

Application No. RD/ER/454/46/2024/Appeal / 6885-87

**BEFORE THE REGIONAL DIRECTOR, EASTERN REGION
MINISTRY OF CORPORATE AFFAIRS, KOLKATA.**

IN THE MATTER OF

THE COMPANIES ACT, 2013

-AND-

IN THE MATTER OF

CA SANJAY KUMAR KHETAN (M. NO: 058510)

M/S S N KHETAN & ASSOCIATES
59-B, CHOWRINGHEE ROAD, 4TH FLOOR
KOLKATA- 700020, WEST BENGAL, INDIA
For the Company: **BRICK & MORTAR REALTY PRIVATE LIMITED**

(CIN: U70101WB2007PTC117693)

-AND-

IN THE MATTER OF

Application under section 454 of The Companies Act, 2013 for preferring an appeal against the penalty order dated 31/10/2023 of Registrar of Companies, West Bengal passed for violating the provisions of section 143 of the Companies Act, 2013.

-AND-

IN THE MATTER OF

CA SANJAY KUMAR KHETAN (M. NO: 058510)

M/S S N KHETAN & ASSOCIATES
59-B, CHOWRINGHEE ROAD, 4TH FLOOR
KOLKATA- 700020, WEST BENGAL, INDIA

..... APPELLANT

In the matter of : Sanjay Kumar Khetan, CA

प्रेषित किया गया/Dispatched by: *S. Sanjay*
हस्ताक्षर/Signature: *S. Sanjay*
दिनांक/Data: **17 NOV 2024**

Date of Hearing : 18/09/2024

Present Sanjay Kumar Khetan, CA

Appellant

ORDER

1. The present appeal under section 454 of the Companies Act, 2013 read with the provisions of the Companies (Adjudication of Penalties) Rules, 2014 was filed vide Form ADJ bearing SRN no. F8384193 dated 21/12/2023 by the aforesaid appellants against the penalty order under section 143 of the Adjudicating Authority i.e. Registrar of Companies, West Bengal dated 31/10/2023 communicated to the appellants vide letter no. ROC/ADJ/21-117693/631/2023/7975 to 7976C to 7978C dated 31/10/2023.
2. The office of the Registrar of Companies, West Bengal had issued Adjudication notice for violation of section 143 of the Act vide no. LEGAL/ADJ/2023/117693/4643 dated 22.08.2023 to the Auditor. In this regard, no adequate reply was received by the ROC, West Bengal from the Auditor.

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3. Considering the above facts and circumstances of the case, the Adjudicating Authority had imposed Penalty for violation of section 143 of the Act as per table below:

Name of the Applicant Company/ Director	Contravention of Section and AS	No. of years	Default (in Rs.)	Total maximum Penalty(in Rs.)
CA SK KHETAN (M. NO: 058510)	(i) Sec 143	2017-18 2018-19 2019-20	10,000*3 years	30,000/-
	(ii) Sec143	2017-18 2018-19 2019-20	10,000*3 years	30,000/-
	(iii) Sec 143	2018-19 2019-20	10,000*2 years	20,000/-
	(iv) Sec 143	2017-18	10,000*1 year	10,000/-

4. Having considered the facts and circumstances of the case and after taking into account the factors above, ROC, West Bengal imposed a penalty of Rs. 90000/- (Rupee Ninety thousands Only) on the concerned Auditor in default for failure to make compliance of the Act u/s. 143 of the Act.
5. The appeal was heard on 18/09/2024 Authorised Representative was asked to make submission regarding any infirmity in the order of Registrar of Companies. The Authorised Representative had submitted the Certified true copy of the Financial Statements and Profit & Loss Account for 2017-18, 2018-19 & 2019-20 for claiming the Company as a "Small Company".

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As per the new amendment, definition of a small company provided under section 2(85) of the Companies Act, 2013 states that *The Act defines a small company as a company that is not a public company and has: paid up share capital equal to or below Rs 4 crore or such higher amount specified not exceeding more ten Rs 10 crores. A turnover equal to or bellow Rs 40 crore or such a higher amount specified not exceeding more than Rs 100 crore.* “ Based on the submissions made by the Authorised Representative and Balance Sheet and Annual Return filed in the MCA Portal for the F.Y 2017-18, 2018-19 & 2019-20, the Appellate Authority is in view that the Company is falling under the definition of a Small Company u/s 2(85) of the Companies Act, 2013 and as per section 446B of Companies Act 2013 which states that *“Notwithstanding anything contained in this Act, if penalty is payable for non-compliance of any of the provisions of this Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be”* thus the Auditor of the Company may be liable for penalty u/s 446B of the Companies Act, 2013 for violation of section 143 of the Companies Act, 2013 Hence,

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the order of ROC is modified as cogent ground was made out by Authorised Representative. The undersigned by virtue of the power vested in Regional Director under section 454(7) of the Companies Act, 2013 read with the Companies (Adjudication of Penalties) rules, 2014 modifies the order of the Registrar of Companies, West Bengal dated 31/10/2023 as under:

Name of the Applicant Company/ Director	Contravention of Section and AS	No. of years	Default (in Rs.)	Total maximum Penalty(in Rs.)	Penalty imposed by the Appellate Authority u/s 446B of the Companies Act, 2013
CA SK KHETAN (M. NO: 058510)	(ii) Sec 143	2017-18 2018-19 2019-20	10,000*3 years	30,000/-	15000/-
	(ii) Sec 143	2017-18 2018-19 2019-20	10,000*3 years	30,000/-	15000/-
	(iii) Sec 143	2018-19 2019-20	10,000*2 years	20,000/-	10000/-
	(iv) Sec 143	2017-18	10,000*1 year	10,000/-	5000/-

6. Having considered the facts and circumstances of the case and after taking into account the factors above, the appellate authority imposed a penalty of Rs. 45000/- (Rupee forty five thousands Only) on the concerned Auditor for failure to make compliance of the Act u/s. 143 of the Act.

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7. The Auditor of the company shall pay the amount of penalty from out of their own pockets. The amount of penalty shall be paid within a period of 90 days from the date of receipt of the copy of the order.
8. Further, if the Auditor fail to deposit the penalty amount within the prescribed time limit action under section 454(8)(i) and (ii) of the Companies Act, 2013 shall be initiated against the Auditor.
9. Hence the instant Appeal stands disposed of accordingly.



(P.Sridhar)

REGIONAL DIRECTOR (ER)**Signed this the 12th day of November, 2024.**

Copy to:-



- ✓ 1. **CA SANJAY KUMAR KHETAN (M. NO: 058510)**
M/S S N KHETAN & ASSOCIATES
59-B, CHOWRINGHEE ROAD, 4TH FLOOR
KOLKATA- 700020, WEST BENGAL, INDIA
- ✓ 2. The Registrar of Companies,
West Bengal,..... for information in respect of his letter no.
ROC/ADJ/117693/57/2023/4199 dated 23/08/2024
- ✓ 3. The Officer in Charge, E-Gov. Cell, Ministry of Corporate Affairs, 5th Floor, A wing Shastri Bhavan, New Delhi-110001,-with a request to upload this Order on the website of the Ministry.

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