

F.No:9/24/ADJ/SEC.203 OF 2013/KARNATKA/RD(SER)/2023 15795

BEFORE THE REGIONAL DIRECTOR, SOUTH EAST REGION

MINISTRY OF CORPORATE AFFAIRS, HYDERABAD

IN THE MATTER OF COMPANIES ACT, 2013

IN THE MATTER OF NDO INDIA PRIVATE LIMITED

1. M/s. NDO India Private Limited
2. Mr. Harsha Chaminda Kodituwakku Hewamallika, Director
3. Mr. Susantha Chaminda Ratnayake, Director
4. Mr. Romesh Michael David, Director
5. Mr. Ravinath Sanjeeva Fernando, Director
6. Mr. Manoshanth Sundarjee Balasingam, Whole time Director
7. Mr. Herve Francois Marie Montjotin, Director
8. Mr. Guillaume Gerald Gilles Col, Director
9. Mr. Abhishek Poddar, Director
10. Mr. Subramanian Rajagopalan Kalyanam, Director
11. Mr. Bharat Kumar Sarronwala, Director
12. Mr. Bimal Kumar Poddar, Director

Appellants

Date of hearing : 20.11.2023

Present : Mr. A. Ravi Shankar, PCS

ORDER

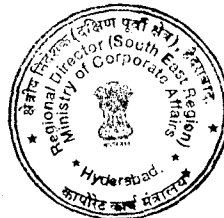
This is an appeal filed under section 454(5) of the Companies Act, 2013 by Mr. Anagha Anasingaraju, Insolvency Professional/Voluntary Liquidator of NDO India Private Limited (Company under liquidation) has filed the present appeal on behalf of the Appellant Company. As the Company is under liquidation and could not file the form ADJ online, however, company had paid the requisite fee vide miscellaneous payment challan vide SRN's X53539771 dated 21.09.2023 and X53456059 dated 20.09.2023 against the adjudication order No. ROC(B)/Adj.Ord.454-203/NDO India/Co.No.27762/2023 dated 27.07.2023 under section 454 passed by the Registrar of Companies, Karnataka for violation of provisions of Section 383A of the Companies Act, 1956/Section 203 of the Companies Act, 2013 read with relevant Rules. Further physical appeal has also been filed by Mr. Subramanian Rajagopalan Kalyanam, Mr. Abhishek Poddar, Mr. Bimal Kumar Poddar and Mr. Bharat Kumar Sarronwala, Former Directors of the Appellant Company.

Contd..2.



2. Registrar of Companies in his order of adjudication has stated that the company has filed a Suo-motu adjudication application on 27.06.2022 for violation of section 383A of the Companies Act, 1956 and Section 203 of the Companies Act, 2013 stating that Mr. V. Srinivasan was holding the post of company secretary and he resigned from the post with effect from 08.04.2008. Thereafter, no wholetime company secretary was appointed till 11.06.2019. Hearing was held before Registrar of Companies on 24.05.2023 and after hearing the authorized representative had levied a penalty of Rs.5,00,000/- each on the Company and 7 directors i.e., Mr. Harsha Chaminda Kodituwakku Hewamallika, Mr. Susantha Chaminda Ratnayake, Mr. Romesh Michael David, Mr. Ravinath Sanjeeva Fernando, Mr. Manoshanth Sundarjee Balasingam, Mr. Herve Francois Marie Montjotin and Mr. Guillaume Gerald Gilles Col, and Rs.2,34,000/- each on 4 directors i.e., Mr. Abhishek Poddar, Mr. Subramanian Rajagopalan Kalyanam, Mr. Bharat Kumar Sarronwala and Mr. Bimal Kumar Poddar, Director (total aggregating to Rs.49,36,000/-).

3. An opportunity of being heard was given to the Appellants on 04.12.2023. The authorized representative Mr. A Ravi Shankar, Practicing Company Secretary appeared on behalf of the appellants and reiterated the submissions made in the appeal and it has been stated in the appeal that the Company has passed a special resolution for voluntary winding up of the company at its extraordinary general meeting of the members held on Friday, 24th March 2023 and has not carried out any business activities since the year 2016-17 as it has incurred losses for the financial years since the period of default which is evidenced through the financials of the company. Since the company was not doing good business from the financial year 2007-08, the company was unable to find and convince any suitable candidate for the appointment as whole-time company secretary. In the meantime, the company was availing the services of a Consultant Company Secretary on a continuation basis. The affairs of the company are conducted in a manner non-prejudicial to the public interest and non-appointment of the Whole time Company Secretary does not harm the public interest and it has not made any disproportionate gain or unfair advantage from this default and the company does not have any external borrowings even prior to and during the period of default.



Contd..3.

// 03 //

Further stated that it has under the erstwhile provisions of the Companies Act, 1956 appointed Mr. V. Srinivasan, a member of ICSI as Company Secretary of the Company. However, due to certain personal reasons and commitments, he has tendered his resignation as Company Secretary effective from 08.04.2008. Thereafter the Company tried its best to appoint a Company Secretary. However, due to financial crunch and losses the Company could not appoint a Company Secretary. Later after due efforts, the Company appointed Mr. Gaurav Upadhyay as Company Secretary of the Company effective 11th June 2019. Further, submitted that as the company is under liquidation process, the penalty on behalf of the Company and the said officers in default shall be paid by the Liquidator.

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) Company has passed a special resolution for voluntary winding up of the company at its extraordinary general meeting of the members held on Friday, 24th March 2023.

(b) Company has not carried any business activities since the year 2016-17.

(c) Company has incurred losses for the financial years since the period of default.

(d) Since the company was not doing good business from the financial year 2007-08, the company was unable to find and convince any suitable candidate for the appointment as Whole Time Company Secretary.

(e) Presently the company is under the process of liquidation and stated that the company is not in a position to pay heavy penalties as levied by Registrar of Companies

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 Rs.75,000/- each on the Company and 7 directors i.e., Mr. Harsha Chaminda Kodituwakku Hewamallika, Mr. Susantha Chaminda Ratnayake, Mr. Romesh Michael David, Mr. Ravinath Sanjeeva Fernando,

Contd..4.




// 04 //

Mr. Manoshanth Sundarjee Balasingam, Mr. Herve Francois Marie Montjotin and Mr. Guillaume Gerald Gilles Col, and Rs.35,100/- each on 4 directors i.e., Mr. Abhishek Poddar, Mr. Subramanian Rajagopalan Kalyanam, Mr. Bharat Kumar Sarronwala and Mr. Bimal Kumar Poddar, Director (total aggregating to Rs.7,40,400/-). 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 with respect to the Company and 7 directors i.e., Mr. Harsha Chaminda Kodituwakku Hewamallika, Mr. Susantha Chaminda Ratnayake, Mr. Romesh Michael David, Mr. Ravinath Sanjeeva Fernando, Mr. Manoshanth Sundarjee Balasingam, Mr. Herve Francois Marie Montjotin and Mr. Guillaume Gerald Gilles Col, amounting to Rs.75,000/- each and by 4 directors i.e., Mr. Abhishek Poddar, Mr. Subramanian Rajagopalan Kalyanam, Mr. Bharat Kumar Sarronwala and Mr. Bimal Kumar Poddar, Director amounting to Rs.35,100/- each (total aggregating to Rs.7,40,400/-) vide SRN's X60392107, X60402864, X60402435, X60401676, X60402138, X60402559, X60402716, X60403425, X60401338, X60401668, X60401361 and X60401254 dated 05.12.2023. 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 13th day of December 2023.




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

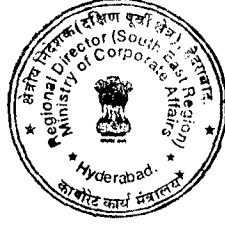
Copy for information and necessary action to


1. Mr. Anagha Anasingaraju,
Insolvency Professional,
No.1-2, Aishwarya Sankul,
G.A. Kulkarni Path, Opp. Joshi Railway Museum,
Kothrud, Pune-411038,
Maharashtra.

Contd..5.

// 05 //

2. M/s. NDO India Private Limited
Vivekananda Nilaya, 41/A2, 3 Cross, Navy Layout,
Chikkabanavara- Post, Bangalore, Karnataka- 590090.
3. Registrar of Companies, Ministry of Corporate Affairs,
Karnataka, Bangalore.
4. The Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi.




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