

BEFORE THE ADJUDICATING OFFICER
REGISTRAR OF COMPANIES, GOA, DAMAN & DIU
(ADJUDICATION ORDER NO: ROCGDD/AO/Sec-203/2019/3)

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:
GOVIND POY OXYGEN LIMITED
L40200GA1972PLC000144

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. Govind Poy Oxygen Limited [herein after known as Company] CIN L40200GA1972PLC000144 is a registered Company with the office of Registrar of Companies, Goa, Daman and Diu and having its present registered address as Fabrica De Gas Carbonico, N.H 17 , Nuvem Salcete, Goa, South Goa, 403604 India as per records maintained by this office in online registry.

Show Cause Notice, Reply and Personal Hearing:-

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/203/2019/3892-3898 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 30.01.2019 furnished it's reply inter alia states as under:-

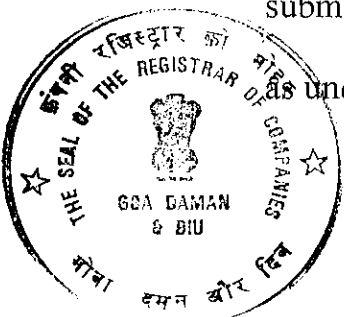
- a. That the company had initiated the process of appointment of Company Secretary of the Company on full time basis.
- b. That Company has already released an advertisement for a Company Secretary in Navhind Times newspaper and Company is positive about filling of post of whole time Company Secretary shortly.

5. The aforesaid reply dated 30.01.2019 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. Shri Savari Muthu I., Practicing Cost Accountant and Shri Krishna D. Kamat, officer of the Company, appeared for hearing with authority letter, in the matter of personal hearing under Section 203 of the Companies Act, 2013. They submitted a written letter of Company dated 25.02.2019 which inter alia states

as under:-

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- a. That the Company has complied with the provisions of the Act and appointed Ms Shruti Subhash Nilekani as Company Secretary with effect from 18.02.2019. Eform DIR-12 vide SRN H45189081 and MGT-14 vide SRN H45186970 dated 19.02.2019 have been filed.
- b. They further submitted that Company being a small company with only Rs.40lakhs as paid up capital and 280 members and with almost no trading.
- c. That Company's business prospectus have dwindled due to the closure of mining activity in Goa as the Company was serving majorly on the Mining Companies with its product namely Oxygen Gas.
- d. That the Company has not intentionally defaulted in the appointment of Company Secretary, and default being first time and undertook, not to default in future.
- e. That there has been no gain or unfair advantage to the Company as a result of default and there has been no loss caused to shareholders or creditor as a result of default.
- f. 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 bonafied and size of the Company.

Provisions of Companies Act, 2013 provides :-

7. 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.

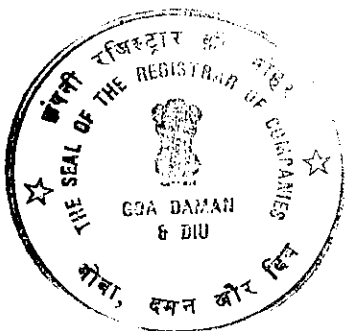
(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

(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.

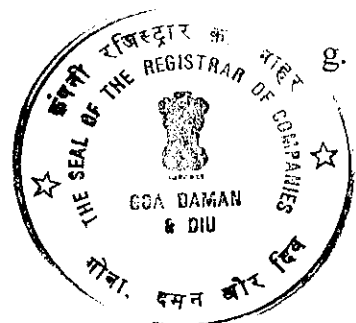
(5) If any company makes any default in complying with the provisions of this section, such company shall be liable to a penalty of five lakh rupees and every director and key managerial personnel of the company who is in default shall be liable to a penalty of fifty thousand rupees and where the default 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.

Factors to be taken into account by the Adjudicating Officer:-

8. While adjudging the quantum of penalty under section 203(5) of the Companies Act, 2013 read with Rule 3(9) of the Companies(Adjudication of Penalties) Rules, 2014 the Adjudicating Officer has taken into consideration the following factors, namely:

- a. Size of the company,
- b. Nature of business carried on by the company,
- c. Injury to public interest,
- d. Nature of default,
- e. Repetition of the default,
- f. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of default, and
- g. The amount of loss caused to an investor or group of investors as a result of the default.





9. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that company is a listed company and the disproportionate gain or unfair advantage made by the noticees or loss caused to the investor as a result of the delay on the part of the noticees to redress the investor grievance are not available on record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the noticees or the loss caused to the investors in a default of this nature. However, the offence is of serious nature and company has defaulted in appointment of company secretary since Companies (Amendment) Ordinance, 2019 read with Section 203 of the Companies Act, 2013.

ORDER

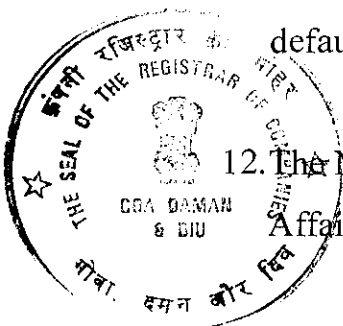
10. The Company and Officers in default have defaulted provision 203(1) of the Act for non-appointment of Company Secretary and liable for penalties under section 203(5) of the Act w.e.f. 02.11.2018 to 17.02.2019.

11. Having considered the facts and circumstances of the case and submissions made by the Noticees through written submission and oral submission by authorized representatives 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 Noticee.

No of Days of Default *	Penalty imposed on Company /Director	Amount of Penalty (In Rs.)	Total (In Rs.)
108 days	On Company Govind Poy Oxygen Limited	Rs.5,00,000/-	Rs.5,00,000/-
	On Shri Sanjay Atchut Poyraiturcar, Managing Director	Rs.50,000/- plus 108 X Rs.1000 = Rs. 1,08,000/-	Rs.1,58,000/-

*No. of days have been calculated from 02.11.2018 till 17.02.2019, when the default is rectified and appointed Company Secretary.

12. The Noticee shall pay the amount of Penalty through the Ministry of Corporate Affairs portal only.



13. 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].
14. Your attention is also invited to section 454(8) of the Act regarding consequences of non-payment of penalty.
15. 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 Govind Poy Oxygen Limited, Fabrica De Gas Carbonico, N.H.-17, Nuvem, Salcete, Goa 403604 and to Shri Sanjay Atchut Poyraiturcar, House No 15/3541, Jeevottam, Monte Hill, Above Nagesh Garnder, Margao, South Goa-403601 and also to Office of Regional Director(WR), Ministry of Corporate Affairs, 100, Marine Drive, Everest Building, Mumbai-400002.

Place: - Panaji, Goa.

Date: - 27.02.2019


(K. S. Reddy)

Registrar of Companies Goa, Daman & Diu
&
Adjudicating Officer