

# THE BOMBAY CHARTERED ACCOUNTANT JOURNAL

VOLUME 56 | ISSUE 12 | ENGLISH - MONTHLY | MUMBAI MARCH 2025 | PAGES 128 | PRICE: ₹100

## NON-REPATRIABLE INVESTMENT

BY NRIs/OCIs UNDER FEMA:  
AN ANALYSIS – PART - 1

KEY YEAR  
END AUDIT  
CONSIDERATIONS

MANUFACTURING'S  
MISSING MIGHT:  
INDIA'S GROWTH PUZZLE

EVOLUTION OF AUDIT:  
“FROM PAPER TO PIXELS”

# CORPORATE LAW CORNER

**PRAMOD PRABHUDESAI**

Chartered Accountant

**KAUSHIK M. JHAVERI**

Company Secretary

## PART A COMPANY LAW

18

**Global One (India) Private Limited.**

**Registrar of Companies, NCT of New Delhi and Haryana**

**Adjudication Order No. ROC/D/Adj/Order/203/ GLOBAL ONE/5224-5226**

**Date of Order: 31<sup>st</sup> January, 2025**

### **Adjudication order for violation of section 203 of the Companies Act 2013(Act): Delay in appointing Whole Time Company Secretary.**

#### **FACTS**

• The Company had earlier filed a compounding application before the Regional Director (NR) for the period starting from 1<sup>st</sup> November, 2013 to 1<sup>st</sup> May, 2023 for non-appointment of CS. During the hearing for compounding, it was indicated that for the period starting from 2<sup>nd</sup> November, 2018, the said default is under adjudication mechanism and accordingly, a separate application has to be filed before the ROC, NCT of Delhi & Haryana.

• In the adjudication application filed thereafter, it is stated that due to the financial constraints, the management was unable to find a suitable candidate for the purpose of appointment of Whole Time Company Secretary on Board.

• The CS could only be appointed on 1<sup>st</sup> May, 2023 and accordingly there has been a delay of 1642 days (i.e. from 2<sup>nd</sup> November, 2018 to 1<sup>st</sup> May, 2023) in the appointment.

• Accordingly, a show cause notice for the default was issued to the company and its officer and a response was received to the notice. In its reply, the company put forth its business condition wherein it is submitted that the Company is part of the Orange Business Group i.e. multinational business group from France

with Govt. of France. The Company had to carry certain business operations with Videsh Sanchar Nigam Limited (VSNL) but due to VSNL being wound up, this Company also did not pursue the business goals further. The company stated that it was neither carrying any business nor it had any revenue from business operations so it could not appoint the CS to meet the requirement of the Companies Act. The company also requested for oral hearing in the matter.

• The authorised representative who appeared for oral submission in the matter requested to take a lenient view while levying penalty on the company and its officers as company is not making any revenue from its operations since many years.

#### **EXTRACT FROM THE PROVISIONS OF THE ACT IN BRIEF:**

**Section 203 (Appointment of Key Managerial Personnel):**

*(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. ....*

*(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"*

*Rule 8A (Appointment and Remuneration of Managerial Personnel) Rules, 2014.*

*Rule 8A. Every private company which has a paid-up share capital for ten crore rupees or more shall have a whole-time company secretary.*

## **FINDINGS AND ORDER**

The Company has failed to appoint to whole time company secretary for a significant period. There has been a delay of 1642 days (i.e. from 2<sup>nd</sup> November 2018 to 1<sup>st</sup> May, 2023) in appointment of CS. Further, the submission of the company to grant any remission in the penalty cannot be considered as the law provides for a fixed penalty. The subject company does not get covered under the purview of small company as defined u/s 2(85) of the Act. Hence, the benefit of section 446B would not be applicable on the company.

Thereafter in exercise of the powers conferred on the AO vide Notification dated 24<sup>th</sup> March, 2015 and having considered the reply submitted by the subject Company in response to the notice, the following penalty was imposed on the Company and its officers in default under Section 203 of the companies act 2013 for violation as follows:

- Penalty on Company of ₹5,00,000 being Maximum Penalty
- Penalty on each of the directors subject to Maximum

of ₹5,00,000 per director

19

**M/s HIND WOOLLEN AND HOSIERY MILLS PRIVATE LIMITED**

**Registrar of Companies, Chandigarh**

**Adjudication Order No. ROC CHD/ADJ/ 860 TO 865**

**Date of Order: 27<sup>th</sup> November, 2024.**

Adjudication Order for Non-disclosure of interest or concern in other body corporate or entities by the Directors in Form MBP-1 at the first Board Meeting of the Financial Year as required under the provisions of the Section 184 of the Companies Act 2013.

## **FACTS OF THE CASE**

Registrar of Companies (ROC) or Adjudication Officer (AO) during its inquiry on M/s HWAHMPL under Section 206 of the Companies Act, 2013 found that the directors had failed to disclose their interest or concern in other companies or body corporate, including their shareholding, at the first board meetings for the financial years 2020-21 and 2021-22 and necessary Form MBP-1 was not submitted/filed by the directors to the M/s HWAHMPL.

Thereafter, ROC issued a show-cause notice (SCN) on November 7, 2024 to directors for violation of Section 184 (1) of the Companies Act 2013 read with Companies (Adjudication of Penalties) Rules, 2014. However, directors did not provide any response or communication to the said SCN.

## **PROVISIONS**

Section 184(1): "Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed."

Section 184(4): "If a director of the company contravenes the provisions of sub-section (1) or sub-section (2), such director shall be liable to a penalty of one lakh rupees."

Section 446B: "Notwithstanding anything contained

*in this Act, if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be.*

*Explanation. —For the purposes of this section-*

*(a) “Producer Company” means a company as defined in clause (1) of section 378A;*

*(b) “start-up company” means a private company incorporated under this Act or under the Companies Act, 1956 and recognised as start-up in accordance with the notification issued by the Central Government in the Department for Promotion of Industry and Internal Trade.”*

*Rule 3(12) of Companies (Adjudication of Penalties) Rules, 2014 “While adjudging quantum of penalty, the adjudicating officer shall have due regard to 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 the default,’*

*e) repetition of the default,’*

*f) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default: and*

*g) the amount of loss caused to an investor or group of investors or creditors as a result of the default.*

*Provided that, in no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act.”*

*Rule 3(13) of Companies (Adjudication of Penalties) Rules, 2014 which read as under: “In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.”*

## **ORDER**

AO, after having considered the facts and circumstances of the case concluded that the directors of M/s HWAHMPL were liable for penalty as prescribed under section 184(4) of the Companies Act 2013 for default made in complying with the requirements.

Hence, AO imposed an aggregate penalty of ₹5,00,000/- (Rupees Five Lakhs Only) i.e. ₹50,000/- (Rupees Fifty Thousand Only) on Each of the Director in default of M/s HWAHMPL for non-disclosure of interest or concern in other bodies corporate or entities at the first Board Meeting held for the Financial year 2020-21 and 2021-22 in form MBP-1 under section 184 (4) of the Companies Act 2013 read with Section 446B of the Companies Act 2013. ■

A Chartered Accountant firm based in Mumbai, with 45 years of experience, invites proposals for merger from sole proprietorships or partnership firms. The firm is also interested in expanding their presence through branch openings.

Additionally, we are seeking full-time Chartered Accountants to lead our Audit and Tax Department.

Please email your profile to [office@cavoras.com](mailto:office@cavoras.com)



# BCA JOURNAL

*56<sup>th</sup> Year of Monthly Publication*

- ◆ BCA Journal is driven by analysis that is independent and balanced
- ◆ Receive in-depth but to the point coverage of developments in Direct Tax, Indirect Taxes, GST, International Tax, Auditing, Accounting, Business, Commercial, Economy, Practice Management, Information Technology, Right to Information, and more
- ◆ Articles curated by specialists
- ◆ Features covering the most relevant themes
- ◆ Series of monthly features dedicated to topics – Practice Management, GST, ICDS, Ind-AS, Transfer Pricing...
- ◆ Contributions from experience professionals
- ◆ Access E-journal, repository of 16 years of Journals in a searchable format
- ◆ Special issues - covers the full spectrum of a subject such as GST
- ◆ Features in Special Issues: Interviews, view and counterview, musings, and more ...

BCA Journal is printed in both paper format and electronic version.  
For subscription and access to past issues: **[www.bcajonline.org](http://www.bcajonline.org)**