

**IN THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK**

C.P No. 14/CB/2023

In the matter of:

An Application under Section 271 and 272 of the Companies Act, 2013 under Chapter XX thereto;

-And-

In the matter of:

The Registrar of Companies-cum-Official Liquidator, Odisha, Cuttack, having its office at Corporate Bhawan, 2nd & 3rd Floor, Plot No. 9 (P), Sector-1, CDA, Cuttack-753 014;

... Petitioner

-Versus-

1. KKDL Nidhi Limited, CIN: U6599OR2011PLC014338, a company incorporated under the Companies Act, 1956 and having its Registered Office at Gandhi Nagar, 2nd Lane, Extension, Berhampur-760001, Odisha;

2. Sujata Dash, Director, Bank Colony, 8th lane, near AIR Luchapada Road, Berhampur, Ganjam, PIN-760001, Odisha;

3. Bamana Charana Das, Managing Director, At/Po- Laxmi Nagar, Berhampur Municipality, Berhampur, Ganjam, PIN-760001, Odisha;

4. Santosh Kumar Panda, Director, At- Vill/Ward No. 35, P.S. Baidyanathpur, Distt: Ganjam, Berhampur, PIN: 760 010, Odisha;

5. Hara Prasad Das Additional Director, S/o- Shri Bipra Charan Das, At Village/Ward-Guradeipur, G.P./Town-Kodla, P.S.- Kodala, Dist: Ganjam, PIN-761032 Odisha.

...Respondents

Coram:

Shri P. Mohan Raj : Member (Judicial)
Shri Kushalendra Kumar Singh : Member (Technical)

Appearances (through video conference)

For Petitioner : Mr. Ujjwal Kumar
(Company Prosecutor)

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Order reserved on: 01.11.2023

Order pronounced on: 29.11.2023

ORDER

1. This instant Winding up Petition is filed by **The Registrar of Companies, Odisha (ROC)** ("petitioner") to initiate winding up proceedings under Section 271 (1) (d) to 275 of the Companies Act, 2013 against the **KKDIL NIDHI Limited** having **CIN: U6599OR2011PLC014338**. The petition has been filed on the grounds that the affairs of the company has been conducted for fraudulent and unlawful purpose under Section 271 (e) and that the company has defaulted in filing its financial statements with the registrar as per Section 271 (d) of the Companies Act, 2013.
2. It is alleged that the Respondent Company has committed default in filing of Statutory Returns i.e., Financial Statements and Annual Returns with the ROC for more than the last five consecutive financial years i.e., from financial years ending on 31.03.2014 till the financial year ending on 31.03.2021, as required under provisions of Section 92 and 137 of the Companies Act, 2013.
3. It is submitted that the Ministry of Corporate Affairs had directed the petitioner to inquire under Section 206 (5) of the Companies Act, 2013 and directed to submit the report in the matter of KKDIL group companies and vide its File No. 4/15/2017/CL-II(ER) dated 10.08.2017 and the same was allocated to Shri AK Mahapatra, then ROC-cum-OL, Odisha vide Directorate's letter no. JD (Inspn.) Cal/MISC-4/Part-1/15059 dated 15.01.2018. In the said inspection report dated 31.12.2018, the Inspecting Officer observed that the Company did not file its Balance Sheet/ financial statements for the years ended 31.03.2014, 31.03.2015, 31.03.2016 and 31.03.2017. The said inspection report containing preliminary findings of the Inspecting officer is marked as **Annexure-III**.

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4. It is submitted that the supplementary inspection was carried out with reference to the Directorate's letter No RD/T/2565/Inspection/19/9242 dated 20.01.2022 followed by Directorate's letter dated 18.05.2022. In the supplementary inspection report dated 2.06.2022 Shri AK Sethi, then ROC-cum-OL Odisha cum inspecting officer in Annexure-I proposed that winding up petition may be filed against the Company. The said supplementary inspection report is marked as **Annexure-I**
5. It is observed by the ROC that, various complaints were received against the company alleging that the company is collecting public deposits, by way of RD/SB/Fixed Deposit, through various branches claiming that the Nidhi Company has permission from the ROC to carry out its business all over India. Further, it is observed by the ROC that, the company has filed its statutory Returns i.e., Annual Return and Balance Sheet up to the financial year ended. 31.03.2013. Hence, the company is in default in filing its Statutory Returns since 2013-14 which attracted the action under Section 271 (d) of the Companies Act, 2013.
6. Further, it is observed by the ROC that the company was incorporated as a Nidhi Company under the Companies Act, 2013 but the company has also not filed any Return viz: NDH-1, NDH-3, NDH-4 as per requirements under the provisions of Nidhi Rules, 2014. Again, the company has failed to declare itself as Nidhi Company as required under Section 620A of the Companies Act, 2013/Rule 23A of Nidhi Rules, 2014. The Company has not fulfilled the requirements of the provisions made in Nidhi Rules, 2014 whereas the company has collected money from the Public in the said capacity.
7. Hence, it appears to the ROC that the company is carrying the business as a manner of Nidhi Company without having “**Nidhi Status**” from the Central Government which indicates that the company was formed for Fraudulent and unlawful purpose. Therefore, it is proposed by the ROC that the Winding-Up petition has been filed as per Section 271 (1) (c) and Section 271 (1) (d) of the Companies Act.

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8. The Regional Director, Eastern Region, Kolkata by letter No. RD/T/33863/272(3)/21/2929 dated 21.06.2022 served Notice under Second Proviso of Sub-Section (3) of Section 272 of the Companies Act, 2013, which was an intimation under Section 20 of the Companies Act, 2013 for giving representation within 15 days why the company should not be wound up under the Provisions of Companies Act, 2013. Further, the Regional Director. Eastern Region, Kolkata by e-mail dated 30.08.2022 authorized the ROC cum-OL, Odisha to file winding up petition under Section 271 (c) & (d) read with Section 272 (1) of the Companies Act, 2013 The copy of Notice dated 21.06.2022 Issued by the Directorate and followed by sanction /authorization dated 30.08 2022 issued by the Directorate through e-mail dated 30.08.2022 are marked as **Annexure-V and Annexure-VI** respectively.
9. Further, as per the instructions of the Regional Director (Eastern Region), Kolkata vide its letter No DO.No JD(Inspn.)/Cal/07/17/11656 dated 21.01 2019, the Office of the Petitioner has filed necessary Prosecutions before the Ld ACIM (Special) Cuttack against the Company and its Directors, which are sub-judice The said letter is marked as **Annexure-VII**.
10. The Directorate (ER) had issued notice to the Respondent Company under the second proviso of sub-section (3) of Section 272 of the Companies Act, 2023 to give an opportunity for making representation *vide* letter no. RD/T/33863/272(3)/21/2929 dated 21.06.2022 but no reply has been received either from the company or from its directors/officers of the company. No representation of the respondent company within the period of 15 days is mentioned in the notice.

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11. It is submitted that the Directorate (ER) has accorded its sanction to file the winding up petition under Section 271 (c) and (d) of the Companies Act, 2012 against the respondent company vide letter dated 30.08.2022.
12. After the petition is taken on the file, this Tribunal by order dated 04.07.2023, also directed the Petitioners to cause a publication of an advertisement of the petition under Rule 7 of the Companies (Winding-up) Rules, 2020 and also to serve a copy of the same on the company and its directors.
13. In compliance of the said order, the petitioner, by an affidavit of service dated 25.08.2023 confirmed that the petitioner has published the notice of petition in two newspapers as per the details given below:

Language	Name of newspaper	Date of Publication
English	<i>"The New Indian Express"</i>	15.07.2023
Odia	<i>"The Samaja"</i>	15.07.2023

14. Despite such publication of the notice, no one has come forward to object or oppose the present company petition before this Tribunal. We are satisfied that pursuant to the publishing of the notice of the petition as required under rule 7, the service is completed.
15. In response to notices and publications none appeared. This petition for winding up under Section 272(1)(d) read with Section 271(d) of the Companies Act, 2013 is presented by the Registrar of Companies-cum-Official Liquidator, Odisha under chapter XXX for seeking directions of this Tribunal so that the respondent company mentioned above be wound up on the grounds provided in Section 271(d) of the Companies Act, 2013 which specifies *inter-alia* the circumstances under which the Company may be wound up by the Tribunal, which is reproduced under-

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“If the Company has made default in filing with the Registrar its financial statements or annual returns for immediately preceding 6 consecutive financial years”

16. We heard the Ld. ROC perused the records and proceedings of each default and the complaints against the respondents minutely. The Registrar of Companies, Odisha has been authorized by the Central Government to file these proceedings vide order dated 10.08.2017 as contemplated under Section 272 (3) of the Companies Act, 2013. It is also on record that the respondent Company has not filed its statutory returns from 31.03.2021 onwards for which the ROC has proper authorization to file a petition for winding up under Section 272 (1) (d) of the Companies Act. 2013.
17. It has been stated by the petitioner that all the statutory formalities requisite for obtaining the sanction of winding up order by the Tribunal have been complied with by the Petitioner.
- 18. In view of the above we, therefore, hereby order as follows: -**
- (a) The present company petition stands **admitted**. The respondent company being **KKDIL NIDHI Limited**, CIN No. **U6599OR2011PLC014338**, having registered office at Gandhi Nagar, 2ND Lane, Extension, Berhampur- 760 001 is to be wound up by this Tribunal under the provisions of Companies Act, 2013.
- (b) The **official liquidator** attached with High Court of Orissa is appointed as a * **liquidator** of the respondent company as provided under section 275(1) of the Companies Act, 2013.
- (c) In terms of sections 277 (1) and 277 (2) of the Act, the registry is directed to cause intimation to the company liquidator and the Registrar of Companies, Odisha. On receipt of the copy of such Order, the Registrar shall make an endorsement to that effect and notify in the Official Gazette that such an order has been made.

* Amended as per the order dated 24.04.2024 passed in IA (Companies Act) No. 17/CB/2024.

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(d) The company liquidator is directed to file a declaration in Form WIN 10, disclosing conflict of interest or lack of independence in respect of his appointment, if any, with this Tribunal within seven days from the pronouncement of this order.

(e) In accordance with section 277 (3) of the Act, this liquidation order shall be deemed to be a notice of discharge to the officers, employees, and workmen of the company, except when the business of the company is continued.

(f) The company liquidator shall initiate the liquidation process in accordance with sections 277 (4), 277 (5), 277 (6), 277 (7), 277 (8), 293, and 294 of the Act. The company liquidator shall fulfil the following functions, namely: -

- (i) taking into custody, all properties, actions, and actionable claims to which the respondent company appears to be entitled to;
- (ii) preservation and protection of the properties of the respondent company
- (iii) examination of the statement of affairs;
- (iv) recovery of property, cash, or any other assets of the company including benefits derived therefrom:
- (v) review of audit reports and accounts of the company;
- (vi) sale of assets;
- (vii) finalization of list of creditors and contributories.
- (viii) compromise, abandonment and settlement of claims,
- (ix) payment of dividends, if any, and
- (x) any other function, as the Tribunal may direct from time to time.

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(g) As envisaged under section 279 (1) of the Act, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, by or against the company. except with the leave of the Tribunal and subject to such terms as the Tribunal may impose

(h) In accordance with section 281, the Company Liquidator shall submit to the tribunal, a report in Form 16 within sixty days of passing this order. Further, the company Liquidator shall file periodical reports to the Tribunal as envisaged under section 288.

(i) The company liquidator shall prepare and file in the Tribunal a provisional list of contributories of the company in terms of rule 28 of the Companies (Winding Up) Rules, 2020 within twenty-one days after the date of the instant order.

(j) There shall be an advisory committee, having powers and functions in terms of section 287. The meetings of the said advisory committee will commence in accordance with the provisions of section 287(3). The company liquidator shall report the result of such meeting to the Tribunal within 7 days from the holding of the said meeting.

(k) All powers and duties of the company liquidator will be exercised in accordance with section 290 and section 292

(l) The company liquidator shall also file its report with the Tribunal as per section 281 of the Act

(m) List the **CP No. 14/CB/2023** on **24-01-2024** for filing periodical reports.

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(n) Copy of the order be sent to the parties, the company liquidator, Registrar of Companies, Odisha and the Authorised Representative for the Petitioner, within seven days through email and registered post.

(o) Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Sd

Kushalendra Kumar Singh
Member (Technical)

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P. Mohan Raj
Member (Judicial)

Signed on this, 29th day of November, 2023.

Supriya_P.S.