

BEFORE THE REGIONAL DIRECTOR
(SOUTHERN REGION)
MINISTRY OF CORPORATE AFFAIRS, CHENNAI
IN THE MATTER OF THE COMPANIES ACT, 2013
SECTION 454(7) OF COMPANIES ACT, 2013

IN THE MATTER OF M/s. MADRAS FERTILIZERS LIMITED

1. M/s. Madras Fertilizers Limited
2. Shri. Ulaganathan Saravanan, Managing Director of M/s. Madras Fertilizers Limited
3. Shri. Harsh Malhotra, Whole-time Director of M/s. Madras Fertilizers Limited

...Applicants/Appellants

Date of hearing : 02.11.2022

Present : 1. Shri. Ulaganathan Saravanan, Managing Director
2. Shri. Harsh Malhotra, Whole-time Director
3. Shri. Ram Ganesh, Company Secretary

ORDER

This is an appeal filed under Section 454 (5) of the Companies Act, 2013 by the above Applicants in Form ADJ vide SRN: F20290342, dated 10.08.2022 against the Adjudication Order No. ROC/CHN/MADRAS/ADJ/Order/S.118/ 2022, dated 30.06.2022 under Section 454 (3) passed by the Registrar of Companies, Chennai, Tamil Nadu for default in compliance with the requirements of Sec. 118(10) of the Companies Act, 2013 read with SS-2 in Clause 14 of Secretarial Standard.

2. As per Sec. 118(10) of the Companies Act, 2013, every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.

3. As per Clause 14 of Secretarial Standard - 'Distribution of Gifts' - No gifts, gift coupons, or cash in lieu of gifts shall be distributed to the Members at or in connection with the meeting.

4. Whereas it is observed that the subject company had given SBI card to all 53 minority shareholders based on their requests. Hence, it is affirmed that the subject company has violated the provisions of Sec. 118(10) of the Companies Act, 2013 read with SS-2 in Clause 14 of Secretarial Standard.

5. The Registrar of Companies, Chennai, Tamil Nadu examined the said default and passed the Adjudication Order No. ROC/CHN/MADRAS/ADJ/Order/S.118/ 2022, dated 30.06.2022 (impugned order) under Section 454 (3) and (4) of the Companies Act, 2013 for default in compliance with the requirements of Sec. 118(10) of the Companies Act, 2013 read with SS-2 in Clause 14 of Secretarial Standard and imposed a penalty of Rs. 25,000/- upon the Company; Rs. 5,000/- upon Shri. Ulaganathan Saravanan, Managing Director; and Rs. 5,000/- upon Shri. Harsh Malhotra, Whole-time Director of the company for the said default respectively.

6. The Appellants have contended the impugned order and pleaded that the non-compliance had occurred due to unavoidable circumstances and default was unintentional.

7. An opportunity of being heard was given to the Appellants on 02.11.2022. The Appellants have appeared while reiterating the grounds taken in the appeal had stated that the 54th AGM was conducted on 29.12.2020 via Video Conferencing due to COVID-19 restrictions and was the first time AGM conducted through electronic means. Prior to the aforesaid AGM, refreshments were given to shareholders when attended physically. The company took a humanitarian approach towards shareholders by giving complimentary gift cards in lieu of the above refreshments and neither a malafide intention nor any detrimental interest vested with the Company in dispatching the same and hence prayed for lenient view.

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8. As per the provisions of Section 205 (1)(b) of the Companies Act, 2013, one of the functions of the Company Secretary shall be to ensure that the Company complies with the applicable Secretarial Standards. It is observed that the company has a whole-time company secretary appointed to ensure compliance with the provisions of the Companies Act 2013. A whole-time Company Secretary of a specified company is a KMP in terms of Sec. 203 of the Companies Act, 2013. It is admittedly the primary duty of the Company Secretary to ensure that the General Meetings including AGMs and Board Meetings are held in accordance with law. In the case of M/s. Madras Fertilizers Limited, the Company had issued gift cards in lieu of refreshments to its shareholders at the 54th AGM conducted vide Video Conferencing on 29.12.2020 due to Covid-19 restrictions.

9. It is the duty of the Company Secretary to take utmost care that the Company complies with all the Secretarial Standards whereas in the instant case, the Company has violated Clause 14 of SS-2 read with Section 118 (10) of the Companies Act, 2013. As such, the Company Secretary alone will be held responsible for the mistake committed. Moreover, when a Company Secretary is appointed, the Managing Director and Whole-time Director can be expected to assume that Company Secretary would take care of compliances with Secretarial Standards and not intervene in those matters. The provisions is Sec. 2(60) also recognizes the Company Secretary who is a KMP as liable for such compliances. In the instant case, the adjudication order suffers from an incurable illegality as the Company, Managing Director and Whole-time Director were held liable to the exclusion of the Company Secretary, who is actually the officer who is in default, therefore, liable to be set aside. Hence, the Penalty imposed on the Company, Managing Director and Whole-time Director is set aside and ROC is directed to initiate necessary action against the Company Secretary alone as sub-section (2) of Section 205 specifically states that the provisions contained in Section 205 shall not affect the duties and functions of the Board of Directors, Chairperson of the Company, Managing Director or Whole-time Director under this Act or any other law for the time being in force.

Dated at Chennai this the 29th day of November, 2022



(Dr. RAJ SINGH)
REGIONAL DIRECTOR (SR)

To

- ✓ 1. M/s. Madras Fertilizers Limited,
Manali, Madras,
Tamil Nadu - 600 068.
2. The Registrar of Companies, Chennai, Tamil Nadu... for necessary action
3. The Officer in Charge, e-Gov. Cell, Ministry of Corporate Affairs, A-Wing, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi -110 001- with a request to upload this Order on the website of the Ministry. Send via mail to Shri. B. Srikumar, Joint Director, (srikumar.b@gov.in) and Shri. Vivek Meena, Asst. Director (vivek.meena@gov.in)