

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI

शिघ्र डाक सेवा
SPEED POST

RD(WR)/Sec. 454(5)/Mascarenhas Marine /H77543080/2019 / 1227

24 SEP 2020

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

AND

In the matter of MASCARENHAS MARINE AND LOGISTICS PRIVATE

LIMITED

having Registered Office at 58/B Near Chicalim Park, Chicalim Vasco,

South Goa, Goa-403711

.....Appellant

Parties Present:

For Appellant : Mr. Edwin Mascarenhas, Disqualified Director/Shareholder

Date of Hearing: 31.01.2020

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 Mascarenhas Marine And Logistics Private Limited (hereinafter referred to as the "Company" or "Appellant") having CIN U61100GA1990PTC001049, incorporated under the Companies Act, 1956, having its registered office at 58/B Near Chicalim Park, Chicalim Vasco, South Goa, Goa-403711 India, 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&137/2019/39 dated 13/05/2019.
2. The order was passed by the ROC on 13/05/2019 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 in Form ADJ (SRN H77543080) is filed on 15/07/2019. 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 submitted that the order was received on 17.05.2019 and the appeal is filed on 15.07.2019. The appeal was filed on 15.07.2019 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. Edwin Mascarenhas (DIN 01656234) and Ms. Ema Mascarenhas (DIN 00568425).
- b The appellant company was defaulting in filing of its Annual Returns and Balance Sheets since FY 2011-12 and default is still continuing till date.
- c The ROC has issued show cause notice under Section 92(5) and Section 137(3) of the Act vide notice dated 12.03.2019 to the company and its directors namely Mr. Edwin Mascarenhas (DIN 01656234) and Ms. Ema Mascarenhas (DIN 00568425) calling them to show cause for non-filing of such documents.
- d No response to the SCN dated 12.03.2019 was received from the Company and its director.
- e As per the Master Data, the company has not filed its statutory returns since FY2011-2012 and default is still continuing till date. Further, an active charge of Rs. 8,68,98,400/- is shown in the master data of the Company.
- f The ROC has imposed a total penalty of Rs.2,59,400/- (Rupees Two Lakh Fifty Nine Thousand Four Hundred Only) on the company for non filing of Financial Statements and Annual Return for year 2017-18, detailed herein below:

Document Required to be filed	No. of Days of Default*	Penalty imposed on the Company/Director	First Default	Default Continues (In Rs.)	Total (In Rs.)

Financial Statement u/s137(1) of the Companies Act,2013	193 days	On Company	Rs.1000X193 days =Rs.1,93,000/-		Rs.1,93,000/-
Annual Returns u/s. 92(4) of the Companies Act, 2013.	164	On Company	Rs.50,000/-	Rs.100X164 days=Rs.16,400/-	Rs.66,400/-

*No. of days have been calculated from November, 2018 & December 2018 for Financial Statement and Annual Return respectively till date of order.

The penalty is not imposed on the officers/directors since all directors are disqualified for a period from 01.11.2016 to 31.10.2021 as per Order passed by ROC.

g The Appellant Company has not yet deposited the said penalty.

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

- a The Company has complied with filing of Annual return and Balance sheet with respective authorities till financial year ending 31.03.2011.
- b After FY 31.03.2011, the Company has not carried on any business or operation and not made any significant transactions from regular business of Company i.e. Marine & Logistic Services during the last six financial years to till date.
- c The concerned Consultant did not inform company about any requirement of mandatory ROC filing even in case of earning of insignificant turnover from non-regular business activities, hence ROC compliances such as filing Annual return and Balance sheet etc. has not been complied by the Company.
- d The Director are not from the legal background and hence the had to fully relied on expert consultant who has skipped to advise Company on day to day compliances and therefore Company has not complied, which is purely unintentional.
- e After introduction of Companies Act, 2013 there was drastic changes in Companies Act provisions and rules made thereunder and penalties increased multiple time. As directors were unaware about the same due to no intimation by the consultant the ROC filing also kept on pending till FY ending 31.03.2018.

f. The appellants have made a prayer that the penalty of Rs.2,59,400/- be completely waived off and allow the Company to file all pending Annual filing forms till date with normal penalty.

6. On careful consideration of the impugned order, the appeal and the documents on record, this forum has observed the points for determining this appeal as under:

- a. Whether the company is carrying out any business since year 2011-12 or not and if not then whether it is a fit case for strike of under section 248 of the Act or not.
- b. Whether it is appropriate on part of the Adjudicating Officer to pass an Adjudication order against the company which does not have any directors on account of disqualification under Section 164 of the Act and consequent vacation under section 167 of the Act.
- c. Whether the Adjudicating Officer has followed the due procedure such as granting an opportunity of hearing to the Appellants before deciding the matter or not.
- d. Whether the reasons given by the Appellants for non filing of the Annual Return and Financial Statements for FY 2017-18 and financial condition of the company to pay the penalty imposed are duly examined and considered by the Adjudicating Officer or not.

7. In this regard, 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 notices as per provisions of section 454(4) of the Act.
- b. The present appeal is filed by the disqualified directors of the company. It is recorded by the ROC in his order that the directors of the company are disqualified and the Adjudication order is passed without waiting for the company to appoint new directors.
- c. The company is defaulting in filing the Annual Return and Financial Statements for years 2011-12 onwards. It is not clear why ROC did not consider action under Section 248 of the Act for striking of as considered in other similar cases.

8. 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 and the ROC/Adjudicating Officer during the hearing held on 31.01.2020. 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 imparting an opportunity of being heard to the Appellants. It is not fathomable why the action under section 248 of the Act is not considered against the Appellant Company which is defaulting in non filing of the Statutory Returns since 2011-12 indicating its non functioning as considered in other similar cases by the Adjudicating Officer in capacity of ROC. In my view imposition of penalty on such non functioning company will not serve any purpose. The order is accordingly set aside with directions to the ROC/Adjudicating Officer to consider the action under section 248 of the Act against the Appellant Company if found appropriate.
9. A copy of this order shall be published on the website of the Ministry of Corporate Affairs as per Rules.
10. No order to cost.

Signed and sealed on 18th day of September, 2020



SHAH
MAHESHKUMAR
PREMCHANDBHAI

Digitally signed by SHAH MAHESHKUMAR
PREMCHANDBHAI
DN: cn=, o=MINISTRY OF CORPORATE AFFAIRS,
ou=REGIONAL DIRECTOR, ou=INDIA, ou=TELANGANA,
serialNumber=7000732433+india, email=7000732433@
india, ip=192.168.1.100, c=IN, o=SHAH
MAHESHKUMAR PREMCHANDBHAI
Date: 2020.09.18 14:20:05Z

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

To

1. MASCARENHAS MARINE AND LOGISTICS PRIVATE LIMITED
58/B, NEAR CHICALIM PARK CHICALIM,
VASCO. South Goa, Goa 403711. India.
2. Registrar of Companies cum Official Liquidator,
Goa

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