

BEFORE THE REGIONAL DIRECTOR, (WR), MUMBAI

CP No. 15/2019

RD(WR)/Sec. 454(5)/Relicab/H84854546/2020

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

AND

In the matter of **RELICAB CABLE MANUFACTURING LIMITED**

having Registered Office at 57/1,(4-B) Benslore Industrial Estate Dunetha, Daman - 396210 (U. T)

Daman DD 392 610.

.....Applicant

Parties Present:

For Petitioner: Ms. Isha Shah, Practicing Company Secretary & Swapneel Patel,
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 RELICAB CABLE MANUFACTURING LIMITED (hereinafter referred to as the "Company" or "Appellant") having CIN L27201DD2009PLC004670, incorporated under the Companies Act, 1956, having its registered office at 57/1,(4-B) Benslore Industrial Estate Dunetha, Daman - 396210 (U. T) Daman DD 392610 IN., 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&137/2019/102 dated 19/06/2019.
2. The order was passed by the ROC on 19/06/2019 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 on Form ADJ (SRN H84854546) is filed on 26.08.2019. 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 31.07.2019 and the appeal is filed on 26.08.2019. The appeal was filed on 26.08.2019 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:
- The appellant company was defaulting in filing of its Annual Returns and Balance Sheets for the Financial Year 2017-18.
 - The ROC has issued show cause notice under Section 92(5) and Section 137(3) of the Act vide notice dated 29/01/2019 to the company and its directors namely Mr. Suhir Hiralal Shah (DIN 02420617), Mr. Parag Jayantilal Shah (DIN 02485384), Mr. Mohit Goyal (DIN AMNPG987), Ms. Vijaya Bhikaji More (DIN 07283800), Mr. Mushtaque Khan (DIN 07295171) & Mr. Rajesh Mahashankar Gor (DIN 07302407) calling them to show cause for non-filing of such documents.
 - In response, the company stated vide reply dated 23/02/2019 that it is in process of filing returns and requested a time of 10 days to file the said statutory returns. It was stated that the delay in filing returns was caused due to receipt of some data pertaining to form from the Registrar and Share Transfer Agent.
 - As per the Master Data, the company has finally filed the due Annual Returns and Balance Sheets for the Financial Year 2017-18 on 25.04.2019 & 27.04.2019 respectively.
 - The ROC has imposed a total penalty of Rs.4,22,600/- (Rupees Four Lakh Twenty Two Thousand Six Hundred Only) on the company and its Managing Director as detailed herein below finding that the company is having a Managing Director:

Document Required to be filed	No of Days of Default	Penalty Imposed on Company /Director	First Default (in Rs)	Default Continues (in Rs)	Total (in Rs)
Financial Statement u/s 137(1) of the Companies Act, 2013	176 days*	On Company	Rs.1000X176 days=	Rs.1,76,000/-	Rs.1,76,000/-
		Suhir Hiralal Shah	Rs.1,00,000/-	Rs.100X176 days=Rs.17,600/-	Rs.1,17,600/-
Annual Returns u/s 92(4) of the Companies Act, 2013	145 days*	On Company	Rs.50,000/-	Rs.100X145 days= Rs.14,500/-	Rs.64,500/-
		Suhir Hiralal Shah	Rs.50,000/-	Rs.100X145 days= Rs.14,500/-	Rs.64,500/-

*No. of days have been calculated from November, 2018 for Financial Statement till 26.04.2019 respectively.

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

5. In the appeal, the appellant has taken the following grounds:
- a. The company has never delayed filing of forms with the Registrar of Companies or the Bombay Stock Exchange Limited (BSE) and the said delay was caused due to genuine reasons without any malafide intention as evidenced from the filing of Annual Returns and other documents with BSE for public dissemination.
 - b. The object and purpose for timely filing was served with filing before BSE.
 - c. The company has now completed the filings with payment of additional fees.
 - d. The company has prayed to grant relief/exemption from payment of penalty.
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. The company is a listed company and is having total revenue from operations to the tune of Rs.20.65 Crore and has earned total profit before tax to the tune of Rs.69.88 lakh during Financial Year 2017-18 and was also having Whole-time-Company Secretary during the period under reference namely Shri Mohit Goyal appointed on 15/04/2017 and who resigned on 01/04/2019.
 - c. Therefore, there was no plausible reason for the Appellant Company for making delay in filing of said statutory returns.
 - d. The company is having a Managing Director (MD), a Chief Financial Officer (CFO), a Whole-time Director (WTD) and a Company Secretary (CS) in addition to other directors on its Board.
 - e. The offences for non-filing of Financial Statement is punishable as per provisions of Section 137(3) of the Act which prescribed as under:
"(3) 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, 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 (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 a maximum of five lakh rupees)."

f. Accordingly, the penalty should have been provided under Section 137(3) to the company and its Managing Director and also it's Chief Financial Officer.

g. In the present case, as the company is having the MD as well as CFO, whereas, the ROC/Adjudicating Officer has imposed penalty only to the company and it's MD. Thus, the impugned order is defective on this count.

h. The offence for non-filing of Annual Returns is punishable under Section 92(5) of the Act which prescribes as under:

"(5) If any company fails to file its annual return under sub-section (4), 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, subject to a maximum of five lakh rupees."

i. For the definition of officers in default, the ROC/Adjudicating Officer should have referred to Section 2(60) of the Act. Whereas, the ROC/Adjudicating Officer has imposed penalty only on the company and its MD despite of the fact that the Appellant Company is having MD, WTD, CFO and CS. Thus, the impugned order is defective on this count too.

j. The order of the ROC/Adjudicating Officer is defective on account of calculating and imposing the penalties in terms of provisions of Section 137(3) and Section 92(5) read with Section 2(60) of the Act as the ROC/Adjudicating Officer has calculated the period of default with effect from November, 2018 without giving the specific date and without considering the extension, if any, granted by the Central Government in filing of Annual Returns and Balance Sheets for Financial Year 2017-18..

k. The order of imposing the penalty was addressed to the company and 06 of its directors vide letter dated 31/07/2019 by the Office of the ROC and the penalty is imposed to the company and its MD only whereas, the appeal has been filed only by the company and there is no Affidavit or Appeal by the MD or by any of other directors of the company. Therefore, the appeal is incomplete/defective on this count.

l. The impugned order has not recorded, if any inquiry was conducted.

7. Thus, the order is without application of mind on the relevant statutory provisions of the Act and without performing the duties cast on the ROC/Adjudicating

Officer. The ROC/ Adjudicating Officer present in the course of hearing could not give any plausible reason for the said defects.

THE REGIONAL DIRECTOR (WR) DOTH HEREBY ORDERS

1. 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 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.
2. A copy of this order shall be published on the website of the Ministry of Corporate Affairs as per Rules.
3. No order to cost.

Signed and sealed on

16th March
day of, ___ 2020 at Mumbai.



(Signature)
(Manmohan Juneja)
Regional Director (WR)

Copy to:

- 1) RELICAB CABLE MANUFACTURING LIMITED
57/1, (4-b) Benslore Industrial Estate Dunetha,
Daman - 396 210 (U.T)
- 2) The Registrar of Companies, Goa.
- 3) Office Copy