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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.क्ष.)/454(5)/Ardeshir B/90/AB2765685/2024-25/

APPEAL UNDER 454(5) OF COMPANIES ACT, 2013 AGAINST ORDER PASSED FOR OFFENCES COMMITTED UNDER SECTION 90 OF THE COMPANIES ACT, 2013.

In the matter of ARDESHIR B CURSETJEE AND SONS LIMITED & ORS

- | | | |
|----|---------------------------------------|-----------------------|
| 1. | Ardeshir B Cursetjee And Sons Limited | - Company |
| 2. | John Joseph Gomes | - Director |
| 3. | Chandrasekar Krishnamurthy | - CFO(KMP) & Director |
| 4. | Manish Shrivastava | - CEO(KMP) |
| 5. | Sneha Shyamnarayan Mishra | - Company Secretary |
| 6. | Harshita Kaushal Shukla | - Company Secretary |
| 7. | Dhananjay Narendra Lonkar | - Company Secretary |

...Appellants

Present: 1) Garima Nagpal, ICLS, Asstt. Registrar of Companies, Mumbai.
2) Pushpal Sanghavi, Practicing Company Secretary and Authorized Representative for Appellants.

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 'Ardeshir B Cursetjee And Sons Limited' (Company) having CIN U63090MH1948PLC006322 and, its Officers/Director, against Order No. ROC/Mum/Ardeshir Adj/Sec.454(3) r/w Sec.90/3027 to 3033 dated 30/12/2024 (ROC Order) of Registrar of Companies, Mumbai for violating provisions of Section 90 of the Act.

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

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3. The punishment for contravention of section 90 is prescribed under section 90(11) of the Act which states that –

" If a company, required to maintain register under sub-section (2) and file the information under sub-section (4) or required to take necessary steps under sub-section (4A), fails to do so or denies inspection as provided therein, the company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day, after the first during which such failure continues, subject to a maximum of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five 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 one lakh rupees."

4. The Registrar of Companies, Mumbai (RoC Mumbai) vide Adjudication Order dated 30/12/2024 held the Company and its Officers/Directors, who have defaulted provisions of Section 90 liable for penalty under Section 90(11) of the Act from 01/04/2020 to 15/03/2024 for not filing return of Significant Beneficial Owners of the company and changes therein with the Registrar in Form No. BEN-2 within 30 days from the date of receipt of declaration from Significant Beneficial Owner, as prescribed in Rule 4 of Companies (Significant Beneficial Owners) Rules, 2018 as under:

Sr. No.	Name of the company / Director	Period of default	Amount of penalty (In Rs.)
1	Ardeshir B Cursetjee And Sons Limited	01/04/2020 to 15/03/2024 (1445 Days) (1,00,000+500X1445=8,22,500/-)	1,00,000+5,00,000= 6,00,000/-
2	John Joseph Gomes	01/04/2020 to 15/03/2024 (1445 Days) (25,000+200X1445=3,14,000/-)	25,000+1,00,000= 1,25,000/-
3	Chandrasekar Krishnamurthy	01/04/2020 to 15/03/2024 (1445 Days) (25,000+200X1445=3,14,000/-)	25,000+1,00,000= 1,25,000/-
4	Manish Shrivastava	01/04/2020 to 15/03/2024 (1445 Days) (25,000+200X1445=3,14,000/-)	25,000+1,00,000= 1,25,000/-
5	Sneha Shyamnarayan Mishra	01/02/2024 to 15/03/2024 (44 Days) (25,000+200X44=33,800/-)	25,000+8,800= 33,800/-
6	Harshita Kaushal Shukla	28/12/2022 to 30/11/2023 (337 Days) (25,000+200X337=92,400/-)	25,000+67,400= 92,400/-
7	Dhananjay Narendra Lonkar	01/09/2022 to 30/09/2022 (30 Days) (25,000+200X30=31,000/-)	25,000+6,000= 31,000/-
TOTAL			12,88,200/-

TOTAL PENALTY PAYABLE: Rs. 12,88,200/-

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5. Appellants have filed Form-ADJ vide SRN AB2765685 dt. 25/02/2025. 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.

6. Grounds of Appeal & Relief sought:

- a. The Company's registered office at Mumbai was closed in 2020 due to lock-down and accordingly SBO Declaration in BEN1 received from overseas in March 2020 inadvertently got lost / misplaced in Company's office.
- b. Upon resumption of the Office, most of the Office staff, either did not attend due to health reasons and/or opted for work from home, which due to lack of requisite infrastructure was not effective. Further there was no Company Secretary and other compliance team members were unavailable which resulted in delay in the process of retrieving BEN1.
- c. Company's business operations being mostly in logistic was adversely affected resulting in losses and further retrenchment of staff / delay in salaries and other outgo impacted availability of staff to handle various business functions including compliance. Brief Financial details of Company's Standalone operations from FY 2019-20 to 2023-24, as per filings made by the Company from time to time, are as mentioned herein.
- d. Appellant No. 3 & 4 being Executive Director & Chief Financial Officer and Chief Executive Officer of the Company being responsible for finance and business functions respectively with limited knowledge of Company Law compliance, inadvertently and unintentionally missed out / delayed filing of E-form BEN 2.
- e. Considering financial position of the Company and also considering the fact that the delay in filing was unintentional, procedural and technical without any intent of causing loss or gaining undue benefit, Appellant No. 1, 3 & 4 hereby requests Hon'ble Regional Director to show leniency and reduce the Penalty from Rs. 6,00,000/-, Rs. 1,25,000 and Rs. 1,25,000 respectively by reasonable amount as thought fit and proper by Hon'ble Regional Director.
- f. Appellant No. 2 is not involved in day-to-day operations. Adjudication Officer while taking cognizance of the position of Appellant No. 2, failed to appreciate non-involvement of Appellant No. 2 and levied penalty of Rs. 1,25,000 on Appellant No. 2, similar to that levied to the Key Managerial Personnel. Considering above submission Appellant No. 2 hereby earnestly requests Hon'ble Regional Director to exonerate him and waive the penalty amount in its entirety.
- g. Appellant No. 5 joined the Company in February 1, 2024 and was unaware of past noncompliance due in 2020. While admitting that violation committed in 2020 was continued non-compliance, Appellant No. 5 hereby states that there was no opportunity for her to review past non-compliance. In fact, upon becoming aware of the non-compliance, Appellant No. 5 initiated requisite action and ensured delayed filing of E-Form BEN 2 in March 2024.



- h. Adjudication Officer while taking cognizance of date of joining, period of association with the Company and involvement in ensuring compliance of BEN2 filing, failed to appreciate above facts and levied penalty of Rs. 33,800 on Appellant No. 5. Considering the above submissions Appellant No. 5 hereby earnestly requests Hon'ble Regional Director to exonerate her and waive the penalty amount in its entirety.
- i. Appellant No. 6 joined the Company on December 28, 2022 and continued as Company Secretary for a period of 11 months till November 30, 2023 and was unaware of past noncompliance due in 2020. While admitting the fact that violation committed in 2020 was continued non-compliance, Appellant No. 6 hereby states that she missed out on doing due diligence of past non-compliances and did not review past papers, to facilitate rectification of non-compliance.
- j. The Adjudication Officer while taking cognizance of period for which Appellant No. 6 was associated with the Company as Company Secretary, failed to appreciate the fact that the Appellant was not associated with the Company at the time of non-compliance and levied penalty of Rs. 92,400 on Appellant No. 6.
- k. Considering above submission and also considering that failure on the part of Appellant No. 6 to carry out due-diligence non-compliance of past years and review of past papers was inadvertent and unintentional and that the Appellant No. 6 was not associated with the Company at the time of non-compliance, Appellant No. 6 hereby earnestly requests Hon'ble Regional Director to exonerate her and waive the penalty in its entirety.
- l. Appellant No. 7 was associated with the Company for a short period of 30 days in the month of September 2022. In few days after joining the Company, Appellant No. 7 had conveyed his intent to resign due to personal reason. Appellant No. 7 was however relieved only on September 30, 2022 as the Company sought time for appointing replacement. In view of the foregoing, Appellant No. 7 did not have any opportunity to review any of the Compliance documents of the Company during such a short period.
- m. The Adjudication Officer while taking cognizance of period for which Appellant No. 7 was associated with the Company as Company Secretary, failed to appreciate the above facts and levied penalty of Rs. 31,000 on Appellant No. 7. Considering the above submissions Appellant No. 7 hereby earnestly requests Hon'ble Regional Director to exonerate him and waive the penalty in its entirety.
- n. That the Penalty on Appellant No. 1, 3 and 4 be reduced from Rs. 6,00,000/-, Rs. 1,25,000/- and Rs. 1,25,000/- respectively by reasonable amount as thought fit and proper by Hon'ble Regional Director.
- o. That Appellant No. 2, 5, 6 and 7 be exonerated and the penalty of Rs. 1,25,000/-, Rs. 33,800/-, Rs. 92,400/- and Rs. 31,000/- respectively levied be waived in its entirety.
- p. To pass such further order or orders and directions as this Hon'ble Regional Director may deem fit and proper.



7. The matter was posted for hearing as per Section 454(5) r/w Section 454(7) of the Act on 04/04/2025. Pushpal Sanghavi, Practicing Company Secretary (PCS), 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 90 of the Companies Act, 2013. However, he contested ROC's Adjudication Order/reduction of penalty on following grounds:

- a. The company is in losses since 2020 and have a turnover of Rs.7.15 crores in F.Y. 2023-24.
- b. Applicant No.2 (Mr.John J. Gomes) is not executive director and not involved in day-to-day operations but inadvertently in DIR-12 it has been marked as executive director. But the company has failed to file revised returns to rectify the defects.
- c. The Applicant Nos. 6, 7 & 8 have been appointed subsequent to cause of action date i.e. 01/04/2020 and for a short period and they should not be held responsible for the said violation.

8. Assistant Registrar of Companies, Mumbai who also attended the hearing stated that Section 90 of the Act for filing BEN-2 is a continuous offence and all Directors/CS who have joined after cause of action date i.e. 01/04/2020 till filing of BEN-2 i.e. 16/03/2024 will be responsible for the said violation. Also, vide further Report dt.03/04/2025, she has stated as follows:

- a. The averments made in the appeal are denied in toto unless specifically admitted and any issues which have not been specifically dealt with may not be deemed to be admitted due to lack of traverse.
- b. The present Appeal filed by the subject Company is devoid of merit. The Company has itself admitted that E-form BEN-1 was received on 27.02.2020, whereas the Company has filed E-form BEN-2 on 16.03.2024. However, the due date of filing the E-form BEN-2 (including extension of last date for filing of Form BEN-1 and BEN-2 vide General Circular No. 1/2020 dated 01.01.2020) was 01.04.2020.
- c. It is submitted that Appellant No. 1's contention that the internal disturbances within the Company led to non-compliance is untenable in law. Compliance obligations are statutory and independent of any internal managerial disruptions. Any lack of awareness regarding the compliance obligation does not absolve the company or its officers from penalties imposed under the Act. Further, the Appellant's plea regarding the COVID-19 cannot be sustained as the due date of filing BEN-2 had already lapsed before the onset of the nationwide lockdown.
- d. With respect to the plea of the Appellant No. 2 Mr JOHN JOSEPH GOMES, Director, it is submitted that he is an Executive Director of the Company as per E-form DIR 12 filed vide SRN G13824461 and thus, the plea that said director was not involved in day to day working is not maintainable.
- e. With respect to the plea of Appellant 5 to 7 it is submitted that they joined the Company on 01.02.2024, 28.12.2022 and 01.09.2022 respectively and non-filing of BEN-2 is continuous violation. Accordingly, they shall be held liable as key

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managerial personnel/officer in default as per the provisions of Section 90(11) read with Section 2(60) of the Companies Act, 2013 for such non-compliance from the date of their appointment till the date on which default was rectified by filing BEN-2 i.e. 16.03.2024 or the date of cessation, whichever is earlier.

9. In view thereof, it is concluded that there is no inherent defect in the Adjudication Order dt. 30/12/2024 and the same is in accordance with the provisions of the Act. The PCS for appellants is not able to establish any defects in the Adjudication Order dt. 30/12/2024 passed by ROC, Mumbai for non-compliance of Section 90 of the Act.

10. Taking into consideration the Adjudication Order of the Registrar of Companies, Mumbai; submissions made by the Appellants in their application as well as oral submissions of authorized representative during the hearing; further report of RoC, Mumbai dt. 03/04/2025; I am of the considered view that there is no merit in the appeal, and accordingly, the Adjudication Order dated 30/12/2024 passed by ROC, Mumbai is 'CONFIRMED' under Section 454(7) of the Act.

11. In view of the above, the present appeal is dismissed with directions to the appellants to pay penalty imposed by the Registrar of Companies, Mumbai vide Adjudication Order dt. 30/12/2024 within 90 days, failing which, Registrar of Companies, Mumbai, is directed to file prosecution under Section 454(8) of the Act.

12. The appellants are directed to submit proof of payment of penalty (challan) imposed upon them to the Office of Registrar of Companies, Mumbai, for their record and for further necessary action.

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

Signed and sealed on 29th day of May 2025.



(SANTOSH KUMAR)
REGIONAL DIRECTOR
WESTERN REGION, MUMBAI

To,

1. Ardeshir B Cursetjee And Sons Limited,
Mackinnon Mackenzie Bldg 4 S V Marg, Ballard Estate,
Mumbai, Maharashtra 400001, India.
2. John Joseph Gomes,
4/B, Maneck Mahal, Juhu Tara Road,
Above Union Bank of India, Juhu,
Mumbai 400049, Maharashtra, India.

3. Chandrasekar Krishnamurthy,
302 Purbani CHSL Plot No 38 Swastik Park
Near Mangal Anand Hospital Chembur,
Mumbai,400071,Maharashtra,India.
4. Manish Shrivastava,
1101, Mayurpankh Co-op Hsg. soc,
Opp., Ahubila Mat, Diamond Garden, Chembur
Mumbai,400071,Maharashtra,India.
5. Sneha Shyamnarayan Mishra,
973 Shiv Kripa Chawl, Church Road Ganesh Nagar
Manpada, Thane 400607, Maharashtra, India.
6. Harshita Kaushal Shukla,
304 Vighnaharta CHSL Opposite Ambar Enclave,
Behind Laxmi Park, Society 90 Ft Road Thakurli East,
Kalyan 421201, Maharashtra, India.
7. Dhananjay Narendra Lonkar,
A-701, Keshar Upvan CHSL, Gawand Baug,
Opp. Upvan Lake, Pokhran Road No.2 Thane, (W)
Thane,400610,Maharashtra,India.
8. Registrar of Companies, Mumbai.
9. E-Gov Cell, Ministry of Corporate Affairs, New Delhi.
10. Master Copy.
11. Office Copy.

"Certified True Copy"



(TUSHAR WAGH, ICLS)
DEPUTY DIRECTOR