

F.No:9/129/ADJ/SEC.42 of 2013/KARNATAKA/RD(SER)/2022

16549

BEFORE THE REGIONAL DIRECTOR, SOUTH EAST REGION

MINISTRY OF CORPORATE AFFAIRS, HYDERABAD

IN THE MATTER OF COMPANIES ACT, 2013

IN THE MATTER OF TURNAROUND SYSTEMS PRIVATE LIMITED

1. M/s. Turnaround Systems Private Limited
2. Ms. Sreepriya Koppula, Director
3. Ms. Vinai Rani Koppula, Director

Appellants

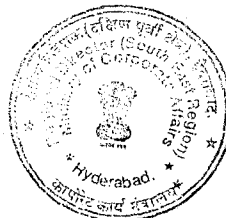
Date of hearing: 05.01.2024  
Present: Mr. D Venkateswarlu, PCS

### 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 F53811600 dated 20.12.2022 against the adjudication order No. ROC(B)/Adj-Ord.454-42(7)/Turnaround/Co.No.74612/2022 /SRN 100075449 dated 02.12.2022 under section 454 passed by the Registrar of Companies, Karnataka for default in compliance with the requirements of Section 42 of the Companies Act, 2013.

2. Registrar of Companies in his order of adjudication has stated that, while processing the STK-2 application filed by the company, vide SRN T5912297, it was observed by his office that the compounding application which was filed by the company was pending for delay in filing PAS-4 under Section 42(1) of Companies Act, 2013. Hence this office vide letter dated 06.05.2022, directed the company to get the matter adjudicated under the said section. Based on the said letter, this office issued adjudication notice to the company and its directors vide notice dated 15.06.2022 directing the company and directors to attend a hearing on 24.06.2022 to adjudicate the matter. Matter was heard on 13.10.2022, during the hearing ROC had directed the authorized representative to file written submissions in order to examine the matter further. It is noticed from the Adjudication application and written submissions that the company has raised Rs.14,85,000/- through private placement by issue of fully and compulsorily convertible debentures and has circulated letter of offer on 03.07.2014.

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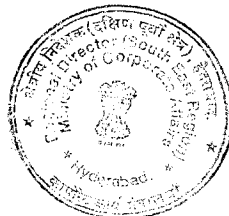
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From the MCA records it is noticed that said offer was made to TG Holdings (Target), a General Partnership having its Registered Office at Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda, equivalent to an amount of USD 25,000/-. The company was required to file letter of offer with the Registrar of Companies under Eform PAS-4 on or before 02.08.2014. However, company has filed the letter of offer in PAS 4 as an attachment to GNL-2 on 13.09.2014 with a delay of 42 days.

Further, the company in its letter dated 11.11.2022 has submitted that the company has incurred huge losses and stopped its commercial operations since 2016. The company and its directors who had invested huge amount of money but incurred heavy losses. The company has also applied for closure under section 248 of the Companies Act, 2013. Hence the company has requested to take a lenient view on the default committed. Further, it is stated that with effect from 07.08.2018, MCA has done away with requirement of filing of letter of offer in PAS-4 with the Registrar of Companies. However, it is silent as to whether the amount of Rs.14.85 Lakhs raised through FCCDs has been refunded to the subscribers or not.

Whereas, it is seen from the financial statements of the company as at 31.03.2021 that the paid up capital is Rs.1,00,557/- and turnover is Nil. Further the Company does not hold status of subsidiary / holding. The company, therefore, comes under the definition of "Small Company" as per section 2(85) of Companies Act, 2013. Hence the provision for levying lesser penalty as provided under section 446B of the Act is applicable to this company.

3. Registrar of Companies in his further report dated 23.03.2023 has stated that while processing the STK-2 form filed by the company vide SRN T59124297 and it was observed that compounding application mentioned above, seeking compounding for delay in filing PAS-4 was pending. Further, the Reserve Bank of India vide letter No.BLR. FED. FID. No.S134/22-00-001/2022-23 dated 05.05.2022 addressed to this office has stated that the company has received Foreign Direct Investment (FDI) from foreign investors and has not completed the procedural formalities of FDI reporting and that FDI can be taken on record by RBI only after submission of relevant documents/clarifications. Hence, STK-2 form filed by the company was rejected as per provisions of Rule3(1)(vii) and Rule 7(2) of the Companies (Removal of Names) Rule with liberty to file a fresh application after complying the above mentioned issues.



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After the non-compliance of the then applicable section 42(7) was noticed while processing STK-2 form, adjudication notice was sent, and hearing was conducted. Subsequently, Adjudication order dated 02.12.2022 was passed. During the proceeding of hearing and order, the penal provisions as on date were considered which included lesser penalties for small companies under section 446B of the Companies Act, 2013. However, inadvertently, there was an error wherein the penalty levied was not capped at Rs.2 Lakhs and Rs.1 Lakhs each for the Company and Directors. Further, from the records available that the company has converted the FCCDs issued in 2014, which are the subject matter of this adjudication, into equity shares on 31.03.2019 as per the terms and conditions and PAS 3 for the same has been filed by the company vide SRN H53771333. Accordingly, hearing was held before Registrar of Companies on 19.10.2022 and after hearing the authorized representative had levied a penalty of Rs.7,42,500/- on the Company and 2 directors i.e., Ms. Sreepriya Koppula and Ms. Vinai Rani Koppula (total aggregating to Rs.22,27,500/-).

4. An opportunity of being heard was given to the Appellants on 05.01.2024. The authorized representative Mr. D Venkateswarlu, PCS appeared on behalf of the appellants and reiterated the submissions made in the appeal and the company has furnished the following grounds in his appeal:

a) The members of the Company in their Extra Ordinary General Meeting held on 03rd July 2014 have approved to issue 0% Fully & Compulsorily Convertible Debentures (FCCD) of Rs.100/- each as equivalent to USD 25000 on the date of receipt of funds, be offered to TG Holdings (Target), a General Partnership having its Registered Office at Clarendon House, 2 Church Street, Hamilton HM 11, Bermuda.

b) Subsequently, the company has circulated the Private Placement Offer Letter dated 03rd July 2014 to the proposed Investor i.e TG Holdings (Target), Bermuda for issue of 0% Fully & Compulsorily Convertible Debentures (FCCD) of Rs.100/- each as equivalent to USD 25000.

c) Pursuant to the provisions of Section 42(7) of the Companies Act, 2013:

All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to invitation to subscribe and that such persons



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shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter.

d) Pursuant to the aforesaid provision, the Company was supposed to file the letter of offer with the Registrar of Companies in Form PAS 4 as an attachment to Form GNL 2 on or before 02nd August 2014, however, the same has been filed on 13th September 2014 vide SRN C20202719 with a delay of 42 days.

e) Further, M/s. TG Holdings (Target), Bermuda has accepted the offer of the Company to subscribe 0% Fully and Compulsorily Convertible Debentures (FCCD) and accordingly remitted USD 25,000/- on 08th July 2014 equivalent to Rs.14,85,000/- (Rupees Fourteen Lakhs and Eighty-Five Thousand Only) to the Company.

f) The Board of Directors of the Company in their Meeting held on 28th August 2014 had allotted 14.850, 0% Fully and Compulsorily Convertible Debentures (FCCD) of Rs.100/- each to M/s. TG Holdings (Target), Bermuda and subsequently the Company has filed Return of allotment in Form PAS 3 with the Registrar of Companies vide SRN S31194962 dated 13th September 2014 within the specified time period as mentioned in Rule 6 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

g) The Form GNL 2 was sent for resubmission by the Registrar of Companies, Karnataka with the following remarks:

"It is seen from the PAS 4 that the letter of offer was issued on 03.07.2014 and the same has to be filed within 30 days from the date of offer where the same has been filed only on 13.09.2014 after a delay of 2m and 11 days. You are requested to compound the offence or otherwise the e-form will be rejected and further PAS-5 not filed"

h) In response to the resubmission remarks made by the Registrar of Companies, Karnataka, the company has made an application under the erstwhile provisions of section 621A of the Companies Act, 1956 for compounding of offence under Section 45(7) of the Companies Act, 2013 before the Registrar of Companies, Karnataka.

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i) Further, the members of the company in their Extra Ordinary General Meeting held on 30th March 2019, has converted existing 14,850 Fully and Compulsorily Convertible Debentures (FCCD) of Rs.100/- each held by M/s. TG Holdings (Target), Bermuda (at a pre-determined valuation agreed at the time of issue of FCCD based on the basis of valuation arrived by a registered valuer) into 557 Equity shares of Re 1/- each at a premium of Rs.2,692/- per shar as per the terms of conditions mutually agreed between the Company and the Debenture Holders at the time of issue of debenture.

j) The Company has utilized the entire amount of Rs.14,85,000/- (Rupees Fourteen Lakhs and Eighty-Five Thousand Only) received in the form of FCCD's from M/s. TG Holdings (Target), Bermuda for its business purposes after all the required filings with the Registrar of Companies, Karnataka. The Company has given employment upto seven (7) employees during the period from January 2015 to June 2016.

k) However, the company has incurred huge loss and stopped its commercial operation since 2016. Also, the Company has made an application for strike off of the name of the Company under Section 248 of the Companies Act, 2013 to the Registrar of Companies in Form STK 2 vide SRN T59124297 dated 18th November 2021.

(l) In response, to the aforesaid application filed under Section 248 the Registrar of Companies, Karnataka, Bengaluru had sent adjudication hearing notice vide its letter F No.ROCB/Adj 454-12/ARHM/Co. No. 135351/2022/3085 dated 15th June 2022 and directed the company to adjudicate the penalties under Section 454 of the Companies Act, 2013, for the offence committed for non-compliance of the provisions of Section 42(7) of the Companies Act, 2013, as the application filed under erstwhile provisions of Section 621A of the Companies Act, 1956 for Compounding of offence was pending for adjudication w.r.t. delay in filing letter of offer with the Registrar of Companies by 42 days.

5. Company in its appeal has stated that the company has incurred huge loss and stopped all its commercial operations since 2016 and already made an application for strike off the name of the Company under section 248 of the Companies Act, 2013 to the Registrar of Companies in Form STK-2 vide SRN T59124297 dated 18.11.2021.



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6. 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 grounds:

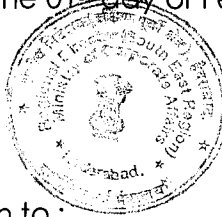
(a) Company has incurred huge loss and stopped its commercial operations since 2016.

(b) Company has made an application for strike off the name of the company under section 248 of the Companies Act, 2013.

7. Taking into consideration the appeal filed by the company and since the company had already made an application for strike off the name of the company under section 248 of the Companies Act, 2013, I deem it would meet the end of justice if the penalty imposed by Registrar of Companies vide his adjudication order dated 02.12.2022, is reduced to 10% i.e., 74,250/- each for the Company and 2 directors i.e., Ms. Sreepriya Koppula and Ms. Vinai Rani Koppula (total aggregating to Rs.2,22,750/-). 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.

5. Accordingly, penalty was paid by the Company and 2 directors i.e., Ms. Sreepriya Koppula and Ms. Vinai Rani Koppula to Rs.74,250/- each (total aggregating to Rs.2,22,750/-) vide SRN's X64993199, X64994601 and X64998602 dated 20.01.2024 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 01<sup>st</sup> day of February 2024.



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

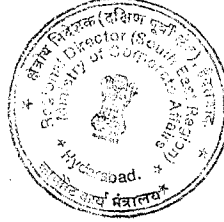
Copy for information and necessary action to :


1. M/s. Turnaround Systems Private Limited  
No. B1103, Salarpuria Serenity APTS, 7<sup>th</sup> Sector,  
HSR Layout, Bangalore, Karnataka- 560102.

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2. Ms. Sreepriya Koppula, Director  
No. B1103, Salarpuria Serenity Apartments, 7<sup>th</sup>  
Sector HSR Layout, Bangalore, Karnataka- 560102.
3. Ms. Vinai Rani Koppula, Director  
H.No.2-2-18/63-A, Muncipal No A-26, D-D Colony,  
Hyderabad, Telangana- 500026.
4. Registrar of Companies, Ministry of Corporate Affairs,  
Karnataka, Bangalore.
5. The Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi.



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