



BEFORE THE REGIONAL DIRECTOR, WESTERN REGION

MINISTRY OF CORPORATE AFFAIRS, MUMBAI

प्रादेशिक निदेशक, पश्चिम क्षेत्र, कारपोरेट कार्य मंत्रालय, मुंबई के समक्ष

29 MAY 2024

सं. - प्रादे. निदे. (प.क्षे.)/454(5)/Shreenath Mhaskoba/203(1)/ F91979047 /2023-24/ /4391

Appeal under 454(5) of Companies Act, 2013 against Order passed for offences committed under sub-Section (1) and (4) of Section 203 of the Companies Act, 2013.

In the matter of SHREENATH MHASKOBA SAKHAR KARKHANA LIMITED & ORS.

1. Shreenath Mhaskoba Sakhar Karkhana - Company.
Limited
2. Pandurang Abaji Raut - Managing Director.
3. Vikas Ramchandra Raskar - Whole-time Director.
4. Yogesh Dattatraya Sasane - Director.
5. Mahesh Sambhajirao Karpe - Director.
6. Hemant Kumar Sambhajirao Karanje - Director.
7. Madhav Pandurang Raut - Director.
8. Kisan Dinkar Shinde - Director.
9. Baban Mahadeo Narke - Ex-CFO(KMP).

...Appellants

Through: Nikhil Naikawadi, Chartered Accountant

AND

10. Babanrao Sopanrao Gaikwad - Ex-Director.

...Appellant

HON'BLE REGIONAL DIRECTOR (WESTERN REGION)

ORDER

Two appeals 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 Shreenath Mhaskoba Sakhar Karkhana Limited having CIN U15424PN1999PLC013976 (Company) and, its Directors and KMPs, against Order No. RoCP/ADJ/order/203/23-24/SMSKL/MV/2216 of Registrar of Companies, Pune dated 11/12/2023 (ROC Order) for violating provisions of section 203 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 11/12/2023 held the Company and its Officers, who have defaulted, liable for penalty under Section 203(5) of the Act from 02/11/2018 till 30/06/2019 for non-appointment of Whole-Time Company Secretary as per sections 203(1) and 203(4) of the Act as under:

No. of days default	Penalty imposed on Company / Director (s)	First default (In Rs.)	Default continues (In Rs.)	Total / maximum penalty (In Rs.)
240	Shreenath Mhaskoba Sakhar Karkhana Limited	5,00,000	5,00,000	5,00,000
	Pandurang Abaji Raut	50,000	1000*239	2,89,000
	Vikas Ramchandra Raskar	50,000	1000*239	2,89,000
	Yogesh Dattatraya Sasane	50,000	1000*239	2,89,000
	Mahesh Sambhajirao Karpe	50,000	1000*239	2,89,000
	Hemant Kumar Sambhajirao Karanje	50,000	1000*239	2,89,000
	Madhav Pandurang Raut	50,000	1000*239	2,89,000
	Kisan Dinkar Shinde	50,000	1000*239	2,89,000
	Baban Mahadeo Narke	50,000	1000*239	2,89,000
	Babanrao Sopanrao Gaikwad	50,000	1000*239	2,89,000

4. Appellant Nos.1 to 9 have filed Form-ADJ vide SRN F91979047 dt. 09/02/2024. Appellant No.10, Shri. Babanrao Sopanrao Gaikwad has made a physical application vide letter dt. 26/03/2024.

5. 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. The Practicing Chartered Accountant confirmed that the said Adjudication Order was received by the company on 14/12/2023 and as such, the application been filed by Appellant nos. 1 to 9 within 60 days from the date of receipt of the adjudication order.

6. The appeal filed by Appellant No. 10, however, has been filed beyond 60 days without following the procedure under section 454 of the Act. Therefore, without going into the merits of the application, the appeal is dismissed with the direction to the applicant to pay adjudication fee imposed on him immediately for non-compliance of section 203 of the Act.

7. Appellant nos. 1 to 9 have appealed that as the default was unintentional, a first-time default, and as the default has been made good, a minimum amount of penalty as provided under the Companies Act, 2013 may be imposed, as relief. That none of the creditors and shareholders of the Company shall be prejudiced due to the same.

8. The Registrar of Companies, Pune, in the matter of the appeal, has stated the following in his report dated 14/05/2024:

- I. As per the available MCA21 records, every executive director has been penalized which was not challenged by the appellants at the time of hearing conducted by the Adjudication Order on 30/11/2023.
- II. The company has not appointed any Company Secretary since the provisions were applicable to the company w.e.f. 01/04/2014.
- III. The appellants are trying to justify the reasons which are not covered under relevant provisions.

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- IV. With reference to default for the period from 01/04/2014 to 01/11/2018, the company had submitted that the company will go for compounding for the same. However, no such compounding has been filed.

9. Facts of the Case:

- I. As per records available on MC21 Portal, it can be seen from the Balance Sheet for FY 2013-14 that the paid-up capital of the Company was Rs.21.48 Crores. However, a Whole Time Company Secretary was not appointed from 01/04/2014 till 30/06/2019 as per requirements of Section 203 of the Act.
- II. A Whole Time Company Secretary was appointed w.e.f. 01/07/2019.
- III. In view of decriminalization of offences under the Act, including, violation of section 203, with effect from 02/11/2018, the Adjudicating Officer has accurately considered the period of non-compliance as commencing from 02/11/2018 till 30/06/2019 for Adjudication of Penalties under Section 454 of the Act.

10. As per provisions of Section 203(1) of the Companies Act, 2013 read with Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, "Every private company which has a paid-up share capital of ten crore rupees or more shall have whole-time Company Secretary."

Section 203(4) of the Act provides that if the office of any Whole-Time Key Managerial Personnel is vacated, the resulting vacancy shall be filled-up by the Board within a period of six months from the date of such vacancy.

That the punishment for contravention of section 203(1) is prescribed under section 203(5) of the Companies Act, 2013 which states that "If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees".

In view thereof, the order of ROC Pune dt.11/12/2023 is in accordance with the provisions of the Act.

11. The matter was posted for hearing as per Section 454(5) r/w Section 454(7) of the Act on 17/05/2024. Nikhil Naikawadi, Practicing Chartered Accountant appeared on behalf of Appellants 1 to 9 as their authorized representative in the presence of Ms. Aparna Mudiam, Deputy Director, of this Directorate. The authorized representative reiterated the submissions made in the application and stated that there was defect in the RoC Adjudication Order and prayed for reducing/ waiving off of penalty as per the grounds mentioned in the appeal.

12. Taking into consideration the Adjudication Order of the Registrar of Companies, Pune, submissions made by the Appellants in their application, report of ROC Pune dated 17/05/2024 and oral submission of the authorized representative during the hearing, I am of the considered view that there is no merit in the appeal and accordingly the Adjudication Order dated 11/12/2023 passed by ROC, Pune is confirmed.

13. In view of above, the present appeal is dismissed with directions to both the appellants to pay the penalty imposed by the Registrar of Companies, Pune vide

Adjudication Order dt.11/12/2023 within 90 days, failing which, Registrar of Companies, Pune, is directed to file prosecution under Section 454(8) 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 28th day of May 2024



[Handwritten Signature]

(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI

To,

1. Shreenath Mhaskoba Sakhar Kachhana Limited,
S. No. 12/2, 2nd Floor, Meghdoot Building,
Behind Bharat Petrol Pump, Old Lokhandi Pull Lane,
Hadapsar, Pune, Maharashtra 411028, India.
2. Pandurang Abaji Raut,
Aspire tower no 6, flat no 604 Amanora park town,
Hadapsar, Pune City,411028,Maharashtra,India.
3. Vikas Ramchandra Raskar,
S no 161/14, Krushna kamal bunglow, Bhosale nagar
Hadapsar, Pune City,411028,Maharashtra,India.
4. Yogesh Dattatraya Sasane,
S no 311 Sasane nagar Hadapsar
Pune City,411028,Maharashtra,India.
5. Mahesh Sambhajirao Karpe,
Plot 25, Mathuranagar Housing Society, Chandannagar
Near Chatrapati Shivaji Maharaj Statue, Kharadi,
Pune,411014,Maharashtra,India.
6. Hemant Kumar Sambhajirao Karanje,
Talegoan road 641 Shikraour,
Shirur,412208,Maharashtra,India.
7. Madhav Pandurang Raut,
Tower no 6, Flat no 604, R 2 Sector, Amanora Park Town,

Hadapsar, Pune 411028, Maharashtra, India.

8. Kisan Dinkar Shinde,
981 Bohi Ali, Rahu Pune,412207,Maharashtra,India.
9. Baban Mahadeo Narke,
Flno A-303, Sundar Sankul, S 151/7/51 8 Nr, Magarpatta City,
Hadapsar, Pune 411028, Maharashtra, India.
10. Babanrao Sopanrao Gaikwad,
Flat No. B-4, Pankaj Avenue Bhosale Nagar, Hadapsar,
Pune 411028,Maharashtra,India.
11. Registrar of Companies, Pune.
12. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
13. Master Copy.
14. Office Copy.

"Certified True Copy"



(APARNA MUDIAM)
DEPUTY DIRECTOR