

BEFORE THE REGIONAL DIRECTOR, NORTH-EASTERN REGION,
MINISTRY OF CORPORATE AFFAIRS, GUWAHATI

IN THE MATTER OF THE COMPANIES ACT, 2013

Section 454 Adjudication of Penalties.

In the matter of appeal under sub (5) of Section 454 of the Companies Act, 2013 read with Rule 4 of the Companies (Adjudication of Penalties) Rules, 2014 against the adjudication order passed by ROC, NER, Guwahati dated 04-10-2023.

In the matter of adjudication for non-compliance of Section 203 read with 454(3) of the Companies Act, 2013.

And

IN THE MATTER OF:

1. AURA HOTELS & RESORTS PRIVATE LIMITED

(CIN: U55101ML2007PTC008290)

having its registered office at Op: Old Meghalaya Legislative Assembly Police Bazar, East Khasi Hills, Shillong -793001

2. Vikas Agarwal (DIN: 00762111), Director

Bhagawati Sadan, J. P. Agarwala Path,

Bharulumukh, Guwahati, Assam, PIN: 781009.



3. Lesly Shylla (DIN: 01754280), Director
C/o: Pyrbot Lyngdoh, Latyrke, Khliehriat,
East Jaintia Hill, Meghalaya, PIN-793200

..... Applicants/ Appellants

V/s

Registrar of Companies, North Eastern Region, Guwahati

..... Respondent

Date of Hearing: - 29-05-2024

Present: - 1. Mr. Narayan Sharma, Practicing Company Secretary & Authorized
Representative of the Appellants.

2. Mr. K Aravind, Assistant Director, O/o RD(NER)

ORDER

That the appellants named above have filed an on-line Appeal under Section 454 (5) of the Companies Act, 2013 in e-form No. ADJ on 20th November 2023 vide SRN F81734097 against the order dated 04-10-2023 passed by the Adjudicating officer i.e. Registrar of Companies, NER, Guwahati.

The appeal in Form ADJ is to be filed within a period of 60 days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person. On examination of the Application/ Appeal it is seen that the said appeal is filed within sixty days (60) from date of passing adjudication order by the Adjudicating officer i.e Registrar of Companies, NER, Guwahati. Hence, the appeal



was filed within the stipulated period of 60 days in terms of provisions of Section 454(6) of the Act.

The brief facts of the case are as under:

1. As per the provision of Sub-section (1) of Section. 203 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."

2. As per the provisions of 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"*
3. As per the provisions of Rule 8A of the Companies (Appointment and remuneration of Managerial Personnel) Rules, 2014, *"A company other than a*



company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole time company secretary"

4. The appellants being an unlisted private limited company failed to appoint a full time Company Secretary as required under the provisions of Sub-section (1) of Section. 203 of the Companies Act, 2013 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personals) Rules, 2014.
5. The appellant company had a paid-up capital of Rs. 19,71,00,000/- as on 01.04.2014 i.e on the date of commencement of the Companies Act, 2013 which came into effect w.e.f. from 1st April 2014 and thereby, there was a default for non-compliance of the provisions of Section 203 of the Companies Act, 2013 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.
6. The Registrar of the Companies, Guwahati filed a criminal complaint vide Case No. 1117/ 2016 for default made under section 203(5) of the Companies Act, 2013 read with Rule 8/8A of the Companies (Appointment & Remuneration of Managerial Personnel) Rules 2014 against the appellants before the Hon'ble Court of Chief Judicial Magistrate, Shillong, Meghalaya.
7. The appellants filed an application u/s 454 of the Companies Act before the adjudicating officer for adjudication of penalties for violations of provisions of section 203 (1) of the Companies Act 2013 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personals) Rules, 2014.
8. An opportunity of being heard was given to the Appellants on 20th December 2023 where in CS Narayan Sharma, PCS/ Authorised Representative on behalf of all the three Appellants appeared. The ROC NER (Adjudication Officer) and Shri K. Aravind, AD, O/o RD(NER) were also present during the hearing. The case was adjourned for further hearing but due to some unavoidable



circumstances and due to transfer of Mr. Vinod Sharma the then RD, NER the further hearing could not take place on the appointed dates. The case was fixed for final hearing on 29th May 2024.

9. The Registrar of Companies, NER, Guwahati after considering the facts and circumstances, passed the Adjudication Order No. ROC- Guwahati/ADJ-Order/Section 454/2023-24/608-10 dated 04-10-2023 (impugned orders) under Section 454 (3) and (4) of the Companies Act, 2013 for default in compliance with the provisions of Sub-section (1) of Section 203 of the companies Act, 2013 read with Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 as mentioned below

Nature of default	Violation of Section of the Companies Act 2013	Company/ Officers to whom penalty imposed	No. of delays in default	Total Penalty (Minimum)	Maximum Penalty for defaults (Rs) as per Section 203(5) of the Act	Penalty imposed
1	2	3	4	5	6	7
Non-Appointment of Whole time Company Secretary	Section 203(1)	Company	3227	Rs. 5,00,000 + Rs. 1,000 each day for 3227 days	Rs. 5,00,000	Rs. 5,00,000
		Vikas Agarwal	3227	Rs. 50,000 + Rs. 1,000 each day for 3227 days	Rs. 5,00,000	Rs. 5,00,000
		Lesly Shylla	3227	Rs. 50,000 + Rs. 1,000 each day for 3227 days	Rs. 5,00,000	Rs. 5,00,000
TOTAL						Rs. 15,00,000

10. Being aggrieved by the Adjudicating officer order, the Company and its directors in default have preferred appeal before the Regional Director, North Eastern Region under the provisions of Sub-section (5) of Section 454 of the



Companies Act, 2013 seeking relief from the penalties imposed in the order dated 04-10-2023 passed by the Adjudicating Officer (AO).

11. On the date of hearing i.e. on 29th May 2024 Mr. Narayan Sharma, PCS appeared in person on behalf of all the three appellants and submitted that the Adjudication Officer did not consider the following circumstances :-

- a) The Company did not have any commercial activity during the defaulting period. There was no revenue generation and Company was incurring constant losses and had negative net worth during the defaulting period.
- b) There was a land dispute going on with Meghalaya Tourism Development Corporation Ltd. (MTDC) who allotted land for the Company's project and the project was facing an uncertain future.
- c) Protests and disruptions of life and business due to anti-Citizenship Amendment Bill (CAB) protests/ COVID-19 pandemic and genuine scarcity of Company Secretaries in state of Meghalaya.
- d) The Company in question is a Private limited Company with four members only. There was no public injury because of default, the default was made good and there was no repetition of default, there was no loss caused to any investor or group of investors or creditors because of the default.
- e) The default was made good by filing DIR -12 for appointment of Mrs. Manisha Kedia as a whole time Company Secretary from 01.02.2021 vide SRN T07926031 dated 04.03.2021 with a delay of 3227 days (730 days under Companies Act, 1956 and 2497 days under Companies Act, 2013).



- f) The Company being in losses since its formation, imposing such heavy penalty would put the Company under acute financial stress. The appellants prays that appellant Authority may kindly consider waving of entire penalty to the company and its directors, considering the above facts.

12. Taking into consideration the facts of the appeal as well as considering the submissions made by the authorised representative and Shri K. Aravind, AD, O/o RD(NER) regarding the poor financial status of the company during the period of default, I find that there is a merit in the reasons given by the appellants for delay in appointment of Company Secretary and therefore, there is a ground in interfering with the impugned adjudication order of the Registrar of Companies, Guwahati to the extent of reducing the quantum of penalty. Accordingly, the penalties imposed are reduced from Rs. 5,00,000/- (Rupees Five Lacs) to Rs. 1,10,000/- (Rupees One Lakh Ten Thousand) for the Company and Rs. 5,00,000/- (Rupees Five Lacs) to Rs 60,000/- (Rupees Sixty Thousand) on each of the appellant Director(s) of the Company. The Appellants shall pay the penalty in 15 days from the date of this order.

13. The appeal stands disposed of with this order subject to payment made within 15 days.

Signed on 30-05-2024 at Guwahati


(MUKTAR SINGH)
(Regional Director, NER)



To,

1. **Aura Hotels & Resorts Private Limited,**
Opp Old Meghalaya Legislative Assembly Police Bazar,
East Khasi Hills, Shillong, Meghalaya, PIN: 793001.
2. **Vikas Agarwal, Director**
Bhagawati Sadan, J. P. Agarwala Path,
Bharulumukh, Guwahati, Assam, PIN: 781009
3. **Lesly Shylla, Director**
C/o: Pyrbot Lyngdoh, Latyrke, Khliehriat,
East Jaintia Hill, Meghalaya, PIN-793200
4. The Registrar of Companies, NER, Guwahati for necessary action accordingly.
5. **The Officer in Charge, e-Gov, Cell**
Ministry of Corporate Affairs,
A-Wing, Shastri Bhavan,
Dr. Rajendra Prasad Road,
New Delhi -110 001

