

F.No:9/39/ADJ/SEC.203 of 2013/KARNATAKA/RD(SER)/2023

BEFORE THE REGIONAL DIRECTOR, SOUTH EAST REGION

MINISTRY OF CORPORATE AFFAIRS, HYDERABAD

IN THE MATTER OF COMPANIES ACT, 2013 /6901

IN THE MATTER OF IBM GLOBAL FINANCING INDIA PRIVATE LIMITED

1. M/s. IBM Global Financing India Private Limited
2. Sudhanshu Ramcharan Sharma, Managing Director
3. Kalahastheswaran Karthikeyan, Director
4. Addepalli Ushasri, Director
5. Anand Mantri, Director
6. Manish Prabhudayal Jhunjhunwala, Director
7. Nifin Srinivasa Murthy, Director
8. Praveen Kumar Jain, Director

Appellants

Date of hearing : 01.02.2024

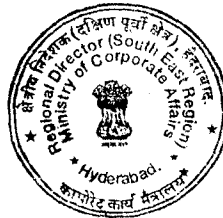
Present : Mr. Joby Chacko, Advocate

ORDER

This is an appeal filed under section 454(5) of the Companies Act, 2013 by the above appellants in e-form ADJ vide SRN F88484316 dated 22.12.2023 against the adjudication order No. ROC(B)/Adj. Ord.454-203/IBM Global/Co.No.093733/2023/ dated 06.11.2023 under section 454 passed by the Registrar of Companies, Karnataka for default in compliance with the requirements of Section 203 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

2. Registrar of Companies in his order of adjudication has stated that the company has filed a suo-motu application on 24.08.2023 regarding non-appointment of whole-time company secretary i.e. violation of section 203 of the Act. The Company has submitted that, the Company was incorporated with paid up capital of Rs.52 Crores and company did not have company secretary till the appointment of Shanubhoganahalli Venkateshamurthy Pushpa on 27.05.2019, thereby violating the

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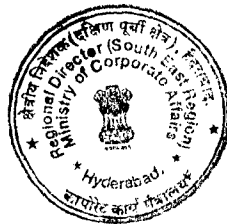


relevant provisions of the Act, from 31.05.2016 to 26.05.2019 i.e., 1091 days. Further, after the resignation of Shanubhoganhalli Venkateshamurthy Pushpa on 23.11.2021, the company did not have company secretary till the date the company was reduced its paid-up capital to 1 lakh as per Hon'ble National Company LAW Tribunal (NCLT) vide order dated 17.03.2023 which was below the threshold limit of Rs.10 crores for appointment of whole time company secretary, thereby violating the relevant provisions of the Act for non-appointment of company secretary from 24.05.2022 to 17.03.2023 i.e. 298 days. Hearing was held before Registrar of Companies on 27.09.2023 and after hearing the authorized representative had levied a penalty of Rs.5,00,000/- each on the Company and 3 directors i.e., Sudhanshu Ramcharan Sharma, Addepalli Ushasri and Anand Mantri Danda Brahmanandam and Rs.3,47,000/- each on 2 directors i.e., Kalahastheswaran Karthikeyan and Nifin Srinivasa Murthy and Rs.2,28,000 on Praveen Kumar Jain and Rs.72,000/- on Manish Prabhudayal Jhunjhunwala (total aggregating to Rs.29,94,000/-).

3. An opportunity of being heard was given to the Appellants on 01.02.2024. The authorized representative Mr. Joby Chacko, Advocate appeared on behalf of the appellants and reiterated the submissions made in the appeal and from the appeal it has been stated that the Appellant Company had not commenced the business and filed an application with Reserve Bank of India for surrendering its certificate of registration on June 06, 2017 and Reserve Bank of India approved the said application and de-registered on February 22, 2018. The Appellant company had not commenced its commercial operations and there were no employees in the Appellant company. All the directors were non-executive directors. As there was no business in the Applicant Company, despite its maximum efforts, could not identify and appoint a suitable Company Secretary except for a span of 2.5 years.

Non appointment of the Company secretary was not intentional or deliberate. The same was due to the reasons beyond reasonable control of the Appellants. Hence a liberal view may be taken to adjudicate and impose nominal penalty for the non-compliance of section 203 of the Companies Act, 2013. The Appellant No.1 is a Private

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Limited Company, and the Directors of the Appellant Company are keen in implementing the provisions of the Companies Act, 2013 in letter and spirit and are law abiding. However, non-compliance with the provisions of Section 203 of the Companies Act, 2013 were unintentional and without any malafide intention.

4. Though there is a default committed, there is a ground in interfering with the impugned adjudication order of Registrar of Companies to the extent of reducing the quantum of penalty due to the following reasons:

(a) Appellant Company had not commenced the business and filed an application with Reserve Bank of India for surrendering its certificate of registration on June 06, 2017 and Reserve Bank of India approved the said application and de-registered on February 22, 2018.

(b) The Appellant company had not commenced its commercial operations and there were no employees in the Appellant company. All the directors were non-executive directors.

(c) No business in the Applicant Company, despite its maximum efforts, could not identify and appoint a suitable Company Secretary except for a span of 2.5 years

Taking into consideration the facts of the appeal and submissions made by the authorized representative. I deem it would meet the end of justice if the penalty imposed by Registrar of Companies is reduced to 15% i.e., 75,000/- each for the Company and 3 directors i.e., Sudhanshu Ramcharan Sharma, Addepalli Ushasri and Anand Mantri Danda Brahmanandam, Rs.52,050/- each for 2 directors i.e., Kalahastheswaran Karthikeyan and Nitin Srinivasa Murthy, Rs.34,200/- on Praveen Kumar Jain and Rs.10,800/- on Manish Prabhudayal Jhunjhunwala (total aggregating to Rs.4,49,100/-). . The appellants are directed to comply with this order and also provisions of Section 454(8) of the Companies Act, 2013 read with Companies (Adjudication of Penalties) Rules, 2014.


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5. Accordingly, penalty was paid by the Company and 3 directors i.e., Sudhanshu Ramcharan Sharma, Addepalli Ushasri and Anand Mantri Danda Brahmanandam amounting to Rs.75,000/- each and by 2 directors i.e., Kalahastheswaran Karthikeyan and Nifin Srinivasa Murthy amounting to Rs.52,050/- each and by Praveen Kumar Jain amounting to Rs.34,200/- and by Manish Prabhudayal Jhunjhunwala amounting to Rs.10,800/- (total aggregating to Rs.4,49,100/-) vide SRN's X66794066, X66799578, X66815671, X66814955, X66803396, X66816075, X66818485 and X66816257 dated 08.02.2024 respectively. Accordingly, this order is issued to the Appellants with a copy to Registrar of Companies, Karnataka and Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi for information and necessary action.

Issued under my hand and seal on this the 19th day of February 2024.




(DR. RAJ SINGH)
REGIONAL DIRECTOR (SER)
HYDERABAD

Copy for information and necessary action to :

1. M/s. IBM Global Financing India Private Limited
No.12, Subramanya Arcade, Bannerghatta
Road, Bangalore, Karnataka- 560029.
2. Sudhanshu Ramcharan Sharma, Managing Director
B-1204, Spring Leaf 5 CHS Ltd, Lokhandwala
Kandivali East, Sector 4, Akurli Rd, Mumbai,
Maharashtra- 400101.
3. Kalahastheswaran Karthikeyan, Director
10/1-12, GF-04, Sunrise Apartment, 71 A
Cross, Jedarahalli, 5th Block, Rajaji Nagar,
Bangalore, Karnataka- 5601010.
4. Addepalli Ushasri, Director
Khata No.350/30-E, Habitat Crest Apt, Hoodi
Mahadevapura, Bangalore, Karnataka- 560048.
5. Anand Mantri, Director
Villa B 22, Sobha Althea and Azalea, Nagenhalli,
Harohalli, Yelahanka, Bangalore, Karnataka- 560064.

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6. Manish Prabhudayal Jhunjhunwala, Director
B-201, Madhuban CHSL Upvan, Uppar Govind Ngr,
Malad East, Near Jyadari Towers, Malad,
Maharashtra- 400097.


7. Nitin Srinivasa Murthy, Director
No.985, Navaneetha, 4th Main, D Block, 2nd Stage,
Rajajinagar, Near Navarang Theater, Bangalore,
Karnataka- 560010.

8. Praveen Kumar Jain, Director
Flat No. 1107, A1 Block, SNN Raj Serenity, Begur Koppa
Road, Yenenahalli, Bangalore, Karnataka- 560114.

9. Registrar of Companies, Ministry of Corporate Affairs,
Karnataka, Bangalore.

10. The Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi.




(DR. RAJ SINGH)
REGIONAL DIRECTOR (SER)
HYDERABAD