



शिवायक सेवा
SPEED POST

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)/Vatan Textiles/92/F96762976/2024-25/

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13 0 JAN 2025

APPEAL UNDER SECTION 454(5) OF COMPANIES ACT, 2013 AGAINST ORDER PASSED FOR OFFENCES COMMITTED UNDER SECTION 92 OF THE COMPANIES ACT, 2013.

In the matter of VATAN TEXTILES LIMITED & ORS.

- | | |
|---------------------------|----------------|
| 1. Vatan Textiles Limited | - Company |
| 2. Rafeeq Ahmed Khan | - Director. |
| 3. Razi Hasan Khan | - Director. |
| 4. Urooj Hameed Khan | - Director. |
| 5. Abdul Hameed | - Ex-Director. |

...Appellants

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 'Vatan Textiles Limited' (Company) having CIN U17120MH1994PLC077440 and, its Officers/Directors, against Order No. ROC(M)/VTI/ADJ-ORDER/733 dated 25/04/2024 (ROC Order) of Registrar of Companies, Mumbai for violating provisions of Section 92 of the Act.

- The appeal lies within the jurisdiction of the Regional Director, Western Region, Ministry of Corporate Affairs, Government of India.
- The Registrar of Companies, Mumbai (RoC Mumbai) vide Adjudication Order dated 25/04/2024 held the Company and its Officers/Directors, who have defaulted liable for penalty under Section 92(5) of the Act from 30/11/2019 to 25/10/2020 for not filing Annual Return for the Financial Year 2018-19 within sixty days from the date of Annual General Meeting in pursuance of Section 96 of the Act as under:

[Signature]

| No. of days default | Penalty imposed on Company / KMP | First default (In Rs.) | Default continues penalty (in Rs.) | Total penalty levied (In Rs.) | Maximum penalty (In Rs.) |
|---------------------|----------------------------------|------------------------|------------------------------------|-------------------------------|--------------------------|
| 331 days | Vatan Textiles Limited | 50,000/- | 331X100 = 33,100/- | 83,100/- | 5,00,000/- |
| | Rafeeq Ahmed Khan | 50,000/- | 331X100 = 33,100/- | 83,100/- | 5,00,000/- |
| | Razi Hasan Khan | 50,000/- | 331X100 = 33,100/- | 83,100/- | 5,00,000/- |
| | Abdul Hameed | 50,000/- | 331X100 = 33,100/- | 83,100/- | 5,00,000/- |
| | Urooj Hameed Khan | 50,000/- | 331X100 = 33,100/- | 83,100/- | 5,00,000/- |
| TOTAL | | | | 4,15,500/- | 25,00,000/- |

TOTAL PENALTY PAYABLE: Rs. 4,15,500/-.

4. 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."

5. Appellants have filed Form-ADJ vide SRN F96762976 dt. 12/07/2024. 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 not been filed within 60 days from the date of passing of the adjudication order dated 25/04/2024.

6. Grounds of Appeal & Relief sought:

- The company filed the Form MGT-7 (Annual Return) for the F.Y. ending 31/03/2019 with the Registrar of Companies, Mumbai on 26/10/2020 in accordance with the General Circular No.12/2020 dt.30/03/2020 and General Circular No.30/2020 dt.28/09/2020 issued by Ministry Of Corporate Affairs and availed the benefits and immunity from any action against the delay of filings of the forms under the Companies Fresh Start Scheme (CFSS), 2020.
- The company vide letter dt.04/12/2020 duly replied to the show cause notice dt.28/10/2020 and informed the Respondent (RoC Mumbai) regarding the filings of the Form MGT-7 under the CFSS which were already approved.
- The Respondent issued orders penalizing the appellants for violation of provisions of Section 92 of the Companies Act, 2013 without considering the fact that the Appellants are immune from such actions and prosecution for delay in filings of the Form MGT-7.
- Appellant No.5 namely Abdul Hameed had already resigned from the office of Director of the company with effect from 19/11/2018 well before the

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Annual General Meeting held for F.Y. ended 31/03/2019. Hence, the said impugned order cannot be held valid in consonance with the provisions of the Act.

- e. This is a fit case for grant of relief, by setting aside the Impugned order issued by the Respondent.

7. The matter was posted for hearing as per Section 454(5) read with Section 454(7) of the Act on 20/09/2024, 23/10/2024, 18/12/2024 & finally on 14/01/2025. Shri P S Thakre, Practicing Company Secretary (PCS), 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. However, he relied upon the benefits and Immunity Certificate issued by Ministry of Corporate Affairs to the company and its directors from any action against the delay of filings of the forms under the Companies Fresh Start Scheme (CFSS), 2020.

8. RoC, Mumbai vide letter dt.27/09/2024 has stated that

- a. There was no argument regarding non-compliance as there is crystal clear default on the part of the company and its directors.
- b. Default is made for F.Y. 2018-19 for which the due date of filing of Annual Return under Section 92 of the Act was 29/11/2019 i.e. prior to the outbreak of COVID-19 pandemic.
- c. The Circular issued by the Ministry in view of COVID- Outbreak since March 2020 does not pertain to period of default.

Hence, the appeal filed by the company is not maintainable.

9. Facts of the Case:

- a. On examination of the application/appeal, it is seen that the said application/appeal has been filed after a period of 78 days from the date of passing of the Adjudication Order dated 25/04/2024.
- b. During the course of hearing held on 20/09/2024, Learned PCS was asked to submit proof of the date of receipt of the order of adjudicating officer or prove that the said appeal against the Adjudication Order dated 25/04/2024 has been filed within 60 days from the date of receipt of Adjudication Order.
- c. During the course of hearing held on 23/10/2024, the Learned PCS submitted an Affidavit stating that the said Adjudication Order dated 25/04/2024 was received by them on 13/05/2024 and they have filed the appeal vide Form ADJ on 12/07/2024 which is within 60 days. As a result, RoC, Mumbai was directed to verify and confirm the date of dispatch of Adjudication Order dt. 25/04/2024 to the company and directors by Speed Post to decide the limitation issue along with concerned page of dispatch register duly signed by the despatcher and the Immunity Certificate dt.30/08/2021.



- d. RoC, Mumbai vide Letter dt.04/12/2024 submitted that the said Adjudication Order dt.25/04/2024 was dispatched on the same day i.e. 25/04/2024 and submitted photocopy of dispatch register duly signed by the despatcher in support of his claim. He further added that the company had not informed that it had applied under CFSS 2020 nor informed the office prior to the passing of the Adjudication Order dt.25/04/2024. He also stated that the company has availed Immunity Certificate on 30/08/2021 i.e. after issuance of show cause notice. This fact was also not brought to the notice of the Adjudication Authority during the proceeding.
- e. The Learned PCS vide further rejoinder dt.17/12/2024 has stated that *"Accepting that the ROC Order was delivered upon the concerned person and there is some and reasonable delay of mere 18 days in filing the APPEAL against the said ROC Order. It is important to note that there is a specific provision under Section 460 of the Companies Act, 2013 for the condonation of delay in filing of any such applications and appeal. Therefore, the law recognizes the fact that there may be delay in making the appeal against the orders and hence there is a provision for condonation of delay in case of reasonable delay which is the factual position in present matter."*

10. Section 454(6) of the Companies Act, 2013 read with Rule 4(1) of the Companies (Adjudication of Penalties) Rules, 2014 reads as under –

"Section 454(6): Every appeal under sub-section (5) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees as may be prescribed."

Rule 4(1): Every appeal against the order of the adjudicating officer shall be filed in writing with the Regional Director having jurisdiction in the matter within a period of sixty days from the date of receipt of the order of adjudicating officer by the aggrieved party, in Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought..."

11. Taking into consideration the Adjudication Order of the Registrar of Companies, Mumbai; submissions made by the Appellants in their application as well as oral submissions of authorized representative during the hearing; further letter of RoC, Mumbai; I am of the considered view that the appeal is barred by limitation and hence, is rejected without going in the merit of the matter as the appeal was filed beyond 60 days after the receipt of Adjudication Order dated 25/04/2024 as, RoC, Mumbai has sent the order through Speed Post on 25/04/2024 itself. Accordingly, the Adjudication Order dated 25/04/2024 passed by ROC, Mumbai is 'CONFIRMED' under Section 454(7) of the Act.

12. In view of the above, the present appeal is disposed of with directions to the appellants to pay penalty imposed by the Registrar of Companies, Mumbai vide Adjudication Order dt.25/04/2024 within 90 days, failing which, Registrar of Companies, Mumbai, is directed to file prosecution under Section 454(8) of the Companies Act, 2013.



13. The appellants are also directed to submit the proof of payment of penalty imposed upon them (challans) to the Office of Registrar of Companies, Mumbai, for their record and for further necessary action.

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

Signed and sealed on 30th day of January 2025.



(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI

To,

1. Vatan Textiles Limited,
CTS 18804/2, Beed Bypass Paithan Road,
Aurangabad, Maharashtra 431005, India.
2. Rafeeq Ahmed Khan,
H No- 4-3-20, Paithan Road Near fly over Bridge,
Silk Mills Compound,
Aurangabad 431001, Maharashtra, India.
3. Razi Hasan Khan,
S/O, Rafeeq Ahmed Khan, 5-28-116, Beed By Pass Road
Silk Mills Compound, Opp Vatan Textiles,
Aurangabad, 431005, Maharashtra, India.
4. Urooj Hameed Khan,
S/o, Rafeeq Ahmed Khan, 5-28-116., Beed by Pass Road.
Silk Mills Compound, opposite Vatan Textiles,
Aurangabad 431005, Maharashtra, India.
5. Abdul Hameed,
S/o, Abdul Shakur Paithan Road, Silk Milk Colony,
H No 5-28-119/P, Near Mohmadiya Masjid,
Aurangabad, 431001, Maharashtra, India.
6. Registrar of Companies, Mumbai.
7. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
8. Master Copy.
9. Office Copy.

(TUSHAR WAGH, ICLS)
DEPUTY DIRECTOR