

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI

CP No. 2/2019

RD(WR)/Sec. 454(5)/Goa Nidhi/H78004991/2020 | 69 28

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

AND

17 MAR 2020

In the matter of GOA NIDHI LIMITED

having Registered Office at 404, Durga Chambers, 18th June Road,

Panaji, Goa – 403 001, India.

.....Applicant

Parties Present:

For Petitioner: Shri Henry Richard, Practicing Company Secretary &
Shri Ashish O. Lalpuria, Practicing Company Secretary

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 GOA NIDHI LIMITED (hereinafter referred to as the "Company" or "Appellant") having CIN U65923GA1995PLC001988, incorporated under the Companies Act, 1956, having its registered office at 404, Durga Chambers, 18th June Road, Panaji, Goa - 403 001 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&137/2019/28 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 on Form ADJ (SRN H78004991) is filed on 19/07/2019. 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 20/05/2019 and the appeal is filed on 19.07.2019. The appeal was filed on 19.07.2019 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:
- The appeal is filed by the Appellant Company and its officers in default namely Mr. Kappettu Prakash Shetty (DIN 00696519), Mr. Katpady Madhava Kini (DIN 01228607) and Mr. Pandurang Ravji Nadkarni (DIN 01833905).
 - The appellant company was defaulting in filing of its Annual Returns and Balance Sheets for the Financial Year 2017-18.
 - The ROC has issued show cause notice under Section 92(5) and Section 137(3) of the Act vide notice dated 02/04/2019 to the company and its directors namely Mr. Kappettu Prakash Shetty (DIN 00696519), Mr. Katpady Madhava Kini (DIN 01228607) and Mr. Pandurang Ravji Nadkarni (DIN 01833905) calling them to show cause for non-filing of such documents.
 - In response, the company stated vide reply dated 18.04.2019 that it has filed its returns for the Financial Year 2017-18 on 16/07/2019.
 - As per the Master Data, the company has finally filed the due Annual Returns and Balance Sheets for the Financial Year 2017-18 on 16.07.2019.
 - The ROC has imposed a total penalty of Rs.8,11,400/- (Rupees Eight Lakh Eleven Thousand Four Hundred Only) on the company and its three Directors 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	190 days	On Company	Rs. 1000x100 days = Rs. 1,90,000/-		Rs. 1,90,000/-
		Kappettu Shetty	Rs.1,00,000/-	Rs. 100x190 days = Rs. 19000/-	Rs. 1,19,000/-
		Katpady Kini	Rs.1,00,000/-	Rs. 100x190 days = Rs. 19000/-	Rs. 1,19,000/-
		Pandurang Nadkarni	Rs.1,00,000/-	Rs. 100x190 days = Rs. 19000/-	Rs. 1,19,000/-
Annual Returns u/s 92(4) of the Companies Act, 2013	161 days	On Company	Rs. 50,000/-	Rs. 100x161 days = Rs. 16,100/-	Rs. 66,100
		Kappettu Shetty	Rs. 50,000/-	Rs. 100x161 days = Rs. 16,100/-	Rs. 66,100
		Katpady Kini	Rs. 50,000/-	Rs. 100x161 days = Rs. 16,100/-	Rs. 66,100
		Padurang Nadkarni	Rs. 50,000/-	Rs. 100x161 days = Rs. 16,100/-	Rs. 66,100

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

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

5. In the appeal, the appellant has taken the following grounds:
 - a. The concerned person looking after the affairs of the company fell ill due to which, the company faced difficulties in filing returns.
 - b. The delay was unintentional and without any malafide intention.
 - c. The company is a Nidhi company with paid up capital of Rs.5.00 Lakh only.
 - d. The company is not carrying on any business activity since the last several years till date and has incurred loss of Rs.1.37 Lakh during Financial Year 2017-18.
 - e. The company has now made compliance by filing of the said statutory returns.
 - f. The appellants have made a prayer to set aside the impugned order and have a lenient view as the default was unintentional and being a company with no business activity.

6. On careful consideration of the impugned order, the appeal and the documents on record, this forum has observed as under:
 - a. It is not clear from the impugned order that the ROC/Adjudicating Officer considered as to whether any extension was granted by the Central Government in filing of the Annual Returns and Balance Sheets for the Financial Year 2017-18 and the period of default has been calculated from the due dates of filing i.e. 30 days from the due date of AGM i.e. 30/09/2018 and 60 days from the due dates for holding AGM in case of Annual Returns.
 - b. While calculating the quantum of penalty, the ROC/Adjudicating Officer has calculated the number of days from November, 2018 to December, 2018. Thus, such calculation of penalty by the ROC/Adjudicating Officer is unexplained and is arbitrary without reference to the statutory provisions of the Act read with extension, if any, granted by the Central Government in filing of Annual Returns and Balance Sheets for Financial Year 2017-18.
 - c. There is nothing on record to show on the impugned order if any of the directors were entrusted with the responsibility of complying with provisions of Section 137 of the Act.
 - d. Thus, it is apparent that the impugned order is defective on this count both in terms of calculating and imposing the penalties as required by Section 92 and 137 of the Act.



THE REGIONAL DIRECTOR (WR) DOTH 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 and the ROC/Adjudicating Officer during the hearing held on 31.01.2020. I am of the considered opinion that in view of observations made hereinabove, the impugned order is liable to be set aside being defective on many counts as noted above. The order is accordingly set aside with directions to the ROC/Adjudicating Officer to conduct the proceedings de-novo and pass an order in accordance and after due compliance of provisions of Section 454 read with Rules thereunder and also read with provisions of Section 137, 92 read with Section 2(60) of the Act and the filings made by the appellant company after giving them a due opportunity of being heard as per Rules within 30 days from the date of this order.
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 16th day of March 2020 at Mumbai.



(Signature)
(Manmohan Juneja)
Regional Director (WR)

Copy to:

- 1) GOA NIDHI LIMITED,
404, DURGA CHAMBERS,
18TH JUNE ROAD,
PANAJI, GOA - 403 001
- 2) The Registrar of Companies, Goa.
- 3) Office Copy