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भारत सरकार/Government of India

कारपोरेट कार्य मंत्रालय/ Ministry Of Corporate Affairs

कार्यालय कम्पनी रजिस्ट्रार, बिहार-सह-शासकीय समापक उच्च न्यायालय, पटना

Office of the Registrar of Companies, Bihar-Cum-Official Liquidator, High Court, Patna

चौथा तल, 'क' खण्ड, मौर्या लोक कॉम्प्लेक्स/4th Floor, 'A' Wing, Maurya Lok Complex

डाक बंगला रोड, पटना-८००००१/Dakbunglow Road, Patna-800001

No. ROC/PAT/SCN/143/36124/ 2399-2401

Dated:04.01.2023

Order for penalty for violation of section 143 of the Companies Act, 2013

In the matter of

SONASUMAN CONSTECH ENGINEERS PRIVATE LIMITED

CIN: U45500BR2017PTC036124

**Appointment of Adjudication Officer:-**

1. The Ministry of Corporate Affairs vide its Gazette Notification No. A-42011/112/2014- Ad. II dated 24.03.2015 has appointed the undersigned as Adjudicating Officer in exercise of the powers conferred under section 454 of the Companies Act, 2013 (herein after known as Act) read with Companies (Adjudication of Penalties) Rules, 2014 for adjudging penalties under the provisions of this Act.

**Company:-**

2. As per the record of MCA Portal and AOC-4 filed by the company- Sonasuman Constech Engineers Private Limited, CIN- U45500BR2017PTC036124, (hereinafter referred to as the company) for the financial years ending on 31.03.2018 and 31.03.2019, Shri Ravikant Kumar - Kumar Vivek & Associates and for financial year ending on 31.03.2020, Shri Basant Kumar Jaiswal-Basant Jaiswal & Associates is the Auditor of the company.

**Facts about the case:-**

- 3.1 As per Section 129(1) of the Companies Act, 2013, the Financial Statements shall give true and fair view of the state of affairs of the Company, comply with the accounting standards notified under section 133 and be in form as provided in Schedule III.

For each class of equity share capital as per Schedule III of the Companies Act, 2013, the Company needs to disclose in the financial statements, the shares held by each shareholder holding more than five percent shares specifying the number of shares held.

However, the Company has not disclosed the same in its financial statement for the F.Y. 2019-20 and has contravened the provisions of the Section 129 read with Schedule III of the Companies Act, 2013, thereby affecting the true and fair view of the state of affairs of the Company.

Thus, the auditor has failed to comment on the same in the audit report for the aforesaid financial year.

- 3.2 As per Section 129(1) of the Companies Act, 2013, *the Financial Statements shall give true and fair view of the state of affairs of the Company, comply with the accounting standards notified under section 133 and be in form as provided in Schedule III.*

*As per Schedule III of the Companies Act, 2013 for each class of share capital the number of shares issued, subscribed and fully paid, and subscribed but not fully paid; par value per share; a reconciliation of the number of shares outstanding at the beginning and at the end of the reporting period shall be disclosed in the notes to the accounts of the Company.*

However the same has not been disclosed by the Company in its financial statement for the financial year ended on 31.03.2018 and 31.03.2019 as per Schedule III of the Companies Act, 2013, thereby affecting the true and fair view of the state of affairs of the Company in the financial year 2017-18, 2018-19 and contravening the provisions of the Section 129 read with Schedule III of the Companies Act, 2013.

Thus, the auditor has failed to comment on the same in the audit report for the aforesaid financial years.

- 3.3 As per Section 129(1) of the Companies Act, 2013, *the Financial Statements shall give true and fair view of the state of affairs of the Company, comply with the accounting standards notified under section 133 and be in form as provided in Schedule III.*

The Company has shown advances from relatives and customers under the head long-term borrowings in the financial statement for the F.Y 2019-20 amounting to Rs.1,13,79,970.50/- however such advances have neither been separately classified as advances from relatives and others nor sub-classified as Secured/ Unsecured and also the nature of security of such loans and advances has not been disclosed as required in Schedule III of the Companies Act, 2013.

Hence the Company has violated with the Section 129 read with Section 133 and Schedule III of the Companies Act, 2013 in the aforesaid financial year, thereby the true and fair view of the state of affairs of the Company has also been affected.

Thus, the auditor has failed to comment on the classification of the long-term borrowings in the audit report for the aforesaid financial year.

- 3.4 As per Section 129(1) of the Companies Act, 2013 *the Financial Statements shall give true and fair view of the state of affairs of the Company, comply with the accounting standards notified under section 133 and be in form as provided in Schedule III.*

Upon examination of the financial statements for the F.Y 2017-18 and 2018-19 it is observed that the Company has long-term borrowings in the financial statement amounting to Rs.51,80,000/- and Rs. 1,13,79,970.50/- respectively but failed to sub-classify such borrowings as Secured/Unsecured and also the nature of security of borrowings has not been disclosed as required in Schedule III of the Companies Act, 2013.

Hence the Company has violated with the Section 129 read with Section 133 and Schedule III of the Companies Act, 2013 in the aforesaid financial years, thereby the true and fair view of the state of affairs of the Company has also been affected.

Thus, the auditor has failed to comment on the classification of the long-term borrowings in the audit report for the aforesaid financial years.

- 3.5 As per Section 129(1) of the Companies Act, 2013, *the Financial Statements shall give true and fair view of the state of affairs of the Company, comply with the accounting standards notified under section 133 and be in form as provided in Schedule III.*

It is found that the Company has shown advances to suppliers under the head of short-term loans and advances amounting to Rs. 40,746.28/- in the financial statement filed for the F.Y ended on 31.03.2019, however the Company has failed to sub-classify such short-term loans and advances as:- Secured/Unsecured.

Therefore, the Company has violated with the Section 129 read with Section 133 and Schedule III of the Companies Act, 2013 in the aforesaid financial year, hence affecting the true and fair view of the state of affairs of the Company.

Thus, the auditor has failed to comment on the classification of the trade payables in the audit report for the aforesaid financial year.

- 3.6 As per Section 129(1) of the Companies Act, 2013 *the Financial Statements shall give true and fair view of the state of affairs of the Company, comply with the accounting standards notified under section 133 and be in form as provided in Schedule III.*

Upon observation of the filed financial statement for the financial year ended on 31.03.2018, 31.03.2019 and 31.03.2020, it is found that the Company has not disclosed the name of the related party and nature of the related party relationship where control exists irrespective whether there have been transactions between the related parties.

According to AS-18 *nature of related party shall be disclosed irrespective of any transaction and if there have been transactions between related parties, during the existence of a related party relationship, the reporting enterprise should disclose the following: (i) the name of the transacting related party; (ii) a description of the relationship between the parties; (iii) a description of the nature of transactions; (iv) volume of the transactions either as an amount or as an appropriate proportion; (v) any other elements of the related party transactions necessary for an understanding of the financial statements; (vi) the*

*amounts or appropriate proportions of outstanding items pertaining to related parties at the balance sheet date and provisions for doubtful debts due from such parties at that date; and (vii) amounts written off or written back in the period in respect of debts due from or to related parties.*

Hence it is observed that the Company has contravened with the AS-18 read with Section 129 read with Schedule III of the Companies Act, 2013 thereby affecting the true and fair view of the state of affairs of the Company in the financial year 2017-18, 2018-19 and 2019-20.

Thus, the auditor has failed to comment on the same in the audit report for the aforesaid financial years

4. Whereas, this office has issued show cause notice for default under section 143 of the Companies Act, 2013 vide this office letter no. ROC/PAT/SCN/sec.143/36124/2216-2217 dated 05.12.2022.
5. However, this office has not received any reply from the abovesaid auditors. Hence, the provisions of Section 143 of the Companies Act, 2013 has been contravened by the auditors and therefore they are liable for penalty u/s. 450 of the Companies Act, 2013 for the Financial Years 2017-2018, 2018-2019 and 2019-2020.

*Section 450 states that:- "If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person".*

6. Further Section 446B states that "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".
7. As per clause 85 of section 2 of the Companies Act, 2013, small company means a company whose paid up capital and turnover shall not exceed rupees four crore and rupees forty crore respectively. As per MCA portal, paid up capital of the company- Sonasuman Constech Engineers Private Limited is Rs. 500,000/- and the turnover of the company is Rs. Nil, Rs. 1,18,05,571.00 and Rs.

2,06,603.00, as per Financial Years 2017-2018, 2018-2019 and 2019-2020 respectively. Therefore, the benefits of small company is extended to this noticee while adjudicating penalty.

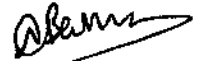
### **ORDER**

8. Having considered the facts and circumstances of the case and after taking into account the provisions of Rule-11 of Companies (Adjudication of Penalties) Rules, 2014 (as amended), I hereby impose a penalty of Rs. 10,000 (Ten Thousand) on Shri Ravikant Kumar, Kumar Vivek & Associates and Rs. 5000 on Shri Basant Kumar Jaiswal, Basant Jaiswal & Associates as per Table Below for violation of Section 143 of the Companies Act, 2013 for the financial years 2017-2018, 2018-2019 and 2019-2020:

Nature of default	Violati on of Section of the Compa nies Act, 2013	Company/Offi cers to whom penalty imposed	No. of days in default	Penalty for defaults (Rs.) as per Section 450 of the Act	Total Penalty (Rs.)	Penalty Imposed (Rs.) As per Sec. 446B of the Act
Non-reporting of violations/ non-compliance made by the company in audit report	Section 143	On Shri Ravikant Kumar, Kumar Vivek & Associates	FY 2017-2018 and FY 2018-2019	Rs.10000	Rs.10000*2 no.of years = Rs. 20,000/-	10,000
		On Shri Basant Kumar Jaiswal, Basant Jaiswal & Associates	FY 2019-2020	Rs. 10000	Rs. 10000	5000

9. The noticee shall pay the amount of penalty individually by way of e-payment (available on Ministry website [www.mca.gov.in](http://www.mca.gov.in)) under "Pay miscellaneous fees" category in MCA fee and payment Services within 90 (ninety) days of this order. The Challan/SRN generated after payment of penalty through online mode shall be forwarded to this office.
10. Appeal against this order may be filled in writing with the Regional Director (ER), Ministry of Corporate Affairs, Kolkata, within a period of 60 (sixty) days from the date of receipt of this order, in Form ADJ (available on Ministry website [www.mca.gov.in](http://www.mca.gov.in)) setting forth the grounds of appeal and shall be accompanied by a certified copy of this order [Section 454(5) and 454(6) of the Act read with Companies (Adjudication of Penalties) Rules, 2014].
11. Please note that if the noticee does not pay the penalty amount imposed herein within a period of ninety days from the date of receipt of the copy of the order, he shall be punishable with

five thousand rupees but which may extend to one lakh rupees, or with both in terms of section 454(8)(ii) of the Companies Act, 2013; apart from the liability to pay the penalty amount in compliance to this order, and for which prosecution will be filed without further notice in this regard.



(Aparajit Barua)

Adjudicating Officer &  
Registrar of Companies-Cum-  
Official Liquidator, Patna

To:-

- 1) Shri Ravikant Kumar,  
Kumar Vivek & Associates,  
01, Shyameshwari Apartment, Sunhjeet Path,  
Near Pandooi Kothi, Boring Road, Patna - 800001, Bihar.
- 2) Shri Basant Kumar Jaiswal  
Basant Jaiswal & Associates  
1st Floor, Jaiswal House Lal Bhai Society,  
Near Hotel Aastha Inn, Exhibition Road,  
Patna-800001, Bihar

Copy to:-

The Regional Director (ER),  
Ministry of Corporate Affairs,  
234/4 A.J.C. Bose Road, 2<sup>nd</sup> MSO Building,  
2<sup>nd</sup> Floor, Kolkata 700020, for information please.

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04/01/23