

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI

RD(WR)/Sec. 454(5)/Paulo Auto Body /H77770030/2019/1226

In the matter of Companies Act, 2013: Section 454(5) 24 SEP 2020

AND

In the matter of PAULO TRAVELS PRIVATE LIMITED (EARLIER KNOWN AS PAULO AUTO BODY BUILDERS AND SERVICING PRIVATE LIMITED)

having Registered Office at Plot no.M-56, Phase III B, Verna Industrial

Estates ,Varna Salcette, Goa-403722

.....Appellant

Parties Present:

For Appellant: Mr. Mario S. Pereira, Director.

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 PAULO Auto Body Builders And Servicing Private Limited (Now As Paulo Travels Private Limited) (hereinafter referred to as the

“Company” or “Appellant”) having CIN U34106GA2000PTC002817, incorporated under the Companies Act, 1956, having its registered office at Plot no.M-56, Phase III B, Verna Industrial Estates ,Varna Salcette, Goa-403722 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&137/2019/31 dated 10/05/2019.

2. The order was passed by the ROC on 10/05/2019 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 H77770030) is filed on 17/07/2019. 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 admitted that the order was received on 19.05.2019 and the appeal is filed on 17.07.2019. The appeal was filed on 17.07.2019 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. Mario Socorro Pereira (DIN 01916036) and Ms. Lorna Fatima Desouza Elias Pereira (DIN 002674554).
 - b. The Appellant company was defaulting in filing of its Annual Returns and Balance Sheets 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 14/02/2019 to the company and its directors namely Mr. Mario Socorro Pereira (DIN 01916036) and Ms. Lorna Fatima Desouza Elias Pereira (DIN 002674554) calling them to show cause for non-filing of such documents.
- d. In response, the company stated vide reply dated 25.02.2019 that they could not file the requisite statutory returns within the prescribed time limit due to "Wannacry Ransomware attack in May 2107 the entire backed up data was lost. Though they had a contractual agreement with Tata Communication Ltd., Hyderabad to store company's accounting data, they could not help the company to retrieve the company's accounting data for any year including financial year 2016-2017. The lodged an F.I.R./Complaint with Hyderabad Police Station. Due to loss of data the company had to repost millions of accounting transaction entries and therefore, the Company's accounts could not get audited in order to file the returns within the due date under the Act."
- e. As per the Master Data, the company has finally filed the due Annual Returns and Balance Sheets for the Financial Year 2017-18 on 10.04.2019.
- f. The ROC has imposed a total penalty of Rs.5,79,800/- (Rupees Five Lakh Seventy Nine Thousand Eight Hundred Only) on the company and its two Directors as 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	159 days	On Company	Rs.1000X159 days =Rs.1,59,000/-	--	Rs.1,59,000/-

Companies Act, 2013		Mr. Mario Socorro Pereira	Rs.1,00,000/-	Rs.100X159 days =Rs.15,900/-	Rs.1,15,900/-
		Ms. Lorna Pereira	Rs.1,00,000/-	Rs.100X159 days =Rs.15,900/-	Rs.1,15,900/-
Annual Returns u/s. 92(4) of the Companies Act, 2013.	130 days	<u>On Company</u>	Rs.50,000/-	Rs.100X130 days=Rs.13,000/-	Rs.63,000/-
		Mr. Mario Socorro Pereira	Rs.50,000/-	Rs.100X130 days=Rs.13,000/-	Rs.63,000/-
		Ms. Lorna Pereira	Rs.50,000/-	Rs.100X130 days=Rs.13,000/-	Rs.63,000/-

*No. of days have been calculated from November, 2018 & December 2018 for Financial Statement and Annual Return respectively till 09.04.2019.

- g. The Appellant Company has not yet deposited the said penalty.
5. In the appeal, the appellant has taken the following grounds:
- The fine imposed by the Adjudicating officer appear to be Exorbitant, hence the Appellants/ Directors of the Company are approaching the Hon'ble Regional Director(WR) at Mumbai by filing Memorandum of Appeal to waive the Penalties imposed by the Adjudication officer vide its certified copy of order dated 10.05.2019.
 - The Appellants have regularised the filing of Annual Return and Financial Statement for FY 2017-18 on 10.04.2019. by paying filing fee and additional fee for delay amounting to Rs. 13,700/- and Rs. 16,500/- respectively.
 - The financial condition of the company is not sound as per Financial Report of the Company for the F.Y.31.03.2016, 31.03.2017 & 31.3.2018 and has incurred losses.

- d. The company has no investors or group of investor or creditors, the Company is belonging to one family and there are no outsiders involved.
- e. There are no complaints against the Company and its Directors.

6. The appellants have made a prayer as under:

- i. That as Company has regularized their default by paying the additional fees as required by the law, and as the default has occurred in unavoidable circumstances without any malafide intention which was not done wilfully and this being the first default of the Company. The appellants most humbly prayed that the Company and its Directors may be pardoned and penalty imposed by the Adjudication officer may kindly be waived off.
- ii. For such other and further order/Direction as may kindly be passed by the Hon'ble Directorate as may deem fit to set aside.

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

- a. The points for determining this appeal are merit in the reasons given by the Appellants for delay in filing the Annual Return and Financial Statements for FY 2017-18 and financial condition of the company to pay the penalty imposed.

b. In this regard, this forum has observed as under:

The Adjudicating Officer did not take into consideration the merit in reply submitted by the Company to Show Cause Notice issued by Adjudicating Officer and during hearing held on 09.04.2019. Further, there is no comment by the Adjudicating Officer on submission made by the Company regarding delay in filing the Annual Return and Financial



SHAH
MAHESHKUMAR
PREMCHANDBHAI

Digitally signed by SHAH MAHESHKUMAR
PREMCHANDBHAI
DN: cn=MINISTRY OF CORPORATE AFFAIRS,
ou=REGIONAL DIRECTOR, postalCode=500068,
st=TELANGANA,
serialNumber=f6b09732a3506deafbe0a55493bf
90313f8dad61fbca8e087006e045a63cd,
cn=SHAH MAHESHKUMAR PREMCHANDBHAI
Date: 2020.09.18 12:56:42 +05'30'

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

To,

1. PAULO TRAVELS PRIVATE LIMITED
(EARLIER AS PAULO AUTO BODY BUILDERS AND SERVICING PRIVATE
LIMITED)
Plot no.M-56, Phase III B,
Verna Industrial Estates ,
Varna Salcette, Goa-403722
2. Registrar of Companies cum Official Liquidator,
Goa.

"Certified True Copy"

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