

IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH

C.P.No.167/BB/2017  
Under Section 252(3) of the Companies Act, 2013  
Order delivered on: 28<sup>th</sup> February, 2018

IN THE MATTER OF  
ABERAME CREATIVE SOLUTIONS PRIVATE LIMITED

Aberame Creative Solutions Private Limited  
#974, Shree Yogambika  
23<sup>rd</sup> Main, 25<sup>th</sup> A Cross, Sector 2  
HSR Layout  
Bengaluru 560 102

.....PETITIONER

Versus

Registrar of Companies  
2<sup>nd</sup> Floor, E-Wing, Kendriya Sadan,  
Koramangla, Bengaluru-560 034

.....RESPONDENT

Coram: Hon'ble Shri RatakondaMurali, Member (Judicial)  
Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

For the Petitioner (s)      Mr. Qaiserahmed  
No.255, 8<sup>th</sup> Block  
3<sup>rd</sup> Main, Koramangala  
Bengaluru-560034  
Practicing Company Secretary for the Petitioner

Per: Hon'ble Shri Ashok Kumar Mishra, Member (Technical) - Author

Heard on:    03.11.2017, 28.11.2017, 18.12.2017, 12.01.2018, 09.02.2018 and  
21.02.2018

O R D E R

The Petitioner Company M/s. Aberame Creative Solutions Private Limited has filed the present Petition under Section 252(3) of the Companies Act, 2013 with a prayer for issuance of directions to the Registrar of Companies, Karnataka to restore the name of the Petitioner Company in the Register of Companies and to pass such order as deems fit in the circumstances of the case.

The averments in the Company Petition are briefly described hereunder:-

The Petitioner Company was originally incorporated on 8<sup>th</sup> December, 2011 under the name and style of "**Aberame Creative Solutions Private Limited**" with the Registrar of the Companies, Karnataka and obtained Certificate of Incorporation vide bearing CIN No. **U74900KA2011PTC061554**.

The Registered Office of the Petitioner Company is situated at #974, Shree Yogambika, 23<sup>rd</sup> Main Road, 25<sup>th</sup> A Cross, Sector 2, HSR Layout, Bangalore 560 102.

The main objects of the Company are to

- a. To provide creative solutions including creative design, retail solution, print & publish media & events and strategic planning which enables the business entity to have innovative ideas for their product development;
- b. To create memorable advertising campaigns that boost brand/product recognition and awareness. This can be undertaken in a variety of media including print (magazine/POS/outdoor), broadcast media (TV, radio, cinema), web/online rich media to POS (point of sale), and email and mobile advertising;
- c. To provide web services in order to support to machine to machine interaction over a network. It includes providing services like domain name registration, hosting services, SEO (Search engine optimisation) and social media marketing;
- d. To plan and create a website that includes text, images, digital media and other interactive elements to produce page screen on

the web browser. It includes conceptualisation, producing, post-production, research and advertising.

The Authorised share capital of the Company is Rs. 1,00,000/- consisting of 10,000 equity shares of Rs. 10/- each. The Issued, Subscribed and Paid up capital of the Company is Rs 1,00,000/- consisting of 10,000 equity shares of Rs 10/- each.

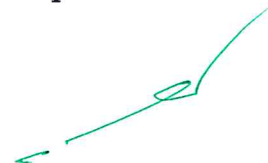
It is averred in the Company Petition that, the Registrar of Companies had struck off the name of the Company on a suo-moto basis under section 248 of Companies Act, 2013.

The Petitioner Company is a closely held private Company with only the family members/friends as shareholders of the Company. The Company was incorporated on 08.12.2011 with the objects to carry on the business as mentioned above in main objects.

That the Petitioner Company has filed papers with ROC upto 31.03.2014. Due to reasons beyond control of the Promoters of the Company they could not file before the ROC the Annual filing for the year 31.03.2015 and 31.03.2016.

It is averred after understanding the consequences of infringement of Companies Act, the Board of Directors has resolved to take necessary steps for restoration of the Company's name to get the status as 'Active'.

It is averred the Directors of the Petitioner Company have engaged professionals to take care of compliances which the Company ought to do for filing of requisite returns before the Registrar of Companies from 01.04.2015 to up to date.



The Directors/Members of the Petitioner Company has also confirmed that no abnormal amount has been deposited into the Company's Account during demonetization period i.e. September 2016 to January 2017 and that no income tax notice has been served on the Company in this connection, as per affidavit duly notarized dated 24.11.2017.

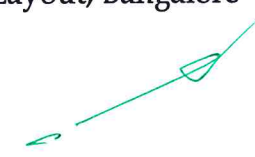
The Directors/Members of the Petitioner Company has also filed an affidavit duly notarized dated 24.11.2017 undertaking to file all the overdue returns such as Balance Sheet, Annual Returns and other documents, if any. with Ministry of Corporate Affairs immediately within 30 days upon restoration of the name of the Company by the Hon'ble National Company Law Tribunal, Bengaluru Bench. However, they have filed audited financial statement as on 31.03.2017.

The Petitioner Company has also filed copies of statement of account of HDFC Bank for the year 2017 bearing No.19932000000757, along with copies of Service Tax and VAT filing returns for the year 2016-17.

The Registrar of Companies, Karnataka, Bengaluru has filed Counter Affidavit dated 12th January, 2018 along with annexures.

The Registrar of Companies, Karnataka, Bengaluru denied all the averments made in the petition except those which are specially admitted herein and submitted his report as follows that:

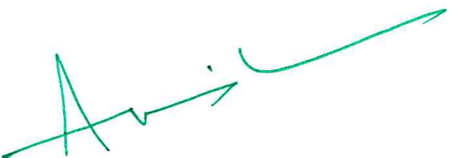
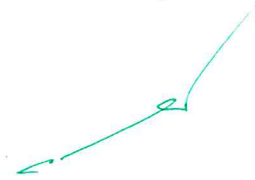
- 1) The Petitioner Company was registered with the Registrar of Companies on 8th December, 2011 with CIN U74900KA2011PTC061554 and as per the records of the Company in MCA 21 portal the Registered Office address is No.974, Shree Yogambika, 23<sup>rd</sup> Main, 25<sup>th</sup> A Cross, Sector 2, HSR Layout, Bangalore



560 102, Karnataka, India. Copy of the Company Master Data is produced and marked as **Annexure-I**.

- 2) It is submitted that on verification of the MCA 21 portal in the month of March 2017 when action under Section 248(1) of the Companies Act, 2013 was initiated against the eligible Companies, it was seen that the Petitioner Company has not filed either the Balance Sheet or the Annual Returns from the year 2014-15 to till 2015-16. Therefore, the Respondent had reasonable cause to believe that the petitioner company is not carrying on any business or operation and therefore a notice in Form STK-1 dated 17.03.2017 was sent to the company. Copy of the said notice is produced and marked as Annexure-II. Further, STK-1 notice dated 22.03.2017 was sent to Mrs. Anitharajan Thyagarajan and Mr. Rajalingam Rathinam, Directors of the Company. Copies of the notices sent to the Directors are produced and marked as **Annexure-III & IV** respectively.
- 3) In the said notice STK-1 that was sent to the Company and the Directors of the Company, it was mentioned that the petitioner company has defaulted in filing of the returns for two immediately preceding financial years and that the respondent proposes to strike off the name of the Company from the Register of company as per Section 248 of the Companies Act, 2013 unless a cause is shown to the contrary with 30 days from the date of receipt of the STK-1 notices.
- 4) It is submitted that a consolidated notice in STK-5 in English and Hindi was released as per Rule 7 of the Companies (Removal of name of Companies from the Register of Companies) Rule, 2016, in the Official website of the Ministry of Corporate Affairs on 28.04.2017 and in the official Gazette on 20.05.2017 and the same was published in the newspaper in Kannada in Vijay Karnataka

(Kannada Edition) and in English in the Times of India on 13.05.2017 and in all the above said notices i.e. STK-1, STK-5 and STK-5A, 30 days' time was given to show cause to the contrary to the action of strike off. Copies of the notice in website, Official Gazette and paper publication in Vijay Karnataka and the Times of India are shown as Annexure- V, VI & VII respectively.

- 5) It is submitted that since neither cause was shown to either the physical notices or to the website, Gazette and newspaper notices either by the Company or its Directors, and also since no Balance Sheet or Annual Return was filed by the Petitioner company till 20.06.2017 the day on which the list of defaulting companies were crystallized, the Respondent proceeded to strike of the name of the Petitioner Company from the Register of Companies and published a notice in STK-7 in the homepage of the MCA on 17.07.2017. A copy of the said STK-7 Notice is shown as Annexure -IX. It was also published in the official Gazette on 29.07.2017 stating that from 17.07.2017 names of the companies mentioned therein including the petitioner company have been struck off from the Register of Companies as per sec 248(5) of the Act. A copy of the publication made in the Official Gazette on 29.07.2017 is shown as Annexure-X.
  - 6) It is nowhere stated in the petition that, the applicant company is an active Company and has not produced any supporting documents like the financial statements, or Income Tax Returns etc., to prove that the Company had been carrying on the business as on the date of strike off. It may be seen that the ROC has sent the STK-1 notice to the Company and its Directors exactly to the same address mentioned in the MCA 21 Portal.
  - 7) There is no prosecution, inspection, technical scrutiny and complaints pending against the Company.
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8) The Petitioner has prayed that the name of the Company be restored to the Register of Companies under section 252 of the Act. In this regard, the Respondent humbly prays that this Hon'ble Tribunal may kindly direct to the Petitioner Company

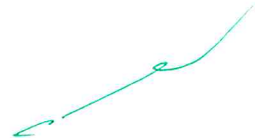
a) To show proof that it was an active Company at the time of strike off u/s 248(5) of the Act by the Respondent, as required by Sec 252(3) of the Act or otherwise. It is just that the name of the Company should be restored to the Register of Companies.

b) If the Hon'ble NCLT is satisfied with the response of the Petitioner to prayer(s) above, then to direct the Petitioner to undertake to file the overdue returns upto date within 30 days in the MCA 21 Portal from the date of the order NCLT reviving the Company and comply with the provisions of the Companies Act, 2013.

c) Direct the Petitioner to pay cost as decided by this Hon'ble Tribunal to be paid to the account of Central Government by way of a demand draft favouring the Pay and Accounts Officer, Ministry of Corporate Affairs, Southern Region, Chennai, towards the expenses incurred by the Respondent in taking Section 248 action, like postage, stationary, advertisement charges etc.

d) Direct the Petitioner that the revival order be automatically vacated if the above compliance is not made within a maximum period of 30 days from the date of the receipt of the order.

The Respondent/ Registrar of Companies, Karnataka, Bengaluru has stated that, he exercised his power under Section 248 of the Companies Act, 2013 read with (Removal of Names of Companies from the Register of Companies) Rules, 2016 after following the procedure as per the law, giving opportunity to the Petitioner Company to file its Statutory Returns



and upon non-filing of Statutory Returns the name of the Company was struck off, vide his Notice No. STK-7/ROC(B)/2017 dated 17<sup>th</sup> July, 2017.

It is also averred from the report of Registrar of Companies, Karnataka, Bengaluru the Petitioner Company has committed default in not filing the Statutory Returns for the Financial Years 2014-15 to till 2015-16 before the Respondent i.e. Registrar of Companies. The Directors are willing to provide creative solutions including creative design, retail solution, print and publish media and events and strategic planning which enables the business entity to have innovative ideas for their product development. The Petitioner Company prayed that the name of the Company be restored in the Register of Companies under section 252 of the Act.

**Section 252(3) stipulates that:**

*"if a company, or any member or creditor or workman thereof feels aggrieved by the company having its name struck off from the Register of Companies, the Tribunal on an application made by the company, member, creditor or workman before the expiry of twenty years from the publication in the Official Gazette of the notice under sub-section (5) of Section 248 may, if satisfied that the company was, at the time of its name being struck off, carrying on business or in operation or otherwise it is just that the name of the company be restored to the register of companies, order the name of the company to be restored to the register of companies, and the Tribunal may, by the order, give such other directions and make such provisions as deemed just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off from the register of companies."*

The PCS has submitted the following documents:

1. Return filed with Central Board of Excise & Customs for the financial year 2016-17;
2. VAT Return of 2016-17;
3. HDFC Bank Statement for the year 2016-17;



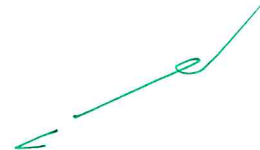
4. Audited Balance Sheet for the years 2014-15 and 2015-16 with Revenue from Operations being Rs. 67,65,608 and Rs. 24,24,895 respectively and existence tangible assets.

We have heard the PCS for the Petitioner Company, who contended that, the Petitioner Company was carrying on business at the time of strike off and that the company is a genuine operational Company. However, inadvertently the company has not filed the Financial Statements and Annual Returns for the year ended 31<sup>st</sup> March 2015 and 31<sup>st</sup> March 2016. He further contended that, the Applicant Company will submit necessary filing of Financial Statements and Annual Returns soon after restoration of the name of the company with the Registrar of Companies, Karnataka at Bengaluru and prayed the Tribunal to revive this Company.

After hearing the PCS for the Petitioner Company and perusal of the material on record, the report of the Registrar of Companies, Karnataka and on going through the provisions of Section 252(3) of the Companies Act, 2013, this Tribunal is of the view that the company was in existence and it is a going concern and name of the Company to be restored in the Register of Companies as maintained by Registrar of Companies. The name of the Company be ordered to be restored and

**THIS TRIBUNAL DO FURTHER ORDER:**

The Petitioner Company shall within 30 (thirty) days of the date of the receipt of this order cause a certified copy of this Order along with the copies of Audited Balance Sheet and all other Statutory filings for the period 2014-15 and 2015-16 and for subsequent year in the prescribed format as required under the Companies Act, 2013 be filed with the Registrar of Companies, Karnataka, Bangalore.



The Petitioner Company is also directed that, the revival order will be vacated if the above compliances are not made within the minimum period of 30 days from the date of receipt of this order by the Petitioner Company. The Petitioner Company is directed to pay Rs. 50,000/- as cost to the account of Central Government in favour of the Pay & Accounts Officer, Ministry of Corporate Affairs, Sothern Region, Chennai and D.D. drawn to be handed over to Registrar of Companies, Karnataka Bangalore.

The Registrar of Companies, Karnataka, Bengaluru is further directed to restore the name of the Petitioner Company i.e. **ABERAME CREATIVE SOLUTIONS PRIVATE LIMITED** in the Register of Companies within a period of 15 days from the date of this order, after accepting the Audited Balance sheets and related financial statements and other Statutory Returns after charging additional fee as may be applicable as required under the Companies Act, 2013.

  
(ASHOK KUMAR MISHRA)  
MEMBER, TECHNICAL

  
(RATAKONDA MURALI)  
MEMBER, JUDICIAL