Returns u/s 92(4) of the Companies Act, 2013	On Company	Rs.1,17,400	Rs.11,740/-
	Andre Jose Joao De Menezes (Director)	Rs.1,17,400	Rs.11,740/-
	Maryann Veronica Menezes (Director)	Rs.1,17,400	Rs.11,740/-
	Brenda Juliette Nazareth Menezes (Director)	Rs.1,17,400	Rs.11,740/-
	Christine Stephanie Menezes (Director)	Rs.1,17,400	Rs.11,740/-

9. Accordingly, the Appellant is to pay the penalty as revised above within 15 days hereof and submit the copies of challan to ROC/AO and this forum. In case of failure, the ROC/Adjudicating Officer shall take necessary action as per Section 454(8) of the Companies Act, 2013 against the Appellant Company and its Officers in Default. Accordingly, the Appeal is disposed off.
10. A copy of this order shall be published on the website of the Ministry of Corporate Affairs as per Rules.
11. No order to cost.

Signed and sealed on 12<sup>th</sup> day of February, 2021.

  
(M.P.SHAH)  
REGIONAL DIRECTOR  
WESTERN REGION, MUMBAI.

To,  
1/ CFL Pharmaceuticals Ltd  
Dempo Tower, 5<sup>th</sup> Floor,  
EDC Patto Plaza,  
Panjim, Goa - 403 001

2. The Registrar of Companies, Goa.

3. Master Copy

4. Office Copy

  
मनोज एस. बंग  
Manoj S. Bang  
उप निदेशक (प.क्ष.)  
Regional Director (W.R.)  
कारपोरेट कार्य मंत्रालय, मुंबई-२  
Ministry of Corporate Affairs, Mumbai-2