



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.क्ष.)/454(5)/Graham Firth/92/F97693568/2024-25/27

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 GRAHAM FIRTH STEEL PRODUCTS (INDIA) LIMITED & ORS.

- |    |   |                |
|----|---|----------------|
| 1. | Graham Firth Steel Products (India) Limited | - Company      |
| 2. | Teyjas Schae                                | - Ex-Director. |
| 3. | Rajnesh Inderchand Jain                     | - Ex-Director. |
| 4. | Shilpin Janak Patel                         | - Ex-Director. |
| 5. | Deepali Shilpin Patel                       | - Ex-Director. |
| 6. | Dhanesh Jayantilal Mehta                    | - Ex-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 'Graham Firth Steel Products (India) Limited' (Company) having CIN U43123MH1960PLC011834 and, its Officers/Directors, against Order No. ROC(M)/GFSPIL/56/ADJ-ORDER/2731 dated 26/06/2024 (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 26/06/2024 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 11/03/2020 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.) |
|---------------------|---|------------------------|------------------------------------|-------------------------------|--------------------------|
| 103 days            | Graham Firth Steel Products (India) Limited | 50,000/-               | 103X100 = 10,300/-                 | 60,300/-                      | 5,00,000/-               |
|                     | Teyjas Schae                                | 50,000/-               | 103X100 = 10,300/-                 | 60,300/-                      | 5,00,000/-               |
|                     | Rajnesh Inderchand Jain                     | 50,000/-               | 103X100 = 10,300/-                 | 60,300/-                      | 5,00,000/-               |
|                     | Shilpin Janak Patel                         | 50,000/-               | 103X100 = 10,300/-                 | 60,300/-                      | 5,00,000/-               |
|                     | Deepali Shilpin Patel                       | 50,000/-               | 103X100 = 10,300/-                 | 60,300/-                      | 5,00,000/-               |
|                     | Dhanesh Jayantilal Mehta                    | 50,000/-               | 103X100 = 10,300/-                 | 60,300/-                      | 5,00,000/-               |
| TOTAL               |   |                        |                                    | 3,61,800/-                    | 30,00,000/-              |

4. Appellants have filed Form-ADJ vide SRN F97693568 dt. 24/08/2024. 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 respondent had issued show cause notice under Section 454 to Appellants during the peak period of COVID-19 which is not justified.
- b. A reasonable opportunity of hearing was not given to appellants for committing alleged default.
- c. As per proviso of Section 454(3) of the Act, the Appellants has complied with Section 92(4) of the Act by filing form MGT-7 with Additional fees on 05/01/2023 before receiving adjudication order dt.26/06/2024.
- d. They were directed by the Hon'ble NCLT by their Interim Order dt.13/12/2017 stating that the pending the final hearing and disposal of the present petition, Respondents shall not convene any general meeting and Extra Ordinary General Meeting without special leave of this Tribunal and without sufficient notice to all the Members.
- e. Penalty imposed under Section 92 of the Act be set aside with no cost.

6. The matter was posted for hearing as per Section 454(5) read with Section 454(7) of the Act on 04/10/2024. Yogesh Choudhary, Practicing Company Secretary, 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 relied upon order of Hon'ble National Company Law Tribunal (NCLT), Mumbai Bench, at para 8(iii), page no.'5' wherein, it is stated that "Pending the final hearing and disposal of the present petition, Respondents shall not convene any General Meeting and Extra Ordinary General Meeting of the Respondent No.1 without a specific leave of this Tribunal and without sufficient notice to all the Members, particularly the Petitioners, and shall not act in contravention of the consent terms dt.29/04/2013."

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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.17/09/2024 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. No reply has been received from the company and its directors as on date except the show cause notice dt.12/03/2020.
- d. Hon'ble NCLT had given liberty that General Meeting and Extra-ordinary General Meeting cannot be convened without a specific leave of the Tribunal. Thus, the company could have obtained the leave.

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. The due date of filing Annual Return was 29/11/2019.
- c. Show cause notice issued on 12/03/2020.
- d. The period of default is calculated from 30/11/2019 till the date of dispatch of the show cause notice dt. 12/03/2020. The default period is thus calculated to be at a total of 103 days from 30/11/2019 to 11/03/2020.
- e. ROC, Mumbai has imposed penalty as per Section 92(5) of Companies Act, 2013.

The defence taken by the company is not tenable as no relaxation has been given by Hon'ble NCLT vide order dt.13/12/2017 in CP No.758/59 with regard to compliance of Section 92(4) of the Act, as the company and officers in default are liable to file Annual Return even though AGM could not be held and same needs to be filed within sixty days from the date of AGM in compliance of Section 92(4) of the Act. In view thereof, there is no inherent defect in the Adjudication Order dt. 26/06/2024 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 26/06/2024 passed by ROC, Mumbai is 'CONFIRMED' under Section 454(7) of the Act.

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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.26/06/2024 within 90 days, failing which, Registrar of Companies, Mumbai, is directed to file prosecution under Section 454(8) of the Companies Act, 2013.

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. Graham Firth Steel Products (India) Limited,  
A-6, M.I.D.C. Industrial Area Chikalthana NA,  
Aurangabad, Maharashtra 431210, India.
2. Teyjas Schae,  
#A002/003, Shobha Coral, Jakkur, Bangalore North,  
Bangalore,560064,Karnataka,India.
3. Rajnesh Inderchand Jain,  
143, Floor 14, A, Jolly Maker, Apartment 1, Cuffe Parade  
Mumbai,400005,Maharashtra,India.
4. Shilpin Janak Patel,  
Tarangan, 24 Presidency Society, N S Road No-7, Juhu Scheme,  
Mumbai,400049,Maharashtra,India.
5. Deepali Shilpin Patel,  
Tarangan, 24 Presidency Society, 7th Road N-S, Juhu Scheme,  
Mumbai,400049,Maharashtra,India.
6. Dhanesh Jayantilal Mehta,  
301-A-Wing, Varsha Building, N.S.Road No.5,  
JVPD Scheme, Vile Parle West  
Mumbai,400056,Maharashtra,India.
7. Registrar of Companies, Mumbai.
8. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
- ✓9. Master Copy.
10. Office Copy.

(TUSHAR WAGH, ICLS)  
DEPUTY DIRECTOR