

F.No:9/124/ADJ/SEC.203 OF 2013/ROC ANDHRA PRADESH/RD(SER)/2022 /6128

BEFORE THE REGIONAL DIRECTOR, SOUTH EAST REGION

MINISTRY OF CORPORATE AFFAIRS, HYDERABAD

IN THE MATTER OF COMPANIES ACT, 2013

IN THE MATTER OF HWASEUNG IA AUTOMOBILES PRIVATE LIMITED

1. M/s. Hwaseung IA Automotives Private Limited
2. Mr. Choi Sung Soo, Managing Director
3. Mr. Hyeong Jin Kim, Director

Appellants

Date of hearing : 09.02.2023

Present : Mr. T. R. Ravi Chandran, 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 F46703575 dated 22.11.2022 against the adjudication order No. ADJ 99/203 of 2022-23/1982 dated 07.09.2022 under section 454 passed by the Registrar of Companies, Andhra Pradesh 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 failed to appoint Whole Time Company Secretary since the applicable provisions of the Act came into force to fill date despite paid up capital has exceeded the prescribed limit as stated in the provisions of Section 203(1) of the Companies Act, 2013. Hearing was held before Registrar of Companies on 07.09.2022 and after hearing the authorized representative had levied a penalty of Rs.5.00 Lakhs on the Company and Rs.50,000/- each for 2 officers in default i.e., Mr. Choi Sung Soo, Managing Director and Mr. Hyeong Jin Kim, Director (total aggregating to Rs.6.00 Lakhs).



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3. An opportunity of being heard was given to the Appellants on 09.02.2023. The authorized representative Mr. T.R. Ravi Chandran, Practicing Company Secretary appeared on behalf of the appellants and reiterated the submissions made in the appeal and submitted that though the Company was incorporated on November 17, 2017, it took approximately two years for the Company to complete the construction of its Rubber and PVC weather strips manufacturing plant in the state of Andhra Pradesh, India. There were no commercial operations during the FY 2017-18 and FY 2018-19 and the turnover for above stated financial year were Nil. The company started the commercial operation only during the financial year 2019-20 on July 04, 2019. Due to lack of commercial operations during the FY 2017-18 & 2018-19 the company thought it fit and prudent to appoint a whole time Company secretary only after the commencement of its commercial operations. Hence the company did not appoint a whole-time Company Secretary during the FY 2017-18 & 2018-19.

Furthermore, during the financial year 2019-20, being the first year of its commercial operation, the Company had prioritized appointment of whole time Company Secretary and the company had taken various efforts to comply with the provisions of section 203 of the Companies Act, 2013. However, the Ministry of Corporate Affairs ("MCA") vide its notification dated January 03, 2020 had amended the Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 wherein the thresh hold limit for appointing a whole time company secretary was raised to Rupees Ten crores w.e.f 01/04/2020. During the financial year ended March 31, 2020 the total paid up share capital was only Rs.6,47,50,020/- and considering the fact that the company did not foresee any further capital requirement at the point in time, also in view of the above stated amendment by the MCA the company did not appoint a whole time Company Secretary during the FY 2019-20.

Pursuant to the rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 the appointment of Whole time Company Secretary was done away with during the commencement of the Financial Year 2020-21 as the paid-up share capital of the Company was only Rs.6,47,50,020/- and it was only during the fag end of financial year 2020-21 the paid-up capital of the company

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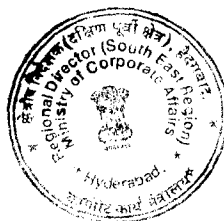
company was raised to Rs.21,12,70,020/- to offset the losses. On March 08, 2021, the equity share capital of the company was raised by a sum of Rs.14,65,20,000/- on Rights issue basis. Since the need for complying with the provisions of section 203 of the Companies Act, 2013 again came about inly during the tag end of the FY 2020-21, the management of the Company had decided to consider the matter during the FY 2021-22. During the First Quarter of the FY 2021-2022, the Second wave of COVID-19 pandemic in India spread with alarming speed, Infecting Lacs of people and bringing economic activity to a near-standstill in the Country. Lockdowns were imposed by various State Government in the Country. The spread of COVID-19 Second wave in India had severely impacted businesses in the Country and for the Company, the focus immediately shifted to ensuring the health and well-being of all employees. Hence the process of appointing a whole-time Company Secretary was slow during the financial year 2021-22 and the management of the Company has appointed Mrs. Manjuladevi Sridharan, Company Secretary with effect from 07.12.2022. Further the authorized representative has requested to waive off the penalty or levy a lesser penalty as imposed by Registrar of Companies vide adjudication order dated 07.09.2022.

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) Though the Company was incorporated on November 17, 2017, it took approximately two years for the Company to complete the construction of its Rubber and PVC weather strips manufacturing plant in the state of Andhra Pradesh.

(b) There were no commercial operations during the FY 2017-18 and FY 2018-19 and the turnover for above stated financial year were Nil. The company started the commercial operation only during the financial year 2019-20 on July 04, 2019.

(c) Due to lack of commercial operations during the FY 2017-18 & 2018-19 the company thought it fit and prudent to appoint a whole time Company secretary only after the commencement of its commercial operations.



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(d) Ministry of Corporate Affairs ("MCA") vide its notification dated January 03, 2020 had amended the Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 wherein the thresh hold limit for appointing a whole time company secretary was raised to Rupees Ten crores w.e.f 01/04/2020. During the financial year ended March 31, 2020 the total paid up share capital was only Rs.6,47,50,020/- and considering the fact that the company did not foresee any further capital requirement at the point in time.

(e) During the fag end of the Financial year 2020-21 the paid-up capital of the company was raised to Rs.21,12,70,020/-, accordingly Company has appointed Mrs. Manjuladevi Sridharan, Company Secretary with effect from 07.12.2022.

Taking into consideration the facts of the appeal and submissions made by the authorized representative, the then Regional Directo had reduced the penalty as imposed by Registrar of Companies to Rs.1,50,000/- for the Company and there no change in the penalty for Mr. Choi Sung Soo, Managing Director i.e. Rs.50,000/- as imposed by Registrar of Companies (total aggregating to Rs.2,00,000/-) and penalty is waived off for Mr. Hyeong Jin Kim, Director as the Company is having a Managing Director who looks after the job of day-to-day activities. The appellants are directed to comply with this order and 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 Mr. Choi Sung Soo, Managing Director amounting to Rs.2,00,000/- vide SRN X63072557 dated 27.12.2023. Accordingly, this order is issued to Company, Mr. Choi Sung Soo, Managing Director, Registrar of Companies, Andhra Pradesh 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 05th day of January 2024.



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


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Copy for information and necessary action to :

1. M/s. Hwaseung IA Automotives Private Limited
Plot No.6 C, Industrial Park Gudipalli, Anantapur,
Anantapur, Andhra Pradesh- 515122.
2. Mr. Choi Sung Soo, Managing Director
Villa No.19, VRM Hankook Mitzip VRM Group,
Palasamundram, Somandepalli, Penukonda
Ananthapuramu, Andhra Pradesh- 515241.
3. Registrar of Companies, Ministry of Corporate Affairs,
Andhra Pradesh, Vijayawada.
4. The Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi.




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