



BEFORE THE REGIONAL DIRECTOR, WESTERN REGION

MINISTRY OF CORPORATE AFFAIRS, MUMBAI

प्रादेशिक निदेशक, पश्चिम क्षेत्र, कारपोरेट कार्य मंत्रालय, मुंबई के समक्ष

सं. - प्रादे. निदे. (प.क्षे.)/454(5)/Ensa Steel/92/F97150452/2024-25/

8462

13 NOV 2024

APPEAL UNDER SECTION 454(5) OF COMPANIES ACT, 2013 AGAINST ORDER PASSED FOR OFFENCES COMMITTED UNDER SECTION 92 OF THE COMPANIES ACT, 2013.

In the matter of ENSA STEEL INDUSTRIES LTD & ORS.

- |    |                                |             |
|----|--------------------------------|-------------|
| 1. | Ensa Steel Industries Ltd      | - Company   |
| 2. | Rajbhushan Omprakash Dixit     | - Director. |
| 3. | Jayshree C Sonawala            | - Director. |
| 4. | Neeraj Sharma                  | - Director. |
| 5. | Rajnikant Jayantilal Sandesara | - Director. |

...Appellants

### ORDER

Appeal under sub-Section (5) of Section 454 of the Companies Act, 2013 (Act) r/w the Companies (Adjudication of Penalties) Rules, 2014 (Rules) have been filed by 'Ensa Steel Industries Ltd' (Company). having CIN L45200MH1985PLC035172 and, its Officers/Directors, against Order No. ROC(M)/ESIL/Sr.No.39/ADJ-ORDER/1841 dated 03/06/2024 (ROC Order) of Registrar of Companies, Mumbai for violating provisions of Section 92 of the Act.

2. The appeal lies within the jurisdiction of the Regional Director, Western Region, Ministry of Corporate Affairs, Government of India.

3. The Registrar of Companies, Mumbai (RoC Mumbai) vide Adjudication Order dated 03/06/2024 held the Company and its Officers/Directors, who have defaulted liable for penalty under Section 92(5) of the Act from 30/11/2019 to 01/03/2020 for not filing Annual Return for the Financial Year 2018-19 within sixty days from the date of Annual General Meeting in pursuance of Section 96 of the Act as under:

No. of days default	Penalty imposed on Company / KMP	First default (In Rs.)	Default continues penalty (in Rs.)	Total penalty levied (In Rs.)	Maximum penalty (In Rs.)
93 days	Ensa Steel Industries Ltd	50,000/-	93X100 = 9,300/-	59,300/-	5,00,000/-
	Rajbhushan Omprakash Dixit	50,000/-	93X100 = 9,300/-	59,300/-	5,00,000/-
	Jayshree C Sonawala	50,000/-	93X100 = 9,300/-	59,300/-	5,00,000/-
	Neeraj Sharma	50,000/-	93X100 = 9,300/-	59,300/-	5,00,000/-
	Rajnikant Jayantilal Sandesara	50,000/-	93X100 = 9,300/-	59,300/-	5,00,000/-
TOTAL				2,96,500/-	25,00,000/-

4. Appellants have filed Form-ADJ vide SRN F97150452 dt. 03/08/2024. As per provisions of sub-Section (6) of Section 454, every appeal under sub-section (5) shall be filed within sixty (60) days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person. On examination of the application/appeal, it is seen that the said application/appeal has been filed within 60 days from the date of passing of the adjudication order.

5. Grounds of Appeal & Relief sought:

- a. The Appellant has never received any show cause notice issued by the ROC and have only received the Impugned Order dt.03/06/2024. That no chance of representation or hearing was accorded to the Appellants and the same has led to gross violation of principle of natural justice.
- b. In view of the COVID-19 outbreak the prescribed statutory limitation was repeatedly extended by the Hon'ble Supreme Court of India by various orders. However, while penalizing the company and its officers, the ROC has considered the period of violation of provision under Section 92 of the Companies Act, 2013 to be from 31/10/2019 till 25/10/2020.
- c. The impugned Order dt.03/06/2024 passed by the ROC be dismissed and set aside.
- d. The quantum of the penalties imposed on the company and its officers be reassessed in light of the facts and the case.

6. The matter was posted for hearing as per Section 454(5) read with Section 454(7) of the Act on 06/11/2024. Sankalp A. Sharma, Advocate, appeared on behalf of Appellants as their authorized representative. The authorized representative reiterated the submission made by the applicants in their application and have admitted the contravention of Section 92 of the Companies Act, 2013. However, he has requested for reduction of penalty as per existing provision under Section 92 of the Act by making beneficial interpretation on imposition of penalty under present provision for past event i.e. from 30/11/2019 to 01/03/2020. He further assured that the company will file the Annual Returns for the year 2018-19 within one month.



7. The punishment for contravention of section 92 is prescribed under section 92(5) of the Companies Act, 2013 which states that -

*"If any company fails to file its annual return under sub-section(4), before the expiry of the period specified therein, such company and its every officers who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees."*

8. RoC, Mumbai vide further letter dt.23/10/2024 has stated that

- a. There was no argument regarding non-compliance as there is crystal clear default on the part of the company and its directors.
- b. Default is made for F.Y. 2018-19 for which the due date of filing of Annual Return under Section 92 of the Act was 29/11/2019 i.e. prior to the outbreak of COVID-19 pandemic.
- c. Show cause notices served upon Appellant No.2 & 3 were returned back by the postal authority.

In view of above, Appeal filed by the company is not maintainable.

9. Facts of the Case:

- a. The Company has failed to file a copy of Annual Return with the Registrar of Companies for the Financial Year 2018-19 within sixty days as per the provisions of Section 92 of the Companies Act, 2013.
- b. Due date of filing Annual Return was 29/11/2019.
- c. Show cause notice issued on 02/03/2020.
- d. The period of default is calculated from 30/11/2019 till the date of dispatch of the show cause notice dt. 02/03/2020. The default period is thus calculated to be at a total of 93 days from 30/11/2019 to 01/03/2020.
- e. ROC, Mumbai has imposed penalty as per Section 92(5) of Companies Act, 2013.

Since, the company has not filed the Annual Return for the year 2018-19 till date the beneficial interpretation of Law for imposing penalty of Rs.10,000 + Rs.100/- per day subject to maximum penalty of Rs.5,00,000/- with effect from 02/11/2018 to 20/12/2020 to Rs.50,000 + Rs.100/- per day subject to maximum penalty of Rs.2,00,000/- for the company and Rs.20,000/- for individual cannot be considered for defaulting company being listed company as argued by the Learned Advocate. In view thereof, there is no inherent defect in the Adjudication Order dt. 03/06/2024 and the same is in accordance with the provisions of the Act.


10. Taking into consideration the Adjudication Order of the Registrar of Companies, Mumbai; submissions made by the Appellants in their application as well as oral submissions of authorized representative during the hearing; further letter of RoC, Mumbai; I am of the considered view that there is no merit in the appeal, and accordingly, the Adjudication Order dated 03/06/2024 passed by ROC, Mumbai is 'CONFIRMED' under Section 454(7) of the Act.

11. In view of the above, the present appeal is disposed of with directions to the appellant to pay penalty imposed by the Registrar of Companies, Mumbai vide Adjudication Order dt.03/06/2024 within 90 days, failing which, Registrar of Companies, Mumbai, is directed to file prosecution under Section 454(8) of the Companies Act, 2013 and to file the Annual Returns for the year 2018-19 within one month from the date of the receipt of this order.

A copy of this order shall be published on the website of the Ministry of Corporate Affairs as per Rules.

Signed and sealed on 13<sup>th</sup> day of November 2024.



  
(SANTOSH KUMAR)  
REGIONAL DIRECTOR  
WESTERN REGION, MUMBAI

To,

1. Ensa Steel Industries Ltd,  
43 Atlanta, Nariman Point,  
Mumbai, Maharashtra 400021, India.
2. Rajbhusan Omprakash Dixit,  
S/o Omprakash Dixit, 901, Evershine Granduer,  
Wing A Chincholi Bunder Road, Mindspace,  
Behind Inorbit Mall, Malad (West),  
Mumbai, Malad West, 400064, Maharashtra, India.
3. Jayshree C Sonawala,  
Flat No.401, 4th Floor, Arihant Prabhu CHS.  
Plot No.228, Sector 3, Charkop, Kandivali (West)  
Mumbai 400067, Maharashtra, India.
4. Neeraj Sharma,  
S/o Suresh Kumar sharma, 301, Indraprasth Tower  
opp. Inox cinema, Ellrapark, Vadodara,  
Vadodara, 390007, Gujarat, India.
5. Rajnikant Jayantilal Sandesara,  
401, Orange Residency, Ishwar Bhuvan, Navrangpura,  
Ahmedabad, 380009, Gujarat, India.
6. Registrar of Companies, Mumbai.
7. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
8. Master Copy.
9. Office Copy.

  
(TUSHAR WAGH, ICLS)  
DEPUTY DIRECTOR