

शिघ्र डाक सेवा
SPEED POST

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI

RD(WR)/Sec. 454(5)/Wiltemar Trade & Forex /R83251025/2019 / 1079

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

7 SEP 2020

AND

In the matter of WILTEMAR TRADE AND FOREX PRIVATE LIMITED

having Registered Office at C Prazeres Prkemarkuis Vaddo, Candolim,

Goad, Goa 403515

.....Applicant

Parties Present:

For Petitioner: Mr. Vinayak Jayaram Naik, Practicing Company Secretary.

Date of Hearing: 31.01.2020

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 Wiltemar Trade And Forex Private Limited (hereinafter referred to as the "Company" or "Appellant") having CIN U51909GA2004PTC003618, incorporated under the Companies Act, 1956, having its registered office at C Prazeres Prkemarkuis Vaddo, Candolim, Goad, Goa 403515 India, against the order passed by Registrar of Companies-cum-Official Liquidator (ROC), Goa, adjudicating a penalty for violation of Section 92(5) and Section 137(3) of the Act vide Order No. ROCGDD/AO/92&137/2019/93 dated 10/06/2019.
2. The order was passed by the ROC on 10/06/2019 and the appeal is filed with this appellate forum having jurisdiction in the matter being the

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Regional Director having jurisdiction in the State of Maharashtra and Goa. Thus, this appellate forum is having jurisdiction.

3. The appeal on Form ADJ (SRN H83251025) is filed on 17/08/2019. 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 admitted that the order was received on 18.06.2019 and the appeal is filed on 17.08.2019. The appeal was filed on 17.08.2019 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 and its officers in default namely Mr. William John Pinto (DIN 01094435) and Mrs. Temla Gomes Pinto (DIN 01094492).
- b. The appellant company was defaulting in filing of its Annual Returns and Balance Sheets for the Financial Year 2017-18.
- c. The ROC has issued show cause notice under Section 92(5) and Section 137(3) of the Act vide notice dated 27/02/2019 to the company and its directors namely Mr. William John Pinto (DIN 01094435) and Mrs. Temla Gomes Pinto (DIN 01094492) calling them to show cause for non filing of such documents.
- d. In response, the company stated vide reply dated 28.03.2019 that it has filed its Annual Returns and Financial Statement returns for the Financial Year 2017-18 on 23/03/2019.
- e. As per the Master Data, the company has finally filed the due Annual Returns and Balance Sheets for the Financial Year 2017-18 on 23.03.2019.
- f. The ROC has imposed a total penalty of Rs.3,77,500/- (Rupees Three Lakh Seventy Seven Thousand Five Hundred Only) on the company and its two Directors as detailed herein below:

Document Required to be filed	No. of Days of Default*	Penalty imposed on the Company/Director	First Default	Default Continues (In Rs.)	Total (In Rs.)
Financial Statement u/s137(1)	141 days	On Company	Rs.1000X141 days =Rs.1,14,000/-	--	Rs.1,14,000/-

of the Companies Act, 2013		Temla Pinto	Rs.1,00,000/-	Rs.100X141 days =Rs.14,100/-	Rs.1,14,100/-
Annual Returns u/s. 92(4) of the Companies Act, 2013.	112 days	<u>On Company</u>	Rs.50,000/-	Rs.100X112 days=Rs.11,200/-	Rs.61,200/-
		Temla Pinto	Rs.50,000/-	Rs.100X112 days=Rs.11,200/-	Rs.61,200/-

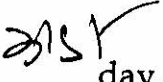
*No. of days have been calculated from November, 2018 & December 2018 for Financial Statement and Annual Return respectively till 22.03.2019,

- g. The Appellant Company has not yet deposited the said penalty.
5. In the appeal, the appellant has taken the following grounds:
- The fine imposed by the Adjudicating officer appear to be Exorbitant, hence the Appellants/ Directors of the Company are approaching the Hon'ble Regional Director(WR) at Mumbai by filing Memorandum of Appeal to waive or to reduce the Penalties imposed by the Adjudication officer vide its certified copy of order dated 14.062019.
 - The penalty calculated by the Adjudication officer appears to be incorrect as the Ministry of Corporate Affairs vide its Circular No.10/2018 dated 29.10.2018 have granted the extension of time for filing of Financial Statement (i.e. e-form AOC-4) and e-form MGT-7 for filing Annual return). The extension of time for filing the aforesaid documents was given up to 31.12.2018 with additional fees. Thus the penalty calculated appears to be incorrect. The same should have been calculated for Financial Statement and Annual return w.e.f 01.01.2019 till the date of filing i.e 23.03.2019.
 - The Appellant/Director have regularizes the filing of Financial Statement and Annual return for the F.Y 31.03.2018 on 23.03.2019 by paying filing fee and additional fee for delay.
 - The financial condition of the company is not sound as per Financial Report of the Company for the F.Y.31.03.2016, 31.03.2017 & 31.3.2018 and has incurred losses.
 - The company and its directors/Appellant are unable to make the payments of penalties as imposed.
 - The company has no investors or group of investor or creditors, the Company is belonging to on family and there are no outsiders involved.

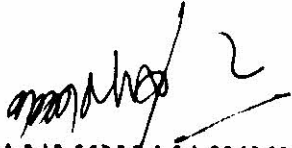
- g. The appellants have made a prayer to set aside the impugned order or penalty imposed by the Adjudicating officer may kindly be waved or reduced as the delay occurred in advertence and without any malafide intention.
6. On careful consideration of the impugned order, the appeal and the documents on record, this forum has observed as under:
- a. There is nothing on record to show as to whether the ROC/Adjudicating Officer has imparted any hearing to the noticees.
 - b. It is also not mentioned in the impugned order that the ROC has conducted an inquiry in the matter as required under Rules.
 - c. Further, as reported by ROC, one director of the company viz. Mr. William John Pinto is disqualified under Section 164(2)(a) of the Act for period from 01.11.2016 to 31.10.2021 and penalty is not imposed on him. Consequently, he is also vacated from post of director as per provision of section 167 of the Act. In such case when one director is disqualified, it is not justified by ROC on how ROC went ahead in passing order of Adjudication. Further, it is not checked by ROC how the Financial Statements and Annual Return signed by the disqualified director who is also vacated in terms of provision of section 167 of the Act is filed with ROC.
 - d. Also as seen from the Financial Statements filed by the Company, the company is loss making. ROC has disregarded this fact while imposing penalty even though the company has made default good by filing the Financial Statements and Annual Return for year 2017-18.
7. I have carefully considered the impugned order, all the submissions made by the Appellant in the appeal and oral submissions made by the Learned Representative of the company and the ROC/Adjudicating Officer during the hearing held on 31.01.2020. 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
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and after due compliance of provisions of Section 454 read with Rules thereunder and also read with provisions of Section 137, 92 read with Section 2(60) 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  day of August, 2020




(MANMOHAN JUNEJA)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI.

To,

1. ✓ WILTEMAR TRADE AND FOREX PRIVATE LIMITED
C Prazeres Prkemarquis Vaddo,
Candolim, Goad, Goa 403515 India

2. Registrar of Companies cum Official Liquidator,
Goa

3. Office Copy

"Certified True Copy"



मनोज एस. बंग
Manoj S. Bang
उप निदेशक / Deputy Director
मुंबई, प्रादेशिक निदेशक (प.क्षे.)
O/c Regional Director (W.R.)
कार्पोरेट कार्य मंत्रालय, मुंबई-२
Ministry of Corporate Affairs, Mumbai-2