



भारत सरकार

GOVERNMENT OF INDIA

कारपोरेट कार्य मंत्रालय

MINISTRY OF CORPORATE AFFAIRS

कंपनी रजिस्ट्रार का कार्यालय, पुणे
पी.सी.एन.टी.डी.ए. ग्रीन बिल्डिंग, ब्लॉक ए, 1ला & 2रा माला,
आकुर्डी रेल्वे स्टेशन के पास, आकुर्डी,
पुणे - 411 044

OFFICE OF REGISTRAR OF COMPANIES, PUNE
PCNTDA Green Building, BLOCK A, 1st & 2nd Floor,
Near Akurdi Railway Station, Akurdi,
Pune - 411044.

SPEED POST

No. ROCP/INQ/Adj/2019/ 1947 to 1950

Date: _____

2 JAN 2019

ORDER FOR PENALTY FOR VIOLATION OF SECTION 173 OF THE COMPANIES ACT, 2013 IN THE MATTER OF THERMAX SPX ENERGY TECHNOLOGIES LIMITED

Appointment of Adjudicating Officer:-

1. The Ministry of Corporate Affairs vide its gazette notification no. A-42011/112/2014-Ad.II, dated 24.03.2015, has appointed the undersigned as Adjudicating Officer in exercise of the powers conferred by section 454 of the Companies Act, 2013 (hereinafter known as Act) read with Companies (Adjudication of Penalties) Rules, 2014 for adjudicating penalties under the provisions of this Act.

Company:-

2. Whereas the company THERMAX SPX ENERGY TECHNOLOGIES LIMITED has been registered under the provisions of the Companies Act, 1956 on 06.10.2009, and is having its registered office situated at Thermax House, 14, Mumbai Pune Road, Wakdewadi, Pune - 411003.

Facts of the case:-

3. Whereas company has filed compounding application for composition of offence under Section 441 of the Companies Act, 2013 for violation of Section 173 of the Companies Act, 2013. The Directorate has returned the compounding application stating that for Section 173 of the Companies Act, 2013 penalty is prescribed under Section 173(4) of the Companies Act, 2013 which comes under the delegated powers of Registrar of Companies.

4. Whereas, this office had issued notice vide No. ROCP/STA/Adjudication/2019/1161 to 1163 dated 04.10.2019 to the company and officers in default by post, to appear personally or through authorized representative under Rule 3(3) Companies (Adjudication of Penalties) Rules, 2014 on 10.10.2019 at 2.30 PM before the Adjudicating Officer for hearing on the default of Section 173 of the Companies Act, 2013. Authorised representative appear before the Adjudicating Officer and submitted his written submission.

Provisions of the Act:-

173. Meetings of Board

(1) Every company shall hold the first meeting of the Board of Directors within thirty days of the date of its incorporation and thereafter hold a minimum number of four meetings of its Board of Directors every year in such a manner that not more than one hundred and twenty days shall intervene between two consecutive meetings of the Board:

Provided that the Central Government may, by notification, direct that the provisions of this sub-section shall not apply in relation to any class or description of companies or shall apply subject to such exceptions, modifications or conditions as may be specified in the notification.

Section 173 (4) of the Act reads as under:-

(4) Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees.

ORDER

5. THERMAX SPX ENERGY TECHNOLOGIES LIMITED was incorporated as a joint venture of Thermax Limited and SPX Netherlands BV. Pursuant to clause 61 of Articles of Association of the company there was a provision for the requirement of quorum for holding Board Meetings of the applicant company. This requirement of presence of at least one director of SPX and one director of Thermax as quorum was inserted in accordance with the Share Purchase Agreement entered into amongst the shareholders and the company. Due to the transition of investment from SPX to Mutares Holding 24 AG, the quorum for the meeting could not be established. This in turn caused the resultant delay in holding Board Meeting. Hence, due to non-availability of the representatives of the Foreign Companies of the Joint Venture the directors of the Company decided that not to convene Board Meeting during the period of default to avoid breach of Share Purchase Agreement executed between parties to

the Joint Venture. Directors of the Applicant company called and convened the meeting of the Board of Directors on 29.03.2018

6. Having considered the facts and circumstances of the case, and after taking into account the facts mentioned above, the Adjudicating Officer do hereby imposes penalty of Rs. 25,000/- to every officer of the company whose duty is to give notice under this section and who fails to do so pursuant of Section 173(4) of the Companies Act, 2013. The A.O. is of the opinion that penalty is commensurate with the aforesaid default committed by the Noticee's.
7. The company and directors are hereby directed to rectify the default immediately from the date of receipt of copy of this order.
8. The penalty imposed shall be paid through the Ministry of Corporate Affairs portal only.
9. The Noticee shall pay the penalty amount in the Misc. Head available on Ministry Website www.mca.gov.in within 90 days of receipt of this order and copy of challan shall also be forwarded to this. It is also directed that the penalty so imposed upon the Officers in default shall be paid from their personal sources/income.
10. Appeal against this order may be filed in writing with the Regional Director, Western Region, Ministry of Corporate Affairs, 100, Everest, Marine Drive, Mumabi – 400002. within a period of sixty days from the date of receipt of this order, in Form ADJ setting for the the grounds of appeal and shall be accompanied by a certified copy of this order (Section 454 (5) & 454 (6) of the Act, read with Companies (Adjudication of Penalties)Rules, 2014).
11. Your attention is also invited to Section 454(8) of the Companies Act, 2013 for non-payment of penalty.



(JAGANADH REDDY)
REGISTRAR OF COMPANIES
PUNE

To,

1. THERMAX SPX ENERGY TECHNOLOGIES LIMITED
Thermax House, 14, Mumbai Pune Road,
Wakdewadi, Pune – 411003.

2. Ravi Ramchandra Shewade
Flat No. 24, Sunflower A,
Sukhwani Campus, VAllabhnagar,
Pimpri, Pune – 411018.
3. Mahesh Vijaykumar Kulkarni
A-702, Dhanlaxmi Residency,
S.No. 89/90, Lokmanya Colony,
Kothrud, Pune – 411038.

Copy for information:

Regional Director,
Western Region,
Ministry of Corporate Affairs,
5th Floor, 100, Everest,
Marine Drive, Mumbai – 400002.