

ADJ/70/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. KPMA POLY-TECH PRIVATE LIMITED

- 1 M/s. KPMA Poly-Tech Private Limited,
Door No. 66/1730-A1 (Old No. 41/1834-CZ)
II Floor, Veekay Tower, Beerankunju Road,
Ernakulam, Kerala - 682 018.
- 2 Mr. Tom Kallarackal JosephAppellants

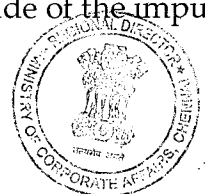
Date of hearing 21.09.2020
Present **Shri S. Narasimhan, Authorized Representative**

ORDER

M/s KPMA Poly-Tech Private Limited, (hereinafter referred to as the Company), having share capital, was incorporated on 11.12.2018 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 59 days on 07.08.2019. The Registrar of Companies, Kerala and Lakshadweep examined the said default and passed the Adjudication Order No. ROC/S-454/10A/721/2020 dated 19.02.2020 (impugned Order) under Section 454 (3) & (4) of the Act, 2013 for the delay of 59 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. 59,000/- upon the Director in default viz. Mr. Tom Kallarackal Joseph @ Rs. 1,000/- per day.

2. Aggrieved by the above said Order dated 19.02.2020, the instant appeal was filed by the Appellants in terms of Section 454 (5) of the Act in Form ADJ on 23.06.2020 vide SRN R 42830091. 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 delay occurred was not wilful or due to any mala fide intention but due to force majeure event or unforeseeable circumstances and prayed for setting aside of the impugned Order.



4. An opportunity of being heard was afforded on 21.09.2020 to the Appellants represented by their Authorized Representative Shri S. Narasimhan, who reiterated the submissions and stated that the delay of 59 days occurred on account of uncertainty of conducting the proposed business since after incorporation of the Company, the Government clamped ban on single use of plastic (disposable plastic items) in the country which is a force majeure and not wilful or with any mala fide intention and finally, they decided to file the form with the hope that the Company could be used for doing some other business. The Authorized Representative further submitted no prejudice is caused on account of the delay to any stakeholder and therefore prayed that the impugned order of the Registrar of Companies, Kerala be set aside and penalty waived.

5. Keeping in view the compelling circumstances including the bonafides of the Company in filing the form despite the fact that the Company is not in a position to carry on the business in foreseeable future, I am of the view that the Company should not be burdened with levy of penalty for the delay caused in filing Form INC 20A and accordingly the impugned order dated 19.02.2020 passed by the ROC, Kerala is set aside and penalties are waived. The Appellants are directed to file order in Form No.INC-28 within a period of 30 days on MCA-21 Portal.

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




(M.R. BHAT)

REGIONAL DIRECTOR (SR)

To

1. M/s. KPMA Poly-Tech Private Limited,
Door No. 66/1730-A1 (Old No. 41/1834-CZ)
II Floor, Veekay Tower, Beerankunju Road,
Ernakulam, Kerala - 682 018.
2. Mr. Tom Kallarackal Joseph
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)