

Application No. RD/ER/454/42/2024/Appeal/ 6358-60

BEFORE THE REGIONAL DIRECTOR, EASTERN REGION
MINISTRY OF CORPORATE AFFAIRS, KOLKATA.

IN THE MATTER OF

THE COMPANIES ACT, 2013

-AND-

IN THE MATTER OF

CA Phalgune Banerjee (M. NO: 409606)

C/o Bandopadhyay & Dutt,

C-1, Premshila Apartment, Bank Colony, Master Para,
Hirapur, Dhanbad, Jharkhand-826001

of company namely **MARS MERCANTILES PVT LTD**

(CIN: U50102WB1993PTC097223)

-AND-

IN THE MATTER OF

Appeal under section 454 of The Companies Act, 2013
against the penalty order dated 15/02/2024 of
Registrar of Companies, West Bengal passed for
violation of the provisions of section 143 of the
Companies Act, 2013.

-AND-

CA Phalgune Banerjee (M. NO: 409606)

C/o Bandopadhyay & Dutt,

C-1, Premshila Apartment, Bank Colony, Master Para,
Hirapur, Dhanbad, Jharkhand-826001

In the matter of CA Phalgune Banerjee (M. NO: 409606)

प्रेषित किया गया/Dispatched by.....
हस्ताक्षर/Signature.....
दिनांक/Date..... 27 OCT 2024

Date of Hearing : 30/08/2024

Present : CA Phalgunee Banerjee, Appellant in Person

Appellant

ORDER

1. The present appeal under section 454 of the Companies Act, 2013 read with the provisions of the Companies (Adjudication of Penalties) Rules, 2014 was filed vide Form ADJ bearing SRN no. F94527983 dated 15/04/2024 by the aforesaid appellants against the penalty order dated 15/02/2024 under section 143 of the Adjudicating Authority i.e. Registrar of Companies, West Bengal communicated to the appellants vide letter no. ROC/ADJ/105/097223/2023/11823 dated 15/02/2024
2. As per the aforesaid adjudication order, the office of the Registrar of Companies, West Bengal had issued Adjudication notice vide no. ROC/ADJ/2023/097223/1105 dated 01/05/2023 for violation of section 143 of the Act to the Auditor. That in this regard, a reply dated 24.01.2024 was received by the ROC, West Bengal from the Auditor for aforesaid Adjudication notice which was not found satisfactory by the Adjudicating Authority.

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3. Considering the above facts and circumstances of the case, the Adjudicating Authority had imposed Penalty for violation of section 143 of the Act as under:-

Name of the Auditor	Nature of violations instances	Default (in Rs.)	Total maximum Penalty (in Rs.)
CA. PHALGUNEE BANERJEE (MEMB. NO.: 409606)	I. Violation under section 143 read with section 129 read with Schedule III.	10,000*4 years	40,000
	II. Violation under section 143 read with section 129 read with Schedule III.	10,000*5 years	50,000
	III. Violation under section 143 read with section 129 read with Schedule III.	10,000*1 year	10,000
	IV. Violation under section 143 read with section 129 read with Schedule III	10,000*5 years	50,000

4. Having considered the facts and circumstances of the case and after taking into account the facts stated above, ROC, West Bengal imposed a penalty of Rs. 1,50,000/- (Rupee One Lakhs fifty thousand Only) on the Auditor under Section 143 of the Act, for failure to make compliance of the provision of section 143 of the Companies Act 2013.
5. The appeal was heard on 30/08/2024. The Authorised Representative was asked to make submission regarding infirmity if any in the order of

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Registrar of Companies. The Authorised Representative had referred the order of this Appellate authority in the Company Mars Mercantiles Pvt Ltd for violation of Section 158 of Companies Act, 2013 wherein the penalty has been upheld, subject to Section 446B of the Companies act, 2013 and on basis of the same , the Authorised Representative submitted that it is settled that the Company Mars Mercantiles Pvt Ltd satisfies the condition of small Company as per provision of Section 2(85) of the Companies, Act, 2013 and thus the Auditor is liable for penalty as per section 446B of the Companies Act, 2013 for violation of Section 143 of the companies Act, 2013. The copy of the order passed by the Appellate Authority dated 09th July, 2024 in the Company Mars Mercantiles Pvt Ltd for violation of Section 158 of Companies Act, 2013 was submitted at the time of submissions during hearing.

6. Based on the submissions made by the Authorised Representative, the Appellate Authority is of the view that the Company falls under the definition of a Small Company u/s 2(85) of the Companies Act, 2013 and thus the Auditor of the said Company liable for penalty u/s 446B of the Companies Act, 2013 for violation of section 143 of the Companies Act, 2013 Hence, the order of ROC is modified as cogent ground was made out by Authorised Representative. The undersigned by virtue of the power vested in Regional Director under section 454(7) of the Companies Act, 2013 read with the Companies (Adjudication of

Penalties) rules, 2014 modifies the order of the Registrar of Companies, West Bengal dated 11/01/2024 as under:

Name of the Auditor	Nature of violations instances	Default (in Rs.)	Total maximum Penalty (in Rs.)	Penalty imposed by the Appellate Authority u/s 446B of the Companies Act, 2013
CA. PHALGUNEES BANERJEE (MEMB. NO.: 409606)	Violation under section 143 read with section 129 read with Schedule III	10,000*4 years	40,000	20000
	Violation under section 143 read with section 129 read with Schedule III	10,000*5 years	50,000	25000
	Violation under section 143 read with section 129 read with Schedule III	10,000*1year	10,000	5000
	Violation under section 143 read with section 129 read with Schedule III	10,000*5 years	50,000	25000


Considering the facts and circumstances of the case and after taking into account the factors above, the appellate authority impose a penalty of Rs. 75,000/- (Rupee Seventy-five thousand Only) on the Auditor for failure to make compliance u/s. 143 of the Act.

7. The Auditor of the company shall pay the amount of penalty from out of his own pocket. The amount of penalty shall be paid within a period of 90 days from the date of receipt of the copy of the order. Further, if the

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company and its directors fail to deposit the penalty amount within the prescribed time limit action under section 454(8)(i) and (ii) of the Companies Act, 2013 shall be initiated against the Company and its Directors.

8. Hence the instant Appeal stands disposed of accordingly.



(P.Sridhar)

REGIONAL DIRECTOR (ER)

Signed this the 22nd, October, 2024.

Copy to:-

OK
22/10/24

- 1) ✓ CA Phalgune Banerjee (M. NO: 409606)
C/o Bandopadhyay & Dutt,
C-1, Premshila Apartment, Bank Colony, Master Para,
Hirapur, Dhanbad, Jharkhand-826001
- 2) ✓ The Registrar of Companies,
West Bengal,..... for information in respect of his letter no.
ROC/ADJ/105/097223/2023/4206 dated 23/08/2024
- 3) ✓ The Officer in Charge, E-Gov. Cell, Ministry of Corporate Affairs, 5th Floor, A
wing Shastri Bhavan, New Delhi-110001- with a request to upload this Order on
the website of the Ministry.

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