



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/ 1943 to 1946

Date: **2 JAN 2019**

**ORDER FOR PENALTY FOR VIOLATION OF SECTION 137 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 137 of the Companies Act, 2013. The Directorate has returned the compounding application stating that for Section 137 of the Companies Act, 2013 penalty is prescribed under Section 137(3) 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/2019/1157 to 1159 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 137 of the Companies Act, 2013. Authorised representative appear before the Adjudicating Officer and submitted his written submission.

Provisions of the Act:-

137. Copy of financial statement to be filed with Registrar.— (1) A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed within the time specified under section 403.

Provided that where the financial statements under sub-section (1) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents under sub-section (1) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose. Provided further that financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed within the time specified under section 403.

Provided also that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year.

Provided also that a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

Section 137 (3) of the Act reads as under:-

If a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2), as the case may be, before the expiry of the period specified in section 403, the company shall be punishable with fine of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of one lakh 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 maximum of five lakh 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 Annual General Meeting for the Financial Year 2016-2017 to avoid breach of Share Purchase Agreement executed between parties to the Joint Venture. Directors of the Applicant company called and convened the Annual General Meeting on 30.03.2018 to transact all the business including adoption of the Balance Sheet and Profit and Loss Account for the Financial Year ending of 31.03.2017.
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 on Company and officers in default whose duty is to give notice under this section and who fails to do so pursuant ot Section 137(3) 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.

Document required to be filed	No fo days of Default	Penalty imposed on company /officers in default	First Default (in Rs.)	Default continues (in Rs.)	Total (in Rs.)
Financial Statements under Section 137 of the Companies Act, 2013	211 days	Company	Rs.1000 x 211 days		2,11,000
		Ravi Ramchandra Shewade	Rs.1,00,000/-	Rs.100 x 211 days	1,21,100
		Mahesh Vijaykumar Kulkarni	Rs.1,00,000/-	Rs.100 x 211 days	1,21,100

- No of days have been calculated from last date of filing of Fiancial Statements i.e 31.10.2017 to actual date of filing of Financial Statements i.e. 29.05.2018.
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 ths 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.


(JAGANABH 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.