

Presented On: -

Subject:- Sec 15(2)(b) of Limited Liability Partnership Act 2009 - Rejection of application for incorporation on the ground that proposed name includes a word which is a trademark registered under class 5 by someone else - Petitioner's activity is a pure service which falls under class 41.

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM.

(Special Writ Jurisdiction).

W.P. (C) No. of 2021

Kunhi Muhammed Etayattil

: **Petitioners**

v.

**The Asst. Registrar, Central Registration Centre &
Another**

: **Respondents**

**MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA**

COURT FEE PAID

COUNSEL FOR THE PETITIONER

SHAMEEM AHAMED M.P [K/2626/1999]
CYRIAC TOM [K/830/2011]

M/s **AHMED& AHMED**
ADVOCATES
36/ 3117 –C, CHOONDANI BUILDING,
KATHRIKADAVU JUNCTION,
ERNAKULAM 682017

**BEFORE THE HON'BLE HIGH COURT OF KERALA AT
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Dated this thethe day of 2021

Counsel for the Petitioner

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM.

(Special Writ Jurisdiction).

W.P. (C) No. _____ of 2021

Kunhi Muhammed Etayattil : Petitioner

The Asst. Registrar, Central Registration Centre &
Another : Respondents

SYNOPSIS

By way of this writ petition, the Petitioner is challenging Ext. P15 order by which, the application made by the Petitioner, for incorporation of a Limited Liability Partnership (LLP) under the name “REEF WELLNESS & EXCELLENCE LLP” has been rejected by the 1st Respondent, on the ground that proposed name includes the word ‘REEF’, which is a trademark under class 5.

Interestingly, in an earlier application, the 1st Respondent had expressly approved the name “REEF WELLNESS & EXCELLENCE LLP” twice as evident from Ext. P1 and Ext. P4 communication. Sec 15(2)(b) of the LLP Act 2008 provides that a LLP cannot be registered by a name which in the opinion of the central government is identical or too nearly resembles to that of any other partnership firm or LLP or body corporate or a registered trade mark of any other person under the Trade Marks Act, 1999.

It is submitted that, even under Sec 28 of the Trademarks Act, a registration will grant exclusivity only for the class of goods or services in respect of which the trademark is used. In other words, a registration under a particular class doesn’t mean that, the said name cannot be used by anyone else for any other class of goods and services.

In the case of Petitioner, the proposed activities of the LLP under incorporation was to provide services like running of wellness centres, healthcare related business, counseling centres, psychology based training and related activities, which are pure services. As per the 1st Respondent, proposed name includes "REEF" which is trademark under class 5. Class 5 is a class for goods, whereas the Petitioners activity falls in service class more specifically class 41.

Sec 15 (2)(b) of the LLP Act has to be read down to mean that, the restriction can be made applicable only if the proposed name includes a trade mark registered in the same class of goods or services in which the activity of the company is being carried out or is proposed to be carried out.

The Companies Incorporation Rules 2014, which is also administered by the same Ministry of Corporate Affairs, also initially contained provision similar to Sec 15(2)(b) of the LLP Act, However, later the legislative intent has been made clear by bringing amendments and incorporating Rule 8A vide Ext. P17 Rules. After incorporating Rule 8A under the Companies Incorporation Rules, it is made clear that the proposed name will be considered as undesirable only if such name includes a trademark registered in the same class of goods or services in which the activity of the company is being carried out.

The Petitioner submits that, that is the only way to read Sec 15(2)(b), otherwise the said provision will be rendered unconstitutional, being arbitrary and unreasonable. It will be difficult to register a LLP with a name because it is likely that most of the general words will be a subject matter of registered trademarks under some classes. Ext. P15 rejection letter is ex-facie illegal and needs to be set aside. The Respondents have to be directed to process Ext. P11 application and grant registration with proposed name REEF WELLNESS & EXCELLENCE LLP. Hence this writ petition.

DATES AND EVENTS

Dates	Events
21.05.2019	Ext. P1 application filed for reservation of name REEF WELLNESS & EXCELLENCE LLP
23.01.2020	Ext. P3 application for incorporation of LLP filed vide FiLLiPSRN M13737069
23.01.2020	1 st Respondent specially mentioned that proposed name can be granted
12.06.2020	Ext. P11 fresh application filed for incorporation filed vide FiLLiP with SRN M14718829
9.07.2020	1 st Respondent rejected Ext. P11 application stating that the proposed name contains REEF which is a trademark u/c 5.

MAIN POINTS URGED

1. Sec 15 (2)(b) of the LLP Act has to be read down to mean that, the restriction can be made applicable only if the proposed name includes a trade mark registered in the same class of goods or services in which the activity of the company is being carried out or is proposed to be carried out.
2. 1st Respondent had approved the name twice prior to rejection.

STATUTES, AUTHORITIES& CITATIONS

1. Sec 115 (2)(b) of the LLP Act 2008
2. Rule 8A of the Companies Incorporation Rules 2014

Dated this theday of2021

Counsel for the Petitioner

**BEFORE THE HON'BLE HIGH COURT OF KERALA AT
ERNAKULAM**

(Special Writ jurisdiction)

W.P. (C) No. of 2021

Petitioner

Kunhi Muhammed Etayattil,
Aged 47Years, S/o Aboobacker
Thekkummala, Naduvattam
Palakkad District
Kerala, PIN 679308

Respondents:

1. The Asst. Registrar of Companies
 Central Registration Centre,
 Ministry of Corporate Affairs
 The Indian Institute of Corporate Affairs (IICA)
 Plot No.6,7,8, Sector-5
 IMT Manesar, Manesar,
 Haryana, PIN: 122050
2. Union of India
 Represented by its Secretary
 Ministry of Corporate Affairs
 'A' Wing, Shastri Bhavan
 Rajendra Prasad Road
 New Delhi-110001

**MEMORANDUM OF WRIT PETITION (CIVIL) FILED UNDER ARTICLE 226 OF
THE CONSTITUTION OF INDIA**

- A. The address for service of all notices on the Petitioner is that of their Counsels Shameem Ahamed and Cyriac Tom. Advocates of M/s "AHMED & AHMED", 1st Floor, Choondani Building, Kathrikadavu Junction, Ernakulam, 682017.

- B. All the Respondents is authorities, coming within the definition of “State” as defined under Article 226 of the constitution of India and hence amenable to the writ jurisdiction. All notices and process to the Respondent may be served in their addresses given above or on their counsel if any engaged.

STATEMENT OF FACTS:

1. By way of this writ petition, the Petitioner is challenging Ext. P15 order by which, Ext. P11 application made by the Petitioner, through his Chartered Accountants, for incorporation of a Limited Liability Partnership (LLP) under the name “REEF WELLNESS & EXCELLENCE LLP” (“Proposed Name”) has been rejected by the 1st Respondent. The 1st Respondent had rejected the application on the ground that proposed name includes the word ‘REEF’, which is a trademark under class 5 and hence it cannot be considered as per Sec 15(2)(b) of the Limited Liability Partnership Act 2008 [LLP Act].
2. The Petitioner herein had decided to incorporate a Limited Liability Partnership (LLP) under the LLP Act to engage in the business of running recreation and wellness centres, primarily to provide training centres, counselling centres, wellness programs etc under the name and style as “REEF WELLNESS & EXCELLENCE LLP”(“**Proposed Name**”). Rule 18(4) & (5) of the Limited Liability Partnership Rules, 2009 (“**LLP Rules**”) provides that, a proposed name of the LLP can be reserved by filing the requisite form on the MCA Portal. The relevant provision reads as below:

(4) An application for reservation of name with which the proposed limited liability partnership is to be registered or for change of name, as the case may be, shall be made to the Registrar having jurisdiction where the registered office of the limited liability partnership is to be situate.

[5] Every such application shall be made through the web service, RUN-LLP, available at www.mca.gov.in and be accompanied by fee as mentioned in Annexure 'A', which may either be approved or rejected, as the case may be, by the Registrar after allowing a re-submission of such application within fifteen days for rectification of defects.

3. The Petitioner submits that vide Notification Number 218(E) dated 22.01.2016, Ministry of Corporate Affairs had established Central Registration Centre (CRC) having territorial jurisdiction all over India, for discharging or carrying out the function of processing and disposal of applications for reservation of names under the provisions of Companies Act 2013. Later, Rule 3 of the LLP Rules were also amended to provide that the RUN- LLP form shall be processed by the Registrar, Central Registration Centre for and on behalf of the jurisdictional registrars. As per the explanation to Rule 3, CRC established under the Companies Act 2013 shall act as the CRC for the purpose of the LLP Rules as well.
4. The Petitioner submits that Sec 15 of the LLP Act contains the general provisions regarding the name of the LLPs. The relevant provision reads as below:

(1) Every limited liability partnership shall have either the words "limited liability partnership" or the acronym "LLP" as the last words of its name.

(2) No limited liability partnership shall be registered by a name which, in the opinion of the Central Government is --

(a) undesirable; or

(b) identical or too nearly resembles to that of any other partnership firm or limited liability partnership or body corporate or a registered trade mark, or a trade mark which is the subject matter of an application for registration of any other person under the Trade Marks Act, 1999(47 of 1999).

5. The Petitioner, in order to ensure that the Proposed Name should not be used by any other applicant before the completion of LLP Registration process, filed Form RUN-LLP for reservation of the name "REEF CENTER FOR WELLNESS & EXCELLENCE LLP" as per Rule 18(5) of the LLP Rules by paying an amount of INR 200 vide Challan SRN M10527299 dt. 21.05.2019. A copy of the Challan SRN M10527299 dt. 21.05.2019 is produced and marked as **Exhibit P1.**
6. The Ext. P1 application filed by the Petitioner was processed by the 1st Respondent and the same was approved vide letter dated 22 May 2019. It was specifically stated in the approval letter that "That the above mentioned name is made available for registration of the LLP for new incorporation". Copy of the letter dated 22 May 2019 approving the name 'REEF CENTRE FOR WELLNESS & EXCELLENCE LLP' is produced and marked as **Exhibit P2.**
7. The Petitioner submits that, although the Petitioner had reserved the name vide Exhibit P2 letter, the Petitioners could not incorporate the LLP within 3 months of the reservation of name. Thereafter on 23.01.2020, The Petitioner filed an application for the incorporation of the Limited Liability Partnership under the same name which was approved under Exhibit P2 letter with the 1st Respondent. This application in Form FiLLiP was allotted SRNM13737069 dated 23.01.2020. Copy of the Form FiLLiP with SRN M13737069 dated 23.01.2020 is produced and marked as **Exhibit P3.**

8. The Petitioner submits that, upon receipt of the Exhibit P3 Application, the 1st Respondent approved the Proposed Name of the LLP with the remark "No Resemblance found, TM Checked u/C (Under Class) 44,35,41". However the following objections were raised and has been marked as 'Sent for resubmission'

- 1. Address should be visible in the provided Utility Bill and it should match with the FILLIP Form. Note: for R/Office address proof provide utility bill (electricity/gas/water/mobile/telephone bill) which should not be older than 2 months (Private Sector Bills, Tax Invoices, Receipts, bank statements, Property Tax Receipts or revenue department receipts are not considerable for R/O proof)*
- 2. Furnish address proof (utility/bank statement with banking transaction) not older than two months of Kunhi Muhammed (1st petitioner herein)*
- 3. Mention full name of Padingharan Achiyaveedu Mohammed Fasal in the subscriber sheet.*
- 4. As the subscriber sheet is signed in India furnish PAN/PAN undertaking, Business Visa/OCI Card/PIO with proof of arrival i.e. arrival stamps of PADINGHARAN ACHIYAVEEDU MUHAMMED FAISAL*

A copy of the email communication of the 1st Respondent dated 23.01.2020 is produced and marked as **Exhibit P4.**

9. The Petitioner submits that, thus even on the second occasion, it was specifically stated there is no resemblance found and there was no objection on the proposed name 'REEF WELLNESS & EXCELLENCE LLP'. Regarding

the objections raised in point no. 1 above, there was absolutely no justification. In the present case, for address proof, the Petitioner had given the Electricity Bill of the landlord and as per the KSEB bill format, complete address will not appear. However, the Petitioner had rectified the defects and had resubmitted the FiLLiP form and instead of submitting the KSEB bill, it obtained a telephone connection in the name of the proposed LLP. Further a NOC from the building owner was also submitted with the FiLLiP form filed on 5.02.2020.

10. The Petitioner submits that, thus a NOC was given from the landlord and as the KSEB bill in the name of the landlord was not showing the Landlord's full address, the Petitioner had obtained a telephone connection (BSNL) in the name of the proposed LLP to show the address proof. However, this resubmitted FiLLiP form was once again sent back by the 1st Respondent's office vide email dated 05th February 2020 stating the NOC should be provided by the same person in whose name the utility bill was furnished. Earlier, the Petitioner had given the Electricity Bill in the name of the building owner and also a NOC from the same building owner and both was matching, but since the 1st Respondent's office wanted complete address of the landlord in the electricity bill, the Petitioner, as an additional document had given the telephone bill as address proof. It is submitted that the LLP Rules only says that a NOC has to be given from landlord and further that any utility bill can be given for address proof. However, the 1st Respondent had come up with new requirements which are not prescribed under the LLP Act or Rules. Copy of the email communication dated 5.02.2020 from the 1st Respondent's office is produced and marked as **Exhibit P5**

11. In response to Ext. P5 email communication, the Petitioner through his Chartered Accountants had clarified the issue that the NOC signed by the building owner was already given and further that a telephone bill in the name of M/s REEF Wellness and Excellence was also given. Thus, there is no room

for any confusion as there was a NOC as well as a utility bill in the name of the proposed LLP to show that the address was under the genuine occupation of the petitioner. Copy of explanation given by Petitioner to resubmission remarks dated 5.02.2020 is produced and marked as **Exhibit P6**

12. The Petitioner submits that, the 1st Respondent without considering the clarifications given had rejected the Ext. P3 application stating the NOC in the case of a proprietorship should given on the letter head and signed. A new ground, which was not all relevant to the case was also raised stating the business visa of one of the partner (who was a resident India) was to be submitted. Copy of the communication dated 18.02.2020 rejecting the Ext. P3 application is produced and marked as **Exhibit P7.**
13. The Petitioner, thereafter had several email communications with the office of the 1st Respondent clarifying that it has already submitted a NOC from the building owner and in support of the owner's name and address of the premises, utility bill is also given. But since the 1st Respondent's office was not ready to understand and address the concerns, the petitioner through his Chartered Accountant had finally escalated the issue to the email of the escalation authority under the Ministry of Corporate affairs, i.e "CRC.Escalation@mca.gov.in", by writing a detailed email. Copy of the email dated 4.03.2020 sent by the Petitioner's chartered accountant to the escalation authority is produced and marked as **Exhibit P8.**
14. It is submitted that, even though, the said authority is the authority for escalation, without considering the detailed email dated 4.03.2020 had simply replied back that the queries are validly raised. The specific point that there is no legal basis for asking OCI card from an Indian Passport was not at all address and had simply replied that the queries were valid. Copy of the email response dated 4.03.2020 from the office of the 3rd Respondent is produced

and marked as **Exhibit P9**. The Petitioner was frustrated with such reckless and casual approach of the grievance redressal authorities and therefore vide email dated 04.03.2020, the Petitioner once again raised the same question as to how an OCI card can be demanded from an Indian Passport Holder. On receipt of the email dated 4.03.2020, the escalation authority had realized the big mistake on its part and therefore vide its email dated 5.03.2020 had admitted that it was sent inadvertently. However, the Petitioner was asked to file a fresh form FiLLiP as the maximum number of resubmissions was already over. Copy of the email dated 4.03.2020 sent by the Petitioner's Chartered Accountant to the 3rd Respondent along with reply is produced and marked as **Exhibit P10**.

15. It is pertinent to note that right from Ext. P2 correspondence, there was no objections raised on the proposed name, and the defects raised were only with respect to the NOC and address proof.
16. It is submitted that after Ext. P10, a series of communications had happened between the Petitioner's Chartered Accountant and the respondents, but it was insisted a fresh form FiLLiP has to be submitted along with a NOC, a utility bill in the name of owner showing complete premise address. Thus, the Petitioner, with lot of difficulty had approached the KSEB department multiple times and got the complete address of the landlord incorporated on the electricity bill. Finally, the Petitioner filed a fresh application on 12.06.2020 in Form FiLLiP with SRN M14718829. All the previous defects pointed out by the 1st Respondent's office was cured and at this time, the form was accompanied by NOC, utility bill in the name of the building owner having full address. Copy of the Form FiLLiP with SRN M14718829 dated 12.06.2020 is produced and marked as **Exhibit P11**.
17. To the utter surprise of the Petitioner, the 1st Respondent, who had approved the name thrice in the previous round, had now raised a new objection with

respect to the proposed name. Among other defects, the defect with respect to the name was given as below:

“Proposed names include the word “REEF” is TM under Class 5. Hence it cannot be considered as per Section 15(2) of the LLP Act, 2008.

Copy of the email communication dated 14.06.2020 from the 1st Respondent is produced and marked as **Exhibit P12**

18. The Petitioner submits that the word “REEF” is a general word and no one can claim exclusivity over the general expressions under Sec 9 (1) of the Trademark Act. The Petitioner submits that, even under the Trademark Act 1999, the registration would give exclusive rights only for the class for which the registration is granted. Sec 28 of the Trademark Act reads as below:

Sec 28: Rights conferred by registration

(1) Subject to the other provisions of this Act, the registration of a trade mark shall, if valid, give to the registered proprietor of the trade mark the exclusive right to the use of the trade mark in relation to the goods or services in respect of which the trade mark is registered and to obtain relief in respect of infringement of the trade mark in the manner provided by this Act.

19. The Petitioner submits that, as per Ext. P12, the proposed name was rejected citing there was another registered trademarks under class 5. Class 5 deals with *Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparation for*

destroying vermin; fungicides, herbicides, which are pure goods. In the case of the Petitioner, the services are that of providing 'counseling, training programs, wellness programs, which are pure services. The relevant class for Petitioners services are class 35. Therefore, the Petitioner made a resubmission of Form FiLLiP on 20.06.2020 clarifying the above position apart from addressing other defects. Copy of the FiLLiP form resubmitted on 20.06.2020 is produced and marked as **Exhibit P13**

20. Interestingly, after reviewing the response dated 20.06.2020, which also contained the explanation with respect to the name issue, the 1st Respondent had sent another email dated 22.06.2020 pointing out the defects, but at this time, he had confined only to one issue, i.e submission of a new subscriber sheet. Therefore, it appeared that, the explanation on the name issue was accepted and the said defect was dropped. Copy of the email dated 22.06.2020 issued by the 1st Respondent is produced and marked as **Exhibit P14.**
21. Later, after the Petitioner submitted its response to the other issue pointed out in the email dated 22.06.2020 on 6.07.2020, the 1st Respondent had rejected Ext. P11 application once again bringing up the issue of proposed name conflicting with another registered trademark under class 5. Copy of the letter dated 9.07.2020 rejecting Ext. P11 application is produced and marked as **Exhibit P15**
22. It is submitted that the 1st Respondent had earlier expressly approved the proposed name twice and had even dropped the said defect when it issued Ext. P14. The Petitioner submits that, even under the special law, i.e Trademarks Act 1999, exclusive rights are granted only for the goods or services in respect of which the trademark is registered. That is the case even for a unique trademark. In the present case, the word "REEF" is a general word which

means 'a long line of rocks, plants, etc. just below or above the surface of the sea'. No one can claim exclusivity over such general words.

23. It is submitted that, the trademarks registry itself has given registration for the trademarks containing 'REEF' for different class for various applicants. Thus, even under the Trademarks Act, there are no restrictions for using the word 'REEF' for different classes. The 1st Respondent's office is not the competent authority under law to decide whether the proposed name is identical or deceptively similar to that of registered trademark. That is the function which has to be decided by the trademark registry. Copy of the screen shot from the trademark's registry showing registration of trademark containing "REEF" for different classes is produced and marked as **Exhibit P16**
24. It is submitted that Sec 15 (2)(b) should be read down to mean "registered trade mark or deceptively similar to a registered trademark belonging to the same class". If the expression 'registered trademark' is read as it is, then no one can use any name which may contain words or expressions which are subject matter of registered trademarks under any other class. It will lead to a situation, where unfair and arbitrary restrictions are placed on the use of names and beyond what is provided under the special law. The Petitioner submits that the Trademarks Act, 1999 is a special statute providing intellectual property rights in Trademark of an enterprise. Section 15 of the LLP Act and Rules cannot go beyond the provisions of the Trademark Act, 1999. Determination of the question whether a trademark is identical or deceptively similar cannot be left to the discretion of the 1st Respondent as it falls within the domain of trademark registry.
25. The Petitioner submits that the registration of names under the Companies Act is also administered by the same authority, Ministry of Corporate Affairs and the said powers has been delegated to the same authority i.e Central

Registration Centre. The Companies Incorporation Rules 2014, also contained similar provisions in Rule 8 (2) (a) which read as below:

Rule 8 (1)

(2) (a) *The name shall be considered undesirable, if-*

(i) it attracts the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950);

[(ii) it includes the name of a trade mark registered or a trade mark which is subject of an application for registration under the Trade Marks Act, 1999 and the rules framed thereunder unless the consent of the owner or applicant for registration, of the trade mark, as the case may be, has been obtained and produced by the promoters

26. However, vide Companies (Incorporation) Fifth Amendment Rules, 2019 [Notification No. 1/13/2013 CL-V, part-I, Vol.III dated 10.05.2019], amendments were made and a new Rule, i.e Rule 8A(1)(b) was inserted which reads as below:

Rule 8A: (1) The name shall be considered undesirable, if-

(a) it is prohibited under the provisions of section 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950 (12 of 1950), unless a previous permission has been obtained under that Act;

(b) save as provided in section 35 of the Trade Marks Act, 1999 (47 of 1999), the name includes a trade mark registered under the Trade Marks Act, 1999 and the rules framed thereunder in the same class

*of goods or services in which the activity of the company is being carried out or is proposed to be carried out, unless the consent of the owner 2[***] of the trade mark, as the case may be, has been obtained and produced by the promoters;*

27. Thus, with the above amendment, the legislative intent has been made very clear that the proposed name will be considered as undesirable only if such name includes a trademark registered in the same class of goods or services in which the activity of the company is being carried out.

Copy of the Rule 8A of the Companies Incorporation Rules 2014 is produced and marked as **Exhibit P 17**

28. It is submitted that the same interpretation as given in Exhibit P17 Rules framed under the Companies Incorporation Rules 2014 should be given to Sec 15(2) of the LLP Act and otherwise, it will amount to placing harsh and unreasonable restriction resulting in violations of the fundamental rights guaranteed under Article 14 and Article 19 (1)(g) of the Constitution of India. It is the same authority which administers both the Companies Act 2013 and the LLP Act and there is no reason why a differential treatment has to be given when it comes to the name approval process under the LLP Act. It is simply an omission on the part of the ministry to make corresponding amendments or to issue necessary clarifications under the LLP Act.

29. Being aggrieved by the irrational and unjustifiable actions of the 1st Respondent as well as that of the escalation authority, the Petitioner had submitted a detailed representation to the 2nd Respondent vide letter dated 7.08.2020. Copy of the representation dated 7.08.2020 is produced and marked as **Exhibit P18**. However, till date, no effective steps were taken by the Respondents for redressal of the Petitioner's grievances.

30. Petitioner submits that the list of classes for registration of trademark under the Trademarks Act is given on the trademark registry portal and classes 1 to 34 deals with goods and classes 35 to 45 deals with services. The list of trademark classes as available on the trademark portal is produced and marked as **Exhibit P19.**
31. The Petitioner submits that, due to the flimsy grounds raised by the Respondents for rejecting the applications submitted for incorporation, the Petitioner had to incur huge costs towards the professional fees and statutory fees etc, when the government policy has been always focused on 'ease of doing business'.
32. The Petitioner has no other alternative and effective remedies against rejection of Ext. 15 rejection letter and hence the Petitioner is constrained to approach this Hon'ble Court under Article 226 of the Constitution of India, without prejudice to the other legal grounds and remedies that may be available to him, for relief, to which they are entitled, on the following among other grounds:

GROUND:

- A. That Ext. P15 rejection order is ex-facie illegal, arbitrary and needs to be set aside.
- B. That the fact a registered trademark under class 5 of the Trademark Act cannot be a reason to reject the Ext. P11 application of the Petitioner. It is submitted that the proposed LLP which the Petitioner have decided to incorporate do not undertake any of the activities under class 5 of the trademark.

- C. That the activities of the proposed LLP is purely service, i.e to provide consulting and training programs in the area of wellness, whereas class 5 of the trademark classification deals with pharmaceutical products.
- D. That the 1st Respondent had thrice approved the proposed name "REEF WELLNESS & EXCELLENCE LLP" and no such objections were raised. That being the case, he cannot now come up with an objection that the proposed name contains 'REEF' which is conflicting with a registered trademark under class 5.
- E. That the *"identical or too nearly resembles to that of any other partnership firm or limited liability partnership or body corporate or a registered trade mark, or a trade mark"* appearing in Sec 15(2)(b) of the LLP Act should be read down to mean only the *"registered trademarks under the same class of services or goods in which the activity of the company is being carried out or is proposed to be carried out"*
- F. That the action of the 1st Respondent in rejecting the application of the Petitioner due to alleged conflict of the Proposed name under the Trademark Act is illegal, arbitrary, unreasonable and is also violative of the fundamental principles of the Petitioner guaranteed under Article 14 & 19 (1) (g) of the Constitution of India.
- G. The Petitioner submits that the Respondents have acted unfairly in modifying their ground of rejection after every resubmission.
- H. The Respondents have erred in treating that the Proposed Name is in violation of Class 5 of the Trademark Act which deals with pharmaceutical goods, whereas Petitioner's business activity is pure provision of services, which falls under class 35.

- I. That, even under the Trademarks Act, exclusivity for a registered trademark is confined only to a particular class and such registration do not grant any exclusivity for the entire class of goods and services. That being the case, the Respondents ought not to have rejected the application of the Petitioner on the ground that the proposed name is in conflict with a trademark registered under class 5.
- J. That the Respondents are not the competent authority to determine whether the proposed name is similar or identical with the registered trademarks and such exercise has to be carried out by the trademark registry.

PRAYER

For these and other reasons that may be urged at the time of hearing, the Petitioner humbly prays that this court may be pleased to:

- A. To call for the records leading to Ext. P 15 order and to issue a writ of Certiorari or such other writ or order to set aside Ext. P 15 rejection letter.
- B. To issue a writ of mandamus or such other writ for directing the 1st Respondents to process the Ext. P11 application for incorporation of LLP without raising any dispute on the proposed name "REEF WELLNESS & EXCELLENCE LLP".
- C. To give a declaration that the provisions of Sec 15(2)(b) of the LLP Act shall be read down to mean that the restriction shall be applicable only if

the proposed name contains a trademark registered under the same class of goods or services in which the activity of the company is being carried out or is proposed to be carried out.

D. To allow the writ petition with cost to the Petitioner

Dated this thethe day of 2021

Petitioner

Counsel for the Petitioner

INTERIM RELIEF:

Pending disposal of the writ petition, this Hon'ble Court may be pleased to direct the 1st Respondent to process Ext. P11 application form for incorporation of the LLP without raising any dispute on the proposed name "REEF WELLNESS & EXCELLENCE LLP".

Dated this the day of 2021

Counsel for the Petitioner

Petitioner

BEFORE THE HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM.

(Special Writ Jurisdiction).

W.P. (C) No. _____ of 2021

Kunhi Muhammed Etayattil

: Petitioners

**The Asst. Registrar, Central Registration Centre &
Another**

: Respondents

AFFIDAVIT.

I, Kunhi Muhammed Etayattil,, Aged 47 Years, S/o Aboobacker residing at Thekkummala, Naduvattam, Palakkad District, Kerala, PIN 679308do hereby solemnly affirm and state as follows:-

1. I am the Petitioner in the above writ petition and I am conversant with the facts of the case and I am competent to swear this affidavit on behalf of the Petitioner.
2. The facts stated in the Writ Petition are true to the best of my knowledge and belief and that stated in the Grounds are legal submissions believed by me to be true. The documents marked as Exhibits P1 to P19 are true copies of their respective originals.
3. I have not filed earlier petitions seeking similar or identical reliefs in respect of the subject matter of this case which are pending.

All the facts stated above are true to the best of my knowledge, information and belief.

Dated this the 30th January 2021

Deponent

Solemnly affirmed and signed before me by the deponent who is personally known to me at my office in Ernakulum on this the 30th day of January 2021

SHAMEEM AHAMED

Advocate

APPENDIX

LIST OF ENCLOSURES

1. **Exhibit P1** : Copy of the Challan SRN M10527299 dt. 21.05.2019.
2. **Exhibit P2** Copy of the letter dated 22 May 2019 approving the name 'REEF CENTRE FOR WELLNESS & EXCELLENCE LLP"
3. **Exhibit P3** : Copy of the Form FiLLiPwith SRN SRN M13737069 dated 23.01.2020.
4. **Exhibit P4** Copy of the email communication of the 1st Respondent dated 23.01.2020.
5. **Exhibit P5** Copy of the email communication dated 5.02.2020 from the 1st Respondent's office.
6. **Exhibit P6** Copy of explanation given by Petitioner to resubmission remarks dated 5.02.2020.
7. **Exhibit P7** Copy of the communication dated 18.02.2020 rejecting the Ext. P3 application.
8. **Exhibit P8** Copy of the email dated 4.03.2020 sent by the Petitioner's chartered accountant to the escalation authority.
9. **Exhibit P9** Copy of the email response dated 4.03.2020 from the office of the 3rd Respondent.

10. **Exhibit P10** Copy of the email dated 4.03.2020 sent by the Petitioner's Chartered accountant to the 3rd Respondent along with reply.
11. **Exhibit P11** Copy of the Form FiLLiP with SRN M14718829 dated 12.06.2020 with its challan.
12. **Exhibit P12** Copy of the email communication letter dated 14.06.2020 from the 1st Respondent.
13. **Exhibit P13** Copy of the FiLLiP form resubmitted on 20.06.2020.
14. **Exhibit P14** Copy of the email dated 22.06.2020 issued by the 1st Respondent.
15. **Exhibit P15** Copy of the letter dated 9.07.2020 rejecting Ext. P11 application.
16. **Exhibit P16** Copy of the screen shot from the trademarks registry showing registration of trademark containing "REEF" for different classes.
17. **Exhibit P17** Copy of the Rule 8A of the Companies Incorporation Rules 2014.
18. **Exhibit P18** Copy of the representation dated 7.08.2020.
19. **Exhibit P19** The list of trademark classes as available on the trademark portal.

Dated this the day of February 2021

Counsel for the Petitioner

WWW.TAXSCAN.IN