



शिव डाक सेवा
SPEED POST

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)/Saptasatij Industries/134/ F90881566 /2023-24/

5015

21 JUN 2024

APPEAL UNDER 454(5) OF COMPANIES ACT, 2013 AGAINST ORDER PASSED FOR OFFENCES COMMITTED UNDER SECTION 134 OF THE COMPANIES ACT, 2013.

In the matter of SAPTASATIJ INDUSTRIES PRIVATE LIMITED & ORS

- | | | |
|----|---------------------------------------|------------|
| 1. | Saptasatij Industries Private Limited | - Company |
| 2. | Krupali Liladhar Warade | - Director |
| 3. | Saurabh Arun Warade | - Director |

...Appellants

Through: Lucky Bansal, Practicing Company Secretary and Authorized Representative of the 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) has been filed by Saptasatij Industries Private Limited (Company) having CIN U29299PN2002PTC016861 and, its Directors, against Order No. RoCP/ADJ/order/134/SIPL/2089 dated 22/11/2023 (ROC Order) of Registrar of Companies, Pune for violating provisions of Section 134 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, Pune (RoC Pune) vide Adjudication Order dated 22/11/2023 held the Company, its Directors, who have defaulted, liable for penalty under Section 134(8) of the Act for failing to make necessary disclosures in the Board Report and not taking due care for the maintenance of the auditing records at the premises of the company for preventing irregularities as under:

Heu

Penalty imposed on Company / Director (s)	Total / maximum penalty (In Rs.)
Saptasatij Industries Private Limited.	3,00,000
Krupali Liladhar Warade	50,000
Saurabh Arun Warade	50,000
TOTAL	4,00,000

4. Appellants have filed Form-ADJ vide SRN F90881566 dt. 23/01/2024. 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 has willfully accepted its non-compliance and has already rectified its error.
- None of the creditors or shareholders of the company shall be prejudiced.
- The order under appeal be set aside and since the contravention has been made good, a minimum amount of composition fee may kindly be levied.

6. The matter was posted for hearing as per Section 454(5) r/w Section 454(7) of the Act on 04/06/2024. Lucky Bansal, 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 134 of the Companies Act, 2013. The Authorized Representative further stated that the company is a small company within the meaning of Section 2(85) read with Section 446B of the Companies Act, 2013 and have submitted requisite documents in support of her claim which has been taken on record.

7. Facts of the Case:

- An inquiry of the company under Section 206 of the Companies Act, 2013 was conducted by an Inspecting Officer and it was observed that the Directors have failed to make necessary disclosures in the Board Report as per Section 134 of the Act. Also, it is concluded that the company and its directors have not due care for the maintenance of the auditing records at the premises of the company for preventing irregularities and hence, the company and every officers of the company has violated Section 134 of the Act and are liable for action under Section 134(8) of the Act.
- The PCS has raised the issue of small companies by saying that the company is a small company within the meaning of Section 2(85) read with Section 446B of the Companies Act, 2013.

[Signature]

Small company defined under Section 2(85) of the Companies Act, 2013		
Paid up capital	Turnover	Applicable
Rs.50 Lakhs	Upto Rs.2 Crores	Upto 31/03/2021
Rs.2 Crores	Upto Rs.20 Crores	w.e.f. 01/04/2021 to 14/09/2022
Rs.4 Crores	Upto Rs.40 Crores	w.e.f. 15/09/2022

Financial position of the company for determining the small company status is as under:

Particulars	2018-19	2019-20	2020-21	2021-22	2022-23
Turnover	12,41,75,140	13,24,27,476	10,03,25,200	13,51,42,000	14,15,97,000
Paid-up Capital	1,39,48,000	1,39,48,000	1,39,48,000	1,39,48,000	1,39,48,000

From the above, it is clear that the company is a small company within the meaning of Section 2(85) read with Section 446B of the Companies Act, 2013. Hence, the company falls within the definition of small company.

- c. Since, Section 446B of the Companies Act, 2013 is overriding provisions over Section 454 read with Section 134(8) of the Companies Act, 2013 as the word is used "Notwithstanding anything contained in this Act, if penalty is payable for non-compliance of any of the provisions of this Act..." and therefore application of Section 446B shall be considered at the date of passing order (in present case 22/11/2023) considering the paid up share capital, turnover of the company as on 22/11/2023 determining the status of the appellant company as small company within the meaning of Section 2(85) of the Companies Act, 2013 for imposing adjudication fees under Section 454 read with Section 134(8) subject to maximum as prescribed under Section 446B if subject company is a small company.

8. That the punishment for contravention of section 134 is prescribed under section 134(8) of the Companies Act, 2013 which states that "If a company is in default by complying with the provisions of this section, the company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees".

Further, Section 446B of the Companies Act, 2013 provides lesser penalties for certain companies which states that "Notwithstanding anything contained in this Act, if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be."



9. RoC, Pune had also joined the proceedings virtually. He had no objection for modification of penalty imposed by him to be reduced by 50% by giving the benefit of Section 446B read with Section 134(8) of the Act.

10. Taking into consideration the Adjudication Order of the Registrar of Companies, Mumbai, submissions made by the Appellants in their application, further letter of RoC, Mumbai dt.17/05/2024 and, oral submissions of the authorized representative during the hearing, this forum is of the view that: -

- a) The company falls under the definition of small company within the meaning of Section 2(85) read with Section 446B of the Companies Act, 2013 and therefore, the penalty amount imposed by RoC, Pune vide Adjudication Order dt. 22/11/2023 is 'modified' under provisions of Section 454(7) of the Act and reduced by 50% by giving the effect of Section 446B read with Section 134(8) of the Companies Act, 2013:-

Penalty imposed on Company / Director (s)	Penalty imposed by Adjudicating Officer (In Rs.)	Penalty 'Modified' by Regional Director (In Rs.)
Saptasatij Industries Private Limited.	3,00,000	1,50,000
Krupali Liladhar Warade	50,000	25,000
Saurabh Arun Warade	50,000	25,000
TOTAL	4,00,000	2,00,000

11. In view of above, the said appeal /application is hereby disposed off and the appellants are hereby, directed to pay the Adjudication Fees which have been 'Modified' by the Regional Director at Para '10(a)' (as per the above table) within 90 days from the date of receipt of this order, failing which, Registrar of Companies, Mumbai, is directed to proceed further under Section 454(8) of the Companies Act, 2013 by filing prosecution against the company and every officers in default for violation of Section 134 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 20th day of June 2024.




(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, PUNE

To,

1. Saptasatij Industries Private Limited,
Gat No 52, Dehu Alandi Road, Chikhali,
Pune, Maharashtra, 411019, India.
2. Krupali Liladhar Warade,
C 20, Parsvnath Pratishtha, Shivtej Nagar,
Bachpan Nursery Chinchwad,
Pune, 411019, Maharashtra, India.
3. Saurabh Arun Warade,
Baner Pashan Link Road, B-303,
SR. No. 137/1/1, Mont Vert Biarritz, Pashan,
Pune, 411021, Maharashtra, India.
4. Registrar of Companies, Pune.
5. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
6. Master Copy.
7. Office Copy.



(TUSHAR WAGH, ICLS)
DEPUTY DIRECTOR