

Editorial 790

PENALTY FOR NON-COMPLIANCE OF SECRETARIAL STANDARD

SHORT SUMMARY:

As per Section 118 and Secretarial Standard, every Company have to comply with Secretarial Standard for Holding of Meetings of Board of Directors and Members. Further, Company have to disclose the compliance of same in Directors Report.

However, there are lot of Companies registered with Ministry of Corporate Affairs, which are not complying with Secretarial Standard or not disclosing the same in Directors Report.

MCA and ICSI should take action against such Companies. As they are doing Non-Compliance of Provisions of Companies Act,2013.

Appreciating Move by Hon'ble ROC Pune:

As per Data available with MCA ROC Karnataka have issued adjudication orders for many Companies registered in Karnataka for non compliance of Secretarial Standards.

In this editorial we will discuss one of those order:

“Adjudication Order in the Matter of

SDU AGRITECH Private Limited”

I. FACTS OF THE CASE:

- a. In terms provisions of section 118 (10) of the Act-"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 ";
- b. Whereas, as per Clause (9) of Secretarial Standard -1 stipulates "The Report of the Board of Directors shall include a statement on compliances of applicable Secretarial Standards;
- c. it is observed during the course of inspection under section 206 of the Act, the Inspector noticed that the company as per its Board Report for the year 2016-17, 2017-18 and 2018-19 has failed to include the statement on compliance of applicable secretarial standards.
- d. Company and every officer in default were called upon to appear personally or through their authorized representative before the undersigned on 09.12.2021.
- e. Shri Harshvardhan Boratti, PCS and authorized representative informed that the adjudication notice was received only on the previous day before the hearing. Hence he requested for adjournment of the hearing in order to provide the details on the said matter. Hence the hearing was adjourned to 10.01.2022. Due to increase in COVID-19 / OMICRON cases, the physical hearing was deferred. Thereafter, hearing was finally held on 28.02.2022. Shri Harshvardhan Boratti, PCS attended the hearing

- f. ***The Authorised Representative submitted that there is no requirement of showing secretarial standard compliance in the Directors' Report. The submission of PCS is not acceptable as there is a clear direction in the Secretarial Standard-1 about the disclosure.***

➤ **ORDER:**

Accordingly, in exercise of the powers vested under Sec 454 (3) of Companies Act 2013, I hereby impose penalty for non-compliance of the provisions of Section 118(10) r/w 134(5) (f) of the Companies Act, 2013 as under

Particulars	2016-17 (Rs)	2017-18 (Rs.)	2018- 19 (Rs.).	Total (Rs.)
SDU Agritech Private Limited	25000/-	25000/-	25000/-	75000/-
Shri Umesh Hingoroni, Director	5000/-	5000/-	5000/-	15000/-
Smt. Shambavi Hingoroni, Director	5000/-	5000/-	5000/-	15000/-
TOTAL PENALTY				105,000/-

Conclusion:

It was really a great move by the ROC Karnataka against the Companies who are doing Non-compliance of Secretarial Standard. It is our request as professional from all the ROC's in Country to take action and issue notice of

adjudication against all such Companies who are not complying with Secretarial Standard.

Further, Companies who are not complying with the provisions of Companies Act, 2013 must get penalized by the ROC by issue of adjudication orders.

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