

F. No:9/35/ADJ/SEC.203 of CA, 2013/KARNATAKA/RD(SER)/2024

BEFORE THE REGIONAL DIRECTOR, SOUTHEAST REGION

MINISTRY OF CORPORATE AFFAIRS, HYDERABAD

IN THE MATTER OF COMPANIES ACT, 2013 / 4704

IN THE MATTER OF TATA ELECTRONICS SYSTEMS SOLUTIONS PRIVATE LIMITED (FORMERLY
KNOWN AS WISTRON INFOCOMM MANUFACTURING (INDIA) PRIVATE LIMITED)

1. M/s. Tata Electronics Systems Solutions Private Limited
2. Mr. Gururaj Ayekawadi, former Managing Director
3. Mr. Ching Yao Shen, former Director
4. Mr. Senthil Iyyamperumal Kumar, former Director
5. Mr. Li Chuan Liang, former Director

.....Appellants

Date of hearing : 07.10.2024

Present : Ms. K.S. Swapna Latha, Advocate, on behalf of the Appellants

ORDER

This is an appeal filed under section 454(5) of the Companies Act, 2013 (hereafter referred as the Act) by the above appellants in e-form ADJ vide SRN F97031678 dated 27.07.2024 against the adjudication order passed by the Registrar of Companies, Karnataka in F No. ROC(B)/Adj.Ord.454-203/Wistron/Co.No.110176/2024/ dated 24.05.2024 under section 454 of the Act, 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.

2.1 Registrar of Companies in his order of adjudication has stated that the company filed a suo-motu application on 17.01.2024 regarding non-appointment of whole-time company secretary i.e. violation of section 203 of the Act. The company has submitted that its paid-up capital crossed the required threshold of Rs.5 crores on 11.05.2018 and it was required to appoint a company secretary thereafter, but it has failed to appoint a company secretary till 02.11.2018 and again from 17.06.2020 to 30.09.2020 after resignation of the incumbent company secretary.



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2.2 Hearing was held before the Registrar of Companies on 07.02.2024 and after hearing the authorized representative, ROC had levied a penalty of Rs.5.00 Lakhs on the Company, Rs.2,24,000/- on Mr. Gururaj Ayekawadi (former Managing Director) and Rs. 1,55,000/- each for 3 former directors i.e., Mr. Ching Yao Shen, Mr. Senthil lyyamperumal Kumar and Mr. Li Chuan Liang, total aggregating to Rs.11,89,000/-.

3.1 Aggrieved by the adjudication order, the appellants had filed the above appeal. A report from the ROC called, and he has filed the same vide his report dated 02.09.2024. An opportunity of being heard was given to the Appellants on 07.10.2024.

3.2 The authorized representative Ms. K.S. Swapna Latha, Advocate appeared on behalf of the appellants and reiterated the submissions made in the appeal and also submitted that the company was required to fill up the vacancy by appointing the Whole-time Company Secretary within 6 months of the vacancy and that the company diligently took efforts in finding a suitable candidate for the appointment of the Whole-time Company Secretary. However, owing to the outbreak of Covid-19 Pandemic and partial restrictions thereafter, the Applicant Company found even more difficulty in finding the suitable candidates for the position of the Whole-time Company Secretary and also submitted that the delay in appointment of the Whole-time Company Secretary under the provisions of the Section 203 of the CA, 2013 r/w Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 was neither deliberate nor intentional. The delay in the appointment of the Whole-time Company Secretary was purely by inadvertence and without any mala fide intention and as such no public interest was affected.

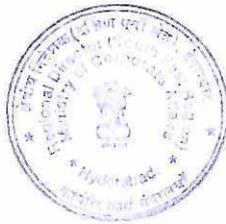
3.3 As per the Authorized representative of the appellants, the present management had taken over the company (the original name being WISTRON INFOCOMM MANUFACTURING (INDIA) PRIVATE LIMITED) and the violation had taken place before take over and now the present management has decided to address the past violations and therefore the suo-motu application for adjudication has been



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filed. She has further stated that efforts made to appoint Company Secretary was hampered by outbreak of Covid -19 and subsequent lockdown and national restrictions imposed by the Government from March to May, 2020 and partial restrictions thereafter. That they have finalized the candidate on 24.06.2020, but for reasons not known, the candidate despite accepting the offer of appointment had not joined the company. Therefore, for the above reasons, the appellants have requested to show indulgence and to reduce the penalty as permitted under section 454(7) of the Act. She has also produced appeal orders passed by other Regional Directors as precedent and has also quoted the judgement passed by the Hon'ble Supreme Court dated 14.12.1999 in the matter of Commissioner of Income Tax Vs Harsiddh Constructions Private Limited wherein it is inter alia stated "Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the Authority to be exercised judicially and on the consideration of all the relevant circumstances"

4. In view of the above, taking into consideration the facts of the appeal and the 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.2,25,000/- and for 3 directors i.e., Mr. Ching Yao Shen (Former Director), Mr. Senthil Iyyamperumal Kumar (Former Director) and Mr. Li Chuan Liang (Former Director) to Rs. 20,000/- each and for Mr. Gururaj Ayekawadi (Managing Director) to Rs.50,000/- (total aggregating to Rs.3,35,000/-). 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.



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5. Accordingly, the appellants have paid the penalty as under

S.No	Name of the Appellants	Date of Payment	SRN details	Penalty Paid
1	M/s. Tata Electronics Systems Solutions Private Limited	23/10/2024	X84497395	2,25,000
2	Mr. Gururaj Ayekawadi, former Managing Director	24/10/2024	X84532506	50,000
3	Mr. Ching Yao Shen, former Director	24/10/2024	X84533306	20,000
4	Mr. Senthil Iyyamperumal Kumar, former Director	24/10/2024	X84533579	20,000
5	Mr. Li Chuan Liang, former Director	24/10/2024	X84534478	20,000
			Total	3,35,000

6. In view of the compliance reported, the appeal is accordingly disposed of, and this order is issued to the Appellants with a copy to Registrar of Companies, Karnataka 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 13th day of November 2024.




(M. JAYAKUMAR)
Regional Director, SER(I/C)
Ministry of Corporate Affairs, Hyderabad

Copy for information and necessary action to:

1. ✓ M/s. Tata Electronics Systems Solutions Private Limited
Achchathanahalli Village,
Narasapura Hobli, Narasapura, Kolar, Karnataka- 563133.
2. Mr. Gururaj Ayekawadi, former Managing Director
Villa No. 8, Phase 2, Chaitanya La Grove, Near Rayan
International School, Bengaluru, Karnataka- 560037.

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3. Mr. Ching Yao Shen, former Director
C/o. M/s. Tata Electronics Systems Solutions Private Limited
Achchathanahalli Village,
Narasapura Hobli, Narasapura, Kolar, Karnataka- 563133.
4. Mr. Senthil Iyyamperumal Kumar, former Director
R/o. 7/20, Sathya Nagar, Savariyur, Avadathur,
Mettur, Tamil Nadu- 636501.
5. Mr. Li Chuan Liang, former Director
C/o. M/s. Tata Electronics Systems Solutions Private Limited
Achchathanahalli Village,
Narasapura Hobli, Narasapura, Kolar, Karnataka- 563133.
6. Registrar of Companies, Ministry of Corporate Affairs,
Karnataka, Bangalore.
7. The Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi.




(M. JAYAKUMAR)
Regional Director, SER(I/C)
Ministry of Corporate Affairs, Hyderabad