

F.No:9/22/ADJ/SEC.135 OF 2013/KARNATAKA/RD(SER)/2023

15809

**BEFORE THE REGIONAL DIRECTOR, SOUTH EAST REGION
MINISTRY OF CORPORATE AFFAIRS, HYDERABAD
IN THE MATTER OF COMPANIES ACT, 2013**

IN THE MATTER OF CONVERGINT INDIA PRIVATE LIMITED

1. M/s. Convergint India Private Limited
2. Mr. Narasimha Murthy Nagaraj, Managing Director

Appellants

Date of hearing : 09.10.2023
Present : Mr. R Venkata Ramana, 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 F63941033 dated 06.09.2023 against the adjudication order No. ROC(B)/ ADJ.ORD.454-135/ Convergint/ Co.No.44996/ 2023/ 1076 dated 27.07.2023 under section 454 passed by the Registrar of Companies, Karnataka for default in compliance with the requirements of Section 135 of the Companies Act, 2013.

2. Registrar of Companies in his order of adjudication has stated that the company has filed adjudication application, signed by Narasimha Murthy Nagaraj, whole time director on 12.04.2023 for violation of section 135 of the Act. It is seen that for the financial year 2020-2021, the Company was required to spend Rs.50,01,313/- towards CSR activities but has contributed a sum of Rs.31,40,000/-. Thereafter, the shortfall of Rs.18,61,313/- which ought to have been transferred to a Fund specified in Schedule VII of the Act within six months of the expiry of the financial year i.e., by 30.09.2021 was deposited with a delay on 23.03.2022. Hearing was held before Registrar of Companies on 31.05.2023 and after hearing the authorized representative had levied a penalty of Rs.37,22,626/- Lakhs on the Company and Rs.1,86,132/- on Mr. Narasimha Murthy Nagaraj, Managing Director (total aggregating to Rs.39,08,758/- Lakhs).

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3. An opportunity of being heard was given to the Appellants on 09.10.2023. The authorized representative Mr. R Venkata Ramana, Practicing Company Secretary appeared on behalf of the appellants and reiterated the submissions made in the appeal submitting that while adjudicating penalty respondent have to consider the parameters as described in the Sub Rule 12 of Rule 3 of The Companies (Adjudication of Penalties) Rules, 2014 which provides as follows:

(12) While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-

(a) The company is not small company but as it is in turnkey solution business company is growing with slow pace given employment to more than 250 people which also has intent to expand and generate more employment in India.

(b) Company is turnkey project solution provider, after COVID-19 there is lots of imbalance on the business model and on the industry, due the increase in cost of hiring business is also affected. Due to the hefty penalty companies cost of operation will increase and its profitability will also affect and it will lead to reduction in CSR spending and also may impact on hiring new employees considering the market condition and this additional cost will impact on the cashflow of the company.

(c) There is no injury occurred to the public interest because of the offence as the company has ensured compliance of transferring unspent CSR amount to PMNRF. However, if your good office imposes huge penalty, it may impact the company's spending on CSR activities as there are several CSR projects undertaken by company and it will impact on the public because of inability of company to spend further on CSR.

(d) The Nature of the default is not injuring or not causing loss to anyone, including the public and Government.

(e) There is no repetition of the default.

(f) There is no gain or unfair advantage made as a result of the default which was unintentional as company transferred the CSR contribution amount of Rs.60,10,000 duly compliant as per the Compliance under Companies Act, 2013.



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(g) There is no loss caused to anyone because of the default. But a hefty penalty will surely cause damage to the interest of the company as well to the operation cost of the company.

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 reasons as stated at para (3) above. Hence, 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 for the Company to Rs.5,00,000/- and Mr. Narasimha Murthy Nagaraj, Managing Director to Rs.30,000/- (total aggregating to Rs.5,30,000/-). 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 amounting to Rs.5,00,000/- and Mr. Narasimha Murthy Nagaraj, Managing Director to Rs.30,000/- (total aggregating to Rs.5,30,000/-) vide SRN's X59044115 and X59044511 dated 22.11.2023 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. M/s. Convergint India Private Limited
Prestige Atrium. Unit No.303 & 304, 2nd Floor,
No.1, Central Street, Shivaji Nagar,
Bangalore, Karnataka- 560001.

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2. Mr. Narasimha Murthy Nagaraj, Managing Director
No.121/A, 4th Cross, SP Naidu Layout, Ramamurthy
Nagar Police Station, Ramamurthy Nagar,
Bangalore, Karnataka- 560016.
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