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भारत सरकार/Government of India
कारपोरेट कार्य मंत्रालय/Ministry of Corporate Affairs
कम्पनी रजिस्ट्रार –सह- शासकीय समापक कार्यालय, ओडिशा
Office of the Registrar of Companies –cum- Official Liquidator, Odisha
कारपोरेट भवन, /CORPORATE BHAWAN
द्वितीय एवं तृतीय तल /2ND & 3RD FLOOR
प्लॉट क्रमांक – 9 (पी) सेक्टर – 1, सी डी ए, ओडिशा, कटक-753014
PLOT NO. 9(P), SECTOR-1, CDA, ODISHA, CUTTACK-753014

No. ROC/S.203/2019/Prime Capital/Penalty Order/

Dated , the 4th April, 2019.

Order for Penalty for violation of Section 203(1) of the Companies Act, 2013 read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

PRIME CAPITAL MARKET LIMITED

CIN : L67120OR1994PLC003649

Appointment of Adjudicating Officer :-

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

Company : -

2. Whereas, **PRIME CAPITAL MARKET LIMITED** (herein after referred to as "the Company") is a company registered with this office under the Provisions of the Companies Act, 2013/1956 (or previous Acts in force, as applicable) having its registered office at **PLOT NO. 18A, BJB NAGAR, BHUBANESWAR : 751 014, ODISHA** as per data available with MCA website.

Facts about the Case :-

3. AND WHEREAS, Section 203(1) of the Companies Act, 2013 provides inter alia :
"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 :"

4. AND WHEREAS, Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (herein after referred as "Rules") framed under Section 203(1) of the Act provides inter alia:

"Every listed company and every other public company having a paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel"

5. AND WHEREAS, Rule 8A of the Rules provides inter alia :

"A company other than a company covered under rule 8 which has a paid up share capital of five crore rupees or more shall have a whole-time company secretary"

6. AND WHEREAS, from the records maintained in the MCA21 system it appears that the Company is a listed public company having paid up capital of Rs. 10,00,01,000.00 (Rupees Ten crores one thousand) and failed to appoint whole-time company secretary since 11.04.2018 as provided under Section 203(1) of the Act read with Rule 8 of the Rules. Therefore, the company and its directors/officers who are in default are liable to be punished as prescribed under Section 203(5) of the Act read with The Companies (Amendment) Second Ordinance, 2019.

7. AND WHEREAS, since the company has failed to appoint whole-time Company Secretary in terms of Section 203(1) of the Act read with Rule 8 of the Rules since 11.04.2018, the Adjudicating Officer issued Show Cause Notice under Sub-Rule (2) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014 vide Notice No. ROC/Sec.203/3649/2018/2422(5) dated 31.12.2018 to the company. and its directors/officers in default directing them to Show Cause within 15 (fifteen) days from the date of service of the notice as to why enquiry should not be held against them for the concerned default/non-compliance.
8. AND WHEREAS, in response to the said Show Cause Notice the company through its Managing Director and other directors furnished their replies vide letter dated 31.01.2019 stating inter-alia, "presently due to resignation of their company Secretary casual vacancy has been arisen and company is trying to fulfil that requirement ASAP" and "the company is looking for suitable candidate and will fill the vacancy caused by resignation" respectively.
9. AND WHEREAS, as the replies furnished by the company and its directors are not satisfactory, the Adjudicating Officer issued Show Cause Notice under Sub-Rule (3) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014 vide Notice No. ROC/Sec.454/3649/2019/2729(5) dated 14.02.2019 to the Company and its directors/officer in default directing them to appear personally or through authorized representative on 27th February, 2019 at 3.30 PM before the Adjudicating Officer for hearing on the default.
10. AND WHEREAS, as on the fixed date neither the directors nor any authorized representative appeared before the Adjudicating Officer the matter was adjourned to 27.03.2019 and on the said date Shri Sushil Kumar Purohit, Managing Director of the company appeared and furnished a letter requesting for adjournment. Considering the request of Shri Purohit the matter again adjourned to 4th April, 2019 at 3.30 PM.

ORDER

On the fixed date i.e. 4th April, 2019 Shri Sushil Kumar Purohit, Managing Director of the Company duly authorized by the Board of Directors of the company appeared before the Adjudication Officer and submitted that the Company would initiate necessary steps for appointment of Company Secretary and assured to appoint within 15 days, Shri Purohit also

requested to reduce the penalty for the aforesaid violation of the Act. On verification from the records from MCA21 system it is found that the company has not appointed any whole-time company secretary since 11.04.2018 i.e. after resignation of the ex-company secretary viz. Nikita Sureka with effect from 10.04.2018, hence the default period of the violation is 359 days i.e. with effect from 11.04.2018 (after the date of resignation of ex-company secretary with effect from 10.04.2018) to 04.04.2019 (date of hearing of the matter). Accordingly, I inclined to impose a penalty for a sum of Rs. 5,00,000/- (Rupees five lakhs) on the company viz. PRIME CAPITAL MARKET LIMITED and Rs. 50,000/- (Rupees fifty thousand) and Rs. 1,000/- (Rupees one thousand) per day for the default period of 359 days i.e. Rs. 3,59,000/- (Rupees three lakhs fifty nine thousand) totaling Rs. 4,09,000/- (Rupees four lakhs nine hundred) each on every director and KMP who is in default viz. S/Shri Sushil Kumar Purohit, Surendra Singh, Gwal Das Vyas, Sunil Kumar Dey and Ms. Soraj Devi Kothari for the defaulting period of 359 days i.e. 11.04.2018 (after the date of resignation of ex-company secretary with effect from 10.04.2018) to 04.04.2019 (date of hearing of the matter) for violation of Section 203(1) of the Act read with Act read with Rule 8 of the Rules. It is further directed that the amount of penalty so imposed shall be deposited by way of Demand Draft in favour of "Pay and Accounts Officer, Ministry of Corporate Affairs, Kolkata" payable at Kolkata, before the Office of the ROC –cum- OL, Odisha within 90 (Ninety) days from the date of receipt of this order. It is also directed that the penalty so imposed upon the Officers-in default shall be paid from their personal sources.



(A. K. Mahapatra)
Adjudicating Officer, Odisha
ROC –cum- OL, Odisha