

BEFORE THE ADJUDICATING OFFICER
REGISTRAR OF COMPANIES, GOA, DAMAN & DIU
(ADJUDICATION ORDER NO: ROCGDD/AO/Sec-203/2019/106)

ORDER

UNDER SECTION 454 OF THE COMPANIES ACT, 2013 READ WITH COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014 AS AMENDED BY COMPANIES (ADJUDICATION OF PENALTIES) AMENDMENT RULES, 2019 IN THE MATTER OF VIOLATION OF SECTION 203(1) OF THE COMPANIES ACT, 2013.

In respect of:

PSL LIMITED

L67120DD1987PLC002395

Appointment of Adjudicating Officer:-

1. Ministry of Corporate Affairs vide its gazette notification no SO 831(E) dated 24.03.2015 appointed undersigned as Adjudicating Officer (hereinafter referred to as 'the A.O.')
- in exercise of the powers conferred by section 454 of the Companies Act, 2013 [hereinafter known as **Act**] read with the Companies (Adjudication of Penalties) Rules, 2014 [Notification no GSR 254(E) dated 31-3-2014] for adjudging penalties under the provisions of the Act. The undersigned vide the Companies (Amendment) Ordinance, 2019 is entrusted with power to adjudicate penalty under Section 203 of the Act with effect from 02.11.2018.

Company:-

2. PSL Limited [hereinafter known as **Company**] CIN L17111DD1994PLC009832 is a registered Company with the office of Registrar of Companies, Goa, Daman and Diu and having its present registered address as Kachigam Daman, Union Territory of Daman and Diu 396210, India, as per records maintained by this office in online registry.

Show Cause Notice, Reply and Personal Hearing:-

3. This office issued a Show Cause Notice under Section 203(5) of the Act for non-appointment of Company Secretary in the Company vide no ROCGDD/Penalty/203/2019/3903-3912 dated 17.01.2019. The Company being listed company was required to appoint Company Secretary pursuant to provisions of Section 203 of Act. Company and Directors were called upon to show cause within 15 days for violation of Section 203 of the Act. No response has been received from the company or directors.
4. Thereafter, Notice of Inquiry was issued on 08.02.2019 pursuant to Rule (3) of the Companies (Adjudication of Penalties) Rules, 2014. Company and Officers/Directors (Noticee) were called upon to appear personally or through authorized representative under Rule 3 (3), the Companies (Adjudication of Penalties) Rules, 2014 on 25.02.2019. Response from Mr.Ashok Punj, Managing Director on behalf of the company dated 07.02.2019 received by this office on 11.02.2019 to the SCN dated 17.01.2019 inter alia stating as under:
 - (a) That company have full time Company Secretary namely, Ms.Yashika Chawla who was appointed by the company on 1st December, 2018 and necessary return with respect to said appointment has been filed on 19.01.2019 with this office.
 - (b) That this office notice dated 17.01.2019 has left this office just 2 days before the return filed for said company Secretary appointment.
5. That an email dated 22.02.2019 received from the company inter alia stating as under:-
 - (a) That company has appointed Ms.Yashika Chawla as 'Company Secretary' on 01.12.2018 itself i.e. almost 2 months before receipt of this office SCN dated 17.01.2019 on 28.01.2019.

(b) That they have filed DIR-12 with respect to the above appointment on 19.01.2019 and the SCN dated 17.01.2019 almost crossed each other.

(c) That clarification letter of the company dated 07.02.2019 (which may have been received later) crossed this office notice of inquiry dated 08.02.2019

(c) Company was in receipt of this SCN dated 17.01.2019 on 28.01.2019.

5. That as per MCA portal, the company has filed e-form No. DIR-12 vide SRN H42671990 on 19.01.2019 appointing Ms.Yashika Chawla as Company Secretary w.e.f. 01.12.2018, without attaching the copy of relevant resolution passed by the company for the said appointment. This office issued letter dated 02.05.2019 to the company to provide duly certified copy of the relevant resolution passed by the company in said regard. In response to the this office letter, a reply dated 13.05.2019, received from Company Secretary on behalf of the company inter alia stating that since the company was very keen to comply with section 203 of the Companies Act, 2013. Mr. Ashok Punj the Managing Director had appointed her on 01.12.2018 vide appointment letter issued on the said date containing terms and conditions of the appointment. The said appointment was thereafter duly ratified by the Board of Directors of the company in their very first meeting held on 12.02.2019 after her appointment i.e., within approximately two and half months after her appointment and also attached resolution passed by the Board of Directors in the Board meeting held on 22.02.2019 duly certified by Mr.Ashok Punj, the Managing Director of the company.

Provisions of Companies Act, 2013:-

6. "Section- 203. (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.

(2) Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

(3) A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time:

Provided that nothing contained in this sub-section shall disentitle a key managerial personnel from being a director of any company with the permission of the Board:



Provided further that whole-time key managerial personnel holding office in more than one company at the same time on the date of commencement of this Act, shall, within a period of six months from such commencement, choose one company, in which he wishes to continue to hold the office of key managerial personnel:

Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, specific notice has been given to all the directors then in India.

(4) If the office of any whole-time key managerial personnel is vacated, the resulting vacancy shall be filled-up by the Board at a meeting of the Board within a period of six months from the date of such vacancy.

(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”.

ORDER

7. As per provisions of Section 203(2) of the Companies Act, 2013, appointment of Key Managerial Personnel has to be only through Board Resolution and in instant case company could not produce any Board Resolution for appointment



of Ms.Yashika Chawla, Company Secretary containing terms and conditions of her services.

Even if the version of company is accepted that the Board ratified the appointment on 12.02.2019, there is observed a violation of Section 203 of the Companies Act, 2013, for a period from 02.11.2018 till 11.02.2019.

8. Having considered the facts and circumstances of the case and after taking into account the factors above, The A.O. do hereby impose penalty on Company and its Managing Director as per table below for violation of sub-section(1) of Section 203 of the Companies Act, 2013 read with Companies (Amendment) Ordinance, 2019 for the default period from 02.11.2018 till 11.02.2019. The A.O. is of the opinion that penalty is commensurate with the aforesaid failure committed by the Noticees.

No of Days of Default *	Penalty imposed on Company /Director	Amount of Penalty (In Rs.)	Total (In Rs.)
102 days	On Company PSL Limited	Rs.5,00,000/-	Rs.5,00,000/-
	On Shri Ashok Yoginder Punj, Managing Director	Rs.50,000/- plus + 102 days X Rs.1000 per day = Rs.1,02,000/-	Rs.1,52,000/-

*No. of days have been calculated from 02.11.2018 till 11.02.2019, when the default is rectified and Company Secretary is appointed.

9. The Noticees shall pay the amount of Penalty through the Ministry of Corporate Affairs portal only under intimation to this office.
10. Appeal against this order if any, may be filed in writing with the Regional Director(WR), Ministry of Corporate Affairs, 100, Marine Drive, Everest Building, Mumbai-400002, within a period of sixty days from the date of receipt of this order, in Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of this order. [Section 454 of the Companies Act, 2013 read with Companies (Adjudication of Penalties) Rules, 2014 as amended by Companies (Adjudication of Penalties) Amendment Rules, 2019].

11. Your attention is also invited to section 454(8) of the Act regarding consequences of non-payment of penalty.
12. In terms of the provisions sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014 as amended by Companies (Adjudication of Penalties) Amendment Rules, 2019, copy of this Order is being sent to PSL Limited at Kachigam Daman, Union Territory of Daman and Diu, 396210, India and to Mr.Ashok Yoginder Punj at 19-20, Lotus Court, J. Tata Road, Churchgate, Mumbai – 400020, Mr.Ashok Sharma at A-1/9 DLF Phase 1, Gurugram, Haryana, Gurugram 122002, Mr.Rajinderkumar Suraj Bahri at 38 A, Sunset Heights 59, Palli Hill Road, Bandra (West), Mumbai – 400050, Mr.Naresh Chandra Sharma at B-605, Dosti Blossom, Dosti Acres, Wadala (E), Mumbai – 400037, Mr.Alok Yogender Punj at 1 & 2 Lotus Court, J. Tata Road, Churchgate, Mumbai – 400020, Mr.Harsh Pateria at H. No. 807, Wright Town, Jabalpur - 482002 Madhya Pradesh, Mr.Chitransankumar Jagdishchandra Goel at Plot No - 55, Ward - 2/B Adipur, Kutch Gandhidham 370205, Gujarat, Ms.Manjula Navinchandra Bhatia at C/602, Pluto Vasant Galaxy, M. G. Road, Ext Link Road, Near Bangur Nagar, Goregaon West, Mumbai – 400104, Mr.Harinder Shourie at Kachigam Daman, Union Territory of Daman and Diu, 396210, India and also to Office of Regional Director(WR), Ministry of Corporate Affairs, 100, Marine Drive, Everest Building, Mumbai-400002.

Place:- Panaji, Goa.

Date :- 31.07.2019

Registrar of Companies Goa, Daman & Diu

