

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH**

CP No. 48/Chd/J&K/2023

**Under Section 252(3) of 'The
Companies Act, 2013' read with Rule
87A of the National Company Law
Tribunal (Amendment) Rules, 2017**

IN THE MATTER OF:

M/s Ehhutmia Solutions Private Limited,
(CIN No. U72900JK2020PTC011404)
(Through its Director, Sh. Shah Ehtisham Ul Haq),
having its registered office at
First floor, Taploo Complex, Dulla Bagh Soura,
Srinagar, Jammu & Kashmir- 190011
PAN: AAFCE8679P

..... Petitioner

Versus

1. Registrar of Companies, Jammu and Kashmir

Hall No. 405-408, South Block,
Bahu Plaza, Rail Head Complex,
Jammu-180012

2. Income Tax Department, Jammu

(Through, Nodal Officer- Chief Commissioner of Income Tax)
Silky Factory Road, Rajbagh,
Srinagar, 190008

.....Respondents

Order delivered on: 07.05.2024

**Coram: HON'BLE DR. P.S.N PRASAD, MEMBER (JUDICIAL)
HON'BLE MR. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

Present:

For Appellant : Mr. Karanveer Jindal, Proxy Counsel for Ms. Veenu
Marwaha, Advocate

For Registrar of Companies: Ms. Deepmala Bagri, AROC

**Per: HON'BLE DR. P.S.N PRASAD, MEMBER (JUDICIAL)
UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

ORDER

This Company Appeal has been filed by **M/s Ehhutmia Solutions Private Limited** (CIN No. U72900JK2020PTC011404) having its registered office at First floor, Taploo Complex, Dulla Bagh Soura, Srinagar, Jammu & Kashmir-190011 (hereinafter referred to as 'Company') under section 252(3) of the Companies Act, 2013 (hereinafter referred to as the "Act") read with Rule 87A of the National Company Law Tribunal (Amendment) Rules, 2017 (hereinafter referred to as the "Rules") against the order passed by the Registrar of Companies, Jammu & Kashmir (hereinafter referred to as the "RoC") to strike off the name of the company vide notice dated 01.11.2022.

2. As the registered office of the company is in Srinagar, Jammu and Kashmir, this appeal is within the territorial jurisdiction of this Tribunal.

FACTS OF THE CASE

3. The facts of the case, as submitted in the petition, are as below:

- (i) The company bearing a CIN: U72900JK2020PTC011404 was incorporated in Chandigarh under the provisions of the Companies Act, 2013 in the name and style of M/S Ehhutmia Solutions Private Limited on 16.03.2020 vide Certificate of Incorporation issued by the RoC.
- (ii) The authorised as well as issued, subscribed & paid up share capital of the company is Rs.1,00,000/- divided into 1000 equity shares of Rs.100/- each and there is no material change in share capital structure of the company subsequent to 31.03.2023. The copy of Master Data & Certificate of

Incorporation have been attached with the Appeal as Annexure P-01 and Annexure P-5 respectively.

- (iii) At present, the company is managed by two directors namely Mr. Shah Ehtisham UI Haq (DIN 08399279) and Mr. Irfan Rehman (DIN 08724622), which are also its two shareholders, each holding 500 equity shares of Rs.100/- each. A copy of signatory details and list of shareholders of the company has been annexed with the Appeal as Annexure P-7 and Annexure P-8 respectively.
- (iv) The appeal has been filed through its Director, Shah Ehtisham UI Haq (DIN No: 08399279) vide Board Resolution dated 01.03.2023 (copy of the Board Resolution of authorisation dated 01.03.2023 has been attached with the Appeal as Annexure P-2) with the consent of all of its shareholders for filing the petition (copy attached with the Appeal as Annexure P-3).
- (v) The RoC struck off the company's name from the register of companies due to default of statutory compliance, namely failure to file financial statements and annual returns for the year 2021-2022 vide notice no. STK-7/ROC/JMU/2022/1464 dated 01.11.2022 at entry no.124 (attached with the Appeal as Annexure P-4).
- (vi) While carrying out the business and operations of the company, it came to the knowledge of the existing directors that inadvertently, the statutory filing with the RoC has not been done in terms of the provisions of the Companies Act, 2013. The Company attempted to file the financial statements, Notice & Director report, MGT-9 and other statutory returns from the year ending at 31.03.2021 to 31.03.2022, however the same was

not accepted by the RoC. The copy of auditors report and financial, statements of the company from the year ended at 31.03.2021 to 31.03.2022 have been attached with the Appeal as Annexure P-9.

- (vii) The petitioners were shocked to observe that the name of the company under the column of the company status was shown as "strike off" and after inquiry about the same from the RoC, it was informed that the name of the company has been struck off due to non-filing of the statutory forms and statutory returns and the name of the company has been removed from the Register of Companies maintained by RoC. The said act done by RoC was not in the knowledge of the petitioner and the same fact came to the knowledge only by themselves and further no notice has been issued to the petitioner before the name was struck off.
- (viii) The company was operative from the time of its incorporation and the business of the company was never terminated ever since the company commenced its business. It has maintained its current account with Jammu and Kashmir Bank Ltd. Anchar, Srinagar Branch, in the name of the company M/s Ehhutmia Solutions Private Limited bearing account number 0173010100002860, to carry on day to day business transactions of the company effectively. A copy of bank statements representing the current account transactions of the company maintained in Indian Bank for the period of 25.02.2021 to 18.03.2023 representing the continuous operational performance of the company have been attached with the Appeal as Annexure P-10.

- (ix) The Company has been doing its business and operation on a going concern basis during the last financial years and has attained the growth, which was desired by the management of the company to achieve the desired elevation in industry, in which the company was operative in the previous financial years and therefore, the strike off of the business and operation of the company has deprived the efficient running and operations of the company. The copy of the invoices sales and service contracts have been attached with the Appeal as Annexure P-11.
- (x) The directors of the company possess the expertise in the business industry, in which the company operates, however, due to lack of professional, legal and lack of acquaintance of other statutory compliance under company law, income tax and other relevant laws as applicable on the company, they had appointed a concerned professional, i.e. Chartered Accountant being in the capacity of compliance auditor of the company to adhere with all the legal requirements and for timely filing of the returns, financials and other related documents before various statutory and regulatory authorities since the inception of the company. However, due to non-compliance on the part of the said consultant, the annual returns and financial statements could not be filed. The non-adherence to the legal requirements and prerequisites of the law was completely unintentional and without mala fide intent or consciously and was completely a human error caused due to lack of knowledge of the management of the company.
- (xi) Due to non-filing to the documents, it gave an impression to the RoC that the company has been non-operative and has not commenced its business

from the time of incorporation of the company or has not been carrying its business or operations for a period of two immediate preceding financial years.

- (xii) The company did not receive any show cause notice, nor was it afforded any opportunity of being heard before the aforesaid action was taken by the RoC.
- (xiii) The Company has timely filed all the annual and statutory returns in compliance of provision of other acts such as, Income Tax Act and Finance Act, however due to not being fully conversant with the statutory provisions and further being relied upon the Chartered Accountants appointed for the said work, due returns/ statements could not be uploaded at the website of MCA. There is no gap in filing income tax returns, hence, it is clear that the company was operative and in working. The copy of the acknowledgement of income tax returns of the A.Y. 2022-23 has been attached with the Appeal as Annexure P-12.
- (xiv) The company has been regular in preparing annual accounts and was timely holding its board meetings and general meetings of the shareholders as and when required, maintained proper records, registers as required under the Companies Act, 2013 or erstwhile Companies Act, 1956.
- (xv) Neither the company nor its directors were aware of the fact that the name of the company is in the list of companies being struck off by the RoC and their name is proposed to be removed from the register of companies by it. The RoC has not followed the procedure prescribed under Section

248(1) of the Companies Act, 2013, notices as required under Section 248(1) were not sent and has now proceeded to issue notice under Section 248(5) publishing the name of the company vide gazette notification notice dated 01.11.2022. Such dissolution was given effect in pursuant to Section 248(5) of the Companies Act, 2013 without complying with provision of sub-section (6) to the Section 248 of Companies Act, 2013, whereby it is mandatory for ROC to make sufficient provision for realization of all the amount due to the company and for the payment or discharge of its liabilities and obligations by the company within a reasonable time and after obtaining necessary undertakings from the Managing Directors, Directors or from any other person in charge for the management, if necessary, before passing any such order of dissolution. However, neither the company nor its directors were in receipt of any prior information before publication of such notice of dissolution of the company in the official gazette.

(xvi) The company was operative in the previous financial years and therefore the strike off of the business and operation of the company has deprived the efficient running and operations of the company. An affidavit to the effect that, at the time, when the name of the company was struck off by the RoC, it was carrying on business and was in operation has been attached with the Appeal as Annexure P-13.

(xvii) The striking off of the name of the company from the register of RoC would result in bringing the working of a running company to stand still, thereby adversely affecting not only the interest of the company, but also its

shareholders and other stakeholders, so the name of the company be restored and it be allowed to file all the statutory documents and get back to the normal stage in order to reap the benefits of the present business for the shareholders.

- (xviii) In the event of revival of the company and restoration of the name of the company in the register maintained by the RoC, the company shall file all outstanding statutory documents i.e. the financial statements from the period 2021-2022 along with the filing fees and the additional fee, as applicable on the date of actual filing and the certified copy of the Tribunal for the restoration of the name of the company to the register maintained by the RoC, etc. and shall pay all the pending amount due, if any, to the income tax department.
- (xix) Unless the name of the company is restored on the register of companies maintained by RoC, the company and its shareholders shall suffer irreparable loss and hardship and will be highly prejudiced and the present appeal is made bona fide and in the interest of justice.
- (xx) By virtue of section 252(3) of the Companies Act, 2013, the appeal could be filed within twenty years from the date of order of RoC notifying the name of the company as dissolved. As the name of the company was struck off vide gazette notification dated 01.11.2022, the petition has been filed within the limitation period in accordance with the provisions of the Limitation Act, 1963.
- (xxi) The matter regarding which this appeal has been made, is not pending before any Tribunal of Law or any other authority or any other tribunal.

4. This Tribunal directed to issue notice to the RoC and Income Tax Department, vide order dated 02.05.2023. The appellant company has filed Affidavit of Compliance vide diary no.01381/01 dated 02.06.2023.

REPORT OF THE ROC

5. The RoC vide letter No. ROC/JMU/252(3)/2023-24/NCLT/78 dated 10.08.2023 submitted by post its written statement (Diary no. 278 dated 16.08.2023), wherein it has submitted the following facts:

- i. As per the record of MCA-21, the company M/S Ehhutmia Solutions Private Limited was incorporated on 16.03.2020 as a private limited company having CIN U72900JK2020PTC011404 and registration number 011404. The company was obliged under sub-section (1)(a) of section 10A of the Companies Act, 2013 to file e-form INC-20A for the commencement of its business activities within 180 days of its incorporation. As on date, Sh. Shah Ehtisham Ul Haq and Sh. Irfan Rehman are the directors of the company.
- ii. Despite the statutory requirement, the petitioner company failed to fulfil its statutory obligation and did not file the required e-form INC-20A within the stipulated time frame viz. 180 days of its incorporation under sub-section (1)(a) of section 10A of the Companies Act, 2013. As a result, the RoC initiated the necessary action as per the provisions of sub-section (1)(d) of section 248 of the Companies Act, 2013 read with Rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 for striking off the name of the company from the Register of Companies.

- iii. The company alleges that no notice was given by the RoC before the strike off. However, the RoC did, in fact, issued a notice in Form No. STK-1 dated 28.01.2022 followed by 09.09.2022 to the registered office of the petitioner company and its directors at their addresses as available on the records of MCA portal intimating the impending strike off and providing an opportunity of being heard. Therefore, the contention raised by the company lacks merit.
- iv. It is a matter of record that the petitioner company and its directors failed to respond to the said notice issued in Form No. STK-1.
- v. The contention raised by the company regarding the unintentional non-filing of financial statements and annual return since incorporation is duly noted. However, it is essential to emphasize that the RoC served a notice in Form No. STK-1 pursuant to sub-section (1)(d) of section 248 of the Companies Act, 2013 for non-filing of e-form INC-20A within 180 days of its incorporation under sub-section (1)(a) read with sub-section (3) of section 10A of the Companies Act, 2013 and not for non-filing of the financial statements and annual returns. This indicates that the RoC followed appropriate legal procedure.
- vi. The company's claim of being operative at the time of its incorporation lacks merits, as the financial statements for the year ended 31.03.2021 disclose that the operational income/ other income and the expenses during such year were Nil, which indicates that it was not in operation from the date of incorporation till the closure of the first financial year.
- vii. The provisions of sub-section (1)(a) of section 10A of the Companies Act, 2013 of filing e-form INC 20A is of utmost significance that the company has

commenced its business operations and is actively conducting its affairs. The company's failure to comply with this fundamental requirement undermines the essence of corporate governance and regulatory norms established under Companies Act, 2013.

- viii. The financial statements for the financial year ended 31.03.2021 attached by the petitioner along with the petition raises concern. The company appears to have prepared these statements for apparent compliance only and it may misrepresent the actual financial situation, since such statements have been signed on 01.03.2023, which denotes that the company had not conducted its 1st Annual General Meeting to adopt the financial statements within 9 months from the date of closing of the first financial year as provided in first proviso to sub-section (1) of section 96 of the Companies Act, 2013. Therefore, the petitioner company is liable to be adjudicated for the same in accordance with the provisions of section 454 of the Companies Act, 2013.
- ix. The strike-off action taken by the RoC against the company was in full compliance with the provisions of sub-section (1)(d) of section 248 read with sub-section (1)(a) and (3) of section 10A of the Companies Act, 2013 and the rules made therein.
- x. The RoC has no objection, if the name of the company is restored in the "Register of Companies" as maintained by it under the provisions of Companies Act, 2013. The company and its directors may be directed to file all the pending documents along with the requisite fee and additional fee as prescribed in the Rules. However, the gazette notification cannot be set aside, as it was published in accordance with the law and no illegality has

been committed by the RoC as alleged by the company in its petition filed under section 252(3) of the Companies Act, 2013.

6. It has been prayed in the RoC Report that:

a) If the name of the company is restored in the Register of Companies maintained by it, the cost may be awarded to the RoC and necessary direction, if any, may be issued to the company by the Hon'ble Tribunal to ensure the compliance of provisions of the Companies Act, 2013 regarding filing of all the statutory documents.

b) According to the provisions outlined under section 252 of the Companies Act, 2013 and the rules made therein, gazette notification is not required anywhere during the process of restoration of the name to the register of companies maintained by the RoC, however, if the Hon'ble Tribunal directs for such an action, then associated expenditure may be borne by the company/petitioner itself.

REPORT OF INCOME TAX DEPARTMENT:

7. The Income Tax Department filed its report vide diary no.01381/3 dated 03.11.2023, wherein it has been submitted that:

i. After consulting the record, it has been found that the company i.e. M/s Ehhutmia Solutions Private Limited was incorporated on 16.03.2020 and as of now, no demand is outstanding against the company, nor any proceedings are pending. The return of income for the assessment year 2022-23 has been filed by the company on 01.04.2023.

- ii. Appropriate orders may kindly be passed and the interest of the revenue be protected and the liberty may kindly be granted to the Revenue to proceed against the company for default(s), if any, under the provisions of the Income Tax Act, 1961, and the company may also be directed to discharge the demand, if any, found later on.

ANALYSIS AND FINDING

8. We have heard the submissions of the Ld. Counsel of the appellant company and Ld. Senior Standing counsel for the Income Tax Department and also perused the written statement of RoC, report of income tax department and paper book of the case file.

9. As per the RoC report, the date of publication of notice in the form of STK-7 under section 248(5) is 01.11.2022 and the appeal for restoration of name under section 252(3) can be filed within 20 years from 01.11.2022. As the appeal has been filed vide diary no. 01381 dated 21.04.2023. The appeal is within the period of limitation.

10. The Appellant Company had filed IA(CA) No.13/2023 vide diary no. 01475 dated 02/05/23, wherein it was prayed to issue ad-interim ex-parte directions to unfreeze the Bank Account No. 01731010100002860 in Jammu and Kashmir Bank, Anchar, Srinagar Branch of the company and allow the company to realize the amount due to the company or discharge the liabilities or obligations of the company pursuant to section 250 of the Companies Act. The said application was allowed by this Tribunal, vide its order dated 15.05.2023 and keeping in view of the facts and circumstances pleaded by the company, Jammu and Kashmir Bank was directed to defreeze the

said bank account temporarily till final disposal of the main application on merits to carry out day-to-day business transactions.

11. The name of the company was struck off under section 248(1)(d) of the Companies Act, 2013 for non-filing of e-form INC-20A within 180 days of its incorporation under section 10A(1)(a) read with section 10A(3) of the Companies Act, 2013 and not for non-filing of the financial statements and annual returns as pleaded by the appellant.

12. The Institute of Chartered Accountants (ICAI) has envisaged the concept of Unique Document Identification Number (UDIN) to counter misrepresentation of Chartered Accountants and forgeries of signatures of CA's that mislead the authorities and stakeholders relying upon such documents or certificates and has made it mandatory to generate the UDINs for all the certificates, reports and documents issued/ certified by them w.e.f. 1st July, 2019. However, it is noted that the financial statements for the years 2020-21 and 2021-22, submitted, as an evidence of carrying on business by the company, which has been audited by Arshad Hussain Mir, Chartered Accountant, (Partner of Amir Jan & Associates) vide auditors certificate dated 01.03.2023 and 01.03.2022 respectively, but the same does not have UDIN. A copy of the order may be sent to The Secretary, The Institute of Chartered Accountants of India, ICAI Bhawan, Indraprastha Marg, New Delhi - 110 002 for suitable actions, as may be required under the law.

13. In addition to the financial statements, the company has also submitted the following documents:

- (i) Sales and Service Contracts between Daljeet Singh, Amritsar and the company dated 25.03.2023 for regular computer maintenance services for

a period of 48 months, which provides for payment @ Rs.3000/- for 8 hours of work per week/ month plus Rs.1000/- per hours for any maintenance not covered in the agreement.

- (ii) Copy of 3 Invoices dated 30.10.2022, 30.11.22 and 31.1.2023 (each for \$3200) amounting to Rs.2,52,800/-, Rs.2,56,000/- and Rs.2,56,000/- respectively raised by the company to COMSUPPORT 247 LLC, 1429, Vienna Rd. SW Canton, Ohio 447706.
- (iii) Copy of Bank Statement of Bank Account No. 01731010100002860 in Jammu and Kashmir Bank, Anchar, Srinagar Branch from 25.02.2021 to 18.03.2023 of the company showing various receipts from COMSUPPORT 247 LLC during the above period.
- (iv) Copy of the acknowledgement of income tax return for the financial year 2021-22 (assessment year 2022-23) of the company showing the total income of Rs.10,160/- and tax paid of Rs.4500/-
- (v) Affidavit dated 05.04.23 of carrying on Business and Operations” by the company signed by Shah Ehtisham Ul Haq, Director of the Company.

14. After careful consideration of the report of RoC, Income Tax Department and documents mentioned at (i) to (v) above, this Tribunal is of the view that it would be just, equitable, and fair in the interest of justice to provide an opportunity to the company to rectify its defaults and continue the business. Accordingly, this Tribunal, in the exercise of the powers conferred on it under Section 252 of the Companies Act, 2013, orders that:

- (i) The RoC, subject to payment of costs of Rs.1,00,000/- (Rupees One Lakh only) to be paid by the appellant in favour of “Prime Minister's National Relief Fund (PMNRF)” is directed to restore the original status of the company, as if the name of the company had not been struck off from the register of companies with the resultant and consequential actions like changing status of petitioner company from ‘struck off’ to ‘active’.
- (ii) The appellant is directed to deliver a certified copy of this order to the RoC, within thirty days of the receipt of this order.
- (iii) On such delivery and after due compliance with the above directions, the RoC is directed to publish the order in the official gazette under his office, name and seal, for which the associated expenditure would be borne by the company/appellant.
- (iv) The appellant is directed to file with the RoC all the pending documents, including all the due annual returns, balance sheets with UDIN of the company and form INC 20A along with the requisite fee and additional fee as prescribed in the Rules and fines/ penalty as decided by RoC, within 45 days from the date, on which its name is restored on the register of companies maintained by the RoC.
- (v) This order is confined to the violations, which ultimately led to the impugned action of striking off the name of the company. It will not come in the way of the RoC, to take appropriate action in accordance with the law for any other violations/ offences, if any, committed by the appellant/ company prior to or during the period, when the name of the company remained struck off.

(vi) The Income Tax Department is granted the liberty to proceed against the appellant/ company for non-filing/ belated filing of the return of income/ other default(s) under the provisions of the Income Tax Act, 1961 and the appellant is directed to discharge the outstanding demand and the demand, if any, found later on against the company.

15. The C.P. No. 48/Chd/J&K/2023 is allowed. The case papers and folders may be consigned to the Record Room.

16. The Registry is directed to send/ e-mail copies of the order forthwith to all the parties including the counsel.

Sd/-
(Umesh Kumar Shukla)
Member (Technical)

Sd/-
(Dr. P.S.N Prasad)
Member(Judicial)

May 07, 2024
AKS