



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)/ SM Dyechem /137/ F92502400 /2023-24/

10 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 SM DYECHM LTD. & ORS

1. SM DYECHM LTD. - Company
2. HERSH SANJIV SHAH - Ex-CFO

...Appellants

Through: Sanam Umbargikar, Practicing Company Secretary.

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 SM Dyechem Ltd. (Company) having CIN U24110MH1982PLC027307 and, it's erstwhile Chief Financial Officer against Order No. ROC(M)/SDL/ADJ-ORDER/6311 of Registrar of Companies, Mumbai dated 26/12/2023 (ROC Order) for violating provisions of Section 137 of Companies Act, 2013.

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 it's then CFO, who have defaulted, liable for penalty under Section 137(3) of the Act from 31/10/2019 to 28/11/2019 for non-filing Financial Statement within the time prescribed by the provisions of Section 137 of the Act as under:

No. of days default	Penalty imposed on Company / Director (s)	First default (In Rs.)	Default continues (In Rs.)	Total penalty levied (In Rs.)	Maximum penalty (In Rs.)
29	SM Dyechem Ltd.	N.A.	29 X 1000 =29,000/-	29,000/-	10,00,000
	Hersh Sanjiv Shah	1,00,000	29 X 100 =2,900/-	1,00,000 + 2,900 = 1,02,900	5,00,000
			TOTAL	1,31,900	15,00,000

[Signature]

4. Appellants have filed Form-ADJ vide SRN F92502400 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) Respondent (RoC, Mumbai) has conducted the "Adjudication process and levied penalty under Section 137 without considering the Ministry's General Circular No.13/2019 dt.29/10/2019.
- b) The Respondent has mentioned that the show cause notice dt.20/10/2020 under Section 454 of the Act has been served on the Applicant Company and its officers in default and no reply has been received by its office from the Company and its officers in default.
- c) In this regard, the Applicant Company has replied to the show cause notice vide its email dt.09/12/2020 sent to roc.mumbai@mca.gov.in....
- d) Neither the Applicant Company nor the officers in default were given an opportunity of being heard and the order of adjudicating penalty has been passed ex-parte....
- e) Order of Adjudication of Penalty be set aside, and the penalty levied be set aside;
- f) Any other order as may be deemed fit and proper by this Bench."

6. Facts of the Case:

- a) Due date of filing Financial Statements under Section 137 with the RoC, Mumbai: 30/10/2019.
- b) As per General Circular No.13/2019 dt.29/10/2019 extension of time for filing AOC-4 for Financial Year 2018-19 was upto 30/11/2019.
- c) Date on which Financial Statements under Section 137 were filed with the RoC, Mumbai: 29/11/2019.

7. The matter was posted for hearing as per Section 454(5) r/w Section 454(7) of the Act on 28/05/2024. Sanam Umbargikar, Practicing Company Secretary appeared on behalf of Appellants as their authorized representative in the presence of Ms. Rujuta Bankar, Assistant Registrar of Companies, Mumbai. The appellants submitted that there was a defect in the Adjudication Order dt.20/12/2023 stating that Financial Statements (AOC-4) under Section 137 of the Act for the year 2018-19 were filed on 29/11/2019 as the Ministry Of Corporate Affairs (MCA) General Circular No.13/2019 dt.29/10/2019 had given extension of time for filing AOC-4 for Financial Year 2018-19 upto 30/11/2019. The defense of the company is maintainable in light of MCA Circular dt.29/10/2019. RoC has no objection if the penalty is accordingly waived off.

8. Taking into consideration the Adjudication Order of the Registrar of Companies, Mumbai, submissions made by the Appellants in their application and, oral submissions of the authorized representative of the company and ARoC during the hearing, RoC Mumbai's Adjudication Order dt. 26/12/2023 is set aside and the penalty is waived off.

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

Signed and sealed on 7th day of June 2024.



(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI



To,

1. SM Dyechem Ltd,
3, Narayan Building, 23 LN Road, Dadar- East NA,
Mumbai, Mumbai City, Maharashtra, 400014, India.
2. Hersh Sanjiv Shah.
Flat 604, Jai Arati Apt, Plot 29 & 30 Swastik Park, Chembur East,
Mumbai 400071, Maharashtra, India.
3. Registrar of Companies, Mumbai.
4. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
5. Master Copy.
6. Office Copy.



(APARNA MUDIAM)
DEPUTY DIRECTOR