

**IN THE COURT OF ADDITIONAL CHIEF JUDICIAL
MAGISTRATE**

AT: - AHMEDABAD

CRIMINAL INQUIRY NO: - 2793 OF 2023

ORDER: - EXIHIBIT - 1

1) The Complainant has filed this Complainant **UNDER SECTION 128(6) OF THE COMPANIES ACT 2013 FOR CONTRAVENTION OF SECTION 128 OF THE COMPANIES ACT, 2013, R.W. AS-2**, against **M/S. AVON COLD STORAGE PRIVATE LIMITED**, CIN No. **U74900GJ2016PTC086081** and its directors in default which was kept under Section 202 of the ***Code of Criminal Procedure***.

2) In the Inquiry the Prosecution has produced following evidence.

I. DEPOSITION OF GAUTAM SOLANKI, UDC, from the office of Registrar of Companies, Gujarat.

II. DESCRIPTION OF DOCUMENTS: -

1. A Copy of the Signatory details as available in the MCA Portal is annexed herewith and marked as **"ANNEXURE-A"**.
2. The Copy of DGCoA, Ministry of Corporate Affairs vide letter No. 03/380/2020/CL-II(NWR) dated 02.12.2020, and Directorate's letter dated RD (NWR)/ Sec 206/TS/331/2020/2410 dated 08.01.2021 is annexed herewith and marked as **"ANNEXURE-B"**
3. A Copy of the Regional Director letter No RD (NWR)/Sec Sec 206/TS/331/2020//3008 dated 10.10.2022 is enclosed herewith and marked as **Annexure-"C"**.
4. A Copy of Complainant's office issued a Notice No. ROC-GJ/Inquiry/02-86081/2020-21/4345 to 4348 dated 31.08.2022 (**Annexure-'D'**).

3) I have heard Company Prosecutor and perused relevant Provision of the Company Act, 2013 as well as papers on record.

4) **Section 435(1) of the Companies Act 2013** state that ;“

435. Establishment of Special Courts.

Notified Date of Section: 18/05/2016

*1[(1) The Central Government may, for the purpose of providing speedy trial of 2[offences under this Act, except under section 452, by notification] establish or designate as many **Special Courts as may be necessary.*

*(2) A **Special Court shall consist of—*

(a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under this Act with imprisonment of two years or more; and

(b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences,

who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.]

(3) A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding office of a Sessions Judge or an Additional Sessions Judge.

Meaning thereby, **if trial of offences punishable under this act less than imprisonment of two years, then or more**

Metropolitan Magistrate or a Judicial Magistrate of the First Class having jurisdiction to try any offence under this act or under any previous company law.

- 5) Looking to the Complaint, it appears that the accused who is officer-in default for **UNDER SECTION 128(6) OF THE COMPANIES ACT 2013 FOR CONTRAVENTION OF SECTION 128 OF THE COMPANIES ACT, 2013, R.W. AS-2** is liable for punishment for above offence **UNDER SECTION 128(6) OF THE COMPANIES ACT 2013 FOR CONTRAVENTION OF SECTION 128 OF THE COMPANIES ACT, 2013, R.W. AS-2**. The Complainant has mentioned in their Complaint as under: -

“Auditors of the company reported in Auditors’ report for the financial year 2015-16 that there is no inventories. It appears that company has failed to maintain inventories in Books of Accounts as per the requirement of Section 128 of the Companies Act, 2013 read with AS-2. Explain, why a legal / Penal action should not be initiated against its company and directors, officers in default under Section 128 (6) of the Companies Act, 2013.”

- 6) Thus, looking to the punishment prescribed for **UNDER SECTION 128(6) OF THE COMPANIES ACT 2013 FOR CONTRAVENTION OF SECTION 128 OF THE COMPANIES**

ACT, 2013, R.W. AS-2 this Court have Jurisdiction to entertain the complaint as per section 435 of the Companies Act, 2013 and the Complainant had filed the said complaint on 22.02.2023, which is within limitation as provided under *Section 468 of the CRPC*.

- 7) Thus, looking to the Complaint as well as documents which are produced along with the Complaint, I am of the view that there is sufficient reason to register the complaint hence in the interest of Justice I pass following order: -

// ORDER//

- The Complaint is hereby ordered to be registered and issue summons to all the **accused** for the offence **UNDER SECTION 128(6) OF THE COMPANIES ACT 2013 FOR CONTRAVENTION OF SECTION 128 OF THE COMPANIES ACT, 2013, R.W. AS-2** returnable on 15/07/2025, under Section 204(1) of the Code of Criminal Procedure.
- Criminal Inquiry is disposed off accordingly.

Date:- 07/04/2025

**(S. J. PANCHAL)
(CODE NO: -00864)
ADD. CHIEF JUDICIAL
MAGISTRATE
AHMEDABAD**