

IN THE HIGH COURT AT CALCUTTA
ORIGINAL SIDE
Commercial Division

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR

CP/1/2025
IA NO: CA/1/2025

SHYAM EMCO INFRASTRUCTURE LIMITED
AND
BASANT KUMAR LOHIA AND ORS
-VS-
THE REGISTRAR OF COMPANIES WEST BENGAL

For the petitioners : Mr. Jayanta Kumar Mitra, Senior Advocate
Mr. Rishav Dutt, Advocate
Ms. Patrali Ganguly, Advocate
Ms. Shrishti Roy Barman, Advocate
Mr. Anuj Singh, Advocate

For the Registrar of
Companies : Mr. Ms. Shreya Choudhury, Advocate
Ms. Rashmi Bothra, Advocate
Mr. Jeet Barman, Advocate

Heard on : 15.12.2025

Judgment on : 22.12.2025

Ravi Krishan Kapur, J.:

1. This is an application under section 463(2) of the Companies Act, 2013
challenging a notice dated December 12, 2024 bearing reference No.
ROC/TS/Inquiry-206/21/116306/8941 issued by the Assistant Registrar

of the Companies West Bengal, Ministry of Corporate Affairs (the impugned notice).

2. Briefly, the company namely, Shyam Emco Infrastructure Limited is engaged in construction activities. The petitioners are the present directors of the company. By a notice dated 31 March 2021, the respondent authorities had sought for information and explanations under section 206(1) of the Act. The company duly replied to the notice by a letter dated 16 August 2021 and provided a point wise reply. Subsequently, after a period of seventeen months, the company received a summons dated 21 March 2023 under section 207(3)(b) of the Act, directing the concerned officers of the company including the auditors to be examined on oath personally in relation to the letter dated 31 March 2021. Significantly, the company had timely filed all its financial statements and statutory filings for the relevant periods. Thereafter, the company received a communication dated 2 June 2023 issued under section 206(4) of the Act. By the said communication, the respondent authorities sought for queries and further information on the basis of financial information for the years 31.03.2020, 31.03.2021 and 31.03.2022 respectively and furnished necessary clarifications. Pursuant

to the above, the respondent authorities on the ground of alleged violations under section 129(1) read with Schedule III Division II, 6E(I) i, (ii), (iii), (vii) of the Act, section 129(I), Schedule III, 6F (III)(c) of Division II and Schedule III Part I, Division II of the Act found the company to be in violation of the above provisions of the Act and threatened prosecution against the petitioners calling upon the company and directors of the company to file an application for compounding under the Act. In this background, the petitioners have filed this application seeking quashing of the impugned notice and all proceedings connected therewith.

3. On behalf of the petitioner, it is contended that the impugned notice is *ex facie* barred by limitation. All the financial statement and accounts were readily available with the respondent authorities. There is no case of fraud nor negligence of the directors or any other officer of the company. The company and its directors have all acted bonafide and in good faith. In support of such contentions, the petitioner relies on the decisions in *Bhagwati Foods P. Ltd vs. Registrar of Companies, West Bengal (2008) 143 Comp Cas 531*, *Girdhar Tracom Private Limited vs. Registrar of Companies, 2024 SCC OnLine Cal 1671* and *AI Champdany Industries Ltd. vs. Registrar of Companies 2011 SCC Online Cal 2296*.

4. On behalf of the respondent it was submitted that the clarification and queries sought for were in good faith and the petitioners always had the option of approaching the respondent authorities for filing applications for compounding of the offences complained of.

5. The relevant sections of the Act are set out below:

129. Financial statement.—(1) *The financial statements shall give a true and fair view of the state of affairs of the company or companies, comply with the accounting standards notified under section 133 and shall be in the form or forms as may be provided for different class or classes of companies in*

Schedule III:

Provided that the items contained in such financial statements shall be in accordance with the accounting standards:

Provided further that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity, or to any other class of company for which a form of financial statement has been specified in or under the Act governing such class of company:

Provided also that the financial statements shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by reason of the fact that they do not disclose—

(a) in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938 (4 of 1938), or the Insurance Regulatory and Development Authority Act, 1999 (41 of 1999);

(b) in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949 (10 of 1949);

(c) in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003 (36 of 2003);

(d) in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law.

206. Power to call for information, inspect books and conduct inquiries.—(1) *Where on a scrutiny of any document filed by a company or on any information received by him, the Registrar is of the opinion that any further information or explanation or any further documents relating to the company is necessary, he may by a written notice require the company—*

(a) to furnish in writing such information or explanation; or

(b) to produce such documents,

within such reasonable time, as may be specified in the notice

206 (4): *If the Registrar is satisfied on the basis of information available with or furnished to him or on a representation made to him by any person that the business of a company is being carried on for a fraudulent or unlawful purpose or not in compliance with the provisions of this Act or if the grievances of investors are not being addressed, the Registrar may, after informing the company of the allegations made against it by a written order, call on the company to furnish in writing any information or explanation on matters specified in the order within such time as he may specify therein and carry out such inquiry as he deems fit after providing the company a reasonable opportunity of being heard:*

Provided that the Central Government may, if it is satisfied that the circumstances so warrant, direct the Registrar or an inspector appointed by it for the purpose to carry out the inquiry under this sub-section:

Provided further that where business of a company has been or is being carried on for a fraudulent or unlawful purpose, every officer of the company who is in default shall be punishable for fraud in the manner as provided in section 447.

207(3)(b): (3) *Notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, the Registrar or inspector making an inspection or inquiry shall have all the powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—*

(b) summoning and enforcing the attendance of persons and examining them on oath; and

463(2) *Power of court to grant relief in certain cases (2) Where any such officer has reason to apprehend that any proceeding will or might be brought against him in respect of any negligence, default, breach of duty, misfeasance or breach of trust, he may apply to the High Court for relief and the High Court on such application shall have the same power to relieve him as it would have had if it had been a court before which a proceedings against that officer for negligence, default, breach of duty, misfeasance or breach of trust had been brought under sub-section (1).*

6. For convenience, a chart showing the respective queries raised by the respondent authorities and the response of the company are set out below:

SI No.	Allegations contained In the Order purportedly under Section 206 (4) @ Page 66A	Company's Response dated 7 th June 2023 @Pg 78-96	Reference in the Petition
1.	Contravention of Section 129(1) read Schedule III, Division-II, 6B (IV) (a) of the Companies Act, 2013	The Company has shown in the financial statements of the Company as at 31 st March, 2020, an amount of Rs. 55,851/- as "Balance with Banks" under "Cash and cash equivalents". Further, it was already mentioned in Note 3 of the	Response dated 7 th June 2023 <i>Balance Sheet</i>

		financial statement that the amount is lying with Oriental Bank of Commerce. Moreover, the balance lying in the bank account of the Company is for general business purpose and for day-to-day affairs of the Company and not for any specific purpose									
2	Contravention of Section 129(1) read with Schedule-III, Division-II, 6B(V)(i)(c) of the Companies Act, 2013	The Company has shown in the financial statements of the Company as at 31st March, 2021 an amount of Rs. 98,00,000/- as advances “to others” under the head “Short-Term loan and advance”. The sub-classification of the borrowing is also mentioned in Note 3 of the financial statements of the Company The Company has always made disclosures and never had the intention to hide anything or to misrepresent its state of affairs.	Response dated 7 th June 2023 <i>Balance Sheet</i>								
3	Contravention of Section 129(1) read with Schedule-III, Division-II, 6F(I)(ii) of the Companies Act, 2013	The Company has shown in the financial statements of the Company as at 31st March, 2022, an amount of Rs. 50,000/- as “Loans from Holding Company” under the head “Long Term Borrowings”. The contentions regarding the disclosures with respect to the classification of the same under point 6F(I)(ii) of Schedule III, Division II is concerned, the following disclosures has been provided for: <table border="1"> <thead> <tr> <th>Sl. No</th><th>Financial Year</th><th>Note No.</th><th>Disclosure</th></tr> </thead> <tbody> <tr> <td>1.</td><td>2021-22</td><td>6</td><td> <u>Long Term Borrowings</u> (Unsecured borrowings) Shyam Metallica & Energy Ltd. Rs. 50,000/- </td></tr> </tbody> </table> It was further clarified that the point under the head of balance sheet had typographical omission and the Company had no intention to hide or misrepresent its state of affairs and against the public and stakeholder’s interest and it was only an inadvertent omission on the part of the Company	Sl. No	Financial Year	Note No.	Disclosure	1.	2021-22	6	<u>Long Term Borrowings</u> (Unsecured borrowings) Shyam Metallica & Energy Ltd. Rs. 50,000/-	Response dated 7 th June 2023 <i>Balance Sheet</i>
Sl. No	Financial Year	Note No.	Disclosure								
1.	2021-22	6	<u>Long Term Borrowings</u> (Unsecured borrowings) Shyam Metallica & Energy Ltd. Rs. 50,000/-								

7. A perusal of the impugned notice would show that the alleged contraventions were purely technical in nature and the explanation for

each of them were easily available on scrutiny of the financial records of the company. The petitioners had satisfactorily responded to each and every allegation contained in the notice dated 2 June, 2023, issued under section 206 (4) of the Act. The allegations under section 129(1) of the Act claimed that the company had wrongly classified items like 'Long Term Borrowings' and 'Other Payables' in its Balance Sheet and has not disclosed the "Statement of Change in Equity" as per the proforma. In response, the company clarified that all details were available in the Notes to Accounts, which identified that these amounts were fully disclosed and available from the accounts.

8. Upon examination of the records, all the alleged violations and the particulars sought were explained and would be apparent from the financial statements submitted by the company. In any event, the queries raised were minor, trivial, and technical in nature which comprised of typographical errors or simple omissions and were ascertainable upon examination of the accounts of the company. The petitioners have throughout acted reasonably and complied with all acceptable norms of accountancy and this had been specifically drawn to the attention of the respondent authorities. If the respondents were of the view that any

further clarification or verification was necessary, it was open for them to inspect the books of accounts of the company. Strangely, there has been no attempt to even deal with the responses on merits which had been submitted by the company. The alleged non-compliances do not appear to be wilful nor deliberate in nature. There is no allegation of malafides attributable to the petitioners. A person seeking to be excused under section 463(2) of the Act for contravention of any provision of the Act is required to satisfy the Court that he or she acted honestly and reasonably and that there was no malafide intent of the petitioners. There is not even an allegation of falsity or suppression or dishonest conduct or misfeasance against the petitioners. (*Deba Prasad Roy & Another vs. Regional Director, Department of Company Affairs (2008) 141 Company Cases 140*).

9. Admittedly, the company has no borrowings from any bank or financial institutions and all funds deployed in the business had been introduced by the promoters. There is no case of infusion of capital from any third party. Matters of accounting are always open to interpretation and divergence of opinion. There has been no substantive violation of the provisions of the Act by the petitioners. The only fault of the petitioners is

that they failed to elaborate on certain entries. No palpable nor malafide intention can be attributed to the petitioners. There is no question of any misrepresentation nor prejudice which could have been possibly caused to any of the shareholders. The directors have at all times acted in good faith, honestly and reasonably.

10. In any event, there is inordinate and undue delay in issuing the impugned notice. The period of limitation when the offence is punishable with imprisonment is one year. The date of the knowledge of an aggrieved person would be the date from when limitation is to be computed. In view of the chronology of events, the alleged contravention of section 129(1) read with Schedule III Division II expired on 22 January, 2022. Similarly, the limitation period in respect of the alleged offence under section 129(1) read with Schedule III, 6F (III) (c) of Division II expired on 10 December, 2022 and section 129(I) read with Schedule III Division II Part I expired on 1 November 2023. Section 514 of the Bhartiya Nagarik Suraksha Sanhita 2023 provides as follows:

“514. Bar to taking cognizance after lapse of period of limitation.—

(1) Except as otherwise provided in this Sanhita, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

Explanation.—For the purpose of computing the period of limitation, the relevant date shall be the date of filing complaint under section 223 or the date of recording of information under section 173.”

11. In this context, a chart reflecting that any action was *ex facie* barred by limitation is set out below:

Alleged Contravention	Date of knowledge of the Respondent, i.e., date when balance sheet was filed by the Company with the ROC	Expiration of Limitation
Section 129(1) read with Schedule-III, Division-II, 6E(I)(i),(ii),(iii) & (vii) of the Companies Act, 2013	22 nd January, 2021 (Documents annexed as Annexure- A)	22 nd January, 2022
Section 129 (1) read with Schedule-III, 6F(III)(c) of Division-II of the Companies Act, 2013	10 th December, 2021 (Documents annexed as Annexure- B)	10 th December, 2022
Section 129 (1) read with Schedule III, Division-II, Part-I, A under the Companies Act, 2013	1 st November, 2022 (Documents annexed as Annexure- C)	1 st November, 2023

12. As such, the respondent had knowledge of the commission of the alleged offences beyond a period of one year and have been sleeping over their rights (*AI Champdany Industries Limited and Ors. -v- Registrar of Companies and Ors., 2011 SCC OnLine Cal 2296 and Bhagwati Foods P. Ltd vs. Registrar of Companies, West Bengal (2008) 143 Comp Cas 531*).

13. In summary, the impugned order has been prepared mechanically and without any application of mind. This would be apparent from the notice dated 12 December 2024 issued by the respondents which records that no response had been received to the letter dated 31 December 2020. This is factually incorrect and a glaring error by the respondents which goes to the foundation of the impugned order. In issuing the impugned notice, the respondent authorities have failed and ignored the representations and responses of the petitioners dated 16 August, 2021 and 19 June, 2023 respectively. The alleged violations could have been easily resolved on a proper scrutiny of the financial statements and records of the company. An infraction of such technical and trivial nature does not warrant issuance of the impugned notice. [*Girdhar Tracom Private Limited and Narendra Dhanuka and Ors. -v- Registrar of Companies, West Bengal, 2024 SCC OnLine Cal 1671*].

14. In conclusion, the role of the Registrar of Companies as a watchdog cannot be undermined. However, it is important to bear in mind that such powers should not be exercised in a light, casual or cavalier manner. Any reply to a notice of the kind impugned requires deployment of manpower, time and resources. The underlying object being one of public interest and

not of harassment. The mantra is one of *ease of doing business* and not *unease of doing business*.

15. With the above directions, CP/1/2025 stands allowed. There shall be an order in terms of prayers (a) to (d) of the Notice of Motion. The petitioners are absolved of all liabilities in respect of the alleged offences complained of in the impugned notice and the proceedings connected therewith. In view of the above, CP/1/2025 alongwith any connected application stands disposed of.

(Ravi Krishan Kapur, J.)