

**F.No:9/21/ADJ/SEC.203 of 2013/ROC(TG)/RD(SER)/2024
BEFORE THE REGIONAL DIRECTOR, SOUTHEAST REGION
MINISTRY OF CORPORATE AFFAIRS, HYDERABAD**

IN THE MATTER OF COMPANIES ACT, 2013 / 5139
And

IN THE MATTER OF AML MOTORS PRIVATE LIMITED

- ✓1. M/s. AML MOTORS PRIVATE LIMITED
2nd Floor, 8-2-248/1/7/16, 17-B, B Block,
Laxmi Towers, Nagarjuna Hills,
Punjagutta, Somajiguda, Hyderabad,
Khairatabad, Telangana – 500082.
2. Shri Ganesh Ramachandra Aiyer Tarakkad (Director),
4/180-108, Sri Sai Baba Officers Colony,
Sainikpuri, Secunderabad,
Telangana– 500094.

.....Appellants

Date of hearing: 04.12.2024
Present: Mr. D.V.M. Gopal, PCS

ORDER

1. The appellants have filed the appeal under section 454(5) of the Companies Act, 2013 in e-form ADJ vide SRN F92789379 dated 28.02.2024 against the adjudication order dated 29.01.2024 passed by ROC Telangana at Hyderabad in File No. ROC(H)/AMLMPL/ADJ-ORDER-3/152336/2023 under section 454 for violation of section 203 of the Companies Act, 2013 as they have admitted that there was a non-compliance of Provisions of Section 203 (1) 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 adjudicating officer has received a suo-moto adjudication application filed jointly by the company M/s. AML Motors Private Limited (Applicant No.1) and Shri. Ganesh Ramachandra Aiyer Tararkkad (Applicant No.2) for adjudication of penalty under the provisions of Section 454 of the Act and rules thereunder and stated therein inter alia that the applicant company had increased its paid-up capital from Rs. 99,00,000/- to Rs. 11,23,00,000/- on 22.12.2022 and that pursuant to Section 203(1) of the Act r/w Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014, the company was required to appoint Whole Time Company Secretary within 6 months i.e., 21st June 2023. However, the company has appointed Whole Time Company Secretary on 09th September 2023 with a delay of 78 days as it could not find a suitable candidate. This delay of appointment of Whole-Time Company Secretary resulted in violation of Section 203(1) of the Companies Act, 2013 and liable under Section 203(5) of the Companies Act, 2013 and vide the impugned order dated 29.01.2024 and vide a subsequent corrigendum dated 08.05.2024 has imposed penalty as under.

Nature of default	Name of the Company	Penalty as per Act. (In Rs.)			Penalty Imposed (In Rs.)
		On default	On Continuous Default	Total Penalty	
Violation of Section 203 (1) of the Companies Act, 2013	AML Motors Private Limited	5,00,000/-	78 days *1000= 78,000/-	5,78,000/-	5,00,000/-
	Shri Ganesh Ramachandra Aiyer Tarakkad (Nominee Director)	50,000/-	78 days *1000 = 78,000/-	1,28,000/-	1,28,000/-

3. Aggrieved by the adjudication order dated 29.01.2024, the applicants herein have filed the instant appeal. This Directorate vide letter dated 20.03.2024 requested the ROC for their Report, who vide his letter dated 08.05.2024 has submitted the same and has requested the Appellant Authority to decide the appeal based on the facts.

4. Accordingly, an opportunity of being heard was given by the Regional Director to the Appellants on 04.12.2024, and the authorized representative Mr. D.V.M. Gopal, PCS appeared on behalf of the appellants and reiterated the submissions made in the appeal and also stated as follows:

(i) that Section 203(5) of the Act, which deals with the penal provisions for the default in compliance of Section 203 of the Act, reads as under:

"If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such default continues but not exceeding five lakh rupees."

(ii) that, in terms of said Section 203(5), penalty for the continuing default is only imposed on the director and key managerial personnel of the company who is in default, and not on a company. Also the maximum penalty that can be imposed cannot exceed Rs. 5,00,000/- (Rupees Five Lakhs).

(iii) that the Appellant No. 1, is a strategic Joint Venture Company and ever since, constituting as a Joint Venture, the parties thereto were actively involved in realigning the business, operations, administration and appointments, in line with the requirements of their joint understanding.

(iv) that Appellant No. 1, have been looking for a suitable and appropriate candidate having relevant experience in line with the business and operational requirements of the Appellant No. 1 and interviewed many candidates, in search of a suitable candidate. In this process, Appellant No. 1, unintentionally and inadvertently defaulted in compliance of provisions of Section 203, by causing a delay of 78 (Seventy-Eight) days in appointing a whole-time company secretary.



(v) that, such delay was neither deliberate nor willful on the part of the Appellant No. 1 or any of its officers and was not intended to adversely affect/prejudice the interests of any party concerned including its shareholders and other stakeholders including creditors. Further the aforesaid default was without any mala-fide intention. The Appellants further unequivocally declares and submits that the said default does not affect public interest in any way.

(vi) That vide further written submission dated 20.11.2024, the Appellants have stated that well in advance to the relevant date, the company had started searching for suitable candidates and also had interviews with Mr. Dinesh Vemula (ICSI Membership No. F11248) and the same was shortlisted well before the due date and that the selection was communicated to the said Candidate vide email dated 29.06.2023 and another offer dated 06.07.2023 was sent to the candidate, who had accepted the offer on 10.07.2023 and he joined on 01.08.2023, the formal appointment as Company Secretary took place in the Board meeting held on 09.09.2023 since, KMP should be appointed in a Board Meeting as per section 179 of the Act. The authorized representative has also produced the proofs for the submissions.

(vii) that in consideration of the aforementioned facts of the matter and noting that the aforesaid default was due to unintentional, inadvertent and inevitable circumstances causing a slight delay in appointment of a whole-time company secretary, the Appellants humbly requests to remove the penalty for continuing default imposed the Appellant No. 1 and to take a lenient view in this matter and lessen the penalty imposed by the Adjudicating Officer.

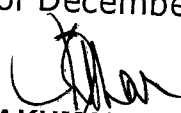
5. I have gone through the appeal papers and also heard the Authorised Representative in detail. I agree with the contention of the Authorized Representative penalty for continuing offence can be imposed only on the directors and key managerial personnel of the company who are in

default, and not on the company and also that the maximum penalty on the company cannot exceed Rs. 5,00,000/- (Rupees Five Lakhs). In view of the above and by taking into consideration the facts of the appeal and the submissions made by the authorized representative, I deemed it would meet the ends of justice, if the penalty imposed by the Registrar of Companies is reduced i.e., for company to Rs. 1,00,000/- and to Rs. 50,000/- for Shri Ganesh Ramachandra Aiyer Tarakkad (Director) (aggregating to Rs. 1,50,000/-) and accordingly reduced it. The appellants were directed to comply with this order and were also reminded about the provisions of Section 454(8) of the Act, in case of failure to comply.

6. The appellants have paid the penalty aggregating to Rs.1,50,000/- vide SRN's X88411566 and X88390877 dated 11.12.2024 respectively. Accordingly, this order is issued to the Appellants with a copy to Registrar of Companies, Telangana 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 16th day of December 2024.




(M.JAYAKUMAR/एम.जयकुमार)
क्षेत्रीय निदेशक (प्रभारी)एस.ई.आर/
REGIONAL DIRECTOR(I/C)(S.E.R.)
हैदराबाद /HYDERABAD

Copy for information and necessary action to :

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


(M.JAYAKUMAR/एम.जयकुमार)
क्षेत्रीय निदेशक (प्रभारी)एस.ई.आर/
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