

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI

RD(WR)/Sec. 454(5)/Arya Steels /R27576248/2020 } 716

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

AND

In the matter of

ARYA STEELS ROLLING (INDIA) LIMITED

having Registered Office at 411/404, 4th Floor, Raghunath, Esquire Pajifond

Salcete , Margoa, South Goa, Goa-403708

.....Appellant

Parties Present:

For Appellant: Shri Vijay Kondalkar, Practicing Company Secretary

Date of Hearing: 18.08.2020

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 the company viz. ARYA STEELS ROLLING (INDIA) LIMITED (hereinafter referred to as the "Company" or "Appellant") having CIN U28910GA2006PLC004326, registered under the Companies Act, 2013, having its registered office at 411/404, 4th Floor, Raghunath, Esquire-Pajifond Salcete, Margoa, South Goa, Goa - 403708 against the order passed by Registrar of Companies-cum-Official Liquidator (ROC), Goa, adjudicating a penalty for violation of Section 137(3) of the Act vide Order No. ROCGDD/AO/137/2019/110 dated 28/10/2019.
2. The order was passed by the ROC on 28/10/2019 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.

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3. The appeal in Form ADJ (SRN R27576248) is filed on 28/12/2019. As per provisions of Section 454(6) of the Act, 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 Officer is received by the aggrieved person. In this case, the Appellant Company has admitted that the order was received on 04.11.2019 and the appeal is filed on 28/12/2019. Thus, it 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 Mr. Alok Bansal (DIN 19846996).
 - The appellant company was defaulting in filing of its Annual Returns and Balance Sheets for the Financial Year 2014-2015.
 - The ROC has issued show cause notice under Section 92(5) and Section 137(3) of the Act vide notice dated 26.10.2016 to the company and its directors namely Mr. Sumit Rajendraprasad Singla -Director (DIN-01363005), Mr. Alok Bansal- Managing Director (DIN: 01984696) and Mr. Ankur Singla-Director (DIN: 02699167) calling them to show cause for non-filing of such documents.
 - The company replied to the Show Cause Notice vide their letter dated 21.11.2016, requesting to allow one month time to file necessary e-forms citing the reasons as the Company could not file the same due to technical reasons.
 - As per the Master Data, the company has finally filed the due Annual Returns and Balance Sheets for the Financial Year 2014-2015 on 23.01.2017.
 - ROC has issued notice to the company vide letter dated 20.09.2019 for hearing to be held on 24.09.2019. Accordingly the hearing was held by the ROC and order was passed adjudicating the violation on 28.10.2019.
 - The ROC has imposed a total penalty of Rs.5,95,000/- (Rupees Five Lakh Ninety Five Thousand Only) on the company and its Managing Directors as detailed herein below:

No. of Days of Default	Penalty imposed on the Company/Director	Amount of Penalty (In Rs.)	Total (In Rs.)

450 days	On Company Arya Steels Rolling (India) Limited	Rs.4,50,000/- (Rs.1000/-per day) i.e. 450x1000=4,50,000/-	Rs.4,50,000/-
	On Mr. Alok Bansal- Managing Director (DIN: 01984696)	Rs.1,00,000/- Plus + 450 days X Rs.100/- per day =Rs.45,000/-	Rs.1,45,000/-

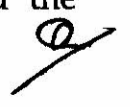
*No. of days have been calculated from 30.10.2015 to 22.01.2017, for the financial statements till the date default was made good i.e. 22.1.2017.

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

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

- a. Weak financial Position of the Company during last three years i.e. 2016-17, 2017-18 and 2018-19.
- b. The Company is facing recession since last 4 years. The net sales of the company in FY 2019-20 from 01.04.2019 to 30.11.2019 are only 121.73 Crores, which is approx. 50% of sales of the year 2018-19. In the current market scenario of recession it is very difficult for the Company to achieve the last year sales amount.
- c. The recession in market had adversely affected the sales of the Company and simultaneously reduced the profit of the Company. The Company is facing tough period during current year and due to recession in market the sales and profitability of the Company is substantially decreased in the current year.
- d. The company is closely held family owned company having 15 shareholders. All the shareholders are family members. Till 2017-18 two Directors were drawing remuneration to the tune of Rs.46 Lakhs. After 2017-18 one Director stepped down as Whole Time Director of the Company so that financial burden on the Company can be lessened. Presently only Managing Director withdraws salary of Rs.36 Lakhs which is much lower than Industry Standard. Presently Companies with similar scales of operation generally pays remuneration of Rs.50 Lakhs to its Managing Director.
- e. Sales are decreasing since last one year i.e. 2019.

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



- a. The violation of the provision of the section 137(1) of the Act has arisen due to delayed filing of the Financial Statements for the year 2014-15 by the company.
- b. As per MCA21 records, the said financial statement is filed on 23.01.2017.
- c. ROC-cum-OL Goa has filed a prosecution against the company and its officers in default before the Hon'ble Court numbered as L.C. No. 23/2017/ A as reported by the ROC in his report dated 11.03.2020.
- d. Thus, the overall picture is that the violation occurred and action was taken by the ROC prior to the Companies (Amendment) Ordinance 2018 which came into force with effect from 02.11.2018. And hence, the said violation of provision of section 137(1) of the Act is to be governed by the punishment provided in section 137(3) of the Act prior to its amendment vide the Companies (Amendment) Ordinance 2018. Same is read as below:

"If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both."

- e. In view of the above position of the law, the said violation of section 137(1) of the Act does not attract adjudication by the ROC under section 454 of the Act which is prescribed for the violation attracting punishment by way of penalty. Further, since ROC has already filed a prosecution for the said violation before the Hon'ble Court, he should not have adjudicated the same violation when the matter is sub judice.



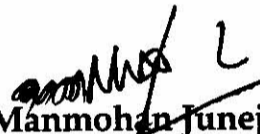
7. Therefore, the order is without application of mind on the relevant statutory provisions of the Act and without performing the duties cast on the ROC/Adjudicating Officer.

THE REGIONAL DIRECTOR (WR) DOTI HEREBY ORDERS

1. 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 18.08.2020 and the submission made by the ROC/Adjudicating Officer vide report dated 11.03.2020. I am of the considered opinion that in view of observation made hereinabove, the impugned order is liable to be set aside being defective The order is accordingly set aside.
2. A copy of this order shall be published on the website of the Ministry of Corporate Affairs as per Rules.
3. No order to cost.

Signed and sealed on 18th day of, August 2020 at Mumbai.




(Manmohan Juneja)
Regional Director (WR)

Copy to:

- 1) ARYA STEELS ROLLING (INDIA) LIMITED
office at 411/404, 4th Floor, Raghunath,
Esquire-Pajifond Salcete , Margoa,
South Goa, Goa-403708
- 2) The Registrar of Companies, Goa.
- 3) Office Copy