

BEFORE THE ADJUDICATING OFFICER
REGISTRAR OF COMPANIES, GOA, DAMAN & DIU
(ADJUDICATION ORDER NO: ROCGDD/AO/92&137/2019/107)

ORDER

**UNDER SECTION 454 OF THE COMPANIES ACT, 2013 READ WITH
THE COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014.**

In respect of:

GAFFINO RESORTS AND MOTELS PRIVATE LIMITED
U55101GA1994PTC001585

Appointment of Adjudicating Officer:-

1. The Ministry of Corporate Affairs vide its Gazette Notification no SO 831(E) dated 24.03.2015 appointed undersigned as Adjudicating Officer [hereinafter referred to as 'the A.O.'] in exercise of the powers conferred by Section 454 of the Companies Act, 2013 [herein after known as the **Act**] read with the Companies (Adjudication of Penalties) Rules, 2014 [Notification no GSR 254(E) dated 31-3-2014] for adjudging penalties under the provisions of the Act. The undersigned vide the Companies (Amendment) Ordinance, 2019 is entrusted with power to adjudicate penalties under Section 92 and 137 of the Act with effect from 02.11.2018.

Company:-

2. Gaffino Resorts And Motels Private Limited [herein after known as the **Company**] CIN:U55101GA1994PTC001585 is a registered company with the office of the Registrar of Companies, Goa, Daman and Diu and having its registered address at Gaffino Building, C/o Gaffino Beach Resort, Mobor, Cavellissim, Goa, India as per records maintained by this office in online registry.

Show Cause Notice, Reply and Personal Hearing:-

3. The Show Cause Notices (SCN) under Section 92(5) and 137(3) of the Companies Act, 2013 was issued vide no ROCGDD/Penalty/2019/Non-filing/5161-5164 dated 01.03.2019 to Company and its Directors, Mr. Brian Dwight Gaffino (DIN:01273225), Mr. Anthony Gaffino (DIN:01398377), and Ms. Jesusmira Gaffino (DIN:01401339). The Noticee's to SCN were called upon to show the cause for non-filing of Annual Return(s) and Financial Statement(s) pursuant to Section 92 and Section 137 of the Act respectively.



4. In response to the SCN dated 01.03.2019, a reply received from the company on 25.03.2019 stating that company has filed its Financial Statements and Annual Returns vide SRN H47289293 and SRN H4728590 respectively on 15.03.2019 for the FY 2017-18. No reason for delay has been given. It is further seen that company is not serious in filing document with MCA. Returns for FY 2015-16 were filed on 17.05.2017 [AGM held on 30.09.2016], returns for FY 2016-17 are filed only on 26.02.2019 [AGM held on 30.09.2016] almost a delay of more than a year. Therefore, penalty is imposed for a period of default.

Provisions of the Companies Act, 2013:-

5. Sub-section (1) of Section 92 of the Act provides that every company shall prepare an Annual return in the prescribed form and sub-section(4) of Section 92 of the Act provides that every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees, as applicable.
6. Every company shall prepare its annual return in the prescribed form containing the particulars as they stood on the close of the financial year regarding—
- (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
 - (b) its shares, debentures and other securities and shareholding pattern;
 - (c) its indebtedness;
 - (d) its members and debenture-holders along with changes therein since the close of the previous financial year;
 - (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
 - (f) meetings of members or a class thereof, Board and its various committees along with attendance details;
 - (g) remuneration of directors and key managerial personnel;
 - (h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
 - (i) matters relating to certification of compliances, disclosures as may be prescribed;

(j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and

(k) such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice:

7. Sub-section (5) of Section 92 of the Act provides that if any company fails to file its annual return under sub-section (4) of Section 92 of the Act, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.
8. Sub-section (1) of Section 129 of the Act provides that company shall prepare a financial statement comply with the accounting standards notified under section 133 of the Act and sub-section (2) of Section 129 of the Act provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Further sub-section (1) of the Section 137 of the Act provides that a copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees, as applicable.
9. Sub-section(3) of Section 137 of the Act provides that if a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2) of the Section 137, as the case may be, before the expiry of the period specified therein, the company shall be liable to a penalty of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further

penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

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10. It is seen that Financial Statement and Annual Return for financial year ending 31.03.2018 has been filed by the company belatedly on 15.03.2019. However, company and officers in default are liable for penalty for the period of default for violation of 92(5) and 137(3) of the Act for FY 2017-18.

The object of filing the annual return of company with the Public Domain is in the public interest, to enable the investors, public and whosoever interested in the company can access the fundamental information about the company and its management. Non-filing of this statutory return will result in denial of information to public about the company.

The object of filing financial statements of a company with MCA portal is to enable the interested public/investors/statutory agencies to access and know about the company state of affairs. The financial statements of a company so filed shall give a true and fair view of the state of affairs of the company, the said statements will become documents of public domain and the interested public can access the said statements through MCA website to know the financial state of affairs of the company as on that date.

11. As per records maintained by this office, noticee no.2, Mr.Brian Dwight Gaffino (DIN:01273225) is disqualified under Section 164(2)(a) of Companies Act, 2013 for a period from 01.11.2016 till 31.10.2021. Therefore, penalty is not being imposed on him. This Order could not be passed within the stipulated time period as most of the Officials of this office were engaged in Lok Sabha Election duty.
12. Having considered the facts and circumstances of the case, and after taking into account the factors above, the A.O. do hereby impose penalty on Company and Directors as per table below for violation of Section 92 and Section 137 of the Companies Act, 2013 for Financial Year ending **31.03.2018**. The A.O. is of the opinion that penalty is commensurate with the aforesaid default committed by the Noticee's.

Document Required to be filed	No of Days of Default *	Penalty imposed on Company /Director	First Default (in Rs)	Default Continues (in Rs)	Total (in Rs)
Financial Statement u/s 137(1) of the Companies Act, 2013	133 days	On Company	Rs.1000X133 days=Rs.1,33,000/-		Rs.1,33,000/-
		Anthony Gaffino	Rs.1,00,000/-	Rs.100X133 days=Rs.13,300/-	Rs.1,13,300/-
		Jesusmira Gaffino	Rs.1,00,000/-	Rs.100X133 days=Rs.13,300/-	Rs.1,13,300/-
Annual Returns u/s 92(4) of the Companies Act, 2013	104 days	On Company	Rs.50,000/-	Rs.100X104 days= Rs.10,400/-	Rs.60,400/-
		Anthony Gaffino	Rs.50,000/-	Rs.100X104 days= Rs.10,400/-	Rs.60,400/-
		Jesusmira Gaffino	Rs.50,000/-	Rs.100X104 days= Rs.10,400/-	Rs.60,400/-

*No. of days have been calculated from November, 2018 & December 2018 for Financial Statement and Annual Return respectively till 14.03.2019.

13. The Penalty imposed shall be paid through the Ministry of Corporate Affairs portal only under intimation to this office.
14. Appeal if any against this order may be filed in writing with the Regional Director(WR), Ministry of Corporate Affairs, 100, Marine Drive, Everest Building, Mumbai-400002, within a period of sixty days from the date of receipt of this order, in Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of this order. [Section 454 of the Companies Act, 2013 read with the Companies (Adjudicating of Penalties) Rules, 2014].
15. Your attention is also invited to Section 454(8) of the Act regarding consequences of non-payment of penalty.
16. In terms of the provisions of sub-rule (9) of Rule 3 of the Companies (Adjudication of Penalties) Rules, 2014, copy of this order is being sent to Gaffino Resorts And Motels Private Limited at Gaffino Building, C/o Gaffino Beach Resort, Mobor, Cavelossim, Goa, India, Mr.Brian Dwight Gaffino (DIN:01273225) at House No. 439/A, Gaffino Towers, Belem, Navelim, Margao, Goa-403707, India, Mr.Anthony Gaffino (DIN:01398377) at H.No. 61/1, Villa Rosa, Ratwaddo, Navelim, Salcete, Goa-403707, India and Ms.Jesumira Gaffino (DIN:01401339) at Gaffino's Beach Resort, Mobor Beach, Cavelossim, Goa-403731, India and also to Office of Regional Director(WR), Ministry of Corporate Affairs, 100, Marine Drive, Everest Building, Mumbai-400002.

Place:- Panaji, Goa.
Date:- 19.06.2019

Registrar of Companies Goa, Daman & Diu

Adjudicating Officer



Prepared by: