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GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF REGISTRAR OF COMPANIES,
Uttar Pradesh
37/17, Westcott Building, The Mall,
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फोन / Phone : 0512 – 2310443 / 2310227

BY SPEED POST

No. 03/24/SBO/UP/2024/Zu Moulds/

Dated: 2024

ORDER OF ADJUDICATION OF PENALTY UNDER SECTION 454 OF THE COMPANIES ACT, 2013 READ WITH RULE 3 OF THE COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014 FOR VIOLATION OF PROVISIONS OF SECTION 90 OF THE COMPANIES ACT, 2013.

IN THE MATTER OF ZU MOULDS PRIVATE LIMITED
(CIN : U29300UP2016PTC085526)

Date of hearing: 31.05.2024

Present on behalf of Applicants: No one appeared on 31.05.2024

The Ministry of Corporate Affairs vide its Gazette Notification no A-42011/112/2014-Ad.II dated 24.3.2015, appointed the Registrar of Companies, Uttar Pradesh as the Adjudicating Officer in exercise of the powers conferred by Section 454(1) of the Companies Act, 2013 (hereinafter known as “the Act”) read with Companies (Adjudication of Penalties) Rules, 2014 for adjudging penalties under the provisions of this Act.

2. Whereas the company viz. ZU MOULDS PRIVATE LIMITED (hereinafter as “the reporting company”) was incorporated under the provisions of the Companies Act, 2013 on 10.08.2016, and has its registered office situated at Plot No. B-45, Sector 81, Phase II, Gautam Buddha Nagar, Noida, Gautam Buddha Nagar, Uttar Pradesh-201301, India. The shareholding details of ‘the reporting company’ as per list of shareholders attached with e-form MGT-7 for financial year 2020-21 (last available annual return at MCA21 Registry) is as follows:-

S. No.	Name of the Shareholder	No. of Shares held	Percentage of holding
1.	Chen Jufeng	3,49,990	99

2.	Manoj Kumar Kashyap	10	1
TOTAL		3,50,000	100

3. That the provisions of Section 90 of the Companies Act, 2013 reads:-

Section 90:- (1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:

Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.

(2) Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.

(3) The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.

(4) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.

(4A) Every company shall take necessary steps to identify an individual who is a significant beneficial owner in relation to the company and require him to comply with the provisions of this section.

(5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—

(a) to be a significant beneficial owner of the company;

(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or

(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,

and who is not registered as a significant beneficial owner with the company as required under this section.

(6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.

(7) The company shall—

(a) where that person fails to give the company the information required by the notice within the time specified therein; or

(b) where the information given is not satisfactory,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.

(8) On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed.

(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8), within a period of one year from the date of such order:

Provided that if no such application has been filed within a period of one year from the date of the order under sub-section (8), such shares shall be transferred, without any restrictions, to the authority constituted under sub-section (5) of section 125, in such manner as may be prescribed;

(9A) The Central Government may make rules for the purposes of this section.

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

(11) 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.

(12) If any person willfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.

4. (i) That Section 2(27) of the Act defines 'control':

"control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

(ii) That Section 2(l) of the Companies (Significant Beneficial Owners) Rules, 2018 of the Act defines 'significant influence' as the power to participate, directly or indirectly, in the financial and operating policy decisions of the reporting company but is not control or joint control of those policies.

5. That Rule 2(1)(h) of the Companies (Significant Beneficial Owners) Rules, 2018 of the Act defines

"Significant Beneficial Owner" in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely: -(i) holds indirectly, or together with any direct holdings, not less than ten per cent. of the shares;(ii) holds indirectly, or together with any direct holdings, not less than ten per cent. of the voting rights in the shares;(iii) has right to receive or participate in not less than ten per cent. of the total distributable dividend, or any other distribution, in a financial year through indirect holdings alone, or together with any direct holdings;(iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone:
Explanation I. - For the purpose of this clause, if an individual does not hold any right or entitlement indirectly under sub-clauses (i), (ii) or (iii), he shall not be considered to be a significant beneficial owner.

Explanation II - For the purpose of this clause, an individual shall be considered to hold a right or entitlement directly in 'the reporting company', if he satisfies any of the following criteria, namely.'
(i) the shares in 'the reporting company' representing such right or entitlement are held in the name of the individual;

(ii) the individual holds or acquires a beneficial interest in the share of 'the reporting company' under sub-section (2) of Section 89 and has made a declaration in this regard to 'the reporting company'.

Explanation III. - For the purpose of this clause, an individual shall be considered to hold a right or entitlement indirectly in 'the reporting company', if he satisfies any of the following criteria, in respect of a member of 'the reporting company', namely: -(i) where the member of 'the reporting company' is a body corporate (whether incorporated or registered in India or abroad), other than a limited liability partnership, and the individual, -(a) holds majority stake in that member; or (b) holds majority stake in the ultimate holding company (whether incorporated or registered in India or abroad) of that member.

6. It is pertinent to mention herein that inquiry report under Section 208 of the Companies Act, 2013 was submitted to the Directorate on 22.07.2022. The shares of reporting company are majorly held by an individual i.e. Mr. Chen Jufeng (99%). On examination of the filings made by 'the reporting company' in MCA-21 Registry till 15.02.2024 (i.e. the date of issuance of letter) there was no e-form BEN-2 filed by the reporting company and it was reason to believe that 'the reporting company' ought to have made compliance with Section 90 of the Companies Act, 2013 i.e. declaration of beneficial ownership by filing e-form BEN-2 of 'the reporting company' till the time of issuance of notice under Section 206(1) of the Act vide letter dated 15.02.2024. However, the reporting company did not submit any reply to the letter dated 15.02.2024 issued by this office.

7. There existed sufficient reason(s) that 'the reporting company' ought to have declared its significant beneficial owner in terms of Section 90 r/w the Companies (Significant Beneficial Owners) Rules, 2018 of the Companies Act, 2013, (herein after referred as SBO Rules). Hence, a Show Cause Notice (SCN) was issued to 'the reporting company' and its directors for non-compliance of Section 90 r/w SBO rules made thereunder, vide letter dated 21.05.2024 and a date of hearing was fixed for 31.05.2024.

8. The reporting company has not furnished any response to the SCN dated 21.05.2024. Further, neither any director nor authorized representative of the company appeared on the date of hearing.

9. The Company has not replied to the notices dated 15.02.2024 and 21.05.2024 of this office. Further, no one appeared on the date of hearing fixed. This indicates that the company has not complied with the provisions of Section 90 r/w SBO rules i.e. at the first instance the company should have issued form BEN-4.

10. Taking into consideration the filings made by the company in MCA21 Registry as the opportunity was given and no one appeared for the company and its directors, it is concluded that the company should have issued form BEN-4 to identify Significant Beneficial Owner and obtained declaration in this regard.

11. Adjudication of Penalty:

To conclude, the default u/s 90 r/w SBO Rules made thereunder of the Companies Act, 2013, stands established on the company and its officers in default.

The default period is counted from the date of decriminalization of default i.e. 21.12.2020 till the date of issuance of SCN i.e. 21.05.2024 for violation of Section 90(4A) r/w SBO Rules made thereunder and the default period is for 1247 days.

A. Calculation of Penalty imposed for violation of Section 90 r/w SBO Rules made there under of the Companies Act, 2013:-

Violation Section	Penalty imposed on & Period	Calculation of penalty amount (in Rs.)	Penalty imposed as per Section 90(11) of CA, 2013 (in Rs.)
A	B	C	D
Section 90(4A) of CA, 2013	Zu Moulds Private Limited (Company)	Rs.1,00,000 + 1247 x 500 = Rs.7,23,500/-	Rs.5,00,000/-
Non-issuance of BEN-4	Default of 1247 days i.e. from 21.12.2020 to 21.05.2024	Subject to maximum Rs.5,00,000/-	
	Chen Junfeng (Director since 01.12.2017 to till date)	Rs.25,000 + 1247 x 200 = Rs.2,74,400/-	Rs.1,00,000/-

	Default of 1247 days i.e. from 21.12.2020 to 21.05.2024	Subject to maximum 1,00,000/-	
	Manoj Kumar Kashyap (Director since 31.12.2020 to till date)	Rs.25,000 + 1237 x 200 = Rs.2,72,400/-	Rs.1,00,000/-
	Default of 1237 days i.e. from 31.12.2020 to 21.05.2024	Subject to maximum 1,00,000/-	
	Govindasamy Shanmugam (Director since 01.12.2017 to 12.02.2021)	Rs.25,000 + 53 x 200 = Rs.35,600/-	Rs.35,600/-
	Default of 53 days i.e. from 21.12.2020 to 12.02.2021	Subject to maximum 1,00,000/-	
TOTAL PENALTY			Rs.7,35,600/-

B. On the findings mentioned above by the Registrar, in respect of the violation under Section 90 r/w SBO Rules of the Act, the company Zu Moulds Private Limited, its "officers" are further directed pursuant to Section 454(3)(b) of the Companies Act, 2013 to determine all the individuals who fall under the definition of 'significant beneficial owner' in the letter and spirit of the Act, in respect of the reporting company and file the relevant e-form BEN 2 with respect to all such individuals within a period of 90 days from the date of this Order.

13. The Noticee shall pay the amount of penalty by way of e-payment [available on Ministry website www.mca.gov.in] under "Pay miscellaneous fees" category in MCA fee and payment Services within 90 days of receipt of this order and intimate this office with proof of penalty paid.

14. Appeal against this order may be filed in writing with the Regional Director (Northern Region), Ministry of Corporate Affairs, CGO Complex, Lodi Road, New Delhi, within a period of sixty days from the date of receipt of this order, in Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of this order [Section 454(5) & 454(6) of the Act, read with Companies (Adjudication of Penalties) Rules, 2014].

15. Attention is also invited to Section 454(8) of the Companies Act, 2013, in the event of non-compliance of this order. In case appeal is made, O/o the Registrar of Companies, U.P., may be informed along with the penalty imposed and the payments made.



(Seema Rath)

**Registrar of Companies & Adjudicating Officer
Uttar Pradesh, Kanpur**



No. 03/24/SBO/UP/2024/Zu Moulds/ 3973 to 3978

Dated: 11-10-2024

To,

1. **Zu Moulds Private Limited,**
Plot No. B-45, Sector 81, Phase II, Gautam Buddha Nagar,
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2. **Mohammad Usman, Director**
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3. **Zhang Shuhang, Director**
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6. **Manoj Kumar Kashyap, Director**
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CC:

The Regional director (Northern Region),
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(Seema Rath)

Registrar of Companies & Adjudicating Officer
Uttar Pradesh, Kanpur