भारत सरकार
कारपोरेट कार्य मंत्रालय
कंपनी रजिस्ट्रार का कार्यालय
100, "एवरेस्ट", मरिन ड्राईव, मुंबई - 400002
दूरभाष / TELE : 2281 2627, 2281 2645, 2281 3760
फैक्स / FAX : 2281 1977

GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF THE REGISTRAR OF COMPANIES
100, "EVEREST", MARINE DRIVE,
MUMBAI - 400 002
Website : www.mca.gov.in
e-Mail ID : roc.mumbai@mca.gov.in

शीघ्र डाक सेवा
SPEED POST

No.ROC(M)/CMC/RS/ADJ-ORDER/ 1723-1727 Date :- 31 MAR 2023

Order for Penalty under Section 454 for violation of Section 135 of the Companies Act, 2013.

IN THE MATTER OF RHI MAGNESITA INDIA LIMITED

(CIN: L28113MH2010PLC312871)

1. **Adjudicating Officer : B. Mishra, ICLS, ROC, Mumbai**
2. **Presenting Officer : Rujuta Bankar, ICLS, AROC, Mumbai**

APPOINTMENT OF ADJUDICATING OFFICER:

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 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 for adjudging penalties under the provisions of this Act.

COMPANY:

Whereas the Company RHI MAGNESITA INDIA LIMITED (CIN: L28113MH2010PLC312871) [herein after known as Company] is registered with this office under the provisions of Companies Act, 1956 having its registered address at office of the Unit No. 705, 7th Floor, Lodha Supremus, Kanjurmarg Village Road, Kanjurmarg (East), Mumbai, Maharashtra - 400042.

FACTS ABOUT THE CASE:

1. Application is being filed Suo moto by the Applicant Company and its officers in default to rectify the non-compliances under the provisions of Section 135 of the Companies Act, 2013. That under Section 135 of the Companies Act, 2013 read with Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 notified on 22 January 2021, the Applicant Company was required to transfer its

unspent CSR/ amount to any of the prescribed funds included in Schedule VII of the Act within 6 months from the end of the financial year.

2. As prescribed under Section 135 of the Companies Act, 2013 read with Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 notified on 22nd January 2021, the Applicant Company was required to transfer its Unspent CSR amount as on 31 March 2021 amounting to Rs. 1,35,40,799/- to any of the prescribed funds included in Schedule VII of the Act within 6 months from the end of the financial year i.e., before 30 September 2021. However, the Company was able to deposit only Rs. 32,00,000/- before 30 September 2021.

3. The Applicant Company failed to transfer the Unspent CSR amount of Rs. 103,40,799 (Rupees One Crore Three Lac Forty Thousand Seven Hundred Ninety-Nine) to any of the prescribed funds included in Schedule VII of the Act within the prescribed due date of 30 September 2021. In view of that Applicant Company has committed a default and not complied with provisions of Section 135 of Companies Act, 2013 read with Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 by not transferring unspent CSR amount of Rs. 103,40,799/- to any of the prescribed funds included in Schedule VII of the Act within the prescribed due date of 30 September 2021

4. Subsequently, the default was rectified by the Company in the fall owing manner by transferring unspent CSR amount held with the company to following funds as stated hereunder.

Name of the fund	Amount(in Rs.)	Date of Transfer
Prime Minister's Citizen Assistance and Relief in Emergency situations Fund (P M CARES Fund)	32,00,00	30 September 2021
Prime Minister's Citizen Assistance and Relief in Emergency situations Fund (P M CARES Fund)	1,03,41,000	18 May 2022
Total	1,35,41,000	

<u>Section 135 of the Companies Act, 2013 is reproduced as under:-</u>

5. Provision of the Act & Rule

135. Corporate Social Responsibility. *— (1) Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during any financial year shall constitute a Corporate*

Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

(2) The Board's report under sub-section (3) of section 134 shall disclose the composition of the Corporate Social Responsibility Committee.

(3) The Corporate Social Responsibility Committee shall, –

(a) formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company as specified in Schedule VII;

(b) recommend the amount of expenditure to be incurred on the activities referred to in clause (a); and

(c) monitor the Corporate Social Responsibility Policy of the company from time to time.

(4) The Board of every company referred to in sub-section (1) shall, –

(a) after taking into account the recommendations made by the Corporate Social Responsibility Committee, approve the Corporate Social Responsibility Policy for the company and disclose contents of such Policy in its report and also place it on the company's website, if any, in such manner as may be prescribed; and

(b) ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

(5) The Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy:

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, specify the reasons for not spending the amount.

Explanation. – For the purposes of this section —average net profit shall be calculated in accordance with the provisions of section 198.

HEARING AND REPLY OF THE COMPANY:

6. Sanjay Verma, practicing Company Secretary being authorized representative of the Company attended the hearing in person on 23.03.2023 at 3.30pm.
7. Further, The authorized representation submitted there was no mens rea and default was committed due to unavoidable circumstances, was no mala fide intention and the default is not of such a nature as to prejudice the interests of the members or creditors or others dealing with the Applicant Company. It was committed due to unavoidable circumstances. Application is being filed suo moto by the Applicant Company and its officers in default to rectify the non-

compliances under the provisions of Section 135 of the Companies Act, 2013.It was also stated that the reason for delay in spending the amount of CSR is that employees were affected due to COVID- 19 pandemic and hence compliances could not be made in a timely manner.

8. Authorized representative further submitted that the Company has complied with the provisions of the law and subsequently corrected the default and to kindly take lenient view and impose penalty on the MD only.

FINDING AND OBSERVATIONS

9. The Company through its authorized representative has submitted that penalty should only be levied on the Managing Director.

Section 2(60)of the companies Act, 2013 defines " officers in default" as that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officer of a company namely:-

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;.

Further, Section 2(51) of the Companies Act, 2013 defines "key managerial personal" as, in relation to a company, means –

(i) the Chief Executive Officer or the managing director or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the Chief Financial Officer; and

(v) such other officer as may be prescribed.

Thus, the penalty is being imposed on the MD, Whole Time Director, CFO(KMP) and CS of the company as covered by the definition.

10. Further it is observed that the Secretarial Audit report for the FY 2020-21, points out that there is a shortfall in CSR expenditure to the tune of Rs. 1,03,40,799. The Board in the Directors Report for the FY 2020-21 has acknowledged the same and in the management response has stated that:
"Due to deteriorating global pandemic of COVID-19 in the initial period of F.Y 2021-22, the Company was not able to transfer rest of the unspent money i.e. ` 103.41 Lacs, which was later on deposited by the Company to Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund and subsequently filed an application for compounding of offence with the appropriate authorities.".

11. Further, it is seen from the balance sheet of the company as at 31.03.22 that the paid-up capital of the company is Rs. 1,609 lakhs and its turnover is Rs. 199,070.53 lakhs. Hence the Company does not come under the classification of small company as per the provisions of section 2(85) of the Companies Act, 2013. Hence, the provisions of imposing lesser penalty as per section 446B of the Act shall not be applicable in this case.

ORDER:

12. Having considered the facts and circumstances of the case and after taking into account the factors above, I hereby impose penalty on Company and its Officers in default, as per Companies (Amendment) Act, 2020 and w.e.f 22/01/2021, for violation of provisions of Section 135 of the Companies Act, 2013 as per table given below.

No. of days of default (■)	Penalty imposed on Company/ Director(s)	Total CSR Amount unspent	Total Penalty in (Rs.)	**Maximum Penalty in (Rs.)**
	RHI Magnesita India Limited	103,40,799	103,40,799 x 2 = 20,681,598	1,00,00,000
	Shri. Parmod Sagar, Managing Director	103,40,799	103,40,799/10 = 10,34,079.9	2,00,000
	Shri. Rudraraju Suryanarayana Raju Venkata, Wholetime Director	103,40,799	103,40,799/10 = 10,34,079.9	2,00,000
	Mr. Sanjeev Bhardwaj, CFO (KMP)	103,40,799	103,40,799/10	2,00,000

			= 10,34,079.9	
	Mr. Sanjay Kumar (Company Secretary)	103,40,799	103,40,799/10 = 10,34,079.9	2,00,000
		TOTAL PENALTY		**1,08,00,000**

(■) The period of violation of provisions under Section 135 of the Companies Act, 2013.

I am of this opinion that, the penalty is commensurate with the aforesaid failure committed by every officer of the Company.

13. The Noticee shall pay the said amount of penalty through "Ministry of Corporate Affairs" portal and proof of payment be produced for verification within 30 days of receipt of this order.

14. Please note that as per Section 454(8)(i) of the Companies Act, 2013, where company does not pay the penalty imposed by the Adjudicating Officer or the Regional Director within a period of ninety days from the date of receipt of the copy of the order, the company shall be punishable with fine which shall not be less than twenty-five thousand rupees, but which may extend to five lakh rupees.

15. Where an officer of a company who is in default does not pay the penalty within a period of ninety days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than twenty-five thousand rupees, but which may extend to one lakh rupees, or with both.

    Therefore, in case of default in payment of penalty, prosecution will be filed under Section 454(8)(i) and (ii) of the Companies Act, 2013 at your own cost without any further notice.

B. Mishra

(B. Mishra)
Registrar of Companies and Adjudicating Officer,
Maharashtra, Mumbai.

To

1. **RHI Magnesita India Limited**
   Unit No. 705, 7th Floor, Lodha Supremus,
   Kanjurmarg Village Road, Kanjurmarg (East) Mumbai 400042.

2. **Shri. Parmod Sagar, Managing Director**
   902, Basil Tower, Salcon, The Verandas,
   Sector-54 Gurugram, Haryana, India – 122011.

3. **Shri. Rudraraju Suryanarayana Raju Venkata, Wholetime Director**
   46, Sunny Isles, Rushikonda, Visakhapatnam,
   Andhra Pradesh India – 530045.

4. **Mr. Sanjeev Bhardwaj, CFO(KMP)**
   House No. 233, Sector- 21A, Faridabad, Haryana, India – 121001

5. **Mr. Sanjay Kumar (Company Secretary)**
   312, SF, Orchid Island, Sector 51, Gurugram, India – 122001

6. **Copy to:-**
   The Regional Director (WR), } For information.
   Ministry of Corporate Affairs, }
   Mumbai. }

167

भारत सरकार
कारपोरेट कार्य मंत्रालय
कंपनी रजिस्ट्रार का कार्यालय
100, "एवरेस्ट", मरिन ड्राईव, मुंबई - 400002
दूरभाष / TELE : 2281 2627, 2281 2645, 2281 3760
फैक्स / FAX : 2281 1977

GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
OFFICE OF THE REGISTRAR OF COMPANIES
100, "EVEREST", MARINE DRIVE,
MUMBAI - 400 002
Website : www.mca.gov.in
e-Mail ID : roc.mumbai@mca.gov.in

No.ROC(M)/CMC/RS/ADJ-ORDER/ 153 RD- 30 Date : 25 APR 2023

Order for Penalty under Section 454 for violation of Section 135 of the Companies Act, 2013.

IN THE MATTER OF RHI MAGNESITA INDIA LIMITED

(CIN: L28113MH2010PLC312871)

1. **Adjudicating Officer : B. Mishra, ICLS, ROC, Mumbai**
2. **Presenting Officer : Rujuta Bankar, ICLS, AROC, Mumbai**

CORRIGENDUM

With reference to and in continuation of this office order No. ROC(M)/CMC/RS/ADJ-ORDER/1723-1727 dated 31.03.2023 Fromm RHI MAGNESITA INDIA LIMITED, it is noted that the said order contained certain inadvertent error and the correction made is as follows:

Sr.	Particulars	Error	Correction
1.	Para. No.6 of the order, 1st Line	CS Sanjay Verma	CS Sanjeev Kumar

The other facts of the aforesaid order will remain same.

(B. Mishra)
Registrar of Companies and Adjudicating Officer,
Maharashtra, Mumbai.

To,

1. **RHI Magnesita India Limited**
   Unit No. 705, 7th Floor, Lodha Supremus,
   Kanjurmarg Village Road, Kanjurmarg (East) Mumbai 400042.

2. **Shri. Parmod Sagar, Managing Director**
902, Basil Tower, Salcon, The Verandas,
Sector-54 Gurugram, Haryana, India - 122011.

3. **Shri. Rudraraju Suryanarayana Raju Venkata, Wholetime Director**
46, Sunny Isles, Rushikonda, Visakhapatnam,
Andhra Pradesh India - 530045.

4. **Mr. Sanjeev Bhardwaj, CFO(KMP)**
House No. 233, Sector- 21A, Faridabad, Haryana, India - 121001

5. **Mr. Sanjay Kumar (Company Secretary)**
312, SF, Orchid Island, Sector 51, Gurugram, India - 122001

6. **Copy to:-**

The Regional Director (WR),	}	For information.
Ministry of Corporate Affairs,	}	
Mumbai.	}	