

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI

02 FEB 2021

RD(WR)/Sec. 454(5)/Mega Structures Realestate Limited /H66760067/2019 } 324)

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

AND

In the matter of MEGA STRUCTURES REALESTATE LIMITED

having Registered Office No. 301,302,305 and 306, 3rd Floor, Commerce

Centre Building Mapusa, Goa- 403507

.....Appellant

Parties Present:

Shri Rajkumar Gadge, Managing Director attended the hearing through Video Conference.

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 Mega Structures Realestate Limited (hereinafter referred to as the "Company" or "Appellant") having CIN U70109GA2016PLC012911, incorporated under the Companies Act, 1956, having its registered office at Office No. 301,302,305 and 306, 3rd Floor, Commerce Centre Building Mapusa, Goa- 403507 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&137/2019/08 dated 29/03/2019.
2. The order was passed by the ROC on 29.03.2019 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 H66760067) 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 25.04.2019 and the appeal is filed on 18.06.2020. The appeal was filed on 18.06.2020 and thus 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:
 - a. The appeal is filed by the Appellant Company and its officers in default namely Mr. Rajkumar Raju Gadge, Managing Director (DIN: 03520673 Activ),.
 - b. The appellant company was defaulting in filing of its financial Statements and Annual Returns for the Financial Year ended 31.03.2018
 - c. The ROC has issued show cause notice under Section 92(5) and Section 137(3) of the Act vide notice dated 28.01.2019 to the company and its directors namely Mr. Rajkumar Raju Gadge, Managing Director (DIN: 03520673), Ms. Treeza Fernandes , Director (DIN: 03520681), Ms. Agnes Raju Gadge, Director (DIN: 03520686), Mr. Rajendra Raju Gadge (DIN:03520688), MS. Norma Viera Fernandes , Director (DIN: 07451013), Ms. Smita Malewadkar, Director (DIN: 07451074), Mr. Chandrakala Narahiri Punaji, Director (DIN: 07451189), Ms. Supriya Samrat Sawant, Director (DIN: 07451253) and Ms. Laxmi Mahesh Khanolkar, Director, (DIN 07470785) calling them to show cause for non-filing of such documents.
 - d. In response, to the above Show Cause Notice, Mr. Rajkumar Raju Gadge, Managing Director vide his letter dated 05.03.2019, explained that the auditor of the Company resigned due to personal difficulties and finding new auditor at such eleventh hour was mountain moving task. Further, stated that due to various personal & business problems, he suffered from Claustrophobia and hence was not able to file such document in time. However, the Annual Returns and Financial Statement for Year 2017-18 were filed on 19/02/2019 with additional fees to regularize the default.

- e. The ROC fixed personal hearing on 09.04.2019 to adjudicate the default under Section 92(5) of the Companies Act, 2013. The authorized representative of the defaulters attended the hearing and explained the reason of defaults.
- f. The company has now made its default good by filing Annual Returns and Financial Statement for Year 2017-18.
- g. The ROC has imposed a total penalty of Rs.3,35,900/- (Rupees Three Lakhs Thirty Five Thousand Nine Hundred Only) on the company and its Director 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	109 days	On Company	Rs. 1000x109 days = Rs.1,09,000/-		Rs. 1,09,000/-
		Mr. Rajkumar Raju Gadge	Rs.1,00,000/-	Rs. 100x109 days = Rs. 10,900/-	Rs. 1,10,900/-
Annual Returns u/s 92(4) of the Companies Act, 2013	80 days	On Company	Rs. 50,000/-	Rs.100x80 days = Rs. 8,000/-	Rs. 58,000/-
		Mr. Rajkumar Raju Gadge	Rs. 50,000/-	Rs. 100x80 days = Rs. 8,000/-	Rs. 58,000/-

- No. of days have been calculated from November, 2018 & December, 2018 for Financial Statement and Annual Return respectively till date 18.02.2019.
- h. The Appellant Company has not deposited the said penalty.
5. In the appeal, the appellant has taken the following grounds:
 - a. That due to illness of Managing Director and unavoidable circumstances the Annual Returns and Financial Statement for Year 2017-18 could not be filed in time.
 - b. The company has already filed the Annual Return for the financial year ended on 31.03.2017 on 19.02.2019.
 - c. The learned Adjudicating Officer has missed out to understand the health problems. The Managing Director produced medical certificates on record showing evidence of genuine health problems. However, the adjudicating officer has missed out to take note of documentary evidence produced by the Managing Director about his health.
 - d. The company is a newly registered one and its financial position of the Company is not sound.

- e. The adjudicating officer charged penalty is very high. Such huge penalty will hit the very foundation of the company and bring down the Company collapsing, hence penalty be waived off.
 - f. There is an error in counting default period for Financial Statement and Annual Return, the default period for financial statement is 79 days and for Annual Return is 49 days instead of 109 days and 80 days respectively.
 - g. The appellants have made prayers that the default has occurred in unavoidable circumstances and due to inadvertence and was not done willfully and hence the penalty be waived off.
6. This forum provided hearing to the Appellants through Video Conference on 22.12.2020 at 3.00 p.m. on which date Shri. Rajkumar Raju Gadge, Managing Director appeared for the Appellant Company and for himself. 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 22.12.2020 Accordingly, the appeal is allowed and it was directed to the representative of the Appellant Company that revised penalty to be paid as under, latest by 08.01.2021

Sr. No	Defaults made for Non-filing documents	Penalty to be paid by Company/Director (officer in default)	Penalty Rs.	Financial Year
1	Financial Statement u/s 137(1) of the Companies Act, 2013	Company And Mr. Rajkumar Raju Gadge, Managing Director	18,000/- 18,000/-	2017-18
2	Annual Returns u/s 92(4) of the Companies Act, 2013	Company And Mr. Rajkumar Raju Gadge, Managing Director	7,000/- 7,000/-	2017-18

Total penalty comes to Rs.50,000/-for the default of Non-filing Financial Statement and Annual Return F Y 2017-18

7. Pursuant to the said directions of this forum, an email dated 08.01.2021 alongwith copy of receipt of payment of penalties is received from Shri

Rajkumar Gadge, Managing Director of the Appellant Company. He has informed that as directed in virtual hearing which was held on 22.12.2020, the total penalty of Rs.50,000/- has been paid for default under section 137 (1) & 92 (4) of the Companies Act, 2013 by the Company & officer in default through online payment. The details of the said payment are as under:-

Sr. No	Defaulters	Amount (Rs.)	Financial Year	Penalty paid to Government of India Receipt portal "bharatkosh.gov.in" Receipt No. & Date
1	Company U/s. 137 of the Act, 2013	18,000/-	2017-18	0801210000130 Dated 08.01.2021
2	Mr. Rajkumar Raju Gadge, MD U/s. 137 of the Act, 2013	18,000/-	2017-18	0701210012675 Dated 07.01.2021
3	Company U/s. 92 of the Act, 2013	7,000/-	2017-18	0801210000133 Dated 08.01.2021
4	Mr. Rajkumar Raju Gadge, MD U/s. 137 of the Act, 2013	7,000/-	2017-18	0801210000135 Dated 08.01.2021
	Total	50,000/-		

8. In view of the above and penalty having been paid by the Appellant Company and officer in default, the application is disposed off accordingly.
9. A copy of this order shall be published on the website of the Ministry of Corporate Affairs as per Rules.

Signed and sealed on 29 day of January, 2021.



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

To,

1. Mega Structures Rcalestate Limited
Office No. 301,302,305 and 306,
3rd Floor, Commerce Centre Building,
Mapusa, Goa- 403507
2. The Registrar of Companies, Goa.
3. E-Gov. cell for publication on MCA website.
4. Master Copy
5. Office Copy.

"Certified True Copy"

(Signature)
मनीज एस. बंग
Manoj S. Bang
Regional Director (P. & S.)
Regional Director (W.R.)
मंत्रालय कार्य भवन, मुंबई-२
Ministry of Corporate Affairs, Mumbai-2