

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI

RD(WR)/Sec. 454(5)/Knitworth Exports /R76791383/2019 /1078

In the matter of Companies Act, 2013: Section 454(5)

AND

7 SEP 2020

In the matter of KNITWORTH EXPORTS LIMITED

having Registered Office at Plot No. 35, Somnath Road, Village-Dabhel, Somnath

Co-Operative Industrial Society, Daman and Diu-396210

.....Applicant

**Parties Present:**

**For Petitioner:** Mr. Ajay Deora, Director,

Mr. Ajay Gupta, Director,

**Date of Hearing:** 30.01.2020

**ORDER**

Heard.

1. This appeal is filed under sub-Section (5) of Section 454 of the Companies Act, 2013 (hereinafter referred to as the "Act") read with Companies (Adjudication of Penalties) Rules, 2014 (hereinafter referred to as the "Rules") by KNITWORTH EXPORTS LIMITED (hereinafter referred to as the "Company" or "Appellant") having CIN L17111DD1994PLC009832, incorporated under the Companies Act, 1956, having its registered office at Plot No. 35, Somnath Road, Village-Dabhel, Somnath Co-Operative Industrial Society, Daman and Diu-396210, against the order passed by Registrar of Companies-cum-Official Liquidator (ROC), Goa, adjudicating a penalty for violation of Section 203 of the Act vide Order No. ROCGDD/AO/Sec-203/2019/15 /2019 dated 12/04/2019.
2. The order was passed by the ROC on 12/04/2019 and the appeal is filed with this Appellate forum having jurisdiction in the matter being the Regional Director having jurisdiction in the State of Maharashtra and Goa. Thus, this appellate forum is having jurisdiction.

3. The appeal in Form ADJ (SRN H76791383) is filed on 08/07/2019. As per provisions of Section 454(6), an appeal under sub-Section (5) of Section 454 is to be filed within a period of 60 days from the date of which the copy of the order made by the adjudicating officers is received by the aggrieved person. In this case, the Appellant company has submitted that the order was received on 11.05.2019 and the appeal is filed on 08.07.2019. The appeal was filed on 08.07.2019 and thus is within the stipulated period of 60 days in terms of provisions of Section 454(5) of the Act.

4. The brief facts of the case are as under:

- a. The appeal is filed by the Appellant Company.
- b. The appellant company was failed to appoint Company Secretary after 17.01.2018.
- c. The ROC has issued show cause notice under Section 203 Section of the Act vide notice dated 17/01/2019 to the company and its officers in default.
- d. The company has not filed reply to the above said show cause notice.
- e. The Company has filed DIR-12 3-form vide SRN: H 42671990 on 22.01.2019, appointing Mr. Akshay Jain, as Company Secretary w.e.f. 01.01.2019.
- f. The ROC has imposed a total penalty of Rs.6,10,000/- (Rupees Six Lakhs Ten Thousand Hundred Only) on the company and its Managing Director.


No. of Days of Default	Penalty imposed on the Company/Director	Amount of Penalty (In Rs.)	Total (In Rs.)
60 days	On Company Knitworth Export Limited	Rs.5,00,000/-	Rs,5,00,000/-
	On Shri Ajay Kumar Gupta, Managing Director, DIN:03181399	Rs.50,000/- plus + 60 days x Rs.1000 per day =Rs.60,000/-	Rs.1,10,000/-

\*No. of days have been calculated from 02.11.2018 till 31.12.2018, when the default is rectified and appointed Company Secretary.

- g. The Appellant Company has not yet deposited the said penalty..

5. In the appeal, the appellant has taken the following grounds:



- a. Ex-parte order has been passed by the Registrar without given reasonable opportunity of personal hearing.
  - b. The Concerned Director who was attending to the matters of compliance was advised rest as he had undergone Kidney Transplant.
  - c. The erstwhile Company Secretary of the Company resigned on 31.01,2018 on account of the Company having decided to shift its registered office from the State of West Bengal to the State of Goa (Daman and Diu).
  - d. The Company got a favorable order from the Hon'ble Regional Director, Kolkata on 18.08.2018 to shift the registered office from state of Kolkata to state of Goa (Daman and Diu).
  - e. The Company has made all efforts to find a suitable Company Secretary from the month of August2018 and as soon as Mr. Akshay jain agreed to be the Company Secretary, the Company employed him w.e.f. 01.01.2019.
  - f. There was no deliberate non-compliance of the provision of the Companies Act, 2013.
  - g. The appellants have made a prayer to set aside the impugned order dated 12.04,2019.
6. On careful consideration of the impugned order, the appeal and the documents on record, this forum has observed as under:
- a. There is nothing on record to show as to whether the ROC / Adjudicating has imparted any hearing to the notices.
  - b. The violation of the provision of the section 203(1) of the Act has arisen due to non-appointment of Company Secretary.
  - c. As per MCA21 records, the Company Secretary has been appointed by the Company on 01.01.2019. The period of default starts from 17.01.2018. However, the penalty is calculated from 02.11.2018, the date since when provision for adjudication of the default came into force. There is nothing in the order for the period of default prior to 02.11.2018.
7. I have carefully considered the impugned order, all the submissions made by the appellant in the appeal made by the Learned Representative of the company and the ROC/Adjudicating Officer during the hearing held on
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30.01.2020. I am of the considered opinion that in view of observation made hereinabove, the impugned order is liable to be set aside being defective on many counts and without conducting any inquiry and without imparting an opportunity of being heard to the Appellants. The order is accordingly set aside with directions to the ROC/Adjudicating Officer to conduct the proceeding de-novo and pass an order in accordance and after due compliance of provisions of Section 454 read with Rules thereunder and also read with provisions of Section 203 of the Act and the filings made by the appellant company after giving them a due opportunity of being heard as per Rules within 30 days from the date of this order.

8. A copy of this order shall be published on the website of the Ministry of Corporate Affairs as per Rules.
9. No order to cost.  
Signed and sealed on 21st day of, August 2020 at Mumbai.



(Mannohan Juneja)  
Regional Director (WR)

Copy to:

1. **KNITWORTH EXPORTS LIMITED**  
Plot No. 35, Somnath Road,  
Village-Dabhel,  
Somnath Co-Operative Industrial Society,  
Daman and Diu-396210
- 2) The Registrar of Companies, Goa.
- 3) Office Copy