

शिवा डाक सेवा
SPEED POST

6 FEB 2021

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI
RD(WR)/Sec. 454(5)/Menezes Pharmaceuticals Ltd. /H76772771 & H76778919 /2019 / 3417

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

AND

In the matter of MENEZES PHARMACEUTICALS LIMITED

having Registered Office at Dempo Tower, 5th 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: 21.12.2020

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 Menezes Pharmaceuticals Ltd. (hereinafter referred to as the "Company" or "Appellant") having CIN U24232GA1996PLC002040, incorporated under the Companies Act, 1956, having its registered office at Dempo Tower, 5th 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&137/2019/26/dated 09/05/2019.

2. The order was passed by the ROC on 09.05.2019 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 H76772771 & H76778919) is filed on 08/07/2020. 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 not mentioned the date of receipt of the penalty order dated 09.05.2019 in the Appeal. However, the appeal is filed on 08.07.2019, thus the appeal is filed 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:
 - a. The appeal is filed by the Appellant Company and its officers in default namely Ms. Maryann Veronica Menezes (DIN: 00145980), Dr. Brenda Juliette Nazareth Menezes (DIN: 01126236) and Ms. Chritine Stephanie Menezes (DIN 06349798).
 - b. The appellant company was defaulting in filing of its Annual Returns and Financial Statement for the Financial Year 2017-18.
 - c. The ROC has issued show cause notice under Section 92(5) and Section 137(3) of the Act vide notice dated 29.01.2019 to the company and its directors namely Ms. Maryann Veronica Menezes (DIN: 00145980), 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 Appellant Company has not filed the Annual Returns and Financial Statement for the Financial Year 2017-18 till date of order passed by the ROC, Goa i.e. on 09.05.2019. However, the same were filed on 23.07.2019 as stated in the ROC, report dated 20.09.2019.
- e. The ROC has imposed a total penalty of Rs.8,09,700/- (Rupees Eight Lakh Nine Thousand seven Hundred Only) on the company and its Three Directors as detailed herein below:

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	189 days	On Company	Rs.1000x189 days =Rs.1,89,000/-		Rs.1,89,000/-
		Maryann Veronica Menezes (Director)	Rs.1,00,000/-	Rs. 100x189 days - Rs.18,900/-	Rs.1,18,900/-
		Brenda Juliette Nazareth Menezes (Director)	Rs.1,00,000/-	Rs. 100x189 days = Rs.18,900/-	Rs.1,18,900/-
		Christine Stephanies Menezes (Director)	Rs.1,00,000/-	Rs. 100x189 days = Rs.18,900/-	Rs.1,18,900/-
Annual Returns u/s 92(4) of the Companies Act, 2013	160 days	On Company	Rs. 50,000/-	Rs.100x160 days = Rs.16,000/-/-	Rs.66,000/-
		Maryann Veronica Menezes (Director)	Rs. 50,000/-	Rs.100x160 days = Rs.16,000/-/-	Rs.66,000/-
		Brenda Juliette Nazareth Menezes (Director)	Rs. 50,000/-	Rs.100x160 days - Rs.16,000/-	Rs.66,000/-
		Christine Stephanies Menezes (Director)	Rs. 50,000/-	Rs.100x160 days = Rs.16,000/-	Rs.66,000/-

- No. of days have been calculated from November, 2018 & December, 2018 for Financial Statement and Annual Return respectively till the date of order.
- f. The Appellant Company has not yet deposited the said penalty.

5. 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 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.
- b. Besides the above reasons there was an ongoing agitation, stoppage of work by the unionized workers at the plant and also disputes before the Labour Commissioner by these unionized workers during the negotiations of Charter of Demands. The Charter of Demands could not be resolved due to these workers' high and unreasonable demands which the Management could not meet due to non-viable economic reasons. Following which the Management was forced to take the tough decision of closure of the plant. This resulted the Company losing many key employees.
- c. Further, the Company was using SAP accounting software for maintaining its accounts records, however the employees who were trained to use this software left at the time of closure of plant and when a replacement accountant was put on the job to finalize the accounts he realized that some date had been entered wrongly in the SAP system by the previous employees despite them being trained. Due to this the accounts took even longer to get finalized. So the Company then moved to Tally accounting software and had to re-enter all the data into Tally and since they were not the employees who had entered the data into SAP, they had to first understand the transactions before entering it in Tally, which is why took even longer.

- d. The Company held the Annual General Meeting on 28.05.2019 for the financial year ended on 31.03.2017 and filed Financial Statement and Annual Return for the FY 31.03.2017 on 10.06.2019 & 25.06.2019 respectively.
- e. The company has also prepared the Financial Statements for the financial year ended 31.03.2018 but could not get audited within the time period specified under the Act, and could not lay before the Annual General Meeting within the time period as per Act.
- f. The learned Adjudicating Officer vide his notice dated 29.01.2019 issued a show cause notice under section 92(5) and 137(3) of the Act, directing the Company and its officer/directors to furnish the reasons as why the inquiry should not be held against them for violation of the aforesaid sections of the Act, for the financial Year ended 31.03.2017 & 31.03.2018.
- g. Upon receipt of aforesaid show cause notice, the Company vide its letter dated 12.02.2019 replied in details explaining the reasons for non-compliance of the provision of section 92(4) and 137 (1) of the Act and requested the ROC not to initiate any inquiry against the Company or its directors. However, ROC/ Adjudication officer without considering the submission made by the Company passed a penalty order dated 09.05.2019 imposing penalty on the Company and its three Directors for non-filing Financial Statement and Annual Return for the FY 31.03.2018.
- h. 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 order was passed without giving opportunity of being heard as required under Rule 3(3) of the Rules;
- (ii) The impugned penalty order was not passed within prescribed limit as provided under Rule 3(7) of the Rules, as amended;
- (iii) The quantum of penalty imposed on the Company and its directors is exorbitant and unreasonable in the facts and circumstances of the case and was imposed without considering the factors as enumerated under Rule 3(12) of the Rules, as amended.

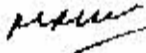
(b) That such further order or other orders may be made affording necessary relief as in this premises the Hon'ble Regional Director may deem fit and proper.

6. On careful consideration of the impugned order, the appeal and the documents on record, this forum has observed as under:
- a. There is nothing on record to show as to whether the ROC/Adjudicating Officer has imparted any hearing to the noticee.
 - b. It is also not mentioned in the impugned order that the ROC has conducted an inquiry in the matter as required under Rules.
7. 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 21.12.2020. I am of the considered opinion that in view of observation made hereinabove, the impugned order is liable to be set aside being defective on many counts and without conducting any inquiry and without imparting an opportunity of being heard to the appellants. The

order is accordingly set aside with directions to the ROC/Adjudicating Officer to conduct the proceeding de-novo and pass an order in accordance and after due compliance of provisions of Section 454 read with Rules thereunder and also read with provisions of Section 137, 92 read with Section 2(60) of the Act and the filings made by the appellant company after giving them a due opportunity of being heard as per Rules within 30 days from the date of this order.

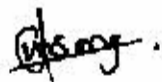
8. A copy of this order shall be published on the website of the Ministry of Corporate Affairs as per Rules.
9. No order to cost.

Signed and sealed on 12th day of February, 2021.


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

To,

- 1/ ✓ Menezes Pharmaceuticals Ltd
Dempo Tower, 5th Floor,
EDC Patto Plaza,
Panjim, Goa - 403 001
2. The Registrar of Companies, Goa.
3. E-Gov. cell for publication on MCA website.
4. Master Copy
5. Office Copy


Regional Director, West
Ministry of Corporate Affairs, Mumbai-2
Regional Director (West)
Ministry of Corporate Affairs, Mumbai-2
Corporate Affairs, Mumbai-2
Ministry of Corporate Affairs, Mumbai-2