

F.No:9/99/ADJ/SEC.203/2013/ANDHRA PRADESH /RD(SER)/2022 / 540

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

IN THE MATTER OF ER CERAMICS PRIVATE LIMITED & OTHER APPELLANTS

1. M/s. ER CERAMICS PRIVATE LIMITED
2. Mr. RAMAKRISHNA EDUPUGANTI

Appellants

Date of hearing : 07-02-2023

Present : GOPIREDDY MALYADRI, 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 F39203518 dated 02/11/2022 against the adjudication order No. ADJ 95/203 OF 2022-23/1954 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 Whole Time Company Secretary since the applicable provisions of the Act came into force till the date of order of adjudication, despite paid up capital has exceeded the prescribed limit as stated in the provisions of Section 203(1) of the Companies Act, 2013. Hearing was held before Registrar of Companies on 07/09/2022 and after hearing the authorized representative, Registrar of Companies had levied a penalty of Rs. 5.00 Lakhs on the Company and Rs. 0.50 Lakh each on other three directors i.e., Venkata Edupuganti Sudhakar, Rajeev Edupuganti, Sreedharababu Jeshta and Ramakrishna Edupuganti, Managing Director (total aggregating to Rs. 7.00 Lakhs).



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3. An opportunity of being heard was given to the Appellants on 07-02-2023. The authorized representative Mr. Gopireddy Malyadri, PCS who appeared on behalf of the appellants and reiterated the submissions made in the appeal and also stated that the company was incorporated on 27.06.2020 and the paid up share capital of the Company has crossed Rs.10.00 Crores on 17.08.2021 and the company has put efforts to appoint a Company Secretary, but could not do so due to non-availability of suitable qualified Company Secretary. Further the company is having only two shareholders and is a Private Company having not much of work for a Whole Time Company Secretary. However, the Company had complied with the provisions of Section 203 of the Companies Act, 2013 by appointing a Company Secretary on 01.09.2022 and also submitted that the company has reported loss of Rs.8.59 Lakhs as on 31.03.2021 and passing through a very bad phase of Covid-19 pandemic and also submitted that the Company is having a Managing Director who looks after the day-to-day activities of the Company and other Directors should not be charged penalty. Since the Company is yet to come out from the financial crises the authorized representative has requested to reduce the quantum of penalty as levied by Registrar of Companies.

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 is a Private Company having only two shareholders

(b) passed through a very bad phase of Covid-19 pandemic during 2020-21 and 2021-22

(c) imposing maximum penalty by the Registrar of Companies on the company, is very harsh, burdensome on the Company under the prevailing situation as discussed.

(d) Registrar of Companies have not taken into consideration stated that Company is having a Managing Director, hence other non-executive directors should not have been penalized.

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

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is reduced for Company to Rs. 1,00,000/- and charging only Managing Director i.e., Mr. Ramakrishna Edupuganti to Rs.50,000/- thus (total penalty aggregating to Rs. 1,50,000/-). 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. 1,00,000/-, and for Managing Director i.e. Ramakrishna Edupuganti for amounting to RS.50,000/- (total aggregating to Rs. 1,50,000/-) vide SRN's X36026920 and X36029999 dated 18.02.2023 respectively. Accordingly, this order is issued to the Appellants 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 25th day of April 2023.


(B. MOHANTY)
REGIONAL DIRECTOR(SER)

1. M/s. ER CERAMICS PRIVATE LIMITED
19-1-422, G. Ragampeta, Peddapuram,
Samalkot East Godavari,
Andhra Pradesh-533440.

2. Mr. RAMAKRISHNA EDUPUGANTI
19-1-389, Sudha Colony,
Near Maharani College Peddapuram,
Andhra Pradesh -533437.

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

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

