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**IMPORTANT
AMENDMENTS BY THE
FINANCE ACT, 2025**

**SECTION 194T WHEN
TAXMAN BECOMES A
SILENT PARTNER**

**IMPLICATIONS ARISING OUT OF NEW
FORMAT OF FINANCIAL STATEMENTS FOR
NON-CORPORATE ENTITIES**

CORPORATE LAW CORNER

PRAMOD PRABHUDESAI

Chartered Accountant

KAUSHIK M. JHAVERI

Company Secretary

PART A COMPANY LAW

4

Caparo India Limited

Registrar of Companies, NCT of Delhi & Haryana

Adjudication Order: ROC/D/Adj/2022/Section 149(1)/6647

Date of Order: 24th November, 2022

Adjudication order for violation of section 149 of the Companies Act 2013 (CA 2013): Failure to appoint woman director

FACTS

• As per the financial statements filed by the company for the financial year ended 31st March, 2021, the paid-up share capital of the company was ₹ 195.80 Crores.

• The company is clearly required to appoint a woman director based on Rule 3(ii) of Companies (Appointment and qualification of Directors) Rules, 2014 as the paid-up share capital of the company was more than ₹ 100 Crores.

• A Show Cause Notice was issued to the company and its officers in default on 27th July, 2022 in this regard. The company vide letter dated 9th August, 2022 submitted its reply and as per request of company an opportunity of personal hearing was also given. The authorised representative of the company appeared and made submissions on behalf of the company.

• It was submitted that there was a woman director who had resigned from the company w.e.f. 19th March, 2020 due to some reasons. The date of the Board Meeting held immediately subsequent to the resignation of the previous woman director was 23rd March, 2020. The company made its efforts to appoint an appropriate person, but those efforts were not fruitful. However, subsequent to the issue of show cause notice, a woman director was appointed. It was submitted that in any case **non-executive directors** should not be liable to any penalty on this account.

EXTRACT OF THE RELEVANT PROVISIONS OF THE ACT:

Section 454(6):

(1)

Second Proviso:

Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.

Rule 3 of the Companies (Appointment and qualification of Directors) Rules, 2014: The following class of companies shall appoint at least one-woman director-

(ii) Every other public company having- (a) Paid-up share capital of one hundred crore rupees or more; or (b) Turnover of three hundred crore rupees or more:

Provided further that any intermittent vacancy of a women director shall be filled-up by the Board at the earliest but no later than immediate next Board meeting or **three months** from the date of such vacancy whichever is **later**.

Explanation- For the purposes of this rule, it is hereby clarified that the paid-up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

Non compliance of section 149 r/w Rule 3 of Companies (Appointment and qualification of Directors) Rules, 2014 would give rise to liability under section 172 which read as under:

Section 172: If a company is in default in complying with any of the provisions of this Chapter and for which no specific penalty or punishment is provided therein, the

company and every officer of the company who is in default shall be liable to a penalty of **fifty thousand rupees**, and in case of continuing failure, with a **further** penalty of **five hundred rupees for each day during which such failure continues**, subject to a maximum of **three lakh rupees in case of a company** and **one lakh rupees in case of an officer who is in default**.

FINDINGS AND ORDER

- As per second proviso to Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014, the company had a period of three months from the date of resignation to appoint a woman director, however, the company failed to do so.
- Further, as per explanation to Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014, the paid-up capital is being reckoned from the next date of latest audited financial statement i.e. one day after 26th November, 2021 (date of auditor report) and the period of default would continue till the issue of Show Cause Notice on 27th July, 2022 (this period is referred as default period).
- For the purpose of determination of penalty, the following data is to be considered :
- Duration of the default is from 27th November, 2021 to 27th July, 2022 i.e. period of 243 days
- Initial Penalty of ₹50,000 and ₹1,21,500 being Penalty for continuing default aggregating to ₹1,71,500 was levied.
- No penalty was levied for officers in default since the company had only non-executive directors.

5

M/s APTIA GROUP INDIA PRIVATE LIMITED
Registrar of Companies, NCT of Delhi & Haryana
Adjudication Order No - ROC/D/Adj/Order/
Section 56(4)(a)/APTIA/4831-4833
Date of Order: 30th December, 2024

Adjudication order issued against the Company and its Director for contravention of provisions of Section 56 of the Companies Act, 2013 with respect to delay in issue of share certificate to shareholders post incorporation of the Company.

FACTS

M/s AGIPL *suo-moto* filed an application with regard to violation of provisions of the Section 56(4)(a) of the

Companies Act, 2013 stating that the company was required to issue the share certificate to both the Subscribers of Memorandum within 2 months of its incorporation i.e. till 7th September, 2023 but failed to do so due to delay in receipt of the subscription money in company's bank account. Hence, there was a delay in issuance of share certificate to subscribers of 105 days.

Thereafter, office of Registrar of Companies, NCT of Delhi & Haryana i.e. Adjudication Officer (AO) issued Show Cause Notice for the said default to M/s AGIPL and its officer. A response against the notice was received wherein M/s AGIPL re-iterated the facts and also submitted that the delay in issuance of share certificates was unintentional and due to external factors beyond its control and the company had also taken steps to rectify the error.

Further Ms. C J, Company Secretary being the authorized representative of M/s AGIPL appeared for oral submission in the matter and requested to take a lenient view while levying penalty on the company and its officers as the company is newly incorporated.

PROVISIONS

Section 56 - Transfer and Transmission of Securities

(4) Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted

(a) within a period of two months from the date of incorporation, in the case of subscribers to the memorandum.

....

(6) Where any default is made in complying with the provisions of sub-sections (1) to (5), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

ORDER

AO after consideration of the reply submitted by M/s AGIPL concluded that M/s AGIPL had failed to issue the share certificate to both subscribers of memorandum within 2 months of its incorporation which was not in compliance with the provisions of Section 56(4)(a) of the Companies act 2013. Hence, penalty of ₹50,000/- was imposed on M/s AGIPL and penalty of ₹50,000/- was imposed on each of its officers in default.

Thus, a total penalty of ₹1,50,000/- was imposed on M/s AGIPL and its Directors. ■

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