

F.No:9/125/ADJ/SEC.203/2013/ANDHRA PRADESH /RD(SER)/2022 /1414

BEFORE THE REGIONAL DIRECTOR, SOUTH EAST REGION

MINISTRY OF CORPORATE AFFAIRS, HYDERABAD

IN THE MATTER OF COMPANIES ACT, 2013

IN THE MATTER OF ACN INFOTECH (INDIA) PRIVATE LIMITED

1. M/s. ACN infotech (India) Private Limited
2. Chaman Kumar Baid, Managing Director

Appellants

Date of hearing : 09.02.2023
Present : Mr. Vivek Surana, 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 F49770316 dated 28.11.2022 against the adjudication order No. ROC(V)/ADJ(454)/Sec.203(5)/CAN/2022-23 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 Company Secretary as specified in section 203(1) of the Companies Act, 2013 after cessation of the previous Company Secretary on 25.05.2020. 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 on Chaman Kumar Baid, Managing Director, Perna Baid, Director and Ajay Gupta, Director (total aggregating to Rs.6.50 Lakhs).

3. An opportunity of being heard was given to the Appellants on 09.02.2023. The authorized representative Mr. Vivek Surana, Practicing Company Secretary appeared on behalf of the appellants and reiterated the submissions made in the appeal and also submitted that the company is having only 3 shareholders belonging to the same

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family. No public interest is involved. The Company Secretary Mr. Tapan Kumar Padhy Who had worked for the Company left the office by resignation as he lost someone in his family. The Company as like the industry hit badly by the sudden outbreak of Covid-19 and lockdown restrictions and has not done any substantial business during the period and could not be able to hire any Company Secretary to occupy the vacancy caused due to resignation of its existing Company Secretary despite its serious efforts to hire the professional within the time frame specified under section 203 of the Companies Act, 2013. Despite all these conditions the Company has appointed Shourya Agrawal as Company Secretary of the Company with effect from 29.07.2022 and complied with the provisions of Section 203 of the Companies Act, 2013 and requested to reduce the quantum of penalty as levied by Registrar of Companies with regard to Mr. Chaman Kumar Baid, Managing Director and to waive off the penalty against the other two directors i.e. Prerna Baid, and Ajay Gupta.

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) due to Covid-19 pandemic, Company was unable to appoint Whole Time Company Secretary as none shown interest despite company's effort during that period.

(b) company is having only 3 shareholders belonging to the same family. No public interest is involved..

(c) imposing maximum penalty by the Registrar of Companies on the company, its Managing Director and other director is harsh, burdensome on the Company.

(e) Registrar of Companies have not taken into consideration the facts that the Company is having a Managing Director, hence other non-executive director should not have been penalized.



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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.3,50,000/- and for Managing Director i.e., Chaman Kumar Baid to Rs.50,000/- (total aggregating to Rs.4,00,000/-) and setting aside the penalty imposed for other two directors i.e. Perna Baid, and Ajay Gupta as the Company has a Managing Director who looks after the job of day-to-day activities. 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.3,50,000/- and for Managing Director i.e., Chaman Kumar Baid to Rs.50,000/- (total aggregating to Rs.4,00,000/-) vide SRN's X36346617 and X36343275 dated 22.02.2023 respectively. Accordingly, this order is issued to the Appellant Company with a copy to 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 27th day of May 2023.

M/s. ACN Infotech (India) Private Limited
3A, Balaji Mangagiri, Chamberssiripuram,
Visakapatnam, Andhra Pradesh- 530003



B. Mohanty
(B. MOHANTY)
REGIONAL DIRECTOR(SER)
HYDERABAD

Copy for information and necessary action to :

1. Registrar of Companies, Ministry of Corporate Affairs, Andhra Pradesh, Vijayawada.
2. The Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi.

sdt
(B. MOHANTY)
REGIONAL DIRECTOR(SER)
HYDERABAD