

BEFORE THE ADJUDICATING OFFICER
REGISTRAR OF COMPANIES, GOA, DAMAN & DIU
(ADJUDICATION ORDER NO: ROCGDD/AO/92&137/2019/35)

ORDER

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

In respect of:

MARIKETY FOODS PRIVATE LIMITED

U55201GA2005PTC003958

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 [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 **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. 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. Marikety Foods Private Limited [herein after known as **Company**] CIN U55201GA2005PTC003958 is a registered company with the office of Registrar of Companies, Goa, Daman and Diu and having its registered address as House No.453, Cuddos, Arpora, Goa -403509, 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 were issued vide no. ROCGDD/Penalty/2019/Non-filing/4103-4105 dated 24.01.2019 to the Company and its two Directors, Ms.Maria Grana Aikater (DIN:00058546) and Mr.Spyridon Granas (DIN: 07694823). The Noticees to SCN were called upon to show the cause for non-



ROCGDD/Penalty/2019/Non-filing/4669-4671 dated 11.02.2019 pursuant to Rule (3) of Companies (Adjudication of Penalties) Rules, 2014. Company and Officers/Directors (Noticees) were called upon to appear personally or through authorised representative under Rule 3(3), the Companies (Adjudication of Penalties) Rules, 2014 on 18.02.2019.

In this regard Shri Rabibal Thapa, Legal Consultant, appeared on behalf of Company and its Directors with authority letter requesting three weeks' time. He highlighted the issue with regard to removal of Auditor and proceeding before Regional Director (WR) in Company Application no.RD/UDC/Sec.140/30/12/2016 for remedy which caused delay in filing Annual Returns. In order to have more clarity, matter was adjourned for 13.03.2019. A letter dated 13.03.2019 was received from one Pradeep Kumar Punekar on letter head of company inter alia stating that their representative Shri Rabibal Thapa, Legal Consultant was down with fever and is therefore, not in a position to travel to Goa and attend hearings scheduled for today. Since Adjudicating Officer was engaged in the matter of Writ Petitions filed by disqualified directors which were kept for final disposal by Hon'ble High Court of Bombay at Goa on 16.03.2019 [despite being saturday], hearing did not take place. Matter was placed before Adjudicating Officer who was on leave from 15.03.2019 to 22.03.2019 and further in view of officer/official duty in Lok Sabha election, company could not be informed about the next date of hearing. Thereafter, vide letter dated 02.05.2019, company and directors were informed to appear personally or through representative on 10.05.2019 at 11.30 A.M.

On the day of hearing Ms.Moksha Kotian, Company Secretary appeared with authority letter and submitted inter alia is as under:

- (i) Filing of returns has been made now and Annual Returns and Financial Statements upto 31.03.2018 are updated.
- (ii) Company is a going concern and delay was because of the reasons of disputes with regard to removal/appointment of statutory auditor of the company. The said matter was referred vide Company Application no.RD/UDC/Sec.140/30/12/2016 to the office of Regional Director (WR), Mumbai and after several hearings, matter was finally disposed of on 24.07.2017. This resulted into the delay.
- (iii) She prayed that matter may be considered sympathetically and relief may be granted being first time default and that too because of the dispute in view of removal of auditors.




- (A) Though filing is updated but default is observed for FY 2017-18 from due date to 04.04.2019 and to 25.04.2019 for Financial Statement and Annual Returns respectively.
- (B) As per records, RD(WR) disposed of matter regarding removal of auditors in July 2017 and company has enough time to update the filing, therefore penalty is being imposed on company and directors for default period with respect to Financial Year 2017-18.

Provisions of Companies Act, 2013:-

4. 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.
5. 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:

6. 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.
7. 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.
8. 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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9. It is seen that Financial Statement and Annual Return for financial year ending 31.03.2018 has been filed by the company belatedly on 04.04.2019 and 25.04.2019 respectively. 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.

10. 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 failure committed by the Noticee.

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	153 days*	On Company	Rs.1000X153 days = Rs.1,53,000/-		Rs.1,53,000 /-
		Maria Grana Aikter	Rs.1,00,000/-	Rs.100X153 days =Rs.15,300/-	Rs.1,15,300/-
		Spyridon Granas	Rs.1,00,000/-	Rs.100X153 days =Rs.15,300/-	Rs.1,15,300/-
Annual Returns u/s 92(4) of the Companies Act, 2013	145 days#	On Company	Rs.50,000/-	Rs.100X145 days =Rs.14,500/-	Rs.64,500/-
		Maria Grana Aikter	Rs.50,000/-	Rs.100X145 days =Rs.14,500/-	Rs.64,500/-
		Spyridon Granas	Rs.50,000/-	Rs.100X145 days =Rs.14,500/-	Rs.64,500/-

*No. of days have been calculated from November, 2018 for Financial Statement till 03.04.2019.

#No. of days have been calculated from December 2018 for Annual Return till 24.04.2019.

11. The Penalty imposed shall be paid through 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 (Adjudicating of Penalties) Rules, 2014].
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 of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014, copy of this order is being sent to Marikety Foods Private Limited at HNo.453,Cuddos,Arpora,Goa-403509,India, Ms.Maria Grana Aikater (DIN:00058546) at House no. 1573, Chivar, Near Vagator, Petrol Pump, Bardez, Anjuna, North Goa, Goa-403509,India and Mr.Spyridon Granas (DIN: 07694823) at HNo.453,Cuddos,Arpora,Goa-403509,India and also to Office of Regional Director(WR), Ministry of Corporate Affairs, 100, Marine Drive, Everest Building, Mumbai-400002.

Place:- Panaji, Goa.

Date:- 13.05.2019

Registrar of Companies, Goa, Daman & Diu

Adjudicating Officer

