

12 FEB 2021

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI
RD(WR)/Sec. 454(5)/ Ataide Construction Private Limited/H77956415/2019 / 3389

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

AND

In the matter of **ATAIDE CONSTRUCTION PRIVATE LIMITED**

having Registered Office at G-2, Sunith Apartments, Near Don Basco Technical Institute, Fatorda, Margoa , Goa-403601

.....Appellant

Parties Present:

Ms. Shilpa Dhulapker Gaonkar, Company Secretary, authorized representative attended on behalf of the Appellant Company and officer in default.

Date of Hearing: 22.12.2020

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 Ataide Construction Private Limited (hereinafter referred to as the "Company" or "Appellant") having CIN U45201GA1998PTC002502, incorporated under the Companies Act, 1956, having its registered office at G-2, Sunith Apartments, Near Don Basco Technical Institute, Fatorda, Margoa , Goa-403601, against the order passed by Registrar of Companies-cum-Official Liquidator (ROC), Goa, adjudicating a penalty for violation of Section 92 & 137 of the Act vide Order No. ROCGDD/AO/92 & 137/2019/51 dated 28/05/2019.
2. The order was passed by the ROC on 28.05.2019 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 H77956415) is filed on 19/07/2019. 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 not mentioned the date of receipt of Penalty order dated 25.05.2019 in the appeal, however, the appeal is filed on 19.07.2019. Therefore, the appeal was filed on 19.07.2019 is within the stipulated period of 60 days in terms of provisions of Section 454(5) of the Act.

4. The brief facts of the case are as under:

- The appeal is filed by the Appellant Company & Officers in default. The appellant company was defaulting in filing of its Annual return and Financial Statements for the Financial Year 31.03.2017 & 31.03.2018
- The ROC has issued show cause notice dated 25.02.2019 to the company and its officer in default for non-filing of such documents.
- The Annual Returns and Financial Statement for Financial Year on 31.03.2017 & 31.03.2018 were filed on 17.04.2019 to regularize the default.
- The ROC has imposed a total penalty of Rs.5,90,300/- (Rupees Five Lakhs Ninety Thousand Three Hundred only) on the company and its Directors, details are as under:

Document required to be filed	No of Days of Default	Penalty imposed on Company/Director	First Default (In Rs)	Default Continues (In Rs)	Total (In Rs)
Financial Statement u/s 137(1) of the Companies Act, 2013	166 days	On Company	Rs.100x166 days =Rs.1,66,000/-		Rs.1,66,000/-
		Mr. Jacob Ataide	Rs.1,00,000/-	Rs. 100x166 days =Rs.16,600/-	Rs.1,16,600/-
		Ms Pearl Ataide	Rs.1,00,000/-	Rs. 100x166 days = Rs.16,600/-	Rs.1,16,600/-
Annual Returns u/s 92(4) of the Companies Act, 2013	137 days	On Company	Rs. 50,000/-	Rs.100x137days = Rs.13,700/-/-	Rs.63,700/-
		Mr. Jacob Ataide	Rs. 50,000/-	Rs.100x137days = Rs.13,700/-	Rs.63,700/-
		Ms. Pearl. Ataide	Rs. 50,000/-	Rs.100x137days = Rs.13,700/-	Rs.63,700/-

- No. of days have been calculated from November & December for Financial Statement and Annual Return respectively till 16.04.2019.
- The Appellant Company has not yet deposited the said penalty.

5. In the appeal, the appellant has taken the following grounds:

- a. The Company is a small Company having paid up-up capital of Rs.1,00,200/-. Entire paid-up share capital of the Company is held by the Directors of the Company.
 - b. The Company's operations have been stopped since 2017-18 and the Directors do not foresee resumption of the operation in the near future. The Directors are already contemplating to close the Company.
 - c. The Appellants admit that there occurred delay in filing the above mentioned documents but submits that the said delay was accidental and due to inadvertence as the Company's operation were stopped and that the Company has not mala-fide or fraudulent intention in not filing the particulars within the prescribed period.
 - d. The Appellant Submit that they have already paid penalties by way of additional fees on the said documents amounting to Rs.98,900/-
 - e. The Appellants submits that there has been no gain or unfair advantage to the Company as a result of the said default.
 - f. Appellant Company prays as under :-
 - a. The delay in filing the financial statements and annual return for the years ending 31.03.2017 & 31.03.2018 be condoned;
 - b. That the order of Adjudication of Penalty vide ROCGDD/Ao.92 &137/2019/51 dated 20.07.2019 issued by the ROC Goa, be directed to be withdrawn as the amount of penalty awarded will further put financial burden on the Directors who are already facing financial problems due to closure of operations.
 - c. No penalty be imposed for delay in filing the financial statements and annual return for the year ending 31.0.3.2017 & 31.03.2018 as the Company has already paid additional fees of Rs.98,900/-.
6. This forum provided hearing to the Appellants on 05.01.2021 at 2.30 p.m. on which date Ms. Shilpa Dhulapkar Gaonkar, Company Secretary, authorized representative on behalf of the Appellants Company appeared before this forum and made submission. I have carefully considered the impugned order, all the submissions made by the Appellant in the appeal and oral submissions made by the Learned Representative of the company during the hearing held on 05.01.2021. Accordingly, the appeal is allowed and it

was directed to the representative of the Appellant Company that revised penalty to be paid as under:-

Sr. No.	Defaults made for Non-filing documents	Penalty to be paid by Company/Director (officer in default)	Revised Penalty Rs.	Financial Year
1	Financial Statement u/s 137(1) of the Companies Act, 2013	On Company	16,600/-	2017-18
		Mr. Jacob Ataide	11,660/-	2017-18
		Mr. Pearl Ataide	11,660/-	2017-18
2	Annual Returns u/s 92(4) of the Companies Act, 2013	On Company	6,370/-	2017-18
		Mr. Jacob Ataide	6,370/-	2017-18
		Ms Pearl Ataide	6,370/-	2017-18

Total penalty comes to Rs.59,030/-for the default of Non-filing Financial Statement and Annual Return for the FY 2017-18.

7. Pursuant to the said directions of this forum, the authorized representative vide its letter date submitted that copies of challan /payment receipt for penalties paid to the MCA. He has informed that as directed in hearing which was held on 05.01.2021, the total penalty of Rs.59,030/- has been paid for default under section 137 & 92 of the Companies Act, 2013 by the Company & officer in defaults through a single challan to MCA. The details of the said challan are as under:-

Sr. No.	Defaulters	Total Amount (Rs.)	Financial Year	Challan No. / SRN No. & date
	Company & its two (2) Directors U/s. 137 & 92 of the Act, 2013	59,030/-	2017-18	SRN: U78826625 Dated 18.01.2021
	Total:	59,030/-		

8. The authorized representative vide e-mail dated 08.02.2021 has forwarded the copies of declaration from the defaulting directors Mr. Jacob Atatie and Ms. Pearl Atadie stating therein that the penalty imposed on them has been paid from their own funds and further declared that the said amount was not from Company's funds.
9. That at the time of hearing, Ms. Shilpa Dhulapker Gaonkar, Company Secretary, authorized representative was directed to submit an undertaking stating that the Company will apply for strike off as it has stopped it's

operations and Directors don't intent to start any operations in future as submitted during hearing and stated in Appeal. The authorized representative has confirmed the above statement vide mail dated 05.01.2021 and submitted that the Directors are already in process of clearing all the liabilities and will apply for strike off the Company as soon as the liabilities and Assets are nil, the same is taken on record.

10. In view of the above and penalty having been paid by the Appellant Company and officer in defaults, the Appeal is disposed off.
11. A copy of this order shall be published on the website of the Ministry of Corporate Affairs as per Rules.

Signed and sealed on 11th day of February, 2021.



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

To,

1. Ataide Construction Private Limited
G-2, Sunith Apartments,
Near Don Basco Technical Institute,
Fatorda, Margoa,
Goa-403601

"Certified True Copy"

2. The Registrar of Companies, Goa.

3. Master Copy

4. Office Copy.

M.P. Shah

REGIONAL DIRECTOR
(WESTERN REGION)
MINISTRY OF CORPORATE AFFAIRS, MUMBAI-2