



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/137/T/92263599/2023-24/

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28 JUN 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 OPTIMATES TEXTILE INDUSTRIES LIMITED.

1. Manendra Pratap Singh - 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 'Manendra Pratap Singh', Director of Optimates Textile Industries Limited (Company) having CIN L18101MH2002PLC134594, against Order No. ROC(M)/Sec.137/ADJ-ORDER/Sr.No.104/5803 dated 11/12/2023 (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 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 20/10/2020 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	Total penalty levied (In Rs.)	Maximum penalty (In Rs.)
356 days	Optimates Textile Industries Limited	N.A.	356X1,000 = 3,56,000/-	3,56,000/-	10,00,000/-
	Mohit Bery (Director)	1,00,000/-	356X100 = 35,600/-	1,35,600/-	5,00,000/-
	Ganesh Sahebrao Saindane (Additional Director)	1,00,000/-	356X100 = 35,600/-	1,35,600/-	5,00,000/-
	Manendra Pratap Singh (Director)	1,00,000/-	356X100 = 35,600/-	1,35,600/-	5,00,000/-
TOTAL				7,62,800/-	25,00,000/-

4. Appellant have filed Form-ADJ vide SRN F92263599 dt.15-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 Learned ROC failed to comply with the provisions of Rule 7 of the Companies (Adjudication Penalties) Rules, 2014 (as amended in 2019) since the notice referred to in the order dates back to 21/10/2020 and the order is said to be passed on 11/12/2023 and nowhere justified explanation for the delay in brought on record in the said order.
- The Learned ROC failed to appreciate the provisions of Rule 12 of the Companies (Adjudication Penalties) Rules, 2014 (as amended in 2019).
- The appellant is now living only with the support of medical systems and is suffering from serious ailments related to kidney and heart.
- The Adjudication Order passed by ROC, Mumbai under Section 454 be quashed and set aside qua this appellant.
- The Hon'ble Regional Director is urged to reduce the penalties to taken penalties not exceeding Rs.10,000 in all.
- 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 137 of the Companies Act, 2013. Further, the PCS has taken defence of the

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provisions of Rule 7 of the Companies (Adjudication Penalties) Rules, 2014 (as amended in 2019) since the notice referred to in the order dates back to 21/10/2020 and the order is said to be passed on 11/12/2023.

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 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. 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. Financial Statements 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 356 days from 31/10/2019 to 20/10/2020.
- d. The offence has not been made good till date.
- e. There is no inherent defect in the Adjudication Order dt. 11/12/2023.
- f. ROC, Mumbai has imposed penalty as per Section 137(3) 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. Therefore, the ground made by applicant in his submission is not tenable.

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 dt.18/06/2024; 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.



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

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



Signed and sealed on 28th day of June 2024.

(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI

- To,
1. MANENDRA PRATAP SINGH,
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.

(TUSHAR WAGH, ICLS)
DEPUTY DIRECTOR