



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/137/F92475649/2023-24/

/4899

19 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 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 I51900MI11984PLC068948 and, its Directors, against Order No. ROC(M)/VII./ADJ-ORDER/6291 dated 26/12/2023 (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 26/12/2023 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:

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No. of days default	Penalty imposed on Company / KMP	First default (In Rs.)	Default continues	Total penalty levied (In Rs.)	Maximum penalty (In Rs.)
363 days	Victor Impex Limited	N.A.	363X1,000 = 3,63,000/-	3,63,000/-	10,00,000/-
	Naresh Shivilal Rupani	1,00,000/-	363X100 = 36,300/-	1,36,300/-	5,00,000/-
	Chandrakant Shamalji Malani	1,00,000/-	363X100 = 36,300/-	1,36,300/-	5,00,000/-
	Girisan Menon	1,00,000/-	363X100 = 36,300/-	1,36,300/-	5,00,000/-
TOTAL				7,71,900/-	25,00,000/-

4. Appellants have filed Form-ADJ vide SRN F92475649 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:

- a) The delay in filing the Financial Statements 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.
- b) 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 or sub-section (1) of section 137 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.
- c) 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.
- d) 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.

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 137 of the Companies Act, 2013. The Authorized Representative further stated that he did not find any defect in ROC Adjudication Order dt. 26/12/2023 but have applied on the ground that the delay was committed due to circumstances beyond the control of the Management/company.

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7. 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.28/10/2020. Default period is thus calculated to be at a total of 363 days from 31/10/2019 to 27/10/2020.
- d. Financial Statements were filed on 13/02/2021.

8. 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."*

9. RoC, Mumbai vide further letter dt.03/06/2024 has concluded that the grounds of appeal relied by the appellants in their submissions are not maintainable.

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.03/06/2024 and, oral submissions of the authorized representative during the hearing, it is observed that:

- a) There is no inherent defect in the Adjudication Order dt. 26/12/2023.
- b) ROC, Mumbai has imposed penalty as per Section 137(3) of Companies Act, 2013.

11. In view of above, Registrar of Companies, Mumbai's Adjudication Order dt. 26/12/2023 is confirmed with directions to the appellants to pay the penalty imposed by the RoC within 90 days, failing which, Registrar of Companies, Mumbai, is directed to file prosecution under Section 454(8) of the Companies Act, 2013 against the company and every officer/director in default.

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

Signed and sealed on 18<sup>th</sup> day of June 2024.



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(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.

  
(TUSHAR WAGH, ICLS)  
DEPUTY DIRECTOR