

ADJ/73/RD (SR)/2019-20 (NAVA)

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. NAVAVIJAYAM FINANCIERS PRIVATE LIMITED

- 1 M/s. Navavijayam Financiers Private Limited,
Room No. VI/521 D,
Mattatthur, Kodakara,
Thrissur - 680 684, Kerala
- 2 Mr. Thayyil House Kochukuttan ChandrasekharanAppellants

Date of hearing 21.09.2020

Present Mr. Kiran M. Krishnan, PCS through WEBEX Meeting

ORDER

M/s Navavijayam Financiers Private Limited (hereinafter referred to as the Company), having share capital, was incorporated on 25.01.2019 but the Appellant Director failed to file the declaration in e-form INC 20A within the prescribed 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 06 days on 30.07.2019. The Registrar of Companies, Kerala and Lakshadweep examined the said default and passed the Adjudication Order No. ROC/S-454/10A/152/2020 dated 20.01.2020 (impugned Order) under Section 454 (3) & (4) of the Act, 2013 for the delay of 06 days in filing the Form INC-20A under Section 10 A(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. 6,000/- upon the Director in default viz. Mr. Thayyil House Kochukuttan Chandrasekharan @ Rs. 1,000/- per day.

2. Aggrieved by the above said Order dated 20.01.2020, the instant appeal was filed by the Appellants in terms of Section 454 (5) of the Act in Form ADJ on 29.07.2020 vide SRN R 47784756. Though the Appeal was filed belatedly, the same is taken on record and heard in the light of the Circular No. 12/2020 dated 30.03.2020 issued by the Ministry of Corporate Affairs in the wake of COVID-19.

3. The appellants have contended in the Appeal that the penalty shall be waived duly taking into account the intent of the Ministry as evident in Circular dated 24.03.2020 allowing an additional period of 180 days more for newly incorporated companies to file declaration for commencement of business and prayed for setting aside of the impugned Order.

4. An opportunity of being heard was afforded on 21.09.2020, through WEBEX to the Appellants who were represented by their Authorized Representative Mr. Kiran M. Krishnan, PCS who mainly contended that the Companies (Amendment) Act, 2019 was notified only on 31.07.2019 and due to retrospective effect given to the said provision, the obligation to file the Form INC-20A had arisen. Had retrospective effect is not given, there is no obligation on the part to file the form. If prospective effect is given, the form ought to have been filed on or before 30.01.2020 whereas the Company had filed the form on 30.07.2019. The Authorized Representative also submitted that one of the subscribers/Directors



Shri T.H.K. Chandrasekharan brought his subscription money belatedly by 5 days i.e. on 29.07.2020 due to his being unwell and that lead to the delay of 6 days and requested for setting aside of the impugned order of the Registrar of Companies, Kerala.

5. The contention that the obligation to file INC-20A form due to insertion of Section 10A through the Companies (Amendment) Act, 2019 had arisen with effect from 02.11.2018 and not 31.07.2019 does not hold good since initially this amendment was introduced by the Companies (Amendment) Ordinance, 2018 and the Ordinance was made into law by notification of Companies (Amendment) Act, 2019 and hence, the obligation arise on 02.11.2018 and not 31.07.2019 as contended. Further, not bringing in subscription money of Rs. 50,000/- by one of the subscribers lead to non-compliance. The subscription money was brought in on 29.07.2019 and the Company filed the form on 30.07.2019. The delay is on account of the prolonged illness of the subscriber/Director. Keeping in view the extenuating circumstances, I deem it appropriate to reduce the penalty of the Company to Rs. 25,000/- and to Rs. 3,000/- on the defaulting Director. With the above orders, the Appeal is disposed of. The Appellants are directed to comply with and file order in Form No.INC-28 within a period of 30 days on MCA-21 Portal, failing which ROC, Ernakulam would take penal action as per law.

Dated at Chennai this the 24th day of September, 2020.



(M.R. BHAT)

REGIONAL DIRECTOR (SR)

To

1. M/s. Navavijayam Financiers Private Limited,
Room No. VI/521 D,
Mattatthur, Kodakara,
Thrissur - 680 684, Kerala
2. Mr. Thayyil House Kochukuttan Chandrasekharan
3. The Registrar of Companies, Kerala, for necessary action.
- ✓ 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)