



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)/Wurknet Private/62(3)/ F90782509 /2023-24/

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6 JUN 2024

APPEAL UNDER 454(5) OF COMPANIES ACT, 2013 AGAINST ORDER PASSED FOR OFFENCES COMMITTED UNDER SECTION 62(3) OF THE COMPANIES ACT, 2013.

In the matter of WURKNET PRIVATE LIMITED. & ORS

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|-----------------------------|---------------|
| 1. WURKNET PRIVATE LIMITED. | - Company |
| 2. SANJAY DINKAR RAMUGADE | - Ex-Director |
| 3. VIVAN PURI | - Director |

... Appellants

Through: 1. Ashwini Shah, Practicing Company Secretary.

2. Rujuta Bankar, ARoC Mumbai.

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 Wurknet Private Limited (Company) having CIN U74999MH2019PTC333001 and, its Directors, against Order No. ROC(M)/CMC/NJN/ADJ-ORDER/5319 dated 17/11/2023 (ROC Order) of Registrar of Companies, Mumbai for violating provisions of Section 62(3) 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 17/11/2023 held the Company and its directors, who have defaulted, liable for penalty under Section 450 of the Act from 09/12/2019 till 04/08/2021 for carrying out compliances as per provisions of Section 62(1)(c) in place of Section 62(3) of the Act as under:

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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.) (450 r.w. 446B)	Penalty levied (In Rs.) (450 r.w. 446B)
604	Wurknet Private Limited	10,000	604 X 1000 =6,04,000/-	6,14,000/-	2,00,000	1,00,000
	Vivan Puri	10,000	604 X 1000 =6,04,000/-	6,14,000/-	50,000	25,000
	Sanjay Dinkar Ramugade	10,000	604 X 1000 =6,04,000/-	6,14,000/-	50,000	25,000
	TOTAL			18,42,000	3,00,000	1,50,000

4. Appellants have filed Form-ADJ vide SRN F90782509 dt. 22/01/2024. 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:

- a) The company sought approval from members for issue of Convertible Notes by providing reference to Section 62(1)(c) of the Companies Act, 2013, however, the special resolution also mentioned that the said approval is sought pursuant to "other applicable provisions of the Companies Act, 2013. Accordingly, in Petitioner's humble opinion the said reference covers the provisions of section 62(3) as well.
- b) It is pertinent to note that the provisions Section 62 (1)(c) read with Rule 13(2) of the Companies (Share Capital and Debentures) Rules, 2014 require additional, specific and exhaustive disclosures in the explanatory statement attached to the notice of EGM. On the other hand, Section 62(3) of the Companies Act, 2013 does not provide for any such requirements. In other words, the company has inadvertently provided additional disclosures under the Companies Act, 2013 enabling the members to take a more informed decision.
- c) In view of the above averments made, the Petitioner humbly submits that considering the unintentional non-serious nature of the default, suo moto application filed by the Petitioners for Adjudication of Penalty and considering the fact that the Company has already closed down its business operations, the Hon'ble Regional Director, Western Region, may allow this Appeal and set aside the order passed by the Respondent.
- d) To pass the necessary order to waive off the penalty and cautionary notice to the Petitioners.
- e) The respondent be further directed not to initiate any penal action against the petitioner under any other provisions of the Act.
- f) For such further and other directions as the nature and circumstances of the case may require.

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6. The matter was posted for hearing as per Section 454(5) r/w Section 454(7) of the Act on 29/05/2024. Ashwini Shah, 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 Authorized Representative stated that she did not find any defect in ROC Adjudication Order dt. 17/11/2023.

7. Facts of the Case:

- a) In the month of December, 2019, the Company being a "Start Up" proposed to raise the funds by issue of Convertible Notes. Convertible Notes are in the form of loan which would be converted into shares as per the terms and conditions agreed between the parties.
- b) In the Extra Ordinary General Meeting held on 09.12.2019, the proposal for issue of 4 convertible notes of Rs. 25,00,000 / - (Rupees Twenty-Five Lacs) each for raising funds was approved by the members by passing of Special Resolution.
- c) However, all the compliances were carried out as per provisions of Section 62(1)(c) in place of Section 62(3) of the Act. The company has therefore, violated provisions of Section 62(3) of the Act.

8. The punishment for contravention of section 62(3) is prescribed under section 450 r.w. Section 446B of the Act which states that -

- a) Section 450 - Punishment where no specific penalty or punishment is provided.

If company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

- b) Section 446B. Lesser penalties for One Person Companies or small companies.

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.

Explanation. - For the purposes of this section-

- "Producer Company" means a company as defined in clause (1) of section 378A;
- "start-up company" means a private company incorporated under this Act or under the Companies Act, 1956 and recognized as start-up in accordance with the notification issued by the Central Government in the Department for Promotion of Industry and Internal Trade

9. RoC, Mumbai vide his further report dt.30/05/2024 has concluded that the appeal filed by the company is not maintainable and should be dismissed.

10. 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, it is observed that:

- a) The PCS has argued the matter on the quantum of penalty should be less keeping in view of procedural/technical issue for non-making specific provision of Section 62(3) in resolution dt.09/12/2023 passed by shareholders for issue of Convertible Notes into equity in further for issue of 'Notes-Debt instrument' to identified persons on Private Placement Basis.
- b) The company has moved adjudication application with RoC, Mumbai for abundant caution for compliance of provisions of the Act.
- c) RoC, Mumbai has imposed penalty stipulated in Section 450 r.w. Section 446B of the Act.
- d) The appellants have not pointed out any defects in the RoC's Adjudication Order dt. 17/11/2023. As the RoC Adjudication Order has no defects, the said order is confirmed.

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. 17/11/2023 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 officers 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 6th day of June 2024.



(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI



To,

1. Wurknet Private Limited,
204, 2nd Floor, Shalaka Juhu Tara Road, Santacruz (West), NA,
Mumbai, Mumbai City, Maharashtra, 400054, India.
2. Sanjay Dinkar Ramugade,
Flat No. B-502, Sai Complex CHS Ltd,
Kandar Pada, Link Road, Nr. DMART, Dahisar (W),
Mumbai 400068, Maharashtra, India
3. Vivan Puri,
302, Prime Beach Apts,
Shanti Lane, Gandhigram Road, Juhu,
Mumbai 400049, Maharashtra, India
3. Registrar of Companies, Mumbai.
4. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
5. Master Copy.
6. Office Copy.


(TUSHAR WAGH, ICLS)
DEPUTY DIRECTOR