

ADJ/14/RD (SR)/2021-22

BEFORE THE REGIONAL DIRECTOR
(SOUTHERN REGION)
MINISTRY OF CORPORATE AFFAIRS, CHENNAI
IN THE MATTER OF THE COMPANIES ACT, 2013
SECTION 454(7) OF COMPANIES ACT, 2013

IN THE MATTER OF M/s. GOPURAM ENTERPRISES LIMITED

1. M/s. Gopuram Enterprises Limited
2. Shri. Kollur Sreenivasan Venugopal, Whole-time Director of M/s. Gopuram Enterprises Limited

...Applicants/ Appellants

Date of hearing : 05.01.2022

Present : Shri. Sumit Agarwal,
Practicing Company Secretary.

ORDER

This is an appeal filed under Section 454 (5) of the Companies Act, 2013 by the above Applicants in Form ADJ vide SRN: T61154563, dated 30.11.2021 against the Adjudication Order No. ROC/CHN/Gopuram/ADJ Order/S.203/JTA(SK)/2021, dated 25.11.2021 under Section 454 (3) passed by the Registrar of Companies, Chennai, Tamil Nadu for default in compliance with the requirements of Sec. 203 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

2. As per Sec. 203(1) of the Companies Act, 2013, every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel - (i) managing director, or Chief Executive Officer or manager and in their absence, a whole-time director; (ii) company secretary; and (iii) Chief Financial Officer: Provided that an individual shall not be appointed or reappointed as the chairperson of the company, in pursuance of the articles of the company, as well as the managing director or Chief Executive Officer of the company at the same time after the date of commencement of this Act unless, - (a) the articles of such a company provide otherwise; or (b) the company does not carry multiple businesses. Provided further that nothing contained in the first proviso shall apply to such class of companies engaged in multiple businesses and which has appointed one or more Chief Executive Officers for each such business as may be notified by the Central Government.

3. As per Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel. Pursuant to Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, notified w.e.f. 09.06.2014, every company which has a paid-up capital of five crores or more shall have a Whole-time Company Secretary

4. The company being an unlisted private limited one with a paid-up capital of Rs. 7,78,14,060/- failed to appoint Whole-time Company Secretary within 06 (six) months from the date of casual vacancy i.e. 28.06.2019, in accordance with Sec. 203(4) of the Companies Act, 2013 and appointment of Company Secretary is not applicable to the company w.e.f 01.04.2020, as the limit of paid up share capital prescribed under Rule 8A is increased from Rs. 5 Crores to Rs. 10 Crores. However, the company should have filled the casual vacancy by 29.12.2019, thereby contravened the above provisions for a period of 94 days from 29.12.2019 to 31.03.2020.

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5. The Registrar of Companies, Chennai, Tamil Nadu examined the said default and passed the Adjudication Order No. ROC/CHN/Gopuram/ADJ Order/S.203/JTA(SK)/2021, dated 25.11.2021 (impugned order) under Section 454 (3) and (4) of the Companies Act, 2013 for default in compliance with the requirements of Sec. 203 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and imposed a penalty of Rs. 5,00,000/- upon the Company; and Rs. 1,44,000/- upon Shri. Kollur Sreenivasan Venugopal, Whole-time Director in default (94 days) respectively.
6. The Appellants have contended the impugned order and pleaded that the delay had occurred due to unavoidable circumstances and default was unintentional.
7. An opportunity of being heard was given to the Appellants on 05.01.2022. The Authorized Representative Shri. Sumit Agarwal, Practicing Company Secretary has appeared for the Appellants while reiterating the grounds taken in the appeal had stated that the Company was into operational losses for the last 03 years, it could not find replacement of the company secretary and the default on appointment was neither deliberate nor intentional and it was due to reasons which were beyond the control of the applicants. Further, the requirement for appointment is not applicable w.e.f. 01.04.2020 has the limit of paid-up share capital prescribed in Rule 8A has been modified from Rs. 5 crores to Rs. 10 crores and hence prayed for lenient view.
8. Though there is a default committed, there is a ground in interfering with the impugned adjudication order of the Registrar of Companies to the extent of reducing the quantum of penalty. Accordingly, the penalties imposed are reduced from Rs. 5,00,000/- to Rs. 50,000/- for the Company; and Rs. 1,44,000/- to Rs. 15,000 for Shri. Kollur Sreenivasan Venugopal, Whole-time Director. The Appellants shall pay the penalty in 15 days.

Dated at Chennai this the 06th day of January, 2022




(Dr. K. THIRUMALAIMUTHU),
REGIONAL DIRECTOR (SR)

To

1. M/s. Gopuram Enterprises Limited,
New Door No. 31, First Floor, Lazarus Church Road,
(Above Andhra Bank), Raja Annamalaipuram,
Chennai, Tamil Nadu - 600 028.
2. The Registrar of Companies, Chennai, Tamil Nadu.
3. The Officer in Charge, e-Gov. Cell, Ministry of Corporate Affairs, A-Wing, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi -110 001- with a request to upload this Order on the website of the Ministry. Send via mail to Shri. B. Srikumar, Joint Director, (srikumar.b@gov.in) and Shri. Vivek Meena, Asst. Director (vivek.meena@gov.in)