



BEFORE THE REGIONAL DIRECTOR, WESTERN REGION

MINISTRY OF CORPORATE AFFAIRS, MUMBAI

प्रादेशिक निदेशक, पश्चिम क्षेत्र, कारपोरेट कार्य मंत्रालय, मुंबई के समक्ष

सं. - प्रादे. निदे. (प.क्षे.)/454(5)/Oriental Industrial/92/F91939397/2023-24/

5349

28 JUN 2024

APPEAL UNDER 454(5) OF COMPANIES ACT, 2013 AGAINST ORDER PASSED FOR OFFENCES COMMITTED UNDER SECTION 92 OF THE COMPANIES ACT, 2013.

In the matter of ORIENTAL INDUSTRIAL INVESTMENT CORPORATION LIMITED & ORS.

- | | | |
|----|--|------------------------|
| 1. | Oriental Industrial Investment Corporation Limited | - Company |
| 2. | Ghulam Ghouse | - Additional Director. |
| 3. | Jagdish Narayan Kalla | - Director. |
| 4. | Parmeshwar Vyas | - Director. |
| 5. | Kavita Parmeshwar Vyas | - Director. |
| 6. | Shanta Jagdish Calla | - Director. |

... Appellants

Through: N.K. Upadhyay, Advocate.

HON'BLE REGIONAL DIRECTOR (WESTERN REGION)

ORDER

Appeal under sub-Section (5) of Section 454 of the Companies Act, 2013 (Act) r/w the Companies (Adjudication of Penalties) Rules, 2014 (Rules) have been filed by 'Oriental Industrial Investment Corporation Limited' (Company) having CIN L99999MH1943PLC003977 and, its Officers/Directors, against Order No. ROC(M)/Sec-92/ADJ-ORDER/Sr.No.106/5791 dated 11/12/2023 (ROC Order) of Registrar of Companies, Mumbai for violating provisions of Section 92 of the Act.

- The appeal lies within the jurisdiction of the Regional Director, Western Region, Ministry of Corporate Affairs, Government of India.

3. The Registrar of Companies, Mumbai (RoC Mumbai) vide Adjudication Order dated 11/12/2023 held the Company and its Officers/Directors, who have defaulted liable for penalty under Section 92(5) of the Act from 30/11/2019 to 20/10/2020 for not filing Annual Return for the Financial Year 2018-19 within sixty days from the date of Annual General Meeting in pursuance of Section 96 of the Act as under:

No. of days default	Penalty imposed on Company / KMP	First default (In Rs.)	Default continues	Total penalty levied (In Rs.)	Maximum penalty (In Rs.)
326 days	Oriental Industrial Investment Corporation Limited	50,000/-	326X100 = 32,600/-	82,600/-	5,00,000/-
	Ghulam Ghose, Additional Director.	50,000/-	326X100 = 32,600/-	82,600/-	5,00,000/-
	Jagdish Narayan Kalla, Director.	50,000/-	326X100 = 32,600/-	82,600/-	5,00,000/-
	Parmeshwar Vyas, Director.	50,000/-	326X100 = 32,600/-	82,600/-	5,00,000/-
	Kavita Parmeshwar Vyas, Director.	50,000/-	326X100 = 32,600/-	82,600/-	5,00,000/-
	Shanta Jagdish Calla, Director.	50,000/-	326X100 = 32,600/-	82,600/-	5,00,000/-
TOTAL				4,95,600/-	30,00,000/-

4. Appellants have filed Form-ADJ vide SRN F91939397 dt. 08/02/2024. As per provisions of sub-Section (6) of Section 454, every appeal under sub-section (5) shall be filed within sixty (60) days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person. On examination of the application/appeal, it is seen that the said application/appeal has been filed within 60 days from the date of passing of the adjudication order.

5. Grounds of Appeal & Relief sought:

- The Adjudication Order was issued in the name of OptimatesTextile Industries Limited and not against Oriental Industrial Investment Corporation. This error makes the entire order unenforceable.
- Mr.Ghulam M Ghose was appointed as Independent Director of the company and also resigned as Director and Independent Director of the company w.e.f. 18/05/2020. Therefore, in compliance with MCA Circular No.1/2020 dt.02/03/2020, the penalty levied on Mr. Ghose be deleted.
- Jagdish Narayan Kalla & Shanta Jagdish Calla, were non-executive Directors on the Board of the Company.
- Parmeshwar Vyas was under Judicial Custody at Udaipur Central Jail since November 4, 2016 and April 11, 2022 and therefore could not attend any Board Meetings of the company. Therefore, due to the operation of law under provisions of Section 167 of the Companies Act, 2013, Mr. Vyas vacated the position of Director w.e.f. November 7, 2017.
- The company is a small company with a turnover of NIL for the F.Y. 2018-19, 2020-21, 2021-22 & 2021-23.

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- f. The show cause notice was not appropriately served upon the company and its Director.
- g. That, Section 454 of the Companies Act, 2013 and Rule 3 of the Companies Adjudication of Penalties Amendment Rules, 2019 makes it obligatory on the Adjudicating Authority to issue show cause notice upon the company and on the officers in default.
- h. The Directors of the company namely Ghulam Ghouse, Jagdish Narayan Kalla & Shanta Jagdish Kalla are not liable for penalty as they were Independent/Non-Executive Directors.
- i. Parmeshwar Vyas vacated the office of Director due to operation of law under Section 167 of the Act with effect from 04/11/2017, therefore, no penalty can be imposed upon him.
- j. The Adjudicating Officer has not perused all documents on record as the Form DIR-12 with regard to appointment of Directors.
- k. The Adjudicating Officer ought to have complied with Ministry of Corporate Affairs Circular No.1/2020 dt.02/03/2020 with regard to inclusion of officers in default in the adjudicating proceedings.
- l. The company is a small company with turnover for the F.Y. 2018-19, 2020-21, 2021-22 & 2021-23 is Nil and paid-up capital of Rs.1,14,30,000/-.

6. The matter was posted for hearing as per Section 454(5) r/w Section 454(7) of the Act on 13/06/2024. N.K. Upadhyay, Advocate appeared on behalf of Appellants as their authorized representative. The authorized representative reiterated the submission made by the applicants in their application and have admitted the contravention of Section 92 of the Companies Act, 2013. However, he has requested for waiver/deletion of penalty to the extent of two directors namely Ghulam Ghouse, Additional Director (Appellant No.2) and Parmeshwar Vyas, Director (Appellant No.4) as he claimed to have filed DIR-12 for both these directors.

7. The punishment for contravention of section 92 is prescribed under section 92(5) of the Companies Act, 2013 which states that -

"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 officers who is in default shall be liable to a penalty of fifty thousand 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."

8. RoC, Mumbai vide further letter dt.03/06/2024 has stated that -

- a. Notices were sent to the company and all officer in default. However, the same were returned back.
- b. No reply has been received by this office from the company and its officers in default till date.
- c. Penalty has been levied upon all officers in default during the period of violation i.e. from 30/11/2019 to 20/10/2020.

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- d. The company has also failed to submit any documents e-forms in support of their claim that Mr. Parmeshwar Vyas is shown as director as per the signatory details on V2 Portal and no e-form DIR 12 was filed by company for vacation.
- e. This office issued show cause notice dt.19/10/2020 but no reply has been received from the company and its directors. Further, Adjudication Order dt.11/12/2023 to company and its directors was also returned back from the postal department. This shows that company is not maintaining its registered office and directors have not updated their DIR - KYC details.

Therefore, the grounds made by applicants in their submissions are not tenable.

9. Facts of the Case:

- a. The Company has failed to file a copy of Annual Return with the Registrar of Companies for the Financial Year 2018-19 within sixty days as per the provisions of Section 92 of the Companies Act, 2013.
- b. Due date of filing Annual Return was 29/11/2019.
- c. Annual Return were not filed till the date of dispatch of the show cause notice dt. 21/10/2020. Default period is thus calculated to be at a total of 326 days from 30/11/2019 to 20/10/2020.
- d. ROC, Mumbai has imposed penalty as per Section 92(5) of Companies Act, 2013.
- e. DIR 12 for one of the director Shri Parmeshwar Vyas, Director (Appellant No.4) has been filed on 06/06/2024 i.e. after the completion of adjudication proceedings to avoid payment of adjudication penalty for event date 09/11/2017 (one year from remanded to Jail/Judicial Custody) for claiming to be ceased as director and copy of minutes not produced and also not able to satisfy as to why company has not filed DIR-12 between 09/11/2017 to 06/06/2024.
- f. No DIR-12 has been filed in respect of Shri Ghulam Ghouse, Additional Director (Appellant No.2).

In view thereof, there is no inherent defect in the Adjudication Order dt. 11/12/2023 and the same is in accordance with the provisions of the Act.

10. Taking into consideration the Adjudication Order of the Registrar of Companies, Mumbai; submissions made by the Appellant in his application as well as oral submissions of authorized representative during the hearing; further letter of RoC, Mumbai dt.03/06/2024; I am of the considered view that there is no merit in the appeal, and accordingly, the Adjudication Order dated 11/12/2023 passed by ROC, Mumbai is confirmed.

11. In view of the above, the present appeal is dismissed with directions to the appellant to pay penalty imposed by the Registrar of Companies, Mumbai vide Adjudication Order dt.11/12/2023 within 90 days, failing which, Registrar of Companies, Mumbai, is directed to file prosecution under Section 454(8) of the Companies Act, 2013.

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A copy of this order shall be published on the website of the Ministry of Corporate Affairs as per Rules.

Signed and sealed on 18th day of June 2024.



(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI

To,

1. Oriental Industrial Investment Corporation Limited,
505-506, Marine Chamber, New Marine Lines,
Mumbai, Mumbai City, Maharashtra 400020, India.
2. Ghulam Ghouse,
1303, Shubda, Sir Pochkanwala Road, Worli,
Mumbai 400018, Maharashtra, India.
3. Jagdish Narayan Kalla,
390, Kamla Nehru Nagar,
Jodhpur 342009, Rajasthan, India.
4. Parmeshwar Vyas,
172 Lovely Home, Cuffe Parade,
Mumbai 400005, Maharashtra, India.
5. Kavita Parmeshwar Vyas,
E-18, Shastri Nagar Behind Cox Kutir Pal Road,
Jodhpur 342001, Rajasthan, India.
6. Shanta Jagdish Calla,
390, Kamla Nehru Nagar,
Jodhpur 342009, Rajasthan, India.
7. Registrar of Companies, Mumbai.
8. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
9. Master Copy.
10. Office Copy.

(TUSHAR WAGH, ICLS)
DEPUTY DIRECTOR