

F.No:9/122/ADJ/SEC.203/2013/ANDHRA PRADESH /RD(SER)/2022 / 516

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

IN THE MATTER OF LAZARUS HOSPITALS PRIVATE LIMITED

1. M/s. Lazarus Hospitals Private Limited
2. Varma Venkata Rama Satyanarayana Vegesna, Managing Director
3. Chamundeswari Marra, Director

Appellants

Date of hearing : 09.02.2023

Present : Varma Venkata Rama Satyanarayana Vegesna, Managing Director

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 F45879319 dated 21.11.2022 against the adjudication order No. ADJ/101/203 of 2022-23/2032 dated 08.09.2022 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 till the date of passing adjudication order, despite the paid up capital of the Company exceeded the prescribed limits as stated in the provisions of Section 203(1) of the Companies Act, 2013. Hearing was held before Registrar of Companies on 08.09.2022 and after hearing the authorized representative had levied a penalty on the Company for Rs.5,00,000/-, Varma Venkata Rama Satyanarayana Vegesna, Managing Director and Chamundeswari Marra, Director amounting to Rs.50,000/- each (total aggregating to Rs.6,00,000/-)

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3. An opportunity of being heard was given to the Appellants/authorized representative on 09.02.2023. The authorized representative Mr. Varma Venkata Rama Satyanarayana Vegesna, Managing Director of the Company appeared on behalf of the appellants and reiterated the submissions made in the appeal and also submitted that the company's assets were auctioned by the State Bank of Hyderabad in the financial year 2015-16 and assigned to Asset Reconstruction Company. The same matter is pending in Debt Recovery Tribunal (DRT) under SARFAESI Act, 2002 (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002). There are no regular incomes to the Company and serving statutory needs by borrowing unsecured loans from outside. Company is not running properly, having a negative networth and incurring losses each year i.e. a negative balance of Rs.46,59,553/- and Rs.66,92,000/- for the financial year 31.03.2021 and 31.03.2020 respectively and for the said reasons the position of the Company Secretary was vacant. No qualified Company Secretary was shown interest to be appointed as Company Secretary in this Company at this juncture. Thus non-compliance of the provisions of Section 203(1) of the Act is not intentional but due to unavoidable circumstances and factors beyond the control of the Directors and the Company. The paid up share capital of the Company was increased at the insistence of the Bank (State Bank of Hyderabad) for bank funding purpose. The contraventions of the provisions of Section 203 of the Companies Act, 2013 is inadvertent in nature and is due to unavoidable circumstances owing to the business reasons. Authorised representative has requested to waive the penalty as imposed by the Adjudicating Officer vide its order dated 08.09.2022 on the applicant Company and its directors.

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 setting aside the order of the penalty due to the following reasons:

(a) company's assets were auctioned by the State Bank of Hyderabad in the financial year 2015-16 and assigned to Asset Reconstruction Company

(b) matter is pending in Debt Recovery Tribunal (DRT) under SARFAESI Act, 2002 (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002)



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(c) Company is not running properly, having a negative networth and incurring losses each year i.e. a negative balance of Rs.46,59,553/- and Rs.66,92,000/- for the financial year 31.03.2021 and 31.03.2020 respectively

(d) paid up share capital of the Company was increased at the insistence of the Bank (State Bank of Hyderabad) for bank funding purpose

(e) Company is having a Managing Director and imposing penalty on non-executive director should not have been made.

(f) offence committed by the Company do not affect the public interest in any way, and no harm is caused to the public interest as all shareholders are family members and friends

(g) Registrar of Companies passed the Adjudication Order in a mechanical manner without taking into consideration the above facts as evident from his order dated 08.09.2022.

5. Taking into consideration the facts of the appeal and submissions made by the authorized representative and the reasons as stated by the undersigned at para 4 above, the Adjudication Order passed by the Registrar of Companies dated 08.09.2022 is set aside and matter is returned back to Registrar of Companies advising to re-examine the issues in its totality and pass fresh order by taking the above facts into consideration before passing adjudication order for imposing penalty on the Company and its defaulting officers. Accordingly, adjudication order passed by Registrar of Companies dated 08.09.2022 is hereby disposed off.

6. 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.

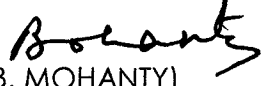


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7. The Appellant Company is directed to file a copy of this order with Registrar of Companies, in Form INC-28 within 30 days.

Issued under my hand and seal on this the 25th day of April 2023.


(B. MOHANTY)
REGIONAL DIRECTOR (SER)
HYDERABAD

1. M/s. Lazarus Hospitals Private Limited
D.No:10-50-2, Waltair Main Road,
Visakhapatnam-532 211,
Andhra Pradesh.

2. Registrar of Companies, Ministry of Corporate Affairs,
Andhra Pradesh, Vijayawada.

3. The Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi.

