ADJ/18/RD (SR)/2019-20

BEFORE THE REGIONAL DIRECTOR (SOUTHERN REGION) MINISTRY OF CORPORATE AFFAIRS, CHENNAI IN THE MATTER OF THE COMPANIES ACT 2016 SECTION 454(7) OF COMPANIES ACT 2013

IN THE MATTER OF M/s. EYERIS CONSTRUCTIONS AND FACILITY MANAGEMENT PRIVATE LIMITED

- M/s. Eyeris Constructions and Facility Management Private Limited, No. 39/1023 B6, Komalam Building, Puthiyangadi, Kozhikode, Kerala - 673 021.
- 2. Shri. Mannaru Kandy Shamjith

......Applicants/Appellants

Date of hearing

26.10.2020

Present

Shri. Cheringal Jithesh, Practising Company Secretary

(COP No. - 18272)

ORDER

This is an appeal filed under Section 454 (7) of the Companies Act, 2013 by the above Applicants in Form ADJ vide SRN No. R35388693, dated 13.03.2020 against the Adjudication Order No. ROC/S-454/10A/155/2020 dated 20.01.2020 under Section 454 (3) passed by the Registrar of Companies, Kerala for default in compliance with the requirements of Section 10A of the Companies Act, 2013 read with the Companies (Adjudication of Penalties) Rules, 2014.

- 2. The subject Company was incorporated on 13.12.2018. E-form INC-20A should have been filed within a period of 180 days from the date of incorporation as required under sub-clause (a) of sub-Section (1) of Section 10A of the Companies Act, 2013 (hereinafter referred to as the Act, 2013) and had filed the said form belatedly with a delay of 31 days on 12.07.2019. The Registrar of Companies, Kerala examined the said default and passed the Adjudication Order No. ROC/S-454/10A/155/2020 dated 20.01.2020 (impugned Order) under Section 454 (3) & (4) of the Act, 2013 for the delay of 31 days in filing the Form INC-20A under Section 10A(2) of the Act, 2013 read with Rule 23A of the Companies (Incorporation) Rules, 2014 (hereinafter referred to as the Rules, 2014) and imposed a penalty of Rs. 50,000/- upon the Company and Rs. 31,000/- upon the Director in default viz. Shri. Mannaru Kandy Shamjith @ Rs. 1,000/- per day.
- 3. The Appellant while filing the appeal contended that the default occurred due to unavoidable circumstances such as floods in Kerala and was not an intentional default.

- 4. An opportunity of being heard was given to the Appellants on 26.10.2020. The Authorized Representative Shri. Cheringal Jithesh, PCS appeared for the Appellants while reiterating the grounds taken in the appeal had stated that the company had delayed in filing Form INC-20A only by 31 days and hence sought condonation. However, the fact of the matter is that the company ought not to have commenced business without filing INC-20A, whereas the Financial Statements for 2018-19 show that the company had revenues of Rs. 2,69,000/- till 31.03.2019. The due date of filing of INC-20A was 11.06.2019, whereas it had commenced the business and did business without filing Form INC-20A. However, the business volumes are not substantial.
- 5. Though there is a default committed, there is a ground in interfering with the impugned adjudication order of the Registrar of Companies to the extent of reducing the quantum of penalty. Accordingly, the penalties are reduced to Rs. 25,000/- on the Company and Rs. 15,500/- for the Director. The Appellants shall pay the penalty in 30 days failing which the ROC, Kerala is directed to file prosecution for non-compliance of this order under Sec. 454(8) (ii) of the Companies Act, 2013.

Dated at Chennai this the 02nd day of November, 2020.



(M.R. BHAT) REGIONAL DIRECTOR (SR)

To

- 1. M/s. Eyeris Constructions and Facility Management Private Limited, No. 39/1023 B6, Komalam Building, Puthiyangadi, Kozhikode, Kerala 673 021.
 - 2. Shri. Mannaru Kandy Shamjith
 - 3. The Registrar of Companies, Kerala.
 - 4. The Officer in Charge, e-Gov. Cell, Ministry of Corporate Affairs, A-Wing, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi -110 001- with a request to upload this Order on the website of the Ministry. Mail sent to Shri Vivek Meena, Asst. Director (vivek.meena@gov.in) and Shri B. Srikumar, Deputy Director, (srikumar.b@gov.in)