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**GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF THE REGISTRAR OF COMPANIES, KARNATAKA
II FLOOR, "E" WING, KENDRIYA SADAN, KORAMANGALA, BANGALORE – 560 034**

No. ROCB/ Adj. Order /Sec.454 /Co. No.016663/2019-2020

Dated: 10-08-2020

**ORDER OF ADJUDICATION OF PENALTY UNDER SECTION 454 OF COMPANIES ACT 2013
READ WITH RULE 3 OF THE COMPANIES (ADJUDICATION OF PENALITIES) RULES 2014
FOR VIOLATION OF PROVISIONS OF SECTION 203(4) OF THE COMPANIES ACT 2013 BY
SUBEX LIMITED**

1. Whereas, M/s SUBEX LIMITED was incorporated on 06.02.1994 under the Registrar of Companies, Karnataka, with its current Registered Office being situated at RMZ Ecoworld, Outer Ring Road, Devarabisanahalli, Bangalore 560103. It is a listed company and shares are listed at BSE and NSE.
2. Whereas, as per the provisions of Section 203 (1) of the Companies Act, 2013:

“Every company belonging to such class or classes of companies as may be prescribed shall have the following whole-time key managerial personnel:

 - a. *Managing Director, or Chief Executive Officer or Manager and in their absence, a Whole-Time Director;*
 - b. *Company Secretary; and*
 - c. *Chief Financial Officer”*
3. Whereas, as per Rule 8 and Rule 8A of Companies (Appointment and Remuneration) Rules, 2013:

Rule 8: “Every listed company and every other public company having a paid up capital of ten crore rupees or more shall have whole-time Key managerial personnel.”

Rule 8A: “A company other than a company under rule 8 which has paid up share capital of five crore rupees or more shall have a whole-time Company Secretary.”
4. Whereas, as per Section 203(4) of the Companies Act, 2013:

“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. *Whereas pursuant to provisions of Section 203(5) of the Companies Act, 2013 (Pre-amendment Act, 2019), if a company contravenes the provision of this section, the company shall be punishable with fine which shall not be less than one lakh rupees, but which may extend to five lakh rupees and every director and key managerial personnel of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees and where the contravention is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.*
6. Whereas, as per the provisions of Section 203(1) of the Companies Act, 2013 that the company shall have separate individuals appointed as KMP designated as MD/CEO/Manager/WTD, CFO and CS, and where the office of any whole-time key managerial personnel is vacated, the resulting vacancy is to be filled within a period of six months from the date of the vacancy.
7. Whereas, since the paid up capital of the company is Rs. Rs.5,62,00,29,350/- and falls under class of companies as prescribed under Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 and hence is required to appoint a KMP and a Company Secretary as prescribed under Rule 8A of (Appointment and Remuneration of Managerial Personnel) Rules, 2014. However, it is seen that Mr. Ganesh KV, who was former Chief Financial Officer, Global Head – Legal, and Company Secretary resigned on 06.06.2017 and the same was accepted by the company with effect from **15.06.2017**. However, Mr. G.V.Krishnakanth was appointed as new Company Secretary of the company only from **10.07.2018**.
8. Whereas the Company Secretary ought to have been appointed on or before 14.12.2017 pursuant to the provisions of sub-section (4) of Section 203 of the Companies Act, 2013. However, the appointment of Mr. G.V.Krishnakanth was made only on **10.07.2018** which is beyond six months from the date of resulting vacancy of the position of Company Secretary, Hence, there is a delay of 216 days in appointing a company secretary (**from 14.12.2017 to 09.07.2018**) and it is established that the company has contravened the provisions of Section 203(4) of the Companies Act, 2013 r/w rule 8 and rule 8A of Companies (Appointment and Remuneration) Rules, 2013. Hence, the Company and its officers in default are liable for penal action under sub-section (5) of section 203 of the Companies Act, 2013.

9. The company has filed its adjudication application on 09.10.2019.
10. Due to COVID-19 pandemic, instructions were issued by the Ministry of Corporate Affairs to conduct hearings through Video Conference in the matters of Adjudication and Compounding of offences by ROCs and RDs.
11. In pursuance of Ministry's guidelines, hearing was held through Video Conference on **24.07.2020** . Ms Pradeep Kulkarni, Authorised Representative attended the hearing. He admitted the offence and pleaded for less penalty to be imposed since the company is solely dependent on orders from United States. For the last three years, the company is not able to get sufficient support and due to Covid-19; all employees are being paid 50% of the salary only.
12. Therefore in view of the said violation of Section 203(4) of the Companies Act, 2013 read with Rule 8A of Companies Appointment and Remuneration of Managerial Personnel) Rule, 2014, and considering the delay of 216 days, the undersigned in exercise of the powers vested to him under Section 454(1) & (2) of the Companies Act 2013 hereby impose a penalty as provided in the pre-amended provisions as the default period is prior to the amendment of Section 203(5) of the Companies Act, 2019 in the following manner against the company and its CEO & Managing Director and CFO (KMP):-

S.No	Particulars	Period of Default	Penalty under Section 203 of Companies Act, 2013
1	Company	14.12.2017-09.07.2018 (216 days)	Rs.2,00,000/-
2	Mr. Vinod Kumar Padmanabhan, Managing Director & CEO (KMP)	14.12.2017-09.07.2018 (216 days)	Rs.1,00,000/-
3	Mr.Mehernaz Zubin Dalal, CFO(KMP)	14.12.2017-09.07.2018 (216 days)	Rs.1,00,000/-
	Total		Rs,4,00,000/-

The CFO(KMP) stated at **Sl.no. 3** above, has not submitted the application but being officer in default, for the relevant period, penalty has been imposed to him also.

13. Whereas, the Company and its Managing Director and key managerial personnel who are in default are hereby directed to pay the penalty (**totaling Rs.4,00,000/-**) immediately through their own sources and submit proof of payment to this office within 60 days from the date of receipt of this order and also file INC-28 enclosing copy of the order and payment challans.

14. Whereas sub-section (5) of section 454 of the Companies Act, 2013 provides that any person aggrieved by an order made by the adjudicating officer under sub-section (3) may prefer an appeal to the Regional Director having jurisdiction in the matter and further sub-section (6) provides that every appeal under sub-section (5) shall be filed within sixty days from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person and shall be in such form, manner and be accompanied by such fees as may be prescribed.

15. Please note that as per Sec 454(8) (i) of the Companies Act 2013,

“(i) where company fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be, within a period of ninety days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

(ii) where an officer of a company or any other person who is in default fails to comply with the order made under sub-section (3) or sub-section (7), as the case may be, within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both. In case of default in payment of penalty, prosecution will be filed U/s 454(8)(i) and (ii) of the Companies Act 2013 at your own costs without any further notice.”

16. Therefore, in case of default in payment of penalty, prosecution will be filed u/s 454(8) (i) & (ii) of the Companies Act, 2013 at your own cost without any further notice.


(C.Y. SAJEEVAN)
REGISTRAR OF COMPANIES,
KARNATAKA.

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1. M/s Subex Limited

RMZ Ecoworld, Outer Ring Road,
Devarabisanahalli, Bangalore 560103.

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2. Mr. Vinod Kumar Padmanabhan

Managing Director & CEO
No.1034, Soba Jasmine Apts
Outer Ring Road
Bellandur, Bengaluru 560103.

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✓ **3. Mehernaz Zubin Dalal, Director**
A/3, Gemfrina, 630, Khareghat Road
Dadar (East), Mumbai – 400014
Maharashtra