



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)/Lokasa Handicraft/92/F91653220/2023-24/

4585
E-17 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 LOKASA HANDICRAFT JEWELLERY EXPORTS LIMITED & ORS.

- | | | |
|----|---|------------|
| 1. | Lokasa Handicraft Jewellery Exports Limited | - Company |
| 2. | Sukumar Samanta | - Director |
| 3. | Susama Sukumar Samanta | - Director |
| 4. | Sandeep Sukumar Samanta | - Director |

... Appellants

Through: Roy Jacob, 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) have been filed by Lokasa Handicraft Jewellery Exports Limited (Company) having CIN L51398MH2004PLC144341 and, its Directors, against Order No. ROC(M)/Sec.92/ADJ-ORDER/Sr.88/5583 dated 05/12/2023 (ROC Order) of Registrar of Companies, Mumbai for violating provisions of Section 92 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 05/12/2023 held the Company and its Directors, who have defaulted liable for penalty under Section 92(5) of the Act from 30/11/2019 to 18/10/2020 for not filing Annual Return within sixty 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.) |
|---------------------|---|------------------------|-------------------|-------------------------------|--------------------------|
| 324 days | Lokasa Handicraft Jewellery Exports Limited | 50,000/- | 324X100 = 32,400 | 50,000 + 32,400 = 82,400/- | 5,00,000/- |
| | Sukumara Samanta | 50,000/- | 324X100 = 32,400 | 50,000 + 32,400 = 82,400/- | 5,00,000/- |
| | Susama Samanta Sukumar | 50,000/- | 324X100 = 32,400 | 50,000 + 32,400 = 82,400/- | 5,00,000/- |
| | Sandeep Samanta Sukumar | 50,000/- | 324X100 = 32,400 | 50,000 + 32,400 = 82,400/- | 5,00,000/- |
| TOTAL | | | | 3,29,600/- | 20,00,000/- |

** Annual Return has not been filed till the date of dispatch of the show cause notice being 19/10/2020. Default period is thus calculated to be a total of 324 days till 18/10/2020.*

4. Appellants have filed Form-ADJ vide SRN F91653220 dt. 03/02/2024. 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 appellants never received the show cause notice pertaining to the alleged violation of Section 92 of the Companies Act, 2013.
- b) The Adjudication Order arbitrarily imposed penalty even without taking due consideration of the provisions of Section 92(5) of the Act.
- c) As of now the company is a defunct company having no assets, no liabilities and no business and not maintaining any banking account.
- d) The penalty imposed be completely waived-off.
- e) Being in-operational and dead since 2008, the company be allowed to strike off.
- f) Such other orders as the Regional Director may deem fit and proper.

6. The matter was posted for hearing as per Section 454(5) r/w Section 454(7) of the Act on 04/06/2024. Roy Jacob, 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 Representative further stated that he did not find any defect in ROC Adjudication Order dt. 05/12/2023 but have applied on the ground of bad financial position of the company.

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7. 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 of Annual Return was 29/11/2019.
- c. The period of violation of provisions of Section 92 of the Act is from 30/11/2019 till 18/10/2020.
- d. Annual Return were not filed till the date of dispatch of the show cause notice dt.19/10/2010. Default period is thus calculated to be at a total of 324 days till 18/10/2020.

8. The punishment for contravention of section 92 is prescribed under section 92(5) of the Companies Act, 2013 which states that –

"If any company fails to file its annual return under sub-section(4), before the expiry of the period specified therein, such company and its every officers who is in default shall be liable to a penalty of fifty thousand 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 applicant in their submission are not legally tenable.

10. Taking into consideration the Adjudication Order of the Registrar of Companies, Mumbai, submissions made by the Appellants in their application, further report of RoC, Mumbai dt.03/06/2024 and, oral submissions of the authorized representative of the company during the hearing, it is observed that:

- a) There is no inherent defect in the Adjudication Order dt. 05/12/2023 .
- b) ROC, Mumbai has imposed penalty as per Section 92(5) of Companies Act, 2013.

11. In view of above, the present appeal is dismissed with directions to the appellants to pay the penalty imposed by the Registrar of Companies, Mumbai vide Adjudication Order dt. 05/12/2023 within 90 days, failing which, Registrar of Companies, Mumbai, is directed to file prosecution under Section 454(8) of the Companies Act, 2013 against the company and every officer 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 7th day of June 2024.



(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI

To,

1. Lokasa Handicraft Jewellery Exports Limited,
30 Dhanji Street 1st Floor Room No 3,
Above Popular Restaurant, Mumbai,
Mumbai City, Maharashtra 400003, India.
2. Sukumar Samanta,
30, Dhanji Street, 1st Floor, R. No. 3 Zaveri Bazar,
Mumbai 400003, Maharashtra, India.
3. Susama Sukumar Samanta,
286-D, Irani House, Dr B A Road, Parel,
Mumbai 400012, Maharashtra, India.
4. Sandeep Sukumar Samanta,
Room No-2, 286-D, Irani House,
Dr. Ambedkar Road, Opp ITC Hotel, Parel,
Mumbai, 400012, Maharashtra, India.
5. Registrar of Companies, Mumbai.
6. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
7. Master Copy.
8. Office Copy.


(TUSHAR WAGH, ICLS)
DEPUTY DIRECTOR