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भारतसरकार/GOVERNMENT OF INDIA

कारपोरेटकार्यमंत्रालय/Ministry of Corporate Affairs

कम्पनी रजिस्ट्रारकार्यालय(प.बंगाल)/Office of the Registrar of Companies (West Bengal)
निजामपैलेस,दुसराएमएसओबिल्डिंग,द्वितीयतल/Nizam Palace, 2nd M. S. O. Building, 2nd Floor
आचार्यजगदीशचन्द्रबोसरोड/ 234/4, Acharya Jagadish Chandra Bose Road
कोलकाता/KOLKATA - 700 020

No. ROC/ADJ/105/097223/2023 /11823

Dated: 15.02.2024

ADJUDICATION ORDER FOR PENALTY U/S 454(3) OF THE COMPANIES ACT, 2013 READ WITH RULE 3 OF THE COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014 AS AMENDED BY THE COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2019 IN MATTER OF NON-COMPLIANCE OF THE PROVISIONS OF SECTION 143 OF THE COMPANIES ACT, 2013

1. In respect of: AUDITOR:

CA. PHALGUNEE BANERJEE (MEMB. NO.: 409606)

of company namely M/S. MARS MERCANTILES PRIVATE LIMITED

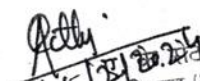
CIN: U50102WB1993PTC097223

1. Appointment of Adjudicating Officer :-

Ministry of Corporate Affairs vide its Gazette Notification No A-42011/112/2014-Ad.II dated 24.03.2015 appointed undersigned as Adjudicating Officer in exercise of the powers conferred by section 454(1) of the Companies Act, 2013 [herein after known as Act] read with Companies (Adjudication of Penalties) Rules, 2014 for adjudicating penalties under the provisions of this Act. The undersigned is entrusted to adjudicate penalties under section 143 of the Companies Act, 2013.

2. Company: -

WHEREAS Company M/S. MARS MERCANTILES PRIVATE LIMITED [herein after known as Company] is a registered company with this office incorporated on 11.06.1993 under


A. K. SETHI
कम्पनी रजिस्ट्रार / Registrar of Companies
भारत सरकार / Government of India
Ministry of Corporate Affairs

on **11.06.1993** under the provisions of Companies Act, 1956 having its registered address at **175, KARNANNI ESTATE, 209, A J C BOSE ROAD, KOLKATA WB 700017 INDIA**, as per MCA website.

Facts about the Case: -

1) On the basis of Inquiry Report carried out under Section 206 of the Companies Act, 2013 the following instances or violations as pointed out in the Inquiry report:

i. **CONTRAVENTION OF SECTION 143 OF THE COMPANIES ACT, 2013 READ WITH SECTION 129 READ WITH SCHEDULE III**

Shri Saroj Varma and Shri Man Mohan Varma, shareholders of the subject Company have the ability to control the Company since they are holding 62% and 32% of share of the company respectively which is more than 20% of the voting powers of the Company during the financial year 2015-16 and therefore are related parties.

Also, Shri Dinesh Pradhan and Shri Mahesh Pradhan, shareholders of the subject Company have the ability to control the Company (since they are holding 47.96 % each of the shares of the company which is more than 20% of the voting powers of the Company) during the financial year 2016-17, 2017-18, 2018-19 and 2019-20 and therefore are related parties.

However, no such disclosure as required as per Accounting Standard 18 is made in the Financial Statements for the aforesaid financial years. The same has not been commented by the Auditor in his Audit Report for the said financial years thereby leading to violation of Section 143 read with Section 129 of the Companies Act, 2013 read with Accounting Standard 18.

ii. **CONTRAVENTION OF SECTION 143 OF THE COMPANIES ACT, 2013 READ WITH SECTION 129 READ WITH SCHEDULE III**

In the Financial Statements for the year ended 31.03.2016, 31.03.2017, 31.03.2018, 31.03.2019 and 31.03.2020, the Company has shown Rs. 6.96 Lacs Rs. 2.68 Crores, Rs. 1.13 Crores, Rs.89.97 Lacs, Rs.1.19 Crores respectively as 'Due to Others' under the head 'Trade Payables without stating whether they are dues of micro enterprises and small enterprises or otherwise thereby affecting the true and fair

view of the state of affairs of the Company. The same has not been commented by the Auditor in his Audit Report for the said financial years thereby leading to violation of Section 143 read with Section 129 read with Schedule III of the Companies Act, 2013.

iii. CONTRAVENTION OF SECTION 143 OF THE COMPANIES ACT, 2013 READ WITH SECTION 129 READ WITH SCHEDULE III

The subject company in its Financial Statements for the financial year 2015-16, has shown Rs.86.64 Lacs as 'Other Advances' under the head "Short-term loans and advances" without specifying the nature of such advances as required under the provisions of Schedule III of the Companies Act, 2013 thereby affecting the true and fair view of the state of affairs of the company. The same has not been commented by the Auditor in his Audit Report for the said financial years thereby leading to violation of Section 143 read with Section 129 read with Schedule III of the Companies Act, 2013.

iv. CONTRAVENTION OF SECTION 143 OF THE COMPANIES ACT, 2013 READ WITH SECTION 129 READ WITH SCHEDULE III

Schedule III of the Companies Act, 2013 states that, "A Company shall disclose by way of notes additional information regarding aggregate expenditure and income on the following items:—

(c) Any item of income or expenditure which exceeds one per cent. of the revenue from operations or Rs.1,00,000, whichever is higher;

(e) Interest expense"

The subject company in its Financial Statements has shown the following income or expense for the period of financial year 2015-16 to 2019-20 :

Particulars	2015-16	2016-17	2017-18	2018-19	2019-20
Interest Expense	51.97 Lacs	50.73 Lacs	49.09 Lacs	46.27 Lacs	44.24 Lacs

Other expenses- advances written off	0	56.09 Lacs	0	0	0
Other Income- U/Loan written off	0	2.97 Crores	0	0	0

From the above table it is clear that the subject company has failed to give any additional information about its interest expense and income or expenditure which is exceeding one per cent of the revenue from operations or Rs.1,00,000, whichever is higher as required to be disclosed under the provisions of Schedule III of the Companies Act, 2013. The same has not been commented by the Auditor in his Audit Report for the said financial years thereby leading to violation of Section 143 read with Section 129 read with Schedule III of the Companies Act, 2013.

2) The provisions of **Section 143(3)** of the Companies Act, 2013 requires that the auditor's report shall also state—

(a) whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements;

(b) whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him;

(c) whether the report on the accounts of any branch office of the company audited under sub-section (8) by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report;

(d) whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns;

- (e) whether, in his opinion, the financial statements comply with the accounting standards;
- (f) the observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company;
- (g) whether any director is disqualified from being appointed as a director under sub-section (2) of section 164;
- (h) any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.
- (i) whether the company has adequate internal financial controls with reference to financial statements in place and the operating effectiveness of such controls;
- (j) such other matters as may be prescribed.

Section 450 of the Act provides *inter alia* that: if a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person. Thus, the Auditor has violated Section 143 of the Companies Act, 2013. Accordingly, Penalty under Section 450 will be applicable on the Auditor.

3) Accordingly, the adjudication officer has issued adjudication notice vide No. ROC/ADJ/2023/097223/1105 dated 01.05.2023 (herein after referred as Adjudication Notice) under Section 454(4) read with Section 143 of the Companies Act, 2013 read with Rule 3(2) of Companies (Adjudication of Penalties), 2014 as amended in Amendment Rules, 2019, to the auditor in default for the violation of the provisions of the Act as mentioned above giving an opportunity to submit a reply as to why the penalty should not be imposed under

the provisions of 450 of the Act against the auditors in default for the above stated violations, followed by a notice of hearing scheduling a physical hearing on 14.07.2023 vide letter no. ROC/ADJ/2023/097223/3241 dated 06.07.2023 and subsequently on second hearing on 23.08.2023 vide letter no. ROC/ADJ/2023/097223/4338D dated 18.08.2023 and a further hearing on 24.01.2024 vide letter no. ROC/ADJ/105/097223/2023/10411 dated 11.01.2024

4) An adequate reply to the Adjudication notice, as mentioned above, have been received dated 24.01.2024 from the auditor as to why penalty shall not be imposed.

5) Mr. Phalgunee Banerjee, a Chartered Accountant, the Auditor of the company attended the hearing and submitted that during the time of inquiry he could not submit reply along with the evidence on his behalf for the relevant period of violations. He stated that now he has submitted reply vide letter dated 27.05.2023 along with the supporting disclosure and evidence as regard to each of the violation of four instances which he took due care at the time of finalization of accounts for the respective periods. There is no lapse on the part of the auditor as regard to the question of due diligence. Considering the above submissions matter may be taken leniently while passing adjudicating order. In view of the above the matter was heard and order is passed as under:

ORDER

1. The Auditors who have defaulted the provisions of section 143 of the Companies Act, 2013 stated above for the relevant periods are liable for penalties under section 450 of the Companies Act, 2013.
2. In exercise of the powers conferred, the undersigned is entrusted to adjudicate penalties under section 450 of the Companies Act, 2013. Therefore, I do hereby impose the penalty of **Total Rs. 1,50,000/- (Rupees One lakh and Fifty Thousand only)** on the concerned auditor-in-default i.e., on **CA. PHALGUNEE BANERJEE**

for all the instances in the table below pursuant to Rule 3(12) of Companies (Adjudication Of Penalties) Rules, 2014 and the proviso of the said Rule and Rule 3(13) of Companies (Adjudication Of Penalties) Rules, 2014 for the above violations.

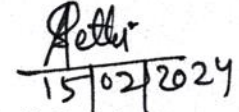
Name of the Auditor	Nature of violations instances	Default (in Rs.)	Total maximum Penalty (in Rs.)
CA. PHALGUNEE BANERJEE (MEMB. NO.: 409606)	I. Violation under section 143 read with section 129 read with Schedule III	10,000*4 years	40,000
	II. Violation under section 143 read with section 129 read with Schedule III	10,000*5 years	50,000
	III. Violation under section 143 read with section 129 read with Schedule III	10,000*1 year	10,000
	IV. Violation under section 143 read with section 129 read with Schedule III	10,000*5 years	50,000

- The noticee shall pay the said amount of penalty (out of own pocket) by way of e-payment [available on Ministry website www.mca.gov.in] under "Pay miscellaneous fees" category in MCA fee and payment Services within 90 days of receipt of this order. The Challan/SRN generated after payment of penalty through online mode shall be forwarded to this Office Address.
- Appeal against this order may be filed in writing with the Regional Director (ER), Ministry of Corporate Affairs, Kolkata located at Nizam Palace, 2nd M. S. O. Building, 3rd Floor, 234/4, A.J.C. Bose Road, Kolkata-700020, West Bengal within a period of sixty days from the date of receipt of this order, in Form ADJ [available on Ministry website www.mca.gov.in] setting forth the grounds of

appeal and shall be accompanied by a certified copy of the this order. [Section 454(5) & 454(6) of the Act read with Companies (Adjudicating of Penalties) Rules, 2014].

5. Your attention is also invited to section 454(8) of the Act regarding consequences of non-payment of penalty within the prescribed time limit of 90 days from the date of the receipt of copy of this order.
6. In terms of the provisions of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014 as amended by Companies (Adjudication of Penalties) Amendment Rules, 2019, copy of this order is being sent to the auditor in default mentioned herein above and also to Office of the Regional Director (Eastern Region) and Ministry of Corporate Affairs at New Delhi.

Date: 15th February 2024


15/02/2024

[A. K. Sethi, ICLS]
Adjudicating Officer & Registrar of Companies,

ए. के. सेठी/A. K. SETHI
कम्पानी रजिस्ट्रार/Registrar of Companies
भारत सरकार/Government of India
कारपोरेट कार्य मंत्रालय/Ministry of Corporate Affairs
कम्पानी रजिस्ट्रार कार्यालय (पं. बंगाल)
Office of the Registrar of Companies (West Bengal)
कोलकाता/Kolkata-700020

To

1. BANDYOPADHYAY & DUTT,
CA. PHALGUNEE BANERJEE (MEMB. NO.: 409606)
CHARTERED ACCOUNTANTS
C - 1, PREMSHILA APARTMENT, BANK COLONY, MASTER
PARA, HIRAPUR, DHANBAD, JHARKHAND 826001, INDIA

Copy for information and records to: -

1. The Regional Director (ER), Ministry of Corporate Affairs, 234/4, A.J.C Bose Road, 2nd M.S.O. Building, 3rd Floor, Kolkata-700020.
2. Director, Legal, Ministry of Corporate Affairs, Shastri Bhawan, New Delhi -01, in compliance to Rule 3(9) of Companies (Adjudication of Penalties) Rules, 2014.
3. E-mail to content Manager for publication on Ministry's website.
4. Inquiry follow up section of the Registrar of Companies, West Bengal.
5. Spare Office copy.