



भारत सरकार
कारपोरेट कार्य मंत्रालय
कम्पनी पंजियक का कार्यालय,
तमिलनाडू, कोयंबटूर

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GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF THE REGISTRAR OF COMPANIES
TAMILNADU - COIMBATORE
No.7 A G T BUSINESS PARK, PHASE II, 1ST FLOOR,
PEELAMEDU, COIMBATORE - 641014

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Ref: ROC/CBE/A.O./92&137/19291/2019

Date: 04.02.2020

Order for Penalty under Section 454 for violation of Section 92 & 137 of the Companies Act, 2013 read with the Companies (Adjudication of Penalties) Rules, 2014

IN THE MATTER OF M/s ARYAN TEX TRADE PRIVATE LIMITED
CIN: U17111TZ2013PTC019291

Appointment of Adjudicating Officer:

1. Ministry of Corporate Affairs vide its Gazette Notification No.A-42011/112/2014-Ad.II dated 24.3.2015 appointed undersigned as Adjudicating Officer in exercise of the powers conferred by Section 454 of the Companies Act, 2013 (herein after known as Act) read with Companies (Adjudication of penalties) Rules, 2014 for adjudging penalties under the provisions of this Act.

2. Company:

Whereas Company M/s ARYAN TEX TRADE PRIVATE LIMITED (hereinafter Known as Company) is a registered company with this office under the provisions of Companies Act, 1956/2013 having its registered address at NEW NO 81 OLD NO 41, GOVERNMENT ARTS COLLEGE ROAD, COIMBATORE - 641018.

3. Facts of the case:

Whereas Adjudication Notice under Section 454 for the violations of Section 92(5) and 137(3) of the Companies Act, 2013 were issued vide No. ROCCBE/ADJ/92&137/19291/2019 dated 11.12.2019 to the Company and its Three directors in default, viz., 1) Shri. PAZHATHAIYA NADAR SUYAMBU (DIN: 03105628) 2) Shri. JAGANATH PAZHATHIYA SUYAMBU (DIN: 03125352) and 3) Smt. JAYALAXMI PAZHATHAIYANADAR SUYAMBU (DIN: 03125371) to show cause for non-filing of Annual Return for the Financial years 2014-15, 2015-16, 2016-17 and 2017-18 and Financial Statement for the Financial years 2014-15, 2015-16, 2016-17 and 2017-18. (Herein after described as "Statutory Return").

4. Whereas the Adjudication notices issued by this office on 11.12.2019 to the Company and its directors for non-filing of Statutory Returns, the Directors have received the notice and the company has not received the notice. But the company has requested one month time, vide its letter dated 19.12.2019 to file the above said Statutory Returns. As the time for filing Statutory Returns has been prescribed under the Act, the company ought to have filed the statutory returns within the due dates. The company has not filed Statutory Returns for which Notice issued on 11.12.2019 and therefore the default continues to this date. Thus the time requested by the Company could not be granted, as the Adjudicating Authority has no power to grant extension of time to file the Statutory Returns more than the time prescribed under the Act.

5. Provisions of the Companies Act, 2013

Sub-Section(1) of Section 92 of the Act provides that every company shall prepare an Annual Return in the prescribed form and sub-section (4) of Section 92 of the Act provides that every company shall file with the Registrar a copy of the Annual Return, within sixty days from the date on which the Annual General Meeting is held or where no Annual General Meeting is held in any year within Sixty days from the date on which the Annual General Meeting should have been held together with the statement specifying the reasons for not holding the Annual General Meeting, with such fees or additional fees, as applicable.

6. Every company shall prepare a return (hereinafter referred to as the annual return) in the prescribed form containing the particulars as they stood on the close of the financial year regarding—
- (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
 - (b) its shares, debentures and other securities and shareholding pattern;
 - (c) its indebtedness;
 - (d) its members and debenture-holders along with changes therein since the close of the previous financial year;
 - (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
 - (f) meetings of members or a class thereof, Board and its various committees along with attendance details;
 - (g) remuneration of directors and key managerial personnel;
 - (h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
 - (i) matters relating to certification of compliances, disclosures as may be prescribed;

(j) details, as may be prescribed, in respect of shares held by or on behalf of The Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and

(k) such other matters as may be prescribed,

and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice:

7. Sub-section (5) of Section 92 of the Act provides that if any company fails to file its annual return under sub-section (4) of Section 92 of the Act, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subjects to a maximum of five lakh rupees.
8. Sub-section (1) of Section 129 of the Act provides that company shall prepare a financial statement complying with the accounting standards notified under Section 133 of the Act and sub section (2) of Section 129 of the Act provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Further sub-section (1) of Section 137 of the Act provides that a copy of 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 applicable.
9. Sub-section (3) of Section 137 of the Act provides that if a company fails to file the copy of financial statements under sub-section (1) or sub-section (2) of Section 137, as the case may be, before the expiry of the period specified therein, the company shall be liable to a penalty 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 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 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.

ORDER

10. The Company and its Directors have not filed Annual Return and Financial Statement pursuant to sub-section (4) of Section 92 and Sub-section (1) of Section 137 of the Act, for financial years ending 31.03.2015, 31.03.2016, 31.03.2017 and 31.03.2018 respectively, thereby attracting penal provisions under Sub-Section (5) of Section 92 and Sub-section (3) of Section 137 of the Act respectively. The offence is of serious nature since non-filing of Annual Accounts by the Company has placed itself out of reach of stakeholders/regulatory Authorities and others who have interest in the company.

The object of filing of Annual Return of company in MCA Portal is in the public interest, to enable the investor, public and whosoever interested in the company can access the fundamental information about the company and its management. Non-filing of this statutory return is not only violation of the provisions of the Act, but result in denial of information to the various stakeholders/ public in general.

The object of filing of audited Financial Statements of a company in MCA Portal is to enable the interested public/investors/statutory agencies to access and know about the company's financial state of affairs. The audited financial statements of a company so filed shall give a true and fair view of the state of affairs of the company. The said statements once filed become public documents and the interested public can access the said statements through MCA website to know the financial state of affairs of the company as on that date.

11. Having considered the facts and circumstances of the case of default by company's in filing the Statutory Returns and also after taking into account the facts narrated in Para 4 & 10 supra, the Adjudicating Officer do hereby impose penalty on Company and its Directors as per Table Below for violation of Section 92 and 137 of the Companies Act, 2013 for the Financial years ending 31.03.2015, 31.03.2016, 31.03.2017 and 31.3.2018, respectively. The Adjudicating Officer is of the opinion that penalty is commensurate with the aforesaid default committed by the Noticee's as the company and its directors have committed a default in non-filing the Statutory Returns and liable to pay penalty as per Table below:-

Document required to be filed	No. of days Default*	Penalty imposed on company/Directors	FY	First Default	Document required to be filed	No. of days Default*
Annual Returns U/s 92(4) of the Companies Act, 2013	460 days for FY 31.03.2015, 31.03.2016 31.03.2017 & 432days for FY 31.03.2018	On company	31.03.2015	50,000	100x460=46,000	96,000
			31.03.2016	50,000	100x460=46,000	96,000
			31.03.2017	50,000	100x460=46,000	96,000
			31.03.2018	50,000	100x432=43,200	93,200
		Shri. Pazhathaiya Nadar Suyambu	31.03.2015	50,000	100x460=46,000	96,000
			31.03.2016	50,000	100x460=46,000	96,000
			31.03.2017	50,000	100x460=46,000	96,000
			31.03.2018	50,000	100x432=43,200	93,200
	Shri. Jaganath Pazhathiya Suyambu	31.03.2015	50,000	100x460=46,000	96,000	
		31.03.2016	50,000	100x460=46,000	96,000	
		31.03.2017	50,000	100x460=46,000	96,000	
		31.03.2018	50,000	100x432=43,200	93,200	
	Smt. Jayalaxmi Pazhathaiyanadar Suyambu	31.03.2015	50,000	100x460=46,000	96,000	
		31.03.2016	50,000	100x460=46,000	96,000	
		31.03.2017	50,000	100x460=46,000	96,000	
		31.03.2018	50,000	100x432=43,200	93,200	
Financial Statement U/s. 137 of the Companies Act, 2013	460 days	On company For	31.03.2015	1000X460=460000		4,60,000
			31.03.2016	1000X460=460000		4,60,000
			31.03.2017	1000X460=460000		4,60,000
			31.03.2018	1000X460=460000		4,60,000
		Shri. Pazhathaiya Nadar Suyambu	31.03.2015	1,00,000	100x460=46,000	1,46,000
			31.03.2016	1,00,000	100x460=46,000	1,46,000
			31.03.2017	1,00,000	100x460=46,000	1,46,000
			31.03.2018	1,00,000	100x460=46,000	1,46,000
		Shri. Jaganath Pazhathiya Suyambu	31.03.2015	1,00,000	100x460=46,000	1,46,000
			31.03.2016	1,00,000	100x460=46,000	1,46,000
			31.03.2017	1,00,000	100x460=46,000	1,46,000
			31.03.2018	1,00,000	100x460=46,000	1,46,000
		Smt. Jayalaxmi Pazhathaiyanadar Suyambu	31.03.2015	1,00,000	100x460=46,000	1,46,000
			31.03.2016	1,00,000	100x460=46,000	1,46,000
			31.03.2017	1,00,000	100x460=46,000	1,46,000
			31.03.2018	1,00,000	100x460=46,000	1,46,000

- No. of days have been calculated from 2.11.2018 to 04.02.2020 for the financial years 31.03.2015, 31.03.2016 and 31.03.2017 and 30.11.2018 to 04.02.2020 for the financial year 31.03.2018 for Annual Return.
- No. of days have been calculated from 02.11.2018 to 04.02.2020 date of order i.e. 04.02.2020 for Financial Statement for the Financial Years 31.03.2015, 31.03.2016, 31.03.2017 and 31.03.2018.

12.The company and its directors are hereby directed to rectify the default immediately from the date of receipt of copy of this order.

13.The Penalty imposed shall be paid through the Ministry of Corporate Affairs portal only.

14.Appeal, if any against this order may be filed in writing with the Regional Director, Southern Region, Ministry of Corporate Affairs, 5th floor, Shastri Bhavan, 26, Haddows Road, Chennai – 600 006 within a period of sixty days from the date of receipt of this order, in Form ADJ setting forth the grounds of appeal and shall

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15. Be accompanied by a certified copy of this order (Section 454 of the Companies Act, 2013 read with the Companies (adjudicating of Penalties) Rules, 2014).

16. Your attention is also invited to Section 454(8) of the Act regarding consequences of non-payment of penalty

In terms of the provisions of sub-Rule (9) of Rule 3 of the Companies (Adjudication of Penalties) Rules, 2014, a copy of this order is being sent to Company, 1. M/s ARYAN TEX TRADE PRIVATE LIMITED, New NO. 81 Old No. 41, Government Arts College Road, Coimbatore- 641018, 2. Shri. PAZHATHAIYA NADAR SUYAMBU, Director, S/o PAZHATHAIYA NADAR, OLD NO.6, New No.35, Chidambaranathan, Street, Nagercoil-629001, 3. Shri. JAGANATH PAZHATHIYA SUYAMBU, Director, S/o PAZHATHIYANADAR SUYAMBU, New No. 35, Chithamboranathan Street, Nagercoil, Dist-629001 and 4. Smt. JAYALAXMI PAZHATHAIYA NADAR SUYAMBU, Director, D/o PAZHATHAIYA NADAR SUYAMBU, New No. 35, Chithamparanathan Street, Nagercoil, Nagercoil-629001.

Also to:-1. Regional Director, Southern Region, Ministry of Corporate Affairs, Chennai 2. Deputy Director, Legal Section, Ministry of Corporate Affairs, 5th Floor, 'A' Wing, Shastri Bhawan, Dr. Rajedraprasad. Road, New Delhi-110001, 3. E Governance Cell, Ministry of Corporate Affairs, Shastri Bhavan, 5th Floor, A wing, Dr. Rajedraprasad Road, New Delhi - 110001.

Place: Coimbatore
Dated the 4 FEB 2020


(C.S. GOVINDARAJAN)
REGISTRAR OF COMPANIES
TAMILNADU, COIMBATORE