

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Through Physical Hearing/ VC Mode (Hybrid))

C.P No.45/BB/2023

Application u/s. Section 131 and other applicable provisions
of the Companies Act, 2013 r/w Rule 77
of the National Company Law Tribunal Rule, 2016

IN THE MATTER OF:

KKNT First Main Private Limited
2nd Floor of #570/571,
1st Cross, 3rd Block, Koramangala,
Bengaluru, Karnataka- 560034.

... Applicant/ Petitioner

And

The Registrar of Companies, Karnataka
'E' Wing, 2nd Floor, Kendriya Sadana,
Koramangala,
Bengaluru - 560 034

... Respondent

Order delivered on: 5th July, 2024

Coram: 1. Hon'ble Shri K.Biswal, Member (Judicial)
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

Present:

For the Petitioner : Ms. Lavanya. B
For ROC : Ms. Anuparna Bordoloi
For IT Dept. : Shri Ganesh R. Ghale

ORDER

Per: K. Biswal, Member (Judicial)

1. The Company Petition bearing **C.P.No.45/BB/2023** has been preferred by M/s. KKNT First Main Private Limited (hereinafter referred to as Applicant/Petitioner) by, *inter alia*, seeking to approve its revised financial statements for the Financial Years 2018-2019, 2019-2020, 2020-2021 as per the revised financial statements and the revised

Board's report related along with annexures forming part of the Petition/Application and to issue directions to the Respondent to allow it to file those revised annual filing form (Form AOC-4 or through Form GNL-2) with online portal of the Ministry of Corporate Affairs, etc.

2. Brief facts of the case, which are relevant to the issue in question, are as follows:

(i) The Applicant Company is in the process of providing information technology and information technology enabled services, which is owned by Mr. Kiran Padman Nambiar (47.42%), Ms. Kinnari Amritlal Thakker (47.42%), Julien Rafael Kristoffer Auscher (3.15%), and Kyle F & Kei Downey (2.01%).

(ii) During the financial year 2018-19, Applicant Company had invested INR 25,00,000/- in the shares of Rooted Objects Private Limited on 14th March, 2019. However, the above investments were erroneously reported as a Long Terms Loans and Advances in the financial statement prepared for the Financial Years 2018-19 and 2019-20.

(iii) During the financial year 2020-21, the Applicant Company had granted Employee Stock Options (ESOP) to its employees. However, this was inadvertently not disclosed under the significant accounting policies in the financial statement prepared for the financial year 2020-21.

(iv) The details of revisions in the Board's report and financial statements for the Financial Years 2018-19, 2019-20 and 2020-21 is summarized below:

(a) In order to rectify the errors in the financial statement prepared for the Financial Years 2018-19, 2019-20 and 2020-21, the Applicant Company has prepared revised Board's report and financial statement for the said financial years where necessary corrections have been made in order to:

i. Report investment of INR 25,00,000 made by the Applicant Company in the shares of Rooted objects Private Limited during the Financial Year 2018-19; and

- ii. Disclosing the grant of Employee Stock Options (ESOP) by the Applicant Company to its employees under the significant accounting policies in the financial statement prepared for the Financial Year 2020-21.
 - (v) In the opinion of the Board of the Applicant Company, there will not be any implications on Income Tax returns or Goods and Service Tax returns filed for the Financial Years 2018-19, 2019-20 and 2020-21 consequent to these revision in the Board's report and financial statements.
 - (vi) The Board of the Applicant Company is of the opinion that interest of Banks or other Financial Creditors of the Applicant Company will not be affected by the revision of Board's report and financial statements.
 - (vii) The Applicant Company confirms that there were no changes in the composition of the Board of the Applicant Company during the Financial Years 2018-19, 2019-20 and 2020-21 and till date.
 - (viii) The Applicant Company confirms that there were no changes in the statutory auditors of the Applicant Company during the Financial Years 2018-19, 2019-20 and 2020-21 and till date.
 - (ix) These revised Board's report and financial statements capture the current financial position of the Applicant Company and hence, it is extremely important that the Applicant Company be allowed to revise its Board's report and financial statements.
 - (x) Hence, the Present Application seeking the prayer as mentioned supra.
3. The Respondent-ROC has filed its Reply by way of an Affidavit *vide* Diary No.216 dated 10.01.2024, by *inter alia*, stating as follows:
- (i) The present Application has been filed for revision of the financial statements for the financial years 2018-2019, 2019-2020 and 2020-2021 which was filed in form AOC-4, vide, SRN R21369822, R98300825 and R78548569 and E-form MGT-7, vide, SRN R22148902, R98329816 and T7654369 for the respective years and

taken on record. The Company has passed a Board Resolution on 11.05.2022 approving the matter to make Application under Section 131 of the Companies Act, 2013 before the Tribunal.

- (ii) The Applicant Company had invested Rs.25,00,000/- in the shares of Rooted objects Private Limited on 14.03.2019. However, it is erroneously reported as a Long-Terms Loans and Advances in the Financial Statement for the financial year ending 31.03.2019 and 31.03.2020. During the financial year 2020-21, the Company granted Employees Stock Option (ESOP) to its employees. However, this was not disclosed under the significant accounting policies in the financial statements for the financial year ended 31.03.2021.
- (iii) The Company has furnished copy of Board Resolution passed for filing an Application under Section 131 of the Companies Act, 2013. However, the resolution has been passed for revision of financial statements and report of board of directors for the financial years 2018-19 and 2019-20. Hence, it is not known whether the Board has passed Board Resolution for the financial year 2020-21 or not.
- (iv) In the event, Hon'ble Tribunal allows for revision of financial statements, the Company may be directed to file revised financial statements in Form AOC-4 for the financial year 2018-19, 2019-20 AND 2020-21 with Ministry of Corporate Affairs and comply with Rule 77 of NCLT Rules, 2016.
- (v) A Copy of advertisement for Revision of Financial Statements as per NCLT Rules has not been attached along with the Application submitted by the Company. It is not known whether Petitioner has advertised the matter as per the requirements.
- (vi) The Ministry, vide its letter No.CL-II-03/334/2023-0/ODGCOA-MCA dated 29/11/2023 has pointed out that as per the requirements of Section 131 of the Companies Act, 2013, notice is required to be issued to the Central Government and in the instant case that would be The Ministry of Corporate Affairs. Here instead of the Central Government only ROC has been made party. The issuance of notice

is not in compliance of the Act, which is brought to the notice of the court for necessary rectification.

4. The Petitioner has filed Rejoinder to the Reply affidavit of ROC vide Diary No.1114 dated 20/02/2024 by, *inter alia*, stating as follows:
 - (i) The Company passed Board resolutions for the revision of financial statements and report of Board of Directors for the financial years 2018-19 and 2019-20. The same has been attached as an Annexure I to this memo.
 - (ii) The Company undertakes to file the revised financial statements in Form AOC-4 for the financial year 2018-19, 2019-20 and 2020-21 with Ministry of Corporate Affairs and comply with Rule 77 of NCLT Rules, 2016.
 - (iii) The Company has published an advertisement pursuant to Rule 25 of NCLT Rules 2016, in Hosa Digantha the Kannada Newspaper and in Business Standard, the English Newspaper on June 03, 2023. The undertakes to file the revised financial statements in Form AOC-4 for the financial year 2018-19, 2019-20 AND 2020-21 with Ministry of Corporate Affairs and comply with Rule 77 of NCLT Rules, 2016. The same has been attached as an Annexure II to this memo. The Company has made Central Government, party to the instant Application.
5. The I.T. Department has filed its report vide Diary No.1939 dated 26/03/2024 and has not opposed the Application.
6. Heard Ms. Lavanya. B, learned Counsel for the Petitioner, Ms. Anuparna Bordoloi, learned Counsel for the ROC and Shri Ganesh R. Ghale, learned Counsel for IT Department. And we have carefully perused all the pleadings of the Parties and the extant provisions of Companies Act, 2013 and the rules made thereunder.
7. The Learned Counsels have reiterated their respective pleadings made in their replies as briefly stated supra.

8. As detailed supra, the Applicant has proposed the rectification in the Financial Statement of the Applicant Company for the Financial Year 2018-2019, 2019-2020, and 2020-2021, which has been duly approved by the Board of the Company on 11.05.2022. The Applicant Company declares that there will not be any implications on Income Tax returns or Goods or Service Tax returns filed for the Financial Years 2018-19, 2019-20, 2020-21 consequent to the revision in the Board's report and financial statement. It is also noted that there are no pending dues of the Income Tax Department with respect of the Applicant Company.
9. We found that the Applicant Company has complied with all extant provisions of Section 131 of Companies Act, 2013 and the Rules made thereunder. Therefore, the Petition deserves to be disposed of with necessary directions.
10. In the result, **C.P.No.45/BB/2023 is disposed of** with the following directions:
- (1) The prayers made in the Petition are hereby allowed.
 - (2) The Applicant Company is directed to file revised financial statement with the Registrar of Companies, Karnataka, within 30 days from the date of receipt copy of this order, and consequently, the ROC is directed to take the same on record for the Financial Years 2018-19, 2019-20 and 2020-21.
 - (3) The Applicant Company is further directed to comply with undertakings given by it in compliance to the observations of the ROC within a period of 30 days from this Order.

-Sd-

**(MANOJ KUMAR DUBEY)
MEMBER (TECHNICAL)**

-Sd-

**(K. BISWAL)
MEMBER (JUDICIAL)**