

F.No:9/32/ADJ/SEC.170 of CA, 2013/KARNATAKA/RD(SER)/2024

BEFORE THE REGIONAL DIRECTOR, SOUTH EAST REGION

MINISTRY OF CORPORATE AFFAIRS, HYDERABAD

IN THE MATTER OF COMPANIES ACT, 2013 /4699

IN THE MATTER OF JAI SHREE KRISHNA STEEL WORKS PRIVATE LIMITED

1. M/s. Jai Shree Krishna Steel Works Private Limited
2. Mr. Mahesh Askarandas, Director
3. Mr. Kunal Mahesh, Director

..... Appellants

Date of hearing : 10.10.2024

Present : Mr. R Venkata Ramana, PCS, on behalf of the Appellants

ORDER

This is an appeal filed under section 454(5) of the Companies Act, 2013 (hereafter referred as the Act) by the above appellants in e-form ADJ vide SRN F96914510 dated 22.07.2024 against the adjudication order passed by the Registrar of Companies, Karnataka in F No. ROC(B)/Adj.Ord.454-170/ JSK Steel Works /Co.No.050503/2024/ dated 24.05.2024 under section 454 of the Act, for violation of Section 170 of Companies Act, 2013.

2. The Registrar of Companies in his order of adjudication has stated that the company filed an application on 10.11.2023 to adjudicate the violation of the provisions of section 170 of the Act. During the course of inspection under section 206 (5) of the Act, no such register found/ maintained by the company. When the matter was taken up with the company, the company replied that the office and factory premises have been taken in possession by Asset Reconstruction Company under SARFAESI Act. The company has not produced the statutory registers/ records which as stated by the company could have been possessed of the factory premises particulars which are kept in the registered office of the company at Hassan, which is under possession of Phoenix ARC Pvt Ltd. Moreover, the records of the company are in no way concerned with the possession of the plant and machinery taken by the Asset Reconstruction Company. However, the company has not produced any evidence



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in the matter. Therefore, the company and its officers have violated the provisions of section 170(1) of the Act. The hearing was held before the Registrar of Companies on 06.02.2024 and after hearing the authorized representative had levied a penalty of Rs.3.00 Lakh on the Company and Rs.1.00 lakh on 2 directors i.e., Mr. Mahesh Askarandas, Director and Mr. Kunal Mahesh, Director (total aggregating to Rs.5.00 Lakh).

3.1 Aggrieved by the adjudication order, the appellants had filed the above appeal. A report from the ROC called, and he has filed the same vide his report dated 27.08.2024. An opportunity of being heard was given to the Appellants on 10.10.2024.

3.2 The authorized representative Mr. R Venkata Ramana, Practicing Company Secretary appeared on behalf of the appellants and reiterated the submissions made in the appeal and also stated that the appellants is closely held company with two promoters and direction who are father and son and that the South Indian Bank has sanctioned term loan to the company for setting up mini steel plant etc. and further additional terms loan were also sanctioned in 2012 for the purpose of purchasing the machinery and fixed assets and due to default in repayment of loan the said bank was assigned to an assets reconstruction company i.e. Phoenix ARC Private Limited who has taken possession of the premises including the factory and registered office of the company under SARFAESI Act, and the said possession of the ARC company continues. Since the company is under the possession of the ARC Company. During the course of inspection no register was found / maintained by the company, as per section 170(1) of the Companies Act and the reason being that the above said Phoenix ARC Private Limited took possession of the registered office and that the violation is neither willful nor wonton and no injury has been caused to public interest and the company has faced financial losses in the previous years. In support of their claim the appellants have filed the possession notice dated 19.06.2018 issued by the ARC Company.



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3.3 With the above submissions the appellants have requested to reduce the penalty imposed by the ROC and has further submitted that the appellant authority is empowered to reduce the penalty imposed by the adjudicating authority in view of the provisions of section 454 (7) of the Act and has submitted the appeal orders passed by the other Regional Directors dated 05.07.2024, 31.07.2024 in the matter of a) M/s. Mukka Proteins Limited , b) M/s. SVR Spinning Mills Private Limited & c) M/s. Aura Hotels & Resorts Private Limited respectively as a precedent.

3.4 The appellant has also produced the citations stating that in the case titled The Chairman Sebi vs Roofit Industries Ltd, the Hon'ble Supreme Court has held that where circumstances so warrant, either the penalty may be waived off completely or may assign a penalty less than the so-called minimum. Thus, the adjudication of penalties may be expected to be more commensurate with the gravity of the offence.

The appellants have also cited the following order / judgements to buttress their argument that the penalty imposed should be commensurate with the gravity of the offence

(i) In the matter of the Adjudicating Officer, Securities and Exchange Board of India V. Bhavesh Pabari wherein the Supreme Court has held that, "...we would hold the legislative intent was not to prescribe minimum mandatory penalty of Rs.1 lakh per day during which the default and failure had continued. We would prefer to read and interpret Section 15-A(a) as giving discretion to the Adjudicating Officer to impose minimum penalty of Rs.1 lakh subject to maximum penalty of Rs.1 crore, keeping in view the period of default as well as aggravating and mitigating circumstances including those specified in Section 15-J of the SEBI Act"

(ii) The judgement by the Hon'ble Supreme Court in the case of Siddharth Chaturvedi & Ors vs. Securities and Exchange Board of India wherein it has provided that by prescribing a minimum mandatory penalty was not to curtail the discretion of the Adjudicating Officer. However, normally, the expression "whichever is less connote absence of discretion, but in context of the amendment in section 15A the legislative intent was not to prescribe minimum mandatory penalty. However, the same provided discretion to the AO to impose minimum penalty of Rs, 1 Lakh subject to maximum penalty of Rs. 1 Crore.



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(iii) The judgement of the Hon'ble Supreme Court in the case of Commissioner of Income tax Vs Harsiddh Constructions Pvt Ltd. on 14 December 1999 holding that "Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the Authority to be exercised judicially and on the consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose the penalty, when there is a technical or venial breach of the provisions of the Act where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

(iv) the judgement of the Hon'ble Supreme Court in the case of State of H.P vs Nirmala Devi on 10th April, 2017 holding that "The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases."

(v) the judgement of the Hon'ble Supreme Court in the case of State of M.P vs Najab Khan and Ors [4] on 1st July, 2013 holding that "It is settled principle of law that the punishment should meet the gravity of the offence committed by the accused and courts should not show undue sympathy with the accused persons. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases."

4. In view of the above, taking into consideration the facts of the appeal and the submissions made by the authorized representative, I deem it would meet the end of justice if the penalty imposed by Registrar of Companies is reduced to Rs.60,000/- each for the Company and 2 directors i.e., Mr. Mahesh Askarandas, Director and Mr. Kunal Mahesh, Director (total aggregating to Rs.1,80,000/-). The appellants were directed to comply with this order and were also reminded about the provisions of Section 454(8) of the Act, in case of failure to comply.



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5. Accordingly, the appellants have paid the penalty as under

S.No	Name of the Appellants	Date of Payment	SRN details	Penalty Paid
1	M/s. Jai Shree Krishna Steel Works Private Limited	28/10/2024	X84684034	60,000
2	Mr. Mahesh Askarandas, Director	28/10/2024	X84683325	60,000
3	Mr. Kunal Mahesh, Director	28/10/2024	X84683523	60,000
			Total	1,80,000

6. In view of the compliance reported, the appeal is accordingly disposed of, and this order is issued to the Appellants with a copy to Registrar of Companies, Karnataka and Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi for information and necessary action.

Issued under my hand and seal on this the 20th day of November 2024.



(M. JAYAKUMAR)

Regional Director, SER(I/C)

Ministry of Corporate Affairs, Hyderabad

Copy for information and necessary action to :

1. M/s. Jai Shree Krishna Steel Works Private Limited

565-A, KIADB Industrial Area, Samudravalli Hobli

Shantigram, Hassan, Karnataka-573201.

2. Mr. Mahesh Askarandas, Director

Plot No.7, Kothari Wadi, Ramchandra Lane,

Malad West, Mumbai- 400064.

3. Mr. Kunal Mahesh, Director

Plot No.7, Kothari Wadi, Ramchandra Lane,

Malad West, Mumbai- 400064.

4. Registrar of Companies, Ministry of Corporate Affairs,
Karnataka, Bangalore.

5. The Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi.