

BEFORE THE ADJUDICATING OFFICER
REGISTRAR OF COMPANIES, GOA, DAMAN & DIU
(ADJUDICATION ORDER NO: ROCGDD/AO/92&137/2019/ 17)

ORDER

**UNDER SECTION 454 OF THE COMPANIES ACT, 2013 READ WITH
COMPANIES (ADJUDICATION OF PENALTIES) RULES, 2014.**

In respect of:

GIOVANNI AND ZIBRONNI SHIPPING PRIVATE LIMITED

U35100GA2008PTC005925

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 in exercise of the powers conferred by section 454 of the Companies Act, 2013 [herein after known as **Act**] read with 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 penalties under section 92 and 137 of the Act with effect from 02.11.2018.

Company:-

2. Giovanni and Zibronni Shipping Private Limited [herein after known as **Company**] CIN U35100GA2008PTC005925 is a registered company with the office of Registrar of Companies, Goa, Daman and Diu and having its registered address as Fransa House, Church Square, Betalbatim, Salcete, South Goa, Goa-403713, India as per records maintained by this office in online registry.

Show Cause Notice, Reply and Personal Hearing:-

3. The Show Cause Notices (SCN) under Section 92(5) and 137(3) of the Companies Act, 2013 were issued vide no. ROCGDD/Penalty/2019/Non-filing/4033-4035 dated 23.01.2019 to the Company and its two Directors, Ms. Viola Rosaline Fernandes (DIN:02239601) and Mr.Francisco Xavier Pacheco (DIN: 02243610). The Noticees to SCN were called upon to show the cause for non-filing of Annual Return(s) and Financial Statement(s) pursuant to Section 92 and Section 137 of the Act respectively.

4. Reply to the SCN dated 23.01.2019 was received by this office on 31.01.2019 from the company requesting to grant them few months to file the returns. The said reply of the company was not satisfactory. Thereafter, Notice of Inquiry was issued vide no.ROCGDD/Penalty/2019/Non-filing/4716-4718 dated 13.02.2019 pursuant to Rule (3) of Companies (Adjudication of Penalties) Rules, 2014. Company and Officers/Directors (Noticee) were called upon to appear personally or through authorised representative under Rule 3(3), the Companies (Adjudication of Penalties) Rules, 2014 on 19.02.2019 [between 10.30 AM to 12.30 PM].

During hearing held on 19.02.2019, Ms.Viola Rosaline Fernandes, Director, appeared for the hearing and submitted a letter dated 19.02.2019 stating that there was a CBI raid in 2009-2010 at the registered office of the company, which picked up all the computer and other devices from the office. Thereafter crime branch and Income Tax raids happened in 2014 which made the system of and records of the business transaction in a mess. Further, a year later mining business was suspended by the government due to which financial crises arise in the company, this resulted in delay of payment to the borrower (EDC) and they took over the mortgage assets of the company. The JMFC, Margao sentenced imprisonment to director in 2015. She also submitted an email dated 18.02.2019 of other director Mr. Francisco Xavier Pacheco, who expressed his regret for not able to attend the said hearing in view of his travel to Dubai and requested to adjourn the hearing for one month. As per company's request and considering the facts and circumstances above, matter was listed on 15.03.2019 at 3.30p.m.

During the hearing on 15.03.2019, Ms.Viola Rosaline Fernandes, Director appeared and submitted a letter dated 15.03.2019 requesting for two weeks' time. Adjudicating officer was on leave from 15.03.2019 till 23.03.2019 and an intimation of the same could not be sent to noticee about further adjournment, noticees were informed about next date of hearing i.e 02.04.2019.

During the hearing on 02.04.2019, Ms. Viola Rosaline Fernandes, Director and Mr.Sunil Vaigankar, Accountant of the Company appeared before the Adjudicating officer and submitted that Income Tax Authorities, CBI New Delhi and Crime Branch Police Authorities have made raids at company's registered office and all the books and records and hard disks of computers were seized and taken away by the said authorities, the then staff who were conversant with the company accounts and other transactions left the company. Due to non-availability of the books of accounts/ computer hard disk etc. the statutory returns could not be filed within statutory stipulated time period. Due to above reasons the representatives of the company requested for another 30 days' time to file all

the statutory returns under the Companies Act, 2013. Further, the A.O. informed them in the meeting that this office could not extend stipulated statutory period for filing returns accordingly the hearing concluded and there was no further hearing in this matter.

Provisions of Companies Act, 2013:-

5. Sub-section (1) of Section 92 of the Act provides that every company shall prepare an Annual Return in the prescribed form and sub-section(4) of Section 92 of the Act provides that every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees, as applicable.
6. Every company shall prepare its annual return in the prescribed form containing the particulars as they stood on the close of the financial year regarding—
 - (a) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
 - (b) its shares, debentures and other securities and shareholding pattern;
 - (c) its indebtedness;
 - (d) its members and debenture-holders along with changes therein since the close of the previous financial year;
 - (e) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
 - (f) meetings of members or a class thereof, Board and its various committees along with attendance details;
 - (g) remuneration of directors and key managerial personnel;
 - (h) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
 - (i) matters relating to certification of compliances, disclosures as may be prescribed;
 - (j) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
 - (k) such other matters as may be prescribed, and signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice.

7. Sub-section (5) of Section 92 of the Act provides that if any company fails to file its annual return under sub-section (4) of Section 92 of the Act, before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.
8. Sub-section (1) of Section 129 of the Act provides that company shall prepare a financial statement comply with the accounting standards notified under section 133 of the Act and sub-section (2) of Section 129 of the Act provides that at every annual general meeting of a company, the Board of Directors of the company shall lay before such meeting financial statements for the financial year. Further sub-section (1) of the Section 137 of the Act provides that a copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees, as applicable.
9. Sub-section(3) of section 137 of the Act provides that if a company fails to file the copy of the financial statements under sub-section (1) or sub-section (2) of the section 137, as the case may be, before the expiry of the period specified therein, the company shall be liable to a penalty of one thousand rupees for every day during which the failure continues but which shall not be more than ten lakh rupees, and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of the managing director and the Chief Financial Officer, any other director who is charged by the Board with the responsibility of complying with the provisions of this section, and, in the absence of any such director, all the directors of the company, shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees.

ORDER

10. The Company and its directors have not filed Annual Return(s) and Financial Statement(s) pursuant to sub-section (4) of Section 92 and sub-section (1) of Section 137 of the Act respectively for financial year ending 31.03.2018, thereby attracting penal provisions under sub-section(5) of Section 92 and sub-section(3)



of Section 137 of the Act respectively. Further, an active charge of Rs.4,00,00,000/- is also shown in the Master Data of the company.

The object of filing the annual return of company with the Public Domain is in the public interest, to enable the investors, public and whosoever interested in the company can access the fundamental information about the company and its management. Non-filing of this statutory return will result in denial of information to public about the company.

The object of filing financial statements of a company with MCA portal is to enable the interested public/investors/statutory agencies to access and know about the company state of affairs. The financial statements of a company so filed shall give a true and fair view of the state of affairs of the company. The said statements will become documents of public domain and the interested public can access the said statements through MCA website to know the financial state of affairs of the company as on that date.

11. As per records maintained by this office, notice no.2, Ms.Viola Rosaline Fernandes (DIN:02239601) and notice no.3, Mr.Francisco Xavier Pacheco (DIN: 02243610) are disqualified under Section 164(2)(a) of Companies Act, 2013 for a period from 01.11.2016 till 31.10.2021. Therefore, penalties are not being imposed on them. This Order could not be passed within the stipulated time period as most of the Officials of this office were engaged in Lok Sabha Election duty and the default is continuing as on the date of this order.
12. 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 Directors as per table below for violation of Section 92 and Section 137 of the Companies Act, 2013 for Financial Year ending **31.03.2018**. The A.O. is of the opinion that penalty is commensurate with the aforesaid failure committed by the Noticee.

Document Required to be filed	No of Days of Default *	Penalty imposed on Company /Director	First Default (in Rs)	Default Continues (in Rs)	Total (in Rs)
Financial Statement u/s 137(1) of the Companies Act, 2013	182 days	On Company	Rs.1000X182=Rs.1,82,000/-		Rs.1,82,000/-
Annual Returns u/s 92(4) of the Companies Act, 2013	153 days	On Company	Rs.50,000/-	Rs.100X153=Rs.15,300/-	Rs.65,300/-

No. of days have been calculated from November, 2018 & December 2018 for Financial Statement and Annual Return respectively till 02.05.2019.

13. It is hereby directed to rectify the default immediately from the date of receipt of copy of this Order.
14. The Penalty imposed shall be paid through Ministry of Corporate Affairs portal only.
15. Appeal against this order 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 (Adjudicating of Penalties) Rules, 2014].
16. Your attention is also invited to section 454(8) of the Act regarding consequences of non-payment of penalty.
17. In terms of the provisions of sub-rule (9) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014, copy of this order is being sent to Giovanni and Zibronni Shipping Private Limited at Fransa House, Church Square, Betalbatim, Salcete, South Goa, Goa-403713, India and Ms. Viola Rosaline Fernandes (DIN: 02239601) at HNo.79/A(1), B Resources House B Resources House, Church Square, Binavaddo, Betalbatim, Salcete, South Goa, Goa-403713 and Mr. Francisco Xavier Pacheco (DIN:02243610) at HNo.79/A(1), B Resources House B Resources House, Church Square, Binavaddo, Betalbatim, Salcete, South Goa, Goa-403713 and also to Office of Regional Director(WR), Ministry of Corporate Affairs, 100, Marine Drive, Everest Building, Mumbai-400002.

Place:- Panaji, Goa.

Date:- 03.05.2019

Registrar of Companies Goa, Daman & Diu

Adjudicating Officer

