

BEFORE THE ADJUDICATING OFFICER
REGISTRAR OF COMPANIES, GOA, DAMAN & DIU
(ADJUDICATION ORDER NO: ROCGDD/AO/92&137/2019/1)

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

In respect of:
ISANI AND VIRANI HOTELS PRIVATE LIMITED
U55101GA2004PTC003521

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 Companies (Amendment) Ordinance, 2019 is entrusted to adjudicate penalties under section 92 and 137 of the Act with effect from 02.11.2018.

Company:-

2. Isani And Virani Hotels Private Limited [herein after known as **Company**] CIN U55101GA2004PTC003521 is a registered company with the office of Registrar of Companies, Goa, Daman and Diu and having its registered address as 10, Mapuca Trade Centrefirst Floor , Next to Municipal Market, Mapuca, Goa 403507 India as per records maintained by this office in online registry.

Show Cause Notice, Reply and Personal Hearing:-

A Show Cause Notice (SCN) under Section 92(5) and 137(3) of the Companies Act, 2013 was issued vide no ROCGDD/Penalty/2019/Non-filing/4039-4041 dated 23.01.2019 to Company & two Directors Shri Ashwin Ramakant Khalap DIN 02988548 and Shri NikhilChander Ramakant Khalap DIN 03009283. Noticee to SCN were called upon to show the case for non-filing of Annual



Return(s) and Financial Statement(s) pursuant to Section 92 and Section 137 of the Act respectively. No response was received by this office to this SCN. Thereafter, Notice of Inquiry was issued vide letter no ROCGDD/Penalty/2019/Non-filing/4722-4724 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 authorized representative under Rule 3 (3), the Companies (Adjudication of Penalties) Rules, 2014 on 19.02.2019 [between 10.30 AM to 12.30 PM].

4. Shri Ravindra Chavan, COP No 11494 and Membership No 30984 appeared for the hearing with an authority letter from the Company by way of Board Resolution where Shri Nikhil Ramakant Khalap DIN 03009283 and Shri Ravindra Chavan, Practicing Company Secretary were authorized to represent the Company and Directors but Shri Nikhil Ramakant Khalap did not appear for personal hearing.

5. Shri Ravindra Chavan has submitted a letter dated 18.02.2019 signed by both the Directors which inter alia states as under:-

- a. That Company and Directors are in receipt of the Notice dated 01.10.2018.
- b. That Company has conducted its Annual General Meeting every year and adopted its financial Statements as per the procedure laid down by the Act.
- c. That due to unavoidable reasons, Company was unable to file the same. Company intends to file the same and need some more time to complete the Compliances.

6. Shri Ravindra Chavan submitted during hearing that Company is in Hospitality sector and in last two seasons, there was not much business and therefore, some hard time in preparing accounts and he requested for 45 days for making compliances. However, the further time request is not considered.

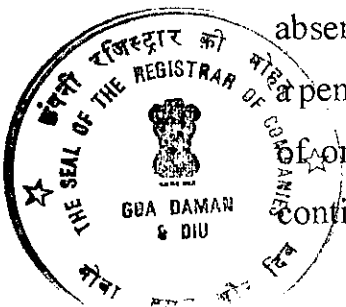
Provisions of Companies Act, 2013:-

7. 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.

8. 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.
9. 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.
10. 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.



Factors to be taken into account by the Adjudicating Officer:-

11. While adjudging quantum of penalty under section 92(5) and 137(3) of the Act, the Adjudicating Officer would take into consideration the following factors, namely:

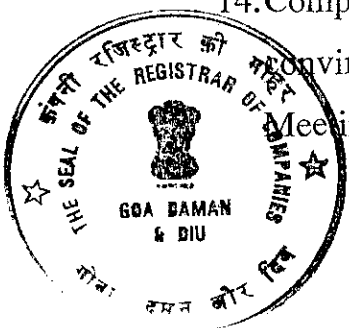
- a. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of default.
- b. The amount of loss caused to an investor or group of investors as a result of the default.
- c. The repetitive nature of default.

12. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the noticees or loss caused to the investor as a result of the delay on the part of the noticees to redress the investor grievance are not available on record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the noticees or the loss caused to the investors in a default of this nature. However, the offence is of serious nature since non-filing of Annual Accounts by the Company put itself out of reach of stakeholders/ regulatory authorities and other concerned.

ORDER

13. The Company has 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.

14. Company and Directors through Authorized Representative could not place any convincing reasons for the delay in filing despite conducted its Annual General Meeting every year and adopted its financial statements as stated in reply to SCN.



15. Having considered the facts and circumstances of the case and submissions made by the Noticees and after taking into account the factors above, I 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. I am 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	111 days	On Company	111 X Rs.1000=Rs.1,11,000/-		Rs.1,11,000/-
		Ashwin Ramakant Khalap	Rs.1,00,000/-	Rs.100X111=Rs.11,100/-	Rs.1,11,100/-
		NikhilChander Ramakant Khalap	Rs.1,00,000/-	Rs.100X111=Rs.11,100/-	Rs.1,11,100/-
Annual Returns	81 days	On Company	Rs.50,000/-	Rs.100X81=Rs.8100/-	Rs.58,100/-
		Ashwin Ramakant Khalap	Rs.50,000/-	Rs.100X81=Rs.8,100/-	Rs.58,100/-
		NikhilChander Ramakant Khalap	Rs.50,000/-	Rs.100X81=Rs.8,100/-	Rs.58,100/-

*No. of days have been calculated from October, 2018 and November, 2018 till Date of Personal Hearing for Financial Statement and Annual Return respectively.

16. The company and it's both the Directors are hereby directed to rectify the default within 30 days from the date of receipt of copy of this Order.

17. Penalty shall be paid through Ministry of Corporate Affairs portal only.

18. 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].



19. Your attention is also invited to section 454(8) of the Act regarding consequences of non-payment of penalty.

20. In terms of the provisions of sub-rule (6) of Rule 3 of Companies (Adjudication of Penalties) Rules, 2014, copy of this order is being sent to Isani And Virani Hotels Private Limited at 10, Mapuca Trade Centre first Floor, Next to Municipal Market, Mapuca, Goa 403507 and to Shri Ashwin Ramakant Khalap DIN 02988548 at 188, Althinho, Mapusa, Goa-403507 India and to Shri NikhilChander Ramakant Khalap DIN 03009283 at 88, Althinho, Mapusa, Goa-403507 India and also to Office of Regional Director(WR), Ministry of Corporate Affairs, 100, Marine Drive, Everest Building, Mumbai-400002.

Place: - Panaji, Goa.

Date:-20.02.2019


(K. S. Reddy)

Registrar of Companies Goa, Daman & Diu

&

Adjudicating Officer

