



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)/Yapp India/187-C(1)/89/ F92630276 /2023-24/

4637

10 JUN 2024

APPEAL UNDER 454(5) OF COMPANIES ACT, 2013 AGAINST ORDER PASSED FOR OFFENCES COMMITTED UNDER SECTION 187-C(1)/89 OF THE COMPANIES ACT, 1956/2013.

In the matter of YAPP INDIA AUTOMOTIVE SYSTEMS PRIVATE LIMITED.

1. Yapp India Automotive Systems Co. Ltd.
2. Yapp Automotive Parts FFoshan Co. Ltd.

...Appellants

Through: Noel Thomas, Advocate & Ms. Monica Gehlot, Company Secretary
for Appellants.

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 Yapp India Automotive Systems Co. Ltd. & Yapp Automotive Parts FFoshan Co. Ltd. against Order No. RoCP/ADJ/order/89/YAPP/VVG/2023/2302 of Registrar of Companies, Pune dated 19/12/2023 (ROC Order) for violating provisions of Section 187-C(1)/89 of the Companies Act, 1956/2013.

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

3. The Registrar of Companies, Pune (RoC Pune) vide Adjudication Order dated 19/12/2023 held the Appellants, and their Officers who have defaulted, liable for penalty under Section 89(5) & (7) of the Act from 21/12/2020 to 25/05/2023 for non-filing of declaration as per Section 187-C(1) of the Companies Act, 1956 r/w the Companies (Declaration of Beneficial interest in Shares) Rules, 1975 r/w Companies (Significant Beneficial Owners) Rules, 2018 of the Companies Act, 2013 as under:

[Signature]

Penalty as per Section 89(5) of the Companies Act, 2013:

No. of days default	Penalty imposed on Company / Director (s)	Default continues (In Rs.)	Total / maximum penalty (In Rs.)
From 21/12/2020 to 25/05/2023 = 885 days	Yapp India Automotive Systems Co. Ltd.	$50,000 + 200 \times 885 = 2,27,000$	2,27,000
	Yapp Automotive Parts FFoshan Co. Ltd.	$50,000 + 200 \times 885 = 2,27,000$	2,27,000

Note: Period of default is from date of amendment of the provisions wherein penalty was replaced with fine till date of issue of notice i.e. 21/12/2020 till 25/05/2023

Penalty as per Section 89(7) of the Companies Act, 2013:

No. of days default	Penalty imposed on Company / Director (s)	Default continues (In Rs.)	Total / maximum penalty (In Rs.)
*From 21/12/2020 to 25/05/2023 = 885 days	Yapp India Automotive Systems Private Limited	$1,000 \times 885 = 8,85,000$	5,00,000
	Huazhu Chen (Executive Director)	$1,000 \times 885 = 8,85,000$	2,00,000
From 03/06/2021 (date of appointment) to 25/05/2023 = 721 days	Sangeeta Devendra Kulkarni (Company Secretary)	$1,000 \times 721 = 7,21,000$	2,00,000
From 21/12/2020 (date of amendment) to 11/05/2021 (date of cessation) = 141 days	Suhas Ganpat Naik (Company Secretary)	$1,000 \times 141 = 1,41,000$	1,41,000

Note: Period of default is from date of amendment of the provisions wherein penalty was replaced with fine till date of issue of notice i.e. 21/12/2020 till 25/05/2023

4. Appellants have filed Form-ADJ vide SRN F92630276 dt. 23/02/2024. 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. The Authorised Representatives confirmed that the said Adjudication Order was received by the company on 25/12/2023 and as such, the application been filed by within 60 days from the date of receipt of the adjudication order.

5. The appellants have prayed that pending hearing and final disposal of the present appeal, the operation of the impugned order dt.19/12/2023 be stalled on the grounds that,

- "Since no individual is significant beneficial owner (directly or indirectly) in YAPP, the Application Company is not contravention of the provisions of Section 89 of the Companies Act, 2013 and/or crossing/overshooting the threshold limit as

mentioned under Section 90 of the Companies Act, 2013 read with Companies (Significant Beneficial Owners) Rules, 2018.

- b) It is further stated that YAPP is a law-abiding entity and has always complied with all the provisions of the Act in letter and spirit. It is further averred that YAPP ought to have diligently reported that the YAPP is not in willful nor deliberate default of any of the provisions of Companies Act, 2013 and/or Companies (Significant Beneficial Owners) Rules, 2018. Despite having not breached any of the provisions of the Act, the company has sue-moto decided to take corrective measures to compound the offence."

6. As per provisions of Section 89(1) of the Companies Act, 2013, "(1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares."

That the punishment for contravention of section 89(1) is prescribed under section 89(5) & (7) of the Companies Act, 2013 which states that -

Section 89(5): "If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with a further penalty of two hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees".

Section 89(7): "If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in case of a company and two lakh rupees in case of an officer who is in default".

7. Facts of the Case:

The company has beneficial owners as shareholders of the company (Foreign companies - YAPP Automotive parts/YAPP Automotive Systems/Yapp Automotive Parts FFoshan etc). As per records available on MCA 21 portal, the company has not filed Declaration by the person as per referred to in section 187-C (1) of the Companies Act, 1956 r/w The Companies (Declaration of Beneficial Interest in Shares) Rules, 1975 r/w Companies (Significant Beneficial Owners) Rules, 2018 of the Companies Act, 2013. Thus, the Company and officers and the persons who failed to make declaration are liable for action u/s 89(5) & (7) of the Companies Act, 2013.

In view thereof, the order of ROC Pune dt.19/12/2023 is in accordance with the provisions of the Act.

8. The matter was posted for hearing as per Section 454(5) r/w Section 454(7) of the Act on 28/05/2024. Noel Thomas, Advocate and Ms. Monica Gehlot, Company Secretary of the subject company appeared on behalf of Appellants as their authorized representatives. The authorized representatives reiterated the submissions made in the application and prayed for reducing the penalty as per the grounds mentioned in the appeal. The appellants admitted to the contravention of Section 187-C(1)/89 of the Companies Act, 1956/2013 and did not point out any defects in the ROC Adjudication Order dt.19/12/2023.



9. Taking into consideration the Adjudication Order of the Registrar of Companies, Pune; submissions made by the Appellants in their application as well as oral submissions of authorized representatives during the hearing; I am of the considered view that there is no merit in the appeal, and accordingly, the Adjudication Order dated 19/12/2023 passed by ROC, Pune is confirmed.

10. In view of the above, the present appeal is dismissed with directions to the appellants to pay penalty imposed by the Registrar of Companies, Pune vide Adjudication Order dt.19/12/2023 within 90 days, failing which, Registrar of Companies, Pune, is directed to file prosecution under Section 454(8) of the Companies Act, 2013.

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

Signed and sealed on 7th day of June 2024.



(SANTOSH KUMAR)
REGIONAL DIRECTOR

- To,
Yapp India Automotive Systems Private Limited,
Plot No. A-3/A, Chakan Industrial Area Phase II,
Village Khalumbre, Tal:Khed Chakan Off Talegaon Rd,
Pune, Maharashtra,410501,India.
2. Yapp India Automotive Systems Co. Ltd.
C/o. Yapp India Automotive Systems Private Limited,
Plot No. A-3/A, Chakan Industrial Area Phase II,
Village Khalumbre, Tal:Khed Chakan Off Talegaon Rd,
Pune, Maharashtra,410501,India.
 3. Yapp Automotive Parts FFoshan Co. Ltd.
C/o. Yapp India Automotive Systems Private Limited,
Plot No. A-3/A, Chakan Industrial Area Phase II,
Village Khalumbre, Tal:Khed Chakan Off Talegaon Rd,
Pune, Maharashtra,410501,India.
 4. Registrar of Companies, Pune.
 5. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
 6. Master Copy.
 7. Office Copy.

(APARNA MUDIAM)
DEPUTY DIRECTOR