



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)/Victor Impex/92/F92476548/2023-24/

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16 JUN 2024
2 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 VICTOR IMPEX LIMITED & ORS.

- | | |
|---------------------------|----------------------------|
| 1. Victor Impex Limited | - Company |
| 2. Naresh Shivilal Rupani | - Managing Director & CFO. |
| 3. Girisan Menon | - Director |

...Appellants

Through: Rahul Agrawal, Practicing Company Secretary and Authorized Representative for 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 Victor Impex Limited (Company) having CIN L51900MH1984PLC068948 and, its Directors, against Order No. ROC(M)/VIL/ADJ-ORDER/6296 dated 26/12/2023 (ROC Order) of Registrar of Companies, Mumbai for violating provisions of Section 92 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 26/12/2023 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 27/10/2020 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:

He

No. of days default	Penalty imposed on Company / KMP	First default (In Rs.)	Default continues	Total penalty levied (In Rs.)	Maximum penalty (In Rs.)
333 days	Victor Impex Limited	50,000/-	333X100 = 33,300/-	83,300/-	5,00,000/-
	Naresh Shivilal Rupani	50,000/-	333X100 = 33,300/-	83,300/-	5,00,000/-
	Chandrakant Shamalji Malani	50,000/-	333X100 = 33,300/-	83,300/-	5,00,000/-
	Girisan Menon	50,000/-	333X100 = 33,300/-	83,300/-	5,00,000/-
TOTAL				3,33,200/-	25,00,000/-

4. Appellants have filed Form-ADJ vide SRN F92476548 dt. 21/02/2024. 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 delay in filing the Annual Return for the Financial Year 2018-19 was completely inadvertent and unintentional. There was no fraudulent or malafide intention on the part of the company and the Promoters and Directors of the company.
- That pursuant to the proviso of Section 454(1) of the Companies Act, 2013, if a company's default relates to non-compliance of sub-section (4) of Section 92 and such default has been rectified either prior to, or within 30 days of the issue of notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded.
- The company and any of its directors did not receive the show cause notice issued by the ROC on 28/10/2020. Therefore, the company was unable to respond to the show cause notice. However, the company filed its Financial Statements on 13/02/2021.
- The contraventions of the said provisions may kindly be dropped out by waving off the penalty imposed by ROC, Mumbai and by taking a lenient view in the matter.
- The default was already made good on 30/12/2020 by filing Annual Return on voluntary basis.
- To waive off the penalty imposed and by taking lenient view in the matter.
- To quash the Adjudication Order.

6. The matter was posted for hearing as per Section 454(5) r/w Section 454(7) of the Act on 11/06/2024. Rahul Agrawal, 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 92 of the Companies Act, 2013. The Authorized

[Signature]

Representative further stated that they have appealed on the ground that Annual Return has been filed by the company under the Companies Fresh Start Scheme (CFSS), 2020 and immunity certificate was issued by Ministry of Corporate Affairs to the company and its directors.

7. RoC, Mumbai vide further letter dt.03/06/2024 has stated that the Circular issued by the Ministry in view of COVID outbreak since March 2020 does not pertain to period of default and further concluded that the appeal filed by the company is not maintainable.

8. The appellants vide letter dt.12/06/2024 has submitted an Immunity Certificate issued by Ministry of Corporate Affairs under CFSS-2020 along with other necessary filings related to CFSS-2020.

9. 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.28/10/2020. Default period is thus calculated to be at a total of 333 days from 30/11/2019 to 27/10/2020.
- d. Annual Return were filed on 30/12/2020 under CFSS-2020 and Ministry has granted immunity vide clause (vii) & (ix) of Para '6' of CFSS-2020 General Circular No.12/2020 dt.30/03/2020 which was binding upon RoC, Mumbai. Also, immunity application was filed within time and immunity certificate was issued by Ministry of Corporate Affairs to the company and its directors.


10. Taking into consideration the Adjudication Order of the Registrar of Companies, Mumbai, submissions made by the Appellants in their application, oral submissions of the authorized representative during the hearing, further letter of RoC, Mumbai dt.03/06/2024 & submission made by the appellants vide letter 12/06/2024, this forum is of the view that Registrar of Companies, Mumbai's Adjudication Order dt. 26/12/2023 is 'Set Aside' under Section 454(7) of the Companies Act, 2013 as he has failed to give benefit of immunity granted by MCA to the company and its directors vide Circular No.12/2020 under CFSS-2020.

11. In view of above, the said appeal / application is hereby dismissed and disposed of.

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

Signed and sealed on 26th day of June 2024.





(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI

To,

1. Victor Impex Limited,
3-5 Nanabhoy Mansion, 1st Floor, 61, Sir P.M.Road, Fort,
Mumbai, Mumbai City, Maharashtra 400001, India.
2. Naresh Shivilal Rupani,
B-142/143, Chinar, 14th floor R.A. Kidwai Road,
Near Uganda Petrol Pump,
Mumbai,400031,Maharashtra,India.
3. Girisan Menon,
Flat 302 Nalanda CHS Ltd. Panvel,410206,Maharashtra,India.
4. Registrar of Companies, Mumbai.
5. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
6. Master Copy.
7. Office Copy.

"Certified True Copy"


(TUSHAR WAGH, ICLS)
DEPUTY DIRECTOR