

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI

RD(WR)/Sec. 454(5)/Sumeru Developers/R85631240/2019/1634

श्रीमत् डाक सेवा
SPEED POST

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

27 OCT 2020

AND

In the matter of SUMERU DEVELOPERS PRIVATE LIMITED

having Registered Office at C 501-502, Boshan Home, Opp. Shri Bodgeshwar

Temple, Mapusa, Goa-403507

.....Appellant

Parties Present:

For Appellant : Shri Sadashiv V Shet, 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 Sumeru Developers Private Limited (hereinafter referred to as the "Company" or "Appellant") having CIN U45203GA2006PTC004373, incorporated under the Companies Act, 1956, having its registered office at C 501-502, Boshan Home, Opp. Shri Bodgeshwar Temple, Mapusa, 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&137/2019/105 dated 19/06/2019.

2. The order was passed by the ROC on 19/06/2019 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 R85631240) is filed on 29/08/2019. 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 02.07.2019 and the appeal is filed on 29.08.2019. The appeal was filed on 29.08.2019 and thus is within the stipulated period of 60 days in terms of provisions of Section 454(6) 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 Shri Amir Sadashiv Gaitonde, (DIN: 00689830) and Shri Kumar Sadashiv Gaitonde (DIN: 007242339) and Ms. Pratibha Amir Gaitonde (DIN: 01682843).
 - 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 25/02/2019 to the company and its directors namely Shri Amir Sadashiv Gaitonde, (DIN: 00689830) and Shri Kumar Sadashiv Gaitonde (DIN: 007242339) and Ms. Pratibha Amir Gaitonde (DIN: 01682843) calling them to show cause for non-filing of such documents.

- d. In response, the company filed reply dated 09.03.2019 with ROC, however, the reply of the Company was found not satisfactory by the ROC.
- e. The company has finally filed the due Annual Returns and Balance Sheets for the Financial Year 2017-18 on 19.08.2019.
- f. The ROC has imposed a total penalty of Rs.4,93,200/- (Rupees Four Lakh Ninety Three Thousand Two Hundred Only) on the company and its One 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 Companies Act,2013	230days	On Company	Rs.1000X230 days =Rs.2,30,000/-	--	Rs.2,30,000/-
		Ms. Prtibha Amir Gaitonde	Rs.1,00,000/-	Rs.100X230 days =Rs.23,000/-	Rs.1,23,100/-
Annual Returns u/s. 92(4) of the Companies Act,2013.	201 days	On Company	Rs.50,000/-	Rs.100X201days= Rs.20,100/-	Rs.70,100/-
		Ms. Prtibha Amir Gaitonde	Rs.50,000/-	Rs.100X201days= Rs.20,100/-	Rs.70,100/-

*No. of days have been calculated from November, 2018 & December 2018 for Financial Statement and Annual Return respectively till the date of the 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 Company has prepared the Balance Sheet and Profit and Loss Account for the year ended 31.03.2018 and the same was approved in the Annual General Meeting held on 28.09.2018.
- b. The company was required to file e-Form AOC-4 on or before 28.10.2018 and e-Form MGT-7 on or before 28.11.2018. Subsequently the Ministry of Corporate Affairs had given relaxation of additional Fees for filing of AOC-4, XBRL and MGT-7 up to 31.12.2018.

- c. Due to unavoidable circumstances there was delay in filing the said Form and the same were filed with the ROC vide e-Form AOC-4 vide SRN H85452126 on 28.08.2019 and Form MGT-7 on 19.08.2019 vide SRN H83549303 respectively by paying the applicable additional fees.
- d. The appellants have made following prayers;
- i. That the order dated 19.06.2019 passed by the ROC, Goa be set aside;
 - ii. The penalty amount levied in the aforesaid orders be waived off;
 - iii. To give appropriate directions to the Respondents to withdraw the said notice ; and
 - iv. Any other or further order as orders be passed or direction be issued awarding necessary relief to the Petitioner as may deem fit and proper.
6. The matter was kept for hearing on 30.01.2020 wherein all the submission made by the appellant in the appeal and oral submission 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 07.10.2020 and stated therein that
- "In view of the point 6(v) of the Companies Fresh Start Scheme 2020 (CFSS Scheme 2020), which states the withdrawal of appeal against any prosecution launched or the proceedings for imposing penalties initiated, the Company hereby makes an application for withdrawal of the appeal with waiver from payment of penalty imposed by the Registrar of Companies, Goa Deman and Diu, so that the Company and Directors can avail the immunity under the said CFSS Scheme, 2020."*

In view of the above said provision the Appellant Company has requested for withdrawal of the Appeal, so that the Company can file the Form CFSS in order to obtain immunity certificate.

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 th 26 day of October, 2020 at Hyderabad



M P Shah
(M P SHAH)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI
Camp at Hyderabad

To,

- ✓ 1. SUMERU DEVELOPERS PRIVATE LIMITED
C 501-502, Boshan Home, Opp. Shri Bodgeshwar,
Temple, Mapusa, Goa-403507
2. Registrar of Companies cum Official Liquidator,
Goa
3. Master Copy
4. Office Copy

"Certified True Copy"

M P Shah

महेश एस. शहा
M. P. Shah
Regional Director
पश्चिम क्षेत्र (प.रे.)
Official Regional Director (W.R.)
का. वि. कार्य भवन, मुंबई-२
Ministry of Corporate Affairs, Mumbai-2