



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)/Optimates Textile/92/F92209113/2023-24/

5328

28 JUN 2024

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

In the matter of OPTIMATES TEXTILE INDUSTRIES LIMITED.

1. Ganesh Sahebrao Saindane - Director

...Appellant

Through: A. G. Shaikh, Practicing Company Secretary and Authorized Representative for Appellant.

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 'Ganesh Sahebrao Saindane', Additional Director of Optimates Textile Industries Limited (Company) having CIN L18101MH2002PLC134594, against Order No. ROC(M)/Sec.92/ADJ-ORDER/Sr.No.104/5799 dated 11/12/2023 (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 11/12/2023 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 20/10/2020 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:

[Signature]

No. of days default	Penalty imposed on Company / KMP	First default (In Rs.)	Default continues	Total penalty levied (In Rs.)	Maximum penalty (In Rs.)
326 days	Optimates Textile Industries Limited	50,000/-	326X100 = 32,600/-	82,600/-	5,00,000/-
	Mohit Bery (Director)	50,000/-	326X100 = 32,600/-	82,600/-	5,00,000/-
	Ganesh Sahebrao Saindane (Additional Director)	50,000/-	326X100 = 32,600/-	82,600/-	5,00,000/-
	Manendra Pratap Singh (Director)	50,000/-	326X100 = 32,600/-	82,600/-	5,00,000/-
TOTAL				3,30,400/-	20,00,000/-

4. Appellant have filed Form-ADJ vide SRN F92209113 dt.14-Feb-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:

- Notices were sent to the company and one Mr.Mohit Bery, Director of the company. It is nowhere mentioned in the order that notice was sent to the appellant.
- The Learned ROC has not given an opportunity of being heard or submit explanation.
- The Appellant was appointed as Additional Director of the company under the provisions of Section 161 of the Act and was never regularized or appointed as a director of the company.
- The Adjudication Order passed by ROC, Mumbai under Section 454 be quashed and set aside qua this appellant.
- Such other reliefs as in the premises of the case look just and fair to meet the ends of justice.

6. The matter was posted for hearing as per Section 454(5) r/w Section 454(7) of the Act on 20/06/2024. A. G. Shaikh, Practicing Company Secretary appeared on behalf of Appellant as his authorized representative. The authorized representative reiterated the submission made by the applicant in his application and have admitted the contravention of Section 92 of the Companies Act, 2013. Further, the PCS has taken defence that office of Mr.Ganesh S. Saindane, as Additional Director ceased on 30/09/2014 (due date of AGM) as per Section 161 of the Companies Act, 2013. Therefore, penalty should not be levied upon him. However, ROC vide reply letter dt.18/06/2024 denied the defence of the Appellant and stated that no such defence/reply in this regard has been filed with the RoC nor the company have filed DIR-12 informing the vacation of Ganesh S. Saindane.

[Signature]

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. 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. Annual Return were not filed till the date of dispatch of the show cause notice dt.21/10/2020. Default period is thus calculated to be at a total of 326 days from 30/11/2019 to 20/10/2020.
- d. The offence has not been made good till date.
- e. In a listed public company, minimum 03 directors are required to be on the Board as per Law. The subject company is a listed company and minimum 03 directors are on the Board as per MCA-21 record.
- f. Further keeping in view, the status of the company as listed company and non-compliance in filing DIR-12 by the company for cessation of Additional Director as claimed and also the appellant Mr. Ganesh Sahebrao Saindane has failed to file DIR-11 with effect from 07/05/2018 (his own resignation with ROC) if company has failed to file form DIR-12, the benefit of Section 161 of the Act can't be granted being listed public company requiring minimum 03 directors on the Board under Section 149(1)(9) of the Act.
- g. There is no inherent defect in the Adjudication Order dt. 11/12/2023.
- h. ROC, Mumbai has imposed penalty as per Section 92(5) of Companies Act, 2013.

In view thereof, the order of ROC Mumbai dt. 11/12/2023 is in accordance with the provisions of the Act.

9. RoC, Mumbai vide further letter dt.18/06/2024 has stated that –

- a. Notices were sent to the company and all officer in default and penalty has been levied upon all officers in default during the period of violation.
- b. Pursuant to Section 167 read with Section 170(2) read with Rule 18 of Companies (Appointment & Qualification of Directors) Rules, 2014, the company ought to have filed DIR-12 informing the vacation of Ganesh S. Saindane.
- c. Therefore, the ground made by applicant in his submission is not tenable.



11. In view of the above, the present appeal is dismissed 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

Signed and sealed on 28th day of June 2024.



J. W.

1. GANESH SAHEBRAO SAINDANE,
14/3113 Ground Floor, Rel Rahat Colony Mandarwaja,
Surat City 395002, Gujarat, India.
2. Registrar of Companies, Mumbai, with a direction to file prosecution against
the Company and Shri Mohit Bery, if they have failed to make payment of
adjudication fees levied upon them within a period of ninety days vide
Adjudication Order dt.11/12/2023.
3. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
4. Master Copy.
5. Office Copy.

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