

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI
RD(WR)/Sec. 454(5)/Isani And Virani Hotels /H54160106/2019

In the matter of Companies Act, 2013: Section 454(5) | 1324

- 5 OCT 2020

AND

In the matter of ISANI AND VIRANI HOTELS PRIVATE LIMITED

having Registered Office at 10, Mapuca Trade Centre, First floor, Next to
Municipal Market, Mapuca , Goa-403507Appellant

Parties Present:

For Petitioner: Mr. Vinesh Deepak Mestry, Practicing Company Secretary

Date of Hearing: 30.01.2020

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 ISANI AND VIRANI HOTELS PRIVATE LIMITED (hereinafter referred to as the "Company" or "Appellant") having CIN U55101GA2004PTC003521, incorporated under the Companies Act, 1956, having its registered office at 10, Mapuca Trade Centre, First floor, Next to Municipal Market, Mapuca , Goa-403507 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&137/2019/1 dated 20/02/2019.
2. The order was passed by the ROC on 20/02/2019 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 H54160106) is filed on 23/04/2019. 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 26.02.2019 and the appeal is filed on 23.04.2019. The appeal was filed on 23.04.2019 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:
- The appeal is filed by the Appellant Company and its officers in default namely Shri Ashwin Ramakant Khalap (DIN 02988548) and Shri Nikhilchander Ramakant Khalap (DIN 03009283).
 - The appellant company was defaulting in filing of its Annual Returns and Balance Sheets since FY 2017-18.
 - 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 Shri Ashwin Ramakant Khalap (DIN 02988548) and Shri Nikhilchander Ramakant Khalap (DIN 03009283) calling them to show cause for non-filing of such documents.
 - No response was received by the ROC to the SCN dated 12.03.2019 from the Company and its director. Therefore, notice of inquiry was issued vide letter dated 13.02.2019 pursuant to Rule 3 of the Rules to the company and its noticee directors providing them an opportunity of being heard and to appear personally or through authorized represented.
 - The authorized representative Shri Ravindra Chavan, Practicing Company Secretary appeared before ROC for the hearing on behalf of the Company & Directors.
 - As per the Master Data, the company has finally filed the due Annual Returns and Balance Sheets for the Financial Year 2017-18 on 10.07.2019.
 - The ROC has imposed a total penalty of Rs.5,07,500/- (Rupees Five Lakhs Seven Thousand Five Hundred Only) on the company & its directors, 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	111 days	On Company	Rs.1000X111days =Rs.1,11,000/-	Rs.1,11,000/-
		On Shri Ashwin Ramakant Khalap,	Rs.1,00,000/-	Rs.100X111= Rs.11,100
		Shri Nikhilchander Ramakant Khalap	Rs.1,00,000/-	Rs.100X111= Rs.11,100
Annual Returns u/s. 92(4) of the Companies Act, 2013.	81 days	On Company	Rs.50,000/-	Rs.100X81days= Rs.8,100/-
		On Shri Ashwin Ramakant Khalap,	Rs.50,000/-	Rs.100X81days= Rs.8,100/-
		Shri Nikhilchander Ramakant Khalap	Rs.50,000/-	Rs.100X81days= Rs.8,100/-

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

- h. The Appellant Company has not yet deposited the said penalty.
5. In the appeal, the appellant has stated that the Company has conducted its Annual General Meeting every year and has adopted its Financial Statements as per procedure laid down by the Act, however, due to unavoidable reasons, Company was unable to file the same.
6. The matter was kept for hearing on 30.01.2020 wherein all the submissions made by the appellant in the appeal and oral submissions made by the Learned Representative of the company during the hearing were heard and order was reserved. However, in the meantime the Appellant Company has submitted a letter dated 04.09.2020 and informed that a new scheme has been introduced by the Ministry of Corporate Affairs (MCA) i.e. "Companies Fresh Start Scheme 2020" vide circular number 12/2020 on 30th March, 2020 and stated that as per point 6(v) of the Companies Fresh Start Scheme,2020, " If the defaulting company with respect to any statutory filing under the Act, or its officer in default, as the case may be, has filed any appeal against any notice issued or complaint filed or an order passed by a court or by an adjudicating authority under the Act, before a competent court or authority for violation of the provisions under the Companies Act,1956 and/or Companies Act, in respect of which the application is made under this scheme, the applicant shall before filing

an application for issued of immunity certificate, withdraw the appeal and furnish proof of such withdrawal along with the application".

In view of the above said provision the Appellant Company stated in the above said letter that they are in process of making an application for issue of immunity certificate, therefore, requested for withdrawal of Appeal which was filed on 23.03.2019 vide SRN: H5416106 with this Directorate.

7. I have considered the request made by the Appellant Company for withdrawal of an appeal and same is hereby allowed. The Appeal is accordingly disposed of as withdrawn.
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 20th day of September, 2020



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

To,

1. ISANI AND VIRANI HOTELS PRIVATE LIMITED
10, Mapuca Trade Centre, First floor, Next to,
Municipal Market, Mapuca, Goa-403507

2. Registrar of Companies cum Official Liquidator,
Goa

"Certified True Copy"

Manoj S. Bang

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