

BEFORE THE ADJUDICATING OFFICER
REGISTRAR OF COMPANIES, GOA, DAMAN & DIU
(ADJUDICATION ORDER NO: ROCGDD/AO/Sec-203/2019/10)

ORDER

UNDER SECTION 454 OF THE COMPANIES ACT, 2013 READ WITH COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014 AS AMENDED BY COMPANIES (ADJUDICATION OF PENALTIES) AMENDMENT RULES, 2019 IN THE MATTER OF VIOLATION OF SECTION 203(1) OF THE COMPANIES ACT, 2013.

In respect of:
TOKYO FINANCE LIMITED
L65923DD1994PLC009783

Appointment of Adjudicating Officer:-

1. Ministry of Corporate Affairs vide its gazette notification no SO 831(E) dated 24.03.2015 appointed undersigned as Adjudicating Officer in exercise of the powers conferred by section 454 of the Companies Act, 2013 [herein after known as **Act**] read with Companies (Adjudication of Penalties) Rules, 2014 [Notification no GSR 254(E) dated 31-3-2014] for adjudging penalties under the provisions of the Act.

Company:-

2. Tokyo Finance Limited [herein after known as **Company**] CIN L65923DD1994PLC009783 is a registered Company with the office of Registrar of Companies, Goa, Daman and Diu and having its present registered address as 363/1(1,2,3), Shree Ganesh Industrial Estate, Kachigam Road, Daman, DD 396210 as per records maintained by this office in online registry.



Show Cause Notice, Reply and Personal Hearing:-

3. This office issued a Show Cause Notice under Section 203(5) of the Act for non-appointment of Company Secretary in the Company vide no ROCGDD/Penalty/203/2019/3886-3891 dated 17.01.2019. The Company being listed company was required to appoint Company Secretary pursuant to provisions of Section 203 of Act. Company and Directors were called upon to show cause within 15 days for violation of Section 203 of the Act.
4. Company vide its letter dated 04.02.2019 furnished its reply inter alia stated as under:-
 - a. That the financial position of the company was not sound and from last 5 year's sales and profit figures were going down. So the company is not in position to appoint applicant in high salary.
 - b. That the Company had appointed a Company Secretary and she left on 11th August 2017 due to non-payment of high salary and underutilization of her qualification and talent.
 - c. That Company is binding and the Board of Directors are very anxious to comply the provision of Companies Act, 2013 to appoint Company Secretary and had made efforts to appoint new Company Secretary but the Company's registered office is at Daman and no outsiders intend to join and stay at Daman.
 - d. At present also company is in process to appoint Company Secretary with recruitment agencies.
5. The aforesaid reply dated 04.02.2019 of the Company was not found satisfactory by this office. Thereafter, Notice of Inquiry was issued on 08.02.2019 pursuant to Rule (3) of Companies (Adjudication of Penalties) Rules, 2014. Company and Officers/Directors (Noticee) were called upon to appear



personally or through authorized representative under Rule 3 (3), the Companies (Adjudication of Penalties) Rules, 2014 on 25.02.2019 [between 10.30 AM to 12.30 PM].

6. That Company vide letter dated 19.02.2019 requested to grant an adjournment of the personal hearing and to schedule it in first week of March as their representative, Mr.Virendra G Bhatt, Practicing Company Secretary would not be available in india, and therefore not in position to attend the hearing on 25.02.2019. That as per the written request made by the Company in the said reply, this office listed the personal hearing on 08.03.2018 at 3.30 p.m.
7. Shri Vikram G. Bhatt., Practicing Company Secretary appeared for hearing with authority letter, in the matter of personal hearing under Section 203 of the Companies Act, 2013. He submitted that Company has complied with the provisions of the Act and appointed Ms Priyanka Borana, as Company Secretary with effect from 27.02.2019. Further he has also submitted copies of the e-form No. DIR-12 with its receipt challan SRN H46290763, copy of the resolution of the Board of Directors of the said company and e-form MGT-14 with its receipt challan SRN H46292140. The company having complied with the provisions and appointed Company Secretary and this being unintentional, first time default, Adjudicating Officer may kindly consider to condone penalties, in view of bonafide and size of the Company.

Provisions of Companies Act, 2013:-

8. Section– 203. (1) 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) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time:

Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:

Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel:


Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment

or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

(5) If any company makes any default in complying with the provisions of this section, 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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9. The Company and Officers in default have defaulted provision 203(1) of the Act for non-appointment of Company Secretary and liable for penalties under section 203(5) of the Act w.e.f. 02.11.2018 to 26.02.2019.
10. Having considered the facts and circumstances of the case and submissions made by the Noticees through written submission and oral submission by authorized representative during personal hearing and after taking into account the factors above, I do hereby impose penalty on Company and its Managing Director as per table below for violation of sub-section(1) of Section 203 of the Companies Act, 2013. I am of the opinion that penalty is commensurate with the aforesaid failure committed by the Noticees. 

No of Days of Default *	Penalty imposed on Company /Director	Amount of Penalty (In Rs.)	Total (In Rs.)
117 days	On Company Tokyo Finance Limited	Rs.5,00,000/-	Rs.5,00,000/-
	On Shri Velji Lakhadir Shah DIN:00007239	Rs.50,000/- plus + 117 X Rs.1000 = Rs.1,17,000/-	Rs.1,67,000/-

*No. of days have been calculated from 02.11.2018 till 26.02.2019, when the default is rectified and appointed Company Secretary.

11. The Noticee shall pay the amount of Penalty through the Ministry of Corporate Affairs portal only.
12. Appeal 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 Companies (Adjudication of Penalties) Rules, 2014 as amended by Companies (Adjudication of Penalties) Amendment Rules, 2019].
13. Your attention is also invited to section 454(8) of the Act regarding consequences of non-payment of penalty.
14. In terms of the provisions 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 Tokyo Finance Limited, 363/1(1,2,3), Shree Ganesh Industrial Estate, Kachigam Road, Daman, DD 396 210 and to Shri Velji Lakhadir Shah (DIN:00007239) at 301, Samarpan, Subhash Road, Vile Parle (E), Mumbai 400 057, Shri Haresh Velji Shah (DIN:00008339) at Flat No.301, Samarpan Jha Niwas, Subhash Road, Opp. Parle Tilak School Vile Parle, (East), Mumbai 400057, Shri Tassadduq Ali Khan (DIN:00008368) at 702, Silver Arch 'A', Indra Darsan Layout, Off: Link Road, Opp. Millat Nagar, Andheri(East), Mumbai 400053, Shri Chimanlal Andrijibhai Kutchhi (DIN:00058092) at Sarvoday Society, Rajvadi, Palitana, Bhavnagar,

Palitana, Gujarat 364270 and Ms. Jagruti Mayurbhai Sanghavi (DIN:07144651)
at House No.202, Taleti Road, Shetrunjay Park, Palitana, Bhavnagar, Palitana,
Gujarat 364270 and also to Office of Regional Director(WR), Ministry of
Corporate Affairs, 100, Marine Drive, Everest Building, Mumbai-400002.

Place:- Panaji, Goa.

Date :- 15-04-2019

Registrar of Companies Goa, Daman & Diu

