

F.No:9/25/ADJ/SEC.203 of 2013/KARNATAKA/RD(SER)/2023

16513

BEFORE THE REGIONAL DIRECTOR, SOUTH EAST REGION

MINISTRY OF CORPORATE AFFAIRS, HYDERABAD

IN THE MATTER OF COMPANIES ACT, 2013

IN THE MATTER OF MANIPAL FINANCE CORPORATION LIMITED

1. M/s. Manipal Finance Corporation Limited
2. Mr. Narayan Thonse Madhvan Pai, Managing Director
3. Mr. Thonse Sanjay Pai, CFO

Appellants

Date of hearing : 20.11.2023

Present : Ms. Anuradha Bisani, 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 F64870181 dated 22.09.2023 against the adjudication order No. ROC(B)/Adj. Ord.454-203/MANIPAL/Co.No.05988/2023/949 dated 24.07.2023 under section 454 passed by the Registrar of Companies, Karnataka 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 filed a suo-motu application on 30.03.2023 regarding non-appointment of whole-time company secretary i.e. violation of section 383A of the Companies Act, 1956 and section 203 of the Companies Act, 2013. The company has submitted that it has failed to appoint a company secretary for the period from 01.07.2023 to 28.09.2018 i.e., 5569 days. It has been further submitted that for the entire duration of default, Mr. Narayan Thonsemadhava Pai was the Managing Director of the Company and for the period from 30.03.2015 to 28.09.2018 i.e., 1279 days, Mr. Thonse Sanjay Pai was the CFO of the company. Hearing was held before Registrar of Companies on 24.05.2023 and after hearing the authorized representative had levied a penalty of Rs.5.00 Lakhs on the Company and 2 officers i.e., Narayan Thonsemadhava pai, Managing Director and Thonse Sanjay Pai, CFO (total aggregating to Rs.15.00 Lakhs).

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3. An opportunity of being heard was given to the Appellants on 20.11.2023. The authorized representative Ms. Anuradha Bisani, Practicing Company Secretary appeared on behalf of the appellants and reiterated the submissions made in the appeal. Further from the facts of the case as mentioned in the appeal submitted the following:

(a) the company is listed company and is incorporated for doing business of Non Banking Financial Companies in the nature of hire purchase and leading Company.

(b) the company had obtained Non Banking Financial Company status by license from Reserve Bank of India (RBI) effective from 14th February 1998.

(c) the company started incurring losses from the financial year 2002 and became sinking ship up to present date and the management of the Company is making all its best efforts for keeping the company afloat.

(d) the Reserve Bank of India vide its order dated 20th December 2004 cancelled the NBFC licence since due to tis financial stress from financial year 2002 onwards was not in a position to keep and maintain the Reserve Bank Norms for NBFC's. This position of non maintaining was due to unavoidable circumstances and financial distress company was running and was not intentional.

(e) the company had failed to appoint whole time company secretary for the company with effect from 01.07.2003 upto 28.09.2018 and there was a delay in appointment of company secretary for a period of 5569 days.

(f) the company had appointed the whole time company secretary with effect from 29.09.2018.

(g) the delay in appointment of whole-time company within the statutory period is not of such nature as to prejudice the interest of the Creditors or shareholders or any other person concerned with the Company.

(h) the ROC while adjudicating the offence has not fully considered the financial position of the company and has imposed the maximum penalty on the company and the two other applicants.



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(i) presently company is not carrying any business operations except that of recovery of dues and repayment of debts.

(j) the Company's Lease finance business is facing severe competition and margins are under great pressure. In the aftermath of stringent Prudential Norms promulgated by the RBI, the NBFCs all across the country suffered a severe setback. Their borrowing capacity is drastically curtailed. With no avenues for further growth, together with ever increasing defaulters in the list of corporate clients, triggered the downfall in the performance of the NBFCs.

4. Registrar of Companies in his adjudication order has stated that after the resignation of Mr. S. Ramchandra Bhat as the Company Secretary on 30.06.2023, the Company did not have Company Secretary till the appointment of Paoulomi Mozumder on 29.09.2018 thereby violating the relevant provisions of the Act from 01.07.2003 to 28.09.2018 i.e. for a duration of 5569 days. Further stated that the company is a public limited company and does not fall under the definition of a small company as per the provisions of Section 2(85) of the Companies Act, 2013. Therefore, the provisions of imposing lesser penalty as per Section 446B of the Act shall not be applicable in this case. Accordingly, imposed penalty of Rs.5,00,000/- each on the Company, Mr. Narayan Thonsemadhava Pai, Managing Director and Mr. Thonse Sanjay Pai, CFO.

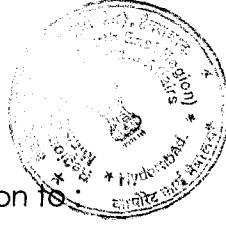
5. As per Section 203(5) of the Companies Act, 2013, if any company makes any default in complying with the provisions of this Section, i.e. appointment of key managerial personnel including Company Secretary, such company shall be liable to a penalty of five lakh rupees and every director and key managerial 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.



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6. Taking into consideration the facts of the appeal and submissions made by the authorized representative and adjudication order passed by Registrar of Companies dated 24.07.2023, the present appeal filed by the Company cannot be considered and dismissed as the company has not appointed the Whole Time Company Secretary for a period of 15 years and thereby violated the provisions of Section 393A of the Companies Act, 1956 and Section 203 of the Companies Act, 2013. Hence, the appellants are directed to pay the penalty as imposed by Registrar of Companies in his Adjudication order dated 24.07.2023, within 30 days from the date hereof. 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.

Issued under my hand and seal on this the 01st day of February 2024.



(DR. RAJ SINGH)
REGIONAL DIRECTOR (SER)
HYDERABAD

Copy for information and necessary action to

1. M/s. Manipal Finance Corporation Limited
Regd. Office, Manipal House, Manipal,
Karnataka- 576104.
2. Narayan Thonsemadhava pai, Managing Director
No.16-125, Anantha Nagar, Manipal,
Karnataka- 576104.
3. Thonse Sanjay Pai, CFO
No.16-125, Anantha Nagar, Manipal,
Karnataka- 576104.
4. Registrar of Companies, Ministry of Corporate Affairs,
Karnataka, Bangalore.
5. The Joint Secretary, E-Governance Cell, Ministry of Corporate Affairs, New Delhi.

(DR. RAJ SINGH)
REGIONAL DIRECTOR (SER)
HYDERABAD