

भारत सरकार
कारपोरेट कार्य मंत्रालय
कंपनी रजिस्ट्रार का कार्यालय
100, "एवरेस्ट", मरिन ड्राइव, मुंबई - 400002
दूरभाष / TELE : 2281 2627, 2281 2645, 2281 3760
फैक्स / FAX : 2281 1977



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF THE REGISTRAR OF COMPANIES
100, "EVEREST", MARINE DRIVE,
MUMBAI - 400 002
Website : www.mca.gov.in
e-Mail ID : roc.mumbai@mca.gov.in

No.ROC(M)/RS/ADJ-ORDER/

263
p
276 & 111

Date : 05 DEC 2023

Order for Penalty under Section 454 for violation of
Section 92 of the Companies Act, 2013.

IN THE MATTER OF ACC LIMITED
(L26940MH1936PLC002515)

- (I) Adjudicating Officer: B. Mishra, ICLS, ROC, Mumbai
(II) Presenting Officer: Rujuta Bankar, ICLS, AROC, Mumbai

Appointment of Adjudicating Officer: -

1. Ministry of Corporate Affairs vide its Gazette Notification No. A-42011/112/2014-Ad. II dated 24.03.2015 appointed the 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.

Company: -

2. WHEREAS, the Company viz ACC LIMITED bearing CIN: L26940MH1936PLC002515 (herein after known as 'Company') is a registered company with this office under the provisions of the Companies Act, 1956 having its registered office as per MCA21 Registry at address ACC LIMITED MUMBAI, CEMENT HOUSE 121MAHARSHI KARVE ROAD 400020 MUMBAI India MUMBAI INDIA.

Relevant Provisions of the Companies Act, 2013

3. **Section 92- Annual return.** – (1) 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 there in 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:

Provided that in relation to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

(2) The annual return, filed by a listed company or, by a company having such paid-up capital or turnover as may be prescribed shall be certified by a company secretary in practice in the prescribed form, stating that the annual return discloses the facts

correctly and adequately and that the company has complied with all the provisions of this Act.

(3) An extract of the annual return in such form as may be prescribed shall form part of the Board's report.

(4) 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 may be prescribed, within the time as specified, under section 403 .

(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.

(6) If a company secretary in practice certifies the annual return otherwise than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees.

Facts about the case: -

4. It was observed from the MCA21 portal that the Company failed to file its Annual Returns for the financial year 2018-19.
5. Accordingly, this office issued a Show Cause Notice dated 28.02.2020 to the Company and its Officers in default.
6. Reply dated 06.03.2020 was received from the Company, by this office.

Reply of the Company: -

7. The company vide its letter dated 06.03.2020 replied to the show cause notice and stated as follows:

- (a) ACC Limited was incorporated on 01.08.1936. It is a step down subsidiary of LafargeHolcim Limited (ultimate Holding Company), a multinational company which is based out of Switzerland. As the ultimate Holding Company follows the calendar year as its Accounting year, to enable the ultimate holding company to present consolidated financial results to its shareholders, ACC Limited had made an application to the Company Law Board under section 2(41) of the Companies Act, 2013 for allowing it to follow the calendar year as its financial year so that the same may coincide with that of the ultimate holding company. Pursuant to the above, the company Law board vide order dated 09.12.2015 in Application No. 113/2(41)/MB/2015 granted its approval to the Company's application for following the calendar year as its financial year.
- (b) The above order was intimated to the Registrar of Companies, Mumbai in form INC-28 dated 28.12.2015 vide SN C73946436.
- (c) In consequence of the above, Company's financial year ended on 31.12.2018 for which the Annual General Meeting was held on 22.03.2019 in terms of Section 96 of the Act.
- (d) The Company has filed its audited Financial Statements for the Financial Year ended 31.12.2018 in form AOC-4 on 09.04.2019 vide SRN H49877855, in accordance with section 137(1) read with the Companies (Accounts) Rules, 2014 as amended from time to time.
- (e) As regards with regard to non-submission of the Annual Return, the Company has filed the annual return in accordance with Section 92 of the Act for the year ended 31.12.2018 in form MGT-7 dated 02.05.2019 vide SRN H58031279 within stipulated time as specified u/s 92(4) read with Section 403 of the act & further read with the Companies (Accounts) Rules, 2014 as amended from time to time.

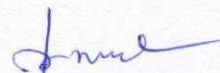
The Company requested this office to take on record the above-stated submissions.

FINDINGS:-

8. The Company Law Board, New Delhi vide its order dated 09.12.2015 in Application No. 113/2(41)/MB/2015 permitted the Company to follow calendar year as financial year i.e. From January to December.
9. It has been observed from MCA21 database that the company filed its Annual Return in form MGT-7 vide SRN H58031279 within 60 days of conduct of its Annual General Meeting held on 22.03.2019.
10. Thus, the reply of the Company is satisfactory and tenable in law.

ORDER

11. In exercise of the powers conferred on me vide Notification dated 24th March, 2015 and having considered the facts and circumstances of the case besides written submissions made by the representative of Noticee(s) at the time of hearing and after taking into account the factors mentioned in the relevant Rules, I am of the opinion that no penalty shall be imposed for the non-compliance of section 92 of the Act as there is no default.
12. The delay, if any, in passing of the order is due to the legal complexities involved in the matter.
13. In terms of the provisions of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules 2014 as amended by Companies (Adjudication of Penalties) Amendment Rules, 2019, copy of this order is being sent to the Company and Noticees and also to Office of the Regional Director, Western Region, Ministry of Corporate Affairs.



(B. MISHRA)

Adjudication officer and Registrar of Companies,
Maharashtra, Mumbai.

OK

To,

1. **ACC LIMITED, (Company)**
ACC LIMITED MUMBAI, CEMENT HOUSE 121MAHARSHI KARVE ROAD
400020 MUMBAI India MUMBAI INDIA.
2. **JAN PHILIPP JENISCH**
C/o ACC LIMITED MUMBAI, CEMENT HOUSE 121MAHARSHI KARVE
ROAD 400020 MUMBAI India MUMBAI INDIA.
3. **FALGUNI SANJAY NAYAR**
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Carmichael Road, Mumbai 400026
4. **SHAILESH VISHNUBHAI HARIBHAKTI**
10 & 11 SAHIL APARTMENT, 14 ALTAMOUNT ROAD, AIRAVAT COOP
HOUSING SOCIETY LIMITED, CUMBALA HIL MUMAI 400026
5. **NAROTAM SATYANARAYAN SEKHSARIA**
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6. **SUSHIL KUMAR ROONGTA**
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8. **MARTIN KRIEGNER**
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9. **CHRISTOF WERNER HASSIG**
C/o ACC LIMITED MUMBAI, CEMENT HOUSE 121MAHARSHI KARVE
ROAD 400020 MUMBAI India MUMBAI INDIA.
10. **VINAYAK CHATTERJEE**

(10)

Vinayak ~~Chaudhary~~ CAN.IN - Simplifying Tax Laws

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12. SUNIL MEHTA

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13. CHAND RATTAN GUPTA

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14. NEERAJ AKHOURY

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Cuffe Parade, Mumbai 400005

Copy to: -

THE REGIONAL DIRECTOR (WR)

Ministry of Corporate Affairs,
100, Everest building, Marine drive,
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For information.