

F.No:9/28/ADJ/SEC.203 of 2013/KARNATAKA/RD(SER)/2023 /6123

BEFORE THE REGIONAL DIRECTOR, SOUTH EAST REGION

MINISTRY OF CORPORATE AFFAIRS, HYDERABAD

IN THE MATTER OF COMPANIES ACT, 2013

IN THE MATTER OF NANDI INFRASTRUCTURE CORRIDOR ENTERPRISE LIMITED

1. M/s. Nandi Infrastructure Corridor Enterprise Limited
2. Mr. Ashok Kumar Kheny, Managing Director
3. Mr. Rudra Avula Goud, CFO(KMP)

Appellants

Date of hearing : 20.11.2023

Present : Ms. K. Srilatha, 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 F65758302 dated 05.10.2023 against the adjudication order No. ROC(B)/Adj-Ord.454-203/NANDI/Co.No.19619/2023 dated 09.08.2023 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 an adjudication application on 06.04.2021 for violation of section 203 of the Act. It has been submitted in the application that subsequent to the resignation of Mr. Mohan Ramchandra Patwardhan as the company secretary w.e.f 01.12.2014, there was no company secretary in the company till the appointment of Mr. Balaji Naidu Nayanameni on 18.07.2017. Hearing was held before Registrar of Companies on 24.05.2023 and after hearing the authorized representative had levied a penalty of Rs.5.00 Lakhs each on the Company and 2 directors i.e., Mr. Ashok Kumar Kheny, Managing Director and Mr. Rudra Avula Goud, CFO(KMP) (total aggregating to Rs.15.00 Lakhs).



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3. An opportunity of being heard was given to the Appellants on 20.11.2023. The authorized representative Ms. K Srilatha, Advocate appeared on behalf of the appellants and reiterated the submissions made in the appeal and also submitted that the company had appointed Mr. Mohan Patwardhan (Membership No.A3312) as whole-time Company Secretary who had resigned from the post of whole-time Company Secretary w.e.f. 01.12.20214. The Appellant Company did not have any business income during the periods from 2014-15 to 2016-17, the other income reported was only a notional income on Optionally Fully Convertible Debentures (OFCD) subscribed by the Appellant Company in its subsidiary company, Nandi Economic Corridor Enterprises Limited and as per lenders covenants, the interest on this OFCD shall not be paid till repayment of entire term loans availed by the subsidiary company. There were no funds available with the Appellant Company to pay remuneration to the Company Secretary as per the market standard. Further stated that the default is not continuing as on the date of this appeal, since the Appellant Company has already appointed the Whole-time Company Secretary i.e., Balaji Naidu Nayanameni (M. No. F6174) as the whole-time Company Secretary on 18.07.2017 and necessary e-form DIR-12 bearing SRN G51114973 dated 23.08.2017 was filed with the ROC. Further the authorized representative has requested to reduce the quantum of penalty as imposed by Registrar of Companies in his Adjudication Order dated 09.08.2023 on the grounds as stipulated in the appeal.

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 did not have any business income during the periods from 2014-15 to 2016-17.

(b) The other income reported was only a notional income on Optionally Fully Convertible Debentures (OFCD) subscribed by the Appellant Company in its subsidiary company.

(c) The interest on this OFCD shall not be paid till repayment of entire term loans availed by the subsidiary company.



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(d) There was no funds available with the company to pay remuneration to the Company Secretary as per the market standards


(e) Appointed the Whole-time Company Secretary i.e., Balaji Naidu Nayanameni (M. No. F6174) as the whole-time Company Secretary on 18.07.2017

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 75,000/- each for the Company and 2 officers i.e., Mr. Ashok Kheny, CFO(KMP) and Mr. Avula Rudra Goud, Managing Director (total aggregating to Rs.2,25,000/-). 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 officers i.e., Mr. Ashok Kheny, CFO(KMP) and Mr. Avula Rudra Goud, Managing Director to Rs.75,000/- each (total aggregating to Rs.2,25,000/-) vide SRN's X62975537, X62975693 and X62979141 dated 26.12.2023 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 05th day of January 2024.




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

Copy for information and necessary action to :

1. M/s. Nandi Infrastructure Corridor Enterprise Limited
No.1, Midford House, Midford Gardens, Off
M.G. Road, Bangalore, Karnataka- 560001.
2. Mr. Ashok Kumar Kheny, Managing Director
#336, 4th Main, 14th Cross, Sadashiv Nagar,
Bangalore, Karnataka- 560080

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3. Mr. Avula Rudra Goud, CFO(KMP)
No.493, 9th Block II Stage, BDA Layout, Nagarbhavi,
Bangalore, Karnataka- 560072
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