

भारत सरकार
कार्पोरेट कार्य मंत्रालय
कार्यालय कंपनीज़ रजिस्ट्रार, दिल्ली एवं हरियाणा
चतुर्थ तल, आई.एफ.सी.आई. टॉवर, 61 नेहरू प्लेस,
नई दिल्ली -110019



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS,
OFFICE OF REGISTRAR OF COMPANIES,
NCT OF DELHI & HARYANA
4TH FLOOR, IFCI TOWER, 61, NEHRU
PLACE, NEW DELHI -110019

ORDER FOR PENALTY FOR VIOLATION UNDER SECTION 89 AND 90 OF THE COMPANIES ACT, 2013 IN THE MATTER OF METEC ELECTRONICS PRIVATE LIMITED (U74999DL2019PTC347291)

1. Appointment of Adjudicating Officer: -

Ministry of Corporate Affairs vide its Gazette Notification No. A-42011/112/2014-Ad.II, dated 24.03.2015 appointed Registrar of Companies, NCT of Delhi & Haryana as Adjudicating Officer in exercise of the powers conferred by section 454(1) of the Companies Act, 2013 (hereinafter known as Act) r/w Companies (Adjudication of Penalties) Rules, 2014 for adjudging penalties under the provisions of this Act.

2. Company: -

Whereas the company viz. METEC ELECTRONICS PRIVATE LIMITED (hereinafter known as 'company' or 'subject company') has been incorporated on 14.03.2019 and having its registered office as per MCA21 Register address at E 262 Basement, East of Kailash, Delhi, South Delhi, 110065, India.

Shareholding Details			
Sl. No.	Name of shareholder	Number of shares	Percentage
1.	Chen Feiyan	2724839	75.69%
2.	Vikash Bhardwaj	361	0.01%
3.	Yang Wen	874800	24.30%

3. Background of the case:

A. Revelations in the adjudication proceedings under section 118

- I. Adjudication proceedings for violation of Sec 118 of Act was initiated and accordingly a notice u/s 118 was sent to the company on 26.05.2022 wherein

it was stated that the minutes of the board of the company were not serially numbered, pages of minutes were not numbered, and each page was not initialed by the Chairman. A reply dated 03.06.2022 was received on 06.06.2022, wherein the company submitted a new set of minutes of the Board Meeting which were serially numbered, and each page were also initiated.

- II. It appeared that the directors of the company had modified the minutes of the Board Meeting so as to avoid getting penalized u/s 118. Thus, a hearing notice was sent to the company and its directors for appearing in this matter before the adjudicating officer on 23.06.2023. As the noticee/Authorised Representative arrived late for the hearing, the hearing was re-scheduled for 11.07.2023. On the next date of hearing, Shri. Subodh Kumar, the then director [now resigned] of the subject company appeared before the adjudicating officer. He also carried an authorization to appear on behalf of Ms. Chen Fiyan (foreign director), which was ostensibly signed in Shenzhen city on 6th July 2023.
- III. The said authorization letter was neither apostilled/notarised nor carried any certification from the consulate. It was surprising to note that the Auditor of the company Shri. Vijay V. Kale had sent Shri. Yogesh Khadiya, his representative even though he was not called for the said meeting.
- IV. During the said hearing, it was also seen that Shri. Subodh Kumar was not aware of the registered office of the subject company. Further, he was unsure as to where the Board Meetings take place. He was also unsure as to how many board meetings he has attended. It was learnt that 4 foreign employees, namely, Jiangping Hu, Wen Jin, Yang Wen and Xudong Ding are working at factory in Greater Noida and have the knowledge about the business operations of the company. Shri. Kumar further submitted that he reports to Jiangping Hu and Yang Wen. Accordingly, a fresh date of hearing was given and Shri. Subodh Kumar, Shri. Yogesh Khadiya along with four foreign employees were directed to appear before the adjudication officer with their passport, Visa documents, Employment contract with the company and copies of bank statements for the past two years.
- V. During the course of the next hearings on 14.07.2023 and 18.07.2023, it emanated that Dongguan Meisen Electronics Co. Ltd., a company incorporated

under the laws of China was one of the primary suppliers of the subject company. However, the representatives of the company did not admit to any direct relationship between the said foreign company and the subject company other than that of a supplier and buyer relationship. It was also noted that there is a company called Metec Electronics Co. Ltd, incorporated under the laws of Hong Kong/ China, whose name closely resembles with the name of the subject company in India, [which is Metec Electronics Private Ltd] and is also dealing in the same business of speakers, sound bars, etc. Therefore, the representatives of the Indian company were required to clearly state the linkage between Metec Electronics Co. Ltd, incorporated in Hong Kong/China and Metec Electronics Private Ltd incorporated in India. They were also required to explain as to whether directly or indirectly any royalty payments were being made to any foreign entity.

- VI. In one of the replies submitted by the subject company, the letterhead of the company carried the insignia of **MEISEN** with the letter **M**. In the next reply submitted by the subject company, the letterhead of the subject company carried the insignia "**MISO**". The representatives of the company were required to give details along with all correspondence exchanged with the trademark registry regarding application made for registration of the trademark of **MEISEN** as well as **MISO** under different classes. The trademark registry records show that the subject had applied for the trademark of **MEISEN** under class 9 vide application no 4186648. When objections were raised by the Trademark registry, the following submissions were inter alia made by the company:

The Trademark "MEISEN (Device)" is an invented trademark being adopted and continuously used by the applicant in China, in respect of the goods and services covered under the present application. The following logo has been used.



A handwritten signature in black ink, appearing to be 'Sha' or similar, located at the bottom right of the page.

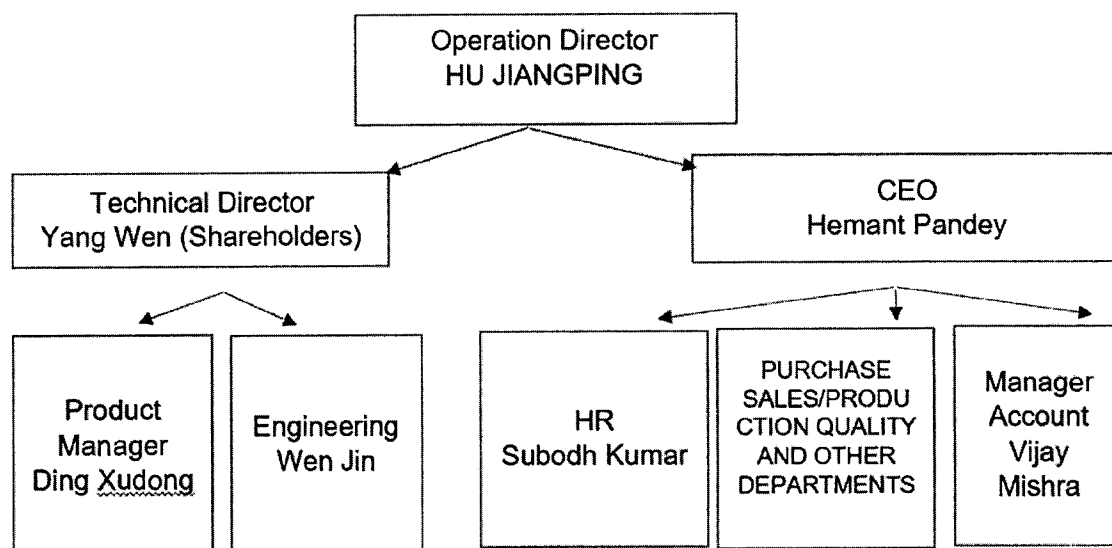
- VII. Further, it was seen that Shenzhen BeYear Appliance Co. Ltd is the second most significant supplier of the subject company, as per the records supplied to this office. While, in its financial statements filed for FY 2021-22, the subject company reported that the following three entities are under common control:

Shenzen Beyear Appliances Co. Ltd	Entity under common control
Shenzen Applesun Electronics Co. Ltd	Entity under common control
Dongguan Meisen Electronics Co. Ltd	Entity under common control

However, as per the Annual return filed vide e-form MGT-7A (SRN: F43449776) for the FY 2021-22, the shareholders of the company are individuals, namely Ms. Chen Feiyan (2724839 shares, 75.69%), Shri Vikash Bhardwaj (361 shares, 0.01%) and Yang Wen (874800 shares, 24.30%). The information filed on MCA21 portal and those submitted by the company during the Adjudication proceedings clearly indicated that the company had not given proper disclosures about its true shareholding or the manner in which the beneficial interest in the shares were being exercised.

B. Issuance of notices under section 89 and 90 of the Act

- I. There existed sufficient reasons to believe that the registered owner and beneficial owner of the shares in the company were different and accordingly the company ought to have made compliance with Section 89 of the Act. Accordingly, an SCN u/s 89 of the Act was issued to the company and associated persons vide No. ROC/D/Adj/89/Metec/3857-3869 dated 13.10.2023.
- II. The subject company vide its letter dated 3rd Aug 2023 had submitted its organization chart to this office, the extract of which is as follows:



- III. The organization chart does not mention the role performed by Ms. Chen Feiyan, Director of the company. It is apparent that the then sole Indian director (Shri Subodh Kumar, Additional Director) reported to Shri Hemant Pandey (designated as CEO) who in turn reported to Hu Jiangping.
- IV. Thus, there existed sufficient reasons to believe that the subject company ought to have also declared its significant beneficial owner. Accordingly, in terms of Section 90 of the Act r/w Companies (Significant Beneficial Owners) Rules, 2018, an SCN was issued to company and associated person vide No. ROC/D/Adj/90/Metec/3880-3892 on 16.10.2023.

4. Reply of the company to the SCN u/s 89 and 90

- I. Replies to the SCN u/s 89 was submitted by the company vide letter dated 28.10.2023 (signed by Shri Vijay Mishra, Manager – Accounts & Finance, Authorised Signatory) wherein company denied the non-compliances as reported in the SCN issued u/s 89 of the Act and *inter alia* stated as under:
- A. *Metec Electronics Private Limited incorporated in India, is an independent company incorporated by the individual shareholders and has no legal relationship Shenzhen Beyear Appliances Co. Ltd., Shenzhen Applessun Electronic Co. Ltd. and Dongguan Meisen Electronic Co. Ltd, except for supply-purchase relationship.*

B. The Trademark "Meisen" was independently applied by the company for registration in India. As per the Intellectual Property Laws of India and WIPO treaty, a trademark has its territorial jurisdiction. It is submitted that use of similar or identical trademark at China has no relevance and the Company has nothing to do with the trade mark at China. Further, the Company has nothing to do with any such promotional details stated to be given by a Company Shenzhen Beyear Appliance Co. Ltd. based at China on the website about the Metec Group about a new factory set up in the year 2019 in India.

C. The shareholders of the company are the actual owners and holding their shareholding directly, individually, and independently and has no relation in any manner of shareholding in these three companies Shenzhen Beyear Appliances Co. Ltd, Shenzhen Applessun Electronic Co. Ltd and Dongguan Meisen Electronic Co. Ltd, as mentioned in the SCN.

D. The company is not required to make any compliance related to Section 89 of the Act and it requested for personal hearing to clarify the true and correct facts.

II. Replies to SCN u/s 90 was submitted by the company vide letter dated 31.10.2023 wherein company denied the non-compliances as reported in the SCN issued u/s 90 of the Act. There were a lot of commonalities in its submission made to the SCN u/s 89 and SCN u/s 90. In substance, the subject company defended itself by raising the following arguments in support of its stance that the provisions of section 90 did not apply to it:

A. The observation made by the ROC that Chen Feiyan, the director of the company has no role in the company is not correct. It is submitted that Chen Feiyan discharges her respective role as a director or shareholder under the organization. Further, there is no relevance of the fact that 4 foreign employees were working in India and have knowledge about the business operation of the company. Such a fact has no relevance to the

provisions under section 90 of the Act and rule 2(1)(h) of the Significant Beneficial Ownership Rules, 2018.

- B. The fact is also outside purview of provisions u/s 2(27) of the Act or 2(1)(b) of the Significant Beneficial Ownership Rules, 2018 which defines control. Out of these employees, Yang Wen being shareholder of the company discharges his role as a shareholder of the company and also being senior operation manager of the company, discharges his duties as per his respective role in the organization. Chen Feiyan being shareholder and director plays her respective role over the management of the Company. That the employees (i) Jiangping Hu, (ii) Wen Jin, (iii) Yang Wen and (iv) Xudong Ding are basically senior operation managers of the company who are looking into business operations of the company in their respective role along with the other senior officers of the company. It is also submitted that except one employee, Yang Wen out of four has no shareholding in the company.*
- C. The observation made by ROC that Shri. Kumar [director] reports to Jiangping Hu and Yang Wen, who is one of the shareholders has no relevance in pursuant to the provisions under Section 90 of the Act and rules made thereunder. In an organization each and every person has different knowledge and experience and merely work reporting to any officer of a company does not mean that the senior officer has control over the management.*
- D. The observation made by the ROC that the Board of the company is not exercising any powers of the management is not correct. Since, there is no significant beneficial ownership as per provisions under Section 90 of the Act and rules made thereunder, filing of BEN-2 form is not required. It is further submitted that the existing shareholders of the Company who hold shares directly in their personal capacity and are the actual owners. The registered owners are the actual owners and none of the shareholders are nominees of any other person or entity and none of the persons or entity hold significant beneficial ownership in the company and hence, no compliance of declaration of Significant Beneficial Owners in*

the form of BEN-1, to maintain a register in the form of BEN-3, to submit a declaration in the form of BEN-2 and to issue a notice in the form of BEN-4 is required.

E. The company is not required to do any compliance related to Section 90 of the Act and it requested for personal hearing to clarify the true and correct facts.

5. Account of the hearings for adjudication u/s 89 and 90

I. As noted earlier, it had come to knowledge that the subject company had applied for trademark on "**MEISEN**" before the Indian Trademark Authorities vide application no 4186648, and for the said application, **CS Manendra Singh** (membership no 40229) was engaged to represent the subject company. It was observed that Shri. Manendra Singh had filed a reply on behalf of company before the trademark authority, an extract of the same is as under:

In response to the objections raised by the Learned Examiner, we hereby give our responses as follows:

1. The Trade Mark "**MEISEN (Device)**" is an invented trade mark being adopted and continuously used by the applicant in China, in respect of the goods and services covered under the present application. It is submitted that in the search report annexed to the examination report, the conflicting marks cited therein are entirely different from the present Trade Mark applied for registration. The annexed search report does not reveal the presence of even a single conflicting mark that could be said to be identical with or deceptively similar to the Trade Mark applied for. All the conflicting marks cited in the search report may be countered as follows:

II. Accordingly, Shri Manendra Singh was called for hearing on 13.12.2023, wherein he made the following submissions:

- *He was unaware about the factual details of the submissions made by him to the Registrar of Trademarks, New Delhi on 11.07.2019 wherein he had stated that "The Trademark MEISEN (Device) is an invented trade mark being adopted and continuously used by the applicant in China, in respect of the goods and services covered under the present application." He submitted that he had not independently verified the veracity of the statement, rather he had simply relied upon the oral correspondence with Sh. Vikas Bhardwaj (erstwhile director) and CS Mukta Kheterpal (M. no A20500 & CP no 15699).*

- *In furtherance of his submissions, he had provided a certified copy of the email correspondences with Shri. Vikas Bhardwaj and CS Mukta Kheterpal.*
- *Shri. Singh submitted that Shri. Vikas Bhardwaj later appointed Shri. Atit Jain as the attorney in this matter.*

III. Shri. Vikas Bhardwaj erstwhile director of the company appeared in the matter on 19.12.2023 and submitted as under:

- *While he was working in Intex Technologies India Limited, he came to know about Ms. Chen Feiyan (alias Nancy) who was working in Metec Electronics China. He had visited the factory of Metec in Shenzhen in 2017/2018. Together with her, the subject company was incorporated in the year 2019.*
- *He submitted that he used to report to Ms. Chen Feiyan who took decision in the financial matters involving in the company.*
- *Mr. Jiangping Hu looked after the sales in the company and Mr. Yang Wen looked after the operations in the company.*
- *As per his knowledge, Mr. Jiangping Hu and Ms. Chen Feiyan are husband-wife.*
- *He further submitted that in so far as the response of the company to the Trademark registry dated 11.07.2019 signed on 02.08.2019 in respect of application no. 4186648 wherein it was stated that "trademark MEISEN is an invented trademark being adopted and continuously used by the applicant in China in respect of goods and service covered under the present application", it was given on the instructions received from Ms. Chen Feiyan.*
- *In so far as the disclosure under note no. 26 of the financial statement of the company for year ended 31.03.2022 wherein **Shenzhen Beyear Appliances Co. Ltd., Shenzhen Applessun Electronic Co. Ltd. and Dongguan Meisen Electronics Co. Ltd.** have been shown as entities under common control is concerned, he submitted that the accounts of the company were prepared by V.V. Kale & Company. The information*



that "**foreign companies under common control**" was provided under the instructions of Ms. Chen Feiyan.

- IV. During the hearing held on 13.12.2023, Shri. Manendra Singh had submitted that the reply submitted to Trademark registry for application no. 4186648 was submitted pursuant to email conversation and instructions of CS Mukta Kheterpal, (Membership no. 20500). Accordingly, CS Mukta Kheterpal was called for hearing on 20.12.2023, wherein she submitted as under:
"She had merely carried out grammatical corrections in the said reply that was forwarded by Shri. Manendra Singh to her."
- V. Further, when Ms. Kheterpal was asked a specific question as to who supplied the factual information to Shri. Manendra Singh for preparing the reply, she denied her role in the same. It is clearly seen that vide email dated 13.07.2019, she had given a go-ahead to Shri. Manendra Singh to file the reply before the trademark authorities. In the said email dated 13.7.2019, the then director of the company, Shri Vikash Bhardwaj was not even marked in the copy. Thus, based on her go-ahead [in her email dated 13.07.2019], the reply was filed by Shri. Manendra Singh before the trademark authorities, stating that the subject company was using the trademark of "**MEISEN**" in China.
- VI. CA Vijay V Kale, the auditor of the company and CA Prabhat Kumar who had assisted Shri Kale for audit for FY 2021-22 were called for oral hearing on 21.12.2023. However, it was informed by Shri Kale that due to his preoccupations, he would not be able to attend the scheduled hearing and requested to postpone the hearing by three weeks. Shri Kale also informed that CA Prabhat Kumar is no longer associated with him, so Shri Kale was asked to provide the email id of CA Prabhat Kumar. However, the requisite details were not provided on time. Accordingly, the scheduled hearing did not happen.
- VII. The company in its replies dated 28.10.2023 and 31.10.2023 had requested for an opportunity for oral hearing. Accordingly, to conclude these proceedings, Ms. Chen Feiyan, (Director), Shri. Subodh Kumar, (erstwhile Director), Shri. Mohd Rafeek Saifi, (Additional Director), Jiangping Hu, (Operation Director) Yang Wen, (Technical Director and shareholder) and Xudong Ding (Product

Manager) along with a Chinese Translator were called for hearing scheduled on 29.12.2023.

VIII. On the schedule date, Yang Wen, Xudong Ding, Mr. Subodh Kumar (erstwhile director/ employee), Mr. Vijay Mishra (finance manager) and Mr. Manish Rathore (translator) appeared before this office. During the hearing, following was noted:

1. *Mr. Xudong Ding did not know Hindi/English, therefore, the services of Manish Rathore, Chinese translator were availed in order to communicate with him.*
2. *All concerned were shown various documents w.r.t application no. 4186648 made before the Trademark Registry of India, which shows that a statement was made before the Trademark registry in India that the subject company is using the trademark of **MEISEN** in China. Further, the documents from the Trademark registry of China showing that the company named Shenzen Beyear (incorporated in China) had applied for the same trademark in China was also shown. The Company Registry records in respect of the same company showed that Mr. Ding Xudong is the general Manager in the company and Mr. Hu Jiangping is a beneficial owner holding 60% shareholding in the Chinese Company.*
3. *Similarly, the Company registration details in respect of Shenzen Misu Technology (a company incorporated in China) showed that Mr. Yang Wen is a supervisor and Mr. Hu Jiangping holds 51.3% in the company and is beneficial owner. These records were shown to all concerned who were present for the hearing.*
4. *Further, they were also shown the submission made by Metec Electronic Co. Ltd (China) through subject company before the IRP in an insolvency proceeding under the IBC-2016, which suggested the linkage between the two companies.*
5. *It was also shown to them that in the financial statement filed for F.Y. 2021-22 by the subject company, Shenzen Beyear Appliances Co. Ltd., Shenzen Applessun Electronic Co. Ltd. and Dongguan Meisen Electronics Co. Ltd, have been shown as entities under common control. None of them were able to explain the reason behind showing these entities under the head related party. They continuously stated that these were not related parties.*



The sole relationship between the subject company and these companies was that of buyer and supplier. The statements of the representatives were clearly at odds with the disclosures made in the financial statements.

6. At last, they all denied the contents of all the documents shown to them and have stated that subject company has no link with Metec Group of China.

6. Linkages between the subject company and the Metec Group of China and persons associated with such group

A. Use of a common trademark in India and China

It has been noted above that the subject company had applied for the trademark on the word "MEISEN" in India and stated that this mark was being used by them in China. The website of the China National Intellectual Property Administration¹ was seen. It was found that a company having a Chinese name 深圳市百亿耳电器有限公司 had applied for several trademarks in China. The extract of the same from the website is as under:

Serial number	Application No./registration No.	International Classification	Date of application	Trademark	Name of applicant
1	25690678	10	August 04, 2017		Shenzhen Billion Electrical Appliances Co., Ltd.
2	20646265	9	July 14, 2016		Shenzhen Billion Electrical Appliances Co., Ltd.
3	8975242	9	December 21, 2010		Shenzhen Billion Electrical Appliances Co., Ltd.
4	8975224	9	December 21, 2010		Shenzhen Billion Electrical Appliances Co., Ltd.
5	7870068	9	November 27, 2009		Shenzhen Billion Electrical Appliances Co., Ltd.

¹ <https://english.cnipa.gov.cn/>



It is clear from above that the Chinese company had also applied for the trademark on "MEISEN" in China. **Under the Chinese law, the Chinese companies do not have English names. To identify a company, it is necessary to know the name of the company in the Chinese language or its Uniform Social Security Code/Registration No.** It is possible to have multiple translations of the names of the Chinese companies. In the instant case, the English translation of the Chinese company which applied for the trademark on "MEISEN" in China is coming as "Shenzhen Billion Electrical Appliances Co., Ltd." and "Shenzhen Baiyier Electric Appliance Co., Ltd.", when checked from various sources. It is undoubtable that the subject company had also applied for a trademark on the same name, using the same insignia in India.

B. Access to the information available on the registry of Companies in China

Since the Chinese name of the company which applied for the same trademark in China was available, a report in respect of the said company was obtained from GoodWill Business Management Agency or GWBMA [registrationchina.com]. The report provided by GWBMA is sourced from the official sources of China such as State Administration for Market Regulation (SAMR), the National enterprise credit information publicity system, the China Executive information disclosure Center, and China National Intellectual Property Administration (CNIPA). The relevant extract of the report is as under:



I. Company Registration Details

Legal Representative	Registered Capital	Status
胡安 Juan	RMB 3 million	Active

Name(Chinese):	深圳市百亿万电器有限公司
Name(English):	Shenzhen Billion Ear Electrical Appliances Co., Ltd
Former Name:	-
Uniform Social Credit Code:	914403000515164459
Organisation Code:	051516445
Registration No.:	440306106929308
Type:	Limited Liability Company
Date of Establishment:	2013-03-08
Latest approved date of the change of company:	2022-01-03
Operating Period:	No fixed term
Registration Authority:	Shenzhen Municipal Administration For Market Regulation
Registered Address:	1301, Building C, Phase II, Zhuoyue Baozhong Times Square, No. 15-3 Haitian Road, N23 Haibin Community, Xin'an Street, Bao'an District, Shenzhen 深圳市宝安区新安街道海滨社区 N23 区海天路 15-3 号卓越宝中时代广场二期 C 栋 1301
Business Scope	The general business projects include: technical development and sales of speakers, electronic products, plastic products, labor protection products (including civilian masks, etc.), headphones, mobile power supplies, and security products; Housing rental; Collecting household water and electricity fees on behalf of residents; Domestic trade, import and export of goods and technology. Except for projects prohibited or required by laws, administrative regulations, or decisions of the State Council to be approved before registration, the licensed business projects are:

II. Contact Information

Tel	Email	Address
15718124207	751931513@qq.com	1301, Building C, Phase II, Zhuoyue Baozhong Times Square, No. 15-3 Haitian Road, N23 Haibin Community, Xin'an Street, Bao'an District, Shenzhen 深圳市宝安区新安街道海滨社区 N23 区海天路 15-3 号卓越宝中时代广场二期 C 栋 1301

III. Shareholder Information

Name of Shareholder	Shareholding Ratio	The amount of Subscribed Capital	Paid in Capital	Expiry Date
Juan 胡江平	0%	-	-	-
undefined 胡安	0%	-	-	-

IV. Company Directors

Name	Position
Ding Xudong 丁旭冬	General Manager
Juan 胡安	Executive Director
Hu Jiangping 胡江平	Supervisor

V. Branches & Subsidiaries

Company Name	Shareholder Type	Shareholding Ratio
Shenzhen Misu Technology Co., Ltd 深圳市米素科技有限公司	Industrial And Commercial Shareholders	50.00%
Shenzhen Bailixin Technology Co., Ltd 深圳市佰立信科技有限公司	Industrial And Commercial Shareholders	0.00%

VI. Ultimate Beneficial Owner (UBO)

Name	Shareholding Ratio	Equity Chain
Hu Jiangping 胡江平	60.0%	Hu Jiangping 胡江平-(60.00%)->深圳市百亿耳电器有限公司
Juan 胡安	40.0%	Juan 胡安-(40.00%)->深圳市百亿耳电器有限公司

Note: The natural person with a share ratio of >25% has not been identified, so it is decided to use the legal representative or senior executives sequentially as the beneficial owner.

VII. Actual Controller

Name	Shareholding Ratio
Hu Jiangping 胡江平	60%

From the above, it is evident that the Chinese company which applied for the same trademark in China [as applied by the subject company in India], has **Mr. Hu Jiangping**, as its supervisor and ultimate beneficial owner/actual controller. **Mr. Ding Xudong** is the general manager in the company. Both of these persons are also associated with the subject company in India and are working as 'employees' in the subject company in India. The names of two other branches and subsidiaries of this



Chinese company, namely Shenzhen Misu Technology Co., Ltd, Shenzhen Bailixin Technology Co., Ltd [along with their original Chinese names] were also noted from the said report.

C. Trademarks applied by Shenzhen Misu Technology Co., Ltd, Shenzhen Bailixin Technology Co., Ltd in China

Since the Chinese names of the two companies associated with the Chinese company which applied for the trademark on "MEISEN" was available from the report obtained from GWBMA as noted above. A trademark search to ascertain the trademarks applied for by these 2 companies in China was carried out on the website of China National Intellectual Property Administration. The screenshot of the results in this respect is as under:

WWW.CNIPA.GOV.CN WCJS.SBJ.CNIPA.GOV.CN


Search to4trademarks

Serial number	Application No./registration No.	International Classification	Date of application	Trademark	Name of applicant
1	44725926	9	March 19, 2020	米素智能	Shenzhen Misu Technology Co., Ltd.
2	31425249	9	June 06, 2018	miisso	Shenzhen Misu Technology Co., Ltd.
3	29684613	9	March 19, 2018	米書	Shenzhen Misu Technology Co., Ltd.
4	29680610	9	March 19, 2018	米素	Shenzhen Misu Technology Co., Ltd.

Total pages: 4 | page: 1 / 1

1

Search to 1 trademarks

Serial number	Application No./registration No.	International Classification	Date of application	Trademark	Name of applicant
1	57139679	9	June 23, 2021	 BLISUN	Shenzhen Ballixin Technology Co., Ltd.

Total pages: 1 | page: 1 / 1

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It was noted that the trademark "miisso" of the Shenzhen Misu Technology Co., Ltd was very similar to another trademark "**MISO**" applied by the subject company before the Indian Trademark authorities. The insignia of MISO, as applied for in India is as under:



Since there was striking similarity in the trademarks applied by the subject company in India and Shenzhen Misu Technology Co., Ltd in China, the report in respect of Shenzhen Misu Technology Co., Ltd was obtained from GoodWill Business Management Agency or GWBMA [registrationchina.com] in respect of Shenzhen Misu Technology Co., Ltd as well.

D. Report on the company registry information in respect of Shenzhen Misu Technology Co., Ltd as obtained from GWBMA

The relevant extract of the report is as under:



I. Company Registration Details

Legal Representative	Registered Capital	Status
柳鸿林 Liu Honglin	RMB 1 million	Active

Name(Chinese):	深圳市米素科技有限公司
Name(English):	Shenzhen Misu Technology Co., Ltd
Former Name:	-
Uniform Social Credit Code:	91440300MA5ERM3B5R
Organisation Code:	MASERM3B5
Registration No.:	440300202610017
Type:	Limited Liability Company
Date of Establishment:	2017-10-12
Latest approved date of the change of company:	2021-01-11
Operating Period:	No fixed term
Registration Authority:	Bao'an Bureau
Registered Address:	308 Huafeng International Business Building, Yintian Industrial Zone, Yantian Community, Xixiang Street, Bao'an District, Shenzhen 深圳市宝安区西乡街道盐田社区银田工业区华丰国际商务大厦 308
Business Scope	The general business projects include: research and development and sales of electronic and electrical products and accessories, energy-saving rechargeable battery products, security and smart home products, closed-loop monitoring systems, anti-theft systems, building intercom systems, access control systems, video electronic products, mobile intelligent terminal equipment, communication equipment, audio equipment, computer software, domestic trade, e-commerce, import and export of goods and technology. The licensed business project is: None

II. Contact Information

Tel	Email	Address
18620272968	9957308@qq.com	308 Huafeng International Business Building, Yintian Industrial Zone, Yantian Community, Xixiang Street, Bao'an District, Shenzhen 深圳市宝安区西乡街道盐田社区银田工业区华丰国际商务大厦 308

IV. Company Directors

Name	Position
Yang Wen 杨文	Supervisor
Liu Honglin 柳鸿林	Executive Director, General Manager

V. Branches & Subsidiaries

Company Name	Shareholder Type	Shareholding Ratio
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VI. Ultimate Beneficial Owner (UBO)

Name	Shareholding Ratio	Equity Chain
Hu Jiangping 胡江平	51.3%	Hu Jiangping 胡江平 (54.00%) -> 深圳市爱浦信电子有限公司 (95.00%) -> 深圳市米素科技有限公司

Note: The natural person with a share ratio of >25% has not been identified, so it is decided to use the legal representative or senior executives sequentially as the beneficial owner.

VII. Actual Controller

Name	Shareholding Ratio
Hu Jiangping 胡江平	51.300000000000004%

Thus, it is evident that Shenzhen Misu Technology Co., Ltd which was using the trademark "miisso" in China, a trademark very similar to "MISO" applied by the subject company in India, had Mr. Yang Wen as a supervisor and Mr. Hu Jiangping as an ultimate beneficial owner/actual controller. Both of these persons are also associated with the subject company in India and are working as 'employees' in the subject company in India.

E. The website www.miisso.com

The website reveals the linkage between Miisso Technology [also translated as Misu Technology] and the Metec Electronics Co. Ltd. and its associated companies. The relevant extracts of the website² are as under:

² <http://www.miisso.com/plus/list.php?tid=26>



Miisso Technology is headquartered in Shenzhen. Miisso is currently invested by three companies: METEC electronics, METECSMART electronics and APPESSUN electronics.

Miisso Group is one of the leading professional manufacturers and exporters in the field of Audio solution by METEC electronic, Security solution by METECSMART, Power solution by APPESSUN electronics. METEC is one of the leading professional manufacturers and exporters in the field of Audio solution, METECSMART is focus on the high quality security solution such as video doorbell, and APPESSUN electronics is focus on high quality power bank and headset.

Shenzhen Applessun Electronic Co., Ltd. is located in Chinese beautiful seaside city—Shenzhen, with convenient transportation from which Shenzhen Airport is only about twenty minutes away by car. Applessun holds "fraternity and integrity" business philosophy and enlists elites from the world, fosters human brand, provides consumers with the best cost-performance products and services through the lean production mode and concept of integrity services.

Applessun Electronics has been pursuing to be a leader in the Consumer Electronics industry since its establishment and engaged in professional, safe, fashion and high-end mobile power development, production and sales. Applessun's senior management team gathered the business elites who have the world's five hundred foreign enterprise advanced production management experience, and sound sales channels distributed in Europe, South America, Southeast Asia and India and other countries.

Applessun Electronics has cultivated a young and energetic R & D team with a high-sense innovation and rich experience; Applessun holds advanced manufacturing and testing equipments, and established the laboratory to ensure product reliability, stability and durability; Applessun's products are all made by efficient and professional production staffs and exquisite workmanship; Applessun has a sound quality management system, and implemented comprehensive and rigorous quality control from raw material procurement, production, testing, sales and after-sales service.

Applessun's mission is to establish and nurture long-term, mutually beneficial customer partnerships by delivering the best performance-to-price ratio product and services available. Applessun endeavors to achieve total customer satisfaction and surpass expectations through excellence in worldwide design, supply chain management, manufacturing and repair solutions.

Today Applessun continues to invest in technologies and services in anticipation of customers' needs. From design through manufacturing and repair and warranty, Applessun provides customers with complete turnkey services.

Metec Electronics Co., Ltd. was incorporated in March 2005, is one of the leading professional manufacturers and exporters of Mini Speakers, Multimedia Speakers & Home Theater Systems in Shenzhen, China. Our skilled R & D team combined with our comprehensive sales & marketing team will give you a preferred choice for superior quality, high specification, advanced equipment and consulting. The design ideas of Metec and consumer's requirements have combined to produce products which are not only visually attractive, but also acoustically desirable. Our products are marketed worldwide to a broad customer base in South Asia, Southeast Asia, Middle East, South America, East Europe and enjoying prestigious reputation with the excellent quality and superior service.

Quality, Service, Pricing and Speed are our permanent targets to be achieved. Now we have already set up Drive unit and wooden box branch factory, which makes us able to control the quality and delivery time for customers based on more competitive price. Using the best available materials and real wood enclosures on many items, has enabled Metec to occupy a leading position in the field of multimedia speakers and home audio products.

Metec is making a great step with advanced technology and exquisite designs. We have already established a solid and long term business relationship with hundreds of customers. Our ultimate goal is to be an innovative and highly-respected leading enterprise in the international arena. We are looking forward to assuring a further, successful cooperation with your esteemed company.

METEC SMART CO., LTD. is a branch company of METEC ELECTRONICS CO., LTD.

It was incorporated in March 2005, is one of the leading professional manufacturer and exporter in the security industry integrated with research, development, design, production and sales in Shenzhen, China. Our main products include villa video door phone system, multi-apartment video door phone system, smart home automation system, and alarm system.

F. Credentials of Ms Chen Feiyan (DIN: 08390191), a director of the company

The email id of Ms Chen Feiyan is manager@empiraudio.com. At the time of obtaining DIN, she had disclosed her occupation as "Service". All communications from O/o ROC for Adjudication proceedings have been marked on this email. While submitting the reply to this office, on behalf of the company, Shri Vijay Mishra, invariably marks a copy of the email to manager@empiraudio.com, which belongs to Ms Chen Feiyan.



A 'WHOIS'³ search was performed to know more about the owner of the domain name empireaudio.com. The search revealed that the registrar for the domain empireaudio.com was Alibaba Cloud Computing (Beijing) Co., Ltd. The domain was registered on 25th August, 2006. The name of the registrant/owner was not available. However, the location of the owner was the province of Guangdong in China. The website of Metec Electronics Co., Ltd. in China⁴ shows that the domain name empireaudio.com is being used by it. The relevant screenshot of the website is as under:

Smart Watch

ADD LUSTER TO YOUR LIFE

Sales / R&D Center: 1301, Block C, Zhuoyue Baozhong Times Square, Haitian Road, Baoan District, Shenzhen

Factory: No.82 Daling Road, Gaoying Village, Dalang Town, Dongguan City, Guangdong, China

✉ sales@empireaudio.com

☎ (+86 755) 29986082

AUDIO

FOLLOW YOUR PASSION

Sales / R&D Center: 1301, Block C, Zhuoyue Baozhong Times Square, Haitian Road, Baoan District, Shenzhen

Factory: No.82 Daling Road, Gaoying Village, Dalang Town, Dongguan City, Guangdong, China

✉ sales@empireaudio.com

☎ (+86 755) 29986082

³ The ICANN website [<https://www.icann.org/resources/pages/whois-rdds-2023-11-02-en>] states that WHOIS is service that asks and answers the question, who is responsible for that domain name or Internet Protocol (IP) address? WHOIS refers to the protocols, services, and data types associated with Internet naming and numbering resources including domain names, IP addresses, and Autonomous System Numbers (ASNs).

⁴ <http://www.metecgroup.com.cn/contact.html>



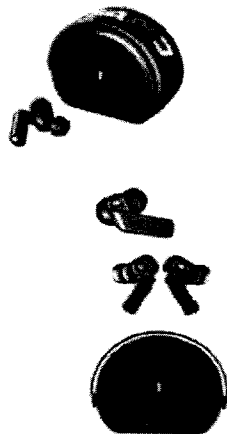

It is seen from the website of Global Sources⁵ which is a multichannel B2B sourcing platform committed to facilitating global trade, that Metec Electronics Co. Ltd has uploaded the following promotional document:



METEC ELECTRONICS CO.,LTD

Tel.: 86 755 29367230 Fax: 86 755 29450679 Mobile: 86 137 9834 0978
 www.empiraudio.com Contact: Ms Summery E-mail: sales5@empiraudio.com
 Factory Address: No.82 Daling Road, Gaoying Village, Daling Town, Dongguan City, Guangdong, China

ANC TWS earbuds

Model No.	TS 16	QTY.	2,000 sets		
Pack	Twin earbuds, charging case, USB-C cable 30cm, user manual, Anti-dust bag gift box.				
Specifications		Product Image			
Bluetooth Version:	Bluetooth 5.2				
Chipset	AIROHA 1562F				
Material:	Aluminum alloy case				
Waterproof	IPX5				
Color Options:	Black/Gray				
Bluetooth Profile:	A2DP, AVRCP, HSP, HFP				
Material:	ABS plastic				
Driver Units:	13 mm Titanium Horn * 4				
Noise Cancellation	Up to 35 dB				
Impedance:	32 ohms				
Sensitivity(1kHz):	92 dB				
Range:	Up to 10m (33ft)				
Charging Case Battery:	3.7V, 400mAh				
Earbud Battery:	3.7V, 40mAh *2				
Charging Time:	2hrs (DC 5V)				
Music Time:	6 hrs				
Total Playtime	35 hrs				
Plug Type:	Type C				
Ear phone weight	33.4g				
Package Image Reference		Size	L mm	W mm	H mm
		Product	46	41.8	18.8
		Giftbox	106	106	38.5
		Carton	540	225	205
		Product	With box	NW./Ctn	GW./Ctn
		33.4g	97g	4.85 kg	5.5 kg
		Qty./Ctn	5k	10k	30k
		30 kg	7.5 CBM	10 CBM	15 CBM

Clearly, the trademark of "MEISEN" and the domain name empiraudio.com are in use by Metec Electronics Co. Ltd [China/Hong Kong]. This also gives a clear indication that Ms. Chen Feiyan [the director of the subject company] is clearly linked to Metec Electronics Co. Ltd [China/Hong Kong].

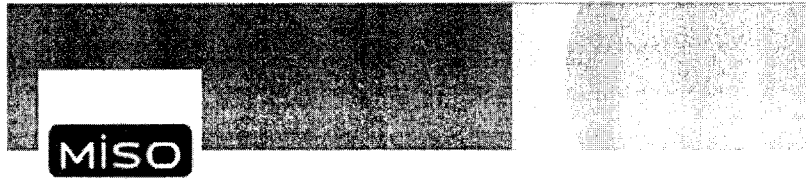
G. Information available on Social Media Platforms:

The screenshot of the "Overview" section of the LinkedIn page of Metec Electronics Private Limited (pic of MISO as profile picture) is as under:

⁵ <https://www.globalsources.com/>



Metec Electronics Private Limited



Metec Electronics Private Limited

Appliances, Electrical, and Electronics Manufacturing

25 followers • 501-1K employees

+ Follow

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Overview

Metec was incorporated in March 2019 affiliated to Metec Group established in 2005 , which is one of the leading professional manufacturers of BT Speakers, Multimedia Speakers, Home Theater Systems, Power Bank, TWS, Headphone & Doorbell phone in Greater Noida (UP), India. Our skilled R & D team combined with our comprehensive sales & marketing team will give you a preferred choice for superior quality, high specification, advanced equipment and consulting.

Industry

Appliances, Electrical, and Electronics Manufacturing

Company Size

501-1,000 employees

4 associated members ⓘ

From the above it is seen that while on one hand the subject company has denied any links with the Metec Group in China, in its own LinkedIn page it has admitted that the subject company is linked to the Metec Group.

G. Claims filed by Metec Electronics Co., Ltd in a CIRP proceedings

It has come to the knowledge that Metec Electronics Co., Ltd. has filed a claim as an operational creditor in the CIRP process of the Corporate Debtor, M/s. Mitashi Edutainment Private Limited. The IRP was requested to provide the copy of Form B along with other documents filed by Metec Electronics Co. Ltd, as an operational creditor.

The copy of Form-B dated 6th August, 2021 was shared by the IRP with this office. It was noticed that the said form was filed by Shri Vikash Bhardwaj (who was the then director of the subject company) on behalf of Metec Electronics Co., Ltd, Hong Kong. The authorization letter attached to the said form, explicitly declared that Shri Vikash Bhardwaj, the then director of the subject company was authorized to sign the Form-B in the IBC proceedings, as Shri Vikash Bhardwaj was **an officer of the group entity of Metec Electronics Co., Ltd in India**. The extract of the letter authorization attached to the Form-B is as under:

AUTHORIZATION FOR LEGAL MATTER

"RESOLVED THAT Mr. Vikash Bhardwaj S/O Mr. G.P Bhardwaj Resident - 601 Coral Tower Gardenia Glamour Society Sector -3 Vasundhara Ghaziabad 201012 Uttar Pradesh an officer of the group entity M/s Metec Electronics Co. Ltd. in India be and is hereby authorized to do the following for and behalf of the Company.

- i. to sign, execute, affirm, attest and submit applications, claims, affidavits, necessary documents Vakalatnamas on behalf of the Company i.e. M/s Metec Electronics Co. Limited against M/s Mitashi Edutainment Private Limited under the provisions of the Insolvency and Bankruptcy Code, 2016 and amendment thereof in India;
- ii. to accept service of notices or processes;
- iii. to retain, and /or engage advocates, attorneys, Vakils and pleaders.
- iv. to do all other necessary acts, deeds and things necessary, ancillary and incidental thereto."

For and on behalf of
M/S METEC ELECTRONICS CO. LIMITED
For and on behalf of
METEC ELECTRONICS CO. LIMITED
英 昌 电 子 有 限 公 司

Mr. Pan
Designation: Authorized Representative

The signature on the authorization letter of the representative of Metec Electronics Co., Ltd matches with that of Ms. Chen Feiyan, which again shows an undeniable linkage between Ms. Chen Feiyan and Metec Electronics Co., Ltd [China/Hong Kong]. The filing in the Form-B shows that Metec Electronics Co. Ltd. had claimed a principal amount of Rs, 22,71,138/- plus interest in the CIRP proceedings. The Purchase Orders/Invoices which were submitted to the RP also included an invoice raised by Shenzhen Beyear Appliances Co. Ltd. [signed by Ms. Chen Feiyan], which shows that Metec Electronics Co. Ltd. had also filed for a claim where Shenzhen Beyear Appliances Co. Ltd. was a creditor of the corporate debtor. This clearly showed that the management of the subject company were trying to mislead this office by denying its linkage to the Metec Group of companies in China. The subject company had on its own admitted to this linkage in the IBC proceedings and now it was not possible to go back on such an admission. Besides this, there were several other factors which clearly showed an undeniable linkage between the subject company and the Metec Group of companies in China.

7. Findings under section 89 of the Act

- I. Section 89 of the Companies Act, 2013 deals with the concept of beneficial interest in shares of a company. It states that in case the person in whose name the shares are registered [registered owner] does not hold beneficial interest in the shares of the company, then such 'registered owner' is required to disclose the interest of the 'beneficial owner' in the shares of the company to the company. The 'beneficial owner' is similarly required to make disclosure of his interest and the details of the 'registered owner' to the company. The company in turn is required to intimate the registry about the holding of beneficial interest in the shares of the company. The non-disclosure of such information by the beneficial owner creates an embargo on the enforceability of the rights of the 'beneficial owner' in relation to such shares.
- II. In the Glossary to the Financial Action Task Force (FATF) recommendations, the term 'nominee shareholder' corresponds to the term 'registered owner' under the company law in India. FATF defines a 'nominee shareholder' as:



A Nominee Shareholder exercises the associated voting rights according to the instructions of the nominator and/or receives dividends on behalf of the nominator. A nominee shareholder is never the beneficial owner of a legal person based on the shares it holds as a nominee.

- III. Similarly, the term 'nominator' in the FATF Glossary corresponds to the term 'beneficial owner' under the company law in India. Though the term 'nominator' is more expansive and also deals with the issue of nominee director. FATF defines 'nominator' as:

Nominator is an individual (or group of individuals) or legal person that issues instructions (directly or indirectly) to a nominee to act on their behalf in the capacity of a director or a shareholder.

- IV. The Annual return filed vide e-form MGT-7A (SRN: F43449776) for the FY 2021-22, shows that the shareholders of the company are only individuals, namely Ms. Chen Feiyan (2724839 shares, 75.69%), Shri Vikash Bhardwaj (361 shares, 0.01%) and Yang Wen (874800 shares, 24.30%). The subject company has not filed e-form MGT-6 to declare nominee shareholding, or the details of the person holding beneficial interest in the shares of the company.
- V. However, as noted above, the subject company incorporated in India cannot be regarded as a standalone entity. The acts of the subject company clearly point out to a linkage between the subject company and the Metec Group in China. Shri Vikash Bhardwaj [first director] had stated in his statement before this office that while he was working in Intex Technologies India Limited, he came to know about Ms. Chen Feiyan (alias Nancy) who was working in Metec Electronics China. He had visited the factory of Metec in Shenzhen in 2017/2018. Together with her, the subject company was incorporated in the year 2019. He had further submitted that he used to report to Ms. Chen Feiyan who took decision in the financial matters involving in the company. The trademark applications on the same keywords in both the countries by the respective companies clearly suggest an apparent and undeniable link between the Indian and Chinese company, while the shareholding details clearly attempt to mask this clearly linkage.



VI. The relation of Ms. Chen Feiyan [a shareholder and director of the subject company] to Metec Electronics Co. Ltd. (Hong Kong/ China) is apparent, as she had authorized Shri Vikash Bhardwaj to file a claim on behalf of Metec Electronics Co. Ltd. in the CIRP proceedings. Her email id contains the domain name of empiraudio.com, which again is associated with Metec Group of China.

VII. In its financial statements filed for FY 2021-22, the subject company has also reported that the following three entities are under common control:

Shenzen Beyear Appliances Co. Ltd	Entity under common control
Shenzen Applesun Electronics Co. Ltd	Entity under common control
Dongguan Meisen Electronics Co. Ltd	Entity under common control

VIII. These companies are also principal supplier of the subject company and part of the Metec Group of China.

IX. The Accounting Standard (AS) 18 [Related party disclosures] *inter alia* applies to enterprises that directly, or indirectly through one or more intermediaries, control, or are controlled by, or are under common control with, the reporting enterprise (this includes holding companies, subsidiaries and fellow subsidiaries). In para 10.3, the term control refers to:

- a) *ownership, directly or indirectly, of more than one half of the voting power of an enterprise, or*
- b) *control of the composition of the board of directors in the case of a company or of the composition of the corresponding governing body in case of any other enterprise, or*
- c) *a substantial interest in voting power and the power to direct, by statute or agreement, the financial and/or operating policies of the enterprise.*

X. Under section 2(27) of the Act, the term control means as under:

"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;



- XI. The financial and operating policies of the subject company [as also referred to in the Standard above], such as procurement from the Metec Group of companies in China suggest that these policies are undertaken at the instance of the Chinese companies. The so-called foreign employees of the subject company to whom even the Indian director reports are clearly connected with the Metec Group, as per the company registry filings of Hong Kong/ China. These 'employees' ensured the control of the Metec Group of Companies on the subject company, without apparently requiring any of the Metec Group of Companies to actually hold shares in the subject company. It is not possible for the subject company to negate its own filings whereby, it has declared that the aspect of 'common control'.
- XII. Thus, the subject company has not correctly portrayed its shareholding in India, to suggest that it is standalone company with only individual shareholders, whereas it is entirely run and controlled by Metec Electronics Co. Ltd. [Hong Kong/China] and its group companies.
- XIII. Thus all the present shareholders [Ms. Chen Feiyan (2724839 shares, 75.69%), Shri Vikash Bhardwaj (361 shares, 0.01%) and Yang Wen (874800 shares, 24.30%)] have defaulted by not making a declaration in terms of section 89(1) of the Act, as they are merely registered holders of the shares of the subject company, but they do not hold any beneficial interest in such shares. Similarly, Metec Electronics Co. Ltd. [China/Hong Kong] has defaulted by not making a declaration under section 89(2) of the Act, as it holds beneficial interest in the shares of the subject company in India, but it is not a registered holder of the shares.
- XIV. Section 89(8) of the Act creates an embargo on the enforceability of the rights of the beneficial owner in absence of a declaration given by him under section 89(1). The said provision reads as under:
- (8) No right in relation to any share in respect of which a declaration is required to be made under this section but not made by the beneficial owner, shall be enforceable by him or by any person claiming through him.*

- XV. The default period is required to be reckoned from the date of decriminalization of default w.e.f. 21.12.2020 till the date of issue of the SCN on 13.10.2023 for violation of section 89, i.e. 1027 days.

8. Findings under section 90 of the Act

- I. Section 90 of the Companies Act, 2013 deals with the concept of significant beneficial owner [SBO] in a company. The section along with the rules provide for determination of the significant beneficial ownership through a concept of threshold [fixed as 10% in the rules] to calculate the beneficial interest in the shares of the company, or exercise of significant influence or control in the company. The section and the rules elaborate that the threshold test is not required to be satisfied if there is significant influence or control.

- II. In the FATF (2023), Guidance on Beneficial Ownership for Legal Persons, the distinction between the legal ownership and the beneficial ownership is explained as under:

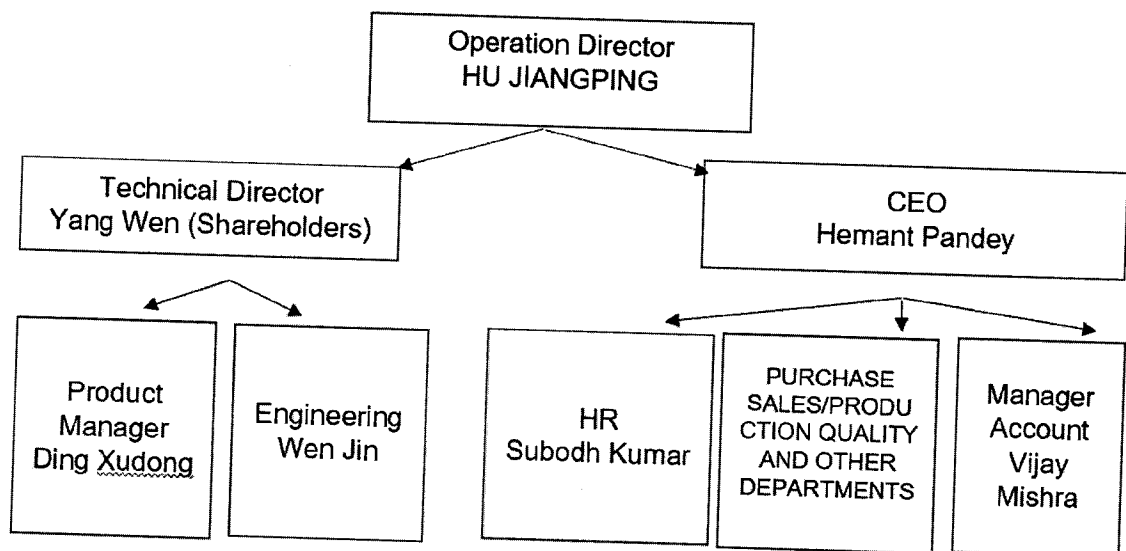
Legal ownership and beneficial ownership over a legal person are two separate concepts. A natural person may be considered a beneficial owner on the basis that he/she is the ultimate owner/controller of a legal person, either through his/her ownership interests or through exercising ultimate effective control through other means. While legal ownership and beneficial ownership can overlap, the legal title or controlling shareholding of a company may be in the name of an individual or a legal person other than the beneficial owner who ultimately controls the entity, directly or indirectly. Accordingly, individuals who exercise ultimate control over a legal person should be identified as beneficial owners, regardless of whether they own shares above any specified minimum ownership threshold.

- III. To explain this concept further, whereby control has to be seen without actual holding of shares, the FATF Guidance [supra] cites some examples, such as:

- ***Control through positions held within a legal person:*** *Natural persons who exercise substantial control over a legal person and are responsible for strategic decisions that fundamentally affect the business practices or general direction of the legal person may be considered a beneficial owner under some circumstances. Depending on the legal person and the country's laws, directors may or may not take an active role in exercising control over the affairs of the entity.*



- **Control through informal means:** Furthermore, control over a legal person may be exercised through informal means, such as through close personal connections to relatives or associates. Further, when an individual is using, enjoying or benefiting from the assets owned by the legal person, it could be grounds for further investigation if such individual is in the condition to exercise control over the legal person.
- IV. In present case, no e-form BEN-2 has been filed by the subject company. The shareholding details reveal that there are only individual shareholders. However, the linkages of the subject company with the Metec Group in China have already been discussed at length in the preceding paras. Despite clear and undeniable linkages, the subject company has repeatedly denied any connections.
- V. The foreign employees working in India are part of the crucial decision-making apparatus of the subject company, as revealed in the statements of the erstwhile directors Shri Subodh Kumar and Shri Vikas Bhardwaj. The company's organizational chart discussed above also indicates the importance of the roles assigned to them in the subject company, so much so that even a director reports to one of the foreign employees. The registry information of the Metec Group of companies obtained through GWBMA [registrationchina.com] shows that these foreign employees working in India in the subject company also exercise significant influence and control in the Metec Group of companies.
- VI. For the ease of understanding, the relevant portion of the organizational chart is once again reproduced as under:



- VII. **The role of Mr Jiangping Hu [alias Andy]:** The subject company in its own reply dated 18.07.2023 has shown the above reporting channel, which shows that Mr. Hu is at the top of the hierarchy. It is significant to note that Mr. Hu is neither a shareholder nor a director in the records of the company. He carries the non-statutory designation of "Operations Director". Shri Vikas Bhardwaj in his statement to this office said that Mr. Hu may be the spouse of Ms. Chen Feiyan [the largest shareholder and director of the subject company]. In the registry information of the Metec Group of companies, Mr Hu is the ultimate beneficial owner/actual controller in case of both Shenzhen Billion Electrical Appliances Co., Ltd. [also translated as Shenzhen Baiyier Electric Appliance Co., Ltd.] and Shenzhen Misu Technology Co., Ltd. [also translated as Miisso Technology Co., Ltd.]. The definition of "significant beneficial owner" in rule 2(1)(h) of the Companies (Significant Beneficial Owners) Rules, 2018 includes the scenario when the individual has right to exercise, or actually exercises, 'significant influence' or 'control', in any manner other than through direct-holdings alone. In such a case, the threshold test of equity shareholding is not required to be met. Mr. Hu has no direct holdings in the subject company, yet he exercises control in its functioning, which satisfies the requirement of rule 2(1)(h). He is a strategic decision maker in the subject company and the ultimate beneficial owner in the Metec Group of Companies. The email used by Mr Hu is md@metecelectronics.in and the bank statement of the subject company, shows that while making payments to Mr. Hu, he is referred as Andy Boss in the narration. Mr Hu is clearly an SBO of the subject company. By not declaring himself as an SBO, he has rendered himself liable for action for violation of section 90(1).
- VIII. The subject company has also erred in not taking necessary steps to identify an individual(s) who is/are significant beneficial owner(s) in relation to the company and require him/them to comply with the provisions of section 90. Thus, the subject company and its officers have violated the provisions of section 90(4A).
- IX. The default period is required to be reckoned from the date of decriminalization of default w.e.f. 21.12.2020 till the date of issue of the SCN on 16.10.2023 for violation of section 90, i.e. 1030 days.



9. The relevant provision of the Act and Rules therewith:

Section 89. Declaration in respect of beneficial interest in any share:

- (1) Where the name of a person is entered in the register of members of a company as the holder of shares in that company but who does not hold the beneficial interest in such shares, such person shall make a declaration within such time and in such form as may be prescribed to the company specifying the name and other particulars of the person who holds the beneficial interest in such shares.
- (2) Every person who holds or acquires a beneficial interest in share of a company shall make a declaration to the company specifying the nature of his interest, particulars of the person in whose name the shares stand registered in the books of the company and such other particulars as may be prescribed.
- (5) If any person fails to make a declaration as required under sub-section (1) or sub-section (2) or sub-section (3), he shall be liable to a penalty of fifty 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 five lakh rupees.
- (6) Where any declaration under this section is made to a company, the company shall make a note of such declaration in the register concerned and shall file, within thirty days from the date of receipt of declaration by it, a return in the prescribed form with the Registrar in respect of such declaration with such fees or additional fees as may be prescribed.
- (7) If a company, required to file a return under sub-section (6), fails to do so before the expiry of the time specified therein, the company and every officer of the company who is in default shall be liable to a penalty of one thousand rupees for each day during which such failure continues, subject to a maximum of five lakh rupees in the case of a company and two lakh rupees in case of an officer who is in default.

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.

Section 90. Register of significant beneficial owners in a company

- (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:

(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.

(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.

(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 wilfully 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.

Companies (Significant Beneficial Owners) Rules, 2018:

2(1)(b) "control" means control as defined in clause (27) of section 2 of the Act.

2(1)(h) "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 percent 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:

10. Adjudication of penalty: -

i. In view of above facts and circumstances, the default under sections 89 and 90 stand established.

ii. Now in exercise of the powers conferred vide Notification dated 24th March, 2015, I do hereby impose the penalty on the company, its officers in default and other persons for violation as follows:

Table- IA

Calculation of penalty for violation of Section 89			
Violation section & period	Penalty imposed on	Calculation of penalty amount (in Rs.)	Penalty imposed as per Section 89(5) (in Rs.)
A	B	C	D
Section 89(1) for non-declaration in form MGT-4 for 1027 days of default i.e from	Ms. Chen Feiyan (Registered Owner)	50000 + 1027 x 200 = 2,55,400 Subject to maximum 5,00,000	2,55,400
	Mr. Yang Wen (Registered Owner)	50000 + 1027 x 200 = 2,55,400 Subject to maximum 5,00,000	2,55,400

21.12.2020 to 13.10.2023	Vikash Bhardwaj (Registered Owner)	50000 + 1027 x 200 = 2,55,400 Subject to maximum 5,00,000	2,55,400
Section 89(2) for non-declaration in form MGT-5 for 1027 days of default i.e from 21.12.2020 to 13.10.2023	Metec Electronics Co. Ltd (Company incorporated under the laws of Hong Kong/ China) (Beneficial Owner)	50000 + 1027 x 200 = 2,55,400 Subject to maximum 5,00,000	2,55,400
It is hereby further directed that the amount payable by Metec Electronics Co. Ltd (incorporated under the laws of Hong Kong/ China) shall be deposited by the subject company.			

Table- IB

Further directions issued pursuant to section 454(3)(b)
<p>In view of the embargo placed by section 89(8) on the beneficial owner [who has not declared its interest to the registry] to enforce its rights, whether through itself or through any other person, the subject company [METEC ELECTRONICS PRIVATE LIMITED] and all its directors, employees, or agents acting through it are hereby debarred by the undersigned from:</p> <p>a) entering into any fresh agreements with Shenzhen Beyear Appliances Co. Ltd., Shenzhen Applessun Electronic Co. Ltd. and Dongguan Meisen Electronics Co. Ltd or any other entity or person of the Metec Group of Companies in China/Hong Kong;</p> <p>b) making any payments to Shenzhen Beyear Appliances Co. Ltd., Shenzhen Applessun Electronic Co. Ltd. and Dongguan Meisen Electronics Co. Ltd or any other entity or person of the Metec Group of Companies in China/Hong Kong, except in case of goods already received or goods in transit as on the date of this order;</p> <p>till the e-form MGT-6 is filed by the subject company, declaring the names of the registered and beneficial owner of the shares of the subject company.</p>



Table- IIA

Violation section & period	Penalty imposed on	Calculation of penalty amount (in Rs.)	Penalty imposed as per Section 90 (10)/ 90(11) (in Rs.)
A	B	C	D
Section 90 (1) (1030 days of default)	Mr. Jiangping Hu (Significant Beneficial Owner)	$50000 + 1030 \times 1000 = 10,80,000$ Subject to maximum 2,00,000	2,00,000
Section 90 (4A)	Metec Electronics Private Limited (company)	$1,00,000 + 1030 \times 500 = 6,15,000$ Subject to maximum 5,00,000	5,00,000
	Mr. Vikash Bhardwaj (Director ceased on 21.11.2022) default of 701 days	$25,000 + 701 \times 200 = 1,65,200$ Subject to maximum 1,00,000	1,00,000
	Mr. Subodh Kumar (Director from 21.11.2022 to 08.09.2023) default of 292 days)	$25,000 + 292 \times 200 = 83,400$ Subject to maximum 1,00,000	83,400
	Mr. Mohd Rafeek Saifi (Director from 08.09.2023 to 16.10.2023) default of 39 days)	$25,000 + 39 \times 200 = 32,800$ Subject to maximum 1,00,000	32,800
	Ms. Chen Feiyan (director)	$25000 + 1030 \times 200 = 2,31,000$ Subject to maximum 1,00,000	1,00,000
	Mr. Jiangping Hu (officer in default pursuant to section 2(60)(v)	$25000 + 1030 \times 200 = 2,31,000$ Subject to maximum 1,00,000	1,00,000


Table- IIB

Further directions issued pursuant to section 454(3)(b)

In view of the findings in respect of the violation under section 90 of the Act. The company, its officers and associated persons are required to determine all the individuals who could be classified as SBO in respect of the subject company and file e-form BEN-2 with respect to all such individuals within a period of 60 days from the date of this order.

11. Order:

- a. Names of parties as mentioned in Table IA and Table IIA above are hereby directed to pay the penalty amount as per column no. 'D' therein.
- b. The company, its officers and associated persons [including Shri Vijay Mishra and Hemant Pandey] are required to strictly comply with directions issued in Table IB and Table IIB above.
- c. The said amount of penalty shall be paid through online by using the website www.mca.gov.in (Misc. head) in favor of "Pay & Accounts Officer, Ministry of Corporate Affairs, New Delhi, **within 90 days of receipt of this order, and intimate this office with proof of penalty paid.**
- d. Appeal against this order may be filed with the Regional Director (NR), Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003 within a period of **sixty days** from the date of receipt of this order, in Form ADJ [available on Ministry website www.mca.gov.in] setting forth the grounds of appeal and shall be accompanied by a certified copy of the order. [Section 454(5) & 454(6) of the Act read with Companies (Adjudicating of Penalties) Rules, 2014].
- e. Your attention is also invited to section 454(8) of the Act in the event of non-compliance of this order.


(Pranay Chaturvedi, ICLS)
Registrar of Companies
NCT of Delhi & Haryana

No. ROC/D/Adj/Order/Section 89 & 90/Metec/54-62

Date: 08/01/2024

To

1. METEC ELECTRONICS PRIVATE LIMITED
E 262 Basement, East of Kailash, Delhi, South Delhi, 110065, India.
(company is required to serve copy of this order to all concerned persons)
2. Mr. VIKASH BHARDWAJ
Flat No-601, Coral Tower Gardenia Glamour Society, Sector-3,
Vasundhra Ghaziabad, 201012, Uttar Pradesh, India
3. Ms. CHEN FEIYAN
C/o Company
E 262 Basement, East of Kailash, Delhi, South Delhi, 110065, India.
4. Mr. SUBODH KUMAR
Yaduvansh Nagar, Diwani Road near Railway Gumati No. 5,
MANIPURI, MANIPURI, 205001, Uttarakhand, India
5. Mr. MOHD RAFAEEK SAIFI
478, Gali No-2, Prahlad Ghari, Vasundhra, Ghaziabad, Uttar Pradesh -
201012, Ghaziabad, 201012, Uttar Pradesh, India
6. Mr. JIANGPING HU
C/o Company
E 262 Basement, East of Kailash, Delhi, South Delhi, 110065, India.
7. Mr. YANG WEN
C/o E 262 Basement, East of Kailash, Delhi, South Delhi, 110065, India.
8. Metec Electronics Co. Ltd
(Company incorporated under the laws of Hong Kong/ China)
C/o 61-A Udyog Vihar Greater Noida, Gautam Buddha Nagar UP, 201308
dgm@metecelectronics.in

Copy to: The Regional Director (NR), Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Pt. Deendayal Upadhyay Bhawan, CGO Complex, Lodhi Road, New Delhi-110003,

