

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

**C.P No. 23/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, 2<sup>nd</sup> & 3<sup>rd</sup> Floor, Plot No. 9 (P), Sector-1, CDA, Cuttack-753 014;

... **Petitioner**

-Versus-

- 1. Hahnemann Herbal Limited**, a company incorporated under the Companies Act, 1956 and having its Registered Office at Bhaskar Ganj- B, Sahadev Kunta, Premises No. 79, 1<sup>st</sup> Floor, Balasore- 756 001, Odisha;
- 2. Goutam Banerjee**, Director, 703E, Diamond Harbour Road, New Alipore, Block P, Kolkata, West Bengal 700 053;
- 3. Santi Ranjan Bannerjee**, Director, At- 21/H/10 Canal East Road, Calcutta, West Bengal- 700 067;
- 4. Bidhan Chandra Ray**, Additional Director, At- Gokul Ray, Village- Betai Sadhubazar, P.O- Betai, P.S- Tehatta, Dist- Nadia, Betai, West Bengal- 7411 63

...**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 pronounced on: 20.12.2023

**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 **Hahnemann Herbal Limited** having **CIN: U24239OR2000PLC006297**. The petition has been filed under Section 271 (e) on the grounds that the affairs of the company has been conducted for fraudulent and unlawful purpose 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 submitted by the Company Prosecutor, who appeared for the Petitioner 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 Nine (9) consecutive financial years i.e., from financial years ending on 31.03.2013-14 till the financial year ending on 31.03.2021-22, as required under provisions of Section 92 and 137 of the Companies Act, 2013.
3. Further submissions as stated in the application and presented by the Company Prosecutor are summarised as under:
  - i) Several complaints were received against the respondent company by the office of the petitioner from people alleging therein that the respondent company has collected money, but they have not refunded the money collected after due date/maturity date. The respondent company is not registered with Reserve Bank of India or SEBI. In such circumstances, as the matter was serious in nature and involving the collection of money from the public, the office of the petitioner conducted a Suo moto inquiry under Section 206 (4) of the Companies Act 2013. But despite issuing summon under Section 207 of the Companies Act 2013, nobody appeared on behalf of the Company. An

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adjudication proceeding for non-maintenance of registered office as required under Section 12 of the Companies Act, 2013 was also initiated.

- ii) The I.O, Shri A.K. Mahapatra, then ROC cum OL, Odisha in his Preliminary Inquiry Report vide letter no. **ROC/Complaint/ 206 (4)/2017/6297/2885 dated 24.11.2017** noted that while inquiring documents available in the MCA portal, it was noticed that the Company has filed 55 numbers of E-Form 2 for the allotment of shares during the period 15.04.2008 to 29.10.2012 and have allotted total face value of shares amounting to Rs. 23,18,53,000/- (twenty-three crore eighteen lakhs fifty-three thousand rupees). Further, on verification of some of the e-forms on a sample basis, it was noticed that the company has allotted those shares to more than 49 persons i.e, the Company has made public issue as per the interpretation under the first proviso to Section 67 (3) of the Companies Act 1956. However, no compliance of the provisions relating to the public issue of shares such as Section 60 and Section 73 of the Companies Act 1956 was noticed.
- iii) Upon the instruction of the **Ministry letters No. 04/120/2018/CL. II (ER) dated 25.10.2021**, a fresh inquiry under Section 206 (4) of the Companies Act 2013 was conducted by the IO- Shri K.K Saha, Dy ROC cum Dy. OL and the Final Inquiry report was submitted to the Regional Director (Eastern Region) vide letter No. ROC/Complaint/ 206 (4) /6297/2017/558 on 30.06 2022. IO in his report concluded that the company has been in default in filing its Statutory Returns since 2012-2013 which attracted action under Section 271 (d) of the Companies Act, 2013. Further, the company was incorporated with business activity of producing, marketing, and trading of various herbal products and medicines. Several complaints have been received by the ROC alleging that the company has collected money from the public and not refunded

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the same after due period maturity date. The Copy of the Final report is attached as **Annexure- V**.

- iv) It was also observed that the company is neither registered with RBI nor with SEBI. Hence, it was clear that the company was formed for fraudulent and unlawful purpose and the affairs of the company was conducted in fraudulent manner, which attracted the provisions under Section 271 (c) of the Companies Act, 2013. Therefore, IO Shri R.K. Sahu proposed that the winding up petition may be filed against the Company under Section 271 (c) and Section 271 (d) of the Companies Act 2013.
- v) The Regional Director, Eastern Region, Kolkata by letter No. **RD/T/33863/272(3)/21/8053 dated 06.12.2022** 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. From the available records it is seen that no reply has been received either with the directorate (Eastern Region) or ROC, Cuttack. Further, the Regional Director, Eastern Region, Kolkata by letter dated 10.01.2023 sanctioned/authorized the ROC-cum-OL, Odisha to file winding up petition under Section 271 and 272 of the Companies Act, 2013. The copy of Notice dated 06.12.2022 issued by the Directorate and followed by sanction/authorization dated 10.01.2023 issued by the Directorate through letter are marked as **Annexure- VI and Annexure- VII** respectively.
- vi) Further, as per the instructions of the Regional Director (Eastern Region), Kolkata vide its letter **No RD/T/27176/206/18/17906 dated 22.03.2018**, the Office of the Petitioner has filed necessary Prosecutions before the Ld ACJM (Special) cum Assistant Sessions Judge, Cuttack

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against the Company and its officers, which are sub-judice. The said letter is marked as **Annexure-I**.

- vii) 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)/21/8053 dated 06.12.2022 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.
- viii) 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 10.01.2023.
4. After the petition is taken on the file, this Tribunal by order dated 18.07.2023, 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 petition on the company and its directors.
5. In compliance of the said order, the petitioner, by an affidavit of service dated 30.08.2023 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	"The Times of India"	02.08.2023
Odia	"The Sambad"	02.08.2023

6. 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.

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7. 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-

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

8. 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 this proceedings vide order dated 25.10.2021 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.
9. 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.

**10. In view of the above we, therefore, hereby order as follows: -**

(a) The present company petition stands **admitted**. The respondent company being **Hahnemann Herbal Limited**, CIN No. **U6599OR2011PLC014338**, having registered office at Bhaskar Ganj-B, Sahadev Kunta, Premises No. 79, 1<sup>st</sup> Floor, Balasore- 756001, Odisha is to be wound up by this Tribunal under the provisions of Companies Act, 2013.

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(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.

(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;

\* Amended as per the order dated 24.04.2024 passed in IA (Companies Act) No. 18/CB/2024.

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- (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.

(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

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- (1) The company liquidator shall also file its report with the Tribunal as per section 281 of the Act
- (m) List the **CP No. 23/CB/2023** on **24-01-2024** for filing periodical reports.
- (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.

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**Kushalendra Kumar Singh**  
**Member (Technical)**

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**P. Mohan Raj**  
**Member (Judicial)**

Signed on this, the 20<sup>th</sup> day of December, 2023.

*Supriya\_P.S.*