



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)/The Kutch/137/F92303312/2023-24/ 6233

5 AUG 2024

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

In the matter of THE KUTCH SALT AND ALLIED INDUSTRIES LIMITED & ORS.

- | | | |
|----|--|-------------|
| 1. | The Kutch Salt and Allied Industries Limited | - Company |
| 2. | Tribhuvan Singhvi | - Director. |
| 3. | Ashokkumar Amarchand Singhvi | - Director. |
| 4. | Jitendra Sukhraj Singhvi | - Director. |
| 5. | Mukesh Babulal Singhvi | - Director. |
| 6. | Sandeep Tribhuvan Singhvi | - Director. |
| 7. | Lekhraj Parasmalji Kanungo | - Director. |
| 8. | Babulal Amarchand Singhvi | - Director. |

...Appellants

HON'BLE REGIONAL DIRECTOR (WESTERN REGION)

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 'The Kutch Salt and Allied Industries Limited' (Company) having CIN U24238MH1950PLC008313 and, its Officers/Directors, against Order No. ROC(M)/TKSAIL/ADJ-ORDER/5771 dated 11/12/2023 (ROC Order) of Registrar of Companies, Mumbai for violating provisions of Section 137 of the Act.

- The appeal lies within the jurisdiction of the Regional Director, Western Region, Ministry of Corporate Affairs, Government of India.
- The Registrar of Companies, Mumbai (RoC Mumbai) vide Adjudication Order dated 11/12/2023 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 27/10/2020 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:

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.)
363 days	The Kutch Salt and Allied Industries Limited	N.A.	363X1000 = 3,63,000/-	3,63,000/-	10,00,000/-
	Tribhuvan Singhvi	1,00,000/-	363X100 = 36,300/-	1,36,300/-	5,00,000/-
	Ashokkumar Amarchand Singhvi	1,00,000/-	363X100 = 36,300/-	1,36,300/-	5,00,000/-
	Jitendra Sukhraj Singhvi	1,00,000/-	363X100 = 36,300/-	1,36,300/-	5,00,000/-
	Mukesh Babulal Singhvi	1,00,000/-	363X100 = 36,300/-	1,36,300/-	5,00,000/-
	Sandeep Tribhuvan Singhvi	1,00,000/-	363X100 = 36,300/-	1,36,300/-	5,00,000/-
	Lekhraj Parasmalji Kanungo	1,00,000/-	363X100 = 36,300/-	1,36,300/-	5,00,000/-
	Babulal Amarchand Singhvi	1,00,000/-	363X100 = 36,300/-	1,36,300/-	5,00,000/-
	TOTAL				13,17,100/-

4. Appellants have filed Form-ADJ vide SRN F92303312 dt. 16/02/2024. 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:

- The company was listed with Bombay Stock Exchange. However, vide notice dt.24/01/2018 it was informed by BSE that the Applicant Company would be delisted from the platform of the exchange w.e.f. 31/01/2018. Based on such notice the Applicant Company requested the ROC to carry out necessary modification in the Master Data to change the status from listed to unlisted.
- Their consultant also advised them not to proceed with uploading of returns in the MCA portal unless the data required medication as requested is carried out in the master data as it will lead to furnishing of information under wrong/incorrect status. Due to this fact, they could not upload the Financial Statements in the MCA portal within the prescribed time.
- Mr. Mukesh Babulal Singhvi, Director of the company had been appointed as officer in default in F.Y. 2004-05 as per Section 2(30) of the Companies Act, 1956.
- The impugned adjudication order of the respondent, so far as they relate to officers other than the Officer in Default be set aside.
- The impugned adjudication orders of the respondent, so far as they related to the appellant company and Mr. Mukesh B. Singhvi, director and the officer in default be set aside.
- Pass such other/further order(s) as may deem fit and proper.

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6. The matter was posted for hearing as per Section 454(5) read with Section 454(7) of the Act on 13/06/2024. Parshwa Shah, 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 137 of the Companies Act, 2013. However, he has requested for reduction of penalty as per existing provision under Section 137 of the Act by making beneficial interpretation on imposition of penalty under present provision for past event i.e. from 31/10/2019 to 27/10/2020. He has also given the reasons/inability in delay filings of Financial Statements under Section 137 of the Act for Financial Year 2018-19 and further submitted a couple of judgements (National Company Law Tribunal, Chandigarh's Order dt.17/08/2023 & Hon'ble Supreme Court of India's Order dt.07/12/1982) in support of his arguments.

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.03/06/2024 has stated that

- a. Company stated that they are in receipt of SCN dt.28/10/2020. However, instead of replying to the said SCN, company has stated that they have sent letter dt.13/07/2020 and reminder dt.19/11/2020 for changing status of the company which is not a valid reason.
- b. Penalty has been imposed on the officers during the violation period.
- c. The company has failed to submit a Board Resolution and copy of e-form GNL03.

In view of above, Appeal filed by the company is not maintainable and should be dismissed.

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 28/10/2020.



- d. Financial Statements were not filed till the date of dispatch of the show cause notice dt. 28/10/2020. Default period is thus calculated to be at a total of 363 days from 31/10/2019 to 27/10/2020.
- e. ROC, Mumbai has imposed penalty as per Section 137(3) of Companies Act, 2013.

In view thereof, there is no inherent defect in the Adjudication Order dt. 11/12/2023 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 Appellant in his 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 11/12/2023 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.11/12/2023 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 31st day of July 2024.

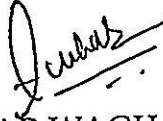


(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI

To,

1. The Kutch Salt and Allied Industries Limited,
01, Ground Floor, Plot No.04, Building Name: Podar,
Dadi Seth Agiarylane, Kalbadevi Road, Malharraowadi,
Mumbai, Mumbai City, Maharashtra, 400002, India.
2. TRIBHUVAN SINGHVI
Plot No. 101, Sector-2, Gandhidham, Kachchh,
Gandhidham, 370201, Gujarat, India
3. ASHOKKUMAR AMARCHAND SINGHVI
103, Sector Gandhidham, Kachchh,
Gandhidham, 370201, Gujarat, India.

4. JITENDRA SUKHRAJ SINGHVI
100, Sector-2 Gandhidham, Kachchh,
Gandhidham,370201,Gujarat,India.
5. MUKESH BABULAL SINGHVI,
Plot No. 99 Sector-2,Gandhidham Kachchh,
Gandhidham,370201,Gujarat,India.
6. SANDEEP TRIBHUVAN SINGHVI,
Plot No.101 Sector -2,Gandhidham, Kachchh,
Gandhidham,370201,Gujarat,India.
7. LEKHRAJ PARASMALJI KANUNGO
3503 Shreepati Arcade 35th Flr,A K Marg,
Nana Chowk Grant Road,
Mumbai,400036,Maharashtra,India.
8. BABULAL AMARCHAND SINGHVI
Plot No.9, Sector-2, Gandhidham, Kachchh,
Gandhidham,370201,Gujarat,India.
9. Registrar of Companies, Mumbai.
10. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
11. Master Copy.
12. Office Copy.


(TUSHAR WAGH, ICLS)
DEPUTY DIRECTOR