



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/137/F97150734/2024-25/

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13 NOV 2024

APPEAL UNDER SECTION 454(5) OF COMPANIES ACT, 2013 AGAINST ORDER PASSED FOR OFFENCES COMMITTED UNDER SECTION 137 OF THE COMPANIES ACT, 2013.

In the matter of ENSA STEEL INDUSTRIES LTD & ORS.

- | | | |
|----|--------------------------------|-------------|
| 1. | Ensa Steel Industries Ltd | - Company |
| 2. | Rajbhusan 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/1835 dated 03/06/2024 (ROC Order) of Registrar of Companies, Mumbai for violating provisions of Section 137 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 137(3) of the Act from 31/10/2019 to 01/03/2020 for not filing Financial Statements for the Financial Year 2018-19 within thirty days from the date of Annual General Meeting in pursuance of Section 96 of the Act as under:

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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.)
123 days	Ensa Steel Industries Ltd	NA	123X1,000 = 1,23,000/-	1,23,000/-	10,00,000/-
	Rajbhushan Omprakash Dixit	1,00,000/-	123X100 = 12,300/-	1,12,300/-	5,00,000/-
	Jayshree C Sonawala	1,00,000/-	123X100 = 12,300/-	1,12,300/-	5,00,000/-
	Neeraj Sharma	1,00,000/-	123X100 = 12,300/-	1,12,300/-	5,00,000/-
	Rajnikant Jayantilal Sandesara	1,00,000/-	123X100 = 12,300/-	1,12,300/-	5,00,000/-
TOTAL				5,72,200/-	30,00,000/-

4. Appellants have filed Form-ADJ vide SRN F97150734 dt. 03/08/2024. As per provisions of sub-Section (6) of Section 454, every appeal under sub-section (5) shall be filed within thirty (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. A show cause notice was issued on 02/03/2020 i.e. on the day when the Financial Statements were filed and the default for non-compliance was cleared. However, the said show cause notice was never received by the Appellants herein neither was any communication addressed to them pertaining the same.
- b. 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.
- c. 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 137 of the Companies Act, 2013 to be from 31/10/2019 till 25/10/2020.
- d. The impugned Order dt.03/06/2024 passed by the ROC be dismissed and set aside.
- e. 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 137 of the Companies Act, 2013. However, he further submitted that they have filed the Financial Statements for the year 2018-19 on 02/03/2020 and

Sharma

argued that since the Adjudication Order has been passed on 03/06/2024, the Regional Director should give benefit of the Amendment in Section 454(3) with effect from 22/01/2021 as ROC has passed order under Section 137 read with Section 454 of the Act on 03/06/2024 with regard to Adjudication Notice dt.02/03/2020.

7. The punishment for contravention of section 137 is prescribed under section 137(3) of the Companies Act, 2013 which states that -

" If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified therein, the company shall be liable to a penalty of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be shall be liable to a penalty of one lakh 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

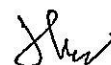
- a. There was no argument regarding non-compliance as there is crystal clear default on the part of the company and its directors.
- b. Default is made for F.Y. 2018-19 for which the due date of filing of Financial Statements under Section 137 of the Act was 29/11/2019 i.e. prior to the outbreak of 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 Financial Statements with the Registrar of Companies for the Financial Year 2018-19 within thirty days as per the provisions of Section 137 of the Companies Act, 2013.
- b. Due date of filing Financial Statements was 30/10/2019.
- c. Show cause notice issued on 02/03/2020.
- d. The period of default is calculated from 31/10/2019 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 123 days from 31/10/2019 to 01/03/2020.
- e. ROC, Mumbai has imposed penalty as per Section 137(3) of Companies Act, 2013.

Since, amendment in Section 454(3) of the Act with effect from 22/01/2021 is prospective in nature, there is no defect in ROC's 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.

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

Signed and sealed on 13th day of November 2024.



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(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